



**International Convention on the  
Protection of the Rights of  
All Migrant Workers and  
Members of Their Families**

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**Committee on the Protection of the Rights of All  
Migrant Workers and Members of Their Families**

**Consideration of reports submitted by States  
parties under article 73 of the Convention**

**Initial reports of States parties due in 2004**

**Morocco<sup>\*</sup>, <sup>\*\*</sup>**

[12 July 2012]

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<sup>\*</sup> In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been formally edited.

<sup>\*\*</sup> The annexes may be consulted in the secretariat's files.

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## I. Introduction

1. The Kingdom of Morocco hereby submits its initial report on the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families pursuant to article 73 of the Convention.
2. This report was prepared in accordance with the general guidelines adopted by the Committee on Migrant Workers, through a consultative process involving all stakeholders, including the various Government departments concerned, national institutions, notably the National Human Rights Commission, and civil society (see annex 1).
3. Human rights are an essential component of Moroccan State policy. Over the past two decades, thanks to a process that is continually gaining in importance, this choice has been underpinned by the adoption of political, legislative, institutional and practical measures.
4. Morocco has continued to become a party to human rights instruments by ratifying the following: the Convention on the Rights of Persons with Disabilities and its Optional Protocol; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The process of accession to the optional protocols (the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) has begun, and some reservations and declarations have been reconsidered (e.g. the withdrawal of reservations to article 9, paragraph 2, and article 16, of the Convention on the Elimination of All Forms of Discrimination against Women, which were superseded by legislative reforms concerning the family and nationality). On 28 February 2012, during the nineteenth session of the Human Rights Council, Morocco signed the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. It also announced that it had ratified the International Convention for the Protection of All Persons from Enforced Disappearance.
5. The positive dialogue with the treaty bodies and special procedures mandate holders has been strengthened. Three periodic reports have been considered: the third and fourth combined periodic reports on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in 2008, the seventeenth and eighteenth combined reports on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in 2010, and the fourth report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2011. The initial report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was submitted in 2011. Other reports are now being prepared and will be submitted in 2012.
6. Morocco was one of the countries that promoted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which it signed on 15 August 1991 and ratified on 21 June 1993.
7. The Special Rapporteur on the human rights of migrants visited Morocco from 19 to 31 October 2003 in response to an invitation from the Government as part of its policy to

cooperate with United Nations mechanisms for the promotion and protection of human rights.

8. The interest shown in this issue is also explained by the sizeable Moroccan community living abroad, officially estimated at more than 3 million people, most of whom live in Europe.

9. Over the past two decades, the geographical proximity of Europe, only 14 kilometres from Morocco, has encouraged transit migration from sub-Saharan Africa. Beginning in the 2000s, Morocco has also become a final destination country for a growing percentage of economic migrants and asylum seekers.

10. Programmes and measures have been developed to cooperate with specialized international organizations, particularly the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM). Closer involvement by civil society has helped to strengthen the promotion and protection of the rights of migrants, particularly with the emergence of a new generation of NGOs working in this field.

## **II. General information**

### **A. Constitutional, legislative, judicial and administrative framework**

11. The preamble to the new Constitution adopted by referendum on 1 July 2011 states that the Kingdom of Morocco “undertakes to adhere to the principles, rights and obligations set out in the respective charters and conventions” and “reaffirms its commitment to universally recognized human rights and its willingness to continue to work to maintain peace and security throughout the world”. In this regard, the Kingdom reaffirms its commitment to “let duly ratified international conventions prevail over domestic law ... and bring the relevant provisions of its national legislation into line accordingly”. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families thus serves as a regulatory framework.

12. Article 16 of the Constitution stipulates that “the Kingdom of Morocco shall work to protect the legitimate rights and interests of Moroccan citizens living abroad, in accordance with international law and the laws in force in the host countries”. The preamble reaffirms the country’s commitment to “prohibit and combat all discrimination against any individual on the grounds of sex, colour, creed, culture, social or regional origin, language, disability or any personal circumstances”.

13. This recognition has also been established in other laws, including the Code of Criminal Procedure and the Nationality Code. Monitoring of the constitutionality of laws was strengthened under the new Constitution, which established a Constitutional Court to replace the Constitutional Council. Article 132 of the Constitution gives this Court the competence to decide on the constitutionality of organic laws and “the international laws and commitments” brought before it “before they are promulgated or ratified”. Article 55, paragraph 4, of the Constitution provides that “if the Constitutional Court decides with regard to a matter referred to it by the King, the President of the House of Representatives, the President of the House of Counsellors, one sixth of the members of the first House or one fourth of the members of the second House, that an international instrument includes a provision that is unconstitutional, that instrument can be ratified only after the Constitution has been amended”.

14. Article 30 of the Constitution provides that “foreigners shall enjoy the same fundamental freedoms granted to Moroccan citizens, in accordance with the law. Those

who reside in Morocco may participate in local elections in accordance with the law, the application of international conventions or reciprocal arrangements”.

15. It should be noted that an entire chapter of the new Constitution is devoted to the protection of fundamental rights and freedoms, including equality in the exercise of rights and freedoms, the right to life, security, freedom of thought, opinion and expression. The same chapter also criminalizes, *inter alia*, torture, arbitrary detention and forced disappearance, genocide and all serious and systematic human rights violations. The new Constitution also prohibits “any incitement to racism, hatred or violence”. Constitutional guarantees for the rights enshrined in the Convention will be outlined at a later stage when describing the implementation of each article of the Convention.

## **1. Ratification of international instruments**

16. Morocco has ratified most of the international conventions on human rights as well as those on refugees. As a member of international organizations, it has also ratified 52 International Labour Organization (ILO) conventions that apply to both nationals and foreign workers in Morocco (see the annex entitled “List of ILO conventions ratified by Morocco”).

17. The aim of ratifying international conventions is to ensure protection for all human beings without discrimination and regardless of their legal status.

18. Thus, Morocco has ratified the main international human rights conventions, namely:

- The Convention on the Prevention and Punishment of the Crime of Genocide, ratified on 24 January 1958;
- The International Convention on the Elimination of All Forms of Racial Discrimination, ratified on 18 December 1970;
- The International Covenant on Economic, Social and Cultural Rights, ratified on 3 May 1979;
- The International Covenant on Civil and Political Rights, ratified on 3 May 1979;
- The Convention on the Elimination of All Forms of Discrimination against Women, ratified on 21 June 1993;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 21 June 1993;
- The Convention on the Rights of the Child, ratified on 21 June 1993;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified on 21 June 1993;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified on 2 October 2001;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, ratified on 22 May 2002;
- The Convention on the Rights of Persons with Disabilities and its Optional Protocol, ratified on 8 April 2009.

This commitment has been strengthened by the 26 May 2011 decision of the Council of Ministers to ratify the optional protocols to the Convention on the Elimination of All Forms of Discrimination against Women and to the International Covenant on Civil and Political Rights establishing an individual communications procedure, as well as the Optional

Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishing a mechanism for the prevention of torture. In addition, on 1 March 2012 the Government Council adopted Bill No. 12-20 by which Morocco acceded to the International Convention for the Protection of All Persons from Enforced Disappearance, which at the time of the submission of this report had been adopted by parliament. Moreover, on 28 February 2012 Morocco signed the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

19. Two major international instruments should be highlighted in this regard: the Convention relating to the Status of Refugees (known as the Geneva Convention of 28 July 1951), for which the instruments of ratification were deposited on 7 November 1956, and the Protocol relating to the Status of Refugees, to which Morocco acceded on 20 April 1971.

20. When it submitted its candidacy for the nineteenth session of the Human Rights Council, Morocco reaffirmed its commitments in accordance with General Assembly resolution 60/251 and its decision to withdraw its reservations to article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, articles 20 and 22 of the Convention against Torture and article 14 of the Convention on the Rights of the Child. In 2011, Morocco withdrew the reservations it had entered to articles 9 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women at the time of ratification (Official Gazette No. 5974 of 1 September 2011).

21. Over the past decade, Morocco has brought several laws into line with its international human rights commitments, particularly in criminal, family, civil liberties and labour matters. Other laws on combating torture and on prisons have also been drawn up. The current Government, elected at the legislative elections of 25 November 2011, is in the process of reforming and standardizing the country's body of laws and bringing them into line with the new Constitution and international human rights standards.

22. The reform of existing laws and the adoption of new laws to bring national law (including the Labour Code, the Commercial Code, the Criminal Code, the Code of Criminal Procedure, the Family Code, the Nationality Code and other laws guaranteeing individual rights and protecting against any infringement of the rights of the person) into line with the international conventions duly ratified by Morocco, also involve protecting the rights of migrants, regardless of their residential status in the country. The guarantees of international human rights law, which Morocco upholds, strengthen this protection.

## **2. Moroccan legal framework on migration**

*Act No. 02-03 of 11 November 2003 on the entry and residence of foreign nationals in Morocco*

23. By adopting Act No. 02-03 of 11 November 2003 on the entry and residence of foreign nationals in Morocco and illegal emigration and immigration, which filled a legislative gap in that area, Morocco has established a modern legal framework in line with its international commitments.

24. Act No. 02-03, published in Official Gazette No. 5162 of 20 November 2003, regulates the various aspects of migration in Morocco: immigration (entry and residence) and emigration (ways of leaving the country). The decree implementing this law was adopted on 1 April 2010 (Decree No. 2-09-607, published in Official Gazette No. 5836 of 6 May 2010).

25. Article 1 of Act No. 02-03 provides that, "subject to the duly published international conventions, foreign nationals' entry to and residence in the Kingdom of Morocco is governed by the provisions of this law", which constitutes a recognition of the place these

international conventions hold in the Moroccan legal system with regard to the entry and residence of foreigners.

*Act No. 65-99 of 11 September 2003 on the Labour Code*

26. Act No. 65-99 of 11 September 2003 on the Labour Code is the result of broad consultations between the Government, trade unions and employers' organizations and aims to regulate labour relations in a stable and healthy social climate capable of guaranteeing and preserving human dignity and making it possible to improve working conditions, and to establish respect for the freedom of association and for negotiations based on the protection and defence of the interests and fundamental rights of workers. Domestic labour law conforms with the principles set out in the Constitution and with international standards as laid out in the labour conventions of the United Nations and its specialized agencies. Books I, II, IV and V of the Labour Code address conditions of employment and work and the rights and obligations that employers and employees are required to uphold, while books III and VI define the institutional mechanisms governing individual and collective relationships between employers and workers or their representatives.

*Decree No. 2-57-1256 of 29 August 1957 on the implementation of the Convention relating to the Status of Refugees of 1951*

27. The final paragraph of article 30 of the Constitution specifies that "the conditions for extradition and the granting of asylum shall be defined by law" and Morocco has adopted specific legislation on refugees and asylum seekers, as contained in Decree No. 2-57-1256 of 29 August 1957 on means of implementing the Convention relating to the Status of Refugees of 1951. As part of a general process to update the national asylum system, the Moroccan Government is in the final stages of a large-scale project aimed at strengthening the institutional and legal framework for asylum, in accordance with international standards and the Constitution.

## **B. Overview of migration in Morocco**

28. Migration has had a significant influence on the history of Morocco. The contributions made by the Amazigh, Arab, Moorish, Jewish, African and European communities are a testament to the diversity of its identity throughout the ages. These contributions are part of the country's culture and history.

29. Historically a labour-exporting country, over time Morocco has become a transit country and is in the process of becoming a destination country, often by default, as a result of the restrictions imposed by European countries.

30. Thousands of Moroccans have emigrated, motivated by Europe's search for the labour force needed for reconstruction efforts. Though Moroccan emigration to Europe began in the 1920s, it increased after independence and now involves more than 10 per cent of the country's population. Thus the number of Moroccans living abroad increased from 1,662,870 in 1998 to 2,549,215 in 2002, reaching 3,556,213 in 2011.

### **Moroccan emigrants by region**

<i>Region and country</i>	<i>Percentage</i>
Europe	84.1
France	36

<i>Region and country</i>	<i>Percentage</i>
Spain	17
Italy	12
Belgium	10
The Netherlands	10
Germany	4
Arab countries	7
The Americas	4

31. Certain categories of people go uncounted under the current method of producing statistics, namely irregular migrants under 16 years of age, Moroccans living abroad who have not registered with their consulates, newborns not reported to the consulates, and any of those with dual citizenship who do not make use of Moroccan consular services.

32. The new generations of Moroccan emigrants are also citizens of the host countries, with all their diversity. Many of them have integrated into the host societies and are active in political, cultural, economic, academic and other spheres of society. Their connection with their country of origin remains strong, as indicated by the 2 million visits they make to the country each year and the significant amount of foreign currency they transfer to Morocco. According to the Exchange Office, the total transferred between January and November 2010 was €4.3 billion, an increase of 7.4 per cent compared to the same period in 2009. According to preliminary indicators for the first five months of 2011 published by the Exchange Office, transfers by Moroccans living abroad grew by 6.8 per cent, from 20.3 billion dirhams (DH) for the same period in 2010 to DH 21.67 billion in 2011. Moroccans living abroad constitute the second largest source of revenue for the Moroccan economy after tourism. In addition, they contribute to the development of their regions of origin by supporting local projects, and also help to establish and strengthen cooperation between non-profit and cooperative organizations in Morocco and abroad. However, it should be emphasized that they do have difficulties integrating in the host societies, an indication of social unease and identity issues that can sometimes take violent forms and that also require support measures by the Moroccan Government. Those working in this area have developed strategies and action plans to meet primary expectations in the fields of education, language, religion and legal support. Several Government departments contribute to these efforts, including the Ministry of National Education, the Ministry of Religious Endowments and Islamic Affairs, the Ministry of Foreign Affairs and Cooperation, the Ministry of Justice and Freedoms and the Ministry of Culture.

33. In search of a better quality of life, thousands of young people seek to emigrate to northern countries, including many highly-trained professionals. According to a study conducted by the National Institute of Economics and Applied Statistics of Morocco (INSEA), the standard of education of Moroccan migrants has improved significantly in recent decades. The percentage of those with a secondary education increased from 20 per cent in the 1960s and 1970s to 44 per cent in the 1990s. The percentage of migrants with higher education rose from 1 per cent to 16 per cent. The percentage of those with vocational and technical training increased from 5.2 per cent to 16.7 per cent. The requirements of international migration call for skilled and highly-skilled workers. In the early 2000s a considerable percentage of engineering graduates specializing in new information and communication technologies went abroad.

34. Moroccan migrants also suffer from the restrictions on entry into European countries. Many of those in an irregular situation are deported. In addition, in recent years



nearly 20,000 Moroccans have been repatriated from certain countries because of political instability, for example in Tunisia, Egypt, Libya and Côte d'Ivoire.

35. A total of 75,147 foreigners were living in Morocco at the end of the first half of 2010. Casablanca tops the list with 21,121 foreign residents, followed by Rabat with 10,166. The total figure had increased to 79,241 by 2 February 2012, according to statistics from the Directorate-General of National Security.

36. The employment of foreign workers is regulated by chapter V (employment of foreign workers) of Act No. 65-99 on the Labour Code, article 516 of which stipulates that "any employer who wishes to hire a foreign worker must obtain authorization from the Government authority in charge of labour matters. The authorization is stamped on the employment contract."

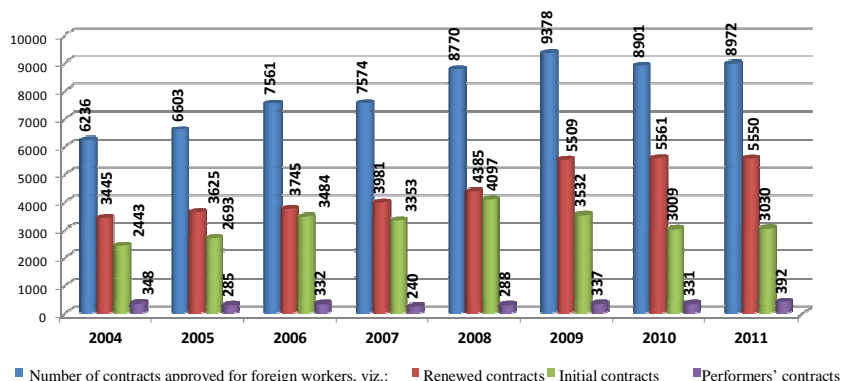
37. Pursuant to article 521 of the Labour Code, and with a view to protecting foreign workers in Morocco, any employer who does not obtain the authorization required under article 516 or who employs a foreign national who does not possess such authorization, who employs a foreign national whose contract is not in line with the model provided in article 517 or who violates articles 518 and 519, is subject to a fine of between DH 2,000 and DH 5,000.

38. The aims of requiring approval of a foreign national's employment contract are twofold: to encourage the employment of Moroccan workers, and to meet the country's need for skills from outside to boost the national economy while guaranteeing foreign workers' rights.

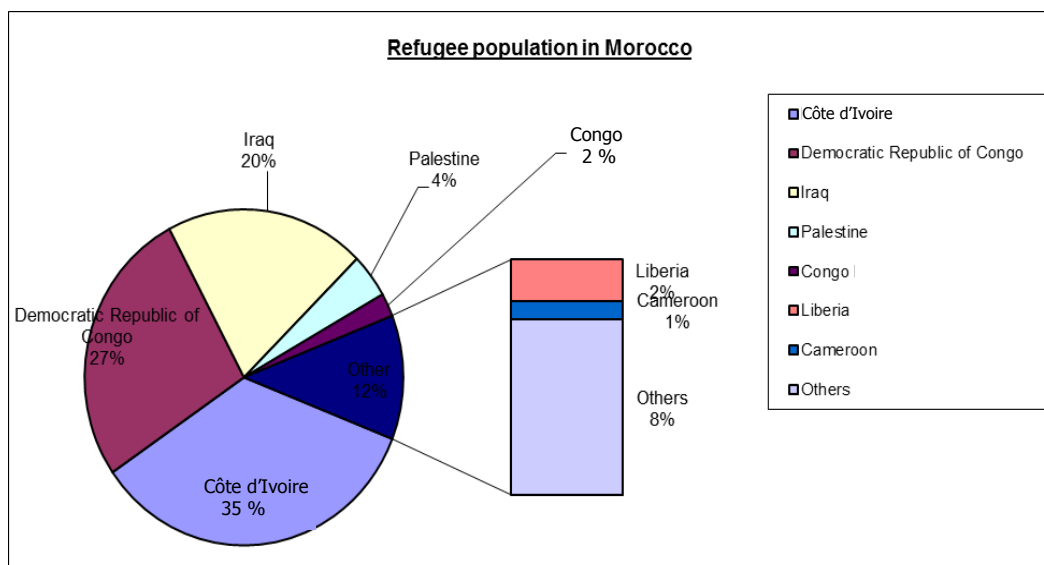
39. From a legal standpoint, under the current regulations, and notably the decree issued by the Minister of Labour and Vocational Training on 9 February 2005, a certificate from the National Agency for the Promotion of Employment and Skills (ANAPEC) is required, and the annex of 25 November 2005 exempts certain categories of foreign workers from that requirement. Those exempted include anyone born in Morocco or whose mother is Moroccan; anyone on limited secondment to a foreign company awarded a public works contract, or its subsidiary; anyone married to a Moroccan; company owners, authorized signatories and managers; company partners and shareholders; delegates or representatives involved in cooperation efforts for a period not exceeding six months; coaches and athletes, subject to authorization by the competent authorities of the Department of Sport; artists performing in Morocco, with advance authorization from the Directorate-General of National Security; and duly identified and recognized political refugees and stateless persons. It should also be noted that Morocco has signed establishment conventions with Algeria, Tunisia and Senegal, and nationals of those countries are treated as Moroccan nationals.

