



MOROCCO

Contribution to the review of the status of the Consultative Council of Human Rights before the Subcommittee of accreditation of the National Human Rights Institutions

The CCHR in the light of the Paris Principles

Alkarama, 11 June 2010

Alkarama reminds that these activities are focused on four major areas; arbitrary detention, enforced or involuntary disappearances, torture and extrajudicial executions. Our work is based mainly on communication of documented individual cases to the special procedures and the Treaty Bodies of the United Nations as well as our contacts with local intermediaries including victims and their families, lawyers and human rights defenders.

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2 Introduction

The Consultative Council on Human Rights (CCHR) – hereafter ‘the Council’ – was set up in 1990 and has just celebrated twenty years of existence. It is in 2001, following a so-called ‘profound reorganization’, that the question of whether its mandate and operation were compliant with the Paris Principles arose.

The Council is by definition merely a public and advisory body. However, since its reorganisation, it has had the difficult mission of establishing a real link between the government and civil society, and more directly, general citizens.

However, despite the restructuring of the Council following Dahir 1-00-350 (decree issued by the Moroccan King) of 10 April 2001, which expanded its powers, and despite several attempts at emancipation, its main mission remains advisory, and in some cases, the promotion of a human rights culture in the country. The first report published regarding the human rights situation in Morocco concerned the year 2003. The last, which was presented to the King in March 2010 (which, to date, has not been made available publically on the Council’s website), covers the situation in 2008. Finally, during the Council’s last session on 25 February 2010, the preparations for the 2009 report were discussed.

On 12 and 13 May 2010, Rabat hosted the sixth meeting of (Arab) national human rights institutions (NHRIs) on the theme of "The Role of Arab National Human Rights Institutions in the Reinforcement of the Rule of Law". This meeting called for the strengthening of the protective mission of NHRIs¹. However, this can evidently only be possible if these institutions are independent.

Alkarama has decided to contribute to the process of five-year re-accreditation of NHRIs. In the case of Morocco, this analysis is being prepared in view of the Council (which currently has an A-status)’s re-accreditation in October 2010.

Alkarama considers that insofar as the Council is one of the oldest NHRIs in the Arab world, it must be more responsive, and even offensive on certain sensitive issues, particularly on the persistence of practices which violate those civil liberties which are most fundamental which are clearly attributable to agents of the State.

3 Methodology

For this review, Alkarama has appraised the Council’s respect of the Paris Principles over the last five years. The analysis is based first and primarily on information coming from direct contact with victims of human rights violations on the ground. Our organization has encountered many violations which have mainly occurred as part of the policy pursued by the authorities in the pretext of the fight against terrorism.

Alkarama has in particular received a number of cases concerning people arrested during several waves of arrests from 2002 to the present, which were often followed by serious human rights violations. This study is also based on direct contacts with NGOs, representatives of the civil society working on the field, as well as victims, their lawyers, and their families.

If the period we have selected for evaluating the work of the Council covers the last five years, it should be emphasised that the evaluation of the current work of the Council must also be viewed in the context of the situation following the Casablanca bombings of 16 May 2003.

¹ Sixth meeting of Arab National Human Rights Institutions on the theme of "the role of NHRIs in the strengthening of the rule of law", held 12-13 May 2010, <http://www.ccdh.org.ma/spip.php?article2813> (accessed on 11 June 2010).

The authorities' counter-terrorism measures raises many questions relating to the very nature of human rights violations, as well as how these violations are viewed by the judiciary and the Council itself.

4 The Equity and Reconciliation Commission

In order to mark a break with the heavy burden of past human rights violations in Morocco, King Mohamed VI engaged a reconciliation process. Negotiations with former political prisoners who wanted to set up a 'Commission for Truth and Justice' ultimately led to the creation of the Equity and Reconciliation Commission (ERC) in January 2004². This body was mandated to bring clarity to the serious human rights violations committed between 1956 and 1999 in Morocco, conditional on dropping all criminal proceedings against perpetrators of human rights violations.

Since 2004, the Council has been strongly identified with the work of the ERC, especially since the Council was responsible for monitoring the implementation of recommendations contained in the ERC's final report published on 30 November 2005. Following the dissolution of the ERC, the fact that some individuals who were part of the ERC are members of the Council reinforces the link made between the two organizations. For example, when Driss Benzekri (who died in 2007) became the President of the Council in July 2005, he had also been the President of the Equity and Reconciliation Commission since 2003. It was Ahmed Herzenni, the current President, who replaced him.

