

The Moroccan initiative for the negotiation of an autonomy statute for the Sahara: a genuinely democratic project respectful of Human Rights?

By Dr Jean-Baptiste HARELIMANA Professor of International Law – University Lyon 3-France-

The Moroccan initiative is “part of the endeavours made to build a modern, democratic society, based on the rule of law, collective and individual freedoms, and economic and social development” (article 3).

Human rights are a set of basic legal and ethical principles intended for private individuals, communities and peoples, and that aim at safeguarding the prerogatives inherent in each human being, considered individually or collectively, on account of the dignity of each person and justified by their human condition. The Sahara conflict was at times considered an obstacle to democratization, to development and finally to the promotion and the protection of human rights.

At a time when the countries of the sub-region are turning towards democracy, in a context of international mutations characterized by the rise in extremisms and the emergence of new powers and, fortunately, of new liberations, this historic window of opportunity opened by the Moroccan initiative has to be used to the fullest. It however looks like we are coming in too late to say anything that hasn't yet been said. Indeed, virtually everything has been said about this initiative qualified by Morocco as the only new and positive dynamic move that offers the best prospect for a final and mutually acceptable political solution to this regional dispute. To use Roger Gallois' expression “No effort is ever in vain. Sisyphus was working out all the way”⁴³.

Under the pressure of reflexive societies (Giddens 1990), the redefinition of the notion of living together on a global scale, living a life that is not guided by imperialism or by the needs of national majorities, has acquired unprecedented proportions and gradually made its mark in the mind of scholars and that of politicians. Taking into account the will of the people/of the nation as the basis for sovereignty ushered in substantial changes in international relations in so far as recognising the right to self-determination implied freedom for all peoples to freely determine, without outside pressure, the type of political, social, economic and cultural regime they want to subject themselves to.

Within already established political communities such as the Kingdom of Morocco⁴⁴, the recognition of autonomy already often leads to various institutional arrangements: administrative autonomy, personal and legal autonomy as well as territorial political autonomy. But we know that these modalities can only be crystallized in institutions through favourable power relations.

In April 2007, the Security Council of the United Nations was presented with the autonomy statute⁴⁵ that the Alaouite Kingdom intends to grant to the Sahara, that gave rise to debates and

⁴³ Fatsah Ouguergouz, *La charte africaine des droits de l'homme. Une approche juridique des droits de l'homme: entre tradition et modernité*, Paris PUF, p.58.

⁴⁴ The main sociologists who have taken an interest in the sociogenesis of the state in the Western world, for instance, show that states are born of what N. Elias calls the “monopoly law” (2003: 25): monopoly of legitimate violence and monopoly of sovereignty within a given territory (M. Weber, 1959:8). This is the path that African states tried to follow as soon as they acceded to international sovereignty.

⁴⁵ Autonomy is a legal status which allows a given population, within a territory, [part of a state that keeps its sovereignty and territorial integrity], to exercise greater or lesser powers and prerogatives of democratic government and management.

conflicts galore, within the framework of Morocco's sovereignty, in order to solve this conflict which has been a thorn in the flesh of Maghreb's integration process. The initiative builds on three elements: Morocco's sovereignty, the taking into account of the region's social and cultural particularities, as well as international autonomy criteria.

To parody E. Kant, it is this project of democratic or perpetual peace that Morocco seems to be heading towards⁴⁶. If anyone needs convincing, they just have to take an unbiased look at the Moroccan initiative for an autonomy statute for the Sahara. For many, it is a form of victory of autonomy over heteronomy to paraphrase Kant again, assuming the overriding aim of human rights is to safeguard individual autonomy. The viability of the project can only be measured against several complementary questions:

To what extent does the Moroccan initiative satisfy the provisions of international texts safeguarding human rights?

Can the conceptual singularity and the promotional nature of this project lead to genuine protection of human rights?

To what extent do the provisions in the initiative provide for protection and promotion of human rights?

These fundamental questions necessarily call for clarifications or, at the very least, a questioning of the basic concepts underlining the right of peoples to self-determination.

This communication studies the project's salient features to compare them with international human rights instruments. The promotion and protection of human rights are the mainstay of the promotion of democracy. It thus seems useful to fully comprehend the elements that contribute to setting out and realizing human rights whose importance for the political life of the region is now well established. We shall first of all examine the right to self-determination as the backbone of human rights and democracy, before looking at the promises contained in the initiative.

I. The right of peoples to self-determination: between democracy and human rights

Using the legal system as a baseline order allowing for the harmonious coexistence of peoples within a society in which interdependence calls for enhanced cooperation is nothing new. It comes in different shapes and sizes depending on the ideological convictions of its promoters, the aspirations, the strength and the will of a people and does not necessarily have the same consequences from the viewpoint of the exercise of the right to self-determination and the foundations of its legitimacy. In Kant's Perpetual Peace Project this idea was already mentioned in article II (preliminary): "No independent State [] shall come under the dominion of another State by inheritance, exchange, purchase or donation. A State is not, like the ground which it occupies, a piece of property. It is a society of men whom no one else has any right to command or to dispose except the State itself. It is a trunk with its own roots. But to incorporate it into another State, like a graft, is to destroy its existence as a moral person, reducing it to a thing; such incorporation thus contradicts the idea of the original contract without which no right over a people can be conceived"⁴⁷.

