



Euro-Mediterranean Human Rights Network
Réseau Euro-méditerranéen des droits de l'homme
الشبكة الأوروبية-المتوسطية لحقوق الإنسان

EMHRN Mission Report

The Human Rights Situation in Morocco and the Western Sahara

The EMHRN (Euro-Mediterranean Human Rights Network) gathers more than 80 human rights organisations, institutions and individuals based in 30 countries around the Mediterranean. It works to promote and protect human rights within the framework of the Barcelona Process and the co-operation between the European Union and the Arab world.

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Acronyms

ACAT – Action by Christians for the Abolition of Torture

ADFM – Democratic Association of Women of Morocco

AMDH – Moroccan Human Rights Association

APALD – Authority for equality and the fight against all forms of discrimination

ASPDPCS – Sahrawi Association for the Protection and Promotion of Sahrawi Culture and Heritage

ASVDH – Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State

CES – Economic, Social and Environmental Committee (Morocco)

CIDH – Independent Human Rights Commission

CODAPSO – Committee to Support Self-Determination for the people of Western Sahara

CODESA – Collective of Sahrawi Human Rights Defenders

CSTS – Union Confederation of Sahrawi Workers

DIDH – Inter-ministerial Delegation for Human Rights

EMHRN – Euro-Mediterranean Human Rights Network

ENP – European Neighbourhood Policy

EU – European Union

IER – Equity and Reconciliation Commission

MINURSO – United Nations Mission for the Referendum in Western Sahara

NGO – Non-governmental organisation

NHRC – National Human Rights Council

OMDH – Moroccan Human Rights Organisation

RHRC – Regional commission of the NHRC

SADR – Sahrawi Arab Democratic Republic

UN – United Nations

UPR – Universal Periodic Review

Introduction

Mission objectives

The Euro-Mediterranean Human Rights Network (EMHRN) organised a mission on the human rights situation in Morocco and Western Sahara which took place from 14 to 21 September 2014.

The delegation was composed of:

- Mr. Michel Tubiana, President of the EMHRN
- Mr. Isaías Barreñada, Member of the EMHRN Executive Committee
- Mr. Marc Schade-Poulsen, Executive Director of the EMHRN
- Ms. Emilie Dromzée, EMHRN Advocacy Officer Maghreb
- Ms. Raoudha Garbi, Member of the Steering Committee of the Tunisian Human Rights League (member of the EMHRN)

This delegation's primary objective was to conduct a series of meetings with the Moroccan civil society and authorities in order to assess the changes in the situation of public and individual freedoms in Morocco. In particular, this visit was an opportunity to take stock of the local dynamics with the Moroccan human rights non-governmental organisations (NGO) in the context of the new Constitution and the effective or forthcoming adoption of several organic laws.

The second objective was to take stock of the human rights situation in the Western Sahara through specific visits to Laâyoune and Tan Tan.

The participants were easily able to access Morocco and the Western Sahara, except for Emilie Dromzée. Upon her arrival at Casablanca airport on 14 September, the border police notified her that she was denied access to Moroccan soil and would have to return to Brussels on the next flight. This was the first time that an EMHRN representative was refused access to Moroccan soil since former EMHRN president Kamel Jendoubi was denied entry in 2010. The involvement of the National Human Rights Council (NHRC) finally enabled Emilie Dromzée to enter Morocco after having been held at the airport for two hours. However, no reasons were given for this attempt to restrict entry by the border police or the Moroccan authorities encountered during the mission, even though the Deputy Minister of the Interior expressed his regrets with regard to this matter.

Subsequently, this mission took place under conditions which enabled the EMHRN representatives to fulfil their assignment, in particular thanks to the cooperation of the NHRC and the Moroccan authorities through the Inter-ministerial Delegation for Human Rights (DIDH) which facilitated the official meetings. The EMHRN would also like to thank the members of NGOs who assisted in organising this mission, Khoumai Mohamed Cheikh and Bakkar Bismir who facilitated the interviews in Tan Tan, and Mohamed Lakhel, who facilitated the interviews in Laâyoune.

The EMHRN regrets that this delegation was followed at all times of day and night by conspicuously plainclothes security forces in Laâyoune and in Tan Tan.

In parallel with this mission, the EMHRN wishes to visit the refugee camps in Tindouf as soon as possible in order to examine the situation of freedoms in the area and strengthen its analysis of the human rights situation in the region. Unfortunately, although the EMHRN submitted a formal request for access to the camps in Tindouf to the Polisario Front on 16 June 2014, it can only regret not having received a response to its request to date. The Network will submit a new request, noting that it is available to initiate a dialogue with the Polisario at any time and, if necessary, with the Algerian authorities responsible for transit permits. Meanwhile, having been prevented from making any observations, it can only express its concern with regard to the lack of transparency of the Polisario authorities.

Programme

In Rabat, the first part of the programme was devoted to the meeting with the EMHRN member organisations and other Moroccan human rights NGOs. Meetings were organised with the Moroccan Human Rights Organisation (OMDH), the Moroccan Human Rights Association (AMDH), the Democratic Association of Women of Morocco (ADFM) and the Adala Association.

Meetings were also organised with the Moroccan authorities including the Minister of Justice, the Deputy Minister to the Minister of the Interior, the Minister of Migration, the Minister of Solidarity and Women, Family and Social Development, the Minister of Foreign Affairs, the president of the House of Representatives. The delegation also met the NHRC, the DIDH, the Economic, Social and Environmental Committee (CES), and the Centre for Saharan Studies (Mohammed V University of Rabat-Agdal) in Rabat.

The delegation split up into two groups for the second part of the mission. The first group, consisting of Marc Schade-Poulsen and Raoudha Garbi, travelled to Tan Tan. The second group, consisting of Isaias Barreñada and Emilie Dromzée travelled to Laâyoune. Both groups met with local authorities, recognized NGOs and a large number of associations and collectives not recognized by the authorities, people alleging human rights violations and their families, and lawyers.

In Tan Tan, meetings were held with the following associations and collectives: the AMDH's regional office for the Sahara and its local branch in Tan Tan, the Organisation "Désert de la dignité et de la liberté", the Sahrawi Observatory for Women and Children, the Group of marginalised women, and a group of former prisoners who were sentenced following the 2008 case.

The delegation in Tan Tan also met with the Moroccan authorities and institutions including the governor of Tan Tan and the NHRC's regional commission of Tan Tan-Guelmim.

In Laâyoune, meetings were organised with the following associations and collectives: the local branch of the AMDH in Laâyoune, the Collective of Sahrawi Human Rights Defenders (CODESA), the Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State (ASVDH), the Committee to Support Self-Determination for the people of Western Sahara (CODAPSO), the Sahrawi Association for the Protection and Promotion of Sahrawi Culture and Heritage (ASPDCPS), the Coordination of families of Gdeim Tzik prisoners, the Union Confederation of Sahrawi Workers (CSTS), the Forum of Sahrawi Women, the Independent Human Rights Commission (CIDH), the Associations for monitoring prisoners, the Collectives of prisoners' families, Sahrawi lawyers, the (Dakhla) Natural Resources Group and various youth groups (refugees, unemployed, culture, bloggers).

The delegation in Laâyoune also met with the Moroccan authorities and institutions in the area, including the Wali of Laâyoune, the Agency for the Development of the South, the NHRC's Regional Commission for Laayoune-Smara, and the United Nations High Commissioner for Refugees in Laâyoune.

A trip was also organised to the port of Laâyoune in order to witness the restrictions on freedom of movement in the area.

