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Equality between women and men: a condition for the success of the Arab Spring

Report¹

Committee on Equality and Non-Discrimination

Rapporteur: Ms Fatiha SAÏDI, Belgium, Socialist Group

Summary

Despite the absence of tangible improvements in women's lives since the beginning of the Arab Spring, the vast process of constitutional and legislative reform which has been undertaken by several countries of the Southern shore of the Mediterranean represents a unique opportunity for strengthening equality between women and men.

The measures taken by the authorities in Morocco and Tunisia not only to keep a line of continuity with past *acquis*, but to go even further in the promotion of women's rights should inspire the other countries in the region. Moreover, to have a tangible impact on the status of women, they should be followed by action to bring legislation into line with international human rights standards, to ensure the effective and consistent enforcement of the law and to remove the legal and practical obstacles which limit women's access to justice. The evolution of law and policy can have a durable and effective impact only if it is accompanied by an evolution of mentalities.

The Parliamentary Assembly should stand ready to contribute to building, in the Mediterranean, an area of democratic stability sharing the same values and the same commitment to pluralist democracy, human rights and the rule of law, in a spirit of dialogue and mutual respect, based on the conviction that human rights, of which women's rights are an integral part, are indivisible and universal.

1. Reference to committee: [Doc. 12652](#), Reference 3811 of 3 October 2011.

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A. Draft resolution²

1. Following the uprisings and demonstrations that have shaken a number of countries on the Southern shore of the Mediterranean since January 2011, a process of democratic transition is currently under way. The Parliamentary Assembly believes that this process can be successful only if equality between women and men is placed as a cornerstone in the legislative and constitutional foundations of the new institutions and if women are fully associated in building and enforcing them.

2. There have been no major improvements in women's lives since the beginning of the Arab Spring one year ago. On the contrary, the elections in Egypt and Tunisia have led to lower levels of women's representation in politics, while in the Moroccan Government there is only one woman. They also resulted in the victory of religion- inspired parties, which has raised questions as regards the prospects of a gender equality agenda. In Libya, women's rights do not feature amongst the priorities of the Transitional National Council.

3. Despite such developments, the Assembly believes that the window of opportunity to strengthen equality between women and men is still open in all the countries of the region. In particular, it welcomes the positive steps taken by the authorities in Morocco and Tunisia not only to keep a line of continuity with past *acquis*, but to go even further in the promotion of women's rights.

4. Thus, in Morocco, the new constitution guarantees the principle of gender equality and the precedence of international human rights instruments, to which Morocco has adhered, over national law. Morocco and Tunisia introduced special safeguards aimed at boosting women's representation in the elections that took place respectively in October and November 2011. Furthermore, both countries have committed themselves to withdrawing all reservations to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

5. These measures should inspire other countries in the region. Moreover, to have a tangible impact on the status of women, they should be followed by action to bring legislation into line with international human rights standards, to ensure the effective and consistent enforcement of the law and to remove the legal and practical obstacles that limit women's access to justice.

6. The evolution of law and policy can have a durable and effective impact only if it is accompanied by an evolution of mentalities. In the months to come, politicians, institutions, the media and the education system should play a key role in removing the invisible barriers which hamper women's enjoyment of human rights.

7. The Assembly stands ready to contribute to building, also in neighbouring countries on the Southern shore of the Mediterranean, an area of democratic stability sharing the same values and the same commitment to pluralist democracy, human rights and the rule of law, in a spirit of dialogue and mutual respect, based on the conviction that human rights, of which women's rights are an integral part, are indivisible and universal. It recalls, in this regard, that the status of partner for democracy creates a structured framework of co-operation with parliaments of non-member states in neighbouring regions wishing to benefit from the Assembly's experience.

8. In the light of these considerations, the Assembly calls on the authorities of all the countries of the region to:

8.1. make a clear and unequivocal commitment to introduce reforms to enhance the status of women and eradicate all forms of discrimination against them;

8.2. introduce, in the electoral legislation, specific measures aimed at promoting women's representation in elected public bodies, at all levels, such as an appropriate quota of reserved seats or the obligation to alternate women and men candidates as a condition for the admissibility of electoral lists;

8.3. bring legislation in the area of marriage, family, inheritance and personal status law into line with international human rights standards, as set out in the CEDAW and to ensure the application of this convention in its entirety;

8.4. promote the full participation of women and women's organisations in public life;

2. Draft resolution adopted unanimously by the committee on 20 March 2012.

- 8.5. introduce a specific legal framework to prevent and prosecute all forms of violence against women, including domestic violence, female genital mutilation, girl child neglect, so-called “honour” crimes and sexual violence, effectively punish the offenders and ensure its implementation;
 - 8.6. set up programmes and services to provide assistance to women victims of violence and other victims of domestic violence;
 - 8.7. promote women’s rights and gender equality in the authorities’ public discourse, with a view to creating a climate conducive to the effective empowerment of women;
 - 8.8. involve the media in promoting a culture of gender equality and combating gender-based stereotypes;
 - 8.9. improve the legal training of members of the police and the judiciary in the field of human rights, set up mechanisms to monitor and ensure the consistent implementation of the law throughout their territories, facilitate women’s access to legal advice and representation and organise awareness-raising campaigns on women’s rights;
 - 8.10. guarantee the participation of women in the transitional justice process as well as the prosecution of the acts of violence suffered by women either during peaceful demonstrations or in situations of armed conflict, irrespective of the perpetrators’ political allegiance;
 - 8.11. organise training on gender equality for civil servants and awareness-raising activities on gender equality for educators and students, at all levels;
 - 8.12. provide financial support to non-governmental organisations working to promote women’s rights and involve them in drafting, implementing, monitoring and evaluating all projects undertaken in favour of women;
 - 8.13. promote women’s access to education and introduce specific measures aimed at addressing the illiteracy rate among women;
 - 8.14. develop specific policies to improve the situation of women in rural areas.
9. The Assembly calls on the countries of the region that will shortly undergo a process of constitutional reform – Egypt, Libya and Tunisia – to ensure that:
- 9.1. the draft constitution is based on an inclusive process and the extensive consultation of all the stakeholders, including civil society and human rights and women’s organisations;
 - 9.2. the principle of gender equality is enshrined in the constitution and reflected in the implementing legislation;
 - 9.3. the constitution explicitly permits the possibility of taking positive action and policies in order to promote equality between women and men;
 - 9.4. the constitution establishes the precedence of ratified international human rights instruments over national law.
10. The Assembly calls on the authorities of Morocco to:
- 10.1. sign and ratify the Optional Protocol to the CEDAW, which recognises the competence of the Committee on the Elimination of Discrimination against Women to receive complaints from individuals or groups;
 - 10.2. initiate a public debate on abolishing polygamy;
 - 10.3. set up, as a matter of urgency, the Authority for parity and fight against all forms of discrimination foreseen in Article 19 of the Constitution, and endow it with sufficient human and financial resources.
11. Recalling that Tunisia has been a pioneering country in the region as far as gender equality is concerned, and has adopted far-reaching measures such as the abolition of polygamy, the Assembly calls on its authorities to:
- 11.1. continue to place the enhancement of the status of women at the centre of the reform effort;
 - 11.2. take advantage, as a full member of the European Commission for Democracy through Law (Venice Commission), of its expertise in the field of democratic transition by means of consultation and exchanges of views in the context of the drafting of the new constitution;

