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To cite this article: Anna Theofilopoulou (2012) Morocco's new constitution and the Western Sahara conflict – a missed opportunity?, The Journal of North African Studies, 17:4, 687-696, DOI: [10.1080/13629387.2012.686297](https://doi.org/10.1080/13629387.2012.686297)

To link to this article: <https://doi.org/10.1080/13629387.2012.686297>



Published online: 08 May 2012.



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# Morocco's new constitution and the Western Sahara conflict – a missed opportunity?

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Morocco's new constitution of July 2011 brought very little change and hardly touches on the King's privileges. It continues with the same autocratic system of patronage and clientelism, long associated with those close to the King, ignoring what had been requested by the protesters in Morocco and promised by the King. The revised constitution and subsequent formation of the new government after the elections of November 2011, was a missed opportunity to move Morocco towards real democracy and to address some of the country's development needs. The precipitous move by King Mohammed VI and his entourage to have a new constitution quickly drafted and approved follows the same lack of long-term strategy, which has not served Morocco and its people well in either internal or external matters, including the Western Sahara conflict. This article outlines Morocco's actions in revising its constitution and forming a new government in response to protests and those in handling the Western Sahara conflict. It argues that real democracy in Morocco and the Western Sahara could help both the Kingdom and its adversaries in resolving the conflict.

**Keywords:** Western Sahara; Morocco; new constitution; Western Sahara conflict; missed opportunity

## Introduction

The Arab Spring of 2011 did not pass unnoticed by the unemployed and underprivileged people of Morocco, especially the young. The demonstrations and demands by hundreds of thousand of people for a constitutional monarchy, government attention to poverty and unemployment, restoration of dignity and end to graft, started on 20 February 2011, from which date the new movement took its name. The King moved fast and tried to pre-empt and co-opt the protesters.

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He acknowledged the need for change and promised a revision of the constitution. He then appointed a constitutional commission to draft the new constitution which was ready on 17 June 2011 and voted upon on 1 July 2011.

Following the adoption of the new constitution, legislative elections were held on 25 November 2011. The Islamist-oriented Justice and Development Party (PJD) won 107 of the 395 seats in the parliament or 27% of the vote, the first time ever that an Islamist leaning party won such a clear majority.

It took 35 days after the elections for the new government to form, despite the initial optimism by the leader of the PJD and new prime minister, Abdelillah Benkirane to create a government within 20 days, consisting of 20 ministers and his hope to have direct contact himself with the King. The new Moroccan government was created as usual in the Moroccan manner, with a number of negotiations among the political parties and consultations with the palace. The formation of the new government also showed how little the new constitution had changed the real balance of power in Morocco and although it would appear that the monarchy may have gained time by keeping at bay the winds of real change, the success might be short-lived.

The Moroccan authorities have acted in a similar short-sighted manner in their handling of the Western Sahara conflict. After Morocco agreed to have the UN resolve the issue through a referendum of self-determination for the people of Western Sahara and accepted that independence would be one of the two options for the voters, Morocco tailored its actions to exclude this possibility. It never hid its conviction that it considered Western Sahara an integral part of the Kingdom and acted accordingly.

## **Morocco's handling of change**

### *The new constitution*

Following the demise of the Tunisian and Egyptian leaders, King Mohammed VI accompanied by high officials from the security and military forces travelled to France on 28 January 2011 for consultations with the French government.

In his public address to the country on 9 March 2011, the King said all the right things and pledged change and respect for the wishes of the people. He promised comprehensive constitutional change featuring the rule of law, an independent judiciary and an elected government that reflected the will of the people through the ballot box. Then he appointed a commission of experts headed by a constitutional law professor with a history of condoning autocracy (Benchemsi 2012, p. 58) to quickly draft the new constitution. The palace also set up a consultative body to work with the commission as liaison between the drafters and political parties, labour unions, business associations, human rights and other groups invited to submit inputs in the new constitution. The 20 February Movement and other protest groups declined to participate claiming that the commission was not elected and thus, illegitimate.

Once the submissions were made, there was no follow up or debate. The organisations were not shown any written draft until 8 June when they could only listen to an oral presentation discussed in a 10-h meeting. The members of the group itself only saw a written draft the day before the King presented the constitution to the nation in a televised speech on 17 June (Ottaway 2011, p. 1). The referendum for voting on the constitution was set for 2 weeks later, on 1 July.

