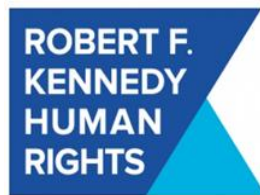


# Report on the Kingdom of Morocco's Violations of the International Covenant on Economic Social and Cultural Rights in the Western Sahara

On the occasion of the Kingdom of Morocco's fourth periodic report to the Committee on Economic, Social and Cultural Rights

Submitted by:

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French Association of Friendship and Solidarity with African Peoples  
Sandblast



August 2015

## Signatories of this Report

**Robert F. Kennedy Human Rights** is a non-governmental organization based in Washington, D.C. Founded in 1968 as a living memorial, it strives to achieve Robert F. Kennedy's vision of a more just and peaceful world. Robert F. Kennedy Human Rights' core programs focus on the power of the individual, providing sustained advocacy, litigation, and capacity-building support to grassroots leaders to advance social justice movements around the globe.

The **Collective of Sahrawi Human Rights Defenders** (CODESA) is a grassroots, non-governmental organization based in El-Aaiun/Western Sahara, whose registration has been denied by the Moroccan authorities. Its members are former disappeared persons and political prisoners. CODESA's objectives are: documenting the violations and attacks to human rights in the Western Sahara territories occupied by Morocco; disseminate and promote the culture of human rights principles and values; contribute to the construction of a modern civil society that believes in peace and peaceful non-violent resistance; and defending the legal and inalienable right of the Sahrawi people to self-determination, as recognized by international law.

The **Sahrawi Association of Victims of Grave Violations of Human Rights Committed by the State of Morocco** (ASVDH) is a non-governmental organization based in El-Aaiún which defends the interests of victims of forced disappearances and all victims of grave violations of human rights. Its mission is to defend the rights of victims and their beneficiaries, to promote a culture of universal human rights, to lead the youth in a non-violent struggle to assert their rights, and to provide psychological support to individuals, especially women, who have been "disappeared."

**ACAT-France (Action by Christians for the Abolition of Torture-France)** is a Christian non-governmental organization for the defense of human rights based in Paris, which was created in 1974 as a non-profit organization. Basing its advocacy on international law, ACAT-France fights against torture, the death penalty, and for the protection of victims, by means of its network of 39,000 members and supporters.

**Fondation Danielle Mitterrand/France Libertés:** Created by Danielle Mitterrand in 1986, France Libertés is a non-profit foundation that has consultative status with the Economic and Social Council (ECOSOC) of the United Nations. France Libertés' mission is to defend human rights and the common good, and in particular the fundamental right of everyone to access to water. The Fondation Danielle Mitterrand contributes to building a more interdependent world.

The **Bureau des Droits de l'Homme au Sahara Occidental** (BIRDHSO) is an international non-governmental organization based in Geneva. Its work focuses principally on the various UN human rights mechanisms in order to draw their attention to human rights violations in Western Sahara, including the special procedures, the treaty bodies, the Human Rights Council, and the High Commissioner for Human Rights.

**French Association of Friendship and Solidarity with African Peoples (AFASPA)** is a French anti-colonial organization that is independent of governments and parties in France and in Africa. It was founded in 1972, is based in Bagnolet and has regional committees. Its purpose is to inform French public opinion about African realities, support the independence

struggles of African peoples and denounce violations of human and peoples' rights. As such, it has dispatched observers to the trials of Sahrawi activists before Moroccan courts.

**Sandblast** is a UK human rights charity promoting the voices and visions of the indigenous Sahrawi from Western Sahara through culture and the arts.

\* \* \* \* \*

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# Table of Contents

- A. Introduction ..... 4**
- B. The Covenant’s Application in Western Sahara ..... 5**
- C. Observations Regarding Violations of the ICESCR in Western Sahara ..... 6**
  - 1. Article 1, para. 1: The Right to Self-Determination..... 6
    - a. *The rights of the Western Saharan people to self-determination* ..... 6
    - b. *The Kingdom of Morocco’s Extended Autonomy Initiative Proposal Fails to Meet UN Standards.* ..... 7
    - c. *The Kingdom of Morocco Has Continually Obstructed the Mandate of MINURSO to Organize a Referendum* ..... 8
    - d. *The Wall Built by Morocco Undermines the Right to Self-Determination and Violates the Economic, Social and Cultural Rights of the Sahrawi People.* ..... 11
    - e. *Morocco’s Movement of Settlers into Western Sahara and its Construction of the Wall Violate the Covenant and International Humanitarian Law.* ..... 12
  - 2. Article 1, para. 2: The Right to Freely Dispose of Natural Resources ..... 14
  - 3. Article 6: The Right to Work..... 16
  - 4. Article 13: Right to education ..... 17
  - 5. Article 15: Right to take part in cultural life..... 21
- D. Obstacles to the Effective Implementation of the Rights Guaranteed by the ICESCR: The Repression of Human Rights Defenders ..... 26**
  - a. *Consequences of Violations of Freedom of Association Relating to the Right to Self-Determination* ..... 26
  - b. *Consequences of Violations of the Freedom to Protest and to Assemble*..... 27
  - c. *Consequences of Violations of Freedom of Movement*..... 27
  - d. *Exclusion and Harassment of Foreign Human Rights Defenders* ..... 28
- E. Conclusion..... 29**

## A. Introduction

The above-listed non-governmental organizations and associations submit this report to shed light on violations of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the Kingdom of Morocco in the non-self-governing territory of Western Sahara. This report addresses, in more detailed fashion, the points addressed in the report submitted by Robert F. Kennedy Human Rights, *et. al.*, on the occasion of the Working Group's consideration of the list of issues to be submitted to the Kingdom of Morocco. It addresses violations of the following rights enshrined in the ICESCR: the right to self-determination (Article 1.1), the right to freely dispose of one's natural resources (Article 1.2), the right to work (Article 6), the right to education (Article 13) and the different rights encompassed in the right to cultural life (Article 15). We also touch upon various obstacles to the realization of the rights enshrined in the ICESCR in this territory, particularly the repression of human rights defenders.

Our review of the Committee's prior Concluding Observations with regard to the Kingdom of Morocco has revealed several gaps in the Committee's treatment of the rights of the Western Saharan people by the Kingdom of Morocco—perhaps because civil society has not previously drawn certain facts to the Committee's attention. In this report, we provide information based on multiple interviews with sources in Western Sahara as well as with academics and NGO staff members who have conducted research in the territory. Many of our sources have requested to remain anonymous over fears of harassment and detention if their identity is known. We have also incorporated information from available academic studies and NGO reports, focusing particular attention on those issued since this Committee last reviewed the Kingdom of Morocco's compliance with the Covenant.

We also include an analysis of the legal and historical framework that should guide this Committee's review with regard to violations of the Covenant in Western Sahara. In this regard, we believe that the Committee's analysis of Israel's violations of the Covenant in the Occupied Territories is especially pertinent. Israel administers the Palestinian territory as an occupied territory, while Morocco claims Western Sahara as a part of its own sovereign jurisdiction. Both, however, exercise control over territories, acquired by force, and in violation of the right to self-determination of the peoples of those territories. While distinctions can be drawn between Israel's actions in the Occupied Territories and Morocco's actions in the Western Sahara, there are also important commonalities. These include the Kingdom of Morocco's maintenance of a barrier that excludes a sizable proportion of the Western Saharan people from their homeland, its encouragement of Moroccan resettlement in the territory, and its expropriation of natural resources. The Committee has repeatedly commented on these issues in its Concluding Observations with regard to Israel.<sup>1</sup> We urge the Committee to take a consistent approach in its assessment of the Kingdom of Morocco's compliance with the Covenant.

We conclude each of the sections below with a list of recommendations we urge the Committee to adopt.

## B. The Covenant's Application in Western Sahara

Since the Spanish withdrawal from the former Spanish Sahara in 1976, Morocco has exercised varying levels of control over the territory of Western Sahara. Today, Morocco occupies roughly 80% of Western Sahara.<sup>2</sup> As a party to the ICESCR, the Kingdom of Morocco is obligated to implement the treaty's provisions in any territory where it exercises effective control. Article I expressly contemplates the situation presented in Western Sahara, by providing that "States Parties...including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination . . ."<sup>3</sup>

Regarding the other rights enshrined in the Covenant, this Committee has already found that States Parties' obligations under the ICESCR extend to all of the territories and populations that are effectively under their control.<sup>4</sup> The International Court of Justice (ICJ) reaffirmed this principle in its 2004 advisory opinion concerning Israel's construction of a wall in Palestine. There, Israel contended that the ICESCR could not be applied in the Palestinian territories because "human rights treaties were intended for the protection of citizens from their own Government in times of peace," whereas the Palestinian territories were in a state of armed conflict.<sup>5</sup> The ICJ examined the Covenant's travaux préparatoires and rejected this reasoning, reaffirming its position that "*the State party's obligations under the Covenant apply to all territories and populations under its effective control*" regardless of an ongoing conflict.<sup>6</sup> A crucial factor in the ICJ's analysis was Israel's long-term exercise of territorial jurisdiction over the Palestinian territories; at the time of the opinion, Israel had been the occupying power of the territories for thirty-seven years.<sup>7</sup> Using various forms of a control test, other international bodies have recognized a similar underlying principle: control creates responsibility.<sup>8</sup>

There is little dispute that the Kingdom has controlled roughly 80% of the non-self-governing territory of Western Sahara for nearly the same length of time as Israel has controlled Palestine.<sup>9</sup> The UN General Assembly ("General Assembly") recognized the Kingdom's occupation in 1979, and UN officials have categorized the Kingdom as the sole administering power.<sup>10</sup> The Kingdom manages all aspects of governance, including domestic security and foreign relations, and has entered into agreements with foreign states and transnational corporations regarding the exploitation of Western Sahara's natural resources.<sup>11</sup> There is no requirement that the State's jurisdiction first be accepted as valid by the international community for the Covenant's obligations to be triggered. The latter point is important, as the General Assembly, the ICJ and the Organization of African Unity have all recognized that Morocco cannot exercise legal sovereignty over Western Sahara.<sup>12</sup>

Rather, in view of international human rights law, specifically the right of self-determination explored below, sovereignty must lie in the people of the territory in question. The use or threat of force against that territory amounts to a breach of that sovereignty.

As the *de facto* Occupying Power in a non-self-governing territory, it is clear that the Kingdom of Morocco must respect and implement the rights protected by the ICESCR in Western Sahara. Nevertheless, the NGOs and associations listed above wish to emphasize that under international law, the Kingdom of Morocco has no legitimate sovereignty over Western Sahara.

## C. Observations Regarding Violations of the ICESCR in Western Sahara

### 1. **Article 1, para. 1: The Right to Self-Determination**

#### a. The rights of the Western Saharan people to self-determination

*Art. 1, para. 1: “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.”*

The legal milestones of Western Sahara reflect a history of rights recognized, but not implemented. This brief summary establishes the historical and legal foundations for the Sahrawi people’s right to self-determination under international law and Article 1 of the Covenant.

The United Nations General Assembly has repeatedly recognized Western Sahara’s right to self-determination due to its status as a non-self-governing territory.<sup>13</sup> During the 1970s, the UN General Assembly passed resolutions that engaged Western Sahara’s Administering Power in how to decolonize the region.<sup>14</sup> In response, the Spanish government helped establish a local government in Western Sahara, despite opposition and territorial claims from Morocco and Mauritania.<sup>15</sup> Spain illegally transferred administrative power of Western Sahara to Morocco and Mauritania under the Madrid Accords in 1975. The Accords’ purpose was to establish an *interim* government in the territory.<sup>16</sup> In 1979, the U.N. General Assembly affirmatively described the Moroccan presence in Western Sahara as an “occupation.”<sup>17</sup> The territory of Western Sahara is claimed by Morocco to constitute a part of the pre-colonial “Greater Morocco;” today, Morocco administers the territory as if it were a part of Morocco proper.<sup>18</sup>

The rights of the Sahrawi people to self-determination were reinforced by the 1975 advisory opinion of the International Court of Justice on Western Sahara.<sup>19</sup> The International Court of Justice expressly rejected Morocco’s and Mauritania’s territorial claims to Western Sahara, and concluded that the principle of self-determination requires “*a free and genuine expression of the will of the peoples of the Territory.*”<sup>20</sup> This principle was reiterated in the ICJ’s Advisory Opinion on Kosovo, where the Court concluded that people of non-self-governing territories and people subject to alien subjugation, domination, and exploitation have a right to independence.<sup>21</sup> Given that ICJ opinions are binding on all UN institutions as a matter of law, any proposal the UN supports for self-determination for Western Sahara must allow for the “free and genuine expression” of the Sahrawi people.<sup>22</sup>

Moreover, it is a paramount principle of customary international law that territory cannot be acquired by force. This principle, which follows logically from the U.N. Charter’s prohibition on the use or threat of force,<sup>23</sup> has been recognized throughout the international community, including the U.N. General Assembly,<sup>24</sup> the U.N. Security Council,<sup>25</sup> and the International Court of Justice.<sup>26</sup> The clearest statement to this effect was given by the U.N. General Assembly’s *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*: “No territorial acquisition resulting from the threat or use of force shall be recognized as legal.”<sup>27</sup> It follows that where a State has forcibly acquired territory, international law will not recognize the State’s claims of title or sovereignty over that territory.

This Committee has *repeatedly* called on Morocco to recognize the Western Saharan people's right to self-determination in its concluding observations in 1994,<sup>28</sup> 2000,<sup>29</sup> and 2006,<sup>30</sup> following its review of the Kingdom of Morocco's periodic reports. As early as 1994, the Committee expressed concern that the right to self-determination in Western Sahara had not been implemented, a failure that contravened plans approved by the United Nations Security Council.<sup>31</sup> In 2006, the Committee stressed that it:

*[A]gain encourages the State Party to make every effort to find a clear and definitive solution to the issue of self-determination for the people of Western Sahara. The Committee calls on the State party to take steps to protect the rights of persons displaced by the conflict in Western Sahara and to ensure their safety.*<sup>32</sup>

Despite the Committee's clear encouragement and the international community's unanimous position on Western Sahara's legal right to self-determination, the Kingdom of Morocco seems unwilling to resolve the question of self-determination in conformity with binding principles of international law.

Notably, the right to self-determination necessitates the freedom to choose among the avenues of self-determination the UN General Assembly recognized more than sixty years ago. Resolution 1541 specifies that "[a] *Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.*"<sup>33</sup> In other words, there can be no predetermined solution to the right of self-determination. Rather, the people of Western Sahara have the right to choose among these three options for its political status according to UN standards.<sup>34</sup> This right to choose was also reinforced by the 1991 Peace Accords between the Moroccan government and the Polisario Front that ended their armed conflict.<sup>35</sup>

b. The Kingdom of Morocco's Extended Autonomy Initiative Proposal Fails to Meet UN Standards.