- 11.3. withdraw the general declaration regarding the interpretation of the CEDAW;
 - 11.4. reform the Personal Status Code so as to consider spouses as joint heads of the household;
 - 11.5. criminalise marital rape.
12. The Assembly calls on Morocco and Tunisia to:
- 12.1. finalise the process of withdrawal of all the reservations to the CEDAW as soon as possible;
 - 12.2. start without delay a process of legislative reform to bring legislation fully into line with the CEDAW, if appropriate relying on the expertise of the Venice Commission, of which they are both members;
 - 12.3. consider it as a political priority to tackle violence against women, in particular by:
 - 12.3.1. countering the idea that domestic violence is a private matter and affirming that violence against women should always engage the public interest;
 - 12.3.2. ensuring that the police investigate all cases of violence against women, even when the complaint is withdrawn;
 - 12.3.3. organising campaigns to raise public awareness of violence against women and to encourage its victims to report it to the authorities;
 - 12.3.4. collecting, on a regular basis, information, data and statistics on domestic violence as well as on other forms of violence against women, such as so-called “honour” crimes, girl child neglect and forced marriages;
 - 12.3.5. repealing the legal provision which enables the rapist of a minor to avoid criminal prosecution if he marries the victim, and ensuring that the fact that the victim is underage represents an aggravating circumstance in the context of criminal proceedings.
 - 12.3.6. considering acceding to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210);
 - 12.3.7. setting up co-operation activities with the Council of Europe in this area.
13. The Assembly recalls that the parliament of Morocco has held the status of partner for democracy since June 2011 and it reiterates its call on the Constituent Assembly of Tunisia to consider the prospects for parliamentary dialogue offered by the status of partner for democracy with the Assembly. It extends a similar call to the other countries of the region. Similarly, it invites the authorities of the countries of the region, if they have not yet done so, to consider joining the European Centre for Global Interdependence and Solidarity (North-South Centre) and the Venice Commission.
14. The Assembly also draws the attention of the relevant authorities of the countries of the Mediterranean Southern shore to the importance of the North-South Centre – of which Morocco is a member – as a platform for co-operation linking governments, parliamentarians, local and regional authorities and civil society. It invites them in particular to support – and encourage active participation in – the North-South women’s empowerment process, set up by the Centre in the framework of the follow-up of the Conference “Women as agents of change in the South of the Mediterranean” (Rome, 24-25 October 2011).

B. Draft recommendation³

1. Referring to its Resolution ... (2012) "Equality between women and men: a condition for the success of the Arab Spring", the Parliamentary Assembly reiterates its conviction that no State can be called truly democratic unless it relies on the balanced participation of women and men in public life and recognises that women and men have equal dignity and should enjoy the same human rights.
2. The Assembly believes that the Council of Europe has both an interest and the instruments to contribute to building an area of democratic stability in its neighbourhood, sharing the same values and the same commitment to democracy, human rights and the rule of law. It therefore welcomes the timely initiatives taken by the Secretary General and a number of Council of Europe bodies to establish closer dialogue with the countries of the region, especially Morocco and Tunisia.
3. The Assembly calls on the Committee of Ministers to pursue this course of action through political dialogue and country-specific action plans and co-operation programmes, drawn up in consultation with the authorities of the countries concerned and other stakeholders. It asks the Committee of Ministers to ensure that, in this context, gender equality and the enhancement of the status of women are included as high priorities.
4. Recalling that both Morocco and Tunisia are members of the European Commission for Democracy through Law (Venice Commission), the Assembly recalls that it attaches great importance to the role that this body can play in providing advice on the new Tunisian Constitution, on legislation which will be adopted to implement the Constitutions in Morocco and Tunisia, as well as on the reforms which are necessary to bring the national legislation of these countries into line with international human rights standards. It therefore encourages the Committee of Ministers to support the Venice Commission in these tasks.
5. The Assembly is of the opinion that, in addition to a process of legislative reform, the citizens of Morocco and Tunisia, in particular women, would benefit from a more consistent and efficient implementation of the law. To this end, the Assembly recommends that the Committee of Ministers propose to the authorities of Morocco and Tunisia that its relevant bodies:
 - 5.1. organise and/or deliver training to members of the judiciary in the area of human rights law;
 - 5.2. provide advice and exchange of good practice on how to remove the practical and legal barriers to women's effective access to justice.
6. Considering that violence against women is a widespread problem, the Assembly proposes that the Committee of Ministers offer the countries of the region, in particular Morocco and Tunisia, extensive co-operation in this area, in particular as regards:
 - 6.1. the organisation of awareness-raising campaigns and activities, addressed to the general public;
 - 6.2. exchange of best practice and advice on legislative reform in order to effectively prevent violence against women, protect its victims and prosecute the perpetrators;
 - 6.3. information and training on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210).
7. With a view to promoting an evolution of mentalities among the general public, the Assembly encourages the Committee of Ministers to propose to the countries of the region the organisation of activities aimed at:
 - 7.1. training civil servants in gender equality and human rights;
 - 7.2. teaching gender equality and human rights education in schools;
 - 7.3. training and raising awareness of the media on gender equality and sharing good practice on how to avoid stereotyping of women;
 - 7.4. enhancing the capacity for action of civil society and non-governmental organisations.

3. Draft recommendation adopted unanimously by the committee on 20 March 2012.

8. The Assembly believes that the consolidated experience of the European Centre for Global Interdependence and Solidarity (North-South Centre) is an important asset in the elaboration, implementation and evaluation of action plans with Morocco and Tunisia, as well as in the establishment of co-operation with other countries in the region. It therefore calls on the Committee of Ministers to confirm its support to the North-South Centre and to its specific activities aimed at:

- 8.1. developing further the network of the North-South women's empowerment process, which was set up in the framework of the follow-up of the Conference "Women as agents of change in the South of the Mediterranean", organised by the North-South Centre in co-operation with the Italian Parliament (Rome, 24-25 October 2011);
- 8.2. strengthening relations with civil society and non-governmental organisations and contributing to capacity building, in particular for youth.

C. Explanatory memorandum by Ms Saïdi, rapporteur

1. Introduction

1. In 2011, upon receiving the Nobel Peace Prize, the Yemenite women's rights activist, Tawakkol Karman, dedicated it to the Arab Spring. In the collective imagination, she became the symbol of thousands of Arab women who were coming out into the open, onto the streets and on the Internet, to call for more equality, an active role in political life, and democratic change in their countries.

2. These women were protagonists in the movements which prompted the recent political upheavals in a number of countries of the southern shore of the Mediterranean: in Morocco, they participated in the "Movement for dignity", which led to a constitutional reform; in Tunisia, they were among the bloggers who contributed to the fall of Ben Ali's regime; in Libya, they supported the fight against Colonel Gaddafi's dictatorship; in Egypt, they called for President Mubarak's resignation. Beyond the South Mediterranean, encouraged by the domino effect of the Arab Spring, women peacefully fought for their rights in Bahrein, Saudi Arabia, Syria and Yemen.

3. However, as protests gained increasing support amongst the population and brought about political changes, women were set aside. On several occasions, women participating in demonstrations were subjected to intimidation and violence by groups of men. In Egypt, Morocco and Tunisia, women's representation in parliament and government is either negligible or well below expectations. In Libya, the introduction of a special quota for women in the future Constituent Assembly has been abandoned and the introduction of Sharia Law is envisaged. Politically, the uncertainty over what the Arab Spring has in store for women is increased by the electoral success of Islamist parties in all the electoral contests which have taken place in the region.

4. One year later, in the light of these developments, it is legitimate to ask ourselves whether the Arab Spring is going to meet women's demands for more equality.

2. Aim, origin, scope and sources of the present report

5. This report is meant to be a contribution to the debate on the evaluation of the Arab Spring and an encouragement to women to continue to be actors of democratic change. It should also help the Council of Europe to identify the priorities for its engagement in the countries of the Southern shore of the Mediterranean.

