

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

**Open Letter to the Members of the UN Security Council
Geneva / Bir Lehlu, 12th April 2019**

The NGOs Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara (183 member-organisations) took note of the Secretary General's Report on the "Situation concerning Western Sahara" (S/2019/282).

The NGOs Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara supports the efforts of the Secretary General's Personal Envoy for Western Sahara, H.E. Mr. Horst Köhler, to advance the negotiation process between the Kingdom of Morocco and the Polisario Front, the two parties to the conflict in Western Sahara.

The NGOs-GSGPPHRWS 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).

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).

Since 26 February 1976, when 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, Western Sahara became, and still is today, the only NSGT that has not an internationally recognized Administering Power reporting to the UN General Assembly, in conformity with article 73 of the UN Charter.

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.

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.

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.

In this context, the NGOs-GSGPPHRWS considers that the UN Security Council should call upon the Kingdom of Morocco to fully respect International Humanitarian Law, including the Fourth Geneva Convention.

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.

The NGOs-GSGPPHRWS highlights that the illegal annexation of the majority of the NSGT of Western Sahara by the Kingdom of Morocco leads to a systematic and serious violations of the Sahrawi's human rights, some of which are referred to in the Secretary-General's report.

It also undermines the independence of Moroccan courts in trials against Sahrawi human rights defenders. Indeed, judges are obliged to ignore the international legal status of the NSGT. Similarly, the independence of lawyers is threatened because they cannot raise the issue of the international legal status of the NSGT before the courts without being accused themselves to undermine the territorial integrity of the Kingdom.

The NGOs-GSGPPHRWS expresses its deep concern since the UN Security Council welcomes the role played by the Moroccan National Council on Human Rights Commissions operating in Dajla and El Aaiun, in so far the mandate of any National Human Rights Institution is limited to its national territory. The NGOs-GSGPPHRWS deems more appropriate for the UN Security Council to invite the Kingdom of Morocco to let the Sahrawi National Commission of Human Rights freely operate in the Occupied Western Sahara.

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).

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.

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 General Assembly position on Non Self-Governing Territories

On 24 October 1970, the UNGA 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”. The Declaration includes the principle of equal rights and self-determination of peoples which states, *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 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”.

The Declaration also states that “The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people”.

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/73/123 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.

Furthermore, the UNGA calls upon the administering Powers concerned to terminate military activities and eliminate military bases in the Non-Self-Governing Territories under their administration. This applies undoubtedly to the Kingdom of Morocco, the only Occupying Power of a Non Self-Governing Territory.

The NGOs-GSGPPHRWS stresses that the illegal occupation of the NSGT of Western Sahara is based on the deployment of hundreds of thousands of soldiers tasked, in particular, with controlling the berm and repressing any form of peaceful expression of the Sahrawi people's desire to enjoy their inalienable right to independence, as was the case in 2010 in Gdeim Izik.

The NGOs-GSGPPHRWS recalls that in its annually adopted by consensus resolution on the "Question of Western Sahara" (last one A/RES/73/107 of 7 Dec. 2018) 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.

Human rights violations

As mentioned above, the human rights' violations of the Sahrawi people by the Occupying Power are systematic and serious.

Besides the violation of the civil and political rights, the NGOs-GSGPPHRWS calls the attention of the UN Security Council's members on the violation of the economic, social and cultural rights of the Sahrawi people living in the Occupied Territory, as well as those living in the refugees' camp for more than 40 years and their descendants.

The construction and maintenance of the berm is the most concrete element of the Occupying Power's disruption of the traditional economic system of the Sahrawi people and their social structure.

The NGOs-GSGPPHRWS notes that, while the Security Council strongly encourages enhancing cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), including through facilitating visits to the region, the Technical mission dispatched by the OHCHR in 2015 was not able to renew its visits even though it was supposed to take place every six months.

Similarly, the NGOs-GSGPPHRWS notes that, while the Security Council encourages the parties to continue in their respective efforts to enhance the promotion and protection of human rights in Western Sahara, recently several special procedures had to postpone their visit to Morocco, including the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Diego García-Sayán, who stressed, in a press release published on 19 March 2019, 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".

Conclusion and recommendations

In recalling the terms of the Settlement Plan presented by the UN Secretary-General in August 1988 and accepted in principle by the two parties to the conflict, as well as the terms of UN Security Council resolution 690 (29/04/1991) which established the UN Mission for the Referendum in Western Sahara and recalling also the terms of UNGA resolution 73/107, the NGOs-GSGPPHRWS considers that the following measures should be taken in a confidence building process:

- the authorization for the International Committee of the Red Cross to visit the Sahrawi human rights defenders detained in the Moroccan prisons and to transfer those detainees to Western Sahara;
- 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;
- the authorization for the Sahrawi National Commission of Human Rights to freely develop its activities in the Occupied Territory of Western Sahara.

