

KINGDOM OF MOROCCO
NATIONAL HUMAN RIGHTS COUNCIL
(CNDH)

SUMMARY OF FINAL REPORT ON THE 1ST OF JULY CONSTITUTIONAL
REFERENDUM OBSERVATION

Rabat, August 2011

GENERAL CONTEXT

The (Moroccan) National Human Rights Council (CNDH) observed the 1st of July constitutional referendum, in accordance with article 25 of its creating law (*Dahir dated* march 1st, 2011), which entitles the Council to carry out election observation.

In this third observation experience, the Council was encouraged by many factors: (1) the fact that the provisions of article 25 strongly link observation to the promotion of democracy, (2) human rights and freedom principles, as universally recognized, entrenched in the Constitution, particularly freedom of expression and fairness/transparency of elections, and (3) the two observation experiences of the former Advisory Council on Human Rights in the 2007 legislative elections and the 2009 municipal elections.

In this new observation experience the Council faced many constraints: uncompleted structure, limited time frame and limited human resources. It opted for a qualitative approach. A mechanism was created and provided with the necessary financial and human resources. All appropriate measures required by the observation were taken.

In accordance with article 21 of its creating law, the Council also coordinated civil society observation, which included 184 observers in 493 polling stations, in 36 provinces and prefectures.

CNDH observation aimed to ensure an objective, impartial and fair assessment of the constitutional referendum, during the campaign, at the polling stations, during the counting of votes and the announcement of results. There were other partial objectives: enhancing trust and citizenship, encouraging participation, observing respect for citizens' will, choice, rights and freedom, and observing the application of the law.

LEGAL FRAMEWORK

In addition to its field observation, the Council reviewed the referendum legal framework. It concluded the following:

- The referendum is provided for in the 1996 Constitution: article 69 stipulates that the King, after a second reading, may submit any draft bill or proposed law to referendum. Articles 103 and 105 indicate that any constitutional revision projects and proposals shall be submitted to the nation for referendum;
- Referendums are organized under Law # 9.97, dated April 2nd, 1997, considered as the Code of Elections. There is no special law devoted to referendums that takes into account their particularities, importance, sensitivity of their results and the wide difference between them and elections (in which different political parties, programs and projects compete);
- Section 3, Chapter 1, Part 1 of the Code of Elections is devoted to the conditions of referendum participation. Under this section, only voters registered in the lists of voters, soldiers, public order agents, authorized arms holders and Moroccans living abroad are eligible to participate;

It's to be mentioned that only eligible Moroccans who live permanently in Morocco are required to be registered in the lists of voters in order to participate. Several articles, mainly article 62, stipulate that voters should submit their voting cards before casting ballots. Moroccans living abroad need only their "consular registration card" to participate, in accordance with articles 135 and 137;

- The law fails to lay down necessary requirements that guarantee the right to vote for some groups that cannot make it to the polling stations;
- No procedures are taken to apply legal provisions and some groups, accordingly, are excluded, although they have the right to vote (for example legal provisions related to accessibilities for persons with disabilities in the polling stations: Law # 90.12, related to construction, and Law # 10.03 related to accessibilities, dated May 21st, 2003).
- Under the law, especially article 112, only political parties and trade unions are entitled to campaign. Civil society groups are excluded.

It might be reasonable that civil society groups cannot campaign in the legislative and municipal elections because of their nature and objectives. But there is no reason why they should be restrained from campaigning in referendums. These groups were officially, and rightly, invited to submit their memorandums to the Advisory Committee for the Revision of the Constitution. They were encouraged to provide their remarks and comments on the draft constitution.

- The law does not stipulate the publication of the lists of voters, although this publication may be a guarantee for transparency and fairness;

The non-publication of these lists raises doubt over the real number of enrolled participants and the real participation rate. The publication of the lists is the best way to prevent voting on behalf of people that never appear at the polls, or adding names to the lists of voters, especially with the conditions under which the operation is done, the composition of the polls and the limited observation.

