Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

1949.2019

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 14869
10 April 2019

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

Committee Opinion[1]
Committee on Equality and Non-Discrimination
Rapporteur: Ms Edite ESTRELA, Portugal, Socialists, Democrats and Greens Group

A. Conclusions of the committee

The Committee on Equality and Non-Discrimination congratulates the rapporteur of the Committee on Political Affairs and Democracy on its detailed analysis of the situation in Morocco from the point of view of democratic institutions and fundamental freedoms. It supports the draft resolution and agrees with the assessment that the partnership for democracy with the Parliament of Morocco is overall very satisfactory.

The principle underlying partner for democracy status, namely open and constructive co-operation to strengthen democracy, human rights and the rule of law, prompts the Assembly to underline the positive developments, without disregarding any of the more critical aspects, and to assure the Moroccan authorities of its political support for the reform process.

Accordingly, it needs to be pointed out that in certain areas more progress could be made in the implementation of the political commitments entered into by Morocco. Such is the case with regard to gender equality, despite the remarkable progress made since 2004, and the respect for the right to private and family life.

The Committee on Equality and Non-Discrimination again emphasises the excellent co-operation with the Moroccan parliamentary delegation, both in terms of its members' active participation in the committee's work and with regard to the opportunities given to the delegation to carry out regional inter-parliamentary co-operation activities in Morocco on issues dealt with by the committee.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 5.3, after the words "at local elections.", insert the following sentence:

> *"The Assembly encourages the Moroccan Parliament to consider the possibility of increasing the number of seats in the House of Representatives reserved for women and allocated on the basis of national electoral lists and of introducing incentives for political parties with a view to increasing the number of female candidates in the other lists. The Assembly recommends repealing the provision prohibiting the re-election to the House of Representatives, for a national electoral constituency, of any person who has already been elected to the said House for that constituency."*

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 9 April 2019.

Explanatory note: The lists reserved for women in the national constituency only enable the election of 60 members who cannot be re-elected at the end of their term on a list of the same type, thus preventing many parliamentarians from continuing their work and depriving parliament of the experience they have acquired.

Amendment B (to the draft resolution)

At the end paragraph 6.4, add the words "as well as freedom from discrimination".

Explanatory note: This amendment aims to strengthen the paragraph by including a reference to the right to protection from discrimination. Civil society represents diverse groups and categories (women, national and linguistic minorities, migrants, people with disabilities, lesbian, gay, bisexual, transgender and intersex (LGBTI) people and others) who are potential victims of discrimination.

Amendment C (to the draft resolution)

After paragraph 6.5, add the following paragraph:

> *"urges the Moroccan Parliament to abolish the provisions of the Criminal Code that criminalise sexual relations between adult people of the same sex or between people of different sexes who are not related by marriage, as well as adultery, and notes that no action has been taken in response to the recommendations on this subject set out in Resolution 1942 (2013) and Resolution 2061 (2015)."*

Explanatory note: Articles 489, 490 and 491 of the Moroccan Penal Code contradict the rights enshrined in the European Convention on Human Rights (ETS No. 5) (right to respect for private and family life, Article 8) and in the Moroccan Constitution of 2011 (right to the protection of private life, Article 24).

C. Explanatory memorandum by Ms Edite Estrela, rapporteur for opinion

1. The Committee on Political Affairs and Democracy's report on the "Evaluation of the partnership for democracy in respect of the Parliament of Morocco" is a follow-up to Resolution 2061 (2015) on the same subject. Since 2015, the situation has changed with respect to several of the issues addressed at that time by the Committee on Equality and Non-Discrimination in its opinion. The changes include amendments to the Criminal Code and the adoption of a law on violence against women. This opinion takes account of these developments. I would also like to pinpoint certain aspects of current legislation and policies likely to constitute progress towards the goal of parity enshrined in the Moroccan Constitution of 2011.

1. Gender equality: progress continues, improvements are still possible

2. What the American academic, Valentine M. Moghadam, wrote ten years ago on the relationship between democratisation and women's rights is still relevant: "today, across the Arab world and in Iran, modernizing women are principal agents of democratization and cultural change. Democratization and women's rights movements have emerged more or less in tandem. These processes are closely intertwined and indeed mutually dependent".[2] For this reason, while progress on gender equality in Morocco is very positive, it is important to press forward in this direction. In particular, in view of the important role that women's civil society organisations have played in this process, the Moroccan authorities should continue to take into account the input they receive from those involved in this extensive and very active sector.

