

Submission by: Front Line Defenders – The International Foundation for the Protection of Human Rights Defenders

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1. The following submission has been prepared based on information received from independent human rights defenders (HRDs) in Morocco. Front Line is an international NGO based in Ireland with Special Consultative Status with the Economic and Social Council of the United Nations. We have particular expertise on the issue of the security and protection of human rights defenders and we work to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998.

Introduction

2. Front Line is deeply concerned about the continued persecution of human rights defenders (HRDs) in Morocco and particularly in Moroccan administered Western Sahara. Restrictions on freedom of expression, association and assembly that exist in the country pose great challenges to the work of HRDs. Human rights defenders are regularly targeted by state authorities, suffering harassment, malicious prosecution and unfair trials. Front Line continues to receive reports on torture and ill-treatment of HRDs in detention. Restrictions on the movement of HRDs were also reported.

3. Constitutional amendments put forward by King Mohamed VI and accepted by referendum in July 2011 improved the human rights framework and addressed several issues that were of concern. The reforms included the inclusion of provisions that reinforce freedom of expression, association and assembly. The state is now explicitly mandated to enhance gender equality and promote freedom of the press. The amendments included a reform of the judiciary – with the establishment of the supreme council – and also made it mandatory for the authorities to inform anyone being detained of the reasons of the arrest and of their rights. Furthermore, the changes granted more power to the Prime Minister and introduced Amazigh as one of the official languages of the country.

4. Despite these positive changes, the Constitution remains illiberal in many respects, including as regards freedom of religion. It is reported that during the referendum campaign a number of irregularities occurred which compromised the integrity, credibility and transparency of the process. This included, for example, the fact that the voting operations were supervised by the Ministry of Interior, and the fact that the authorities at all levels used the state apparatus, public media as well as mosques to campaign for the monarchy and the government. Eventually the referendum was boycotted by the February 20 Movement, a broad coalition of civil society groups and political entities. This undermined the legitimacy of the constitutional reform. At present, it is considered unlikely that real change will take place in the country as the full implementation of the new Constitution would require far reaching changes of laws and practices.

5. This submission is divided into two parts, the first concerning human rights defenders in Morocco and the second concerning human rights defenders in Western Sahara.

I. Morocco

Freedom of expression

6. Freedom of expression continues to be restricted in Morocco especially as regards Islam, the monarchy and Western Sahara. The Moroccan authorities have continued to intimidate and maliciously prosecute HRDs when their work touches on sensitive issues such as those just mentioned. Articles 179 and 265 of the Penal Code punish any expression deemed to be offensive of members of the royal family and state authorities or institutions. Article 41 of the Press Code further stipulates that any offence against the King or the Royal family be punished by three to five years imprisonment and a fine of up to 100.000 *Dirhams*. The same punishment is provided for offences against Islam, the monarchical system or Morocco's territorial integrity. These provisions do not strictly define what constitutes an offence, thus leaving ample room for arbitrary interpretations. A number of human rights defenders have been prosecuted under these provisions for advocating for democratic reforms or exposing the abuses of state authorities.

Freedom of association and peaceful assembly

7. The law on associations forbids the creation of associations deemed contrary to morals or detrimental to Islam, the Monarchy, or the country's territorial integrity. While it is positive that the law only requires new associations to declare their existence (as opposed to obtaining approval) in practice many legal constraints hinder their work. Furthermore, a number of associations were unable to operate legally as the authorities did not provide them with the necessary receipt upon receiving the relevant documents. At least five NGOs remain in such situation at the time of writing.

8. Freedom of assembly, although guaranteed by law, is also limited. The authorities do resort to use of force to disperse peaceful assemblies. The pro-reform demonstrations that started in February 2011 encountered a mixed response from the authorities. At times people were able to demonstrate without interference from police, but in many occasions state authorities used excessive force against peaceful protestors. There were reports of protesters being beaten and chased down after the protest was dispersed. One of the protesters died in hospital four days after being assaulted by police.

9. On 26 February 2011, human rights defender Ms **Buthaina Amina Elmakoudi** was physically assaulted while taking part in a peaceful protest in Agadir, Morocco. Buthaina Amina Elmakoudi is the director of the Agadir section of the Association against AIDS. Buthaina Amina Elmakoudi and a number of others were attacked by police while taking part in a peaceful demonstration calling for democratic and social reform and human rights in Agadir. She was beaten over the head, resulting in her falling unconscious for several minutes, a broken nose and bruising. Upon arriving at Hassan II hospital, she and several others who had also been assaulted were reportedly denied treatment or medical reports confirming their injuries.