⁴⁶ As shown in the democratic peace theory. What does this theory say? It holds that democracies never go to war with one another. The relationship between democracies is characterized by stable peace defined by K. Boulding as "a situation in which the parties [states, their decision-makers or their citizens] do not seriously consider violent options when deciding how best to pursue their interests".

⁴⁷ Emmanuel KANT, *Perpetual Peace Project*, pp. 25-26. Jürgen HABERMAS however stresses that according to Kant, the freedom of a nation entails an obligation to reach an agreement based on cooperation, the *Republican*

1. The right to self-determination

There are two dimensions to the right to self-determination: internal and external. The external dimension means that the peoples which live under foreign occupation have the right to self-determination in the shape of total independence. The internal dimension means that communities that have specific particularities within one country have the right to autonomy within the framework of the State. The right to self-determination leads to external autonomy whenever internal autonomy is impossible, in other words through the right to democracy. The very principle of the right of peoples to self-determination has been the engine of decolonization in the third world, it goes back a while, as it also fuelled the emancipation of other peoples. The American Revolution shows how the right to self-determination was realized, implying emancipation from the colonizing power and referring to the nation as the bedrock of state authority⁴⁸. Woodrow Wilson is usually considered the strongest advocate for the right of peoples to self-determination⁴⁹. Human rights contributed to delegitimize any form of political organization moving away from this standard ideal.

2. The right to self-determination: towards a fundamental human right under international law

Together with the right to non-discrimination in the enjoyment of human rights, the right of peoples to self-determination is the only one mentioned in the Charter of the United Nations. Timidly enshrined in articles 1.2 and 55 of the Charter of the United Nations, but strongly entrenched in customary law since the decolonization charter of December 14th 1960, the right of peoples to self-determination turned out to be fertile and is among the many founding principles which are quite numerous in international law⁵⁰ but which can only become positive principles when implemented, knowing that implementation depends on the political, economic and social contexts, frequently shifting by nature. This is how article 1, paragraph 1 of both Covenants state that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. In this context, the word “peoples” refers to peoples constituted into States. This is about equality of States in their right to self-determination in international relations, without foreign intervention.

Paragraph 55 of article 1 further refers to peoples’ right to self-determination: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. Here again, peoples constituted into States are concerned but this time from the viewpoint of their status and their domestic development.

Integration, p.104. He however considers that Kant’s project is too dependent on the principle of State sovereignty and would rather favour a right to intervene. *La paix perpétuelle. Bicentenaire d’une idée kantienne*, Paris, Cerf, 1996, pp. 55-63.

⁴⁸ Jean CHARPENTIER, “Autodétermination et décolonisation”, *Mélanges offerts à Charles Chaumont. Le droit des peuples à disposer d’eux-mêmes*, Paris, Pedone, 1984, pp. 119-124.

⁴⁹ The USA played a crucial part in the decolonization process, on two accounts: on the one hand they wanted to put pressure on the Europeans to give up their zones of colonial influence whose protectionist nature curbed the expansion of world trade. The official doctrine was that since free trade and open economies put an end to privileges between former colonizers and colonies, they would foster the reconstruction of European economies as well as that of newly independent countries.

⁵⁰ See the two 1966 international Covenants on human rights. Many UN declarations and resolutions focus mainly on that right. It is worth noting too that the signatory States to these two Covenants have undertaken to ensure to all individuals within their territory the rights recognized herein without distinction or discrimination of any kind (sex, language, religion, political opinion, ethnic origin or social status).

Besides, for the populations of non-self governing territories article 73 only envisages the “development of their free political institutions”. We know the background to this article: a unilateral declaration of colonial powers was added in extremis to the Dumbarton Oaks provisions and eventually incorporated into the Charter. By this declaration the members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government committed to respect certain obligations in any case limited:

“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a/ to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b/ to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement”.

In the “Dictionnaire de la terminologie du droit international” under the guidance of President Basdevant (1960), the entry “Non self-governing territories” reads as follows: “It is widely recognized that this phrase and its definition are imprecise, some saying that the phrase is only intended for colonies in the narrow sense of the term, while others consider that it applies to all territories whose populations, due to their backward civilization, are not yet capable of fully governing themselves”⁵¹.