40. Thus, the number of authorizations granted to foreign nationals to do paid work in Morocco has increased significantly, from 6,236 in 2004 to 8,972 in 2011. This increase is explained in part by the expansion of foreign investment in Morocco, particularly in the building and construction sectors, hospitality, catering, aeronautics, relocation, and major retail outlets and franchises, and also by the shortage of particular skill profiles in the national labour market.

### Number of contracts approved by the department of employment from 2004 to 2011



41. These figures cover only legal residents. There is also the refugee population to take into account, estimated by the Office of the United Nations High Commissioner for Refugees (UNHCR) at 829 in May 2008 and 754 in September 2011, including 278 children under 17 years of age and 109 women. Of that total, 66.57 per cent come from five countries in sub-Saharan Africa and 24.53 per cent from two countries in the Middle East.



42. The draconian migration measures taken by authorities in European countries have increased the pressure of migration flows on transit countries. Political instability, economic hardship and ethnic tensions have led many people from sub-Saharan Africa to leave their countries in search of a place where they can live in dignity and safety. Morocco remains a destination for illegal migrants, given its proximity to Europe and the situation of the Moroccan cities of Ceuta and Melilla, occupied by Spain, in the north of the country, and also its Atlantic shoreline near the Canary Islands in the south. Transit through Morocco is becoming more difficult, due to the measures taken and agreements signed by countries of the region to deal with this migration flow. The European approach to this issue places an additional burden on Maghreb countries such as Morocco, which need to strengthen capacity, institutions and the means of managing the situation. With an eastern land border of 1,601 kilometres with Algeria and a southern land border of 1,561 kilometres with Mauritania, as well as a 3,500-kilometre coastline on the Atlantic and the Mediterranean, Morocco, as a default transit country, is heavily affected by irregular

migration flows. Migrants are remaining in transit for increasingly longer periods, and many of them end up staying permanently in Morocco because of the strict control of the borders and points of entry to Europe and the tightened surveillance of the outer borders of the European Union.

43. In order to cope with the social and human consequences of this situation, Morocco has developed a policy of voluntary return for irregular migrants who wish to return of their own accord to their countries of origin, in close coordination with the diplomatic missions of the countries concerned, which help by issuing consular laissez-passer.

44. The voluntary return of irregular migrants is carried out within the framework of cooperation between the Ministry of the Interior and the International Organization for Migration (IOM), under a memorandum of understanding between the two parties signed in July 2007 (attached). This agreement formalized cooperation efforts that had existed since 2005.

45. The IOM purchases airline tickets and finances resettlement projects in the country of origin for returnees, in some cases. Assistance with administrative formalities at the airport of departure is provided jointly by IOM representatives and the Directorate of Migration and Border Surveillance (see paragraphs 433 and 434 of this report). The Moroccan Government has directly funded the voluntary return of approximately 3,400 migrants to their countries of origin.

46. The importance Morocco attaches to the issue of migration is evidenced by the establishment of several institutions and organizations devoted to this issue (see also pp. 101–105 of this report). The Government institutions of Morocco thus include the following:

(a) A ministerial department responsible for the Moroccan community living abroad, which develops and implements Government policy on the Moroccan community abroad, including by promoting economic, social, cultural and educational measures on their behalf, safeguarding their material and moral interests in the host countries and in Morocco, monitoring the migratory movements of Moroccans, and negotiating bilateral and international agreements relating to the Moroccan community abroad;

(b) The Directorate of Migration and Border Surveillance of the Ministry of the Interior, which began operating in 2005 with the primary missions of implementing and monitoring the national strategy to combat human trafficking networks, while at the same time acting as a hub and facilitator for cooperation in this area at the bilateral, multilateral and regional levels;

(c) The Directorate-General of Bilateral and Regional Affairs of the Ministry for Foreign Affairs and Cooperation, which handles all the country's external relations with States and regional groupings;

(d) The Ministry of Labour and Vocational Training, which, in conjunction with the relevant Government departments, is responsible for managing the immigration of foreign workers in a regular situation in Morocco and, in conjunction with the Ministry for Foreign Affairs and Cooperation, for monitoring issues relating to seeking employment abroad and the implementation of labour agreements;

(e) The National Agency for the Promotion of Employment and Skills (ANAPEC), which is a public institution established by the Dahir of 5 June 2000 on Act No. 51-99 to assist with the organization and implementation of Government programmes to promote skilled employment. In the area of emigration, ANAPEC receives offers of employment from abroad and explores all job opportunities for nationals abroad, and in order to do this properly, it has established a centralized division of international placement,

set up four regional agencies abroad, and opened an international section within 10 other agency offices in its network;

(f) The Ministry of Justice and Freedoms safeguards the rights of migrant workers and members of their families by implementing the judgements issued in cases concerning them, and by proposing legal reforms, particularly as part of the efforts to modernize the Criminal Code, the Civil Code, and the relevant codes of criminal and civil procedure.

There are also two national institutions and one foundation that work on various aspects of the issue, namely:

(a) The Council for the Moroccan Community Abroad, established on 21 December 2007, which is an advisory body with administrative and financial autonomy that is responsible for issuing opinions on cases relating to emigration and in particular on issues concerning Moroccans living abroad. Its mission is also to ensure the monitoring, evaluation and improvement of public policies on Moroccans abroad, in order to uphold their rights and boost their participation in Morocco's political, economic, cultural and social development. The Council for the Moroccan Community Abroad is also responsible for monitoring and forecasting trends in migration issues;

(b) The National Human Rights Council, which was established in March 2011 as an independent and pluralistic national institution to replace the Consultative Council on Human Rights established in 1990. In accordance with the Dahir establishing the National Human Rights Council (Official Gazette No. 5922 of 3 March 2011), the Council is responsible for all matters relating to the defence and protection of human rights and freedoms, guaranteeing their full enjoyment and promotion, and upholding citizens' dignity and individual and collective rights and freedoms, in strict observance of the relevant national and universal standards. It also observes and monitors the human rights situation at the national and regional levels and prepares reports and makes recommendations to that effect to the Governments and other institutions concerned;

(c) The Hassan II Foundation for Moroccans Living Abroad, which was established under Act No. 19-89, promulgated by the Dahir of 13 July 1990, as a non-profit institution with legal personality and financial autonomy. Its purpose is to maintain the fundamental links between Moroccans living abroad and their homeland and to help them overcome the difficulties they face as a result of their emigration.

47. NGOs play an important role in efforts to protect and promote human rights in general and those of migrants in particular. According to the Ministry for Relations with Parliament and Civil Society, there are an estimated 70,000 associations working in all areas in Morocco, and hundreds of them work in human rights, women's rights, children's rights, the rights of persons with disabilities and the rights of persons living with HIV, among others. Over the past decade new categories of NGOs have emerged, including those working on migration issues. Some groups have existed since the mid-1990s, but with the strict control of European borders and the increase in high-risk migration attempts in open boats and rising numbers shipwrecked off the coast, there is more awareness of the problem and new NGOs have been set up, partly to deal with the cases of those who die crossing the Mediterranean, and partly to help their families mobilize public opinion on the issue. The increasing number of sub-Saharan migrants who die trying the crossing has prompted NGOs to broaden their area of focus to cover all victims of this kind of trafficking. It is within this context that NGOs such as the Association des familles et des victimes de l'immigration clandestine (AFVIC), a network of associations in the north of Morocco that helps sub-Saharan migrants, and the Groupe antiraciste de défense et d'accompagnement des étrangers et des migrants (GADEM) have been established. In addition, the measures used to combat irregular migration have led NGOs working in the general field of human

rights to take an interest in the situation, as evidenced by the establishment of service centres for migrants and asylum seekers in transit cities by the Moroccan Human Rights Organization in partnership with UNHCR, and the establishment of a branch of the Euro-Mediterranean Human Rights Network in Rabat, in order to better understand the issue and its impact on migrants' human rights. Lastly, it seems appropriate to mention the non-governmental institutions that provide support to sub-Saharan migrants in the form of services (vocational training, education for their children, etc.) and cultural activities, such as the Fondation Orient-Occident.

48. In addition, the Moroccan authorities attach special importance to cooperation with international organizations in this area. The Moroccan Government has developed an open and fruitful cooperation with the UNHCR, making it possible to better support that organization's efforts by giving it legal status, in particular by signing its headquarters agreement. This development constitutes a recognition of the role of UNHCR in processing refugee and asylum applications. Similarly, the International Organization for Migration (IOM) has been active in Morocco since 2001, and the signing of a headquarters agreement with the Moroccan Government in July 2006 allowed it to open a mission in Rabat in January 2007. United Nations agencies in Morocco have created an inter-agency group on migration issues, which has developed a comprehensive approach to the problem. Efforts have begun to raise awareness, identify problems and offer support, with a view to ensuring respect for the fundamental rights of migrants and refugees and improving their living conditions.

49. Morocco was one of the first countries to promote the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and one of the first States to ratify it. Long before it entered into force, the Convention was the focus of numerous events, including the first International Conference on the Issue of Migration, organized by the Ministry of Human Rights in 1999 in Tangier (northern Morocco), and attended by organizations working on the issue of migration in Morocco and in Europe, and representatives of a number of concerned European States. In 2003, the Human Rights Documentation, Information and Training Centre, established in 2000 by the Ministry of Human Rights, in collaboration with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Development Programme (UNDP), organized an international symposium on the topic of "Moroccan migration dynamics: balancing globalization and human rights" which was attended by researchers, elected officials, politicians and representatives of Government institutions from several countries. Similarly, a national seminar organized by the Ministry of Justice in 2003 following the adoption of Act No. 02-03 was attended by representatives of Government ministries and other State institutions (including the Ministry of Justice, the Ministry of the Interior, the Directorate-General of National Security and the Judicial Institute) and dealt with the status of the Convention in Moroccan legislation. Other activities have also been organized by various departments and institutions (such as the Ministry for Moroccans Living Abroad, the National Human Rights Council and the Council for the Moroccan Community Abroad), research groups and NGOs on various migration-related issues.

50. The migration issue has also sparked scientific interest within the Moroccan university system. Worth noting is the establishment of a migration and rights department at the Hassan II University in Casablanca, the Regional Observatory for Migration in Agadir, the UNESCO Migration and Human Rights Chair at Hassan II University in Casablanca, and the Moroccan Association of Migration Studies and Research in Rabat. These developments have made it possible for researchers to specialize in this topic and to produce research and studies on various aspects of the migration issue.

51. Over the past decade the Convention has been widely disseminated and published by various Government departments and official institutions, including the Ministry of Human Rights, the Ministry for Moroccans Living Abroad, the Consultative Council on Human Rights and the Centre for Migrant Rights. Debates on the issue of migration are regularly organized on International Migrants Day and on the National Day for the Moroccan Community Abroad, celebrated on 10 August every year, with conferences, discussion programmes broadcast on radio and television, and other cultural events organized at the national and regional levels.

52. The importance attached to dissemination of the Convention is part of a strategy to promote human rights and democracy that is centred on two major projects: a citizens' platform for the promotion of a human rights culture and a national plan for human rights and democracy. These two projects have been adopted as part of the implementation of the recommendations of the World Conference on Human Rights held in Vienna in 1993. A consultation strategy and a participatory approach were developed during the planning stage of the projects, enabling all stakeholders to be involved, namely national and regional NGOs, various Government departments and other relevant institutions, and seminars and thematic workshops were organized in several regions of the country.

### **III. Information relating to each of the articles of the Convention**

#### **A. General principles**

##### **1. Articles 1, paragraph 1, and 7. Non-discrimination**

53. Non-discrimination in the respect and recognition of the Convention rights is guaranteed in Morocco by several legal provisions.

54. Non-discrimination is one of the core principles of the country's legislation and was strengthened through its explicit recognition in the preamble to the new Constitution, adopted in 2011, in which Morocco undertakes to "prohibit and combat all discrimination against anybody on the grounds of sex, colour, creed, culture, social or regional origin, language, disability or any personal circumstances". The preamble to the new Constitution also states that Morocco:

- Reaffirms its commitment to universally recognized human rights;
- Undertakes to protect and promote instruments of human rights and international humanitarian law and contribute to their development as indivisible and universal;
- Undertakes to let duly ratified and published international conventions prevail over domestic law, and to bring the relevant provisions of its national legislation into line accordingly. It should be noted that Morocco has ratified and published the main international human rights conventions, and therefore provides broad protection for the human rights of migrant workers and their families.

55. Migrants' fundamental rights are also guaranteed under chapter II of the Constitution entitled "Fundamental rights and freedoms", which explicitly recognizes to everyone the main human rights and fundamental freedoms.

56. Also, under articles 431-2 to 431-4 of the Criminal Code, discrimination is prohibited and penalized by 1 month to 2 years' imprisonment and a fine of between DH 1,200 and DH 50,000.

57. National labour legislation specifically prohibits all discrimination between Moroccan workers and migrant workers in a regular situation and applies equally to

everyone. The preamble to Act No. 65-99 on the Labour Code stipulates that “the provisions of this Act are applicable throughout the national territory without discrimination between employees on the grounds of race, colour, sex, disability, marital status, religion, political opinion, trade union membership or national or social origin”. Articles 9 and 478 of the Code prohibit all discrimination with regard to employment or the practice of a profession as well as all discrimination by private recruitment agencies. Lastly, article 9, paragraph 2, and articles 346 and 478 of the Labour Code prohibit all discrimination in relation to recruitment and pay.

58. In addition, it should be noted that on 2 April 2007, the Moroccan Nationality Code was amended to include the principles of equality and non-discrimination by granting Moroccan women married to foreign nationals the right to pass their nationality on to their children (Nationality Code, art. 6), and any child born in Morocco of foreign parents who themselves were born in Morocco the right to acquire Moroccan nationality (Nationality Code, art. 9).

## 2. Article 83. Right to an effective remedy

59. Migrant workers and members of their families may use any of the remedies available to a Moroccan citizen in the event of abuse of power or a violation of their rights.

60. Thus, in the judicial sphere, remedies may be sought before:

- *Courts of general jurisdiction*, consisting of courts of first instance and appeal courts. Appeals in cassation against decisions made by these courts may be submitted to the Cassation Court. Courts of first instance have general jurisdiction over all civil, property, criminal and social matters, as well as all personal, family and inheritance matters;
- *Specialized courts*, and notably administrative courts in respect of residence of migrant workers and members of their families. Administrative courts have the competence to rule on applications to set aside administrative decisions, on applications for damages arising from the acts or activities of public officials and, in relation to migrant workers in particular, applications to set aside decisions denying entry to the country, ordering expulsion or escort to the border, or denying or withdrawing a residence permit.

61. Any order denying entry to Morocco is considered an administrative act which may be appealed in the administrative court on grounds of abuse of authority, as provided for by article 20 of Act No. 41-90 of 1993 on the establishment of administrative courts.

62. A foreign national whose residence permit is refused or withdrawn has the right, within 15 days of the notification of refusal or withdrawal, to challenge the decision before the president of the administrative court, as interim relief judge. Nevertheless, this remedy will not prevent a decision being taken on escort to the border or expulsion (Act No. 02-03, art. 20).

63. A foreign national may, within 48 hours of notification, request the president of the administrative court, as interim relief judge, to set aside a decision to escort them to the border. The president or their deputy shall hand down a decision within four days of the request. The time-limit for appeal is suspensive, that is, the decision on escort to the border cannot be executed for 48 hours following notification or until the president of the administrative court has given a ruling (Act No. 02-03, arts. 24 and 28). The judgement may be appealed before the administrative court of appeal within one month of the date of the notification. It should be noted that article 24 indicates that appeals are to be submitted to the administrative chamber of the Court of Cassation because the administrative appeals courts had not yet been set up when Act No. 02-03 on the entry and residence of foreigners

in Morocco and on irregular emigration and immigration was adopted. The appeal is not suspensive (Act No. 02-03, art. 24). If the individual lives outside Morocco, applications to set aside decisions denying entry or ordering expulsion or escort to the border may be submitted even after the 48 hours stipulated in article 23 (Act No. 02-03, art. 32).

64. In addition to the right of appeal, there are procedural guarantees (Act No. 02-03, art. 24) allowing individuals to notify their lawyer, their country's consulate or a person of their choice.

65. Migrant workers also have access to the extrajudicial remedies available to individuals through the Office of the Ombudsman and the National Human Rights Council. Complaints submitted to the Office of the Ombudsman by foreign physical and legal persons in Morocco are shown in the following table.

<i>Year</i>	<i>Complaints submitted to the Office of the Ombudsman by foreign physical and legal persons in Morocco</i>
2004	29
2005	7
2006	2
2007	6
2008	5
2009	3
2010	4

66. The National Human Rights Council has a service for individual complaints in the event of a violation of rights. It looks into the complaint and makes the necessary recommendations so that the competent authority may correct the situation. Since the establishment of the Council under the Dahir of 1 March 2011, it has been able to take up cases of human rights violations on its own initiative. Indeed, it was partly under its power to act ex officio that the Council, as an independent body, launched an investigation and published a report on the facts surrounding irregular immigration to Ceuta and Melilla in 2005.