The publication of these lists after the voting day, within the contestation delay, is mandatory to guarantee transparency and fairness. It can help reduce doubt of the results and contestation possibilities. But this should not violate the provisions of article 39 of the Code of Elections, which stipulate that the voting is free, personal, confidential and universal;

- The majority of common provisions related to voting irregularities can be legally adapted to and applied on possible irregularities during the voting day or the campaign. Still, some observed examples can challenge that. For example, when public entities like prefectures, rural and urban communes, etc. hung banners supporting (in almost all observed cases) the draft constitution, “on behalf of the population”.

This frequently repeated scene is a double challenge for the law. The said public entities are not entitled to campaign, in accordance with article 112 of the Code of Elections. Besides, can such (directly or indirectly) elected entities have a position vis-à-vis the draft constitution on behalf of voters?

- There is no legal quorum to be adopted by the legally entitled body in the validation of the voting results.

- Article 129 of the Code of Elections stipulates that the minutes of the polling stations should stay for four days at the headquarters of the urban or rural communes. During this four-day period, voters can examine these minutes and submit their relevant claims, before the counting of votes, at the prefectures or provinces. These claims shall be referred to the Constitutional Council, which announces the results after “verifying and deciding over the claims” (article 141). Two remarks:

- a. The term “claim” is ambiguous. The legislator did not specify its connotation, its intent or the purpose behind it. The Constitutional Council is entrusted with the counting of votes. It examines all claims contained in the minutes and gives a final decision over them. In case of irregularities, it must decide - according to their nature and severity - whether the operations should be maintained, or be partially or entirely cancelled.
- b. Under the Code of Elections, only voters can examine minutes. A large number of citizens who did not vote, because of their convictions or because other objective reasons prevent them from voting, are excluded. It is to be noted that the non-participation, regardless motives and reasons, cannot be a basis for the prevention of a citizen from the right to examine these minutes. Besides, there is no room, in this context, for the quality or interest conditions imposed in normal disputes and contestations, including electoral contestations.

These two remarks shed light on a shortcoming in the legal provisions relating to the referendum. They highlight the need to take various legal measures to fill this gap and rectify other weaknesses.

This report includes a number of proposals, listed in the section of recommendations, that can be of help in this regard.

REFERENDUM OBSERVATION

The Council observed 141 polling stations (out of 4688 polls in the selected cities, i.e. 3.01%), as indicated in the following table:

Prefecture	N° of polls	Polls observed by CNDH	Percentage
Agadir Idaoutanane	577	15	2,60%
Boujdour	137	6	4,38%
Smara	262	6	2,29%
Tanger + Al Fahs Anjara	744	21	2,82%
Laâyoune	253	21	8,30%
Dakhla	124	9	7,26%
Rabat	1023	15	1,47%
Safi	704	15	2,13%
Bouaârfa Figuig	241	12	4,98%
Casablanca Anfa	623	21	3,37%
Total	4688	141	3,01 %

(CNDH observation concerned 0.5% of the total 39 969 polling stations throughout Morocco).

1- Referendum campaign

The CNDH team observed the referendum campaign in the selected cities on Wednesday and Thursday 29-30 June 2011. The following conclusions are based on the observers' reports and forms:

- **Banners:** 82.56 % of observers reported the use of banners in public spaces. Although it is unauthorized to do so, supporting banners were hung in such places.
- **Campaign:** All tools and means were used. Political parties, trade unions and some civil society groups participated in the campaign. Public gatherings of contributors were not

banned. There were some limited disruption cases. The observers reported that discrimination cases, related to the authorization to use public spaces, were limited. 79.5% said there was no discrimination and 88.6% witnessed no abnormal intervention of the Administration in the referendum campaign.

