



Executive summary

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations
for protecting the rights of prisoners

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I/ CONTEXT AND METHODOLOGY

In fulfilment of the council's mandate and prerogatives assigned to the National Human Rights Council (Conseil national des droits de l'Homme - CNDH) by virtue of the Dahir (Royal Decree) of 1 March 2011, which include visits to places of detention, this being regarded as one of the principal mechanisms for strengthening the monitoring of the conditions in prisons and the protection of the rights of prisoners (Article 11(1) of the Dahir);

And as part of the process of monitoring the conditions in prisons and the situation of prisoners on the basis of the report produced by the former Advisory Council on Human Rights (Conseil consultatif des droits de l'Homme) in 2004 (updated in 2008) with a view to determining the extent to which the rights of this group are being respected and the nature of the violations to which they could be subject, the National Human Rights Council set up a team within the permanent working group responsible for protecting human rights, with the task of carrying out visits to a number of penal establishments selected according to criteria established on the basis of a methodology conforming to the standard rules for visits to places of detention, taking into account three main objectives:

- To establish a climate of trust and cooperation with the directors of the (regional or local) penal establishments and their staff
- To gain the trust of the prisoners and to make them aware of the importance of these visits and how such visits might play a role in enabling the Council to improve their conditions, protect their rights and put an end to any violations which might affect those rights
- To obtain as much information and as many personal accounts and (accurate) statements as possible for the purpose of preparing a rigorous and objective report on conditions in prisons and the conditions of prisoners.

1

2/ GUIDING PRINCIPLES AND APPROACH

I - Guiding principles

- The conclusions of the previous report and the main legislative, judicial, administrative and managerial provisions which were adopted during the period between the two reports and which could contribute to improving prison conditions and putting an end to abuses of the rights of prisoners
- An objective and rigorous identification of the abuses which could affect the rights of prisoners and the direct and indirect causes of these abuses
- The drafting of proposals and recommendations relating to preventive and proactive legislative and administrative provisions and concrete measures aimed at resolving any problems uncovered and putting an end to the identified abuses.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

2- The approach

Visits were organised on the basis of a participative approach and in collaboration and partnership with:

- The Regional Human Rights Commissions of the National Human Rights Council (CNDH)
- The Delegation General of the Prisons Administration and Reintegration (Délégation générale de l'Administration pénitentiaire et de la réinsertion)
- The Moroccan Prisons Observatory (Observatoire marocain des prisons - OMP) at Oujda, Nador and Al Hoceima
- Juvenile judges and enforcement judges whose jurisdiction includes the penal establishments visited.

3/ THE REGULATORY FRAMEWORK

1- International

The Report is essentially based on the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This regulatory framework brings together the best practices which are applied internationally in this sphere. The report is also based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and other international conventions on the rights of women, children in conflict with the law and persons with disabilities.

2- National

This includes the various legal and regulatory texts relating to prisons and the treatment of prisoners, which may be global in nature (the constitution and the code of criminal procedure) and include provisions directly or indirectly relating to prisons and prisoners, or texts which are concerned solely with the organisation of penal establishments and the treatment of prisoners (Law 23/98 No 2.00.485, Dahir No 1.08.49 and all other relevant decrees).

4/ SUPPORTING MATERIAL

- Preparing forms and sending them to the Delegation General of the Prisons Administration and Reintegration to fill them out. These forms contained data and information relating to penal establishments, the basic infrastructures, the prison population, staffing, administrative management, the services provided to prisoners, etc.
- Developing a database to facilitate the gathering of data relating to all penal establishments in Morocco, and preparing a complete factsheet for all prison establishments and an individual factsheet for each establishment.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

5/ CONCLUSIONS AND OBSERVATIONS

Following its on-site visits, meetings, interviews with prisoners and analysis of the gathered data, the Council offers the following conclusions and observations:

I - Management and operation of penal establishments

While the Council notes with satisfaction the efforts made by the Delegation General of the Prisons Administration and Reintegration in upgrading old and constructing new penal establishments and in combatting corruption within these establishments, it notes that the Delegation gives greater priority to security policy than to the security of prisoners and there is excessive recourse to the disciplinary measures contained in Law 23/98 and its implementing decree, with a lack of or inadequate levels of effective and regular supervision by means of administrative and judicial monitoring mechanisms. The CNDH notes the following:

