



WSRW

**WESTERN SAHARA
RESOURCE WATCH**

OBSERVATIONS AND TOPICS TO BE INCLUDED IN THE LIST OF ISSUES

**On the occasion of Morocco's 2015 periodic report on the implementation of
the International Covenant on Civil and Political Rights**

To the attention of the United Nations Human Rights Committee

Submitted by Western Sahara Resource Watch on 18 December 2015

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Executive Summary

2016 marks a crucial period in the history of Africa's last colony, Western Sahara and its people, the Saharawi. 40 years have passed since the invasion, occupation and progressive annexation of the territory. It is also the 50th anniversary of the creation of the *International Covenant on Civil and Political Rights* (the ICCPR) in 1966, and the 40th year since it entered into force.

The ICCPR's basic protections, a part of the "International Bill of Rights" framework that includes the 1948 *Universal Declaration of Human Rights* together with the *International Covenant on Economic and Social Rights* (the ICESCR), have been profoundly violated in occupied Western Sahara. Grave breaches of foundational rights in the territory are notorious, reported in detail by credible, independent organizations and observers. The ICCPR has an important role in reversing this, and to the restoration of peace and justice in the territory.

This submission to the United Nations Human Rights Committee (the Committee) by Western Sahara Resource Watch (WSRW) provides evidence and the analysis of ICCPR concerns in occupied Western Sahara, and offers recommendations for the Committee's consideration. WSRW is an independent, non-governmental organization in Brussels. Its mandate and governance are described in this report. WSRW works to reveal and make recommendations about the exploitation of resources in Western Sahara, and environmental protection and sustainability issues. In line with our mandate, the present submission will focus on Morocco's continuing violation of Article 1 of the Covenant, the right to self-determination.

The submission begins with a review of the ICCPR's application in Western Sahara. It then turns to examine the Saharawi people's right to self-determination, noting the established legal basis for it under the ICCPR, international law and the promises of the parties involved in what the United Nations calls the "question" of Western Sahara. The second part of the submission addresses the violation of the Saharawi people's rights to their natural resources in the context of the ICCPR. Here, the requirements of international humanitarian law and the human rights law applicable to non-self-governing peoples are considered. The issue of natural resources, which should expectedly have little more than a minor role in self-determination, is revealed to be a major impediment to the realization of self-determination. The submission concludes with recommendations for the Committee to consider in view of the List of Issues, detailing information that the Committee should request from Morocco as an ICCPR State party. A second set of recommendations is directed to the Kingdom of Morocco for the realization of ICCPR rights in occupied Western Sahara, and notably to ensure the Saharawi people are able to exercise their right to self-determination. Finally, an annex is included to provide additional background information to the question of Western Sahara.

I. Western Sahara Resource Watch

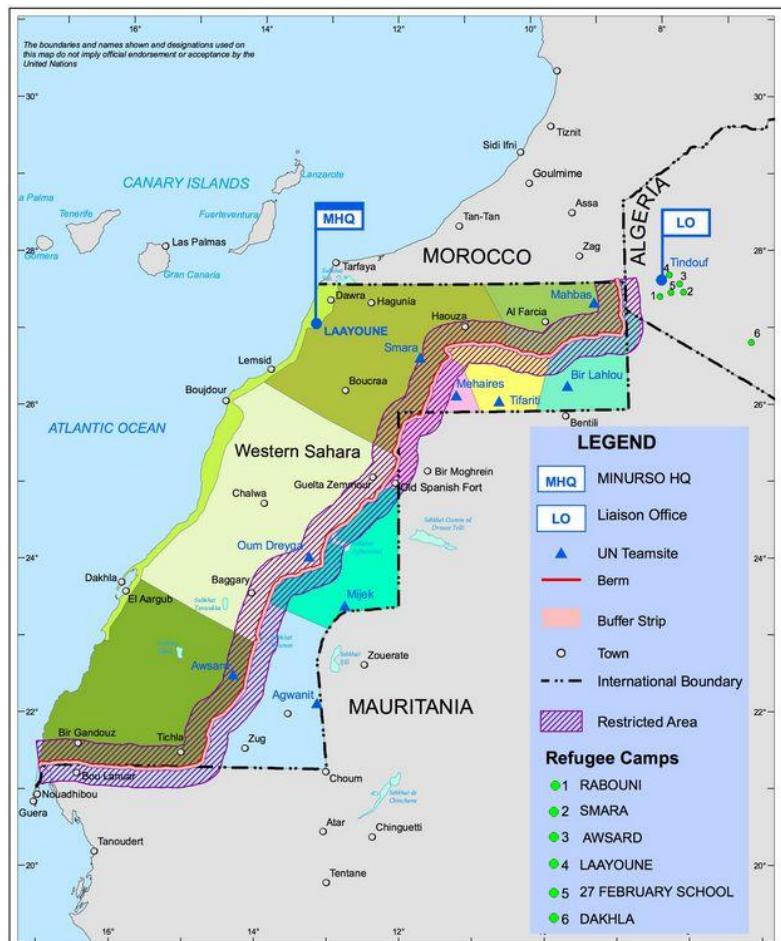
1. Western Sahara Resource Watch (WSRW) is an independent, non-governmental organization based in Brussels, with an international board of directors, operating in more than 40 countries. Our principal purpose is to research, monitor and comment about the development and export of natural resources from occupied Western Sahara and to address related human rights and environmental protection issues. For a decade, WSRW organization has highlighted problems of illegal fishing, phosphate rock exports and petroleum exploration in the coastal waters and territory of Western Sahara. The development of natural resources in Western Sahara has become an important part of Morocco's continuing annexation of the territory. The revenue from natural resources is neither received in Western Sahara nor is publicly accounted for. Natural resources related activities serve as a cover or justification for "development" in the territory, thereby securing a deepening Moroccan presence. The larger part of resources activities and employment is accorded to Moroccan nationals, and is used as a basis for the migration of settlers into the territory. WSRW conducts research and reports about such matters in an effort to present a factual account and actionable recommendations in order to contribute to the peaceful resolution of the question of Western Sahara.
2. WSRW emphasizes its independence. Our organization, while supporting the right of the Saharawi people to self-determination guaranteed to them under international law and the commitment of the organized international community, is entirely independent in governance, operations, finances and campaign work. WSRW is not funded by any direct or indirect means by any person or party involved with Western Sahara. WSRW refuses offers of financial contribution and in-kind services from the Polisario Front, the Saharawi Arab Democratic Republic, the Kingdom of Morocco, governments of all other States, and enterprises with interests in the region.

II. The International Covenant on Civil and Political Rights and Western Sahara – Preliminaries

3. The *International Covenant on Civil and Political Rights* (the ICCPR) applies with full effect throughout Western Sahara, both the coastal area occupied by Morocco and the inland part held by the Saharawi government east of the berm.¹ Morocco, the occupying power, ratified the ICCPR on 3 May 1979. Spain, the colonial and *de jure* administering power which has continuing responsibility for the people and territory of Western Sahara, gave its ratification on 27 April 1977.² The ICCPR has been adopted by states on a substantial or near-universal basis. Whichever state has the principal obligation to comply with the ICCPR and to realize its norms in occupied

Western Sahara, Morocco or Spain, it can be accepted from the outset that Covenant does apply in the territory. Moreover, when Article 73 of the UN Charter is recalled, the application of the ICCPR takes on added import in the circumstances of the Saharawi people as a non-self-governing.³

4. It is submitted that the Kingdom of Morocco has the primary responsibility to implement the ICCPR in that part of Western Sahara which it controls. In addition, because of the status of the



Map: United Mission for a Referendum in Western Sahara (MINURSO), 2007

¹ International Covenant on Civil and Political Rights (19 December 1966) 999 UNTS 171 (in force 23 March 1976). See also the Covenant's First Optional Protocol, also adopted by the UN General Assembly and open for signature by states on 19 December 1966. The 1985 Second Optional Protocol for abolition of the death penalty is not considered in this submission.

² On both these dates, the two states each also ratified the *International Covenant on Economic, Social and Cultural Rights*. Neither Morocco nor Spain have made declarations or reservations to the ICCPR.

³ Charter of the United Nations (26 June 1945) 1 UNTS XVI (in force 24 October 1945). Article 73 provides in part that: "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end ... to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses ..."

Saharawi people under occupation as non-self-governing, the requirements of Article 73 of the UN *Charter* and UN General Assembly Resolution 1541 (XV) together with the operation of international humanitarian law, there is a heightened duty on Morocco to report and offer transparent information about the implementation of the Covenant in the territory.

5. ICCPR Parts I, II, and II, together with Article 47 at Part V are relevant to the present review. WSRW contends that all these provisions are both generally and specifically breached by Morocco. By general, we mean the persistent inability of persons in occupied Western Sahara to ensure the progressive access to and realization of the ICCPR's stipulated rights – their application to ensure the overall protection of civil society within a framework of obligations to restrain the excess of state conduct marked by widespread, credibly reported human rights abuses. By the specific, we mean the individual rights violated on a person-by-person, case-by-case basis.