6. The origin of the present report is a motion for a recommendation on "Gender equality and the status of women in the Council of Europe southern neighbourhood", presented by Ms Deborah Bergamini and others (Doc. 12652). Although the scope of the Arab Spring is broader, in this report I will keep the same geographical scope as the original motion – which is limited to the countries of North Africa –, as these are the countries with which the Council of Europe as an organisation has initiated a closer dialogue and co-operation. I have decided not to address the situation in Algeria, as this country has not been substantially affected by the Arab Spring and has not undertaken a process of constitutional reform. This report uses the expression "Arab Spring", but deals in fact with the democratic spring which included all the populations that are present in the region, including the Amazighs.

7. For the preparation of the present report, I have relied on desk research as well as first-hand information gathered through a number of events organised by the Committee on equal opportunities for women and men⁴ and bilateral meetings.⁵ This report also draws ideas and information from the Conference on Women as agents of change in the South of the Mediterranean, organised by the European Centre for Global Interdependence and Solidarity (North-South Centre) in Rome (24-25 October 2011).

4. An exchange of views on recent developments in the field of gender equality in Morocco, with Ms Fatiha Layadi, member of the Moroccan Parliament, (January 2011); a hearing on women in North Africa, with Ms Gauri van Gulik, Advocate and Researcher for Europe and Central Asia, Women's Rights Division, Human Rights Watch (June 2011); and a hearing on gender equality and the status of women in the Council of Europe southern neighbourhood, with Ms Khadija Mohsen-Finan, political scientist at the University Paris VIII and at the Institut de relations internationales et stratégiques, France (December 2011).

5. I held bilateral meetings with the Moroccan parliamentarians (January 2012), with the Secretariat of the European Commission for Democracy through Law (Venice Commission) and the Council of Europe Director General of Programmes, Ms Gabriella Battaini.

8. I would like to take this opportunity to warmly thank the Moroccan and Tunisian authorities for the assistance and co-operation which enabled me to conduct fact-finding visits to these countries, respectively on 15-18 February and 19-21 February 2011.⁶

3. The electoral success of Islamist parties and its implications for women's rights

9. In the wake of popular demonstrations, elections took place in Morocco, Tunisia and Egypt and are scheduled to take place in Libya. One common feature of these elections has been the clamorous success of Islamist parties.

10. This success is particularly marked in Egypt, where Islamist political forces represent 75% in parliament. The Freedom and Justice Party, which was founded by the organisation of the Muslim Brotherhood in April 2011, has obtained 47% of the seats (235 out of 498 seats).

11. The second main political force is an alliance of three radical salafist parties (Al-Nour, Building and Development party and the Authenticity party), which has 125 seats, that is 25%.⁷ In addition, independent candidates of Al-Nour won 28 of the 168 seats reserved for independent candidates.

12. In October 2011, the Tunisian electorate was called to choose the members of the National Constituent Assembly which would be in charge of drafting a new constitution.⁸ The moderate Islamist party Ennahda ("Renaissance") won 89 of the 217 seats, followed by the Congress for the Republic (29 elected), of liberal inspiration, the new party Popular Petition (26 seats) and the centre-left Ettakattol (21 seats).⁹ Following the elections, Ennahda formed a coalition with the Congress for the Republic and Ettakattol.

13. In Morocco, the elections concerned the 395 seats of the House of Representatives, which is the lower chamber of the Moroccan Parliament and the only one elected by a direct vote.¹⁰ The Justice and Development Party (PJD), of Islamist inspiration, gained 27% of the seats (107 out of 395).¹¹ Following this result, Abdelilah Benkirane, Secretary General of the PJD, was instructed to form a government. Unable to establish an absolute majority, the PJD formed an alliance with the Istiqlal party, which had been in power most of the time since independence, and other parties having a long history in the Moroccan political scene.

14. Building a representative democracy will represent a particularly daunting challenge for Libya, a country where political parties have been banned since 1972. Elections for a Constituent Assembly should be held in June 2012.

15. Islamist organisations and movements, which were severely persecuted under Gaddafi's regime, took active part in the uprising. Amongst the most influential Islamist organisations are the Libyan branch of the Muslim Brotherhood, which reportedly has doubled its membership since February 2011, and the Libyan Islamic Movement for Change (LIMC).¹²

16. Despite being represented in the National Transitional Council (NTC), which has *de facto* ruled the country since the demise of the previous regime, many Islamists criticise it as a secular structure geared towards a Western international audience, to the detriment of national Islamist values. There are no reasons to doubt that, also in Libya, Islamist parties will have political support from the majority of the population.

17. The success of Islamist parties in Egypt, Morocco, Tunisia and, in the near future, probably in Libya represents a major political change in the entire region: before the Arab Spring, some of these parties were either banned or did not exist. In fact, previous regimes often presented themselves as the main barrier against Islamism, and some may argue that it is mainly on this basis that they enjoyed Western support.¹³

6. Programme of the fact-finding visit to Morocco (AS/Ega/Inf (2012) 07) and programme of the fact-finding visit to Tunisia (AS/Ega/Inf (2012) 08).

7. www.guardian.co.uk/world/feedarticle/10053165.

8. At the invitation of the Tunisian authorities, the Assembly conducted an electoral and a post-electoral mission.

9. ISIE, Independent Higher Authority for the Elections, www.isie.tn/Fr/accueil_46_3.

10. At the invitation of the Moroccan Parliament, an Assembly delegation was invited to observe them.

11. Portail National du Maroc, www.maroc.ma/PortailInst/Fr/logoevenementiel/Dossier+Elections.htm.

12. International Crisis group, Holding Libya Together: Security Challenges after Qadhafi, December 2011.

13. These views were expressed during some meetings with civil society representatives in Morocco and Tunisia.

18. The Islamist parties that obtained the greatest electoral support present themselves as moderate forces; their leaders have indicated willingness not to put into question the progress in the area of gender equality achieved under previous regimes or governments.

19. In Tunisia, for instance, the electoral programme of Ennahda explicitly called for protection of women's freedoms and equal opportunities for women and men as regards employment and administrative and political responsibilities. The fight against all forms of discrimination and violence against women was also indicated as one of the goals. Party representatives that I met during the visit assured me that women's rights would be protected. In Morocco, the PJD has pointed out on several occasions that civil rights and women's rights will not be adversely affected. In Egypt, the principles of freedom, equality for citizens and equal opportunities for women and men appear in the manifesto of the Muslim Brotherhood, as well as the prohibition of any discrimination based on "religion, sex or colour".

20. These declarations are a reassuring first step. However, the real orientation that these parties and movements will give to their policies in practice is not yet entirely predictable, owing to their sometimes short history and to the lack of previous governmental responsibilities. Besides, the situation may differ considerably according to whether they are in a coalition with other parties, whether they have to compete with more radical parties for the support of the Islamist electorate or on the basis of the specific characteristics of each country.

21. For the Arab Spring to usher in real democracies, it is not sufficient that what has been achieved so far in the area of gender equality is not put into question: it is necessary to make further progress.

22. The new governments of the region should engage in a systematic and comprehensive effort to ensure that laws and policies are in line with international human rights standards in the area of gender equality and that women are given the same chances as men to participate in all aspects of society and enjoy human rights. In doing so, these countries should be able to rely on the support and assistance of the Council of Europe, in a spirit of dialogue and mutual respect.

23. Dialogue with the Islamist political forces that have won the elections is indeed a must. As political representatives elected through processes which have been recognised in conformity with international standards, these parties have full democratic legitimacy.

24. The Islamist success confronts Europe with a dual challenge: how to understand the reality of other countries while avoiding a European-centred approach, and how not to give in to any temptation of cultural relativism.

25. The separation between state and religion is considered by many, including the Assembly, as a necessary condition for gender equality.¹⁴ It is not difficult to imagine, however, that suggestions to enhance the status of women by introducing secularism would not lead to results, because – with the exception of Tunisia – this concept is alien to the political culture of these countries, would be perceived as an imposition, and, moreover, the electorate is possibly not interested in it.¹⁵

26. Instead, the Council of Europe should help the States of the region to promote gender equality and enhance the status of women in a context where the separation between State and religion is blurred, in the sense that religious law is either the main source of law or strongly shapes it. In doing so, the Council of Europe should reaffirm the universality and indivisibility of human rights, which cannot be interpreted differently according to the culture, religion or social context.