- The persistence of abuses of prisoners by some staff members at the prisons visited, which constitutes a violation of the laws governing penal establishments and of all the relevant conventions which regard such actions as cruel, inhuman or degrading treatment. This ill-treatment involves beatings with batons and pipes, hanging from doors by means of handcuffs, beatings on the soles of the feet ('falaqa'), slapping, piercing with needles, burns, kicking, prisoners being forced to strip in full view of other prisoners, insults and the use of malicious and degrading expressions which are an affront to the human dignity of the prisoners. These abuses were observed in most of the prisons visited, the prevalence and frequency varying from one prison to another, with the exception of the Inezgane and Dakhla prisons where only isolated occurrences were noted;
- Excessive recourse to discretionary powers in over-interpreting any actions and gestures by prisoners as threatening the security of the establishment, resulting in the prisoners being deprived of certain rights. Food brought by the prisoners' families is sometimes turned away or destroyed. Collective punishment is sometimes applied in the event of a revolt or when prisoners submit a collective grievance;
- Prisoners are still subjected to ill-treatment by some staff members and complaints made against staff, including healthcare staff, or abuses reported by the press and by associations, are rarely investigated;
- Some places are still used to torture prisoners (for example, within Prisons of Outita I, Ain Qadouss, El Jadida, etc.)
- Abusive recourse to administrative transfer as a disciplinary measure against prisoners, and particularly prisoners belonging to Salafiya Jihadiya (the Salafi Jihadist Movement);
- Failure to take a stepped approach when applying disciplinary sanctions, in accordance with the principle of making the disciplinary measure proportional to the offence, and the placing of prisoners in punishment cells immediately and for the maximum period, in some cases;

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

- The absence of effective monitoring and inspection procedures aimed at putting an end to the various forms of corruption which, to varying degrees, characterise certain establishments;
- The absence of an integrating approach for the management of services and educational and training programmes.

2- Failure to comply with laws and procedures

Despite advances in criminal law, the failure to apply certain legal provisions or their application without effective supervision by the judicial control mechanisms of the Ministry of Justice is prejudicial to the rights of prisoners in all categories. In this regard the CNDH makes the following observations:

- Excessive use of pre-trial detention, which is the primary cause of prison overcrowding
- Slowness in rendering judgments by the courts, which undermines the guarantees of a fair trial as provided for in law
- Failure to apply the legal provisions relating to conditional release (Articles 622 to 632 of the Code of Criminal Procedure), aggravated by the difficulty in indentifying the competent authority responsible for applying these provisions, and the rejection of most applications submitted in this regard (two cases of conditional release in 2011)
- Failure to implement the conciliation procedure provided for in Article 41 of the Code of Criminal Procedure, which relates to offences punishable with a maximum of two years' imprisonment or a fine not exceeding MAD 5000. As at 30 April 2012 there were some 14 522 prisoners sentenced to one year or less, of whom 9228 sentenced to 6 months or less
- Poor management of judicial transfers. Defined by the implementing decree of Law No 23/98, transfers fall within the competence of the Public Prosecutor's Office (Ministère public) according to the Code of Criminal Procedure. The lack of means of transport and the scarcity of human resources create lengthy delays in the process and, in consequence, undermine the guarantees of fair trial
- The ineffectiveness of judicial supervision as provided for in Article 249 of the Code of Criminal Procedure which requires the President of the Correctional Chamber (Chambre correctionnel) or his deputy to visit the penal establishments at least once a quarter in order to acquaint himself with the situation of accused persons in pre-trial detention and the grounds for their incarceration. In this regard, je can make appropriate recommendations to the investigating judge. With the exception of the Aïn Kadous prison in Fez, which recorded three visits in 2011, the CNDH found that most of the establishments it visited had not been checked by the President of the Correctional Chamber in 2011
- Irregularity of visits to the majority of the penal establishments by the provincial commissions contrary to what is provided for in Articles 620 and 621 of the Code of Criminal Procedure.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

3- Justice for minors

Although all the actors agree that the provisions of the Conventions on the Rights of the Child and the relevant guiding principles have been taken into account in the Code of Criminal Procedure, thereby giving priority to protecting the rights of minors who come into conflict with the law, the Council makes the following comments:

