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

Addendum to the report¹

Committee on Political Affairs and Democracy

Rapporteur: Mr Bogdan KLICH, Poland, Group of the European People's Party

1. Introduction

1. At its meeting on 11 September 2018, the Committee on Political Affairs and Democracy approved a report and adopted a draft resolution on the “Evaluation of the partnership for democracy in respect of the Parliament of Morocco”. As they were not going to be presented until the May 2019 Standing Committee, it seemed advisable to supplement the report, so as to inform Parliamentary Assembly members about recent developments in the country, follow up on particularly important human rights issues and report on certain activities carried out by the Council of Europe, especially the Assembly.

2. The Moroccan authorities were asked to contribute to the preparation of this addendum, and both the Ministry of Foreign Affairs and the National Human Rights Council (*Conseil national des droits de l'homme*, CNDH) took part in the ensuing dialogue, which, in the rapporteur's opinion, is characteristic of the partnership for democracy.

2. Activities of the Council of Europe and of the Assembly's Committee on Political Affairs

3. The rapporteur welcomes the developments that have taken place on this subject since the adoption of his report.

4. As far as the political dialogue conducted at Committee of Ministers level is concerned, the rapporteur reiterated the latter's desire that the intensity of this dialogue should “[reflect] the quality of the co-operation between Morocco and the Council of Europe” (see paragraph 91 of the report) – which, in highly diplomatic terms, meant that was not yet entirely the case. The situation began to reverse with the visit to Rabat on 11 and 12 April 2018 by the Deputy Secretary General of the Council of Europe, a tendency which was confirmed with the arrival in Rabat, on 22 and 23 October 2018, of a delegation of the Rapporteur Group on External Relations (GR-EXT) for an exchange of views with the relevant authorities and civil society representatives on the implementation of the Neighbourhood Partnership 2018-2021, which had been approved by the Ministers' Deputies on 21 March 2018. The “high-level” dialogue is therefore under way, and it is up to the two parties to maintain it.

5. At the level of the Parliamentary Assembly, on 23 January 2019 the Committee on Political Affairs and Democracy organised an exchange of views with Ambassador Katrin Kivi, Permanent Representative of Estonia to the Council of Europe and Chair of the GR-EXT, Ms Amina Bouayach, President of the Moroccan National Human Rights Council, Mr Driss Guerraoui, President of the Moroccan Competition Council and former Secretary General of the Economic, Social and Environmental Council (CESE), and Ms Gabriella Battaini-Dragoni, Deputy Secretary General of the Council of Europe.

1. Addendum approved by the committee on 9 April 2019.



6. This type of hearing is fully in line with the approach advocated by the rapporteur so as to develop further the Assembly's dialogue with our Moroccan partners (see paragraph 86 of the report). Both the senior status of the Moroccan participants and the content of their contributions are to be welcomed.

7. In this connection, the President of the CNDH gave a broad overview of this institution's activities and noted that Morocco welcomed an average of three special rapporteurs a year from leading international organisations, in particular from the United Nations, on different human rights-related issues.

8. The President of the CNDH believes that the human rights situation in Morocco is improving with the adoption of new laws, such as the law on the prevention of torture and the law on the prevention of victimisation of children and the protection of the rights of people with disabilities. A national human rights action plan has also been rolled out. The constitutional reforms of 2017 strengthened the rights of women, for example by allowing women to pursue any profession, and strengthened the repression of acts of violence against women, such as harassment and marital rape.

9. The former Secretary General of the CESE focused his contribution on Morocco's "New Development Model", a theme which had been discussed by his former institution and which had its origins in the apparently paradoxical fact that not only the country's wealth but also its inequalities had grown between 1999 and 2013. For the rapporteur, this contribution confirms a number of facts gathered during his mission to Morocco.

10. Firstly, there is the benefit for the Assembly in listening to these institutions, whose assessments echo the discussions under way in a number of Council of Europe member States. The fact that economic growth goes hand in hand with a significant fall in job creation applies both to Morocco and to other countries, as does the increase in wealth inequality.

11. Secondly, the statement by the former Secretary General of the CESE clearly shows that Moroccan institutions are aware of two major future challenges: educational reform and its impact with regard to both employability and the strengthening of democratic values, and the challenge posed by social issues, with wealth redistribution doubtless the most critical factor for Moroccan society. The Moroccan parliamentary delegation's remarks on the draft report also pointed in this direction.

12. Thirdly, this type of exchange of views helps to provide Assembly members with food for thought concerning the promotion of certain rights. For example, Mr Guerraoui emphasised the paradoxical situation in Morocco concerning the rights of women, which had, in his opinion, never been so extensive, despite the fact that female job/occupation rates had never been so low and the number of under-age marriages had never been so high. This observation raises the question of the effectiveness of rights and the best way to implement reforms in keeping with the values upheld by the Council of Europe.

