



Western Sahara Student Union (UESARIO)

**Written contribution for the 6th periodic review
of the Kingdom of Morocco
Human Rights Committee 118th session**

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UESARIO

Western Sahara Student Union was founded in 1975 to organize Saharawi students. Its main objective is mobilizing students to contribute in the just struggle of the Saharawi people to end the illegal occupation of their land and enjoy their legitimate right to self-determination. At this time, UESARIO concentrates its efforts to ease growing frustration among Saharawi youth in the refugee camps and occupied part of Western Sahara. UESARIO believes that after 40 years a peaceful solution is urgently needed in Western Sahara, but it needs sincere commitment from international community.

As 2016 remarks the 50th anniversary of the adoption of the International Covenant on Civil and Political Rights (the ICCPR) in 1966, it would be very important to highlight carefully if its provisions are implemented in Western Sahara, where 40 years have passed since the invasion, occupation and progressive annexation of the territory by Morocco.

UESARIO, through the submission of this report to the United Nations Human Rights Committee (the Committee), wishes to draw the attention to the grave breaches of ICCPR provisions committed by Morocco, as occupying power, in the territory Western Sahara.

In this report, we concentrate mainly on the article 1 of ICCPR because we do believe that ensuring the true application of the right to self-determination where the Saharawi people “freely determine their political status”, other problems of the retarded application of the ICCPR will be resolved.

This submission closes with recommendations 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.

A. Article 1: The Right to Self-Determination

The Kingdom of Morocco claims¹, “The Sahara is part of Morocco since ancient time”. Moreover, the Kingdom of Morocco² states “...Sahara was decolonized through the negotiation with the Administering Power (Spain) through the signature of the Madrid Agreement of 1975 of which the General Assembly took note (Resolution 3458/B)”.

¹ Sixth periodic reports submitted by Morocco to the Human Rights Committee CCPR/C/MAR/6 issued on August 31st 2015, p. 31

² Ibid., page 33

Legal facts stand clear that:

1. Western Sahara is included, since 1963, in UN General Assembly's list of non-self-governing territories.
2. In its Advisory Opinion of 16 October 1975, the International Court of Justice clearly stated that "The inferences to be drawn from the information before the Court concerning internal acts of Moroccan sovereignty and from that concerning international acts are... in accord is not providing indications of the existence... of any legal tie of territorial sovereignty."
3. On 10th December 1975 the General Assembly adopted resolution 3458/A which states, among other:
OP 1 "Reaffirms the inalienable right of the people of Spanish Sahara to self-determination in accordance with General Assembly Resolution 1514 (XV)"
OP 3 "Reaffirms the responsibility of the administering Power and of the United Nations with regard to the decolonization of the Territory and the guaranteeing of the free expression of the wishes of the people of Spanish Sahara;"
OP 7 "Request the Government of Spain, as the administering Power, ...to take immediately all necessary measures,... so that all Saharans originating in the Territory may exercise fully and freely, under UN supervision, their inalienable right to self determination".
4. On 21st November 1979, in adopting resolution 34/37, the General Assembly "Deeply deplores the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and the extension of that occupation to the territory recently evacuated by Mauritania" (OP 5) and "Urges Morocco...to terminate the occupation of the Territory of Western Sahara" (OP 6).
5. On 29th April 1991, the UN Security Council, in adopting unanimously resolution 690, decided to establish a United Nations Mission for the Referendum in Western Sahara (MINURSO) and called upon the two parties to cooperate fully with the Secretary-General for the organization and the supervision of a referendum for self-determination of the people of Western Sahara.
6. The continuing delay in applying Article 1 of the ICCPR is the cause of the failure to achieve meaningful implementation of legal form (Part 2) to individual rights (Part 3). By ensuring the true application of the right to self-determination where the Saharawi people "freely determine their political status", 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 Office of the High Commissioner for Human Rights 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”³.

7. In its ICCPR State Report of 2015 Morocco refers to the 2007 Moroccan Autonomy Proposal (or Initiative) for negotiation of an autonomy statute for the “Sahara region”, claiming that there are multitude of forms and procedures to exercise the right to self-determination, and that self-determination should not be equated to independence. UESARIO is of the view that Autonomy Proposal contradicts clearly 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 state is in stark opposition to the bottom-up character of the right to 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.
8. 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.
9. 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

³ 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.

Sahara” is not mentioned once. Rather, the Moroccan authorities use the notions “southern provinces” or “the Moroccan Sahara” to claim the territory of Western Sahara.

10. Morocco’s continuing refusal to allow the Saharawi people to exercise their right to self-determination was demonstrated in a 6 November 2015 speech of the Moroccan head of state, King Mohammed VI. when 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 give⁴ .

B. Article 1, paragraph 2: The Right to Freely Dispose of Natural Resources

11. Under Article 1(2) Morocco has a duty to respect, protect and fulfill the rights enshrined in the Covenant to the benefit of the Saharawi people, including their right to develop and export the territory’s natural resources. On this issue, UESARIO 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.
12. It is obvious that Morocco does not mention the right to resources in the report it submitted to the Committee. This is all the more present case, since the CESCR Committee issued a specific recommendation on the topic in October 2015⁵:

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.

13. UESARIO 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:

⁴ Speech of King Mohammed VI, 6 November 2015. Full text available at: <http://www.maroc.ma/en/royal-speeches/fulltext-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>

⁵ UN 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.

maintaining and strengthening a claim to the territory that was already rejected by the International Court of Justice.

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.

14. Examples of the unequal benefit from resource extraction for Moroccan settlers are readily found. Of some 2200 employees in Phos-Boucraâ (the local subsidiary of Office Chérifien des Phosphates SA) only about 25-30% are Saharawi persons by any definition⁶. 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 of 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 violence⁷. Saharawis who have had the

⁶ 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>

⁷ WSRW, “Unemployed Saharawis were beaten for demanding a job”, 13 December 2015, <http://wsrw.org/a105x3324>

opportunity to complete a higher education in Morocco describe discrimination in the job market because of their Saharawi origin⁸.

15. 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 attacked the camp site, burning it to the ground. 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. 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. The Saharawi Campaign Against the Plunder (SCAP) organized a large-scale public demonstration against this activity in the Saharawi refugee camps late in the year⁹.

Recommendations:

UESARIO respectfully suggests to the Committee that it urge the following recommendations upon Morocco as an ICCPR State party:

1. 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.
2. 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.
3. 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.
4. To immediately terminate all petroleum licenses, the export of phosphate mineral rock, fisheries agreements, agricultural development and associated

⁸ WSRW, "Unemployed Saharawi graduates rally in Rabat" (22 July 2010) at: <http://www.wsrw.org/a105x1540>

⁹ Thousands of Saharawis protest against San Leon Energy" (15 October 2015), at: www.wsrw.org/a228x2913

exports, and other commercial activity in Western Sahara done without the express consent (i.e. the prior informed consent) of the Saharawi people.

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