The Kingdom of Morocco's proposal for "An Extended Autonomy Initiative", as provided in paragraph 26 of its state report, fails to comply with the terms of the peace accords and falls far short of what is required under international law. According to Morocco's State report to the Committee on Economic, Social, and Cultural Rights, the *Moroccan Extended Autonomy Initiative* would grant Western Sahara a degree of autonomy, with the Western Sahara population deciding on their autonomy status through a referendum.<sup>36</sup> However, Morocco's proposal fails to meet UN standards for several reasons. As an initial matter, it does not specify *who* will be eligible to vote or *when* the referendum will take place. More fundamentally, Morocco's proposal refuses to recognize any form of Sahrawi independence by failing to address whether the Sahrawi people will have the opportunity to choose independence over regional autonomy.<sup>37</sup> Because the Sahrawi people would not be able to choose among all the UN-approved forms of self-determination, implementing Morocco's proposal would not lead to a "*free and genuine expression*" of the Sahrawi people, as the ICJ opinion requires.<sup>38</sup> Consequently, it is not the "*clear and definitive solution to the issue of self-determination for the people of Western Sahara*" the Committee recommended in 2006.<sup>39</sup>

The Kingdom of Morocco's report makes clear that it has no intention to facilitate a true referendum on self-determination. Instead, Morocco intends to absorb the Sahrawi people into the Moroccan state through its so-called "autonomy initiative." Morocco's lack of good faith on this issue is highlighted by King Mohammed VII's words on the anniversary of the Green



March in 2014. The King noted, *“Morocco will remain in its Sahara, and the Sahara will remain in its Morocco until the end of time . . . Moroccan sovereignty in the whole of its territory is unalterable, inalienable and nonnegotiable.”*<sup>40</sup> Morocco’s rigid refusal to comply with its international legal obligations violates the Sahrawi people’s right to self-determination and jeopardizes international peace.<sup>41</sup>

In its very essence, self-determination is a collective pursuit of dignity and freedom. The Sahrawi people are entitled to this pursuit, and most importantly, in choosing the way to exercise this right. Yet the Kingdom of Morocco has hindered even the United Nations’ efforts to promote the right to self-determination in the region through the United Nations Mission for Organization of a Referendum in the Western Sahara (MINURSO), as described below.

c. The Kingdom of Morocco Has Continually Obstructed the Mandate of MINURSO to Organize a Referendum

In 1991, the Kingdom and Polisario agreed to a UN-brokered ceasefire.<sup>42</sup> Shortly thereafter, the Security Council adopted Resolution 690, calling for a referendum in Western Sahara and establishing the United Nations Mission for Organization of a Referendum in the Western Sahara (MINURSO) to protect the ceasefire and to implement the referendum.<sup>43</sup>

The Security Council resolution tasked MINURSO with identifying eligible voters who could participate in the referendum, the most controversial of outstanding issues. In 1994, the Commission on the identification of voters submitted a first report drawing up a list of individuals who would be eligible to participate in the referendum. Moroccan authorities, who participated in registering voters, had allegedly blocked Sahrawis from appearing to register at MINURSO headquarters.<sup>44</sup> Many who did obtain a form reflecting a successful appeal were forced to turn that form over by Kingdom security forces. In a further attempt to influence the outcome, the Kingdom repeatedly violated its agreement not to transfer settlers into the territory during the transitional period.<sup>45</sup> According to a major study on the conflict in Western Sahara, “it is clear that the Kingdom of Morocco is the party that polluted the vote.”<sup>46</sup>

In 1997, Secretary-General Kofi Annan enlisted James Baker, former United States Secretary of State, as his envoy to the region.<sup>47</sup> Within two years of Baker’s appointment, MINURSO made gains in identifying eligible voters.<sup>48</sup> At the same time, it recorded over 100,000 appeals by voters not deemed eligible, most of whom were Moroccan-backed settlers.<sup>49</sup> The sheer number of the appeals, more than the accepted registrations, made it impossible to maintain the existing timetable for a referendum.<sup>50</sup> Independent experts alleged that this was the Kingdom’s intention.<sup>51</sup> In 2000, the Security Council effectively abandoned the referendum process without holding Morocco responsible for its failure to live up to its commitment to support a referendum.<sup>52</sup>

Over a two-year period in 2001 and 2003, UN officials offered two proposals to achieve a solution on the issue. The first would employ the voter registration list as of 1999 to elect executive and legislative branches of government that would govern domestic issues within Western Sahara. This is known as the Framework Agreement.<sup>53</sup> The Kingdom would continue to oversee foreign relations. After a five-year period, voters who had lived in the territory for at least one year could vote in a final referendum where they would have the option of independence or regional autonomy as part of Morocco.

The second proposal, popularly known as the Baker Plan, would have also established a local government to administer the territory for an interim period while the UN determined who could vote in a final referendum.<sup>54</sup> Voters would be eligible if they had continuously resided in the territory since 1999. Polisario accepted this plan, but Morocco did not. The latter was particularly surprising, as the voter list would likely have been favorable to the Kingdom. Mr. Baker resigned soon after. From 2003 to present day, the Kingdom has made clear that despite its agreement in 1991 to provide for a referendum including the option of an independent Western Sahara, it would endorse no such plan. Since the 1991 agreement, the Kingdom has opposed nearly every proposal by UN authorities. Though successive UN representatives have persuaded the two sides to engage in discussions, the stalemate over a referendum continues.

MINURSO's ineffectiveness is directly linked to the consensual basis of its mandate. MINURSO was created on the basis of Chapter VI of the United Nations Charter, and more specifically on the basis of Article 34. The Security Council's use of Chapter VI places MINURSO in a situation of dependence vis-a-vis the Kingdom of Morocco. All of its activities are subordinated to Morocco's good will and Morocco can to a certain extent determine the scope of its prerogatives.<sup>55</sup>

Although MINURSO remains in Western Sahara, its mandate is a source of controversy. While many argue that it should take a stronger role in rights monitoring, the Kingdom asserts its only role is to maintain the ceasefire. The latter effectively limits MINURSO's focus to military matters, where the balance of forces since the ceasefire has swung strongly in favor of the Kingdom. In 2013, MINURSO noted reports of human rights violations and the precarious nature of the ceasefire. Consequently, the UN-Secretary General concluded that there was a "*need for independent, impartial, comprehensive and sustained monitoring of the human rights situations . . .*"<sup>56</sup> Attempts by any party to expand MINURSO's mandate to include this monitoring have been met with a strong negative reaction from the Kingdom.

The impasse over the mandate has led to uncertainty over the nature of the activities that MINURSO may carry out within the territory. Its official role is peacekeeping, but efforts to implement this mandate are continually thwarted by the Kingdom, which restricts opportunities for the mission to interact with civil society. In his 2014 report to the Security Council, the Secretary-General noted that, "*the ability of MINURSO to form its own picture of the situation in Western Sahara for the purpose of operational awareness . . . remains limited.*"<sup>57</sup>

The Kingdom has attempted to divert MINURSO's attention from human rights violations within the Moroccan-occupied territory by alleging that terrorist groups are operating out of Polisario-run refugee camps in Algeria.<sup>58</sup> While testifying in front of Congress in 2012, the Coordinator for Counterterrorism at the State Department characterized these reports as "*spurious.*"<sup>59</sup>

The Kingdom's obstruction of MINURSO has affected the mission at the highest administrative levels as well. In May 2014, the Secretary-General appointed Kim Bolduc as the new head of MINURSO. The Kingdom refused her appointment and blocked her entry until February 2015. For eight months, she was forced to carry out her duties from United Nations headquarters in New York. This is not the first time the Kingdom has denied entry to a representative of the United Nations: in 2012, it similarly barred the Secretary-General's Special Envoy, Christopher Ross, from entering the region.

Other actions by the Kingdom occur on a smaller scale, yet have a dramatic impact on MINURSO's ability to operate. For example, in 2014 the Secretary-General's report stated that MINURSO's appearance of neutrality had been affected by the Kingdom's decision to issue Moroccan-themed license plates to UN vehicles in Western Sahara. The Kingdom also flew the flag of Morocco at and near MINURSO's headquarters. Though the 2014 report stated that a solution had been reached, the Secretary-General's report of April 2015 notes that the Kingdom has not implemented it. Such acts make it far less likely that non-Kingdom authorities will trust MINURSO or will believe that it is safe to cooperate with UN representatives. Activists, who have protested this by attempting to remove the plates personally, have faced violent reprisals by Kingdom security forces.<sup>60</sup>

The Kingdom has also taken covert actions to stall MINURSO's work. At each renewal of the mission's mandate, the Kingdom has sought a rollover to maintain the status quo. Intense lobbying has led some to believe that the mission has become the "security blanket" of the Kingdom;<sup>61</sup> empowered to maintain a divided peace amongst the parties, but powerless to intervene or even report human rights violations that occur in the open. Kingdom intelligence services, which are widely acknowledged as monitoring civil society groups, also allegedly watch MINURSO officials and staff closely.

Leaked diplomatic cables from the Kingdom reveal the intensity of Morocco's campaign to maintain the current limited mandate. The political pressure placed on MINURSO by the Kingdom and its allies in the UN has not gone unnoticed by those serving on the mission.<sup>62</sup> Former UN officials have spoken about the potential consequences of offending the Kingdom, which include censure and termination.<sup>63</sup> On the ground, the pressure not to agitate the Kingdom or Polisario has demoralized staff. Worse yet, many of the Kingdom's most brutal repressions are targeted at those Sahrawis who participate in demonstrations asking for an expanded mandate.

The Kingdom's acts make it clear that MINURSO's current mandate is incompatible with a peaceful resolution to the situation in Western Sahara. The Security Council has the authority to strengthen the MINURSO mandate on the basis of Chapter VII, which would enable the mission to act without prior consultation with the Kingdom of Morocco and therefore to actively ensure that the latter respect its obligations.<sup>64</sup> The Council has already had occasion in the past to broaden the mandate of a peace-keeping mission; notably in the case of the MONUC in the Democratic Republic of Congo.<sup>65</sup> More recently, we have seen the Security Council rely on the existence of human rights violations in some states to acknowledge a threat against international peace and trigger Chapter VII.<sup>66</sup>

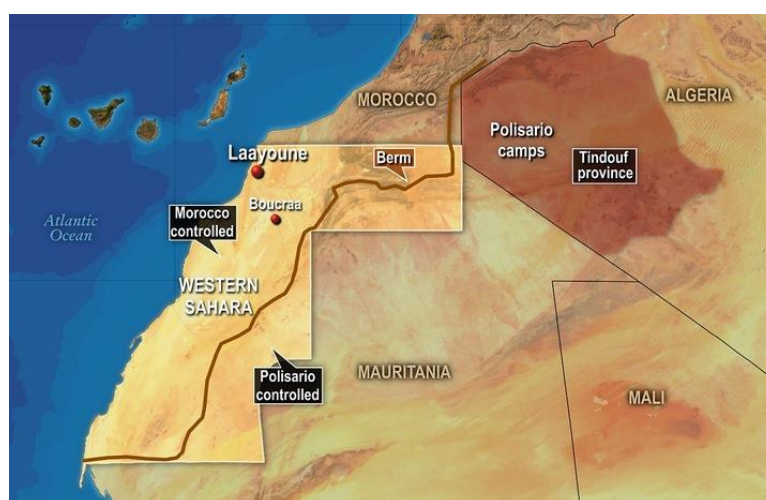
Peacekeeping operations must be carried out in conformity with human rights. This is why most of them proceed with a mandate to protect human rights.<sup>67</sup> The broadening of MINURSO's mandate would enable impartial monitoring of the human rights situation in Western Sahara. It is essential for independent observers not invested in the conflict to observe and denounce the rights violations suffered by the Sahrawi population and its human rights defenders. Many NGOs support this proposal: for example, in a letter addressed to Security Council members in April 2013, Human Rights Watch asked the Council to "put an end to this abnormal situation" and broaden MINURSO's mandate to include human rights protection.<sup>68</sup> For several years, Robert F. Kennedy Human Rights, the Movement against Racism and for Friendship Between Peoples (MRAP) and France Libertés – Fondation

Danielle Mitterrand have repeatedly advocated for such an expansion before the Human Rights Council.

d. The Wall Built by Morocco Undermines the Right to Self-Determination and Violates the Economic, Social and Cultural Rights of the Sahrawi People.

The Moroccan wall, also referred to as a “berm,” is the physical manifestation of the political and social subjugation of the Sahrawi people. In its review of Israel’s obligations in the Palestinian Occupied Territories, this Committee has repeatedly recognized that the closure of borders has a direct impact on a people’s rights to self-determination and access to resources.<sup>69</sup> The United Nations Special Coordinator for the Middle East Peace Process has lamented that restrictions on the exit and entry of goods and people in the Gaza strip “fuel instability, underdevelopment and conflict.”<sup>70</sup> In 2015, the Report of the Secretary-General on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem, criticized the continued existence of a “blockade” in Palestine for “its negative impact on enjoyment of economic, social and cultural rights and the lack of accountability for violations of international human rights law and international humanitarian law.”<sup>71</sup> Most significant of all, the International Court of Justice (ICJ) determined in 2004 that Israel’s construction of a wall preventing movement within and outside the Occupied Territories was “contrary to international law”<sup>72</sup> and violated several ICESCR rights, including the rights to work, health, education, and an adequate standard of living.<sup>73</sup> The Moroccan wall violates these same rights, and has had devastating effects on the lives of the Western Saharan people, yet this Committee has never even commented on its existence.

At over 1,600 miles long, the wall is the longest operational military barrier in the world.<sup>74</sup> It stretches through the entire length of the disputed territory of Western Sahara, separating the Moroccan-occupied territory from the Polisario-controlled Free Zone.<sup>75</sup> It has no crossing points.<sup>76</sup> The Moroccan wall is longer, older, and more militarized than the internationally-criticized Israeli-built wall in the Palestine territory,<sup>77</sup> but its existence is virtually unknown.



The wall is made of rock and sand, fortified with trenches, barbed wire, and an estimated seven million landmines.<sup>78</sup> Although the Kingdom of Morocco claims to be implementing a demining program along the wall, 2,171 accidents due to mines or other explosive remnants were registered between 1975 and 2008.<sup>79</sup> Another 92 have been reported since 2009.<sup>80</sup> The problem of mines constitutes a great menace to the life of the Sahrawi population in the

occupied territory of Western Sahara; Morocco has not undertaken sufficient steps to do a mapping of the mined zones or to mark them with special signals.

According to reports by the United Nations Secretary General, Moroccan forces continue to fortify the wall, which is patrolled by an estimated 120,000 soldiers.<sup>81</sup> In 2013, the United Nations Mission for the Referendum in Western Sahara (MINURSO) recorded 42 violations by the Royal Moroccan Army of military agreements between the Kingdom of Morocco and the United Nations.<sup>82</sup> These violations “included and continued to relate to increases in the length of trenches, the construction of new observation posts, tactical reinforcement and the construction of an antenna tower for a global system of mobile communication in the restricted area.”<sup>83</sup> Furthermore, “long-standing violations” relating “to the reinforcement of existing observation posts and increases in the length of trenches” increased by seven between April 2012 and April 2013.<sup>84</sup>

In its advisory opinion regarding the Israeli wall, the ICJ noted that the wall’s impact on the human rights of the Palestinian people was exacerbated by the infrequency of crossing points along the barrier.<sup>85</sup> By comparison, the Moroccan-built wall has no crossing points and stretches almost 1,200 miles longer than the wall in Palestine. This inability to cross or otherwise circumnavigate the Moroccan wall impedes the Sahrawi people’s exercise of other rights under the ICESCR. The inability to cross effectively bars Sahrawi people living east of the wall from accessing Western Sahara’s many physical resources located west of the wall, and bars those living west of the wall from their pasturelands in the east, thereby violating their right to freely dispose of natural resources guaranteed by Article 1, paragraph 2, of the ICESCR. Although the territory of Western Sahara is rich in natural resources such as phosphate deposits, fisheries, and arable lands, these resources are primarily located in the Moroccan-occupied part of the territory west of the wall.<sup>86</sup> Because there are almost no natural resources east of the wall, let alone any pastures suited to rearing livestock, the Sahrawi people east of the Wall live in refugee camps in Algeria where they rely on international humanitarian assistance for survival.<sup>87</sup> Just as the Israeli-built wall “restrict[s] the ability of many to access their land and crucial services, such as schools and health clinics,”<sup>88</sup> the Moroccan wall physically separates the Sahrawis from labor markets in Western Sahara, violating their right to work under Article 6, paragraph 1, of the ICESCR, and impedes their ability to receive an education, violating the right to education under Article 13 of the ICESCR. By requiring the Sahrawi people to give up their traditional nomadic lifestyle, the wall contributes to the weakening of its Bedouin culture and values, violating their right to take part in cultural life under Article 15 of the ICESCR.

In its advisory opinion on the wall in Palestine, the ICJ concluded that, as a result of its illegal construction of that wall, Israel was obliged to cease its construction of the wall, dismantle the existing barrier, and make reparation for all damage caused by the construction of the wall.<sup>89</sup> Consistent with the ICJ’s opinion, we request that the Committee recommend immediate action by the Kingdom to dismantle the wall and allow for free movement of Western Saharan people throughout their territory.

- e. Morocco’s Movement of Settlers into Western Sahara and its Construction of the Wall Violate the Covenant and International Humanitarian Law.

