

Submission to the Universal Periodic Review
Kingdom of Morocco

4th Cycle: March 2022

Submitted by:
Children's Rights Research (Maastricht University)
Adala UK
Global Human Rights Defence
terre des hommes Deutschland e.V.
terre des hommes schweiz
Western Sahara Campaign



Children's Rights Research is an online platform that shares the work of a research collective working on children's rights, based at Maastricht University. While we work on a diversity of projects, what these have in common is that all projects aim to involve children themselves as much as possible and create social change by sharing the research findings with the relevant community.

Signatories of this Report

Adala UK is a UK-based NGO. We gather testimonies and evidence of human rights violations in Western Sahara in order to raise awareness, hold the Moroccan government to account and change existing practices regarding human rights.

Global Human Rights Defence (GHRD) caters to promoting and protecting human rights globally. It places emphasis on the areas and populations where severe and extensive human rights violations of ethnic, linguistic, and religious minorities are taking place which has been completely overlooked by the mainstream media.

terre des hommes Deutschland e.V. is a children's rights organisation committed to creating a future for children in a just and peaceful world. terre des hommes Deutschland is guided by the UN Convention on the Rights of the Child and, through its work, promotes civil society organisations to work for fair educational and development opportunities and social participation of children and young people.

terre des hommes schweiz is a non-profit organisation based in Switzerland. We have been working for 60 years in development corporation. terre des hommes schweiz empowers youth in Africa, Latin America and Switzerland. Together we fight poverty, violence and discrimination and advocate for the rights of children and youth.

The **Western Sahara Campaign** works in solidarity with the Saharawi people to generate political support in order to advance their right to self-determination and promote their human rights.

Introduction

1. Adala UK, Global Human Rights Defence, terre des hommes Schweiz, terre des hommes Deutschland e.V., Western Sahara Campaign and the Children's Rights Research team from Maastricht University submit this joint report to the Universal Periodic Review (UPR) concerning the right to freedom of expression in Morocco. We submit this report with the intent to share our research outcomes, hoping to provide a clear overview of the current situation, including concrete suggestions for the Moroccan authorities to better protect the right to freedom of expression for its children.
2. The Children's Rights Research team¹ conducted field and desk research regarding the right of children to freedom of expression in Morocco, from May 2019 to January 2021. The study focused on the area of the Non-Self-Governing Territory of Western Sahara which is under Moroccan control, also referred to as "West of the Berm" by the United Nations. In this report we will refer to this area as "Moroccan-Occupied Western Sahara" (hereafter: MOWS). Results presented in this report apply to Morocco and MOWS unless otherwise indicated.
3. The research consisted of four different phases: a) initial online interviews with experts and NGO actors, b) a research-visit to the territory,² c) online in-depth qualitative interviews, and d) study of literature, legal documents and other relevant documents. The research stay included an 18-day visit to the cities of Laayoune, Boujdour, Dakhla and other smaller villages. Data collection included interviews with 67 participants, of which 10 were interviewed in groups and individually online during the first consultation phase, 31 individual interviews were conducted in the territory, and 26 individual interviews were conducted online after the research stay.³ All interviewees were adults.⁴ In addition, 23 observations were recorded in the territory. The results have been published in a report called "Things that a child shouldn't say: The Right to Freedom of Expression for Children living West of the Berm".⁵
4. This submission: a) discusses the international obligations of Morocco, b) examines the right to freedom of expression in Morocco under the first, second and third UPR cycle, c) provides an overview of the right to freedom of expression in Morocco, d) analyses the freedom of expression i) under Moroccan law, ii) in practice, e) considers the (il)legality of restrictions i) in Moroccan law, ii) in practice, f) makes recommendations in order for the Kingdom of Morocco to comply with its international human rights obligations in the future.

International Obligations of the Kingdom of Morocco

5. The Kingdom of Morocco is a party to several human rights instruments that guarantee the right to freedom of expression, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC).
6. Morocco's obligations under international human rights law extend to the part of the territory of Western Sahara that is under Moroccan control. This responsibility has been acknowledged by the Human Rights Committee (hereafter: HRC), who included references and recommendations to Morocco concerning Western Sahara in their past concluding

observations.⁶ Morocco is responsible for human rights protection in the area based on its effective control over the territory.⁷

7. The right to freedom of expression entails ‘the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers’.⁸ This right also applies directly to children.⁹ State parties should ‘refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue’.¹⁰
8. However, the right to freedom of expression can be subject to restrictions, on the conditions that: these restrictions are provided by law,¹¹ they follow a legitimate aim (such as: the respect of the rights or reputations of others,¹² protection of national security or public order,¹³ protection of public health or morals¹⁴). Any restriction imposed should be proportionate to the act.¹⁵
9. The HRC has emphasised that ‘when a State party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.’¹⁶ Further, the HRC stipulated that