Critics charged the King with violating his non-partisan status by quoting a passage from the Qur'an enjoying the public to follow his 'way'. The Ministry of Religious Affairs apparently instructed imams to urge a 'yes' vote during Friday sermons. The mainstream political parties

accepted the process and hurried to campaign for a 'yes' vote in the referendum including the opposition PJD that said that the new constitution contained sufficient guarantees for democracy. The 20 February Movement rallied thousands across the country to boycott the constitution, but they were counteracted violently by supporters of the referendum who called the protesters anti-monarchists. Protesters claim that the 'monarchists' were organised and paid by the Ministry of the Interior (Silverstein 2011, p. 3).

Dissenters report incidents of voters being bussed to voting stations by state officials, stations not carrying 'no' ballots and officials not verifying voters' identification or requiring signatures. Videos posted online showed officials rummaging on open ballot boxes (Benchemsi 2012, p. 58). To veteran observers of Moroccan politics, the results of approval by 98.5% of those voting who in turn were 72.65% of all voters were hardly credible although they came as no surprise (Entelis 2011, p. 3). Many question the latter number citing earlier reports by the Ministry of Interior putting the number of those registered to vote to no more than 50% or 60% (Silverstein 2011, p. 3).

In its first article, which defines the foundations of Morocco's regime, the new constitution addresses all key demands of the protesters, namely, parliamentary monarchy, separation of powers and accountability by those in charge. The Preamble runs to seven paragraphs, five times the length of the previous one, and enumerates many high-sounding ideas addressing the concerns of liberals, Muslim conservatives, Western opinion leaders by mentioning human rights, Islamic law and international conventions (Benchemsi 2012, pp. 59–60). However, despite the high-sounding long Preamble that says all the right things to please everybody and the substantive articles that talk about parliamentary monarchy, separation of powers, accountability by those in charge, the King abandoning his sacredness, the prime minister enjoying new constitutional powers and severing the ties between the Justice Ministry and judges, the changes made are less than meets the eye. A close and careful reading of the document, especially by viewing the whole documents in light of other legal texts and the larger political, economic and social context of the country, or by considering the articles in relation to each other (Benchemsi 2012, p. 59), shows that Morocco has a long way to go towards real parliamentary monarchy and it still has an autocratic regime. Events related to forming a new government in the aftermath of the 25 November elections and as predicted with astuteness and foresight by Ahmed Benchemsi in his January 2012 article demonstrate this.

### *The 2011 elections*

The 45% of registered voters voting in the November 2011 legislative elections was certainly better than the 37% that voted in the 2007 elections. However, considering that these were the first elections where the King would be obliged to appoint the prime minister from the party that won the largest number of seats at the parliament, based on the new constitution, following the will of the people, the number was low. Rather, the number pointed to cynicism, indifference and apathy among Moroccans that it would not really matter whether they voted or not despite the purported changes by the new constitution (Entelis 2011, p. 3).

Subsequent manoeuvring by the parties themselves and the palace to form the new government justified the indifference by the electorate to participate in the election of its own government. While the PJD won the largest number of seats, it still needed support by other parties to form a government. Eighteen out of the 35 political parties won much smaller number of seats which they tried to counteract by forming coalition blocks. The Independence Party, or *Istiqlal*, which won the second largest number of votes, (60) together with the Socialist Union of Popular

Forces (USFP) and the Party of Progress and Socialism (PPS) formed the Koutla group, which was expected to collaborate with PJD. The other large group, the Coalition for Democracy, or G8, was formed by the eight monarchist leaning parties: Rally of National Independence (RNI), Constitutional Union (UC), Popular Movement (MP), Party of Authenticity and Modernity (PAM), Socialist Party, Left Wing Green Party, Labor Party, Islamist Party of Renewal and Virtue.

Following his electoral success, Abdelilah Benkirane proceeded to form his government by approaching the Koutla group. He soon found out that the political bureau of USFP was not willing to go along. Benkirane then approached the UC and MP. While Istiqlal and PPS opposed the UC, they agreed on MP. At the end, after getting the support of smaller parties, he succeeded to have some more members in his parliamentary coalition.