3. I would like to draw attention to two specific aspects that could be improved: women's political representation and legislation to combat gender violence. Over the last few years, the proportion of women in the parliament and other national and local elective bodies has increased, especially through the introduction of positive measures. For the House of Representatives in particular, lists reserved for women are used in the national constituency, making it possible to elect 60 women parliamentarians (others participate in elections on ordinary lists alongside male candidates). This measure was the subject of an appeal to the Constitutional Court, which ultimately ruled that it was lawful but also noted the provisional nature of the system. In my opinion, while confirming that these measures are temporary, the number of parliamentarians elected on the basis of special lists should be increased. There is currently no consensus, but at least one political group has indicated it is in favour of raising the number from 60 to 90.

2. The Gender of Democracy: The Link Between Women's Rights and Democratization in the Middle East, Valentine M Moghadam, Carnegie Endowment for International Peace, 20 August 2008.

4. Furthermore, a vexed aspect of the present electoral system is the fact that parliamentarians elected to the national constituency (60 women, as well as 30 young people) cannot be re-elected in that constituency at the end of their term. The only possibility they have is to stand in local constituencies, with more limited chances of success, with the result that quite a number of women and young people have been able to enter parliament through this system but have been replaced in the following elections, which deprives the House of Representatives of the experience they have gained. I believe this system of ineligibility should clearly be abolished. At the same time, the number of female candidates on non-reserved lists should increase. This falls mainly within the remit of political parties.

5. Another point is the law on violence against women, which was passed in February 2018. Unfortunately, the original draft was gradually watered down during the parliamentary proceedings and the final outcome has been severely criticised by experts and activists. The law does make some forms of violence against women, such as forced marriage and harassment, a criminal offence, but lacks important provisions, such as making marital rape an offence. There is a need for a process of reflection here, taking particular account of input from civil society and of European experience in the implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") in order to reform Moroccan law and extend the protection afforded to victims of violence on the basis of higher standards.

2. Discrimination on the basis of sexual orientation and gender identity: continuing violations of freedom to enjoy personal and family life

6. Article 489 of the Moroccan Criminal Code, which makes consenting relations between persons of the same sex a criminal offence, is still in force. Parliamentary Assembly Resolution 2061 (2015) on the evaluation of the partnership for democracy in respect of the Parliament of Morocco already mentioned the need to abolish this provision. The opinion of the Committee on Equality and Non-Discrimination at that time referred to several instances of criminal penalties imposed by the Moroccan courts. This practice has continued since then: several cases of arrests and convictions have been reported by the Moroccan and international press and mentioned by human rights organisations. The criminalisation of consenting relations between individuals of the same sex constitutes a violation of human rights, in particular as enshrined in the European Convention on Human Rights (Article 8, respect for the right to private and family life) and in the Moroccan Constitution of 2011, which introduced the right to protection of private life, which up to then had not been recognised in Moroccan constitutional law.

7. In Morocco, as in many other countries, this criminalisation is a legacy of legislation of European origin imposed during the colonial period. Some countries quickly abolished it after independence. One example is Jordan, another country of the Middle East/North Africa region, whose population, like that of Morocco, is mainly Muslim and whose parliament also has partner for democracy status with the Assembly. In Jordan, the criminalisation of homosexual relations was repealed in 1951. This is reflected in the legislation in force in the West Bank, the part of the Palestinian territories under Jordanian jurisdiction at that time. Other countries have recently begun the decriminalisation process, the most notable case being that of India, where decriminalisation took place in 2018. In 2015, Mozambique also renounced "this archaic vestige … of the colonial era", to quote Human Rights Watch, by rejecting this form of discrimination based on sexual orientation.

8. At the institutional level, there has been no visible progress on this subject, but there are indications that a debate on the provision and, more generally, the situation of LGBTI people is beginning to take place in civil society and the Moroccan media. Several associations involved with this issue have emerged in the last few years, such as the ASWAT Collective, the Alternative Movement for Individual Freedoms (MALI), the Akaliyat association and Dynamique Trans. All these organisations operate discreetly, often through social media, because of the difficulty in obtaining legal recognition, which Mr Klich also mentions in his report. This has consequences, especially with regard to funding and visibility of their work. By contrast, the association, Kifkif, which has occasionally carried out activities in Morocco, is based in Madrid, where it was founded, *inter alia*, by Moroccan emigrants.

