



# General Assembly

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**Joint written statement\* submitted by the World Federation of Democratic Youth (WFDY), a non-governmental organization in general consultative status, the American Association of Jurists (AAJ), France Libertés: Fondation Danielle Mitterrand, non-governmental organizations in special consultative status, the Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), non-governmental organizations 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.

[22 August 2012]

## **The Kingdom of Morocco must account for the human rights situation in Western Sahara, a non-self-governing territory under its de facto occupation\*\***

The Report of the Working Group on the Universal Periodic Review of Morocco submitted to the 21st session of the Council enumerates the member States' recommendations accepted by the Kingdom of Morocco, as well as others declared already implemented or about to be. Our organisations congratulate the Kingdom of Morocco for having declared in many occasions "its commitment to continuing its cooperation with the United Nations human rights system, and openness to constructive dialogue and interaction with all its mechanisms, especially the Human Rights Council, its treaty bodies and special procedures".

Within this spirit of cooperation and constructive dialogue, our organisations would nevertheless like to draw attention to a number of deficiencies and sources of concern regarding the juridical situation of Western Sahara which was not properly and correctly dealt with in the Moroccan report.

The first remark concerns the fact that the Kingdom of Morocco seems to be unwilling to recognise the nature of the juridical status of Western Sahara: a territory on which the Kingdom has no legal sovereignty. In the report submitted by the Kingdom of Morocco, Western Sahara is presented as part of the Moroccan own recognised territory, more specifically when it declares that the new Constitution: "provided for advanced regionalization, starting with the Southern Provinces, allowing the local population to manage their own affairs and enhance local democracy, as a prelude to the implementation of the autonomy statute proposed by Morocco as a political solution to the Sahara dispute".

Legally speaking, Western Sahara is not "the Southern Provinces" of Morocco and is instead still on the UN list of Non-Self-Governing territories pending a decolonisation process. Actually Western Sahara finds itself under Moroccan de facto occupation. As pointed out by the Mr. Hans Corell, Under Secretary General for Legal Affairs (Legal Counsel), in his letter addressed to the President of the Security Council<sup>1</sup> referring to the Status of Western Sahara under Moroccan administration: "The Madrid Agreement<sup>2</sup> did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory."

The legal Counsel even stated in the same document that "In recognizing the inalienable rights of the peoples of Non-Self-Governing Territories to the natural resources in their territories, the General Assembly has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the

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\*\* NGOs without consultative status, also share the views expressed in this statement: International Bureau for Human Rights in Western Sahara (BIRDHSO), Union of Saharawi Journalists and Writers (UPES), Association of Saharawi Families of Prisoners and Disappeared (AFAPREDESA), General Workers Union of Saguia El Hamra et Rio de Oro (UGSARIO), Union of Saharawi Jurists (UJS), Union of Saharawi Women (UNMS), Union of Saharawi Youth (UJSARIO).

<sup>1</sup> S/2202/161 par. 6 and 7.

<sup>2</sup> Declaration of principles on Western Sahara signed in Madrid, on 14 November 1975, by Spain, Morocco and Mauritania.

interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources.”<sup>3</sup>

The very scope for the creation by the Security Council<sup>4</sup> in 1990 of the United Nations Mission for the Referendum in Western Sahara (MINURSO) is the organisation of a self-determination referendum for the people of Western Sahara, who are the only sovereign owner of their land and natural resources.

Consequently, the Kingdom of Morocco, through internal constitutional or legislative reforms, cannot impose to the Sahrawi people any fundamental change of Status of the Non-Self-Governing Territory that may hinder the exercise of their inalienable right to self-determination nor has it the right to impose any kind of regionalization or autonomy on this colony pending the Sahrawi people choose freely and democratically, under the auspices of the UN, the political status of the Non-Self-Governing Territory.

In this respect, our organisations find it mandatory to refer to Chapter XI of the UN Charter (Articles 73 and 74), and the International Court of Justice legal opinion of 1975<sup>5</sup> which confirmed the applicability of the United Nations General Assembly’s Resolution 1514 of 14 December 1960, titled "Declaration on the Granting of Independence to Colonial Countries and Peoples" on Western Sahara.

The World Conference on Human Rights in adopting the Vienna Declaration and Programme of action<sup>6</sup> stressed, in article 2, that: “The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.”

We firmly believe the Kingdom of Morocco should explicitly recognise the reality of the juridical status of Western Sahara and refer to it in such terms in all communications and documents submitted to any UN body. Moreover, the Kingdom of Morocco should be held accountable for any human rights violations committed by its forces or security services in that non self-governing territory as long as it is under its de facto occupation. It is unacceptable to turn a blind eye to any State’s attempt to change or use confusing terminology when dealing with the political and legal status of a territory under its control, especially in the case of a Non-Self-Governing territory whose people is not represented in this Council to defend their own rights.

This leads us to mention the issue of the dire situation of human rights defenders in what can be considered the last colony in Africa.

The Kingdom of Morocco accepted the recommendation to “take measures to protect human rights defenders, particularly in the Western Sahara, against harassment, repression, arrest or detention, including by granting an official accreditation to the associations working in this field”. It further declared that this recommendation is already under implementation. Our organisations would like to point out that this assertion is simply not correct.

There are at least 22 Saharawi human rights defenders detained since 2010 and still waiting for trial in the Sale2 prison and others detained following the violent attacks against Saharawi civilians in Dakhla city in November 2011. 7 other eminent Saharawi human rights defenders were detained for 18 months starting from 2009, and were conditionally released without trial. In general, there are now 68 Saharawi political prisoners in

<sup>3</sup> S/2002/161 par. 22.

<sup>4</sup> Security Council Resolution 658 (27 June 1990).

<sup>5</sup> Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.12.

<sup>6</sup> A/CONF.157/23.

Moroccan prisons all of whom were detained during peaceful demonstrations or because they were accused of participating in such demonstrations. Yet, in all cases the Moroccan justice accuses them of criminal acts so as to put them in jail.

In addition the Moroccan authorities in El Aaiun, the occupied capital of Western Sahara, refused to give legal registration to the Saharawi Association of the Victims of Gross Human Rights Violations Committed by the Moroccan State (ASVDH) though this association has a court decision to operate. Another Saharawi human rights organisation, the Collectif of the Saharawi Human Rights Defenders (CODESA) was not allowed to hold its constituting Assembly in 2007, and is still considered illegal by Morocco as all the Saharawi associations that advocate or defend the rights of the people of Western Sahara, notably the right to self-determination.

Finally, the Kingdom of Morocco stated that “Human rights are the backbone of the new Constitution. They appear in all its chapters, including its preamble, which is an integral part thereof. The new Constitution enshrines the concept of participatory democracy, through the broadened pluralist and citizenship participation in political life and in the management of public affairs”. But it seems that even the new Constitution falls short to guarantee anything when it comes to the human rights situation in Western Sahara, where human right abuses and violations continue unabated against the Sahrawi population just because they are Sahrawi advocating for their very fundamental rights.

Our organisations also believe that as long as Western Sahara remains on the list of the Special Committee on Decolonisation, the United Nations must assume its responsibility in the monitoring and protection of the Saharawi people’s fundamental human rights. The Kingdom of Morocco seems to be unwilling to recognise the past and present abuses perpetrated by its authorities against the colonised Sahrawi people and truly punish them.

We therefore call upon the Human Rights Council and all UN relevant bodies to urgently take measures so as to investigate the Moroccan abuses in Western Sahara as well as to monitor and protect human rights in this last colony in Africa.

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