Constitution of 2011: Morocco at the crossroads

The implementation of the Constitution of 2011 and the adoption of the organic laws

It is useful to recall the process that led to the adoption of a new Constitution in Morocco, and to highlight the progress made and the problem areas that arose from it. The adoption of the new Constitution in 2011 took place in a tense political, economic and social context at a time when Morocco was facing massive demonstrations and the Arab world was undergoing historic upheavals. The constitutional reform, launched by the Kingdom's highest authorities in response to popular protests, was the subject of a consultation involving political and social stakeholders and also followed the recommendations of the Equity and Reconciliation Commission that remained partly unimplemented. The progress enshrined by the Constitution included the new separation of powers, the primacy of human rights, the strengthening of the independence of the judiciary, the principle of non-discrimination, equality, recognition of the Amazigh language, the importance of the role of civil society and the right of petition.

The implementation of this Constitution was planned through the adoption of 19 organic laws. In addition, various institutions, such as the High Authority for Equality, were created for the purpose of ensuring good governance. A new Ministry for Relations with Parliament and civil society was also created.

However, some provisions were framed by restrictive wording which could contribute to limiting their scope. So it is with the primacy of duly ratified international treaties on domestic law, which is only recognised "while respecting its (Morocco's) immutable national identity (Preamble of the Constitution)" or regarding the equality which is proclaimed although while respecting "constants of the Kingdom" (Article 19).

Three years after the adoption of the Constitution, the constitutional provisions largely remain to be implemented in law and in practice. To date, only nine¹ of the expected 19 organic laws have been adopted, and the political and legislative agenda needed to clarify the process before the end of the legislature in 2016 remains unclear. One of the major challenges facing upcoming parliamentary sessions will be the matter of the Justice reform (status of the Judiciary, Superior Council of the Judiciary), the Equality law and the Advanced Regionalisation law.

Although the Moroccan authorities confirmed that the implementation of the Constitution was the government's priority and that the announced organic laws and reforms would be adopted during this legislature, the government and association representatives interviewed generally acknowledged that the

¹ To the date of 21 October 2014, nine organic laws were adopted : the Organic Law on the House of Representatives, the Organic Law on the House of Councillors, the Organic Law on Political Parties, the Organic Law on the Appointment to Higher Positions, the Organic Law on the Constitutional Court, the Organic Law on the procedures for the functioning of parliamentary investigations committees, the Organic Law on the Economic, Social and Environmental Council, the Organic Law on the organisation and management of governmental works and the legal status of its members, and the Organic Law on the election of the members of the Boards of territorial authorities.

reforms announced by the Constitution had been delayed.

For instance, the Justice reform, which includes a reform of the Superior Council of the Judiciary, a new penal code and a code of criminal procedure, has still not been submitted.

Several major reforms intended to consolidate the progress made with regard to women's rights are still expected, such as the creation of the High Authority for Equality and the draft law against violence against women.

The Moroccan Ministers confirmed that the laws would be consistent with Morocco's international human rights commitments. The Minister of Justice reaffirmed the forthcoming adoption of reforms aimed at better ensuring the independence of the Judiciary and better guaranteeing defence rights, and that the deadlines of the work plan of the Charter of the Judicial System Reform (July 2013) will be respected. The Minister of Solidarity and Women also promised to ensure that "good laws" on the issue of Women would be negotiated and that the national plan for equality for achieving parity would be respected.

These delays, however, raise questions regarding the quality of the forthcoming legislation and their compliance with international standards, but also regarding civil society's opportunities for contributing to the legislation process.

According to the NGOs interviewed, the quality of the consultation of civil society was lacking on key texts such as the Justice reform, the draft law against violence against women and the Authority for equality and the fight against all types of discrimination (APALD). It is also useful to note the lack of transparency with regard to legislative timetables, which the EMHRN delegation was not able to obtain despite repeated requests. These concerns are to be viewed within the context of statements made by government officials attacking civil society (see below).

Overview of public and individual freedoms

During the interviews conducted with civil society and the meetings with authorities, some of the progress made by Morocco in the field of human rights was underlined, including:

- The ratification of international conventions on human rights;
- The visits made by the United Nations (UN) High Commissioner for Human Rights and Special Rapporteurs²;
- The law on special courts that put an end to civilians being judged in military courts;
- The campaign for regularisation of illegal migrants who, at the time of the mission, had counted 17,757 applications submitted, around 5,000 applications accepted and 2,624 residence permits issued (as well as 553 refugee cards);
- Impunity and Torture: the recent case of a court in Agadir which, following the visit by the United

² Including the United Nations Special Rapporteur on Human Trafficking; the United Nations Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment; the United Nations Working Group on Discrimination against Women.

Nations Special Rapporteur on Torture, decided to drop all charges against a convicted person after a forensic doctor found evidence of torture on his body, the timeframe of which corresponded to the period during which the person was held in custody at the police station.³

The mission members were able to speak to the NHRC about the evaluation of its three years of operation, as presented to parliament in June 2014⁴. At the time, the NHRC had submitted reports on all current major reforms. The institution also receives direct complaints submitted by citizens. In addition, the NHRC informed the delegation that it had also requested information from the authorities regarding the reasons for the delays in responding to the complaints. Since then, the government undertook to provide a response within a period of three months. However, it seems that the period is not being respected.

Regarding international mechanisms, a topic discussed with the DIDH, Morocco ratified most of the international conventions. The EMHRN is pleased that Morocco withdrew its reservations with regard to the Optional Protocol to the Convention against Torture and receiving the Special Rapporteurs. At the time of its visit, the EMHRN had deplored the fact that the protocol ratification instruments had still not been filed with the UN (since then, Morocco filed the instruments on 24 November 2014). The EMHRN also deplored the fact that the mid-term report on the implementation of the recommendations of the Universal Periodic Review (UPR) had not yet been finalised.

The Minister for Migration explained the process of **regularisation of migrants**. The next goal is the adoption of laws on asylum, human trafficking and migrants. One of the major challenges to be faced is the management of the integration of migrants and the recognition of their rights to employment, housing and healthcare. In this regard, certain NGOs deplored the low number of migrants regularised since the launch of the process and the restrictive conditions for regularising migrants.

During the mission, the Moroccan NGOs shared a number of **concerns and recent threats to public freedoms**.

In his statement delivered to parliament on 15 July 2014, the Moroccan government's Minister of the Interior accused the human rights movement of working for foreign bodies and of undermining the country's interests, amalgamating human rights organisations with religious extremism and terrorism. Many of the organisations interviewed do not consider these words to be a simple mistake or a slip of the tongue, but rather as a discourse which, under cover of prevention against terrorist threats, is part of an authoritarian process aimed at undermining fundamental freedoms and rights in Morocco.

Following the statements made by the Minister of the Interior, the Moroccan Human Rights Association (AMDH), a member of the EMHRN, reported 17 arbitrary bans on meetings, sit-ins, public conferences,

³ However, since the mission, the Moroccan government attacked a French NGO, the Action by Christians for the abolition of torture (ACAT), which supports lawsuits lodged in France against certain Moroccan officials under the International Convention against torture. For more information, see the press release of 9 February 2015: Morocco: nine NGOs worried about the intimidation measures used against the victims of torture and one NGO representing them (only available in French): <http://www.euromedrights.org/fra/2015/02/09/maroc-9-ong-inquietes-des-mesures-dintimidation-exercees-contre-les-victimes-de-tortures-et-une-ong-qui-les-represente/>

⁴ A report presented by the Chairman of the National Human Rights Council before both Houses of Parliament, 16 June 2014, Publication of the National Human Rights Council – Rabat
Full document only available in French: http://cndh.org.ma/sites/default/files/cndh_-_discours_president_fr_-_19nov_1.pdf
Summary available in English: <http://www.cndh.org.ma/sites/default/files/documents/summary.pdf>

training activities and campaign caravans during the period between 12 July and 30 September 2014. Since then, the AMDH has noted other bans and regularly updates the list of bans it has received on its website.⁵ Most of these bans were not communicated in writing or issued with explanations justifying them.

