

**NGOs Geneva Support Group for the Protection and Promotion
of Human Rights in Western Sahara
(NGOs-GSGPPHRWS)**

**Open Letter to the Secretary General and the Member States
of the United Nations**

Geneva, 14th November 2018

The NGOs Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara (175 member-organisations) welcomes the initiative of the Secretary General's Personal Envoy for Western Sahara, H.E. Mr. Horst Köhler, and supports Him in his efforts to hold a negotiations' table with the Kingdom of Morocco and the Polisario Front, the two parties to the conflict in Western Sahara that lasts since 1975.

The NGOs Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara also welcomes the fact that the two neighbouring countries, Algeria and Mauritania, in their capacity as observers, will attend these negotiations, insofar as they can support the peaceful process of conflict resolution.

The NGOs-GSGPPHRWS expresses its concern about some concept inserted in the Security Council's resolutions of 2018 concerning the conflict in Western Sahara (S/RES/2414 and S/RES/2440) and deems necessary to recall some fundamental principles of international law and decisions taken by different organs of the United Nations and the African Union.

The international legal status of Western Sahara

On 11 December 1963, in adopting resolution 1956 (XVIII), the UN General Assembly (UNGA) integrated Spanish Sahara to the list of Non Self-Governing Territories (NSGT). The UN General Assembly subsequently invited the Administering Power (Spain) to determine at the earliest possible date the procedures for the holding of a referendum with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination (UNGA Res. 2229 – XXI).

Since its inclusion in the list of the NSGT, Western Sahara is under the scrutiny of the UN 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).

On 26 February 1976, Spain informed the UN Secretary General that as of that day it had terminated its presence in Spanish Sahara and relinquished its responsibility over the Territory. Subsequently, the United Nations referred to the NSGT as Western Sahara, which became, and still is today, the only NSGT that has not an internationally recognized Administering Power.

Since November 1975, Western Sahara is also the only NSGT under illegal military occupation.

The international legal status of the Kingdom of Morocco in Western Sahara

On 16 October 1975, the International Court of Justice (ICJ) released its Advisory Opinion 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.

On 6 November 1975, the Kingdom of Morocco invaded Western Sahara militarily and organized a transfer of thousands of Moroccan people into the Non-Self-Governing Territory. The same day, the UN Security Council adopted resolution 380, deploring the holding of the march and calling upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants to the march.

Later on, the Kingdom of Morocco, while maintaining heavy military forces and financially supporting the transfer of an increasing number of Moroccan civil settlers, has illegally annexed the majority of Western Sahara and illegally organizes legislative election of representatives of / from Western Sahara to its national Parliament.

Throughout the years, the Kingdom of Morocco has shown no will to end the occupation of Western Sahara and has put in place the infrastructure to illegally plunder the natural resources of the Non-Self-Governing Territory with the complicity of third countries and private companies, some of which belong to the Moroccan Royal family.

The breach of four general principles of international law (non-annexation / non permanent or indefinite occupation / preservation of the interests of the people under occupation / administration of the occupied territory in good faith) leads to the conclusion that the occupation of Western Sahara by the Kingdom of Morocco is illegal.

The Principle of Bona fides in International Law

For many years, the UN Security Council is calling upon the parties to resume negotiations under the auspices of the Secretary-General without preconditions and in good faith.

Good faith is a central principle of public international law which has been included in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations adopted by the UN General Assembly in October 1970 (resolution 2625 – XXV).

In view of the content of the King of Morocco's annual speeches delivered on 6 November commemorating the launch of the Green march in Western Sahara, it is hardly difficult to believe that the Kingdom of Morocco is engaging in negotiations without preconditions and in good faith.

Although the Kingdom of Morocco accepted the Settlement Plan presented by the UN Secretary General in August 1988, as well as the Houston Agreements in September 1997 and the Peace Plan for Self-determination for the People of Western Sahara (Baker Plan) that the UN Security Council defined as the "optimum political solution" (S/RES/1495), it has spared no efforts in order to prevent the process from being finalized.

Recent declarations of the Permanent Representative of the Kingdom of Morocco to the UN in New York concerning the fundamental mandate of the MINURSO and the withdrawal of Western Sahara from the list of Non Self-Governing Territories also seriously challenge the good faith with which the Kingdom engages in negotiations.

Furthermore, since the Kingdom of Morocco has joined the African Union in January 2017, it has spared no efforts to gain the suspension or the eviction of the Sahrawi Arab Democratic Republic from the Union, in contradiction with articles 3(b), 4(a), 4(b) and 4(f) of the African Union Constitutive Act.