- Failure to implement the provisions of Article 460 of the Code of Criminal Procedure which stipulates that 'an officer of the judicial police with responsibility for minors may, without prejudice to the provisions of Article 470 hereinafter, detain a minor alleged to have committed an offence in a place specifically reserved for minors for a period not exceeding that allowed for custody. He must take all necessary steps to protect the minor against any kind of ill-treatment. This procedure may only be used when it is not possible to return the minor to the person responsible for his care, or when the needs of the investigation or the safety of the minor so require, subject to approval by the Public Prosecutor's Office'
- The lack of a juvenile police unit or dedicated custody locations, which makes keeping minors in custody at police stations the rule rather than the exception
- The non-existence of deputy public prosecutors specialising in cases involving minors, despite this being provided for in law. Minors are therefore dealt with by any magistrate of the courts, with no account being taken of their special requirements
- The lack of adequate human and material resources to ensure that no harm comes to minors in custody (food, healthcare, psychological or social help, etc.)
- Failure in some cases to inform parents of any arrangements which have been made and failure to respect their right to make contact with the minor in cases where they have been informed
- Although placing police stations under the effective control of the public prosecutor's office is the best guarantee for minors, this control is rarely exercised as specified in law, and this can be prejudicial to the minor
- Recourse to the conciliation procedures relating to offences committed by minors is rare
- The Public Prosecutor's Office rarely asks juvenile judges or counsellors to return minors to their parents or to pursue an alternative course of action rather than detention (Articles 501 to 504 of the Code of Criminal Procedure).

Placement in a child protection centre as an alternative to detention does not take place with immediate effect, or does not happen at all. In many cases, minors for whom such an arrangement has been granted spend a long time waiting in prison before the measure is implemented.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

4- Other vulnerable groups

1.4/ Women:

In addition to the general conditions in prisons, women suffer, for various socio-cultural reasons and to greater extent, from cruel and degrading treatment (insults, humiliations) both in police stations and in prisons. Women incarcerated for matters relating to moral conduct are particularly singled out by some custodial staff.

Women who have given birth in prison and who do not have the benefit of any support from their family are dependent on the humanitarian aid which some staff or directors offer them to meet the needs of the child. The Council also notes the small amount of space they are allocated in prison and the lack of crèches or any means of keeping children amused. Where crèches do exist they have no facilities.

At the end of the period for which they are allowed to keep their child with them in prison, and if relatives are unavailable or unwilling to take the child, female prisoners are obliged to give up the child to third parties who sometimes exploit them for begging or put them into orphanages.

2.4/ Persons suffering from mental illness:

- Moroccan criminal law treats persons suffering from mental illness differently depending on whether they have committed a misdemeanour, a minor offence or a serious crime. Article 134 of the Penal Code states that in the case of a serious or minor offence the court should order judicial internment in a psychiatric institution in cases where the accused, at the time of the alleged offence, was incapable of understanding what he was doing or of committing a wilful act, due to a disturbance of his mental faculties. In the case of a misdemeanour an individual who is acknowledged to be legally incompetent, although presenting a danger to public order, is handed over to the administrative authorities without any appropriate medical follow-up
- Failure to observe the principle of tailoring the punitive measures to the seriousness or otherwise of the criminal acts for their perpetrators or for public order, and failure to make the punitive measures appropriate to their mental condition
- Compliance with Article 134, despite its imperfection, is patchy. Perpetrators of criminal acts who are suffering from a mental illness are still being placed in penal establishments, either because of the slow progress of the investigation or trial process or because placement in psychiatric hospitals does not take place or is delayed
- A lack of psychiatrists and psychologists to provide medical follow-up for mentally ill prisoners in penal establishments
- Failure to deduct any period of hospitalisation which occurs during the investigation from the sentences imposed on persons held to be partly responsible for their actions.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

3.4/ Persons with disabilities

The main observations relating to the situation in this group include:

- The lack of accessibility within penal establishments
- Some prisoners do not have wheelchairs, which handicaps their movement and deprives them of certain rights such as moving around within their cells, exercising and accessing sanitation facilities
- A lack of persons trained in sign language in penal establishments who can facilitate communication between the deaf and other prisoners, the prison authorities and the outside world.