67. The Office of the Ombudsman is an independent national institution replacing the Diwan Al-Madhalim and is responsible for investigating, either on its own initiative or in response to complaints and grievances by citizens or foreigners, any administrative act deemed to be unlawful by reason of abuse of authority or as contrary to the principles of justice and equity.

68. Under article 50 of the Dahir of 17 March 2011 on the Office of the Ombudsman, the Ombudsman is authorized to conclude partnership and cooperation agreements with similar mediating bodies "to coordinate measures that will allow them to help Moroccan citizens living in the foreign States in question, as well as foreign nationals living in Morocco, to set out complaints and grievances for harm suffered as a result of administrative acts, and to submit those complaints or grievances to the competent authorities in their country of residence ...".

69. Thus five partnership agreements — with France, Spain, Denmark, Mali and Quebec — provide for transfer of complaints between counterpart bodies where the complainants are Moroccans or foreign nationals. The four cases in which complaints were sent to the previous Ombudsman of France, for instance, in accordance with the counterpart partnership agreement, have been actively followed up by the competent authorities.



70. It should also be noted that a large proportion of remedies are submitted via services offered by NGOs such as the Organisation marocaine des droits humains and outreach, advice and guidance centres for victims whose rights have been violated. These legal advisory services are coordinated by lawyers and legal scholars.

71. National legislation recognizes the right of Moroccan nationals abroad, under the Vienna Convention on Diplomatic Relations, to apply to Morocco's consulates and diplomatic missions for remedies. Under article 7 of Dahir No. 421-66 of 20 October 1969 on the assignment of diplomatic agents and consuls to posts abroad, "diplomatic agents and consuls are required to assist Moroccan nationals in their district who have been charged with a criminal offence by the authorities in their country of residence or are no longer able to support themselves". In accordance with articles 4, 24 and 36 of Act No. 02-03 on the entry and residence of foreigners in Morocco and irregular emigration and immigration, the regulation also applies to foreigners in Morocco.

72. In addition, a new remedy has just become available as a result of the ongoing process of ratification of the Optional Protocol to the International Covenant on Civil and Political Rights, whereby the Human Rights Committee of the United Nations may receive communications from individuals claiming to be victims of violations of their rights under the Covenant. A number of those rights are also covered by the Convention.

### **3. Article 84. Duty to implement the Convention**

73. As mentioned above, a major step forward in the 2011 revision of the Moroccan Constitution — establishing the duty to implement the Convention — is the explicit recognition of the primacy of duly ratified and published international conventions over domestic law.

74. Furthermore, article 2 of Act No. 02-03 on the entry and residence of foreigners in Morocco and irregular emigration and immigration stipulates that the Act is applicable "subject to duly published international conventions".

75. The necessary framework for challenging the Government on its implementation of the provisions of the Convention is now in place, not least given its publication in Official Gazette No. 6015 of 23 January 2012.

## **B. Part III of the Convention. Human rights of all migrant workers and members of their families**

### **1. Article 8. Right to leave any country, including one's own, and to return**

76. The comments in respect of article 8 are based, on the one hand, on article 24 of the Constitution, which sets out the conceptual basis, and, on the other hand, on Dahir No. 1-03-196 of 11 November 2003 on promulgation of Act No. 02-03, which sets out the restrictions.

77. Article 24 of the Constitution establishes that "everyone shall be guaranteed the freedom to travel and settle in the national territory, and to leave and to return, in accordance with the law".

78. In accordance with the Constitution and duly published international conventions, Act No. 02-03 guarantees the entry, residence and free movement of foreigners across the entire country with no administrative restrictions of a discriminatory nature and on a valid travel document, for three months for foreigners exempt from the visa requirement and for as long as the visa is valid for those who require one.

79. Confirming the primacy of international conventions, and recognizing that Morocco ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1993, article 1 of Act No. 02-03 states that foreign nationals' entry to and residence in Morocco are governed by the Act, subject to duly ratified international conventions.

80. Article 3 of the Act states that "any foreign national landing or arriving in national territory shall appear before the competent border-control authorities with a passport issued by the State of which they are a national or any other valid document recognized by the Moroccan State as a valid travel document and, where applicable, the requisite visa issued by the Government".

81. Article 4 of the Act establishes that "controls carried out to check the documents referred to in article 3 above may also verify the person's means of support and reasons for coming to Morocco and the guarantees that they can return, having particular regard to immigration laws and regulations".

82. Article 39 stipulates that any foreign national living in Morocco under any kind of residence permit, is free to leave the country, except if they are subject to an administrative decision whereby they must inform the administrative authorities of their intention to leave the country.

83. In addition, since the abolition of the re-entry visa, any foreign national legally resident in Morocco is free to leave the country and return to their country of origin or a country of their choice, and is not required to seek authorization to return.

84. Article 16 sets out how a migrant worker may obtain a residence card, and the conditions for issuing the cards are defined by decree No. 2-09-607 of 1 April 2010. Under article 20, a foreigner whose application for a residence permit or the extension of a permit is refused or whose permit is withdrawn may appeal to the president of the administrative court, as interim relief, judge within 15 days, of notification of refusal or withdrawal.

85. As to Moroccan nationals, whether resident in Morocco or abroad, it is their constitutional right to leave and re-enter the country.

86. In this regard, several bodies, including the Hassan II Foundation for Moroccans Living Abroad and the Directorate-General of National Security, are actively involved in promoting this freedom by helping Moroccans living abroad to leave and enter Morocco throughout the year and around the clock, by all land, sea and air border ports.

87. These bodies have qualified staff who are trained to carry out border control effectively. Furthermore, major checking and control mechanisms have been introduced to make border crossing more fluid, including the computer equipment, electronic detection devices and scanners used for control operations. The main challenge in an era of potential threats from transborder crime is to ensure the right balance between speed of checking and proper security as Moroccans come and go.

**2. Articles 9 and 10. Right to life; prohibition of torture; prohibition of inhuman or degrading treatment**

88. Morocco recognizes the right to life and prohibits all forms of violence and torture which could in any way violate a person's integrity or dignity, and has adopted legislation penalizing any violation of that right.

*Right to life*

89. The protection of the right to life of migrant workers and members of their family is guaranteed both by the Constitution, which prohibits any violation of a person's physical integrity, and by the Criminal Code, which penalizes such violations.

90. Article 20 of the Constitution establishes that "the right to life is the primary right of every human being and shall be protected by law".

91. The Constitution also prohibits all violations against a person's physical or mental integrity under any circumstances by any person, private or public. No person shall inflict on another, under any pretext whatsoever, cruel, inhuman or degrading treatment or any treatment constituting an affront to dignity. The use of torture in all its forms by any person shall be an offence punishable by law (Constitution, art. 22).

*Prohibition of torture and inhuman or degrading treatment*

92. Morocco signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 January 1986 and ratified it on 21 June 1993.

93. It acceded on 25 April 2011 to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which, in accordance with article 17, paragraph 2, of the Protocol, entered into force on 25 May 2011.

94. The Committee against Torture has considered the following reports by Morocco:

- Initial report (CAT/C/24/Add.2), considered on 16 November 1994;
- Second report (CAT/C/43/Add.2), considered on 6, 7 and 11 May 1999;
- Third report (CAT/C/66/Add.1 and Corr.1), considered on 12, 13 and 20 November 2003;
- Fourth report (CAT/C/MAR/4), submitted in November 2009 and considered on 1 and 2 November 2011.

95. On 19 October 2006, Morocco withdrew its reservation to the Convention against Torture and recognized the Committee's competence to receive and consider individual complaints.

96. The Criminal Code, as amended by Act No. 43-04 of 23 February 2006, defines all acts of torture as offences under articles 231 ff. Article 231 states that the term "torture" means any act by which severe physical or mental pain or suffering is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of a public official, for the purpose of intimidating or coercing them or a third person, in order to obtain from them or a third person information or a confession, or to punish them for an act they or a third person has committed or is suspected of having committed, or when such pain or suffering is inflicted for any other reason based on discrimination of any kind.

97. In addition to the provisions on torture, the Criminal Code contains general provisions to extend individuals' protection from acts of torture and punish law-enforcement officials for abuse of authority, violence or arbitrary arrest. In order to protect individuals' physical integrity, the Code also prohibits officers from exceeding their authority and using force where not legally justified, subject to severe criminal penalties and other disciplinary measures.

98. Chapter VII of the Criminal Code, entitled "Crimes and offences against the person", defines and establishes penalties for intentional homicide and violence, poisoning, intentional homicide, discrimination and homicide, and unintentional injuries.

99. The Criminal Code establishes heavy sentences for murder and attempted murder, and injury, violence or assault. Moreover, section III sets forth severe penalties for abuse of authority by civil servants and State officials against individuals. In this regard, under articles 225 to 232, any judge or public official who abuses their authority in violation of individual rights or freedoms (judicial immunity, violation of privacy, use of violence) is liable to forfeiture of their civil rights, a fine, a prison sentence or life imprisonment.

100. In addition, to ensure that persons in custody are treated humanely and to prevent the use of torture, the Code of Criminal Procedure contains provisions regulating the initial investigation conducted by the criminal investigation police (medical examination of the person in custody on the decision of the prosecutor, at the request of the accused or their counsel, and supervision of custody) (Code of Criminal Procedure, arts. 73, 74 and 134).

101. A considerable part of the Code is also dedicated to the protection of individual rights and freedoms and due process guarantees for all. Articles 66 to 70, 160 to 174 and 175 to 188 regulate custody, detention orders and pretrial detention in the strictest possible way.

102. The Code regulates custody conditions and provides for three cases in which custody is applicable, with important restrictions (Code of Criminal Procedure, arts. 23, 24, 45 and 66).

### **3. Article 11. Prohibition of slavery and forced labour**

103. In its first years of independence, Morocco ratified a number of international instruments, including:

- International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), ratified on 20 May 1957;
- United Nations Slavery Convention (1926), ratified on 11 May 1959;
- ILO Abolition of Forced Labour Convention, 1957 (No. 105), ratified on 1 December 1966;
- ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified on 27 March 1963;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), ratified on 17 August 1973;
- Convention on the Rights of the Child (1989), ratified on 21 June 1993;
- Convention relating to the Status of Refugees (1951), ratified on 7 November 1956;
- Convention on the Elimination of All Forms of Discrimination against Women (1979), ratified on 21 June 1993;
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182), ratified on 26 January 2001;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), ratified on 2 October 2001.

104. Furthermore, article 10 of the Labour Code prohibits the requisitioning of employees to perform forced or involuntary labour.

**4. Articles 12, 13 and 26. Freedom of opinion and expression; freedom of thought, conscience and religion; right to join a trade union**

105. The rights set out in articles 12, 13 and 26 of the Convention are enshrined in the Constitution, national legislation and other international instruments ratified by Morocco.

*Freedom of thought, conscience and religion*

106. The Constitution “guarantees the freedom of thought, opinion and expression in all its forms” (art. 25). The same article guarantees “the freedom of creation, publication and exhibition in literary and artistic matters, and of scientific and technical research”.

107. The predominance of the Muslim religion in the context of the multiple and indivisible composition of Morocco’s national identity goes hand-in-hand with the Moroccan people’s attachment to openness, moderation, tolerance and dialogue with the aim of achieving mutual understanding between all cultures and civilizations in the world (preamble to the Constitution). Article 3 of the Constitution stipulates that “Islam is the State religion and freedom of worship is guaranteed to all”.

108. This principle coexists with Morocco’s policy of openness and bears witness to an identity “built on a marriage of its Arabo-Islamic, Amazigh and Saharo-Hassani components and nourished and enriched by its African, Andalusian, Hebraic and Mediterranean constituents” (preamble to the Constitution).

109. It should be noted here that the Christian and Jewish religions coexist harmoniously in Morocco. In various regions of the country, synagogues and churches are found side by side with mosques. Museums for the conservation of the Jewish heritage help preserve this important component of Morocco’s identity and culture.

110. Morocco was one of the pioneers of dialogue between monotheistic religions, including a dialogue sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Organization of Islamic Cooperation (OIC). It was host to Pope John Paul II for his first visit to a Muslim country. Members of the Jewish community also visit Morocco every year for their religious ceremonies and cultural festivals, reflecting their attachment to their country of origin.

111. Article 220 to 230 of the Criminal Code cover offences relating to the practice of religion.

112. Article 220 establishes that anyone who, by means of violence or threats, compels or prevents one or more persons from practising their religion or taking part in worship, is liable to between 6 months’ and 3 years’ imprisonment and a fine of DH 200 to DH 500.

113. Article 221 of the Code stipulates that anyone who deliberately disrupts religious worship or a religious ceremony or intentionally causes such a disturbance, is liable to a prison sentence of between 6 months and 3 years and a fine of between DH 200 to DH 500 (art. 221).

114. Article 2 of the Family Code indicates that Jews in Morocco are subject to the rules relevant to the Hebraic Moroccan personal status.

115. In accordance with the same article, the Family Code covers all Moroccan nationals, including those with a second nationality; refugees, including stateless persons, in accordance with the Convention relating to the Status of Refugees of 28 July 1951; any relationship between two persons in which one is Moroccan; and any relationship between two Moroccans in which one is Muslim.

*Right to the freedom of opinion and expression*

116. This right is guaranteed under article 28 of the Constitution, which states that it “cannot be restricted by any form of prior censorship. Everyone has the right to express and disseminate information, ideas and opinions freely, subject only to the restrictions contained in the law. Public authorities shall encourage an independent, democratic press and establish legal and ethical rules for the press. The law shall establish regulations for the organization and oversight of the public media. It shall guarantee access to the media, while respecting the linguistic, cultural and political pluralism of Moroccan society”.

117. Article 165 of the Constitution designates the High Authority for Audiovisual Communication (HACA) to ensure that this pluralism is respected.

118. Article 1 of Dahir No. 1-02-207 of 3 October 2002 on the promulgation of Act No. 77-00 amending and supplementing Dahir No. 1-58-378 of 15 November 1958 establishing the Press and Publishing Code, stipulates that “the freedom to publish newspapers, to run a printing press, and to publish and sell books is guaranteed in accordance with the law”.

119. Also “all media outlets shall have the right to access sources of information and procure information from different sources, unless the information is deemed to be confidential under the law. These freedoms shall be exercised in accordance with constitutional principles, legal provisions and the press code of ethics. The media must relay information faithfully”.

120. Before any newspaper or periodical is published, a statement shall be made in triplicate to the Crown prosecutor of the court of first instance nearest to the newspaper’s head office, containing:

- The title of the newspaper or periodical and its form of publishing and dissemination;
- The civil status, nationality, residence, educational qualifications and national identity card numbers and, if they are foreign nationals, their residence permits, of the director of the publication or, where applicable, the co-director, and the permanent editors (art. 5).

121. Section 3 of the Press Code covers newspapers and foreign publications. Article 28 establishes that each foreign newspaper and periodical printed in Morocco is subject to the general provisions of the Press Code and certain specific regulations. These are only regulatory formalities, however, and do not affect the freedom of opinion or expression.

*Right to join a trade union*

122. Article 29 of the Constitution guarantees the freedom of assembly and the freedom to hold peaceful demonstrations, the freedom of association and the freedom of political and trade union affiliation. The conditions for exercising these freedoms are defined by the law.

123. Article 8 of the Constitution provides for the free establishment of trade unions and the free exercise of their activities in accordance with the Constitution and the law. “The law shall establish, inter alia, rules governing the establishment of trade unions, their activities and the criteria for financial support from the State” (art. 8, para. 4).

124. Also, article 398 of the Labour Code states that “trade unions may be freely established by persons in the same profession or trade, or in similar or related professions or trades producing particular goods or providing particular services, under the conditions prescribed by this Code and irrespective of the number of employees in the business or company. Employers and workers are free to join any trade union of their choice.”

125. A bill on trade unions is being debated. The bill focuses on the promotion and enhancement of the coordination and consultation activities of trade unions, thereby making them social partners at various levels (national, public sector, private sector, regional, etc.). It provides for effective protection of the freedom of association by criminalizing any obstruction to the exercise of that freedom. It also provides for a set of mechanisms to be introduced to facilitate the enjoyment of the freedom of association.

126. The Labour Code protects the rights guaranteed by the international labour conventions ratified by Morocco and the rights enshrined in the main ILO conventions, including:

- Freedom of association, and the effective enjoyment of the right to organize and collective bargaining;
- The prohibition of all forms of forced labour;
- The effective elimination of child labour;
- The prohibition of discrimination in respect of employment and occupation.

127. The Code applies across the entire country, without discrimination between employees on the grounds of race, skin colour, sex, disability, marital status, religion, political opinion, trade union membership or national or social origin.

128. In addition, article 9 of the Code prohibits all violations of trade union freedoms and rights in companies, in accordance with the law and regulations, as well as all violations of the right to work with regard to employers and workers in a company.

129. An employer who contravenes this article is liable to a fine of between DH 15,000 and DH 30,000. In the event of a repeat offence, the fine is doubled, pursuant to article 12 of the Labour Code.

*Right to participate in the meetings and activities of any other associations*

130. With regard to participation in the meetings and activities of any other associations (Convention, art. 26), article 12 of the new Constitution states that civil society associations and NGOs may be established and operate freely in compliance with the Constitution and the law.

131. These associations, which, in a participatory democracy, actively contribute to the drafting, implementation and evaluation of the decisions and projects of elected bodies and public authorities, can only be suspended or dissolved by public authorities following a judicial decision.

132. Public bodies and authorities organize the contribution of associations in accordance with the terms and conditions established by law. The organization and operation of associations and NGOs must follow with democratic principles.

133. The Constitution also guarantees the freedom of assembly and the freedom to hold peaceful demonstrations, the freedom of association and the freedom of political and trade union affiliation. The conditions for exercising these freedoms are defined by the law. The right to strike is guaranteed, and an organic law shall set out the terms and conditions for the exercise of that right (Constitution, art. 29).

134. Associations can be formed freely without authorization, subject to article 5 of the Dahir of 15 November 1958. The article, as amended by the Dahir on Act No. 1-09-39 of 18 February 2009, stipulates that each association must make a statement to the local administrative authority that has jurisdiction over the association's head office. The statement shall provide the following information:

- The association's name and purpose;
- A list of the full names, nationalities, ages, dates and places of birth, professions and addresses of the members of the board of directors;
- The board members' standing to represent the association in any regard;
- Copies of their national identity cards and, if they are foreign nationals, their residence permits;
- The association's head office;
- The number and location of its branches and subsidiaries, and any separate establishments, it may have created and operating under its direction or in constant communication with it for a shared purpose;
- The association's statutes, to be included with the statement.