4. The decrease in women's political representation

27. The Arab Spring elections resulted in a disparity between women's contribution to the transition process and women's representation in politics.

14. The Assembly has expressed this view in its [Resolution 1860 \(2012\)](#) on advancing women's rights worldwide: "The Assembly underlines that the separation of religion and state is necessary for the realisation of equality and non-discrimination, both de jure and de facto" (paragraph 1).

15. This view was expressed by Ms Khadija Mohsen-Finan during the hearing of 8 December 2011 in Paris, who mentioned how demonstrations in support of the secularity of the state were always met with limited popular support in Morocco, and how some secular reforms in Tunisia were sometimes perceived as an imposition.

28. In Egypt, only 2.2% of the seats of the new parliament are occupied by women: nine of them were elected, while two were appointed by the Supreme Council of the Military Forces (SCAF).¹⁶ The electoral law on which the election was based did not set aside any special quota for women. The only “positive action” to promote women’s political representation was the requirement for at least one woman to be present in every electoral list.¹⁷

29. Women’s representation has deteriorated compared to the previous legislature: as a result of the 2005 parliamentary election, only five women were elected; however, subsequently, new legislation enabled 64 seats for women to be added, which brought the representation of women to 12%.¹⁸

30. In Libya, in November 2011, the NTC set up an interim government, composed of 29 ministers, two of whom are women: Ms Fatima Hamroush, Minister of Health, and Ms Mabrouka Jibril, Minister of Social Affairs. At the end of January 2012, a special committee in charge of the preparation of the election adopted the electoral law for the election of the future Constituent Assembly. The quota of 10% of the seats initially reserved for women disappeared from the final text. However, there seems to be a requirement for women to represent 50% of the candidates on political parties’ electoral lists.¹⁹

31. In Morocco, following the November 2011 election, women occupy 67 seats in the House of Representatives; 60 of them were elected on the basis of a quota reserved for women,²⁰ while the other seven were elected in local constituencies. This represents an improvement in the overall representation of women in the lower chamber, which has passed from 12,3% to 16,7%. However, it remains exceedingly low, placing Morocco in 72nd place amongst the countries of the world as regards women’s parliamentary representation.²¹

32. The poor representation of women affects also the government, which has only one woman: Ms Bassima Hakkaoui (PJD), Minister for Solidarity, Women, Family and Social Development. This represents a dramatic step backwards, considering that in the previous government there were seven women ministers.

33. The presence of only one woman in the government raised protests from a number of women members of parliament.²² Following pressure also from civil society groups, the Prime Minister has made a commitment to compensate for this imbalance by appointing more women to high-level decision-making positions within the administration.²³

34. As a result of the election in Tunisia, only 59 out of 217 seats are occupied by women. Again, this figure (27%) represents a reduction in the proportion of women compared to the previous legislature (30%). The government counts only two women ministers (Ms Sihem Badi, Minister of Women and Family Affairs, and Ms Mémia El Benna, Minister of Environment) and one woman secretary of state (Ms Chahida Ben Fraj Bouraoui, Secretary of State for Housing) out of 41 members (30 ministers and eleven secretaries of state).

35. The poor result as regards women’s political representation is a disappointment also in the light of the history of Tunisia, where for years women have enjoyed a particularly advanced status compared to other countries in the region. All the more so, considering that the rules established in April 2011 by the Tunisian electoral commission were particularly progressive, as they required political parties to use “zip-lists”, alternating men and women from top to bottom on their electoral lists.²⁴

36. Despite these provisions, the dispersion of the vote amongst the high number of lists (110) strongly affected women’s chances of election, as often only the first or the first two candidates on the list were elected. Only 7% of lists had women as the first candidate.

37. The experience of the Arab Spring elections shows that, in order to ensure meaningful representation of women in parliament, it is necessary to introduce positive measures in electoral laws, such as a quota of seats reserved for women or, even better, the requirement for political parties to alternate men and women candidates (the “zip lists” system), as a condition for the admissibility of the lists.

16. The SCAF has the right to appoint 10 members of parliament.

17. www.quotaproject.org/uid/countryview.cfm?country=69.

18. www.aljazeera.com/news/middleeast/2010/11/2010111813029420433.html.

19. www.lemonde.fr/libye/article/2012/01/29/libye-loi-electorale-adoptee-quota-pour-les-femmes-abandonne_1636033_1496980.html.

20. Framework law n 29-11 on political parties, dahir n. 1-11-166 of 24 kaada 1432 (22 October 2011).

21. Source: Inter-Parliamentary Union.

22. <http://english.alarabiya.net/articles/2012/01/20/189421.html>.

23. Information provided during the visit to Morocco.

24. www.jeuneafrique.com/Article/ARTJAJA2623p024.xml0/.

38. To do so, the new governments will have to overcome their reticence over quotas and other positive measures to promote the political representation of women. Such measures are indeed often considered as a legacy of former regimes, when they were introduced to give an appearance of modernity.²⁵

39. However crucial to make a leap forward, electoral laws cannot achieve substantial results unless they are accompanied by an evolution of mentalities. Women's chances of success in politics overwhelmingly depend on the willingness of political parties to put them forward for leadership positions.

40. Tunisia is a pioneering country in this area: a woman is at the head of the Democratic Party for Progress (PDP); four women are in the political office of the Green Party for Progress; three women are in the political office of the Social-Democratic Movement and one woman is in the political office of the Party of Popular Union.²⁶ The recent election of a woman as Secretary General of the Unitarian Socialist Party (USP), in Morocco, represents an important sign, even though it is an isolated case.²⁷ Several parties include women in their political bureaux.

41. A final comment as regards Morocco: on the basis of the electoral law which was used for the November 2011 elections, some seats were reserved for women while others were reserved for men under 40. Although this measure can be considered as a positive development in so far as it promotes youth political participation, I cannot but regret that it discriminates against young women. I hope that, if retained for the next election, this provision will be reviewed so as to ensure that also young women can benefit from it.

5. Social media and women's political participation

42. The Arab Spring would not have been the same without the many women bloggers who used the social media to express their views, spread information about developments and orchestrate protest activities. Thanks to the accessibility of the Internet, women with an appropriate level of education have managed to overcome societal and cultural barriers and engage in political activism. Sometimes they were acting on their own; other times they were linked to women's civil society groups and non-governmental organisations, which found fertile breeding grounds during the upheavals.

43. Amongst the best-known examples of creative social media initiatives launched by women were the "Women2Drive" campaign²⁸ in Saudi Arabia, and the "HarassMap" initiative in Egypt,²⁹ on ending the social acceptability of sexual harassment against women. Currently, the civil society group Women4Libya is organising an ipetition, collecting signatures on the Internet with a view to asking for greater representation of Libyan women in the NTC and future governmental institutions.³⁰

44. Women's political activism through social networks is a positive development, which should be preserved and encouraged. However, we should be careful not to overestimate it: only one third of social media users in the Arab world are women, a figure which is well below the global average of 50% women and 50% men;³¹ in addition, virtual participation can be a first step towards women's empowerment, but "it might not necessarily translate into real-life participation in mainstream political, civic and public arenas".³²

45. It is necessary, therefore, to work closely with the authorities, civil society and non-governmental organisations in order to find appropriate mechanisms to promote women's active participation and representation in real political bodies and refrain from considering Internet activism as a substitute for institutional forms of involvement.

46. At the same time, women bloggers (in groups or individually) should be encouraged to continue in their active social media engagement, as a new way of exerting democratic control over the authorities and ringing alarm bells when appropriate.

