



MOROCCO

Freedom to Create Associations

A Declarative Regime in Name Only

HUMAN
RIGHTS
WATCH



Freedom to Create Associations

A Declarative Regime in Name Only

Copyright © 2009 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 1-56432-541-5
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



Freedom to Create Associations A Declarative Regime in Name Only

I. Overview	1
Recommendations.....	5
Methodology	6
II. The Legal Framework for Associations	7
Moroccan law	7
Procedures for declaring an association and maintaining its declared status	7
Administrative obstruction of the declaration process	8
Obstacles when existing associations file updated declarations	8
Legal grounds for refusing or withdrawing legal recognition.....	9
Absence of explicit reasons for blocking recognition	10
III. The Impact of Not Being Declared	12
IV. Case Studies	14
The National Association of Unemployed University Graduates (ANDCM).....	14
Amazigh rights and development organizations	18
Sahrawi human rights associations in al-Ayoun.....	22
The Commission for the Protection of Public Property in Morocco (INPBPM).....	26
The Union of Promotion Nationale Workers in al-Ayoun	27
Associations led by Al-Adl wa'l-Ihsan members	28
Group against Racism and for Assisting and Defending Foreigners and Migrants (GADEM).....	34
Neither Whores Nor Submissives (NPNS).....	35
Appendix: Joint Letter to Moroccan Ministers of Justice and Interior.....	36

I. Overview

Morocco has made great strides in human rights since the early 1990s, releasing many political prisoners, widening the boundaries of permissible speech, formally acknowledging past abuses and compensating thousands of victims, and amending several laws in ways that protect basic rights.

However, many of the improvements remain tenuous and reversible because they have not been institutionalized. Morocco has yet to amend many repressive domestic laws that do not conform to the international human rights treaties it has ratified. One example of such an unamended law is the article of the penal code that provides prison terms for persons who “offend” state institutions. This is among several laws that violate the right to freedom of expression and that continue to be used to jail critics of the government.¹ And where Morocco has reformed its repressive laws, the political will is lacking to put into practice the new, more progressive provisions by holding accountable those who fail to apply them.

In Morocco, both types of restrictions—provisions of the law that are repressive and the non-application of provisions that are progressive—constrain the right of persons to create and maintain associations. Specifically, the law on associations² states that an association cannot exist legally if its objectives or aims are deemed “contrary to good morals” or “undermine” Islam, or the monarchy, or the country’s “territorial integrity,” or if it is deemed to “call for discrimination.” The restrictions on undermining Islam, the monarchy, and the country’s “territorial integrity” (understood to mean Morocco’s claim to the disputed Western Sahara) are the well-understood red lines on free discourse in the country.³ The law does not elaborate on the meaning of these broad phrases, or on the equally sweeping restrictions on associations whose objectives are “contrary to good morals” or “call for discrimination.” These restrictions in Moroccan law far exceed the limits that the applicable

¹ For example, the case of human rights activist Chekib el-Khayari, convicted on June 24, 2009, and sentenced to three years in prison. See “Morocco: Narco-Traffic Whistleblower Unfairly Sentenced,” Human Rights Watch news release, June 24, 2009, <http://www.hrw.org/en/news/2009/06/24/morocco-narco-traffic-whistleblower-unfairly-sentenced>. International law on freedom of expression requires particularly strong reasons to justify the threat of prison for persons who peacefully criticize state authorities or institutions.

² Dahir 1-58-376 of November 15, 1958 relating to the right of association, as amended by law 75.00 in 2002 and law 36.04 in 2006 (hereinafter the law on associations). The law is online in French at <http://www.cabinetbassamat.com/fileadmin/Codes%20et%20lois/Droits%20de%20l'homme%20et%20libert%C3%A9s%20publiques/droitdassociation.pdf> (accessed September 4, 2009).

³ Article 41 of Morocco’s press code punishes by up to five years in prison and a fine persons who publish anything deemed to harm Islam, the monarchy, or Morocco’s “national integrity.” See Human Rights Watch, *Morocco: Prosecution of Independent Newsweeklies*, May 8, 2006, <http://www.hrw.org/en/reports/2006/05/08/morocco-prosecution-independent-newsweeklies>.

international human rights treaties permit on freedom of association and of expression, and provide the authorities with a basis in domestic law for dissolving organizations whose political agenda displeases them.

In other respects, the law of associations as amended in 2002 contains provisions that are progressive but that in practice authorities sometimes refuse to implement. Notably, the law creates a “declarative regime” for associations, meaning that associations need only to declare to authorities their creation but do not need to obtain prior authorization to be legal. The 2002 amendments also provide that once an association has been legally “declared,” only the courts have the power to dissolve it. These provisions are favorable to the exercise of the right of freedom of association. Yet the practice by authorities remains far from the role assigned them in the written text. The administration responsible for handling the declarations filed by associations routinely and with impunity disregards and subverts the procedures laid out in the law, in what seems to reflect a government policy designed to weaken and keep off-balance the associations that are affected.

This report documents the pattern whereby the administration fails to do its part to implement the most basic procedures laid out for creating associations. In so doing, the administration violates the right to freedom of association by arbitrarily depriving associations and their members of the legal protections that allow them to operate freely. The affected associations espouse a variety of objectives and are spread out across Morocco and Western Sahara, the latter being a disputed territory that Morocco administers de facto.⁴

This is not to say that Morocco has shut down civil society, or crushed all associations that challenge the government. Observers have expressed admiration for the vibrancy of Morocco’s civil society,⁵ which includes more than 30,000 legally declared associations, according to some estimates,⁶ among them many whose purpose is to monitor, expose,

⁴ Since Morocco treats the disputed Western Sahara administratively as part of Morocco, we cite examples of associations that are based in Western Sahara whose rights are affected by the way Moroccan authorities apply Moroccan law with respect to them. This should not be taken to imply that Human Rights Watch recognizes Moroccan sovereignty *de jure* over the territory or is taking a position on its political future. See Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 2008, <http://www.hrw.org/en/reports/2008/12/19/human-rights-western-sahara-and-tindouf-refugee-camps>.

⁵ For example, Marvine Howe wrote, “[O]ne of the most important transformations that has occurred in Moroccan society in recent years [is] the explosion of volunteer organizations around the country.” Marvine Howe, *Morocco: The Islamist Awakening and Other Challenges* (New York: Oxford University Press, 2005), p. 160.

⁶ Kristina Kausch, Fundacion para las relaciones internacionales y el dialogo exterior (FRIDE), Project on Freedom of Association in the Middle East and North Africa, “Morocco: Negotiating Change with the Makhzen,” February 2008. www.fride.org/descarga/WP54_Morocco_Makhzen_ENG_mar08.pdf (accessed August 12, 2009), p. 3: “Estimates suggest between 30,000 and 80,000 associations are registered in Morocco, making the country the regional leader in quantitative

confront, and criticize official policies and practices. But the fact that Morocco boasts many truly independent associations that are legally recognized cannot excuse the arbitrary means by which authorities deprive scores, if not hundreds, of other associations of their right under law to register.

The cases we studied and discuss here do not allow us to present a comprehensive picture of the types of associations that authorities prevent from declaring themselves. However, our research shows that those that are adversely affected include many organizations working in politically sensitive realms. While not necessarily representative of all associations that Moroccan authorities have deprived of legal recognition, these case studies demonstrate that interference with associational life is not the result of isolated initiatives by local officials, but rather part of a nationwide policy. This policy does not consist of crushing outright those organizations whose names, aims or office-holders displease the authorities, but rather of imposing a repression “lite” whereby such organizations are kept legally vulnerable in a way that marginalizes and weakens them. For example, members of an association that is not properly declared are subject to prosecution if they raise money or collect dues on behalf of the association. The association is commonly denied access to public subsidies, rentals of public halls, and the possibility of opening a bank account. It will also lack the status required to hold a legally authorized demonstration in a public space, and to file a case in court. The authorities’ refusal to allow an association to regularize its status induces some members to suspend their activities and dissuades some potential members from joining.

The affected associations include several working to defend the human rights of the Sahrawi and the Amazigh populations, and others that promote the rights of unemployed persons and of immigrants in Morocco from sub-Saharan Africa. In other instances, it seems that the administration blocks charitable and educational associations from obtaining legal recognition merely because these groups have selected as their leaders persons affiliated with the country’s biggest and most potent Islamist movement, al-Adl wa’l-Ihsan (Justice and Spirituality).

The most common maneuver that undermines what the law purports to provide on paper is the refusal by local authorities to issue a provisional receipt for the documents that associations are required to submit as part of their declaration process, a receipt that would prove the date on which the association had made a good-faith effort to file its declaration.

terms. The unavailability of official statistics or a comprehensive national association database, however, makes it impossible to verify the exact number of registered associations.”

Almost equally common are refusals by local authorities to accept the declarative documents at all. The law requires associations to submit written declarations to the authorities both at the moment of their creation and at specified moments during the life of the association, such as when it holds elections or amends its bylaws or changes its address. The law does not give local authorities such discretion to refuse the declarative documents or the right not to issue a receipt upon having received them. Nor does it give the administrators the authority to evaluate the organization and pass judgment on its legality.

This widespread refusal of local administrators to apply provisions of the law on associations in effect transforms the law from what is, on paper, a declarative regime, to one that is, in practice, a prior-authorization regime. These refusals occur too frequently, and in too many parts of the country for them to be dismissed as the isolated acts of low-level bureaucrats. Moreover, they continue in spite of these practices being challenged in administrative courts, and being exposed and criticized by local and international human rights organizations.⁷ The widespread occurrence of these refusals, and the similarity of the practices of local administrators across the country, indicates that these practices emanate from a policy decided upon at a high level to weaken certain categories of associations whose methods or whose objectives disturb the authorities.

International law gives persons the right to an effective remedy when their rights are abridged. Moroccan law specifies remedies available to an association when local officials do not fulfill their obligation to process its declarative documents. Associations have the option to send in their paperwork via registered mail; they can hire a bailiff as a legally authorized witness to testify to their good-faith efforts to register; or they can bring a case against the official in question in an administrative court. As this report shows through examples, associations have tried these remedies to secure their rights, with unsatisfactory results overall.

A better way to curb violations of the right of association is for the Moroccan government to exercise the political will to lift the obstacles that local authorities place in the way of associations that follow the legal procedures for declaring themselves, and to hold accountable those local officials who undermine the rule of law by arbitrarily obstructing the rights of associations.

⁷ See, for example, l'Observatoire marocain pour les libertés publiques, *Annual Report 2008* (in Arabic; summary available in French), and the Euro-Mediterranean Human Rights Network, *Freedom of Association in the Euro-Mediterranean Region*, December 2008, <http://www.emhrn.net/usr/00000026/00000027/00000028/00002654.pdf> (accessed August 12, 2009). See also Kausch, *Morocco: Negotiating Change with the Makhzen*, www.fride.org/descarga/WP54_Morocco_Makhzen_ENG_maro8.pdf, p. 3.

Morocco's obligations under international law require nothing less. The International Covenant on Civil and Political Rights (ICCPR), which Morocco has ratified, states in article 22, "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." The same article makes clear that states can restrict this right only under narrow and specific conditions: "No restrictions may be placed on the exercise of [the right of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."⁸

Recommendations

To bring to an end to the violations of the right of Moroccans to freedom of association as documented in this report, the government of Morocco should:

- Reaffirm publicly the right of Moroccans to exercise their right to freedom of association as set forth in international conventions, and inform local officials that they must fulfill their obligations under Moroccan law pertaining to the registration of associations, and that they will be held accountable for deviating from the law's provisions.
- Revise article 3 of the law on associations to bring it into conformity with international standards of freedom of association (including the International Covenant on Civil and Political Rights' article 22), by narrowing the criteria by which an association can be banned on the basis of its objectives. Article 3's stipulation that no association may be created whose objectives include "harming" Islam, the monarchical regime, or Morocco's "territorial integrity," or that "calls" for discrimination, is excessively broad and invites politically motivated suppression of associations.
- Revise the law on associations to require that authorities provide a clearly stated motive in those instances when they decide, in accordance with the law, to oppose legal recognition for an association.
- Implement rulings by Morocco's administrative tribunals in favor of associations that have encountered arbitrary administrative obstacles to filing their declaration.

⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Morocco ratified the ICCPR on May 3, 1979.

- Halt the prosecutions of persons for “membership in an unrecognized association,” an offense that has no clear legal basis; while Moroccan law criminalizes specific activities when undertaken on behalf of an association that has not filed the proper declaration, it does not criminalize mere membership in one.