The Declaration on the granting of independence to colonial countries and peoples is the UN’s first major contribution to the definition of the right to self-determination. It was adopted because States were convinced that “the process of liberation is irresistible and irreversible and that in order to avoid serious crisis, an end must be put to colonialism and all practices of segregation and discrimination associated therewith.”⁵²

The right of peoples to self-determination is thus a dynamic concept that doesn’t wither away with the creation of an independent state or in case the latter’s effectiveness is considerably reduced.⁵³ This collective right is both a condition for the expression of individual rights and the expression of the principle of liberal democracy.⁵⁴ Pushed to the forefront of these two covenants and of other instruments, the right to self-determination was enshrined as a fundamental human right in international law as rightly underlined by UN expert Aurelieu Cristescu: “Recognition of the right of peoples to self-determination as one of the fundamental rights, is bound up with recognition of the human dignity of peoples, for there is a connection between the principle of equal rights and self-determination of peoples, on the one hand and respect for fundamental human rights and justice on the other. The principle of self-determination is the natural corollary of the

⁵¹ *Dictionnaire de la terminologie du droit international*, Jules Basdevant (ed), Paris, Sirey 1960, p. 600.

⁵² Resolution 1514 (XV) of the General Assembly of the United Nations, adopted on December 14th 1960.

⁵³ According to Joe VERHOEVEN, the right of peoples to self-determination has major consequences, particularly from the point of view of effectiveness. Indeed, allowing for a right of peoples to self-determination means you don’t demand power (or less so), in other words the condition of State effectiveness permits a more liberal interpretation; “Sovereign State: A collectivity or a community?”, *Hitoisubashi Journal of Law and Politics. Special Issue*, 1994, p. 154.

⁵⁴ Claude LEFORT, “Nation et souveraineté, *Les Temps Modernes*, n°610, September/October/November 2000, p.26.

principle of individual freedom, and the subjection of people to alien domination constitutes a denial of fundamental human rights.”⁵⁵

Though the right to self-determination is mainly the right of any human community united by conscience and the willingness to constitute a popular unity capable of acting towards a common future, it is also a fundamental human right. Indeed, realization of that collective right requires prior recognition of the political rights of the individuals who make up the community.

Self-determination of the people is subject to self-determination of citizens which itself depends on the effective exercise of the right of the people to decide their own future. These are two sides of the same coin: only a free people is made up of citizens with rights, and only free citizens can freely partake in the determination of a political status for the people they belong to. As reminded by the International Court of Justice in the case of Western Sahara, one of the most important elements of the right to self-determination is “the free and genuine expression of the will of the peoples of the Territory”. The same opinion was rendered in the case of Namibia then occupied by South Africa.

3. International self-determination of all peoples or the Right to freely participate in public affairs

The General Assembly of the United Nations having limited the benefit of the right to self-determination to what it had called colonial peoples, one question arises: is the external right to self-determination still relevant? None of the relevant international instruments limits the right to self-determination to colonial peoples alone. On the contrary, resolutions 1514 (XV) and 2625 (XXV) of the General Assembly, as well as article 1 of the two 1966 international human rights covenants state that “all peoples” have the right of self-determination. By granting a right to self-determination to all peoples living under foreign oppression, resolution 2625 of the General Assembly of the United Nations qualifies itself as the first universal text in that it goes beyond decolonization. By taking into account the fact that there are less than 10% of so-called “homogenous” states in the world, one had to use the dynamic application of the principle to facilitate decolonization on the one hand, while on the other averting the possible threat to national unity and territorial integrity of states, including those that were born out of decolonization and which are often more fragile, older and often made up of multiple ethnic groups artificially brought together.

The concept of “peoples’ right” was not defined in the Charter of the United Nations. The Charter refers to the rights of a community to determine how it should be ruled, how its economy and its culture should be developed and to what extent it should legitimately take part in the management of the public affairs of the state within which it is meant to develop to its fullest potential. The statement of the rights of peoples is a “statutory originality” mainly based on the equality of peoples and their right to existence or liberation. Michel Virally considered that the “right of peoples” was part and parcel of positive international law.⁵⁶ Though it has assumed a special place in international law, this right suffers from many weaknesses and lacks clarity, especially with regards to the exact determination of those who hold it. Judge Nicolas Valticos considers that “some objected that in certain respects, there could be a danger in asserting a right of peoples, in that it could weaken human rights”.⁵⁷ Conversely, we believe that the right to self-

⁵⁵ See § 221 of the study entitled *The Right to Self-Determination: historical and current development on the basis of United Nations instruments*, drafted by Aureliu Cristescu, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1981.

⁵⁶ M. Virally, “Panorama du droit international contemporain”, *Cours général de droit international public*; *Recueil des cours de l’Académie de droit international*, tome 183, 1983 V, pp. 7-382, especially p.60.