The AMDH filed a complaint regarding the ban on organising a "Media and Democracy" conference which was due to be held at the National Library in Rabat on 27 September, under the pretext of failure to comply with the provisions of Article 3 of the Royal Decree (dahir) governing public meetings, despite the fact that legally constituted associations are exempt from reporting on their activities. On 22 November, following the complaint filed by the association against the governor of Rabat, the administrative court of Rabat acknowledged the illegality of the ban and ordered the Minister of the Interior to pay 100,000 dirhams in damages, ruling that the ban issued by the Rabat wilaya was null and void and without legal basis.⁶

During the meeting with the delegation, Mr. Charki Draiss, the Deputy Minister to the Minister of the Interior, did not object to the fact that the AMDH's public activities were the subject of arbitrary restrictions.

According to the organisations interviewed, the AMDH is not the only organisation defending human rights whose activities are hampered by decisions made by the departments of the Ministry of the Interior. In early September 2014, the sixteenth edition of the youth camp organised in Morocco by Amnesty International was arbitrarily prohibited from taking place by the Moroccan authorities. The Moroccan League for the Defence of Human Rights was also prohibited from using the Bouhhal centre in Rabat for a conference on education and human rights. Similarly, on 27 September, a "Caravan for solidarity with the Sub-Saharan people" travelling from Rabat and denouncing the abuse suffered by the migrant population in Morocco, was arbitrarily blocked by security forces at the entrance of Tangiers, preventing it from attending a planned demonstration in the city centre. No explanation was given on the prohibition from entering the city.⁷

The attacks against certain human rights organisations are contrary to the Moroccan Constitution, Article 29 of which guarantees freedom of assembly, and to the Moroccan government's international commitments in the matter, including the International Covenant on Civil and Political Rights.

⁵ For more information, see (only available in French): <http://www.amdh.org.ma/fr/communiqués/liste-des-interdictions-des-activites-de-l-amdh-depuis-juillet-2014>

⁶ See the letter addressed by the EMHRN to Mr. Mohamed Hassad, Moroccan Minister of the Interior, 26 November 2014 (only available in French): <http://www.euomedrights.org/fra/2014/11/26/lettre-ouverte-au-sujet-des-restrictions-grandissantes-a-liberte-de-reunion-au-maroc/>

⁷ Since the mission returned from Morocco, the ADALA association was prohibited from holding a meeting and the AMDH received a formal notice to change its activities under threat of legal action for dissolution. For more information, see the ADALA association's press release on the administrative authorities' decision to prohibit the seminar entitled "The Internet between respect for privacy and freedom of expression: the right to privacy in the digital era", published on the association's Facebook page (only available in French): <https://www.facebook.com/photo.php?fbid=579072828893413&set=pcb.579072912226738&type=1&theater>, and the AMDH's press release following the formal notice received from the Wilaya of Rabat-Salé-Zemmour-Zaër (only available in French): <http://www.amdh.org.ma/fr/communiqués/com-demeure-wilaia->

In addition, the registration applications of some associations remain blocked despite several repeated efforts over the years. According to the NHRC, around fifty organisations are affected, thirty-seven of which have filed a lawsuit.⁸

Concerning **women's rights**, associations, including EHRN member organisation ADFM, have expressed their concerns regarding the increasing number of attacks on women's rights, the rise of conservatism and the authorities' reactions in this regard. The upsurge in marriages involving underage girls is an example of this. A joint report published by the NHRC, UNICEF and the AMANE association shows that the number of marriages involving underage girls increased by 91.6% between 2013 and 2014 (from 18,341 to 35,152), and judges are almost systematically granting the exemptions required for organising such marriages.⁹ In this regard, the Minister for Solidarity and Women stated that she wished to comply with the commitments undertaken by Morocco on the topic. She nevertheless stressed that 90% of women are married after reaching the age of 18, and that 67% of minors are married at 17, which the Minister attributes to the young girls' social environment. The contents of the law against violence against women and the implementation of the Government Plan for Equality and Parity are also the subject of concerns raised by NGOs working on women's rights which have expressed their dissatisfaction with regard to the methods used for drafting the law and its contents.

During discussions with the EMHRN delegation, association leaders also raised the issue of the **impunity** of those responsible for abuses. NGOs claim that torture is still a common practice. The EMHRN reiterated its request (for the third time) made to the Moroccan authorities for statistics on the prosecution of the security forces accused of abuse; it has yet to receive such information.

⁸ For more information, see the outcomes of the EMHRN regional study on the freedom of assembly. The first part, published in November 2013, focuses on a review of legislative frameworks: <http://www.euromedrights.org/eng/2013/11/27/the-right-to-freedom-of-assembly-in-the-euro-mediterranean-region/>. The second part, published in December 2014, analyses the implementation of the laws and the exercise of the freedom of assembly and demonstration in practice: <http://www.euromedrights.org/eng/2014/12/08/freedom-of-assembly-under-threat-muzzling-dissent-in-the-euro-mediterranean-region/>

⁹ Joint study by Unicef, the NHRC and Amane, Study on sexual violence against children in Morocco, December 2014 (only available in French): http://www.unicef.org/morocco/french/Etude_sur_la_VS_2014.pdf.

Western Sahara:

Respecting all dissenting voices

Status of the Western Sahara

The UN considers the Western Sahara as having the status of a non-autonomous territory whose final status has not yet been decided and whose territory is administered de facto by another state - Morocco.

Morocco considers that the territory is an integral part of the Kingdom due to the treaties of allegiance signed by various local authorities.

After several years of military conflict between Morocco and the Sahrawi national liberation movement, the Polisario Front, which caused population to be forcibly displaced and the territory of the former Spanish colony to be divided, the parties agreed to sign a peace plan submitted by the UN in April 1991.

A United Nations mission, the MINURSO¹⁰, was established and deployed in September 1991 in order to monitor the cease-fire and organise a referendum enabling the inhabitants of the Western Sahara, who are entitled to vote, to decide the future status of the territory. The settlement plan, as approved by the Security Council, provided for a transitional period for preparing the referendum during which the population of the Western Sahara would choose between independence and integration within Morocco. The lack of agreement on the electoral roll ahead of the self-determination referendum blocked the whole process.

Since then, several proposals have been discussed although the parties have been unable to come to an agreement, creating a tense situation of "neither peace nor war". Morocco's latest proposal was to grant a status of advanced autonomy to the Western Sahara under Moroccan sovereignty. The Polisario Front, however, has continued to request a self-determination referendum. The Secretary General of the United Nations sent a personal envoy - currently Mr. Christopher Ross - to monitor the matter, facilitate dialogue and come up with a formula that would be acceptable for both parties. The African Union also appointed a special envoy for the Western Sahara, Mr. Joaquim Chissano.

Since 2005, the protest led by the pro-independence parties has gained momentum in the territories under Moroccan control, and was followed by an escalation of repression. Recently, a large number of human rights organisations have requested that the MINURSO's functions be extended to monitoring respect for fundamental rights, as is carried out by other peacekeeping operations throughout the world. At the time of the latest extension of the mission's assignment, the Security Council had not taken into account the growing concern, including that expressed by Mr. Christopher Ross.

¹⁰ Resolution 690 of the United Nations Security Council on the situation concerning Western Sahara, 29 April 1991, # HYPERLINK "[http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/690\(1991\)&TYPE=&referer=/fr/&Lang=E](http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/690(1991)&TYPE=&referer=/fr/&Lang=E)" [http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/690\(1991\)&TYPE=&referer=/fr/&Lang=E](http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/690(1991)&TYPE=&referer=/fr/&Lang=E)

The lack of political progress and growing political and social unrest in the region are major concerns in Rabat.

According to concordant statements, the Moroccan government has, since 1976, conducted a policy of colonisation accompanied by major investments and aids aimed at consolidating its presence in the Western Sahara and at winning the support of the local population, namely through the Agency for the Development of the South, and through programmes developed by all the public institutions in the territory. As a result, the region absorbs a large share of the national budget, however, without directly benefitting the populations concerned, according to unanimous accounts.