Furthermore, in order to promote transparency in its treatment of associations under the law, the government should issue on a regular basis a list of associations whose documents government officials have refused to accept or for which national and local government officials have refused to issue a receipt, or whose legal constitution the government has contested, with the reasons for doing so.

Methodology

This report is based on missions to Morocco conducted in March and July 2009. Eric Goldstein, research director of the Middle East and North Africa Division of Human Rights Watch, researched and wrote the report. Sarah Leah Whitson, executive director of the Middle East and North Africa Division, and Ian Gorvin, senior program officer, edited the report. Clive Baldwin, senior legal advisor, provided legal review. Brahim Elansari, intern at Human Rights Watch, and Abderrahim Sabir, project leader for the Civilian Protection Initiative at Human Rights Watch, provided research assistance.

The report was prepared for publication by Brent Giannotta and Nadia Barhoum, associates in the Middle East and North Africa Division, Grace Choi, publications director, and Fitzroy Hepkins, mail manager.

Human Rights Watch sought input from Moroccan authorities when preparing this report. It wrote to the ministers of justice and interior prior to its March and July visits to Rabat, proposing to meet with appropriate officials to discuss the issue of freedom of association. It received no reply and no meetings took place. Together with the Euro-Mediterranean Network for Human Rights and the Moroccan Observatory for Public Liberties, it addressed to the ministers of interior and justice on June 26, 2009, a detailed letter (reproduced as an appendix to this report), containing numerous examples where local authorities appeared to be flouting the law on associations. Human Rights Watch followed up the sending of this letter by phoning, faxing, and emailing officials at the ministries of justice, interior, and foreign affairs, and at the Moroccan embassy in Washington, DC, to reiterate our interest in receiving a reply to that letter and our readiness to meet with officials in Rabat to discuss the issues raised therein. No reply was received by the time this report went to press in September.

II. The Legal Framework for Associations

Moroccan law

Morocco's constitution in article 9 guarantees freedom of association.⁹ In 1979 Morocco ratified without reservation the International Covenant on Civil and Political Rights, which guarantees, in article 22, "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

The establishment and functioning of associations in Morocco is governed by a 1958 decree, dahir 1-58-376. This law affirms the right of persons to form associations "freely and without authorization in conformity with the provisions of article 5."

Article 5 begins by stating, "Every association must declare itself to local authorities in the jurisdiction where the association's headquarters are located." Thus, associations are required to register, although Moroccan law does not sanction individuals merely for belonging to, or acting within, an association that has not declared itself to the authorities. The law does, however, penalize activities conducted on behalf of an association that has not respected the formalities specified in article 5, when such activities involve certain financial or real property transactions (for this and other consequences of being considered "undeclared," see chapter III of this report).

Procedures for declaring an association and maintaining its declared status

Article 5 sets forth the procedure for declaring an association and maintaining its declared status. It involves furnishing authorities a list of specified documents about the association (including its bylaws and objectives, its address, and photocopies of the identity cards of members of the executive bureau) and then waiting up to 60 days.

Article 5 states that upon receiving the required documents from a representative of the association, the local administrative authority issues a provisional receipt that is stamped and dated. The law states that the local authority is to issue the provisional receipt "on the spot"; it gives the authority no discretion to refuse to accept the documents or to refuse to issue a provisional receipt for them. The provisional receipt is the key enabling document:

⁹ "The constitution guarantees to all citizens...freedom of association and freedom to belong to any union or political organization of their choice. No limits may be imposed on the exercise of these rights except those provided by the law." Morocco's constitution is online in French at www.maroc.ma/NR/rdonlyres/B6B37F23-9F5D-4B46-B679-B43DDA6DD125/o/Constitution.pdf (accessed September 7, 2009).

Within the 60 days the authorities may formally authorize the association to begin operating by issuing a final receipt for its documentation. At the end of the 60-day period an association possessing a provisional receipt can also operate legally if, absent a final receipt, state authorities have not opposed the association's declaration (see below).

Administrative obstruction of the declaration process

The most commonly reported form of abuse occurs when local administrative authorities, who are employees of the Ministry of Interior, refuse to receive an association's founding documents, or accept these documents but refuse to issue the provisional receipt confirming the place and date of their submission. Without a dated receipt, an association cannot prove that it submitted its founding documents in compliance with the law, and hence cannot establish the expiry of the 60 days post-submission when, absent a ruling against declaration, it should become free to operate. Some associations argue that, according to their reading of the law, as long as they made a good faith effort to file their required founding papers and authorities did not object within 60 days, they are legal. However, members of several associations have told us that officials insist that associations that cannot produce either a provisional or a final receipt are not legally constituted, and treat them as such.

An association can challenge in the administrative court a local authority's refusal to receive documents or issue a receipt. However, the administrative court cannot force authorities to behave differently, as it has no enforcement powers; it can only rule that administrative authorities exceeded their powers and order payment of damages to an injured party. Thus, a ruling in the administrative court in favor of an association does not necessarily lead to it getting its documents accepted or a receipt issued. This was the case with two of the organizations featured in the case studies in chapter IV—the ASVDH and the Union of Promotion Nationale Workers in al-Ayoun.

Obstacles when existing associations file updated declarations

The problem of administrative obstruction arises not only at the time of an organization's founding but also at other times when it is required to notify authorities in writing of specific internal developments. The law on associations requires in article 5 that an association formally notify authorities in writing, within 30 days, of such developments as a change to the composition of its leadership body or administration, amendments to its statutes or bylaws, or the creation of branches or chapters. An association also must inform authorities if it decides to keep in place, rather than replace, office-holders upon the expiry of their terms as stipulated in the association's bylaws. The authority receiving such notification is

supposed to issue a stamped and dated receipt for it, but the notification requirement has become another occasion for authorities to exercise further pressure on the association by refusing either to accept the written notification or refusing to issue a receipt.

Legal grounds for refusing or withdrawing legal recognition

By law the local authority has no role in evaluating and determining the eligibility of an association that seeks to declare itself. Rather, it should simply forward a copy of the file of founding documents to the office of the state attorney (*le parquet*) at the court that has geographic jurisdiction. It is the state attorney who may, “if warranted,” issue an “opinion” on the association’s founding document. Opposition by the state attorney within the 60-day period means that the association is not legally declared. Its members can appeal that opposition to the administrative court. The limitations of that option are the same as when appealing in court the administration’s refusal to receive documents or failure to issue a receipt, noted above.

Article 3 of the law on associations defines types of associations that may not exist legally: “Any association is void if it is founded on a cause or with an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, the integrity of national territory, or the monarchical regime, or that calls for discrimination.”

Article 3’s enumeration of prohibited objectives conflicts with Morocco’s obligations under the ICCPR, which in article 22 states, “No restrictions may be placed on the exercise of [the right of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” These article 22 restrictions should be interpreted narrowly. For example, terms such as “national security” and “public safety” refer to situations involving an immediate and violent threat to the nation, which should not be confused with situations that threaten only the continuance in power of those who presently govern the country. “Necessary” restrictions must be proportionate: that is, they must be no more broad in scope than is strictly necessary to address the specific reason for their being put in place. Moreover, when restricting the right of association, the burden falls on the authorities to demonstrate that the measure is both justified and proportionate.¹⁰

¹⁰ See Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on State Parties to the Covenant [2004]. According to Manfred Nowak, one of the leading commentators on the ICCPR, article 22(2) allows for total prohibition of associations only for organizations that are a political or military “threat” to the “entire nation” or whose activities aim at the destruction of the other rights of the Covenant. Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein: NP Engel, 2005), p. 506.

The permitted limitations to the right of association under ICCPR article 22 are in any event far narrower in scope than the broad concepts that form the basis in Moroccan law for banning an association, and that lend themselves to all kinds of politically self-serving interpretations by authorities. For example, the government refused to allow a Sahrawi human rights organization, the Collective of Sahrawi Human Rights Defenders (CODESA) to declare its creation on the grounds that its focus on the rights of Sahrawis constituted an illegal call for discrimination (see case study in chapter IV). An association that favors a secular Morocco could be seen as undermining Islam; one that favors independence for Western Sahara could be seen as undermining the integrity of national territory; and one that advocates redistribution of power in Morocco so as to reduce the king's prerogatives could be seen as undermining the monarchy.

Once an association has obtained its final receipt, or 60 days have passed without a ruling against recognition, the association can only be dissolved by order of a court of first instance, according to article 7 of the law on associations. Article 36 states that “any association that conducts activities other than those provided for by its statutes can be dissolved” and its leaders subject to fines. Authorities in 2003 successfully petitioned a court of first instance in al-Ayoun to dissolve a Sahrawi human rights organization, the Forum for Truth and Justice – Sahara section, on the grounds, among others, that its activities were harmful to Morocco’s “territorial integrity.”¹¹

Absence of explicit reasons for blocking recognition

A problem with the law on associations itself is that it does not require that state authorities provide a reason when they refuse an association legal recognition. Morocco does have a law that, more generally, requires authorities to state the justification behind any individual administrative decision that disfavors an interested party.¹² In practice, however, they do not always furnish an explanation. As described in one of the chapter IV case studies, below, authorities formally objected to the creation of the Assa section of the Amazigh Network for Citizenship without stating the reasons.

¹¹ See Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, <http://www.hrw.org/en/node/77259/section/9>.

¹² Loi n° 03-01 relative à l'obligation de la motivation des décisions administratives émanant des administrations publiques, des collectivités locales et des établissements publics, promulguée par dahir n°1-02-202 du 23 juillet 2002, *Bulletin officiel*, n°5030, August 15, 2002, <http://www.marchespublics.gov.ma/wps/wcm/connect/bbe352804cc24930ba57bfe0c95ab7d5/1-02-202-fr.pdf?MOD=AJPERES&CACHEID=bbe352804cc24930ba57bfe0c95ab7d5> (accessed August 18, 2009), p. 882. Article 2(a) specifies that administrative decisions affecting the exercise of public liberties must be accompanied by an explanation. Article 3 exempts from this requirement decisions related to internal or external state security.

It is a prerequisite to the enjoyment of the right to an effective remedy under international human rights law that a person or an entity with legal personality is able to know the reason for the authorities interfering in any of their rights (in this case freedom of association). Only if the harmed party knows the basis for the refusal can that party effectively challenge that refusal in court. Therefore authorities should ensure that any refusal to recognize an association comes with a substantive justification for that refusal.

It is hard to tell how often authorities use article 3 and article 36 criteria when opposing an association's right to exist. This is because it is less common for authorities to formally oppose the creation of an association, or to seek its dissolution in court, than it is for authorities to consign an association to legal limbo by refusing to take the association's documents or to issue a receipt for them. In those two latter scenarios, authorities rarely provide a motive for depriving the association of its right to declare itself legally.

III. The Impact of Not Being Declared

An association that is legally declared is entitled, according to article 6 of the law on associations, to file actions in court; make purchases; acquire and administer public subsidies, dues collected from its members, private donations, grants from foreign organizations or international institutions; and acquire offices and materials necessary for its activities.

The withholding or effective withdrawal of legal recognition by refusing to accept documents or issue receipts impact associations in various ways and to varying degrees, even if a great many associations continue to operate without recognition, circumventing these obstacles without being prosecuted. The overall effect however, is to weaken these associations and keep them off-balance. The following is a list of some of the practical consequences when an association is not considered declared:

Difficulty of renting an office or hiring a hall, or posting announcements on public thoroughfares: Without declared status, associations have difficulty renting an office or hiring halls in which to meet, or getting the necessary permission from the municipality to post fliers along the streets. Authorities decline to make available to undeclared associations public halls (for example, the local youth center or *salle de commerce*).

Obstacles to opening bank accounts: Banks often are reluctant to accept, or simply refuse, applications to open accounts in the name of associations that cannot produce proof of their declared status. Some associations that lack receipts manage nonetheless to open accounts.

Exclusion from official events and consultations, and ineligibility for subsidies: Local authorities do not invite undeclared associations to official activities to which they invite declared associations; they also exclude them from subsidies for which declared associations are eligible, pursuant to article 6(1) of the law on associations.

Boycott by authorities: If the association's objectives involve communicating with, or seeking meetings with, public authorities, the non-recognition of their declaration makes it less likely that authorities will respond to communications or formally receive them.

