

MOROCCO

Follow-up - State Reporting

i) Action by Treaty Bodies, including reports on missions

CCPR, A/60/40 vol. I (2005)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

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233. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the comprehensive table presented below. Since 18 June 2004, 15 States parties (Egypt, Germany, Kenya, Latvia, Lithuania, Morocco, the Netherlands, the Philippines, Portugal, the Russian Federation, Serbia and Montenegro, Slovakia, Sweden, Togo and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only six States parties (Colombia, Israel, Mali, Republic of Moldova, Sri Lanka and Suriname) have failed to supply follow-up information that had fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

224. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State Party</u>	<u>Date Information Due</u>	<u>Date Reply Received</u>	<u>Further Action</u>
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Eighty-second session (October 2004)

Morocco ¹	4 November 2005	9 February 2005	At its eighty-fourth session, the Committee decided to take no further action.
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¹ The Committee's concluding observations on Morocco identified priority areas, but rather than asking for information within a year, a full treatment in the next report was sought.

Follow-up - State Reporting
ii) Action by State Party

CCPR CCPR/CO/82/MAR/Add.1 (2005)

Comments by the Government of Morocco to the concluding observations of the Human Rights Committee

[ORIGINAL: Arabic]

[January 2005]

Reply from the Ministry of Justice regarding the concluding observations issued by the Human Rights Committee following its consideration, on 25 October 2004, of Morocco's fifth periodic report on the implementation of the International Covenant on Civil and Political Rights

1. Length of the period of custody

Persons suspected of committing certain offences are questioned and investigated by the police. If there is no evidence to show that they have committed an offence, they are released immediately. If the case relates to an offence that is punishable by a term of imprisonment, and if the exigencies of the preliminary investigation are such that the police officer needs to keep a person at his disposal, he may remand that person in police custody for up to 48 hours, which period may be extended for a further 24 hours, after the person has been brought before the Crown Prosecutor. The Crown Prosecutor will examine and question the person and will weigh up the arguments set out in the extension application before taking a decision. Article 80 of the Code of Criminal Procedure provides as follows:

"If the case relates to a serious or a lesser offence which is punishable by a term of imprisonment, and if the exigencies of the investigation are such that the police officer needs to keep a person at his disposal, he may remand that person in police custody for up to 48 hours, subject to the approval of the public prosecutor's office. He must present the person to the Crown Prosecutor or the Crown Public Prosecutor before the end of that period.

"The Crown Prosecutor or the Crown Public Prosecutor, having examined the person presented to him, may give written permission for one 24-hour extension of the period of police custody.

"In the case of an offence against the internal or external security of the State, the period of police custody shall be 96 hours. This may be renewed, once, with the written permission of the public prosecutor's office.

"Exceptionally, the above-mentioned permission may be granted without the person being

presented to the public prosecutor's office, pursuant to a decision issued together with an explanatory note.

"If an extension of the period of police custody is granted, the person in custody shall be entitled to ask for a lawyer. The designated lawyer shall be entitled to interview the person in custody.

"Such interviews shall be conducted, with the permission of the public prosecutor's office, beginning from the first hour of the extension of police custody and lasting for up to 30 minutes. Interviews are monitored by the police under conditions which guarantee their confidentiality.

"However, if a problem of distance makes it difficult to obtain permission from the public prosecutor's office, the police may, by way of an exception, authorize the lawyer to interview the person in custody, provided that the public prosecutor's office is promptly informed that this has been done.

"Lawyers shall not disclose any information which they obtain during interviews with their clients before the end of the period of police custody.

"If warranted by the exigencies of the investigation, a representative of the public prosecutor's office may postpone an interview between a client and his lawyer, at a police officer's request, whenever the case in hand relates to one of the offences mentioned in article 108 of this Code.

"During the extension of the period of police custody, the lawyer authorized to communicate with the person in custody may submit documents or written comments to the police or the public prosecutor's office for inclusion in the police report and in exchange for a receipt".

Article 66 of the Code stipulates that: "The period of police custody may be extended for a further 24 hours, with the written permission of the public prosecutor's office".

As for the period of police custody prescribed in the Code of Criminal Procedure, it is short when compared with those prescribed in the legislation of other countries and it protects the freedom of suspects, while offering them legal guarantees. If the legislature has established 48 hours as the period of police custody, it is because this allows it to preserve the confidentiality of the investigation, to prevent the destruction of evidence and to meet the requirements of investigations into certain serious offences.