4.4/ Foreign prisoners:

Under the law, foreign prisoners enjoy the same rights as other prisoners. They also suffer the same abuses which have been described elsewhere. However, the Council notes that:

- Foreign prisoners are victims of other abuses as a result of discrimination based on colour, committed by other prisoners and sometimes by the administration. Because of the language problem they also suffer from a lack of or indeed a total absence of contact with the outside world. For these prisoners, particularly those from sub-Saharan Africa, visits are non-existent and they find it impossible to make contact with their diplomatic representations, who either ignore them when they are informed, or are never informed at all
- Foreign prisoners do not benefit from training programmes, due to the obstacles detailed above
- There is also a failure to provide them with legal assistance which could help guarantee them a fair trial.

4.5/ Drug addicts and prisoners suffering from chronic illnesses:

According to data from the Delegation General of the Prisons Administration and Reintegration, the percentage of prisoners incarcerated for the trafficking and/or consumption of drugs is 37.25% of the total number of prisoners. Drug addiction in prison is therefore a fundamental problem which can only be dealt with by the combined involvement of all the parties concerned. The Council also notes that the coercive measures taken by the Delegation against members of staff involved in introducing drugs to prisons are inadequate. They need to be accompanied by the setting up of addiction centres and by an addict rehabilitation policy.

The Council notes the inadequacy of the medical intervention and the treatment resources devoted to the needs of patients who are suffering from chronic illnesses (patients with HIV, cancer, renal failure) and whose condition requires hospitalisation and urgent treatment in order to preserve life. In addition to a poor level of coordination between the departments concerned (hospitals, penal establishments, public prosecutor) in the

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

majority of cases hospitals refuse to admit these patients because of the unavailability of places or the lack of the necessary budget to provide care for prisoners who do not have any source of income.

5/Legislative dysfunctionality

Building new prisons or increasing the capacity of existing establishments cannot in itself constitute an effective and appropriate solution. A reform of penal policy, and all the measures which go with it, is also required. And probably one of the main problems surrounding penal establishments is that of overcrowding, which contributes to the emergence of serious violations which fundamentally affect service provision, health, hygiene, nutrition and security on the one hand, and the rehabilitation of prisoners on the other. Improving conditions in prisons and the conditions for prisoners therefore requires legal and judicial reforms which must be at the heart of the major questions to be tackled through the national dialogue on justice reform.

5.1/ The Code of Criminal Procedure and the Penal Code:

The Council notes a number of areas of dysfunctionality relating to the application of the Code of Criminal Procedure, with several consequences:

- 8
- The limited nature and the ineffectiveness of intervention by the enforcement judge (juge d'application des peines)
 - The difficulty experienced by individuals incarcerated because they couldn't pay their debts in obtaining the certificate of indigence prescribed in Article 635 of the Code of Criminal Procedure which would release them from detention
 - The inappropriateness of the periods set for the exercise of the right of automatic discharge or judicial discharge by prisoners who have served their sentence, which makes their social reintegration more difficult, encourages recidivism and stigmatises former prisoners
 - The absence from the criminal law of a preamble setting out the guiding principles of penal policy with a view to harmonising a system of sanctions and penalties which in many ways is no longer in step with developments in society
 - The absence from current criminal law of any alternatives to imprisonment, particularly for offences for which the penalties do not exceed five years
 - The failure to apply the principles of equity, equality and legality in defining the criminal liability and partial criminal liability of the perpetrators of criminal acts committed while they were in a psychological and mental state which affected their capacity to exercise judgement at the time of the offence.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

5.2/ Law No 23/98 and its implementing decree:

- The absence of a preamble to the Law setting out the guiding principles for the rights of prisoners
- The ban on prisoners submitting collective grievances, and the imposition of disciplinary measures by the officials in charge of the penal establishment pursuant to Article 99 of Law No 23/98
- The ambiguous wording of Article 66 of the implementing decree to Law No 23/98 relating to the identity of the party responsible for implementation of any measure taken in respect of a minor placed in a penal establishment, in accordance with the provisions of the Code of Criminal Procedure
- The limited nature of the activities permitted to associations. They are restricted to certain national events or celebrations and require the approval of the Delegate General of the Penal Administration (Article 10 of the implementing decree to Law No 23/98), which minimises the role of associations in the work of reintegrating prisoners and spreading the culture of human rights in penal establishments
- The absence of precise criteria enabling prison managers to assess the good conduct of prisoners with a view to applying the incentives specified in Articles 32 and 34 of Law No 23/98, and the absence of any monitoring of the ways in which and the conditions under which these measures are adopted. Yet these measures relate to proposed modifications to the rules governing detention, transfer, pardon, conditional release and temporary release from custody. This diminishes the scope of these provisions, which are regarded as one of the most effective mechanisms in the process of reintegrating prisoners.

