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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Written statement* submitted by World Federation of Trade Unions (WFTU), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2009]

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

Situation of Saharawi workers in Western Sahara

Western Sahara is a non-autonomous territory. Its legal status is defined by Article 73 of the United Nations Charter.

The inhabitants of a non-autonomous territory, according to international law, enjoy a certain number of rights. They are protected by some instruments of general public international law, as well as by specific rules of international humanitarian law.

The case of Phosboucraa Mine Workers

The Phosboucraa mine was discovered in 1962, during the period of Spanish colonial domination. Although exploitation of the mine did not begin till 1972, the Spanish administration had already established the rules for the organization and the management of the mine, as well as bye-laws, workers' rights, and conditions governing the labour contracts for Saharawi workers in: "Rules and Regulations of Phosboucraa". At that time there were about 1,500 Saharawi workers, including all types of skills, which was about the same number as the Spanish workers. These contracts were then modified by the company management in 1977. At that time, 65% of the property of Phosboucraa had been made over to the "Office Chérifien des Phosphates" (OCP). OCP had undertaken to respect the arrangements of the earlier convention, but did not abide by this commitment. Since that time the Saharawi workers have become marginalised, their salaries unjustifiably reduced, as compared to the salaries of Spanish or Moroccan workers with equal skills and for the same posts. As far as job responsibilities were concerned, the inequalities between Saharawi and Moroccan workers increased. Retirement age had been established in the Rules and Regulations at 65 years of age, but Saharawi workers were obliged to retire at 55. As to health service provisions, OCP no longer covered hospitalisation costs, except for newly hired Moroccan workers, denying it to Saharawi workers, despite the fact that the old Rules and Regulations had specifically guaranteed this provision for all. The new contracts drawn up by OCP were not submitted to Saharawi workers for signature: thus, 720 workers have been deprived of their social rights. Today, there are no more than about 100 Saharawi workers out of 1,000 employees, and none of them holds a position of responsibility. In the past, it was customary to hire the children of the workers. This practice has been totally abandoned and new recruits are entirely Moroccan.

The fact that Saharawi workers' contractual rights, as established by the 1962 Phosboucraa Rules and Regulations, were unilaterally changed in 1977, while Spanish workers continued to enjoy the rights acquired before 1975, raises the issue of discrimination and the violation of the law of "non-discrimination", enshrined in a large number of charters of international law.

The principle of non-discrimination is firmly based on the notion that all human beings are equal, enshrined in Article 1 of the Universal Declaration of Human Rights and affirmed by the United Nations Charter (Article 1 § 3), as well as by all international legal instruments upholding Human Rights: UDHR, Article 2; ICCPR (International Covenant on Civil and Political Rights), Article 2; ECHR (European Convention on Human Rights), Article 14; African Charter, Article 2. This principle demand that equal treatment be guaranteed to equal individuals, and embodies the existence of a norm prescribing equality before the law. On 21 June 1971, referring to South Africa's occupation of Namibia, the International Court of Justice defined discrimination as follows: "Any distinction, exclusion, restriction or preference based on race, colour, ascendancy, national or ethnic origin, is a violation of the fundamental rights of a human being." The United

Nations Human Rights Committee holds the same exclusive notion of discrimination. The right to non-discrimination is thus the result of the constructive interpretation, provided by the Human Rights Committee, of article 26 of ICCPR: “all persons are equal before the law and have the right to equal protection by the law which enshrines the general principle of equality, proclaimed by Article 7 of the UDHR which ‘prohibits any form of legal or practical discrimination in all fields’.” Under Article 26 a State is obliged not to adopt or to enact any law whose content would be discriminatory. The right guaranteed by this article is a right to non-discrimination in the enjoyment of all rights, whether they be proclaimed by the ICCPR or any other international instrument, such as the International Covenant on Economic, Social and Cultural Rights (Right to Social Security and Social Insurance, Article 9). Morocco and Spain have ratified these two international covenants. They have thus committed themselves to protect all the rights enshrined in them.

