

**Geneva Support Group for the Protection and Promotion
of Human Rights in Western Sahara**
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SENEGAL

**Violation of the right to
self-determination**

(Common art. 1 ICCPR and ICESCR)

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Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara

The Geneva Support Group is a platform that was created in September 2017 at the request of the Saharawi human rights defenders present at the 36th session of the Human Rights Council. Today the Group counts with more than 300 member-organisations from around the world.

As its name explicitly indicates, the aim of the coalition is to advocate for the protection and promotion of human rights in the Non-Self-Governing Territory of Western Sahara, with a particular attention to the part of the territory illegally occupied and illegally annexed by the Kingdom of Morocco.

The Geneva Support Group also pays a particular attention to the systematic violations of International Humanitarian Law norms and human rights law in the occupied Western Sahara, notably the right to self-determination, the free exercise of which is the precondition to the enjoyment of all fundamental freedoms and rights.

Finally, the Geneva Support Group also pay a particular attention to policies implemented by third countries towards the occupied Non-Self-Governing Territory of Western Sahara, notably when those policies weaken or prevent the free exercise of the right to self-determination by the Saharawi people.

A. The right to self-determination

1. The right to self-determination is enshrined in article 1 of the UN Charter.
2. It took on a particular value in reference to colonial countries and peoples in December 1960 with the adoption by the UN General Assembly of resolution 1514 (XV) entitled "Declaration of the Granting of Independence to colonial peoples and countries", which states in its Operative par. 1 that "*The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights*".
3. Operative par. 4 stresses that "*All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence and the integrity of their national territory shall be respected.*"
4. Operative par. 7 underscores that "*All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.*"
5. In December 1962, in adopting resolution 1803 (XVII), entitled "Permanent sovereignty over natural resources" the UN General Assembly declared that "*The exploration, development and disposition of such resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities*".
6. Furthermore, the General Assembly declared that "*Violation of the rights of peoples and nations to sovereignty over their natural wealth and resources is contrary to the spirit and principles of the Charter of the United Nations*".
7. Subsequently, the right to self-determination was consecrated in common Article 1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) and of the International Covenant on Civil and Political Rights (ICCPR) adopted in December 1966 and entered into force, respectively, in January and March 1976.
8. First paragraph of article 1 reads: "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."
9. While paragraph 3 of article 1 reads: "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."

10. The principle of equal rights and self-determination of peoples, included in UN General Assembly resolution 2625 (XXV), adopted in October 1970, states that *"Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned."*
11. Furthermore, the same principle entails that *"The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."*
12. In its annually adopted resolution, entitled "Universal realization of the rights of peoples to self –determination", the UN General Assembly *"reaffirms that the universal realization of the right of all peoples, including those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights."*
13. The UN General Assembly also *"requests the Human Rights Council to continue to give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation."*

B. General comment No. 12 of the Human Rights Committee on the Right to self-determination (21st session – 1984)

14. Follows here below some abstracts of General comment No. 12 that are relevant to the violation of common Article 1 of the ICCPR and of the ICESCR by Senegal:

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.

Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2.

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... This right entails corresponding duties for all States and the international community.

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Paragraph 3, in the Committee's opinion, is particularly important in that it imposes specific obligations on States parties, not only in relation to their own peoples but vis-à-vis all peoples which have not been able to exercise or have been deprived of the possibility of exercising their right to self-determination.

The obligations exist irrespective of whether a people entitled to self-determination depend on a State party to the Covenant or not. It follows that all States parties to the Covenant should take positive action to facilitate realization of and respect for the right of peoples to self-determination.

C. The right to self-determination of the Saharawi people

15. In 1963, the UN General Assembly approved¹ the report presented 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 and thereafter included Western Sahara in the list of Non Self-Governing Territories paving the way for the People originating from the Territory to freely exercise their inalienable Right to Self-determination, in accordance with UN General Assembly 1514 (XV), entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples".
16. On 24 October 1970, the UN General Assembly adopted resolution 2625 (XXV), entitled "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". Among those principles, the Principle of equal rights and self-determination of peoples establishes, *inter alia*, that «*The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering² it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.*»
17. On 16 October 1975, the International Court of Justice (ICJ) released its Advisory Opinion³ determining that the materials and information presented to the Court do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco. The very same day, King Hassan II of Morocco announced the launching of the Green March in order "to recover the integrity of the Kingdom's territory", thus disregarding the conclusions of the ICJ.

¹ UN General Assembly resolution 1956 (XVIII)

² Not mentioning an occupying State

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

18. On 6 November 1975, the Moroccan army opened the way to the Moroccan population for the occupation of Western Sahara.