With regard to police custody for terrorist offences, the legislature has granted relatively long periods of custody in view of the nature and gravity of such offences and in order to take account of the exigencies of investigations into such offences. If a police officer requires an extension of the period of police custody, he must seek written permission from the public prosecutor's office. Extensions cannot be granted automatically, but are subject to the scrutiny of a prosecuting judge, who must verify the reasons given in the extension application and will not grant an extension unless

it is needed.

2. The fact that the person in custody is not guaranteed access to a lawyer from the beginning of the period of custody

According to article 66 of the Code of Criminal Procedure, anyone remanded in police custody has the right to ask to speak to his lawyer. The designated lawyer is entitled to communicate with the person in police custody from the beginning of the extension of the period of police custody.

The lawyer has a more pro-active role in his dealings with the police; he has the right to submit written comments and documents, against a receipt, to supplement the police report. He also has the right to communicate with his client.

If the legislature allows the lawyer to communicate with his client only after the beginning of the extension of the period of custody, it is to preserve the confidentiality of investigations, investigation techniques and the evidence required to establish the facts of a case.

3. Confiscation of the passports of some representatives of non-governmental organizations

These allegations are of a general kind and do not mention any specific cases or the names of persons who had their passports confiscated and were thus prevented from attending international human-rights conferences. It is impossible to provide any useful clarifications about non-specific cases.

4. Retroactive application of the Anti-Terrorism Act

Moroccan legislation seeks to promote the development of a State based on the rule of law by recognizing a number of principles, including:

The principle of the presumption of innocence; the protection of the right to a defence; the right to have a fair public hearing in accordance with the due process of law; the principle that the parties must be present and shall have equal treatment when it comes to the submission of evidence; and the principle of the non-retroactive application of criminal law.

Article 4 of the Criminal Code stipulates as follows: "No one shall be held guilty of an offence on account of an act that did not constitute a criminal offence under the law in force at the time it was committed". The Moroccan Constitution recognizes the same principle; article 4 provides: "The law shall be the supreme expression of the will of the nation. Everyone shall comply with the law, which shall not have retroactive effect".

This principle is one of the general principles from which there can be no derogation, except as provided in an explicit legal provision. The Anti-Terrorism Act No. 03-03 of 28 May 2003 does not contain any provisions referring to its retroactive application. No judicial body can breach the aforementioned legislative provisions and any judgement that commits such a breach shall be

deemed null and void.

It is worth pointing out that the issue raised by the Human Rights Committee about the retroactive force of the Anti-Terrorism Act is a general one and does not mention any specific cases in which the Act was applied retroactively.

5. Harassment of journalists in the exercise of their profession

Freedom of expression is granted to all citizens under the Constitution and is regarded as one of the loftiest principles. It extends to recognition of the right of all the print and audiovisual media to freedom of expression and opinion. In this regard, the Press Code regulates some of the rights relating to freedom of expression under the terms of the Act promulgated in the decree of 15 November 1958, as amended and extended on 10 April 1973 and further amended on 3 October 2002. The Code has been brought into line with international conventions and reflects the determination of the political authorities to guarantee this right, to consolidate democratic choice, and to enact laws that enable individuals and groups to exercise their rights. If the right to freedom of expression is legitimate, it is subject to legal regulations which define the framework in which this right is exercised.

The provisions of article 19 of the International Covenant on Civil and Political Rights are replicated in other international conventions and read as follows:

"1. Everyone shall have the right to hold opinions without interference.

"2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

"3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals."

With regard to the reference in the report to the harassment of some journalists in the exercise of their profession, the fact that there has been no harassment of journalists or members of the media is confirmed by the statistics on trials and prosecutions of journalists in 2004. The figures clearly show that the prosecution services only initiated one public prosecution, while a total of 34 prosecutions were brought on the basis of direct complaints or complaints which injured parties had filed with the prosecution services. The prosecution services usually operate according to the principle of the advisability of bringing a prosecution, since such cases usually involve questions of

freedom of opinion and expression. The prosecution services tend to discontinue investigations into complaints against journalists which do not appear to involve a breach of the Press and Publishing Code.
