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

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Jordi XUCLÀ, Spain, Alliance of Liberals and Democrats for Europe

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Political Affairs and Democracy, Mr Bogdan Klich, on his comprehensive report, and supports by and large the proposed draft resolution.

2. The Parliament of Morocco was granted partner for democracy status on 21 June 2011 (see Resolution 1818 (2011)). Beforehand, the Committee on Legal Affairs and Human Rights supported the request of the Parliament of Morocco in this respect, whilst stressing the need to pursue constitutional reform, adhere to certain Council of Europe conventions and respect human rights and fundamental freedoms in Morocco.[2] In June 2013, the Parliamentary Assembly evaluated this partnership in its Resolution 1942 (2013) on the evaluation of the partnership for democracy in respect of the Parliament of Morocco,[3] for which the committee had also contributed an opinion.[4]

3. Since 2013, co-operation between the Parliament of Morocco and the Parliamentary Assembly has further developed and Morocco has pursued reforms in line with the commitments stemming from Resolution 1818 (2011). However, with respect to the human rights situation, most of the concerns mentioned in the committee's opinion of 2013, and set forth in Assembly Resolution 2004 (2014)[5] remain valid, in particular on the use of torture, inhuman or degrading treatment, poor conditions of detention, and violations of the freedoms of expression, assembly and association. Moreover, new issues of concern have appeared in the meantime.

4. Thus, the committee wishes to propose some amendments to further strengthen the draft resolution regarding human rights aspects.

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1. Reference to committee: Bureau Decision, Reference 3980 of 28 June 2013. Reporting Committee: Committee on Political Affairs and Democracy. See Doc. 13807. Opinion approved by the committee on 22 June 2015.
2. See Doc. 12646, committee's opinion on the request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco (rapporteur: Mr Arcadio Díaz Tejera, Spain, Socialist Group).
3. See also Doc. 13230 (rapporteur: Mr Luca Volonté, Italy, EPP/CD).
4. Doc. 13244 (rapporteur: Mr Jordi Xuclà, Spain, ALDE).
5. "Parliamentary contribution to resolving the Western Sahara conflict", adopted on 25 June 2014. See Doc. 13526, report of the Committee on Political Affairs and Democracy (rapporteur: Ms Liliane Maury Pasquier, Switzerland, SOC), and Doc. 13544, opinion of the Committee on Legal Affairs and Human Rights (rapporteur: Ms Teresa Bertuzzi, Italy, SOC).

B. Proposed amendments to the draft resolution:

Amendment A (to the draft resolution)

In paragraph 5.7, replace the second sentence, by the following:

> *"It welcomes the efforts made by the parliament to associate more actively the National Council on Human Rights, expert communities and non-governmental organisations with the law-making process, and calls on it to extend this practice so as to make their voices better heard."*

Amendment B (to the draft resolution)

In paragraph 5.9, after the words "the criminalisation of", add "adultery and".

Amendment C (to the draft resolution)

After paragraph 5.9, insert the following paragraph:

> *"remains concerned about the lack of progress concerning the issues of concern mentioned in paragraph 9 of Resolution 1942 (2013), such as the use of torture, inhuman or degrading treatment, poor conditions of detention, violations of the freedom of expression, the independence of the media, and the freedoms of association and of peaceful assembly."*

Amendment D (to the draft resolution)

At the end of paragraph 5.10, replace the words ", including those reported by civil society organisations and the media" by the words "as well as other issues reported by the United Nations, civil society and the media".

Amendment E (to the draft resolution)

In paragraph 8, at the end of the first sentence, add the following: ", such as torture, inhuman or degrading treatment, violations of the right to a fair trial and violations of the freedoms of expression, assembly and association".

C. Explanatory memorandum by Mr Xuclà, rapporteur for opinion

1. I can only congratulate Mr Klich on his report, which takes stock of the reforms carried out in Morocco between June 2013 and June 2015 and of the implementation of political commitments undertaken by its parliament in June 2011.

2. I should like, however, to propose a few amendments to the draft resolution, with a view to completing it with regard to compliance with human rights and fundamental freedoms in Morocco and the Western Sahara. In my explanatory memorandum to the committee's opinion on the previous report of the Committee on Political Affairs and Democracy in 2013,[6] I already pointed out a number of human rights concerns. Unfortunately, most of these concerns remain valid, in light of the reports of the United Nations and several prominent international non-governmental organisations (NGOs). The latter also reported extensively about other areas of concern (such as the very worrying situation of irregular migrants).