Over the course of its four-decade occupation, Morocco has facilitated the transfer into Western Sahara of 200,000 to 300,000 Moroccan citizens; Moroccan settlers now constitute the majority population of the occupied territory. This settlement—highlighted by the two so-

called “Green Marches,” whereby Morocco sent waves of Moroccans into the territory—are “highly suggestive of a state-coordinated campaign to populate Western Sahara.”<sup>90</sup> As of 2004, Moroccan settlers accounted for approximately 75–80% of the population of occupied Western Sahara.<sup>91</sup>

The Israeli occupation and settlement of the Palestinian territory offers an instructive analogy to the situation of occupied Western Sahara. Since 1967, Israel has occupied the West Bank, the Gaza Strip and East Jerusalem, encouraging and enabling the settlement therein of Israeli civilians. Despite Israel’s withdrawal from Gaza in 2005, roughly 500,000 Israeli settlers still reside in the West Bank and East Jerusalem. This Committee has repeatedly denounced Israel’s settlement policies,<sup>92</sup> yet it has remained silent on Morocco’s decades-long policy of moving Moroccan settlers into Western Sahara.

The occupations and settlement enterprises of Israel and Morocco implicate grave matters of international law. Both Israel and Morocco exercise control over territories whose indigenous populations are entitled, under international human rights law, to self-determination. At the same time, both occupations constitute territorial acquisitions by the use of force and therefore implicate international humanitarian law.

The Committee has repeatedly commented on the intersectionality of international human rights and international humanitarian law in its review of Israel’s actions in the occupied territories.<sup>93</sup> Article 2 of the Fourth Geneva Convention applies “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.” Article 49(6) of the Fourth Geneva Convention prohibits occupying Powers from “deport[ing] or transfer[ing] parts of its own civilian population into the territory it occupies.”<sup>94</sup> In its 2004 advisory opinion on the construction of a wall in the occupied Palestinian territory, the International Court of Justice held that Israel’s settlement policy violated Article 49(6) of the Fourth Geneva Convention.<sup>95</sup>

It bears mentioning here a critical difference between Israel’s settlement enterprise and Morocco’s settlement enterprise. While the former is predicated on differentiating the land and legal structures between Israelis and Palestinians, the latter is geared toward the integration of Western Sahara into Morocco proper. Still, both the Israeli settlement enterprise and the Moroccan settlement enterprise effect what Article 49(6) of the Fourth Geneva Convention sought to prevent. By diluting the demographic makeup of the occupied territories, the settlement enterprises imperil the peoples’ right of self-determination. In occupied Western Sahara, Moroccan resettlement has had a direct impact on the Western Saharan people’s access to resources and employment. In addition, it has further complicated efforts to determine which individuals are eligible to vote in a referendum on self-determination.

**In light of these facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 1 of the Covenant. We also ask the Committee to urge Morocco:**

- To accept without reservations a schedule proposed by the Secretary General, with the aid of the United Nations Mission for the Referendum in Western Sahara (MINURSO), in order to enable, within a reasonable timeframe, the organization of a referendum allowing the Sahrawi people to exercise its right to self-determination unambiguously and in a democratic manner.

- To accept an expanded mandate for MINURSO that would permit the monitoring of human rights in the occupied territory, consistent with the vast majority of contemporary UN peacekeeping missions.
- To dismantle the wall and allow for free movement of Western Saharan people throughout their territory.

## 2. Article 1, para. 2: The Right to Freely Dispose of Natural Resources

*Art. 1, para. 2: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."*

The General Assembly has emphasized that the exploitation and pillaging of natural resources in colonial or non-self-governing territories by foreign economic interests compromise the integrity and the prosperity of these territories, and that "any administering Power that deprives the colonial peoples of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources, or subordinates the rights and interests of those peoples to foreign economic and financial interests, violates the solemn obligations it has assumed under the Charter of the United Nations."<sup>96</sup> Hans Corell, Under-Secretary General for Legal Affairs and Legal Counsel of the United Nations, reminded the President of the Security Council in his letter dated January 29, 2002, that administering powers must respect two conditions for the exploitation of natural resources in a non-self-governing territory to conform with international law: first, the resources must be exploited for the benefit of the peoples in the territory; and second, the resources must be exploited in their name or in consultation with their representatives.<sup>97</sup> The latter condition requires that the population—or its legitimate representatives—be consulted *prior* to such exploitation.

In Western Sahara, however, the principle of permanent sovereignty of peoples under foreign occupation over their natural resources<sup>98</sup> is not respected, not only because the construction and maintenance of the wall by the Kingdom of Morocco has impeded a large segment of the Sahrawi population living east of the wall from freely accessing their natural resources, but also because these resources are exploited neither in their name nor with their consent. The transfer of the Moroccan population to the non-self-governing territory of Western Sahara is an aggravating factor in the exploitation of the territory's resources, as well as a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.<sup>99</sup>

The principle according to which resources must be exploited in the name and in the interest of the population of non-self-governing territories is not respected even though "*the General Assembly. . . called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration do not adversely affect the interests of the peoples of such territories, but are instead directed to assist them in the exercise of their right to self-determination.*"<sup>100</sup>

Morocco should, at a minimum, exploit these resources in the interest of the Sahrawi people and in its name or after prior consultation with its legitimate representatives. This is not, however, its practice when it comes to exploiting phosphates, fisheries, oil, farmlands or pastoral lands in the occupied territories of Western Sahara.

Reports on the exploitation of phosphate mines in Bou Craa denounce discrimination against Sahrawi employees, demonstrating that phosphate mining for export does not serve the interest of the indigenous population. While Moroccan state organizations estimate that over 50% of phosphate mine employees are Sahrawi, Sahrawi organizations allege that there are fewer than 600 Sahrawi among the 1,900 mine workers, most whom work in manual labor positions and representing 30% of employees.<sup>101</sup> There is no reliable data regarding the profits generated from the Bou Craa mines, and whether it is shared with the Sahrawi people.

The exploitation of fisheries has led to several fisheries agreements, notably between Morocco and the European Union.<sup>102</sup> These agreements appear to allow fishing in waters under the sovereignty or jurisdiction of the Kingdom of Morocco and do not expressly exclude fishing off the coast of Western Sahara.<sup>103</sup> Thus, one current protocol provides in an appendix defining fishing zones that small-scale fishing can be carried out south of the 30°40'00"N parallel, without indicating any meridian limit.<sup>104</sup> European fishing in Sahrawi waters is nevertheless contrary to international norms because of the absence of consent from the Sahrawi people and because it competes with traditional Sahrawi fishing practices.<sup>105</sup>

The exploitation of oil resources is also problematic. While it is true that Hans Corell determined in 2002 that oil reconnaissance and evaluation activities in the Western Sahara do not violate international law,<sup>106</sup> Corell goes on to state that such activities must be differentiated from the exploitation and physical capture of mineral resources, which must be conducted in accordance with the wishes of the Sahrawi people. According to the NGO Western Sahara Resource Watch, the oil company Kosmos Energy and its partners have dispatched an oil drilling platform and was to start pumping oil by April 2015.<sup>107</sup> (While this oil platform was ultimately judged to be unfeasible and abandoned, Kosmos Energy is to explore other oil drilling sites in the same area.) Morocco has not consulted any of the legitimate representatives of the Sahrawi people regarding these activities.

Finally, the exploitation of Western Sahara farmlands is also problematic, especially as it relates to water resources. According to the United States government, the tomatoes grown in the Dakhla region draw upon a phreatic table containing non-renewable water resources, thus endangering the ecosystem of the region.<sup>108</sup> This farming operation allows a French company to profit from the exportation of several tons of tomatoes every year on the international market, without sufficiently taking into account the interest of the Sahrawi population in a region in which water resources are scarce and valuable.<sup>109</sup> According to multiple observers, tomatoes and other agricultural products from Western Sahara are exported under the label “product of the Kingdom of Morocco,” which does not reflect their true origin.

Morocco therefore currently controls the exploitation of all of these natural resources without having previously consulted the legitimate representatives of the Sahrawi people and without their interests being sufficiently taken into account. This violates Article 1 of the ICESCR.

**In light of these facts, we ask the Committee to find Morocco in violation of Article 1 (2) of the Covenant. We also ask the Committee to urge Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:**

- To refrain from entering into contracts with private entities and foreign governments for the purposes of exploiting Western Sahara’s natural resources,



unless and until the legitimate representatives of the Sahrawi people have assented to such contracts;

- To provide transparent and verifiable data to civil society regarding the income and profits from the Bou Craa mines, as well as from all contracts with private entities and foreign governments for the purposes of exploiting Western Sahara's natural resources;
- To promote the employment of Sahrawi workers in the Bou Craa mine, including in management positions
- To release data on the issuance of fishing licenses, and adopt policies to promote the issuance of fishing licenses to Sahrawi fisherman.

### **3. Article 6: The Right to Work**

*Article 6: "1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."*

States Parties to the ICESCR recognize the right to work (Article 6) and commit to ensuring that this right is implemented without any discrimination (Article 2.2). These provisions of the Covenant are not respected in Western Sahara, where employment discrimination against Sahrawi individuals causes a disproportionately high unemployment rate.

Sahrawis are under-represented in almost every labor sector, including restaurant and retail services, the police force, education, and public administration in general.<sup>110</sup> Furthermore, Sahrawis occupy only a tiny fraction of the jobs generated by the exploitation of the territory's valuable natural resources. In Dakhla, for instance, where fishing is the main industry, Sahrawi fishermen are granted very few fishing licenses and off-shore fishing is entirely reserved to Moroccan trawlers. As a result, only 5% of fishermen are Sahrawi.<sup>111</sup> The region's phosphate industry – the territory's most valuable export, reaching \$330 million in 2013 – employs around 3,000 workers, but only 21% of those are Sahrawi. Moreover, the great majority of these are employed in menial positions; only 4% of technicians are Sahrawi.<sup>112</sup> In terms of agricultural production, not one of the 12 extensive farms north of Dakhla that produce tomatoes for the European market are owned by Sahrawis. Of the farms' 700 to 1,000 employees, an astonishingly small number—four—are Sahrawi.<sup>113</sup>

Moreover, numerous observers report that a large number of Sahrawi youth with university degrees from Moroccan universities, including graduate degrees, cannot find jobs in Western Sahara.<sup>114</sup> Discrimination is apparent from continuing migration of settlers from Morocco, who are drawn to the territory by the prospect of well-paid jobs.<sup>115</sup>

The situation is further complicated by the fact that, according to experts, the Kingdom of Morocco provides certain Sahrawis with “ghost jobs,” particularly for management positions. This practice aims to silence dissent through financial incentives.

**In light of these facts, we ask the Committee to find Morocco in violation of Article 6 of the Covenant. We also ask the Committee to urge Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:**

- to take all measures necessary to prevent and correct discriminatory hiring practices, including improving its legal and institutional frameworks making such practices illegal and implementing quotas or affirmative action programs in favor of Sahrawis until they are adequately represented in the workforce;
- to take all measures necessary to prevent and correct discriminatory practices in the attribution of professional licenses, memberships or certificates of any kind, including licenses to practice law or medicine, that constitute barriers to entering a profession;
- to take all necessary measures to offer professional training programs to Sahrawi individuals in order to broaden the number and quality of job positions for which they are eligible;
- to publish official statistics regarding the comparative unemployment rates of Sahrawis and Moroccan settlers in Western Sahara.

#### **4. Article 13: Right to education**

Article 13: *“The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”*

The Kingdom’s education policies in Western Sahara have led to greater unrest and diminished hopes for the next generation of the Sahrawi population. The “right of everyone to education” enshrined in the Covenant is not respected in Western Sahara. The educational experience of Sahrawi students is fraught with physical and emotional abuses and discriminatory practices so severe that they prevent Sahrawi students from receiving an adequate education. Sahrawi students are, according to many reports, neglected, insulted and sometimes beaten by teaching staff and school administrators, especially when they speak Hassaniya at school.<sup>116</sup> Moreover, older Sahrawi children who are politically active are often expelled from school under various pretexts.<sup>117</sup>

These policies, in addition to violating the Covenant, constitute a breach of Article 29 of the Convention on the Rights of the Child (“CRC”), to which Morocco is a state party. Pursuant to this universally accepted treaty, states agree that education is to be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest

potential; respect for human rights and fundamental freedoms; and respect for the child's parents, his or her own cultural identity, language and values.

The content of school curricula also violates the provisions of the CRC and the Covenant, which provides that “[a]ll persons are entitled to quality education and training that fully respect their cultural identity.”<sup>118</sup> Schools in Western Sahara do not tolerate student use of the Hassaniya language, let alone teach Sahrawi history, culture or geography,<sup>119</sup> thus playing a key role in the acculturation of the Sahrawi people through its children. Private schools set up by settlers in the territory are too expensive for the average Sahrawi student and perpetuate the curricular approach of ignoring Hassaniya culture and history.<sup>120</sup> As the Hassaniya language is one of the main vectors for the transmission of Sahrawi culture and values, its systematic absence from school programs constitutes a serious assault on the integrity and transmission of the culture.

The historical narrative promoted by Morocco in Western Sahara schools is particularly problematic from a human rights perspective. The U.N. Special Rapporteur in the field of cultural rights has “noted the paramount importance of history writing and teaching for people’s identities, sense of belonging and relationships with societal others.”<sup>121</sup> She describes “an approach to history writing and teaching that is based on human rights” as one that calls for “fostering mutual understanding between people and communities and providing the spaces necessary for various communities to present their perspectives on their own history, which they consider to be an integral part of their identity and cultural heritage.”<sup>122</sup>

Schools in Western Sahara teach a monolithic Moroccan version of history. Teachers set the starting point for the territory’s history as the Green March, denying Sahrawi history in favor of promoting the concept of Greater Morocco, which extends its borders into the Occupied Territory.<sup>123</sup> Lessons about Western Sahara pre-1970, if they exist, often present the Sahrawi people as uncivilized and in need of aid from Morocco.<sup>124</sup> By “promoting nationalistic political agendas and... monolithic views of dominant powers, education policies relating to history teaching fail to acknowledge cultural diversity and the multiplicity of historical narratives between and within communities.”<sup>125</sup> These policies, as noted by the Special Rapporteur, “are at odds with the right to education, the right of all individuals, groups and peoples to enjoy and to have access to their own cultural heritage as well as that of others, the right to freedom of opinion and expression and the right to information.”<sup>126</sup>

Far from promoting “friendship among all nations and all racial, ethnic or religious groups,” as required by the Covenant, the discriminatory realities of schools in Western Sahara contribute to racist stereotypes and ethnic tensions. Ethnically motivated verbal abuse is frequent. For example, Sahrawi schoolchildren are reportedly told by teachers that they sound like “camels” when they speak Hassaniya, or that traditional male Sahrawi clothing resembles “parachutes” while girls in traditional dress look like “ninjas.”<sup>127</sup> Students are also sometimes barred from entry to school when wearing traditional attire.<sup>128</sup>

Several observers also describe an alarming phenomenon: the presence of Moroccan law enforcement forces inside secondary schools and around their perimeters. In addition to security forces overtly stationed at or near schools, covert officers maintain surveillance of certain students who are active opponents of the Moroccan occupation.<sup>129</sup> The presence of these forces is well known and contributes to a deep sense of fear and intimidation.<sup>130</sup> Purportedly designed to prevent conflict and unrest, some agents work to incite chaos around the school so that a demand for more overt security is credible.<sup>131</sup> The resulting increase in

law enforcement actually makes attending school less safe for those who are targets of intentional ridicule, harassment or beatings by officers.<sup>132</sup> In efforts to obtain a reaction from male Sahrawis, officers have reportedly harassed female students to whom Sahrawi culture accords particular respect.<sup>133</sup> One study conducted in 2014 found that out of 13 Sahrawi girls, 8 reported being prevented from entering their schools because they participated in public protests, or just because they were Sahrawi.<sup>134</sup> Moroccan forces have also attempted to convince Sahrawi parents that their children should be removed from school entirely because they are causing trouble.<sup>135</sup> This twin set of tensions, from home and from school, is overwhelming to Sahrawi students.