Judicial harassment against HRDs exposing abuses

10. Human rights defenders exposing corruption or abuses by the authorities faced arrest and prosecution, often on the basis of charges of offending state authorities.

11. On 14 April 2011, Mr **Chekib El-Khiari** was released from prison, after a royal pardon that commuted or shortened the sentences of 190 prisoners. On 17 February 2009, Chekib El-Khiari responded to a summons to report to the National Brigade of the Judicial Police in Casablanca, and was arrested there. The General Crown Prosecutor of the Court of Appeals ordered his arrest and trial because of public statements he had made in the national and international media

regarding the alleged involvement of high ranking state officials in corruption and drug trafficking in Rif, a region in the north coast of Morocco. He was also investigated for having accepted money from “foreign parties” in order to discredit the efforts made by Moroccan authorities to combat drug trafficking.

12. In April 2011, the Appeal Court in Casablanca overturned the sentenced against Mr **EI Mustapha Addari**, head of the Khenitra branch of the *Association Marocaine des Droits Humains* (Moroccan Association for Human Rights - AMDH). EI Mustapha Addari together with Ms **Idriss Chahtane**, publisher of the “Almichaal” weekly newspaper, were convicted on 27 October 2009 of defamation for an article where EI Mustapha Addari exposed cases of alleged abuses by members of the royal family.

II. Western Sahara

13. HRDs from the Moroccan administrated region of Western Sahara have continued to suffer from repressive practices from state authorities. These include intrusive surveillance physical attacks, arbitrary detention and unfair trials. Independent human rights organisations in Western Sahara are prevented by the Moroccan authorities from legally registering. Some HRDs were prosecuted for membership of an illegal organisation because they continued to operate in defiance of the denial of registration. Independent NGOs were prevented from holding meetings. HRDs from the region were sentenced following unfair trials and were subjected to ill treatment and torture while in detention. HRDs are subject to travel restrictions and their passports are confiscated. Sahrawis advocating for the right to self-determination have continued to be denied their right to freedom of expression, association and assembly.

Arbitrary detention and charges against human rights defenders

14. Many human rights defenders from Western Sahara have been arrested solely for their human rights work. In the past two years, Front Line worked on 17 cases of human rights defenders that were arbitrarily arrested. Those advocating for the right to self-determination are the most exposed and most likely to face imprisonment since Moroccan law regards any advocacy on self-determination as an attack on its territorial integrity. Even though pro-independence protests in Western Sahara are not always peaceful, non-violent demonstrations were also forcibly dispersed by the authorities and its participants and organisers arrested. Security forces also carried out raids against members of human rights groups not in connection to protests and demonstrations. Frequently HRDs have been convicted as a result of unfair trials, with charges that include participating or inciting violent activities. A number of human rights defenders have undertaken hunger strikes as a way to protest against the harsh detention conditions and their unfair trials.

15. On 2 and 3 October 2011, human rights defenders **Kamal Al Tarayh**, **Abd Al Aziz Barrai**, **Al Mahjoub Awlad Al Cheih** and **Mohamed Manolo** were arrested by the Moroccan authorities in different areas of Dakhla town, Western Sahara. Mr Tarayh is a member of the Western Sahara Observatory, while the other three are all affiliated with the Organisation Against Torture in Dakhla. Police did not present any warrants for these arrests. The detained human rights defenders were initially denied access to their lawyers, their families as well as medical care. On 10 October 2011, the four HRDs were interrogated by the investigating magistrate in the city of El Aaiún in connection with violent disturbances which took place in the town of Dakhla during the last week of September. They were charged with forming a criminal organization, complicity in killings, and setting fire to cars. All the human rights defenders vehemently denied the charges.

16. On 14 April 2011 three human rights defenders from Western Sahara were released on bail. **Ali Salem Tamek**, first Vice-President of the Sahrawi Collective of Human Rights Defenders (CODESA), **Brahim Dahane**, President of the Sahrawi Association of Victims of Grave Violations of Human Rights (ASVDH), and **Ahmad Anasiri**, General Secretary of the Sahrawi Committee for the Defence of Human Rights in Smara, were arrested along with four others on 8 October 2009 upon returning from a visit to a Sahrawi refugee camp in Algeria. They went on hunger strikes eight

times in protest against their detention and unfair trial.

