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Evaluation of the partnership for democracy in respect of the Parliament of Morocco

Committee Opinion[1]
Committee on Equality and Non-Discrimination
Rapporteur: Ms Sahiba GAFAROVA, Azerbaijan, European Democrat Group

A. Conclusions of the committee

1. The Committee on Equality and Non-Discrimination supports the draft resolution presented by the Committee on Political Affairs and Democracy. It agrees that granting partner for democracy status to the Moroccan Parliament created new dynamics in the co-operation between the Council of Europe and Morocco and considers very positively the dialogue established since between the Assembly and the Moroccan Parliament.

2. Resolution 1818 (2011), with which the Assembly granted the status of partner for democracy to the Moroccan Parliament, lists essential areas in which reform is necessary to strengthen democracy, the rule of law and respect for human rights and fundamental freedoms in Morocco. The recommendations formulated therein articulate and explain in more detail the political commitments undertaken by the Moroccan Parliament, and should continue to be central both to the dialogue with the Moroccan authorities and the evaluation of the partner for democracy status.

3. In this context, the Committee on Equality and Non-Discrimination reiterates the call on the Moroccan authorities to undertake a number of legislative reforms and to take measures to bridge the gap between the law and its effective implementation. The committee invites the Moroccan authorities to make full use of the Council of Europe's expertise with a view to facilitating this process.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In the draft resolution, after paragraph 8, insert the following paragraph:

> *"Reiterating that the recommendations set out in paragraph 8 of its Resolution 1818 (2011) are essential to strengthen democracy, the rule of law and respect for human rights and fundamental freedoms in Morocco, the Assembly calls on the Moroccan authorities to make greater efforts in order to achieve decisive progress in these areas, and invites them to rely on the Council of Europe expertise to facilitate this process, be it at the level of technical expertise, exchange of good practice, and/or parliamentary support."*

1. Reference to committee: Decision of the Bureau, Reference 3831 of 23 January 2012. Reporting committee: Committee on Political Affairs and Democracy. See Doc 13230. Opinion approved by the committee on 24 June 2013.

Amendment B (to the draft resolution)

In the draft resolution, after paragraph 8, insert the following paragraph:

> *"The Assembly expresses serious concern that the Penal Code criminalises consensual sexual relations between persons of the same sex, with penalties of between six months and three years in prison. It notes that there are recent reports of persons being imprisoned under this legislation, and calls on the Moroccan Parliament to initiate its repeal at the earliest opportunity."*

Amendment C (to the draft resolution)

In the draft resolution, at the end of paragraph 14, after "in line with the political commitments entered into under the partnership", add "and the recommendations laid down in Assembly Resolution 1818 (2011)".

Explanation for amendments A and C: The areas covered in Resolution 1818 (2011) are essential to strengthen democracy, the rule of law and respect for human rights and fundamental freedoms, and are complementary/explanatory to the political commitments undertaken by the Moroccan Parliament when requesting the status of partner for democracy. In the areas covered by the Committee on Equality and Non-Discrimination, the political commitments *stricto sensu* are rather limited, as they refer only to "encouraging the balanced participation of women and men in public life and politics". In order to assess the impact of the status of partner for democracy, it is necessary to take into account a broader range of fundamental human rights issues.

Explanation for amendment B: Criminalisation of homosexuality is in breach of human rights.

C. Explanatory memorandum by Ms Gafarova, rapporteur for opinion

1. General comments

1. I wish to congratulate Mr Volontè on his comprehensive report, which reviews the state of progress achieved in implementing the political commitments undertaken by the Parliament of Morocco in the framework of its request for the status of partner for democracy.

2. In the present opinion I will complement the information and analysis provided by Mr Volontè as regards both the balanced representation of women and men in public life and politics (which is one of the political commitments laid down in the request for partner for democracy status by the Moroccan Parliament) and "a number of specific measures [which are] essential to strengthen democracy, the rule of law and respect for human rights and fundamental freedoms", as listed in Resolution 1818 (2011), by which the Assembly granted partner for democracy status to the Moroccan Parliament. I will also refer to some recommendations included in Assembly Resolution 1873 (2012) on equality between women and men: a condition for the success of the Arab Spring.

3. Before starting my analysis, I would like to commend the Moroccan authorities for the constructive spirit of co-operation and dialogue which has characterised relations with the Parliamentary Assembly and the Council of Europe in recent years, in the area of equality. I would like to mention the participation of Bassima Hakkaoui, Minister of Solidarity, Women, Family and Social Development, in the Assembly debate on the report of the Committee on Equality and Non-Discrimination on "Equality between women and men: a condition for the success of the Arab Spring" (April 2012). Other activities include the active participation of the members of the Moroccan delegation in the activities of the committee and the Parliamentary Network "Women Free from Violence" and the organisation of events and conferences on the situation of women in co-operation with the European Centre for Global Interdependence and Solidarity (North-South Centre) and other Council of Europe structures. I trust that the content of this opinion will be considered as constructive suggestions for future work, in the context of a dialogue which I hope will grow deeper.

