

On “Political detention” in Morocco

It is with great interest that I followed the reactions sparked by one of my answers during a press interview I gave on July 22nd, 2019. I have also noted the distortion and fragmentation of my remarks which were stripped out of their context. The ensuing debate, imbued with political crispation and tense confusion, eclipsed the complexity the quasi-existential question every nation must answer at least once in its History: “What is a political prisoner?”.

Taking into account the open, interactive and transparent approach with which the National Human Rights Council (CNDH) has accustomed victims and actors alike, and the Council’s mission of contributing to the intellectual debate and of raising public awareness on human rights issues, I have decided to tackle this issue, yet again, with the goal of refocusing the debate, in the hope there will stem from this effort the premises of a common understanding of what is “political detention.”

I will deal with this issue in a succinct and concise manner, aiming to contribute to the debate in the Moroccan context. I would like to insist, nonetheless, upon the fact that this is not a legal document; rather, a preamble to a collective reflection on an issue where legal, political, and philosophical considerations intertwine and overlap.

Definitions:

A minority of media outlets have astutely noted the lack of a universally recognized definition of the term “political prisoner”.

According to Amnesty International, the term includes “any prisoner whose case has a significant political element: whether the motivation of the prisoner’s acts, the acts in themselves, or the motivation of the authorities.”

According to AI, this includes:

- a person accused or convicted of an ordinary crime carried out for political motives, such as murder or robbery carried out to support the objectives of an opposition group
- a person accused or convicted of an ordinary crime committed in a political context, such as at a demonstration by a trade union or a peasants’ organization
- a member or suspected member of an armed opposition group who has been charged with treason or “subversion”

This broad definition puts in the same category a person who has exercised his/her right to expression and a person who has committed a crime, such as murder, for political purposes. It confounds distinct and separate categories into one. It is unacceptable to put on an equal footing a peaceful protester with an individual accused of murder, no matter how noble the latter’s motivations are. Moreover, this definition leaves the door open to manipulation and obfuscation due to the connotation the term “political prisoner” conveys. Indeed, images of a great injustice committed in an arbitrary manner for the purpose of revenge against an innocent person who merely exercised his/her fundamental rights, come to mind. It is worth mentioning that many AI

sections do not refer to this definition to describe cases of prisoners who have committed acts that may be considered as crimes.

The Parliamentary Assembly of the Council of Europe considers that “A person deprived of his or her personal liberty is to be regarded as a ‘political prisoner’:

- a) if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
- b) if the detention has been imposed for purely political reasons without connection to any offence;
- c) if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
- d) if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
- e) if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities.”

This restrained but practical definition is closely related to several areas of Human Rights Law, particularly arbitrary detention, fair trial conditions, and guarantees of fundamental rights. Even if it is limited to only those fundamental rights defined in the European Convention on Human Rights, it has its uses. The fact that this definition does not apply to the current context in Morocco, even if it did in the past, is self-evident.

Nonetheless, these definitions refer to one crucial notion in the qualification of a “political prisoner”, that of “political motivation”. The notion of political motivation is even trickier to determine than that of a political prisoner. I will therefore use a broad and flexible definition of this term, so as not to artificially constrict the debate : “an act is politically motivated if it can be ascertained, beyond any reasonable doubt, that it was carried to serve the interests of a given political entity”. I consider the presence of “political motivation” a *sine qua non* condition to assert the political character of a detention.

This nuance is subtle but paramount. Although the possibility that the arrests following the events of Al Hoceima or Jerada were politically motivated is undeniable, and although some in the national community have considered them as such, it would be neither fair nor precise to ascertain, beyond any reasonable doubt, their political motivation given the protests’ duration and the circumstances of the arrests. Therefore, I will not settle this question which is, in any case, subordinate to another one: that of the use of violence.

Use of Violence and international law

All the complexity of the events of Al Hoceima and Jerada stem from the fact that the use of violence prevails over any other description based on the notion of “political motivation.”