Any Saharawi who expresses his or her political opinions, or who is a Human Rights activist in the Saharawi territory, risks being arrested and losing his or her job.

MOUTIK Elhoussine, former President of the Sahara Section of FVJ (Forum Vérité et Justice*) was unlawfully fired from his job at SEPOMER firm in 2002. Moutik was a member of the Human Rights activists’ group that met with Catherine LALUMIERE and a delegation of other Members of the European Parliament, in Western Sahara in February 2002.

On 5 October 2005, in Goulimine, Moutik’s sister, Khadija, a trade unionist, was arrested with two other Saharawi women – BOUDA Aziza and ASSAGHI Attifa – the day after a sit-in organized in front of the Goulimine Prefecture. She had unlawfully been fired by the City of Goulimine as a consequence of her union activities in 2003.

Arbitrary Transfers

At the beginning of the school year 2003-2004 about twenty Saharawi teachers were transferred to Moroccan towns, in flagrant violation of the regulations governing transfers in the Moroccan Ministry of Education. These teachers were all Human Rights activists.

- LIDRI Elhoçine (transferred to Chichaoua, 80 km from Marrakesh, Morocco), member of the Bureau of the former FVJSAH, philosophy teacher in a Lycée in Aaiun ; currently jailed in the Prison Noire of Aaiun, since July 2005. Tortured, mistreated, recognized by Amnesty International as a prisoner of conscience together with other Saharawi detainees.
- LATIF Allal, English teacher at Aaiun, transferred to Arfoud, near Rachidia (Morocco); this activist was arrested in July 2005 and tortured, after having accompanied a Norwegian delegation which was visiting the Territory.
- LAGHZAL Elloud, teacher at Aaiun, transferred to El Haouz, near Marrakesh.
- IGUILID Hammoudi : philosophy teacher at Aaiun, president of the local chapter of AMDH (Moroccan Association of Human Rights), transferred to Arfoud (Morocco); IGIULID, a Human Rights defender, listed in his reports all Human Rights violations in the occupied territories since 1999; he was arrested in June 2005, after having given an interview to a Moroccan newspaper on the events at Aaiun in May 2005.

- LAKHAL Mohamed Salem, a member of former FVJSAH, transferred to Safi.

Any consideration relating to the protection of Human Rights of the Saharawi people must be based on the affirmation that, based on international law, this people enjoys the right to decide for themselves and to freely choose their political status. The latest report by the UN Secretary General, dated 13 October 2005, is very worrying, since it appears to move towards a framework of illegality in some of its statements that are no longer consistent with the peace plan and the commitment to hold a free, fair and impartial referendum.

Any international treaty diverging from that plan would be legally null and void, and would have no legal standing or effect. It is necessary to demand complete observance of all collective and individual human rights, through all existing means contemplated in international law.

The trend to collectivize Human Rights was clearly stated, as a universal notion, by the Teheran Declaration on 13 May 1968, which includes Resolution 1514 among the universal instruments of Human Rights protection, envisaged as obligatory provisions; and by Resolution 32/130 which firmly places the “right of each people to exercise full sovereignty over its natural riches and resources” among the priorities in the domain of Human Rights.

In another text, Opinion no. 2 of the Arbitration Commission of the European Peace Conference on former Yugoslavia, 11 January 1992, the right of a people to determine their political status is a protecting principle of Human Rights, the implementation of which is a basic condition for the full enjoyment of individual rights.

Envisaged as the right of nations to form an independent State, the right of peoples is also bound to the notion of democracy, and implies the right of a people to freely choose their political institutions and their rulers: « Founded on the freely expressed will of the people, determining their own political, economic, social and cultural system, and based on full participation in all aspects of the life of society.”

Interpreted as a principle of democratic legitimacy, the right of peoples should thus take its place precisely at the point where collective rights border on individual civil and political rights.

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