‘when a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.’¹⁷

The Right to Freedom of Expression in the Kingdom of Morocco under the first, second and third UPR Cycles (2008, 2012 and 2017)

10. The Kingdom of Morocco has confirmed the importance of safeguarding the right to freedom of expression in their law and policy in national reports.¹⁸ In relation to children, Morocco has indicated in their reporting to the UN Children’s Rights Committee that ‘no provision in the law in Morocco stands between the child and the expression of his or her views’.¹⁹
11. Other States and several UN institutions, including the HRC, have expressed concern regarding aspects of the protection of this right in Morocco.²⁰ Particular attention has been given to the restrictions on freedom of press and the maltreatment of journalists,²¹ the restrictions on freedom of expression for human rights defenders, activists and protestors,²² the prohibition on criticism of Islam, the monarchy, and the territorial integrity of the Kingdom,²³ the suppression of freedom of expression in matters pertaining to Western Sahara²⁴ and the freedom of religion and belief.²⁵
12. Civil society organisations and other stakeholders have expressed similar concerns over the realisation of this right in practice.²⁶

Summary: The Right to Freedom of Expression in Morocco

13. Despite the Kingdom of Morocco's formal commitment to ensure the right to freedom of expression, in Morocco not everyone is afforded this right in line with international human rights law, neither in law nor in practice.
14. According to Moroccan law, the right to freedom of thought, opinion and expression is guaranteed for all people within its jurisdiction. However, there are several legal restrictions of this right. Some of these restrictions are warranted under international law, while some are directly contrary to international law. Such as the prohibition of expressions that undermine the King or the royal family, and expression that undermine the Islamic religion.²⁷
 - a.
 15. Under Moroccan law, punishment for transgressing these limitations is either imprisonment of 6 months to 5 years, a fine between 20.000-500.000 dirham (\$ 2.260 – \$ 56.500) and/or being stripped of certain civil rights.²⁸ Children under age 12 cannot be held criminally responsible, while children aged 12-18 have limited criminal responsibility.
 16. In practice, people enjoy freedom of expression in Morocco regarding a wide range of subjects. However, the Moroccan State authorities do not allow people to share certain views, such as any criticism of the human rights situation in MOWS, or talking about Western Sahara in general (see para. 31 for a complete list).²⁹
 17. The Moroccan government further limits free expression through an intrusive surveillance system, which is particularly present in the MOWS territory. This system includes monitoring of phone calls and Whatsapp messages, surveillance by the secret police, and controls at the many police checkpoints.³⁰ For children, monitoring includes surveillance in and around schools.
 18. Adults who cross the lines mentioned under §16 face two types of enforcement by Moroccan authorities: formal/legal and informal/illegal enforcement. Formal/legal enforcement includes formal arrests, court prosecutions and prison sentences. Informal/illegal enforcement includes many "off the record" measures, such as police beatings and being put under regular police surveillance.
 19. For children (under 18) who cross these lines, only informal/illegal enforcement measures are applied, namely: police beatings, being arrested and/or being held at the police station for one or two nights, being expelled from school.
 20. Children encounter Moroccan State enforcement of restrictions on the right to freedom of expression both directly, when they cross the lines, and indirectly, when they suffer consequences imposed on their parents or other close adults who cross these lines (e.g. police surveillance of the home, seeing their parents being beaten by the police).
 21. The restrictions are also of direct influence on the child's right to education in Morocco, where these limitations are part and parcel of Moroccan school curricula. This is

particularly prominent in MOWS, where children are not allowed to speak about the political situation in which they live.

22. As elaborated further below, there are three main areas where Morocco is currently violating international human rights law: first, many of the restrictions on the right to freedom of expression in Moroccan law are in violation of international law. Second, in practice by Moroccan authorities, they enforce certain restrictions on the right to freedom of expression, not necessarily codified by law, which are in violation of international law. Third, enforcement measures applied by Moroccan authorities (legal enforcement measures as well as informal/illegal enforcement measures) are disproportionate to the act and illegal under international law. The latter is particularly worrying when concerning children.