135. Chapter V of the Dahir regulates foreign associations, that is to say, groups with the attributes of associations and with head offices abroad or which, if based in Morocco, are run de facto by foreign nationals or have foreign managers or more than half their membership is foreign.

136. Article 22 specifies that governors can at any time request the directors of any group working in their province or prefecture to provide them, within one month and in writing, with all information showing their head office, main purpose and their members', managers' and directors' nationality.

137. Foreign associations are subject to all the provisions of the Dahir which do not contradict those of chapter V.

**5. Articles 14 and 15. Prohibition of all arbitrary or unlawful interference with privacy, family, the home, correspondence and other communications; prohibition of arbitrary deprivation of property**

*Right to privacy*

138. In Morocco, the offences of arbitrary or unlawful interference with privacy, family, the home, correspondence and other communications and the prohibition of the deprivation of material or intellectual property are punishable under a set of legal provisions that are regularly reviewed, updated and brought into line with the latest developments in this area.

139. Article 24 of the Constitution thus provides that "everyone (including migrant workers and members of their families) shall have the right to the protection of privacy. The home is inviolable. Searches shall be made only under the conditions and in the manner prescribed by the law."

140. In the same way, article 26 of Act No. 24-96 on the postal service and telecommunications, as amended by Acts Nos. 79-99, 55-01 and 29-06, promulgated by Dahirs Nos. 1-01-123 of 20 June 2001, 1-04-154 of 4 November 2004 and 1-07-43 of 17 April 2007, respectively, provide that "operators of public telecommunications services and telecommunications service providers, and their employees, shall respect the confidentiality of telecommunications correspondence and the conditions for the protection of users' privacy and personal data, subject to the penalties provided for under article 92 below".

141. Private communication of any kind is confidential. Only the courts may authorize, under the conditions and in the manner prescribed by the law, access to the content of such communications, their full or partial disclosure or their use in cases against individuals.



142. Everyone is guaranteed the freedom of movement and residence in Morocco and to leave and return, in accordance with the law.

*Right to property*

143. The Constitution guarantees the right to own property. The law can restrict the scope and enjoyment of that right if required in the interest of the country's economic and social development. Expropriation is only possible in the circumstances and manner provided for by law. The Constitution also guarantees the freedom of enterprise and free competition (art. 35).

144. In addition, Criminal Code stipulates that entering or attempting to enter another person's house by means of fraud, threats or violence is punishable by a prison sentence and fines (art. 441).

145. Furthermore, articles 232 and 448 of the Code and article 92 of Dahir No. 1-97-162 of 7 August 1977 on the promulgation of Act No. 24-96 on the postal service and telecommunications (as amended by the Acts mentioned in paragraph 139 of this report), make it an offence for civil servants, public officials or private individuals to divert, open or destroy letters, telegrams or correspondence entrusted to the Post Office or addressed to third parties, or in any way to violate the confidentiality of correspondence sent, transmitted or received by telecommunications.

146. Article 232 provides that "any civil servant, public official, employee or clerk of the postal service who opens, diverts or destroys letters entrusted to the postal service or facilitates such actions, shall be liable to a prison term of between 3 months and 5 years and a fine of between DH 200 and DH 1,000". The article adds that "the same penalty shall apply to any employee or clerk of the telegraph service who diverts or destroys a telegram or discloses its contents. The offender shall also be barred from any public office or employment for between 5 and 10 years."

147. Article 570 penalizes the deprivation of immovable property by deception or fraud with imprisonment and fines, while articles 505 to 539 impose heavy penalties on persons who commit any kind of robbery or extortion.

148. A number of provisions in the Code of Criminal Procedure regulate house searches (arts. 59–63, 79–82 and 101–107). The Code also strictly prohibits the interception, recording and confiscation of telephone communications and other forms of telecommunications. Only judges and the criminal investigation police may use these methods, under exceptional conditions, subject to severe criminal penalties.

149. Similarly, article 92 of Act No. 24-96 on the postal service and telecommunications stipulates that "anyone authorized to provide a rapid international postal service or any of their employees, who in the performance of their duties, opens, diverts or destroys mail, breaches the confidentiality of correspondence or aids and abets in such acts, shall be liable to a prison sentence of between 3 months and 5 years and a fine of between DH 5,000 and DH 10,000". The second paragraph of the same article imposes the same penalties on "anyone authorized to provide telecommunications services or anyone employed by telecommunications networks or telecommunications service providers who, in the performance of their duties, in any way breaches the confidentiality of correspondence sent, transmitted or received by telecommunications, orders it to be breached or aids and abets in such acts". The third paragraph of the article provides for "a prison sentence of between 1 month and 1 year and/or a fine of between DH 5,000 and DH 10,000 for any person other than those mentioned in the two previous paragraphs who commits one of the acts provided for in those paragraphs". The fourth paragraph adds that, "in addition to the penalties set out in the first, second and third paragraphs, an offender may not exercise any profession or

work in or related to the post and telecommunications sector for a period of between 1 and 5 years”.

150. Dahir No. 1-09-15 of 18 February 2009 on the promulgation of Act No. 09-08 regarding the protection of individual personal data, specifies the procedures and methods to be followed with regard to the processing of personal data. Except where provided by law, such data may only be processed if the person concerned has given their formal consent. Guarantees and penalties have been established to counter all violations in this area.

151. Dahir No. 1-81-254 of 6 May 1982 on the promulgation of Act No. 7-81 on expropriation in the public interest and temporary occupation states the conditions under which such expropriation occurs and defines the procedure and methods. Expropriation in the public interest requires authorization by the courts. The law does not make a distinction in this respect between Moroccan nationals and foreign citizens, including migrant workers and members of their families.

**6. Articles 16, paragraphs 1–4, 17 and 24. Right to liberty and security of person; protection against arbitrary arrest or detention; and the right to recognition as a person before the law**

*Right to liberty and security of person and protection against arbitrary arrest or detention*

152. The rights to liberty and security of person, including those of migrant workers, are guaranteed by the Moroccan Constitution, the Criminal Code and other laws. In this regard, migrant workers and members of their families enjoy the same legally protected, constitutional rights as those established for Moroccan citizens.

153. Article 24 of the Constitution states that “everyone has the right to protection of their privacy”. Article 23, paragraph 1, states that “no one may be arrested, detained, prosecuted or convicted except in the circumstances and manner established by law. Arbitrary detention, secret detention and enforced disappearance are very serious offences and incur the most severe punishments for their authors.”

154. Under the same article, anyone taken into custody must be informed, immediately and in a manner they understand, of the reasons for their arrest, as well as of their rights, including the right to remain silent. They must also, as soon as possible, be provided with legal assistance and be allowed to contact their relatives in accordance with the law.

155. The presumption of innocence and the right to a fair trial are guaranteed by the Constitution. “All detainees have fundamental rights and the right to be held in humane conditions. They may take part in training and rehabilitation programmes. Any incitement to hatred, racism or violence is prohibited. Genocide, crimes against humanity, war crimes and all serious or systematic violations of human rights are punishable by law.” (art. 23, para. 2).

156. Additionally, the Criminal Code imposes heavy criminal sanctions for different types of violations of individual liberty (arts. 436 and 437) and human life, (murder, battery, bodily harm and physical violence or assault; arts. 392 and 393).

157. Section III of the Code meanwhile punishes any abuse of authority committed by magistrates or State officials against private citizens with the forfeiture of their civil rights, fines, a prison term or life imprisonment (arts. 225–232).

158. The Code of Criminal Procedure, for its part, guarantees the conditions required for a fair trial. Under articles 66–70, 160–174 and 175–188, all procedures, including custody, bail and pretrial detention, are very strictly regulated. Mention should also be made of

articles 298–363 of the Code, which cover the obligation to handle cases expeditiously and to not discontinue them without valid grounds.

159. In the Moroccan prison system, all detainees are subject to the same rules and regulations, regardless of whether they are nationals or foreigners, migrant workers or not. Article 51 of Act No. 23-98 on the organization and operation of prisons thus establishes that “detainees may not be discriminated against on the grounds of race, colour, sex, nationality, language, religion, opinion or social status”.

160. Section II of the same Act, entitled “Correspondence”, establishes and regulates the right to correspondence. Detainees have the right to send and receive letters (art. 89). Persons in pretrial detention may write to anyone they choose and receive letters from anyone as well, unless instructions to the contrary are issued by the investigating judge (art. 91). Visiting rights are established and regulated by articles 75–88 of the Act.

161. Article 75 states that “detainees have the right to receive visits from their relatives and guardians. Visits are arranged through the prison director unless the detainees are being held in solitary confinement under the orders of the investigating judge. Other persons may be authorized to visit a detainee provided that their visit does not jeopardize the security or order of the establishment and seems to benefit the detainee.”

162. Migrant workers or members of their families who have been detained for any reason may thus receive visits from their relatives. They are also entitled to receive visits from other persons (lawyers, guardians, etc.).

163. Article 85 of the Act provides that diplomatic or consular representatives may visit their citizens when they have been placed in detention. Foreign detainees also have the right to correspond with the consular representatives of their country.

164. Article 108 of Decree No. 2-00-485 of 3 November 2000, which regulates the implementation of Act No. 23-98 on the organization and operation of prisons, stipulates that “detainees of other faiths may receive visits from representatives of their religion, with accreditation from the prison and rehabilitation authorities, at the request of the competent religious body. They may also receive religious texts and keep them in their possession.”

165. In addition, article 82 of Dahir No. 1-99-200 of 13 Jumada I A.H. 1420 on the promulgation of Act No. 23-98 on the organization and operation of prisons, provides that foreign nationals undergoing extradition proceedings may communicate with their lawyers under visitor permits granted by the Crown Prosecutor of the place in which the prison is located.

*Right to recognition as a person before the law*

166. With regard to the recognition of migrants as persons before the law, diplomatic and consular officials, according to the Moroccan laws and regulations on the subject, issue civil status certificates to Moroccans living abroad (Act No. 37-99 of 3 October 2002 and its implementing Decree No. 2-99-665 of 9 October 2002 on civil status, as amended and supplemented by Decree No. 2-04-331 of 7 June 2004).

167. The consular services that diplomatic and consular officials are authorized to provide to Moroccans living abroad are presented below. For Moroccan citizens in the foreign country, temporarily, special provision may be made to issue, for example, birth or death certificates for non-residents.

168. As far as civil status records are concerned, diplomatic and consular officials are authorized to:

- Issue Moroccan family record books;

- Register births and deaths;
  - Log births and deaths in the family record book;
  - Transcribe the contents of the birth and death certificates issued by the civil registrar of the country of residence to the Moroccan civil registers;
  - Register births of children whose father is unknown;
  - Record the details of any marriages or dissolutions of marriages in the margin of the birth certificate of spouses born in the consular district; as well as the kafalah (custody) status, etc.;
  - Issue copies of civil status certificates.
169. They may also, on request, issue various civil status certificates, namely:
- Certificates of nationality;
  - Certificates of the family situation of intending spouses;
  - Certificates of single status (i.e. never married);
  - Marriage certificates;
  - Certificates stating the bearer has not remarried;
  - Divorce certificates;
  - Certificates of eligibility for marriage in country of origin;
  - Certificates of single occupancy, certificates of co-habitation, family civil status records [http://www.maec.gov.ma/fr/guide\\_consulaire/Etatcivil.htm-Attestation Dindividualité](http://www.maec.gov.ma/fr/guide_consulaire/Etatcivil.htm-Attestation Dindividualité);
  - Certificate of individual identity;
  - In procedural matters, consular services responsible for civil status affairs may also, for example, process requests for certificates of concordance;
  - Authorization to transfer mortal remains to Morocco.
170. Moroccans living abroad may register with the diplomatic or consular office of the jurisdiction in which they have established their usual place of residence.
171. Registration is a prerequisite for accessing all other consular services. It facilitates administrative formalities, the receipt of information issued by the consulate and access to certain procedures. Registration is also a prerequisite for obtaining or renewing an electronic national identity card or a biometric passport, for example.
172. On registration with the consulate, an individual “registration file” is opened in the name of the applicant, in which, once verified, the main details of the person’s identity, nationality, civil status, family situation, residence and occupation are recorded. This information can be supplemented with other useful data such as the person’s social security number, their life insurance policy details and arrangements for the transportation of their remains, for example.
173. In the case of members of the same family, parents and their children under the age of 16 can be registered together in the same file. The file can be prepared in the name of the father or the mother or the eldest of any children aged over 16. Other family members can be listed as additional registered persons provided they each individually meet the requirements for being registered.

174. Individual files are opened for any children included in a family file as soon as they turn 16 and provided they personally continue to meet the requirements for registration.

175. Those registered are issued with a consular registration certificate that states their identity, nationality, residence and occupation. Registration is immediate and the registration certificate is issued on the day the complete application is submitted. Any important changes in the personal or family situation of registered persons must be reported and noted in their registration file.

176. Individuals are removed from the register if they lose their Moroccan nationality or move away from the consular district.

177. If they move to another consular district, they may ask the consulate in their new place of residence to have their file transferred.

## **7. Articles 16, paragraphs 5–9, 18 and 19. Right to procedural guarantees**

178. Article 6 of the Moroccan Constitution states that “the law is the supreme expression of the will of the nation. All natural or legal persons, including public authorities, are equal before the law and obliged to comply with the law.”

179. Article 23 of the Constitution states that “no person may be arrested, detained, prosecuted or convicted except in the circumstances and manner established by law”. It also establishes the presumption of innocence and the right to a fair trial.

180. The Moroccan State guarantees the protection of migrant workers and members of their families against violence, bodily harm, threats and intimidation. All cases involving threats, assault, robbery or other offences committed against migrant workers are investigated by the public prosecution service.

181. The Criminal Code provides that no one may be convicted for an act that is not explicitly classified as an offence in law or be subject to penalties that have not been established in law.

182. Also, no one may be convicted for an act that was not an offence under the law in force when it was committed. And no one may be convicted for an act that, has ceased to be an offence under a law passed since it was committed. If there has been a conviction, the principal sentences and associated penalties must be annulled (arts. 4 and 5).

183. Under article 179 of the Code of Criminal Procedure, accused persons may apply for release on bail at any time during the proceedings, and the investigating judge must rule on the matter within five days. Otherwise the accused may file an appeal directly with the Indictments Chamber, which must then rule on the matter within 15 days. Civil claimants in relation to a criminal offence may only present their case to the investigating judge.

184. Identity checks of migrant workers and members of their families are carried out by the police in accordance with the law.

185. All foreign nationals who are arrested are informed in a language they understand of the reasons for their arrest and may speak with the relevant authority.

186. Migrant workers and members of their families who are arrested or detained for a criminal offence are brought before the Crown Prosecutor and tried promptly in accordance with the procedures established in law. They are not, as a rule, remanded in custody pending trial. Nor are they held for longer than 48 hours except where the charges are criminal charges. Their presence in all stages of the proceedings (pretrial, trial, sentencing and other proceedings) is guaranteed under Act No. 02-03.

187. When foreign nationals are arrested or imprisoned, the consular or diplomatic authorities of the State of origin or of the State representing its interests are notified within 48 hours of the arrest taking place.

188. The Prosecutor brings the defendant before the court. If the defendant speaks a language or dialect that is difficult for the judges, parties or witnesses to understand, or if it is necessary to translate a piece of evidence presented in court, the Prosecutor must officially appoint an interpreter, otherwise the proceedings will be rendered null and void (articles 21, 47, 73, 74 and 147 of the Code of Criminal Procedure).

189. All foreign nationals who are arrested or detained have the right to petition the court to rule immediately on the legality of their detention and to order their release if their detention is unlawful. Foreign nationals are provided the services of an interpreter free of charge if they do not understand or speak the language used in proceedings, but only where the charges are sufficiently serious.

190. All foreigners who have been detained unlawfully are entitled to reparation under a clearly defined procedure.

*Provisions on police custody*

191. The regulations on police custody set forth in the Code on Criminal Procedure are rigorously enforced, both for nationals and foreigners. The Code establishes the regime for police custody and the three cases in which it applies, subject to strict limitations:

(i) When a person is caught in flagrante delicto, the officer of the criminal investigation service handling the case may hold that person in custody for 48 hours. If there is substantial supporting evidence, the officer may, with written authorization from the prosecutor, hold the suspect for up to a total of three days (art. 66);

In the case of alleged offences against the internal or external security of the State, the suspect may be held in police custody for 96 hours, renewable once, or twice for a terrorist offence;

Officers of the criminal investigation service must record the date and time of arrest, as well as the date and time of release or of appearance before the prosecutor, both in their statement records and their logbooks (Code of Criminal Procedure, art. 66, paras. 11–15);

The same data must also be recorded in the special register to be kept by all police stations and gendarmeries and checked by the judicial authorities (art. 67, para. 1);

(ii) During a preliminary investigation, an officer of the criminal investigation service may not hold a suspect in custody for longer than 48 hours. At the end of that period, the officer must bring the suspect before the prosecutor, who may authorize, in writing, an extension of custody, but only for a further 24 hours (art. 80);

The regulations on the provision of interpreting services described above must also be followed;

(iii) When executing a letter rogatory issued by an investigating judge that requires the officer of the criminal investigation service to hold a person in custody at the court's disposal, the officer must bring that person before the investigating judge within 24 hours;

The investigating judge may authorize the period of custody to be extended for a further 48 hours (art. 192).

*Obligation to inform diplomatic or consular authorities*

192. The provisions of article 16, paragraph 7, on the obligation to inform diplomatic or consular authorities, are based on the Vienna Convention on Consular Relations.

193. Morocco acceded to that Convention on 23 February 1977, and it came into force on 25 March 1977. Article 36 of the Convention establishes mechanisms for facilitating communication between consular officials and citizens of the sending State.

194. Consular officials must have the freedom to communicate and meet with nationals of the sending State. Nationals of the sending State must likewise have the freedom to communicate with their consular officials and to meet with them.

