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### **Written statement\* submitted by the American Association of Jurists, 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 August 2017]

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



## **Kingdom of Morocco: Denial of the Right to Freedom of Opinion and Expression when addressing Self-determination and Independence of Western Sahara**

### **Introduction**

The Report of the Office of the United Nations High Commissioner for Human Rights entitled “Compilation on Morocco” mentions<sup>1</sup> that the Human Rights Committee “welcomed the adoption in 2016 of the new Press Code, under which press-related offences were no longer subject to custodial penalties. It was concerned, however, about the introduction of new provisions in the Criminal Code that established terms of imprisonment as penalties for acts perceived as being offensive to Islam or the monarchy or as posing a threat to the country’s territorial integrity. [...]”

In its 6th periodic report<sup>2</sup> to the Human Rights Committee in 2016, the Kingdom of Morocco highlighted the developments in the area of Freedom of Press (par. 210 to 229).

Paragraph 219 of the report states: "Laâyoune TV is the first regional channel in the Maghreb. This channel, which is intended to be a channel of proximity covers all the southern provinces, ...".

### **Legal background**

Since 1884, Western Sahara was under Spanish colonial rule. In December 1963, the General Assembly<sup>3</sup> added the Territory into the list of the Ad-Hoc Committee on the Situation in the Non-Self-Governing Territories concerning the implementation of the Declaration on the Granting of Independence to colonial countries and peoples.

On 6 November 1975, the International Court of Justice, responding to a request for an opinion from the General Assembly, had determined that "The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are in accord in not providing indications of the existence, ..., of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State."<sup>4</sup>

The same day, the Kingdom of Morocco invaded Western Sahara militarily and organized a transfer of thousands of Moroccan people into the Non-Self-Governing Territory (Green march). The UN Security Council adopted resolution 380, deploring the holding of the march and calling upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants to the march.

On 26 February 1976, Spain informed the UN Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory. Western Sahara became, and is still today, the only Non Self-Governing Territory that has not an internationally recognized Administering power and which is under foreign occupation.

Recent judgments of the Grand Chamber of the Court of Justice of the European Union<sup>5</sup> (December 2016) and of the High Court of South Africa in Port Elisabeth<sup>6</sup> (June 2017) reaffirmed that Western Sahara has a separate and distinct status in relation to that of any State, including the Kingdom of Morocco and that the Moroccan occupation of a large part of Western Sahara has not affected the international status of the Territory as a Non Self-Governing Territory.

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<sup>1</sup> A/HRC/WG.6/27MAR/2 (par. 39)

<sup>2</sup> CCPR/C/MAR/6

<sup>3</sup> UNGA Resolution 1956 (XVIII)

<sup>4</sup> Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.12

<sup>5</sup> <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf>

<sup>6</sup> <http://www.saflii.org/za/cases/ZAECPEHC/2017/31.html>

While the UN Security Council calls upon the parties to resume negotiations without preconditions and in good faith<sup>7</sup>, the Kingdom of Morocco persists in considering the Non Self-Governing Territory of Western Sahara as an integral part of its national territory: this position has a direct consequence throughout the Moroccan legislative system.

### **Right to Freedom of Expression**

Whoever speaks about the inalienable right to self-determination of the Sahrawi people and their right to independence<sup>8</sup>, either within the borders of the Kingdom of Morocco or in the occupied part of the Non Self-Governing Territory of Western Sahara, is accused of challenging the security of the State and its territorial integrity.

#### ***A/ The New Press Code***

Promulgated in the Official Bulletin of the Kingdom of Morocco on 15 August 2016, it entered into force on that date. The Code is composed of three texts: the law relating to the press and the edition (law n ° 88-13), the law that regulates the status of professional journalists (law n ° 89-13) and the law establishing the Press National Council (law n ° 90-13).

The new Press Code is questioned by the members of the profession, all political tendencies and sympathies. In recent months, press professionals, newspaper publishers and journalists, who were barely consulted by the Minister of Communication in the elaboration of the law, have often denounced it.