In October 2013, the Economic, Social and Environmental Committee published a report entitled "New model of development for the southern provinces" which outlines a new approach aimed at modernising the region of the Western Sahara and better inserting it in Morocco's socio-economic environment.¹¹

The territory's specific context undeniably affects the human rights situation. Independence activists denounce the violations and repression suffered since 1976, and the Moroccan authorities denounce the instrumentalisation of the conflict through human rights-based arguments. Some NGOs (the Independent Human Rights Commission, for instance), although relatively few of them, have taken up the official position and deplore the politicisation of civil society in the Western Sahara.

Coverage of the matter by international NGOs, such as Human Rights Watch and Amnesty International, was also denounced by the authorities who have deplored their lack of information or even their biased views.

Over the past two years, Mr. Christopher Ross had several meetings with human rights defenders in the territories, and the United Nations Special Rapporteur on Torture also visited the territories of the Western Sahara.

The impact of Morocco's institutional and constitutional reforms on the Western Sahara

Morocco's 2011 Constitution does not include an article relating specifically to the Western Sahara, but the region is referenced on two separate occasions: in the Preamble, where it mentions the Saharo-Hassani component of the national identity, and in Article 5 where it references the Hassani language.

Article 5: "The State works for the preservation of Hassani, as an integral component of the Moroccan cultural unity, as well as the protection of the cultural expression and languages of Morocco."

Three NHRC regional commissions (RHRC) were set up in the three regions composing what is referred to as the South. Their members include individuals in various political positions; they include former activists for the cause of independence for the Western Sahara.

Local NGOs consider this to be a positive development. The NHRC does not consider the human rights violations in the Western Sahara as exceptional compared to those committed on the territory of Morocco.

¹¹ Report published by the Moroccan Economic, Social and Environmental Committee, *New Development model for the Southern Provinces*, October 2013: <http://www.ces.ma/Documents/PDF/Synthese-NMDPS-VAng.pdf>.

However, the organisations interviewed in Laâyoune and Tan Tan (see below) shared stories of certain applications being blocked at national level, particular as regards the registration of certain associations. In Laâyoune, good relations between the new Wali and the RHRC were pointed out as a positive point which now enables the Commission to have access to prisons or address specific cases. The RHRC in Tan Tan-Guelmim, however, has only been able to make two prison visits since 2012.

In their exchanges with the EMHRN delegation, the Moroccan authorities in Rabat and Laâyoune emphasised the clear political will to respect all dissenting voices and different political views, including those calling for independence. The authorities claimed that there was no policy exception in the Western Sahara and that the reforms applied in the same way to the entire Moroccan territory.

However, a policy exception does exist as can be observed given the number of prohibitions and/or refusals of international delegations wishing to visit the Western Sahara or express their support for the cause of self-determination of the Sahrawi nationalist movement. An example of this was the European Parliament's Commission for Fisheries being refused entry to the territory in 2010, and more recently, two delegations, French and Spanish, being refused access to the territories in August 2014. In total, around 45 individuals were refused access between April and September 2014, according to the estimations of several NGOs.

The Deputy Minister to the Minister of the Interior confirmed the refusals during his meeting with the EMHRN delegation and stressed that the Moroccan government does not appreciate the visits of delegations that have a prior bias with regard to the situation in the Western Sahara. Through such refusals, the Moroccan government creates a discriminatory situation between Morocco and the territories of the Western Sahara.

Following the adoption of the new Constitution in Morocco, the vast majority of NGOs in the Western Sahara declared that they saw no visible impact on the human rights situation. In order to explain the spirit in which Morocco manages the Western Sahara and considers pro-independence activists, many NGOs referred to the speech given by the King on the occasion of the commemoration of the Green March of 11 November 2009:

"We reiterate our commitment to ensuring that Morocco remains a State under democratic law striving for democratic progress. Our desire to achieve this is matched only by our rejection of the despicable exploitation of our country's achievements in terms of freedoms and human rights, and the rejection of their instrumentalisation by any who plot against the sovereignty, the unity and the sacred constants of our country." "One is either a patriot or a traitor."

According to the interpretations of certain sources, this speech means that any individual who questions the "Moroccanness" of the Western Sahara will be considered a traitor and that traitors are not entitled to invoke the rights of a citizen. This is in line with Article 7 of the Constitution which prohibits political parties from "undermining...the Kingdom's national unity and territorial integrity". This provision constitutes, in fact and in law, a limitation to the political activity of any organisation which advocates independence for the Western Sahara.

Visit of Tan Tan:

Overview of public and individual freedoms

Historical and geographical context

Tan Tan is the capital of the governorate of Tan Tan-Tarfaya. Built up around a major waterhole and frequented by the area's nomadic tribes, the city became a military post for monitoring the movements of the tribes and for controlling the borders defined by the colonial forces in the early 20th century. During the war of liberation, it also became a gathering point for the Free Army of the South which fought French and Spanish colonisation. The military activity linked to this strategic position contributed to the emergence of other activities such as trade and services.

After Morocco recovered the province of Tarfaya in 1958, King Mohamed V exempted the area from a certain number of taxes as a reward for the role that its inhabitants played during the war of liberation and in order to facilitate the territory's economic and social integration with the rest of the country. As a result, Tan Tan became a bustling commercial centre and a place of trade between the country's various regions and with the Saharan countries neighbouring Morocco.

After the Green March of 1975, Tan Tan became a military support base for the Moroccan army which was then engaged in fighting with the Polisario Front. In 1981, Tan Tan was promoted to the status of capital of the province; a large port complex was built there in 1982, which subsequently became one of Morocco's largest fishing ports.

Despite these developments, the region still lags behind the rest of Morocco in terms of socio-economic development. A situation which neither the fishing port - whose economic activities are mainly oriented towards the north -, nor the airport, an essential factor for regional development, nor the natural and touristic sites around the city of Tan Tan, nor its annual Moussem¹², have been able to improve.

Tan Tan being located outside of the borders of the territories disputed by Morocco and the Polisario Front, the city is therefore located outside of the territory which would formally be the subject of a possible referendum on self-determination for the Western Sahara. However, Tan Tan is historically a centre of the Polisario Front given that its mainly young people from the city - mostly sons of notables or former members of the Army for the liberation of the south - that birthed the embryonic movement for the liberation of the Sahara in Rabat in 1969.

In June 1972, during the celebration of the annual Moussem, these young people arriving from Rabat, where they were following university studies, marched in the streets of Tan Tan to denounce the poverty in the region and to call on the central authorities to expel the Spanish occupier.

¹² The Moussem of Tan Tan was an annual meeting of the nomadic peoples of the Sahara bringing together more than thirty tribes from southern Morocco and other nomadic peoples of northwest Africa. Originally, these were spontaneous and regular meetings of these peoples around a well for a long week around the month of May. These gatherings took the form of a Moussem - a type of annual economic, cultural and social fair - from 1963 when the first Moussem of Tan Tan was organised to promote local traditions and to make the event a place for exchange, meetings and celebration. The Moussem was proclaimed a part of the universal cultural heritage by UNESCO in 2005: http://www.unesco.org/culture/intangible-heritage/26arb_uk.htm.

The movement was severely repressed at the time, and the repression seemed to be aimed at suppressing a burst of anti-colonialist dignity which was supposed to be shared by everyone, especially given that the dismantling of the southern wing of the National Liberation Army was still fresh in everyone's minds. The movement soon became radicalised and led to the creation of the "Popular Front for the Liberation of Saguia Hamra and Oued Addahab" or "Polisario Front" in 1973.

Tan-Tan was also the first city to be attacked by the troops of the Polisario Front in 1979, and it was occupied for over five hours by more than 1,700 men.

The many drawings representing the Sahrawi flag on the walls of several of the city's neighbourhoods seem to indicate that a large part of Tan Tan's population currently supports the Sahrawi movement's separatist arguments.

It is also worth noting that despite owning a residence in the centre of the city, the King has never travelled to Tan Tan.