1. Amendment A (to the draft resolution)

Explanatory note:

The amendment aims at underlining the role of the National Council on Human Rights (NCHR) in the process of elaborating legislation in compliance with international human rights standards. As indicated in Mr Klich's report,[7] the role of this institution has increased in the last few years. The Moroccan Parliament has taken on board one third of the comments and proposals from the NCHR. This should be welcomed, but the Moroccan Parliament could be encouraged to take into account the NCHR's position still more often when drafting legislation.

6. Supra note 4.
7. Paragraphs 41 and 42.

2. Amendment B (to the draft resolution)

Explanatory note:

With reference to the decriminalisation of homosexuality, one should not forget that adultery still constitutes a crime in the Moroccan Criminal Code. A recent case reported by Human Rights Watch (HRW)[8] (concerning the ten-month prison sentences for journalist Hicham Mansouri and his co-defendant, a 30-year woman) shows that these provisions are still applied. As noted by HRW, the Ministry of Justice has even proposed to amend the Criminal Code to increase penalties for adultery, by imposing a fine in addition to a prison term.

The criminalisation of adultery is a violation of the right to privacy, as enshrined in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and also violates women's rights.[9] Therefore, one should recommend the decriminalisation of adultery.

3. Amendment C (to the draft resolution)

Explanatory note:

The amendment aims at putting emphasis on the human rights situation in Morocco, which has not improved since I examined this issue as rapporteur for opinion in 2013.

In its Resolution 1818 (2011), the Assembly considered that a number of specific issues, listed in its paragraph 8, were of key importance for strengthening the respect of human rights and fundamental freedoms in Morocco. In its Resolution 1942 (2013), the Assembly expressed its concerns in relation to the reported use of torture, inhuman or degrading treatment, poor conditions of detention, violations of the freedoms of religion and expression, the independence of the media, and the freedoms of association and of peaceful assembly.[10] As highlighted by the United Nations and prominent international NGOs advocating respect for human rights, most of these issues remain problematic.

In its Resolution 1818 (2011), the Assembly stressed the necessity of "**preventing torture** and inhuman or degrading treatment of persons deprived of their liberty; fighting **impunity** for crimes of torture and ill-treatment" (paragraph 8.13, emphasis added). Despite the fact that in November 2014 Morocco adhered to the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), there are still serious allegations of abuses in this respect.[11] For example, in its report of 19 May 2015, Amnesty International denounces acts of torture in Morocco, maintaining that there is also a culture of impunity.[12] Its report draws on 173 alleged cases of torture and other ill-treatment between 2010 and 2014,[13] ranging from beatings and stress positions to asphyxiation and drowning techniques as well as psychological and sexual violence. Most of these abuses occurred during custody and most of the victims were persons accused of terrorism or threats against national security, protesters, migrants, refugees and asylum seekers. Moreover, the authorities prosecuted and imprisoned individuals who had reported such abuses for "false reports" and "slander of security forces".[14] These findings were also corroborated by the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan E. Méndez, following his visit to Morocco in September 2012.[15] As underlined by the United Nations Working Group on Arbitrary Detention, torture and other ill-treatment are often used to obtain confessions, which are then rarely rejected by the trial courts.[16]

As regards conditions of detention (mentioned in paragraph 8.13 of Resolution 1818 (2011)), they still do not seem to be in line with the United Nations prison-related norms and standards. Overcrowding is an issue that needs to be addressed (for instance, in some cells there are no beds and ventilation is very poor), as has been acknowledged by the Moroccan authorities.[17] Overcrowding is mainly due to the excessive use of

8. HRW, Morocco: Prison Terms for Adultery, 2 June 2015.
9. See United Nations Working Group on Discrimination against Women in Law and in Practice, statement of 18 October 2012.
10. Paragraph 9.
11. See, for example, FIDH, La justice marocaine en chantier: des réformes essentielles mais non suffisantes pour la protection des droits humains, November 2014, pp. 17-21.
12. Amnesty International, Shadow of impunity: torture in Morocco and Western Sahara, May 2015.
13. Ibid., p. 7.
14. Ibid., p. 9.
15. A/HRC/22/53/Add.2, 30 April 2013, pp. 6-7.
16. A/HRC/27/48/Add.5, 4 August 2014, paragraphs 30-31.

detention on remand;[18] according to the FIDH, 50% of inmates are in detention on remand.[19] Moreover, the United Nations Working Group on Arbitrary Detention received allegations that Morocco had served as "a departure point, a transit country and a destination for illegal extraordinary renditions carried out in the context of the international fight against terrorism. … Such extraordinary renditions have allegedly been accompanied by incommunicado detention and/or detention in secret places, as well as acts of torture and ill-treatment, particularly during the questioning of suspects".[20]