Freedom of Expression under Moroccan Law

23. According to Moroccan law, the right to freedom of thought, opinion and expression is guaranteed for all people within its jurisdiction.³¹ This includes the freedom of creation, publication and exposition of art and scientific research,³² freedom of press,³³ right to assembly and peaceful protest,³⁴ right to information of elected and administrative bodies³⁵ and freedom of religion.³⁶
24. The Moroccan constitution states that primacy is given to international conventions ratified by the Kingdom of Morocco over national law,³⁷ meaning that international obligations entered into should take precedence over national law. However, this primacy is supposed to take place “in the framework of the constitutions and the laws of the Kingdom”.³⁸ The compatibility of Morocco’s international commitments thus seems to be conditional on adherence with the Moroccan constitution and other laws.
25. Moroccan law imposes certain limitations on the right to freedom of expression. Some of these restrictions clearly fall within the scope of what is allowed under international law, namely restrictions regarding expressions that are: potentially harming national security; inciting crime, inciting discrimination or hatred between people; inciting sexual abuse of minors; defamation; affecting fundamental rights and freedoms.
26. However, some other restrictions on the right to freedom of expression in Moroccan law are more questionable, and some are directly contrary to international law. It concerns the prohibition of:
 - a. Expressions undermining, insulting and/or disrespecting the King and/or the royal family³⁹
 - b. Expressions undermining the Islamic religion⁴⁰
 - c. Expressions potentially harming national security and the territorial integrity of the Kingdom⁴¹
 - d. Expressions disrespecting national symbols such as the Moroccan flag and anthem⁴²
 - e. Expressions including false accusations or information, especially when regarding Moroccan political leaders⁴³

The illegality of these restrictions under international law will be discussed in paras. 43-58.

27. Punishment for transgressing these limitations is either imprisonment of 6 months to 5 years, a fine between 20.000-500.000 dirham (€ 1.800 – € 45.000) and/or being stripped of

certain civil rights.⁴⁴ Police officers and other public officials are not allowed to use torture (defined as “causing severe physical or mental pain or suffering”) as a punishment.⁴⁵

28. All of the above stated laws apply to children as well as to adults. However, under Moroccan law, children under the age of 12 have no criminal responsibility, and cannot be sent to jail under any circumstances.⁴⁶ Children aged 12-18 have limited criminal responsibility, and can only be imprisoned if this measure is essential and it is not possible to make any other arrangement.⁴⁷ Police officers who torture children (defined as any person younger than 18 years old) are subject to life imprisonment,⁴⁸ and ‘anyone who intentionally injures or beats a child under 15 years of age’ or commits any other violence against that child, is subjected to imprisonment for one to three years, and more if it concerns a person with authority over the child.⁴⁹
29. According to the Code of Criminal Procedure, surveillance is generally prohibited except if the suspected crime in question relates to state security, terrorism, criminal gangs, murder, poisoning or abduction of hostages.⁵⁰

Freedom of Expression as practiced by Moroccan authorities

30. In general, people enjoy freedom of expression in Morocco regarding a wide range of subjects. However, there are certain restrictions, the legality of which under international law is questionable. Enforcement of these restrictions is strict, and people are monitored through an elaborate system of surveillance (in particular in MOWS).
31. In practice, the Moroccan authorities do not allow people to publicly:
- a. Criticise/insult the King and/or the royal family⁵¹
 - b. Talk about Western Sahara, say that Western Sahara is not Moroccan, argue for self-determination of the Sahrawi people⁵²
 - c. Wave / touch / have / draw the flag of the Sahrawi Arab Democratic Republic
 - d. Criticise the human rights situation in MOWS (including research/journalism on the human rights situation in MOWS)
 - e. Criticise religion (Islam)⁵³
32. As long as one does not transgress any of these limitations, there is no problem. However, trouble starts if one of these lines is crossed, and especially if it happens multiple times, or in a public manner that receives a lot of attention (e.g. in a video on a popular YouTube channel or in a newspaper article).
33. Moroccan authorities use an intricate system of intelligence to monitor any transgressions. This system is heavily used in the MOWS territory and entails phone tapping, surveillance by secret police as well as controls at many police checkpoints.⁵⁴
34. Adults who cross these lines, in particular lines a-d, face two types of enforcement by Moroccan authorities: formal/legal and informal/illegal enforcement.
35. Formal/legal enforcement includes formal arrests, court prosecutions and prison sentences.⁵⁵ It is reportedly quite common for adults to be formally prosecuted on different, sometimes fabricated, charges (e.g. extra-marital sex, drinking alcohol, smoking drugs, attacking a police officer), while the true reason for prosecution is transgression of the limitations on freedom of expression.⁵⁶