195. At the request of the interested party, the competent authorities of the receiving State must immediately notify the consulate of the sending State when a national of that State has been arrested, imprisoned or placed in pretrial custody or any other form of detention in the consular district. All communication addressed to the consulate by the person arrested, imprisoned or placed in pretrial custody or any other form of detention must also be forwarded without delay by those authorities. The authorities must also immediately inform the person concerned of their rights. This right is set forth in the Constitution (art. 23, para. 3).

196. Consular officials have the right to meet with a national of the sending State who has been imprisoned or placed in pretrial custody or any other form of detention, to speak and correspond with them and provide them with legal assistance. They also have the right to meet with a national of the sending State who has been detained or imprisoned in their district, by court order. However, consular officials must refrain from taking action on behalf of a national who has been imprisoned or placed in pretrial custody or any other form of detention if the national in question explicitly objects.

*Right to legal remedy before the courts*

197. Article 23 of Act No. 02-03 provides that all foreigners and all migrant workers and members of their families ordered to be escorted to the border have the right, within 48 hours of notification, to petition the president of the administrative court, as interim relief judge, for the decision to be set aside.

198. Article 23 also establishes that the president or their deputy must rule within four clear days from the time of application. The case may be referred to the court nearest to the foreign national if they are detained under article 34 of the Act.

199. The foreign national may ask the president of the administrative court or their deputy to arrange for the assistance of an interpreter and for access to the file containing the documents on which the contested decision was based (art. 23).

200. Hearings are public. They are held in the presence of the interested party unless, despite being duly summoned, the party fails to appear (art. 23).

201. The foreign national may be assisted by a lawyer if they have one. Otherwise, they may ask the president of the administrative court or their deputy to appoint them a public defender (art. 23).

*Right to reparation*

202. The right to reparation of migrant workers and members of their families who have been unlawfully arrested or detained (Convention, art. 16, para. 9) is guaranteed by the Constitution and the Code of Criminal Procedure.

203. Article 122 of the Constitution provides that “damages arising from a miscarriage of justice shall entitle the victim to reparation from the State”.

204. Anyone who personally suffers bodily, material or psychological harm as a direct result of a crime, offence or violation is entitled to file a civil claim for damages. The civil action may be filed against the perpetrators of the offence or their accomplices, or their heirs, or the persons civilly responsible.

205. A civil action may be pursued while the public prosecution of the case is under way in the criminal court. The court may proceed in such cases regardless of what natural or legal person under civil or public law is liable for damages. Civil action suits may be filed separately from public action in the competent civil court (Code of Criminal Procedure, arts. 7–10).

206. Article 565 provides that retrial is possible only to correct an error of fact that has resulted in harm to a person convicted for a crime or an offence. Requests for a retrial are admissible only if all other legal remedies have been exhausted and under the circumstances listed below.

207. Retrials may be requested, according to article 566, regardless of which court ruled on the case or the sentence handed down, when:

(a) Following a conviction for murder, sufficient evidence is produced to suggest or indicate that the alleged murder victim is still alive;

(b) Following a conviction, another defendant is convicted of the same offence and the two convictions are incompatible, thus proving the innocence of one or the other of the persons convicted;

(c) One of the trial witnesses, is prosecuted following the conviction and found guilty of giving false testimony against the defendant, that witness may not give evidence in the new proceedings;

(d) Following a conviction, something happens or comes to light, or evidence undiscovered during the trial is submitted, that establishes that person’s innocence.

208. Article 573 of the Code of Criminal Procedure provides that the decision recognizing the innocence of a convicted person may give rise to damages for harm arising from the conviction.

209. If the victim of a miscarriage of justice is deceased, the right to claim damages passes, under the same conditions, to their spouse, parents and children. This right does not pass to relatives removed by more than one degree of kinship unless they can demonstrate that they have suffered material harm as a result of the conviction. The claim is admissible at any stage of the retrial proceedings.

210. The damages shall be paid by the State unless the State brings a claim against any civil claimants, anyone who reported the offence or anyone who gave false witness, who may have been responsible for the error leading to conviction. The damages are paid as criminal court fees.

#### *Right to non-discrimination before the courts*

211. Migrant workers and members of their families have the same rights before the courts as Moroccan citizens (Convention, art. 18, para. 1).

212. The Moroccan Constitution contains two chapters guaranteeing that right, one entitled “Fundamental rights and freedoms” (arts. 19–40), the other entitled “The judiciary” (arts. 107–128).



213. The principles set forth in those two chapters apply to all subjects in the territory of the Kingdom, whether Moroccan or foreign and regardless of their nationality or origin.

214. These principles establish:

- Equality before the law without discrimination of any kind;
- The protection of fundamental freedoms and human rights;
- The presumption of innocence and the right to a fair trial;
- The legality of established offences and penalties;
- The non-retroactivity of the law;
- The independence of the judiciary, the legislature and the executive;
- The obligation of the judiciary to protect the rights, freedoms and legal security of persons and groups, as well as to uphold the law;
- The court is subject only to the law;
- In the exercise of their judicial function, judges shall not receive any injunction or instruction or be subjected to any pressure;
- The right of all persons to have access to justice to defend their legally protected rights and interests;
- In the cases provided for by law, justice is free of charge to those who do not have sufficient resources to take legal action.

215. According to article 23 of the Constitution, “anyone taken into custody must be informed immediately and in a manner they understand of the reasons for their detention, as well as their rights, including the right to remain silent. They must also, as soon as possible, be provided with legal counsel and be allowed to contact their relatives, in accordance with the law.”

216. The law guarantees the right to a defence. Anyone, whether national or migrant, who has committed an offence is entitled to be assisted by a lawyer. If necessary, the lawyer may be appointed by the court under the legal aid scheme. The Code of Criminal Procedure safeguards the right to a defence at all stages of criminal proceedings.

217. The Criminal Code and the Code of Criminal Procedure apply these principles, at all stages of criminal proceedings, against anyone, whether Moroccan or migrant, (preliminary investigation, judicial inquiry, trial, objection proceedings, appeal, cassation, special procedure for miscarriage of justice, etc.).

#### *Non-retroactivity of criminal law*

218. With regard to article 19 of the Convention, the information is based on the Constitution and the Criminal Code.

219. According to article 6, paragraph 2, of the Constitution, “the law may not have a retroactive effect”. This principle is upheld in articles 3, 4, 5 and 6 of the Criminal Code as follows:

- Article 3. “No one may be convicted for an act that is not explicitly classified as an offence in law, or be liable to penalties not established in law”;
- Article 4. “No one may be convicted for an act that was not an offence, under the law in force when it was committed”;

- Article 5. “No one may be convicted for an act that has ceased to be an offence, under a law passed since it was committed. If a person has been convicted in such circumstances, the principal sentences and associated penalties shall be annulled”;
- Article 6. “If several laws have been in force between the time of the offence and the final judgement, then the law establishing the lighter penalty must be applied”.

220. These provisions are applicable to everyone prosecuted for criminal offences committed in Moroccan territory.

**8. Article 20. Prohibition on imprisoning a migrant worker or depriving a migrant worker of their residence or work permit merely on the ground of failure to fulfil a contractual obligation**

221. The Constitution guarantees that “no one may be arrested, detained, prosecuted or convicted except in the circumstances and manner established by law” (art. 23, para. 1), and article 19 of Act No. 02-03 cites two possible grounds for withdrawing authorization of residence in Morocco:

- The foreign national fails to present the documents and papers required under the pertinent regulations;
- The holder of the residence permit is the subject of an expulsion order or a court order denying them entry to the territory.

222. Article 20 of the Act stipulates that any foreign national whose application for a residence permit or renewal of the permit has been denied may file an appeal with the president of the administrative court, as interim relief judge, within 15 days of notification of refusal or withdrawal.

223. In the absence of any serious or specific violations of the regulations on foreign persons’ residence in Morocco (illegal entry, posing a threat to public security, expulsion or denial of entry to the territory, etc.), no restrictions may be imposed on the granting of residence permits to foreigners legally established in the country.

224. In accordance with article 11 of the International Covenant on Civil and Political Rights, both Moroccan law and the Moroccan justice system prohibit the imprisonment of any one on the ground of failure to fulfil a contractual obligation.

225. The relevant case law on the matter includes Supreme Court decision No. 3515 of 26 February 2001 on civil case No. 2051-1/3/99, which cites, among other arguments, the fact that “Morocco’s ratification of the International Covenant on Civil and Political Rights means that it is obliged to implement and enforce its provisions in the national territory since it expresses its own will.” The Court also overturned a decision on appeal that enforcement by committal could be used to recover an amount outstanding under a rental contract.

**9. Articles 21, 22 and 23. Protection against the confiscation and/or destruction of identity or other documents; protection against collective expulsion; right to have recourse to consular or diplomatic protection**

*Protection against the confiscation and/or destruction of identity or other documents*

226. Moroccan law establishes penalties for any removal or confiscation of personal documents, except as prescribed by law and when the validity of such documents is in doubt. In such cases, the documents are examined by forensic experts to determine their validity.

227. Any foreigner who enters Morocco legally is protected unless they violate the provisions of Dahir No. 1-03-196 of 11 November 2003 on the promulgation of Act No. 02-03 on the entry and residence of foreigners in Morocco and illegal emigration and immigration.

228. The Constitution establishes that searches may be made only under the conditions and in the manner prescribed by law (art. 24).

229. In accordance with the principles of the Convention and as mentioned above, article 19 of Act No. 02-03 stipulates that residence permits may be withdrawn only if the foreign national fails to provide the documents and papers required under the regulations or if the holder is subject to an expulsion order or a court order denying them entry to Moroccan territory. However, a foreigner whose residence permit has been withdrawn may file an appeal with the president of the administrative court, as interim relief judge, within 15 days of notification of refusal or withdrawal (art. 20).

230. The Code of Criminal Procedure meanwhile establishes very strict procedures for the confiscation of identity papers or other documents. Investigators must be magistrates or officers of the criminal investigation service and must abide scrupulously by the strict rules governing searches and, consequently, the confiscation of documents and other pieces of evidence (arts. 99–107).

231. Article 592 of the Criminal Code establishes a prison sentence of 5–10 years for anyone who deliberately burns or in any way destroys original records, certificates or official documents issued by public authorities (identity papers, documents authorizing the bearer to enter, stay, reside or settle in the country, work permits, passports, etc.) or bonds, notes, bills of exchange or other commercial or bank papers that entail or incur an obligation to pay or receive a sum of money.

#### *Collective expulsion*

232. No mention is made in Moroccan law, including Act No. 02-03, of collective expulsions. Moroccan legislators used the singular form in the provisions on expulsion in that Act (see the comments on article 56 of the Convention).

233. According to those provisions, expulsion cannot be a collective measure.

#### *Right to have recourse to consular or diplomatic protection*

234. With regard to the right of recourse to consular or diplomatic protection, Act No. 02-03 states that “any foreign national denied entry has the right to notify, or to have notified, the person whose home they have stated they were going to, or their consulate or the attorney of their choice”.

235. Also, any foreign national or migrant worker or a member of their family subject to a decision on escort to the border shall immediately be given the opportunity to notify their lawyer, their consulate or a person of their choice (Act No. 02-03, art. 24, para. 4).

236. The Ministry of Foreign Affairs and Cooperation ensures the protection and defence of the interests of Moroccans living abroad in accordance with the agreements signed with the host countries and through the action of its diplomatic and consular offices abroad. To that end, the Ministry has taken the following action, among others:

- Maintaining bilateral agreements on social security, judicial cooperation and the teaching of Arabic and the culture of origin;
- Signing new agreements on labour, migration and unaccompanied minors;

- Participating in joint committees to monitor the implementation of bilateral agreements on social, consular and judicial affairs;
- Establishing subcommittees on consular and social matters in respect of certain Arab countries (Libya, Tunisia, Algeria, Kuwait, Saudi Arabia and Oman);
- Establishing a joint Moroccan-Dutch committee on integration of the Moroccan community resident in the Netherlands;
- Setting up a joint Moroccan-Spanish standing committee, with two subcommittees, one on unaccompanied minors and the other on integration.

**10. Articles 25, 27 and 28. Principle of equal treatment regarding remuneration and other conditions of work and terms of employment; social security; right to receive emergency medical care**

237. The specific provisions on the employment of foreign workers are set forth in chapter V of Act No. 65-99, the Labour Code, and stipulate that the hiring of a foreign employee must be authorized by the Government labour authority (art. 516), subject to sanctions (art. 521).

238. In addition, employment contracts must follow the model established by the labour authority whereby the employer is liable for the costs of returning a foreign employee to their country of residence if authorization is denied. No reimbursement shall be paid to employers in receipt of a deposit in respect of central or local government public works contracts without official proof of payment of the return expenses of any foreign workers recruited outside Morocco and of the wages owed to them.

239. Article 520 of the Labour Code provides that the bilateral and multilateral agreements ratified by Morocco on the employment of foreign workers must be observed.

*Principle of equal treatment regarding remuneration and other conditions of work and terms of employment*

240. The principle of equal treatment, including as regards remuneration, access to employment and conditions of work, is upheld by Moroccan law through the Labour Code, as well as the Social Security Act of 1972, as amended.

241. The preamble to the Labour Code prohibits attempts to remove workers from their jobs for any of the following reasons:

- Participating in a collective labour dispute;
- Exercising the right to collective bargaining;
- Pregnancy or maternity;
- The permanent replacement of a worker injured in a workplace accident or suffering from a work-related illness before the end of the convalescence period.

242. The Labour Code is applicable nationwide and does not discriminate between workers on the grounds of race, colour, sex, disability, marital status, religion, political views, union membership, or national or social origin.

243. The rights set forth in the Labour Code are considered minimum inalienable rights. More favourable conditions may be established in employment contracts or collective labour agreements.

244. In business and as stipulated in the Moroccan Code of Commerce, foreign nationals have the right to do business under the same conditions as Moroccans.

245. Foreign businesspeople are subject to the same tax regulations as Moroccan businesspeople. They must submit their tax returns to the tax office of the place in which their business is located, subject to penalty, and they must pay business taxes.

246. Foreign businesspeople living in Morocco must also pay income tax, in common with Moroccan businesspeople.

*Right to social security*

247. Article 31 of the Constitution stipulates that “the State, public bodies and territorial authorities shall strive to mobilize all available resources to facilitate equal access of all citizens, to conditions that enable them to enjoy the right ... to social protection, medical coverage and benefits arranged either under mutual benefit or State-run welfare schemes.”

248. Foreign workers working in Morocco are eligible for social security under the same conditions as Moroccan workers in accordance with the provisions of Dahir No. 1-72-184 of 27 July 1972, on social security, and the bilateral agreements signed by Morocco with some countries.

249. Regarding social security, article 24, paragraph 2, of the Labour Code provides that employers are obliged to inform their workers, including migrant workers, in writing when they are hired of the provisions on the following matters, and to notify them, also in writing, of any changes to those provisions:

- Collective labour agreements and, if applicable, their contents;
- Company rules;
- Working hours;
- Arrangements for taking weekly rest periods;
- Legal provisions and other measures on health and safety and hazard prevention around machinery;
- The dates, times and place at which wages are paid;
- Their national social security registration number;
- The name of the insurance company that covers them against workplace accidents and diseases.

250. The Moroccan social protection system covers both public- and private-sector workers. The scheme protects beneficiaries against the risks of illness, disability, old age, survivorship and death, and provides for family and maternity benefits.

251. Insurance against workplace accidents and illness is compulsory for all workers. Corporations must take out an insurance policy for all their workers with an insurance company.

252. Morocco has pursued cooperation on social security matters with other countries to guarantee the social protection of citizens in both their country of origin and their host country. These efforts have led to the signing of several multilateral and bilateral agreements, which are founded on the following principles:

- The equal treatment of citizens from both countries as regards the rights and obligations established in their social security schemes;
- The maintenance of acquired rights and rights in course of acquisition;
- The consolidation of insurance periods in the two countries for the purposes of calculating entitlements;

- The transfer of social benefits to the place of residence of the beneficiary.

#### *Guaranteed benefits*

The benefits guaranteed under these agreements are usually those established in ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), namely:

- Family benefits;
- Sickness and maternity benefits;
- Medical benefits;
- Disability benefits;
- Old-age benefits;
- Survivors' benefits;
- Death benefits;
- Workplace accident and illness benefits (benefits paid in cash, kind or annuities).

#### *Provisions on health care*

253. In accordance with articles 28 and 43 of the Convention and as established in the Constitution (art. 31), foreign nationals living in Morocco receive the same treatment in the Moroccan health system as Moroccan citizens. Everyone in Morocco, regardless of their nationality, is entitled to basic health care. Everyone, without discrimination, may receive health care under the various programmes provided by the public health service.

254. Also, like Moroccan nationals, foreign nationals may benefit from all the services provided free of charge under the country's national health-care programmes, namely:

- HIV/AIDS testing (diagnosis and confirmation) and immuno-biological follow-up (C and CV);
- Diagnosis of sexually transmitted infections;
- Diagnosis of malaria;
- Diagnosis of cutaneous and visceral leishmaniasis.

255. For health security reasons, Ministry of Health Order No. 2284-05 of 7 November 2005 lists a number of illnesses for which medical fees are waived when the corresponding treatment is provided by hospitals or medical services attached to the Ministry of Health. This fee waiver applies to both nationals and foreigners.

256. National rules on the provision of medical care to foreigners are based on a number of legal instruments and regulations.

257. The Rules of Procedure for Hospitals state that "sick or injured foreign nationals must be admitted on the same conditions as Moroccan citizens".

258. Article 57 of the new Rules (Ministry of Health Order No. 456-11 of 6 July 2010, on hospital procedures, published in Official Gazette No. 5926 of 17 March 2011) states that "non-nationals who are sick or injured must be admitted on the same conditions as nationals regardless of their status. They must also be billed on the same conditions for any services they receive except when health-care agreements have been signed between Morocco and the patient's own country."

259. The sole article of the Dahir of 1962 on hospital fees of indigent foreign patients provides that only "when a reciprocal arrangement has been signed with the foreign

national's State will an indigent foreign national, be hospitalized at the expense of the Moroccan State”.

260. The Office of the United Nations High Commissioner for Refugees (UNHCR) has implemented a programme of access to medical care for refugees, which covers medical consultations and medicines, and support and follow-up in hospitals.

261. Act No. 65-00, on the Code of Basic Medical Coverage, lays the foundations for social protection as regards health care in Morocco inasmuch as it establishes the right of everyone to health and makes no distinction between nationals and foreigners.

