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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 Conservatives 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 and shares the analysis of the situation of the country as presented in the draft text. The committee agrees that the partnership for democracy with the Moroccan Parliament has been instrumental in launching and developing crucial reform and in triggering further co-operation between the Council of Europe and Morocco. It praises the active participation of the Moroccan delegation in the activities of the Committee on Equality and Non-Discrimination, not only when issues relevant to Morocco and its region are discussed.

2. The Committee on Equality and Non-Discrimination also shares the view that the pace of legislative and institutional reforms needs to be stepped up and notes that positive developments are taking place particularly slowly as regards the matters falling in the remit of the committee. Two years after the partnership was first evaluated by the Assembly, some of the recommendations contained in the relevant texts adopted by the Assembly remain unheeded, and some of the ambitious reforms envisaged in the Constitution of 2011 have yet to be implemented.

3. In addition, as regards a number of issues including gender equality, the line that the Moroccan authorities intend to follow remains unclear. The Authority for parity and the fight against all forms of discrimination, envisaged in Article 19 of the Constitution of 2011, for instance, may finally be established after years of hesitation and postponements, as a draft bill was approved by the Council of Ministers on 29 March 2015. However, the draft text is disappointing, as it designs a weak body, not really independent from the government and with mainly consultative functions.

4. In this respect and in dealing with other matters such as gender-based violence, polygamy, inheritance rights and discrimination on grounds of sexual orientation and gender identity, the committee believes that the Parliament of Morocco could play an important role, either by amending the draft bills tabled by the government or by taking autonomous legislative initiatives, in order to fulfil the commitments undertaken when requesting the status of partner for democracy.

5. Both the Parliament of Morocco and the Parliamentary Assembly should be consistent with the principles underlying the status of partner for democracy, namely open and constructive co-operation with a view to reinforcing democracy, human rights and the rule of law.

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.

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In paragraph 5.4, after the words “to action”, insert the words “to fight against all forms of discrimination against women and”.

Explanatory note: Discrimination against women is widespread in a variety of forms and is not limited to women’s under-representation in public life and decision-making bodies. While calling for action to ensure an adequate level of representation of women at all levels of power and society, the Parliamentary Assembly should underline that the Moroccan authorities should take action against all possible forms of discrimination.

Amendment B (to the draft resolution)

After paragraph 5.4, insert the following paragraph:

> *“reiterates the call on the Moroccan authorities to initiate a public debate on abolishing polygamy and reforming legislation on inheritance rights with a view to ensuring equal rights for women and men;”*

Explanatory note: Polygamy and unequal inheritance rights represent clear violations of gender equality and a threat to the human dignity of the women directly concerned. On several occasions, the Assembly has called on the Moroccan authorities to initiate a public and political debate to amend the relevant legislation. In Resolution 1818 (2011), the wording was: “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.”

Amendment C (to the draft resolution)

After paragraph 5.5, insert the following paragraph:

> *“welcomes the abolition of Article 475 of the Criminal Code and calls on the Moroccan authorities to adopt and implement comprehensive legislation to prevent violence against women, protect the victims and prosecute the perpetrators;”*

Explanatory note: Irrespective of whether Morocco accedes to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), it should adopt and implement effective and comprehensive legislation to prevent gender-based violence, protect the victims and prosecute the perpetrators.

Amendment D (to the draft resolution)

In paragraph 5.9, delete the words “take the necessary steps to”.

Explanatory note: Criminalisation of homosexuality is in breach of human rights, notably the right to private life and to dignity. There has been no positive development after the Assembly’s call on the Moroccan Parliament “to initiate its repeal at the earliest opportunity”, in Resolution 1942 (2013).

C. Explanatory memorandum by Ms Gafarova, rapporteur for opinion

1. General comments

1. I wish to congratulate Mr Klich on his comprehensive report, based on several visits and extensive consultations with the Moroccan representatives both from the governmental and parliamentary side, which is consistent with the idea of co-operation underlying the “partnership” status, as well as with representatives of civil society. I welcome the rapporteur’s call for additional information and comments on my part as concerns balanced participation of women and men in public life and politics. I will endeavour to complement the report also in respect of other matters covered by Resolution 1818 (2011), defining the scope of parliamentary co-operation with Morocco, which are relevant to the mandate of the Committee on Equality and Non-Discrimination, namely discrimination on grounds of sexual orientation and gender identity as well as racism and xenophobia.