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.

c.c.: Mr. Antonio Guterres – UN Secretary-General

Mr. Horst Köhler – Secretary General's Personal Envoy for Western Sahara

Ms. Michelle Bachelet – UN High Commissioner for Human Rights

Acción Solidaria Aragonesa (ASA), Adala UK, African Law Foundation (AFRILAW), Afrika Kontakt , **American Association of Jurists (AAJ)**, Arabako SEAD en Lagunen Elkartea, Asociación de Amigos y Amigas de la R.A.S.D. de Álava, Amal Nanclares, Asociación Amal Centro Andalucía, Asociación Amigos del Pueblo Saharaui del Campo de Gibraltar (FANDAS), Asociación Amigos del Pueblo Saharaui de Toledo, Asociación de Amistad con el Pueblo Saharaui de Albacete, Asociación ARDI HURRA, Asociación Asturiana de Solidaridad con el Pueblo Saharaui, Asociación Canaria de Amistad con el Pueblo Saharaui (ACAPS), Asociación de la Comunidad Saharaui en Argon (ACSA), **Asociación Cubana de las Naciones Unidas**, Asociación de Discapacitados Saharauis, Asociación Ecuatoriana de Amistad con el Pueblo Saharaui (AEAPS), **Asociación Española para el Derecho Internacional de los Derechos Humanos (AEDIDH)**, Asociación de Familiares de Presos y Desaparecidos Saharauis (AFAPREDESA), Asociación por la Justicia y los Derechos Humanos, Asociación de Médicos Saharaui en España, Asociación Navarra de Amigos y Amigas de la R.A.S.D. (ANARASD), Asociación Navarra de Amigos y Amigas del Sahara (ANAS), Asociación Pro Derechos Humanos de España (APDHE), Asociación Profesional de Abogados Saharauis en España (APRASE), Asociación por la Protección de los Presos Saharaui en las Cárcenes Marroquí, Asociación Riojana de Amigos de la R.A.S.D., Asociación Saharaui de Control de los Recursos naturales y la Protección del Medio Ambiente, Asociación Saharaui para la Protección y Difusión del Patrimonio cultural Saharaui, Asociación Saharaui contra la Tortura, Asociación de Saharauis en Alicante, Asociación de Saharauis en Ávila, Asociación de Saharauis en Bal, Asociación de Saharauis en Fuerteventura, Asociación de Saharauis en Jerez de la Frontera, Asociación de Saharauis en Lebrija, Asociación de Saharauis en Navarra, Asociación de Saharauis en Tenerife, Asociación de Saharauis en Valdepeñas, Asociación Um Draiga de Zaragoza, Asociación Venezolana de Solidaridad con el Sáhara (ASOVESSA), Asociación de Víctimas de Minas (ASAVIM), Asociación de Zamur, Associació d'Amics del Poble Sahrauí de les Iles Balears, Association des Amis de la RASD (France), Association de la Communauté Sahraouie en France, Association Culture Sahara, Association culturelle Franco-Sahraouie, Association des Femmes Sahraouies en France, Association of Humanitarian Lawyers, **Association Mauritanienne pour la Promotion du Droit, Association Mauritanienne pour la Transparence et le Développement – ATED**, Association for the Monitoring of Resources and for the Protection of the Environment in Western Sahara (AMRPENWS), **Association Nationale des Echanges entre Jeunes (ANEJ)**, Association pour un Référendum libre et régulier au Sahara occidental (ARSO), Association Sahraouie des Victimes des Violations Graves des Droits de l'Homme Commises par l'Etat Marocain (ASVDH), Association des Sahraouis de Bordeaux, Association de le vie maghrébine pour la solidarité et le développement (AVMSD), Associazione Nazionale di Solidarietà con il Popolo Saharaui, Bentili Media Center, Bureau International pour le Respect des Droits Humains au Sahara occidental (BIRDHSO), Campaña Saharaui para la sensibilización sobre el peligro de Minas (SCBL), Cantabria por el Sáhara, Centro Brasileiro de Solidaridad con los Pueblos y Lucha por la Paz, CEBRAPAZ, Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J." (CSMM), **Centro de Estudios sobre Juventud**, Centro Saharaui por la Salvaguardia de la Memoria, Colectivo Saharaui de Defensores de Derechos Humanos (CODESA), Colectivo Saharaui en Estepona, Colectivo Saharaui en Gipuzkoa, Colectivo Saharaui en Jaén, Colectivo Saharaui en Lanzarote, Comisión Ecuménica de Derechos Humanos de Ecuador (CEDHU), Comisión General Justicia y Paz, Comisión Media Independientes, Comisión Nacional de los Derechos Humanos de la República Dominicana (CNDH-RD), Comisión Nacional Saharaui por los Derechos Humanos (CONASADH), Comité d'Action et de Réflexion pour l'Avenir du Sahara Occidental, Comité de Apoyo por el Plano de Paz y la Protección de los Recursos Naturales en el Sáhara Occidental, Comité de Defensa del Derecho de Autodeterminación (CODAPSO), Comité de Familiares de los 15 Jóvenes Secuestrados, Comité de Familiares de Mártires y Desaparecidos, Comité de Familiares de los Presos Políticos Saharauis, Comité de Protección de los Defensores Saharauis – Freedom 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 Saharauis 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, **Fundación Latinoamericana por los Derechos Humanos y el Desarrollo Social (Fundalatin)**, 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, **Indian Council of South America (CISA)**, **International Association of Democratic Lawyers (IADL)**, **International Educational Development, Inc.**, **International Fellowship of 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, 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 Lluidio, 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 Organization (WBO)**, **World Peace Council**

NGOs enjoying UN - ECOSOC Status