We received several testimonies of arbitrary violence perpetrated by security forces against Sahrawi children, ranging from stealing food to sexual harassment and serious physical assaults. Reports from visits to Layoun in 2014 recount physical and sexual assault against schoolchildren as young as eight.<sup>136</sup> Minor female and male students who are politically active are allegedly pulled from school by police authorities to be detained and interrogated incommunicado<sup>137</sup> in response to their participation in political protest.<sup>138</sup> Sources claim that in some cases Sahrawi children have been detained for months<sup>139</sup> – interrupting their life and education<sup>140</sup> – and among the number of Sahrawi detainees who have complained of torture since April 2014, at least seven are documented to have been minors.<sup>141</sup> One young man was reportedly denied permission to write his final high school exam for 12 consecutive years after having been expelled from school for organizing a protest in favor of founding a university in Western Sahara.<sup>142</sup> Some school administrators act as accomplices in the endeavor to silence dissident Sahrawi voices.<sup>143</sup> These efforts are not unnoticed by children of Moroccan settlers, who are encouraged to show the same prejudices at a young age, thus amplifying the effects of discriminatory harassment.<sup>144</sup>

The combination of these conditions causes some Sahrawi students to drop out of school.<sup>37</sup> One 12-year-old girl, whose family was not politically engaged in the Sahrawi cause, was overheard in class chanting a pro-independence slogan “by accident,” according to her, because it was stuck in her head. Instantly her fellow students, who were Moroccan settlers, began teasing her and throwing pencils at her. They then reported her to their teacher, who yelled at her, slapped her arm, and pulled her chair out from underneath her. From that moment she was verbally harassed every day until she decided to leave school definitively.<sup>145</sup>

Those Sahrawi students who do complete school find in many cases that employers do not value their school certificates.<sup>146</sup> Furthermore, access to higher education for young Sahrawis is hindered by discriminatory practices. There is not a single university in the territory of Western Sahara and very few professional training programs are available. This forces young Sahrawis to move far from home to Moroccan cities in order to pursue university studies and subjects them to oppressive financial burdens.<sup>147</sup> The closest universities are in Agadir and Marrakech, some 670 km and 830 km away, respectively. Furthermore, Sahrawi students are rarely given access to university housing, forcing them to pay much higher rents. Families struggle to meet these costs, and many Sahrawi students are forced by financial pressures to drop out of university, while others must give up on attending classes, staying home to keep costs low and traveling to university only for exams.<sup>148</sup>

In its response to the Committee’s list of issues, Morocco notes that it has created seven university level institutions in “the southern regions.” Our contacts on the ground inform us that of these seven, six are under discussion and only one is currently offering classes: the seminary in Smara (*Faculté des sciences théologiques d’Es-Smara*), which few Sahrawi

attend.<sup>149</sup> Furthermore, the bulk of the increase in student registration described in Morocco's report refers to the region of Guelmim - Smara, which is not located in the disputed territory of Western Sahara.<sup>150</sup>

Once Sahrawi students register in a Moroccan university, testimony indicates that they face significant obstacles to attend class. Sahrawi students report that university professors discriminate against Sahrawi students because Moroccan media "paint them as the enemy of the people."<sup>151</sup> Some students reported that upon their arrival at university, the administration informed them that their classes had been cancelled and that they should come back in a couple of weeks. This process was repeated several times in a row, depriving Sahrawi students of any education while their Moroccan counterparts were attending regularly scheduled classes.<sup>152</sup> Other Sahrawi students reported that they were prevented from enrolling in their graduate degree programs because they refused to say that they were from Morocco, and asserted that the Western Sahara exists.<sup>153</sup>

In practice, it is also extremely difficult for Sahrawi students to obtain a university degree in certain fields. Independently of the strength of their academic transcripts, Sahrawi students are rarely accepted into Moroccan university programs for medicine,<sup>154</sup> and several observers report that there are few, if any, Sahrawi doctors in Western Sahara.<sup>155</sup> It is also reportedly impossible for Sahrawi students to train as pilots or to study nuclear physics.<sup>156</sup> While many Sahrawi youth obtain university law degrees, extremely few are admitted to practice, and one observer notes that there are fewer than a dozen Sahrawi lawyers in the territory.<sup>157</sup>

Sahrawi university students also face similar kinds of violence and repression to that of secondary school children in response to political activism or general outspokenness. For example, in December of 2014, "14 Sahrawi students protesting against the administrative failings of the University of Agadir were arrested and allegedly tortured."<sup>158</sup>

This Committee has recognized that these conditions violate the right to education under Article 13. In its 2011 Concluding Observations pursuant to its review of Israel, the Committee urged Israel:

to address violations of the right to education, including those stemming from restriction on movement, incidents of harassment and attacks by the Israeli military and settlers on school children and educational facilities, as well as non-attendance caused by a lack of registration.<sup>159</sup>

**In light of these facts, we ask the Committee to find Morocco in violation of Article 13 of the Covenant. We also ask the Committee to urge Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:**

- to take immediate measures to investigate and hold accountable any state agent who has engaged in the surveillance, harassment, arbitrary detention or assault on any child, and to take all necessary measures to prevent such violations in future, in compliance with Morocco's obligations under the Covenant and the Convention on the Rights of the Child;

- to take immediate measures to design and implement pedagogical programs at the elementary and secondary levels focused on teaching Hassaniya language, literature, history, geography and culture, in consultation with Sahrawi leaders and following public consultations, to make this program available throughout schools in the territory of Western Sahara, to actively train and recruit Sahrawi teachers to implement this program, and to take all other measures necessary to ensure the full respect of the right to education in a spirit of respect for the Sahrawi people's right to self-determination and guided by established best practices in the implementation of Morocco's international obligations under the Covenant and the Convention on the Rights of the Child;
- to take all measures necessary to prevent and correct discriminatory practices directed against Sahrawi students in educational institutions in Morocco, including improving its legal and institutional frameworks making such practices illegal and implementing quotas or affirmative action programs in favor of Sahrawis until they are adequately represented in the student population;
- to take all necessary measures to found and establish in the territory of Western Sahara a university offering undergraduate and graduate education across different fields of endeavor including law and medicine, sciences and the humanities, and ensure that the university serves the whole population of Western Sahara without discrimination;
- to take all necessary measures to establish professional training programs in the territory of Western Sahara across a variety of professional pursuits, and ensure that these training programs serve the whole population of Western Sahara without discrimination;
- until such time as the university of Western Sahara shall be operational, to provide financial and material support to Sahrawi students wishing to pursue higher education in universities outside the Occupied Territory, so as to ensure equality of access to university education in conformity with Morocco's obligations under the Covenant.

## **5. Article 15: Right to take part in cultural life**

Article 15: *“The States Parties to the present Covenant recognize the right of everyone:*

*1. a. To take part in cultural life;*

...

*3. to undertake to respect the freedom indispensable for ... creative activity.*

Article 15 of the Covenant affirms that State Parties should recognize the right of everyone to “take part in cultural life” and binds State parties “to respect the freedom indispensable for [...] creative activity.” The Kingdom of Morocco is in violation of both of these provisions in Western Sahara.

The UN Expert in the field of cultural rights has defined culture, for the purpose of implementing article 15 (1)(a), as encompassing “ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which

individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.”<sup>160</sup>

In human rights terms, cultural life and artistic creation are closely intertwined with human dignity and identity.<sup>161</sup> According to the U.N. Special Rapporteur in the field of cultural rights, “[a]ccessing and enjoying cultural heritage is an important feature of being a member of a community, a citizen and, more widely, a member of society.”<sup>162</sup> With regard to culturally significant expressions in the public space, “the State has a specific role in ensuring that space is made available for a plurality of narratives and multiplying opportunities for such narratives to engage with each other.”<sup>163</sup>

In clear violation of these precepts, Moroccan authorities exert intense pressure on the content of Sahrawi cultural productions, leading in practice to the censorship of Sahrawi culture, denying it even the name “Sahrawi” in favor of calling it “Hassaniya.” In the past few years, a number of state-led initiatives—including the construction of a multimedia library, plans for a “museum of the Sahara,” a music institute and a center for Saharan studies, and the organization of cultural and theatre festivals<sup>164</sup> – have been launched with the apparent goal of promoting “Hassaniya” culture<sup>165</sup> but are in reality aimed at exploiting a simplified, “folklorized” and decontextualized version of Sahrawi culture in order to better control it and reduce it to an asset of Morocco’s tourism industry.

The incorporation of Sahrawi cultural elements into a dominant Moroccan cultural narrative – a fiction for which there is no historical backing, according to experts<sup>166</sup> – requires silencing dissenting Sahrawi voices. Sahrawi artists who refuse to support Moroccan authority over Western Sahara are banned from taking part in cultural life and may be subjected to harassment, arbitrary detention, and beatings. The pro self-determination singer Malainine Baykika, for instance, was banned from singing on the radio or participating in state-organized festivals.<sup>167</sup> More recently, the young Sahrawi rapper Flitoox Crazy, whose songs denounce the occupation, was detained and tortured by Moroccan authorities on several occasions.<sup>168</sup> The Sahrawi writer El Batoul Mdaymigh (also known as Batoul Mahjoub) wrote an autobiographical short story collection called “Obscure Days” that was confiscated during a book fair in Casablanca in 2011. The stories focused on her childhood and the disappearance of her father, an opponent of the Moroccan regime, and his eventual death in a secret detention center.<sup>169</sup> Other artists have had their work reviewed by a committee authorized to ask them to change the lyrics of traditional songs or modify performances that were deemed inappropriate.<sup>170</sup> At least one artistic collective was shut down after the performance of a political poem at an international cultural festival in Morocco.<sup>171</sup> Conversely, artists who benefit from the material support of Moroccan authorities are chosen because of their known pro-Moroccan stance or obliged to produce work in praise of Morocco.<sup>172</sup> The Special Rapporteur in the field of cultural rights noted that “[s]uch practices, which limit the free expression of cultural diversity that should be otherwise promoted and fulfilled, seem contrary to the right to freedom of expression and artistic freedom.”<sup>173</sup>

Poets and storytellers in Sahrawi culture, as in most mobile pastoralist societies, are particularly important repositories of oral traditions.<sup>174</sup> Not surprisingly, the Kingdom of Morocco has singled them out for particular censorship and mistreatment. Sidatiould Essallamiould Lahbib, an elder Sahrawi poet “considered one of the greatest living resources on Hassani oral heritage,”<sup>175</sup> hosted a cultural radio show in Hassaniya and had “embarked on a comprehensive project to record the Hassani oral traditions that he had learned and

composed in his lifetime in a personal library collection.”<sup>176</sup> His collection was seized twice by the Moroccan government, the second time as part of a wave of arrests following a series of popular protests that resulted in Essallami being temporarily imprisoned and his library ransacked. According to one expert, “the loss was staggering: 72 manuscripts handwritten on goat and gazelle skins, his 18-volume collection of 1410 poems written over two decades, and audio cassettes containing several thousand Hassaniya radio broadcasts over a period of 25 years.”<sup>177</sup> This case illustrates how “the cultural domain of poetry and verbal arts is closely bound up with political struggles.”<sup>178</sup>

The Kingdom’s plan to build a “Museum of the Sahara” in Dakhla,<sup>179</sup> which according to media reports is to house 23,000 works, manuscripts, CDs and other artistic media,<sup>180</sup> will do little to restore this lost heritage. As the Special Rapporteur on cultural rights has noted, “[m]useum collections are the result of selections. As most museums are perceived to speak with an authoritative voice, they too may be used to promote political agendas or to defend community interests through the presentation of a particular narrative.”<sup>181</sup> The narrative that emerges from the press releases announcing the Museum of the Sahara reduces the Sahrawi artistic heritage to a fragment of greater Morocco’s culture. Emphasizing the cultural heritage of “the Moroccan Sahara”<sup>182</sup> and Morocco’s “southern provinces” and avoiding any mention of “Western Sahara” or “Sahrawi,” the museum’s supporters celebrate its exploration of “Hassaniya culture as a component of Moroccan identity”<sup>183</sup> and “the southern provinces that have always maintained their Moroccan identity.”<sup>184</sup> The collection of the current, more modest, Museum of the Sahara in Dakhla confirms that the projected cultural center intends to flatten Sahrawi claims to a distinct history and culture in order to render invisible their right to self-determination endorsed by the International Court of Justice. One visitor to the existing museum describes the exhibit beginning with King Mohamed VI’s visits to the region and the “peaceful” event of the Green March.<sup>185</sup> One visitor to the existing museum describes the exhibit beginning with King Mohamed VI’s visits to the region and the “peaceful” event of the Green March. The rest of the museum displays Sahrawi arts and crafts, traditional instruments and clothing, but fails to present these with any meaningful historical context for understanding present Sahrawi identity, reducing Sahrawi culture instead to an ethnographic curiosity. Earlier this year, a state-sponsored television channel based in Layoun began broadcasting two new purportedly Sahrawi television series, which depict Sahrawi characters as savages and slave-owners and falsify the historical record in presenting Western Sahara as always having been part of Morocco.<sup>186</sup> The appropriation and re-formulation of Sahrawi history aim at legitimizing the Moroccan occupation, and far from promoting Hassaniya cultural life, ensure the context for further violations of Article 15 of the Covenant.<sup>187</sup>

Statements by Morocco—and the National Council of Human Rights of Morocco—that they have published collections of Hassaniya poetry, literature and produced recordings of Hassaniya music<sup>188</sup> should be understood within the context of this cultural policy of appropriation and self-legitimization. Whatever the intended purposes of such works, they do not include distribution or circulation among Hassaniya speakers. Several reliable observers have reported that no publications in Hassaniya are available in bookstores in Western Sahara.<sup>189</sup> Only a few collections of Sahrawi poetry self-published by the authors are privately distributed.<sup>190</sup> In particular, Hassaniya dictionaries and language textbooks are impossible to find in Western Sahara.<sup>191</sup> The territory’s first library is currently under construction and is set to be completed within two years, but to date there has never been a library in Western Sahara.<sup>192</sup> Similarly, local sources indicate that Morocco’s National Human Rights Council has financed and produced three recordings of Hassaniya music by groups such as the Khousaifa Band and the Amnat Aichatta Band, but the CDs are not for sale and not available



to the public. Instead, they are reportedly gifted as souvenirs to visiting delegations as a mark of the Kingdom's claim to the disputed territory's culture.<sup>193</sup>

The Kingdom of Morocco's stated interest in the "memory and archives of the Moroccan Sahara"<sup>194</sup> also contradict its policies restricting the Sahrawis' ability to practice and maintain a relationship with their traditional nomadic lifestyle. Moroccan authorities enforce severe limits on the organization of activities in the desert, a space that is geographically, economically, and symbolically central to Sahrawi culture.

To begin with, landmines prohibit access to many traditional territories.<sup>195</sup> Moreover, and most significantly for those who continue to practice nomadic pastoralism, about five years ago the Moroccan army implemented a ban on entering the area of Oum-Dreyga. Located in the center of the occupied territory, this area of roughly 50 square km encompasses particularly fertile lands that were commonly used to graze herds prior to the ban.<sup>196</sup> Other smaller areas located close to the berm are also inaccessible to shepherds.<sup>197</sup> Moroccan checkpoints at city exits further infringe upon freedom of movement in the desert.<sup>198</sup>

Although the "Museum of the Sahara" presents khaimas (traditional Sahrawi tents) as cultural artifacts worthy of exhibition,<sup>199</sup> Moroccan authorities have strictly banned their use and production ever since the dismantlement of the Gdeim Izik protest camp. This is a true affront to a nomadic people who, even when they live in urban centers, would frequently camp in the desert or on the beach on the weekend or on holidays.<sup>200</sup> Even tents set up by Sahrawi families on flat building rooftops in the hot season are sometimes targeted by Moroccan security forces.<sup>201</sup> Moreover, for those who continue to work as shepherds in the desert, this ban puts their livelihoods at serious risk.<sup>202</sup>

Similarly, the "Museum of the Sahara" exhibits a collection of traditional Sahrawi clothing,<sup>203</sup> but some Sahrawis report that they have stopped wearing traditional clothing when they travel in Moroccan provinces because they fear being harassed and threatened.<sup>204</sup> As the Occupying Power, the Kingdom of Morocco has the obligation to ensure the full realization of cultural rights protected by the ICESCR, including by protecting them from interference by third parties.

The separation of Sahrawi families and the division of their communities by the wall, which as noted above has no points of passage, make the transmission and perpetuation of Sahrawi language and culture extremely difficult.<sup>205</sup> The family visitation program organized by the United Nations High Commissioner for Refugees, which enabled around 20,000 visits from 2004 to 2014, is no longer operational. Moreover, these figures represent only a small portion of the number of separated families and the duration of these visits was limited. Morocco must promote family reunification as much as possible in order to comply with its obligations to respect the right to participate in cultural life.