6/Conclusion regarding the budget

All these observations and conclusions concerning prison conditions and the situation of the prisoners emphasise the need to adopt an integrated approach which is essentially based on a clear penal policy and efficient management. Such policies are dependent on the introduction of a budget policy based on the identification of needs and the allocation of the financial resources required to implement programmes and provisions which can improve prison conditions and improve the situation of prisoners.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

6/ THE RECOMMENDATIONS OF THE NATIONAL HUMAN RIGHTS COUNCIL

I. Short-term recommendations

With a view to protecting the rights of prisoners, the National Human Rights Council for makes the following recommendations:

I. I. Recommendations addressed to the Delegation General of the Administration for Prisons and Reintegration:

Treatment of prisoners:

- The Council reiterates its earlier recommendations regarding equality of treatment of prisoners and non-discrimination on any grounds, and the implementation of Articles 3 and 4 of the implementing decree to Law No 23/98, including non-recourse to acts of violence, humiliating or offensive language and forms of control such as handcuffs, chains or straitjackets (except in the cases provided for in law) and the use of isolation as a disciplinary reprisal measure
- Compliance with the procedure for the presentation of complaints, grievances and objections by prisoners in accordance with Article 98 of Law No 23/98
- Strengthen the role of this mechanism so as to guarantee the right of appeal to persons affected by disciplinary decisions, and comply with the time limits specified for that purpose and respect their right to designate a defence representative to appear on their behalf before the commission charged with deciding on the case
- Combat all forms of illegal practices such as blackmail, corruption and threats to which prisoners are subjected in return for exercising the rights guaranteed under the law (visits, use of the telephone, interview with the prison director, medical care outside the prison, etc.)
- Extend the partnership with associations and facilitate their access to penal establishments in order to guarantee their role in creating awareness of and disseminating the culture of human rights and contributing to strengthening the human resources directly or indirectly involved in the operation of penal establishments.

Installations and infrastructure:

- Speed up the process of closing the Aïn Kadouss prison in Fez
- Remove the divider installed in the visiting room at Laâyoune prison
- Carry out the necessary upgrading of prisons which are in an advanced state of disrepair
- Provide a single visiting room with divider instead of three at Oudayas prison in Marrakesh, since the use of such a visiting room is an exceptional measure
- Enlarge the patient exercise area attached to the prison infirmary at Oudayas prison in Marrakesh
- Give consideration in the building plans for new penal establishments to accessibilities for prisoners with disabilities, ensuring that such facilities are in compliance with planning and development standards and meet the relevant international norms.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

Human resources:

- Provide penal establishments with human resources which reflect the staff-to-inmate ratio applied internationally, i.e. one guard for every three inmates
- Improve staff training, including training in the area of human rights and in particular the protection of the rights of prisoners, and set up a staff incentive system (annual awards and commendations)
- Introduce a system of one-off housing allowances for staff where staff accommodation is not available.

Sports and recreational activities and religious observance:

- Attach greater importance to social, sports and recreational activities for inmates, by encouraging talented inmates who display competence in certain areas and allowing associations concerned to organise these activities
- Provide prayer rooms in all penal establishments.

Exercise:

- The Council reiterates its earlier recommendation that, in accordance with the law, prisoners should, without exception, enjoy a daily period of exercise and exposure to the sun of at least one hour, including on public holidays.

Provision of services:

Health:

- The Council reaffirms the need to implement its recommendations, in particular those relating to handing over responsibility for healthcare in penal establishments to the Ministry of Health, setting up detox programmes and ensuring that psychiatric medical services are available in all prisons.

The Council also recommends:

- Encouraging the use of travelling clinics provided by civil society for the benefit of sick persons in penal establishments
- The organisation by the Ministry of Health of campaigns against contagious diseases and in particular skin diseases
- The organisation of awareness campaigns in prisons about the seriousness of contagious illnesses, including AIDS, and campaigns to help addicts quit
- The adoption of specific measures to protect vulnerable groups including the elderly, persons with disabilities and those suffering from AIDS, cancer or mental illness
- Increasing the numbers of medical and paramedical staff
- Providing penal establishments with the medical equipment and materials they require and an adequate supply of medicines.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

Food:

- Improve the quality of food provided to prisoners, increase the food budget and ensure that the nutritional programme set out by central administration is adhered to
- Ensure that the prices of food products sold in the shops established within penal establishments are controlled and that prisoners are not compelled to purchase food products only from these shops.