⁵⁷ N. Valticos, “Universalité et relativité des droits de l’homme”, *op. cit.* p.749.

determination of a decolonized people corresponds to the right to democracy. As Antonio Cassese pointed out, the right to self-determination also means “once the government is chosen, the right to make sure it is always based on consensus among the people”.⁵⁸ In other words, as stated in the Declaration of Algiers, the right of every people “to have democratic government representing all the citizens ... and capable of ensuring effective respect for the human rights and fundamental freedoms for all”.⁵⁹

The Human Rights Committee has always upheld that position. To this Committee, the right of peoples to self-determination means that all components of the state’s population can take part in the country’s political life, and the Committee does not hesitate to ask state parties for more details on that on the occasion of the consideration of the reports submitted under article 40 of the Covenant on Civil and Political Rights. Article 21 of the Universal Declaration of Human Rights provides that everyone has the right to take part in the conduct of public affairs:

“1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. Everyone has the right of equal access to public service in his country. 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”.

The International Covenant on Civil and Political Rights provides for the same right in article 25. All peoples have an imprescriptible and inalienable right to self-determination. Peoples express themselves for instance through free, transparent, periodic, genuine, honest elections. The International Court of Justice reaffirmed this right as follows: “Each state is permitted to decide freely the choice of a political, economic and social system”.⁶⁰

The right to self-determination truly seems like the nexus of the exercise of power, the only principle likely to enshrine true “democracy”⁶¹. This principle includes the principle of self-affirmation (who are the members of the baseline Community?) and that of self-definition (on the basis of what criteria?). Genuine democracy additionally implies self-organization (what status?) and self-management (which refers to the right to govern themselves). The right to self-determination thus naturally and logically precedes democracy.

II. Autonomy for the sahara used as a factor in the consolidation of human rights

The type of self-determination (self-government) or the degree of autonomy varies considerably according to the type of society concerned. The way autonomy is designed in the Moroccan initiative greatly differs from what decentralization laws provide for. The autonomous region will indeed be called upon to freely manage its internal affairs through its own legislative and executive bodies in accordance with the Constitution.

⁵⁸ Antonio CASSESE and Edmond JOUVE, “Pour un droit des peuples: essai sur la Déclaration d’Alger”, Paris, Berger-Levrault, 1978, p.102.

⁵⁹ Universal Declaration of the Rights of Peoples, Algiers, 4th July 1976, available online on the site on human rights violations in Algeria <http://www.algerie-tpp.org/>

⁶⁰ Case concerning the Military and Paramilitary Activities in and against Nicaragua (merits), judgment of 27 June 1986, ICJ, *Rec.*, 1986, p.131. In its jurisprudence on the right of peoples to self-determination, the African Commission (ACHPR) which receives communications/complaints claiming enjoyment of this right inside state parties has consistently underlined that these peoples may exercise their right to self-determination in any form and way compatible with the territorial integrity of state parties [See communication n°75/92 (1995) Katangese Peoples’ Congress v. Zaire, 8th Annual Activity Report of the ACHPR]

⁶¹ It is not uncommon for members of one single “ethnic group”, of one clan practicing nepotism or even an oligarchy to take over the whole apparatus of the state.

Article 12 of the initiative indeed contains a non-exhaustive list of competences granted to the region and which cover all aspects of local life. The region is an entity which is hard to define in a generic manner.⁶² It can equally well refer to German Länder or to the Belgian communities of Flanders and Wallonia, or even to the regions of the same state that enjoy varying degrees of autonomy, such as in Spain, Italy, Great-Britain or France. Some regions are more akin to nations (Scotland and the other nations of the United Kingdom, Catalonia, the Basque Country). Conversely, other regions are merely administrative entities devoid of political power. The Sahara region would be half-way between federalism (coexistence of a federal state and federated states on the same territory) and administrative decentralization (the powers granted only relate to the administrative management of the community).

Beyond territorial communities, various rights can be claimed collectively or individually under human rights. The effect of this autonomy on the rights of the Saharawi populations can only be judged at the internal political and institutional levels. Mr Chevallier considers that the working model of the post-modern state is based on two ideas (on top of that of partnership): substitution (principle of subsidiarity) and proximity⁶³.

1. Great expectations for the autonomy plan

It is a natural development in international law, a logical follow-up to the African approach and practice of human rights. It is thus necessary to look for the unsuspected resources hidden in the plan and then hope that (failing to arouse interest on the basis of its potential) by highlighting its virtues it will be fruitful for the Sahara which wants to eradicate human rights violations from its spiritual horizon.

Fundamental rights are consubstantial with the Constitution, or more broadly with the standard at the basis of a given legal system. They are the legal expression of the recognition of spaces of self-determination and of rights to be realized through national and international provisions. It provides for a legal system, including with regard to public authorities. The rule of law is thus considered a successful development of societies.

The concept was created in the 18th century. The School of natural law came up with the idea that any individual has inalienable rights and that these rights take precedence over state power and must be respected by it (cf John Locke). Considering fundamental rights as standards occupying a certain hierarchical position may sound like a highly positivist and normativist conception of law. It actually is a characteristic of the contemporary legal experience. The idea of natural right became impossible, impracticable and incomprehensible to us; it became alien to us.⁶⁴ If their emergence and the fact that they became positive rights are undeniably linked to modernity's central characteristics of individualism, rationalism, secularization and contractualism, their internationalization and the identification of their content and holders started in the 20th century.