Even if the new Press Code brings some real advances like the legal recognition of the freedom of electronic media and the establishment of judicial protections of the confidentiality of sources, the announcement of the annulment of custodial sentences and their replacement by fines and alternative punishments is misleading. Indeed, the sentences of imprisonment were eliminated from the new Press Code, but it is because they were "transferred" to the Penal Code, in particular with respect of offenses to religion, monarchy or symbols of the Kingdom.

#### ***B/ The new Article 275 e / of the Penal Code***

Article 275 e / of the new Penal Code (Law No. 73.15), published in the Official Bulletin on 15 August 2016, together with the Press Code (BO No. 6491, in Arabic) stipulates that "anyone who insults the Muslim religion, the monarchy or attempts to the territorial integrity of the Kingdom will be punished from six months to two years of imprisonment and a fine of 20,000 to 200,000 Dirhams 9, or one of these two penalties".

The same article provides that penalties may be increased from two to five years imprisonment and a fine of 50,000 to 500,000 Dirhams, if the aforementioned acts are committed by statements made at meetings or in public places, posters, or by distributing leaflets or any other printed or electronic means".

These provisions of the Criminal Code were not introduced accidentally. In fact, they nullify the advances made in the Press Code, making more difficult the work of journalists and restricting anyone from questioning religion, the monarchy or the conflict in Western Sahara.

#### ***C/ The practice and its consequences***

Article 275 e / introduced, without naming it, the crime of blasphemy, it reintroduces the crime of slur to the sacredness of the King, which was eliminated in the last reform of the Moroccan Constitution in 2011 and it explicitly aims to close any debate on the more than 40 years ongoing conflict in Western Sahara.

While self-censorship is very common for journalists in Morocco, well known journalists have chosen to exile:

- Ali Lmrabet, an independent journalist (who actually lives in Spain) was condemned in 2005 to close down its publication and was prohibited to exercise his profession in Morocco for a period of 10 years; still in the present days he is subject to administrative harassment by the Moroccan authorities;

<sup>7</sup> UN Security Council Resolution 2351 (OP 8), 28 April 2017

<sup>8</sup> UN General Assembly Resolution 1514 (XV)

<sup>9</sup> 100 Dirhams are equivalent to approximately 10,55 US \$

- Hicham Mansouri, historian and journalist, (who actually lives in France) was Chief of project at the Moroccan Investigative Association (AMJI) left the country in 2016;
- Aboubakr Jamaï, investigative journalist, former editor of the weekly French-language "Le Journal hebdomadaire" (18,000 copies) (who actually lives in France), at a press conference in Casablanca in February 2010 said: "I will no longer do journalism in Morocco and I decided to opt for the voluntary exile";
- Ahmed Réda Benchemsi, founder and former publishing director of the Moroccan weeklies Tel Quel (in French) and Nichane (in Darija) went into exile in the United States three months after the closure of Nichane in 2010 by the Moroccan authorities.

Since 2014, Maati Monjib (an historian and journalist), and six other Moroccan human rights defenders are the target of judicial harassment because of their activities in favor of freedom of expression in the country. On 24<sup>th</sup> May 2017, the Moroccan judiciary postponed their trial for the seventh consecutive time: the next hearing will take place on 11<sup>th</sup> October 2017.

In the Non Self-Governing Territory of Western Sahara, Sahrawi independent journalists and media outlets advocating for the implementation of UNGA resolution 1514 (XV)<sup>10</sup> are systematically targeted by the Moroccan authorities.

In the 2017 ranking established by the international organization for the defence of journalists, Reporters Without Borders, the Kingdom of Morocco is ranked 133 out of 180 countries. Compared to the 2016's ranking, established before the adoption of the new Press Code, the Kingdom of Morocco was demoted three ranks.

## Recommendations

The Human Rights Council should complete the Report of the Working Group on the Universal Periodic Review on the Kingdom of Morocco with the following recommendations:

- call upon the Kingdom of Morocco to abrogate any legislative provision that would prevent any citizen from freely express his or her opinions about religion, the role of the King in the national social, economic or political spheres or the decolonization of the Non-Self-Governing Territory of Western Sahara;
- urge the Kingdom of Morocco to end the illegal occupation of Western Sahara and to cooperate in good faith with the MINURSO with the view of organizing the referendum in order to implement the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations.

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<sup>10</sup> Declaration on the Granting of Independence to colonial peoples (14 Dec. 1960)