2. Over the past few years, the Committee on Equality and Non-Discrimination has followed relevant developments thanks to the active participation and valuable contribution of the Moroccan delegation in the work of the committee itself and of the Parliamentary Network Women Free from Violence. At the same time, members of the committee have taken part in several activities in Morocco, including a seminar on the role of the opposition in parliamentary democracy held in Rabat on 19 June 2014. In addition, the report on women's rights and prospects for Euro-Mediterranean co-operation, prepared by Ms Fatiha Saïdi for this committee, devoted a great deal of attention to the situation in Morocco. The relevant adopted texts are Resolution 2012 (2014) and Recommendation 2053 (2014).[2]

3. In 2013, on the occasion of the previous evaluation of the partnership for democracy in respect of the Parliament of Morocco, the Committee on Equality and Non-Discrimination highlighted that positive developments had taken place in legislation and policies, notably concerning equal opportunities for women and men in political and public life and increased awareness among the authorities and the general public on issues including gender-based violence and trafficking in human beings. In the last two years, the acquis in matters of political representation remains strong and gender parity continues to be part of the political debate, but the attitude of the authorities seems to have changed. The authority on gender equality and the fight against discrimination, envisaged in Article 19 of the Constitution of 2011, for instance, has not been set up and the process which should lead to its establishment has been a political stop-and-go.

2. Women's rights

2.1. Gender equality in the Moroccan Constitution

4. Article 19 of the Constitution of 2011 enshrines the principle of gender equality and gives the Moroccan State the ambitious task of creating parity between women and men. It also provides for the establishment of an authority for parity and the fight against all forms of discrimination.

5. Since the Constitution was adopted, the setting up of the authority has been considered a top priority by all those committed to gender equality, particularly at civil society level, and the Parliamentary Assembly also stated that the authority should be set up "as a matter of urgency" and endowed with "sufficient human and financial resources".[3] However, the process leading to the setting up of the authority has not been prompt. The relevant draft bill was approved by the government only in March 2015 and still has to be discussed in parliament. The draft has raised criticism both from politicians from the opposition and representatives of civil society,[4] as it designs a weak authority, not able to act on its own initiative and with purely consultative functions. The very composition of the authority, which according to the draft bill should include a number of government representatives, would hinder its independence.

6. Once again, legislators have an opportunity to take the lead and improve the draft bill they will debate. In carrying out this important task, they should take into account the indications coming from women's organisations of civil society. Even in this respect, the National Human Rights Council has provided sensible recommendations as far back as 2011, by means of a comparative study on the experience of equality bodies in various countries, particularly of Europe and America.

7. As concerns international obligations on women's rights, I mentioned in the opinion of 2013 that Morocco had not yet signed and ratified the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which recognises the competence of the Committee on the Elimination of Discrimination against Women to receive complaints from individuals or groups. Unfortunately there are no positive developments to mention in this respect. The Assembly's recommendation to this end, contained in Resolution 1873 (2012), has not yet been followed.

2.2. Political representation of women

8. Thanks to a quota system using women's lists to cover 60 seats reserved for women, the current composition of the House of Representatives, the lower chamber of the Parliament of Morocco, has 67 female members out of 395. Seven of them were elected through the general lists. While this is an encouraging result and marks a positive trend (female parliamentarians almost doubled as compared with the previous

2. See also Doc. 13596.
3. Resolution 1873 (2012) "Equality between women and men: a condition for the success of the Arab Spring".
4. L'instance sur la parité enfin approuvée par le gouvernement, 20 March 2015, Tel Quel.

legislature), I hope that future developments will show further improvement. Women should in fact be represented at the different stages of political activity, particularly within political parties, rather than simply being recruited to form special lists.

9. There has been a slight improvement as concerns women's representation in the government. Mr Abdelilah Benkirane's first cabinet had been widely criticised for featuring only one female member, namely Ms Bassima Hakkaoui, Minister of Solidarity, Women, Family and Social Development. In its current composition, the government has 5 female members out of 38, including 2 ministers (Ms Hakkaoui and Ms Fatema Marouane, Minister of Handicrafts and Social Economy) out of 25, and 3 female ministers delegates out of 13. These figures are low and not particularly encouraging, and they certainly leave room for improvement. While gender equality is not merely a matter of numbers, a more proportionate representation of women in the composition of the cabinet is nevertheless necessary for Morocco to abide with Article 19 of its Constitution.

