

**INTERNATIONAL  
CONVENTION  
ON THE ELIMINATION  
OF ALL FORMS OF  
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION

Third periodic reports of States Parties due in 1976

Addendum

MOROCCO<sup>1/</sup>

[9 December 1976]

This report, submitted by the Kingdom of Morocco as a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination, confirms pro memoria the content of the two earlier reports, dating respectively from 1972 and 1974, and at the same time contains replies to the questions raised by honourable members of the Committee, during their consideration of the second report, concerning the Administrative Chamber of the Supreme Court, the Dahir governing the right of association, and the effective application of article 4 of the Convention.

In addition to these elements of law, the report mentions some factual elements which demonstrate that racial discrimination, in any form whatsoever, is totally unknown in Morocco because it is contrary to the political convictions of the Kingdom of Morocco and to the precepts and teachings of Islam, on which the Moroccan State is founded.

The application of the Constitution of 10 March 1972, like the two earlier constitutions of 14 December 1962 and 31 July 1970, together with the laws and regulations which establish in detail the legal framework for the exercise of civil and political rights and also of economic, social and political rights, has been strengthened by the Kingdom of Morocco's accession to a number of international legal instruments which have been adopted in particular by the United Nations and the specialized agencies, and have been incorporated into Moroccan domestic law. These

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<sup>1/</sup> The third periodic report of Morocco was due on 17 January 1976. For the initial report of Morocco, see document CERD/C/R.33/Add.1 and for its consideration by the Committee, see documents CERD/C/SR.111-112. For the second periodic report, see document CERD/C/R.65/Add.1 and for its consideration by the Committee, see document CERD/C/SR.188.

instruments include, in particular, the International Convention on the Political Rights of Women adopted in New York on 31 March 1953, to which Morocco acceded by the Dahir of 5 October 1976, deposited with the Secretary-General of the United Nations on 22 November 1976; and the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, which were signed by the Kingdom of Morocco and for which the ratification procedure is now in progress. The Kingdom of Morocco has also already embarked on the procedure for accession to the International Convention on the Suppression and Punishment of the Crime of Apartheid, of 30 November 1973.

The incorporation in Moroccan legislation of international legal provisions gives these provisions especial force, since the Moroccan Constitution implicitly recognizes the primacy of international law over domestic law.

This primacy is apparent from the Preamble and article 31 of the Constitution of 10 March 1972, read in conjunction.

In the Preamble, it is stated that:

"Conscious of the need to pursue its policies within the framework of the international organizations of which it has become an active and dynamic member, the Kingdom of Morocco subscribes to the principles, rights and obligations deriving from the charters of these organizations."

Article 31 states that:

"..... Treaties which may affect provisions of the Constitution shall be approved in accordance with the procedures laid down for the reform of the Constitution."

This means that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination have - with effect from the entry into force of this Convention for the Kingdom of Morocco - become an integral part of the internal public order from which no derogation is admissible. Accordingly, article 4 of the Convention is being fully applied, although the Dahir of 29 June 1935 does not expressly mention racial discrimination.

The concept of "demonstrations contrary to public order" appears to cover and encompass within itself the concept of racial discrimination.

Furthermore, the Moroccan Penal Code establishes penalties for persons committing crimes or offences which threaten the freedoms and rights of citizens, and prescribes severe punishment for "any association, whatever the duration or the number of members thereof, formed or established for the purpose of preparing or committing crimes against persons or property".

With regard to associations and in response to the question raised by one distinguished member of the Committee - namely, "whether the Dahir of 15 November 1958 governing the right of association lays down penalties for the members of associations" - the Kingdom of Morocco wishes to point out that article 8 of that Dahir, as amended by the Dahir of 10 April 1973, states that:

"The founders, leaders or officials of an association operating in violation of the provisions of article 5 [concerning the requirements for the formation of associations] shall be liable to imprisonment for not less than three months and not more than two years and to a fine of not less than 10,000 dirhams and not more than 50,000 dirhams.

"The following shall also be liable to the same penalties:

- (a) the founders, leaders or officials of an association which has been maintained or re-established after its suspension or dissolution;
- (b) persons who have been instrumental in organizing a meeting of members of an association which has been dissolved or suspended."

In other words, the motive for the above-mentioned penalties is the desire to ensure respect for the substantive and formal requirements governing the establishment of associations, and to give their activities a legal framework. The penalties are not based on any other personal, ethnic or racial consideration.

The competence of the Supreme Court is specified in the Dahir of 27 September 1957 and the relevant provisions of the Code of Civil Procedure. Under article 353 of the Code of Civil Procedure, the Court rules on:

- "1. Appeals against final decisions by all courts in the Kingdom.
- "2. Appeals against decisions by administrative departments on the grounds that they have exceeded their powers."

Such appeals must be made within the time-limit specified in article 360 of the Code of Civil Procedure, which reads as follows:

"Subject to the provisions of the following paragraph of this article, appeals against decisions by administrative departments on the grounds that they have exceeded their powers shall be lodged within a period of 60 days from the date of publication or notification of the decision contested.