- The campaign for the referendum continued until the voting day. The Council noticed that radio stations broadcasted an advertisement for the campaign on Friday, 1st of July. Some daily newspapers published, on the voting day, brochures that included the most important provisions of the new constitution in Arabic and French.
- Observers did not witness any use of violence during the campaign. 95.5% reported no intimidation of voters, and 81.8% said they did not witness any acts of violence perpetrated by political parties, trade unions or other parties.
- **Use of mosques to campaign for the constitution:** The decision of the Ministry of Endowments and Islamic Affairs to generalize the sermon of Friday the 24th had some negative reactions. The sermon expressly called citizens to vote yes for the draft constitution. It considered it “a sign of patriotism, a national and religious duty, and a way to express one’s attachment and dedication to one’s motherland and its development”. The ministry decided to take punitive measures against an imam who refused to read the sermon.

The sermon mixed two aspects. The first was pedagogical. It concerned the simplification and explanation of the main principles and provisions of the draft constitution. The second was related to the call for voting “yes”, and should thus be considered as part of the referendum campaign, governed by the provisions of the Code of Elections.

Reading the sermon in all mosques can be seen as a violation of article 112 of the Code of Elections.

Considering the yes vote as “a sign of patriotism, a national and religious duty and a way to express one’s attachment and dedication to one’s motherland and its development” contradicts the provisions of article 2 of *Dahir* 1.11.82, dated June 17th, 2011, submitting the draft constitution to referendum. This article asked citizens to vote “yes” or “no”. It did not differentiate between the two options or prefer one over the other. Also, the national positive normative system does not punish the “no” vote. Voting “yes” or “no” is a way to

practice one's political rights to vote according to the human rights-based approach. According to the said sermon, refraining from voting "yes", which the sermon considered as a religious duty, is religiously wrong.

The same thing applies at what the sermon considered as a national duty and a way to express one's love to one's motherland. Again, the national positive normative system is in contradiction with what the sermon conveyed. Under article 55 of the Code of Elections, voting is a right and a national duty. It is clear that provisions of this article are neutral.

Posters and banners: They were hung in streets, commercial shops, cars, taxis and public buses. Children were exploited in the campaign. In some places, handbills and banners of boycott-supporters were removed, collected immediately after distribution or destroyed.

Some "yes" supporting banners were hung randomly in the entries of public buildings where polling stations were located.

Gatherings: Several gatherings were held in halls and public places. Some 4392 activities were organized, attended by approximately 3 386 695 participants.

Peaceful protestations: Political parties and associations organized several marches supporting the draft constitution. Boycott-supporters organized marches as well to explain their position and invite citizens to boycott the referendum.

In some places, CNDH observers reported cases of friction between the supporters and opponents of the draft constitution, especially when their marches intersected.

Observation of the campaign: In some places, anonymous yes-supporting banners were hung on the voting day. Cars were used to hold yes-supporting posters. (11.4%)

Exploitation of national symbols: Some national symbols, like the picture of the king, the crown and the national flag, were exploited.

Use of public facilities: 20% of observers reported the use of public places by yes-supporters, mainly partisans of political parties and trade unions. Civil-service buses, advertising boards rented from local authorities and facilities of public institutions and local authorities were used. Phrases like "staff members and agents of administrations, public and semi-public institutions and local authorities" were frequently used to call citizens to vote yes. However, there was no use of racist slogans during the referendum campaign, according to 84.1% of observers.

Use of children: One of the persistent observations was the illegal use of children in the referendum campaign. Indeed, 79.5 % of observers reported that this phenomenon was widely spread.

VOTING AND COUNTING

a. Polling stations' equipments and opening time

Articles 57 to 62 and articles 116 to 122 of Law No. 9.97, considered as the Code of the Elections, as was amended and completed, provide for some arrangements and preparations for the voting procedures, especially with regard to the location of the polling stations, appointment of their members and presidents by the local authorities, appointment of the representatives of political parties and trade unions, and the provision of ballot papers, lists of voters, minutes, vote counting forms, ballot boxes, voting booths and indelible ink, in addition to the opening and closing time of the polls.

