

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

www.lrwc.org; lrwc@portal.ca; Tel: +1 604 738 0338; Fax: +1 604 736 1175

3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

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Hon. Mohamed Aujjar
Minister of Justice
Moroccan Ministry of Justice
Mamounieh Square, PO Box 1015
Rabat, Morocco
Fax: +212 (0) 537 705 914
Email: entraidecivil@justice.gov.ma,
baraebouhmala@gmail.com

Mr. Mohamed Abdennabaoui
Attorney General of HM the King Prosecutor
General of the Cassation Court
Supreme Council of the Judiciary Court of
Cassation
Rue Arriad, Rabat, Morocco

Dear Minister and Excellency,

Re: International obligations to guarantee the rights of journalist and human rights defender Ms. Nazha Al Khalidi

I am writing on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems and the rule of law globally through advocacy, education, and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations (UN).

LRWC is concerned by illegitimate charges laid against Ms. Nazha Al Khalidi, a journalist and human rights defender with Equipe Media in El-Ayoun, Western Sahara. Equipe Media is a news outlet and activist group working for the realization of the right to self-determination of Western Sahara, which right has been recognized by the International Court of Justice and the UN Security Council.¹

On 4 December 2018, Ms. Al Khalidi was reporting on a peaceful demonstration in El-Ayoun in support of the renewal of UN-sponsored peace talks in Geneva aimed at resolving the decades-old territorial dispute regarding Western Sahara. She was live-streaming a police blockade of the demonstration on Facebook when she was arrested by Moroccan police. At that time her phone was confiscated with no warrant, and no official documentation was provided after the seizure of the phone. She was released the same day without charge. On 4 March 2019, Ms. Al Khalidi was arrested without a warrant at her house and taken to a police station where she was interrogated about her work as a journalist. She was charged on 6 March 2019 under Article 381 of the Moroccan Penal Code for allegedly calling herself a journalist while not having a journalism degree. At her first scheduled trial date at the Court of First Instance in El-

¹ The right of the people of Western Sahara to self-determination was recognized in an advisory ruling by the International Court of Justice (Western Sahara, *Advisory Opinion* 1975 I.C.J. 12 (Oct. 16)), as well as in UN Security Council and UN General Assembly Resolutions (*UN General Assembly, Question of Western Sahara: resolution / adopted by the General Assembly*, 11 December 1991, A/RES/46/67; UN Security Council Resolution 31 October 2018, S/RES/2440 (2018)).

Ayoun on 20 May 2019, the matter was adjourned to 24 June 2019. If convicted, she faces up to 2 years in prison and a fine of up to 5000 Dirhams (approximately US \$513.85). Article 381 of the Moroccan Penal Code prohibits a person “claiming or using a title associated with a profession that is regulated by law ... without meeting the necessary conditions to use it.”² This law is being used to criminalize the legitimate work of Ms. Nazha Al Khalidi, who is legitimately called a journalist and human rights defender. This constitutes an unauthorized violation of the right to freedom of expression guaranteed by Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),³ ratified by Morocco in 1979 and by Article 19 of the *Universal Declaration of Human Rights* (UDHR).

Arrest or detention of a person for lawfully exercising their Article 19 right to freedom of expression is arbitrary.⁴ The right to be freedom from arbitrary arrest, detention or exile, is guaranteed in Article 9 of the UDHR and Article 9 of the ICCPR.

The UN Human Rights Committee (HR Committee) has stated that

the freedoms of information and expression are cornerstones in any free and democratic society. It is the essence of such societies that citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment by the Government, subject to certain restrictions set out in article 19, paragraph 3, of the [ICCPR].⁵

The HR Committee has emphasized that that, “a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights.”⁶ The HR Committee has determined that Article 19(2) of the ICCPR embraces, among other things, “political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.”⁷ The scope of ICCPR Article 19(2) includes expression that may be regarded as deeply offensive.⁸

Laws restricting the right to freedom of expression under Article 19 (3) of the ICCPR must be compatible with the provisions, aims and objectives of the ICCPR.⁹ The State party must demonstrate the legal basis for any restrictions imposed on freedom of expression.¹⁰ In this case, Morocco has not provided any lawful rationale for the use of Article 381 of the Penal Code to restrict and impose penal sanctions on Ms. Nazha Al Khalidi for exercising her right to freedom of expression to report on the Western Sahara conflict.