The Kingdom of Morocco's restrictions on Sahrawi cultural life also take more indirect forms. Moroccan authorities sometimes prevent Sahrawi parents from registering the Hassaniya names they choose for their children, especially if they are hyphenated names which are common in Sahrawi culture,<sup>206</sup> or names which according to the authorities have sovereignist connotations.<sup>207</sup> Some Sahrawi adults have also had to adopt a Moroccan name, sometimes one imposed by administrative staff, in order to be granted an identification document.<sup>208</sup> Moreover, no administrative services are offered in Hassaniya and

administrations do not offer translation or interpretation services. In practice, this prevents some Sahrawi from accessing rights and services to which they are entitled.<sup>209</sup>

**In light of these facts, we ask the Committee to find Morocco in violation of Article 15 of the Covenant. We also ask the Committee to urge Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:**

- to take immediate measures to cease the harassment, arrest, arbitrary detention or physical assault of any individual on the grounds of his or her artistic or cultural expressions;
- to take immediate measures to re-authorize the use and creation of traditional Sahrawi tents across Western Sahara, notably by nomadic pastoralists and for purposes of cultural and leisure activities in the desert and in urban centers;
- to take immediate measures to re-open and intensify the UNCHR's family visitation program in order to ensure maximum contact and communication between family members separated by the berm;
- to take immediate measures to authorize the registration of traditional Sahrawi names, including double names and names that refer to the Sahrawi right to self-determination, and to take all necessary measures to ensure that all administrative services provided by the Moroccan state are available in Hassaniya to Hassaniya-speakers;
- to take all necessary measures to foster a cultural environment which welcomes and supports a plurality of artistic and cultural expressions, views and narratives, including through the material and financial support of artists, writers and cultural actors, and the protection of their creative independence, guided by the precepts laid out by the Committee and experts in the field, including the Special Rapporteur in the field of cultural rights, and in the spirit of recognizing that cultural rights are "pivotal to the recognition and respect of human dignity, as they protect the development and expression of various world visions — individual and collective — and encompass important freedoms relating to matters of identity," and mindful of the Sahrawi people's right to self-determination;<sup>210</sup>
- to take all necessary measures to consult with a wide range of Sahrawi artists, writers, scholars, experts and the general public in Western Sahara in advance of designing and building sites of memorialization such as museums, cultural centers and libraries, in a spirit of recognizing that in order for Morocco to conform to its human rights obligations under Article 15, it must "create conditions that allow a broadly located, mobile, multi-layered, and interactive dialogical truth," remaining mindful of the Sahrawi people's right to self-determination.<sup>211</sup>

#### D. Obstacles to the Effective Implementation of the Rights Guaranteed by the ICESCR: The Repression of Human Rights Defenders

Human rights are universal, interdependent and indivisible.<sup>212</sup> Human rights defenders play a critical role in the application of the ICESCR. As recognized in the United Nations Declaration on Human Rights Defenders, the work of individuals and associations is essential in bringing about the effective elimination of human rights violations stemming from “the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.”<sup>213</sup> It is because they enjoy civil rights that human rights defenders are entitled to form associations, protest peacefully and circulate freely to monitor compliance with the ICESCR. Several observers, however, have noted that the Kingdom of Morocco systematically represses Sahrawi associations working to defend their economic, social and cultural rights, particularly the right to self-determination.

##### a. Consequences of Violations of Freedom of Association Relating to the Right to Self-Determination

The right to freedom of association is limited by the law and practice of local authorities of the Kingdom of Morocco. Article 2 of the Moroccan law regulating freedom of association provides that all “associations of persons can freely form without authorization subject to the provisions of article 5.”<sup>214</sup> There are no provisions in the Moroccan Constitution limiting freedom of association in relation to independence claims. However, Article 3 of the law of associations prohibits “associations that have an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, *the integrity of national territory, or the monarchical regime*, or that calls for discrimination.”<sup>215</sup> According to Morocco’s King, “One is either a patriot or a traitor.”<sup>216</sup> Accordingly, local authorities have either refused to accept, or have delayed their acceptance, of applications from any Sahrawi association whose object is the defense of the right to self-determination.<sup>217</sup> While the Moroccan authorities have given ASVDH (*Sahrawi Association of Victims of Grave Violations of Human Rights*) a provisional receipt acknowledging the filing of the organization’s founding papers,<sup>218</sup> many other organizations seeking recognition have been ignored. As one example, Robert F. Kennedy Human Rights has extensively reported on the lack of legal recognition for CODESA (Collective of Sahrawi Human Rights Defenders).<sup>219</sup> Associations without legal status, such as CODESA, face significant obstacles to achieving their goals. They do not have access to public facilities, so they may only meet in private homes, and they cannot obtain funding.<sup>220</sup> When associations do manage to meet, they report that they experience constant surveillance by Moroccan authorities.<sup>221</sup> Human Rights Watch’s 2015 World Report confirms that the Kingdom of Morocco continues to violate the rights to freedom of association of Sahrawi human rights defenders.<sup>222</sup>

Moreover, the overly vague language of Article 3 of the law on associations, which was amended in 2002, gives the State very broad powers to refuse to recognize an association for political reasons.<sup>223</sup> In June 2003, a court decision dissolved the Sahrawi branch of the Forum for Truth and Justice Association on the alleged basis that it was involved in illegal activities endangering public order and the territorial integrity of Morocco.<sup>224</sup> According to a November 2014 report from the FIDH (Fédération Internationale des Ligues des Droits de l’Homme), members of the FEMED delegation (Euro-Mediterranean Federation against Forced Disappearances), had key advocacy documents confiscated upon their arrival at Marrakech airport on the eve of the Global Forum on Human Rights.<sup>225</sup>

#### b. Consequences of Violations of the Freedom to Protest and to Assemble

Gatherings in support of the independence of Western Sahara are not tolerated by Morocco.<sup>226</sup> In November 2010, Moroccan authorities violently intervened to dismantle the Gdeim Izik resistance camp formed by approximately twenty thousand Sahrawis to defend their economic, social and cultural rights, including the right to self-determination (Article 1.1 of the ICESCR) and the right to freely dispose of their natural resources (Article 1.2 of the ICESCR). According to Human Rights Watch, 25 Sahrawi civilians, known as the “Gdeim Izik Group,” were arrested following these events, and most of them spent 26 months in pre-trial detention.<sup>227</sup> The trial of these individuals was held in February 2013 in Rabat before a military tribunal, despite their civilian status, in violation of international law.<sup>228</sup> Charged with having formed a criminal gang aimed at committing violent acts against Moroccan law enforcement authorities, some of them were condemned to twenty years’ imprisonment while others were condemned to life imprisonment.<sup>229</sup> The Gdeim Izik Group was convicted mainly based upon confessions which they claim were extracted through police torture, and they continue to maintain their innocence.<sup>230</sup>

Twenty-two of the Gdeim Izik Group are currently serving their sentences.<sup>231</sup> While the Moroccan government has taken steps to revise legislation that allowed for the prosecution of civilians in military courts, civilians may be still be tried before a military court in times of war.<sup>232</sup> Moreover, it is unclear whether the changes to this legislation will have any effect on the convictions of the Gdeim Izik Group.

Other human rights defenders also face persecution as a result of their activism on behalf of self-determination. The home of Aminatou Haidar, human rights defender and president of CODESA, was recently attacked during a peaceful protest in her neighborhood while she was meeting with representatives from the United Nations Office of the High Commissioner on Human Rights.<sup>233</sup> In April, 2015, after being convicted first by military tribunal to three months in prison, a civil court in Agadir sentenced Mbarek Daoudi, who has advocated for self-determination, to a six-month sentence for alleged violations of weapon possession.<sup>234</sup> Daoudi denies these allegations and also claims that he confessed under police torture.<sup>235</sup> In addition, the verdict does not take into account the 17 months that Mbarek Daoudi spent in preventive detention in local prison No. 1 of Salé. Associations report that individuals who videotape protests as well as Sahrawi web reporters are often the first victims of repression, so that the images they recorded can be hidden from public view.<sup>236</sup>

#### c. Consequences of Violations of Freedom of Movement

The Kingdom of Morocco, as the Occupying Power, has the responsibility to ensure that the Sahrawi people can freely circulate to promote and protect human rights and to denounce their violation.<sup>237</sup> Human rights defenders in Western Sahara, however, do not enjoy these rights. Many of them have been sentenced to lengthy prison terms as a result of demonstrations in favor of self-determination at Gdeim Izik, including Enaama Asfari,<sup>238</sup> President of the Commission for the Defense of Human Rights in Western Sahara; Ahmed Sbaai, former political prisoner and Secretary General of the Committee for the Protection of Sahrawi prisoners; and members of the Sahrawi information agency “Equipe Media.”<sup>239</sup> Human rights defenders also face significant hurdles traveling abroad to attest to the violation of their rights, due to the threat that the Moroccan authorities will confiscate their passports.<sup>240</sup> In 2009, Aminatou Haidar, because of her refusal to declare her nationality as Moroccan on an immigration form upon returning to Layoune from the United States, had her

passport confiscated and was illegally expelled to Spanish territory.<sup>241</sup> Ms. Haidar was only allowed to return to her homeland after a 32-day long hunger strike, international outcry, and diplomatic intervention.<sup>242</sup> In 2013, ASVDH stated that earlier that year on January 15<sup>th</sup>, Moroccan authorities had prohibited ASVDH human rights activists from attending an international meeting of human rights defenders.<sup>243</sup>

d. Exclusion and Harassment of Foreign Human Rights Defenders

The effects of Morocco's systematic persecution of Sahrawi human rights defenders are compounded by its exclusion of foreign observers.<sup>244</sup> The Moroccan authorities regularly expel political activists, scholars, and human rights advocates seeking to observe, monitor, and report on human rights abuses.<sup>245</sup> Even accredited Moroccan journalists are generally not granted access to Western Sahara.<sup>246</sup> As a consequence, Morocco has largely succeeded in barring objective observers from reporting on human rights violations in the territory, restricting access to empirical data and eyewitness accounts that could assist this Committee in its task.<sup>247</sup>

Human rights defenders who attempt to observe and report abuses in Western Sahara face harassment, intimidation, and expulsion.<sup>248</sup> In 2013, four MEPs and five parliamentary assistants were deported after they traveled to Western Sahara to view human rights abuses as part of an observation mission.<sup>249</sup> Moroccan authorities have also banned activities organized by legally recognized international human rights organizations, such as Amnesty International and the Moroccan Association for Human Rights.<sup>250</sup> Even Sahrawi human rights defenders connected with international organization face harassment and intimidation.<sup>251</sup> In 2010, Moroccan police beat and insulted a research assistant for Human Rights Watch who was of Sahrawi origin in broad daylight, calling him a "traitor" and a "separatist."<sup>252</sup> Despite the presence of witnesses, the prosecutor closed the case five months later due to "lack of evidence."<sup>253</sup> Morocco has also impeded the work of MINURSO. During the events at Gdeim Izik, MINURSO was denied entry to camp in its first three attempts, despite an agreement allowing them freedom of movement 24 hours per day.<sup>254</sup> MINURSO was only granted entry three days after the camp was dismantled.<sup>255</sup>

Morocco should end systematic repression of Sahrawi human right activists and allow monitoring of human rights issues in Western Sahara. Despite Morocco's establishment of the National Commission of Human Rights in 2011, Western Sahara remains in need of a mechanism without the potential for bias in favor of Morocco.<sup>256</sup> As Secretary-General Ban Ki-moon urged in 2014, Western Sahara needs a "sustained, independent and impartial monitoring of human rights, covering both the Territory and the camps."<sup>257</sup> Protection of human rights in Western Sahara requires recognition of the rights of human rights defenders and the extension of the MINURSO mandate to include human rights monitoring.

**In light of these facts, we ask the Committee to urge Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:**

- Take all necessary measures to protect the freedoms of human rights defenders in Western Sahara by removing any obstacles to their ability to meet, travel, and organize peaceful protests;

- Take all necessary measures to recognize and grant legal status to organizations that peacefully support the right to self-determination, including CODESA, and punish local authorities who attempt to block efforts by those organizations to comply with the law on associations;
- Take all appropriate measures to ensure that no civilians are tried before military courts and that any civilians previously tried before a military court are provided new trials before a civilian court, as well as put an end to arbitrary detentions and arrests based on political reasons.

## E. Conclusion

We urge the Committee to adopt the above-listed recommendations in its Concluding Observations subsequent to its review of the Kingdom of Morocco's Fourth Periodic Report to this Committee.

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<sup>1</sup> See Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶¶ 17-19, 21-22, 24, 39, 41, U.N. Doc. E/C.12/1/Add.27 (Dec. 4, 1998); Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 13, 15, U.N. Doc. E/C.12/1 (Aug. 31, 2001); Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 19, 26, U.N. Doc. E/C.12/1/Add.90 (June 26, 2003); Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶¶ 24, 26, 29, 35, 36, U.N. Doc. E/C.12/ISR/CO/3 E/C.12/1 (Dec. 16, 2011).

<sup>2</sup> CIA World Fact Book, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/wi.html>.

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, art. 1., ¶ 1, Dec. 16 1966, 993 U.N.T.S. 3.

<sup>4</sup> Comm. on Econ. Social and Cultural Rts, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 8, U.N. Doc. E/C.12/1/Add.27 (Dec. 4, 1998) ("The Committee is of the view that the State's obligations under the Covenant apply to all territories and populations under its effective control."); Comm. on Econ. Social and Cultural Rts, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 11, U.N. Doc. E/C.12/1 (Aug. 31, 2001) (deploring Israel's refusal to concede its responsibility for violations of the Covenant in the occupied territories).

<sup>5</sup> U.N. Secretary-General, *Report of the Secretary-General Prepared Pursuant to General Assembly Resolution ES-10/13*, App. 4, ¶ 4, U.N. Doc. A/ES-10/248 (Nov. 24, 2003).

<sup>6</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 137, § 112 (9 July) ("The International Covenant on Economic, Social and Cultural Rights contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction. Thus Article 14 makes provision for transitional measures in the case of any State which "at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge". . . [The Court] would also observe that the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.") [hereinafter *ICJ Advisory Opinion of the Construction of the Wall*].

<sup>7</sup> *Id.*

<sup>8</sup> Human Rights Comm., Gen. Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/ Add.13, ¶ 10 (May 26, 2004) ("[A] State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective

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control of that State Party.”); Human Rights Comm., Concluding Observations: United States of America, ¶ 10, U.N. Doc. CCPR/C/USA/CO/3 (Dec. 18, 2006) (noting the Committee’s concern about the restrictive view taken by the United States with respect to denial of rights for individuals under its jurisdiction but not in its territory); *Loizidou v. Turkey*, 310 Eur. Ct. H.R. (ser. A) at ¶ 62 (1995) (Judgment on Preliminary Objections) (rejecting Turkey’s jurisdictional argument that the Convention for the Protection of Human Rights and Fundamental Freedoms does not apply to its actions in northern Cyprus because Cyprus is not within Turkey’s national territory); *Coard v. United States*, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/Ser.L./V/II.106, doc. 3 rev. ¶ 37 (1999) (finding jurisdiction for a claim based on the American Declaration of the Rights and Duties of Man where the United States allegedly detained individuals during its invasion of Grenada in 1983); see generally, John Cerone, *Human Dignity in the Line of Fire: The Application of International Human Rights Law During Armed Conflict, Occupation, and Peace Operations*, 39 VAND. J. TRANSNAT’L L. 1447, 1471–85 (2006); Sarah H. Cleveland, *Embedded International Law and the Constitution Abroad*, 110 Colum. L. Rev. 225, 248–70 (2010) (examining international law on the effective control test to determine possible extraterritorial applications of the U.S. Constitution).

<sup>9</sup> See STEPHEN ZUNES & JACOB MUNDY, *Western Sahara: War, Nationalism, and Conflict Irresolution* 261 (Syracuse Univ. Press ed., 2010), [hereinafter ZUNES & MUNDY].

<sup>10</sup> G.A. Res. 34/37, ¶ 5, U.N. Doc. A/RES/34/37 (Nov. 21, 1979); Hans Corell, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, Addressed to the President of the Security Council, ¶ 7, UN Doc. S/2002/161 (Feb. 12) [hereinafter *Corell Letter*]. Mr. Corell, Under-Secretary-General for Legal Affairs, examined the issue in the context of the exploitation of Western Sahara’s natural resources, where he asserted that the Kingdom must respect the interests of the population of Western Sahara. *Id.*, ¶ 22. Though basing his opinion on Article 73 of the United Nations Charter, he clarified that the same principles were reaffirmed by the ratification of subsequent covenants, including the ICESCR.