The analysis of data available through CNDH observation, regarding the location of the polling stations, indicated that the referendum administration succeeded in choosing public places close to voters to host the polls, as required by the law. Polling stations were located within public places (schools and public administrations), except for six stations.

CNDH observers reported that there were no posters in these voting places at the opening time, to ensure the right of equality and to have no influence over the choices of voters.

Generally, the polling stations were open on time, i.e. 08:00 a.m. (for 95.03%, i.e. 134 out of 141 stations). Presidents and members were present before the opening time.

Based on the available data, the Council noticed that women's participation as presidents or members of the polling stations was limited. In 4 out of the 141 polling stations, i.e. 2.83%, the president was a woman, and in 27 (i.e. 19.14%) women were members.

CNDH observers reported the availability of all legally required equipment. Ballot boxes, locks, voting booths, minutes, "yes" and "no" ballot papers (equal in number and with two different colors), sealed, opaque and no gummy envelopes, lists of voters (two copies), vote counting forms, indelible ink, tables and adequate lighting were all available. In some polling stations, however, only limited number of chairs for the representatives of political parties and trade unions were available.

The voting booths did not always guarantee confidentiality (10.63% of booths, i.e. in 15 out of 141 stations). Indeed, some booths were installed before open or transparent glass windows, others were not adequately covered or their covers were too transparent. This is a challenge for the Administration. CNDH observers witnessed (limited) violations of the principle of confidentiality by the voters themselves, when they withdrew the ballots and when they left the booths.

They also reported a lack of accessibility for people with disabilities. This is not a new observation. The Council highlighted in its two last observation reports (2007 legislative elections and 2009 municipal elections) the need to address this issue in order to ensure the participation of people with disabilities in elections and referendums. The available data showed that 85.1% of observed polling stations did not have accessibility for these citizens (in 120 stations).

The observers of the National Human Rights Council reported that the referendum was conducted in a safe environment. No incidents that might jeopardize this condition were reported. Security agents were always around during the voting day, in 140 out of 141 polling stations (99.29%).

Among the important observations, CNDH observers reported that there were no representatives of political parties and trade unions at the polling stations. This is a real issue, given the important role they are supposed to play to monitor the referendum and contribute to ensuring fairness and transparency of the process, and given the fact that only political parties and trade unions have the right to participate in the referendum campaign and can appointment representatives and examiners at the polls, central offices and counting committees.

b. Voting

The CNDH team was able to observe the voting. It had the possibility to observe the confirmation or rejection of voter identities, identity impersonations, if any, casting ballots in the voting booths, voting duration, use of the indelible ink, continuation of the campaign until the voting day, etc.

Although the overall percentage deducted from the observation forms highlights the normal conditions of the referendum in the observed polling stations, there were some procedural deficiencies. Referendums and elections would have more credibility and fairness if such deficiencies could be avoided.

CNDH observers reported that citizens could practice their right to vote until the closing time. No violation of the closing time was reported. They practiced their right without interference from any third party. And there were no identity impersonation cases.

However, 17.73% of CNDH observers (in 25 out of the 141 polling stations) reported that the legal requirements to read loudly the voter's name and his/her number, after consulting his/her National ID Card and voting card, were not respected. In 25 polling stations, cases when voters did not use the voting booths were reported. This confidentiality condition was respected in the other 116 stations. Some cases of identity rejection were also reported (5.67%, in 8 out of 141 stations). Authority agents were around in some polling stations.

Appropriate measures should be taken to avoid these deficiencies in future elections and referendums.

In general, the referendum was conducted under normal conditions, despite the said deficiencies and gaps, for which the presidents of polling stations or voters might be liable themselves.

c. Counting of votes and results

According to the forms and reports submitted by CNDH observers, the counting legal procedures in force were respected, despite some negative observations in some polling stations.