6. The grossly insufficient application and development of the ICCPR in that part of Western Sahara controlled by Morocco is itself a form of human rights violation. States which contract to the Covenant's obligations assume the mantle of a commitment to ensure basic human rights protections. Indeed, it may be suggested that the organized international community, with an established duty (or *obligatio erga omnes*) to ensure Saharawi self-determination has failed in a supervening role to monitor and report on the state of human rights in the territory.

7. The principal source of *arrested realization* of the ICCPR in Western Sahara is the continuing denial of Saharawi self-determination. In other words, the continuing delay in applying Article 1 of the ICCPR is the cause, or substantial cause, of the failure to achieve meaningful implementation of legal form (Part 2) to individual rights (Part 3). The reasoning is compelling: Ensure the true application of the right to self-determination where the Saharawi people "freely determine their political status" and other problems of the retarded application of the ICCPR will be resolved. The relation between the lack of fulfillment of the right to self-determination on one side, and all other human rights violations on the other, was also one of the main conclusions by the UN Human Rights Commission in 2006:

As has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay. As underlined above, the delegation concludes that almost all human rights violations and concerns with regard to the people of Western Sahara, whether under the de facto authority of the Government of Morocco or of the Frente Polisario, stem from the non-implementation of this fundamental human right.⁴

⁴ United Nations, Office of the United Nations High Commissioner for Human Rights (OHCHR). 2006. Report of the Office of the United Nations High Commissioner for Human Rights Mission to Western Sahara and the Refugee Camps in Tindouf : 15/23 May and 19 June 2006. Geneva: OHCHR, 8 September 2006.

It should also be mentioned that the Committee in its 2004 report about Morocco issued a recommendation on the Saharawi people's right to self-determination:

The Committee remains concerned about the lack of progress on the question of the realization of the right to self-determination for the people of Western Sahara (Covenant, art. 1).

The State party should make every effort to permit the population groups concerned to enjoy fully the rights recognized by the Covenant.⁵ [Emphasis in bold in original]

⁵ United Nations Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant – Concluding Observations: Morocco* (1 December 2004), UN doc. CCPR/CO/82/MAR.

III. Observations regarding violations of the ICCPR in Western Sahara

A. Article 1: The Right 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."

Art. 1, para. 3: "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

8. Article 1 is both *chapeau* of the Covenant and in its continuing violation illuminates the acute problem of particular and individual human rights failures in that part of Western Sahara held under armed force by Morocco. Article 1(1) prescribes that all peoples have the right to self-determination. This right in the context of colonized (*i.e.* non-self-governing) peoples is binding on all States; an obligation *erga omnes*. It is also a peremptory norm of international law and therefore animates all considerations of the application of the ICCPR in Western Sahara. Article 1(3) complements Article 1(1), requiring States party to the ICCPR to specifically promote the realization of self-determination of non-self-governing territories.

9. The Committee has recognized the importance of common Article 1, noting that:

The right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two Covenants.⁶

10. Article 1(1) is given added weight by international law. The duty on all States, and notably upon those acting in either (or both) the role of a colonial administering power or as an occupier, to ensure the self-determination of non-self-governing peoples is perhaps the clearest obligation in all of public international law. It is a duty that is non-derogable and to be realized in the meaning and spirit of Article 73: In good faith and with a full range of elective options available to an occupied or non-self-governed people. Article 1(3) underscores this. The use of the phrases "shall promote" and "shall respect that right" make clear the duty to ensure for the Saharawi people the free determination of their political status.

⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples* (13 March 1984), § 1.

11. Article 1(1) is also given additional effect by Morocco's stated commitments to decolonize Western Sahara. The commitments were manifested in agreements which provided for a ceasefire and referendum process, the latter to have been completed a reasonable time after September 1991.⁷ The assertion of a commitment by a State, one required of (and consistent with) international law, most assuredly binds that State to its performance in an acceptable period of time. WSRW submits that this assumption of a commitment – without any meaningful or clear repudiation of it in the quarter century that has passed – allows the present Committee a strong mandate to inquire fully of the situation and present clear recommendations for the realization of Article 1 for the Saharawi people, both to Morocco and the organized international community.

12. Between 2004 and 2015, Morocco did not report its ICCPR progress (or any matter of the status of Western Sahara and the Saharawi people) to the Committee.⁸ WSRW is unsure of how this came about. It is submitted that this failure to meaningfully inform the Committee about compliance with Article 1 is serious in the circumstances where there is an obligation in the circumstances of an occupied, non-self-governing people to account under the Covenant to the Committee for the extension (*i.e.* the realization) of Article 1 rights to that people.⁹

13. In accounting for such a “lost decade” Morocco’s 2015 State Report to the Committee specifically refers to three “major developments” that have happened in that time-frame; the Equity and Reconciliation Commission (IER, *Instance Equité et Réconciliation*), its presentation of a project for advanced regionalization and the adoption of a new Constitution in July 2011.¹⁰ All three elements are connected with the Western Sahara conflict and the Saharawi people’s right to self-determination.

14. Though falling outside of the scope of WSRW’s ordinary mandate, it is useful to comment briefly about the IER. We content that it failed significantly in Western Sahara. While it should be noted that WSRW questions the credibility of a Moroccan government appointed institution’s work in Western Sahara, it is nevertheless worthwhile to analyze the outcome of the IER. The IER had been constituted as a truth commission instructed to enquire into grave human rights violations committed between 1956 and 1999 in both Morocco proper and in Western Sahara. Morocco’s State report alleges that by

⁷ For further background to the ceasefire and referendum process, please see § 9 of the Annex to this report: The “Question” of Western Sahara in Perspective.

⁸ Consideration of Reports Submitted by States Parties under Article 40 of the Covenant - Concluding Observations of the Human Rights Committee: Morocco, above note 4.

⁹ The weight of such reporting obligation is significant, recalling again the parallel requirements of Article 73 of the UN Charter and common Article 1 ICESCR. In a 10 December 2015 decision the Court of Justice of the European Union (formerly the European Court of Justice) found as a fact that Morocco had not complied with Article 73. “Il convient également de tenir compte du fait que le Royaume du Maroc ne dispose d’aucun mandat, décerné par l’ONU ou par une autre instance internationale, pour l’administration de ce territoire et qu’il est constant qu’il ne transmet pas à l’ONU de renseignements relatifs à ce territoire, tels que ceux prévus par l’article 73, sous e), de la charte des Nations unies.” *Front Polisario c. Conseil de l’Union européenne et Commission Conseil de l’Union européenne*, Arrêt du Tribunal, 10 décembre 2015, affaire T/512-2012, § 233, at: curia.europa.eu

¹⁰ Comité des Droits de l’Homme, Examen des rapports soumis par les Etats parties en application de l’article 40 du pacte: Sixièmes rapports périodiques des Etats parties attendus en 2008: Maroc (15 June 2015) p. 3.

2012, over 17,000 victims had received some form of indemnization.¹¹ The era under review by the IER was characterized by the Saharawis' struggle for self-determination, particularly at the time of war with Morocco and into the immediate post-ceasefire era with its promise of a self-determination referendum. Though hundreds of Saharawis presented their case to IER panels in Western Sahara, there was no follow-up or compensation for the many cases that the IER accepted as genuine cases of forced disappearance, arbitrary detention, torture and other violations of human dignity – all in themselves a direct consequence of the victims' advocacy for self-determination.¹² Furthermore, not a single responsible for these grave human rights violations committed in the reviewed period has been identified, let alone held accountable. Following his visit to Morocco and Western Sahara in September 2012, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, recommended that the Moroccan government open judicial investigations into all the cases accepted by the Equity and Reconciliation Committee.¹³ To date, that has not happened.¹⁴

15. The Moroccan 2015 ICCPR State Report explicitly refers to the 2007 Moroccan Autonomy Proposal (or Initiative) for negotiation of an autonomy statute for the "Sahara region". This proposal was presented on 11 April 2007 to the UN Secretary-General and then reported to the UN Security Council. The Autonomy Proposal can be found in Annex 2 of the State report. It is helpful at this point to refer to Morocco's 2014 State report to the Committee to the Covenant on Economic, Social and Cultural Rights (henceforth the CESCR Committee), which contains further public assertion of the autonomy plan.¹⁵ In its State Report under the ICCPR, the Autonomy Proposal is further outlined under the header "Article 1: Droits à l'autodétermination".¹⁶ Here, the Moroccan government claims that there are a multitude of forms and procedures to exercise the right to self-determination, and that self-determination should not be equated to independence.

16. WSRW submits that Morocco's Autonomy Proposal contravenes the very spirit of the right to self-determination. The suggestion of a top-down, occupying state-conceived form of limited autonomy offer, ostensibly developed by a body of 141 individuals with sworn allegiance to the occupying power's head of state¹⁷, is in stark opposition to the bottom-up character of the right to

¹¹ *Ibid.*

¹² Association Sahraouie des Victimes des Violations Graves des Droits de l'Homme commises par l'Etat du Maroc, *Les rapports de l'I.E.R. et de la commission de suivi : la grande illusion* (September 2013).

¹³ UN Human Rights Council, Report of the Special Rapporteur on Torture and other Cruel Inhuman or Degrading Treatment or Punishment, Mission to Morocco (A/HRC/22/53/Add.2), 28 February 2013, p. 15.