On 7 December, he found out that the King had appointed Fouad Ali El Himma, the head of PAM, as one of his royal advisers, as he had Taieb Fassi Fihri, the former foreign minister. According to Tel-Quel online (No. 504) (2012), prior to the start of the talks, Benkirane had drawn only one red line regarding possible coalitions: he had excluded PAM. The appointment of the royal advisors appears to mitigate the new prime minister's idea of direct contact with the King even if it does not exclude it. He met with resistance from the palace in naming Mustapha Ramid, strongly supported by other members of PJD and with a past of having defended Salafists, as Minister of Justice (Magharebia online 2012). Ramid was finally nominated as Minister of Justice. After further manoeuvring by the political parties to get the ministries that they considered important in exchange for being part of the coalition with PJD and nominations of ministers that appear to have behind them the hand of the royal advisors the new government was finally formed, 35 days after Benkirane was appointed. It has 31 members rather than the 20 that he wanted (Tel-Quel online 2012).

The formation of the new government followed the pattern of previous such formations in Morocco with the palace having a strong hand in it as it had happened in 1998 when USFP formed a government with the so-called policy of *alternance* (Entelis 2011, p. 4). Benkirane, like previous prime ministers tried to make the best of it, being aware that his options were limited. Ottaway believes that his initial acquiescence to the manner that the constitution was revised and his accommodating posture vis-a-vis the Palace were due to desire by PJD to continue and complete the process of integrating an Islamist party into the legal political process. In the final analysis, he is no less a constitutional hostage of the monarchy than previous prime ministers (Benchemsi 2012, p. 65) and he demonstrated his political adaptation in forming his government.

### **Morocco's handling of the Western Sahara conflict**

In August 1988, Morocco's King Hassan II was persuaded by the then UN Secretary-General Pérez de Cuellar to accept the UN settlement proposals laying down broad guidelines for an internationally supervised ceasefire and a democratic referendum offering the people of Western Sahara the choice of independence or integration with Morocco. The King accepted the proposals 'in principle' however his subsequent statements should have left no doubts that he intended to give the most restrictive interpretation of the plan for the referendum as a 'confirmative' one for Morocco. Such statements by the Moroccan authorities regarding the 'Moroccanness' of Western Sahara have continued to date (Theofilopoulou 2006, p. 3).

Morocco, which had annexed Western Sahara after the 'green march' of November 1975 where thousands of Moroccans had moved into the Territory led by King Hassan II, proceeded to put 'facts on the ground' to ensure its eventual winning of the referendum. With around half of

the Territory's native Saharan population staying, while the other half had fled to southern Algeria where they had been settled by the Algerian Government in refugee camps, Morocco relocated thousands of Moroccans into the Territory claiming that it was facilitating the return of Saharans who had fled to Morocco when Western Sahara was a colony of Spain.

The UN Settlement Plan that was developed out of the settlement proposals and created the UN Mission for the Referendum in Western Sahara (MINURSO) foresaw the Spanish census, conducted by Spain in 1974 in preparation for a referendum of self-determination (never held), as the basis for the subsequent voting list that the UN would develop after updating it. Both sides realised that the final shape of the voter's list would determine who would win the referendum and for this reason the Polisario wanted to keep it as close to the Spanish census as possible. Morocco, on the other hand, wanted to expand it as much as possible. Due to logistical considerations, it was agreed that the two parties would submit to the Identification Commission of MINURSO, tasked with identifying potential voters with names of applicants to be interviewed. Morocco submitted a total of 181,000 (100,000 of them living in Morocco). The Polisario submitted a total of 39,000 (Theofilopoulou 2006, p. 4).

Morocco's local strategy for winning the referendum was to insist that the Identification Commission interviewed all of its applicants and to try to influence it to approve as many of them as possible. Morocco also proceeded to inject resources into the Territory, by building up its cities, developing its infrastructure and by providing financial and other incentives to thousands of Moroccans to move there. It also undertook a policy of trying to divide the Saharans by co-opting some of them based on tribal affiliations and giving them privileged positions, while being contemptuous and indifferent to the fate and well being of the majority of the local population as well as repressing those who challenged its presence there. Overall, Moroccan officials, in the Territory and in Rabat, made no attempt to win the 'hearts and minds' of the majority of the Saharans which would help Morocco win the referendum.