36. Informal/illegal enforcement includes many “off the record” measures. The most direct measure is a police beating. There are also reports of torture happening in relation to the exercise of freedom of expression. Most informal/illegal enforcement measures however are more indirect and long-term. Examples are: losing your job (because your employer is pressured by authorities to fire you), your job being moved to another city, not getting your passport renewed, being put under regular/constant police surveillance, social benefits being cancelled. There is also positive informal/illegal enforcement: for example, a Sahrawi family may receive state financial support (social benefits) or government jobs if they do not “create trouble”. In some cases, informal/illegal enforcement is not only directed against the person crossing a line, but also against their family, including their children.
37. For children (under 18) who cross these lines, things are different. It seems that in general formal/legal enforcement does not happen when concerning minors. Instead, certain informal/illegal enforcement measures are applied to children, namely: police beatings, being arrested, and/or being held at the police station for one or two nights. There are also reports of children being stripped of their clothes and/or taken by the police and left in the desert outside of the city. Another common form of informal/illegal enforcement concerning children is for children to be expelled from school. While this may happen more on the level of the school, it seems that this is also connected to State authority, since some schools/teachers may be pressured by Moroccan authorities to take this action.
38. Therefore, there are three ways in which children encounter State enforcement of limitations on freedom of expression:
1. Children may themselves cross the lines and suffer consequences such as those listed above.
 2. As children of parents who cross these lines, they may suffer direct consequences such as police surveillance and/or police harassment.
 3. If their parents or other adults they know cross these lines, the enforcement suffered by adults may have an indirect effect on children. Children may see these adults beaten up by the police, getting arrested, being imprisoned, the family may lose social benefits, the family home may be put under surveillance, a child may see a beloved adult less often because their job is moved to a faraway city. All these are serious consequences suffered by children, even when they themselves did not transgress the limitations on the freedom of expression.
39. The indirect victimisation of children due to their parent’s transgression of the State limitations on the right to freedom of expression is illustrated well by this Sahrawi activist parent:

Interview 45 (online), a 45-49 year-old male Sahrawi activist and parent

The police sometimes come to my house, there is constant surveillance of our house, that scares my daughter [...] She's always scared, she always says to me ‘We should move, Dad’. She can't stop herself. ‘Dad, we should leave the city of Laayoune. We should move to another city or another country’. And still now she always asks me to leave. [...] To be honest, I'm thinking about this. She's 11 and I couldn't say no. Earlier I taught her the story of my father. He was captured in 1976, so I didn't see my father ever. I told my daughter that probably one day, you will not see me. I will be arrested, captured, jailed, killed.

40. The restrictions set on the freedom of expression directly influence and direct the child's education. While this applies to the whole of the Kingdom of Morocco, it is particularly present in MOWS, where children are not allowed to speak about the political situation in which they live.
41. In history class, the Moroccan nationalist perspective is taught, which teaches children that Western Sahara was liberated by the Moroccan King after colonization by the Spanish. In geography, children learn the map of Morocco (which includes MOWS). Discussing these matters from another perspective than the Moroccan nationalist perspective is considered 'engaging in political propaganda', which is forbidden. All children need to learn and repeat this narrative, they are not allowed to discuss this critically. In many schools, children are also expected to sing the Moroccan national anthem in the morning and/or to salute the Moroccan flag.

The (il)legality of restrictions on freedom of expression in Moroccan law

42. As mentioned before, in Moroccan law, there are several restrictions imposed on the right to freedom of expression that are questionable under international law. They concern expressions related to the Royal family, Islamic religion, national security, national symbols and politicians (see § 26). Below, the (il)legality of each of these restrictions under international law is discussed.
43. Both the general restriction on expressions undermining, insulting and/or disrespecting the King and/or the royal family, and the restriction on expressions including false accusations or information especially when regarding Moroccan political leaders, are illegal under international law. This is because criticism of political public figures should be allowed, and especially protected, as a part of the right to freedom of expression. In addition, defamation laws should be composed as restrictive as possible, and there should be no sanctions that limit the person's freedom (such as prison sentences). The restriction on expressions containing "false accusations or information" becomes especially problematic in MOWS when according to the Moroccan government, contradicting the Moroccan nationalist narrative and questioning whether Morocco indeed liberated Western Sahara is considered "false information".
44. The HRC stated in their General Comment 34 on Article 19 ICCPR that

*'Public figures, including those exercising the highest political authority such as heads of State and government, are legitimately subject to criticism and political opposition. [...] laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.'*⁵⁷

45. In *Aduayom et al. v Togo* the HRC held that

*'the freedom of expression [is] the cornerstone in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to [...] criticize or openly and publicly evaluate their governments without fear of interference or punishment.'*⁵⁸

This position has been consistently reiterated by the HRC.⁵⁹ In addition, the HRC has specifically indicated that defamation against the highest public figures of a country should not be classified as a criminal offence.⁶⁰ Insulting a public figure is not a sufficient reason to justify the imposition of penalties.⁶¹ Whether such criticism may be otherwise restricted must be assessed on a case-by-case basis, taking the public interest into account.⁶²

