



FREEDOM NOW

Honorary Chair
The Most Reverend Desmond M. Tutu

FREEDOM NOW – INDIVIDUAL SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Introduction

1. Freedom Now individually submits this report to assist the UN Human Rights Council in its review of the policies and practices of the Kingdom of Morocco (“Morocco”). Freedom Now is a non-partisan, non-governmental organization (“NGO”) that works to free prisoners of conscience around the world through focused legal, political, and public relations advocacy.¹
2. This report documents the Moroccan government’s use of arbitrary detention to silence individuals in support of independence for Western Sahara and does not address issues relating to the status of Western Sahara as a Non-Self-Governing Territory.² As outlined in detail below, Morocco reportedly continues to silence civil society activists, human rights defenders, and demonstrators through wrongful criminal detention – a pattern documented by numerous human rights organizations and international institutions, including the UN Working Group on Arbitrary Detention (the “Working Group”) and the UN Special Rapporteur on Torture and Other Cruel and Inhuman and Degrading Treatment or Punishment (the “Special Rapporteur on Torture”). Such practice violates the government’s freely undertaken obligations under the International Covenant on Civil and Political Rights (“ICCPR”).

History of Arbitrary Detention in Morocco

3. The government of Morocco has a history of detaining Sahrawi self-determination activists and intimidating participants of peaceful protests advocating for the independence of Western Sahara. It is reported that Sahrawi self-determination activists are often arbitrarily detained for exercising their fundamental human rights,

¹ FreedomNow is currently serving as international *pro bono* counsel to Moroccan prisoner of conscience Mohamed Al-Bambary.

² While this report highlights violations of the rights to freedom of expression, assembly and association – the analysis is limited to a discussion of arbitrary detention as relevant to prisoners of conscience in support of independence for Western Sahara. It does not cover wrongful limitations on those rights that occur outside the context of such imprisonment. Ultimately, this report is meant to shed light on the Moroccan government’s use of arbitrary detention to silence those in favor of Sahrawi self-determination.

including the rights to freedom of expression, association, and assembly. In the context of such alleged politically-motivated prosecutions, and under the guise of national security interests, the government has repeatedly failed to meet minimum international due process standards and has violated detainees' rights to be free from torture and other forms of mistreatment.

4. Concern regarding the arbitrary detention of supporters of independence for Western Sahara was addressed in the most recent Universal Periodic Review of Morocco in 2012.³ During that review, it was recommended that the government “[t]ake measures to protect human rights defenders, particularly in Western Sahara, against harassment, repression, arrest or detention...”⁴ It was also recommended that Morocco “give particular attention to all measures to improve the human rights situation in Western Sahara, in particular...guaranteeing such basic rights as freedom of association and expression”⁵ and to “[a]dopt international human rights standard in national trials.”⁶ While these recommendations enjoyed the support of Morocco, the government claimed, despite evidence to the contrary, that these recommendations were “already implemented or in the process of implementation.”⁷ Morocco did accept the recommendation that it “[i]nvestigate all allegations of police brutality and torture and prosecute all security force officials accused of harsh treatment.”⁸
5. Unfortunately, Morocco has largely failed to implement the changes needed to effectuate these resolutions, safeguard the Sahrawi people from arbitrary detention and protect their freedom of expression, assembly, and association. Instead, in 2015, “authorities prohibited all public gatherings deemed hostile to Morocco’s contested rule over [Western Sahara], dispatching large numbers of police who blocked access to demonstration venues and often forcibly dispersed Sahrawis seeking to assemble.”⁹ Furthermore, while Moroccan law prohibits arbitrary arrests and detention, it is reported that security forces routinely ignore this prohibition, particularly during and in the wake of protests, and demonstrators are often severely mistreated and denied basic due process rights.¹⁰ Overall, articles in the Penal Code that criminalize acts deemed harmful to Morocco’s claim over Western Sahara, such as Articles 179 (criminalizing speech deemed to offend the dignity of the king) and 206 (criminalizing the acceptance of finances capable of harming the integrity, sovereignty or independence of the Kingdom) of the Penal Code, continue to be used to repress independent voices.¹¹

³ UN Working Group on the Universal Periodic Review, *Report of the Working Group on Universal Periodic Review: Morocco*, A/HRC/21/3, July 6, 2012.

⁴ *Id.* at ¶ 130.3.

⁵ *Id.* at ¶ 130.11.

⁶ *Id.* at ¶ 129.74.

⁷ *Id.* at ¶ 130.

⁸ *Id.* at ¶ 129.48. Enjoying the full support of the Moroccan government.

⁹ Human Rights Watch, *World Report 2016: Morocco and Western Sahara, Events of 2015*, 2016, available at: <https://www.hrw.org/world-report/2016/country-chapters/morocco/western-sahara>.