262. Act No. 02-03 on the entry and residence of foreigners in Morocco and illegal emigration and immigration provides for special treatment to be given to pregnant foreign women, including protection against expulsion or removal to another country. The Act also establishes the right of foreign nationals in an irregular situation to the assistance of a physician pending deportation or while they are held in custody at ports or airports.

263. There is no provision in Moroccan law for a special medical examination in order to enter Moroccan territory.

**11. Articles 29, 30 and 31. Right of each child of a migrant worker to a name, registration of birth and a nationality; access to education on the basis of equality of treatment; respect for the cultural identity of migrant workers and members of their families**

*Right of each child of a migrant worker to a name, registration of birth and a nationality*

264. Article 54 of the Family Code stipulates that parents must protect the life and health of their children from pregnancy to the age of majority and preserve their identity, notably their given name, surname, nationality and civil registration. It further stipulates that the State is responsible for taking the necessary measures to protect children and guarantee and preserve their rights, in accordance with the law.

265. Article 3 of Act No. 37-99 on civil status states that all Moroccans are subject to the civil status regime. The same regime applies to foreign nationals, including migrant workers and members of their families, in respect of births and deaths occurring on Moroccan territory.

266. Conversely, diplomatic missions and consular offices abroad handle the civil registration of children of Moroccan nationals with either a Moroccan father or a Moroccan mother and an unknown father, in accordance with Act No. 37-99 on civil status and implementing Decree No. 2-99-665.

267. Since 2 April 2007, Moroccan missions abroad have been processing registration requests for children of a Moroccan mother and a foreign father, pursuant to the new provisions of Dahir No. 1-58-250 of 6 September 1958 on the Nationality Code, which permits mothers to transmit Moroccan nationality to their children with a foreign father.

268. Article 1 of the Nationality Code, on the sources of law in nationality matters, stipulates that “the provisions regarding Moroccan nationality shall be determined by law and, in some cases, by duly ratified and published international treaties and agreements. The provisions of ratified and published international treaties and agreements shall prevail over domestic law.”

269. Under Moroccan law, children with a Moroccan father or Moroccan mother are considered Moroccan, in accordance with the provisions of article 6 of Act No. 62-06 amending and supplementing Dahir No. 1-58-250 of 6 September 1958 on the Nationality Code, and published in Official Gazette No. 5513 of 2 April 2007. It is pertinent to emphasize the significance of the reform of the Nationality Code pursuant to Act No. 62-06

of 23 March 2007 concerning transmission of Moroccan nationality by the mother, one of the main long-standing demands of Moroccan women's associations, which resolved a situation that had caused many problems, for mothers and children alike, with birth registration and residence.

270. The reform eliminated discrimination against women in the transmission of nationality and gave children of a foreign father and a Moroccan mother the rights inherent in Moroccan citizenship.

271. The new provisions on transmission of Moroccan nationality also apply to anyone born before the publication of Act No. 62-06.

272. Anyone with a Moroccan mother who wishes to regularize their situation on the basis of the new provisions of the Nationality Code should have their birth recorded in the Moroccan civil registry.

273. Transmission of Moroccan nationality through a Moroccan mother is a two-step process:

- Producing a certificate of Moroccan nationality;
- Entering the birth in the civil registry.

274. Article 9 of the Nationality Code stipulates that all children born in Morocco to foreign parents who were themselves born there after the entry into force of Act No. 62-06, acquire Moroccan nationality provided that, in the two years before reaching the age of majority, they have stated that they wish to acquire it and that they are normally and legally resident in Morocco.

275. Anyone born in Morocco to foreign parents and who is normally and legally resident in Morocco, shall acquire Moroccan citizenship, if that is their stated wish, if their father was born in Morocco and comes from a country where the majority of the population is Arabic-speaking or Muslim.

276. Anyone who was 18 to 20 years old at the time of entry into force of the Act and who was born in Morocco to foreign parents who were themselves born there was given one year's grace to apply for Moroccan nationality.

*Fundamental right to access to education on the basis of equality of treatment*

277. The Moroccan school system is composed of three cycles, in addition to preschool:

- Preschool, for children aged 4 to 5;
- Primary school, for children aged 6 to 11;
- Junior secondary school, for children aged 12 to 14;
- Vocational secondary school, for children aged 15 to 17.

278. The system allows candidates to sit the baccalauréat (upper secondary leaving certificate) freely, irrespective of age or nationality.

279. There are two types of education: free public education and private education.

280. There are also foreign teaching missions in Morocco, which teach the curricula of a number of countries and give priority access to their own nationals and nationals of other countries – for example, the French mission (with approximately 25,000 students in 2010, of which half were Moroccan), Spanish schools (with approximately 4,000 students) as well as American and Saudi Arabian schools.



281. In theory, and in accordance with current relevant legislation and Morocco's international commitments (e.g. the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), foreign minors have the right to enrol in either public or private schools, irrespective of their migration status (regular or irregular).

282. In practice, access to education is not an issue for the family members of migrant workers in a regular situation, who as a rule have the requisite documents, namely, a birth certificate, a residence permit, the parents' employment certificate as well as school attendance and equivalence certificates if the children were enrolled in their country of origin. The same documents are required of Moroccans wishing to enrol in school.

283. According to 2004 statistics, the enrolment rate of foreign children aged 7 to 12 living in Morocco was 93.2 per cent.

284. While negotiations are under way between the Ministry of Education and the United Nations system to find sustainable solutions for the education of migrants, an agreement in principle given by the Moroccan authorities makes it possible to enrol refugee children through local NGOs, as with the partnership agreement between the Office of the United Nations High Commissioner for Refugees (UNHCR) and Fondation Orient-Occident, which handles the enrolment in public schools of all children recognized as refugees under the mandate of UNHCR in Morocco.

*Respect for the cultural identity of migrant workers and members of their families*

285. Since the 1970s, Morocco has set up, in cooperation with host countries, Moroccan language and culture classes for Moroccans living abroad, with a view to preserving their cultural identity.

286. The Government has developed an emergency programme to modernize the teaching of Arabic and Moroccan culture to children of Moroccan expatriates. The goal is to preserve the attachment of Moroccan nationals to Morocco without hurting their integration into their host country.

287. In the same vein, the Government intends to set up blended cultural centres within the next five years to foster harmonious integration of younger generations seeking an identity, and to tackle shared issues, such as fighting prejudice, stereotypes and all forms of xenophobia.

288. The centres will be established in partnership with the authorities of host countries and will constitute cultural spaces both open to host societies and linking back to Morocco.

289. The cities chosen for the centres are Barcelona, Brussels, Montreal, Paris and Tripoli. They will provide a space for dialogue and meetings and will host cultural events, as well as offering Arabic classes.

290. The programme encompasses other focus areas, such as the setting up of exchanges and cultural trips to Morocco for children of Moroccans living abroad, support to associations that offer cultural and education activities to Moroccans living abroad, organizing summer school and university programmes for children of Moroccans living abroad, provision of financial assistance for the tuition of children of disadvantaged Moroccans living in certain host countries, promoting the use of new information technologies to learn Arabic online, setting up cultural and sports exchange programmes for Moroccan children and youngsters living abroad, and organizing activities when they come back to Morocco on holiday, including summer school, sports events and summer camps.

291. In addition, the Hassan II Foundation for Moroccans Living Abroad, established pursuant to Act No. 19-89 promulgated by the Dahir of 13 July 1990, strives to maintain and foster the fundamental ties between Moroccan expatriates and their country of origin.

292. Its activities in the areas of education, cultural exchanges, sports and youth comprise:

- Arabic and Moroccan culture classes for children of Moroccans living abroad;
- Cultural trips to further their knowledge of Morocco;
- Religious events and preservation of cultural values.

293. Approximately 60,000 children take part in Arabic and Moroccan culture classes each year, mobilizing 80 per cent of the Foundation's budget and 540 instructors.

294. In order to adapt to the specificities of each country, the classes are offered in three formats:

- Integrated classes, which are part of the curriculum in the schools where they are taught;
- After-hours classes, which are taught outside school hours and are not part of the curriculum;
- Parallel classes, which are generally taught by associations on weekends.

295. The Foundation has replaced the summer camps it organized prior to 1998 with cultural trips for children of Moroccans living abroad. The programme is limited to children aged 9 to 14 who are selected on the basis of their school marks and/or their social situation. Its objectives are to:

- Give children of Moroccans living abroad the opportunity to discover their country of origin and immerse themselves in its culture;
- Strengthen children's sense of identity while introducing them to other cultures and teaching them to live peacefully with others;
- Provide spaces for children to express and assert themselves and flourish through a range of sports and cultural activities and arts workshops;
- Give foreign children the opportunity to take part (their current participation rate is 5.3 per cent);
- Enable participants to make the most of their holiday.

296. In order to provide those members of the Moroccan Muslim community who want it with quality, community-based religious guidance, a local branch of the Moroccan Council of Ulema in Europe (Dahir No. 1-08-17 of 20 October 2008 establishing the Moroccan Council of Ulema in Europe, art. 8) can be set up in any European country, in accordance with host country legislation.

297. The Ministry of Religious Endowments and Islamic Affairs is endeavouring to make it easier for Moroccans living abroad to practise their culture and religion by guaranteeing places of worship in host countries through contributions to the building and repair of mosques.

298. In principle, the cultural identity of migrant workers and members of their families is protected in Morocco and nothing deprives them of their right to assert their cultural identity or maintain cultural ties with their country of origin, insofar as it does not disturb the public order.

299. Respect for the cultural identity of migrant workers settled in Morocco is guaranteed under bilateral cultural cooperation agreements, which provide for culture weeks, including exhibitions, conferences and films, to maintain cultural ties with countries of origin.

300. Regarding access to and participation in cultural life, migrants in a regular situation in Morocco enjoy the same rights as Moroccan nationals.

301. Foreign associations aim to create a space, mainly through cultural and sports activities, conducive to the personal development and integration into Moroccan society of all their foreign members and showcase the various cultures represented in Morocco.

**12. Articles 32 and 33. Right of migrant workers to transfer their earnings, savings and personal effects to their country of origin; right to be informed of their rights arising out of the Convention and the dissemination of information**

*Right of migrant workers to transfer their earnings, savings and personal effects to their country of origin*

302. Under Moroccan law, migrant workers and members of their families have the right to transfer their earnings, savings and personal effects upon the termination of their stay in Morocco.

303. Like resident and non-resident foreigners, Moroccans living abroad benefit from liberal currency exchange regulations which guarantee complete freedom to conduct their currency transactions. The regulations cover nearly all areas relevant to them, such as:

- Importing and exporting currency;
- Opening accounts in convertible dirhams or in other currencies;
- Guaranteed transfer of investments in foreign currency in Morocco;
- Purchase of real estate in Morocco belonging to foreigners, with payment abroad in the equivalent amount of foreign currency.

304. See comments relating to articles 46, 47 and 48 of the Convention.

*Right to be informed of their rights arising out of the Convention and the dissemination of information*

305. See comments in paragraphs 49 to 51 of this report.

**C. Part IV of the Convention. Other rights of migrant workers and members of their families who are documented or in a regular situation**

**1. Article 37. Right to be fully informed prior to departure of all conditions applicable to admission in the State of employment and to remunerated activities**

306. The branches of the National Agency for the Promotion of Employment and Skills (ANAPEC) provide migrant workers with information regarding conditions of admission, residence and paid employment.

307. Article 512 of the Labour Code stipulates that Moroccan workers going to a foreign State for paid employment must have a work contract signed by the competent authorities of the host country and the Moroccan labour authority.

308. Contracts must comply with the labour agreements concluded with the States or with the employers, where such agreements exist.

309. In addition to the contract, Moroccan workers must have the following documents in order to leave the national territory:

- A medical certificate less than one month old;
- All documents required by host country law (art. 513).

310. The right to information is ensured by the employment services during the process of obtaining a work contract, and by the labour inspectorate, which is responsible for monitoring the implementation of the Labour Code.

311. Pursuant to article 532 of the Labour Code, labour inspectors:

- Ensure compliance with labour laws and regulations;
- Provide information and technical advice to employers and workers regarding best labour practices;
- Report to the Government labour authority on areas where laws and regulations are too lax or too strict;
- Initiate mediation in individual labour disputes. The parties to the dispute and the labour inspector sign the record of mediation sessions, which serves as a written discharge from financial responsibility in the amount cited therein.

**2. Articles 38 and 39. Right to be temporarily absent without effect upon their authorization to stay or to work; the right to liberty of movement in the territory of the State of employment and freedom to choose their residence there**

*Right to be temporarily absent without effect upon their authorization to stay or to work*

312. The Labour Code provides for absences, time off and statutory holidays for both Moroccan and foreign workers. Workers are entitled to time off to attend family events, sit an exam, find another job, attend a national sports camp or take part in an official national or international competition.

313. The right to liberty of movement and freedom of residence in Moroccan territory, as defined in article 39 of the Convention, are guaranteed under the Constitution, primarily in article 30 which stipulates that “foreign nationals shall enjoy the same fundamental freedoms as Moroccan citizens, in accordance with the law”.

314. Under article 40 of Act No. 02-03, “foreign nationals must produce the documents proving their right to reside in Moroccan territory at the request of public or law enforcement officials”. Article 41, paragraph 1, of the Act stipulates that, “subject to the provisions of article 40, foreign nationals shall have the right of residence and movement throughout Moroccan territory”.

315. It also states that “when a foreign national has been granted a visa for a stay of less than three months, the visa may be revoked if they are in paid employment in Morocco without official authorization, or if there is clear evidence that they came to Morocco to settle there or if their behaviour undermines public order”.

**3. Articles 40, 41 and 42. Right of migrant workers to form associations and trade unions; right to participate in the public affairs of their State of origin, to vote and to be elected at elections of that State; the establishment of procedures or institutions to take account of their needs and the possibility for them to enjoy their political rights in the State of employment**

*Right of migrant workers to form associations and trade unions*

316. Under article 12 of the Constitution, “civil society associations and NGOs shall be established and conduct their activities freely, in accordance with the Constitution and the law”.

317. Act No. 75-00 amending and supplementing Dahir No. 1-58-376 of 15 November 1958 regulating freedom of association, covers both domestic and foreign associations.

318. Under article 21 of the Act, an association is deemed to be foreign when its headquarters are abroad, its senior managers or half its members are foreign nationals or it is headed de facto by foreign nationals while its headquarters are located in Morocco.

319. Any foreign association has the right to take part in court proceedings and to purchase, hold and administer State subsidies, the joining fees and dues of its members, private sector aid, aid received from a foreign entity or international organizations and the movable and immovable assets required to run the association, starting three months from the date of the latest certificate of declaration (art. 25).

320. Migrants resident in Morocco have the right to form associations. A number of branches of foreign and international NGOs are legally operating in Morocco, such as Environmental Development Action, Amnesty International, the National Democratic Institute, German foundations (e.g., Friedrich Ebert, Friedrich Naumann) and student associations for those pursuing studies in Morocco.

321. The Constitution recognizes the right to form trade unions and the terms of exercising that right are set out in book III of the Labour Code. Migrant workers may join a trade union and receive the same benefits as Moroccan workers.

*Right to participate in the public affairs of their State of origin, to vote and to be elected at elections of that State*

322. Article 17 of the Constitution stipulates that “Moroccans living abroad enjoy full civic rights, including the right to vote and be elected. They may stand for local, regional or national office. The law sets specific qualifying and disqualifying criteria and also determines the terms and conditions of exercising the right to vote and be elected from their countries of residence.”

323. Under article 30 of the Constitution, “foreign nationals shall enjoy the same fundamental freedoms as Moroccan citizens, in accordance with the law. By law or pursuant to international conventions or reciprocal arrangements, foreign nationals resident in Morocco may take part in local elections. Extradition and asylum conditions are defined by law.”

324. The authorities endeavour to guarantee Moroccans living abroad the fullest possible participation in consultations and good governance processes provided for in the Constitution and the law (Constitution, art. 18).

325. Act No. 23-06 amending and supplementing Act No. 9-97 establishing the Electoral Code provides:

- For Moroccans born outside the country and living abroad;

- Registration on general electoral lists (art. 4 bis);
- Submission of their candidacy in the town where they are registered (art. 201, new para. 5);
- For Moroccan expatriates, irrespective of their place of birth: the establishment of electoral lists in other countries (art. 137, revised).

326. The Act strengthens the ties of Moroccans born outside the country and living abroad with the country's municipalities. This category of migrant may choose to register on the electoral list of any of four types of municipality:

- One where they own assets or exercise a profession or trade;
- One where one of their parents or their spouse is registered;
- One where one of their parents or their spouse has a residence;
- One where their father or grandfather was born. The birth must be attested in the usual way, by birth certificate, notarized document or other administrative document.

327. Voter lists are drawn up on the basis of the list of Moroccan citizens registered with Moroccan diplomatic missions and consular offices abroad (art. 137).

328. This provision enables our compatriots living abroad, irrespective of their place of birth, to participate in elections and referendums being held outside Morocco.

*The establishment of procedures or institutions to take account of their needs and the possibility for them to enjoy their political rights in the State of employment*

329. Although all members of political parties must have Moroccan nationality (Act No. 36-04 of 14 February 2006 on political parties, article 5), it should be noted that under the Constitution "foreign nationals shall enjoy the same fundamental freedoms as Moroccan citizens, in accordance with the law" (art. 30).

330. Migrant workers and members of their families residing in Morocco may nonetheless take part in local elections, in accordance with article 30 of the Constitution or in application of international conventions or reciprocal arrangements.

331. Foreigners settled on national territory, including migrant workers and their families, may, under the arrangements made by their countries of origin, take part in elections organized by those countries through their accredited diplomatic and consular missions in Morocco.

#### **4. Articles 43, 54 and 55. Equality of treatment with nationals of the State of employment in relation to protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment and access to alternative employment**

332. Foreigners legally resident in Morocco, including migrant workers, enjoy equal treatment with Moroccan citizens in access to education facilities and services, vocational training and retraining, housing and social and health services, among others.

333. Regarding access to education facilities and services, see comments relating to articles 29, 30 and 31 of the Convention.

334. As with education, vocational training is open to foreign nationals in a regular situation. It is available to foreigners not resident in Morocco through the Moroccan Agency for International Cooperation, which sets specific quotas, notably for African countries.