After two years of work, the Equity and Reconciliation Commission published its final report in 2005. Many human rights NGOs have strongly condemned the fact that the perpetrators of serious abuses committed during the reign of Hassan II, the father of the current king, could not be cited nor prosecuted. Thus, victims who are already deprived of their right to justice are also deprived of their right to the truth.

Because of its official role of providing oversight to the application of measures and recommendations presented in the ERC's final report, it faces critics from Moroccan public opinion which have focused on the issues of the disappearances and the violations committed during the "Years of Lead". Several specific issues are of particular concern, such as the social integration of former political prisoners and the families of the missing, the question of compensation at the community level, as well as the serious matter of impunity for perpetrators of human rights violations. Several local NGOs fear that the recommendations of the ERC will ultimately remain unimplemented.

Thus, during the presentation of the monitoring report of the ERC's recommendations by the Council on 14 January 2010, the *Forum marocain pour la Vérité et Justice* (the Moroccan Forum for Truth and Justice) stated emphatically that "the recommendations of the ERC are not mere proposals that the Moroccan State may accept or not". It pointed out that "they are binding for the Moroccan State insofar as they are the result of a resolving process of the crisis of serious violations of human rights". The Forum reproves the Council for interpreting its role in monitoring the recommendations that has allowed it to reduce its responsibility and vigilance, while these recommendations remain the only solution to avoid serious new violations³.

According to Abdelilah Benabdessalam who is the Vice-President of the *Association Marocaine des Droits de l'Homme* (Moroccan Association of Human Rights – MAHR), "the Council did not provide the necessary effort needed to support the issue and to avoid the recurrence of serious violations. Except for the recommendation on individual redress, we have registered no progress regarding the implementation of other recommendations relating to community compensation, the establishment of

² On 6 November 2003, the King approved the Council's recommendation for the creation of the Equity and Reconciliation Commission, which was established on 7 January 2004. This recommendation is the third and final recommendation made by the Council.

³ Mohamed Aswab, "Le Forum Vérité et Justice accuse le CCDH de laxisme" (The Moroccan Forum for Truth and Justice accuses the Council of laxity) in *Aujourd'hui le Maroc*, 25 February 2010, <http://www.aujourd'hui.ma/couverture-details74353.html> (accessed on 11 June 2010)

the truth, and the preservation of the memory of what happened and political and constitutional reforms⁴.

On 19 April 2010, following 15 days of sit-ins outside the Council building, a group of former prisoners began a hunger strike to protest the Council's lack of action regarding the ERC's recommendations. They were particularly concerned about the recommendations on social reintegration and administrative and financial regularization⁵.

Lack of implementation of recommendations issued both by the Council and by bodies of the international human rights system by the Moroccan authorities is also significant. This problem concerns both the consideration given to, and the monitoring, of these recommendations.

Nobody really doubts the advancements resulting from the work and influence of the Council, particularly in 2003. At this time, Morocco passed a new Code of Criminal Procedure and announced the lifting of its reservations on the Convention against Torture, which was implemented on 19 October 2006. The Council has also published a substantial amount of reports regarding various themes.

In addition, the Council "interacts"⁶ with the international human rights system and with organizations or local associations which willingly cooperate with it, in particular through the creation of a civic platform for the promotion of a human rights culture (2009).

We must however note that in the recent years, the Council has faced difficulties serving as a bridge between the government and its citizens. Some independent NGOs consider that the Council does not play the role that it should. They say that as the Council has not yet made a clear stand on serious human rights violations, and it appears more as a spokesman for the authorities concerning human rights matters.

5 Appointment of Council Members

The Council's Rules of Procedure, as amended by the Dahir of 10 April 2001 on the reorganisation of the Council, defines the length of the mandate of the legislative members, who must ensure the independence and the pluralism of the institution in accordance with the Paris Principles.

If the Council's by-laws provide, in principle, for a consultation of local human rights organisations and associations that is as broad as possible, it is clear that the organisations which are mainly contacted are the oldest ones. Thus, it should be noted that the Moroccan Association of Human Rights (MAHR) refuses to participate in such consultation because it does not consider the Council as being independent from the State.

