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World Forum for Human Rights in Marrakech Ongoing violations: Morocco should get back on track

Position paper – Morocco

Morocco is hosting the second World Forum for Human Rights starting 27 November 2014, just at a time when the country is launching a process for major political and legislative reform. Although this process is an important step in consolidating the rule of law, FIDH and its partner and member organisations are concerned about the increased impediments to the application of fundamental freedoms and to the never-ending violations of human rights. The signatory organisations urge the Moroccan authorities to respect their country's commitments and take the steps needed to put an end to the violations. To do this, the authorities should accelerate the pace of the reforms and the implementation of the political, legislative and institutional measures needed to guarantee human rights and fundamental freedoms.

“The reform process is an important, awaited step, the backbone of the rule of law. But an arsenal of legal measures alone is not enough. They must be supported by strong, tangible measures to guarantee the protection of human rights, counter gender-based discrimination and fight against the impunity of the perpetrators of human rights violations”, said Karim Lahidji, President of FIDH.

More and more obstacles to freedom of association and freedom of assembly

During the last few months, increased efforts have been made to prevent the activities of the human rights NGOs, especially the Moroccan Association of Human Rights (AMDH). Many AMDH activities, such as public meetings scheduled in various cities throughout the country were forbidden or prevented without prior notice. Amnesty international-Morocco and the Moroccan League for the Defence of Human Rights (LMDDH) were prevented from holding public demonstration¹. On 27 September 2014 a “Caravan for

¹ See esp. AMDH, press release on the slander campaign against AMDH, 5 November 2014
<http://www.amdh.org.ma/fr/communiqués/com-amdh-compagne-denigrement> and Observatory for the Protection of Human Rights

solidarity with Sub-Saharan migrants” that denounced abusive treatment of migrants in Morocco was blocked by the police at the entrance to Tangiers. The latest incident concerns the Moroccan Association for Investigative Journalism (AMIJ) which had organised a closed seminar on 1 and 2 November 2014 in Rabat but was informed that the meeting had been forbidden. On 6 November, the Ibn Rochd Centre for Studies and Communications that works on freedom of press, thought and expression announced that it will cease its activities since it was repeatedly prevented from carrying them out. The Centre’s management moreover deplored the fact that it was being monitored regularly. The Moroccan authorities usually communicated bans at the very last minute, informally and arbitrarily, without ever giving any legal grounds.

The actions of the human rights defence organisations and the civil society organisations were restricted even more after the Minister of the Interior told the Moroccan Parliament last 15 July that the NGOs were influenced by “foreign agenda” and that their actions could harm the country’s reputation and security.

Several associations are still coping with problems of registration. In May 2014, for instance, the organisation “Freedom Now”, whose goal is to defend freedom of speech, press and information was prevented from submitting a registration application. The case has been brought before the administrative court which rejected the submission on 22 July 2014.

On 15 November, just a few days before the World Forum for Human Rights, several Moroccan NGOs, including AMDH, announced that they would boycott the Forum. AMDH will explain the grounds for this decision very soon².

The signatory organisations are worried about the statements of last July by a government representative and the obstacles to the activities of the civil society organisations and urge the Moroccan authorities to respect their constitutional and international commitments to the protection of human rights by removing all barriers to freedom of association, gathering and peaceful assembly.

Repression of “dissenting” voices, and the dysfunctional administration of justice

For several years, Morocco has been announcing far-reaching reforms that also affect the judiciary. The process has been underway for the last few months. Important reforms, e.g. reforms to the Code of Military Justice, have been adopted, and many draft laws and legal amendments are now being prepared, discussed or submitted for examination. Morocco is reforming its Code of Penal Procedures, the statute of the magistrates, and the Higher Judiciary Council (*Conseil supérieur du pouvoir judiciaire*)³. Work will soon be started to reform the penal code.

The new enactments should reflect Morocco’s unambiguous fulfilment of its constitutional and international commitments to human rights by making the independence of the judiciary central to the reform process. Our organisations feel that revisions to the Moroccan penal code should, *inter alia* include the abolition of the death penalty and should go further than merely restricting its scope of application, as has

amdh/1614-maroc-recrudescence-des-entraves-al'action des ong

² <http://www.amdh.org.ma/fr/communiqués/com-amdh-boycotte-fmdh-fr>

³ On this subject, see *Mémoire du Collectif civil pour l'indépendance de la justice*

been the case during the last few years.

It is essential to overcome the legislative “sluggishness” and “bottlenecks” and work from a calendar that recognises priorities in the preparation of reforms, and at the same time systematically and effectively consults the civil society about the impending reforms.

Furthermore, an FIDH report published on 25 November 2014⁴ shows that human rights abuses are being committed that contravene national laws and ignore impending reforms and that these abuses are especially aimed at dissidents and people suspected of jeopardising national security. The report strongly criticises the disproportionate use of force against demonstrators, arbitrary detention, abusive pre-trial detention, use of torture and unjust judicial proceedings.