Freedom of expression, association and demonstration

During the meetings organised in Tan Tan, the various organisations shared stories of several instances of restrictions of the freedom of demonstration and assembly. Political and solidarity demonstrations are systematically prohibited or hampered, including by violent crackdowns carried out by police forces.

The statistics of the Tan Tan-Guelmim RHRC corroborate the findings of the EMHRN delegation attesting that besides the fact that the region is economically, culturally and environmentally neglected, individual and public freedoms are hampered by draconian police control¹³. A lack of communication, and even latent hostility between the authorities and civil society representatives must be noted, considering relations between the AMDH's activists and the authorities.

The EMHRN delegation was itself the subject of such control during its visit of Tan Tan. The delegation was received and its identity papers controlled by law enforcement representatives upon arrival at the airport; it was subsequently monitored day and night in all its movements, and a plainclothes policeman stayed in the same hotel as the delegation.

The case of the group of marginalised women is an example of the repressive practices in the city of Tan Tan (see box).

¹³ The complaints received by the Tan Tan-Guelmim RHRC relate to allegations of abuse of power by police officers, on allegations of violations of trade union and association rights (Note from the RHRC sent to the EMHRN on the 'Complaints and grievances received by the Tan Tan – Guelmin RHRC since its establishment to the present day', 2014). The EMHRN delegation welcomed the establishment of the "Tan Tan-Guelmim Regional Human Rights Commission" in December 2011, composed of 27 members nominated by the regional representative bodies, including a former activist and victim of an enforced disappearance for the cause of the independence of the Western Sahara.

The "Group of marginalised women"

This is an informal group made up of 13 Sahrawi women considering themselves to be excluded from all development programmes and claiming their right to work as a result. In 2012, they organised a march to Rabat in order to bring their claims to the city. On the way there, they were blocked in Oued Draa, 20 km away from Tan Tan. The march was then converted into a sit-in¹⁴, the activists having been able to find shelter for the time necessary to write down their demands in letters addressed to the authorities. According to the eyewitness accounts obtained by the delegation, the authorities soon surrounded the site and prohibited all demonstrations of solidarity for the movement and subsequently destroyed the tents and chased away the activists. The group then moved one kilometre away where new shelters were set up for the purpose of staging a sit-in which lasted for 72 hours and attracted the solidarity of many associations and activists. The protest subsequently evolved into a hunger strike. In the early hours of 4 September 2012, six members of the group (the other seven being in hospital), were violently manhandled by police officers who arrived in 16 vehicles, armed with shields and batons. The tents were destroyed and the activists were battered and pushed into police vehicles, driven to the Cité El Kods and then, released.

A week later, the group resumed its activities by organising sit-ins and filing support petitions towards the authorities. Despite their repeated requests, the authorities continued to refuse their applications.

The delegation also met with activists for the Sahrawi cause who were arrested following the demonstrations of 26 February 2008, during which citizens of Tan Tan had demanded the right of self-determination for the Sahrawi people. The demonstrations led to clashes with law enforcement forces, causing the death of a policeman and the arrests of many demonstrators (see below).

Arrests, arbitrary detentions, violation of the right to a fair trial

The witness accounts collected speak of various violations occurring following the repression carried out against demonstrations and sit-ins.

Fatiha Boushab was arrested and detained during a sit-in of the "Group of marginalised women" in

¹⁴ It is important to note that Moroccan law exempts sit-ins from the reporting obligation.

November 2013, on the grounds of interference with a high-ranking official. The chief of Police and the police officers justified the grounds with pictures taken during the 2012 demonstration in Oued Draa showing her wearing a headband bearing the words "Sahrawi Women".

Fatiha Boushab was arrested in November 2013; her interrogation lasted five hours, after which she was forced to sign a document under the threat of being held in custody for a week. After spending a night in an office with no chair or mattress, Fatiha Boushab began a hunger strike and was subsequently brought to the chief of Police who gave her two documents to sign, a charge report and a notice informing her family of her detention. Fatiha Boushab signed the documents without reading them and was subsequently transferred to the local prison in Tiznit where, according to her statement, she was put into solitary confinement, was the victim of malicious remarks and suffered a lack of hygiene (absence of mattresses, dirty blankets, etc.). Her trial, which resulted in her being sentenced to a month of imprisonment, was held in the presence of two lawyers delegated by the High Council of Spanish lawyers. She began a hunger strike that lasted for a month, during which she was taken to hospital on two separate occasions.

Regarding the activists for the Sahrawi cause and in particular the holding of their trials, the delegation noted several pieces of information¹⁵ which indicate that their trials were not held in compliance with international standards for a fair trial.

Intimidation of victims and the families of victims, abuse, allegations of torture and impunity

During the meetings, all the witness accounts reported instances of intimidation, abuse and torture.

Following their arrest, the activists for the Sahrawi cause filed a complaint with the United Nations Rapporteur against Torture, Juan Mendez, during his visit of Morocco in September 2012. To date, the complaints have not received a response, and neither have the national remedies filed with the Prime Minister, the Ministry of Health and Justice, and the Prison administration¹⁶.

¹⁵ The testimonies collected reported having to wait several days before being able to meet with their lawyers, unproven charges, speedy trials and the obligation to sign the interrogation transcript without having been questioned or being able to read its contents, among other complaints.

¹⁶ Juan Mendez also stated that Morocco used torture within the borders of its own country and against opponents involved in the conflict relating to the Western Sahara. Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez A/HRC/22/53/Add.2; 28/2/2013

Testimonies of activists for the Sahrawi cause, arrested following the demonstration of February 2008

Mahmoud Barkaoui Following his participation in the demonstrations, a group of armed plainclothes policemen raided his home and arrested him. According to his testimony, he was blindfolded and taken to the Tan Tan police station, where he was tortured and ordered to recite the words of the Moroccan national anthem. Following a five-day interrogation, the public prosecutor ordered his detention to be extended after rejecting his allegations of torture and threatening more torture. Mahmoud Barkaoui was made aware of the charges against him (creation of a gang of criminals, armed gathering, participation in events having caused the death of a person, etc.) by the investigating magistrate who asked him for his opinion on the matter of the independence of the Sahara. Following the committal order issued against him, he was taken to the prison in Izguen where he suffered more abuse due to the poor prison conditions and overpopulation. Mahmoud Barkaoui was sentenced to four years in prison, a sentence which he has served in full and during which he was tortured and placed in solitary confinement. The complaints made to the public prosecutor in this regard have not received a response. In response, he went on hunger strikes, the longest of which lasted 58 days. Upon his release from prison, he was placed under surveillance and is the victim of harassment.

Charafi Salama was arrested in March 2008 while walking in the street. Taken to the police station, he was undressed, handcuffed, beaten on the head and the abdomen and subjected to touching. The interrogation lasted for two days and was followed by being held in custody for three days, after which he was forced to sign the police charges report without having been able to read it. He appeared before the investigating magistrate in Agadir and was accused of taking part in demonstrations despite not having taken part in them. The verdict of his trial saw him sentenced to four years in prison. Upon his arrival in prison, he was beaten and was the victim of insults. He then joined in the hunger strike led by other activists who had previously been imprisoned. Several months later, suffering from kidney failure, he was transferred to the prison in Marrakech in order to be treated in the nearest hospital, at his own expense. According to his testimony, he was quickly sent back to the prison in Izguen in order not to be seen by the King who was visiting the hospital. He was subsequently taken to the hospital and back to the prison on several occasions as his health problems persisted, and the abuse continued until his release from prison.

Aissa Boudda went into hiding following the events of 2008, before being arrested in Boujdour in the Western Sahara in 2010. He spent 24 hours in the police station, where he was tortured and interrogated by the intelligence services, and was subsequently transferred to the headquarters of the wilaya in Laâyoune. He was then transferred to Tan Tan. There, he was once again tortured and interrogated on his political history, after which he read and signed a pre-written charges report in the presence of the investigating magistrate. He was then imprisoned and sentenced to four years in prison during a summary trial held two months later. Aissa Boudda testified of the abuse suffered in prison for which he received no treatment. Upon his release from prison, he suffered various reprisals: his family home was surrounded, power cuts, and provocation against family members.