First of all, let me emphasize that the amalgamation between the legality or illegality and the violent or peaceful nature of any protest is a fallacy. The CNDH has issued a memorandum calling for the abolition of any penalties against participants of undeclared peaceful protests. On July 12th 2019, the Council also called for the legalization of new forms of public expression, especially on social media platforms. The Council did not address the issue of violent protests because, in such cases, considerations other than the right of expression, the right to association [...] and right to protest also come into play.

I share the commonly-held opinion according to which committing a violent act supersedes the notion of “political motivation”. Once a protest can be described as “violent”, the qualification of “political motivation” becomes secondary, except in cases of self-defense or necessity. The same applies to forms of violence committed in the context of hate crimes or incitement to violence.

Consequently, the use of violence strips the author of the qualification of “political prisoner” and opens up the possibility of prosecution. Accordingly, one can find evidence, amongst states, of a general practice accepted as law; even if such general practice is still fragmented and only in a formative stage.

The National Human Rights Council’s framework of Action

The CNDH is a national constitutional institution with three general mandates: prevention of violations, protection of human rights, and promotion of human rights. It must therefore display in its assessment of cases of alleged human rights violations the utmost precision, accurateness and exactitude, in light of its legal, humane and moral responsibilities. Furthermore, the conduct of successful advocacy and victim support strategy demands particular attention to the qualification of said violations.

Needless to reiterate that the Council has observed and closely followed the protests in Al Hoceima and Jerada for several weeks, in fulfillment of its mandate. Would those arrested have met the above-defined criteria, the Council’s work would have been clearer and even easier. In this case, the Council’s chairperson would have called, unequivocally and without hesitation, for the immediate release and compensation of the prisoners, in accordance with article 23 of the Constitution and Article 9(5) of the International Covenant on Civil and Political Rights, instead of seeking Pardon (Article 58 of the Constitution). Since those criteria were not met, the use of the

term “political prisoner” by the CNDH would have been, in this case, wrong, erroneous, counterproductive, and irresponsible, and would have constituted a national and international derogation.

How can one describe these young prisoners then, if they are not “political prisoners”? Personally, I consider them as victims of a grave failure to provide for the basic economic and social rights of citizens, guarantee their decent living and respond to their legitimate demands. This is what led me to describe this malfunctioning, on July 12th, 2019 as a “performance crisis” that resulted in a real “crisis of confidence”; hence, my call for a new sociopolitical contract, which I see the only way out of the crisis our institutions face. This contract must be adopted following a participatory approach that takes into account the social and cultural specificities of each region in their historical dimensions, so as to establish a new territorial design which meets the national expectations of our compatriots. This approach, if it is to succeed, must take into account Morocco’s national and international human rights commitments.

In all of my numerous meetings with the families of the prisoners, the same basic request was recurrent: every mother, every father, every sister, and every wife had but one demand: “free our sons”! The exceptional and tragic circumstances of the events that led to the arrest of these young people and their families’ dire conditions have, rightly, mobilized the entire nation behind them. The CNDH will continue to listen and support them with the same commitment empathy and the same rigor and dedication to its duties.

After the anger, the emotion, the active listening, time has come for reflection. The CNDH will continue discussing this issue with the different stakeholders in order to reach a common understanding on these notions and assess the political, economic, social, cultural, and legal consequences of what happened. In addition, the Rabat – Driss Benzekri – Human Rights Institute will be tasked to study the issue of “political detention” in cooperation with national and international experts.

The report, which the CNDH will publish as soon as it is approved by its newly-appointed General Assembly, will address the arrests, the trial conditions, as well as the torture and ill-treatment allegations. The report will also be the opportunity to fully take stock of these tragic events which have changed our country, deeply divided Moroccans and left profound marks on our collective memory.

Time has come to start healing. The CNDH intends to carry out this mission by exercising its full mandate and by jealously defending its independence. One thing is certain: the CNDH will never betray the trust of the victims, their families and of all Moroccans.