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Temas 2, 3 y 4 de la agenda

**Informe anual del Alto Comisionado de las Naciones Unidas
para los Derechos Humanos e informes de la Oficina
del Alto Comisionado y del Secretario General**

**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

**Situaciones de derechos humanos que
requieren la atención del Consejo**

Nota verbal de fecha 7 de julio de 2021 dirigida a la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por la Misión Permanente de Sudáfrica ante la Oficina de las Naciones Unidas en Ginebra

La Misión Permanente de la República de Sudáfrica ante la Oficina de las Naciones Unidas en Ginebra y otras organizaciones internacionales en Suiza presenta la correspondencia adjunta del Frente POLISARIO sobre la falta de cooperación del Reino de Marruecos con los mecanismos de derechos humanos de las Naciones Unidas (véase el anexo).

La Misión Permanente de la República de Sudáfrica solicita que la presente nota verbal y su anexo* se publiquen como documento del Consejo de Derechos Humanos y se distribuyan a todos los Estados miembros y observadores del Consejo en relación con los temas 2, 3 y 4 de la agenda.

* Se reproduce como se recibió, en el idioma en que se presentó únicamente.



Annex to the note verbale dated 7 July 2021 from the Permanent Mission of South Africa to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Frente Popular de Liberación de Saguía el Hamra y Río de Oro (Frente POLISARIO), created in May 1973 as a National Liberation Movement, with the aim to achieve independence from Spanish colonial rule and recognized since 1979 by the UN General Assembly as the representative of the people of Western Sahara¹, strongly condemns the systematic and serious violations of human rights and international humanitarian law norms by the Kingdom of Morocco, which illegally occupies the majority of the Non Self-Governing Territory of Western Sahara.

The Frente POLISARIO recalls that in its 1975 Advisory Opinion the International Court of Justice² (ICJ) stated that *«...the 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... 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 Frente POLISARIO also recalls that in its 2004 Advisory Opinion the International Court of Justice³ stated that *«...the Court considers that the protection offered by human rights conventions does not cease in case of armed conflict, ...»*. The Court further stressed that the Occupying Power is bound to comply with its obligation to respect the right to self-determination and its obligations under international humanitarian law and international human rights law, which are applicable to the Occupied Territory.

The Kingdom of Morocco's longstanding occupation of Western Sahara has led to numerous gross violations of human rights as well as serious and continuous breaches of the Fourth Geneva Convention of 1949. Those gross violations of human rights and grave breaches of international humanitarian law are systematic and inherent in the illegal military occupation of the Non-Self-Governing Territory. In order to avoid external, independent testimonies, the Kingdom of Morocco has barred access to occupied Western Sahara to parliamentarians, lawyers, human rights defenders, journalists, academics and human rights officers of the Office of the High-Commissioner for Human Rights wishing to visit.

At the Human Rights Committee's and the Committee on economic, social and cultural rights' concerns about the delayed exercise of the right to self-determination (common Article 1) by the people of Western Sahara, the King of Morocco replays, in contradiction with the ICJ Opinion and the European Court of Justice rulings, that his *«commitment to reaffirming the Moroccaness of the Sahara is as steadfast as my endeavors to make the Sahara an engine of development at the regional and continental levels. To complement the major projects implemented in our southern provinces, I think the time has come to exploit the region's enormous maritime potential»*.⁴

In his 2013 mission's report to the Human Rights Council⁵, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Mr. Juan E. Méndez) found that, in Western Sahara, torture and ill-treatment were used to extract confessions and that protestors were subjected to excessive use of force by Moroccan law-enforcement officials. The Special Rapporteur also noted the apparent absence of prompt and thorough investigations into all cases of torture and ill-treatment, prosecution of the perpetrators, and the provision of effective remedies and reparations, including rehabilitation services, for all

¹ UNGA resolution 34/37.

² Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 12.

³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Advisory Opinion, I.C.J. Reports 2004, p. 136.

⁴ <https://www.diplomatie.ma/en/his-majesty-king-delivers-speech-nation-45th-anniversary-green-march>.

⁵ A/HRC/22/53/Add.2.

victims of torture and ill-treatment. The same observations were confirmed by the UN Working Group on Arbitrary Detention (WGAD) following their country visit to both Morocco and Western Sahara in 2013⁶. In the report, the members of the WGAD noted that they had «*received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population*».

In its November 2016 decision⁷, the Committee Against Torture found that Ennaâma Asfari (condemned to 25 years imprisonment at the Gdeim Izik trial) was victim of torture and urged the Kingdom of Morocco to provide him with fair and adequate compensation, including the means for the fullest rehabilitation possible; to initiate a thorough and impartial investigation into the incidents in question and to refrain from any form of pressure, intimidation or reprisals likely to harm the physical and moral integrity of the complainant and his family.