Internationally, Morocco tried to influence the UN Security Council so that its decisions would benefit the Moroccan position by using friendly states in the Council, France being the foremost among them, the USA to a lesser degree, as well as members of the Secretariat in UN Headquarters. The UN (both the Security Council and Secretariat) tried at times to accommodate Morocco and facilitate its chances to win the referendum (Theofilopoulou 2006, pp. 3–6).

In April 1997, after the identification had been deadlocked for close to 1 year, former US Secretary of State James Baker was appointed as Personal Envoy of the Secretary-General on Western Sahara to break the impasse. He immediately asked both parties if they would be interested in finding a solution outside the referendum under the Settlement Plan, since they both kept finding reasons to block the process.

Although both sides were equally uncertain about the referendum, both were adamant in wanting to continue. Baker and his team helped them break the deadlock in the identification and waited to see who would 'blink first' as they were getting closer to the referendum.

Once the partial results of the identification started becoming known, Morocco got extremely nervous seeing that the numbers were not what it expected them to be. However, rather than seek to compromise in a way that could still satisfy its needs as well as those of the Polisario, Morocco kept insisting on the referendum under the Settlement Plan, upping the ante with demands that they would clearly not help its case, other than delay the process and always expecting its powerful friends to help (Theofilopoulou 2006, pp. 7–8).

By late 1999, the results of the identification showed that despite the Polisario's fears and suspicions, the Identification Commission had done its job properly and had approved only those who could satisfy the requirements agreed by the parties and MINURSO. Morocco then



proceeded to have all its rejected applicants appeal. Its officials, mainly from the Ministry of Interior, under which Western Sahara fell in an effort by Morocco to show that Western Sahara was an 'internal' issue, engaged with local MINURSO officials but mainly with high-level Secretariat officials in New York to negotiate the terms of the appeals procedure in the effort to have its appellants approved.

The Polisario, who had tried previously to stop the identification process at every opportunity because they were convinced that the Identification Commission staff was caving to Moroccan pressure and approving all its applicants, became quite cooperative in accommodating Moroccan demands. It figured out that the Identification Commission was no more likely to approve Moroccan applicants without the proper credentials on appeal that it had before.

By that time, Baker had started focusing his efforts to help the two sides to find a political solution that could accommodate the needs of both sides outside the zero-sum game of the Settlement Plan. He approached King Hassan II and suggested that he start looking for such a solution. The King was willing to consider this suggestion however when the then Minister of the Interior Driss Basri became aware of this, he convinced the King to remain with the Settlement Plan.

When finally the new Moroccan King, Mohammed VI, realised that Morocco had to compromise and move towards a political solution as following the strategy of his father would not help him resolve the issue in a satisfactory manner for Morocco, it was a case of too little too late. In September 2000, Morocco agreed to discuss an autonomy solution for Western Sahara, 'taking into account Morocco's sovereignty and territorial integrity' (Theofilopoulou 2006, p. 9). Predictably, the Polisario rejected the offer and insisted on discussing the implementation of the referendum under the Settlement Plan. Baker waited for 8 months for Morocco to come up with an offer. When it did not, he prepared the Draft Framework Agreement, obtained Morocco's agreement and in May 2001 he travelled to Algeria to discuss the matter with the government there and the Polisario. Both rejected the proposal outright because it did not spell out the options for the final status of the territory although it did foresee a referendum (Theofilopoulou 2006, pp. 9–10).

After efforts by Baker to have them accept the document failed, with Algeria finally proposing division of the Territory, which the Polisario agreed to but Morocco rejected, in February 2002, Baker explained to the Security Council that there was no early, durable and mutually acceptable political solution that both sides would accept. He asked the Council to consider four options to resolve the conflict, none of which would require the agreement of the parties. It proved impossible for the Council to choose any option, on the grounds that the conflict over Western Sahara fell under Chapter VI of the UN Charter, which required the agreement of the parties to a dispute. Baker was persuaded to produce a new solution which he did, by preparing the Peace Plan for Self-determination for the People of Western Sahara.

The Peace Plan was a more detailed and expanded version of the Framework Agreement, spelling out more clearly the responsibilities and duties of the two parties. Most importantly, it foresaw the holding of a referendum of self-determination after a period of 4 years with choices of integration, independence or continuing autonomy and it specified that the voters would be those in the final MINURSO voting list plus all Moroccans who had moved into the Territory by the end of 1999. Baker had no illusions that either side would be entirely happy with the Peace Plan, however he wanted to deliver a proposal that 'no reasonable person would turn down'. The key point of the Peace Plan and Baker's main concern was that each side had a fair chance to win the referendum after the self-governing period, based on its performance during that period.