No right to organize gatherings in public thoroughfares: Associations that are not considered declared are ineligible to organize gatherings on public thoroughfares, according to article 11 of the Law on Public Gatherings, which limits this right to political parties, unions,

professional associations, and associations that are “regularly declared.”¹³ They can, however, hold a public meeting not on public thoroughfares, provided that they notify authorities at least one day in advance and authorities do not forbid it.¹⁴

Risk of prosecution for membership: Moroccan law does not criminalize mere membership in an unrecognized association, in contrast to countries such as Jordan (penal code, articles 159-163), Syria (article 71 of Law No. 93), and Tunisia (articles 29-30 of Law 59-154 of November 7, 1959, on associations).¹⁵

Members of an association that is considered not properly declared or that has otherwise not followed the provisions of article 5 risk prosecution and fines under article 8 of the law on associations if they conduct any of the financial transactions enumerated in article 6, including the receipt of grants and financial support from domestic or foreign sources (in practice, some associations that have been denied receipts continue nevertheless to raise money and accept grants). Article 8 also provides punishments of between one and six months in prison and a fine of 10,000 to 20,000 dirhams (US\$1,250-2,500) for persons who act to maintain or to revive an association after a court has ordered its dissolution.

The absence of a law criminalizing mere membership has not prevented prosecutors from including “membership in an unauthorized association” when filing other charges, such as participation in an unauthorized demonstration, against members of associations considered undeclared. Human Rights Watch is aware of one court conviction solely on a charge of “membership,” although this was overturned on appeal—see the case of Sadyk Ballahi, a member of the Sahrawi Association of Victims of Grave Human Rights Violations, featured in chapter IV.

Dissuading potential members: More generally, an association’s unrecognized status acts as a disincentive for many would-be members, who fear trouble with the authorities or even prosecution if they act within such associations.

¹³ Dhahir no. 1-58-377 of November 15, 1958 Concerning Public Gatherings, article 11, states that qualified entities must submit in advance information about their gathering to authorities, who can prohibit it if they deem it likely “to disturb the public order.”

¹⁴ *Ibid.*, arts. 1-3.

¹⁵ Human Rights Watch, *Shutting Out the Critics: Restrictive Laws Used to Repress Civil Society in Jordan*, December 2007, vol. 19, no. 10(E), <http://www.hrw.org/en/reports/2007/12/16/shutting-out-critics>, p. 16; *No Room to Breathe: State Repression of Human Rights Activism in Syria*, October 2007, vol. 19, no. 6(E), <http://www.hrw.org/en/reports/2007/10/16/no-room-breathe-0>, p. 27; and *Tunisia: A Lawsuit against the Human Rights League, An Assault on All Human Rights Activists*, April 2001, vol. 13, no. 3(E), http://www.hrw.org/legacy/reports/2001/tunisia/tunisiao401-05.htm#P317_66578, p. 18.

IV. Case Studies

The following are examples of associations that have faced arbitrary obstacles of one kind or another to declaring themselves according to the law. While these organizations have for the most part continued to operate, these obstacles imposed by the authorities have undercut and weakened them. Furthermore, these obstacles exemplify the way that authorities often disregard in practice laws that are protective of human rights.

Most of the featured cases involve the withholding of receipts for documentation, although in one case featured below, involving the Morocco section of the World Mountain People Association, the arbitrariness by local authorities extends to refusing to recognize that if an association obtains a provisional receipt and is not challenged within 60 days, it is properly declared (see under Amazigh rights and development organizations).

In another of the cases featured below, involving the Amazigh Network for Citizenship, one of its local branches was issued a provisional receipt but then was notified within the 60-day period that the local representative of the state attorney had expressed “reservations”; it was not told what those reservations were, however.

In two cases the authorities took preemptive steps even before the law’s declarative process could be set in motion. In one, authorities in al-Ayoun stepped in to ban the Sahrawi human rights association CODESA from holding its constitutive assembly, thereby preventing it from fulfilling one of the steps it must take before submitting its founding papers. In the other, involving a prospective Moroccan branch of the French organization Neither Whores Nor Submissives, the minister of interior himself issued a statement, even before presentation of founding documents, that any registration attempt would be blocked. These represent perhaps the most glaring examples of the extent to which Moroccan authorities disregard the declarative spirit of the law on associations, and apply arbitrary, subjective interpretations in assessing whether an organization meets the vaguely defined criteria of the law on associations.

The Moroccan National Association of Unemployed University Graduates (ANDCM)

The National Association of Unemployed University Graduates is a large umbrella group of local associations nationwide composed of unemployed Moroccans holding university degrees. Its platform is organized around the right to work, a right that, in the association’s

view, the public sector should fulfill by providing employment to graduates of Moroccan universities.

The rate of unemployment at the end of 2006 among young Moroccans holding university degrees was officially 23.7 percent, more than twice the rate for the general population.¹⁶ According to the official statistics, four out of every five university graduates had been jobless for at least one year. This population, estimated to be one-quarter million strong, has at times shown its restlessness: unemployed graduates were among those who blockaded the port of the city of Sidi Ifni in June 2008, leading to city-wide disturbances and police repression that caused dozens of injuries.¹⁷

The ANDCM presented its founding papers to the *wilaya* (governorate offices) of Rabat-Salé-Zemmour-Zâir in October 1991, according to ANDCM president Abdellah Moujdi of Rabat.¹⁸ Authorities at the wilaya refused, without explanation, to provide the ANDCM a receipt. Since then, the association has held nine congresses, the last one in December 2008. Each time, it has attempted to inform the authorities at the Rabat-Salé-Zemmour-Zâir wilaya in writing of the newly elected officeholders, as required by article 5 of the law on associations. Each time, said Moujdi, the authorities have refused to issue a receipt, without ever explaining this refusal.

According to Moujdi, authorities refrain from legally recognizing the ANDCM so as to avoid having to regularize relations with it. The lack of legal recognition means that the ANDCM is ineligible for grants that public institutions provide to nongovernmental associations, and is excluded when authorities engage in rounds of consultations or organize meetings with Moroccan NGOs. Local authorities refuse to let the ANDCM hire public halls for its gatherings, forcing it to rely on the largesse of trade unions whose headquarters house large meeting halls.¹⁹

As long as the authorities regard it as not properly declared, the ANDCM cannot hold rallies legally on public thoroughfares. Despite this, the ANDCM and its local affiliates persist in

¹⁶ Employment figures in this paragraph come from Nezha Maachi, “Unemployment: Should you burn your diploma?” («Chomage : Faut-il brûler son diplôme?») *l’Economiste* (Casablanca), February 8, 2008, reproduced at *Forum Algerie*, <http://www.algerie-dz.com/forums/international/70354-chomage-des-diplomes-les-vrais-chiffres-maroc.html> (accessed August 26, 2009), and citing statistics prepared by the High Commission for Planning (Haut Commissariat au Plan) for the end of 2006.

¹⁷ See Moroccan Organization for Human Rights (OMDH), “Rapport de la commission d’enquête de l’OMDH sur les événements de Sidi Ifni,” July 1, 2008, <http://www.omdh.org/newomdh/def.asp?codelangue=23&info=567> (accessed August 18, 2009).

¹⁸ Human Rights Watch interview with Abdellah Moujdi, president of the ANDCM, Rabat, March 11, 2009.

¹⁹ Human Rights Watch interview with Abd-el Ali Boussattati, president of the ANDCM Nador chapter, Nador, March 13, 2009.

staging frequent public rallies and marches in support of their demands. In Rabat members gather regularly outside of parliament and various ministries, where they unfurl banners and chant slogans.

These demonstrations by the ANDCM have sometimes resulted in informal concessions, whereby government officials receive representatives of the association and pledge to hire a certain number of jobseekers. More often, however, it is the police, rather than concessions by officials that have ended their public protests. The police and auxiliary forces, wielding batons, have often dispersed the demonstrators with considerable force, inflicting sometimes serious injuries. Reuters photographer Rafael Marchante described to Reporters without Borders how Moroccan security forces beat unemployed graduates and Marchante as he tried to cover their demonstration on May 21, 2008, in front of the parliament building:

These demonstrations are held each week outside parliament. This week I appeared to be the only person covering it. The auxiliaries were beating the demonstrators violently, including young women, kicking them in the face. Five or six auxiliaries came up to me, grabbed one of my cameras and beat me. I produced my information ministry accreditation but one of them, who appeared to be their superior, tore it up and then punched me twice in the face.²⁰

In many instances after forcibly dispersing their gatherings, authorities have prosecuted ANDCM members on charges of participating in “unauthorized” assemblies; to that charge, they sometimes add the charge of membership in an unauthorized association, even though (as noted in chapter III) this charge cannot be found anywhere in Moroccan law. For example, authorities prosecuted on such combined charges Saïd Marzouki, president of the association’s chapter in Jerrada, and Anas as-Salmani, president of the section in Beni Madhar, both small cities in northwest Morocco. The charges against the two stem from events of June 4, 2008, when Marzouki participated in two sit-ins with members of the association, the first in Beni Madhar and the second in Jerrada. Marzouki told Human Rights Watch that the unemployed graduates had staged the sit-ins without first notifying the authorities, adding that he was certain the authorities would not have authorized them.²¹

²⁰ “Interior Ministry Auxiliaries Beat Spanish News Photographer outside Parliament,” Reporters without Borders news release, May 23, 2008, <http://www.rsf.org/Interior-minister-auxiliaries-beat.html> (accessed July 2, 2009).

²¹ Human Rights Watch telephone interview with Saïd Marzouki, president of the ANDCM Jerrada chapter, April 30, 2009. There is some ambiguity with respect to whether sit-ins fall under the requirement in the Law on Public Gatherings (Dhahir no. 1-58-377), article 11, that organizers of gatherings must notify in advance the authorities, who may prohibit them on grounds of likelihood to “disturb the public order.” See Human Rights Watch and Amnesty International, *Morocco/Western Sahara: Freedom of Assembly on Trial*, November 21, 2001, <http://www.hrw.org/legacy/backgrounder/mena/morocco1121.htm>.

The security forces used force to disperse both sit-ins. After the second sit-in, police summoned Marzouki and as-Salmani. According to Marzouki, the local prosecutor subsequently charged them with insulting a police officer, obstructing traffic, disobeying orders, incitement to commit crimes (based on slogans they allegedly chanted), and membership in an unauthorized association. The court convicted Marzouki and Selmani and sentenced them to seven and five months in prison respectively, terms they served in full.

The refusal by authorities to legally recognize the ANDCM extends to its many chapters around the country. Local authorities did issue receipts in some instances when local sections of the ANDCM presented their founding papers, but when it came time for them to present updated lists of the chapters' office-holders (as per article 5 of the law on associations) the authorities refused to issue receipts. One example is the experience of the ANDCM's chapter in the city of Nador. The *bacha*²² of that city had in the past issued receipts for documents submitted by the association, but refused to do so after the chapter submitted an updated list of office-holders following its December 2008 congress, according to its president, Abd al-Ali Bousattati. In the 1990s, in the southern Moroccan city of Tiznit, local authorities issued the local ANDCM section a receipt for its founding papers but refused to do so when the chapter tried to submit its updated documentation as required, according to Brahim Elansari, a member of the chapter at that time.²³

Bousattati insists that the Nador chapter is legal because it had followed in good faith the procedures set forth in the law. However, he said that the local authorities in Nador persist in telling him that it is not. Bousattati said that on March 5, 2009, security forces broke up a sit-in organized by the chapter in front of the provincial government building in Nador. They arrested nine of the protesters and questioned them before releasing them without charge. The reports completed by the police and presented to the detained protesters stated that they had been participating in a demonstration organized by an unrecognized association, Bousattati said.

Another effect of the ANDCM's lacking legal recognition, Bousattati said, is that the association is not included among the NGOs that local authorities invite to official events or official consultations with civil society. Nor can it hire public halls. Instead, it relies on trade unions to provide them space for meetings.²⁴

²² The *bacha* is a local administrator who is an employee of the ministry of interior and who reports to the *wali*, or governor.

²³ Email communication from Brahim Elansari to Human Rights Watch, April 29, 2009.

²⁴ Human Rights Watch interview with Ali Bousattati, March 13, 2009.

Amazigh rights and development organizations

The Amazigh, also known as Berbers, are the indigenous people of North Africa. They are overwhelmingly Muslim. Today the two largest Amazigh populations are in Morocco and Algeria, where some are actively engaged in trying to secure their cultural, linguistic, and political rights. In recognition of Amazigh aspirations King Mohammed VI of Morocco created a Royal Institute of Amazigh Culture in 2001 and launched a program to begin teaching the Tamazight language in schools.

Some Amazigh activists want Tamazight declared an official language of Morocco, and regional autonomy for the Rif region, which has a large Amazigh population. After some activists founded the Amazigh Democratic Party in 2005, authorities petitioned the Rabat administrative court to outlaw it on the grounds that it violated the prohibition, in the political parties law, on parties based on religion, ethnicity, or language.²⁵ The court ruled in favor of the ban in April 2008.

