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Human rights situations that require the Council's attention

Note verbale dated 19 June 2023 from the Permanent Mission of Zimbabwe to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and other international organizations in Geneva, in its capacity as the current Chair of the Geneva Support Group of Western Sahara, hereby draws the attention of the Office of the President of the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights to the attached communication from Frente POLISARIO pertaining to the effective implementation of the judgment of the African Court on Human and Peoples' Rights of 22 September 2022 (see annex).

The Permanent Mission requests that the present note verbale and the annex thereto* be issued as a document of the Human Rights Council and circulated to all members of the Council under agenda item 4.

* Reproduced as received, in the language of submission only.



Annex to the note verbale dated 19 June 2023 from the Permanent Mission of Zimbabwe to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

Introduction

In December 1963, the UN General Assembly included Western Sahara¹ in the list of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in UNGA resolution 1514 (XV)², paving the way for a peaceful decolonization process of the Territory.

In 1966, the UN General Assembly adopted resolution 2229 (XXI), Inviting “the administering Power [Spain] to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara, the procedures for the holding of a referendum under United Nations auspices ...”

In October 1975, Moroccan military occupation forces entered the Non-Self-Governing Territory of Western Sahara. On 6 November of the same year, the UN Security Council deplored the invasion and called for a complete withdrawal of occupation forces from the Territory.

It is worth remembering that in its 1975 Advisory Opinion³, the International Court of Justice concluded that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the occupying power and that it did not find 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.

In November 1979, the UN General Assembly in adopting Resolution 34/37 deeply deplored the aggravation of the situation resulting from the continued occupation of Western Sahara and recognized the Frente POLISARIO as the representative of the people of Western Sahara.

The Frente POLISARIO draws the attention of the members of the Human Rights Council to the fact that today, out of the 17 Non-Self-Governing Territories listed by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Western Sahara is the only one that has not an internationally recognized acting administering Power and the only one that is under foreign illegal military occupation.

The Frente POLISARIO also recalls that Article 3 of the African Union Constitutive Act provides that, inter alia, the objectives of the Union shall be to defend the sovereignty, territorial integrity and independence of its Member States, as well as, to promote peace, security, and stability on the continent and to promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instrument.

The Frente POLISARIO also stresses that paragraph 2 of Article 20 of the Charter provides that *«Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community. » and that paragraph 3 of the same Article provides that « All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination...».*

¹ The Territory was called Spanish Sahara until Spain retired from the Territory in February 1976.

² UN General Assembly 1956(XVIII).

³ Western Sahara, Advisory Opinion, I.C.J. Reports 1975.

The Frente POLISARIO also recalls that Article 4 of the African Union Constitutive Act provides that the Union shall function in accordance with a number of principles, including, inter alia: the respect of borders existing on achievement of independence⁴ and the prohibition of the use of force or threat to use force among Member States of the Union.

The African Court Judgment of 22 September 2022

A case was brought before the Court in relation to alleged violations of the human rights of the Sahrawi people as a result of the erosion of the sovereignty, territorial integrity and independence of Western Sahara, due to the continued occupation of its territory. The Applicant (a Ghanaian national) further alleged that the occupied part of Western Sahara harbours one of the world's richest fishery stocks as well as abundant phosphate and oil reserves which the occupier has been exploiting without the consent of the Saharawi people.

From the outset, the African Court observed that «...in international law, the right to self-determination has achieved the status of *jus cogens* or a peremptory norm; thereby, generating the corollary obligation *erga omnes* on all States. As such, no derogation is permitted from the right and "all States have a legal interest in protecting that right"⁵. Where a peremptory norm is breached, States are also under an obligation not to recognize the illegal situation resulting from such breach and not to render aid or assistance in maintaining the situation⁶. »

The Court noted that the violations of several rights of the Sahrawi people were alleged, including the right to non-discrimination, the right to a fair trial, the right to participation in political activities of one's own country; the right to equality of all peoples, the right to self-determination; the right to dispose of natural resources, the right to development, the right to peace and the right to satisfactory environment.

The Court considered that the case was linked to the right to self-determination, particularly, the right of the Sahrawi people to obtain assistance in their struggle for freedom from foreign occupation and that although the other rights are autonomous by their nature, their violation in the instant case basically flows from the alleged denial of the right to self-determination of the people of Western Sahara.

Furthermore, the Court highlighted that «*It is the occupation of the SADR and the deprivation of its people of their right to self-determination that have occasioned and facilitated the alleged violations of their other rights, including their right to development, right to disposal of their natural resources, their right to peace and to non-discrimination.*»

The Court also highlighted that «*the Charter weaves the right to self-determination into the right to existence of peoples, something that denotes a wholesale entitlement or right to survival as people. The Charter further explicitly embodies the right of colonized or oppressed peoples to free themselves from the bonds of domination.*»

«*Furthermore, the Court recalls that the obligations resulting from the right to self-determination are owed by States not only towards those who are under their jurisdiction but also to all other peoples who are not able to exercise or have been deprived of their right to*

⁴ The southern and eastern boundaries with the Islamic Republic of Mauritania were established by the "Convention pour la délimitation des possessions françaises et espagnoles dans l'Afrique occidentale, sur la côte du Sahara et sur la côte du Golfe de Guinée", signed in Paris on 27 June 1900. The Northern boundary of Western Sahara with the territory of the Kingdom of Morocco was delimited by two conventions, the Paris Convention signed on 3 October 1904, and the Madrid Convention signed on 27 November 1912. Its delimitation has been slightly corrected by the Madrid Convention signed on 19 December 1956.

⁵ Footnote no. 64 of the African Court judgment: ICJ, Advisory Opinion on Chagos Archipelago" (2019), § 180; see also Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, ICJ Reports 1970, § 33; East Timor (Portugal v. Australia) case, ICJ Reports 1995, p. 102, § 29.

⁶ Footnote no. 65 of the African Court judgment: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion of 9 July 2004, § 163.

*self-determination*⁷. In line with this, Article 20 of the Charter confers the right to get assistance on “all peoples” without geographical or temporal limitations.»

In analysing the status of the People of SADR and their right to self-determination, the African Court noted that «both the UN and the AU recognise the situation of SADR as one of occupation and consider its territory as one of those territories whose decolonization process is not yet fully complete» and recalled that «although the occupying power has always laid claim to the territory it occupies, its assertion has never been accepted by the international community.»

Finally, the Court stressed that «the continued occupation of the SADR is incompatible with the right to self-determination of the people of SADR».

In recalling the dispositions of common Article 1 of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights, as well as General Comment no. 12 of the Human Rights Committee, the Frente POLISARIO calls upon the UN Human Rights Council to avoid application of double standards in the implementation of Human Rights Law and UN General Assembly’s resolutions.

The Frente POLISARIO calls upon the Human Rights Council to create a mandate of Special Rapporteur on the situation of human rights in the Non-Self-Governing Territory of Western Sahara occupied since 1975.

The Frente POLISARIO calls upon the High Commissioner for Human Rights to urgently dispatch an information mission to the occupied Non-Self-Governing Territory of Western Sahara.

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and other International Organisations in Geneva

⁷ Footnote no. 66 of the African Court judgment: Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion of 9 July 2004, § 163.