The HR Committee has determined that domestic registration and licensing provisions cannot lawfully be used to restrict or criminalize journalism.

² *Maroc: Code Pénal [Morocco]*, 26 November 1962, Version consolidée en date du 15 septembre 2011 at Article 381.

³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>.

⁴ OHCHR Working Group on Arbitrary Detention, *Fact Sheet No.26*, Section B, paragraph 6, at <https://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

⁵ HR Committee, Communication No. 1173/2003, *Benhadj v. Algeria*, Views adopted on 20 July 2007, para. 8.10.

⁶ UN Human Rights Committee (HRC), *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34

⁷ *Ibid.*, para. 11 (footnotes in the original text are omitted).

⁸ See HR Committee, Communication No. 736/1997, *Malcolm Ross v. Canada*, Views adopted on 18 October 2000.

⁹ *Ibid.*, para. 26. See HR Committee, Communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, para. 8.2.

¹⁰ *Ibid.*, CCPR General Comment No. 34, para. 27.

Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3.¹¹

Morocco's 2016 press law requiring registration of journalists and Article 381 of the Penal Code as applied to 'journalists' are part of a "general State system of registration or licensing" that is inconsistent with Article 19 (3) and a violation of Article 19.

Further protection of the work of Ms Al-Khalidi is provided by the UN *Declaration on Human Rights Defenders*¹² which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels" (Article 1).

The Office of the UN High Commissioner for Human Rights (OHCHR) has expressed concern about restrictions to rights on freedom of expression, peaceful assembly, and association in the Western Sahara territory.¹³ The UN Working Group on Arbitrary Detention has also highlighted the systemic nature of arbitrary arrests and detentions of those who take part in or report on peaceful demonstrations in support for the right to self-determination of Western Sahara.¹⁴

The OHCHR cites reports of harassment, arbitrary arrests, excessive surveillance and confiscation of personal property of journalists and human rights defenders covering the ongoing situation. Further concern is expressed about Moroccan authorities' pattern of expelling persons from the territory, including human rights defenders, researchers, lawyers and representatives of international non-governmental organizations.¹⁵

LRWC is also concerned that Morocco has not facilitated the requests of the UN Human Rights Council's Special Rapporteur on the Independence of Judges and Lawyers for the country visit planned since 2017. The Special Rapporteur cancelled the visit in March 2019, explaining that because Morocco was "unable to ensure a programme of work in accordance with the needs of the mandate and the terms of reference for country visits by special procedures," he was unable to fulfill his "suggestions of places to visit and schedule of work." Morocco responded by "denouncing" the Special Rapporteur's lack of compliance

¹¹ *supra* note 3, at paragraph 44.

¹² UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144, available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding, including the ICCPR. The Declaration was adopted by consensus of the General Assembly and thus represents a unanimous commitment by States to its implementation.

¹³ UN Security Council, *Situation Concerning Western Sahara*, S/2019/282, para 66 - 68, at: https://minurso.unmissions.org/sites/default/files/unsg_report_april_2019.pdf.

¹⁴ UN Human Rights Council, *Report of the Working Group on Arbitrary Detention: Mission to Morocco*, A/HRC/27/48/Add.5, para 62 - 67.