The Amazigh Network for Citizenship, which advocates for the cultural, linguistic, political, and civil rights of Morocco's Amazigh population, is among the many Amazigh organizations in Morocco that authorities have refused to treat in accordance with the law on associations. The national bureau of the association, based in Rabat, along with its branches in Tanalt, Tiznit, Casablanca, and Ifrane, have all submitted founding papers to the relevant branch of the local administration in conformity with the law. However, the local administrations have consistently refused to provide a receipt to the local branches, while the Network's national bureau has gotten receipts only after long delays.

The national bureau submitted its founding documents to authorities in Rabat after its inaugural congress in July 2002. The authorities refused to issue a receipt. The association submitted its papers again following its second congress in July 2005, and obtained a receipt for the first time only in June 2006, after campaigning publicly to demand it. The Network held another congress in August 2008 and filed with local authorities a declaration of the decisions taken at the congress, as required by law. It did not receive a receipt for that filing until June 2009.

Authorities rarely furnish a justification for refusing to issue a receipt to an association. However, the associations often learn of possible motives through informal channels. Authorities in Rabat did not explain to the Amazigh Network for Citizenship why they would

²⁵ Law 36-04 on Political Parties of February 14, 2006, article 4, online at http://www.pcb.ub.es/idp/docs/marroc/loi_de_partis_politiques.pdf (accessed September 8, 2009).

not grant it a receipt for its 2008 filing. Ahmed Arehmouch, a Rabat-based attorney and member of the network's executive committee, said he believes that authorities withheld the receipt because of the network's endorsement, in the platform emanating from its August 2008 congress, of a separation between religion and the state.²⁶ Secularism is a controversial demand in a country whose constitution in article 19 calls the king the "Commander of the Faithful" and "Defender of the Faith."

The *caïd*²⁷ in Tanalt refused to accept the registration documents from the network's branch in that city after it held its inaugural congress in August 2008, both when members delivered it to him in person and when they sent it to him by registered mail.²⁸ The branch tried again in the presence of a bailiff, who completed a report attesting to the caïd's refusal to take the dossier. The branch then challenged the caïd's refusal before an administrative court, which at this writing has not yet ruled on the case. In the meantime, the branch continues to function, but with obstacles. For example, the caïd prevented the branch from distributing in schools AIDS awareness materials in Tamazight, justifying this refusal by saying that the branch is not legally recognized, according to Arehmouch.²⁹

An attempt to create a branch in the southern city of Assa resulted in government authorities' blocking the network by means of another stratagem. In this case, the branch submitted its founding documents and received a provisional receipt from the bacha in that city, Mohamed Stitou. But before the expiry of the 60-day period provided by the law, Stitou informed the branch of official objections to its creation: in an undated two-sentence letter received in early 2009, Stitou wrote that he had consulted the state attorney at the court of first instance in Guelmine, who had expressed "reservations" about the establishment of the Assa chapter.

The bacha's notification to the Assa chapter of the network means it cannot function legally, even though he did not specify what those reservations were. The network filed suit in administrative court in Agadir, challenging the authorities' opposition to the section's declaration. The case is pending at this writing, and officials have still not specified the basis for their opposition, according to Arehmouch.³⁰

²⁶ Human Rights Watch interview with Ahmed Arehmouch, Rabat, March 17, 2009.

²⁷ The *caïd* is a local administrator at the level of the district who reports to the *bacha*, who in turn reports to the *wali*. All are employees of the Interior Ministry.

²⁸ Communiqué issued by the executive committee of the Amazigh Network for Citizenship, undated.

²⁹ Human Rights Watch interview with Ahmed Arehmouch, Rabat, July 17, 2009.

³⁰ Email communication from Ahmed Arehmouch to Human Rights Watch, August 14, 2009.

Another small Amazigh organization called the Aguelmam Association for Development and Culture, located in the commune of Dayet Aoua, in the Dayet Ifrah district of the province of Ifrane, obtained a final receipt for its founding papers from the local caïd in 2005. Aguelmam then pursued activities promoting Amazigh culture and the Tamazight language.

However, since filing papers informing authorities of the results of its internal elections held in December 2007, it has been unable to get a receipt for this filing. The association's president, Lahcèn Oussaïd, told Human Rights Watch that the Aguelmam association has lobbied unsuccessfully for the receipt:

The caïd said, "Just wait a bit, you'll get it." But it never came. After four months, we wrote to the *'amil* [governor]. Fifteen days went by with no response. The *'amil* then referred us to the head of the DAG [Directorate of General Affairs, an agency that is part of the interior ministry]³¹ in the Ifrane government office. I tried to see the DGED head but he refused to meet with me. I submitted a written complaint to the local authorities, and also informed the press that they were refusing to issue us a receipt. But nothing worked.

Oussaïd said the authorities never provided any formal reason for refusing to issue a receipt to the Aguelmam association. However, he said that he heard unofficially that authorities were withholding legal recognition because Oussaïd himself had become more active in Amazigh politics. In 2006 he attended the congress of the Amazigh Democratic Party and won election as vice secretary-general of its youth wing; he also served on the party's national steering committee. In 2008, as noted above, a court ruled in favor of a government lawsuit to ban the party.

According to Oussaïd, non-recognition has not prevented the Aguelmam association from conducting its activities, which include programs to combat illiteracy. It has even carried out projects in conjunction with the Royal Institute on Amazigh Culture. The association also has been able to open a bank account. The main day-to-day impact of the non-recognition of Aguelmam, says Oussaïd, is that authorities exclude it from the officially sponsored events to which they invite NGOs. This is a significant disadvantage in a rural area such as the one in which Aguelmam operates, where local authorities and institutions are central to

³¹ Direction des affaires générales.

community life.³² Oussaïd told Human Rights Watch that the association is hoping to regularize its status through contacts with the authorities, before resorting to administrative court.³³

Thawiza Association for Culture and Development Selouane/Nador, an Amazigh cultural organization in Selouane, a small city in the province of Nador near Morocco's Mediterranean coast, obtained legal recognition when founded in 2005. Among its activities was to co-organize in October 2008 a conference on strategies for autonomy for the Rif region. Thawiza notified the basha of Nador about the impending conference and held it without encountering obstacles or adverse measures.³⁴

However, after Thawiza elected new officeholders in early 2009, the caïd of Selouane refused to issue a receipt for the document reporting the election results. The caïd gave no explanation to Karim Meslouhi, an Amazigh activist whom Thawiza had chosen as its new president, when he came to present the document. But when other Thawiza members returned to the caïd's office to request the receipt, the caïd told them that the problem was their election of Meslouhi, who advocates political autonomy for the Rif region.³⁵ Meslouhi told Human Rights Watch that Thawiza had not filed suit in administrative court, explaining, "I have no confidence in the court to solve our problem; it's the ministry of interior that should be applying the law."³⁶

The Moroccan section of a France-based association interested in the rights of indigenous peoples encountered problems emanating from yet another variation of authorities' failure to respect the law on associations. The section of the World Mountain People Association (Association des Populations des Montagnes du Monde, APMM)³⁷ obtained its provisional receipt from the bacha of Meknes when it submitted its founding documents in October 2007, but has yet to receive its final receipt. Section President Saïd Kemal told Human Rights Watch, "Every time I stop by at the desk in charge of the file at the office of the bacha of Meknes, the clerk there tells me the investigation is still going on."³⁸

³² Human Rights Watch interview with Lahcèn Oussaïd, president of the Aguelmam Association for Development and Culture, Rabat, March 17, 2009.

³³ Human Rights Watch telephone interview with Lahcèn Oussaïd, August 18, 2009.

³⁴ Human Rights Watch telephone interview with Karim Meslouhi, president of Thawiza, May 8, 2009.

³⁵ Ibid., and communiqué by Thawiza, undated, received by Human Rights Watch April 30, 2009.

³⁶ Human Rights Watch telephone interview with Karim Meslouhi, August 18, 2009.

³⁷ Information about the organization is available at www.mountainpeople.org (accessed August 28, 2009).

³⁸ Email communication from Saïd Kamel, president of the Morocco branch of APMM, to Human Rights Watch, July 4, 2009.

The law on associations is clear regarding this situation: if the state authorities do not formally oppose an association's existence within 60 days of the local authority's having issued it a provisional receipt, that association can begin functioning legally. However, the bacha of the city of Mrirt in Khenifra province in the wilaya of Meknes-Tafilalet had his own interpretation: when the association applied to hire a large public hall in that town for an event in March 2009, the bacha refused, explaining that the association lacked the final receipt and that its provisional receipt had "expired." The association was forced to transfer the venue of the meeting to a private home, according to Kamel.³⁹

Sahrawi human rights associations in al-Ayoune

Moroccan authorities have deprived of legal status several Western Sahara-based Sahrawi human rights associations that have tried to follow the procedures for obtaining legal recognition. Human Rights Watch described these cases in its December 2008 report "Human Rights in Western Sahara and the Tindouf Refugee Camps."⁴⁰ Referring to two of the larger organizations, the Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State (Association Sahraouie des Victimes de Violations Graves des Droits de l'Homme Commises par l'Etat Marocain, ASVDH) and the Collective of Sahrawi Human Rights Defenders (Collectif des Défenseurs Sahraouis des Droits de l'Homme, CODESA), the then-governor of al-Ayoune-Boujdour-Saguia al-Hamra, M'hammed Drif, made clear to Human Rights Watch that the reason these organizations are refused legal recognition is that their imputed political views in favor of independence for Western Sahara violate Morocco's constitution:

For CODESA and the ASVDH, the problem is that their founding statutes do not respect the Constitution of Morocco.... If they present an application for legal recognition that conforms to the law, like the AMDH [Association Marocaine des Droits de l'Homme] or the OMDH [Organizations Marocaine des Droits de l'Homme] did, then they will be approved. They must first of all renounce the Polisario line.⁴¹

(The Polisario is the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro, the Sahrawi independence organization.)

³⁹ Human Rights Watch interview with Saïd Kamel, Washington DC, April 29, 2009.

⁴⁰ Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, <http://www.hrw.org/sites/default/files/reports/wsahara1208web.pdf>.

⁴¹ *Ibid.*, p. 93 (citing Human Rights Watch interview with M'hammed Drif, then-governor of al-Ayoune-Boujdour-Saguia al-Hamra, al-Ayoune, November 6, 2007).

The al-Ayoun-based ASVDH remains an unrecognized association because the bacha in al-Ayoun has refused since 2005 to accept the set of founding documents the association submitted. This refusal persists despite a ruling by the administrative court of Agadir in September 2006 that the bacha had exceeded his powers under the law on associations when he refused to accept the ASVDH's founding documents. Despite this court ruling, the bacha refused again in 2008 to accept the documents from ASVDH president Brahim Dahhan and filed an appeal before an administrative appeals court in Marrakesh against the ruling in first instance by the Agadir court. The Marrakesh court on December 17, 2008, dismissed the appeal on the grounds that it had not been filed within the required deadline for such filings.

Despite these administrative court rulings against him, the bacha of al-Ayoun continues to refuse to receive the papers from the ASVDH. As noted in chapter II, an administrative court lacks enforcement power, so a ruling in favor of an association does not necessarily translate into a change in behavior by the authorities. In this case, the local authorities have flouted the court's ruling with impunity.

While the ASVDH continues to operate and to issue a large number of statements and reports about human rights violations against Sahrawis, the lack of legal status has adverse consequences for it and its members. In November 2007 the al-Ayoun Court of First Instance convicted an ASVDH executive committee member, Sadyk Ballahi, of membership in an unrecognized association, while acquitting him of participating in and inciting illegal demonstrations.⁴² The court sentenced him to six months in prison but let him remain free pending the outcome of his appeal. On October 20, 2008, the al-Ayoun Court of Appeals, to its credit, overturned the conviction of Ballahi on the membership charge—but not before Ballahi, a resident of Guelmine, had spent two days in police custody and then fifteen months with a possible prison term hanging over him. The appeals court held that the “misdemeanor of membership in an unrecognized association is non-existent,” which renders “incorrect” on the law the lower-court's guilty verdict against the defendant.⁴³

The ASVDH, because of its unrecognized status, is unable to organize lawful demonstrations in public thoroughfares. Security forces violently disrupted its effort to organize a peaceful sit-in in a square in downtown al-Ayoun on international human rights day on December 10, 2006, even though the association had notified the authorities in advance and had received

⁴² Al-Ayoun Court of First Instance case 2317/2007.

