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## *Geneva Support Group for Western Sahara*

*Invite all delegations to the 42<sup>nd</sup> session of the UN Human Rights Council  
to a High-Level side-event on*

## *Human rights in the context of Humanitarian aid*

*Tuesday 10<sup>th</sup> September 2019 – 13:30 to 15:00 – Room XXIII*

### *Panelists:*

*H.E. Amb. Nozipho J. Mxakato-Diseko – Permanent Representative of the Republic  
of South Africa*

*H.E. Mr. Brahim Mojtar Bouajruta – Minister for Water and Environment, Sahrawi  
Arab Democratic Republic*

*Mr. Joseph Schechla – Director, Housing International Network*

*Ms. Monica Alonso San Millan –Mundubat Foundation*

*Mr. Yahia Buhubeini – President, Sahrawi Red Crescent*

### *Moderator:*

*Ms. Micól Savia – International Association of Democratic Lawyers (IADL)*

*Oriental buffet will be served before the meeting*

*English / French interpretation*



**High-Level side-event at the 42<sup>nd</sup> session**

**Human Rights Council**

## **Human rights in the context of Humanitarian aid**

**Ambassador Nozipho J. Mxakato-Diseko**

**Permanent Representative of the Republic of South Africa**

**Geneva, 10 September 2019**

Moderator,  
Honourable Minister Buyema,  
Fellow panelists,  
Excellencies,  
Representatives of Permanent Missions,  
Members of civil society,  
Friends,

Permit me to express my appreciation on behalf of the countries that make up the Geneva Support Group for Western Sahara, for the opportunity to open this side-event focusing on the very important issue of human rights in the context of humanitarian aid in Western Sahara. In so doing, I again reiterate the support and solidarity of my government and of the people of South Africa for the liberation and self-determination of the Sahrawi people.

In March 2018 the UNHCR published an official report that for the first time told us the number of Sahrawi refugees in the camps near Tindouf. The UNHCR Expert Mission Team found that the new population figure stands at 173,600 people. The World Food Programme and UNHCR told us in 2016 that 75% of these people are vulnerable. That means that more than 130,000 people do not enjoy food security. The report was published on the UNICEF website and was then removed.

Moderator and friends,

In his report to the Security Council in April this year, Secretary-General Guterres pointed out that malnutrition and anaemia among the refugees are serious concerns, especially among pregnant women, girls and young children. Yet last year, UNICEF, the WFP and UNHCR received only 59% of their combined funding needs for the Sahrawi refugees.

For us, it is not up to the Occupying power to determine the number of refugees in the camps. Any political manipulation of the suffering of the Sahrawi refugees is unacceptable and inhuman. We expect the UNHCR to adopt a principled approach and resist manipulation and the politicisation of human suffering by the country that has caused the problem in the first place.

Moderator,

Today most of all, those of us in this room want to know what is going on on the humanitarian terrain in the refugee camps. We want to know what we must do to change the situation. The eminent panellists we have assembled on this podium are going to put us in the picture.

Together let us join forces to address the suffering and humanitarian needs of the Sahrawi people, and never tire of supporting their struggle for liberation and freedom.

I thank you.



# Human rights in the context of Humanitarian aid

**Mr. Joseph Schechla, Coordinator**

**Geneva, 10 September 2019**

When considering the context of humanitarian aid and assistance, it is necessary to keep in mind their convergence with human rights and other doctrines of international law, including applicable international humanitarian law (IHL).<sup>1</sup> In order to uphold our unitary system of international law, we are compelled to apply also the relevant peremptory norms, refugee law and criminal law in the humanitarian context. These coinciding and overlapping frameworks cast a complex picture and require much more time to explore than a side-event would permit. So, I will only touch on some aspects to give a sketch of what is required of states and the UN System in the context of humanitarian aid to the people of largely occupied Western Sahara.

Consistent with both the voluntary commitments and binding obligations of states, I would like to address these overlapping regimes as they coincide also in the context of the global policy frameworks, in particular, the 2030 Agenda (2015), the so-called New Urban Agenda (2016) and the outcomes of the Global Humanitarian Summit (2015).

IHL naturally invokes the law of occupation and the norms of humanitarian assistance to protected (civilian) persons, while humanitarian aid and assistance form a much broader field. At the same time, humanitarian aid and assistance form part of the principle of international assistance and cooperation.