Human rights aren't a mere abstract ideal, they are real rights, "justiciable" and effective rights. Effective enjoyment of these rights implies being able to concretely record, sanction and obtain

⁶² It differs from regionalism which is the expression of a need for affirmation that is often associated with a criticism or a denunciation of the central power and its hegemony. It often builds on a hurtful and mythified history. However, the claim for regionalism can be of variable geometry. Sometimes it acknowledges the full legitimacy of the nation-State within the framework of which it can express itself, sometimes it seeks to embody a nationalism that can lead to separatism. Regionalization refers to the political process under which regions are granted a greater role in the management of territorial affairs, whereas the concept of regionalism could be better defined as an ideology of territorial identity.

⁶³ Jacques Chevallier, *L'État post-moderne*, op. cit., p.49.

⁶⁴ F. Ewald, *Le droit du droit, Droits*, 1990, p.246.

reparation in case of injury caused by the violation of these rights. Effective enjoyment doesn't grow overnight or once and for all.

Two closely related problems arise here: vis-à-vis whom should these rights be protected and safeguarded?; which mechanisms will be used to ensure their protection? Answering the first of these questions has become more difficult with time: initially it essentially meant protecting human rights against possible infringements by the Executive, and to that end we relied mainly on the law. The law thus seems like the main mechanism to protect human rights. However, laws themselves have their limitations and reservations and the future will show the ambivalence of Parliament's action to safeguard human rights. The law sometimes enshrines new rights but it can also limit their exercise in the name of other priorities (public order, security...), or even infringe upon certain rights. We even came to realize that private individuals could also infringe upon human rights, that the law could be oppressive⁶⁵ and that the judge himself was a potential threat to rights and freedoms due to the powers residing with him (criminal judge) or due to the fact that he can support the Executive (administrative judge)⁶⁶.

Similarly, we came to realise the limitations of traditional protection systems (law and judge) as well as the need to set up twin systems and even to control them through new arrangements. This approach is much more pragmatic. A good example of this is the growing multiplication of protection systems meant to correct deficiencies and shortcomings. Judicial review is essential in punishing violations of rights and freedoms and it is now coupled with more flexible controls to avoid formalism, cumbersome and slow legal proceedings. The establishment of the Ombudsman institution shows that though indispensable, judicial mechanisms are not necessarily the most effective to safeguard rights and freedoms: more flexible arrangements with considerable operational capacity can offer more effective protection thanks to their independence and moral authority.

Internationalization of human rights led to a yet deeper change in prospects: while the state was seen as the place where human rights were realized and protected, these are now like a constraint on the state and control systems were established to ensure respect of commitments. The international system of protection of human rights not only offers real possibilities of blaming individual states whose behaviour may disregard human dignity, but it also fosters genuine state integration through human rights law on the basis of the universal values shared by the international community. Over the past five decades, international human rights law turned into a corpus juris for the protection of human beings and now covers a large number of regional and universal instruments characterized by unity of conception and purpose. There is indeed agreement on the fact that state intervention doesn't annihilate all initiatives aimed at safeguarding human rights.

⁶⁵ The law actually only offers random safeguards at the mercy of changing political balances. It can be the best but also the worst of things; hence the emergence of the review of the constitutionality of laws. The constitutional guarantee of fundamental rights appeared in America at the time of the War of Independence. Most new states (Virginia) then adopted a written Constitution guaranteeing several fundamental rights. In Europe, they were first enshrined in the French Constitution: the first National Constituent Assembly created by the Revolution adopted on 29 August 1789 a "Declaration of the Rights of Man and of the Citizen". This text juxtaposes rules of political organization and guarantees of fundamental rights. One should however not overestimate the effectiveness of these safeguards. First of all, the *nature of the control* by the Constitutional Council is such that a number of texts can slip through the net: the possibility for litigants to bring matters before it is often limited. Politicization of appointments does affect the content of decisions.

⁶⁶ Jurisdictional guarantee implies respect of a number of *conditions*: access to the judge, real guarantees of independence and impartiality, fair rules of procedure, effectiveness of recourse to the courts, extent of the power of judges, the conditions for implementation of their decisions.

From a legal point of view, it is up to the state, as a subject of international law, to make sure treaties are implemented throughout its territory and its international obligations are respected, especially related to human rights.⁶⁷ The triple international obligation made to states to respect, protect and fulfil human rights makes nonsense of the differentiation or the division between two categories of human rights depending on the obligations placed upon states.