⁴³ Al-Ayoun Court of Appeals decision number 931, dated October 10, 2008, in appeals case 101/2008.

no order prohibiting the gathering, according to ASVDH Vice-President el-Ghalia Djimi.⁴⁴ The *wali* (governor) later argued that the ASVDH lacked legal status and was therefore not legally entitled to organize a demonstration.⁴⁵

On May 22, 2007, an al-Ayoun appeals court upheld the guilty verdict against two men for membership in an “unauthorized association” – namely the ASVDH -- among other charges.⁴⁶ The court affirmed the March 7, 2007 conviction by an al-Ayoun court of first instance of ASVDH secretary-general Brahim Sabbar and steering-committee member Ahmed Sbaï on the membership charge and on charges of inciting violent demonstrations that took place in Western Sahara during 2005 and 2006. The appeals court increased the sentences that the lower court had imposed on the two men from 12 months to 18 months in prison. Both men served their sentences, Sabbar concurrently with another sentence he was already serving on other charges.

With respect to CODESA, authorities in al-Ayoun have used tactics different from those they used against the ASVDH to prevent it from declaring itself legally. The authorities stepped in to block CODESA from holding its constitutive assembly, set for October 2007, thereby impeding it from fulfilling one of the steps it must take before submitting its founding papers to the local authorities.

The Moroccan government wrote to Human Rights Watch in 2008 to justify its decision to prevent the legalization of CODESA:

Reviewing the principles underlying the inaugural assembly of the “Collective of Sahrawi Human Rights Defenders,” we find that the goal in establishing this association is to “promote the culture of human rights in Western Sahara and Morocco’s southern cities and universities that contain students coming from these regions.” This constitutes an infraction of the provisions of article 5 of [the law on associations].

Given that this association aims to organize and represent a specific segment of Moroccan society while excluding others, not to mention that

⁴⁴ Ibid., p. 89 (citing email communication from el-Ghalia Djimi, vice-president of the Sahrawi Association of Victims of Grave Human Rights Violations (ASVDH), to Human Rights Watch, June 6, 2008).

⁴⁵ Ibid., p. 93 (citing Human Rights Watch interview with M’hammed Drif, November 6, 2007).

⁴⁶ Al-Ayoun court of appeals case 90-2007 and al-Ayoun court of first instance case 248-2006.

even its name displays its discriminatory origin, it directly violates the requirements of article 3 of the [law on associations].

Furthermore, Moroccan authorities are preventing the legalization of this association due to the obligation to respect the bedrock principles of the nation. This group tries to use the cover of a human rights association to create a political organization connected to the Polisario Front, which aims to compromise national territorial integrity by advocating separatism. It thus violates the requirements of article 3 of the same royal decree, which states, “Any association is void if it is founded on a cause or has an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, the integrity of national territory, or the monarchical regime, or that calls for discrimination.”⁴⁷

In accusing CODESA of being an organization that is “discriminatory” by its essence, Moroccan authorities are applying an unreasonably expansive notion of that term, which is used to connote practices that have a negative impact on members of particular groups, not those that aim to positively benefit particular groups. The provisional bylaws of CODESA speak in general terms about protecting international human rights and ensuring respect for those rights by the Moroccan state (a copy of the bylaws is one of the documents an association must submit when declaring itself before the authorities). The bylaws contain nothing that could be construed as advocating discrimination. Another CODESA document, its draft platform, makes clear that its “priority is to defend the collective rights of the Sahrawi people” from violations committed by the Moroccan state, although it goes on to say that it will concern itself with all human rights issues in Western Sahara and not just those affecting the Sahrawi people. It also provides a political analysis of the evolution of the Western Sahara conflict that runs counter to the official Moroccan version, referring to Morocco’s “invasion” rather than “reclaiming” of the disputed region.

In embracing an objective that focuses on the plight of one particular category of persons (the Sahrawis), CODESA is no different from thousands of nongovernmental associations around the world that are formed to promote or defend the interests of one social group, be it a group sharing an ethnicity, religion, disability, common belief, condition, or interest. It is no more “discriminatory” than would be an organization formed by Moroccan migrants in France to defend the rights of Moroccans living in that country.

⁴⁷ Ibid., p. 105.

As for the claim that CODESA “aims to compromise national territorial integrity by advocating separatism,” and thus violates article 3 of the law on associations, such interference in freedom of association would require evidence of advocacy of violence to be justified under international law. However, the government provided no evidence, either to CODESA or to Human Rights Watch, to support the allegation that even peaceful advocacy of “separatism” was an aim of the organization. It is no secret that CODESA’s founders include several Sahrawi activists known for their pro-independence views. However, the personal views of the founders cannot be attributed to the organization itself, and they therefore provide no legal basis for acting against it.

By preventing CODESA’s registration—rather than by opposing it after it has filed its founding papers—Moroccan authorities are demonstrating once again that the law on association is in practice not a declarative regime but rather one of prior authorization.

The Commission for the Protection of Public Property in Morocco (INPBPM)

The National Commission for the Protection of Public Property in Morocco (l’Instance nationale pour la protection des biens publics au Maroc, INPBPM) is a Rabat-based organization dedicated to safeguarding Morocco’s land resources and heritage from corruption, misappropriation, or illegal monopolization by means of “confronting those who are corrupt or corruptible regardless of their social status.”⁴⁸ The INPBPM submitted its founding papers on August 1, 2006, to the local administration at the wilaya of Rabat-Salé-Zemmour-Zâir, where the clerk on duty refused to issue the association a provisional receipt. When the INPBPM heard nothing from the authorities within the 60-day period provided by the law, the INPBPM took the position that it was now properly declared, having adhered to the procedures laid down in the law on associations, its president, Tarek Sbaï, told us.⁴⁹

Rather than filing a case in court, the INPBPM initially protested to the minister of interior the refusal to issue receipts, since in its judgment, the refusal was a political matter, Sbaï said. The INPBPM wrote letters on November 15, 2006, to the prime minister and interior minister about the problem but received no answer. None of its correspondence addressed to public officials has produced a response, he said.

The INPBPM eventually filed a case in the Rabat administrative court, which responded by issuing an order designating a bailiff to accompany and bear witness to the INPBPM’s efforts

⁴⁸ INPBPM, “Protection of public property is the responsibility of ALL” («La Protection des biens publics est la responsabilité de TOUS»), brochure dated April 17-18, 2009. See also <http://inpbpm.zeblog.com> (accessed August 26, 2009).

⁴⁹ Human Rights Watch telephone interview with Tarek Sbaï, INPBPM president, April 30, 2009.

to file its papers at the wilaya.⁵⁰ A bailiff accompanied the INPBPM on June 2, 2009, and in his report stated that the association delivered the papers to the official on duty at the public affairs office within the wilaya, who refused to issue a provisional receipt for them or to identify himself.⁵¹

The INPBPM has formed chapters in the cities of al-Hoceima, Sidi Ifni, TanTan, Smara, Assa, and Mrirt, none of which has succeeded in getting a receipt when depositing founding documents. The Hoceima section sent its founding papers by registered mail to the local administration, return receipt requested, but their mailing was returned to the sender, Sbaï said. In some cases, he added, authorities explained orally to members of the local sections that since the national association was not recognized, they could not grant recognition to the local sections.⁵²

There have been practical consequences to the fact that authorities view the INPBPM as undeclared. Because it lacks legal personality, the association cannot file suits in Moroccan court in pursuit of its objective to protect public property.⁵³ In addition, authorities at the Rabat wilaya denied a request by the INPBPM to hold on April 17-18, 2009, a congress at the School of Mines, saying the INPBPM had no receipt, Sbaï said.

But, in a reflection of the ambiguities between practice and the law, after the wilaya refused, the INPBPM persuaded the School of Mines to make a meeting room available to it anyway. The INPBPM also managed to open a bank account, something that banks typically refuse to do for associations that cannot produce the receipts issued by the local administration.

The Union of Promotion Nationale Workers in al-Ayoune

The “Promotion Nationale” is a national public-sector program designed to provide work for unemployed or underemployed adults in labor-intensive projects and activities. It has a particularly large presence in Western Sahara.

In 2007 a group of workers in Western Sahara decided to form a union called the Union of Promotion Nationale Workers in al-Ayoune. They held a constitutive assembly on May 18 of that year. According to its president, Mohamed Mbarek Braikou, the union seeks

⁵⁰ Rabat Administrative Court, Order 198 in case 09/2/197, dated June 1, 2009. Copy on file with Human Rights Watch.

⁵¹ Report of bailiff Saïd Temri, Rabat, June 6, 2009. Copy on file with Human Rights Watch.

⁵² Human Rights Watch telephone interview with Tarek Sbaï, April 30, 2009.

⁵³ Article 6 of the law on associations states, in part, “All associations that are properly declared can launch actions before the courts...”

to give a voice to Promotion Nationale workers' demands for medical insurance, contributions to social security, paid vacation, higher salaries, public housing, compensation for workplace injuries, and equal pay for men and women. He said the union's members are all Sahrawis, but its demands are only social and economic, not political.

The union attempted to deliver its founding documents to the bacha of al-Ayoun on May 25, 2007. The bacha refused to take the file, explaining that the Promotion Nationale workers had no right to form a union, according to Braikou. The union engaged a bailiff to witness its second effort to deliver the file. Once again, the bacha refused to take it. The union next filed suit at the administrative tribunal of Agadir, which ruled that the bacha had exceeded his authority when he refused to accept the documents and issue a receipt. Despite this court decision, the bacha has continued to refuse to issue the receipt.

Braikou said that authorities routinely block the union's efforts to hold sit-ins in al-Ayoun to reinforce workers' demands. In April 2008 the union informed local authorities of its intention to hold a sit-in on the 8th of that month. The security chief of al-Ayoun asked the union orally not to hold the event, but no written order was provided. When the union went ahead with its sit-in, the police dispersed the demonstrators by force. Authorities gave an oral but no written refusal when the union informed them of plans to hold another sit-in on November 20, 2008. The union went ahead with the event, and once again the police used force to break it up. When the union informed authorities of a sit-in planned for March 26, 2009, authorities ordered them not to hold the event because other demonstrations were expected in al-Ayoun that day. The union canceled their event.⁵⁴

The union cannot hire a public hall in which to meet, and relies instead on the Fédération Démocratique du Travail, a national union, to make a room available to them in its al-Ayoun offices.⁵⁵

Associations led by Al-Adl wa'l-Ihsan members

Members of the Islamist al-Adl wa'l-Ihsan (Justice and Spirituality) movement encounter a whole variety of violations of their right to freedom of association. Although al-Adl wa'l-Ihsan contends that it obtained legal recognition in 1983 and has maintained it ever since,⁵⁶ authorities subject its members to a regime of surveillance and harassment. The

⁵⁴ Human Rights Watch telephone interview with Mohamed Mbarek Braikou, May 15, 2009.

⁵⁵ Human Rights Watch telephone interview with Mohamed Mbarek Braikou, April 28, 2009.

⁵⁶ Human Rights Watch interview with Mohamed Aghnaj, lawyer and member of al-Adl wa'l-Ihsan's human rights committee, Salé, March 16, 2009.

organization, thought to be Morocco's largest religiously-based movement and the strongest opposition force in the country, seeks to re-Islamize Moroccan society. It wants to curb the king's executive powers and contests article 19 of the Constitution, which confers on the king religious authority as "Commander of the Faithful."

In addition to restricting and harassing al-Adl wa'l-Ihsan and its members directly, authorities around the country apply various forms of pressure on associations that are not formally affiliated with al-Adl wa'l-Ihsan but whose leadership includes members of that movement. The local authorities rarely state their reasons for these and other actions impeding these groups, just as they rarely state their reasons when they refuse to take other associations' documents or issue them receipts. However, members of the affected associations say they are given to understand that the problem resides in the associations' having selected as leaders persons affiliated with al-Adl wa'l-Ihsan. The movement has documented the plight of tens of organizations that local administrative authorities have destabilized in this way.⁵⁷

While some of these associations led by al-Adl wa'l-Ihsan members continue to pursue their activities, the impediments are real: In addition to the usual challenges facing undeclared associations, such as not being able to hold meetings in public halls, in some cases local authorities ordered members of the association to cease all activities, telling them the association was not legally recognized, or posted police outside the association's office to bar persons from entering.

For example, al-Ma'rifa,⁵⁸ an educational association working to raise the professional level of teachers and defend their socioeconomic interests in Sidi Slimane, in the province of Kenitra (Gharb-Chrarda Bnei Hcene wilaya), has, since its creation in 2005, encountered the refusal of the bacha to accept its documents. Al-Ma'rifa President Mohamed Dahhan said he tried four times to meet with the bacha to discuss this refusal, but the bacha refused to meet each time. "The officials told me the bacha was not in, but I could see him entering and leaving the building," Dahhan told us.

