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MOROCCO

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I. INTRODUCTION AND PRINCIPAL RESULTS

The aim of this report is to provide information on the application of the death penalty in Morocco since the last session of the Universal Periodic Review (27th May to 1st June 2012). It is a joint report by the following three organisations:

- Founded in 2003, the **Coalition marocaine contre la peine de mort** (Moroccan Coalition Against the Death Penalty or CMCPM) gathers 14 Moroccan human rights organisations. It constitutes a national mechanism to coordinate the work of human rights activists in Morocco with a view to protecting the right to life under all circumstances. Since its creation, CMCPM has led awareness campaigns and carried out investigations into the situation of prisoners sentenced to death. It leads advocacy campaigns with political decision-makers and, by organising conferences and political meetings, mobilises Moroccan parliamentarians to raise the debate about the death penalty to life in Parliament. Finally, every year it participates in the World Day Against the Death Penalty (on 10th October) by organising roundtables, press conferences and sit-ins, and by sending memoranda to the head of government. CMCPM is a member of the Steering Committee of the World Coalition Against the Death Penalty.
- Ensemble contre la peine de mort** (Together Against the Death Penalty or ECPM) argues for universal abolition of capital punishment, particularly via action to raise awareness and international advocacy. As a founding member of the World Coalition Against the Death Penalty, ECPM organises the World Congress, which is held every three years. ECPM supports the creation of national and regional coalitions, educates the public through paper publications and online, and leads investigative missions, press conferences and, depending on the urgency of the executions, international campaigns for action.
- The World Coalition Against the Death Penalty** is composed of more than 150 NGOs, bar associations, local authorities and unions. It aims to strengthen the international dimension of the fight against the death penalty. Its eventual goal is to obtain universal abolition of the death penalty. The World Coalition provides a global dimension to the action taken by its members in the field who are sometimes isolated. Its work complements their initiatives while respecting their independence.

II. LEGAL FRAMEWORK SURROUNDING THE APPLICATION OF THE DEATH PENALTY IN MOROCCO

II.1. INTERNATIONAL LEGAL FRAMEWORK

Morocco has ratified a number of international treaties relating to the protection of human rights.

On 19th January 1977, Morocco signed the International Covenant on Civil and Political Rights (ICCPR)¹, a convention it ratified on 3rd May 1979. The ICCPR was adopted by the UN General Assembly and submitted for signature, ratification and adherence through Resolution No. 2 200 of 26th December 1966. On 8th January 1986, Morocco signed the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and ratified it on 21st June 1993. It was adopted by the UN General Assembly and submitted for signature, ratification and adherence through Resolution No. 39/46 of December 1984. It came into force on 26th June 1987.

In 2013, Morocco ratified the International Convention for the Protection of All Persons from Enforced Disappearance and, in 2014, the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). To

¹ In conformity with Article 6, the International Covenant on Civil and Political Rights (ICCPR) sets out that "every human being has the inherent right to life" and that every person enjoys the natural right to life, obliging the law to protect this right in such a way that "no one shall be arbitrarily deprived of his life".

date, the national mechanism for the prevention of torture, an independent body charged with overseeing respect for people deprived of their liberty, has not yet been established. Within international bodies, Morocco has systematically abstained from voting on resolutions by the UN General Assembly seeking a moratorium on application of the death penalty (it abstained in 2007, 2008, 2010, 2012 and 2014). In September 2012, Morocco nonetheless accepted the two recommendations of the UN Universal Periodic Review, including an appeal to continue the de facto moratorium and commit to moving towards abolition. Since 2011, the Moroccan Parliament has enjoyed Partner for Democracy status at the Council of Europe Parliamentary Assembly. Since 2013, it has enjoyed Observer status at the European Commission for the Efficiency of Justice (CEPEJ). Adhesion to this status includes Morocco's commitment to abolish the death penalty (Resolution 1 818 of the Council of Europe Parliamentary Assembly²) but the Council of Europe's Neighbourhood Partnership document with Morocco (2015-2017) does not mention capital punishment. In their request to enjoy this new status at the Council of Europe, the chairs of the two chambers of the Moroccan Parliament notably committed themselves to continuing their work "to raise awareness among public powers and players in political life and civil society to advance reflection already underway about [...] capital punishment" and to continue to "encourage the relevant authorities to continue the moratorium on executions of the death penalty which has existed since 1993."