¹⁰ *Id.*

¹¹ *Id.*; Human Rights Watch, *Morocco: Free Student Imprisoned for ‘Insulting’ King*, July 16, 2013, available at: <https://www.hrw.org/news/2013/07/16/morocco-free-student-imprisoned-insulting-king>; Cairo

Continued Use of Arbitrary Detention

6. Moroccan law fails to define or recognize the concept of a political prisoner. As of 2016, the government allegedly did not consider any of its prisoners to be political prisoners and stated that it had legally convicted or charged all individuals in prison under criminal law.¹² However, human rights groups and groups advocating for Western Sahara's independence assert that there are a substantial number of political prisoners detained across the region.¹³ Freedom Now has received reports of at least 61 individuals who were arbitrarily detained from 2012 to 2016.¹⁴ An additional 24 were also likely detained in this time period, although the exact date of their detention is unknown.¹⁵
7. The government reportedly is active in prosecuting persons under the Penal Code who criticize the government's official position regarding territorial integrity and claim to Western Sahara.¹⁶ Penal law in Morocco is allegedly overly broad and criminalizes nonviolent advocacy and dissent, with crimes such as "defaming Morocco's sacred values" by denouncing the king and the regime during a public demonstration.¹⁷ In 2015, Sahrawi organizations and other international human rights groups confirmed that the government imprisons individuals for political activities or beliefs, such as demonstrating support for the Sahrawi people's right to self-determination, under the cover of criminal charges.¹⁸
8. Even though the constitution provides for an independent judiciary, the courts are reportedly neither independent nor impartial. Corruption and extrajudicial influence appears to severely weaken judicial independence. For example, trials in which the government had a strong political stake, such as those involving the status of Western Sahara, seem predetermined.¹⁹ Likewise, defendants' rights to a fair and public trial were repeatedly violated, especially for those protesting the incorporation of Western Sahara into Morocco.²⁰
9. In 2013, the Working Group conducted a fact-finding mission to Morocco and took special notice of the government's pattern of excessive use of force in repressing

Institute for Human Rights Studies, *Freedom of expression does not undermine the security of the state*, November 19, 2015, available at: <http://www.cihrs.org/?p=17614&lang=en>.

¹² United States Department of State, *Country Reports on the Human Rights Practices for 2015, Morocco*, Bureau of Democracy, Human Rights and Labor, 2016, at 11, available at: <http://www.state.gov/documents/organization/253151.pdf> [hereinafter "United States Department of State"].

¹³ *Id.* at 11-12.

¹⁴ Source on file with author.

¹⁵ *Id.*

¹⁶ United States Department of State, *supra* note 12 at 12

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 10-11.

protests and arresting demonstrators calling for Sahrawi self-determination.²¹ Those arrested were beaten, insulted and forced under duress to reveal the names of other protestors.²² In cases related to the arrest of supporters of independence for Western Sahara, the Working Group found that there is a pattern of torture and ill-treatment by police officers, in particular by agents of the National Surveillance Directorate.²³ It also found that many demonstrators and Sahrawi self-determination activists have been coerced into making incriminating confessions and sentenced to prison on the sole basis of that confession.²⁴

10. Moroccan police forces reportedly raid private homes of alleged or known supporters of Western Saharan independence and beat or otherwise mistreat those present in the homes being searched.²⁵ The Special Rapporteur on Torture found that torture and ill-treatment were inflicted during arrest, at police stations, and at the prison in Laayoune, Western Sahara and that excessive force was used during pro-independence demonstrations, including the kidnapping and abandoning of individuals in the desert, in an attempt to intimidate protestors and quell any future protests.²⁶

Morocco's Abuses Exemplified: The Cases of Activists Mohamed Al-Bambary²⁷ and Salah Lebsir²⁸

A. Mohamed Al-Bambary

11. Mohamed Al-Bambary is a forty-six year old Sahrawi media activist and human rights defender. Before his arrest on August 27, 2015, Mr. Al-Bambary was actively involved in the peaceful self-determination movement for Western Sahara. He began working with a group of media activists known as Equipe Media in 2014, and helped to document and disseminate information about events and abuses relevant to Western Sahara.
12. Mr. Al-Bambary was arrested on August 27, 2015 at the Dakhla Police Station while attempting to renew his identification card. At the time, he was not informed of the reason for his arrest and remained in pre-trial detention pending trial. He was later informed that his arrest resulted from his involvement in a protest dating back to

²¹ UN Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention, Mission to Morocco*, A/HRC/27/48/Add.5, August 4, 2014, at ¶ 1.

²² *Id.* at ¶ 64.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Morocco*, A/HRC/22/53/Add.2, February 28, 2013, at ¶ 64.

²⁶ *Id.* at ¶ 84.

²⁷ Information regarding Mr. Al-Bambary in this section is available on file with the author. Public information regarding Mr. Al-Bambary is not readily available in English and FreedomNow has been working with Arabic speakers to obtain information regarding this client through credible sources.