3. Human rights: the events in the Rif

13. The rapporteur noted in paragraph 57 of his report adopted on 11 September 2018: "It will therefore be particularly interesting to see what weight will be given by the courts to freedom of expression, especially freedom of the press, and what importance they will attach to a fair trial. This will also provide an opportunity to assess whether the new independence of the Public Prosecutor's Office has any impact on how prosecutors conduct themselves and what sentences they call for. In order to be as objective as possible, I plan to add, if necessary, an addendum to this report on the aftermath of the events in the Rif."

14. It can be recalled that the protest movement ("*Hirak*" – "the movement") in the Rif region town of Al Hoceima began after the death of the fishmonger Mouhcine Fikri, who was crushed in a rubbish truck while trying to recover his merchandise that was being taken away to be destroyed because it had been obtained illegally.² The spontaneous demonstrations concerning, according to the CNDH, the region's socio-economic development and the fight against abuses of power in the region, were followed by violent clashes with the police, accompanied by destruction of public property (vehicles and buildings burned down), from April 2017, again according to the CNDH, and by mass arrests (the figure of 400 in paragraph 55 of the report was not denied by the rapporteur's interlocutors).

15. The rapporteur has tried to establish what legal proceedings have been brought and has asked the CNDH, Amnesty International and the Council of Europe Office in Rabat for assistance in this regard. Unfortunately, the information obtained leaves a number of questions unanswered,³ but the following details do emerge.

2. *La Croix* with AFP, 31 October 2016, "[Au Maroc, la mort d'un vendeur de poissons indigné la population](#)".

16. Fifty-four people linked to *Hirak*, including the leader of the protests Mr Nasser Zefzafi, as well as two journalists and three “citizen journalists”,⁴ to use the term employed by Amnesty International in its report “Morocco: Hirak El-Rif Appeal, a chance to reverse unfair trial”,⁵ who were arrested by the police between 26 May and 15 July 2017, were sentenced at first instance by a court in Casablanca to between 1 and 20 years’ imprisonment. Six, according to the CNDH (four according to Amnesty International), were sentenced to 20 years, and 21 to two years or less according to Amnesty International. On 21 or 22 August 2018, 11 were given a royal pardon. On 17 December 2018 the appeal hearings of 43 individuals convicted at the trial stage began.

17. Since 2017, the CNDH has carried out its routine work, especially conducting visits to the prisons where the detainees are held, acting as a mediator between them and the prison authorities in hunger strikes, providing material support to their families to facilitate their visits and monitoring trial and appeal hearings.

18. The Amnesty International report on the convictions at first instance was very critical both of the proceedings and of the sentences imposed. Although the rapporteur does not agree with all the statements made in it, such as those concerning the violation of the right to a public hearing, two important areas of concern should be emphasised.

19. The first is the allegations of torture and of forced confessions, which the Amnesty International report says were used as evidence during the trials. These allegations, which the prosecution regards as a concerted strategy on the part of the defendants, echo the criticisms sometimes made of the Moroccan judicial system. In this connection, the rapporteur welcomes the fact that, according to the CNDH, the public prosecutor’s office at the Al Hoceima Court of Appeal has ordered the National Judicial Police Brigade to open investigations concerning 39 complaints alleging the torture and ill-treatment of people questioned and that medical examinations have already been carried out. He also welcomes the CNDH’s medical report, forwarded to the Ministry of Justice at the beginning of July 2017, concerning allegations of the torture of detainees, which was leaked to the press at the end of June 2017. He believes that it is important to make sure that such reports are not left unanswered and undertakes to monitor this aspect in the year following the adoption of his report.

20. While the rapporteur is fully aware of the serious nature of the violence perpetrated⁶ and understands that aggravated penalties can be imposed when it is directed against law-enforcement officers, he is not totally convinced, in the light of the facts in his possession, by some of the charges against those convicted and by the length of the sentences imposed on some of them at the trial stage. According to Amnesty International, 32 of the 54 defendants were found guilty of inciting or participating in a “breach of State security”. However, according to Amnesty International, under Article 201 of the Criminal Code the offence of “breaching State security through incitement to commit attacks for the purpose of causing devastation, killing and pillage in one or more regions” would seem to be punishable by the death penalty and that of “plotting to breach State security” by five to 20 years’ imprisonment. Fairly broad use also seems to have been made of one charge, that of “public incitement to undermine the Kingdom’s territorial integrity”.

