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## Human Rights Council

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### Universal Periodic Review

## Written statement\* submitted by Liberation, a non-governmental organization on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 August 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## **Western Sahara: grave and continuous violations of the Civil and Political Rights of the Sahrawi people**

### **Introduction**

The Report of the Office of the UN High Commissioner for Human Rights entitled “Compilation on Morocco” mentions<sup>1</sup> that “The Secretary-General reported that, according to various sources, the Moroccan authorities continued to routinely prevent or disperse gatherings focused on the right to self-determination [...] In several cases, protesters and activists were allegedly subjected to arbitrary arrest, unfair trials and imprisonment on ostensibly trumped-up charges.”

The same document reports<sup>2</sup> that “The Special Rapporteur on the rights to freedom of peaceful assembly and of association was also concerned by allegations relating to the excessive use of force during peaceful demonstrations...” and that<sup>3</sup> “The Secretary-General reported that unnecessary restrictions were reportedly imposed on some human rights defenders and activists seeking to enter and leave Western Sahara [...] and that the Moroccan authorities continued to harass human rights defenders in Western Sahara.”

Paragraph 48 of the same document states that “The Human Rights Committee was concerned by reports of illegal infringements of the right to privacy in the course of surveillance operations targeting journalists and human rights defenders...”

Paragraph 106 of the same document mentions that “The Special Rapporteur on torture found that in Laâyoune, Western Sahara, torture and ill-treatment had been inflicted during arrest, at police stations and at the prison, [...] The Working Group on Arbitrary Detention expressed similar concerns and recommendations.”

The Draft report of the Working Group on the Universal Periodic Review on the Kingdom of Morocco<sup>4</sup> mentions a number of recommendations offered by members of the Working Group concerning the Right to Freedom of peaceful assembly and association, the Right to Freedom of Expression, the conditions of Human Rights Defenders, Arbitrary detention in relation to the Sahrawi people, as well as on the Right to Self-determination of the Sahrawi people.

### **Historical and legal background**

Western Sahara was a Spanish colony from 1884 until 26 February 1976, when Spain informed the UN Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory. Since then,

In 1963, the UN General Assembly recognized Western Sahara as a Non Self-Governing Territory<sup>5</sup> to which UN General Assembly resolution 1514 (XV)<sup>6</sup> applies.

On 6 November 1975, the UN Security Council<sup>7</sup> deplored the holding of the march and called upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants to the march. Subsequently, the UN General Assembly<sup>8</sup> expressed its concern about the occupation of Western Sahara by the Kingdom of Morocco and called the Kingdom of Morocco to terminate the occupation. By referring to the previous resolution when adopting a new one on the “Situation in Western Sahara”, the general Assembly has ensured a continuity of its interpretation of the legal status of Western Sahara.

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1 A/HRC/WG.6/27MAR/2 (par. 42)

2 Ibid, par. 43

3 Ibid, par. 44

4 A/HRC/WG.6/27/L.4

5 UNGA Resolution 1956 (XVIII)

6 Declaration on the granting of independence to colonial countries and peoples.

7 UNSC resolution 380

8 UNGA resolutions 34/37 (21 Nov. 1979) and 35/19 (11 Nov. 1980)

Today, Western Sahara is the only territory in Africa that has still to finalize its decolonisation process. It is the only Non Self-Governing Territory, among the 17 listed by the Special Committee on Decolonisation, that has not an internationally recognized Administering power and which is, according to international law, under foreign occupation.

### **Applicability of the International Humanitarian Law**

The invasion and occupation of a large part of Western Sahara by the Kingdom of Morocco obliges the latter to respect the International Humanitarian Law.

By largely practicing coercion, corporal punishment, torture, degrading and inhuman treatments on the members of the Polisario Front<sup>9</sup> before the Ceasefire Agreement of 1990 and on the Sahrawi civil population until our days, the Kingdom of Morocco severely violated and continues to violate Articles 31 and 32 of the IV<sup>th</sup> Geneva Convention.

### **Torture and other cruel, inhuman or degrading treatments**

In his 2013 country visit report<sup>10</sup>, the Special Rapporteur on torture and other cruel, inhuman or degrading treatments describes the practice of torture as anchored and systematic at the time of arrest and during detention, among others, for people claiming the independence of Western Sahara.