Indeed neither side was happy with the new proposal, although the Algerians showed willingness to consider it seriously. Morocco made it clear right away that it was unhappy with the proposal, the main reason being the option of independence. However, Morocco kept finding other reasons to disagree with the proposal, rejecting and questioning even items that it had accepted in the Framework Agreement. At Algeria's urging the Polisario finally accepted the proposal as a basis for negotiations.

In July 2003, the Security Council adopted Resolution 1495 supporting Baker's efforts and calling upon the parties to work with the UN and each other towards accepting and implementing the Peace Plan. Morocco kept stalling in giving an answer, employing all means in its disposal (mainly the French government but also going behind Baker directly to the US State Department) to get Baker to change the proposal. Morocco even presented a counter proposal to Baker 'the draft Autonomy Status' (Theofilopoulou 2006, p. 13) some elements of which constituted a dramatic reversal of the Peace Plan.

Baker and some of his staff worked with the Moroccans to modify the proposal in a manner that opened the way for a discussion with the other side. Moroccan new attempts were no more successful than the previous ones and finally Morocco sent a document that required the parties to agree to a negotiated solution based on 'autonomy within the framework of Moroccan sovereignty' (Theofilopoulou 2006, p. 13).

In April 2004, the Security Council was informed that Morocco did not accept essential elements of the Peace Plan and therefore rejected it. Given the history of the conflict, the Secretary-General saw two options: either terminate MINURSO recognising that after 13 years, the UN was not going to resolve the conflict without requiring that one or both parties do something they would not voluntarily agree to do; or try to get them to work towards acceptance of the Peace Plan.

The Security Council led by France, the USA and Spain (elected member of the Council at the time), adopted Resolution 1541 which weakened the Council's support of the Peace Plan and asked the parties to work towards a mutually acceptable political solution. The Council ignored that 2 years earlier, the Secretary-General and Baker had informed that the parties would not agree to any such solution.

Morocco did not hide its satisfaction in the weakened support for the Peace Plan. When 2 months later, on 1 June 2004, Baker resigned informing the Secretary-General that there was nothing more he could do to resolve the conflict, the Moroccan Foreign Minister called it 'a triumph of Moroccan diplomacy'.

There followed a new Personal Envoy, Peter van Walsum, and several resolutions by the Security Council that read like wish lists, encouraging Morocco to come up with its own autonomy proposal as it had promised to do at the time that it had rejected the Baker plan. Finally, in April 2007, Morocco presented to the UN the Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region. The proposal falls within the Moroccan framework of the Kingdom's sovereignty, national unity and territorial integrity and in presenting it Morocco stated that it expected the Secretary-General and his Personal Envoy to 'exert efforts to convince the other parties to seize the chance for peace brought by this initiative' (United Nations S/2007/206 2007). As reported in Wikileaks, while the Security Council was not quite prepared to recognise Morocco's sovereignty over Western Sahara, led by France, it characterised in its resolution the Moroccan proposal as serious and credible despite strong private misgivings about the proposal by France, Germany, the USA and the UK (Theofilopoulou 2011).

The Council adopted Resolution 1754 asking for negotiations without preconditions with a view to achieving a just, lasting and mutually acceptable political solution, which will



provide for the self-determination of the people of Western Sahara. That set the stage for a series of meetings, four 'formal' under Personal Envoy van Walsum and so far nine 'informal' under current Personal Envoy Christopher Ross where the parties meet, exchange views, are polite to each other and agree to meet again. As van Walsum admitted in his parting oral briefing of the Security Council nothing resembling negotiations happened in any of the meetings sponsored by him and judging by the communiqués issued by Ross after each meeting with the parties' approval, nothing of the kind has happened in any of the informal meetings so far.

If anything, Resolution 1754 and subsequent resolutions that followed it have set the path for irresolution of the conflict (Theofilopoulou 2009). Morocco, having expanded its lobbying efforts within the US Congress and news outlets in the USA where individuals without real grasp of the conflict present simplistic views on how the conflict could be resolved by using solely the Moroccan proposal, continues with its strategy of short-sighted inflexibility. Support by France is assured no matter what.