²⁸ Information regarding Mr. Lebsir in this section is available on file with the author, unless otherwise noted within the section.

September 2011. According to the police, Mr. Al-Bambary participated in violent actions, which led to the death of one man. Mr. Al-Bambary refuted his involvement in such violence and claims the protest was peaceful.

13. Since his arrest, Mr. Al-Bambary has been held at prisons located in El-Aaiun and Dakhla where he was subjected to torture intended to induce a false confession. Under duress, Mr. Al-Bambary signed several documents that he was not allowed to review. While in detention, Mr. Al-Bambary has participated in several hunger strikes in protest against his arbitrary detention and the abysmal prison conditions.
14. On November 4, 2015, in a trial replete with due process violations, the El-Aaiun Appeals Court sentenced Mr. Al-Bambary to 12 years in prison on charges of forming a criminal gang, participating in a murder, obstructing a public road, partaking in a fatal brawl, committing violence against public servants, and sabotaging public benefits under Articles 293, 294, 392, 267, 129, 591, 271, and 595 of the Moroccan Penal Code. This sentence was later reduced to six years imprisonment. Although Moroccan authorities relied on confessions made by ten other individuals previously convicted and since released for their involvement in the September 2011 protests--confessions which were likely made under duress--none of these men were produced as witnesses during the trial.
15. The charges, brought after a four-year delay and well after the arrest and release of others involved in the 2011 protests, despite Mr. Al-Bambary's continued presence in Western Sahara, and Mr. Al-Bambary's conviction, after a trial which failed grant him his basic due process protections, evidences that his detention was intended to silence his activism.

B. Salah Lebsir

16. Salah Lebsir is a political activist and a journalist.²⁹ He is also a member of Organisation Soleil de Liberté pour la Protection des Défenseurs Sahraouis des Droits de l'Homme, a human rights organization that works on behalf of Sahrawi people. Mr. Lebsir is currently serving a four-year prison sentence for charges related to his involvement in peaceful protests calling for the independence of Western Sahara and for related comments made on social media.³⁰ In response to his work, he was falsely accused of "forming a criminal group, provocation and participation in riots, vandalism, and throwing stones."³¹ In recent years, similar charges have been made against many Sahrawi activists and journalists.³²

²⁹ Pravada, *Postponement of trial of Saharawi activist and journalist*, August 12, 2015, available at: http://www.pravdareport.com/world/africa/12-08-2015/131628-saharawi_activist-0/ [hereinafter, "Pravada"].

³⁰ European Parliament, *Parliamentary Questions, Detention of the activist Salah Lebsir*, E-009547-15, June 11, 2015, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2015-009547+0+DOC+XML+V0//EN> [hereinafter, "Parliamentary Question"].

³¹ Pravada, *supra* note 29.

³² *Id.*

17. Mr. Lebsir was detained on June 6, 2015 under the premise of a search warrant issued in May 2013, which had led to the detention of five Sahrawi protesters in Smara, Western Sahara. Mr. Lebsir had fled Western Sahara after these warrants were issued, but returned to the region after learning that the five Sahrawi protesters had been released. He was arrested shortly after his return and was detained at Carcel Negra prison,³³ where he was denied family visitations.³⁴ During his detention, Mr. Lebsir was denied the right to have his charges read to him and has been subjected to torture. Like many other Sahrawi individuals, Mr. Lebsir remains in prison for his work as a human rights defender and engaging in peaceful protests.

Conclusions and Recommendations

18. As a party to the ICCPR, Morocco is obliged to respect its citizens' rights to freedom of expression, association, and assembly. By systematically imprisoning peaceful activists and protesters for exercising these fundamental human rights, the government clearly violates its freely undertaken obligations under international law. As such, Freedom Now recommends that Morocco:

- Immediately and unconditionally release and rehabilitate the civil and political rights of Mr. Al-Bambary, Mr. Lebsir and all other individuals who have been detained under pre-textual charges for exercising their fundamental human rights, including the right to freedom of expression, the right to freedom of association, and the right to freedom of assembly and allow them to peacefully promote the cause of human rights in accordance with the rights guaranteed to them in international human rights treaties without fear of mistreatment, including arbitrary detention.
- Thoroughly investigate all cases of arbitrary detention, torture, fair trial abuses, and other rights abuses directed against Mr. Al-Bambary, Mr. Lebsir and other human rights and Sahrawi self-determination activists.
- Fully cooperate with, respond to, and follow the recommendations of all Human Rights Council special procedure mandate holders – including the Working Group and the UN Special Rapporteur on Torture.

³³ All Africa, *Western Sahara: President of Republic Calls UN to Intervene for Release of Salah Lebsir*, June 20, 2015, available at: <http://allafrica.com/stories/201506221466.html>.

³⁴ Parliamentary Question, *supra* note 30.