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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

**Joint written statement* submitted by France Libertés –
Fondation Danielle Mitterrand, a non-governmental
organization in special consultative status, the Mouvement
contre le racisme et pour l'amitié entre les peuples, a non-
governmental organization, on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 June 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Right to freedom of opinion and expression is denied in the Kingdom of Morocco*

In a free and democratic society the right of freedom of opinion and expression unequivocally relies on three pillars as stipulated in art.19 of the International Covenant on Civil and Political Rights: “(a) the right to hold opinions without interference; (b) the right to seek and receive information as well as the right of access to information; and (c) the right to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one’s choice.”

This right constitutes the essential foundation of a democratic society where its enjoyment is instrumental to the development and reinforcement of any democratic system by virtue of which its importance is closely linked to the right to freedom of association, peaceful assembly, thought conscience and religion as well as participation in public affairs. Moreover it further helps as a tool for combating impunity and corruption, (Art.20 and 21 of the above mentioned Convention). The right to freedom of opinion and expression should be construed as an essential symbol of the indivisibility and interdependence of all human rights, its effective enjoyment becoming an important indicator of the respect and protection of all other human rights and fundamental freedoms.

Like all rights, it obviously imposes legal obligations upon Governments, such as respecting and protecting it, refraining from interfering with its enjoyment and exercising due diligence in order to prevent, punish, and investigate abuses as well as provide redress for harm caused by private persons or entities.

Though the above-mentioned articles contain also a caveat in the sense that they stipulate that all these rights and freedoms may be the object of certain constraints in order to safeguard national security, law and order, it must unfortunately be acknowledged that States frequently arbitrarily limit or restrict freedom of expression, sometimes by recourse to criminal legislation, or interfere with freedom of association and assembly in order to silence dissent or criticism.

In view of such practices, our organisations fully share the concepts and views expressed by the Special Rapporteur on the right to freedom of opinion¹ quoted hereafter in a summarised form.” [...]The general principle is that permissible limitations and restrictions must constitute an exception to the rule and must be kept to the minimum necessary [...] They must not be arbitrary nor used for political censorship or for silencing criticism of public officials or public policies [...] Consistency must exist with other rights recognized in the Covenant, in international human rights instruments as well as with the fundamental principles of universality, interdependence, equality and non-discrimination [...] Wherever doubt exists as to the interpretation or scope of a law imposing limitations or restrictions, the protection of fundamental human rights consideration must prevail”.

The peculiar status of Western Sahara – that of an occupied non self-governing territory still waiting for a self-determination referendum that Spain should have organized in 1975 – has engendered a paradoxical situation - a de facto occupation, by virtue of which the Kingdom of Morocco erroneously refers to this territory as “its southern provinces”, while all attempts to solve the situation in the framework of the 1991 settlement plan approved by the United Nation, have failed.

* The Bureau International pour le Respect des Droits de l’Homme au Sahara Occidental-BIRDHSO, an NGO without consultative status, also shares the views expressed in this statement.

¹ A/HRC/14/23.

Article 42 of the Moroccan Constitution of 2011 states that “the King guarantees [...] the territorial integrity of the Kingdom in its true borders”; and moreover, the Moroccan legislation defines any expression of dissent or opposition to its administration as an attack on its territorial integrity and thus punishable, since it would undermine the country’s security and law and order. From the legal viewpoint, it is rather disputable that these so-called “true borders” should include the Western Sahara. The sovereignty of the Kingdom of Morocco on this territory has never been acknowledged by the United Nations (on this subject see the consultative opinion of the International Court of The Hague of 1975 – paragraph 162) nor does the Kingdom of Morocco appear on the United Nations list of administering powers.

And yet, it is in the name of the above mentioned principle of “protection of national security, law and order” that the Moroccan authorities justify the condemnation of all activities or declarations that might, according to its perception, undermine the Kingdom’s stability.