<sup>11</sup> See ZUNES & MUNDY, *supra* note 9, at 251; *The Resource Curse*, WESTERN SAHARA RESOURCE WATCH (Sept. 16, 2009), <http://www.wsrw.org/a137x519>.

<sup>12</sup> International Court of Justice, Advisory Opinion on Western Sahara, 1975 I.C.J. 12 (Oct. 16), available at, <http://www.icj-cij.org/docket/index.php?sum=323&p1=3&p2=4&case=61&p3=5> [hereinafter *ICJ Advisory Opinion on Western Sahara*]; U.N. General Assembly, Question of Spanish Sahara, Resolution 3458, A/RES/3458 (XXX), 2435th Plenary Meeting, 10 December 1975 [hereinafter *2435th Plenary Meeting*]; The Assembly of Heads of State and Government of the Organization of African Unity, meeting in its Eighteenth Ordinary Session in Nairobi, Kenya, from 24 to 27 June 1981, Resolution on Western Sahara, AHR/Res. 103 (XVIII) (24 to 27 June, 1981).

<sup>13</sup> For example, UN General Assembly Resolution 2983 reaffirmed “the inalienable right of the people of the Sahara to self-determination and independence.” U.N. General Assembly, Question of Spanish Sahara, Resolution 2983, A/RES/2983 (XXVII), 2110th Plenary Meeting, 14 December 1972. See also, *2435th Plenary Meeting*, *supra* n. 12 (“Reaffirms the inalienable right of the people of Spanish Sahara to self-determination, in accordance with General Assembly resolution 1514 (XV)”; Susan M. Akram, *Self-Determination, Statehood, and the Refugee Question under International Law in Namibia, Palestine, Western Sahara and Tibet in Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises* (eds. Susan Akram and Tom Syring 2014), 92-95 [hereinafter Akram].

<sup>14</sup> See *2435th Plenary Meeting*, *supra* n. 12.

<sup>15</sup> See Akram, *supra* n. 13, at 92-95.

<sup>16</sup> See U.N. Under-Secretary General for Legal Affairs, Letter dated 19 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, UN Doc. S/2002/161, ¶ 6 (12 February 2002). This letter noted:

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 [sic] Spain alone could not have unilaterally transferred.

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The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory.

<sup>17</sup> *Question of Western Sahara*, G.A. Res. 34/37, U.N. Doc. A/RES/34/37 (Nov. 21, 1979).

<sup>18</sup> See Jacob Mundy, *Moroccan Settlers in Western Sahara: Colonists or Fifth Column?*, 15 ARAB WORLD GEOGRAPHER 95, 96–101 (2012) [hereinafter *Settlers*].

<sup>19</sup> *ICJ Advisory Opinion on Western Sahara*, *supra* n. 12, at ¶162.

<sup>20</sup> *Id.*

<sup>21</sup> ICJ Advisory Opinion on Accordance with International Law of the Unilateral Declaration of Independence of Kosovo, 2010 I.C.J. Reports 403 (July 22), at ¶79, available at <http://www.icj-cij.org/docket/files/141/15987.pdf>. The ICJ observed:

During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation . . .

A great many new States have come into existence as a result of the exercise of this right.

<sup>22</sup> See also Akram, *supra* n. 13, at 96.

<sup>23</sup> U.N. Charter art. 2(4).

<sup>24</sup> See, e.g., *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, G.A. Res. 2625/XXV, U.N. Doc. A/RES/25/2625 (Oct. 24, 1970) [hereinafter *Friendly Relations*].

<sup>25</sup> See, e.g., S.C. Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967).

<sup>26</sup> See, e.g., *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J.14, 181 (June 27).

<sup>27</sup> *Friendly Relations*, *supra*, n. 24.

<sup>28</sup> Committee on Economic, Social, and Cultural Rights, Concluding observations of the Committee on Economic, Social, and Cultural Rights, Morocco, 30 May 1994, E/C.12/1994/5, ¶ 10 [hereinafter *1994 Concluding Observations*].

<sup>29</sup> Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social, and Cultural Rights, Morocco, 1 December 2000, E/C.12/1/Add.55, ¶13.

<sup>30</sup> Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights, Morocco, 4 September 2006, E/C.12/MAR/CO/3, ¶ 35 [hereinafter *2006 Concluding Observations*].

<sup>31</sup> *1994 Concluding Observations*, *supra* n. 28, at ¶ 10.

<sup>32</sup> *2006 Concluding Observations*, *supra* n. 30, at ¶ 35.

<sup>33</sup> G.A. Res. 1541 (XV), Principles Which Should Guide Members in Determining Whether or not an Obligation Exists to Transmit the Information called for under Article 73e of the Charter, U.N. Doc. A/4651 (Dec. 14, 1960).

<sup>34</sup> In 1953, Resolution 742 also stressed that “[T]he manner in which Territories . . . can become fully self-governing is primarily through the attainment of independence . . .” G.A. Res. 742 (VIII), Factors which should be Taken Into Account in Deciding whether a Territory is or is not a Territory Whose People not yet Attained a Full Measure of Self-Government, U.N. Doc. A/2556 (Nov. 27, 1953).

<sup>35</sup> See generally Report of the Secretary General on the situation concerning Western Sahara, 18 June 1990, S/21360, §§ 1, 23, 31, 47(f); Report of the Secretary General on the situation concerning Western Sahara, 19 April 1991, S/22464, §9, 37.

<sup>36</sup> Committee on Economic, Social and Cultural Rights, Fourth Periodic Report of the State of Morocco, 24 March 2014, E/C.12/MAR/4, §26.

<sup>37</sup> Committee on Economic, Social and Cultural Rights, Final observations, 4 September 2006, E/C.12/MAR/CO/2, §35.

<sup>38</sup> *ICJ Advisory Opinion on Western Sahara*, *supra* n. 12, at ¶162; Akram, *supra* note 13, at 96.

<sup>39</sup> *2006 Concluding Observations*, *supra* n. 30, at ¶ 35.

<sup>40</sup> Speech of King Mohammed VI, 6 November 2014, available in French at <http://www.bladi.net/discours-roi-mohammed-6-jeudi-6-novembre,40587.html>.

<sup>41</sup> Though there are circumstances under which internal autonomy measures satisfy a people’s right to self-determination, the history of the conflict in Western Sahara and the Kingdom’s oppression of the



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Sahrawi people renders this impossible. Given Western Sahara's status as a non-self-governing territory subject to colonial domination, Morocco cannot rely on precedent like the Québec case, where internal measures to grant greater autonomy were sufficient to satisfy the self-determination issue. See *Re Secession of Quebec*, [1998] 2 SCR 217 (Supreme Court of Canada).

<sup>42</sup>UNITED NATIONS MISSION FOR THE REFERENDUM IN WESTERN SAHARA, MINURSO BACKGROUND, <http://www.un.org/en/peacekeeping/missions/minurso/background.shtml> (last visited April 12, 2015).

<sup>43</sup>S.C. Res. 690, para. 4, U.N. Doc. S/RES/690 (Apr. 29, 1991).

<sup>44</sup>ZUNES & MUNDY, *supra* note 9, at 203.

<sup>45</sup>Ziai, Fatemeh, *Keeping It Secret: The United Nations Operation in Western Sahara*, HUMAN RIGHTS WATCH (Oct. 1995), <http://www.hrw.org/reports/1995/Wsahara.htm> (last visited Apr. 6, 2015); ZUNES & MUNDY, *supra* note 9, at 192-93 (“Morocco, under false pretenses, presented thousands of its own citizens as native Western Saharans—both Arabs and Berbers in addition to ethnic Sahrawis of non-Western Saharan origin. . . . Out of the candidates from Morocco proper, only 5 percent qualified to vote, and a little less than half of Moroccan-sponsored candidates from the occupied Western Sahara qualified to vote.”).

<sup>46</sup>ZUNES & MUNDY, *supra* note 9, at 193.

<sup>47</sup>*Id.* at 207.

<sup>48</sup>*Id.* at 208-09.

<sup>49</sup>*Id.* at 192-93.

<sup>50</sup>*Id.* at 195.

<sup>51</sup>*Id.* at 192-93.

<sup>52</sup>*Id.* at 193.

<sup>53</sup>U.N. Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, App. I, U.N. Doc. S/2001/613 (June 20, 2001).

<sup>54</sup>U.N. Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, App. II, U.N. Doc. S/2003/565 (May 23, 2003).

<sup>55</sup>Every peacekeeping operation based on Chapter VI gives the state the authority to accept or reject the mission's activities. As an illustrative example, Morocco has repeatedly shown hostility towards any human rights protection mechanisms. All the initiatives, undertaken several times in the last few years, to broaden its mandate in this way have been met with a Security Council veto, notably by France.

<sup>56</sup>U.N. Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, ¶ 116, U.N. Doc. S/2013/220 (April 8, 2013).

<sup>57</sup>U.N. Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, ¶ 48, S/2014/258 (April 10, 2014).

<sup>58</sup>ZUNES & MUNDY, *supra* note 9, at 52, 164.

<sup>59</sup>*LRA, Boko Haram, al-Shabaab, AQIM, and Other Sources of Instability in Africa: Hearing Before the H. Comm. On Foreign Affairs*, 112th Cong. (2012) (statement of U.S. State Dep't Coordinator for Counterterrorism Daniel Benjamin).

<sup>60</sup>*Acting with Impunity: Morocco's Human Rights Violations in Western Sahara and the Silence of the International Community*, NORWEGIAN STUDENTS' AND ACADEMICS' INTERNATIONAL ASSISTANCE FUND 21 (Apr. 2015), <http://saih.no/assets/docs/Acting-With-Impunity-Western-Sahara-report.pdf>.

<sup>61</sup>*Western Sahara: Ambassador Bolton's Meeting with Peter Van Walsum*, SRSB Bastagli, WIKILEAKS, [https://wikileaks.org/plusd/cables/06USUNNEWYORK1018\\_a.html](https://wikileaks.org/plusd/cables/06USUNNEWYORK1018_a.html) (last visited April 22, 2015).

<sup>62</sup>ZUNES & MUNDY, *supra* note 9, at 149.

<sup>63</sup>Ziai, Fatemeh, *Keeping It Secret: The United Nations Operation in Western Sahara*, HUMAN RIGHTS WATCH (Oct. 1995), <http://www.hrw.org/reports/1995/Wsahara.htm> (last visited Apr. 6, 2015).

<sup>64</sup>Invoking Chapter VII would allow the Security Council to achieve its plan of peaceful conflict resolution by settling the disputes between the parties that are hindering the process. It is difficult to imagine that after over 20 years of negotiations an agreement can be reached. Only the intervention of a third party with coercive authority will allow a fair and equitable solution to be reached.

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<sup>65</sup> On 1 July 2010, by its Resolution 1925 of 23 May 2010, the U.N. Security Council changed the name of the MONUC (United Nations Organization Mission in the Democratic Republic of the Congo) to MONUSCO to account for the country entering into a new phase. The new Mission was authorized to use all necessary means to fulfill its mandate (<http://www.un.org/fr/peacekeeping/missions/monusco/mandate.shtml>), which included protecting civilians, humanitarian personnel and human rights defenders exposed to imminent threats of physical violence and helping the government to stabilize and consolidate peace.

<sup>66</sup> This was the case with its intervention in Libya. Following the Human Rights Council's Resolution A/HRC/RES/S-15/1 of 25 February 2011, the U.N. Security Council adopted Resolution 1973 (2011) on 17 March 2011 on the basis of Chapter VII of the UN Charter, exhorting the Libyan authorities to “*comply with their obligations under international law, including international ... human rights ... law.*”

<sup>67</sup> See [http://pbpu.unlb.org/pbps/library/capstone\\_doctrine\\_eng.pdf](http://pbpu.unlb.org/pbps/library/capstone_doctrine_eng.pdf). The Capstone doctrine, which aims at regulating the framework of Peacekeeping Operations, states that as a matter of principle human rights law are inherently part of the objectives and principles defined in the United Nations Charter. It is on the basis of this doctrine that several current UN operations occurred (MANUA, MINUK, MINUL, MINUSS, MONUSCO and ONUCI) include effective human rights protection mechanisms.

<sup>68</sup> In a common letter addressed to the U.N. Security Council on the eve of the presentation of U.N. Secretary-General Ban Ki-Moon's April 2014 report, 115 organizations and associations, among them Sahrawi associations and international NGOs, called for an expansion of the MINURSO mandate. They affirmed that “*the only way to accurately monitor the reality of the human rights situation is through independent investigations and MINURSO reports.*”

<sup>69</sup> Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 39, U.N. Doc. E/C.12/1/Add.27 (Dec. 4, 1998) (noting that closure of borders “restricts the movement of people and goods, cutting off access to external markets and to income derived from employment and livelihood”); Comm. on Econ. Social and Cultural Rts, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 15, U.N. Doc. E/C.12/1 (Aug. 31, 2001) (calling on Israel to remove restrictions imposed on the movement of civilians between points within and outside the occupied territories).

<sup>70</sup> Report of the Secretary General on human rights in the situation in the Occupied Palestinian Territory, including East Jerusalem, 5 March 2015, A/HRC/28/45, §34.

<sup>71</sup> *Id.*, §17.

<sup>72</sup> *ICJ Advisory Opinion of the Construction of the Wall*, *supra* n. 6, at § 163(3)(A).

<sup>73</sup> *Id.* at § 134.

<sup>74</sup> ZUNES & MUNDY, *supra* note 9, at 21-23.

<sup>75</sup> Report of the Secretary General on the situation concerning Western Sahara, 10 April 2014, S/2014/258, §43.

<sup>76</sup> *Id.*

<sup>77</sup> Compare *id.* with Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, 13 January 2014, A/HRC/25/67, §13-21.

<sup>78</sup> See ZUNES & MUNDY, *supra* note 9, at 21-23. See also Pamela Epstein, *Behind Closed Doors: “Autonomous Colonization” in Post United Nations Era – The Case For Western Sahara* (2009), p. 116 (referring to the berm as “the world's largest landmine field”).

<sup>79</sup> Report of the Secretary General on the situation concerning Western Sahara, 14 April 2009, S/2009/200, §27.

<sup>80</sup> See, e.g., *id.*

<sup>81</sup> Report of the Secretary General on the situation concerning Western Sahara, 8 April 2013, S/2013/220, §39.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *ICJ Advisory Opinion on Western Sahara*, *supra* n. 12, at §133.

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<sup>86</sup> See Report of the Secretary General on the situation concerning Western Sahara, 10 April 2014, S/2014/258, §11, 43.

<sup>87</sup> *Id.* at §54-59. See also Paul R. Williams and Francesca J. Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 STAN. J. INT'L L. 347, 348 (2004) (noting over fifty thousand Sahrawi refugees have lived in refugee camps in Algeria for over twenty years).

<sup>88</sup> Report of the Secretary General on human rights in the situation in the Occupied Palestinian Territory, including East Jerusalem, 5 March 2015, A/HRC/28/45, §54.

<sup>89</sup> *ICJ Advisory Opinion on Western Sahara*, *supra* n. 12, at §163.

<sup>90</sup> *Settlers*, *supra* n. 18, at 99, 104, 106–108.

<sup>91</sup> See *id.* at 110.

<sup>92</sup> Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 24, U.N. Doc. E/C.12/1/Add.27 (Dec. 4, 1998); Comm. on Econ. Social and Cultural Rts, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 26, U.N. Doc. E/C.12/1/Add.90 (June 26, 2003); Comm. on Econ. Social and Cultural Rts, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 29, U.N. Doc. E/C.12/ISR/CO/3 E/C.12/1 (Dec. 16, 2011).

<sup>93</sup> See, e.g., Comm. on Econ. Social and Cultural Rts, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 31, U.N. Doc. E/C.12/1/Add.90 (June 26, 2003) (“The Committee repeats its position that even in a situation of armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law and are also prescribed by international humanitarian law. Moreover, the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2(1) for the actions of its authorities.”).

<sup>94</sup> According to the Commentary of the International Committee of the Red Cross (ICRC), Article 49(6) was intended “to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.” OSCAR UHLER & HENRI COURSIER, COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949 VOLUME IV (1958).

<sup>95</sup> See *id.* at 183.

<sup>96</sup> U.N. General Assembly Res. 48/46, Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, 22 March 1994, §2, 48 U.N. GAOR Supp. (No. 49) at 124; U.N. General Assembly Res. 49/40, Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, 30 January 1994, §2.