¹⁴ Amnesty International, October 2015, "Morocco/Western Sahara: Time for Truth 50 years after enforced disappearance of opposition leader Mehdi Ben Barka" at: <https://www.amnesty.nl/nieuwsportaal/pers/moroccowestern-sahara-time-truth-50-years-after-enforced-disappearance-opposition>

¹⁵ Committee on Economic, Social and Cultural Rights, Fourth periodic report of the State of Morocco (24 March 2014) E/C.12/MAR/4, §§25 and 26.

¹⁶ Comité des Droits de l'Homme, *Examen des rapports soumis par les Etats parties en application de l'article 40 du pacte : sixièmes rapports périodiques des Etats parties attendus en 2008: Maroc* (15 June 2015), p. 4 and pp. 7-10.

¹⁷ In its 2014 CESCR State report, Moroccan government states that it had "created a special 141-member body for the Saharans, the Royal Advisory Council on Saharan Affairs. The Council's terms of reference include the development of an

self-determination as defined in Article 1: a people having the right to choose from a panoply of options, ranging from complete independence to complete integration, rather than that of accepting or rejecting a single proposal sponsored by a foreign government with no legal status to the territory. A singular choice for the Saharawi people to become incorporated within a territorial area itself to be a part of the Kingdom of Morocco fails entirely to meet the basic stipulation of Article 1; the free determination of political status. Moreover, Morocco's State Report does not specify who would be granted the right to vote in such a referendum or when it would take place. It strongly indicates those entitled to vote will not be given the option of choosing independence over regional autonomy. As such, the non-self-governing Saharawi people would not have the ability to freely decide the future political status of their homeland. Accordingly, Morocco's autonomy proposal falls well outside the principle of self-determination provided by Article 1 of the ICCPR. Indeed, to proffer the 2007 Autonomy Proposal was a breach of the duty of good faith to ensure "realization of the right of self-determination" under Article 1(3).

17. When confronted on the matter in the 2015 List of Issues developed by the ICESCR Committee (the CESCR), the Moroccan government replied that an internal process of consultation allowing the "population of the southern provinces to share its views on implementation of autonomy had been completed". Again, such reply demonstrates that Morocco fails to comprehend the core principle of the right to self-determination. The central question does not concern the matter of the implementation of autonomy, but rather which political future the Saharawi people will freely choose. Autonomy is but one of the several required options – options that Morocco expressly agreed to when it committed to the United Nations' 1991 signed the ceasefire-referendum agreement. Further, it is not "the population of the southern provinces", now a majority of Moroccan settlers, that possesses the right to self-determination, it is the Saharawi people – including those who have fled their homeland as a direct consequence of Morocco's invasion and ensuing occupation of a large part of the territory.¹⁸

18. The CESCR Committee issued the following recommendation to Morocco in October 2015:

Strengthen its efforts, under the auspices of the United Nations, to find a solution to the issue of the right to self-determination for Western Sahara, as established in article 1 of the Covenant, which recognizes the right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development. The Committee recalls that States parties to the Covenant are obliged to promote the realization of the right of self-determination in Non-Self-Governing

autonomy plan based on reconciliation, an initiative that broadly complies with the principle of self-determination." That Council, known under its abbreviation CORCAS, is also referred to in Morocco's ICCPR State Report, namely, § 35.

¹⁸ The difference between the population of occupied Western Sahara and the people of Western Sahara is of crucial importance, and is further elaborated upon below.

Territories and to respect that right, in conformity with the provisions of the Charter of the United Nations.¹⁹

19. Morocco's inability to grasp the basic tenets of the right to self-determination is apparent in its own State Report to the Committee, where the term "Western Sahara" is not mentioned once. Rather, the Moroccan authorities use the notions "southern provinces" or "the Moroccan Sahara" to denominate the territory of Western Sahara.

20. In its State Report, Morocco specifically mentions the new 2011 Constitution as one of the major developments of the period during which it failed to report to the Committee.²⁰ That Constitution considers the entire territory of Western Sahara as part of the national territory of Morocco.²¹ This unilateral act demonstrates the complete lack of respect for the Saharawi people's right to self-determination, as the right to freely determine the status of the territory resides with them, not with Morocco's legislative body.

21. Morocco's continuing refusal to allow the Saharawi people to exercise their right to self-determination was exemplified in a 6 November 2015 speech of the Moroccan head of state, King Mohammed VI. Speaking on the 40th anniversary of the 1975 Green March, he claimed that the 2007 Autonomy Plan "is the most Morocco can offer. Its implementation will hinge on achieving a final political settlement within the framework of the United Nations Organization. Those who are waiting for any other concession on Morocco's part are deceiving themselves. Indeed, Morocco has given all there was to give."²²

22. This intransigence is evident in Morocco's State report, where it declaims that "*Le Sahara fait partie intégrante du Rayaume du Maroc depuis les temps immémoriaux*" ("The Sahara has been an integral part of the Kingdom of Morocco since time immemorial"). It goes on to make the decidedly erroneous remark that "the retrocession of different parts of its national territory were negotiated in full conformity with the principles and aims of the UN Charter".²³

¹⁹ Committee on Economic, Social and Cultural Rights, "Concluding observations on the fourth periodic report of Morocco" (22 October 2015), UN doc. E/C.12/MAR/CO/4*, § 6.

²⁰ Moroccan Constitution of 2011, "*Titre IX: Des régions et des collectivités territoriales*", available at: <http://mjp.univ-perp.fr/constit/ma2011.htm#9>.

²¹ Décret n°2.15.40 du 20 Février 2015, fixant le nombre des régions, leurs dénominations, leurs chefs-lieux ainsi que les préfectures et provinces qui les composent, publié au Bulletin Officiel n° 6340 du 05 Mars 2015, available at: www.pncl.gov.ma/fr/EspaceJuridique/DocLib/d%C3%A9cret%20fixant%20le%20nombre%20des%20r%C3%A9gions.pdf.

²² Speech of King Mohammed VI, 6 November 2015. Full text available at: <http://www.maroc.ma/en/royal-speeches/full-text-royal-speech-nation-40th-anniversary-green-march>. See the press release of the Moroccan American Centre, "On 40th Anniversary of Green March, King Mohammed VI Lauds Autonomy Plan, Pledges to Turn Western Sahara Into African Hub" (7 November 2015), reported online at: <http://www.reuters.com/article/idUSNMKWQd90Qa+1e2+MKW20151107>

²³ Comité des Droits de l'Homme, *Examen des rapports soumis par les Etats parties en application de l'article 40 du pacte: Sixièmes rapports périodiques des Etats parties attendus en 2008: Maroc* (15 June 2015), p. 7.

23. Another general issue for the Committee to consider in the context of Articles 1(1) and 1(3) is the fact of Morocco's continuing armed occupation of Western Sahara. Plainly, it is impossible to realize or confer the right to self-determination when a hostile force is present in a non-self-governing territory. In other words, the mere presence of a large military garrison throughout the Moroccan held part of Western Sahara is inimical to Article 1's right to "freely" arrive at self-determination. A military occupying force implicitly results in the kind of intimidation as recently reported on by the UN Secretary-General to the Security Council:

A level of discontent was perceptible among the Western Saharan population west of the berm, illustrated in intermittent demonstrations throughout the reporting period in Laayoune and other towns. These events aimed to draw attention to human rights concerns, socioeconomic issues and political demands, including the right to self-determination, with youth emphasizing the lack of employment opportunities and organizing informal associations to press for redress. These protests were small in scale and the Moroccan security forces dispersed them quickly. On several occasions, credible reports were received about the disproportionate use of force on the part of the security forces and hostile actions on the parts of the demonstrators in response.²⁴

The features of such a military occupation are notorious, and it suffices to set them out briefly here. WSRW respectfully notes that each are an impediment to Article 1 and are worthy of being commented on by the Committee. The berm constructed by Morocco to partition the territory with extensive mine-fields on its east side is another exemplar of the problem of occupation, a physical manifestation of the prevention of self-determination by dividing the population entitled to exercise that right.

24. In its 2015 Concluding Observations, the CESCR Committee noted the following about the berm:

While acknowledging the security concerns invoked by the State party, the Committee is deeply concerned that the Berm, which is fortified by anti-personnel mines and was built by the State party to separate the Moroccan-controlled part of Western Sahara from the rest of the territory, is preventing the Sahraouis from fully enjoying their rights under the Covenant [the ICESCR].

The Committee recommends that the State party take appropriate steps to enable the Sahraouis to access their land and natural resources and rejoin their families. It also urges the State party to expedite its mine clearance programme along the Berm. The Committee asks the State party to provide, in its next periodic report, detailed

²⁴ *Report of the Secretary-General on the situation concerning Western Sahara* (10 April 2015), UN doc. S/2015/246, § 5. In his 2014 report, the Secretary-General made similar observations: "Civil society organizations, including human rights groups active in Western Sahara west of the Berm, continue to face obstacles in registering as non-governmental organizations, despite a judicial decision in their favour. Such obstacles have deterred several associations from initiating the registration process, while others suspended their activities after the authorities allegedly refused to receive their applications." See *Report of the Secretary-General on the situation concerning Western Sahara*, UN doc. S/2014/258 (10 April 2014), § 79.

information on the enjoyment, by the Sahraouis, of all the rights set out in the Covenant.²⁵ [Emphasis in bold in original.]

