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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 André VALLINI, France, Socialists, Democrats and Greens Group

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 (Poland, EPP/CD), on his very comprehensive report and, on the whole, endorses the draft resolution which has been proposed.

2. On 21 June 2011, the Parliamentary Assembly granted the Moroccan Parliament partner for democracy status (see Resolution 1818 (2011)). The Committee on Legal Affairs and Human Rights had previously supported the Moroccan Parliament's request in this regard, while stressing the need for the country to pursue constitutional reform, accede to certain Council of Europe conventions and respect human rights and fundamental freedoms in the country.[2] On two occasions, in June 2013 and 2015, the Assembly carried out an evaluation of this partnership in its Resolutions 1942 (2013) and 2061 (2015),[3] to which the committee also contributed with an opinion.[4]

3. As underlined by the Committee on Political Affairs and Democracy, co-operation between the Moroccan Parliament and the Assembly has intensified since 2011 and Morocco has successfully pursued reforms to strengthen democratic governance.

4. The committee therefore wishes to propose some amendments to further strengthen the draft resolution concerning the aspects relating to human rights in order to encourage the Moroccan authorities to guarantee that the rights and fundamental freedoms enshrined in the 2011 Constitution are fully implemented in practice. In addition, given that the committee has regularly considered issues relating to the death penalty in Morocco, on the basis of information documents presented by its general rapporteur on the abolition of the death penalty,[5] it would like to encourage the Moroccan authorities to abolish the death penalty entirely.

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1. Reference to committee: Bureau decision, Reference 4246 of 23 November 2018. Reporting Committee: Committee on Political Affairs and Democracy. See Doc. 14659. Opinion approved by the committee on 4 March 2019.
2. See the committee opinion on "Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco" (rapporteur: Mr Arcadio Díaz Tejera, Spain, SOC), Doc. 12646.
3. Resolutions on "Evaluation of the partnership for democracy in respect of the Parliament of Morocco", adopted on 25 June 2013 and 23 June 2015 respectively, see Doc. 13230 (rapporteur: Mr Luca Volontè, Italy, EPP/CD) and Doc. 13807 and (rapporteur: Mr Bogdan Klich, Poland, EPP/CD).
4. Doc. 13244 and Doc. 13826 (rapporteur: Mr Jordi Xuclà, Spain, ALDE).
5. See the revised information note, "Abolition of the death penalty in Council of Europe member and observer States, Belarus and countries whose parliaments have co-operation status – situation report" by Mr Yves Cruchten (Luxembourg, SOC), former member of the committee, AS/Jur (2018) 44, 3 October 2018, declassified.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 5.1, after the first sentence, insert the following sentence:

> *"Nevertheless, the Assembly is still concerned that the Moroccan courts continue to impose the death penalty."*

Amendment B (to the draft resolution)

At the end of paragraph 5.1, add the following sentence:

> *"It also encourages the Moroccan authorities to sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;"*

Amendment C (to the draft resolution)

At the end of paragraph 6.3, add the words "and encourages the Moroccan authorities to promptly finalise implementation of these mechanisms;"

Amendment D (to the draft resolution)

In paragraph 6.4, replace the words "and to ensure respect for freedom of expression, freedom of the press and the right of association" with the words ", the media and the United Nations and to ensure respect for human rights and fundamental freedoms and guarantee that human rights defenders, civil society and the media can operate in an environment that is conducive to their work;".

Amendment E (to the draft resolution)

After paragraph 6.4, insert the following new paragraph:

> *"asks the Moroccan authorities to reinforce further their efforts to respond to the issues of concern raised in paragraph 5 of Resolution 2061 (2015);"*

C. Explanatory memorandum by Mr André Vallini, rapporteur for opinion

1. I cannot but congratulate Mr Klich on his report, which takes stock of the reforms carried out in Morocco between June 2015 and October 2018 and the implementation of the political commitments made by the Moroccan Parliament in June 2011. With the enactment of almost all the institutional laws provided for in the 2011 Constitution, the country has made real progress in the field of the rule of law and in the establishment of institutions entrusted with the promotion of human rights. In addition, the partnership for democracy with the Assembly is working in a satisfactory way.