The UN and its Member States responsibilities

Since February 1976, Western Sahara has not an internationally recognized Administering Power, therefore no one present an annual report in accordance with article 73 of the UN Charter. Considering also that Western Sahara is the only NSGT under foreign occupation, the United Nations bear a primary responsibility over the Territory and the UN Secretary General should provide this kind of report.

In its annually adopted by consensus resolution on the "Question of Western Sahara" (last one A/RES/72/95 of 7 Dec. 2017) the UNGA reaffirms the responsibility of the United Nations towards the people of Western Sahara.

In its annually adopted by consensus resolution on "Support to Non-Self-Governing Territories by the specialized agencies and international institutions associated with the United Nations" (last one E/RES/2018/18) the UN Economic and Social Council reaffirms that the recognition by the General Assembly, the Security Council and other United Nations organs of the legitimacy of the aspirations of the peoples of the Non Self-Governing Territories to exercise their right to self-determination entails, as a corollary, the extension of all appropriate assistance to those peoples. The UN Economic and Social Council also urges those specialized agencies and organizations of the United Nations system that have not yet provided assistance to Non Self-Governing Territories to do so as soon as possible.

Regrettably no such programmes has been implemented in Western Sahara (both sides of the Berm and in the refugees' camps), notably by the Office of the High-Commissioner for Human Rights.

In its annually adopted by consensus resolution on "Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories" (last one A/RES/72/92 of 7 Dec. 2017) the UNGA reaffirms its concern about any activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the Non-Self-Governing Territories and invites all Governments and organizations of the United Nations system to take all possible measures to ensure that the permanent sovereignty of the peoples of the Non-Self-Governing Territories over their natural resources is fully respected and safeguarded.

The inalienable right of the Sahrawi people to self-determination

In its annually adopted by consensus resolution on "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" (last one A/RES/72/111 of 7 Dec. 2017), the UNGA affirms its support for the aspirations of the peoples under colonial rule to exercise their right to self-determination, including independence.

In its annually adopted by consensus resolution on the "Question of Western Sahara" (last one A/RES/72/95 of 7 Dec. 2017) the UNGA reaffirms the inalienable right of all peoples to self-determination and independence as well as the responsibility of the United Nations towards the people of Western Sahara.

Conclusion and recommendations

After 43 years of illegal military occupation that has led to a number of gross violations of human rights as well as serious and continuous violations of the Fourth Geneva Convention of 1949 and 30 years after the acceptance by the two parties of the Settlement Plan proposed by the UN Secretary-General, the time has come for the UN and its member States to fully assume their responsibility towards the people of Western Sahara in accordance with International Law, the UN Charter and the resolutions adopted by different organs in relation to Non Self-Governing Territories and, in particular, to Western Sahara.

In this context, by no means may the presence of Sahrawi people and its legal representative, the Polisario Front, in Western Sahara be considered as destabilizing actions; indeed it is the illegal military occupation that has to cease.

The mandate of each National Human Rights Institution is limited to the territory of its own country; therefore the Security Council cannot welcome the role played by the Moroccan National Council on Human Rights Commissions operating in Dakhla and Laayoune, which only be considered as political instruments of the Occupying Power.

Considering the large number of gross violations of human rights as well as the serious and continuous violations of the Fourth Geneva Convention of 1949 committed by the Occupying Power, the Kingdom of Morocco, in the occupied part of Western Sahara, as well as the continuous and serious violations of the fundamental rights of the Sahrawi refugees as a direct consequence of 43 years of illegal military occupation of their Territory, the following measures should be taken in a confidence building process:

- the inclusion of a Human Rights Monitoring chapter in the MINURSO mandate in order to develop and implement independent and credible measures to ensure full respect for human rights;
- the periodic dispatching of a technical mission by the UN Office of the High-Commissioner for Human Rights to Western Sahara (both sides of the Berm) and to the refugees' camps;
- the implementation by the UN Office of the High-Commissioner for Human Rights of a specific programme of Technical cooperation and capacity building with the Polisario Front.

In conformity with International Law, the UN Charter and the resolutions adopted by different organs of the UN in relation to Non Self-Governing Territories a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara has to lead to the holding of a referendum with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination: there are no possibilities, for such a referendum, to exclude the option of independence.