25. The obligations of ICCPR Articles 1(1) and 1(3) have additional force borne of the duties of an occupying power under international humanitarian law. That law includes the *Fourth Geneva Convention* 1949, the *Hague Convention* 1907 and, because Spain continues to have legal responsibility for Western Sahara and is a signatory to it, the *Rome Statute* 1998.²⁶

26. As such, there is an added feature of the general violation of Article 1(1) and 1(3) useful for the Committee to assess and make recommendations about. In addition to its duty to protect the Saharawi people of the territory while they “freely determine” their political status, Morocco is prohibited from settling its nationals into Western Sahara. Article 49 of the *Fourth Geneva Convention* is clear: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” The Saharawi population that remained in the occupied part of Western Sahara is now outnumbered by at least two to one by such resettled Moroccan nationals.²⁷ This continues to have a number of deleterious effects of the realization of Article 1(1) and 1(3) rights, most seriously an erosion of the right to self-determination.²⁸ The presence of settlers in a place that Morocco refers to as part of its “Southern Provinces” diminishes the availability of self-determination. The spectre is too compelling to escape notice.

²⁵ Committee on Economic, Social and Cultural Rights, “Concluding observations on the fourth periodic report of Morocco” (22 October 2015), UN doc. E/C.12/MAR/CO/4*, §§ 7-8.

²⁶ *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 75 UNTS 287 (in force 21 October 1950). Morocco and Spain have ratified the *Convention* and are signatories to its Additional Protocols I and II of 1977. *Hague Convention, Convention (IV) respecting the Laws and Customs of War on Land*, 187 CTS 227 (in force 26 January 1910). *Rome Statute of the International Criminal Court*, 2187 UNTS 90 (in force 1 July 2002). Spain has ratified the *Rome Statute*, Morocco has signed it.

²⁷ See Jacob Mundy, “Moroccan Settlers in Western Sahara: Colonists or Fifth Column?” 15 *The Arab World Geographer* 95 (2012) p. 96.

²⁸ Morocco’s 2007 Autonomy Proposal (or Initiative) is contrary to its *pacta sunt servanda* obligation under the UN sponsored 1991 ceasefire-referendum agreement, and contrary to international law. Self-determination with an elective option of independence is the requirement: *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*, ICJ Rep (2010) p. 403 at § 79.

B. Article 1, paragraph 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."

27. Article 1(2) is common to the ICCPR's parallel convention, the ICESCR. The Committee has recognized the policy consideration of ICCPR State parties ensuring access and unrestricted disposition of a non-self-governing people's natural resources:

Paragraph 2 affirms a particular aspect of the economic content of the right of self-determination, namely the right of peoples, for their own ends, freely to "dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence". This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.²⁹

28. Article 1(2) should be considered in conjunction with the particular requirement of Article 47, in Part 5 of the Covenant, which is intended to set limits on the reach or operation of the ICCPR, that it not conflict with the UN Charter. Article 47 states that "[n]othing in the present Covenant shall be interpreted as impairing the inherent rights of all peoples to enjoy and utilize fully and freely their natural wealth and resources." Article 1(2) is given added weight in the circumstances of Western Sahara. Sovereignty to the natural resources of the territory is the inherent right of the Saharawi people.

29. Article 1(2) is meant to ensure that the Saharawi people, who assumed sovereignty over their natural resources in the fullest sense after Spain's announced departure from the territory, retain the right to "freely dispose of their natural wealth and resources". In addition, Article 1(2) provides that the Saharawi people must not "be deprived of [their] own means of subsistence." The occupation and physical partitioning of the territory has resulted in exactly this, with one-half of the Saharawi population living as refugees in Algeria who do not have access to the direct food supply and indirect economic benefits of Western Sahara's resources.

30. Under Article 1(2) Morocco has a duty to respect, protect and fulfil the rights enshrined in the Covenant to the benefit of the Saharawi people, including their right to develop and export the

²⁹ UN human Rights Committee, (HRC), *CCPR General Comment No. 12: Article 1 (Right to Self-determination)*, above, § 5.

territory's natural resources. On this issue, WSRW maintains that Morocco does the opposite: It interferes with the effective use of that right, including by active violations of that right by third States and commercial actors, and through the failure to take appropriate steps to progressively realize full enjoyment of that right.

31. It is telling that Morocco does not mention the right to resources in the report it submitted to the Committee. This is all the more the present case, since the CESCR Committee issued a specific recommendation on the topic in October 2015:

It further recommends that the State party guarantee respect for the principle of the prior, free and informed consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.³⁰

32. It is submitted that there is some urgency to review Morocco's obligations in the framework of the Saharawi people's right to resources, in part because of the scope of the problem of the taking of resources – serving to entrench an annexation project that relies on the denial of self-determination – and because of the human rights abuses perpetrated on Saharawi nationals who have opposed the development and export of resources.

33. WSRW contends that Morocco's taking of Western Sahara's resources is illegal because the activity it is not directed towards assisting the Saharawi people in the exercise of their right to self-determination, but instead to an opposite goal: maintaining and strengthening a claim to the territory that was already rejected by the International Court of Justice.³¹ The problem has three dimensions: (a) an enrichment of Morocco through the sale of the territory's natural resources; (b) Morocco's development of Western Sahara's resources to further acceptance of its illegal presence in the territory; (c) the decreased availability of non-renewable resources to the Saharawi people when they eventually achieve self-determination.

a) Saharawis do not share in the exploitation of their resources

34. The first aspect is Morocco's enrichment through its sale of the territory's natural resources. It is useful to categorize those resources. There are three principal and three secondary (or minor) ones of concern, namely (in order of estimated market value in 2015): (i) phosphate mineral rock (\$180

³⁰ UN Committee to the Covenant on Economic, Social and Cultural Rights, "Concluding observations on the fourth periodic report of Morocco" (22 October 2015), UN doc. E/C.12/MAR/CO/4*, § 6.

³¹ WSRW defines "taking" as the administration, development, sale and export of natural resources by the government of Morocco, state agencies and parastatal corporations, with revenues from such activities flowing to Morocco's central state treasury.

million)³²; (ii) the Atlantic coastal fishery (\$60 million); (iii) seabed petroleum (\$0); and then (iv) agricultural products (\$5 million); (v) sand aggregates (\$1 million); (vi) salt (< \$1 million).³³

35. None of the revenue from these resources is returned to the Saharawi people, and there is no public accounting of them in the territory or Morocco.³⁴ The Saharawi people who reside in the refugee camps at Tindouf do not receive the benefit of such revenues. This situation should be considered in light of multilateral aid to the Saharawi refugees. To paint a stark picture, the total amount of multi-lateral aid given to the Saharawi refugees in 2013 was less than 10% of the estimated amount Morocco earned in revenues from selling Western Sahara's phosphates to interested takers around the globe in the same year. The two largest purchasers of Saharawi phosphate rock in 2015, the Canadian companies Potash Corporation and Agrium Inc., will together pay the Moroccan government (through its state-owned company the Office Chérifien des Phosphates SA) about the same amount of this multilateral aid.³⁵

b) Western Saharan resources used to legitimize illegal occupation

36. The second problem, Morocco's strategy of using Western Sahara's resources to build an international acceptance of its illegal presence in the territory, is evident by the Moroccan government's own admissions. The following extract coming from an internal Moroccan government document that was leaked on the internet on 21 November 2014 illustrates this.³⁶ It reveals how Morocco employs the offering to other states and corporate actors of Western Sahara's resources to foster a tacit acceptance of its claim to the territory. The document, "*La Fédération de Russie et la Question du Sahara Marocain*", noted that:

³² The value for the sales of phosphate from Western Sahara is significantly lower in 2015 than in preceding years, as no shipments took place during the first months of the year following operational problems at the port facilities.

³³ These figures are estimates for the year as at 18 December 2015. They are calculated WSRW's continuing research, which is routinely published in reports such as "P for Plunder" (2014, 2015). Such reports can be found at our website: www.wsrw.org

Despite several years of detailed surveys and test well drilling that continued into early 2015, no petroleum has been recovered from the seabed on the coast of Western Sahara.

³⁴ A useful example of Morocco's refusal to make public details about resources and investments in the territory can be seen in the case of the European Commission asking Morocco for information that demonstrated how Western Sahara benefitted from the sectoral support accorded under the EU Morocco *Fisheries Partnership Agreement*. After several Morocco provided a Powerpoint presentation which did not distinguish between metropolitan Morocco and Western Sahara. It was impossible to draw conclusions on the amount of support allocated to Western Sahara. The former UN Legal Counsel deemed the European Commission's request to have Morocco report about benefits of the *Fisheries Partnership Agreement* to the Saharawis "simply not acceptable". See Hans Corell, "Western Sahara – status and resources", 4 *New Routes* (2010), pp. 10-13. As noted above, the Court of Justice of the European Union has found that Morocco has given no information under its Article 73 UN *Charter* responsibility.

