UN Human Rights Committee
118th Session (17th Oct – 4th Nov 2016)

APT submission on Morocco

19 September 2016

Alternative report from the Association for the Prevention of Torture (APT) to the Human Rights Committee on the national implementation of articles 2(2) and 7 of the Covenant in relation to Morocco, whose sixth report will be considered by the Committee during its 118th session in Geneva.

The Association for the Prevention of Torture (APT) is an independent NGO based in Geneva. We work for a world free from torture, where the rights and dignity of all persons deprived of liberty are respected.

To achieve this vision we:

• Advocate for strengthened legal and policy frameworks,
• Promote improved detention practices, and
• Advise on effective public oversight.
1. Summary

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is recognised as a particularly effective way of preventing torture.

OPCAT Ratified on 24th November 2014.
SRT Last visit of Special Rapporteur on torture, Juan Méndez, from 15 to 22 September 2012.

2. The role of the OPCAT in the prevention of torture

The risk of torture and other ill-treatment exist in all situations where people are deprived of their liberty, particularly in places closed to the outside world.

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the UN General Assembly in 2002 and came into force in 2006. It aims to minimise the risks of abuse by opening up prisons, police stations, mental health institutions and all other places of detention to examination by independent watchdogs.

The basic premise behind the OPCAT is that the more open and transparent places of detention are, the lesser the risk for abuse.

3. Background information on Morocco

Morocco ratified the OPCAT in November 2014. The Kingdom of Morocco is hence committed to the creation of a national mechanism for the prevention of torture (NPM) and was required to fulfil its obligations under the OPCAT by 25th December 2015.

The Moroccan National Council for Human Rights Institution (CNDH) has submitted a draft law to the Government suggesting to incorporate the NPM mandate within the structure of the CNDH; a status ‘A’ national human rights institution (NHRI) according to the UN GANHRI.

The Moroccan Minister of Justice announced in January 2016 that the NPM will be integrated within the CNDH, however the proposed law could not be transferred to the parliament for adoption before the end of the legislative term and will now have to wait until a new parliament is elected (7th October 2016).

Consequently, the designation of the NPM remains outstanding.

4. Legal framework for torture prohibition and prevention

4.1. The Constitution

Article 22 of the Moroccan constitution of 2011 prohibits all acts of torture and ill-treatment:

The physical or moral integrity of anyone may not be infringed, in whatever circumstance that may be, and by any party that may be, public or private. No one may inflict on others, under whatever pretext there may be, cruel, inhuman, [or] degrading treatments or infringements of human dignity. The practice of torture, under any of its forms and by anyone, is a crime punishable by the law.

4.2. The Penal Code

On 14 February 2006, the Moroccan Criminal Code was amended by Law No. 43-04, to broaden the definition of torture to comply with the Convention against Torture’s definition.
According to Article 231-1 of the Moroccan Criminal Code, torture is prohibited in the following way:

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\text{Any act that causes severe physical or mental pain or suffering intentionally inflicted by a public agent or upon his instigation or with his express or tacit consent, upon a person for the purpose of intimidating or pressuring him or for pressuring a third person, to obtain information or a confession, to punish him for an act that he or a third party committed or is suspected of having committed, or when such pain or suffering is inflicted for any other objective based on any form of discrimination.}
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Following his visit in September 2012, the Special Rapporteur against torture recommended a modification of the definition of torture in the penal code in order to fully comply with the Convention, to take account of other forms of participation by public officials not covered in the Moroccan provision, including instigation, consent and acquiescence.

4.3 The Criminal Procedure Code

On 19th May 2014, the Government prepared a draft law amending the Moroccan criminal code of procedure. The Moroccan CNDH reacted to the draft by sending a full proposition to the Ministry of Justice and summarising their suggestions in a related publication.

5. OPCAT Implementation:

The internal process of ratification has been completed with the publication of the Royal Decree (dahir) n° 1-13-63 of 17 June 2013, on the adoption of the law n°124-12 on the ratification of the OPCAT in the Official Gazette n° 6166 of 4 July 2013.

Morocco deposited the instrument of ratification with the office of the United Nations in New York on 24 November 2014.

According to article 17 of the OPCAT, Morocco has one year in which to establish its National Preventive Mechanism (NPM). Morocco’s deadline was therefore 25th December 2015. To date, Morocco has not complied with its obligation of establishing the NPM under the OPCAT.

In May 2015, The Moroccan National Council for Human Rights (CNDH) submitted a draft law to the Ministry of Justice, in order to acquire the constitutional status and integrate the mandate of the NPM within its structure, along with three complaints mechanisms (non-discrimination, persons with disabilities and children).

Currently, the law integrating the NPM within the structure of the CNDH is pending after the parliamentary term elapsed in mid-July 2016. Legislative elections have been planned for 7th October.

It should be noted that the CNDH was established in 2011, by Royal Decree (Dahir) No. 1.11.19, which gives the CNDH some financial and functional independence. The CNDH has the right to visit places of detention, prisons, child protection centres, reintegration centres, hospitals specialised in treating mental and physical illness and places of detention of foreigners in illegal situation, and it prepares relevant reports for the competent authorities.

6. Suggested recommendations

In light of the background material above, the APT proposes that the Human Rights Committee make the following recommendations to the delegation from Morocco:

Articles 2(2), 6, 7 and 10
• **Recommend** the revision of the definition of torture in the Moroccan Penal Code Article 231-1 of to include all situations of involvement in torture cases including instigation, consent and acquiescence of public officials.¹

• **Recommend** the adoption of the proposed Criminal Code of Procedures drafted in May 2014, while taking into consideration the recommendations of the CNDH, concerning articles 61, 108, 80, 67, and 116, covering guarantees in detention (custody detention, immediate access to a lawyer even in terrorism crimes, contact with the family, right to medical examination in custody by an independent doctor upon the detainee’s request, etc.)²

• **Urging** Morocco to establish the National Preventive Mechanism in compliance with the OPCAT; ensuring financial and functional independence to implement its mandate without interference from the State authorities, granting full access to all places of detention, detainees and information related to detainees and to revise law n° 23-98 on the organisation and operation of prisons in Morocco (articles 75-88 related to visits) in order to guarantee the right to conduct private interviews with detainees.³

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¹ See para.13 in LOI of Morocco, dated 9 May 2016 (CCPR/C/MAR/Q/6)
² See para.14 of LOI, supra.
³ See paras.13 and 15 in LOI, supra.