Signatories

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Sun, Comité de Protección de los Recursos Naturales, Comité Saharaui de Defensa de Derechos Humanos (Glaimim), Comité Saharaui de Defensa de Derechos Humanos (Smara), Comité Saharaui de Defensa de Derechos Humanos (Zag), Comité Saharaui por el Monitoreo de los Derechos Humanos (Assa), Comité de Solidaridad Oscar Romero, Comité Suisse de soutien au Peuple Sahraoui, Comité de Víctimas de Agdaz y Magouna, Comunidad Saharaui en Aragón, Comunidad Saharaui en Castilla y León, Comunidad Saharaui en Castilla la Mancha, Comunidad Saharaui en Catalunya, Comunidad Saharaui en Grenada, Comunidad Saharaui en Las Palmas, Comunidad Saharaui en Murcia, Coordinadora Estatal de Asociaciones Solidarias con el Sáhara (CEAS – Sáhara), Coordinadora de Gdeim Izik para un Movimiento Pacífico, Coordinadora de los Graduados Saharaui Desempleados, Coordinadora d'Organizacions No-Governamentals de Cooperació al Desenvolupament (CONGDIB), Coordinadora de las ONGs en Aaiún, Coordinadora Saharaui de Derechos Humanos de Tantan, DISABI Bizkaia, Emmaus Åland, Emmaus Stockholm, Equipe Média, Federació ACAPS de Catalunya, Federació d'Associacions de Solidaritat amb el Poble Sahrauí del País Valencià, Federación Andaluza de Asociaciones Solidarias con el Sahara (FANDAS), Federación de Asociaciones de Amigos del Pueblo Saharaui de Extremadura (FEDESAEX), Federación de la Comunidad de Madrid de Asociaciones Solidarias con el Sahara (FEMAS Sahara), Federación Estatal de Instituciones Solidarias con el Pueblo Saharaui (FEDISSAH), Forum Futuro de la Mujer Saharaui, Freiheit für die Westsahara e.V., Fundación Mundubat, Fundación Sahara occidental, Giuristi Democratici, Groupe Non Violence Active (NOVA SAHARA OCCIDENTAL), Grupo por la renuncia de la Nacionalidad Marroquí, Ibsar Al Khair Association for the Disabled in Western Sahara, **International Educational Development, Inc., International Fellowship for Reconciliation (IFOR), Liberation**, Liga de Defensa de los Presos Políticos Saharaui, Liga de Deportistas Saharaui en España, Liga de Estudiantes Saharaui en España, Liga de Periodistas Saharaui en España, Liga Saharaui de defensa de Derechos Humanos y Protección de RW-Bojador, Ligue des Jeunes et des Etudiants Sahraouis en France, **Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP)**, National Television Team, Norwegian Support Committee for Western Sahara, Observatoire des Médias Saharaouis pour documenter les violations des droits de l'homme, Observatorio Aragonés para el Sáhara Occidental, Observatorio Asturiano de Derechos Humanos para el Sáhara Occidental (OAPSO), Observatorio Saharaui por el Niño y la Mujer, Observatorio Saharaui de Protección del Niño, Observatorio Saharaui de Recursos Naturales, Organización Contra la Tortura en Dakhla, Organización Saharaui por la Defensa de las libertades y la dignidad, Pallasos en Rebeldía y Festiclown, **Paz y Cooperación**, Por un Sahara Libre, **Réseau Unité pour le Développement de Mauritanie**, Sahara Euskadi Vitoria, Sahara Gasteiz Vitoria, Saharawi Advocacy Campaign, Saharawi Association for Persons with Disabilities in Western Sahara, Saharawi Association in the USA (SAUSA), Saharawi Campaign against the Plunder (SCAP), Saharawi Center for Media and Communication, Saharawi Media Team, Saharawi Voice, Schweizerische Unterstützungskomitee für die Sahraouis, Sindicato Español Comisiones Obreas (CCOO), Solidariedade Galega col Pobo Saharaui (SOGAPS), Stichting Zelfbeschikking West-Sahara, Tayuch Amurio, Tawasol Lludio, The Australian Western Sahara Association, The Icelandic Western Sahara Association, The Swedish Western Sahara Committee, Unión de Asociaciones Solidarias con el Sáhara de Castilla y León, Union des Ingénieurs Sahraouis, Unión de Juristas Saharaui (UJS), Unión Nacional de Abogados Saharaui, Unión Nacional de Estudiantes de Saguia El Hamra y Rio de Oro (UESARIO), Unión Nacional de la Juventud de Saguia El Hamra y Rio de Oro (UJSARIO), Unión Nacional de Mujeres Saharaui (UNMS), Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO), Unión de Periodistas y Escritores Saharaui (UPES), US Western Sahara Foundation, VZW de Vereniging van de Sahrawi Gemeenschap in Belgie, Western Sahara Resource Watch España (WSRW España), Western Sahara Times, **World Barua, World Peace Council.**

NGOs enjoying UN - ECOSOC Status