³⁵ See WSRW's 2014 and 2015 "P for Plunder" reports, and see "WSRW report gives complete overview of controversial clients" (12 June 2014) at: <http://www.wsrw.org/a105x2905>

³⁶ The Moroccan government has not denied authenticity of the documents. For reports about the leaking of the documents, see *TelQuel*, "Chris Coleman: le gouvernement dénonce finalement une campagne <enragée>" (12 December 2014); *Le Monde*, "L'étrange <Wikileaks> marocain" (4 January 2015); *Le Monde*, "Un hacker ne peut déstabiliser à lui tout seul la monarchie marocaine" (6 January 2015).

"To this objective, Morocco has to ... implicate Russia in activities in the Sahara, as is already the case in the field of fisheries. Oil exploration, phosphates, energy and touristic development are, among others, the sectors that could be involved in this respect ... In return, Russia could guarantee a freeze on the Sahara file within the UN, the time for the Kingdom to take strong action with irreversible facts with regard to the marocanité of the Sahara."³⁷

37. An important part of a strategy to annex by resource development has been the settlement of Moroccan nationals into Western Sahara. For it is they who mainly benefit from resource extraction in the territory. The presence of settlers in a place that Morocco styles as part of its "southern provinces" objectively takes away certain economic opportunities from the Saharawis and serves as a pretext for a military force to ostensibly protect such persons and the building of an infrastructure to extend the occupation. Their presence also obscures the debate on the wishes and the interests of the Saharawi people with regard to Morocco's exploitation of the territory's resources. For this reason, it is important to note the difference between the "population" of the territory and the Saharawi "people". As such, while the definition "population" includes Moroccan settlers who have come to the territory after 1975 (or who spend parts of the year there as seasonal workers), the term "people" can only mean the Saharawi as the sole, original inhabitants of the territory prior to Morocco's invasion.

38. The Moroccan government actively encourages Moroccans to relocate to Western Sahara. As noted in the US Department of State's 2014 Country Report on Human Rights in Western Sahara:

As an inducement to relocate to the territory, wage-sector workers earned up to 95 percent more than their counterparts in internationally recognized Morocco. The government also provided fuel subsidies and exempted workers from income and value-added taxes.³⁸

³⁷ The document was made public through the whistle-blower's Twitter account @chris_coleman24 on 21 November 2014, although the account has been occasionally blocked. See TelQuel, "Twitter a supprimé le compte de Chris Coleman, sans s'expliquer" (17 December 2014). A recovered version of the document can be found at: http://www.arso.org/Coleman/Note_Russie_Saharacorrigé.pdf

³⁸ United States Department of State, *Western Sahara 2014 Human Rights Report*, p. 15, <http://www.state.gov/documents/organization/236840.pdf>

39. Examples of the unequal benefit from resource extraction for Moroccan settlers are readily found. Because it is a single discrete employer engaged in the production of one commodity, the case of Phos-Boucraâ (the local subsidiary of Office Chérifien des Phosphates SA), responsible for phosphate rock mining, processing and exports including from occupied Western Sahara, is useful. Of some 2200 employees in that enterprise only about 25-30% are Saharawi persons by any definition.³⁹ Saharawis employed by OCP have lamented that the company offers certain benefits to Moroccan employees that it does not provide to Saharawis.⁴⁰ In November 2015, the director of OCP announced on the 40th anniversary of Morocco's invasion of Western Sahara that 500 jobs would be created at the Bou Craa plant, for start-up in January 2016. However, the qualification criteria made it clear that the job opportunities would not go to Saharawis, who lack the necessary education. In the 40 years occupation of Western Sahara, Morocco has not established a single university in the territory. Higher education at universities in Morocco proper is practically unaffordable for most Saharawis, who already suffer social and economic exclusion in their own land. The result is that few Saharawis have access to tertiary education. Peaceful protests broke out in El Aaiun in December 2015, met with disproportionate police violence.⁴¹

40. Reports of similar underemployment, that is, minority presence in the agricultural industry⁴² and in the coastal fishing industry also reveal the extent of the exclusion.⁴³ ⁴⁴ Saharawis who have had the opportunity to complete a higher education in Morocco describe discrimination in the job market because of their Saharawi origin.⁴⁵

³⁹ The first organization to investigate the situation of the Saharawi phosphate workers was France Libertés - Fondation Danielle Mitterrand, in a report: *International Mission of Investigation in Western Sahara* (January 2003), available at: http://www.vest-sahara.no/files/pdf/France_Libertes_occupied_2003.pdf. Protests by redundant Saharawi phosphate workers continue to denounce what they call "a policy of segregation". See e.g. WSRW, "14 Saharawis injured when protesting the plunder" (2 August 2010) at: <http://www.wsrw.org/a159x1554>.

⁴⁰ WSRW, "Discrimination over the right to housing in OCP, workers say" (5 April 2012): <http://www.wsrw.org/a214x2275>.

⁴¹ WSRW, "Unemployed Saharawis were beaten for demanding a job", 13 December 2015, <http://wsrw.org/a105x3324>

⁴² WSRW, Report: Label and Liability, June 2012, at: <http://www.wsrw.org/a214x2321>.

⁴³ See e.g. WSRW, "9 detained, threats of jail if demonstrating against EU fisheries" (14 March 2014), <http://www.wsrw.org/a228x2859>; and see also

WSRW, "Demands of Saharawi fishermen in Dakhla 25 May 2013" (30 May 2013) at: <http://www.wsrw.org/a217x2596>;

WSRW, "Saharawi fishermen ordered to explain themselves" (29 June 2013) at: <http://www.wsrw.org/a217x2594>;

WSRW, "Saharawi in Dakhla keep protesting" (4 February 2013) at: <http://www.wsrw.org/a217x2496>;

WSRW, "Statement by Saharawi fishermen in Dakhla regarding protest" (11 January 2013) at:

<http://www.wsrw.org/a217x2480>;

WSRW, "Saharawi fishermen protest exclusion from employment" (29 June 2012) at: <http://www.wsrw.org/a214x2342>;

WSRW, "Saharawi fishermen boarded foreign trawler in protest" (2 May 2012) at: <http://www.wsrw.org/a214x2291>.

⁴⁴ The rights that pertain to the benefits and conditions for work are routinely violated for the Saharawi people. They are most readily denied by the presence of extensive security forces, as the UN Secretary-General notes in his 2014 and 2015 reports, above. There is evidence that a larger population than present resources and economic facilities can support in the territory has created marginal economic conditions for Saharawi. Empirically, this evidence includes clearly higher rates of unemployment and underemployment of Saharawi.

⁴⁵ WSRW, "Unemployed Saharawi graduates rally in Rabat" (22 July 2010) at: <http://www.wsrw.org/a105x1540>

41. Statements from corporations that purchase phosphate rock from occupied Western Sahara also reveal how Moroccan settlers are used as a pretext of employment opportunities and economic development in this annexation project:

We believe that Phos-Boucraâ's [the Western Sahara subsidiary of Morocco's Office Chérifien des Phosphates SA] operations and investments in the region have significantly contributed to the development of Western Sahara and continue to provide substantial and sustainable economic and social benefits to the Saharawi population [sic], all of which create enhanced opportunity for, and capacity building within, the local population.⁴⁶

42. There are no figures or records that support claims of the kind cited above. Saharawis have made requests to access information that would allegedly prove that they benefit from Morocco's exploitation from occupied Western Sahara's resources. But they fail to get responses. Law firms contracted by the Moroccan government to further international acceptance of the Moroccan position vis-à-vis Western Sahara refuse to share the documents they forward to international firms, on the stated basis that their client will not allow it.⁴⁷ Requests to Morocco's state-owned phosphate company, OCP, which is responsible for mining the deposits and export from Western Saharan deposits, asking for details about how the Saharawi people benefit from their activities, are never responded to.⁴⁸

43. The use of settlers is not only instrumental to Morocco in propagating the misconception that the exploitation of Western Sahara's resources is beneficial to the Saharawis, it also creates the false impression that the Saharawis have been consulted about and agree to the exploitation. Central to this approach is the Economic, Social and Environmental Council (CESE), instituted under the 2011 Moroccan Constitution.⁴⁹ The CESE is a state agency and it is the Moroccan monarch who controls its appointments and mandates. The current president of the CESE is Nizar Baraka, a former Moroccan Minister of Finance and member of the Baraka family, said to be connected to the royal court. In October 2013, CESE published a report mapping out the development model for the Moroccan occupied parts of Western Sahara, which boasted widespread consultations and dialogue with representatives of civil society in the territory.⁵⁰ None of the Saharawi groups, associations and individuals that WSRW has contacted was approached by the CESE. Nevertheless, the work of the

⁴⁶ Statement of Potash Corporation of Saskatchewan Ltd., "Phosphate rock from Western Sahara" (1 August 2014), available at: www.potashcorp.com. Potash Corporation has been, after 2010, the largest purchaser of phosphate rock from Western Sahara. See WSRW's "P for Plunder" reports, above.

⁴⁷ WSRW, "Report: P for Plunder 2014", March 2015, pp. 28-29, http://wsrw.org/files/dated/2015-03-11/p_for_plunder_2014_web.pdf.