46. International jurisprudence reiterates that the imposition of custodial sanctions through criminal defamation laws is disproportionate and unnecessary to protect individual reputations, particularly when alternative measures - including apologies, corrections and the use of the right to reply - can effectively address any harm to reputation without exerting a chilling effect on the freedom of expression.⁶³

47. A prohibition on expressions undermining the Islamic religion is also illegal under international law, unless it concerns an expression that advocates for religious hatred [against Islam]. In General Comment 34, the HRC indicated that

*‘Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in art. 20(2) of the Covenant’.*⁶⁴

Art. 20(2) ICCPR refers to religious hatred that ‘constitutes incitement to discrimination, hostility or violence’.⁶⁵

48. In 2008, the UN Special Rapporteur on Freedom of Religion or belief and the Special Rapporteur on Contemporary Forms of Racism, Xenophobia and related Intolerance published a joint declaration expressing that

*‘Defamation of religions may offend people and hurt their religious feelings, but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion primarily confers a right to act in accordance with one’s religion, but it does not bestow a right for believers to have their religion itself protected from all adverse comment.’*⁶⁶

49. The HRC already stated in its 2016 Concluding Observations concerning Morocco that the provisions establishing terms of imprisonment as penalties for acts perceived as being offensive to Islam were too broad.⁶⁷ Those provisions are still in place.

50. A prohibition of expressions potentially harming national security and the territorial integrity of the Kingdom could potentially be legal under international law, in case this is necessary for the protection of national security or public order.⁶⁸ This is indeed the argument made for this restriction by Morocco.⁶⁹ However, in practice this article is used to prohibit all discussion around the legitimacy of Morocco’s authority over MOVS, even though according to the UN, the territorial integrity of Morocco does not encompass MOVS.⁷⁰ This is an illegal limitation of the right to freedom of expression.

51. The Johannesburg Principles on national security, freedom of expression and access to information, which were endorsed by the UN Commission on Human Rights,⁷¹ provide that a limitation of an expression is justified only in cases when ‘the expression is intended to incite imminent violence. And there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.’⁷²

52. When assessing national security, the HRC requires States to show in a specific and individualized manner the precise nature of a threat, and the necessity and proportionality of the specific measure, particularly by demonstrating a direct and immediate link between the expression and threat.⁷³
53. Moreover, the HRC specified in its General Comment 11 that ‘the provisions of Art. 20(1), do not prohibit advocacy of ... the right of peoples to self-determination and independence in accordance with the Charter of the United Nations’.⁷⁴
54. A prohibition on expressions disrespecting national symbols such as the Moroccan flag and anthem could be considered legal under international law, on the condition that there is a clear element of incitement to violence.
55. In its General Comment 34, the HRC has expressed concerns regarding laws on matters such as disrespect for flags and symbols.⁷⁵ The provisions restricting disrespecting national symbols thus need to be redefined in order to ensure that it is within the scope of lawful limitations of the freedom of expression.
56. From a legal perspective, the mere unwillingness to sing the national anthem or refusal to salute the Moroccan national flag should not be considered a threat to national security or public order.⁷⁶
57. As indicated under para. 29, the law punishes transgressions of these restrictions on the right to freedom of expression either by imprisonment of 6 months to 5 years, a fine between 20.000-500.000 dirham (€ 1.800 – € 45.000) and/or being stripped of certain civil rights.⁷⁷ Even though these penalties satisfy the “provided by law” criterion, they are unacceptable because they go beyond what is strictly required to protect the respective legitimate aim followed by the measure. As seen in the preceding paragraphs, certain expressions onto which these penalties are imposed count as a legitimate exercise of freedom of expression and should not be restricted.
58. Special provisions are made in Moroccan law for the protection of children in relation to law enforcement. These provisions are in line with international law, except that beating a child aged 15-17 by an authority figure is still allowed.⁷⁸ This is a violation of international law, since under international law children shall in any event not be subjected to corporal punishment by state authorities, such as police beatings.⁷⁹

The (il)legality of restrictions on freedom of expression in practice by Moroccan authorities

59. As mentioned in para. 31 above, in addition to restrictions on freedom of expression contained in Moroccan law, in practice, Moroccan state authorities do not allow people to publicly express themselves concerning various topics, namely: the Royal family, the Western Sahara issue, the human rights situation in MOWS, and religion. The national legal basis for prohibitions on expressions related to the Royal family, the Western Sahara issue, and religion have been discussed above. All of these restrictions as they are applied by Moroccan authorities are illegal under international law and a direct violation of the right to freedom of expression.