10. The situation may evolve in the near future, as local elections, originally scheduled for June 2015, are now foreseen in September 2015. They will take place under new legislation which is currently under discussion at the Moroccan Parliament. I hope that our Moroccan colleagues will seize this opportunity to implement the principle of parity. In March 2015, Morocco's National Human Rights Council made an important contribution to the public debate on electoral law by publishing a memorandum including "forty-five recommendations for more inclusive elections". This text proposes amendments and measures to contribute to achieving the constitutional goal of parity between men and women, but also greater participation of young people and persons with disabilities in the political process.

11. Increasing women's representation at the level of local authorities would provide the double benefit of increasing the legitimacy and representativeness of local governing bodies, and of introducing a new generation of women in the political arena. Political activity within local and regional authorities often represents a step in a political career which may later lead to higher mandates at national level.

2.3. Family law and the issues of inheritance and polygamy

12. The *Moudawana* or Family code, adopted in 2004, marked a turning point and was greeted as substantial progress for women. However, the gap between this text and its actual implementation has hindered to a great extent its innovation potential. Limitations to women's access to justice and the lack of uniform application of the regulations in the country, with differences in particular between urban and rural areas, has considerably weakened the impact of this code.

13. Training the judiciary and the legal professions can play a positive role and contribute to improving women's access to justice. I welcome the co-operation between the European Commission for the Efficiency of Justice (CEPEJ) and Morocco, which has had observer status with this body for two years. Recent co-operation activities include the visit of a delegation of experts of CEPEJ to Morocco from 21 to 24 April 2015, a meeting between the Moroccan Minister of Justice and Liberties, Mustapha Ramid, and representatives of CEPEJ as well as the Directorate General of Programmes of the Council of Europe, on 12 May 2015 in Rabat, and the participation of a delegation of the Ministry of Justice and Liberties in a workshop on "Improving day-to-day justice" organised by CEPEJ and the Tunisian Ministry of Justice in Monastir (Tunisia) on 1 and 2 June 2015.

14. Besides incorrect or inconsistent application of the Family law and other relevant pieces of legislation, some shortcomings are to be found in the provisions themselves, notably as concerns the regulations on inheritance. In this respect, the Family Code has not reformed precedent provisions based on religious jurisprudence, stating that male relatives are entitled to double the share of women. Discrimination of women could not be more evident. I believe that it is time for Morocco to initiate a debate on the reform of inheritance law, to bring it into line with the general principle of gender equality now underlying the country's legal system.

15. Although polygamy may be seen as a politically delicate issue in Morocco, I cannot but reiterate what has been said on this subject by several rapporteurs of the Committee on Equality and Non Discrimination, such as Ms Nursuna Memecan and Ms Fatiha Saïdi, and what I myself wrote in my previous opinion on co-operation with Morocco. As I recalled in that text, the Committee on the Elimination of All Forms of Discrimination Against Women made it clear that "[p]olygamous 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". Both the principle of gender equality and material considerations should lead to reforming family law and banning polygamy.

16. There has been no positive development in this respect. In spite of the Assembly's calls, no political debate has been initiated on the abolition of polygamous marriage, and the government does not show a will to take steps in this direction. I wish to underline that a number of countries with a majority of Muslim population have successfully abolished polygamy. These include Tunisia, a country from the same region which shares a great deal of cultural features with Morocco, as well as Turkey and my own country Azerbaijan.

2.4. Violence against women

17. Violence against women is widespread in all countries and Morocco is no exception to this rule. In 2006, a network of 10 Moroccan non-governmental organisations committed to fighting violence against women established an Observatory on violence against women. The observatory's sixth report, presented in January 2015, shows an increase of this phenomenon, probably linked to increased awareness and visibility.

18. I am pleased to mention that the infamous Article 475 of the Criminal Code, which allowed for the rapist who married the victim to avoid criminal prosecution, was abolished as recommended by the Assembly, vocally requested by civil society and promised by Minister Hakkaoui.

19. While this was a step in the right direction, much work remains to be done to provide the country with a comprehensive set of laws to prevent violence, protect victims and prosecute perpetrators. A draft bill on fighting violence against women was prepared by Minister Hakkaoui in co-operation with the Ministry of Justice and Liberties in 2013 but its discussion by the government was postponed. A new version was expected to be presented in October 2014. Further to divided opinion within the government, important parts of the draft, in particular those concerning marital rape and theft between spouses, were deleted.