To eliminate these practices, the signatory organisations urged the Moroccan authorities to refrain from interfering with the justice department, to express its position clearly to the public and to adopt legislation that is significant and establishes the importance of respect for the rule of law that guarantees the fundamental freedoms and the safety of the people.

Disproportionate use of force against demonstrators is not uncommon. A political commitment to prevent the police from using violence against peaceful demonstrators and to punish breaches of this policy should be adopted to stop the present violence.

Urgent measures should be taken to systematically investigate allegations of torture and ill treatment especially during arrests and police custody, and thereby fight to prevent the perpetrators from enjoying impunity. This should be backed by reforms to the code of criminal proceedings to ensure better management of conditions of detention in police custody and guarantee the protection of the individual against torture and ill treatment by the security forces.

Furthermore, the authorities should deposit the instruments of ratification of the Optional Protocol to the Convention Against Torture as soon as possible, and then establish a national torture prevention mechanism.

Irregularities in the judicial proceedings have also been documented regularly⁵ especially in cases involving “voices of dissent”. The right to a fair trial, which is enshrined in the Moroccan Constitution, must be guaranteed in all circumstances. When the new Code on Military Justice has been adopted and enters into force, it should be possible to transfer ongoing cases concerning civilians and cases of serious human rights violations from the military courts to the civil courts.

Last, judicial proceedings are often seriously delayed causing very long periods of pre-trial detention and serious overcrowding in the prisons. Criteria for pre-trial detention should be clearly defined and then adopted. Alternative measures to pre-trial detention should also be available.

⁴ www.justice.maroc.org

⁵ See the FIDH report: Maroc La justice marocaine en chantier : des reformes essentielles mais non suffisantes pour la protection des droits humains. It will be published on November 25, 2014 on our website. <https://www.fidh.org/fr/maghreb-moyen-orient/maroc/>

Protection of Women's Rights and Promotion of Equality

The signatory organisations are particularly concerned about the ongoing discrimination and violence against women. Despite the adoption of legislative reforms during the last ten years, constitutional laws guaranteeing gender equality and establishing an authority for parity and the struggle against all forms of discrimination (which has not yet been created), many laws remain discriminatory. This is the case, especially, with certain provisions of the family law (parental custody, divorce, inheritance), the Penal Code, the Code of Penal Procedures, and the Nationality Code.

Moreover, some laws protecting women's rights are often ignored. Thus, in spite of limits imposed on polygamy in 2005⁶, over 85% of exemption requests filed in court have been approved in Marrakech, Rabat and Fez. Similarly, the minimum legal age for marriage has been set at 18, yet the judges approve about 93% of the exemption requests.

With regards to violence against women, the perpetrators of these acts often enjoy impunity, making it urgent to amend the proposed law 103-13 to meet international standards. This law concerns violence against women. A ministerial commission was established on 7 November 2013 to address this issue, but no information has been provided on its progress, in spite of many repeated requests from civil society organisations working in the area of women's rights. In January 2014, Article 475 of the Criminal Code was amended (thanks to the relentless efforts of women's rights movements and defenders of equality), to put an end to impunity for those who commit rape by marrying a minor-aged female and to increase the duration of the prison sentences⁷). Our organisations regret that those laws are not applied to the crime of rape against women who are no longer minors. Moreover, in Articles 486 and 488 of the Penal Code, rape is defined as an attack against social mores, and not as violence against a person, which contravenes international law. This emphasises the necessity of totally revising the Criminal Code, which dates back to 1962 with its extremely patriarchal philosophy, a structure based on a security approach, and its discriminatory clauses.

Lastly, the State of Morocco is far from having achieved the objectives as set out in Chapters 6, 19 and 30 of the July 1, 2011 Constitution, concerning political representation, and enshrining the principle of parity. As of now, out of 38 government ministers, 6 are women, and out of 16 Wilaya, only one of the women is Wali. Only 17 % of the members of the House of Representatives are women.

With regards to the appointment of women in decision-making positions, only 50 women out of 453 were appointed to high positions as of 27 October 2014, which is only half (11%) of the percentage (22%) set out in the government's 2014 plan for equality.

Moreover, speeches by persons in high positions, particularly the one by the head of government whose words countered the principle of gender equality and the women's fundamental rights, especially the right to employment, are very disturbing and are not in keeping with the provisions of the constitution.

⁶ Since 2005, polygamy is no longer permitted except in specific cases which require the agreement of the first wife and the authorisation of a judge.

⁷ The sentence for kidnapping a minor without having sexual relations is between 1 to 5 years; the sentence for kidnapping and having sexual relations with a minor is between 2 and 10 years.