Dahhan said the bacha never informed the association why authorities refused its file, but he said he is quite sure that it is due to having members of al-Adl wa'l-Ihsan in its leadership. Al-Ma'rifa has largely ceased to function, Dahhan said.⁵⁹

⁵⁷ Youth section of al-Adl wa'l-Ihsan, "The Situation of Associational Rights," March 2009 (in Arabic).

⁵⁸ Al-Marifa means "knowledge."

⁵⁹ Human Rights Watch interview with Mohamed Dahhan, Sidi Slimane, July 15, 2009.

The Mishkat Educational and Cultural Association, also based in Sidi Slimane, claims that it too is victim to the authorities' intolerance for the presence of office-holders affiliated with al-Adl wa'l-Ihsan.⁶⁰ At its founding in July 1999, al-Mishkat had no problem filing its documents with the local authorities and obtaining its final receipt. The association then set about pursuing its activities, which were primarily charitable and social: distributing meat to the poor on the occasion of Muslim feasts, and arranging for doctors to provide free medical care, medications, and circumcisions of newborns.

However, shortly after its founding, al-Mishkat began to encounter obstacles to its activities. Authorities blocked an outing for families it had organized to a lake on May 14, 2000. They then blocked a book fair al-Mishkat had planned to hold in a city-run hall in November 2000. After obtaining approval to use the hall, they were informed orally that the hall was no longer available to them. The bacha issued a written order to that effect only after al-Mishkat held two days of sit-in protests, al-Mishkat's former president, Saïd al-Khli', said.

Al-Mishkat's problems with the authorities grew more severe the following year, when the association went to the bacha to present the required written notification of the results of its internal elections. Instead of issuing a receipt on the spot as required by law, the official at the bacha's office informed al-Mishkat that it would have to cease its social and charitable activities. Al-Mishkat member Mohamed Lamiesser explained, "We were distributing every year 120 sheep, providing healthcare for about 400 people, arranging circumcisions for free and paying for the family celebration around the circumcision. This is a poor area of the country. They saw that we were competing with the state in the provision of services."

Al-Mishkat saw no choice but to submit to this demand, said al-Khli'. At the same time, the organization decided to change its bylaws so that elections would be held at five-year instead of two-year intervals. One reason for this amendment, al-Khli' explained, was to minimize the frequency that al-Mishkat had to file declarations with the authorities, since these filings were the occasion for interference. The organization submitted its amended bylaws in 2001—eliminating charitable and social work objectives and lengthening the intervals between elections—and received its receipt from the bacha. Al-Mishkat continued its social and charitable work, but at a reduced level and only in a supporting role for other organizations authorized to conduct those activities, Lamiesser said.

⁶⁰ Al-Mishkat means "the niche" in Arabic, and is found in a Quranic verse where it is associated with light and illumination. Information in this case study comes from Human Rights Watch interviews with al-Mishkat former president Saïd el-Khli' and member Mohamed Lamiesser, Sidi Slimane, July 15, 2009, and telephone interview with Slawi Benali, March 25, 2009.

Despite issuing the receipt in 2001, authorities only intensified their harassment of al-Mishkat. Beginning that year the authorities refused each time the association sought to hire the town's youth center for an event.

In 2006, following its scheduled internal elections, al-Mishkat attempted to submit the notification of the voting results along with other required documents, but the bacha refused to accept them. Al-Mishkat then hired a bailiff to witness and report on its efforts to submit the documents to the Economic and Social Services office of the *bachaouia* (the bacha's administration) of Sidi Slimane on September 12 and 15, 2006. The bailiff's report states that the official on duty refused to take or sign for the documents.⁶¹

Al-Mishkat did not challenge the bacha's refusal in an administrative court, preferring to count on the bailiff's report as proof of their good faith effort to comply with the law. Al-Khli' told us also that they feared that filing suit in court would trigger a reprisal by authorities; al-Mishkat preferred to quietly pursue its activities and hoped to be left alone.

But when al-Mishkat sought to organize a lecture in a public hall for February 3, 2007, by al-Khli' about his pilgrimage to Mecca and Medina, the bacha summoned its leaders on February 1 to inform them orally they could not hold the event, even though they had earlier obtained approval to use the hall. The bacha refused their request to provide them written notification of the ban and its legal basis. When people approached the public hall on February 3 to attend the event, security forces turned them away.⁶²

Al-Mishkat has been able to conduct without harassment a limited number of activities in its offices, which they rent from a private landlord and which can accommodate about 30 persons. The one exception, said president Slawi Benali, was a several-week-long course al-Mishkat offered to persons preparing to go on pilgrimage to Mecca and Medina. Benali said that after authorities noticed the would-be pilgrims gathering at the office, the police stationed an agent near the entrance to al-Mishkat's office and later phoned some of those taking the course or visited their homes to question them about it. Benali said participants in the course informed him of these measures; none said they suffered any other measures or were prevented from departing on the pilgrimage.

⁶¹ Report of bailiff Jamal Hamdi, September 15, 2006. Copy on file with Human Rights Watch.

⁶² Email communication from Saïd Khli' to Human Rights Watch, August 20, 2009; and "The Bacha of the City of Sidi Slimane Bullies the Citizenry," al-Mishkat press release, February 3, 2007 (in Arabic).

While authorities have not shut Al-Mishkat down, their refusal to recognize it hampers even the limited activities it can undertake since being forced to abandon its charitable and social mission. Among other things, the lack of legal recognition makes al-Mishkat ineligible for grants that the local authorities make available to local organizations.

Benali said that even though no official ever gave him a reason for the repressive measures, he is convinced that the affiliation with al-Adl wa'l-Ihsan is behind it. Benali acknowledged that he and other leading members of al-Mishkat are members of al-Adl wa'l-Ihsan but insisted that their association and its activities are independent of that movement. Mohamed Lamassier said, “The unfortunate thing is that people were benefiting from our services—and the state has deprived them of those services.”

As-Sobh was founded in 1999 in the city of Sidi Kassem to pursue cultural, athletic, and social activities, according to its founding statutes. Around the time that authorities granted as-Sobh its final receipt, the association—like many other recognized associations—received a subsidy from the municipality (in as-Sobh’s case, a one-time grant of 3,000 DH, equivalent to US\$375). In 2002 as-Sobh rented an office in downtown Sidi Kassem from a private landlord.

In its early years, as-Sobh conducted its activities without significant obstacles, holding cultural and educational events at the local youth center. In May 2003 it sponsored an event at which doctors provided medical care and circumcisions at no charge.

Shortly after that, authorities in Sidi Kassem began harassing the association, in particular by preventing it from holding events except at its own headquarters. In 2005 they blocked a festival of traditional chanting at a local, privately owned movie theater, a teachers’ conference for teachers at the public library, and an evening devoted to the Quran at the town’s youth center during Ramadhan. In 2006 the authorities blocked as-Sobh from using a youth center for a children’s festival.

The bacha of Sidi Kassem at the time, Abdelhak Mechiche, began summoning as-Sobh’s president, Qassem Baraka, to tell him the association would have to cease its activities or close down without ever giving a reason, according to Baraka. The police also summoned Baraka for questioning, the gist of which was to get him to confirm that as-Sobh was in fact an appendage of al-Adl wa'l-Ihsan. Baraka insisted that as-Sobh was an independent organization, even if some of its office-holders belonged to that movement.⁶³

⁶³ Human Rights Watch interview with Qassem Baraka, president of as-Sobh, Sidi Kassem, July 15, 2009.

On November 14, 2006, as-Sobh held its scheduled congress and later that day tried to deliver to Mechiche the list of its newly elected executive bureau and other required documents. When the bacha refused to receive the documents, they sent them again by registered mail; again the bacha refused them. On December 14 as-Sobh officials had a bailiff accompany them as they tried to submit the documents. As the bailiff noted in his report, the bacha refused to take the file, explaining that as-Sobh’s executive committee “could not be renewed.”⁶⁴

With the bailiff’s report of December 14, 2006, proving their good faith effort to file the required documents, as-Sobh waited 60 days before resuming its activities. After receiving no formal objection, as-Sobh began operating again only to find that authorities were still barring it from organizing events except at its own office. Then, beginning in autumn 2007, authorities posted policemen outside as-Sobh’s office who barred all access to it around the clock. One of the officers on duty told members of as-Sobh that he had orders from above to prevent all comers from gaining entry.⁶⁵ Thus, authorities have all but shut down as-Sobh, through measures that have no basis in law.

In Morocco, as in many countries around the world, parents of public school students form associations in order to monitor and support the education of their children. These associations, like others in Morocco, must declare themselves before local authorities if they wish to collect dues and pursue various other activities.

According to al-Adl wa’l-Ihsan members, authorities have refused to issue receipts for parent associations at schools in various cities around the country when those associations have elected members of al-Adl wa’l-Ihsan to leadership positions. Abderrahim Bensaïd, of as-Sobh, recounted how this practice worked in Sidi Kassem:

My son is in the Bir Anzarane elementary school. In September 2006 the parents elected nine parents to represent them. Then these nine parents chose their office-holders, including Mohamed Bilali as president and myself as a counselor. Both of us are active in al-Adl wa’l-Ihsan. When we went to give the caïd of the arrondissement the list of the newly elected committee, he looked at it and replied, “These two [meaning Bilali and myself] cannot be chosen.” He announced this to the school principal and asked the outgoing president of the committee—in which there were no Adl members—not to

⁶⁴ Report of bailiff Jaouad Skalli, December 14, 2006.

⁶⁵ Human Rights Watch interview with Abderrahim Bensaïd, as-Sobh secretary-general, Sidi Kassem, July 15, 2009.

turn over the committee's official stamp and administrative documents. The justification he gave was that the elections had not been conducted in a legal fashion. But this was only a pretext. We were not about to step down: that was a decision that the assembly of parents would have to take. Instead, we decided to freeze the committee's activities. When the time came for new elections, we decided not to have any al-Adl wa'l-Ihsan members running. The parents elected a new committee, and it got its receipt.⁶⁶

Group against Racism and for Assisting and Defending Foreigners and Migrants (GADEM)

The Group against Racism and for Assisting and Defending Foreigners and Migrants (Groupe Anti-raciste d'Accompagnement et de Défense d'Etrangers et Migrants, GADEM) monitors the treatment by Moroccan authorities of migrants, in particular sub-Saharan living in Morocco or crossing Moroccan territory in the hope of reaching Europe. GADEM has been unable to obtain its registration receipt because authorities have said they object to its name.

When GADEM submitted its founding papers to the wilaya of Rabat-Salé-Zemmour-Zâir on December 20, 2006, the official on duty refused to issue a receipt for them. GADEM has contacted the wilaya several times in writing to obtain the receipt, without success.

Two weeks after submitting its founding papers, GADEM president Hicham Rachidi received a summons to report to police headquarters in Rabat. There, the police questioned Rachidi about his past and present activities and political affiliation. Then, recalls Rachidi,

We got to the heart of the matter. The police officer asked me if racism existed in Morocco. I answered that we were establishing the association precisely to make observations and reports on whether racism existed or not. And whatever we said, there were norms that had to be respected and that Morocco had ratified. The discussion lasted three hours. Other officials came in and took part in the discussion, in an atmosphere that was even a bit jocular because they seemed taken aback that I was not intimidated and that I was even making jokes. Then the officers told me, "You have to eliminate the reference to racism if you want the association to be recognized." I answered that I was not empowered to change the statutes or the name of the association because only the general assembly could change that.

⁶⁶ Ibid.

Rachidi sent letters via registered mail with return receipt requested to the wali, the prime minister, and the minister of interior, but at this writing has received no response to any of these.⁶⁷ Rachidi does not even have the registered mail delivery receipts. He went several times to the post office to request them and was told each time to check again later.

Rachidi says that GADEM, despite lacking a receipt, has managed to open a bank account and rent office space.⁶⁸ It has also established itself as a leading critic of the government's policies toward sub-Saharan migrants in Morocco.

Neither Whores Nor Submissives (NPNS)

Another association that faces possible obstacles to registering because of its name is Neither Whores nor Submissives (Ni Putes ni Soumises, NPNS). The organization, created in France, advocates on behalf of the rights of girls and women, particularly in poor and working-class settings and wherever they are at risk of violence and face pressure to adhere to religiously-inspired norms of behavior.

After the French daily *Le Monde* reported on February 20, 2009, that NPNS planned to open a branch in Morocco,⁶⁹ Minister of Interior Chekib Benmoussa issued a statement announcing that should NPNS ever apply for legal recognition, authorities would not allow it. Minister Benmoussa explained, "The approach taken by this association, which has conducted respectable work in France, does not correspond to the approach that has been adopted in Morocco for treating issues related to the status of women." He added, "Morocco has several national and international associations that are active in protecting and promoting women's rights and that fully respect our values and traditions."⁷⁰ Minister Benmoussa did not frame his objection in terms of any of the criteria provided by article 3 for nullifying an association.