⁴⁸ WSRW, "OCP refuses to respond to Saharawi refugee", 4 March 2015, <<http://wsrw.org/a106x3169>>.

⁴⁹ See: <http://corpus.learningpartnership.org/constitution-of-morocco-2011-11-of-the-economic-social-environmental-council>

⁵⁰ Economic, Social and Environmental Council (Morocco), "New Development Model for the Southern Provinces", October 2013, <http://www.cese.ma/Documents/PDF/Synthese-NMDPS-VAng.pdf>.

CESE is increasingly used to try to legitimize Morocco's exploitation of Western Sahara's resources, as it creates an illusion that the Saharawi people's views have been heard.

44. Statements from companies involved in the taking of Western Sahara's resources exemplify how the CESE is increasingly central in Morocco's attempt to hijack the very concept of the Saharawi people's wishes. In its position paper defending its controversial oil exploration activities in the waters of Western Sahara, the U.S. company Kosmos Energy Corporation refers extensively to the CESE as "undertaking extensive consultations in Western Sahara about governance issues and development needs with diverse stakeholders":⁵¹

In this regard, the [CESE] report calls for natural resources development in Western Sahara to be conducted sustainably and for the preponderance of public revenues from such development to be used to benefit the local population fairly, equitably and transparently, and in consultation with them and their representatives.⁵²

45. The result is to foster a perception that resource development in occupied Western Sahara is acceptable, and is an activity that purports to result in benefits to the Saharawi people. The absence of actual, verifiable information in this regard is one reason why the Court of Justice of the European Union on 10 December 2015 set aside free trade arrangements between the EU and Morocco is Western Sahara. The Court specifically noted that the lack of information provided by Morocco suggested that Morocco might not recognize the rights of the people of the territory under Article 73 of the Charter.⁵³

46. The conclusion that the benefits of resource development in the territory accrue to other than the original people of the territory becomes apparent when the social and economic marginalization of the Saharawis in their homeland is recalled. In October 2010, thousands of Saharawis decamped into the desert outside Western Sahara's capital city El Aaiun, at a place called Gdeim Izik. They did so in an effort to protest their socio-economic marginalization as a people while Morocco continued to earn revenues from selling the territory's resources. On 8 November 2010, the Moroccan military overran the camp site, burning it to the ground.⁵⁴ In addition to routine resources protests inside

⁵¹ Kosmos Energy, "On Hydrocarbon exploration offshore Western Sahara", February 2014, <http://www.kosmosenergy.com/pdfs/PositionStatement-WesternSahara-English.pdf>.

⁵² *Ibid.*

⁵³ "L'absence de communication des renseignements prévus par l'article 73, sous e), de la charte des Nations unies par le Royaume du Maroc à l'égard du Sahara occidental est à tout le moins susceptible de faire surgir un doute quant à la question de savoir si le Royaume du Maroc reconnaît le principe de primauté des intérêts des habitants de ce territoire et l'obligation de favoriser dans toute la mesure du possible leur prospérité, ainsi que cela est prévu par cette disposition." Front Polisario c. Conseil de l'Union européenne et Commission Conseil de l'Union européenne, Arrêt du Tribunal, 10 décembre 2015, affaire T/512-2012, § 235, at: curia.europa.eu

⁵⁴ Camp residents reported the use of live ammunition, rubber bullets, hot-water cannon, tear-gas, truncheons and stones. Clashes between the Moroccan army and protesters led to casualties and injuries on both sides. An exact figure of the number of victims does not exist, as Morocco did not allow independent observers – including MINURSO personnel – to conduct interviews or make inquiries. Moroccan security officials arrested hundreds of Saharawi in connection with the event. Many were held for longer than 48 hours - the maximum period someone can be held without being charged under the Moroccan penal code. They were provisionally released over time, often after having spent months in jail without charge.

Western Sahara, the Polisario Front and the SADR government with a significant number of civil society organizations declared that they do not consent and receive nothing from resource extraction. The problem was commented on by the UN Secretary-General in this way:

The Secretary-General of Frente Polisario wrote to me repeatedly to condemn Morocco's exploitation of the Territory's resources and publicly announced his intention to consider a possible judicial appeal against the [2007 EU-Morocco fisheries] agreement. The agreement was also the subject of some of the demonstrations [in the occupied area of Western Sahara] cited earlier.

Frente Polisario also sent me letters indicating its concern that Morocco has renewed contracts with foreign oil companies that have announced their intention to accelerate plans for further seismic surveys and to drill exploration and appraisal wells in the territorial waters and seabed areas of Western Sahara. Such contracts were addressed by the [United Nations] Legal Counsel, at the request of the Security Council, in a legal opinion dated 29 January 2002. The opinion states 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 interest and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories**". (S/2002/161, para. 25).⁵⁵ [Emphasis added in bold.]

47. Recent and continuing efforts by Morocco to engage commercial actors in the development of petroleum in Western Sahara must be noted. The problem is a singular example which is useful to the Committee. Despite the UN's 2002 Legal Opinion, noted in the Secretary-General's annual report, and in the face of protests of the Saharawi people and the Frente Polisario, Morocco has carried on with its oil program in the territory.

48. Licenses for oil and gas in four offshore and three onshore blocks have been awarded, in which the Moroccan state owned oil company ONHYM (Office National des Hydrocarbures et des Mines) holds an interest alongside international oil companies. As well as these, Morocco has allocated four other blocks in Western Sahara to new oil companies. On 19 December 2014, the aforementioned Kosmos Energy spudded in the Al Khayr well in the Cap Boujdour offshore exploration block of the Aaiun basin. The block covers 7,3 million acres in depths of up to 3000 metres. The targeted reservoirs are said to contain a probable 1 billion barrels of oil (or the petroleum equivalent).⁵⁶

A group of 25 men remained in jail, however, and were transferred to Rabat for investigation by a military court. On 17 February 2013, based on wrongful accusations lacking any credible evidence, 23 of these detainees were condemned to sentences ranging from 20 years to life imprisonment.

⁵⁵ 2014 Report of the Secretary-General on the situation concerning Western Sahara, above, § 11-12

⁵⁶ Kosmos Energy, Investor Presentation, December 2014, p. 13, at: <http://www.kosmosenergy.com/pdfs/kosmos-energy-presentation-2014-December-v2.pdf>

49. On two occasions in 2014, Moroccan security forces stopped peaceful demonstrations of Saharawis in response to the planned drilling.⁵⁷ Kosmos completed its exploratory program in February 2015, announcing commercial prospects but no further immediate activity at the well site. WSRW submits that if commercial quantities of oil are discovered in Western Sahara, Morocco will have even less incentive to engage the question of self-determination thereby eroding the chances of a peaceful outcome. The SADR government expressed the concern in the following terms to the UN Secretary General:

The Saharawi government concludes that the present petroleum activity is illegal and impedes progress toward the conduct of a “free and fair referendum” as that has been accepted by the parties. (See report of Secretary-General 18 June 1990, UN document S/21360, paragraph 47(g).) The activity underscores to the Saharawi people that a violation of well-settled, universally rules of international law is allowed to continue. That suggests the organized international community is unwilling to ensure the paramount obligation of self-determination flowing from Article 73 of the UN Charter.⁵⁸

50. In 2015, petroleum exploration continued in the northern reaches of the Moroccan held area of Western Sahara, carried out by the Irish corporation, San Leon Energy. A large-scale public demonstration against the activity took place in the Saharawi refugee camps late in the year.⁵⁹

c) Depletion of non-renewable resources

51. The third problem resulting from the violation of ICCPR Article 1(2) is that because of ongoing development and export of non-renewable resources they will be less available to the Saharawi people when they realize their self-determination. This diminishes the present perception of a viable future independence, if that is what the Saharawi people would choose in a referendum. The stark problem is that less natural wealth will be available when the “question” of Western Sahara is eventually resolved. The organized international community had the preservation of natural wealth in mind when the United Nations Council for Namibia prohibited the taking of resources from that non-self-governing territory when under foreign occupation. Such legal duties have not changed when it comes to the Western Sahara of today.⁶⁰

⁵⁷ WSRW, “Letter from Elfayda to Kosmos Energy” (15 April 2014) at: <http://www.wsrw.org/a228x2883>; and see WSRW, “Alouat protested against Kosmos - was cut with razor blade” (13 June 2014), at: www.wsrw.org/a228x2913

⁵⁸ Letter of the Saharawi Government to the UN Secretary-General, 26 January 2015, at: www.spsrasd.info/en/content/president-republic-urges-un-security-council-stop-seabed-oil-drilling-coast-occupied-western.