60. The prohibition on criticising the human rights situation in MOWS, including research/journalism on the human rights situation in MOWS, has no legal basis in Moroccan law. Instances of this prohibition being enforced in practice have been experienced and documented by both national and international actors.⁸⁰ This prohibition is certainly illegal under international law and a clear infringement of the right to freedom of expression.
61. The type of punishment applied in practice for transgressing these limitations by Moroccan authorities also amounts to human rights violations, on four counts: first, the illegality of certain systems of surveillance, second, the formal prosecution of defendants for other offenses while the true reason for prosecution is transgression of the limitations on freedom of expression, third, the application of informal/illegal enforcement measures, and fourth, the application of informal/illegal enforcement measures to children.
62. The surveillance measures used by Moroccan authorities are contrary to Morocco's human rights obligations. First, all surveillance law should be open and accessible to the public, which currently it is not.⁸¹ Second, surveillance should not be used as a means of control, intimidation, and/or punishment. The HRC has indicated that States are not allowed to put in place measures aiming at silencing those exercising their right to freedom of expression.⁸² In MOWS, it is clear that surveillance is used as a means to silence political activists (including Sahrawi activists) and human rights researchers (including journalists). This is illegal under international law.⁸³
63. It is illegal to prosecute defendants under false charges, whilst in reality the goal is to punish transgressions of the freedom of expression. Doing so defeats the whole purpose of any restriction of the freedom of expression being "in accordance with the law", since this requirement aims to ensure that persons can adjust their conduct and are aware of the consequences.⁸⁴
64. In general, the application of informal/illegal "off the record" enforcement measures by Moroccan authorities is illegal under international law, since all enforcement measures by authorities should be codified in law.⁸⁵
65. Applying these informal/illegal "off the record" enforcement measures is particularly troublesome when concerning children. It is illegal under international law for the police to beat children, as well as for children to be arrested and/or held at the police station for one or two nights without any charges.⁸⁶ In addition, since punishment should be proportionate to the offense, it is disproportionate for the Moroccan authorities to pressure schools to expel children who, for example, refuse to salute the Moroccan flag, draw a Sahrawi flag or discuss the legality of the Moroccan authority over Western Sahara. Not only is this measure disproportionate, it is also a violation of the child's right to education.

Recommendations

66. Based on the above information, the submitting organisations urge reviewing States to make the following recommendations to the Kingdom of Morocco with a view of realising these recommendations until the next mid-term report:

- I. Amend the relevant legal provisions in the Constitution, the press code and the penal code that currently restrict the exercise of freedom of expression, in order to align them with international human rights standards. In particular, legalise the following expressions:
 - Expressions undermining, insulting and/or disrespecting the King and/or the royal family
 - Expressions undermining/criticizing Islamic religion
 - Expressions related to the political situation of Western Sahara, including those advocating for self-determination
 - Expressions disrespecting national symbols such as the Moroccan flag and anthem
- II. Adjust the regulation of surveillance measures so that surveillance measures restricting the right to freedom of expression comply with the requirements set out in Art. 19(3). In particular:
 - Make the laws on surveillance measures accessible to the public.
 - End the use of surveillance as a means to silence those exercising their right to freedom of expression.
- III. Adjust enforcement measures to be proportionate to the offence complying with the international right to freedom of expression, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the UN Standard Minimum Rules for the Administration of Juvenile Justice, and the UN Rules for Juveniles Deprived of their Liberty. In particular:
 - Prohibit all informal/illegal enforcement measures.
 - Prohibit any enforcement measures against children who are sharing their views, opinions, or ideas, unless there is a direct, immediate, realistic threat of violence.
 - Prohibit the use of physical violence by the police against both adults and children in reaction to their free expression, both in law and in practice.
- IV. Inform and train the police on how to engage with children and adults who may transgress legal limitations of the right to freedom of expression, in a manner compatible with international human rights standards.
- V. Make explicit in law, policy and in practice that human rights research is allowed in the Kingdom of Morocco and MOWS. Do not refuse entry to researchers, journalists or human rights defenders.
- VI. Take all possible measures to provide data, report on and subsequently protect the human rights, including children's rights, of all people in Morocco and in MOWS.

- VII. Make a public statement to indicate that the Kingdom of Morocco is changing to a modern democracy that respects human rights, and that this includes allowing its people to criticise the King and its government, to question religion and to openly discuss the Western Sahara conflict.
- VIII. Draft a guideline on how to have a free and open dialogue about the Western Sahara issue, that is available to all.
- IX. Provide clarity regarding what is expected of schools and teachers regarding the realisation of the child's right to freedom of expression in schools.

¹ The research team for this case study consisted of 4 young researchers and is led by Dr Marieke Hopman. A large part of this report was written by Emilia Klebanowski. For more information see <https://www.childrensrightsresearch.com>.