2. Nevertheless, I would like to propose some amendments to the draft resolution, in order to supplement the aspects relating to respect for human rights and fundamental freedoms in Morocco. In his opinions on the two previous reports of the Committee on Political Affairs and Democracy of 2013 and 2015,[6] our former committee colleague Mr Jordi Xuclà highlighted a number of human rights concerns. Unfortunately, in the light of information coming from the media and from reports of the United Nations and several leading international and national non-governmental organisations (NGOs), most of them remain valid today. In addition, I would like us to further encourage the Moroccan authorities to abolish the death penalty entirely, to which the Moroccan Parliament gave an undertaking on becoming a partner for democracy with the Assembly in 2011.

6. See footnote 4 above.

1. Amendment A (to the draft resolution)

Explanatory note

3. This amendment seeks to highlight the fact that, despite the implementation of a *de facto* moratorium on executions since 1993, Moroccan courts continue to impose death sentences, as stated in Mr Klich's last report.[7] According to Amnesty International's report on death sentences and executions in 2017 (published in April 2018), this concerns at least 95 people and the World Coalition against the Death Penalty also indicates that 95 people currently remain under this sentence.[8]

4. According to Amnesty International, in 2015, nine death sentences were imposed in Morocco and Western Sahara.[9] There were six such sentences in 2016 and some individuals sentenced to death had their sentence commuted or were pardoned.[10] In 2017, at least 15 individuals were sentenced to death and the authorities granted four commutations.[11] Other death sentences were handed down in 2018.[12] In January 2019, the King pardoned one prisoner who had been given a death sentence.[13]

5. In the new draft Criminal Code, there are still 11 crimes for which the death penalty can be imposed.[14] In December 2016, the United Nations Human Rights Committee expressed concern about the proposed amendments to the Criminal Code to extend the scope of the death penalty to three new categories of crimes (despite a reduction in the number of capital offences); these concerns were reiterated by Amnesty International in September 2017.[15] On 17 December 2018, during the vote in the United Nations General Assembly on its latest resolution (the seventh) on a moratorium on the use of the death penalty,[16] the Moroccan delegation abstained.

2. Amendment B (to the draft resolution)

Explanatory note

6. The purpose of this amendment is to encourage the Moroccan authorities to sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the United Nations General Assembly in New York on 15 December 1989. This legal instrument, to which 86 countries are Parties, prohibits executions and requires a commitment from each State Party to "take all necessary measures to abolish the death penalty within its jurisdiction". If Morocco were to accede to this optional protocol, it would represent a step forward in the process of abolishing the death penalty and would further demonstrate its commitment in this matter.[17]

3. Amendment C (to the draft resolution)

Explanatory note

7. The purpose of this amendment is to encourage the Moroccan authorities to promptly finalise the establishment of the National Mechanism for the Prevention of Torture (NMPT) within the National Human Rights Council ("CNDH"), provided for by Law No. 76-15 of February 2018 (see paragraph 51 of Mr Klich's report), in particular in view of allegations of torture and inhuman and degrading treatment and the use of confessions obtained following such treatment (see below), along with the implementation of other provisions provided by that law.