Education and vocational training:

- Strengthen the cooperation between the Delegation General of the Prisons Administration and Reintegration, the Ministry of National Education, the Ministry of Employment and Vocational Training and the Mohammed VI Foundation for the Reintegration of Prisoners, together with the other actors in this field
- No conditions should be attached to the right to education
- Organise awareness programmes for prisoners on the importance of education and vocational training.

Work for prisoners:

- Attach particular importance to providing work for prisoners, in view of the role which this can play in their social reintegration
- Ensure that prisoners receive recompense for the work they do
- Provide production workshops as used to be done in the past
- Insure prisoners against workplace accidents
- Arrange supervision by the Labour Inspectorate of the work done by prisoners in penal establishments.

Hygiene and showers:

- Implement the legal provisions relating to penal establishments and in particular Article 130 on the importance of hygiene and its relevance to the health of the prisoner
- Respect the prisoner's right to privacy when showering and in the toilets
- Ensure compliance with the implementing decree to Law No 23/98 relating to hygiene and preservation of health (Articles 84 to 88).

Blankets, bedding and clothing:

- Provide prisoners with adequate blankets, mattresses and clothing, taking hygiene conditions into account, as a fundamental right provided by law
- Implement the powers devolved to the Ministry of Justice and Freedoms by virtue of Article 182 of the implementing decree to the Law relating to the composition and description of clothing for prisoners and their bedding requirements and their maintenance and periodic renewal
- The fair and equitable allocation of blankets to all prisoners without exception.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

Contact with the outside world:

- Allow families to visit their relatives as a group, at the same time, in direct contact without dividers, with the exceptions provided for in law
- Make provision to guarantee contact with the outside world for foreign prisoners
- Equip the visiting areas of all prisons with chairs and tables to improve visiting conditions for families
- Install facilities for reception of digital terrestrial broadcasts by the Tamazight TV Channel
- Provide establishments with sign language specialists
- Make it easier for prisoners to obtain a national identity card, and allow them to use the address of the penal establishment where they are being detained.

1.2. Recommendations addressed to the Ministry of Justice and Freedoms:

With a view to ensuring the application of the Law and the implementation of its provisions, the CNDH makes the following recommendations to the Ministry of Justice and Freedoms:

Prison overcrowding:

- Rationalise the use of pre-trial detention, given that each year thousands of people who are incarcerated have their case dismissed, are acquitted or are given a suspended sentence
- Limit the number of short prison sentences and replace them with suspended sentences or fines, pending the introduction of alternative penalties
- Speed up the processes for dealing with prisoners placed in pre-trial detention, in relation to both investigative and trial procedures
- Make use of the available legal options which allow for the conditional release or pardon of prisoners on grounds of good behaviour and/or because they have served two thirds of their sentence (17 939 cases in 2011), the elderly, those given a sentence of less than 6 months (9228 in 2011) and those with chronic illnesses
- Ensure that prisoners are equally distributed amongst the different prisons in proportion to their accommodation capacities
- Implement the conciliation procedure provided for in Article 41 of the Code of Criminal Procedure.

Minors in conflict with the law:

- Train magistrates specialising in dealing with minors
- Implement the principle of not resorting to the systematic imprisonment of minors. Such imprisonment should only happen in exceptional circumstances, as a last resort, and for as short a time as possible
- Encourage judges and counsellors with responsibility for minors to examine their circumstances in a regular and effective manner
- Apply in an effective manner the powers granted to judges and to counsellors with responsibility for minors to rectify or modify on their own initiative any decisions which have been taken, where this is in the best interests of the child

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

- Ensure the immediate implementation of any decisions taken to rectify or modify a decision and to specify the agency responsible of implementation
- Guarantee the right of an incarcerated minor to schooling and the other rights to which he is entitled in law
- Guarantee legal aid for all minors who have broken the law and strengthen their social support
- Provide post-release support centres for minors and make such centres available throughout the country.