25. Presentation by Ms Gauri van Gulik, Human Rights Watch, June 2011.

26. Euromed gender equality, Women's Human Rights and Gender Equality in the Southern Mediterranean, Regional Situation Analysis, 2011.

27. Information provided during my visit to Morocco.

28. www.facebook.com/Women2Drive.

29. <http://blog.harassmap.org/>.

30. www.ipetitions.com/petition/women4libya/.

31. Arab Social Media Report, The Role of Social Media in Arab Women's Empowerment, November 2011.

32. Ibid.

47. Finally, it should not be forgotten that a great proportion of women outside urban centres not only do not have access to the Internet but often lack an appropriate level of education.³³ Efforts to provide women in rural areas with the basic instruments for their empowerment – literacy and education – should be relentless.

6. Constitutional reform: a window of opportunity for women's rights

48. In the months to come, the constituent assemblies of Egypt, Libya and Tunisia will undertake the drafting of new constitutions. In addition, Morocco, where a new Constitution was approved by a popular referendum, will have to adopt a wealth of legislation to put the new Constitution into effect, with an effort which could take five years of work.

49. The process of constitutional reform offers a unique opportunity to enshrine the principle of gender equality in the backbone of the legal system and thus create the legal conditions for enhancing the status of women. Several measures can be taken to this end:

- embedding the principle of gender equality in the constitution and ensuring that it is reflected in the legislation;
- including in the constitution the possibility of introducing positive actions and policies in order to promote equality between women and men;
- establishing the precedence of international human rights treaties to which a country is a party over national law.

50. These different measures are not mutually exclusive. On the contrary, if introduced together they would offer the best guarantee for a sound gender equality framework.

51. Morocco is leading the way in the area of constitutional reform. The new constitution enshrines gender equality in its Article 19, which reads: "Men and women should enjoy equal rights and freedoms in all civil, political, economic, social, cultural and environmental matters set forth by this title and by other provisions of the Constitution, as well as in the conventions and international pacts duly ratified by the Kingdom and this, in respect of the provisions of the Constitution, the constant features and the laws of the Kingdom. The Moroccan State aims to create parity between men and women. For this purpose, an Authority for parity and fight against all forms of discrimination is established."

52. The new provision can be hailed as decisive progress. It is now of crucial importance to see to what extent the government will consider it a priority to implement it, not only by setting up the Authority for parity and fight against all forms of discrimination, as required by the constitution, but also by establishing a comprehensive legal framework to eradicate discrimination against women and promote gender equality, and allocate sufficient funding for it.

53. Political will to consider the enhancement of the status of women as a priority is the key element, as gender equality is one of many other areas in which legal and political reforms will have to be introduced to give implementation to the constitutional charter. In this respect, a number of interlocutors in Morocco pointed out that the National Plan on democracy and human rights, which had been presented to the former Prime Minister in 2011, was a particularly progressive document and hoped that it could be pursued.³⁴

54. The new Moroccan Constitution recognises the precedence of international law over national legislation in its Preamble, which states that the Kingdom of Morocco commits itself to: "giv[ing] to international conventions it has ratified, in the framework of the provisions of the Constitution and the laws of the Kingdom, in compliance of its immutable national identity following the publication of the conventions, the primacy on domestic law, and to harmonis[ing] accordingly the relevant provisions of its national legislation".

55. The other countries in the region should be encouraged to introduce a similar provision, preferably in the part of the constitution devoted to the sources of law.

56. An issue which often raises concern is the inclusion of Sharia as a source of law in the constitution, or as the main source of law. For instance, the announcement made by the Libyan TNC that the future Libyan Constitution would be based on Sharia was received with alarm in some quarters.³⁵

33. Illiteracy in the Arab world, www.iiz-dvv.de/index.php?article_id=208&clang=1.

34. Meeting with Mr Driss El Yazami, President of the National Human Rights Council, Rabat.

35. International Crisis group, "Holding Libya Together: Security Challenges after Qadhafi", December 2011.

57. Before the Arab Spring, Sharia was explicitly considered as the main source of law by the constitutions of Egypt and Libya; it was not explicitly mentioned in the Moroccan and the Tunisian constitutions, even if it permeated a large corpus of legislation, in particular in the area of family and inheritance law.

58. I believe that, while remaining vigilant, the Assembly should refrain from formulating general judgments without considering the specificities of each national context. It would be neither appropriate nor constructive for the Assembly to suggest that democratically elected representatives who have been (or will be) voted on the basis of an Islamist platform, in countries which are not Council of Europe member states and where Islam is the religion of the state and the religion of the majority of the population, should not include Sharia amongst the sources of law.

59. Instead, if the Council of Europe and its Assembly want to give a tangible contribution to strengthening women's rights in this neighbouring region, they should have a constructive approach: they should promote knowledge and understanding of human rights amongst the general population of these countries, support civil society groups that promote women's rights, and provide advice to the authorities on how to ensure that the law is in line with fundamental international human rights standards, irrespective of the religious context and the influence of religion on the sources of law.

7. Key areas of legislative reform

7.1. Full applicability of the Convention on the Elimination of All Forms of Discrimination against Women

60. Egypt, Libya, Morocco and Tunisia have all signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However, only Libya and Tunisia are Parties to the Optional Protocol, which recognises the competence of the Committee on the Elimination of Discrimination against Women to receive complaints from individuals or groups. In 2006, Morocco declared it would ratify the Optional Protocol but this statement was not followed up by concrete action.³⁶

61. In recent years, Northern African countries, especially Egypt and Morocco, have taken steps to withdraw reservations to important articles. In particular, Morocco withdrew its reservations to Articles 9.2 and 16 in April 2011. However, to date, some reservations remain, including to:

- Article 2 on policy measures to be undertaken to eliminate discrimination (Libya, Morocco);
- Article 9.2 on equality of rights between women and men on passing nationality to children (Tunisia);
- to Article 15.4 on equality before the law, which refers also to the movement of persons and freedom to choose residence and domicile (Morocco, Tunisia);
- various paragraphs of Article 16 on marriage and family law (Egypt, Libya, Tunisia);
- Article 29.1 on the regulation of disputes between one or more States parties on the interpretation or application of the convention (Morocco, Tunisia).

62. The current process of constitutional reform should be used as an opportunity to remove the legal obstacles to the lifting of such reservations.

63. Morocco could, therefore, give a concrete follow-up to the declaration made in April 2010 by the King on the 60th anniversary of the Universal Declaration of Human Rights, that all reservations to the CEDAW would be withdrawn, and hopefully also ratify the Optional Protocol.³⁷

36. Euromed gender equality, Women's Human Rights and Gender Equality in the Southern Mediterranean, Regional Situation Analysis, 2011.

37. www.hrw.org/news/2010/04/14/letter-king-morocco-his-commitment-withdraw-reservations-cedaw.

64. Tunisia has already taken a concrete step in this direction: following pressure from civil society groups³⁸ and the visit by Ms Michele Bachelet, Executive Director of UN Women, the government adopted a decree aimed at lifting all the reservations on specific articles.³⁹ However, as the Constituent Assembly is not a parliamentary assembly with full legislative powers, the decree will have to wait until the formation of a new parliament to be ratified.

65. The agreement to lift all the reservations to the CEDAW is, politically, a sign of great importance: Morocco and Tunisia would be the first Arab countries to do so. Momentum should not be lost, and political commitments should be translated into actions as soon as possible.

66. It should also be mentioned that, at the time of ratification, Tunisia made a general declaration to the effect that, in the implementation of the CEDAW, it would not adopt any measure which contradicted its constitution.⁴⁰ As underlined by civil society groups, the authorities should consider withdrawing the general declaration, which creates ambiguity on Tunisia's political will to implement the convention in its entirety and raises questions with regard to the precedence of religion over human rights.⁴¹

67. The removal of the reservations to the CEDAW would imply that Morocco and Tunisia should embark on a process of legislative reform, to fully align national law to these countries' international obligations. This applies, in particular, to the areas of family law, polygamy and inheritance.