Yet, in a reflection of the frequent paradoxes found in the exercise of civil liberties in Morocco, the NPNS president travels frequently to Morocco to represent the organization and is well received, according to Mar Merita Blat, manager of NPNS's international section.⁷¹

⁶⁷ Email communication from Hicham Rachidi to Human Rights Watch, August 28, 2009.

⁶⁸ Email communication from Hicham Rachidi, president of GADEM, to Human Rights Watch, May 12, 2009.

⁶⁹ Florence Beaugé, "Neither Whores nor Submissives opens a branch in Morocco" («Ni putes ni soumises ouvre une antenne au Maroc») *Le Monde*, February 20, 2009.

⁷⁰ Communiqué published by Maghreb Arabe Presse, February 20, 2009.

⁷¹ Email communication from Mar Merita Blat to Human Rights Watch, April 3, 2009.

Appendix: Joint Letter to Moroccan Ministers of Justice and Interior

(The Arabic version of this letter is online at the website of Human Rights Watch)

Note: Moroccan authorities had not replied to this letter as of September 25, 2009.



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

Le 26 juin 2009

M. Abdelouahed Radi
Ministre de la Justice
Ministère de la Justice
Place Mamounia
administratif
Rabat, Maroc
Télécopieur: +212 537 73 07 72/ +212 537 72 37 10
76 20 56

M. Chakib Benmoussa
Ministre de l'Intérieur
Ministère de l'Intérieur
Quartier
Rabat, Maroc
Télécopieur: +212 537

Messieurs les ministres,

La présente lettre vise à vous informer que Human Rights Watch (HRW), le Réseau euro-méditerranéen des droits de l'Homme (REMDH) et l'Observatoire marocain des libertés publiques rédigent parallèlement des rapports sur la liberté d'association au Maroc. Elle vise également à inviter les autorités marocaines à bien vouloir communiquer certains renseignements de même que des commentaires généraux, qui seront incorporés à ces rapports. En dernier lieu, la présente communication vise à vous faire part de certaines préoccupations et à vous donner des indications sur les résultats préliminaires de notre démarche.

Tout renseignement pertinent que nous vous remercions de bien vouloir nous transmettre, au plus tard le 24 juillet 2009, seront intégrés aux rapports finaux que HRW, le REMDH et l'Observatoire marocain des Libertés publiques comptent publier dans les prochains mois. Par ailleurs, nous sommes disposés à nous rendre à Rabat au cours du mois de juillet afin de nous entretenir avec vous des questions soulevées dans ces rapports. Une fois de plus, toute information pertinente qui nous serait alors communiquée serait intégrée à nos rapports.

Le Rapport du REMDH constituera un suivi de ses deux premières études sur l'état et l'évolution de la liberté associative dans la région euro-méditerranéenne, publiée en décembre 2007 (<http://www.euromedrights.net/usr/00000019/00000077/00000080/00003055.pdf>) et décembre 2008 (<http://www.euromedrights.net/usr/00000019/00000077/00000080/00002742.pdf>)

Le Rapport de l'observatoire marocain des libertés publiques traitera la situation des libertés civiles, y compris le droit d'association.

Les rapports de HRW, du REMDH et de l'Observatoire marocain des libertés publiques ne couvriront pas tous les aspects de la législation et des pratiques en matière de liberté d'association. Il sera axé essentiellement sur les trois préoccupations suivantes:

À plusieurs reprises, les autorités locales relevant du Ministère de l'Intérieur (bachas, caïds) auraient refusé de réceptionner la déclaration et les autres pièces, qu'aux termes de la loi, une association est tenue de présenter lors de sa création ou à la suite de changements survenus dans son organisation interne, notamment dans la composition de son bureau dirigeant. Nous avons été informés que, dans d'autres cas, les autorités locales auraient refusé de délivrer le récépissé provisoire accusant réception de ces documents.

Ces pratiques, qui seraient contraires à l'article 5 du dahir 1-58-376 tel qu'amendé par la suite (ci-après, la Loi sur les associations), ont pour effet de transformer la procédure relative à la création d'associations de régime de simple déclaration en régime d'autorisation préalable. Elles placent également les associations dans une situation irrégulière et vulnérable qui restreint le droit d'association des membres actuels et potentiels de celles-ci.

Il existe en théorie des voies de recours pour les associations victimes du refus des autorités locales de réceptionner leur déclaration ou de leur délivrer le récépissé réglementaire.

Toutefois, dans la pratique, ces voies de recours (par exemple, envoi des documents par courrier recommandé ; recours aux services d'un huissier de justice afin d'obtenir une preuve écrite des démarches visant à se conformer à la loi ; procédure devant un tribunal administratif) se sont avérées être un remède inefficace pour garantir les droits des associations énoncés dans la loi.

La Loi sur les associations énumère un certain nombre de motifs de dissolution d'associations (« porter atteinte à la religion musulmane, à l'intégrité du territoire national, au régime monarchique, ou faire appel à la discrimination »). Ces motifs semblent être d'une portée beaucoup plus vaste et risquent d'ouvrir la voie à une interprétation plus subjective que ceux, plus étroits, énoncés à l'article 22 du Pacte international relatif aux droits civils et politiques. Cet article dispose en effet que l'exercice de ce droit ne peut faire l'objet « que des seules restrictions prévues par la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre public, ou pour protéger la santé ou la moralité publique ou les droits et les libertés d'autrui. » Dans sa forme actuelle, l'article 3 de la Loi sur les associations ouvre la voie à l'invocation d'un grand nombre de motifs pour s'opposer à la reconnaissance d'une association, ou pour demander aux tribunaux de dissoudre une association déjà reconnue.

Les cas des associations mentionnées ci-après figureront dans nos trois rapports. Sans être un échantillonnage représentatif, ces cas présentent toutefois une diversité tant sur le plan de la distribution géographique que des objectifs associatifs. Nous souhaitons vivement connaître le point de vue des autorités marocaines sur les démarches de ces associations en vue d'obtenir la reconnaissance juridique. En outre, nous vous invitons à nous communiquer toute mise au point dans le cas d'informations que vous jugeriez inexacte, ou toute information qui n'apparaît pas dans ce document et qui, selon vous, devrait y figurer. Une copie de nos rapports finaux vous sera envoyée au moins dix jours avant leur publication, ceci dans l'espoir que vous en prendrez connaissance et entamerez une discussion en profondeur de son contenu avec nous.

L'Association nationale des diplômés chômeurs au Maroc - Rabat

Selon les renseignements qui nous ont été communiqués, des fonctionnaires de la wilaya de Rabat-Salé-Zemmour-Zâir auraient refusé de délivrer un récépissé provisoire lorsque les membres fondateurs de l'association ont voulu déposer les documents de fondation en octobre 1991. Depuis lors, l'association a tenu neuf assemblées générales, dont la dernière date de décembre 2008. À chaque occasion, l'association aurait tenté, en vain, d'informer par écrit les autorités de la wilaya de la composition du nouveau bureau dirigeant,

conformément à l'article 5 de la Loi sur les associations, mais les autorités auraient chaque fois refusé de délivrer un récépissé.

Les sections locales de l'ANDCM à travers le pays ont été confrontées à la même difficulté. Il est arrivé à l'occasion que les autorités aient délivré le récépissé provisoire au moment de la création d'une section mais, par la suite, elles ont toujours refusé de délivrer le récépissé lorsque les sections déposaient le document réglementaire attestant des changements survenus dans l'organisation interne de l'association. Ce fut le cas en particulier de la section de Nador qui, dans un premier temps, s'est vue délivrer le récépissé temporaire au moment de sa création, mais qui par la suite n'a pu obtenir de récépissé pour le document faisant état de la composition du nouveau bureau dirigeant qu'elle a transmis à la suite du scrutin interne de décembre 2008.

Réseau Amazigh pour la citoyenneté - Rabat

Le Réseau a soumis sa déclaration de fondation aux autorités de la wilaya de Rabat-Salé-Zemmour-Zâir suite à son assemblée inaugurale de juillet 2002. Selon le Réseau, les autorités ont alors refusé de lui délivrer le récépissé réglementaire. À la suite de sa deuxième assemblée plénière tenue en juillet 2005, l'association a transmis à nouveau les pièces d'usage, mais ce n'est qu'en juin 2006 qu'elle s'est vue délivrer un récépissé, pour la première fois. Elle n'a toutefois toujours pas reçu le récépissé pour les pièces qu'elle a soumises à la suite de son assemblée plénière d'août 2008.

Afin de se conformer à la loi, les sections locales du Réseau à Tanalt, Tiznit, Casablanca, et Ifrane ont soumis les pièces réglementaires aux autorités mais aucune d'elles n'a réussi à se faire délivrer le récépissé indiquant qu'elles s'étaient bien conformées à la Loi sur les associations.

Les difficultés rencontrées par la section locale de la ville d'Assa ont été d'un autre ordre. Celle-ci a bien reçu un récépissé après avoir présenté sa déclaration de fondation au bacha de la ville mais, au début de 2009, ce dernier l'a informé que le parquet général avait exprimé des « réserves » concernant l'association. Dans sa lettre (dont nous avons obtenu copie), le bacha n'indique pas la nature des réserves en question, mais on peut supposer que cet avis signifie que les autorités s'opposent désormais à la création de cette association.

Association Aguelmam pour le développement et la culture - Ifrane

Cette association de la commune de Dayet 'Aoua du district de Dayet Ifrah (province d'Ifrane) a obtenu délivrance d'un récépissé définitif pour sa déclaration de fondation mais n'a pu, par la suite, obtenir le récépissé pour le document attestant de la composition de son nouveau bureau dirigeant résultant du scrutin interne de décembre 2007.

Association Tamount pour la culture et le développement – Séfrou

(Rectificatif : cette lettre a indiqué à tort que l'association « Tamount » est visée par ces mesures alors que c'est la section marocaine de l' Association des Populations des Montagnes du Monde qui est concernée.)

Les difficultés auxquelles a fait face cette association de Tazouta (province de Séfrou) sont d'un autre ordre mais il semble qu'elles découlent également du refus des autorités locales d'appliquer la Loi sur les associations. Tamount s'est bien vu délivrer le récépissé provisoire lors du dépôt de sa déclaration de fondation en 2007 mais elle n'a, toutefois, jamais reçu le récépissé définitif. En vertu de la loi, si la nouvelle association n'est informée d'aucune opposition à sa création dans les 60 jours suivant la délivrance du récépissé provisoire, elle est considérée légalement constituée et peut entreprendre ses activités. Toutefois, des fonctionnaires de la localité de Mrirt auraient affirmé à Tamount que le reçu provisoire était « périmé » et qu'elle ne pouvait prétendre être une association légale aussi longtemps qu'elle n'avait pas reçu le récépissé définitif, ce qui semble être un point de vue contraire à la loi. C'est pour ce motif que les autorités de Mrirt ont refusé de mettre une salle réunion publique à la disposition de Tamount en mars 2009, ce qui a contraint l'association de tenir sa réunion dans une maison privée.

Association Thawiza pour la culture et le développement - Nador

Cette association de Selouane, dans les environs de Nador, a obtenu la reconnaissance juridique lors de sa création en 2005 mais, mais il semblerait qu'à la suite du renouvellement du bureau dirigeant au début de 2009, le caïd de Selouane aurait refusé de délivrer le récépissé pour le document faisant état de la composition du nouveau bureau dirigeant.

Association sahraouie des victimes de violations graves commises par l'État marocain (ASVDH) - El Aioun

Selon el-Ghalia Djimi, vice-président d'ASVDH, le bacha d'El Aioun refuse depuis 2005 de réceptionner les documents de fondation de l'association. En septembre 2006, le tribunal administratif d'Agadir déclarait dans un jugement qui allait devenir définitif que le bacha

avait outrepassé son autorité en refusant de réceptionner le dossier de fondation (affaire 41/2006 du tribunal administratif d'Agadir, et affaire 188/5/2008 de la cour d'appel). Il semblerait que le bacha, en dépit de ce jugement, continuerait de faire obstacle aux démarches de l'ASVDH en vue de déposer les documents de fondation.