Human rights guarantee schemes thus became undeniably more diversified and stronger: human rights now enjoy various interrelated levels of protection (international, European, constitutional, legislative, jurisdictional); and new schemes such as the Ombudsman, independent authorities, truth commissions, the “Diwan Al Madhalim” (the Moroccan Onmbudsman) now complement traditional protection mechanisms (the law, the judge). But that doesn’t mean that all problems are solved, new weaknesses keep coming to light. The effective enjoyment of human rights is a long-term process which needs constant nurturing and fortifying.

2. The autonomy plan and civil and political rights

The Moroccan initiative as a whole is an ideal framework for the realization of the right to self-determination of the Saharawi populations since it provides them with the opportunity to freely determine their political status and to ensure their economic, social and cultural development.

The Moroccan initiative indeed appears to draw on the ICCPR since it states that “the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers. They will have the financial resources needed for the region’s development in all fields, and will take an active part in the nation’s economic, social and cultural life” (Article 5 of the Moroccan autonomy initiative). This is what Charles Chaumont called “le droit des peuples à témoigner d’eux-mêmes” (the right of peoples to testify for themselves).

The Moroccan initiative is also consistent with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the General Assembly on December 18th 1979. It is in keeping with international gender equality standards as it provides in article 19 that “[...] There shall be adequate representation of women in the Parliament of the Sahara autonomous Region”.

Regarding political participation at the local level, paragraph 15 of the Final Declaration of the United Cities and Local Governments Congress of Jeju states that “Effective local democracy implies the active participation of citizens through methods witch enable all sections of the local community, including those traditionally excluded, to be involved on an equal basis. Furthermore, if we want to make progress in the active involvement of citizens, we should implement participatory mechanisms”. Through the regional bodies and the voting procedures envisaged for Saharawi populations, the autonomy initiative for the Sahara fully meets these requirements.

All those principles reflect the spirit of the Moroccan autonomy initiative for the Sahara which states in article 2 that “the Kingdom of Morocco set a positive, constructive and dynamic process

⁶⁷ A review of Moroccan positive law shows that in terms of provisions related to the rule of law, in terms of human rights and good governance, Morocco has nothing to envy to established democracies. Morocco is a party to a number of international human rights treaties, particularly the International Covenant on Civil and Political Rights (May 3rd 1979), the International Covenant on Economic, Social and Cultural Rights (May 3rd 1979), the Convention on the Rights of the Child (June 21st 1993), the International Convention on the Elimination of All Forms of Racial Discrimination (December 18th 1970), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (June 21st 1993), the Convention on the Elimination of All Forms of Discrimination Against Women (June 21st June 1993).

in motion » capable of meeting the expectations of the international community, especially in terms of human rights protection.

Furthermore, by decentralizing power, the Moroccan initiative confers more political and democratic rights, or at least more significant and more effective rights to the populations of the provinces of the South, by giving them more opportunities to take part in the public life of their region and to that of the country as a whole.

In this respect, by providing for the establishment of highly autonomous regional political bodies, especially a regional government and parliament, the autonomy of the Sahara region limits the decision making process to a more restricted social unit and thus guarantees better participation of Saharawi citizens by allowing them to effectively participate in public life. Regional autonomy gives each citizen the opportunity to exert greater influence at the local rather than the national level. The closer citizens are to their governments, the greater political control they can have over them.⁶⁸ If protection of civil and political rights is subject to state neutrality and limitation of its powers, the protection of economic, social and cultural rights requires constant government intervention.

3. Autonomy for the Sahara and economic, social and cultural rights

The autonomy initiative for the Sahara is part of Morocco's undertakings to respect international standards for the protection of economic, social and cultural rights, also called second-generation rights. The initiative draws on related international texts for more effective implementation of this category of rights. In the very preamble of the International Covenant on Economic, Social and Cultural Rights, it is said that "[...]the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights".

All of these rights are constitutionally guaranteed for all Moroccan citizens. As provided for in article 25 of the initiative "The Region's populations shall enjoy all the guarantees afforded by the Moroccan Constitution in the area of human rights as they are universally recognized".

The Declaration on the Right to Development adopted by the General Assembly in resolution 41/128 dated December 4th 1986 states in article 8.1 that "States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices".

The promotion of socioeconomic and cultural rights is now the focus of international concern. Within this framework, the international community adopted the eight Millennium Development Goals (MDGs) announced during the Millennium Summit of 8 December 2000, and that the 191 member states of the United Nations committed to achieve by 2015. In this respect, autonomy for

⁶⁸ Being elected to a municipal body doesn't in itself guarantee access to decision-making processes since we know that urban policies are decided in a number of inner sanctums, within parallel decision-making structures made up of public and private stakeholders, various levels of government, as well as members of the civil society. By explicitly stating that Southern provinces will have a regional parliament, a regional government and regional courts, the Moroccan autonomy initiative (though deliberately incomplete) gives Western Sahara a particular institutional system under Morocco's sovereignty whilst respecting the country's territorial integrity.

the Sahara, as a very extensive decentralization process, is a considerable step towards achievement of these goals since many of them can only be achieved at the local level.⁶⁹

Indeed, in the Final document of the 2005 World Summit that followed the Millennium Summit of 2000, participating states underlined “the important role of local authorities in contributing to the achievement of the internationally agreed development goals, including the Millennium Development Goals”. (Paragraph 174).

