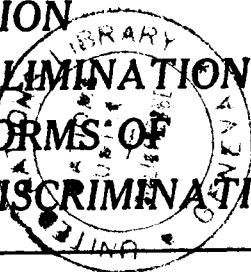


INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Initial reports of States Parties which are due in 1972

Note by the Secretary-General

Addendum

MOROCCO

10 January 1972

1. Information on the constitutional, legislative and judicial measures which have been adopted and which give effect to the following provisions of the Convention

(a) Condemnation of racial segregation and apartheid in accordance with article 3.

The provisions of the Moroccan Constitution promulgated by the Dahir of 31 July 1970 and the texts adopted in application of the principles it enunciates clearly condemn all forms of racial segregation.

Thus, the preamble of the Constitution states: "Realizing the need for action within the framework of the international organizations, the Kingdom of Morocco, which has already become an active member of these organizations, pledges adherence to the principles, rights and obligations embodied in their charters".

In addition, article 5 of the Constitution stipulates that "All Moroccans are equal before the law".

Moreover, articles 8, 9, 10, 12, 13, 16, 17 and 18 of the Constitution, which are examined below, proclaim the absolute equality of all citizens in the exercise of their political, economic and social rights.

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There can be no doubt therefore that the constitutional provisions, supplemented by legislative and statutory texts, none of which makes any distinction between the various categories of citizens, ensure that no racial segregation of any kind, either de jure or de facto, will be tolerated in Morocco in the exercise of the fundamental rights which are recognized for all citizens without discrimination.

(b) The prohibition and elimination of racial discrimination in all its forms, as listed in article 5, and, in particular, in the field of political, civil, economic, social and cultural rights and with regard to the right of access to any place or service intended for use by the general public.

Political, civil, economic, social and cultural rights

It has already been stated above that, in addition to article 5 of the Constitution, which expresses in a general form the equality of all Moroccans before the law, articles 8-18 of the same text specifically name the basic rights whose exercise is not subject to any distinction. The text of these articles is given below:

Article 8

"Men and women shall have equal political rights.

"All citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote."

Article 9

"The Constitution guarantees to all citizens:

"Freedom of movement and residence throughout the Kingdom,

"Freedom of opinion, freedom of expression in all its forms and freedom of assembly,

"Freedom of association and freedom to join any trade union or political organization of their choice.

"The exercise of these freedoms shall be subject to no limitation save by law."

It should be noted first of all in this respect that article 225 of the Penal Code approved under the Dahir of 26 November 1962 stipulates that: "Any judicial officer, public employee, agent or official of a public authority or the law enforcement services who orders or commits any arbitrary act which threatens either the personal freedom or civic rights of one or more citizens shall be punished by loss of civic rights.

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"If he proves that he acted under orders from his superiors in a field within their competence and in which he had to obey them, he shall be fully excused. In such cases, only the superiors who gave the order shall be punished.

"If the act which is arbitrary or threatens personal freedom was committed or ordered for private profit or to satisfy personal passions, the penalty incurred shall be that prescribed under articles 436-440."

In addition to the criminal penalties thus provided for, freedom of opinion, expression and assembly have been regulated by the Dahir of 15 November 1958 establishing the Moroccan Press Code and by a Dahir of the same date relating to public assembly.

Freedom of association and trade union freedom have been dealt with, respectively, in the Dahir of 15 November 1958 governing the right of association and in the Dahir of 16 July 1957 concerning trade unions.

Article 10

"No one shall be liable to arrest, detention or punishment save in the cases and in the manner prescribed by law.

"The domicile shall be inviolable. No searches or examinations shall be carried out save under the conditions and in the manner prescribed by law."

The freedom of every person is protected by the provisions of the Code of Criminal Procedure which was put in effect as from 1 May by the Dahir of 10 February 1959, whose authors, basing their work on presumption of innocence, which clearly inspires the text as a whole, endeavoured to define and regulate the conditions under which a person may be deprived of his freedom before and after judgement.

Detention pending trial, which, under article 152 of this Code, is an exceptional measure, is carefully and strictly regulated, any untried prisoner being able, in particular, at any stage of the proceedings to ask to be conditionally released, always subject to appeal. Detention pending trial is, in addition, ruled out in the case of offences liable to a fine only, and cannot exceed one month for first offenders having committed an offence punishable by imprisonment for a maximum of less than two years.