Moulay Ali Maamoun was 19 years old when he was arrested on 31 November 2008, on the presumption of his belonging to a separatist movement. He was arrested in a train in Casablanca and taken to the police station in El Maarif, before being transferred to Agadir. After being interrogated by criminal investigation department officers, he was forced to put his fingerprints on the charges report without having been questioned. Upon being taken to the investigating magistrate, he denied the allegations against him and openly claimed his right to believe in self-determination. He was then transferred to the prison in Izgen where he stayed for a month and a half. During his time in prison, he was the victim of abuse, beatings and insults. He then appeared before the investigating magistrate and the trial was held eight months later. Moulay Ali Maamoun was sentenced to two years in prison, but his sentence was doubled during the appeal. Before being released in February 2012, his brother was arrested on the same grounds and sentenced to four years in prison, a sentence he is still serving to this day.

Said el Ouaabane was arrested in Smara in the Western Sahara as a result of his activism within the Cadi Ayyadh University in Marrakech. He was tortured during an interrogation that lasted for eight days, and was also pressured into abandoning his beliefs. He learned of the grounds for his arrest while appearing before the public prosecutor (premeditated attempted murder), a charge which he denied due to his belief in the peaceful struggle for self-determination. During his testimony, he mentioned his determination in convincing the prison administration to allow him to complete his studies. Said el Ouaabane had chosen the subject of "Violence and counter-violence in international relations" as the subject for his end of studies report, a subject which had been refused by his supervising professor.

The delegation was also able to visit the family of Yahia Mohamed Elhafed Izaa, a Sahrawi human rights activist and member of the Tan-Tan branch of the AMDH. Sentenced to 15 years in prison following the events of February 2008, Yahia Izaa began several hunger strikes and was moved to Ouadia prison in Marrakech, 700 km away from his family home. His allegations of torture were never examined by the courts.

Finally, several of the witnesses interviewed stated that the chief of police in Tan Tan was present during the torture sessions. This person was allegedly promoted and is said to currently be the divisional chief of the police department in Agadir.

Economic, social and cultural rights

During its visit, the delegation observed gaps in the region's socio-economic development. Unemployment, particularly among young people, remains above the national average; the problems of pollution caused by certain industrial activities in the region remain ignored; the deficits recorded in major services, such as the provision of running water and electricity, continue to persist and gaps in the healthcare system must be noted. The testimonies heard by the delegation, and the statement collected from the governor, attest the absence of major prospects for development which would be likely to foster youth employment and guarantee the economic growth expected due to the strategic position occupied by the city of Tan Tan.

The region's authorities, represented by the governor, made it clear to the delegation that a demineralisation project was currently being implemented in order to provide a solution to the problem of the lack of drinking water. On this occasion, the governor mentioned the need to educate the population on resource management. The serious lack of medical services in Tan Tan was explained by medical specialists refusing to work in the country's more remote regions.

No measures were proposed to end this dysfunction. The authorities also explained the region's underdevelopment by the absence of initiative from a population judged "impatient" and experiencing "nostalgia for the past".

The socio-economic development of the Tan Tan region now seems to be paying the cost of the region's political history as the cradle of the separatist movement. The authorities' indifference to demands relating to economic and social rights (access to work, access to social services, the development of working-class neighbourhoods) seems to be explained by the fact that they are often combined with separatist aspirations. Complaints relating to violations of economic and social rights received by the Tan Tan-Guelmim RHRC on a recurrent basis generally have a strong component based on identity. This is the case for the demands made by the activists of the Group of marginalised women and its leader Fatiha Boushab (see box above).

Visit of Laâyoune:

Overview of public and individual freedoms

The below-mentioned violations were discussed during the meetings with Moroccan officials and NGOs in Laâyoune. The members of the mission heard the testimonies of individuals who were victims of violations and from witnesses of other instances of violations.

Freedom of expression and association

The vast majority of Sahrawi NGOs is not officially recognised. Although some have made the deliberate choice of not registering in the Moroccan legislative framework, other have taken steps to gain legal recognition - unsuccessfully over the course of several years - , and some have entered appeals, such as the Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State (ASVDH) which obtained a favourable judgment from the Agadir courts in 2006. According to the NHRC's regional commission, this is a problem faced by seven organisations operating in the Western Sahara whose applications are seemingly blocked by a political decision at national level. Among these organisations, the EMHRN mission met with the ASVDH and the Collective of Sahrawi Human Rights Defenders (CODESA).¹⁷ Due to the lack of legal recognition, the organisations in question have no premises and meetings must be held in the homes of individuals. This also prevents them from carrying out normal public activities, such as obtaining access to public facilities, and they are unable to obtain any funding.

According to the Laâyoune Wali, only two organisations are at issue, which the authorities accused of pursuing a political agenda or of failing to take the necessary steps for registration.

All the Sahrawi association activists asserted being under constant surveillance by the authorities. The Organisation against Torture based in Dakhla said that five of its members were currently in prison as a result of their activism. Some said they experienced problems in receiving certain documents by E-mail or had telephone communications cut off during certain periods. Associative involvement also has a negative impact on activists when searching for jobs and/or when facing difficulties with their employer, in particular when they are public servants working for the Moroccan government. They are also the victims of social and cultural defamation, and in particular the women who are accused of having loose morals.

During the mission, the brother of a journalist from the Sahrawi Arab Democratic Republic (SADR) press agency also recounted his brother's arrest in his own home on 4 July 2014 and his subsequent unfounded detention since then; the man in question began a hunger strike on 6 September.

The members of an unregistered union reported that they were faced with similar difficulties to those faced by the associations.

¹⁷ For more information, see the outcomes of the EMHRN regional study on the freedom of assembly (see the footnote n°8)

Freedom of demonstration

According to the authorities, the main grounds for the demonstrations in Laâyoune are economic demands which the Moroccan government is trying to meet through socio-economic development policies implemented in the region. Still according to the authorities, the political demonstrations take advantage of visits by international observers.

Videos showing the repression carried out against demonstrators were aired during the meetings with the associations. All of the NGOs interviewed attested of a systematic ban on political demonstrations and demonstrations with Sahrawi activists. Demonstrations held on symbolic dates, such as the International Human Rights Day on 10 December, are also prohibited. This was corroborated by the RHRC in Laâyoune. According to the associations interviewed, sit-ins¹⁸ and demonstrations are systematically the subject of violent repression carried out by police forces against peaceful demonstrators. Another major concern is the fact that the RHRC observed that clashes between Moroccan citizens and the Sahrawi were tolerated and even encouraged. There are many women in the demonstrations. The associations observed that those filming the demonstrations were often the first victims of the repression aimed at avoiding eyewitness accounts from being broadcast. The EMHRN representatives observed evidence of police violence exercised during demonstrations. It is important to note that, according to the videos, much of the police presence witnessed during these demonstrations was made up of plainclothes policemen.

It was impossible to obtain a figure in order to attest to the strong presence of security forces in the region.

The issue of the excessive use of force during the dismantling of the protest camp of Gdaim Izik in 2010, and the subsequent use of torture after the arrests, was repeatedly raised by the NGOs. It is also important to note that the events caused the death of ten members of the police force. The reports published by the NHRC and the associations garnered a positive reception from the Sahrawi associations, although the latter deplored the fact that the recommendations were largely ignored.

Arrests, arbitrary detentions, violation of the right to a fair trial

The lawyers working for Sahrawi individuals exposed the violations against their clients during political trials and in particular during the investigation stage (abductions, arrests in the home, arbitrary detentions, extortions, abuses, torture). Regarding the matter of the grounds for their arrests, the lawyers responded that the charges were always on grounds of common law: criminal conspiracy, throwing rocks at the police, obstructing the public highway, insulting police officers, carrying weapons, armed mobs. They also denounced the intimidation to which they themselves are subjected.