II.2. NATIONAL LEGAL FRAMEWORK

II.2.1. THE LEGAL BASIS FOR APPLICATION OF THE DEATH PENALTY

— The death penalty in the Moroccan Constitution

Promulgated on 25th July 2011, the Moroccan Constitution gives constitutional law primacy over criminal law and henceforth recognises the crimes of torture, kidnapping and enforced disappearance.

"The right to life is the first right of all human beings. The law protects this right." It is in these terms that Article 20 of the 2011 Constitution sanctions the right to life. The Supreme Law is even more explicit in Article 22: "No one may be injured, physically or morally, by any person under any circumstances, private or public." Article 21 protects the safety of people, respecting the fundamental freedoms and rights guaranteed to all.

— The death penalty in the Moroccan penal system

The Moroccan penal system, which provides for capital punishment, rests on the following references:

- *Dahir*³ of 10th November 1957 relating to military justice
Number of articles: 16
Number of cases for which the death penalty is provided: 79
- *Dahir* of 29th October 1959 relating to the repression of crimes against the health of the nation
Number of articles: 1
Number of cases for which the death penalty is provided: 10
- *Dahir* of 17th June 1963 by virtue of which the Penal Code came into force
Number of articles: 31
Number of cases for which the death penalty is provided: 937

Therefore, if the provisions of the Penal Code, as amended by the 2003 Terrorism Law, and those of the Military Justice Code are included, there is a very large number of offences which could result in the death penalty, whose application extends a long way beyond violent crime alone: arson, kidnapping, attacking State security, attacking the life of the King, treason and a number of military offences, etc. To this, crimes against public health can be added: "Those who have knowingly produced or held with a view to sale,

² The text of Resolution 1 818 is available at: <http://assembly.coe.int/nw/xml/News/FeaturesManager-View-EN.asp?ID=997>

³ A *dahir* is a royal decree.

distributed or put up for sale products or derivatives destined for human consumption which are dangerous to public health shall be put to death.”

II.2.2. APPLICATION OF THE DEATH PENALTY IN MOROCCO

In the history of modern Morocco, the death penalty has been mainly used as a tool for political repression.

According to official statistics from the Ministry of Justice, nearly 250 death sentences have been handed down by the Moroccan justice system since 1954. Between 1954 and 1993, 54 executions were recorded, mainly political opponents.

The last execution in Morocco dates from 5th September 1993. Despite this de facto moratorium on executions, the courts continue to hand down death sentences on a regular basis. Since 2013, 28 people have been sentenced to death, including nine in 2015⁴. On 31st August 2016, the Moroccan prison administration recorded 92 prisoners sentenced to death, including four women⁵.

During the second half of 2016, King Mohammed VI granted pardons to 35 prisoners sentenced to death to mark the Feast of the Throne and Aid el-Adha⁶. An exceptional royal pardon was even granted to a prisoner previously sentenced to death, Khadija Amrir, who had been released on 1st August 2016 after 22 years in prison. These were the first royal pardons recorded since 2011.

Places of detention of the 92 prisoners sentenced to death in Morocco in 2016:



III. THE UNIVERSAL PERIODIC REVIEW OF MOROCCO IN 2012

III.1. RECOMMENDATIONS RELATING TO THE DEATH PENALTY ACCEPTED BY MOROCCO

In September 2012, Morocco accepted four recommendations from the UN Universal Periodic Review encouraging it to:

- Consider the possibility of ratifying the Second Optional Protocol (OP2) to the International Covenant on Civil and Political Rights (ICCPR).

FOLLOW-UP TO THE RECOMMENDATION: In 2015, the Coalition marocaine contre la peine de mort led a national advocacy campaign in favour of the ratification of the OP2. Within the framework

4 www.tudert.ma/fr/archive/item/45-amnesty-maroc-exprime-son-inquietude-face-au-projet-de-reforme-du-code-penal-du-gouv-t .

5 Data from the General Delegation to the Penal and Rehabilitation Administration (DGAPR) on 15th September 2016.

6 www.tudert.ma/fr/archive/item/74-la-coalition-marocaine-contre-la-peine-de-mort-se-rejouit-de-la-grace-royale-accordee-a-35-condamnes-a-mort

of this campaign, the Coalition was granted interviews with the Conseil national des droits de l'homme [President of the National Human Rights Council or CNDH], the Secretary General of the Inter-Ministerial Delegation on Human Rights, and the Office of the Foreign Affairs Minister. Further, the Coalition organised a side event on the subject at the Palace of Nations in Geneva on 29th September 2015. To date, Morocco has not ratified the OP2.