L'Instance nationale pour la protection des biens publics au Maroc (INPBPM) - Rabat
Le président de l'INPBPM représentée par Tarek Sbaï, nous a déclaré que les membres fondateurs ont déposé les documents de fondation le 1^{er} août 2006 au siège de la wilaya de Rabat-Salé-Zemmour-Zâir, mais que le fonctionnaire en service aurait alors refusé de délivrer le récépissé provisoire. Depuis lors, l'Instance a créé plusieurs sections locales, dont aucune n'a pu obtenir délivrance du récépissé provisoire lors du dépôt des documents de fondation. Selon Tarek Sbaï, il s'agit des sections d'Al Hoceima, Sidi Ifni, TanTan, Smara, Assa, et Mrirt. La section d'Al Hoceima a envoyé ses documents de fondation par courrier enregistré avec demande d'un avis de réception, mais l'enveloppe lui a été retournée par la poste.

Promotion nationale, section syndicale d'El Aioun - El-Aioun

Ayant décidé en 2007 de former une section syndicale, un groupe de travailleurs de Promotion nationale à El Aioun tenaient une assemblée plénière le 18 mai puis tentaient, en vain, le 25 mai de déposer les documents de fondation de la section auprès du bacha d'El Aioun. La section syndicale a alors engagé un huissier de justice chargé de consigner les démarches de la section en vue de se conformer à la loi. Les représentants de la section syndicale affirment toutefois que le bacha a, de nouveau, refusé de réceptionner les documents.

Al-Ma'rifa - Province de Kénitra

Depuis 2005, Al-Ma'rifa, association éducative de Sidi Slimane, n'a pas réussi à déposer ses documents de fondation auprès du bacha, qui refuse de les réceptionner. Le président de l'association aurait même tenté, sans succès, de rencontrer le bacha pour discuter du problème.

Al-Michkat - Province de Kénitra

L'association Al-Michkat n'a pas rencontré de problème lorsqu'elle a déposé ses documents de fondation auprès des autorités locales de Sidi Slimane en 1999. En 2001, Al-Michkat a modifié son règlement interne afin de permettre la tenue de l'élection des membres du bureau dirigeant tous les cinq ans, plutôt que tous les deux ans. À la suite d'une élection en

2006, l'association a déposé le document attestant des changements apportés au bureau dirigeant, mais le bacha a refusé de réceptionner le document sans donner d'explication, et cela même en présence d'un huissier de justice engagé par al-Michkat pour prendre acte des démarches d'Al-Michkat pour se conformer à la loi.

Es-Sobh - Province de Sidi Kassem

Es-Sobh, association à vocation culturelle, sportive et sociale, a été fondée en 1999. Par la suite, l'association a fait l'objet de différentes formes de harcèlement de la part des autorités. Le président, Kacem Baraka, a été convoqué par le bacha, qui l'a sommé de dissoudre l'association. Puis, le 14 novembre 2006, lorsque Es-Sobh a tenté de déposer le document attestant de la nouvelle composition de son bureau dirigeant, le bacha a refusé de réceptionner le document. Le 14 décembre 2006, les dirigeants de l'association, cette fois-ci accompagnés d'un huissier de justice, ont tenté à nouveau de déposer le document. Ce fut en vain car le bacha a de nouveau refusé de le réceptionner au motif que « le bureau dirigeant d'Es-Sobh ne pouvait pas être renouvelé ».

Éducation Jeunesse - Salé

Les autorités locales ont refusé de délivrer un récépissé à l'association, lorsque celle-ci déposa les documents de fondation de la nouvelle section de Salé, le 7 juin 2007. À la suite de lobbying intense et de vives protestations, l'association a finalement obtenu la délivrance du récépissé, après plus d'un an d'attente.

Groupe antiraciste d'accompagnement et de défense des étrangers et des migrants (GADEM)
- Rabat

GADEM s'est donné comme mission de suivre de près le traitement par les autorités marocaines des migrants, en particulier des migrants subsahariens, qui se trouvent au Maroc ou qui traversent son territoire dans l'espoir d'atteindre l'Europe.

L'association a déposé sa déclaration de fondation au siège de la wilaya de Rabat-Salé-Zemmour-Zâir le 20 décembre 2006. Le fonctionnaire en faction a refusé de lui délivrer le récépissé d'usage. Deux semaines plus tard, Hicham Rachidi, président de GADEM, a reçu une convocation l'enjoignant de se présenter à la préfecture de police de Rabat. M. Rachidi nous a déclaré que, sur place, la police l'a interrogé sur son passé, sur ses activités, de même que sur ses affiliations politiques. On lui a alors dit qu'il devrait éliminer toute référence au racisme dans le nom de l'association s'il souhaitait que celle-ci soit reconnue.

M. Rachidi a rétorqué que seule l'association réunie en assemblée plénière était habilitée à changer le nom de l'association.

Par la suite, M. Rachidi a envoyé une lettre par courrier recommandé avec accusé de réception au wali, au Premier ministre et au ministre de l'Intérieur, mais il n'a reçu ni réponse ni avis de réception. M. Rachidi a toutefois appris quel était le numéro de dossier (numéro 6059) que le service des associations de la wilaya avait attribué à la déclaration de fondation déposée par l'association le 20 décembre 2006.

* * *

Eu égard à ce qui précède, nous vous saurions gré de bien vouloir nous transmettre vos réponses aux questions suivantes :

- (1) Pour chacune des associations dont le cas est abordé dans la présente lettre (ANDCM, Réseau Amazigh pour la citoyenneté, Aguelmam, Thawiza, ASVDH, INPBPM, section syndicale d'El Aioun de Promotion Nationale, Ma'rifa, Michkat, es-Sobh, Éducation Jeunesse – Salé, GADEM), est-il exact que les autorités locales ont refusé, soit de réceptionner les documents, soit de délivrer le récépissé accusant réception de ces documents lors de la création de l'association ou lors de changements intervenus dans les structures ou l'organisation interne de l'association existante et pour lesquels toute association est tenue de fournir une attestation écrite aux autorités? Si tel est le cas, nous vous remercions de nous bien vouloir préciser les motifs et le fondement juridique de ces refus? Les autorités locales ont-elles fourni par écrit, ou par un autre moyen, le motif de leur refus à l'association concernée?
- (2) Le gouvernement a-t-il élaboré des lignes directrices et des procédures détaillées portant sur l'interprétation des motifs, énoncés à l'article 3 de la Loi sur les associations, sur lesquels se fonde le refus d'autoriser la création d'une association (« porter atteinte à la religion musulmane, à l'intégrité du territoire national, au régime monarchique », ou « faire appel à la discrimination »)? Dans l'affirmative, quelles sont ces lignes directrices et ces procédures? Le gouvernement a-t-il mis en place un mécanisme d'examen interne des décisions rendues. Dans l'affirmative, quels sont ces mécanismes?
- (3) Lorsque le gouvernement refuse l'enregistrement d'une association, est-il tenu de donner le motif de son refus? Existe-t-il des règles ou des directives qui précisent : a) qui, au sein du gouvernement, est chargé d'accepter ou de refuser l'enregistrement d'une association, b) quel est niveau d'approbation requis; c) de quelle façon le refus est-il communiqué à l'association concernée ou rendu public? Dans

- l'affirmative, pourriez-vous nous transmettre les textes de ces règles ou ces directives? Existe-t-il des motifs autorisant l'État à refuser de réceptionner les documents de fondation d'une nouvelle association ou les documents que sont tenues de soumettre les associations existantes dans certaines circonstances, ou de délivrer les récépissés provisoires accusant réception de ces documents? Dans l'affirmative, les autorités doivent-elles fournir un motif justifiant leur refus? Existe-il des règles ou des directives précisant la marche à suivre pour communiquer le refus à l'association concernée ou pour le rendre public? Dans l'affirmative, pourriez-vous nous transmettre une copie de ces règles ou directives?
- (4) Le gouvernement maintient-il des données et des statistiques annuelles sur les questions suivantes : le nombre d'associations ayant entrepris des démarches pour s'enregistrer ou renouveler leur enregistrement auprès des autorités des wilayas ; les associations qui ont pu s'enregistrer ou renouveler leur enregistrement ; les associations dont on a refusé de réceptionner les documents ou délivrer un récépissé ; les motifs du refus de réceptionner les documents ou de délivrer le récépissé ; le nombre de cas réexaminés par les autorités judiciaires? Dans l'affirmative, pourriez-vous nous communiquer celles des trois dernières années?
- (5) Le Maroc ayant ratifié le Pacte international relatif aux droits civils et politiques, comment le gouvernement entend-il concilier les motifs particulièrement contraignants énoncés à l'article 3 de la Loi sur les associations avec les motifs moins contraignants énoncés à l'article 22 du Pacte?
- (6) Le gouvernement maintient-il des données et des statistiques annuelles sur le nombre d'associations qui ont été dissoutes ou suspendues pour un des motifs énoncés à l'article 3 de la Loi sur les associations? Dans l'affirmative, pourriez-vous nous communiquer celles des trois dernières années? Existe-t-ils des dissolutions ou des suspensions d'associations qui ont été invalidées à la suite d'un examen interne?
- (7) Est-il exact que les autorités locales de Mrirt ont refusé en mars 2009 de permettre à l'association Tamount d'utiliser une salle de réunion publique au motif que le récépissé provisoire délivré en 2008 était « périmé » ?
- (8) Est-il exact que les autorités locales se sont opposées à l'enregistrement de la section d'Assa du Réseau Amazigh pour la citoyenneté? Dans l'affirmative, quels étaient le motif et le fondement juridique de ce refus?
- (9) Dans l'affaire concernant l'ASVDH détaillée dans la présente lettre, sur quel fondement juridique repose le refus des autorités d'appliquer la décision du tribunal administratif, lequel a statué que les autorités locales avaient outrepassé leurs prérogatives en refusant de réceptionner les documents de fondation de l'ASVDH? En vertu de la loi, les fonctionnaires de l'État sont-ils tenus en cette matière de se conformer aux décisions des tribunaux administratifs?

(10) Quels sont les mécanismes de formation et de surveillance mis en place pour assurer la conformité des actes des fonctionnaires locaux aux dispositions de la Loi sur les associations, en particulier en ce qui concerne la formation des associations?

Comme il a été mentionné en début de lettre, le rapport final intègrera toutes les informations pertinentes que vous voudrez bien nous communiquer, au plus tard le 24 juillet 2009. Nous rappelons que nous sommes disposés à nous rendre au Maroc au cours du mois de juillet pour nous entretenir avec vous des lois et des pratiques ayant une incidence sur l'exercice de la liberté d'association au Maroc. Nous vous invitons à communiquer avec nous dans le cas où vous souhaiteriez obtenir de plus amples informations sur ces cas pour lesquels nous souhaitons obtenir vos commentaires.

Vous remerciant par avance de l'intérêt que vous réserverez à la présente, nous vous prions de croire, Messieurs les Ministres, en l'expression de notre haute considération.

Sarah Leah Whitson, directrice exécutive, HRW, division du Moyen-Orient et de l'Afrique du Nord



Kamel Jendoubi, Président, REMDH



Kamal Lahbib, Observatoire marocain des libertés publiques



cc: Ahmed Herzenni, président, Conseil consultatif des droits de l'Homme, via fax +212 537.72.68.56

S. E. Aziz Mekouar, ambassadeur du Royaume du Maroc aux États-Unis

Freedom to Create Associations

A Declarative Regime in Name Only

Morocco has liberalized its legislation governing independent associations, but as with many issues in the country, practice lags behind what is on paper. Interior ministry officials often disregard the law that states that associations need only file a declaration in order to gain legal existence, using administrative subterfuges to undermine many groups whose mission or membership displeases the authorities.

The associations arbitrarily prevented from registering, and thus from operating as legally recognized entities, include associations fighting against state corruption or for the rights of the unemployed, Amazighs (Berbers), Sahrawis, and sub-Saharan migrants. In addition, authorities routinely thwart charitable and educational organizations from filing declarations if those groups elect as office-holders persons who belong to the Justice and Spirituality, one of the country's most active Islamist movements.

While “undeclared” associations rarely face outright closure, they cannot legally raise money or collect dues, and they face obstacles when they seek to organize a demonstration, rent a hall, or open a bank account. In some cases, Moroccan authorities have prosecuted persons for belonging to an “unrecognized association.” This situation of legal limbo serves to put off both present and future members.

Morocco boasts thousands of nongovernmental organizations that are active in many domains. But the administrative hurdles it erects before certain organizations transform a “declarative regime” into one where in practice prior authorization of the state is required to operate in a fully legal way. The political will is needed to end these arbitrary measures, which violate the right to freedom of association and undermine the rule of law.

The National Association of Unemployed Graduates of Morocco (ANDCM) demonstrating against unemployment in Rabat. Authorities have thwarted efforts by the ANDCM to obtain legal recognition since its founding in 1991.

© 1998 Getty Images