7.2. Family law

68. In Morocco, remarkable progress for women in the area of family law was made in 2004 with the adoption of the new Family Code. In particular, the Code incorporated the principle that a Moroccan woman can marry freely, without the permission of her father. The requirement for the wife to obey her husband was suppressed and the law considers wife and husband as joint heads of the household. Spouses are on equal footing as regards marital age, which is 18 for both women and men, whereas it used to be 15 and 18 respectively.

69. The 2004 Code also reformed divorce. Men's unilateral right to divorce was restricted and two new forms of divorce have been introduced, based respectively on mutual consent and on irreconcilable differences. Both can be initiated by either spouse. Discrimination remains in so far as Muslim women are not allowed to marry non-Muslim men. "This represents a discrimination against women, as no similar provision applies to men, a violation of the fundamental right to marry, and also a restriction of the freedom of religion".⁴²

70. Even if the 2004 reform represented a turning point from a legal point of view, there is still scope for improving the implementation of the law, by providing training for members of the judiciary and ensuring the consistent application of the law throughout the country, including in rural areas.⁴³

71. The Tunisian constitution of 1956 enunciates at Article 6 the principle of equality of all citizens before the law. Gender equality, although generally considered as part of this general principle, is not explicitly mentioned. The Personal Status Code, established after the independence of Tunisia (1957), accorded a series of rights to women, such as the right to marry, manage their own property and divorce, as well as the prohibition of polygamy.

38. www.femmespourlamediterranee.org/pg/actus/view/2815/en/4.

39. Association Tunisienne des Femmes Démocrates, "La levée des réserves à la CEDAW mais non au maintien de la déclaration général", 2011, p. 12.

40. The French version of the convention refers to the first chapter of the convention, while the Arab version refers to Article 1, which reads: "Tunisia is a free, independent and sovereign state. Its religion is Islam, its language is Arabic and its type of government is the Republic."

41. Association Tunisienne des Femmes Démocrates, op. cit.

42. Doc. 12647, Opinion of the Committee on Equal Opportunities for Women and Men on the request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco (Rapporteur: Ms Nursana Memecan, Turkey, ALDE).

43. As mentioned in Ms Memecan's opinion, the gap between the law and its implementation is wide: "The Family Code is often criticised for leaving too much room for the interpretation and discretion of the judge. Moreover, the reform has not been accompanied by adequate training activities of staff within the judiciary. Finally, a number of marriages, particularly in rural areas, are celebrated in a traditional form and not officially registered, thus escaping the application of the law and depriving women of any protection set out by it."

72. In general, Tunisian law is progressive as regards gender equality and women's rights. However, a number of provisions in the area of family law result in direct or indirect discrimination against women. Even if, like in Morocco, the wife's requirement of obedience to her husband was suppressed in 1993, in Tunisia, the husband remains the head of the household and the one who decides the family's place of residence. If the wife leaves the common residence without authorisation – for instance because she is subjected to marital violence –, she risks facing a divorce of which she will have to bear the financial costs. At the same time, the husband is free to decide to change the family's place of residence without asking his wife's opinion, irrespective of whether this is in the interests of the children. In addition, in Tunisia the concept of paternal rather than parental authority over the children continues to apply, while the mother only participates in some aspects of the exercise of such authority.

7.3. Polygamy

73. The only country of the region which has abolished polygamy is Tunisia, in 1956.

74. In Morocco, the 2004 Family Code did not abolish it but introduced a number of restrictive conditions, such as the judge's approval, the first wife's authorisation and the obligation for the husband to possess sufficient financial resources to provide for all the families. From a statistic point of view, polygamy concerns a very limited number of families and is on the decline (approximately 864 men married a second wife in a polygamous marriage in 2007, compared to 904 in 2004).⁴⁴

75. In Egypt, polygamy is subjected to less strict conditions and is much more common. A man should inform the first wife that he has taken a second wife within one year of the second marriage. If he does not do so, the first wife is entitled to file for divorce.

76. In Libya, polygamy is permitted based on grounds of physical and financial capacity, prior to judicial permission and written authorisation from the wife.⁴⁵

77. In a number of exchanges I had with Moroccan interlocutors, the impossibility of abolishing polygamy was pointed out to me, with the argument that it is strictly related to religious law and that such a move would not be understood by society. Although fully realising that this is a particularly sensitive matter, I would like to recall that, in addition to Tunisia which is a Muslim country and where Islam is the State religion, polygamy has been abolished also in Turkey.

78. Finally, I feel bound to underline that polygamy is in contravention of international human rights standards. As stated by the CEDAW Committee, "polygamous 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. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention".⁴⁶

7.4. Inheritance

79. Inheritance law systematically discriminates against women in all countries of the region: according to the rules of Islamic law, a woman's share is half the share of a man. Some Muslim scholars have highlighted that this arrangement does not imply any "judgement" on the value of women and men as human beings but rather responds to the different role of women and men in a household and their different financial needs, as the responsibility to support the family lies with men.⁴⁷

80. Irrespective of the ratio of these rules and the fact that, in reality, they are often circumvented through donations to women, unequal inheritance rights in law contravene the principle of non-discrimination laid down in the CEDAW and represent an actual or potential barrier to women's empowerment and emancipation.

44. www.lalati.ma/fr/marocaines/la-polygamie-au-maroc-9554.

45. www.law.emory.edu/ifl/legal/libya.htm.

46. General Recommendation No. 21 (13th session, 1994), paragraph 14.

47. Inheritance in Islam and women, Darul Ihsan University, <http://documentsearch.org/pdf/inheritance-law-in-islam-and-women.html>.

8. Violence against women

81. Violence against women is believed to be significant in the region, although difficult to estimate in quantitative terms due to endemic underreporting and lack of systematic data collection. The most common form of violence against women is domestic violence.⁴⁸ According to reliable sources, female genital mutilation is not practiced in Morocco and Tunisia, unlike in Egypt and Libya.⁴⁹ Female genital mutilations should not be considered as a health issue, but as a grave violation of women's and children's rights. The occurrence of girl-child neglect has been reported in all the countries of the region.⁵⁰

82. Despite consistent indications by non-governmental organisations and civil society that so-called "honour" crimes occur,⁵¹ there is no reliable evidence or information about them; the authorities of Morocco and Tunisia denied the occurrence of these crimes and I am not aware of any relevant court cases. In general, so-called "honour" violence occurs in communities where the concepts of honour and shame are fundamentally bound up with the expected behaviour of families and individuals, particularly those of women. I believe, therefore, that these crimes also occur in the countries addressed in this report, even if they do not reach the courts, because they are not reported to the authorities or, in some cases, they are presented as accidents or suicides.

83. Last but not least, in the recent conflict in Libya, hundreds of women and girls have been subjected to rape as a weapon of war; the authors of such crimes remain unpunished and no assistance has been provided by the authorities to its victims.⁵²

84. In the last few years, in Morocco, the issue of violence against women has become more visible thanks to the work of a number of very active non-governmental organisations and to increased attention by the government. According to a study by the Haut Commissariat au Plan, 62.8% of Moroccan adult women suffered some form of gender-based violence in 2010.⁵³

85. From a legal point of view, there is no comprehensive legal framework to prevent and prosecute violence against women, even if various forms of such violence are criminalised, including marital rape.

86. The Moroccan authorities have made substantial efforts in the area of visibility and awareness raising: the first national campaign against gender-based violence was launched by the Moroccan government in 1998 and several have followed. In 2006, in the framework of the national strategy against gender-based violence, a National observatory of violence against women was set up in which several ministries (health, justice, development) and state departments co-operate with civil society.