² Because of the Moroccan prohibition on this type of research, we did undercover research and entered the area as tourists.

³ Interviewees had the following background: Moroccan 15, Sahrawi 26, Other 7, Unknown 9. 25% of the respondents were women, 75% were men.

⁴ While we are convinced that including children would have largely benefitted the research, we made this choice because we could not rule out the risk of endangering children who participated.

⁵ See Annex 1, or https://www.childrensrightsresearch.com/images/CRR-StoriesMoroccan/West_of_Berm_CaseStudy_ENGLISH.pdf.

⁶ See for example CCPR/C/MAR/CO/6.

⁷ CCPR/C/21/Rev. 1/Add.13.

⁸ UDHR, art. 19. See also art. 19 ICCPR and art. 13 CRC.

⁹ CRC, art. 13.

¹⁰ CRC/C/GC/12, para. 81.

¹¹ CRC, art. 13(2)); CCPR/C/GC/34, paras. 22, 24 and 25.

¹² ICCPR, art. 19.3(a); CRC, art. 13.2(a). This includes a prohibition on 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'

¹³ ICCPR, art. 19.3(a); CRC, art. 13.2(a). This includes a prohibition on 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'

¹⁴ ICCPR, Art. 19(3)(b).

¹⁵ *ibid*, para. 34.

¹⁶ *ibid*, para. 21.

¹⁷ CCPR/C/GC/34, para. 35; CCPR/C/80/D/926/2000.

¹⁸ Morocco national report 2008, paras. 16, 85; Morocco national report 2012, paras. 42-43; Morocco's mid-term report 2014, pp. 35-38.

¹⁹ Committee on the Rights of the Child 2012, para. 96, referring to Committee on the Rights of the Child 2003, para. 186.

²⁰ Report of the Working Group 2008, paras. 33, 47, 70; Report of the Working Group 2012, para. 30 and recommendations 129.79, 129.80, 129.82, 129.87, 129.91, 129.92, 129.95, 130.11; Report of the Working Group 2017, paras. 134, 243, recommendations 144.113- 144.121; Compilation of UN information 2017, paras. 39-45); UN High Commissioner for Human Rights 2017, p.4.

-
- ²¹ Compilation of UN information 2008, paras. 26, 27; Compilation of UN information 2012, para. 30; Compilation of UN information 2017, para. 39, recommendation 144.117-144.119; Report of the Working Group 2008, paras. 33, 47, 70; report of the Working Group 2012, para. 30, recommendations 129.80, 129.91.
- ²² Report of the Working Group 2012, recommendation 91; Report of the Working Group 2017, recommendations 144.114, 144.120; Compilation of UN information 2017, paras. 42-45; UN High Commissioner for Human rights 2017, p. 4.
- ²³ Compilation of UN information 2012, para. 30; Compilation of UN information 2017, para. 39.
- ²⁴ Report of the Working Group 2012, para. 30, recommendations 130.11, 130.12; Report of the Working Group 2017, recommendations 144.117, 144.120, 144.244; Compilation of UN information 2017, paras. 44, 45; UN High Commissioner for Human Rights 2017, p.4.
- ²⁵ Report of the Working Group 2012, recommendation 92; Compilation of UN information 2017, para. 39.
- ²⁶ Summary of other stakeholder information 2008, paras. 23, 24, 25; Summary of other stakeholder information 2012, paras. 42, 44-46, 48; Summary of other stakeholder information, paras. 36-46.
- ²⁷ See paras. 24-31 for references.
- ²⁸ 2019 Criminal Code, art. 26, 40, 267-1, 267(5); 2016 Dahir No. 1-16-122 amendment of law no. 88-13 regarding the press and publishing [Press and Publication Code], art. 79, 81, 84 and 103.
- ²⁹ For references, see paras. 32-43.
- ³⁰ See also Errazzouki 2017; The Guardian 2020; The New York Times Magazine 2017.
- ³¹ 2011 Constitution of Morocco, art. 25; Press and Publication Code, art. 3.
- ³² 2011 Constitution of Morocco, art. 25.
- ³³ *ibid*, Art. 28; Press and Publication Code, art. 3.
- ³⁴ 2011 Constitution of Morocco, art. 29.
- ³⁵ *ibid*, art. 27; Law No. 31-13 regarding the right to access to information (2018).
- ³⁶ 2011 Constitution of Morocco, art. 3.
- ³⁷ *ibid* (preamble).
- ³⁸ *ibid* (preamble).
- ³⁹ 2011 Constitution of Morocco, art. 46; Press and Publication Code, art. 31.
- ⁴⁰ 2019 Criminal Code, arts. 179, 267-5; Press and Publication Code, arts. 31 and 71. See also US State Department (2018).
- ⁴¹ 2011 Constitution of Morocco, art. 42; 2019 Criminal Code, art. 267-5; 2018 Law No. 31-13 regarding the right to access to information, art. 7; Press and Publication Code, arts. 5, 31, 71, 72. In art. 91 of Press and Publication Code this is regarded as necessary for the “protection of the public order (*ordre public*)”.
- ⁴² 2019 Criminal Code, arts. 263, 267-1, 267-2, 267-4.
- ⁴³ Press and Publication Code, arts. 65, 72, 81, 82, 84, 85. If this regards a national politician or the King, the punishment (fine) is higher.
- ⁴⁴ 2019 Criminal Code, arts. 26, 40, 267-1, 267(5); Press and Publication Code, arts. 79, 81, 84, 103.
- ⁴⁵ *ibid*, arts. 231-1, 231-2.
- ⁴⁶ *ibid*, arts. 138, 473.
- ⁴⁷ *ibid*, arts. 139, 140, 473; 2004 Family code, art. 209.
- ⁴⁸ *ibid*, art. 231-4.
- ⁴⁹ 2019 Criminal Code, arts. 408, 411
- ⁵⁰ Code of Criminal Procedure, art. 108.
- ⁵¹ See also El Kadoussi 2020, 10; Koprowski 2011, 21-24
- ⁵² See also Koprowski 2011, 25-29
- ⁵³ *ibid*.
- ⁵⁴ See also Errazzouki 2017; The Guardian 2020; The New York Times Magazine 2017
- ⁵⁵ HRW 2020; Koprowski 2011.
- ⁵⁶ See also: Global Voices 2020; Zaid 2017, 356-357.
- ⁵⁷ CCPR/C/GC/34, para. 40.
- ⁵⁸ CCPR/C/51/D/422/1990, 423/1990 and 424/1990.
- ⁵⁹ CCPR/C/83/D/1128/2002.
- ⁶⁰ CCPR/C/ZMB/CO/3.