It has been several years that the MAHR has called for "a change in the legal framework which regulates the Council in order for Morocco to have a truly consultative institution in the field of human rights, resembling similar institutions which exist in democratic states⁷.

⁴ Mohamed Aswab, "Le CCDH célèbre ses 20 ans dans la controverse" (The Council celebrates its 20th anniversary in controversy" in *Aujourd'hui le Maroc*, 7 May 2010, <http://www.aujourd'hui.ma/couverture-details75753.html> (accessed on 11 June 2010)

⁵ M'Hamed Hamrouch, "Après 15 jours de sit-in devant le CCDH : Les anciens détenus politiques entrent en grève illimitée de la faim" (Former political prisoners start unlimited hunger-strike after 15 days of sit-in in front of the Council) in *Libération*, 19 April 2010, http://www.libe.ma/Apres-15-jours-de-sit-in-devant-le-CCDH-Les-anciens-detenus-politiques-entrent-en-greve-illimitee-de-la-faim_a10528.html (accessed on June 11th, 2010)

⁶ The Council contributed to the submission of NHRIs in the framework of the Universal Periodic Review in 2008 "Rapport initial du Conseil consultatif des droits de l'homme (CCDH) au titre de l'UPR" (Initial report of the Consultative Council on Human Rights (CCHR) in view of the UPR) http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/MA/CCDH_MAR_UPR_S1_2008_ConseilConsultatifdesDroitsdelHomme_urpsubmission.pdf (accessed on 11 June 2010)

⁷ MAHR, *Rapport alternatif de l'AMDH au 2ème rapport périodique du Maroc présenté au Comité des droits de l'homme à la 67ème session, Genève, October 18th - November 5th, 1999*, (The MAHR Alternative Report to the 2nd Periodic Report of Morocco presented to the Human Rights Committee at its 67th session, Geneva, October 18th - November 5th, 1999) Rabat, p.3.

Moroccan Observatory of Prisons (MOP), which would like to be represented at the Council has already proposed certain candidates, without success, and it has never been formally invited to nominate one of its members, it. Other associations with more limited funds but which have the same importance on the field such as the Annassir Association are not represented to the Council either.

This means that the Council cannot be truly pluralist, as civil society as a whole is not represented. This situation is regrettable as pluralism is the only way to ensure greater independence of the Council.

6 Scope of Recommendations by International Human Rights Mechanisms and the Consultative Council

6.1 Recommendations issued by international human rights mechanisms

The A status conferred to NHRIs by the Sub-Committee on Accreditation (indicating compliance with the Paris Principles) allows them to interact closely with the United Nations system. However, this privileged access raises questions concerning the recommendations adopted by various Treaty Bodies, and particularly the Committee on Human Rights and the Committee against Torture.

These two issues concern the diffusion of these bodies' recommendations and their monitoring by the Moroccan authorities. This last matter of monitoring the recommendations challenges the Council on its ability to exert a more effective role with the authorities, especially regarding the answers which the State should provide to each Committee's Concluding Observations.

A workshop on the implementation of the United Nations Human Rights Treaty Bodies' Concluding Observations at the national level was held between 16 and 18 April 2008 in Rabat under the auspices of the Office of the High Commissioner for Human Rights (OHCHR), following another workshop held on the same subject in June 2006. Several human rights associations participated in the workshop and noted the lack of effective implementation of the relevant Committees' recommendations by the Council⁸.

The adoption on 10 June 2010 of the Marrakesh Declaration regarding the strengthening of relations between NHRIs and human rights Treaty Bodies is evidence of the increasing importance granted by international bodies to the NHRIs. According to this declaration, all state institutions must take these recommendations into account and consider in particular the harmonization between domestic law and international human rights law⁹.

The Treaty Bodies, after considering the reports of States parties, expressly recommend to the authorities that they ensure the wide diffusion of the Concluding Observations. This role is primarily assigned to NHRIs.

