

AFRICAN UNION



UNION AFRICAINE

الاتحاد الأفريقي

UNIÃO AFRICANA

African Commission on Human & Peoples' Rights

Commission Africaine des Droits de l'Homme & des Peuples

No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) (220) 441 05 05 /441 05 06, Fax: (220) 441 05 04 E-mail: achpr@achpr.org; Web www.achpr.org

REPORT OF THE FACT-FINDING MISSION TO THE SAHRAWI ARAB DEMOCRATIC REPUBLIC (24 – 28 SEPTEMBER 2012)



**REPORT OF THE FACT-FINDING MISSION TO THE
SAHRAWI ARAB DEMOCRATIC REPUBLIC
(24 – 28 SEPTEMBER 2012)**

INTRODUCTION

1. In January 2012, The African Union at its Twentieth Ordinary Session held in Addis Ababa, Ethiopia adopted Executive Council Decision EX.CL/Dec. 689 (XX), which decision:

“requests the ACHPR to carry out a mission to the occupied territory of the Sahrawi Arab Democratic Republic, with a view to investigating human rights violations and report to the next Ordinary Session of the Executive Council in January 2013”.

2. In order to give effect to the above Decision, the African Commission on Human and Peoples Rights (the Commission) on 28 April 2012 sent Note Verbale Ref: ACHPR/CHAIR/MRC/SAHWI/PM/353/12 to the Government of the Kingdom of Morocco requesting for safe passage to the Occupied Territory. The same request was followed in a second Note Verbale Ref: ACHPR/CHAIR/SADR/670/12 of 8 August 2012. No response was received from the Moroccan authorities and the Commission was unable to visit the Occupied Territory as a consequence.

3. The Commission with the co-operation of the Government of Sahrawi Arab Democratic Republic (SADR) only visited the refugee camps near Tindouf in the South of Algeria. The findings of the present report are therefore limited to observations on the field as well as the testimonies and exchanges that the Commission had with various actors in the refugee camps and part of the Liberated Territory of Western Sahara as well as various authorities and organizations in Algiers, Algeria.

II. COMPOSITION OF THE MISSION

4. The mission took place from 24 to 28 September 2012 and the delegation of the Commission was comprised of:

- Commissioner Dupe Atoki, Chairperson of the Commission and Chairperson of the Committee for the Prevention of Torture in Africa, head of delegation;
- Commissioner Mohamed Bechir Khalfallah, Commissioner responsible for monitoring human rights in SADR and Chairperson of the Working Group on Economic, Social and Cultural Rights;
- Commissioner Reine Alapini Gansou, Special Rapporteur on Human Rights Defenders;
- Commissioner Soyata Maiga, Special Rapporteur on Rights of Women and Chairperson of the Working Group on Indigenous Populations/Communities in Africa;

- Commissioner Maya Sahli-Fadel, Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons;
- Commissioner Med Kagwa, Special Rapporteur on Prisons and Conditions of Detention.

5. The members of the Commission were accompanied and assisted by the following staff of the Secretariat of the Commission; Offah Obale, Tem Fuh Mbuh, Mourad Belmouktar and Fred Tamakloe.

III. GENERAL CONTEXT OF THE MISSION

Geographical context

6. Bordered to the north by Morocco, to the west by the Atlantic Ocean, to the north-east by Algeria and to the south by Mauritania, the Western Sahara covers an area of 266,000 km square. Its capitals are Laayoune (under Moroccan control) and Bir Lahlou (the temporary capital situated in the territories liberated by the Sahrawis). The refugee camps, located near Tindouf in the South of Algeria are home to a population of over 165, 000 Sahrawi refugees who depend almost exclusively on humanitarian aid. The camps are located in a very difficult hot desert environment without arable land and acute scarcity of water which makes any form of agriculture almost impossible. The camps are administered by the SADR Government which has established fully functioning governmental institutions in the area.

Historical Context

7. A Spanish protectorate since 1884, the territory of Western Sahara was designated in 1963 as 'non-autonomous' by the United Nations¹. On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred².

8. The Sahrawi Arab Democratic Republic was proclaimed on 27 February 1976 in Bir Lahlou by the The Frente Popular para la Liberacion da Saguia el Hamra y Rio del Oro (Polisario Front) which claimed sovereignty over the territory of the Western Sahara. However, this territory is also being claimed by Morocco which has been in control of 80 per cent of it since 5 August 1979 following the withdrawal of Mauritania from the Territory upon the conclusion of the Mauritano-Sahraoui agreement of 19 August 1979 (S/13503).