In the area of cultural rights, the Moroccan initiative does take into account the cultural specificities of the Saharawi populations and gives them the right and the duty to work for the “promotion of the Saharan Hassani cultural heritage” (article 12). It is worth mentioning here the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted on October 20, 2005, by the General Conference of the UNESCO and whose aim is to strengthen the creation, production, distribution, dissemination, access and enjoyment of cultural expressions as conveyed by cultural activities, goods and services.

Cultural rights ensure the very existence of the subject, its coherence within itself and vis-à-vis what it can give and receive. This is why their violation means the subject can no longer give and receive. They are that paradoxical link to others and what sets it apart from other groups, as described by Alain Touraine. They imply the recognition without which the subject has no social existence and the distance without which there is no freedom. Autonomy does not preclude belonging: it implies choosing what you belong to.

Autonomy of conscience has to be twofold: personal autonomy (vis-à-vis one’s inner determinism) and autonomy vis-à-vis others. Without that double decommitment, or liberation, free commitment is impossible. Decommitment and commitment feed off each other, none takes precedence over the other. In the same vein, autonomy and heteronomy (the state of being beholden to external influences) are indissociable. Cultural rights develop on the basis of that connection and they are needed to secure that connection. By freeing inner and outer determinisms, cultural rights let the subject feed on cultural resources and thus develop. This is, in a nutshell to explain their “triggering effect” vis-à-vis all other rights. The poor, the abused, can only access freedoms if they can appropriate the links with cultural reserves, “cultural capitals”, that give meaning and reveal a lot.

Autonomy requires implementation of an institutional framework for a population group so that it can freely manage local affairs, and allows it to express its identity on the basis of a number of powers and competences guaranteed in various areas. By granting autonomy to the Sahara, Morocco is taking a very serious view of sustainable development and identity-related emancipation issues as crystallized in the Convention on cultural diversity.⁷⁰

The plan that sets aside the option of war must be based on the place given to people. There is no contradiction between peace and human rights, they are part of a continuum that leads to the promotion of the right of peoples to self-determination under jus cogens, especially when people can testify themselves to use the words of Professor Charles Chaumont. Beyond its solemn commitment to ensure respect for the fundamental rights of its citizens of the autonomous region

⁶⁹ Decentralization now largely appears to be devolution “draped” in very limited local autonomy for want of appropriate political as well as functional legitimacy. The huge problem of resources comes on top of this lack of institutional credibility and thus compounds the whole problem.

⁷⁰ The Convention identifies a body of principles that connects the concept to three powerful themes: democracy (protection of diversity as a human right), development (support to local cultural industries, on the basis of the paradigm of sustainable and cooperative development) and globalization (implementation of a global cultural policy to cope with that new reality).

of the Sahara, Morocco commits itself to “take all the necessary steps to ensure full integration, into the nation’s fabric, of persons to be repatriated. This will be done in a manner which preserves their dignity and guarantees their security and the protection of their property” (article 30 of the Moroccan autonomy initiative). In the same vein, under article 31 of the initiative, “the Kingdom of Morocco shall, in particular, declare a blanket amnesty, precluding any legal proceedings, arrest, detention, imprisonment or intimidation of any kind, based on facts covered by this amnesty”. In the light of these commitments, and in view of the progress made so far by Morocco in this area, it can be said that human rights are afforded all safeguards by the autonomy initiative.

4. The Moroccan initiative: a pro-democracy project put forward in a favourable regional context

The contemporary context is marked in the political sphere by a multiplication of regulatory levels. The rise in local powers is significant and a worldwide phenomenon. A new public affairs management structure has appeared, characterized by superimposed, or rather entangled national institutions, infra-state bodies as well as supranational organizations (both regional and international). While keeping a privileged position, the state no longer holds monopoly over policy-making; the national sphere no longer is the only locus of political life. The choices of Moroccan political elites vis-à-vis the state are to a great extent determined by international standards and the practice of third countries which actually are the main external sources for perfecting the rule of law.

The establishment of regional organizations is now considered “one of the features of international governance”⁷¹. The integration of the Maghreb has also become an absolute economic must considering the intense competition between regional blocks⁷². Regional integration (AU) is a necessity along the road to democratic peace and in the fight against terrorism and the Islamist threat. Among democracies, resorting to war has become politically irrational. The “Euro-Mediterranean Zone of peace, stability and security” based on partnership will most likely have positive externalities.

The new American anti-terrorism policy under which Western Sahara is a cornerstone of the region is a major geopolitical factor. Algeria and Morocco cooperate closely with the United-States in their war against terrorism. These are working to improve relations between Algeria and Morocco (the elimination by Morocco of visa requirements for Algerian citizens is among the gestures of goodwill that can ease relations between the two countries).