A particularly revealing example of failures encountered in the administration of the justice system should to be raised here. In the recent Concluding Observations adopted by the Committee against Torture on 5 February 2004 (CAT/C/CR/31/2), the Committee recommended that the State party "ensure that all allegations of torture or cruel, inhuman or degrading treatment are immediately investigated impartially and thoroughly, especially allegations relating to cases and situations verified [...] and allegations implicating the National Surveillance Directorate¹⁰ in acts of torture, and ensure

⁸ Agence Maghreb Arabe Presse, "Atelier à Rabat sur l'application au niveau national des observations des organes conventionnels des droits de l'Homme de l'ONU" (Workshop in Rabat on the National Application of UN Human Rights Treaty Bodies) 17 December 2007, Rabat, http://www.map.ma/fr/sections/duhd/atelier_a_rabat_sur/view (accessed on 11 June 2010)

⁹ CCHR press release "Rabat : Appel au renforcement de la mission de protection des Institutions nationales de Droits de l'Homme" (Rabat: call to reinforce NHRIs' protective mandate) available on the CCHR website: <http://www.ccdh.org.ma/spip.php?article2848&lang=fr> (accessed on 11 June 2010)

¹⁰ The *Direction de la Surveillance du Territoire*, or *DST* (Directorate for the Surveillance of the Territory - DST) was renamed the *Direction générale de la surveillance du territoire*, or *DGST* (General Directorate for the Surveillance of the Territory, or DGST) in the aftermath of the attacks in Casablanca on 16 May 2003.

that appropriate penalties are imposed on those responsible and that equitable compensation is granted to the victims”.

This recommendation has not been implemented so far, and the Council has never felt obliged to remind the authorities of these important obligations despite actions undertaken by local NGOs.

The Concluding Observations adopted by the Human Rights Committee on 1 December 2004 (CCPR/CO/82/MAR), expressed the same concern regarding the question of torture. The Committee mentioned that “the State party should ensure that complaints of torture and/or ill-treatment are examined promptly and independently. The conclusions of such examinations should be studied in depth by the relevant authorities so that those responsible can be not only disciplined but also punished under criminal law”.

Once again, the Council has chosen to overlook such a serious issue and has failed to prompt the authorities to act pursuant to this important recommendation.

6.2 The Consultative Council’s recommendations and opinions

To date and since its establishment, the Council has only adopted three recommendations and two opinions.

The first recommendation was adopted at its 19th session held on 12 July 2003, and focused on the Council’s prerogatives regarding the study of legislation and international conventions relating to human rights¹¹.

On this occasion, the Council simply urged the various authorities in charge of harmonising legislation to consult with it during the process of harmonisation. As part of its new powers, it is to be associated by the authorities to the reform of the justice system, including the reform of the criminal justice system.

It is only a year later, during its 22nd session on 20 July 2004 that an Advisory Opinion was submitted to King Mohamed VI about the "harmonization of the Moroccan Criminal Code to combat hatred, discrimination and violence"¹². To date, we still do not know how the authorities have taken this opinion into consideration as the harmonization process appears blocked.

Civil society as a whole expects a new momentum in the reform process. In addition, the Moroccan Observatory of Prisons (which is not represented at the Council) considers that no real efforts have been made to in this regard to achieve general harmonisation of domestic law with international human rights law.

Of course, the President of the Council occasionally reminds the authorities - on an informal basis via the media or at public conferences - of the need to ratify all international instruments to which the State is not yet party.

However, it is obvious that the Council generally holds itself back, and does not seem to really be able to raise any issues relating to human rights violations. A telling example is the difficulty in has setting the different points of its agenda during its various sessions.

¹¹ CCHR, *20 ans au service des droits de l'homme - 1990-2010*, (20 Years at the Service of Human Rights – 1990-2010), vol. II, p. 493 available in Arabic on the Council website: http://www.ccdh.org.ma/IMG/pdf/partie_2-20_ans_au_service_des_Droits_de_l_Homme-2.pdf (accessed on 11 June 2010).

¹² CCHR, *20 ans au service des droits de l'homme - 1990-2010*, (20 Years at the Service of Human Rights – 1990-2010), vol. II, p. 501 available in Arabic on the Council website: http://www.ccdh.org.ma/IMG/pdf/partie_2-20_ans_au_service_des_Droits_de_l_Homme-2.pdf (accessed on 11 June 2010).