9. In its Advisory Opinion of 16 October 1975, the International Court of Justice (ICJ) concluded that the "materials and information presented to it do not establish any

¹ United Nations Doc.A5514, annex III

² United Nations Doc. S/2002/161

tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. The Court held that it found no legal ties of such nature as might affect the application of General Assembly resolution 1514 (XV) of 14 December 1960 in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the people of the Territory.”

10. Following this Advisory Opinion and the departure of Spain from Western Sahara, Morocco organized the ‘Green March’ into Western Sahara where 300, 000 unarmed Moroccans accompanied by the Moroccan Army armed with heavy weapons crossed into and occupied Western Sahara.

11. SADR has been a full member of the Organization of African Unity (OAU) since 1982 and a founding member of its successor, the African Union (AU). It ratified the African Charter on Human and Peoples’ Rights in 1986 and submitted its initial report to the Commission in January 2003.

12. The AU has long defended the principle of Sahrawi independence. At the 13th Session of the Council of Ministers of the OAU held in Addis-Ababa from 27 August to 6 September, 1969, resolution CM/RES/206(XIII), “reaffirmed the legitimacy of the war waged in the so-called Spanish Sahara” and “requested Spain to enforce Resolution 2428 (XXIII) through which the United Nations’ General Assembly recognized the inalienable right of the Saharawi people to self-determination”.

13. At its 14th Session held in Addis-Ababa in February, 1970, the Council of Ministers of the OAU upheld Resolution 206 of the previous session through the adoption of a new resolution, i.e. CM/RES/209(XIV).

14. At the 15th Session of August, 1970, the Council of Ministers, per Resolution CM/RES/234(XV), “earnestly requested Spain to immediately comply with the relevant provisions of the United Nations resolutions dealing with the right to self-determination of the people of the so-called Spanish Sahara”.

15. Resolution CM/RES/272(XIX) which was adopted in June, 1972 called for the exercise of the “right to self-determination and independence “of Western Sahara.

16. In 1991, the United Nations Security Council adopted the Settlement Plan signed by Morocco and the Polisario Front. Under this plan, the United Nations Mission for the holding of a referendum in the Western Sahara (MINURSO) was established to hold the self-determination referendum which was to enable the Saharawi people to choose between independence and integration into Morocco. There were some difficulties, particularly with the identification of voters, which prevented the enforcement of the Settlement Plan.

17. The Commission at its 27th Ordinary Session held in Algiers, from 27 April to 11 May 2000 issued Resolution ACHPR/Res145(XLV) on the Western Sahara calling for the organization of the Saharawi peoples’ referendum on self-determination in a free, fair and regular manner, as desired by the international community.

IV. CONDUCT OF THE MISSION

18. The delegation held meetings with various officials and organizations both in Algiers and in the Refugee Camps near Tindouf.

19. 19. In Algiers, the delegation met with the following: the SADR Ambassador to Algeria, H.E Brahim Ghali; Algerian National Committee of Solidarity with the Sahrawi People (CNASPS). The delegation also met representatives of humanitarian agencies (the Algerian Red Crescent, the United Nations High Commission for Refugees (UNHCR), the World Food Programme (WFP), and the International Committee of the Red Cross (ICRC). These meetings ended with the holding of two press briefings.

20. In the refugee camps near Tindouf, meetings were held with the following officials and institutions: the Head of State and Secretary General of the Polisario Front, H.E. Mohamed Abdelaziz; the Minister of Justice, H.E Abba Dih Sheikh; the Minister of Education, H. E. Mariem Salek Ahamadh; the Minister of Health, H.E Mohammad Lamine; the Minister of Culture, H.E Khadija Hamdi; the Minister of Interior, H. E. Hamada Selma Daf; the Governors of the Wilayas of Smara and Boujdour, female parliamentarians; the Chief Judge and judges of the Supreme Court; lawyers of the Sahrawi Bar Association; the National Union of Sahrawi Women; the Head of the Sahrawi Red Crescent; representatives of MINURSO, UNHCR, WFP, UNICEF; humanitarian organizations operating in the camps; members of Civil Society (AFAPREDESA, NOVA); members of Sahrawi Students Union; members of Sahrawi Workers Union; and families of the disappeared and victims of bombings.

