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

Written statement* submitted by the Fondation Danielle Mitterrand France-Libertés, a non-governmental organization in special consultative status

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

[13 February 2012]

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

Civil and political rights in Western Sahara

After the withdrawal of Spain from Western Sahara and the invasion of the region by Morocco, a de facto occupation was established, which still continues today. Morocco refers to this territory as “its southern provinces” and all attempts to solve this situation in the framework of the settlement plan approved by the United Nation or other alternative attempts subsequently presented have failed, since these alternatives inevitably contained the option of independence for the Sahrawi people. Morocco, on the other hand, putting forward the option of “autonomy within Moroccan sovereignty” has strongly underscored the fact that any questioning of the present status quo would be unacceptable and that Western Sahara is indeed part of the national Moroccan territory.

Article 42 of the 2011 Moroccan Constitution states that “the King guarantees [...] the territorial integrity of the Kingdom in its true borders”; on the other hand, 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. Now, from the legal viewpoint, it is rather disputable that these so-called “true recognised borders” should include the Western Sahara. The sovereignty of Morocco on this territory has never been accepted by the United Nations (on this subject see the consultative opinion of the International Court of the Hague of 1975 – paragraph 162) nor does Morocco appear on the United Nations list of the administering powers.

An attentive examination of articles 7, 9, 14, 19 of the above-mentioned Treaty proves to be extremely important in attempting to enumerate the many rights of the Sahrawi people that have been denied and violated.¹

It should be underscored that these very same principles are contained in the Universal Declaration of Human Rights as also, in even greater details, in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and, most of all, in the Convention against Torture.

It must nevertheless be recognized that the above-mentioned articles contain a caveat in the sense that it is declared that all these rights and freedoms may be the object of certain constraints in order to safeguard national security and law and order; it is thus, in the name of this last principle, that Morocco considers itself justified in condemning all activities or declarations that might undermine its stability. However, it is hard to envisage, for example, how certain freely expressed declarations concerning independence for the Sahrawi people or a right such as the right to peaceful assembly, to a dignified job, to adequate housing or to education might represent a serious threat to national security or, even more so, how this could threaten law and order unless, of course strong and violently repressive actions on the

¹ Art.7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Art. 9, par 2 and 4: Anyone who is arrested shall be informed at the time of the arrest of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Art.14, par 3 (b) and (e): Everyone charged shall have the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing. Art.19, par1 and 2: Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and 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 his choice. Art.21: the right of peaceful assembly shall be recognised. [...]

part of the police force intervene, triggering, in turn, a reaction on the part of demonstrators, something that has indeed happened ever too often.

This very hazy concept of the undermining of territorial integrity and its security has been exploited to repress all forms of protest, to prohibit peaceful demonstrations, to harass Sahrawi militants and, even worse, to proceed to arbitrary arrests by the police during demonstrations, as has been repeatedly denounced by human right defence organizations.

One of the most flagrant cases has been the violent dismantling of the Gdeim Izik camp on November 8, 2010. This was accompanied by a whole range of violations forbidden by the rules and regulations included in the above-mentioned documents:: deprivation of life, arbitrary detention linked to cruel, inhumane and degrading treatments, as well as torture, which is always taking place in the south of Morocco and in Moroccan prisons since October 31, 1975, date in which the Moroccan occupation began.

To this, the events at El-Ayoune, (November 2010) and Dahla (September 2011) must be added. Those detained were often beaten up, and endured serious torture, physically and mentally, the sequels of which will remain with them for life. None of the conditions relating to the guarantees for a fair and just trial according to International Law, as indicated in the above mentioned articles, were respected: from the moment of initial provisional detention, the date of which was often tampered with so as to extend it and extract confessions by torture, to immediate access to a lawyer, etc. Complaints are not attended to, and no legal procedure takes place. Despite visible traces of torture and of beatings, all requests for medical examinations are refused by the authorities. There are also serious delays in informing the families of detainees of their movements, and of the place where they are kept. This leads to a general climate of impunity, since very few of those responsible for torture and other cruel treatments have ever been brought to appear in Moroccan courts to face trial. Despite the serious character of certain cases (murder through torture) only two policemen have been brought to court. One was sentenced to two years in jail for the case of Hamdi Lembarki, and the other exonerated and acquitted for the case of Chouih Soulaïman. It should be known that Mr. Hafed Benhachem, at the head of the Prisons General Directorate, is infamously implicated in many serious violations of Human Rights, both in Morocco and in Western Sahara.

The final document published by the Committee Against Torture,(which examined the situation in Morocco as of November last, takes note of the concerns expressed in their alternative reports by many international, Moroccan and Sahrawi NGOs (CAT/C/MAR/CO/4).

Out of 14, 12 pages, as well as 29 separate points, are devoted to the worries expressed by the Committee members regarding violations of rules and regulations, as stipulated in the Convention against Torture.

The events regarding Western Sahara are developed at length, in particular under points 12 and 13.

- Events involving Western Sahara

The Committee recalls once more that, under the Convention, no exceptional circumstance whatsoever may be invoked as a justification of torture [...] and that law enforcement measures and investigative procedures should be in full accord with international human rights law, as well as the legal procedures and basic safeguards in effect in the State party. [...]The State party should put in place stronger measures for ensuring prompt, thorough, impartial and effective investigations into all allegations of torture or ill-treatment of prisoners and persons taken into custody or in any other situation.

- The Gdeim Izik camp

The Committee is particularly concerned by the events surrounding the closure of the Gdeim Izik camp in November 2010, during which several persons were killed, including law enforcement officials, and hundreds of others were arrested. The Committee takes note that the vast majority of the persons who were arrested were later released while awaiting trial, but is gravely concerned by the fact that those trials are to be held in military courts even though the persons concerned are civilians. The Committee is also concerned by the fact that there has not been an impartial, effective investigation to ascertain exactly what occurred and to determine what responsibility may be borne by members of the police or security forces (arts. 2, 11, 12, 15 and 16).

The State party should amend its laws to guarantee that all civilians will be tried only in civilian courts.

In paragraph 33 the Committee requests that information be provided to it before 25 November 2012 about the follow-up measures taken in connection with the following recommendations:

The Committee requests the State party to provide it, before 25 November 2012, with information on the measures undertaken in response to its recommendations on: (1) providing or strengthening legal safeguards for detainees; (2) conducting prompt, impartial and effective inquiries; (3) prosecuting suspects sentencing those found guilty of torture or ill-treatment; and (4) making the reparations referred to in paragraphs 7, 11, 15 and 28 herein.

France-Libertés hopes that these recommendations will not remain without practical consequences but will lead instead to an improvement of the conditions faced by the Sahrawi people, so as to allow them finally to accede to a dignified existence.