87. Despite its progressive approach to women's rights, Tunisia's record in combating violence against women is also mixed. Amongst the positive measures are the adoption of a national strategy in 2007, the inclusion in the legislation of a provision protecting the physical integrity of women, the criminalisation of a number of forms of violence against women, the abolition of the provision that considered adultery as grounds for granting a pardon to husbands who murdered their wives and the adoption of protection policies for women who are victims of violence, including a public fund to provide temporary financial aid to married women who leave abusive husbands.

88. At the same time, however, serious shortcomings are present in the legal framework and in the functioning of the law-enforcement system: domestic violence is generally viewed as a private issue and the police usually refuse to intervene. If a woman withdraws the complaint – and she often does so as a result of family pressure – there is no obligation for the police or the courts to pursue the matter further. Marital rape is not criminalised. The rape of a minor does not represent a crime if its author marries the victim.⁵⁴

48. Euromed gender equality programme, State of play: gender-based violence in Southern Mediterranean countries, April 2011.

49. www.unicef.org/egypt/protection_148.html; and <http://www.prb.org/Publications/Datasheets/2010/fgm2010.aspx>.

50. www.ohchr.org/Documents/Publications/FactSheet23en.pdf.

51. www.independent.co.uk/opinion/commentators/fisk/robert-fisk-the-lie-behind-mass-suicides-of-egypts-young-women-2074229.html; www.trust.org/trustlaw/news/egypt-circumventing-honour-killings; www.unhcr.org/refworld/publisher,IRBC,,MAR,42df612e2,0.htm, www.stophonourkillings.com/?q=node/3783.

52. www.independent.co.uk/news/world/africa/hundreds-of-women-raped-by-gaddafi-militia-2290609.html.

53. Haut Commissariat au Plan, Morocco, www.hcp.ma/downloads/Violence-a-l-egard-des-femmes_t13077.html.

54. It is the same in Morocco.

89. I believe that, in the light of the remarkable expertise of the Council of Europe in the area of violence against women, there is room for enhancing dialogue and co-operation with the countries of the region in this particular area, providing legal expertise to review legislation and tools to promote awareness raising amongst the general public.

9. Access to justice

90. Even the most refined justice system cannot serve its purpose if it is not accessible to its beneficiaries. Unfortunately, multiple systemic barriers continue to limit the access of women to justice in the region. The lack of knowledge of their rights and of the justice system, in addition to social barriers and hurdles such as the cost of legal advice and transportation prevent women from reporting violations.⁵⁵

91. This applies in particular to sexual and domestic violence: women are afraid to report it to the authorities because of their fear of being stigmatised within their families and in their community.⁵⁶ According to a survey on the family courts in Morocco, 69% of women who had experienced domestic violence expressed a preference for resolving the problem within the family.⁵⁷ The large impunity of the offenders, secondary victimisation and the low conviction rate are also elements which lead women not to seek justice.

92. I wish to encourage efforts towards an overall reform of the judiciary systems in line with the provisions of Article 2 of the CEDAW asking states to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”.

93. Ensuring a gender-responsive justice system requires the training of judges, lawyers and police officers, in particular on gender-based violence, in addition to awareness raising on women’s rights. I believe that the Council of Europe can be of assistance also in this area.

94. Finally, I wish to mention that ensuring justice for women will be one of the key elements in determining the success or the failure of the Arab Spring. An efficient transitional justice system will require the inclusion and participation of women, as well as the prosecution of the acts of violence suffered by women either during peaceful demonstrations or situations of armed conflict, irrespective of the perpetrators’ political allegiance.

10. The involvement of the Council of Europe

95. The Council of Europe is designing a policy to respond to the events unfolding on the southern shore of the Mediterranean, aimed at facilitating democratic political transition and promoting good governance. The first Action Plans (“Neighbourhood Co-operation Priorities”) for the implementation of the new policy concern Morocco and Tunisia and should be agreed upon in the spring of 2012. Furthermore, the European Union-Council of Europe Programme for strengthening democratic reform in the Southern Neighbourhood was signed between the European Commissioner for Enlargement and Neighbourhood Policy, Mr Stefan Füle, and the Secretary General of the Council of Europe in January 2012. Some of the programmes included in the Action Plans with Morocco and Tunisia will be backed by the European Union, through this programme. Contacts with other donors that might contribute to the implementation of the programmes included in the Action Plans have also been undertaken.

96. According to the policy of the Council of Europe towards neighbouring regions, co-operation with the countries concerned shall be demand-driven, which is in line with the wish of the interlocutors that I met during my fact-finding visits to Morocco and Tunisia. In fact, the neighbourhood co-operation priorities were decided in close consultation with the countries concerned during a number of meetings and missions.

55. UN Women, Progress of the World’s Women report “In pursuit of justice” 2011-2012, pp. 53-54.

56. Information provided by UN Women during the fact-finding visit to Tunisia on 20 February 2012.

57. UN Women, Progress of the World’s Women report “In pursuit of justice” 2011-2012, p. 52.

97. The action plans will build upon the co-operation that the Council of Europe has already established with Morocco and Tunisia in a wide range of fields.⁵⁸ Gender equality occupies a prominent place within the co-operation priorities with Morocco and Tunisia under Pillar 1 (Human rights), the objectives of which include promoting women's rights, participation of women in political and public life, combating violence against women and domestic violence. Co-operation activities under Pillar 2 (Rule of law), especially those aimed at enhancing the independence, efficiency and quality of justice, are also of great relevance because they would have a direct impact on the enforcement of family law and women's access to justice.

98. Other actions which would be beneficial to the status of women are those concerning freedom of expression and media independence and pluralism, as the image of women conveyed by media has an impact on the actual status of women in society.⁵⁹ Co-operation activities are also envisaged in the field of fighting trafficking of human beings. Both Morocco and Tunisia are affected as source, destination and transit countries for trafficked persons. The legal framework in the two countries needs to be reinforced and the institutional and human resource dimensions of the law enforcement system should be developed.

99. In my opinion, at a future stage, Morocco and Tunisia should seek accession to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Even before this happens, as proposed in the Action Plans, a number of co-operation activities could be organised in this area, in particular as regards awareness training, exchange of good practice, training of law enforcement officials and knowledge of the convention.

100. I believe that, on the intergovernmental side of the Council of Europe, the two key structures that are instrumental to consolidate co-operation with Morocco and Tunisia in the area of gender equality and the status of women are the Venice Commission and the North-South Centre.

101. Morocco and Tunisia's full membership of the Venice Commission gives them direct access to its expertise. The Venice Commission is in a position to provide advice and assistance to Tunisia, which is in the process of drafting its constitution. In addition, it could assist both Tunisia and Morocco in drafting a number of pieces of legislation aimed at enforcing their constitutions, such as laws on the functioning of the State's powers, electoral laws, rules of procedure of the elective bodies and many others. In carrying out this task, the Venice Commission should ensure consistency of national legislation with international instruments and that the gender dimension is taken into account.

102. The North-South Centre is a tool for structured dialogue with the southern countries of the Mediterranean. Engaged in activities of intercultural dialogue and co-operation since its creation in 1989, the Centre saw its relevance confirmed and enhanced by the events of the Arab Spring and contributed to formulating the priorities of the Council of Europe for Morocco and Tunisia for the period 2012-2014. In May 2011, a new statutory resolution reaffirmed its role as an interface between the Council of Europe and neighbouring countries of the region interested in co-operating with the Organisation.