21. The mission was facilitated by Mr. Abba Salek, the Secretary General of the Constitutional Council of SADR, who accompanied the delegation throughout the mission.

22. The Delegation visited the following refugee camps; Smara, Rabouni, and a camp called "February 27". The delegation also visited the Moroccan Wall the Military Museum, the head office of the National Union of Sahrawi Women, schools, as well as hospital.

23. The observations and findings set below are the results of discussions during these meetings and visits.

A) The Human Rights Situation in the Occupied Territory

24. Although the delegation did not actually visit the Occupied Territory for the reason outlined above, information gathered from the many meetings the delegation held with various SADR authorities and other stakeholders point to the fact that human rights violations have been perpetrated in the Occupied Territory under Moroccan control.

i) The right to self-determination of the Sahrawi People

25. The right of all peoples to self-determination is guaranteed by the African Charter in its Article 20 in the following words:

“All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.”

26. The African Union and the United Nations have recognized the right of the Sahrawi people to this inalienable right in the resolutions and decisions outlined above. However, in their struggle for self-determination for almost four decades running, the Sahrawi people generally feel let down by the African Union and the international Community. While appreciating the support of some African Countries, many stakeholders the delegation interacted with pointed out the need for a more active involvement of the African Union as a whole in order to find a speedy and acceptable resolution to the conflict. It was brought to the attention of the delegation that the situation in Western Sahara and the immense suffering of the Sahrawi people seems to have been forgotten and relegated to the background.

27. In the various meetings and discussions the delegation held with some of the stakeholders, the protracted nature of the situation in occupied Western Sahara with endless negotiations that have not resulted in any tangible solution to the conflict was a major concern which they feared could lead to frustrations and loss of patience, with disastrous consequences for the Sahrawi population.

28. There have been continuous delays in holding the envisaged referendum that will constitute a free and genuine exercise of the right of the Sahrawi People to self-determination. The reasons for the continued delay in holding the referendum were attributed to obstructions from Morocco and its allies in the UN Security Council, who have been persistently delaying and blocking the process. The delegation was informed that the process to identify voters for the referendum has already been concluded but the actual holding of the referendum has not been carried out.

ii) Right to freedom of association and expression

29. Sahrawis in the refugee camps generally expressed concern about the situation of their kith and kin in the Occupied Territory whom they worried were subjected to frequent harassment from the Moroccan authorities and Moroccan settlers. Many of the

reported violations were attributed to the Moroccan occupying military and security officers who have a very heavy presence in the Territory.

30. The delegation was informed that Sahrawis are not allowed by the Moroccan authorities to assemble freely and any form of peaceful demonstration is usually violently suppressed by the authorities. Many instances of peaceful demonstrations organized by Sahrawis against their marginalization and the stalemate on the question of the referendum were reportedly brutally suppressed.

31. Allegations of suppression of freedom of expression and constant censorship of the media as well as surveillance of persons and entities that seek to advocate for the independence of Western Sahara and bring the reality of the plight of the Sahrawi people in the Occupied Territory to light, were also brought to the attention of the delegation.

iii) Right to freedom of movement

32. The Moroccan government in 1981 built a 2,700 kilometer long wall known as the Berm or the Wall of Shame cutting Western Sahara in two from North to South. It acts as a separation barrier between the Moroccan-controlled Occupied Territory (80 per cent of Western Sahara) and the Polisario-controlled Liberated Territory. Visits between the camps and the Occupied Territory are impossible, with the Moroccan Wall hindering movement between the two parts of Western Sahara. Thousands of families have been separated for more than 30 years, a painful situation for the population in both the Occupied Territory and the refugee camps.

33. In 2004, the UNHCR and MINURSO under the Confidence Building Measures started organizing flights to facilitate the exchange of reciprocal visits between family members in the refugee camps and the Occupied Territory. This initiative however has some limitations in that the demand for family visits is high and the flights are very restrictive, however new initiatives are being envisaged to increase the capacity of the flights.

iv) Right to freely dispose of wealth and natural resources

34. The illegal exploitation of natural resources by Morocco in the Occupied Territory was also brought to the attention of the delegation. The delegation was informed that the European Union and the Government of Morocco signed a fisheries agreement that allows European fishing vessels to fish off the shore of the Occupied Territory, without involving the Sahrawi and without re-investing the proceeds of exploitation of the resources for the benefit of the Sahrawi People. The same concern was also raised about the mining of phosphates especially in the mine of Bou Craa from which Morocco has allegedly greatly benefited.

v) Right to life and the integrity of the person

35. The delegation met with and listened to testimonies from about thirty-five (35) families whose members have disappeared. Some of them were kidnapped from their

families and kept in Moroccan prisons. According to the testimonies, some 4500 Sahrawis were victims of enforced disappearances and more than 500 of them are still reported missing.