2. "Ensuring equal opportunities for women and men in political and public life" (political commitment undertaken by the Moroccan Parliament; sub-paragraph 8.6 of Resolution 1818 (2011))

4. The electoral legislation currently in force in Morocco made it possible to achieve significant progress in women's political representation in parliament. As Mr Volontè recalls, 67 of the 395 members of the House of Representatives (lower chamber of the Moroccan Parliament) are women. This represents an increase of 34 women compared to the previous legislature.

5. These figures are largely the result of a quota system reserving 60 seats for women, with seven more women having been elected from the general lists. I hope that this additional share will grow in the future, reflecting the significant role that women have acquired over the last decades in all areas of Moroccan public life. Political parties should play a greater role in this process, ensuring more balanced participation of women in their activities at all levels and introducing gender-sensitive mechanisms for the selection of candidates. The recommendations formulated by the Assembly in its Resolution 1898 (2012) on political parties and women's political representation are fully relevant for Moroccan political parties.

6. As Mr Volontè notes, today only one woman sits in the Moroccan Government. As the presence of seven women in the previous government shows, the country is culturally and politically ready for a more gender balanced cabinet. I trust that the gradual enforcement of the new constitution through the adoption of the organic laws, particularly as regards the implementation of article 19 on the principle of gender equality, will have an impact also on Morocco's political life. If the State "works to put gender equality into practice", as the constitution stipulates, future governments will necessarily have a more gender-balanced configuration.

3. "Fighting all forms of discrimination (in law and in practice) based on gender … Fighting all forms of gender-based violence; actively promoting equal opportunities for women and men" (sub-paragraph 8.20 of Resolution 1818 (2011))

3.1. Discrimination against women

7. The principle of gender equality is embedded in the 2011 Constitution. Its Article 19 reads: "Men and women should enjoy equal rights and freedoms in all civil, political, economic, social, cultural and environmental matters set forth by this title and by other provisions of the Constitution, as well as in the conventions and international pacts duly ratified by the Kingdom and this, in respect of the provisions of the Constitution, the constant features and the laws of the Kingdom. The Moroccan State aims to create parity between men and women. For this purpose, an Authority for parity and fight against all forms of discrimination is established."

8. I would like to reiterate the recommendation already made by the Assembly in its Resolution 1873 (2012) on equality between women and men: a condition for the success of the Arab Spring, that the Moroccan authorities should "set up, as a matter of urgency, the authority for parity and the fight against all forms of discrimination foreseen in Article 19 of the constitution, and endow it with sufficient human and financial resources".

9. Since the Parliament of Morocco was granted the status of partner for democracy, an important, positive development has occurred as regards the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): in April 2011, Morocco withdrew its reservations to Articles 9.2 (equal rights with regard to nationality) and 16 (equality in marriage and family life). Currently, Morocco maintains a reservation to Article 29.1 – on the obligation to submit to arbitration on the interpretation or the application of the Convention – and a declaration to Article 2 on the obligation to pursue a policy on eliminating discrimination against women by all appropriate means and without delay, stating that the Government of Morocco is ready to apply the provisions of the article as long as these do not conflict with Islamic law.

10. I hope that in the near future Morocco will also sign and ratify the Optional Protocol to the CEDAW, which recognises the competence of the Committee on the Elimination of Discrimination against Women to receive complaints from individuals or groups, as recommended in Resolution 1873 (2012).

3.2. Violence against women

11. In Morocco, awareness is increasing on the prevalence of violence against women, a violation of human rights and a major obstacle on the path towards gender equality which is widespread and often underestimated. Political will to eradicate this scourge exists and is shared across the political spectrum. This should help take the necessary steps, which include changes in legislation and new policies.

12. One main priority should be revising the 1962 Penal Code, which is exceedingly outdated: it places emphasis on the "honour" and "respectability" of women and their families, while neglecting the need to protect victims. To give an example, rape – which is not gender neutral but consists of "a man having sexual relations with a woman against her will" – is considered as a "decency offence"; the severity of the punishment for rape varies according to the victim's marital status; sentences are harsher if the victim loses her virginity.[2]

13. The case of Amina Filali, a 16-year-old girl who committed suicide after being forced to marry her rapist, sparked outrage in Morocco's public opinion. Article 475 of the Penal Code on the abduction of a minor allows for a rapist who marries the victim to avoid criminal prosecution.[3] This is not only unjust but imposes a double violence on the victim.