The current examples of self-determination in Africa no longer reflect separatist ambitions but are rather akin to strategies to renegotiate integration of these groups into the state. This seems to be the case for the separatists of the Casamance region in Senegal, and the Lozi in Zambia, for instance. South-Sudan is an exception on the continent and suggests that when an entity, a religion and resources are equally distributed, identity-related activism comes into play.

In Morocco, the Advisory Council on Human Rights (CCDH), the Equity and Reconciliation Commission (IER), the reform of the Moudawana, the Royal Institute of the Amazigh Culture (IRCA), among others, are genuine steps forward. True enough, there remain major deficiencies especially in the area of social democracy and in terms of differences between social strata.

⁷¹ François Benaroya, *Organisations régionales et gouvernance mondiale*, in *Gouvernance mondiale*, Rapport du Conseil d’analyse économique, la Documentation française, mai 2002.

⁷² Some economists reckon that the Maghreb is losing some 10 billion dollars a year for want of regional integration. *Le Monde*, 24th May 2005.

Conclusion

For over twenty years the United Nations has been coming up against the entrenched positions of the actors in the conflict over Western Sahara. The autonomy initiative comes as the positive culmination of a process of internal and external dialogue focused on a third approach aimed at integrating the Sahara into Morocco whilst granting it considerable autonomy. This initiative is thus an additional chance for the international community and a victory for human rights. Western Sahara is now in the middle of a transitional phase and about to be reorganized in a way that is not yet clearly defined. The initiative is part of a global model of ongoing negotiations under J. Habermas's principle of "discourse ethics".

From a mere political principle at the beginning of the 20th century, the right of peoples has become a positive right through the action of the UN in the area of decolonization. We have seen that it is not only enforceable against colonial powers in so far as it is a right available to all peoples, at least as the right to internal self-determination. We believe that the autonomy initiative is in the same vein and could be a major legal and moral reference for the Saharawis to claim. Rather than remodelling the framework for the protection of human rights, the initiative is a direct response to the violations of human rights committed during the conflict. The provisions of the initiative are presented as "safeguards" integrated into the new structures of government. The rights referred to are international standards that enjoy established legitimacy: the language used is neutral vis-à-vis the parties in the conflict and Morocco is already bound by a large number of these standards. As shown above, the most fundamental principles of international law (like the right of peoples to self-determination in our case) are still something of a puzzle; their interpretation keeps changing depending on the historical context and the constantly evolving contradictions of the international society; and past experiences are always teachings for the future, especially when one is right too soon.

Contribution of the Moroccan Autonomy Initiative to Morocco's Regionalisation Plan

Mr Romuald PIAL MEZALA Researcher – Lawyer, Preparing a Doctorate in International Law at the University of Geneva- Switzerland-

Historical background

Unlike the other countries of the region, from the dawn of its independence Morocco showed undeniable political and strategic interest in decentralization and was always very open in the area of management of local affairs. Its ultimate goal is to lay the foundations for the development of its regions, by banking on the creation and the strengthening of local management and governance capacities on the basis of the resources (especially human) of the region.

Morocco's decentralization policy attests to the awareness and political will of public authorities to devolve power and set the stage for decentralization followed by regionalization, taking into account the multi-faceted social structure of the Kingdom and its regions. It also bears testimony to Morocco's deep belief that learning the rules of democracy, political socialization and political participation are first and foremost a local matter. The country's policy fosters the dissemination of the culture of governance at the local level and bases the relationship between citizens/regions/central government on an economic, social and cultural neighbouring policy.

Morocco is indeed the only country in the African region and in the Middle East to have adopted such a regionalization policy based on an evolutionary process aimed at recognizing the regions' personality and at allowing them to contribute to the consolidation and diversity of the Kingdom.

The process unfolded in stages and took several shapes and forms: it was first centered on administrative considerations closely related to the daily management of local citizens' needs in their relationship with territorial authorities. This approach required dynamic economic development in tune with the evolution of the Moroccan nation, with the aspirations of all its social components and their cultural specificities based on the territory's diversity and unity.

Regionalisation was then enshrined in the Constitution, in statutory instruments and even in municipal charters.

It is in this context that Morocco established a regional territorial administration "marked by the relics of the past, as a result of the modernization of ancestral institutions or the maintenance of institutions inherited from the protectorate and through innovations of various origins, including systems borrowed from abroad."

The foundations of Morocco's regional administration system or of the process of progressive establishment of local democracy were laid during the first decade after independence. This system evolved under the influence of the many major transformations that the Moroccan society underwent.

The creation in 1971 of seven economic regions allowed for the emergence of a type of regionalism that fostered harmony rather than separation.

The regionalisation process came back with a vengeance in the 1980s. King Hassan II had set the tone, stating his determination to endow the country with advanced regions along the model of