Judicial monitoring:

- Strengthen the monitoring of places of detention by the public prosecutor's office
- Introduce compulsory judicial monitoring of penal establishments in the form of regular visits to determine the true situation within these establishments, and extend the competences of the enforcement judge to enable him to exercise effective monitoring and supervision of how sentences are carried out.

1.3. Recommendations to the Interior Ministry:

- Introduce monitoring by provincial commissions in the form of regular and effective visits and the drafting of thematic reports on the situation
- Speed up the process of creating criminal police posts specifically for dealing with minors, with specialist staff.

14

1.4. Recommendations to other actors:

- Make use of the powers granted to Parliament by the law. Indeed, the Parliament has the power to monitor, interrogate, investigate and ensure accountability. It can improve laws and ensure their harmonisation with the relevant international norms
- Activate the role of the commission provided for in the last sub-paragraph of Article 2 of the Dahir of 29 April 2008, created pursuant to Decree No 2.09.212, specifying the powers of this commission which comprises the Ministries of Justice and Freedoms, Habous and Islamic Affairs, Economy and Finance, Housing, Town Planning and Development, Youth and Sport, Agriculture and Marine Fisheries, National Education, Higher Education, Executive Training and Scientific Research, Employment and Vocational Training, Craft Industries and Culture and the Royal Gendarmerie. The original purpose of this commission was to manage the penal establishments in a coordinated manner with a view to improving conditions for prisoners, provide them with healthcare and ensure their rehabilitation following their release in order to facilitate their reintegration into society, and to provide training for the staff of the Delegation General in social, health and security matters
- Strengthen the role and broaden the activities of civil society organisations to include monitoring of conditions in prisons and the organising of educational sessions in citizenship and human rights for prison staff and prisoners. This requires an amendment to Article 84 of Law No 23/98, conferring on the head of the establishment the power to authorise civil society organisations to make visits to the prison after notifying the Delegation General

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

- Make the necessary legal provisions to protect the well-being and dignity of prisoners and respect professional ethics by not publishing photographs of prisoners or giving out their names without their permission
- Strengthen the role of the Mohammed VI Foundation for the Reintegration of Prisoners in relation to the provision of post-release support with a view to reducing recidivism
- Create child protection centres to provide for the material, moral, psychological and social care of children born in penal establishments who are in a vulnerable situation due to the absence of any close relatives or the refusal of such relatives to care for the child.

2/ Medium- and long-term recommendations

With a view to promoting the well-being of prisoners, the National Human Rights Council makes the following recommendations:

2.1. Creating awareness of human rights and a human rights culture:

- Launch a national dialogue on prison conditions by organising a national symposium in which all the actors, both governmental and non-governmental, will take part, with the aim of arriving at a common diagnosis of the situation in our penal establishments and drafting proposals for reforming our prisons and juvenile reform centres and educational centres
- Involve all actors, including the CNDH, in educating prison staff in human rights, citizenship and good governance
- Implement the recommendations of the Equity and Reconciliation Commission (Instance Équité et Réconciliation) on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, on the abolition of the death penalty, on the grounds that it does not constitute an exemplary or effective form of punishment.

2.2 Legal guarantees:

The Council recommends that the Ministry of Justice and Freedoms, Parliament and the High Level Judicial Body (Haute Instance) charged with conducting the dialogue on justice reform should:

- Implement the provisions of the Constitution of 2011 on the guaranteeing of the physical and emotional wellbeing of all persons, in all circumstances, by any private or public person (Article 22(1)), the avoidance of inflicting on others, on whatever pretext, treatment which is cruel, inhuman, degrading or which constitutes an affront to human dignity (Article 22(2), a ban on all forms of torture (Article 22(3), and the linkage between responsibility and accountability;