¹⁵ *supra* note 7.

with its suggestions for his visit.¹⁶ This response by Morocco is contrary to the UN Human Rights Council's mandate, which calls for the fullest possible cooperation with the Special Rapporteur.¹⁷

LRWC urges Morocco to:

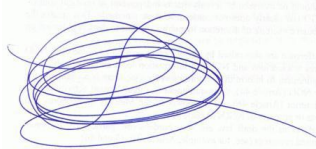
1. withdraw all charges against Ms. Nazha Al Khalidi;
2. ensure, in the event of a trial, strict compliance with the fair trial requirements of the ICCPR including under Articles 14 and 9 and interpretation of Moroccan law consistent with the ICCPR.¹⁸

LRWC also requests that independent international observers be permitted to observe the trial of Ms. Nazha Al Khalidi and that Morocco fully cooperate with the requests of all UN Human Rights Council Special Procedures mandate holders including that of the Special Rapporteur on the independence of judges and lawyers.

LRWC call on Morocco to prevent the harassment, arbitrary arrest and detention and unlawful prosecution of journalists and human rights defenders.

We look forward to your reply.

Sincerely,



Gail Davidson, Executive Director, LRWC

Copies sent to:

Ms. Amina Bouayach
President
National Human Rights Council
N° 22 Avenue Riad Hay Riad BP 21527
Rabat, Morocco
Fax: +212 537 72 68 56
E-mail: cndh@cndh.org.ma

¹⁶ OHCHR, UN rights expert unable to carry out visit to Morocco over lack of guarantees, 19 March 2019, at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24356&LangID=E>. LRWC notes the Government of Morocco's response and denunciation of the Special Rapporteur's decision and statement stating that the government "gave all necessary guarantees to ensure the success of this visit, in addition to proposing other cities and interlocutors to help him have an overall vision on the different themes covered by his mandate nationwide," reported in "Moroccan Authorities Deeply Regret Unilateral Approach by Special Rapporteur on Independence of Judges and Lawyers," MAP news, 20 March 2019, at <http://www.mapnews.ma/en/actualites/social/moroccan-authorities-deeply-regret-unilateral-approach-special-rapporteur>.

¹⁷ UN Human Rights Council, Mandate of the Special Rapporteur on the independence of judges and lawyers, A/HRC/35/L.19, 19 June 2018, at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.19

¹⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 at Article 14.

His Excellency Mr. Omar Zniber
Ambassador and Permanent Representative
Permanent Mission of the Kingdom of Morocco to the United Nations in Geneva, Switzerland
18a Chemin François Lehmann
1218 Grand Saconnex
Fax: + (41) 022 791 81 80
Email: maroc@mission-maroc.ch

Her Excellency Souriya Otmani
Embassy of the Kingdom of Morocco in Canada
38 Range Road
Ottawa, ON K1N 8J4
Fax: (613) 236-6164
Email: sifamaot@bellnet.ca

Mr. Michel Forst
Special Rapporteur on the situation of human rights defenders
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland
Email: defenders@ohchr.org

Mr. Livingstone Sewanyana
Independent Expert on the promotion of a democratic and equitable international order
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland
Email: ie-internationalorder@ohchr.org

Ms. Victoria Tauli-Corpuz
Special Rapporteur on the Rights of Indigenous Peoples
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10, Switzerland
Email: indigenous@ohchr.org

Mr. Horst Kohler
UN Secretary General's Personal Envoy Western Sahara
UN Mission for the Referendum in Western Sahara (MINURSO)
Laâyoune PO Box 5846
Grand Central Station New York, NY 10163-5846
Email: PESG_WSAHARA@un.org; david.schake@un.org

Hon. Chrystia Freeland
Minister of Foreign Affairs
House of Commons
Ottawa, Ontario
Canada K1A 0A6
Email: Chrystia.Freeland@parl.gc.ca

Ambassador Sandra McCardell
Embassy of Canada to Morocco
P.O. Box 2040 Rabat-Ryad
Morocco, 10 000
Fax: (+212) (0)537 54 48 53
Email: rabat@international.gc.ca

Ms. Rosemary McCarney
Ambassador and Permanent Representative of Canada to the United Nations in Geneva
Avenue de l'Ariana, 1202
Geneva, Switzerland
Email: genev-gr@international.gc.ca