

INTRODUCTION

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Ladies and Gentlemen,

It is a pleasure to welcome you to this on-line international research seminar on the topic: “Ensuring the success of experiences of territorial autonomy: Devolution of judicial powers”. I wish to thank the Permanent Mission of the Kingdom of Morocco to the United Nations for initiating and hosting this academic seminar. I also thank the eminent professors who joined us to share their expertise on autonomous regions in the world.

Let me first situate this seminar in its geopolitical and historical context. You may remember that, on 11 April 2007, the Kingdom of Morocco presented to the United Nations Secretary-General its “Initiative for Negotiating an Autonomy Statute for the Sahara Region” in order to break the stalemate in negotiations on the regional dispute about Sahara.² The UN Security Council in successive thirteen resolutions qualified this initiative as “serious and credible”. It recalled “*its endorsement of the recommendation (...) that realism and a spirit of compromise by the parties are essential to achieve progress in negotiations*”³ and its call upon neighbouring states “*to strengthen their involvement to end the current impasse and to achieve progress towards a political solution.*”⁴

With the aim of promoting discussion on aspects of that proposal, since 2009, Morocco initiated several international academic seminars in Dakhla, Geneva, or New York on various aspects of experiences of territorial autonomy, comparing achievements on several continents with the Moroccan Initiative. Comparative studies included the cases of Aceh, Andalusia, the Azores and Madeira, Bangsamoro, Caribbean island states, Catalonia, Greenland, Indian Northeast, Iraqi Kurdistan, Italian autonomous regions, Mexican states, New Caledonia, Newfoundland, Nicaragua’s Atlantic Coast, Northern Ireland, Nunavut, Puerto Rico, Quebec, the Spanish Provinces, South Tyrol, Vojvodina, Wallonia, Zanzibar, etc. Those studies have been published by Morocco and are available on a dedicated website (www.academicautonomynetwork.com).

Today’s seminar will offer a new opportunity to study the lessons learned from experiences of devolution of judicial powers in the framework of systems of territorial or regional autonomy in several regions, as well as to compare them with the provisions offered by the Moroccan Initiative.

Indeed, regarding judicial powers, the Initiative for the Autonomy of the Sahara Region includes several provisions:

- Art. 5: (...) “*[T]he Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers.*” This emphasizes that the autonomy of the Region of Sahara will be total, encompassing the three branches of government and benefitting from exclusive jurisdiction.
- Art. 12: “*In keeping with democratic principles and procedures, and acting through legislative, executive and judicial bodies, the populations of the Sahara autonomous Region shall exercise powers, within the Region’s territorial boundaries, mainly over the following:*
 - o *The Region’s local administration, local police force and jurisdictions*

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² United Nations Security Council, Document S/2007/206, 13 April 2007.

³ United Nations Security Council, Document S/RES/2218(2015), 28 April 2015.

⁴ Ibid.

- *In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism, and agriculture*
- *The Region's budget and taxation*
- *infrastructure: water, hydraulic facilities, electricity, public works, and transportation*
- *In the social sector: housing, education, health, employment, sports, social welfare, and social security*
- *Cultural affairs, including promotion of the Saharan Hassani cultural heritage*
- *The environment."*

This impressive list of competencies includes all the main areas of an entity enjoying almost full sovereignty. Among them are the Region's jurisdictions, which will receive jurisdiction over all those areas.

- Art. 22: *"Courts may be set up by the regional Parliament to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara autonomous Region. These courts shall give their rulings with complete independence, in the name of the King."* Here again, this provision goes perhaps farther than in any system of devolution of judicial powers. The fact that regional courts will make their decisions "in the name of the King" should not be seen as a limitation but, on the contrary, as a source of legitimacy that will grant them full legal force in the whole Kingdom.
- Art. 24: *"Laws, regulations and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region's autonomy Statute and with the Kingdom's Constitution."* This is the legal framework within which the Region will exercise its autonomy: the Autonomy Statute (resulting from negotiations with all the parties confirmed by a referendum) and the Kingdom's Constitution (which will incorporate the status of autonomy for the Sahara Region).

How is this question of devolution of judicial powers addressed in existing statutes of autonomy? We will now hear expert presentations and comparative analyses between several cases of autonomous regions and the proposals included in the Moroccan Initiative. The following questions could be addressed (this list is only illustrative):

1. Do the powers attributed to the autonomous region by its status include judicial powers apart from the executive and legislative competencies?
2. If this is the case, are these judicial powers exercised independently from national judicial powers or concurrently?
3. Do the powers attributed to the autonomous region apply to all areas of competency recognised to the autonomous region or do the courts of the central state still exercise some powers in domains which are deemed strategic?
4. Are decisions of regional courts applicable as a last resort in the autonomous region or are they subject to appeal or cassation in national courts?
5. Are there any mechanisms to solve conflicts between decisions of regional courts and national courts?
6. Are regional judges and magistrates recruited, trained, and salaried only in the framework of the autonomous region or also or solely in a national framework?

The academics who will present their research today are: Professor Joan-Josep Vallbé, from the University of Barcelona (Spain), who will speak on Western Europe; Dr Laura-Stella Enonchong, from De Monfort University (UK), who will address Cameroon; Dr Jean-Louis Roy, CEO, National Quebec

Library and Archive (Canada), who will talk about Canada; and Professor Yvonne Tew, from the University of Georgetown (USA), who will focus on East Malaysia (Sabah and Sarawak). After their presentations, I will attempt to draw some conclusions.