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

- Harmonise the majority of the provisions of the relevant law with international norms on human rights, in particular the rules relating to the treatment of prisoners and the obligations of staff charged with applying the law, and in accordance with the new powers granted to parliament;
- Amend Article 473 of the Code of Criminal Procedure, raising the age of minors who can be placed in penal establishments from 12 to 15, while emphasising that this is an exceptional measure;
- Implement the principle of protecting women prisoners from all forms of discrimination and violence based on gender; treating the sexual violence to which they may be subjected in places of detention as a form of torture and adopting measures and means of verification which are adequate to provide them with protection against any forms of discrimination or violence ;
- Combat impunity by penalising degrading treatment which constitutes an affront to human dignity, inflicted by the authority or one of its agents;
- Strengthen the conditions for guaranteeing a fair trial as set out in the Code of Criminal Procedure, by:
 - strengthening the role of the defence and broadening its powers of intervention, and creating a true balance between the defence and the prosecution;
 - reducing the custody period, specifying the custody conditions and making the places where persons are held in custody more humane;
 - applying severe penalties where procedural guarantees are not met;
 - reviewing the procedures for judicial discharge and the applicable conditions, without imposing specific time periods, and reducing the time periods for automatic discharge
 - making the exercise of the discretionary powers conferred on judges contingent on respect for the law, by clearly stating the legal intentions of the content of the texts (for example, aggravating circumstances, cases of re-offending and the criteria for mitigation of the sentence);
 - setting up a special compensation procedure for judicial errors, pursuant to Article 122 of the new Constitution, and making provision for penalising those responsible;
 - strengthening the protection of minors in conflict with the law;
 - issuing a regulation giving prisoners the right to conjugal visit;
 - amending Article 66 of the implementing decree to Law No 23/98 so as to determine responsibility in the event of modification of any measure taken in respect of a minor;
 - considering mental illness and 'diseases of the will' as factors contributing to lack of legal capacity or diminished capacity, in accordance with the principles of legality, equity and equality contained in the section of the Penal Code relating to legal capacity;

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

- making provision for the time spent receiving care in a psychiatric hospital to be deducted from the sentence in the case of persons who are acknowledged to have diminished capacity but where the case against them has been pursued and they have been given a prison sentence;
- providing alternative penalties in the Penal Code, including unpaid community work and the revocation of driving licences, and giving the enforcement judge competence to monitor the effective application of such alternative penalties and assess their effect on the behaviour of the persons sentenced.

3/ Recommendation on the budget

The CNDH recommends there should be an appropriate budget allocation which takes into account the need for coherence with penal policy and which is adequate for achieving the strategic objective of rehabilitating prisoners and reintegrating them into society.

7/GENERAL CONCLUSION

In the absence of regular supervision of the various supervisory mechanisms (judicial authorities and provincial commissions) and given the existence of legal lacunae, the weakness of parliamentary control, the multiplicity of actors involved and the overlaps between their powers, and in view of the persistence of bad practices and violations of the rights of prisoners;

On the basis of the visits made by the CNDH working group to certain penal establishments, which enabled them to see the nature and extent of these violations;

Given the persistence of practices which sometimes amount to a serious violation of prisoners' rights and in view of the complaints, the cases of apparent reprisals and the importance of witness protection, all of which are matters requiring constant and continuous monitoring;

The Council recommends that the Government should speed up the process of ratifying the Optional Protocol to the International Convention against Torture, and in consequence should speed up the process of creating an independent national preventive mechanism for the prevention of torture in accordance with the said Protocol, Article 17 of which stipulates that each State party shall put in place independent national preventive mechanism for the prevention of torture at the domestic level.

The CNDH calls for the opening of a major public debate on the creation of such a mechanism which, together with inspections of all types of incarceration establishments, should provide a fundamental guarantee for protecting persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment.

CRISIS IN THE PRISONS: A SHARED RESPONSIBILITY

100 recommendations for protecting the rights of prisoners

The CNDH believes such a mechanism should have the guarantees and the resources to enable it to carry out its mandate, through access to information about prisoners, places of detention and all information relating to the treatment of such persons and their conditions of detention, and access to all places of detention (police custody centres, juvenile detention centres, land frontier posts, transit posts at airports and ports, detention centres for foreigners and asylum seekers, psychiatric hospitals, the custody centres of the Directorate of Territorial Security (Direction de la surveillance du territoire), detention sites under military jurisdiction, prisoner transport facilities and any public or private place of detention which the prisoner is not free to leave without an order from a judicial, administrative or other authority. And the required capabilities and professional knowledge, in addition to the necessary resources for functioning (Article 18).

The CNDH also considers that in accordance with Article 18 of the Optional Protocol, the national preventive mechanism should have functional independence and the required capabilities and professional knowledge, in addition to the necessary resources for functioning.

The National Human Rights Council further recommends the drafting of an action plan for the eradication of torture, in partnership with all the actors including the judicial authorities, parliament, the government and civil society.



المجلس الوطني لحقوق الإنسان
Conseil national des droits de l'Homme

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