In addition, abuses in this area are punished under the aforementioned article 225 of the Penal Code and, when arbitrary arrest or detention have been carried out by a private person under articles 436-440 of the same Code.

As to the inviolability of the private domicile of every person, the Code of Criminal Procedure has thoroughly regulated the conditions under which house searches must be carried out when they are necessary as the result of the discovery of an offence. They may be carried out or ordered only by the examining judge, except in the case of a flagrant crime or correctional offence. Unless a crime is suspected, they may not be begun before 5 a.m. or after 9 p.m.

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Moreover, any illegal house search may lead to criminal prosecution in application of article 230 of the Penal Code; violation of domicile by a private person is punishable under article 441 of the same Code.

Article 11

"Correspondence shall be secret."

Here again, the protection is general and the destruction or opening of correspondence is punishable under articles 232 and 448 of the Penal Code depending on whether the act has been committed by a public employee or private person.

Article 12

"All citizens shall have access, on the same terms, to the public service and public employment."

In application of this rule, which has been reiterated and affirmed by the Constitution, article 1 of the Dahir of 24 February 1958 establishing general regulations for the public service provides that:

"All Moroccans shall have access to public office on an equal footing."

Moreover, with regard to economic and social rights, the Constitution stipulates the following:

Article 13

"All citizens shall have an equal right to education and to work."

Article 14

"The right to strike remains guaranteed.

"The conditions and the manner in which this right may be exercised shall be prescribed by an organic Act."

Article 15

"The right to own property remains guaranteed.

"The law may limit the scope and exercise of this right if the planned economic and social development of the nation so requires.

"No expropriation shall be undertaken except in the cases and in the manner prescribed by law."

Article 16

"All citizens are liable to military service in the defence of the country."

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Article 17

"Every citizen is liable to taxation, according to his capacity, to meet public expenditure which shall be determined under law, and allocated in accordance with the procedures detailed in this Constitution."

Article 18

"All citizens shall bear collectively the expenditure required to meet disasters that befall the country."

It should be added that freedom for all types of worship has been traditional in Morocco and that, in addition, articles 220 and 221 of the Penal Code punish any impediment to worship, while article 223 punishes any destruction, defacement or defilement of buildings, monuments or objects used in worship.

Right of access to any place or service intended for use by the general public

The right of access to services intended for the public is affirmed in article 6 of the Dahir of 21 November 1957 on the regulation and control of prices, under which it is considered an unlawful increase and therefore a punishable act "to refuse to satisfy, to the extent of one's means, requests for the provision of services when such requests are in no way abnormal, when they are made in good faith and when the sale of the products or the provision of the service is not prohibited under special regulations."

Thus this text penalizes, in particular, the refusal by any public carrier or by the manager of any establishment open to the public of access to their vehicles or their establishments solely because of the race, colour or ethnic origin of the users.

Prohibition of access to other places open to the public would, according to the circumstances, be subject to the Dahir of 29 June 1935 relating to the repression of demonstrations contrary to order and disrespect for authority, which metes out special punishment for "demonstrations contrary to order, tranquillity or security" or the provisions of the Penal Code which penalize in a general manner all types of violence or assault.

It is thus obvious from the foregoing that the exercise of all the individual rights of citizens is protected without discrimination under Moroccan legislation.

(c) The need to assure "to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination", in accordance with article 6.

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Moroccan legislation enables everyone whose rights and interests have been impaired to obtain, through the courts, reparation for the damage he has suffered.

Indemnification proceedings may have several aspects.

If the injury has been caused by a private person, reparation for it may be sought from the competent civil court in application of articles 77 and 78 of the Dahir of 13 August 1913 establishing the Code on Obligations and Contracts, which state:

Article 77

"Any act by a person who, without legal authority, knowingly and wilfully causes material or non-material damage to another person, shall oblige its author to make good the said damage when it has been established that such act was the direct cause of it.

"Any provision to the contrary shall be null and void."

Article 78

"Every person shall be responsible for non-material or material damage which he has caused, not only by his acts but also by his fault, when it has been established that such fault is the direct cause of such damage.

"Any provision to the contrary shall be null and void.

"Fault consists either in omitting to do what one was bound to do or doing what one was bound not to do, without intention to cause damage."