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7. Doc. 14659, paragraph 14.
8. As at 4 February 2019, see www.worldcoalition.org/Morocco.
9. Amnesty International, Death sentences and executions 2015, p. 52.
10. Amnesty International, Death sentences and executions 2016, pp. 5-6.
11. Amnesty International, Death sentences and executions 2017, pp. 32 and 34.
12. At least eight as at late September. See L. Hallaoui, *HUffPost Maroc*, Abolition de la peine de mort: Le Maroc appelé à voter la résolution onusienne d'un moratoire sur les exécutions, 4 December 2018 (French only).
13. www.peinedemort.org/zonegeo/MAR/Maroc.
14. Doc. 14659, paragraph 15.
15. United Nations Human Rights Committee, Concluding observations on the sixth periodic report of Morocco, CCPR/C/MAR/CO/6, 1 December 2016, paragraph 19, and Amnesty International, public statement of 21 September 2017.
16. A/RES/73/175.
17. See also CCPR/C/MAR/CO/6, op. cit., paragraph 20.

4. Amendment D (to the draft resolution)

Explanatory note

8. The purpose of this amendment is to highlight the fact that concerns relating to respect for human rights have been reported not only by civil society but also by United Nations bodies and the media. In addition, the Moroccan authorities should be called upon to respect not only freedom of expression, freedom of the press and the right of association, but all human rights and fundamental freedoms (as guaranteed in the international legal instruments to which Morocco has acceded). This amendment also emphasises the need to ensure that human rights defenders, civil society and the media can operate in an environment that is conducive to their work, given the cases and problems mentioned above (see Amendment E).

5. Amendment E (to the draft resolution)

Explanatory note

9. This amendment seeks to draw attention to the human rights situation in Morocco. In its Resolution 2061 (2015), the Assembly expressed concern at the "insufficient progress on the issues of concern mentioned" in Resolution 1942 (2013), such as the use of torture, inhuman or degrading treatment, poor conditions of detention, violations of the freedom of expression and the freedoms of association and of peaceful assembly.[18] According to information from the United Nations, international and national human rights NGOs and the media, these issues remain valid.

10. With regard to torture and inhuman or degrading treatment of persons deprived of their liberty, several cases have been reported despite Morocco's accession, in November 2014, to the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Serious allegations of abuse in this regard continue to be reported.[19] In October 2017, the United Nations Subcommittee on Prevention of Torture (SPT) carried out its first visit to the country to provide advice and support for the establishment of a national mechanism for the prevention of torture. In its December 2016 observations, the United Nations Human Rights Committee remained concerned about the continuing allegations of torture or ill-treatment by State officials in Morocco and Western Sahara, in particular against persons suspected of terrorism or of endangering national security or posing a threat to the territorial integrity of the State.[20] Amnesty International's 2017/2018 report once again makes reference to such allegations and criticises the existence of a culture of impunity.[21] According to this NGO, the courts have used statements made by people in detention in the absence of a lawyer as evidence against them, without properly investigating allegations that they were extracted under torture and other ill-treatment by law-enforcement officials. This was reportedly the case during the trial of the leaders of the Hirak (a socio-economic protest movement founded in 2016 in the Rif region). In June 2018, 53 activists belonging to this movement were given, at first instance, sentences of up to 20 years' imprisonment. The court took as evidence the "confessions" of the accused, who tried to refute them by alleging that these "confessions" were obtained under duress, and did not explain why it had rejected medical reports suggesting that at least some of the accused had suffered police violence during or after their arrests.[22] In addition, allegations of torture have been dismissed in other trials, including the case of the deadly clashes in 2010 in Gdim Izik (Western Sahara).[23]

11. Furthermore, Amnesty International claims that the authorities have taken no action to remedy the impunity enjoyed by the perpetrators of serious violations committed in Morocco and Western Sahara between 1956 and 1999 (systematic torture, enforced disappearances and extrajudicial executions).[24]

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18. Paragraph 5.12 of Resolution 2061 (2015).
19. Amnesty International Report 2017/2018: Morocco and Western Sahara, pp. 266-267.
20. CCPR/C/MAR/CO/6, op. cit., paragraph 23.
21. Amnesty International, see footnote 19 above. In a May 2015 report, Shadow of impunity: torture in Morocco and Western Sahara, Amnesty International examined 173 allegations of acts of torture and other ill-treatment between 2010 and 2014.
22. Human Rights Watch, Morocco: Torture suspicions mar mass trial verdicts, 30 November 2018.
23. Amnesty International, see footnote 19 above, p. 267.
24. See also Human Rights Council, Working Group on the Universal Periodic Review, Summary of stakeholders' submissions on Morocco, A/HRC/WG.6/27/MAR/3, paragraphs 26-28.