➤ **Consider the possibility of adopting measures aimed at abolishing the death penalty.**

FOLLOW-UP TO THE RECOMMENDATION:

- In 2014, the parliamentary group of the Union socialiste des forces populaires (USFP) put forward a draft law seeking to abolish the death penalty, as did the Réseau des parlementaires contre la peine de mort [Network of Parliamentarians Against the Death Penalty], which put forward an identical proposal. These proposals were not adopted by Parliament.
- On 16 June 2014, Driss el-Yazami, President of the CNDH, presented a report to the Moroccan Parliament and officially called upon the authorities to abolish the death penalty.
- The Moroccan authorities are committed to a process aiming to reform the Penal Code and reduce the number of crimes which can be punished by capital punishment. The draft revision of the Penal Code provides for retaining nine articles (instead of the 31 in the current Code). To date, this draft has not yet been examined by the Parliament.
- The new Military Justice Code, adopted unanimously on 23rd July 2014, henceforth contains five articles referring to the death penalty (instead of 16 previously).

➤ **Continue to implement the moratorium with a view to abolishing the death penalty.**

FOLLOW-UP TO THE RECOMMENDATION: Morocco has not carried out any executions since 1993.

➤ **Continue to implement a national debate on abolition of the death penalty.**

FOLLOW-UP TO THE RECOMMENDATION:

- Since the Universal Periodic Review in 2012, Morocco has hosted a large number of events about the death penalty, organised under the initiative of the Coalition marocaine contre la peine de mort, the Réseau des avocats contre la peine de mort [Network of Lawyers Against the Death Penalty] and the Réseau des parlementaires contre la peine de mort [Network of Parliamentarians Against the Death Penalty].
- In October 2012, Morocco hosted the first Regional Congress Against the Death Penalty, organised in Rabat by Ensemble contre la peine de mort (ECPM) and attended by more than 300 people from across North Africa and the Middle East.
- On 26th February 2013, the first Réseau des parlementaires contre la peine de mort au Maroc [Network of Parliamentarians Against the Death Penalty in Morocco or RPCPM] was created. A unique initiative in the world in a country which still includes capital punishment as part of its legal arsenal, this network brings together more than 250 parliamentarians from all political colours, with the exception of the Parti de la justice et du développement [Justice and Development Party or PJD].
- In December 2013, the Moroccan Parliament hosted the first seminar organised by RPCPM. This event brought together more than 150 people: parliamentarians from both houses, lawyers, NGO players, members of the CNDH, and regional parliamentarians from Algeria, Jordan, Mauritania and Tunisia.
- Abolition of the death penalty was one of the subjects covered in the official programme of the second World Human Rights Forum organised in Marrakech from 27th to 30th November 2014 and coordinated by the CNDH. During the opening session, King Mohammed VI congratulated abolitionist civil society and encouraged it to continue the debate.

III.2. RECOMMENDATIONS REFUSED BY MOROCCO

In September 2012, Morocco refused two recommendations relating to the death penalty:

- Introduce an official moratorium on the application of the death penalty as soon as possible;
- Commute all sentences of prisoners sentenced to death and abolish the death penalty.

IV. TREATMENT OF PRISONERS SENTENCED TO DEATH IN MOROCCO

IV.1. PLACES OF DETENTION OF PRISONERS SENTENCED TO DEATH IN MOROCCO

On 31st August 2016, the 92 Moroccan prisoners sentenced to death were being held in ten Moroccan prisons. The vast majority of them live in the central prison of Kenitra. Kenitra and Meknès prisons are the only two Moroccan prisons with cells reserved for prisoners sentenced to death. The central prison of Kenitra was built in 1922 during French colonisation while Toulal II prison in Meknès was built in 2011.

IV.2. CONDITIONS OF DETENTION OF PRISONERS SENTENCED TO DEATH

Article 16 of the Convention Against Torture stipulates that Morocco is committed to prohibiting any act considered to be cruel, inhuman or degrading treatment throughout its territory.

And yet, the reports ⁷ produced by the Coalition marocaine contre la peine de mort, the Organisation marocaine des droits humains [Moroccan Human Rights Organisation or OMDH], the Réseau des avocats contre la peine de mort au Maroc and Ensemble contre la peine de mort describe particularly inhumane conditions of detention. These reports have highlighted a set of essential challenges connected to the death penalty which is itself a cruel, inhuman and degrading punishment.