With the exception of a few violation cases, such as the lack of respect for the voting and the closing time at some polling stations and some disputes at the closing time, the other procedures were properly respected in accordance with the provisions of the election laws.

There was no contradiction between the number of used and unused ballots. No political party or trade union was refused access to the polling stations at the counting time. CNDH non-partisan observers were not bothered or asked to leave during the counting of votes. And there were no illegal ballots at the boxes.

However, the burning of the valid ballots outside the polling stations raises an important question about the respect of the environment in this process.

HUMAN RIGHTS VIOLATIONS OBSERVED BY THE PRESS

The observation of printed and electronic newspapers aimed to highlight all possible human rights violations observed by these newspapers.

A total of 1161 news articles were analyzed. 233 cases of alleged human rights violations were detected: 110 cases related to freedom of expression, 68 to freedom of assembly, 30 cases to the right to life and physical integrity, 9 cases to abuses and inhuman or cruel treatment, 7 cases to discriminatory treatment, 3 cases to non-respect for the principle of equality before the law and one case to arbitrary arrest.

GENERAL CONCLUSION AND RECOMMENDATIONS

1. General conclusion

Through CNDH observation, and despite deficiencies related particularly to the referendum campaign and the distribution of voting cards in addition to the non-implementation of some earlier CNDH recommendations (included in the previous 2007 and 2009 observation reports, particularly those related to the availability of accessibilities for people with disabilities), a number of general conclusions were made. They can be summarized as follows:

- In general, the law was respected during the referendum;
- The referendum was conducted, in general, under safe conditions. No security threatening practices or use of violence were reported;

2. Recommendations

Through the analysis of the legal framework of the referendum, and the analysis of the results of the observation, in its different stages, the following recommendations were made:

a. Legal framework

- Code of Elections
 - Mentioning clearly and explicitly the observation of elections in addition to its institutionalization and organization in accordance with the provisions of article 11 of the Constitution and the international relevant standards.

- The law should establish the necessary measures to guarantee the right to vote for some categories that find it difficult to go to the polls, for many reasons (as it is the case for sick persons, people with disabilities, nomads, sailors, hospitalized people and prisoners) who are not legally deprived from the right to vote.
- Promulgate a special law devoted to referendums
 - This law must take into account the particularities of referendums and the historical, legal and political significance of their results. It should highlight the important role of civil society groups in the referendum campaign and/or observation, according to the position these groups want to take. It should make explicit the special measures to be taken in regard to the voting of soldiers and arms holders, and the organization of the polling stations where they should vote;
 - Approving the right to contest referendum results and amplification of such practice and establishing the conditions that guarantee its seriousness;
 - The Council encourages the publication of the lists of voters to give more credibility to the results of referendums and ensure their fairness and transparency. But the provisions of article 39 of the Code of Elections, which stipulate that the vote must be free, confidential, personal and universal, must be respected;
 - The adoption of appropriate penalties for violations that may be perpetuated during the referendum, including the campaign, voting, counting, announcement of results, etc.
 - The adoption of laws and regulations related to the terms and conditions of public funds in referendum campaigns.

b. Accessibilities

The Council insists on the provision of accessibilities in public places in general, and in polling stations and places where voters register or withdraw their voter cards in particular. The right to vote for illiterate people should be equally guaranteed, through the use of symbols.

c. General Recommendations

- Reinforcing equal participation in the referendum without depriving some categories from this right, especially prisoners, sick persons, hospitalized people, nomads, sailors, etc.
- Supporting the National Human Rights Council and facilitating its task in the capacity building of civil society groups in the field of observation, through the organization of training programs, in coordination and collaboration with the relevant government departments, etc.;
- Observing the international environmental standards when burning the ballots as stipulated by the law;
- Adopting a gender-based approach in the composition of the board of the polling stations (presidents and members), to ensure the implementation of the principle of equality.