12. As of late 2016, conditions of detention still did not appear to be in compliance with United Nations standards and principles relating to prisons, in particular on account of the excessive use of pretrial detention, with half of all detainees being remand prisoners.[25] Although the government had announced measures to address this problem (including the use of alternative sentences),[26] the problem of overcrowding in prisons was raised during the Universal Periodic Review in July 2017.[27]

13. With regard to freedom of expression, prison sentences for several offences of non-violent expression (against Islam, the monarchy or challenging territorial integrity) are still maintained in the Criminal Code, despite the fact that the 2016 Press and Publishing Code eliminated such sentences. Some journalists, bloggers and activists have been prosecuted and detained for publicly criticising the authorities or relaying information about human rights violations (including in Western Sahara), acts of corruption or people's demonstrations, including those in the Rif.[28] Criminal provisions on offences relating to national security and counterterrorism legislation are vague and often serve as a pretext for charging and convicting journalists or activists. For example, the journalist Hamid El Mahdaoui, a well-known government critic, was sentenced to two terms of imprisonment – once for "inciting citizens to participate in a banned demonstration" and again for "failing to report a security threat".[29] Seven people, including activists, journalists and the academic Maâti Monjib, were charged with "attacks on national security" for promoting a mobile citizen journalism application which protects the confidentiality of its users,[30] and the journalist Ali Anouzla for "advocating, supporting and inciting terrorism" for an article published on the internet.[31] In addition, on 4 December 2018, the journalist Nazha el Khalidi, a member of the Sahrawi collective Équipe Media (founded in 2009 to document and disseminate information on human rights violations in Western Sahara) was arrested for a few hours by the police in Laâyoune (Western Sahara) while filming police violence against participants in a demonstration; she claims to have been assaulted by police during her arrest.[32] In January 2019, another member of the Équipe Media, Mohamed Mayara, was reportedly physically assaulted by police at Laâyoune airport on his way back from a visit to the Sahrawi refugee camps.[33]

14. Concerns also remain about respect for the freedoms of association and peaceful assembly. The authorities have obstructed the registration of several new organisations, particularly if they were deemed critical of government policies and practices.[34] In addition, between January 2017 and July 2018, they prohibited 16 events organised by local branches of the Moroccan Human Rights Association (AMDH) from being held, either by denying access to participants or by forcing the venue manager to cancel the event. Since 2015, the government has *de facto* banned Amnesty International's research visits. Although Human Rights Watch researchers were able to conduct such visits to Western Sahara in 2018, they were frequently followed by cars with plain-clothes officers on board.[35] In May 2018, two Swedish citizens and members of Emmaus Stockholm, which supports the Sahrawi Association of Victims of Grave Human Rights Violations committed by the Moroccan State (ASVDH) – Caroline Nord and Juan Obregón – were arrested and questioned by customs police at Laâyoune airport and deported to Stockholm.[36]

15. The International Federation for Human Rights (FIDH) has reported several cases of harassment of human rights defenders, who are members of NGOs working in this field. For example, in April 2018, Zine el Abidine Erradi, a member of the AMDH Paris/Île-de-France Section, a former Moroccan political prisoner and refugee in France, was arrested at Agadir airport and placed in provisional detention. In 2016, the Agadir Court of Appeal had sentenced him *in absentia* to one year in prison for "violent and unauthorised demonstration" and "civil disobedience".[37] In addition, Ettalbi Hafdalla and Babit El Kori, respectively legal adviser and President of the El Ghad (Tomorrow) Association for Human Rights, and the latter's wife, were