36. In 2010, the Moroccan National Human Rights Commission issued a list of “352 cases of enforced disappearances.” It recognized that 352 Sahrawis have died, including 144 people allegedly during military battles without specifying their identities or the exact circumstances of their death. The report acknowledges that the perpetrators of these crimes belong to different Moroccan military corps, especially the army, gendarmerie and auxiliary forces.

37. The delegation also received reports of arbitrary arrests and detention and heard numerous testimonies of Sahrawi victims of torture and humiliating treatment in Moroccan jails, especially those involved in pro-independence activities. According to these victims, torture of Sahrawis in Moroccan jails and police detention centres is systematic and the perpetrators enjoy total impunity.

38. The delegation was informed that there is frequent perpetration of violence against Sahrawi women by Moroccan security forces in the Occupied Territory. According to the testimonies of Sahrawi activists in the camps who met with the delegation, women are often victims of acts of violence during peaceful demonstrations which are violently dispersed by Moroccan security forces. Individuals reported numerous cases of excessive use of force, alleging that officers beat them severely on the head, arms, legs, back and knees with truncheons.

39. The delegation was shown some scars on the bodies of human rights defenders and activists, with whom it met which were alleged to have been inflicted by Moroccan security forces during demonstrations and through torture.

40. The delegation watched the projection of a film which traced the physical, moral and sexual violence which a young Sahrawi girl was subjected to in a police station in the Occupied Territory and testimonies of Sahrawi women exhibiting wounds on different parts of their bodies (arms, backs and bellies).

vi) Socio-economic rights

41. Discrimination against Sahrawis resulting in the lack of jobs and training opportunities which have resulted in widespread unemployment for native Sahrawis was also brought to the attention of the delegation.

B) The Human Rights Situation in the Refugee Camps

42. This section of the Report examines the implications of the occupation of Western Sahara by Morocco on the human rights of Sahrawis in the refugee camps. The delegation visited three of the five refugee camps near Tindouf viz ; Smara, Rabouni, and the camp called “February 27” where it noted the harsh desert environment in which the Sahrawi refugees live.

43. The delegation observed that there is an acute scarcity of water in the camps and inadequate social services, which has led the refugees to be entirely dependent on humanitarian aid. The delegation noted the following issues:

(i) Victims of land mines

44. The 2, 700 KM long Moroccan Wall is protected by an estimated 150,000 Moroccan soldiers stationed in fortified positions and contaminated with about 5, 000, 000 land mines. Since the beginning of the conflict thousands of Saharawi civilians have been victims of these landmines, with accidents happening almost every week. The delegation met with some victims of the land mines. In spite of the cease-fire in force since 1991, the number of Sahrawi people sustaining injuries from the land mines continues to increase.

45. Victim assistance efforts have been limited. Medical facilities in the camps lack resources, and services are dependent on international aid for medicines and materials.

46. Landmine contamination hinders safe movement for the local population throughout Western Sahara (Occupied Territory and Liberated Territory). Whilst this problem persists, the almost 165,000 Saharawi refugees currently residing in camps in Algeria will be unable to freely move within Western Sahara.

(ii) The Role of Women

47. The delegation met with the NUSW and visited the National Women's School called the "27 February School" which offers training in computer studies, sewing, weaving and languages to women from all the refugee camps.

48. The population of the Saharawi refugee camps is made up of 80 per cent women and children. The women are involved in the organization of everyday life in refugee camps. Saharawi women occupy most of the jobs in the camps: education, administration and health. At present, 85 per cent of the teachers are women.

49. Furthermore, not only are women actively involved in the social construction of life in the camps, but also are involved in the political arena as well. Under the umbrella of the **National Union of Sahrawi Women (NUSW)**, the women continue to play a major role in the political formation in the camps. Currently, there are two women ministers, one woman who is the governor of the Wilaya of Boujdour, and five women are members of the political bureau of the Polisario front. Their role is very crucial to the Sahrawi struggle for independence.