## International Cooperation

International cooperation is an obligation of states arising from the Charter of the United Nations. The Charter's Article 1 sets out the three essential pillars and purposes of the Organisation: (1) international peace and security, (2) political, economic, social and educational advancement, and (3) for human rights and for fundamental freedoms.<sup>2</sup> International Cooperation forms the indispensable buttress of these pillars of the System, as explained in several of the Charter's articles.<sup>3</sup>

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<sup>1</sup> See Human Rights Committee, General Comment No. 29: States of Emergency (article 4), CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 3, at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en); and General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004, at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en);

*International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva: OHCHR, 2011), HR/PUB/11/01, at:

[https://www.ohchr.org/documents/publications/hr\\_in\\_armed\\_conflict.pdf](https://www.ohchr.org/documents/publications/hr_in_armed_conflict.pdf).

<sup>2</sup> Charter of the United Nations, 26 June 1945, at: <https://www.un.org/en/charter-united-nations/>

<sup>3</sup> Article 1 identifies international cooperation as necessary "3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms..." and "4. To be a centre for harmonizing the actions of nations in the attainment of these common ends." Article 2 calls for "5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action." Article 11 add that international cooperation is needed "1. ... in the maintenance of international peace and security. With respect to upholding legal norms, including the human rights pillar of the Charter, Article 13 recognizes the indispensability of international cooperation "1.a. ... in the political field and encouraging the

Crucial to the specific case of Western Sahara, the Charter's Article 55 recognized the role of international cooperation "for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." Moreover, the Charter's Declaration Regarding Non-Self-Governing Territories invokes international cooperation

to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes."<sup>4</sup>

Elaborating further the meaning and content of the Charter's human rights pillar and the corresponding obligations of states, International Covenant on Economic, Social and Cultural Rights provides:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.<sup>5</sup>

### Self-determination

Echoing the Charter, both the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights share a common Article 1, which enjoins state parties to uphold self-determination also for peoples in non-self-governing territories:

1. 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.<sup>6</sup>
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. 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.

These sacrosanct principles continue to apply as the basis for international cooperation and diplomacy. The related treaty-bound obligations combine with general principles and peremptory norms to form the basis of the UN system and international order. Every qualified diplomat knows them. Among those peremptory norms is the inalienable right of peoples to self-determination and the unacceptability of the acquisition of territory by force, including by military means.

As provided in the Vienna Convention (1969), any international agreement "is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law...which can be modified only by a subsequent norm of general international law having the same character."<sup>7</sup>

Both principles of self-determination of peoples and international cooperation grounding the UN Charter and governing the UN System characterize the obligations of all states in the case of Western Sahara, including the corresponding obligation of all states, their subsidiaries and domiciled third parties not to recognize, not to cooperate with and not to benefit from the illegal situation.<sup>8</sup>

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progressive development of international law and its codification; b. in the economic, social, cultural, educational, and health fields, an assisting in the realization of human rights and fundamental freedoms..." UN Charter, *op. cit.*

<sup>4</sup> UN Charter, *op. cit.*, Chapter XI, Article 73.d.

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, Article 2.1, at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg\\_no=IV-3&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg_no=IV-3&chapter=4&clang=_en)

<sup>6</sup> ICESCR, *op. cit.* and International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg\\_no=IV-4&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mdsg_no=IV-4&chapter=4&clang=_en)

<sup>7</sup> Vienna Convention on the Law of Treaties, signed at Vienna 23 May 1969, entry into force: 27 January 1980, Article 53: Treaties conflicting with a peremptory norm of general international law (*jus cogens*): For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

<sup>8</sup> Maastricht Guidelines on the Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011); Declaration on the Granting of Independence to Colonial Countries and Peoples (GA Resolution 1514 (XV) of 14 December 1960); Resolutions of the OAU - decolonization and boycott (CIAS/Plen.2 / Rev.2, Addis Ababa, May 25, 1963) and boundary disputes between states (AHG/Res 16 (1) of Cairo, July 21, 1964 ); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (GA Resolution 2526 (XXV), 24 October 1970); Definition of Aggression (GA Resolution 3314 (XXIX) December 14, 1974); Advisory opinion of the International Court of Justice, the legal consequences for States of the continued

This obligation of all states to comply with this peremptory norm, involves also bringing the illegal situation to an end and to ensure international justice and accountability, including effective remedy and reparation for victims (to which we will return).

## Occupation

In this construct of complex frameworks applying in the case of Western Sahara is the law of occupation, a branch of IHL. The application of the law of occupation applies not only because the UN Legal Counsel invoked that field of international law in his 2002 opinion to the Security Council on the exploitation of natural resources in the occupied Western Sahara,<sup>9</sup> or the complementary references in resolutions of the General Assembly (A/RES/34/37 and A/RES/35/19).<sup>10</sup> We do not use the term "occupation" lightly or rhetorically, but rest on its definition in law.