20. I can only recommend that Morocco rapidly adopt effective and comprehensive legislation to prevent and combat violence against women. Violence against women is a severe violation of women's rights and hinders their enjoyment of any other right. Tackling gender-based violence should therefore represent the top priority of any State committed to implementing gender equality. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), referred to as "the golden standard" in this field, should be used as a source of inspiration and a benchmark by Moroccan legislators.

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

21. In the opinion adopted by the Committee on Equality and Non-Discrimination in 2013, I underlined that lesbian, gay, bisexual and transgender (LGBT) people face discrimination in several respects, including access to education, health care and work, and that discrimination was largely undetected and systematically unreported.

22. The criminalisation of homosexual acts under Article 489 of the Criminal Code, providing for harsh sentences of six months' to three years' imprisonment and fines of 200 to 1 000 Moroccan dirhams, is at variance with human rights standards and with Article 24 of the Moroccan Constitution (enshrining the right to private life) as it represents a violation of the right to privacy and to dignity. In addition, it contributes to perpetuating prejudice and may be perceived as a justification for other forms of discrimination against LGBT people.

23. In recent years, an increasing number of convictions have been made public by human rights organisations, making these human rights violations more visible. The international website Erasing 76 Crimes estimated in August 2014 that eight people were in prison in Morocco for acts of "deviancy" (homosexual acts) and that "dozens more" had reportedly been arrested and tried. More recent cases include that of two men arrested and convicted in December 2014 in Al Hoceima, and three men arrested on 16 May 2015 in Taourirt, one of them simply for having arranged for the other two to meet. Disturbingly, in this case the sentences were three years' imprisonment.[5]

24. This situation is not acceptable in a country which committed itself to respecting human rights and is actively co-operating with the Council of Europe to this end. I can only reiterate the call on the Moroccan authorities to repeal Article 489 of the Criminal Code as a matter of urgency.

5. Trois Marocains condamnés à trois ans de prison ferme pour «homosexualité», *Le Monde*, 25 May 2015.

4. Fighting racism and xenophobia

25. For a long time a country of origin of migration, Morocco is now also one of transit and even of destination. Large numbers of people from Sub-Saharan Africa travel through Morocco on their journey towards Europe and, given the increasing difficulties of reaching their final destination, they often find themselves forced to extend their stay, often in clandestinity. In addition, a growing number of foreigners from the same countries, but also from Asia, migrate to Morocco for reasons of work or business, or enrol in local universities.

26. Morocco is strengthening its ties with Sub-Saharan countries, particularly in the central and western part of the continent, and "South-South co-operation" is an important axis of its international relations. While the Moroccan authorities invest in political and economic co-operation with the region, it is crucial that they pay adequate attention to the problem of racism, in particular against black foreigners, which has become endemic.

27. In September 2013, the Moroccan Government launched a programme of regularisation of undocumented foreigners. About two thirds of 27 000 applicants received a one-year residence card which, according to the national authorities, should be automatically renewed upon expiration. This programme was a step in the right direction as it helped thousands of people from over 100 different countries to resurface from illegality and made them less exposed to abuses from the police and criminality. However, the end of the "special programme" suddenly announced in February 2015 seemed to mark a change of attitude of the authorities and left a number of applicants in a legal limbo.[6] In addition, this announcement was immediately followed by the mass arrest of over 1 200 foreigners in northern Morocco, denounced as arbitrary, abusive and illegal by organisations like the Euro-Mediterranean Human Rights Network (EMHRN) and the International Federation for Human Rights (FIDH).

28. Two years ago, we recommended that programmes to combat racism and xenophobia be developed, based on three elements: awareness-raising for the general public; training of law-enforcement officials, particularly immigration officials, border guards and judges; and information on relevant legislation and legal remedies, targeting both concerned groups and lawyers.

29. Some positive developments can be noted in respect of the first of those elements. On 21 March 2014, on the occasion of the International Day for the Elimination of Racial Discrimination, the first national campaign to fight racial prejudice and discrimination was launched in Morocco. "My name is not Azzi", from the derogative word often used to address black people, aimed to convey the message that racism existed in Morocco, albeit denied and often unconscious, and that it needed to stop. The campaign can be considered successful, as it sparked a heated debate which certainly contributed to raising awareness on the issue of racism. Much work remains to be done, as racism and discrimination are rife, both in society and, according to some commentators, within the institutions.[7]

6. Between Round-ups and Regularisation: Morocco's Vacillating Migration Policy, 30 March 2015, FIDH

7. Khadija Ainani: «Les autorités nient le phénomène de racisme au Maroc», Salsabil Chellali, 31 July 2013, *La Jeune Afrique.*