14. Many voices in Morocco demand that this provision be repealed. The Assembly joined these voices just a few weeks after Amina's dramatic gesture: in its Resolution 1873 (2012) on equality between women and men: a condition for the success of the Arab Spring, it asked Morocco (and Tunisia): to repeal 'the legal provision which enables the rapist of a minor to avoid criminal prosecution if he marries the victim'.

15. I am pleased to hear from various sources that the government has declared its intention to amend the Penal Code, in particular Article 475.[4] I also welcome the decision expressed by Minister Hakkaoui to declare 2013 the year to combat violence against women[5] and to submit to parliament a specific bill on violence against women. I hope that the Moroccan authorities will decide to make use of the Council of Europe expertise in this area by seeking advice on the draft, also to ensure that it is fully in line with Council of Europe standards. In this context, I totally support the appeal to the Moroccan authorities to consider accession to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, CETS No. 210), which offers the most advanced and far-reaching set of provisions in this field and is open to non-member states.

3.3. Trafficking in human beings

16. Trafficking in human beings is a human rights violation which affects women disproportionately. Morocco is a country of origin, destination and transit for victims of trafficking. A large number of trafficked persons transit through Morocco on their way to Europe. These include women, children and men, mostly trafficked for purposes of forced labour and sexual exploitation. Moroccan women are forced into prostitution in Gulf States, Jordan, Libya and Syria, as well as in European countries, while men are reportedly promised regular jobs in the Gulf but then face confiscation of their passports and forced labour upon arrival.

17. Countering transnational trafficking requires intense international criminal co-operation. Morocco is co-operating on this matter with various counterparts, particularly European organisations: for instance the Euromed Police III programme, funded by the European Union, comprises training activities for police forces in several areas including trafficking in human beings.

18. Internal trafficking is also rife in Morocco. Involuntary servitude of young girls from rural areas (the so-called *petites bonnes*, "little maids") is a widespread phenomenon. These girls, as young as 13, often face non-payment, physical, psychological and sexual abuse and sometimes restrictions on movement. A Human Rights Watch report published in November 2012 states that child domestic workers – mostly girls – work for 12 hours a day, seven days a week, for as little as US$11 a month.[6] They are sometimes denied adequate food. In extreme cases, they are victims of severe mistreatments and are even murdered. The press regularly reports on similar episodes. In March 2013, the death of a 13-year-old girl in Agadir shocked the public opinion once again and gave rise to questioning of the Minister of Justice by parliament.[7]

19. In May 2013, the Moroccan Government presented a draft bill on household work confirming the strict prohibition of employing minors under 15. This law has been criticised by Moroccan human rights organisations: the Moroccan Organisation for Human Rights (OMDH) found in particular that the law should provide harsher sanctions and a control mechanism: lacking which, the current text is weak and ineffective.[8] On the other hand, the law has innovative provisions as concerns foreign workers, providing for the first time an obligation to register them at the Ministry of Employment. This should help tackle trafficking for forced labour and other forms of abuse that numerous women, particularly from Sub-Saharan African countries and Asia, currently face in Morocco.

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2. www.amnesty.org/en/news/bias-penal-code-puts-women-and-girls-danger-morocco-2013-03-01.
3. www.unicef.org/french/infobycountry/morocco_62113.html; www.alarabiya.net/articles/2012/03/14/200577.html.
4. www.rtw.fr/fmaroc1.htm.
5. www.yabiladi.com/forum/femmes-maroc-subi-recemment-acte-2-5512767.html.
6. www.hrw.org/sites/default/files/reports/morocco1012ForUpload_2_0.pdf.
7. www.lamarocaine.com/agadir-deces-dune-jeune-domestique-son-employeuse-en-garde-a-vue/.
8. www.leconomiste.com/article/906411-travail-domestiqueles-mesurettes-du-projet-de-loi.

20. Effectively tackling human trafficking requires strong and structured co-operation. For this reason, I strongly support the draft resolution's call on the Moroccan authorities to consider accession to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197). This convention offers an effective, far-reaching framework for action and co-operation and several non-Council of Europe member States have signed and ratified it.

3.4. Discrimination on the grounds of sexual orientation and gender identity

21. In Morocco, lesbian, gay, bisexual and transgender (LGBT) people face discrimination in access to education, healthcare and work.[9] Discrimination is, however, largely undetected and systematically unreported, also because homosexuality is criminally sanctioned.

22. Same-sex consensual acts are criminalised under Article 489 of the Moroccan Penal Code of 1962, stating that any person who "commits a lewd or unnatural act" with an individual of the same sex may be sentenced to between six months and three years' imprisonment and fined 200 to 1 000 Moroccan dirhams. While these provisions were infrequently enforced in the past, recently there have been a number of convictions. Four people were prosecuted in May 2013, including two men from Souk el-Arbaa, not far from Rabat, who were sentenced to three years' imprisonment.[10]

23. These sentences and the provisions in the Penal Code on which they are based are in breach of the principle of non-discrimination, as well as of human rights including the right to privacy and to dignity. While it may take time to promote a change of mindset and achieve tolerance and respect for LGBT people, criminalisation of homosexuality should be repealed as a matter of urgency.