"However, the persons concerned shall be entitled, before the expiry of the time-limit for the appeal to the Supreme Court, to appeal out of court to the person responsible for the decision or to lodge an appeal with the next higher administrative authority. In this case, the appeal to the Supreme Court may be lodged within a period of 60 days from the date of notification of a decision expressly rejecting, either wholly or in part, the earlier administrative appeal."

In application of these provisions, the Administrative Chamber of the Supreme Court has quashed administrative decisions which violate the laws and regulations in force. Mention may be made, for example, of rulings by the Supreme Court which affirm one of the most fundamental rights, namely the right to state one's case.

In its ruling of 19 February 1962 in the Idrissi El Hassani Mohamed case, the Supreme Court quashed the order of Minister of Interior which had removed the petitioner from the rolls of the Khalifas of the Caids. In this ruling, the following clause is of particular significance: "But since even in the absence of any legislative provision or regulation, the higher administrative authority is obliged, before dismissing any public official as a disciplinary measure, to give the official in question an opportunity to submit observations in his own defence concerning the charges made against him ...".

The Supreme Court made a similar ruling on 26 November 1962 in the Fartmissi M'hammed case, when it quashed a decree of the President of the Council dismissing the petitioner from his duties as a district Khalifa, on the grounds that the person concerned had not had an opportunity to submit his observations on the charges against him.

Again, in a decision of 19 June 1962 the Supreme Court quashed the decision by the Governor of the town of Sefrou withdrawing from Hamou David the taxi operating licence which the petitioner had formerly held.

In addition to these laws and regulations and court rulings, there are also policy decisions, the latest and not least of which is designed to facilitate and even encourage the return to Morocco of Moroccans of the Jewish faith.

The decision of His Majesty the King of Morocco to allow Moroccan Jews who have left their country to return to Morocco, and to enjoy all the rights guaranteed to all citizens under the Moroccan Constitution, is further proof of the concern of the Moroccan Government to apply the principle embodied in the Universal Declaration of Human Rights, and in a number of other international legal instruments, to the effect that: "Everyone has the right to leave any country, including his own, and to return to his country".

The necessary instructions have been given to all Moroccan diplomatic and consular missions to facilitate the repatriation of Moroccans of the Jewish faith; and some of them have already returned to their national community. Recently His Majesty the King stated: "I would like the Jews to return to Morocco, all the more so because I never asked them to leave their country".

This attitude recalls that adopted by His late Majesty Mohamed V, who in 1940 strongly opposed the application in Moroccan territory of the anti-Jewish laws which the Vichy Government was proposing to extend to Moroccan Jews.

In Morocco, Moroccans of the Jewish faith enjoy not only the political, economic and social rights guaranteed by the Constitution, but also the assurance that they can freely practise their religion. Article 220 of the Moroccan Penal Code specifies in this respect that: "Any one who by violence or threats forces a person or persons to practise a certain religion or to participate in the rites thereof, as also any one who by violence or threats prevents a person or persons from so doing, shall be liable to imprisonment for not less than six months and not more than three years and to a fine of not less than 100 dirhams and not more than 500 dirhams."

Moreover, in any private law dispute involving the personal status of Moroccans of the Jewish faith, the Moroccan judge is required to apply exclusively the Hebraic personal status rules, as recognized by the Jewish community in Morocco.

Accordingly, the Moroccan Nationality Code of 6 September 1958 provides in its article 3 that: "With the exception of Moroccans of the Jewish faith, to whom the personal status rules for Moroccan Jews shall apply, the Code of Personal Status and Succession applicable to Moroccans of the Moslem faith shall apply to all nationals".

Furthermore, the Dahir of 12 August 1913 on the civil status of aliens provides in its articles 8, 11 and 18 that the legal status and capacity of aliens shall be

governed by their national law, that aliens may be married only in the manner permitted by their national law and that inheritance of movable and immovable property in Morocco shall be subject to the national law of the deceased.

The concern of the Moroccan legislator to ensure respect for the rules governing the personal status of aliens has also led to the incorporation in the Dahir of 27 September 1957 of a provision guaranteeing such respect. Article 13 of this Dahir states that:

"Appeals to the Supreme Court shall be based on one of the following grounds:

1. Violation of domestic law or of a foreign law governing personal status" ...

All these elements of law and policy taken together provide proof, if proof were still needed, that the Kingdom of Morocco remains as true as ever to its time-honoured vocation as a privileged meeting place - at the crossroads of continents - for civilizations and cultures, and as a land of fraternal co-existence of revealed religions and of legendary hospitality towards foreigners; and that the Moroccan nation - which has shaped for itself an individual identity within the Moslem world by the steady mingling throughout its long history of all the ethnic elements of its Arab-African land - will remain a nation that is at all times resolutely opposed to any form of discrimination "based on race, colour, descent, or national or ethnic origin...".