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19. In adopting resolution 34/37 (21.11.1979) the UN General Assembly urged Morocco to terminate the occupation of the Territory of Western Sahara. The following year, the UN General Assembly expressed its deep concern at the aggravation of the situation derived from the continued occupation of Western Sahara by Morocco (resolution 35/19 – 11.11.1980).
20. In 1991, after 15 years of war between the Polisario Front and the Kingdom of Morocco, the parties agreed on a cease-fire and the holding of a referendum. Thereafter, the UN Security Council approved the creation of the UN Mission for the Referendum in Western Sahara (MINURSO).
21. Since that time, the Kingdom of Morocco has spared no effort to impede the holding of a free referendum of self-determination in Western Sahara.

D. The Constitutive Act of the African Union

22. The Saharawi Democratic Republic, proclaimed on 27 February 1976, is a founding member of the African Union.
23. Article 3 letter (b) of the Constitutive Act, states that one of the objectives of the Union is to defend the sovereignty, territorial integrity and independence of its Member States.
24. Article 3 letter (f) of the Constitutive Act, states that another objective of the Union is to promote peace, security and stability on the continent.
25. Article 3 letter (h) of the Constitutive Act, states that another objective of the Union is to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.
26. Article 4 letter (b) of the Constitutive Act, states that one of the principles of the Union is the respect of the borders existing on achievement of independence.⁴
27. Article 4 letter (f) of the Constitutive Act, states that another principle of the Union is the prohibition of the use of force among Member States of the Union.
28. Article 4 letter (i) of the Constitutive Act, states that another principle of the Union is the peaceful co-existence of member States and their right to live in peace and security.

⁴ The Saharawi Arab Democratic Republic's 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.

E. The African Court on Human and Peoples' Rights

29. In its 22 September 2022 judgment, the Court underlined 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 self-determination.
30. Article 20 of the Charter confers the right to get assistance from "all peoples" without geographical or temporal limitations.
31. The Court also observed that the right to self-determination is essentially related to peoples' right to ownership over a particular territory and their political status over that territory and it indicated that both the United Nations and the African Union recognise the situation of Saharawi Arab Democratic Republic (SADR) as one of occupation.
32. Furthermore, the Court stressed that the continued occupation of the SADR by Morocco is incompatible with the right to self-determination of the people of SADR as enshrined in Article 20 of the African Charter on Human and Peoples' Rights.
33. The Court reiterated that the right to self-determination under Article 20 of the Charter imposes an international obligation on all State Parties to take positive measures to ensure the realisation of the right, including by giving assistance to oppressed peoples in their struggle for freedom and refraining from engaging in actions that are incompatible with the nature or full enjoyment of the right.
34. The Court reiterated that all Member States of the African Union have the responsibility under international law, to ensure the enjoyment of the right to self-determination of the people of Western Sahara and not to do anything that would give recognition to the Moroccan occupation as lawful or impede their enjoyment of this right.

F. Senegal violations of right to self-determination of the Saharawi people and of its permanent sovereignty over their natural resources

35. On 5th April 2021, Senegal announced the opening of a Consulate in Dakhla – Villa Cisneros, in the occupied Non-Self-Governing Territory of Western Sahara.
36. In doing so, Senegal violates the fundamental norms of Consular Law, as well as the Constitutive Act of the African Union and recognizes as lawful the illegal military occupation of the Non-Self-Governing Territory of Western Sahara by the Kingdom of Morocco.

37. Furthermore, being part of the so-called «Group of support of the Territorial Integrity of the Kingdom of Morocco» in the Human Rights Council, pretending that the occupied Non-Self-Governing Territory of Western Sahara is part of the Kingdom of Morocco, Senegal violates article 1 of the two main Covenants.
38. Moreover, Senegal violates the fundamental right to self-determination of the Saharawi people and its permanent sovereignty over their natural resources.

G. Conclusion and recommendations

39. The Geneva Support Group for the Protection and Promotion of the Human Rights in Western Sahara deeply deplores the decision of Senegal to open a consulate in the Non-Self-Governing Territory of Western Sahara, while the Territory is under illegal military occupation by the Kingdom of Morocco and to join the so-called «Group of support of the Territorial Integrity of the Kingdom of Morocco» in the Human Rights Council.
40. The Geneva Support Group for the Protection and Promotion of the Human Rights in Western Sahara calls upon Senegal to:
 - abide to all international obligations related to the peoples' right to self-determination;
 - implement without delay common Article 1 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) and of the International Covenant on Civil and Political Rights;
 - immediately declare null and void its opening of a Consulate in the Non-Self-Governing Territory of Western Sahara;
 - dissociate itself from the so-called «Group of support of the Territorial Integrity of the Kingdom of Morocco»;
 - take positive measures to ensure the realisation of the right to self-determination of the Saharawi people;
 - take positive steps in ensuring the implementation of an independent and impartial mechanism of observation of the Human Rights and International Humanitarian Law violations in the Non-Self-Governing Territory of Western Sahara.