4. "Ensuring that the Family Code is fully implemented while initiating a public and political debate with a view to reviewing the provisions which are at variance with international human rights standards, including on the issue of polygamy" (sub-paragraph 8.21 of Resolution 1818 (2011))

24. Almost ten years after the adoption of a new *Moudawana* or Family Code, there is still room for improvement in Moroccan family law and its implementation. The remarks made by my predecessor, Ms Nursuna Memecan, rapporteur for opinion for the Committee on Equal Opportunities for Women and Men on the request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco, still apply. As she noted two years ago, the gap between the law and its implementation is wide.

25. As pointed out by the United Nations Committee on Racial Discrimination (CERD), a particular problem is that the Family Code is not applied in a uniform manner throughout the country, with vulnerable segments of the population, such as women and children living in remote areas, suffering double or multiple discrimination.

26. Training activities for staff within the judiciary and the legal professions, carried out by the authorities also in co-operation with the civil society and international partners, should continue. A wide range of actors, including non-governmental organisations, have set up activities to raise awareness among women and educate them on their rights under the law. Improving women's access to justice is crucial and should represent a top priority in this area.

27. In this context, it should be welcomed that, in May 2013, the Committee of Ministers of the Council of Europe accepted Morocco's request for observer status at the European Commission for the Efficiency of Justice (CEPEJ). CEPEJ has already been working closely with the Moroccan authorities for over a year to help evaluate how the country's legal system works and to provide guidance on reform. This forms part of a wider Council of Europe programme – together with the European Union – to help strengthen the independence and efficiency of legal systems in Morocco and Tunisia. I hope that it will have a positive impact on women's access to justice and the implementation of the Family Code.

28. In her opinion on the request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco, Ms Nursuna Memecan had already pointed out that, although the Moroccan authorities have restricted the conditions to contract polygamy marriages so as to strongly discourage them, polygamy is lawful in Morocco. Since the adoption of Assembly Resolution 1818 (2011),

9. www.refworld.org/pdfid/4b6fe29ed.pdf.
10. http://abcnews.go.com/International/wireStory/moroccans-homosexuality-months-19226261.

there has been no change as regards the legal provisions on polygamy. In addition, no public debate on its possible prohibition has been initiated, contrary to the recommendations of the Assembly in Resolution 1818 (2011) and Resolution 1873 (2012).

29. I would like to recall that, according to the Committee on the Elimination of all forms of discrimination against women, "Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States Parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5.*a* of the Convention".[11]

5. "Fighting racism, xenophobia and other forms of discrimination" (sub-paragraph 8.16 of Resolution 1818 (2011))

30. A growing number of foreigners, particularly from Sub-Saharan countries, migrate to Morocco for reasons of work or to study. While the country's economic development creates jobs appealing to foreign migrants, its co-operation programmes and inter-African international relations attract numerous students, particularly from the western and central parts of the continent.

31. Migrants and students from Sub-Saharan Africa face prejudice and discrimination. Traditional stereotypes, dating back from the times of slavery, are mixed with new fears of foreigners "stealing" jobs from Moroccans. Modern stereotypes related to the prevalence of AIDS, political instability and criminality in Sub-Saharan countries complete the picture.

32. Although racism, especially against black, non-Muslim foreigners, has been reported by the Moroccan media for years,[12] and has been pointed out by the United Nations Committee on Racial Discrimination (CERD)[13] and Moroccan non-governmental organisations, it remains a taboo in a country where hospitality is an important value. Due to underreporting and limited access to justice for the groups concerned, cases of racial discrimination and racism hardly ever make it to court.[14]

33. The Moroccans authorities should develop programmes to combat racism and xenophobia, based on three elements: awareness-raising for the general public, conveying the message that no discrimination can be accepted based on any ground, including racial discrimination; training of law enforcement officials, particularly those who are in charge of dealing with immigration, as well as border guards and judges; information on relevant legislation and the availability of legal remedies, addressed to concerned groups and lawyers.

34. I would also like to make a brief reference to the situation of people who are in need of international protection and migrants who transit through Morocco on their way to other destinations. The challenges faced by Morocco in this area have been the subject of an in-depth exchange of views between the Moroccan Parliament and the Committee on Refugees, Migrants and Displaced Persons (Rabat, 5 April 2013).[15]

11. General Recommendation No. 21 (13th session, 1994).
12. http://moroccoboard.com/news/1124-racism-in-morocco.
13. CERD, Concluding observations, Morocco, 25 August 2010, CERD/C/MAR/CO/17-18
14. Ibid.
15. AS/Mig/Inf (2013) 05 rev.