As regards freedom of expression and media independence (mentioned in paragraph 8.18 of Resolution 1818 (2011)), journalists and activists often face prosecution and imprisonment for publicly criticising the King, State officials and institutions (especially the police)[21] or even other Arab governments.[22] NGOs have also reported about the very broad interpretation given to anti-terrorism legislation, which is often applied as a pretext to indict and convict journalists.[23]

Freedom of association and of peaceful assembly (mentioned in paragraph 8.19 of Resolution 1818 (2011)) also remains an issue, even though the Constitution guarantees the free enjoyment of these rights. Despite the fact that there are thousands of independent associations, government officials impede the registration of many of them, in particular those defending the rights of Sahrawis, Amazighs (Berbers), sub-Saharan migrants and the unemployed. In the Western Sahara, the authorities refused legal recognition to all local human rights organisations supporting independence for that territory, even though they had been recognised by court decisions.[24] The FIDH[25] and Amnesty International[26] also reported about the authorities' refusal to register "Freedom Now", an NGO whose goal is to defend freedom of expression, as well as of some branches of the Moroccan Association of Human Rights (AMDH).[27] Moreover, just a few days ago, two researchers from Amnesty International were expelled from Morocco on the grounds of posing a "threat to the public order".[28] As regards freedom of peaceful assembly, the use of excessive force by security forces against protesters (pro-reform or social justice activists, students, workers or unemployed), causing death and injuries, have been reported on several occasions. Some of the protesters were also placed in detention and sentenced to prison terms (like those who took part in a trade union demonstration in Casablanca in April 2014) and some events were banned, especially in Western Sahara.[29]

4. Amendment D (to the draft resolution)

Explanatory note:

This amendment aims at enumerating some other issues of concern (not mentioned in proposed amendment D), such as violations of the right to a fair trial, ill-treatment of irregular migrants and trafficking in human beings. It also points out that these problems have not only been reported by civil society and the media, but also by United Nations bodies.

The respect for the right to a fair trial remains an issue, as reported by many NGOs, especially in the context of the use of confessions obtained by torture or other ill-treatment (see above). According to the United Nations Special Rapporteur on torture, many cases are transmitted to courts only on the basis of such confessions.[30] There have also been allegations of politically motivated charges in some cases and of courts' refusals to allow defence lawyers to cross-examine prosecution witnesses or to call defence witnesses.[31]

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17. Supra note 15, paragraphs 46-47.
18. Supra note 16, paragraphs 47-50.
19. Supra note 11, p. 23.
20. Supra note 16, paragraph 27.
21. For more detail on these cases, see Amnesty International Annual Report 2014/2015, The State of the World's Human Rights, p. 258.
22. HRW, Dispatches: Morocco's Tolerant' Islam Meets Realpolitik, E. Goldstein, 23 January 2015.
23. Ibid., pp. 256 and 259. See also HRW, Morocco/Western Sahara, World Report 2014, January 2014. See, for example, the case of Ali Anouzla, who published an article on the Lakome online news about a video released by the al-Qa'ida and who could face up to 20 years' imprisonment.
24. Ibid.
25. FIDH, Ongoing violations: Morocco should get back on track. Position Paper Morocco, 25 November 2014.
26. Amnesty International, supra note 21, p. 256.
27. HRW, Morocco: Persistent Restrictions on Rights Group, 8 April 2015.
28. Amnesty International, Expulsion Throws Spotlight on Morocco Human Rights, J. Dalhuisen, 16 June 2015.
29. Amnesty International, supra note 21, p. 256-257; FIDH, supra note 11, p. 10.
30. Supra note 15, paragraph 27.
31. See Amnesty International, supra note 21, p. 258; FIDH supra note 11, pp. 13-15.

Special attention should also be brought to the human rights of refugees, asylum seekers and irregular migrants. Although since 2013 Morocco has led a more humanitarian policy concerning the legalisation of illegal migrants, cases of abusive use of force by police against them, non-elucidated deaths and unfair trials have been reported.[32] As noted by the United Nations Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo, following her visit to Morocco in June 2013, there are some 20 000 irregular migrants in Morocco and there has been a significant increase in the number of victims of **trafficking** in this country in recent years.[33] Thus, the Special Rapporteur has made a number of recommendations to the government concerning the creation of a legal and institutional framework to combat this phenomenon.

5. Amendment E (to the draft resolution)

Explanatory note:

The amendment aims at enumerating some of the main human rights problems in the Western Sahara, such as the use of torture, inhuman or degrading treatment, poor conditions of detention, violations of the right to a fair trial and violations of freedoms of expression, assembly and association, which have been underlined in Mr Klich's report (see paragraphs 82-89) and Assembly Resolution 2004 (2014).[34]

32. FIDH, supra note 11, pp. 21-22.
33. A/HRC/26/37/Add.3, 1 April 2014, paragraphs 5 and 7.
34. Paragraph 4.11.