335. Foreigners resident in Morocco who wish to take part in public vocational training must apply to the Agency through their diplomatic missions.

336. The Moroccan system of public vocational training is available across the country, offers many courses of study and is divided into four tracks:

- A two- to three-year specialized technical course for holders of the baccalauréat;
- A two-year technical course for students in their last year of secondary school;
- A two-year qualifying course for students who have completed the fourth year of basic education;
- A one- to two-year specialization for students having completed the sixth year of primary education.

337. The private vocational training system is open to foreign nationals.

338. The Fondation Orient-Occident, in partnership with UNHCR, has established a centre for sub-Saharan refugees, asylum seekers and migrants, men, women and children alike. The centre provides refresher courses and vocational training. Hundreds of people have benefited from the training and employment services provided by the centres, most of them from Côte d'Ivoire (35.69 per cent), the Democratic Republic of the Congo (26.27 per cent), Iraq (21.07 per cent) and Palestine (3.59 per cent). The remaining 14 per cent were from Cameroon, Liberia and the Republic of the Congo. One quarter of the refugees are under the age of 17.

*Protection against dismissal, unemployment benefits, alternative employment and equality of treatment in the exercise of remunerated activity*

339. Equality of treatment in the exercise of a remunerated activity is guaranteed under Moroccan law, specifically the Labour Code.

340. Equality of treatment is also guaranteed in respect of protection against dismissal. Article 9 of the Labour Code prohibits "all forms of discrimination on grounds of race, colour, sex, disability, marital status, religion, political opinion, membership of a trade union or national or social origin that may violate or undermine the principle of equal opportunity or treatment in the area of employment or pursuit of a profession, particularly with respect to recruitment, the management and assignment of work, staff training, remuneration, promotion, the right to social benefits, disciplinary measures and dismissal".

341. As to access to alternative employment, recruitment of a migrant worker by another employer in the event of termination of their remunerated activity requires renewal of their work contract in accordance with article 516 on the granting of labour contracts.

**5. Articles 44 and 50. Protection of the unity of the families of migrant workers and family reunification; consequences of the death of a migrant worker or the dissolution of marriage**

*Protection of the unity of the families of migrant workers and family reunification*

342. Article 32 of the Constitution stipulates that the family is founded on the legal bond of marriage and is the basis of society. The State guarantees by law the legal, social and economic protection of families as a means of preserving them and their unity and stability. It guarantees all children, irrespective of their family situation, equal legal protection and equal social and moral treatment.

343. Morocco deems that family immigration derives from the right to family reunification, guaranteed in international legal instruments (e.g. Migrant Workers

Convention) and European law (e.g. European Convention on Human Rights, article 8, and European directives).

344. Act No. 02-03 on the entry and residence of foreign nationals in Morocco sets out the terms for family reunification of foreigners in a regular situation (art. 17).

345. Under article 17, the following are eligible for a residence card, provided that their entry into and stay in Morocco is regular and barring exceptions:

- (a) The foreign spouse of a Moroccan national;
- (b) The foreign or stateless child of a Moroccan mother who is not covered by the provisions of article 7, paragraph 1, of Dahir No. 1-58-250 of 6 September 1958 on the Nationality Code, if the child has reached the age of majority or is dependent on the mother; and the dependent foreign ascendants of a Moroccan national or of his or her spouse;
- (c) The foreign father or mother of a child born and resident in Morocco and who, pursuant to article 9 of the aforementioned Dahir, obtained Moroccan nationality in the two years prior to the age of majority, provided that the father or mother is the child's legal guardian or custodial parent or effectively provides for the child;
- (d) The spouse and minor children of a foreign national with a residence card. Once the children reach the age of majority, however, they may apply individually for a residence card, provided that they meet the requirements;
- (e) A foreign national who has obtained refugee status through the Decree of 29 August 1957 implementing the Convention relating to the Status of Refugees, and their spouse, minor children and children no more than one year over the age of majority;
- (f) A foreign national who demonstrates, by any means, that they have been normally resident in Morocco for more than 15 years or since they were at most 10 years old, or who demonstrates that they have been in a regular situation for more than 10 years.

346. However, a residence card is not issued in the above-mentioned cases if the presence of the foreigner in Morocco presents a threat to public order.

347. Article 16 of Decree No. 2-09-607 of 1 April 2010 implementing Act No. 02-03 stipulates that "a foreign national seeking family reunification must submit documents establishing a marital, parental or filial relationship, in the case of minor children, or demonstrating their parents' or children's dependence, and that they have an adequate income".

348. Article 16 further states that "residence permits issued to foreigners for the purpose of family reunification shall bear the reference 'family reunification', provided that, where mandatory for their nationality, they have a Moroccan entry visa bearing the same reference".

*Consequences of the death of a migrant worker or of the dissolution of marriage*

349. Under Moroccan law, divorce — as a means of dissolving marriage — is a right of which both husband and wife can avail themselves, subject to the legal provisions specific to either party and under court supervision. The objective is to curtail men's right to repudiate their wives by defining rules and conditions to avoid abuse of that right.

350. Article 73 of the Family Code stipulates that a marriage can be dissolved as a result of death, annulment, divorce, judicial divorce or divorce with compensation (khol').

351. In the event of the death of a foreign national legally resident in Morocco, the family's right to remain in the country is guaranteed. When their residence permits expire,



the deceased's family may apply for renewal, which will be considered in accordance with relevant regulations.

**6. Articles 45 and 53. Equality of treatment with nationals of the State of employment in relation to integration of children of migrant workers in the local school system; right of members of a migrant worker's family to freely choose their remunerated activity**

352. In principle, in compliance with current relevant legislation and the international commitments of Morocco, foreign children are entitled to enrol in public and private education establishments, irrespective of their migration status (regular or irregular).

353. As previously mentioned, in practice, there are no barriers to education for minor migrants in a regular situation, who usually have the documentation required of both foreigners and Moroccans, namely, a birth certificate, a residence permit, the parents' employment certificate and school attendance and equivalence certificates if the children were enrolled in their country of origin.

*Right of members of a migrant worker's family to freely choose their remunerated activity*

354. The members of a migrant worker's family are permitted to freely choose their remunerated activity, provided that the employer obtains authorization from the labour authorities. The authorization is stamped on the work contract.

**7. Articles 46, 47 and 48. Exemption from import and export duties and taxes in respect of their personal and household effects; right to transfer their earnings and savings from the State of employment to their State of origin or any other State; conditions of taxation and measures to avoid double taxation**

*Exemption from import and export duties and taxes in respect of their personal and household effects*

355. Pursuant to the provisions of article 164 of the Code on Customs and Excise Taxes, one-off non-commercial shipments are exempt from customs duties and other duties and taxes.

356. Under articles 180 to 182 of Decree No. 2-77-862 of 9 October 1977 implementing the Code on Customs and Excise Taxes, foreign nationals who settle in Morocco may be exempt from import duties and taxes on their personal and in-use household effects, with the exception of transportation vehicles (e.g. vehicles subject to registration, trailers and leisure crafts).

357. Granting freedom from taxation is subject to the submission of a detailed declaration, including:

- An official change of residence certificate issued by either the municipal authority of the place of departure or the Consul of Morocco assigned to the former residence, or any other document meeting the requirements of the authorities (e.g. work contract, consular registration certificate);
- An itemized inventory of the imported goods, dated and signed by the applicant.

358. Unless an exception is made by the authorities, freedom from taxation is limited to a one-off import of personal and household effects.

359. However, if, owing to special circumstances, a move occurs in two shipments, each shipment can be exempt from taxation, provided that the goods being shipped were listed in the overall inventory submitted at the time of the initial shipment.

360. Moreover, in order to qualify for this taxation measure, the change of residence and the shipment of household effects must occur simultaneously. A six-month grace period from the change of residence can be granted.

361. Exemptions from customs duties are directly authorized by the head of the customs office responsible for this type of shipment.

362. Motor vehicles are covered by the temporary entry scheme for six months following the arrival of the beneficiary. At the end of this period, the situation of the vehicle must be regularized through re-export or clearance for home use, subject to the payment of relevant duties and taxes.

*Right to transfer their earnings and savings from the State of employment to their State of origin or any other State*

363. Circular No. 1606 of the foreign exchange office dated 21 September 1993 determines the exchange rates applied to routine transactions such as external trade transactions, international transportation expenses, insurance and reinsurance fees, costs for technical assistance abroad, royalties, travel costs, foreign investment income, remittances of foreign individuals residing in Morocco and social transfers.

364. Title IX of the Circular, regarding remittances, provides that accredited intermediary banks and the treasury and postal services can transfer remittances resulting from profits, wages, salaries, pensions and professional fees.

365. Foreign nationals with residence permits, including the foreign wives of Moroccan nationals, can transfer part of their income to Morocco if they fall into one of the following occupational categories:

- Public sector employees, including those of local authorities, bureaux, Government bodies and concessions;
- Private sector employees with a work contract duly approved by the Ministry of Labour;
- Professionals working in Morocco in compliance with current legislation;
- Manufacturers, businesspeople, agricultural workers, tradesmen and other self-employed workers;
- Retirees receiving a pension payable in Morocco.

366. The amount of remittances permitted for transfer is calculated on the following basis:

- For employees of both the public and private sectors: their wages, salaries and emoluments, including bonuses and allowances but excluding all claimed expenses; from these are deducted all taxes, pension and social security contributions and any other employee deductions;
- For retirees: net pensions received in Morocco;
- For the other categories listed above: the taxable income withheld by the tax authorities during the fiscal year preceding the year of the transfer, minus relevant taxes and charges.

367. The transferable amount, as calculated above, cannot exceed 50 per cent of income.

368. The export of the household effects of migrant workers and their families at the end of their stay in Morocco is free and is not subject to any specific procedures. However, if

the effects include works of art or antiques, their export is subject to authorization by the department of cultural affairs. No duties or taxes can be levied on the export.

*Conditions of taxation and measures to avoid double taxation*

369. The Kingdom of Morocco has signed several double taxation agreements to avoid penalizing foreign businesses and workers, regardless of their status.

370. Moroccan tax law does not distinguish between Moroccan and foreign workers; the same tax system applies to both. Individuals who own a permanent residence in Morocco, are employed there or live in the country at least 183 days per year are subject to the Moroccan tax system.

**8. Articles 51 and 52. Right to seek alternative employment in case of termination of the remunerated activity for migrant workers not authorized to freely choose their remunerated activity; conditions and restrictions for migrant workers who can freely choose their remunerated activity**

371. Paid work is subject to authorization stamped onto the contract by the Government labour authority. The same permit is required each time a migrant worker's contract is renewed.

372. To renew a migrant worker contract, the employer must provide an earnings certificate from the National Social Security Fund showing the last three months' contributions paid on behalf of the employee concerned.

373. Once approval has been given, the contract is stamped. The duration of a migrant worker's contract should comply with the provisions of immigration law (a home address and residence permit are required).

374. National companies or multinational subsidiaries wishing to hire a migrant worker on a local contract (a contract governed by the law of the host country) must hold a certificate from the National Agency for the Promotion of Employment and Skills (ANAPEC) – an exception is made for any country with an establishment convention with Morocco.

375. When a migrant worker finally leaves Morocco, a tax clearance certificate must be issued in order to remain in compliance with Moroccan law after departure.

**9. Articles 49 and 56. Authorization of residence and authorization to engage in remunerated activity; general prohibition and conditions of expulsion**

*Authorization of residence and authorization to engage in remunerated activity*

376. Article 41 of Act No. 02-03 provides for foreigners to reside and move freely on Moroccan territory.

377. Statistics from the Directorate-General of National Security show that, as at 20 February 2012, 79,241 foreign nationals belonging to various social and occupational groups were resident in Morocco under the residence regulations.

378. Article 10, paragraph 1, of Act No. 02-03 also provides that the "registration card authorizes residence for a period of 1 to 10 years maximum, renewable for the same period, depending on the reasons given by the foreign national to the competent Moroccan administration to justify their residence in Morocco".

379. The same Act also specifies in article 13, paragraph 3, that "a registration card issued to a foreign national who wishes to engage in a professional activity in Morocco that

is subject to authorization, and who can demonstrate that they have obtained that authorization, shall refer to this activity”.

380. In practice, and unless otherwise provided for in the regulations or stipulated by other departments, all registration cards are valid for one year, renewable for the same period, which fits with the validity of migrant worker contracts in the Kingdom, which are usually stamped by the Ministry of Employment and Vocational Training as valid for one year. It should be added that certain nationalities have prerogatives due to bilateral agreements or the principle of reciprocity.

381. Article 19 of the Act also stipulates that “any foreign national who does not meet the conditions under the provisions of this Act on residence permits or who requests a registration card to engage in a professional activity they are not authorized to engage in, will not be issued with a residence permit”.

382. A residence permit may be withdrawn if:

- The foreign national does not provide the documents and evidence required by regulations;
- The permit holder is subject to a deportation order or a court ruling denying them entry to Moroccan territory.

383. It should also be noted that articles 11 and 12 of the same Act respectively stipulate that in cases where a registration card is refused or withdrawn, the foreign national must leave Moroccan territory within 15 days of notification of refusal or withdrawal. The foreign national must leave Moroccan territory on expiry of their registration card, unless it is renewed or they are issued with a residence permit.

384. Articles 14 and 15 of this Act stipulate that the registration card, which may only be granted to foreign nationals holding a residence visa for a period exceeding three months, may be denied to any foreign national whose presence in Morocco may pose a threat to public order.

385. Under article 20 of the same Act, a foreign national whose application for, or for renewal of, a residence permit has been refused, or who has had their residence permit withdrawn, may appeal to the president of the administrative court, as interim relief judge, within 15 days of notification of refusal or withdrawal.

386. The remedy mentioned in the first paragraph of the above article does not preclude a decision on escort to the border or expulsion in accordance with chapters III, IV and V of title I of this Act establishing the grounds for ordering escort to the border or expulsion, the manner of application and the remedies available to foreign nationals affected — subject to certain criteria for suspension of or derogation from execution — and their common modalities.

387. To obtain a residence card a person must have been resident in Morocco for an uninterrupted period of at least four years. In accordance with article 17 of Act No. 02-03, residence cards are issued to:

- The foreign spouse of a Moroccan national;
- The foreign or stateless child of a Moroccan mother;
- The foreign father or mother of a child born and resident in Morocco, and who has acquired Moroccan nationality;
- The spouse and minor children of a foreign national holding a residence card;
- A foreign national who has obtained refugee status, as well as their spouse and minor children;

- A foreign national who demonstrates by any means that they have been normally resident in Morocco for more than 15 years or since the age of 10, or have been in a regular situation for over 10 years.

388. Adequate means of subsistence, occupation and all documents in support of the application for permanent residence in Morocco are taken into account when issuing or refusing residence cards.

389. A residence card may be refused to any foreign national whose presence on Moroccan territory poses a threat to public order.

390. The provisions of multinational or bilateral international agreements relating to the employment of Moroccan workers abroad or foreign workers in Morocco and published in accordance with the law are taken into consideration.

391. Foreign nationals who wish to obtain a visitor registration card must prove that they can support themselves using their own means and undertake not to engage in any professional activity subject to authorization.

392. Foreign nationals who wish to obtain a student registration card must provide proof of their studies in Morocco and have sufficient means of subsistence.

393. Registration cards issued to foreign nationals in Morocco who wish to engage in a professional activity subject to authorization and who can demonstrate they have obtained that authorization shall refer to this activity.

*Authorization to engage in a remunerated activity*

394. See the comments on articles 25, 27 and 28 of the Convention.

*General prohibition and conditions of expulsion*

395. The Moroccan authorities may only expel a foreign national under article 25 of Act No. 02-03 if their presence on Moroccan territory poses a serious threat to public order, subject to the provisions of article 26 of the Act.

396. The decision to expel a foreign national is taken by order of the Director-General of National Security and communicated to the foreign national by a police or gendarmerie officer, giving a grace period to leave the country (Act No. 02-03, art. 28). The expulsion decision may be revoked or postponed at any time.

397. The Moroccan authorities may order escort to the border, by reasoned decision, for specific cases such as foreign nationals overstaying their visa and who cannot prove they have entered the country legally; foreign nationals convicted of counterfeiting, forgery using a false name, or whose registration card or residence card has been refused or withdrawn (Act No. 02-03, art. 21).

398. Article 26 sets out the categories of person who cannot be subject to an expulsion decision, including:

- Foreign nationals who can demonstrate by any means that they have been normally resident in Morocco since the age of 6 at the latest;
- Foreign nationals who can demonstrate by any means that they have been resident in Morocco for more than 15 years;
- Foreign nationals who have been resident in Moroccan territory for 10 years and were students during the entire period;
- Foreign nationals who have been married for at least one year to a Moroccan spouse;

- Foreign nationals who are father or mother to a child who is resident in Morocco and has obtained Moroccan nationality;
- Foreign nationals normally resident in Morocco who hold one of the residence permits provided for by Moroccan law or international convention and have not been sentenced by final judgement to at least 1 year's imprisonment, unsuspended;
- Pregnant female foreign nationals;
- Foreign minors.

399. Under article 23 of Act No. 02-03, foreign nationals subject to escort to the border have the right to apply, within 48 hours of notification, to the president of the administrative tribunal, as interim relief judge, for the order to be set aside. They may request the assistance of an interpreter and sight of their file. The hearing is public and the person is assisted by counsel and may, where appropriate, ask the court to appoint a lawyer.

400. No limit need be set to a period of expulsion if the conviction arises from an offence involving terrorism, immorality or narcotics.

401. If expulsion is deemed necessary for the security of the State or the maintenance of law and order, it may be ordered by derogation from article 26 of Act 02-03.

402. Foreign nationals who are subject to an expulsion decision or deportation order under article 29 are removed to:

- (a) Their country of nationality, unless refugee status has been granted or no ruling has yet been taken on their application for asylum;
- (b) The country that issued their valid travel document;
- (c) Any other country they can legally enter.

403. Pregnant female foreign nationals and foreign minors cannot be removed. Similarly, foreign nationals cannot be deported to a country where their life or liberty could be at risk or where they could be subject to inhuman, cruel or degrading treatment.