⁵⁹ See WSRW, “Thousands of Saharawis protest against San Leon Energy” (15 October 2015), at: www.wsrw.org/a228x2913

⁶⁰ Seabed petroleum, and prospectively land-recovered petroleum, together with phosphate rock are currently Western Sahara’s non-renewable resources. There are problems with the sustainability of a coastal fishery which is not properly regulated and alleged to be subject to corrupt practices. The fishery has also been revealed s being over-fished from time to time. See notably Oceanic Développement, “Framework Contract Fish/2006/20 Convention Spécifique N°26: Evaluation ex-

IV. Suggested questions to the Government of Morocco

In view of the above, we recommend that the Committee request that Morocco as a State party to the ICCPR provide information about the following issues:

- * The reason for not reporting in more than a decade on the progress made with regard to compliance with the right to self-determination, as defined in Article 1 ICCPR, in Western Sahara, where the circumstances of a Non-Self-Governing people to account for require such reporting.
- * Specific and independently verifiable information about the implementation of the Saharawi people's right to self-determination. Such information must *a priori* note preparations being made, what measures will be taken, a time-table for the organization of the referendum, a list containing the identities of those entitled to vote, and the options to be included in the referendum. (In making this recommendation, WSRW notes that the United Nations organization has accepted primary responsibility for the administration that is, the conduct, of the self-determination referendum in Western Sahara.)
- * Clear information about the consequences of a potential rejection by the Saharawi people of the proffered 2007 Autonomy Proposal.
- * Accurate, current and ascertainable figures about the number of the State party's nationals currently residing in Western Sahara, with a break-down of civilians, security personnel and armed forces members.
- * Detailed information on measures taken to protect the rights of persons displaced by the conflict in Western Sahara and to ensure their safety, further to Article 73 of the UN *Charter* and the implicit obligation of the ICCPR to report about such matters. In addition, the State party should be importuned to deliver a plan for removal of the berm and its surrounding mine-fields, together with the necessary environmental remediation, in order to ensure compliance with the ICCPR.
- * An explanation why so many cases identified by the Moroccan Equity and Reconciliation (IER) Commission that originated in Western Sahara still await disposition.
- * What measures will be taken to open judicial investigations into all cases identified by the IER, as recommended by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2012.

post du protocole actuel d'accord de partenariat dans la domaine de peche entre l'union europeenne et le royaume du maroc, etude d'impact d'un possible future protocole d'accord – Rapport - Décembre 2010" (the Oceanic Développement Report), p. 91, <<http://www.fishelsewhere.eu/files/dated/2012-03-05/e>

- * What measures will be taken to hold those responsible for the grave and serious human rights violations in Western Sahara as revealed by the IER to account.
- * Measures taken to allow international human rights and resource organizations may enter into and proceed without restriction throughout the occupied area of Western Sahara to interview such persons they consider necessary and visit facilities and communities without impediment.
- * Plans to review the Moroccan constitution and the law fixing the regions, provinces and prefectures, so that they would accurately reflect the status of Western Sahara as a Non-Self Governing Territory, and not as part of Morocco's national territory.
- * An explanation as to why Morocco's ICCPR State reports make no reference to the right to freely dispose of natural resources, as a corollary of the right to self-determination.
- * How Morocco has assured itself of the meaningful consent (*i.e.* free, prior and informed) of the Saharawi people - both those living in the areas under its occupation and as refugees in Algeria as a direct consequence of its occupation - to the continuing taking of the territory's natural resources.
- * Unambiguous proof as to how the Saharawi people, including those living in the Tindouf refugee camps as a direct consequence of Morocco's occupation of Western Sahara, benefit from Morocco's development of their territory's resources.
- * Complete information and data relating to the exploitation, sales, export and research of Western Sahara's natural resources for assessment by the United Nations and the Polisario Front.
- * A separate accounting by a credible, independent third party about the use of Western Sahara's natural resources (one independently arrived at from Morocco's own national accounting).
- * Details about measures taken to promote the right to freely dispose of natural resources to the Saharawi people.
- * Information about those persons and entities holding licenses pertaining to economic activities in Western Sahara, *e.g.* in the fields of fisheries, agriculture, sand excavation, and mining.

V. Recommendations to Morocco

WSRW respectfully suggests to the Committee that it urge the following recommendations upon Morocco as an ICCPR State party. In offering the following, WSRW emphasizes the settled obligations of international law that apply in the case of Western Sahara. The legal norms and the obligations under the ICCPR and an animating UN *Charter* are clear. They have been obvious since the International Court of Justice delivered its Western Sahara advisory opinion. They are also obligations implicitly accepted by Morocco under the 1990-91 UN agreement for a self-determination referendum for the Saharawi people. There is no misunderstanding in about the law and the principles of the ICCPR which apply to the “question” of Western Sahara. Equally, the obligation of all States, and notably of Spain and Morocco under the Covenant in Western Sahara are apparent.

Recommendation I - To undertake immediate efforts to organize, under the direction of the United Nations, a self-determination referendum that includes the option of independence for the Saharawi people as such.

Recommendation II - To take into account and in good faith, in negotiations and bilateral agreements, all the obligations incumbent upon it under the Covenant, so as to ensure the greatest possible promotion of the Saharawi people’s right to self-determination.

Recommendation III - To take into account and in good faith, in negotiations and bilateral agreements, all the obligations incumbent upon it under the Covenant, so as to not impair the Saharawi people’s right to freely dispose of their natural resources.

Recommendation IV - To remove any hurdle, administrative, legal and social, to the exercise of the right to organize and to freedom of expression in the universally understood meaning of the right, for the Saharawi people.

Recommendation V - To immediately terminate all petroleum licences, the export of phosphate mineral rock, fisheries agreements, agricultural development and associated exports, and other commercial activity in Western Sahara done without the express consent (*i.e.* the prior informed consent) of the Saharawi people.

Recommendation VI - To release all Saharawi political prisoners, such persons defined or classified by their having been tried by military tribunal contrary to international humanitarian law.

* * *

ANNEX

The “Question” of Western Sahara in Perspective

1. Western Sahara is properly called Africa’s last colony. The Saharawi people of the territory have, by a colonizing state and the organized international community, been promised the right of self-determination. As international law and the practice of states became clear in the late 20th century, the practical availability of the right in Western Sahara was impeded. 40 years after the abandonment of the Saharawi people by Spain to armed invasion, the right to self-determination in the territory is in peril. It is at least stalled, and is certainly under threat from several things, including the basic denial of the realization of the right itself, the failure of the rule of international law in what the United Nations calls the “question” of Western Sahara, significant and unchecked human rights violations, the widespread taking of natural resources despite the ongoing protests of Saharawi civil society and representative-governance organizations, and a closing of the territory to any meaningful human rights inquiry by neutral third parties. It is fair to say that nowhere in Africa are the principles of the *International Covenant on Civil and Political Rights* (the ICCPR) less achieved.⁶¹ The consistent failure by the states most responsible for the protection of a Saharawi civil population under occupations – the Kingdoms of Morocco and Spain – is one that is aggravated by the passive witness and inaction of the organized international community. A more compelling demonstration of how the ICCPR’s goals are left unrealized is difficult to conceive.

2. The basic facts of Western Sahara’s modern history are well known.⁶² It is important to recall them, because they are routinely overlooked in the evaluation of human rights in the territory and the basic (and established) human rights obligations which ought to apply.

3. The Saharawi people have had a unique identity for at least several centuries. Semi-nomadic until the later decades of Spanish colonial rule, their society is marked by a particular linguistic dialect, *Hassaniya*, of the Arab language, ties of kinship, and shared collective history. Occupation and encampment as refugees since 1975 has reinforced such an identity. So has geography, with barriers to wider social connection in the east by way of the Sahara desert and in the north with the presence of the mountains of southern Morocco and the Draa River. In 1885, Spain acquired possession of what it would later define to be the colony of Spanish Sahara with colonial frontiers established in 1900 and 1912. These boundaries constitute the present-day extent of the territory.

⁶¹ *International Covenant on Civil and Political Rights* (19 December 1966) 999 UNTS 171 (in force 23 March 1976). And see the First Optional Protocol to the ICCPR, also adopted by the UN General Assembly and open for signature by states on 19 December 1966. The Second Optional Protocol of 1985, aiming at the abolition of the death penalty, is not considered in this submission.

⁶² For a brief timeline of events, please see “Milestones in the Western Sahara Conflict” at the website of the UN mission for a self-determination referendum in Western Sahara, MINURSO, at: <https://minurso.unmissions.org>

4. The right of non-self-governing peoples to self-determination originated in the United Nations Charter.⁶³ Article 73 requires states with responsibility for non-self-governing peoples to ensure their interests are held “paramount”, to ensure “their just treatment, and their protection against abuses”, to develop their self-government and “free political institutions” and to regularly provide the UN Secretariat with information about the economic, social and education conditions of such peoples. The cornerstone of present-day international law which underpins the Saharawi right of self-determination are the UN General Assembly resolutions which followed Article 73. UN General Assembly Resolutions 1514 (XV) and 1541 (XV) of 14 December 1960 expressed in clear terms the right to self-determination and the means for its realization, including the requirement that a non-self-governing people be permitted in all cases to elect for themselves political independence.⁶⁴ The organized international community first identified the right as applying to the Saharawi people in a 1965 resolution of the UN General Assembly.⁶⁵

5. In 1973, Spain accepted its obligation to decolonize Western Sahara, while the Saharawi people’s national liberation organization, the Polisario Front (Frente Polisario), was created.⁶⁶ The next year, Spain organized a census of the territory’s population in preparation for a referendum on the subject of self-determination. At the same time, the UN General Assembly determined that it needed the advice of the International Court of Justice (the ICJ) about Western Sahara in order to determine how to proceed with its decolonization. The General Assembly also undertook to arrange a mission into the territory to assess for itself the prospect of self-determination, which visit took place in May 1975.⁶⁷ In October 1975, the ICJ delivered its advisory opinion to the General Assembly, concluding that Western Sahara had been inhabited at the time of Spanish colonial acquisition and that there were no ties between the territory sufficient to result in “any” legal claim of title or sovereignty by an interested Mauritania and Morocco.⁶⁸

6. Later the same month, the armed invasion of Western Sahara began. This was followed by a brief mass entry of Moroccan civilians into the northern frontier area under the guise of the “Green March” in a bid to purportedly reclaim the territory. On 14 November 1975, Spain concluded the so-called Madrid Accords, an agreement with Mauritania and Morocco for the interim administration of

⁶³ *Charter of the United Nations* (26 June 1945) 1 UNTS XVI (in force 24 October 1945).