103. The Centre followed the developments of the Arab Spring with great attention throughout 2011. The Rome Conference "Women as actors of change in the Euro-Mediterranean region", co-organised by the North-South Centre and the Italian Parliament in October 2011, brought together representatives of governments, international organisations, parliamentarians, civil society, journalists and experts to discuss not only the role of women as agents of political, economic and personal changes but also the role of the media as an instrument for the promotion of the role of women. In the final document of the Conference, the participants agreed on the creation of a women's network for democratic governance, aimed at investing in capacity building to promote women's access to political life both at national and local level; and on guaranteeing a yearly follow-up event to the Conference. The conclusions of the conference laid the basis for a set of activities for the period 2012-2014 labelled as "The North-South Women's empowerment process".

104. Morocco became the first non-European member State of the North-South Centre in 2009 and it would be advisable for other countries in the region to follow its example and consider joining this partial agreement.

58. Both countries are full members of the Venice Commission and have observer status with the European Pharmacopoeia. Morocco is a member of the North-South Centre. Both countries are also Contracting Parties to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, ETS No. 104). The Congress of Local and Regional Authorities has also regularly co-operated with local authorities in Morocco for over a decade.

59. In Morocco, a comprehensive study on the image of women in the media was published by the Haut Commissariat au Plan on 8 March 2012.

105. At this point in time, the North-South Centre is a key actor in the development of this co-operation. I hope that the decision of Germany to withdraw from this partial agreement will not affect its operational capacity and that the Centre will continue receiving an adequate level of funding for its activities.

11. Strengthening parliamentary relations

106. In 2009, the Assembly set up the status of partner for democracy.⁶⁰ Two years later, with the Arab Spring, this status became particularly relevant as it offered a framework for structured co-operation with parliaments of non-member States in neighbouring regions wishing to benefit from the Assembly's experience in democracy building and to participate in the political debate on common challenges which transcend European boundaries. The status of partner for democracy was granted to the Parliament of Morocco in June 2011.

107. Gender equality is a core element in the context of the procedure to obtain the status of partner for democracy. The request for such a status should include an explicit reference to the aspiration of the applicant parliament to embrace the values of the Council of Europe, which are pluralist and gender parity-based democracy, the rule of law and respect for human rights and fundamental freedoms. It should also include a commitment to encourage balanced participation of women and men in public and political life. Furthermore, the parliamentary delegation enjoying partner for democracy status should, insofar as the number of its members allows, be composed in such a manner as to ensure a fair representation of the political parties or groups in that parliament and to include at least the same percentage of the underrepresented sex as is present in the parliament, and in any case one representative of each sex.

108. The status of partner for democracy should not be a formal title but a concrete instrument for closer co-operation. Partner for democracy delegations should be given the possibility of fully participating in the work of the Assembly, sharing ideas, exchanging views and examples of best practices and organising joint initiatives and events. In fact, they should be encouraged to put forward specific proposals for joint statements and actions.

109. Equality between women and men and the status of women should be at the core of the activities which make the status operational. The decision that parliaments enjoying the status of partner for democracy can appoint a member to participate in the Parliamentary Network women free from violence is an example of involvement in parliamentary campaigning.⁶¹ Additional activities could be envisaged in areas such as the representation of women in politics and their participation in public life, the prevention and fight against trafficking in human beings or the situation of women in rural areas.

110. Finally, the possibility that more countries from the region may be interested in applying for the status should be explored. This applies, first of all, to Tunisia, a country which has indicated a clear commitment in the area of gender equality and with which co-operation has already been established.

12. Conclusions and recommendations

111. It has taken the space of a spring to change the political colour of the governments in Egypt, Libya, Morocco and Tunisia. It will take longer to build sound democracies, based on the balanced participation of women and men and the recognition that women and men have equal dignity and should enjoy the same human rights. It may take even longer for mentalities to evolve and to create the social and cultural conditions for the full empowerment of women.

112. One year on from the beginning of the upheavals and demonstrations, no concrete positive changes have affected the real life of women on the ground: in Libya, women's rights are not high on the agenda of the Transitional National Council, and women are not adequately represented therein; in Egypt, the status of women seems to be deteriorating, judging from the way in which the harassment against women demonstrators is met with impunity, the negligible representation of women in the Constituent Assembly and the lack of specific proposals from the political forces that have won the elections on how to improve the protection of women's rights; in Morocco and Tunisia, there are respectively fewer women in government and in parliament than before the Arab Spring.

60. [Resolution 1680 \(2009\)](#) on the establishment of a "Partner for democracy" status with the Parliamentary Assembly.

61. Assembly [Resolution 1861 \(2002\)](#) on promoting the Council of Europe Convention on preventing and combating violence against women and domestic violence.

113. However, it cannot be denied that, for all these countries, the window of opportunity for women is still open: the constitutional and legislative foundations are being laid down; this is the right moment to ensure that equality between women and men is one of the cornerstones on which the new legal systems are built.

114. Moreover, if the Arab Spring has not yet blossomed for women, it has certainly spread good seeds in Morocco and Tunisia. In Morocco, the new constitution enshrines the principle of equality between women and men, makes it possible to introduce positive measures to promote gender equality and establishes the precedence of international human rights instruments over national law. This is the best basis, at constitutional level, to develop a legal system which is protective of women's rights.

115. Moreover, Morocco and, even more clearly, Tunisia have expressed a commitment to withdraw all reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and to review domestic legislation accordingly. This would be an unprecedented step amongst Arab countries, and would make it possible to align with international human rights standards areas of law that govern marriage, personal status and inheritance.

116. Although the electoral results of 2011 are disappointing as far as women's representation is concerned, both Morocco and Tunisia have shown political will to introduce positive measures aimed at enhancing women's representation in parliament. The electoral law used in Tunisia for the election to the Constituent Assembly was very progressive not only by regional but also by European standards.

117. These good premises set out in Morocco and Tunisia should serve as a model for other countries in the region and be followed by further actions in the following months. Constitutional reform is only the beginning in the path towards building democracies based on equality between women and men. To achieve tangible changes it will have to be followed by:

- the adoption of implementing legislation, which should take into account the gender dimension;
- a deliberate decision to give priority to gender equality, amongst many areas of law and policy that need reviewing and implementing;
- the active involvement of women in the institutions and administration at all levels and in all fields;
- the introduction of positive measures to promote the representation and participation of women;
- strengthening knowledge and implementation of the law;
- improving women's access to justice, literacy and education, in particular in rural areas;
- improving data collection, legal framework and awareness-raising measures in the area of violence against women;
- strengthening dialogue with civil society and women's organisations.

118. We should be also aware that, despite the introduction of legal and policy measures, socially constructed perceptions and traditional values, shared by men and women alike, prevent people from fully integrating the principle of equality in their personal behaviour, and create invisible barriers to women's empowerment. This is one more reason for the political forces who have vowed their commitment to promote women's rights to show the example, and put women forward for leadership positions. This will encourage more women to come forward in other fields and contribute to the evolution of mentalities.

119. The countries of the southern shore of the Mediterranean will never become members of the Council of Europe, as they lack the basic requirement of being European. However, the Council of Europe has an interest in contributing to building, also in its neighbourhood, an area of political stability sharing the same values and the same commitment to democracy, human rights and the rule of law. It should, therefore, make its expertise available, primarily to Morocco and Tunisia, through country-specific actions and programmes which take into account national features and the state of advancement of women's rights, while seeking contacts with the other countries of the region. Similarly, structured forms of partnership – such as the status of partner for democracy with the Assembly – can but facilitate closer co-operation.

120. The Council of Europe can contribute to the success of the Arab Spring if the States of the southern shore of the Mediterranean wish to draw from its expertise, experience and tools. Relations should be based on mutual respect and sensitivity as regards the cultural and religious context. However, it should be clear from the outset that the Council of Europe upholds universal values and defends the universality and indivisibility of human rights, of which women's rights are an integral part. Cultural and religious sensitivity will never turn into cultural and religious relativism. There can be no bargaining over women's rights.