Sadly, the Moroccan authorities have contested the Committee's decision and have not implemented its recommendations. On the contrary, Claude Mangin, Ennaâma Asfari's wife is considered as *persona non grata*, prevented from entering Moroccan territory and therefore to visit his husband.

The confessions signed under torture were again used as evidence against Asfari, being tried alongside the rest of the so-called Gdeim Izik prisoners. The trial held against the Gdeim Izik prisoners in 2016/2017 did not meet the minimum international standards of due process, leading the WGAD, the Special Rapporteur on Freedom of Expression, the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on the Independence of Judges and Lawyers and the Special Rapporteur on Torture to issue a joint communication raising serious concerns into the continued detention of the well-known Saharawi activists having been arrested, tortured and imprisoned in response to their freedom of expression and freedom of assembly in the Gdeim Izik camp.⁸

The Frente POLISARIO stresses that all the Sahrawi human rights defenders serving heavy sentences (including life imprisonment) have been condemned without any material evidence; all of them had to sign confessions under torture.⁹

Unfortunately a visit that was to be scheduled in 2019 by the Special Rapporteur on the independence of judges and lawyers (Mr. Diego García-Sayán) did not meet the necessary conditions. Mr. García-Sayán stated¹⁰ that «*The Government of Morocco has not been able to ensure a programme of work in accordance with the needs of the mandate and the terms of reference for country visits by special procedures*».

The Special Rapporteur on the situation of human rights defenders¹¹ (Mr. M. Forst) has also had the opportunity to express his concern about the arbitrary detention, torture and ill-treatment and lack of adequate medical care that led to the death of Mr. Hassanna al-Wali, a Saharawi human rights and political activist.

In 2017, Mr. Forst regretted that, at the time of finalizing his report¹², no replies had been received to the communications sent during the reporting period and encouraged the Moroccan authorities to respond to these communications.

On 1st July 2021, the Special Rapporteur on the situation of human rights defenders (Ms. M. Lawlor) issued a public statement¹³ calling the Moroccan authorities to stop targeting human rights defenders and journalists standing up for human rights issues related to Western Sahara, and allow them to work without reprisals.

⁶ A/HRC/27/48/Add.5, para 62-71.

⁷ CAT/C/59/D/606/2014.

⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23226>.

⁹ https://www.ohchr.org/Documents/Issues/Defenders/longterm-detention-defenders/Submissions/CSOs/36_nscws-aaj-lpspp-cso-en-morocco-y.pdf.

¹⁰ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24356&LangID=E>.

¹¹ A/HRC/28/63/Add.1.

¹² A/HRC/34/52/Add.1.

¹³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27244&LangID=E>.

Instead of engaging constructively with the Special Rapporteur, the Moroccan authorities¹⁴ categorically denied the allegations contained in the statement of the Special Rapporteur and warned her that the «*so-called associations for the liberation of colonialism or political activists whose action you consider peaceful, benefits the separatists, and strengthens them in their continuous provocations, for the sole purpose of making propaganda and harassment, including vis-à-vis a number of special procedures, including yours*».

In recent times, the WGAD has issued a number of Opinions¹⁵ concerning Saharawi activists, stressing that their detention is directly linked to their political activities in favor of the free exercise of the right of self-determination of the Saharawi people and therefore that their detention violates international law. The decisions rendered by UN WGAD confirm that the practice of arbitrary detention of Saharawi activists in response to their support for the right to self-determination constitutes racial discrimination, breaching the equality of human rights.

The opinions of UN WGAD establish a systematic pattern of the arbitrary arrest of Saharawi activists without a legal basis, practice of torture and confessions signed under torture, and the subsequent usage of confessions as *prima facie* evidence against Saharawi activists. In the latest decision rendered, the UN WGAD confirmed that the Moroccan judiciary had not been independent and impartial when trying the case of well-known Saharawi journalist Walid Salek Batal, with the court failing to respond to serious torture allegations having been raised in all successive proceedings with the usage of confessions signed under torture as main piece of criminal evidence¹⁶.

Instead of implementing the recommendations made by the Working Group, the Kingdom of Morocco continues to imprison the Saharawi human rights defenders, students and journalists until they have served their full sentence. Compounding the lack of implementation of opinions rendered by the WGAD is reports of acts of reprisals against the victims having brought their case to the international level, in lack of effective national mechanisms¹⁷.