Determining the start of an occupation is essentially a question of fact,<sup>11</sup> which is distinguished from invasion by military or other means: Occupation is invasion plus taking possession of territory outside the internationally recognized boundaries of a state for the purpose of holding it, even temporarily. The difference between mere invasion and occupation becomes apparent by the fact that an occupant sets up some kind of administration, whereas the mere invader does not.<sup>12</sup> The situation in Western Sahara, therefore, is undoubtedly one of occupation, regardless of any descriptive euphemism promoted by its perpetrators and supporters operating outside the law.

## Population Transfer

The practice of population transfer is governed by another field of IHL, as well as international criminal law. Population transfer is a serious crime that was prosecuted already before the International Military Tribunals at Nuremberg and Tokyo (1945–46).<sup>13</sup> However, the crime was carried out by states and proto-states in the same period, including the *Vertreibung* of Germans from other countries after World War II,<sup>14</sup> as well as in the partition of India/Pakistan<sup>15</sup> and the Zionist ethnic cleansing of Palestine since 1947.

IHL prohibits the implantation of civilian persons of an occupying Power in an occupied territory in accordance with Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949).<sup>16</sup> The prohibition covers both the push and pull factors of population transfer, involving both expulsion of the indigenous population and the implantation of settlers.

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presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, adopted on June 21, 1971, p. 16; Advisory opinion of the International Court of Justice, the international legal status of Western Sahara, adopted 16 October 1975; S/RES/465 (1980), 1 March 1980, para. 7; Advisory opinion of the International Court of Justice, the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, adopted July 9, 2004, paragraph 157; Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001); Draft articles on Prevention of Transboundary Harm from Hazardous Activities (2001); Draft Articles on International Liability in Case of Loss from Transboundary Harm arising out of Hazardous Activities (2006); Basic Principles and Guidelines on the Right to a Remedy and Reparation," op. cit.

<sup>9</sup> Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, 12 February 2002.

<sup>10</sup> UN General Assembly 34/37 (1979) and A/RES/35/19 (1980).

<sup>11</sup> See Lord Arnold Duncan McNair and Sir Arthur Watts, *The Legal Effects of War* (Cambridge: Cambridge University Press, fourth edition, 1966), pp. 377–78; and Georg Schwarzenberger, *International law as Applied by International Courts and Tribunals*, Vol. II: "The Law of Armed Conflict" (London: Stevens & Sons, 1968), p. 324.

<sup>12</sup> Hersch Lauterpacht, "Disputes, war and neutrality," in Lassa Francis Lawrence Oppenheim, *International law: a treatise*. Vol. II: (London: Longman, 7<sup>th</sup> edition, 1952), p. 434; Re Lepore, *Annual Digest of Public International Law Cases*, Vol. 13 (Supreme Military Tribunal, Italy, 1946), , p. 354–55; Disability pension case, *International Law Reports*, Vol. 90 (Federal Social Court, Federal Republic of Germany, 1985), p. 403; and Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis: University of Minnesota Press, 1957), pp. 28–29.

<sup>13</sup> See Awn Shawki al-Khasawneh and Ribot Hatano, "The Human Rights of Population Transfer, including the Implantation of Settlers and Settlements," E/CN.4/Sub.2/1993/17, at: <https://digitallibrary.un.org/record/171114>.

<sup>14</sup> Alfred M. de Zayas, *Die Nemesis von Potsdam. Die Anglo-Amerikaner und die Vertreibung der Deutschen* (Herbig, 2005).

<sup>15</sup> William Dalrymple, "The Great Divide: The violent legacy of Indian Partition," *The New Yorker* (29 June 2015), at: <https://www.newyorker.com/magazine/2015/06/29/the-great-divide-books-dalrymple>; P. R. Brahmananda, "The Impact on India of Population Transfers in 1947 and After," in Briney Thomas, *Economics of International Migration*, proceedings of International Economic Association conference (London: Palgrave Macmillan, 1958).

<sup>16</sup> Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), Article 49. See Jean S. Pictet, *Commentary* (Geneva: International Committee of the Red Cross, 1958), at: [https://www.loc.gov/rr/frd/Military\\_Law/pdf/GC\\_1949-IV.pdf](https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf).

This serious crime is classified as such in both the ILC's draft Code of Crimes against the Peace and Security of Mankind<sup>17</sup> and the Rome Statute of the International Criminal Court, in both its Article 7 on crimes against humanity and Article 8 concerning war crimes.<sup>18</sup> In occupied Western Sahara, the Kingdom of Morocco has carried out both aspect of the serious crime of population transfer in the ongoing situation.