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<sup>97</sup> *Corell Letter, supra n. 10*, at §24 “*The recent State practice, though limited, is illustrative of an opinio juris on the part of both administering Powers and third States: where resource exploitation activities are concluded in Non-Self-Governing Territories for the benefit of the peoples of these territories, on their behalf, or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power, and in conformity with the General Assembly resolutions and the principle of "permanent sovereignty over natural resources" enshrined therein*”; see also §9 (“*Members of the United Nations who assumed responsibilities for the administration of these territories have whereby recognized the principle that the interest of the inhabitants of these territories are paramount, and have accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these territories.*”). The Legal Service of the European Parliament has also noted that “*compliance with international law requires that economic activities related to the natural resources of a Non-Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes.*” Legal Opinion of the Legal Service of the European Parliament, 13 July 2009, available at, <http://www.wsrw.org/a105x1346>.

<sup>98</sup> See U.N. General Assembly Res. 68/235, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, 7 February 2014, A/RES/68/235.

<sup>99</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, art. 49.

<sup>100</sup> *Corell Letter, supra n. 10*, at §10 (“*The legal regime applicable to Non-Self-Governing Territories was further developed in the practice of the United Nations and, more specifically, in the Special Committee and the General Assembly. Resolutions of the General Assembly adopted under the agenda item “implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,” called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration do not adversely affect the interests of the peoples of such territories, but are instead directed to assist them in the exercise of their right to self-determination. The Assembly also consistently urged the administering Powers to safeguard and guarantee the inalienable rights of the peoples of these territories to their natural resources, and to establish and maintain control over the future development of those resources (GA res 35/118 of 11 December 1980; 52/78 of 10 December 1997; 54/91 of 6 December 1999; 55/147 of 8 December 2000; and 56/74 of 10 December 2001).*”

<sup>101</sup> Toby Shelly, *Endgame in the Western Sahara: What Future for Africa’s Last Colony* (2004), p. 91. See also Kristen Chick, *In remote Western Sahara, prized phosphate drives controversial investments*, The Christian Science Monitor, 24 January 2013, <http://www.csmonitor.com/World/Africa/2013/0124/In-remote-Western-Sahara-prized-phosphate-drives-controversial-investments>. Interviews with Lahcen Dalil and Abdelhay Toubali, affiliated with the Association for the monitoring of the natural resources and the protection of the environment in Western Sahara; MbarkaAlina Baali, affiliated with Forum de l’Avenir de la Femme Sahraouie; Hmad Hammad, affiliated with Comité de Defensa de la Autodeterminación del Pueblo del Sahara Occidental; Ahmed Salem Abdelhay; Soufi Ahmed; Byay Abdelaziz, Jul. 16-20, 2015.

<sup>102</sup> See the protocol to the most recent fisheries agreement between the EU and Morocco: *Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*, European Union Council Decision n° 14165/13, 5 November 2013, approved by the European Parliament on 10 December 2013, Official Journal of the European Union, 7 December 2013, No. L328, pp. 2 *et. seq.*

<sup>103</sup> See *ibid*, *Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*, Appendix 4 “Coordinates of fishing zones.”

<sup>104</sup> See *ibid*, *Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement*

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between the European Union and the Kingdom of Morocco, Appendix 2, Fishing Datasheet No. 3 “Small-scale fishing in the south.” See also Fishing Datasheets Nos. 4, 5, and 6.

<sup>105</sup> See Opinion of Legal Service of the European Parliament, 13 July 2009: “Following a series of parliamentary questions to the Commission, it appears that EU-flagged vessels have fished in the waters off Western Sahara. Not only this can be deducted from the data provided by the Member States to the Commission pursuant to their obligations established by Community legislation on “control,” but also it has also been explicitly acknowledged in several Commission declarations. ... In its previous legal opinion of 20 February 2006, the Legal Service noted that, failing a clear delimitation in the FPA of the fishing zones in which EU vessels were entitled to fish, it could not be excluded that Community vessels would operate in the waters off Western Sahara. ... In the event that it could not be demonstrated that the FPW was implemented in conformity with the principles of international law concerning the rights of the Sahrawi people over their natural resources, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara.”

In 2013, according to a press release from the European Parliament dated 10 December 2013, “Morocco will have to prove that this money is invested in a way that benefits the Sahrawi population. On the other side, the fishing possibilities for 11 member states will allow 1,500 fishermen, 500 of whom are Moroccan, to go ahead and fish”, said rapporteur Carmen Fraga Estévez (EPP, ES). ... MEPs from several political groups again voted against the agreement on the grounds that “it does not respect international law provisions, as it does not exclude the waters of the Western Sahara coast”, and underlined that the Sahrawi population had not been consulted.” See Press Release, Fisheries, 10 December 2013, <http://www.europarl.europa.eu/news/en/news-room/content/20131206IPR30021/html/MEPs-approve-renewed-EU-Morocco-Fisheries-agreement> (last accessed 22 December 2014).

<sup>106</sup> Corell Letter, *supra* n. 10, at § 25 (“it must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council’s request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories.”).

<sup>107</sup> Western Sahara Resource Watch, “According to last available sources, Kosmos and Cairn still plan to initiate its controversial drilling in occupied Western Sahara before the end of the year,” 2 December 2014, <http://www.wsrw.org/a105x3071>.

<sup>108</sup> American Embassy in Rabat, “Western Sahara: Economic Considerations,” Cable of 18 May 2005, 5RABAT1052.

<sup>109</sup> Western Sahara Resource Watch, “Agriculture,” 30 January 2011, <http://www.wsrw.org/a201x1837>.

<sup>110</sup> Erica VASQUEZ, *Living Under Occupation in the Western Sahara: Women, Resistance and Self-Determination*, Georgetown Institute for Women, Peace and Security, November 2014.

<sup>111</sup> UK House of Commons, *Life Under Occupation: Report of a delegation of the All-Party Parliamentary Group on Western Sahara to the Occupied Territory of Western Sahara*, p. 9, February 13-16, 2014.

<sup>112</sup> *Id.* p. 8.

<sup>113</sup> *Id.*

<sup>114</sup> Joanna Allen & Hamza Lakhal, *Acting with Impunity: Morocco’s Human Rights Violations in Western Sahara and the Silence of the International Community*, p. 7, SAIH, April 2015.

<sup>115</sup> *Id.*

<sup>116</sup> VASQUEZ, *supra* n. 110.

<sup>117</sup> Interview with Danielle Smith, Sandblast, December 8, 2014; Interview with a reliable and informed source requesting anonymity for security reasons, April 17, 2015 [hereinafter *April 17 Reliable Source Interview*].

<sup>118</sup> Article 5 of the Universal Declaration on Cultural Diversity.

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- <sup>119</sup> Interview with Danielle Smith, Sandblast, December 8, 2014.
- <sup>120</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>121</sup> U.N.G.A. General Assembly Human Rights Council, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, para. 3, U.N. Doc. A/68/296, August 9, 2013 [hereinafter *2013 Rapporteur on Cultural Rights Report*].
- <sup>122</sup> *Id.*
- <sup>123</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>124</sup> *Id.*
- <sup>125</sup> *2013 Rapporteur on Cultural Rights Report*, *supra* n. 121, at para. 86.
- <sup>126</sup> *Id.*
- <sup>127</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>128</sup> *Id.*
- <sup>129</sup> *Id.*
- <sup>130</sup> *Id.*
- <sup>131</sup> *Id.*
- <sup>132</sup> *Id.*
- <sup>133</sup> Allen & Lakhali, *supra* n. 133, at 11; *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>134</sup> Interview with Erica Vasquez, Georgetown University, June 3, 2015 [hereinafter *Vasquez Interview*].
- <sup>135</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>136</sup> Allen & Lakhali, *supra* n. 133, at 19.
- <sup>137</sup> *April 17 Reliable Source Interview*, *supra* n. 117. Allegations of the use by Moroccan authorities of incommunicado detention were confirmed in the 2013 report by Juan Mendez, UN Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, as noted in Allen & Lakhali, *supra* n. 133, at 18.
- <sup>138</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>139</sup> *Id.*
- <sup>140</sup> *Id.*
- <sup>141</sup> Allen & Lakhali, *supra* n. 133, at 18.
- <sup>142</sup> *Id.* at 13.
- <sup>143</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>144</sup> *Id.*
- <sup>145</sup> *Vasquez Interview*, *supra* n. 134.
- <sup>146</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>147</sup> VASQUEZ, *supra* n. 110.
- <sup>148</sup> Interviews with Lahcen Dalil and Abdelhay Toubali, affiliated with the Association for the monitoring of the natural resources and the protection of the environment in Western Sahara; MbarkaAlina Baali, affiliated with Forum de l'Avenir de la Femme Sahraouie; Hmad Hammad, affiliated with Comité de Defensa de la Autodeterminación del Pueblo del Sahara Occidental; Ahmed Salem Abdelhay; Soufi Ahmed; Byay Abdelaziz; reliable and informed sources requesting anonymity for security reasons, Jul. 16-20, 2015.
- <sup>149</sup> *Id.*
- <sup>150</sup> *Id.*
- <sup>151</sup> Allen & Lakhali, *supra* n. 133, at 6.
- <sup>152</sup> Interview with Isabel Lourenço, Adala UK, 21 November 2014 [hereinafter *Lourenço Interview*].
- <sup>153</sup> *Vasquez Interview*, *supra* n. 134.
- <sup>154</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>155</sup> VASQUEZ, *supra* n. 110; *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>156</sup> *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>157</sup> *Id.*
- <sup>158</sup> Allen & Lakhali, *supra* n. 133, at 19.
- <sup>159</sup> Comm. on Econ. Social and Cultural Rts, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding Observations of the Comm. on Econ. Social and Cultural Rts.: Israel, ¶ 35, U.N. Doc. E/C.12/ISR/CO/3 E/C.12/1 (Dec. 16, 2011).

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<sup>160</sup> U.N.G.A. Human Rights Council, Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, p. 4, footnote 5, U.N. Doc. A/HRC/14/36, March 22, 2010 [hereinafter *2010 Rapporteur on Cultural Rights Report*].

<sup>161</sup> *Id.*, p. 3.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*, para. 72.

<sup>164</sup> Human Rights Council, Twentieth Session, Report of the Independent Expert in the Field of Cultural Rights, Mme Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011), A/HRC/20/26/Add.2, 2 May 2012, § 70 [hereinafter *2012 Rapporteur Morocco Report on Cultural Rights*]; Morocco's National Council for Human Rights submission to this Committee, paras. 71, 77-79, February 2015.

<sup>165</sup> Morocco's National Council for Human Rights submission to this Committee, paras. 71, 77-79, February 2015.

<sup>166</sup> *Vasquez Interview*, *supra* n. 134; Interview with Alice Wilson, Durham University, 10 November 2014 [hereinafter *Wilson Interview*].

<sup>167</sup> *April 17 Reliable Source Interview*, *supra* n. 117.

<sup>168</sup> *Cultures of Resistance Films, Life is Waiting: Referendum and Resistance in Western Sahara*, directed by Iara Lee, 2015.

<sup>169</sup> Interviews with reliable and informed sources requesting anonymity for security reasons, Jul. 16-20, 2015.

<sup>170</sup> *Id.*, § 80; *Wilson Interview*, *supra* n. 166; Interview with Tara Deubel, University of South Florida, 25 November 2014 [hereinafter *Deubel Interview*].

<sup>171</sup> Allen & Lakhil, *supra* n. 133, at 14.

<sup>172</sup> *Deubel Interview*, *supra* n. 170.

<sup>173</sup> *2012 Rapporteur Morocco Report on Cultural Rights*, *supra* n. 164, at § 80.

<sup>174</sup> Tara Deubel, Poetics of diaspora: Sahrawi poets and postcolonial transformations of a trans-Saharan genre in northwest Africa, p. 5, *The Journal of North African Studies*, 2011.

<sup>175</sup> *Id.* at 10.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 11.

<sup>178</sup> *Id.*

<sup>179</sup> National Council of Human Rights of Morocco, Dakhla: Des efforts unis pour une meilleure préservation de la mémoire et de l'archive du Maroc saharien, <http://www.cndh.org.ma/fr/bulletin-d-information/dakhla-des-efforts-unis-pour-une-meilleure-preservation-de-la-memoire-et-de>, December 2011. Morocco's National Council for Human Rights submission to this Committee, para. 76, February 2015.

<sup>180</sup> Mokhtar Semlali, «Le petit musée du Maroc saharien» à Dakhla: Un voyage aux fins fonds du patrimoine des provinces du Sud, *L'Opinion*, [http://l'opinion.ma/def.asp?codelangue=23&id\\_info=38872&date\\_ar=2014-5-16](http://l'opinion.ma/def.asp?codelangue=23&id_info=38872&date_ar=2014-5-16), May 10, 2014.

<sup>181</sup> U.N.G.A. Human Rights Council, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, para. 75, U.N. Doc. A/HRC/25/49, January 23, 2014 (internal citation omitted) [hereinafter *2014 Rapporteur on Cultural Rights Report*].

<sup>182</sup> National Council of Human Rights of Morocco, Dakhla: Des efforts unis pour une meilleure préservation de la mémoire et de l'archive du Maroc saharien, <http://www.cndh.org.ma/fr/bulletin-d-information/dakhla-des-efforts-unis-pour-une-meilleure-preservation-de-la-memoire-et-de>, December 2011.

<sup>183</sup> Sahara Question, A Dakhla, la culture hassanie en composante de l'identité marocaine, <http://sahara-question.com/fr/actualites/dakhla-culture-hassanie-en-composante-1%E2%80%99identit%C3%A9-marocaine>, April 7, 2014.

<sup>184</sup> Mokhtar Semlali, «Le petit musée du Maroc saharien» à Dakhla: Un voyage aux fins fonds du patrimoine des provinces du Sud, *L'Opinion*, [http://l'opinion.ma/def.asp?codelangue=23&id\\_info=38872&date\\_ar=2014-5-16](http://l'opinion.ma/def.asp?codelangue=23&id_info=38872&date_ar=2014-5-16), May 10, 2014.

<sup>185</sup> Lilia Blaise, Dakhla, Sahara occidentale ou Maroc saharien?, *Pambauka News*, <http://www.pambauka.net/fr/category.php/features/83318>, July 4, 2012.