9. Some calls are being made for the abolition of Article 489 of the Criminal Code. The opinion magazine, TelQuel, has published editorials calling for respect for homosexual rights. Sarah Leah Whitson, Director of Human Rights Watch's Middle East and North Africa Division, stresses that the current situation is detrimental to the overall outcome in terms of the protection of fundamental rights in the country: "If Morocco truly aspires to be a regional leader on human rights, it should lead the way in decriminalising homosexual conduct."

10. At a hearing with the Committee on Equality and Non-Discrimination in Paris on 10 December 2018, Driss El Yazami, the then President of the National Human Rights Council, spoke in favour of repealing several articles of the Moroccan Criminal Code that infringe the right to private life, namely Article 489 on homosexual relations, as well as Articles 490 (extramarital sexual relations) and 491 (adultery). In my opinion, the Parliamentary Assembly can only share this position on the three provisions and, since no action has been taken in response to the previous appeals to the Moroccan Parliament to abolish them, the Assembly should firmly reiterate these calls.

3. The rights of people with disabilities

11. The policies concerning people with disabilities in Morocco have taken a positive turn in the last few years. Two important steps in this respect were the ratification in 2009 of the Convention on the Rights of Persons with Disabilities and its Optional Protocol and the adoption of the Constitution of 2011, Article 34 of which requires the public authorities to introduce policies and programmes for people with specific needs. In addition to the principle of non-discrimination reaffirmed in the 2011 Constitution, it can be said that the political, social, economic and cultural rights of people with disabilities are now constitutionally entrenched.

12. Morocco has undertaken to implement the provisions of the Convention on the Rights of Persons with Disabilities, Article 33 of which provides, *inter alia*, for the creation of a governmental co-ordination mechanism. A ministerial commission tasked with monitoring the strategies and programmes for the promotion of the rights of people with disabilities was set up in 2014. Chaired by the head of the government, it is responsible for monitoring the implementation of the relevant international conventions, making recommendations on legislative and regulatory measures, issuing opinions and strengthening the interaction between government departments to implement programmes and measures in this area. At the same time, a technical commission has been formed. Almost all ministries are involved in protecting the rights of people with disabilities, and collaboration between all these bodies is essential.

13. In this connection, an integrated public policy for promoting the rights of people with disabilities, covering the period 2016-2026, was adopted in 2015 and a national action plan in this area was launched in 2017 to implement the integrated public policy. The action plan includes important initiatives, such as the establishment of a National Monitoring, Research and Documentation Centre on Disability, the setting up of Guidance and Assistance Centres for People with Disabilities and the introduction of quotas for the employment of people with disabilities in both the public and private sectors. The Ministry for Family Affairs, Solidarity, Equality and Social Development plays an important role in the implementation of these measures.

14. All the above measures show a high level of awareness and a strong political will to eradicate discrimination against people with disabilities and to work to bring about their social inclusion.

4. Integration of migrants and combating racism

15. Mr Klich's report clearly illustrates, on the one hand, the exemplary character of Morocco's migration and migrant integration policies while, on the other hand, pointing to the growing number of instances of intolerance of, and indeed violence against, foreigners, especially those from sub-Saharan Africa.

16. Morocco's efforts in this area are indeed remarkable. Many measures have been taken, especially since the adoption of the National Immigration and Asylum Strategy, which has made it possible not only to regularise the situation of thousands of migrants but also to give them access to a large number of services (care, education, housing, etc.) on an equal footing with Moroccans. The strategy comprises 11 programmes, both in the areas I have mentioned and in others such as employment, combating human trafficking, communication and international co-operation.

17. In connection with the Strategy's education and culture programme, for example, 5 545 migrant children were able to attend State and private schools in the 2017-2018 school year. The aim of the culture, youth and leisure programme is to foster the integration of young migrants and refugees by providing opportunities for interaction, such as sports activities and summer camps (600 migrant children and refugees aged 7 to 14 had the opportunity to attend summer camps in 2018). Other activities involved vocational training and legal aid.

18. While the National Strategy's Governance and Communication programme already provides for mechanisms for consultation on integration with civil society and the academic world, I believe that the role of civil society should be further promoted. Its contribution is remarkable, especially as far as awareness-raising campaigns are concerned. In addition to the first national campaign conducted in Morocco in 2014, I would like to mention as a "good practice" the trans-Maghreb campaign against racism, which took place for the first

time in 2016. A group of activists and national associations from Algeria, Morocco and Tunisia came together for this awareness-raising activity entitled “Neither slave, nor Negro – stop, that’s enough”. The mobilisation of Moroccan civil society in this area should continue and the authorities should lend their support.