-
- ⁶¹ CCPR/C/GC/34, para. 39.
- ⁶² A/HRC/23/40, para. 27.
- ⁶³ Article 19, 2004.
- ⁶⁴ CCPR/C/GC/34.
- ⁶⁵ Art. 20(2) ICCPR; CCPR/C/GC/11.
- ⁶⁶ A/HRC/2/3, para. 37.
- ⁶⁷ CCPR/C/MAR/CO/6, para. 43.
- ⁶⁸ ICCPR, art. 19.3; CRC art. 13.2.
- ⁶⁹ Press and Publication Code, art. 91.
- ⁷⁰ A/5446/Rev.1, Annex I.
- ⁷¹ *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* [Johannesburg Principles]. Available at: <https://www.article19.org/wp-content/uploads/2018/02/joburg-principles.pdf>.
- ⁷² Ibid, principle 6.
- ⁷³ CCPR/C/GC/34, para. 35.
- ⁷⁴ CCPR/C/GC/11, para. 2.
- ⁷⁵ CCPR/C/GC/34, para. 38.
- ⁷⁶ Johannesburg Principles, principle 6.
- ⁷⁷ 2019 Criminal Code, art. 26, 40, 267-1, 267(5); Press and Publication Code, arts. 79, 81, 84, 103
- ⁷⁸ See para. 39.
- ⁷⁹ UN International Human Rights Standards for Law Enforcement Officials, p. 12; CRC, arts. 19 and 37; CRC/C/GC/13.
- ⁸⁰ In addition to our study, see also United Nations Security Council (2017: para. 72, 2018: para. 69), Human Rights Watch (2017, 2018), United States Department of State (2017: 8, 11), ACPHR (2012), Fernández-Molina (2017: 61), Smith (1987: 61). An exception seems to be made for certain UN experts, for example the Independent Expert on Human Rights and international solidarity was allowed a one-day visit to Dakhla, although unfortunately “due to time constraints, the Independent Expert did not have a chance to meet with members of the local civil society” (HRC (2016: art. 2, 68)).
- ⁸¹ See Privacy International 2016.
- ⁸² CCPR/C/GC/34, para. 23.
- ⁸³ *ibid*, para. 23.
- ⁸⁴ CCPR/C/GC/34.
- ⁸⁵ Art. 19(3); CCPR/C/GC/34.
- ⁸⁶ CRC, Art. 37(a); A/RES/40/33, rules 1, 5 and 6; The Beijing Rules, rules 1, 5 and 6; UN Rules for Juveniles deprived of their Liberty (UN Rules for Juveniles), rules 2 and 17.