21. The rapporteur naturally does not have access to the case documents and can only base his observations on information transmitted to him, rather than the information he would have liked to have in his possession. However, the fact remains that the courts have not been lenient with the defendants, the vast majority of whom seem to have no criminal record, according to Amnesty International, and who did not express a particular desire to overturn Moroccan institutions or bring about the secession of part of the territory.

22. The rapporteur will therefore keep a close eye on the outcome of the appeal proceedings and hopes that the establishment of an independent judiciary will be reflected in a meaningful way in the prosecution's sentence demands and in the courts’ observance of the principle of proportionality of sentences.

3. Such as the nature of the prosecution’s sentence demands in the subsequent trials, the types and severity of the sentences imposed and subject to royal pardons and the possible follow-up by the CNDH on the allegations of violations of press rights and of the right to inform. One of the reasons for the lack of response has to do with the fact that the main judicial proceedings against 54 people associated with *Hirak* are still pending and, consequently, the CNDH, which is monitoring them, is unable to publish all the information it possesses, which it should do at the end of the trials.

4. Respectively, Mr Hamid El Mahdaoui and Mr Rabie Lablak and Mr Mohamed El Asrihi, Mr Houcine El Idrissi and Mr Fouad Essaidi.

5. Amnesty International Public Statement, 17 December 2018, “[Morocco: hirak el-rif appeal a chance to reverse unfair trial](#)”.

6. The Amnesty International report mentions in particular that one of the many police officers injured (800 according to the rapporteur’s information) and a party in the trial is now disabled.

4. Western Sahara

23. Although the human rights situation has not changed significantly since the date of the report, there have been recent events in the case of three notable developments it mentions that have taken place since 2015 in the Western Sahara (the Guerguerat crisis, the relaunch of the negotiations to reach a political solution and two decisions of the Court of Justice of the European Union).

24. As the Secretary-General of the United Nations points out in his most recent report, of October 2018, “overall calm has prevailed throughout the Territory on both sides of the berm”⁷ since March 2018, a finding confirmed in the case of the buffer strip in Guerguerat, where there is no longer any element of the Polisario Front’s “police force”.

25. In addition, the relaunch of the negotiations was reflected in the holding of a roundtable on 5 and 6 December 2018 in Geneva with the participation, at the invitation of the Secretary General’s Personal Envoy, Mr Horst Köhler, of representatives of Algeria, Morocco, Mauritania and the Polisario Front. Aimed above all at a resumption of dialogue, this meeting involving all the region’s players was the first for six years. It was followed by a new roundtable with the same participants on 21 and 22 March 2019. According to the official United Nations report, these meetings were characterised by a positive spirit and a respectful and constructive atmosphere.

26. As regards the action taken in response to the judgment of the Court of Justice of the European Union of 21 December 2016,⁸ in *Council v. Front Polisario*, and its Opinion of 27 February 2018,⁹ this action is in line with what the rapporteur envisaged: on 14 January 2019, the European Union and the Kingdom of Morocco stated that the terms of their Association Agreement relating to agricultural produce extended to the territory of the Western Sahara. Similarly, the new fishing agreement, signed the same day, explicitly refers to the Western Sahara and its adjacent waters. As the extension of the scope of these bilateral accords was contingent upon the European Commission having previously satisfied itself that the populations affected by the agreement benefit from socio-economic advantages and from the exploitation of their territories’ natural resources, the European institutions therefore considered that condition had indeed been met.

5. Conclusion and amendment

27. The conclusions of the report approved by the Committee on Political Affairs and Democracy on 11 September 2018 still apply. However, the most recent developments since the adoption of the report lead the rapporteur to propose an amendment to the draft resolution and to make a more general remark.

28. The amendment draws conclusions from the rapporteur’s observation on the judicial follow-up given to the events in Al Hoceima and reads as follows:

“In paragraph 6.2, after the words ‘Ministry of Justice;’, insert the words: ‘calls on the Moroccan authorities and the Attorney General of the King at the Court of Cassation to make a clear contribution to a change of culture in the judiciary by promoting the principle of proportionality of sentences, both through a revision of the Penal Code and by sending general instructions to the members of the Public Prosecutor’s Office, when one and/or the other proves necessary.’”

29. In addition, the rapporteur considers that the significant involvement of a parliamentary delegation of a partner for democracy deserves a translation in terms of the right to participate in the activities of the Assembly, which goes beyond the presence in committee or the right to speak. He welcomes the fact that the committee is planning to discuss the results of the partnership and the way forward with the partner for democracy delegations and hopes that on that occasion concrete proposals could be made to make the partnership more attractive and better suited to the expectations of the partner delegations.

7. Report on the situation concerning Western Sahara, S/2018/889, paragraph 2.

8. C-104/16 P.

9. C-266/16.