#### **D. Part V of the Convention. Provisions applicable to particular categories of migrant workers and members of their families**

404. The Moroccan Labour Code does not contain specific provisions applicable to particular categories of migrant workers and members of their family. However, it is worth mentioning the MEDA II "Institutional Support for the Movement of Persons" project in the context of cooperation programmes managing legal migration flows. This project, which came to an end in December 2009, supported major recruitment operations during its four years in operation, including the recruitment of women seasonal agricultural workers in the province of Huelva in Spain and agricultural workers sent to Corsica.

405. A survey of the women seasonal agricultural workers recruited in Spain, conducted by Atento at the request of the Division of International Investment ANAPEC in 2009, shows that 96 per cent were satisfied with the work they were offered and wished to repeat the experience, and that 68 per cent had a three-month contract: the vast majority of these (88 per cent) worked five to eight hours per day. More than 67 per cent did overtime and in 94 per cent of cases, the accommodation provided by the employer was satisfactory; 58 per cent received medical care.

406. According to the same source, 95 per cent of the agricultural workers sent to Corsica were satisfied. Over 92 per cent thought the accommodation provided was satisfactory, and

69 per cent received medical care in France. Over 72 per cent of the seasonal workers worked an average of eight hours per day and 43 per cent worked overtime.

407. The global economic crisis continues to dampen international employment markets. Spain, the main employer of seasonal agricultural workers from ANAPEC continues to reduce the number of workers, retaining only half of its authorized quotas in 2009, meaning only those who have previously worked in Spain are rehired.

## **E. Part VI of the Convention. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families**

### **1. Article 65. Establishment of appropriate services to deal with questions concerning the international migration of workers and members of their families**

408. In order to meet the needs and address the interests of the large Moroccan community abroad, estimated at over 3 million, Morocco has established several institutions to protect and promote the rights of Moroccan workers and members of their family abroad.

409. Ministry for Moroccans Living Abroad. At the educational and cultural levels, the Ministry has spent DH 248 million creating several Moroccan cultural centres abroad, organized summer schools, summer camps and cultural trips for young Moroccans living abroad in an amount of DH 29 million and organized lessons on Moroccan language and culture (DH 94 million over three years). At the social level, the Ministry provides support for vulnerable groups and helps persons in distress by the strengthening of the social services offered at Moroccan consulates, crisis management, support plans for Moroccan women and retirees and seniors abroad, and the provision of social assistance for vulnerable groups. Many Moroccans have also been repatriated following political events and natural disasters in regions across the world. More than 18,800 persons had been repatriated by the end of July 2011 (Libya: 15,242; Côte d'Ivoire: 937; Tunisia: 600; Egypt: 1,230; Yemen: 305; Bahrain: 19; Japan: 165; Spain: 100). At the legal and administrative levels, a legal and judicial support system was implemented at 51 consulates and 5 embassies to help Moroccans living abroad as well as an integrated request-management system for Moroccans around the world. This system is primarily designed to automate the various procedures in the special request-management service. This project also aims to manage and process all types of requests to help Moroccans living abroad in their preliminary procedures. Those seeking intervention from the request-management service can view the outcome of their inquiry via the Ministry's portal. At the economic level, in order to encourage those Moroccans living abroad wishing to act as project sponsors in Morocco, the Government has set up a fund to promote investment by Moroccans abroad, called MDM Invest. Management of the fund is entrusted to the Central Guarantee Fund. This mechanism allows Moroccans living abroad wishing to set up an investment project or expand an existing project to receive a grant amounting to 10 per cent of the total project cost. It is worth mentioning that other measures have also been taken to benefit Moroccans living abroad, including the extension of the Damane Assakane fund to provide Moroccans living abroad with the same conditions as residents and reduce the cost of transfers.

410. The Hassan II Foundation for Moroccans Living Abroad, see paragraph 46 above.

411. The Council for the Moroccan Community Abroad (CCME), see paragraph 46 above.

412. The Ministry of Foreign Affairs and Cooperation, Directorate of Consular and Social Affairs. The Directorate of Consular and Social Affairs is responsible for:

- Receiving and dealing with all consular and social questions and issues relating to the establishment and movement of Moroccan nationals abroad and foreign nationals in Morocco;
- Ensuring the protection of Moroccan citizens abroad as well as their interests and their property;
- Enabling the development of Moroccan external relations in the social and consular field;
- Negotiate agreements concerning the establishment, movement and social protection of Moroccans abroad, and on employment of Moroccans, and ensuring their application.

413. To increase the availability of Government services to the population, Morocco has created new consular posts to provide Moroccans living abroad with a local service. Since 2002, a dozen consulates or consular offices have been created in countries and regions where there is a high concentration of Moroccan nationals:

- Spain: Seville, Valencia, Bilbao, Tarragona and the Balearic Islands;
- The Netherlands: Utrecht;
- Italy: Palermo and Verona;
- France: Toulouse, Orleans and Orly;
- Libya: Benghazi;
- Turkey: Istanbul;
- United Arab Emirates: Dubai;
- Planned: Venice, Mantes-la-Jolie and Girona.

414. In order to meet the needs of Moroccan migrant workers and members of their families, Moroccan embassies abroad organize mobile consulates to provide administrative services close to the areas where Moroccan migrants reside.

415. In order to better defend the interests of Moroccan migrants and members of their families, Morocco intends to strengthen the network of social attachés and counsellors by providing additional human and material resources to help them carry out their work.

416. In terms of international migration issues, Morocco plays an active role, both at the international and the regional levels, in advocating the shared responsibility for migration management and the adoption of a comprehensive and balanced approach on the issue:

- At the European level, through the establishment of the Social Affairs and Migration Working Group (GTASM) to implement measures set out in the Neighbourhood Action Plan on migration;
- Through participation in many forums and meetings on migration (5+5 Dialogue, Bern Initiative, Global Commission on International Migration, Global Forum on Migration and Development, High Level Political Dialogue, Euro-African Conference on Migration and Development, etc.).

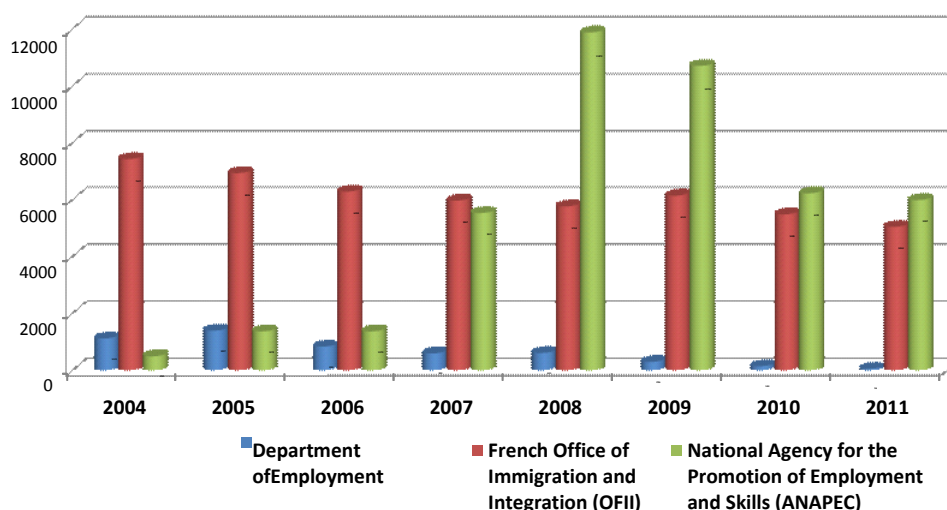
417. The Ministry of Employment and Vocational Training is responsible, in conjunction with other relevant ministerial departments, for managing legal foreign worker immigration in Morocco and, along with the Ministry of Foreign Affairs and Cooperation, for questions of looking for work abroad and the application of employment agreements.

418. The National Agency for the Promotion of Employment and Skills (ANAPEC) is a public institution whose mission is to help organize and implement programmes to promote



skilled employment put in place by the authorities. In terms of migration, it is responsible for processing jobs from abroad and identifying all placement opportunities for Moroccan nationals abroad.

### International placements 2004–2011



## 2. Article 66. Authorized operations for the recruitment of workers for employment in another State

419. The emigration of Moroccan workers abroad is regulated by chapter IV, entitled “Hiring Moroccan employees abroad”, of Act No. 65-99 on the Labour Code, which stipulates in article 512 that “Moroccan employees travelling to a foreign State to engage in paid employment must have a contract of employment stamped by the competent departments of the State of immigration and by the Moroccan Government authority in charge of employment”.

420. Emigration of Moroccan workers occurs in two ways:

- Group emigration. The Ministry of Employment and Vocational Training receives job offers directly from employers or their representatives, or from the host country’s embassy to Morocco, which sends them to ANAPEC. These job offers are usually for Moroccan workers;

Also, under employment agreements between Morocco and certain countries — West Germany (21 May 1963), France (1 June 1963), Belgium (17 February 1964), the Netherlands (14 May 1969), Qatar (17 May 1981), Iraq (21 May 1981), the United Arab Emirates (22 December 1981), Jordan (20 April 1983), Libya (4 August 1983), Spain (25 July 2001) and Italy (21 November 2005) — the competent authorities of these countries inform the Department of Employment of their requirements in terms of Moroccan workers and provide general guidance on salary and living and working conditions and the probable dates the workers should report for work. ANAPEC designates, by mutual agreement with the employer, the area from which the required workers can be recruited;

- Individual emigration. The worker obtains an employment contract by themselves, either via direct contact with a foreign employer or through private recruitment

agencies. The most important thing is that the employment contract for the worker must, like the group contracts, be approved by the competent authorities of the host country. Once this is done, the worker will have no difficulty in obtaining a visa from the Department of Employment and an entry visa from the host country's embassy to Morocco.

421. Under the provisions of the Labour Code, it is ANAPEC as well as recognized private recruitment agencies that ensure the fit between labour supply and demand. Agencies must be accredited by the relevant Government authority in charge of employment (Labour Code, art. 477).

**3. Article 67. Measures regarding the orderly return of migrant workers and members of their families to the State of origin, their resettlement and their cultural reintegration**

422. The Marhaba (Welcome) Transit Operation aims to ensure the best welcome during the summer for Moroccans living abroad, through a comprehensive, integrated operational mechanism which provides reception centres and support and guidance. This national body is managed by the National Transit Committee.

423. The number of Moroccans living abroad who returned to Morocco during the summer of 2011 (5 June–6 September) was 2,078,311. In the same period in 2009, the number was 1,947,624 persons (source: Ministry of the Interior, Department of Migration and Border Surveillance).

424. To this end, each year the relevant border operations are strengthened by significant human, material and technical resources.

425. The Directorate-General of National Security mobilized 2,030 civil servants in 2011 to several areas, 1,643 of them going to the border posts involved in the Transit Operation.

426. The Ministry for Moroccans Living Abroad has also adopted a series of measures to support the families of Moroccans living abroad who wish to return to settle permanently in Morocco, such as creating a central unit to welcome and support Moroccans returning to settle in Morocco; creating a legal centre to help Moroccans from abroad with legal issues and to respond to their administrative and judicial complaints – this centre is also responsible for strengthening institutional coordination; developing a system of administrative advice offices; creating a central point to handle complaints; creating a welcome unit on investment; providing migrants access to Dar al Muhajir (Home of the Migrant) in Nador and Beni Mellal to guide and help solve any problems; assigning a social housing quota for needy members of the community; and establishing an 85 per cent discount on customs duties on foreign-registered passenger cars for retirees.

427. The Ministry for Moroccans Living Abroad, together with other relevant ministries, took various urgent measures to deal with the emergency situation caused by the political events during 2011 in a number of countries with a large number of Moroccan residents, namely Tunisia, Egypt, Libya and Côte d'Ivoire.

428. These measures included the repatriation of 18,898 Moroccans and 200 foreigners; 15,298 Moroccans were repatriated at the expense of the Moroccan State and 3,300 persons returned using their own funds. The number of returnees from Libya, as of 30 June 2011, was estimated at 15,242; 11,942 of them were repatriated at the expense of the Moroccan State and 3,300 returned using their own funds. The number of returnees from Tunisia was 600 and from Egypt was 1,230.

429. Measures taken in order to meet the needs of returnees and to facilitate their provisional integration in Morocco included:

- Provision of priority social housing for returnees, within the limits of available supply. The institution responsible for social housing, Al Omrane, had received 4,235 requests as of 20 June 2011 and was able to respond initially to more than 1,500 requests in several cities in Morocco;
- Direct integration of children of Moroccan returnees into State schools to ensure the continuity of their education. Private revision classes were also offered to these children in order to help their integration;
- Free medical care and monitoring for 200 returnees with chronic illnesses;
- Accommodation in social institutions for returnees in a precarious situation;
- Recognition of the equivalence of foreign driving licences with Moroccan driving licences.

**4. Article 68. Measures to prevent and eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation**

430. The Moroccan authorities have developed various prevention measures to restrict the movement and illegal or clandestine employment of migrant workers in an irregular situation.

431. These include various assistance and social integration programmes which provide on-site opportunities for the most vulnerable as well as potential victims of human trafficking networks. The National Initiative for Human Development (NIHD) launched in 2005 is one example. NIHD provides a strategic framework to fight against poverty and social exclusion in Morocco. It takes into account the inequalities between regions, provinces and municipalities and targets the poorest and most vulnerable populations. It aims to reduce social deficits, especially in poor urban neighbourhoods and the most disadvantaged rural communities, and to promote activities that will generate stable income and jobs.

432. Cooperation programmes for the management of legal migration flows have also been developed. It is in this spirit that the MEDA “Institutional Support for the Movement of Persons” project was conceived as part of the Euro-Mediterranean Partnership, as a means to support regulated, structured immigration that would benefit the economy of the host country, the country of origin and the migrants themselves.

433. A voluntary return programme for migrants in an irregular situation has also been implemented, as part of the framework of cooperation with the International Organization for Migration (IOM). Thus from July 2006 to January 2009, 22 Moroccan migrants received support to return to Morocco voluntarily and take part in reintegration activities.

434. The voluntary return programme for foreign migrants in an irregular situation in Morocco is funded through the partnership with IOM, and enabled 11,213 migrants to return voluntarily to their countries of origin between 2004 and the end of May 2012, in close coordination with the diplomatic and consular offices of the countries concerned.

435. At the legal level, title II of Act No. 02-03, on criminal provisions relating to irregular emigration and immigration (arts. 50–56), aims in part to combat human trafficking. Where illegal migration is organized or facilitated on a regular basis or by members of criminal gangs formed for the purpose of organizing or carrying out such acts, the penalty is 15 to 20 years’ imprisonment if those transported to or from Moroccan territory suffer permanent incapacitation and life imprisonment in the event of death.

436. In the same context, the competent Moroccan authorities are making great efforts to dismantle all units and branches of the criminal networks involved in irregular migration and human trafficking.

437. A statistical analysis of efforts to deal with illegal immigration and attempts by foreign nationals in an irregular situation to leave Morocco, between 2004 and 2011, resulted in the following findings:

<i>Year</i>	<i>Number of migrants arrested by the Directorate-General of National Security and the Moroccan Royal Gendarmerie</i>
2004	17 252
2005	21 894
2006	9 469
2007	7 830
2008	8 735
2009	7 531
2010	10 223
2011	12 929

438. Networks dismantled: between 2004 and 2011, the Directorate-General of National Security and the Moroccan Royal Gendarmerie dismantled 2,702 illegal migration and human trafficking networks. The following table illustrates the progress made in combating such networks:

<i>Year</i>	<i>Networks dismantled</i>
2004	425
2005	484
2006	381
2007	417
2008	220
2009	130
2010	92
2011	108

439. In 2006, Morocco signed a funding agreement worth €67 million with the European Union to provide support to the Moroccan migration strategy. This investment is well below the costs incurred by Morocco in managing migration issues.

440. The programme is organized around five lines of action:

- Support for the Directorate-General of National Security;
- Strengthening of the legal framework;
- Upgrading of border operations;
- Technical and scientific capacity-building in criminal investigations;
- Informing and raising awareness among potential migrants.

**5. Article 69. Measures taken to ensure that the irregular situation of migrant workers does not persist in the territory of the State party and circumstances that must be taken into account in regularization procedures**

441. Partnership with the countries of origin of migrants in an irregular situation in Morocco involves not only joint responses to the challenges posed by migration issues but also the regularization of certain categories of migrants. In practical terms, integration is carried out on a case-by-case basis by issuing a residence card for adult migrants or a freedom of movement card for migrant children. The process is easier for those who already have a job and/or can demonstrate a link to the country. Foreign migrants who do not meet the requirements to remain in Morocco, including in the context of asylum law, can return freely and voluntarily, in coordination with the diplomatic missions of their countries of origin and the IOM office in Rabat.

**6. Article 70. Measures taken to ensure that the living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety and health, and principles of human dignity**

442. See comments on articles 26, 27 and 28 of this report.

**7. Article 71. Repatriation of the bodies of deceased migrant workers or members of their families and compensation matters relating to death**

443. The Ministry of Foreign Affairs and Cooperation strictly applies the provisions of Circular No. 5 of 11 March 1981, granting permission for the repatriation of a body to Morocco, upon receipt of a request by the relevant diplomatic or consular mission (Moroccan embassies and accredited consulates abroad).

444. In order to identify the bodies of presumed Moroccan nationals, the diplomatic and consular missions of Morocco, in partnership with the host country, send the fingerprints to the Directorate-General of National Security, who is responsible for identifying the bodies of Moroccan nationals.

445. In difficult cases where a corpse has begun to decompose, the authorities of the host country and those of Morocco identify the body of the presumed Moroccan national using DNA samples.

446. The Moroccan authorities are encouraging banks and repatriation companies to offer Moroccan nationals the option of taking out insurance to cover all the costs relating to the laying out and repatriation of the body in the event of death. The same applies to exhumation and repatriation of the body.

447. For those without resources, the Moroccan authorities pay for the repatriation of the body for burial in Morocco. Over the past four years, the Ministry for Moroccans Living Abroad has repatriated 532 bodies for burial in Morocco.

448. The Moroccan authorities ensure the application of national law and any international legal instrument relating to damages and compensation for Moroccan nationals who die in accidents at work, traffic accidents or similar, by designating accredited attorneys to defend the rights and interests of such nationals in the competent courts.

449. The Moroccan authorities also ensure the implementation of legal and treaty provisions relating to foreign migrant workers in Morocco, in particular with regard to the repatriation of the body and remuneration in the event of accident or similar.