The Special Rapporteur notes that there is an apparent absence of convictions under article 231-1 of the Criminal Code. He concludes that given the failure to impose genuine disciplinary measures or to bring any significant number of cases against State officials accused of torture, an atmosphere of impunity seems to exist with regard to recent years as well as with regard to the gross, large-scale human rights violations that took place between 1956 and 1999.

In his conclusions, the Special Rapporteur also affirms that “In cases involving State security, such as terrorism, membership in Islamist movements, or supporters of independence for Western Sahara, there is a pattern of torture and ill-treatment by police officers during the arrest process and while in detention, in particular, by agents of the National Surveillance Directorate (DST). Many individuals have been coerced to confess and sentenced to prison on the basis of such a confession. The violations often continue while these individuals are serving their sentences.”

With regard to Western Sahara, the Special Rapporteur recommended to the Kingdom of Morocco to investigate promptly all allegations of torture and ill-treatment during and after demonstrations and at the Prison of Laâyoune; hold the perpetrators accountable and provide compensation to the victims.

In the decision adopted in November 2016<sup>11</sup>, ruling on a complaint filed by Ennaâma Asfari<sup>12</sup>, the Committee Against Torture finds that the facts before it reveal a violation by the Kingdom of Morocco of articles 1, 12, 13, 14, 15 and 16.

The Committee urges the State party to compensate Mr. Asfari adequately and equitably, including the means necessary for the fullest possible rehabilitation; to initiate an impartial and thorough investigation into the events in question and to refrain from any act of pressure, intimidation or retaliation likely to harm the physical and moral integrity of the complainant and his family. As of the day of submission of the present document, none of those measures have been taken by the Kingdom of Morocco.

### **Arbitrary detention**

<sup>9</sup> The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro, formally constituted on 10 May 1973, has been recognized by the UN General Assembly as the legal representative of the Non Self-Governing Territory of Western Sahara (UNGA Resolution 34/37 – 21 Nov. 1979)

<sup>10</sup> A/HRC/22/53/Add.2

<sup>11</sup> CAT/C/59/D/606/2014 (published on 12 Dec. 2016)

<sup>12</sup> Mr. Asfari was arrested during the manifestations of Gdeim Izik (Nov. 2010) and sentenced by a Military Court (February 2013) to 30 years imprisonment. A sentence that the Court of Cassation annulled (Sept. 2016) by referring the case to the Supreme Court of Appeal, which, last July, sentenced again Mr. Asfari to 30 years imprisonment.

Since the Kingdom of Morocco considers that the part of the Non Self-Governing Territory of Western Sahara it occupies belongs to its national territory, anyone raising publicly the issue of the self-determination of the Sahrawi people originating from the Territory is arrested and indicted for criminal offense of attempting the security of the State and the integrity of the territory.

This continued and systematic practice challenges the good faith of the Kingdom of Morocco to which the UN Security Council calls for in its resolution 2351 (27 April 2017).

### **Freedom of peaceful assembly and of association**

Any public and peaceful assembly advocating for the implementation of the inalienable right to self-determination and independence for Western Sahara is promptly interrupted by the Moroccan security forces. Very often women that participate to those assemblies are beaten in the streets and arrested.

Moroccan authorities proceeded with the legal registration of ASVDH13, a Saharawi Human Rights organisation in July 2015; however, to date, the organisation has not been authorized to lead a plenary public activity. Moreover, the Moroccan authorities disrupt even closed doors activities organized by the same organization.

### **Human Rights Defenders**

Several cases of harassment and retaliation against Sahrawi Human Rights Defenders in the Occupied part of the Non Self-Governing Territory of Western Sahara have been documented. Some Sahrawi human rights defenders have even been prevented from attending the sessions of the Human Rights Council<sup>14</sup>.

### **Recommendations**

The Human Rights Council should complete the Report of the Working Group on the Universal Periodic Review on the Kingdom of Morocco with the following recommendations:

- calls upon the Kingdom of Morocco to strictly respect the norms of International Humanitarian Law when acting in the Occupied territory of Western Sahara.
- calls upon the Kingdom of Morocco to respect the fundamental rights and freedoms of the Sahrawi people, including its inalienable right to self-determination and independence, through the holding of a free and independent referendum under the auspices of the United Nations.

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<sup>13</sup> Association Sahraouie des Victimes des Violations Graves des Droits de l'Homme Commises par l'État Marocain

<sup>14</sup> Cases of Mrs El Ghalia Djimi, Vice President of ASVDH and Mr Hammadi Naciri, President of Freedom Sun Association for protection of Human Rights Defenders