7 The Consultative Council and counter-terrorism in Morocco

7.1 The Consultative Council and Law 03-03 on Counter-Terrorism of 28 May 2003

The attacks in Casablanca of 16 May 2003 plunged the country back into its past. A special session (18th) of the Council held on 29 May 2003 following the attacks and the report of this session created shock waves felt throughout the country.

Even if the President of the Council did briefly recall that all investigations should be conducted in respect of human rights, he focused primarily on the reasons behind such an attack. According to him, the situation is beyond doubt attributable to the limited nature of the culture of human rights in the country¹³.

Despite the official discourse of the Council which aimed at the promotion and raising awareness of issues relating to human rights, the abuses committed by the authorities following the attacks of 11 September 2001 prove that it has not played a more effective role in the protection of fundamental rights.

The Moroccan authorities announced on 17 July 2003 that more than 700 Islamists had been the subjects of lawsuits in various terrorism cases across the country. The trial of 27 individuals directly accused of being the perpetrators of the attacks in Casablanca was simultaneously announced for 21 July 2003¹⁴.

The judges handed down harsh sentences to the accused, following trials which were qualified as unfair by all observers. The arrests of hundreds of other people continued. Despite the reports of several NGOs which denounced serious human rights violations, the Council kept silent and issued no formal recommendations in this regard.

Since 2003, the human rights situation has deteriorated significantly, which brings to mind the most difficult years experienced by the country in the past. While the Moroccan security forces continue to carry out waves of arrests which are followed by torture and secret detentions of these detainees, the President of the Council says that "In comparison with the Years of Lead, we can say that at present there are no more serious and systematic human rights violations in Morocco"¹⁵.

The new Criminal Procedure Code came into force in October 2003 - following a procedure in which the Council participated – which lead to an expectation for a significant improvement in the protection of defendants' rights.

However, Law 03-03 on counter-terrorism measures enacted just a few days after the attacks of 16 May 2003 undermined all the guarantees established by the Code. Although the Council is part of the process of legal reform, it has never criticised or issued any reservations about this law, even though the law has been unanimously denounced by human rights activists as a threat to individual freedoms.

In addition, the main Treaty Bodies have pointed out the inconsistencies in Law 03-03 with the State party's obligations under relevant treaties in their Concluding Observations, and have recommended Morocco reviews its domestic law. Despite this, the Council has not confronted the authorities with the need to implement these important recommendations.

¹³ CCDH, *20 ans au service des droits de l'homme - 1990-2010*, (20 Years at the Service of Human Rights – 1990-2010), vol. I, p.211, available in Arabic on the Council website:

http://www.ccdh.org.ma/IMG/pdf/partie_1_CCDH_20_ans_au_service_des_Droits_de_l_Homme-3.pdf (accessed on 11 June 2010)

¹⁴ Associated Press (AP), "Maroc- Plus de 700 islamistes poursuivis dans des affaires de terrorisme au Maroc" (Morocco: more than 700 Islamists prosecuted in terrorism cases), Rabat, July 17th, 2003.

¹⁵ Mohamed Aswab, "Les progrès des droits de l'Homme au Maroc sont différemment appréciés par les acteurs" (Progress in Human Rights evaluated differently by actors in Morocco) in *Aujourd'hui Le Maroc*, 10 December 2009, <http://new.aujourd'hui.ma/couverture-details72691.html> (accessed on 11 June 2010)

Between 27 and 29 October 2008, a regional forum was organised by the United Nations office in Amman, Jordan. The forum aimed to promote the protection of human rights in the context of counter-terrorism measures. The Council was represented by one of its members, and while Recommendations adopted at the forum concerned better protection of human rights¹⁶, the Consultative Council has never translated these into concrete actions.

At present, there are still serious abuses in Morocco and NGOs working in the field have not witnessed any reaction from the NHRI. For example, from 12 March to 3 May 2010, Alkarama received the cases of eleven people who were abducted in the street or at home by the DST, and then detained in secret. As usual, the families who informed the Council of these violations have not noted any official reaction.

7.2 The examination of individual complaints by the CCHR

The Council's statutes explicitly empower it to examine, either on its own initiative or by petition from individuals or their representatives, the human rights complaints submitted to it. The Council can make the necessary recommendations to the competent authority in accordance with the Paris Principles' equally important complementary principles. As such, the Council has a working group which focuses specifically on the protection of human rights.