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- <sup>186</sup> Interviews with Lahcen Dalil and Abdelhay Toubali, affiliated with the Association for the monitoring of the natural resources and the protection of the environment in Western Sahara; MbarkaAlina Baali, affiliated with Forum de l'Avenir de la Femme Sahraouie; Hmad Hammad, affiliated with Comité de Defensa de la Autodeterminación del Pueblo del Sahara Occidental; Ahmed Salem Abdelhay; Soufi Ahmed; Byay Abdelaziz; reliable and informed sources requesting anonymity for security reasons, Jul. 16-20, 2015.
- <sup>187</sup> Lilia Blaise, Dakhla, Sahara occidental ou Maroc saharien ?, Pambauka News, <http://www.pambazuka.net/fr/category.php/features/83318>, July 4, 2012.
- <sup>188</sup> Morocco's National Council for Human Rights submission to this Committee, paras. 77-79, February 2015.
- <sup>189</sup> *Deubel Interview*, *supra* n. 170; *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>190</sup> *Deubel Interview*, *supra* n. 170.
- <sup>191</sup> *Id.*
- <sup>192</sup> VASQUEZ, *supra* n. 110.
- <sup>193</sup> Interview with a reliable and informed source requesting anonymity for security reasons, June 21, 2015.
- <sup>194</sup> National Council of Human Rights of Morocco, Dakhla: Des efforts unis pour une meilleure préservation de la mémoire et de l'archive du Maroc saharien, <http://www.cndh.org.ma/fr/bulletin-d-information/dakhla-des-efforts-unis-pour-une-meilleure-preservation-de-la-memoire-et-de>, December 2011.
- 2012 Rapporteur Morocco Report on Cultural Rights*, *supra* n. 164, at § 80; *Wilson Interview*, *supra* n. 166; *Deubel Interview*, *supra* n. 170.
- <sup>196</sup> Interview with a reliable and informed source requesting anonymity for security reasons, December 10, 2014 [hereinafter *December 10 Reliable Source Interview*].
- <sup>197</sup> *Id.*
- <sup>198</sup> Interview with Andrea Brandt von Lindau, Adala UK, 18 November 2014; *Wilson Interview*, *supra* n. 166.
- <sup>199</sup> Sahara Question, A Dakhla, la culture hassanie en composante de l'identité marocaine, <http://sahara-question.com/fr/actualites/dakhla-culture-hassanie-en-composante-1%E2%80%99identit%C3%A9-marocaine>, April 7, 2014.
- <sup>200</sup> Allen & Lakhil, *supra* n. 133, at 13-14; *April 17 Reliable Source Interview*, *supra* n. 117; *December 10 Reliable Source Interview*, *supra* n. 196.
- <sup>201</sup> *December 10 Reliable Source Interview*, *supra* n. 196.
- <sup>202</sup> Allen & Lakhil, *supra* n. 133, at 13-14; *April 17 Reliable Source Interview*, *supra* n. 117; *December 10 Reliable Source Interview*, *supra* n. 196.
- <sup>203</sup> Bouthaina Azami, Petit musée du Maroc saharien, Le 360, <http://www.le360.ma/fr/culture/petit-musee-du-maroc-saharien-11857>, March 24, 2014.
- <sup>204</sup> *2012 Rapporteur Morocco Report on Cultural Rights*, *supra* n. 164, at §75; *Wilson Interview*, *supra* n. 166.
- <sup>205</sup> *2012 Rapporteur Morocco Report on Cultural Rights*, *supra* n. 164, at § 73; *April 17 Reliable Source Interview*, *supra* n. 117.
- <sup>206</sup> *2012 Rapporteur Morocco Report on Cultural Rights*, *supra* n. 164, at § 77.
- <sup>207</sup> *Wilson Interview*, *supra* n. 166.
- <sup>208</sup> *Lourenço Interview*, *supra* n. 152.
- <sup>209</sup> *Deubel Interview*, *supra* n. 170; *Lourenço Interview*, *supra* n. 152.
- <sup>210</sup> *2010 Rapporteur on Cultural Rights Report*, *supra* n. 160, at pp. 3-4.
- <sup>211</sup> *2014 Rapporteur on Cultural Rights Report*, *supra* n. 181, at para. 20.
- <sup>212</sup> Preamble to the Universal Declaration on Human Rights, 1948.
- <sup>213</sup> U.N. General Assembly Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, 8 March 1999.
- <sup>214</sup> Morocco Dahir N° 1-58-376 of 3 jomada I 1378 (15 November 1958) regulating the right to free association, as amended and completed, Official Journal N° 2404 bis of 27 November 1958, available



in French: [https://www.imolin.org/doc/amlid/Morocco/Morocco\\_Dahir\\_no\\_1-58-376\\_reglementant\\_le\\_droit\\_dassociation\\_1958.pdf](https://www.imolin.org/doc/amlid/Morocco/Morocco_Dahir_no_1-58-376_reglementant_le_droit_dassociation_1958.pdf). Article 5: “Every association must be declared before the head of the administrative authority in the district where the headquarters of the association are located [...]. When the declaration meets all the conditions listed in the paragraph below, the final acknowledgment must be delivered within a maximum of 60 days, failing which the association may conduct its activities as they are defined in its constitutive status.”

<sup>215</sup> *Id.* at Article 3.

<sup>216</sup> King Mohammed VI, Speech to the Nation on the 39th Anniversary of the Green March (Oct. 9, 2009).

<sup>217</sup> Human Rights Watch, *Freedom to Create Associations: A Declarative Regime in Name Only*, 2009, pp. 4-5, <http://www.hrw.org/sites/default/files/reports/morocco1009webwcover.pdf>. HRW qualifies this practice of interference in the life of associations as the result not of isolated acts of certain public officials, but of a repressive governmental policy implemented at a national level. This permits the government to keep Sahrawi human rights associations vulnerable from a legal standpoint.

<sup>218</sup> ASVDH is still waiting for the authorities to send it a definitive receipt pursuant to Moroccan law.

<sup>219</sup> See, e.g., Robert F. Kennedy Human Rights, *The Moroccan Government Continues Systematic Violations against the Sahrawi People: Reported human rights violations, September 2013-February 2014* (2014) 3; Robert F. Kennedy Human Rights, *Nowhere to Turn: The Consequences of the Failure to Monitor Human Rights Violations in Western Sahara and Tindouf Refugee Camps* (2013) 26, available at <http://rfkcenter.org/images/attachments/article/1884/NowhereToTurnLoRes.pdf>.

<sup>220</sup> EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, FREEDOM OF ASSEMBLY UNDER THREAT: MUZZLING DISSENT IN THE EURO-MEDITERRANEAN REGION (2014), available at, [http://www.euromedrights.org/eng/wp-content/uploads/2014/12/FOA2014\\_PART-II\\_EN\\_REPORT.pdf](http://www.euromedrights.org/eng/wp-content/uploads/2014/12/FOA2014_PART-II_EN_REPORT.pdf) [hereinafter *Muzzling Dissent*].

<sup>221</sup> EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, EMHRN MISSION REPORT: THE HUMAN RIGHTS SITUATION IN MOROCCO AND THE WESTERN SAHARA (2015).

<sup>222</sup> Human Rights Watch, World Report 2015: Morocco/Western Sahara (29 January 2015): “Officials continue to arbitrarily prevent or impede many associations from obtaining legal registration although the 2011 constitution guarantees the right to form an association.”

<sup>223</sup> Morocco Dahir N° 1-58-376 of 3 jomada I 1378 (15 November 1958), regulating the right to free association, as amended and completed, Official Journal N° 2404 bis of 27 November 1958. Article 3: “Any association founded for a purpose that is illicit, contrary to the law or good morals, or that aims at undermining the Islamic religion, the integrity of the national territory, or the monarchical regime, or that calls for discrimination is void.”

<sup>224</sup> Aujourd’hui Le Maroc, “Forum Justice et Vérité” perd une section, [“Forum Justice and Truth” loses a section], 26 March 2013, available in French: <http://www.aujourd'hui.ma/maroc/societe/%C2%ABforum-justice-et-verite%C2%BB-perd-une-section-30909#.VHXVyPldXSE>.

A. <sup>225</sup> Fédération Internationale de Droits de l’Homme, Morocco: the advocacy documents of the NGO FEMED confiscated by Customs on the eve of the World Human Rights Forum and defenders prevented from participating, 28 November 2014, available in French and in English: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/morocco/16560-morocco-the-advocacy-documents-of-the-ngo-femed-confiscated-by-customs-on>: “Involved? An official map of the High Commissioner for Human Rights on the status of ratification of the International Convention for the Protection of All Persons against Enforced Disappearance, mentioned in the brochure of presentation of the association. All these brochures of the FEMED team were confiscated by Moroccan customs on the basis that the map representing the Western Sahara as a territory without status was “a threat to internal security.””

<sup>226</sup> Human Rights Watch, World Report 2015: Morocco/Western Sahara (29 January 2015).

<sup>227</sup> Human Rights Watch, *Morocco: Tainted Trial of Sahrawi Civilians*, 1 Apr. 2013, <http://www.hrw.org/news/2013/04/01/morocco-tainted-trial-sahrawi-civilians>.

<sup>228</sup> Human Rights Watch, *Morocco: Sahrawi Activist Facing Military Tribunal*, 22, Dec. 2014, <http://www.hrw.org/news/2014/12/22/morocco-sahrawi-activist-facing-military-tribunal>.

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<sup>229</sup> See Robert F. Kennedy Human Rights, *Nowhere to Turn: The Consequences of the Failure to Monitor Human Rights Violations in Western Sahara and Tindouf Refugee Camps* (2013) 27-28, available at <http://rfkcenter.org/images/attachments/article/1884/NowhereToTurnLoRes.pdf>. See full list of prisoners in French: *Écrire pour les libérer: 72 prisonniers politiques sahraouis*, <http://www.ecrirepourlesliberer.com/liste-des-64-prisonniers/>.

<sup>230</sup> Western Sahara Resource Watch, *Gdeim Izik, the Trial*, 21 Feb. 2014, <http://wsrw.org/a131x2834>. The Special Rapporteur on Torture has found that Moroccan courts and prosecutors do not investigate reasonable allegations of torture or order medical investigations, contrary to Morocco's Code of Criminal Procedure; U.N. Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, ¶ 27, U.N. Doc. A/HRC/22/53/Add.2 (28 Feb., 2013).

<sup>231</sup> Human Rights Watch, *Morocco: Sahrawi Activist Facing Military Tribunal*, 22, Dec. 2014, <http://www.hrw.org/news/2014/12/22/morocco-sahrawi-activist-facing-military-tribunal>.

<sup>232</sup> Cairo Institute for Human Rights Studies, *Morocco: Prohibition of Military Trials of Civilians a Fundamental Step Towards Judicial Independence* (20 Mar., 2014), <http://www.cihrs.org/?p=8247&lang=en>.

<sup>233</sup> Robert F. Kennedy Center for Justice & Human Rights, *Home of Robert F. Kennedy Human Rights Award Laureate Aminatou Haidar is Attacked; Disturbing Reports of Police Brutality Against Peaceful Protestors in Western Sahara* (17 Apr., 2015), <http://rfkcenter.org/home-of-robert-f-kennedy-human-rights-award-laureate-aminatou-haidar-is-attacked-disturbing-reports-of-police-brutality-against-peaceful-protesters-in-western-sahara-2>

<sup>234</sup> Sarah Press Service, *Western Sahara: Sahrawi Political Prisoner Embarekdaoudi Sentenced to Six Months in Prison* (9 Apr., 2015), <http://allafrica.com/stories/201504100850.html>.

<sup>235</sup> Human Rights Watch, *Morocco: Human Rights Watch, Morocco: Sahrawi Activist Facing Military Tribunal*, 22, Dec. 2014, <http://www.hrw.org/news/2014/12/22/morocco-sahrawi-activist-facing-military-tribunal>.

<sup>236</sup> EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, EMHRN MISSION REPORT: THE HUMAN RIGHTS SITUATION IN MOROCCO AND THE WESTERN SAHARA (2015).

<sup>237</sup> International Covenant on Civil and Political Rights, article 12; *see also* Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, arts. 31, 33, 35.

<sup>238</sup> On February 12, 2014, ACAT-France filed a complaint before the UN Committee Against Torture to denounce the torture and arbitrary detention of Ennaama Asfari.

<sup>239</sup> See *Écrire pour les libérer: 72 prisonniers politiques sahraouis*, <http://www.ecrirepourlesliberer.com/liste-des-64-prisonniers/>.

<sup>240</sup> See, e.g., Robert F. Kennedy Human Rights, *Kerry Kennedy urges Morocco: Allow Return of Illegally Expelled Sahrawi Rights Defender, Aminatou Haidar*, 24 November 2009, <http://rfkcenter.org/kerry-kennedy-urges-morocco-allow-return-of-illegally-expelled-Sahrawi-rights-defender-aminatou-haidar?lang=en>.

<sup>241</sup> See Robert F. Kennedy Human Rights, *Kerry Kennedy urges Morocco: Allow Return of Illegally Expelled Sahrawi Rights Defender, Aminatou Haidar*, 24 November 2009, <http://rfkcenter.org/kerry-kennedy-urges-morocco-allow-return-of-illegally-expelled-Sahrawi-rights-defender-aminatou-haidar?lang=en>; Amnesty International, *Morocco/Western Sahara: Expulsion of human rights defender reflects growing intolerance*, AI Index: MDE 29/012/2009, 17 November 2009, <http://www.amnesty.org/en/library/asset/MDE29/012/2009/en/9168fdcd-6f76-4f8f-949a-e3346239b061/mde290122009en.html>: “On 14 November, Morocco's official new agency said that Aminatou Haidar had left to the Canary Islands after refusing to complete standard airport police procedures and had “renounced” her Moroccan nationality and “reconfirmed” her support of “separatists”. The following day, Morocco's Minister of Foreign Affairs repeated allegations that Aminatou Haidar has “renounced her Moroccan citizenship.” Aminatou Haidar, who travels frequently, says that she has regularly since 2006 completed airport landing cards in the same manner, without identifying herself as a Moroccan national and stating her address to be in Western Sahara.”

<sup>242</sup> See Robert F. Kennedy Human Rights, *RFK Center Applauds Return of Aminatou Haidar to Western Sahara* 18 December 2009, <http://rfkcenter.org/rfk-center-applauds-return-of-aminatou->

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[haidar-to-western-sahara?lang=en](http://www.rfkcenter.org/statements-from-us-and-international-officials-in-support-of-the-return-of-aminatou-haidar-updated-1211?lang=en); Robert F. Kennedy Human Rights, *Statements for US and International Officials in Support of the Return of Aminatou Haidar*, 11 December 2009, <http://rfkcenter.org/statements-from-us-and-international-officials-in-support-of-the-return-of-aminatou-haidar-updated-1211?lang=en>.

<sup>243</sup> ASVDH, Press Release, 22 January 2013, <http://saharadoc.wordpress.com/2013/01/22/communique-de-lassociation-sahraouie-des-victimes-des-violations-graves-des-droits-de-lhomme-commises-par-letat-du-maroc>.

<sup>244</sup> EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, EMHRN MISSION REPORT: THE HUMAN RIGHTS SITUATION IN MOROCCO AND THE WESTERN SAHARA (2015); Institute for Security Studies, *Human Rights in Occupied Western Sahara* (17 May, 2013), <http://www.issafrica.org/iss-today/human-rights-in-the-occupied-western-sahara>.

<sup>245</sup> ROBERT F. KENNEDY CENTER FOR JUSTICE & HUMAN RIGHTS, WESTERN SAHARA: ACCOUNTS OF HUMAN RIGHTS ABUSES PERSIST IN WAKE OF NOVEMBER UNREST (2011), [http://www.rtfn-watch.org/uploads/media/Western\\_Sahara\\_Report\\_RFK.pdf](http://www.rtfn-watch.org/uploads/media/Western_Sahara_Report_RFK.pdf).

<sup>246</sup> *Muzzling Dissent*, *supra* n. 220.

<sup>247</sup> ROBERT F. KENNEDY CENTER FOR JUSTICE & HUMAN RIGHTS, WESTERN SAHARA: ACCOUNTS OF HUMAN RIGHTS ABUSES PERSIST IN WAKE OF NOVEMBER UNREST (2011), [http://www.rtfn-watch.org/uploads/media/Western\\_Sahara\\_Report\\_RFK.pdf](http://www.rtfn-watch.org/uploads/media/Western_Sahara_Report_RFK.pdf).

<sup>248</sup> *Muzzling Dissent*, *supra* n. 220.

<sup>249</sup> Sahara Press Service, *Reporters Without Borders Condemns the “Hindrance” to Freedom of Information in Western Sahara* (6 May, 2013), <http://www.spsrasd.info/en/content/reporters-without-borders-condemns-hindrance-freedom-information-western-sahara>

<sup>250</sup> Human Rights Watch, *World Report 2015: Morocco/Western Sahara* (29 January 2015).

<sup>251</sup> Human Rights Watch, *Morocco/Western Sahara: No Action on Police Beatings of Rights Worker* (15 May, 2012), <http://www.hrw.org/news/2012/05/15/moroccowestern-sahara-no-action-police-beating-rights-worker>

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* “If there is impunity for police who beat up a citizen who works for an international organization in broad daylight, in front of witnesses and despite formal complaints, it’s clear how vulnerable ordinary citizens are.” (quoting Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch).

<sup>254</sup> ROBERT F. KENNEDY CENTER FOR JUSTICE & HUMAN RIGHTS, WESTERN SAHARA: ACCOUNTS OF HUMAN RIGHTS ABUSES PERSIST IN WAKE OF NOVEMBER UNREST (2011), [http://www.rtfn-watch.org/uploads/media/Western\\_Sahara\\_Report\\_RFK.pdf](http://www.rtfn-watch.org/uploads/media/Western_Sahara_Report_RFK.pdf).

<sup>255</sup> *Id.*

<sup>256</sup> Human Rights Watch, *Letter to Members of the UN Security Council: Extend MINURSO Mandate to Human Rights* (Apr. 14, 2014), <http://www.hrw.org/news/2014/04/14/letter-members-un-security-council-extend-minurso-mandate-human-rights>.

<sup>257</sup> *Id.* (quoting a report written by Secretary-General Ban Ki-moon on situation in Western Sahara).