17. On 8 November 2010, Moroccan military and security forces raided a camp of displaced Sahrawi families to the east of Laayoune city, which led to 14 deaths among Sahrawi people and security officials. On the same day, amongst scores of ordinary people, several human rights defenders were arrested in different areas. Mr **Ennaama Asfari** was physically assaulted and arrested at the home of another human rights defender, **Al-Salmani Mohammed**. Mr Mohammed's house was searched and ransacked. Mr Asfari is co-president of the Comité pour le respect des libertés et des droits humains au Sahara occidental (Committee for the respect of liberties and human rights in the Western Sahara) and Al-Salmani Mohammed is a member of AMDH. The security forces also arrested, in different locations, Mr **Banka Al-Shaikh**, AMDH member in Asa, Mr **Isma'el Brahim**, AMDH member in Laayoune, and Mr **Brahim Elansari**, local representative of the Human Rights Watch. The latter was arrested while accompanying a journalist from the National Geographic.

Torture and ill-treatment of HRDs

18. Front Line continues to receive reports of torture and ill treatment of human rights defenders in detention. Methods reported include severe beating and solitary confinement. Prison conditions were made harsher by arbitrary deprivation of blankets and clothes while in confinement.

19. On 21 August 2009 Mr **Mohammed al-Tahleel**, head of the Bu-Jdur branch of ASVDH, was abducted and severely beaten by Moroccan security forces in Al-Laayoun city, Western Sahara. . It is believed that Mr al-Tahleel was targeted because of his participation in the welcoming of the prominent Sahrawi human rights defender, Mr Sultana Khayya, who returned to Western Sahara on 18 August 2009. Mohammed al-Tahleel was in an internet café in the Fath district of Al-Laayoun city when a group of 6 plain-clothes security officials entered and took him away in a car. He was handcuffed, blindfolded and severely beaten all over his body and hit with a stick on his feet until he lost consciousness. Municipality cleaning workers found him at 12 midnight at a cemetery far from the city.

20. On 3 April 2009, human rights defender **Yahya Mohamed el Hafed Aaza** was reportedly subjected to torture in Enzkan prison. He was later transferred to Ayat-Melol prison where he was placed in solitary confinement without blankets, clothes and sufficient water and sugar, which he required as he was on hunger strike. Yahya Mohamed el Hafed Aaza, who is a member of AMDH and CODESA, suffered from rheumatism, asthma, anemia and other illnesses for which he spent three months in medical care while in Enzkan prison. The day after the reported torture and transfer to another prison, his wife and father were refused admission to the prison and asked to bring an authorisation from the Directorate of Prisons in Rabat (700kms from Ayat-Melol). On 29 February 2008, Yahya Mohamed el Hafed Aaza was arrested while working in his shop in Tan-Tan, South Morocco, two days after his participation to peaceful pro-independence demonstrations in Tan-Tan. In September 2008, he was sentenced to 15 years imprisonment following an unfair trial.

Travel restrictions

21. Sahrawi human rights defenders have had their freedom of movement restricted on account of their human rights work. Cases have been reported of HRDs being stopped at the airport and prevented from traveling abroad, or of HRDs being denied renewal of their passports. The authorities have also at times deported representative of international NGOs who were visiting the country.

22. The Moroccan authorities refused to renew the passports of human rights defenders Ms **EI Ghalia Djimi** and Mr **Mustafa Al-Dah** and return the passports to them, on 23 January 2010. EI Ghalia Djimi is the vice-president of ASVDH and Mustafa Al-Dah is a member of the coordinating council of the same organisation.

23. Ms **Idagja Lachgare** was prevented from travelling by Moroccan authorities at Terminal 3 of Mohammed V International Airport. She was scheduled to travel to Ireland to participate as a guest speaker at a conference entitled "Global Resource, Human Rights and Development: The Conflict of Western Sahara" on 3 April 2009, having been invited by Ethical Development Action (EDA).

24. Front Line calls upon the UN to urge the authorities in Morocco to prioritise the protection of human rights defenders and in doing so to:

1. Conduct an independent, impartial and thorough inquiry into arbitrary detention, threats, ill-treatment, torture and all forms of intimidation and harassment directed towards all those human rights defenders mentioned in this submission;
2. Fully investigate the allegations of torture and ill treatment mentioned in this report; take urgent measures to prevent the re-occurrence of instances of torture, including accession to the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT);
3. Take urgent measures to ensure the accountability of security forces for their actions, in particular in the Moroccan administered Western Sahara;
4. Build on the recent constitutional amendments and proceed to review current legislation on freedom of expression with a view to bringing it in full compliance with international standards; in particular, review provisions related to offending the royal family and state authorities or institutions, so as to impede their misuse to target the legitimate exercise of freedom of expression;
5. Invite the UN Special Representative for Human Rights Defenders to Morocco.
6. Ensure that all human rights defenders in Morocco and Western Sahara are free to carry out their human rights activities free from persecution;