The following principal results were revealed:

- Two thirds (67%) of prisoners sentenced to death in Moroccan prisons suffer from serious psychological problems. Most of these illnesses should have led to the annulment of any criminal responsibility during the trial. Consequently, either the court did not request a psychiatric assessment or it did not call for the medical assessment which determines the psychological state of the accused at the time of the crime.
- Although the treatment of prisoners sentenced to death by the administration and guards has clearly improved over the last decade, conditions of detention remain very difficult, particularly with regards to the material needs of the detainees such as food, covers and clothes. Hygiene levels are deficient and below the standards of the recognised rights of the detainees.
- Although the right of visitation is officially the same for all prisoners, those sentenced to death receive significantly fewer visits than the other prisoners. The areas for prisoners sentenced to death in Kenitra and Meknès do not anywhere allow for them to share private moments with their close family and friends.
- Penal establishments generally dispose of professional training services for detainees, subject to certain conditions and according to a particular methodology. These possibilities are not available to prisoners sentenced to death.
- Built in 1922, the central prison of Kenitra, where most prisoners sentenced to death live, is particularly dilapidated. Today, it holds nearly 2,000 prisoners most serving long sentences.
- Life on death row accentuates the development of psychological problems, firstly because the wait itself becomes a slow agony. These conditions push a significant proportion of prisoners (35%) to contemplate suicide or wish for their own execution.

V. RECOMMANDATIONS

V.1. POLITICAL

- **We ask His Majesty King Mohammed VI** to exercise his right of pardon and commute all death sentences into imprisonment;
- **We ask the Moroccan Government** to make the moratorium on capital executions official by supporting the UN General Assembly resolution seeking application of a universal moratorium on executions;

⁷ Voyage au cimetières des vivants, enquête dans les couloirs de la mort marocains, File ://C:/Users/ecpm/Downloads/missions-enquetes-maroc%20(6).pdf
Le Couloir de la mort, ou l'anéantissement de l'être et du temps, publication by the Réseau des avocats contre la peine de mort au Maroc, 2015.

- **We ask the Moroccan Government** to propose a revision of the Penal Code in Morocco, abolishing the death penalty definitively, in conformity with Article 20 of the Constitution protecting the right to life;
- **We ask the Moroccan Government** to ratify the Second Optional Protocol (OP2) to the International Covenant on Civil and Political Rights providing for abolition of the death penalty under all circumstances, in conformity with the recommendations of the Instance équité et réconciliation [Body for Equality and Reconciliation or IER].

V.2. HUMANITARIAN AND PENITENTIARY

- **We ask the Moroccan authorities** to increase the budgets allocated to the department of correction in order to allow it to improve the conditions of detention of prisoners sentenced to death;
- **We ask the department of correction** to set up a committee of psychologists and psychiatrists charged with assessing the mental state of prisoners sentenced to death;
- **We ask the department of correction** to authorise the transfer of prisoners sentenced to death to prisons located near their families;
- **We ask the department of correction and the prison wardens of Kenitra and Meknès** to suspend the isolation imposed on prisoners sentenced to death and their separation from other prisoners;
- **We ask the department of correction** and the prison wardens of Kenitra and Meknès to take all necessary steps with a view to improving the conditions of detention of prisoners sentenced to death, particularly regarding hygiene, food and sanitation conditions. We ask them, in particular, to authorise the use of portable stoves in cells, to provide prisoners with beds and to arrange sports halls in order to encourage them to carry out a physical activity;
- **We ask the department of correction** to make it possible for prisoners to have private time with their spouses in order to strengthen family ties and reduce tension and aggression;
- **We ask the administration** to grant prisoners sentenced to death the possibility of studying or following training and to participate in leisure activities (drawing, writing, theatre, etc.).

V.3. JUDICIAL

- **We ask the Justice Minister** to include in penitentiary law the right to visits for prisoners sentenced to death;
- **We ask the Justice Minister** to reform penal procedure in order to install the obligation to perform a medical-psychiatric assessment in the judgement of the most serious crimes.

V.4. MEDICAL

- **We ask the Justice Minister** to create a prison medical centre for criminals who are mentally ill and who are susceptible to relapse;
- **We ask the Justice Minister** to create a regional forensic medicine department charged with the medical diagnosis and psychological assessment of prisoners and victims, and educational and social assistance for prisoners.

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