The signatory organisations urge the Moroccan authorities to give priority to establishing an authority for parity and for the fight against all forms of discrimination and to develop and implement public policies that incorporate the principle of equality which are supported by resources and mechanisms for monitoring and evaluation.

They also invite the authorities to reform all their discriminatory laws in accordance with Morocco's international obligations and to ensure that the laws are truly enforced by the courts in order to prevent exceptions from becoming the rule.

The signatory organisations also urge the Moroccan authorities to adopt a law banning sexual violence against women. The law should adopt a holistic approach based on human rights. A national strategy to combat violence against women should also be adopted to address this phenomenon from all angles (educational, cultural, social and legal).

Lastly, the organisations request that the authorities implement the provisions of the constitution on political and parity representation and call on parliamentarians to immediately adopt the draft laws to approve Morocco's accession to the Optional Protocol to the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW).

Persistent violations of migrant rights in spite of a promising migration policy

Morocco has been working with a new migration policy since September 2013, after having acted randomly to the changes which progressively transformed the country – traditionally one of emigration – into a country where migrants could stay permanently. Thanks to this new policy migrants are no longer rounded up and escorted back to the borders. A regularisation program for people in irregular situations was launched by Moroccan authorities in early 2014, which is not without its challenges, particularly because of its short duration (one year) and the strict interpretation of the criteria⁸. Moreover, recent new cases of migrant expulsions⁹ are causing concern that the ambitious regularisation policy is losing ground. Moreover, migrant rights NGOs continue to denounce the excessive use of force applied when arresting migrants, especially near the Ceuta and Melilla enclaves. Lastly, the migrants who attempt to cross the border into the Spanish enclaves of Ceuta and Melilla, or try to go by boat to the Canary Islands, are arrested and sent back to their home country, in violation of the law on the removal of migrants. Others are displaced and released into the streets of Rabat, Casablanca and Fez.

Since numerous requests for regularization were dismissed during the first round, a mechanism for recourse was established on 27 June 2014¹⁰ with the mandate to review

⁸ See especially the conclusions of the Day of Reflection organised by FIDH and the GADEM on 10 April 2014 at Rabat on “prospects of increasing consultation and dialogue between public authorities and civil society groups regarding the process used to regularize people in irregular situations in Morocco” and its conclusions, published on 16 May 2014 : <http://www.fidh.org/fr/maghreb-moyen-orient/maroc/15330-des-strategies-pour-ameliorer-le-programme-de-regularisation-des-sans>

⁹ <http://www.gadem-asso.org/L-Etat-marocain-face-au-meurtre-de>

¹⁰ See the CNDH press release of 24 June 2014 on the installation of the National Commission on Recourse for the Regularisation of Migrants in Irregular Situations: <http://cndh.ma/fr/communiqués/nouvelle-politique-de-migration-installation-de-la-commission-nationale-de-recours-et>

the dismissed requests. Initially, the National Commission for Recourse focused primarily on the regularisation of women and leaders of migrants' associations. Because of the vulnerability criterion, it exceptionally recommended the regularisation of 5,020 requests filed by migrants in July 2014¹¹. The authorities accepted the Commission's recommendation. The recommendation of regularising the status of association leaders is currently under review.

Our organisations call on Moroccan authorities to pursue an ambitious policy of regularisation and to consult qualified civil society organisations and NGOs about revising this policy on the basis of lessons learned from its first year of implementation.

At the legal level, the regime of protection for the rights of migrants and refugees in Morocco is still not satisfactory.. Moroccan Law no. 02-03, which penalises immigration, staying in the country and irregular emigration, violates the right of an individual to leave any country, including his/her own.¹² It must therefore be amended to fulfil Morocco's international obligations and Morocco's November 2013 commitment to the United Nations Committee on the Protection of the Rights of all Migrant Workers and Members of their Families¹³.

Lastly, with regards to the two draft laws on trafficking and asylum, which are currently being finalised, our organisations call for a consultation process that is transparent, particularly with civil society groups.

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Bonne nouvelle: 5 060 femmes migrantes obtiendront la carte de séjour », 28 July 2014, http://telquel.ma/2014/07/28/5060-femmes-migrantes-obtiendront-carte-sejour_1411572 and « *Le Maroc régularise 6 000 migrants mais les violences continuent* », 16 September 2014, <http://www.la-croix.com/Actualite/Monde/Le-Maroc-regularise-6-000-migrants-mais-les-violences-continuent-2014-09-16-1206826>. By the end of October 2014, 21,000 regularization requests were filed, 8,989 received a positive response, and 4,400 ID cards were issued.

¹² See Article 13 of the Universal Declaration of Human Rights.

¹³ For more information, see the Practical Legal Guide produced by the GADEM, entitled « *Le cadre juridique relatif au statut des étrangers* », September 2013.