Moreover, if the damage is due to the actions of a government department or to an error by a government employee in the performance of his duties, proceedings may be instituted under articles 79 and 80 of the same Code, which state:

Article 79

"The State and municipalities shall be responsible for damage caused directly by the actions of their departments and by errors committed by their employees in the performance of their duties."

Article 80

"Employees of the State and of municipalities shall be personally responsible for damage caused by fraud or by grave errors they have committed in the performance of their duties.

"The State and municipalities may be prosecuted in connexion with such damage only if the employees who are responsible are insolvent."

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Moreover, independently of the above-mentioned indemnification proceedings, individual victims of decisions made by an administrative department in excess of its powers have the option of referring such decisions to the Administrative Chamber of the Supreme Court with a view to their annulment, in accordance with articles 2 and 14 of the Dahir of 27 September 1957 concerning the Supreme Court.

Finally, when the injury has been caused by a criminal offence, the victim has the right to institute reparation proceedings before the criminal court (articles 7-14 of the Code of Criminal Procedure) as a civil claimant.

2. Information on the legislative and judicial measures which have been adopted and which give effect to the following provisions of the Convention

- (a) The undertaking "to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation", in accordance with article 2, paragraph 1 (a).
- (b) The undertaking "not to sponsor, defend or support racial discrimination by any persons or organizations", in accordance with article 2, paragraph 1 (b).
- (c) The undertaking not to "permit public authorities or public institutions, national or local, to promote or incite racial discrimination", in accordance with article 4 (c).

The constitutional and legislative provisions listed above show beyond doubt that Morocco has already assumed, in advance, the undertakings imposed by articles 2 and 4 of the Convention with regard to any actions which threaten the prohibition of racial discrimination.

3. Information on the legislative and judicial measures which have been adopted and which give effect to the following provisions of the Convention.

- (a) The undertaking to "review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."
- (b) The undertaking to "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization", in accordance with article 2, paragraph 1 (d).
- (c) The undertaking to prevent, prohibit and eradicate all practices of racial segregation and apartheid in territories under their jurisdiction, in accordance with article 3.

With regard to the three preceding points, it should be noted once again that in Morocco all necessary steps are already being taken to avoid racial segregation, which does not, moreover, exist in Moroccan territory.

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(d) The undertaking to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof", in accordance with article 4 (a).

The dissemination of ideas conducive to racial hatred may be punished under the aforementioned Dahir of 29 June 1935 relating to the repression of demonstrations contrary to order in that this Dahir is designed to repress all demonstrations contrary to order or tranquillity.

Moreover, incitement to acts of violence based on racial discrimination or hatred as well as the advocacy of such acts may be prosecuted under articles 38 and 39 of the Dahir of 15 November 1958 establishing the Moroccan Press Code, the application of which is without prejudice to the provisions of article 201 of the Penal Code, which relates to threats to the internal security of the State. These articles read as follows:

Article 38

"Any person directly inciting another by speeches, cries or threats uttered in a public place or meeting, or by written or printed matter sold, distributed, offered for sale or exhibited in a public place or meeting, or by posters or notices exhibited in public, to commit an act constituting a crime or an offence shall be punished as an accessory if such incitement is followed by an overt act.

"This provision shall also be applicable if the incitement is followed only by an attempt to commit a crime."

Article 39

"Any person who by one or other of the means enumerated in the preceding article directly incites another to theft, or to commit wilful homicide, looting or arson, or destruction by the use of explosives, or crimes and offences against the external security of the State shall be punished by imprisonment for not less than one year nor more than five years, and a fine of not less than 1,000 nor more than 100,000 dirhams, where such incitement is not followed by an overt act.

"Any person who by the said means directly instigates any of the crimes against the internal security of the State shall incur the same penalties.

"Any person who by any of the means enumerated in article 38 advocates the crimes of wilful homicide, looting, arson, theft or destruction by the use of explosives shall incur the same penalties."

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(e) The undertaking to "declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination" and to "recognize participation in such organizations or activities as an offence punishable by law", in accordance with article 4 (b).

It has already been pointed out above that such activities may be punished under the Dahir of 29 June 1935, which is designed to repress, in a general manner, all demonstrations contrary to order, tranquillity and security.

Moreover, article 3 of the Dahir of 15 November 1958 governing the right of association declares null and void any association established to further a cause or objective which is illegal or contrary to law or morality.