On 7 January 2021, the Special Rapporteur on the situation of human rights defenders, the Working Group on Arbitrary Detention (WGAD), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a joint communication to the Moroccan authorities concerning threats, acts of surveillance, arbitrary detention, ill-treatment in detention, and serious violations of the right to health of eight human rights defenders documenting the situation in Western Sahara¹⁸.

In its 27 January 2021 replay¹⁹, the Moroccan authorities considered that the vocabulary and terminology contained in the text did not respect total neutrality and impartiality. Furthermore, the Moroccan authorities pressured the WGAD to reconsider its spirit of constructive cooperation, accusing the WGAD of intervening «*directly in the political field, setting itself as a defender of people "who militate for the self-determination of the population of Western Sahara"* ».

As stated by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Mr. N. Melzer) in his last report to the Human Rights Council²⁰ «*...some official statements or communications transmitted or attached by the Special Rapporteur have received aggressive responses. The States concerned not only rejected the*

¹⁴ <https://www.maroc.ma/en/news/hrc-moroccos-ambassador-geneva-denies-allegations-special-rapporteurs-statement>.

¹⁵ Reference is made to Opinion no. 11/2017 concerning Salah Eddin Bassir, Opinion No. 31/2018 concerning Mohamed Al-Bambary, Opinion No. 58/2018 concerning Ahmed Aliouat, Opinion No. 60/2018 concerning Mbarek Daoudi, Opinion No. 23/2019 concerning Laaroussi Ndour, Opinion No. 67/2019 concerning the Student Group, Opinion No. 52/2020 concerning Ali Saadouni and latest in Opinion No. 68/2020 concerning Walid Salek El Batal.

¹⁶ https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_68.pdf.

¹⁷ A/HRC/45/16.

¹⁸ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25731>.

¹⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35929>.

²⁰ A/HRC/46/26.

allegations of human rights violations, but also accused the relevant mandate holders of “bias”, “inflammatory remarks”, “political motivation”, “violations of the Charter of the United Nations” or “interference with national sovereignty”. Instead of addressing the allegations, they accuse or denigrate mandate holders...».

The Frente POLISARIO deeply regrets that the Kingdom of Morocco does not respect international law, including international humanitarian law and international human rights law, with regard to the internationally recognized legal status of the Non Self-Governing Territory of Western Sahara and the people originating from the Territory.

The Frente POLISARIO also deeply regrets that the Kingdom of Morocco does not seem to be willing to cooperate constructively with the UN human rights mechanisms in ensuring the full enjoyment of all human rights to the people of Western Sahara, including their right to self-determination and independence.

The Frente POLISARIO reaffirms the responsibility of the United Nations, in accordance with resolution 1514 (XV), to assist in the process of decolonization of Western Sahara and to ensure to the people of Western Sahara the free exercise of the right of self-determination and independence.

The Frente POLISARIO, while recalling that respect for the right to self-determination is an obligation *erga omnes* and that all Member States are under an obligation to cooperate with the United Nations in order to complete the decolonization of Western Sahara, calls upon all Member States to cooperate with the United Nations to ensure the completion of the decolonization of Western Sahara as rapidly as possible, and to refrain from any action that will impede or delay the completion of the process of decolonization of Western Sahara in accordance with the 1975 Advisory opinion of the International Court of Justice.

The Frente POLISARIO calls upon the Kingdom of Morocco to comply with its obligation to respect the right to self-determination and independence and its obligations under international humanitarian law and international human rights law in the Non Self-Governing Territory of Western Sahara it occupies.

The Frente POLISARIO calls upon the High-Commissioner for Human Rights to resume the technical missions initiated in 2015 and to urgently dispatch an observation mission in the occupied Self-Governing Territory of Western Sahara and to report at the 49th session of the Human Rights Council.

The Frente POLISARIO calls upon all relevant Special procedures mandate holders of the Human Rights Council, each one in the framework of his/her mandate, to pay a special attention to the human rights violations committed by the Kingdom of Morocco in the Non Self-Governing Territory of Western Sahara it occupies.

The Frente POLISARIO calls upon the members of the Human Rights Council to create a mandate of Special Rapporteur on the situation of human rights in the Occupied Non-Self-Governing Territory of Western Sahara.

The Frente POLISARIO calls upon the UN Secretary-General to duly reflect in his report to the Security Council the extent of the violations of international humanitarian law and international human rights law committed by the Kingdom of Morocco in the occupied Non-Self-Governing Territory of Western Sahara.

I would be most grateful if you would bring the present letter to the attention of the members of the Human Rights Council.

Geneva, 7 July 2021

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and other international organisations in Switzerland