(iii) Humanitarian Aid

50. It was brought to the delegation's attention that humanitarian aid on which the camp residents were entirely dependent has been steadily dwindling caused by the global economic crisis. Following the kidnap in October 2011 of three European aid workers, some European humanitarian NGOs left the refugee camps. Humanitarian organizations operating in the camps also brought to the delegations attention, the fact

that the emergency norms under which they operate are not suited to the peculiarities of Sahrawi refugees since theirs is a situation that has persisted for almost 38 years and cannot therefore continue to function using such norms. It is therefore necessary to reflect on the need to establish a specific framework to cater for the situation of the Sahrawi refugees as was emphasized by a UNHCR representative.

(iv) The Situation of Sahrawi Youths

51. Although the SADR authorities have made considerable efforts to ensure access to education to a majority of its citizens, difficulties in this respect still abound. There are no higher education institutions in the camps and the SADR government depends entirely on scholarships from countries including Algeria, Spain, Libya and Cuba to send their youths to higher education institutions. The delegation noted the dearth of infrastructure in the schools it visited in the camps. The lack of employment opportunities for graduates who return to the camps was an issue of major concern.

52. The plight of about 350 Sahrawi students who had been studying in Libya and whose studies were abruptly interrupted following the crisis in that country was brought to the attention of the delegation. The delegation was informed that these students have not been able to obtain documentation from the Libyan universities that would enable them enroll in universities elsewhere.

53. The delegation visited some health establishments in the Wilaya of Smara. Here the delegation was briefed on the functioning of the health system in general and the difficulties faced, the most important being the lack of infrastructure and medicines.

54. Malnutrition was also a major cause for concern and according to the Sahrawi Red Crescent, humanitarian aid only covers 50 per cent of monthly food rations. Infant malnutrition is about 30 per cent and anaemia is very prevalent in pregnant women, breast-feeding mothers and women of reproductive age.

55. Access to water is a fundamental concern in the refugee camps due to their location in the harsh desert environment.

V. CONCLUSIONS AND RECOMMENDATIONS

A- Conclusions

56. At the end of the visit to the refugee camps and enriched by the numerous contacts which they had with the political authorities, the civil society and the representatives of international organizations working in the field, the delegation drew the following conclusions:

- i) The question of Western Sahara remains a matter of de-colonisation and thus the self-determination of the Sahrawi People; and in accordance with the provisions of the African Charter, in particular Article 20 which reinforces the position of the Sahrawi People on their right to self-determination.

- ii) The political authorities and the civil society in SADR are very strongly mobilized around the question of their self-determination and future independence of their Occupied Territory.
- iii) The issue does not benefit from adequate international support.
- iv) This situation has led to psychological repercussions linked to a rupture of social and family ties among the Sahrawi People.
- v) All these frustrations have a negative impact on the future of the Sahrawi People.

B- Recommendations

57. In view of the above observations, findings and conclusions, the delegation recommends as follows :

- i) The African Union should place the issue of the self-determination of Western Sahara as one of its priority agenda items and spur international efforts towards resolving the issue speedily and equitably in order that the aspirations of the Sahrawi people could be realized.
- ii) The AU should call on and engage with the UN Security Council for the inclusion of monitoring of human rights violations in the Occupied Territory in the mandate of MINURSO. The mandate of MINURSO was recently extended until 30 April 2013; however the monitoring of human rights was yet again excluded from the mandate.
- iii) The AU and other international bodies should use their good offices with the States involved so that the mined areas which represent a continuing source of danger to the population be demined at the earliest opportunity.
- iv) While the situation in Western Sahara persists, the AU should advocate for the establishment of a special humanitarian regime to cater for the needs of Sahrawi refugees which constitute the oldest refugee situation in Africa. The AU should support the return of humanitarian organisations to the refugee camps.
- v) African humanitarian organizations should show more interest for Sahrawi refugees who undoubtedly need their assistance, as an African people living on African soil. The AU should encourage its Member States to contribute financially to humanitarian efforts in the refugee camps as well as to offer scholarships for higher education opportunities to Sahrawi students.
- vi) There is need for an AU monitoring office to be opened in Western Sahara.

58. The delegation extends its appreciation to the authorities of the SADR for their hospitality, cooperation and full transparency throughout the mission as well as to all stakeholders with whom it met during the mission both in Algiers and the Refugee Camps.