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25. Ibid., paragraph 32, and CCPR/C/MAR/CO/6, op. cit., paragraphs 29-30.
26. UN Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/2, A/HRC/WG.6/27/MAR/1, paragraphs 57-59.
27. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review. Morocco, A/HRC/36/6, 13 July 2017, see in particular Recommendation 144.103.
28. Amnesty International, see footnote 19 above, pp. 265-266.
29. Ibid. and Human Rights Watch, World Report 2019, Morocco/Western Sahara. Events of 2018.
30. FIDH, Maroc: trois ans de harcèlement à l'encontre de Maâti Monjib et de six défenseurs des droits humains, 3 April 2018.
31. Amnesty International, See footnote 19 above, p. 265.
32. www.fidh.org/fr/themes/defenseurs-des-droits-humains/maroc-detention-arbitraire-de-nazha-el-khalidi-journaliste-et-membre.
33. FIDH, Maroc/Sahara Occidental: Mohamed Mayara agressé par des policiers à l'aéroport de Laâyoune, 24 January 2019.
34. A/HRC/WG.6/27/MAR/3, see footnote 24 above, paragraph 43.
35. Human Rights Watch, see footnote 29 above.
36. FIDH, Maroc/Sahara: Détention arbitraire et déportation de M^{me} Caroline Nord et M. Juan Obregón, 15 May 2018.

harassed and threatened by police officers or unknown persons. The latest threats they faced were linked to the invitation from the European Commission received by Mr Hafdalla and Mr El Kori to take part in the process of consultation with the Sahrawi people.[38]

16. With regard to freedom of peaceful assembly, in 2017 and 2018, NGOs reported on numerous occasions that security forces used excessive force to disperse demonstrations (particularly in Western Saharan cities such as Laâyoune, Smara, Boujdour and Dakhla) and arrested peaceful demonstrators on grounds such as unauthorised demonstrations[39] and attacks on police officers. Between March and May 2018, at least 69 participants in the socio-economic demonstrations in Jerada, in the northeast of the country, were arrested. The demonstrations in the Rif resulted in the arrest of more than 400 activists, many of whom were sentenced to up to 20 years' imprisonment for breaches of national security.[40] Amnesty International claims that the justice system did not seriously investigate the circumstances of the deaths of two demonstrators (Imad El Attabi and Adbelhafid Haddad).

17. Moreover, respect for the right to a fair trial also remains a problem, particularly in the context of the use of confessions obtained through torture or other ill-treatment or the refusal of courts to allow defence lawyers to cross-examine prosecution witnesses or call defence witnesses (see above). These practices have already been singled out by the United Nations Human Rights Committee.[41] Furthermore, in its 2017/2018 report, Amnesty International states that several demonstrators, bloggers and activists have been sentenced to prison terms following unfair trials on the basis of false accusations (see in particular the cases of the Sahrawi blogger and Sahrawi activist Walid El Batal and Hamza El Ansari).[42] It should also be noted that the Code of Criminal Procedure authorises any accused person to contact his or her lawyer after 24 hours of police custody, which may be extended to 36 hours. However, detainees are not allowed to be assisted by a lawyer when they are questioned by the police or when the police present them with statements for signature.

37. www.fidh.org/fr/themes/defenseurs-des-droits-humains/maroc-arrestation-et-etention-arbitraire-de-m-zine-el-abidine-erradi.
38. www.fidh.org/fr/themes/defenseurs-des-droits-humains/maroc-menaces-et-harcelement-contre-mm-ettalbi-hafdalla-et-babit-el.
39. This practice had previously been criticised by the UN Human Rights Committee in 2017, see CCPR/C/MAR/CO/6, op. cit., paragraph 46.
40. Human Rights Watch, see footnote 29 above, and Amnesty International, footnote 19, p. 267.
41. CCPR/C/MAR/CO/6, op. cit., paragraph 34.
42. Amnesty International, see footnote 19 above, p. 267.