⁶⁴ UN General Assembly 15th Session, Supp. No. 16, UN doc. A/4684 and UN doc. A/L 323, respectively.

⁶⁵ UN General Assembly Resolution 2072 (XX) (17 December 1965), “Question of Western Sahara”. The right of the Saharawi people has since been repeated in every annual resolution of the General Assembly. See most recently UN General Assembly Resolution 70/98 (9 December 2015).

⁶⁶ The events of the 1970s are recounted in detail by Tony Hodges, *Western Sahara: The roots of a desert war* (Westport, CONN: Lawrence Hill, 1983).

⁶⁷ Report of the United Nations Visiting Mission to Spanish Sahara, 1975 (15 October 1975), UN General Assembly, 30th Session, Supp. 23, UN doc. A/10023/Rev. 1, Annex.

⁶⁸ *Western Sahara Advisory Opinion*, ICJ Reports 1975, p. 12. See notably paragraph 162: “[T]he Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.”

the territory pending the self-determination, for which all three parties undertook joint responsibility to ensure, of the Saharawi people.⁶⁹

7. On 27 February 1976, the Polisario Front met in elected assembly and proclaimed creation of the Saharawi Arab Democratic Republic (the SADR). The next day Spain quit the territory, and has not exercised administering power or legal jurisdiction in respect of it since.⁷⁰ That April, Mauritania and Morocco concluded a treaty to partition the territory between them, which Mauritania impliedly denounced when it concluded a peace agreement with the Polisario Front in August 1979. Mauritania would go on to extend recognition to the Saharawi state, which became a member of the then Organization of African States (the OAS), now the African Union, in 1984.

8. The armed conflict in Western Sahara continued through the 1980s. The OAS was at the fore of mediation efforts between the two parties, and notably in a 1986 proposal that resulted in the United Nations taking a greater role. After 1988, the UN, under the leadership of its then Secretary-General, assumed entire conduct of efforts to end the conflict and to resolve the “question” of Western Sahara. It should be recalled that, at least since 1988, the UN has dealt with two parties; the Kingdom of Morocco and the Polisario Front. This relationship continues today.⁷¹ Occasionally, informal attempts are made to suggest that other purportedly Saharawi civil society organizations and persons have legitimacy in representing the Saharawi people. The representative role of the Polisario Front was recently confirmed by the Court of Justice of the European Union, in a decision issued 10 December 2015.⁷²

9. In September 1991, the United Nations reached a ceasefire and referendum agreement for Western Sahara. The agreement is detailed in two UN Security Council Resolutions.⁷³ It contemplated

⁶⁹ “Declaration of principles on Western Sahara” (14 November 1975), 988 UNTS I-14450. Spain also purported to “terminate” its responsibilities as administering Power in the territory, under Article 1 of the agreement. On 19 November 1975, the Spanish government legislated a formal end to colonial responsibility in the Spanish Sahara. See *Ley no. 40/1975*.

The 1975 Madrid Accords were accompanied by three subsidiary agreements only made public in 2009 which provided for the division of the territories resources between the three states. See Jeffrey Smith, “The taking of the Sahara: The role of natural resources in the continuing occupation of Western Sahara” (2015) 27 *Global Peace, Change & Security* p. 263.

⁷⁰ Two decisions of Spain’s appeals court the *Audencia Nacional*, on 4 July 2014 and 9 April 2015 have, however, confirmed the continued application of Spanish criminal law in Western Sahara since 1975 and implicitly abrogated the Spanish government’s terminating colonial responsibility, above. The first decision directed the continuation of the investigation of a war crimes allegation resulting from the November 2010 Gdeim Izek incident. The second did so for allegation of genocide in the early years of the occupation of Western Sahara.

⁷¹ See e.g. Report of the Secretary-General on the situation concerning Western Sahara (10 April 2015), UN doc. S/2015/246.

⁷² See *Front Polisario c. Conseil de l’Union européenne et Commission Conseil de l’Union européenne*, Arrêt du Tribunal, 10 décembre 2015, affaire T/512-2012, available at: curia.europa.eu

“En effet, le Front Polisario est le seul autre interlocuteur qui participe aux négociations menées sous l’égide de l’ONU, entre lui et le Royaume du Maroc, en vue de la détermination du statut international définitif du Sahara occidental.” *Ibid.* § 113.

⁷³ See the two reports of the UN Secretary-General to the UN Security Council, UN docs. S/21360 (18 June 1990) and S/22464 (19 April 1991). “The two parties, namely the Kingdom of Morocco and the Frente POLISARIO, recognize in the settlement proposals that the sole and exclusive responsibility for the organization and conduct of the referendum is vested in the United Nations.” S/22464 § 9. See also UNSC Resolution 621 (1988) of September 1988.

a relatively fast registration of Saharawi persons eligible to participate in a self-determination referendum which would have on offer the required options under international law, namely incorporation into Morocco, status as an autonomous entity with or associated with Morocco, and independence. During the years of slow registration and dispute of the eligibility of people within and with purported connections to Western Sahara until 1999 and thereafter until a second mediated proposal by UN envoy James A. Baker III, the option of independence for the Saharawi people was always held forth. Such option continues undiminished as a result of ICJ decisions, including that of the *Western Sahara Advisory Opinion* that the Saharawi people were entitled to exercise self-determination, together with the almost universal practice of colonial states to ensure the independence of non-self-governing peoples.⁷⁴

10. In April 2007, the Polisario Front and the Kingdom of Morocco each advanced a proposal to resolve the question of Western Sahara.⁷⁵ That from Morocco contained only the option of autonomy within that state. In the more than eight years since, notwithstanding several negotiation meetings of the parties under the leadership of UN Personal Envoys, the positions of Morocco and the Polisario Front remain the same. This period has seen the continuing economic development of Western Sahara, including the settlement of Moroccan nationals into the territory.⁷⁶ The Polisario Front, the government of the SADR, Saharawi civil society organizations, and non-governmental organizations routinely protest both activities, declaring that they advance a tacit acceptance of Morocco's presence and claim to Western Sahara.⁷⁷

11. The African Union has recently been outspoken about the matter of stalled self-determination for the Saharawi people, urging the United Nations organization to act, including in fulfilment of its stated commitment to conduct a referendum in the territory. In a *communiqué* issued 27 March 2015, the AU Peace and Security Council urged "the UN Security Council to take all necessary decisions to ensure progress in the search for a solution to the conflict in Western Sahara, acknowledging its critical role and primary responsibility for the maintenance of international peace and security."⁷⁸ The Council also requested that the Security Council confer a mandate to monitor

⁷⁴ See most recently *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, ICJ Reports 2010, p. 403, § 79: "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, and exploitation ... A great many new States have come into existence as a result of the exercise of this right." [Citations omitted]

⁷⁵ See *Proposal of the Frente Polisario for a mutually acceptable political solution that provides for the self-determination of the people of Western Sahara*, 16 April 2007, in UN doc. S/2007/210; and *Moroccan initiative for negotiating an autonomy statute for the Sahara region*, 11 April 2007 (unpublished).

⁷⁶ The settlement of an outside population into Western Sahara may at least confuse or slow the process of voter registration for a self-determination referendum and therefore may violate ICCPR Article 1. If it is accepted that international humanitarian law applies in the territory, then the in-migration of such persons is a grave breach of the *Fourth Geneva Convention*, 1949.

⁷⁷ The Court of Justice of the European Union recognized such concerns in its judgment of 10 December 2015, above. See §§ 223 and following.

⁷⁸ *Communiqué* of the African Union Peace and Security Council (27 March 2015) AU doc. PSC/PR/COMM/1.(CDXCVI), § 7(ii).

human rights upon MINURSO. It called on the Security Council:

to address the issue of the illegal exploitation of the Territory's natural resources, bearing in mind the call made in the UN Secretary-General report of 10 April 2014, for all relevant actors, in the light of the increased interest in the natural resources of Western Sahara, to "recognize the principle that the interests of the inhabitants of these territories are paramount", in accordance with Chapter XI, article 73 of the Charter". In this respect, [the AU] Council recommends consideration of a strategy of global boycott of products of companies involved in the illegal exploitation of the natural resources of Western Sahara as a way of further sustaining the attention of the international community on the situation in Western Sahara".⁷⁹

⁷⁹ *Ibid.* at § 11.