The lawyers working for Sahrawi individuals also found that the courts refuse to hear witnesses and that investigating magistrates ratify charge reports without taking witness accounts and expert opinions into account.

¹⁸ It is important to note that Moroccan law exempts sit-ins from the reporting obligation.

The members of the EMHRN delegation met with the families of the individuals convicted following the events in Gdaim Izik¹⁹, who consider their relatives as political prisoners and who seek the annulment of the judgment and their release from prison.

Regarding the detentions, the information provided with the interviewed NGOs indicate that the figures according to which there are 66 political prisoners and 200 individuals on provisional release are probably close to the actual number.

Intimidation of victims and the families of victims, abuse, allegations of torture and impunity

During the mission, the EMHRN delegation collected numerous testimonies from people certifying that they were victims of torture at the time of their arrest or abduction. To this day, several people have claimed that they, or members of their families, were victims of abuse and torture during their detention, particularly in the "Black prison" of Laâyoune. The delegation was shown visual evidence of abuses committed against men and women of all ages during demonstrations (bruising and fractures caused by metal bars and thrown stones) attesting to the brutality of police repression carried out against peaceful demonstrators.

It is also important to emphasise the fact that victims are usually unable to obtain medical certificates certifying acts of torture.

Several people have claimed that identified former torturers are still present in Laâyoune. It was stated that around one hundred complaints denouncing abuse by the police lodged with the courts received no response. As an example, the EMHRN delegation met with the family of Said Dembar, who was killed by a policeman, which is still requesting an autopsy and an inquiry into his extrajudicial execution. The family denounced the strong pressure exerted by the police and the authorities aimed at making them withdraw their request for an investigation of the matter.

Enforced disappearances and the remnants of the Equity and Reconciliation Commission (IER)

During the interviews, several people spoke about their own disappearance and subsequent release, sometimes after several years of detention in official or unofficial places of detention. The war situation that has long prevailed in the region resulted in large-scale enforced disappearances until 1993 at least. This widespread practice was designed to terrorise a civil population that was not under Moroccan sovereignty. The families of victims continue to protest against the matter being processed by the IER and the compensation process. In this region, the process was considered superficial at best. NGOs continue to

¹⁹ In October 2010, thousands of people settled in tents at Gdaim Izik camp, 12 km to the east of Laâyoune, to protest against their socio-economic situation. When the camp was dismantled, the clashes resulted - according to the Moroccan authorities, in the deaths of 10 members of the security forces and two civilians, and many wounded. In 2013, twenty-four individuals were subsequently arrested and sentenced to heavy prison sentences by the Salé Military Court after having reported being tortured, or threatened with torture, during a trial which was considered unfair and biased - see the EMHRN report 'Gdaim Izik' Trial Permanent military court, Rabat – MOROCCO; Observation report (October 2012 – February 2013), EMHRN 2013:

<http://www.euromedrights.org/eng/2013/06/19/the-gdaim-izik-trial-observation-report/>

request access to experts in order to examine the mass graves that remain to be exhumed in military areas.

Several NGOs have put the number of missing persons whose fate is still unknown at 551. According to the NHRC, missing persons reports remain unresolved in the Western Sahara due to missed deadlines in the process launched by the IER. Re-opening missing persons cases is not on the political agenda.

Economic, social and cultural rights

The special treatment policy applied to the region for more than four decades led to a paradoxical situation: according to Moroccan statistics, the Western Sahara is the region with the highest income per capita and the highest number of building sites while unemployment and other economic and social problems are at their worst.

Youth associations and groups have denounced discrimination in hiring practices within the administration and the companies established in the territory. Several organisations have denounced violations of the right to work by the multinationals established in the region.

In particular, the management of natural resources is one of the major issues worked on by NGOs; the latter argue that the exploitation of these resources (fishing and mining) benefits the Sahrawi people which is currently said to be excluded and marginalised.

The mass influx of Moroccan settlers and the permanence of the conflict, which made all signs of Sahrawi identity a sign of non-allegiance to the Kingdom of Morocco, had a significant impact on the cultural of the indigenous population. Following the Hassani culture, now considered to be an integral part of the Moroccan identity, being recognised in the new Moroccan Constitution, some NGOs noted changes in Morocco's strategy concerning the repression of Sahrawi cultural practices, moving from a "Moroccanisation" of the Sahrawi people (prohibition of traditional clothing, the language, tents) to the "Sahrawisation of Moroccans" (claiming the Sahrawi identity as belonging to Morocco).

Access and surveillance by international observers

A large number of international delegations (organisations of human rights defenders, MPs, local officials, etc.) was denied access to the territory over the past year. These visits are seen as acts of support for the separatists who are hostile to the Kingdom.

As noted above, the Deputy Minister to the Minister of the Interior stated that international observers did not require formal authorisation to access the territory of the Western Sahara, but they did have to inform the authorities in advance in order to access the territory and had to guarantee an unbiased approach in their work.

Upon their arrival in Laâyoune, the two members of the EMHRN delegation were able to enter the city unhindered. However, the border police had been informed of their arrival since the policemen inquired about the third member of the delegation. The delegation was subsequently constantly followed by plainclothes policemen. In addition, the members of the delegation observed a strong presence of security forces (the police, the gendarmerie, the army) in the city's streets and squares. According to the

associations, journalists are often targeted by this same type of monitoring and control.

Association activists and Sahrawi political dissidents are often hindered in their movements within the territory or upon leaving the territory. During their visit of the port of Laâyoune, around twenty kilometres away, the mission's members observed the way in which freedom of movement was impeded (checkpoints, identity checks). The delegation's escorts, Sahrawi individuals known to the security forces for their activism, once recognised by the police during a check, were harassed in the presence of the mission's members.

Conclusions and recommendations

Within the time allotted to them, the mission's members were unable to fully assess the state of public and individual freedoms and economic, social and cultural rights in Morocco and the Western Sahara.

During this mission, the EMHRN noted that:

Regarding Morocco

- First begun in the 1990s and continued by the work of the Equity and Reconciliation Commission, whose conclusions nevertheless remain incomplete and many recommendations unimplemented, Morocco has experienced positive developments with regard to human rights in a turbulent regional context. In addition, the EMHRN noted the Moroccan authorities' desire to initiate a dialogue and availability during this mission.
- The EMHRN also emphasises the NHRC's positive role as a mediator between certain claims from the Moroccan people aimed at fully enjoying the exercise of their rights as full citizens and the official bodies under the authority of the government and the King. Its multifaceted contribution to reflection on the institutions must be noted. The EMHRN thanks the NHRC for the support it provided to this mission.
- The EMHRN also noted that Moroccan civil society is rich as a result of its diversity and significant contributions to public debate. Rooted in a long tradition of independence and strength of proposals, Moroccan civil society remains an essential guarantor of democratic change in Morocco. Government statements and the Moroccan authorities' threatening declarations against civil society call for vigilance. Faced with an upsurge of incidents observed by Moroccan NGOs since July 2014 and the obstruction of the functioning of certain NGOs, the EMHRN expressed its concerns to the Moroccan authorities with regard to a return of certain arbitrary and authoritarian practices that Morocco was thought to have abandoned.
- While the EMHRN acknowledges the significant progress made in terms of human rights and freedoms enshrined in the Constitution, as well as ongoing reforms, it highlights that constitutional provisions remain under discussion. They remain to be guaranteed in law and in practice. In general, the reforms announced by the Constitution have been delayed. The Ministers stated that coming reforms would be adopted, but it remains that the majority of the 19 organic laws required for the implementation of the Constitution has not been adopted. These delays raise questions with regard to the quality of the legislation to come and civil society's opportunity to contribute to such legislation.