As for the Polisario, which presented its own proposal to the UN just before Morocco did, based on the UN Peace Plan with guarantees for Morocco in case of independence, also continues in its wishful thinking, equating rhetorical support by some states and the international civil society with meaningful action to help it resolve the conflict the way it wishes.

## **Conclusions and recommendations**

The new Moroccan constitution has not resulted in a constitutional monarchy, real separation of powers, accountability by those in charge, the King abandoning his sacredness, the prime minister enjoying new constitutional powers and an end to Morocco's clientelist system of government as promised. Although all of the above are mentioned in its preamble and some substantive articles, for the time being, these high-minded ideals remain just that, ideals waiting to be put into practice.

The impact of the new constitution depends on the way it is implemented. As an opposition Moroccan legislator told Ottaway, the text has potential. However, in order for it to be realised, the parliament has to adopt the necessary legislation and make sure that it provides maximum space for the political forces. Past performance by the parliament suggests that it is not a foregone conclusion that it will make good use of this potential.

Reported demonstrations and violence since the elections and formation of the new government, show disappointment and despair still prevailing among the young and disaffected. Otherwise there would not have been reported self-immolations by unemployed university graduates (The New York Times 2012, Democracy Now 2012) and soldiers despondent about the conditions of their service (News Daily 2012, Demain online 2012a). A young man in the town of Taza, which has been convulsed by riots and violent crackdowns by security forces, to little notice by the West, would not have been sentenced to 3 years in prison after 'insulting' the person of the King (Demain online 2012b).

Those with real power in Morocco are still resisting the idea that only real reform will address the population's grievances. They appear to cling to the belief that cosmetic changes and repression will bring the desired results.

Similarly, Morocco never had a long-term strategy for resolving the Western Sahara conflict, other than insist on its sovereignty over the Territory. Morocco had an opportunity to win the referendum under the original Settlement Plan if it had followed a well-thought strategy of winning over the local Saharan population. It chose not to do so.

It also had the best possible proposal in the 2003 UN Peace Plan to resolve the conflict in a manner that could have resulted in an acceptable autonomy for both sides. The outcome could have favoured Morocco since the voter list would have included all Moroccans moved to Western Sahara up to the end of 1999, as long as they could prove that. Morocco would have had 4 years of acting as a benevolent democratic administrator to convince the residents that they could trust it to continue doing so. It chose to reject the Peace Plan also.

After preparing its own autonomy proposal, Morocco now expects the other side and the international community to accept it as the basis for negotiations and take at face value that Morocco intends to negotiate fairly and stand by its promises when its record on the issue has been so erratic. Even assuming that the Polisario and Algeria would be willing to discuss a balanced autonomy that would incorporate elements of the Moroccan proposal and the UN Peace Plan, a big 'if', how convincing would a still authoritarian Morocco be in promising to stand by the agreements?

The Moroccan authorities appear to ignore the link between autonomy arrangements and democracies. However, a review of the literature on autonomy arrangements in non-democracies by Khakke (2011) shows that they have functioned less well and/or to be unstable. Analysis and international norms on the matter indicate that autonomy can only truly exist within a democratic system. In the case of Western Sahara, Morocco proposes to govern the autonomous territory in a truly democratic manner, however, how would the Moroccan authorities reconcile this with a largely authoritarian Morocco?

Morocco should be advised and encouraged by its friends to start implementing real democracy internally and in Western Sahara. It needs to hear that more flexibility and less disdain and sense of entitlement in its dealings with the Polisario could achieve more progress. There are plenty of constitutional arrangements within democratic states that could be adapted to work to address the Western Sahara situation.

What should be unacceptable for all concerned with stability and prosperity in North Africa is the continuation *ad infinitum* of the current impasse that only seems to be brewing violence in Western Sahara. The year 2010 was marked with violence with the occupation of the Gdeim-Izik camp in Western Sahara to be followed by other disturbances in the Territory in 2011, showing the frustration of the young local Saharan and even Moroccan population with economic and social conditions. Similarly in the refugee camps of Tindouf, the young are growing restless waiting for something or anything to happen.

It is incumbent among Morocco's supporters to stop blindly supporting its every position in the mistaken belief that this is helping. Real help for Morocco should include demanding more of it both in terms of its internal politics but also in its handling of the Western Sahara conflict.

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