In its last report (2008), the Council recognised there had been a marked increase of ill-treatment and violations of physical integrity during arrests, which indicate the persistence of certain practices which may prejudice the rights of detainees¹⁷.

On 26 October 2007 a Council delegation visited the prison of Sale because of a major and indefinite hunger strike by hundreds of detainees. These detainees were being detained in the context of so-called "terrorism" cases, and called for the respect of human rights in detention and their right to benefit from a fair trial and effective remedies. Despite the commitments made by Council representatives to examine the claims of the detainees and their families, the Council has never made any formal recommendation to the authorities in this regard.

Indefinite hunger strikes are currently underway in several prisons in Morocco, most notably in Sale since the end of May 2010. This social movement has since expanded to other prisons, but this time, no reaction from the NHRI has been registered¹⁸.

According to various corroborating accounts given by many victims or their families, the Council has been informed since 2003 of cases of arbitrary arrests followed by incommunicado detentions, enforced disappearances and torture. Thus, the Council has regularly and thoroughly been informed of such violations since 2003. To our mind, it should have rendered the established complaint procedure more efficient.

8 Conclusion and recommendations to the Council in light of the Paris Principles

Since 2003, the Council does not appear to have had a great influence on the authorities and has certainly failed to encourage them to put an end to serious human rights violations. Rather than decreasing in number, these violations do not appear to be limited to the past, but to be recurring at present.

¹⁶ CCHR press release, "Le CCDH au Forum régional pour la promotion des droits de l'Homme dans le contexte de la lutte contre le terrorisme" (The CCHR at the Regional Forum for the Promotion of Human Rights in the Context of Counter-Terrorism) in *Bulletin d'information du CCDH n°4 - Décembre 2008*, <http://www.ccdh.org.ma/spip.php?article1049> (accessed on 11 June 2010)

¹⁷ CCHR press release "Les Plaintes entrant dans le cadre du domaine de la protection du CCDH - Dossier : Rapport du CCDH pour l'année 2008", (Complaints fall within the protective framework of the CCHR – File : CCHR 2008 Annual Report), in *Bulletin d'information du CCDH n°12*, March 2010

¹⁸ « أنباء عن تدهور صحة مضرّبين عن الطعام في المغرب » (Deteriorating Health of the Hunger Strikers in Morocco) in *Al-Hayat*, 9 June 2010, <http://international.daralhayat.com/internationalarticle/150427> (accessed on 11 June 2010).

The Paris Principles explicitly assign NHRIs with the role of drawing the government and relevant authorities' attention to human rights violations throughout the country. It can propose any initiative which might bring an end to the violations, and if necessary, adopt an opinion on government's positions and reactions.

To date, the Council has not issued an opinion on the specific issue of abuses committed by agents of the State in the context of the counter-terrorism measures. Such an opinion would have been a sure sign of the Council's real independence from the authorities.

This lack of evidence of the Council's independence is the reason why some NGOs and civil society in general perceive the Council as an entity whose position closely reflects those of the authorities. This taints the Council's credibility.

In order to be in full compliance with the Paris Principles, the Council should affirm its independence from the authorities in its speeches and actions, and take concrete initiatives to improve the situation of human rights in Morocco.

The Council should in particular:

- 1- Ensure true pluralism when it consults with civil society in order to determine the eligibility of persons to become members of the Council.
- 2- Adopt and submit appropriate recommendations to the government in line with the actual situation of human rights in the country, and if necessary, criticise positions adopted by the government on even the most sensitive issues.
- 3- Treat cases submitted within the context of the individual complaint mechanism more effectively.
- 4- Interact more closely with the various international human rights protection mechanisms:
 - Ensure the wide diffusion of the Treaty Bodies' Concluding Observations in Morocco;
 - Encourage the State to assure a more effective follow up to the various recommendations adopted by the Treaty Bodies;
 - Participate in the preparation of "lists of issues" likely to be raised by the Treaty Bodies prior to the examination of the state's periodic reports;
 - Inform citizens about the new possibility of submitting individual complaints to the Committee against Torture since the 2006 lifting of the reservation on the competence of the Committee;
 - Inform citizens of the possibility of seizing the United Nations Special Procedures in case of human rights violations.