Regarding the Western Sahara

- In the specific context of the Western Sahara, the situation is characterised by the safe management of the territory by the Moroccan authorities. This considerably diminishes the impact of ongoing constitutional and legislative reforms and makes it very difficult to hold a democratic

debate on the territory's future.

- The testimonies collected reveal serious violations of human rights committed in a permanent and systematic manner: arrests and arbitrary detentions, allegations of torture and impunity. Certain tolerances exist (unregistered associations), which is partly explained by an increased visibility of the problems linked to the Western Sahara within the international community over the past few years. However, recent events have shown the persistence of unjustified repressive practices carried out against the freedoms of association, expression and demonstration, as well as a biased judicial system, restrictions to the freedom of movement, and equally grave violations of economic, social and cultural rights.
- The violations of public and individual freedoms observed, as well as the systematic repression of dissenting voices, are contrary to Morocco's international commitments.

Therefore, the EMHRN makes the following recommendations:

Regarding Morocco

To the Moroccan authorities

1. Guarantee that the **freedoms of assembly, expression, association and peaceful demonstration** may be exercised by any individual or group without discrimination based on opinions, origin, sex, religion, etc.;
2. Reform law 00/76 on public meetings and demonstrations in accordance with the provisions of the new Constitution, international law, and the commitments undertaken by Morocco;
3. Ensure that the authorities are always open to dialogue with the organisers (before and during gatherings), and when such dialogue takes place, that it aims to improve the facilitation of the right of peaceful assembly; put an end to arbitrary arrests during peaceful demonstrations; guarantee the safety and access of journalists to the demonstrations; adopt clear, detailed and binding rules for the use of force against the demonstrators, in accordance with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; train law enforcement officers in the use of force and riot weapons; implement the responsibility of the State to protect peaceful demonstrators; ensure that any use of force by law enforcement officers follows the principles of the last resort, of necessity, graduality and proportionality; ensure that lethal force is only used as a last resort to protect against an immediate threat that endangers human lives;
4. **Expedite prompt, independent and impartial investigations** of complaints and information on possible actions bypassing the law or violations of human rights committed by law enforcement officers as part of peacekeeping operations; punish those responsible and allow the victims to obtain redress and guarantees that such events shall not occur again; to this end, implement an independent mechanism for monitoring and investigating the actions of the security forces;
5. Put an end to the administrative barriers preventing certain civil society collectives from obtaining

their legal status²⁰. In particular, ensure that the registration procedure provided for by the law is transparent, accessible, free of charge, and that the administrative authorities comply with the law in its implementation; put an end to the administration's arbitrary practices such as refusal to issue the receipt for filing; with regard to assembly, ensure that the restrictions are applied in accordance with the law, respect the principles of necessity and proportionality, and are communicated to the organisers in writing within a period enabling an appeal to be lodged with the courts before the planned date of the event; cease intimidation, judicial harassment and barriers against certain activists and associations of Moroccan civil society;

6. Speed up the implementation of the government plan for equality and make the Authority for equality and the fight against all types of discrimination (APALD) operational;
7. Involve Moroccan NGOs to contribute to the implementation, monitoring and evaluation of the government plan for equality and the law against violence against women;
8. Ensure that the draft laws reforming the judicial system are consistent with international standards;
9. Implement the migration and asylum policy along the lines defined by the NHRC report guaranteeing the rights of migrants;
10. Fully guarantee the rights of migrants refugees by fighting against the impunity of any person responsible for police violence against migrants, and of collective deportations and expulsions at the borders;
11. Set up an asylum scheme and legislation on migration that is consistent with the Constitution and international Conventions ratified by Morocco aimed at protecting and promoting the rights of migrants and refugees both in law and in practice.

To the European Union (EU)

1. Take all necessary measures to implement Article 2 of the EU-Morocco Association Agreement; fully implement its commitments to democracy, respect for human rights and equality between the men and women of the European Neighbourhood Policy (ENP) after the Arab Spring;
2. Implement the (current and future) EU Strategic Framework and Action Plan on Human Rights and democracy in Morocco, in particular by ensuring coherence between its human rights instruments and its geographical instruments, such as the ENP Action Plans, ENP monitoring reports and local Human Rights Strategies;
3. Ensure the implementation of the ENP's EU-Morocco Action Plan human rights priorities through the establishment of evaluation criteria for the Action Plan's general objectives and a timetable for the implementation of these criteria; perform an annual evaluation of the implementation of the priorities according to the criteria;

²⁰ For more information, see the outcomes of the EMHRN regional report on freedom of assembly (see the footnote n°8).

4. Considerably strengthen the support provided to Morocco for its policy on the regularisation and integration of foreigners;
5. Make a priority of including the freedoms of association and demonstration, the end of abuse in prison and detention centres, freedom of expression and independence of the judiciary in the recommendations addressed by the EU to the Moroccan authorities;
6. Ensure that, in the event of the signing of agreements on fishing, mining or any other resources from the Western Sahara, the products of such resources primarily benefit the latter territory;
7. Adjust the level of support provided by the EU to its partners according to progress made in terms of human rights, in accordance with the new ENP's "more for more" principle;
8. Raise the issue of human rights violations at all levels of political dialogue as well as in technical sub-committee meetings between the EU and Morocco, with the objective of achieving a tangible improvement; in particular, ensure that the police fulfil their duty to protect instead of the repressive role that is usually assigned to it;
9. In particular, raise the issue of gender-based discrimination and violence preventing women from safely participating in public life, gatherings and demonstrations;
10. Ensure the effective implementation of the EU Guidelines²¹ on Human Rights Defenders and on violence against women and the fight against all forms of discrimination against them; defenders are unable to take action without the full enjoyment of the freedom of assembly and the authorities must ensure their protection during gatherings and demonstrations.

Regarding the Western Sahara

To the Moroccan authorities

1. Implement the obligations falling to Morocco in all circumstances and in application of international human rights law and international humanitarian law, including the management of natural resources;
2. Guarantee that the **freedoms of assembly, expression, association and peaceful demonstration** can be exercised by any individual or group on the territory of the Western Sahara under Moroccan administration even when the opinions expressed are critical of the policy of the Moroccan authorities or of the territory belonging to Morocco;
3. Remove the administrative and political obstacles preventing associations of human rights defenders and other Sahrawi associations from obtaining their legal status;
4. Put an end to the arbitrary arrests during peaceful demonstrations and the judicial harassment of activists claiming their right to demonstrate peacefully; put an end to the use of plainclothes

²¹ http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/index_en.htm

security forces to suppress such demonstrations;

5. Review the proceedings and convictions pronounced by such courts against Sahrawi demonstrators given that they have not offered the guarantees of independence and impartiality required for a fair trial under international law;
6. Facilitate the establishment of permanent international human rights monitoring mechanisms in the Western Sahara.

To the international community, to the European Union and its Member States

1. Integrate the human rights situation in the Western Sahara as a central component of bilateral relations between the EU and Morocco as part of the ENP;
2. Include the human rights situation in the territory of the Western Sahara on the occasion of visits of European Union representatives including the High Representative of the Union for Foreign Affairs and Security Policy, the Commissioner in charge of the ENP and the EU Special Representative for Human Rights, as well as through the European Union Delegation in Rabat;
3. Request the release of political prisoners, many of which come from the Western Sahara;
4. Request open access to the territory for international delegations, observers and journalists;
5. Request the establishment of permanent international mechanisms of vigilance and monitoring respect of human rights in the Western Sahara, whereas the extension of the MINURSO's powers perfectly matches the situation in the region and the nature of this mission; call the European Union member countries and the Mediterranean partners that are currently in the Security Council (United Kingdom, France, Spain, Lithuania and Jordan) to support this move; pay attention to this issue, particularly in the context of their relations with Morocco;
6. Establish direct contacts with Sahrawi civil society in order to gain better knowledge of the situation.