Is it not conceivable that freely expressed declarations concerning independence for the Sahrawi people or their right to peaceful assembly and demonstration, claiming a dignified job, adequate housing or education, could represent a serious threat to law and order. Nevertheless this very hazy concept of territorial integrity and security has been constantly exploited to repress all forms of protest, to prohibit peaceful demonstrations, to refuse registration of Sahrawi civil society organisation, to increasingly harass Sahrawi militants as well as journalists and, even worse, to proceed to arbitrary arrests by the police during demonstrations.

Some examples

Saharawi journalists holding opinions that contradict the Moroccan thesis are not allowed to exercise their job in Moroccan newspapers nor to create their own journals. They only write on the net as freelancers or bloggers. The arrest and imprisonment of Mr. Mustapha Abd Daiem, member of the Saharawi Journalists and Writers Union (UPES) is a good example on the fate of any intellectual who dares write in favour of independence. Mustapha was writing short reports and articles that unveil the policies of the Moroccan occupation on UPES pages. He was arrested in October 2008, sentenced to 3 years imprisonment and 5000 DH fine, dismissed from his work in a secondary school and sentenced to 10 years ban from any work in Morocco.

All peaceful demonstrations advocating Saharawi people’s right to self-determination, social, political or economic rights are systematically dispersed by the Moroccan forces using excessive violence. Police interventions usually cause injured victims who often refrain from going to hospitals because police always beat or arrest them when caught there. The story of Mrs. Aminatou Haidar a Saharawi human rights defender is one example. In June 2005, she while participating in a peaceful demonstration was attacked by a police officer, beaten and left bleeding in the street. When some activists took her in a car to hospital they were assaulted by police. One of them, Hmad Hammad, was beaten and left unconscious in front of the hospital.

After violent dispersion of demonstrations, the police usually arrests activists, most of the time beats them in the streets or takes them to police-stations where they are further tortured, then usually released after hours or days of custody. Other detainees are transferred to the Moroccan courts under criminal charges such as “membership in criminal or armed groups”, “insult to an officer in duty”, or “disturbance of public order”. There are now around 80 Saharawi political prisoners in Moroccan detention, the majority are arrested after demonstrations or because they were accused by police of having participated to demonstrations.

Freedom of association is denied to any Saharawi group who may criticise the Moroccan policies in Western Sahara. The Saharawi Association of Victims of Gross Human rights Violations Committed by the Moroccan State (ASVDH) was denied the right to exercise though it has legally been constituted and has a legal rule from Moroccan courts to exercise its duty as a human rights association. The members of ASVDH have been usually intimidated, beaten and arrested, including its president, Brahim Dahan, and Secretary General, Brahim Sabar, who have been imprisoned several times since 2005. CODESA, another Saharawi association was denied legal permission to operate. Members of CODESA such as Ali Salem Tamek, Aminatou Haidar, and others were also targets to police intimidation and violence because of their opinions and peaceful actions. Seven Saharawi human rights defenders were arrested in 2009 upon their return from a visit to the refugees camps. Moroccan authorities and media presented them to public opinion as traitors. They spent 18 months in prison without trial while officially Morocco said they would be presented to a martial court. In 2011 they were released without a sentence.

Foreign media and organisations are either denied access to Western Sahara, or harassed and intimidated by Moroccan police upon arrival to airport in El Aaiun. Many journalists were arrested and expelled from El Aaiun, parliamentarians and NGOs face the same fate. The European parliamentarian, Willy Mayer, is a good example on that. Stopped by police in the airport he was forced to leave in the same plane that brought him to the occupied El Aaiun.

A famous Moroccan journalist, Ali Lemrabet, was denied the right to work in his country for 10 years starting from April 2005 because he visited the Saharawi refugee camps in Tindouf, and declared that no one was “sequestered” by POLISARIO, contrary to what the Moroccan propaganda says.

We urge the Kingdom of Morocco to fully comply with its international obligations with regard to freedom of opinion and expression and draw the attention of the Special Rapporteur on freedom of opinion and expression on the persistent and grave violations occurring in the Kingdom of Morocco and in the non self-governing territories of Western Sahara.