## Displacement

The humanitarian situation arising from displacement of the people of Western Sahara by outright expulsion and other means, including the occupier's denial of Sahrawi refugees' right to return, forms an important part of an unfortunate regional phenomenon. This is one of the most-overwhelming challenges facing the Middle East and North Africa (MENA) region, with multiple and complex emergencies on a scale unprecedented since Israel's ethnic cleansing of Palestine. While the region has experienced mass forced displacements since the earliest human civilizations arose there,<sup>19</sup> it is currently distinguished as the region hosting the largest proportion of the world's refugees and displaced.<sup>20</sup>

In human rights terms, these displaced persons are victims of various kinds of forced eviction, which practice the UN Commission of Human Rights has twice affirmed as "a gross violation of human rights, particularly the [human] right to adequate housing."<sup>21</sup> This invokes another legal framework, namely the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, which the General Assembly has adopted without a vote.<sup>22</sup>

The accumulated cases of displacement across the Arab states now has exceeded 33 million persons entitled to reparation. Among them are at least 174,000 Sahrawi refugees in camps, as well as untold others.<sup>23</sup> While this number may be among the most imprecise of displaced and refugees populations in the region by nationality, their reparation entitlement to land restitution is easily calculable as the largest in the region at 21,280,000<sup>ha</sup>, or the 80% of the Sahrawi people's self-determination unit that is currently occupied by the Kingdom of Morocco.

The remedy to this illegal situation, which all states are bound by peremptory norms of international law to bring to an end, is the subject of yet another framework of declaratory and binding international law: *The Principles on Housing and Property Restitution for Refugees and Displaced Persons* (a.k.a. "Pinheiro Principles").<sup>24</sup> The practical application of these principles is the subject of a multi-agency Handbook on their application to the Middle East/North Africa that has been awaiting publication by the Office of the High Commissioner for Human Rights since last year.<sup>25</sup>

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<sup>17</sup> Draft Code of Crimes against the Peace and Security of Mankind with commentaries, 1996, Article 20, at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/7\\_4\\_1996.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf).

<sup>18</sup> The Rome Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>.

<sup>19</sup> Bustenay Oded, *Mass deportations and deportees in the Neo-Assyrian empire* (Wiesbaden: Dr. Ludwig Reichert Verlag, 1979), at: <https://books.google.com/books?id=Nn9ftwAACAAJ>; Karen Radner, "Mass deportation: the Assyrian resettlement policy," *Assyrian empire builders* (London: University College London, 2012), at: <http://www.ucl.ac.uk/sargon/essentials/governors/massdeportation/>.

<sup>20</sup> UNHCR, "Global Trends: Forced Displacement in 2017," <https://www.unhcr.org/5b27be547.pdf>.

<sup>21</sup> Commission on Human Rights, "forced eviction," resolution 1993/77, 10 March 1993, at: <http://www.hln.org/img/documents/ECN4199377%20en.pdf>; and "Prohibition of forced evictions," resolution 2004/28, 16 April 2004, para. 1, at: [http://www.hln.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hln.org/img/documents/E-CN_4-RES-2004-28.pdf).

<sup>22</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: [http://www.hln.org/img/documents/A\\_RES\\_60\\_147%20remedy%20reparation%20en.pdf](http://www.hln.org/img/documents/A_RES_60_147%20remedy%20reparation%20en.pdf).

<sup>23</sup> In the Tindouf refugee camps alone, they number some 174,000, rounded from UNHCR's total camp census of 173,600. See UNHCR, *Sahrawi Refugees in Tindouf, Algeria: Total In-Camp Population*, March 2018, at: [http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR\\_Tindouf-Total-In-Camp-Population\\_March-2018.pdf](http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR_Tindouf-Total-In-Camp-Population_March-2018.pdf).

<sup>24</sup> *Housing and property restitution in the context of the return of refugees and internally displaced persons* : final report of the Special Rapporteur, Paulo Sérgio Pinheiro, E/CN.4/Sub.2/2005/17, 28 June 2005, at: <https://digitallibrary.un.org/record/552535>.

<sup>25</sup> *Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles in the Middle East and North Africa* (OHCHR, forthcoming).

## Integrated Solutions in the Humanitarian Aid Context

All of these frameworks together constitute the formula for the international community to apply in such protracted illegal situations and consequent humanitarian crises such as the case of Western Sahara. When we fast-forward to the present set of international norms as developed since 2015, indeed these cumulative obligations, along with the current policy commitments referred to at the beginning of this presentation, give us an answer to the question: "What sort of humanitarian aid should apply to the Western Sahara." The new global sustainable-development policies offer an updated response.

The New Urban Agenda gives us a partial answer in paragraph 19:

Special attention should also be given to countries in situations of conflict, as well as countries and territories under foreign occupation, post-conflict countries and countries affected by natural and human-made disasters.<sup>26</sup>

However, the New Urban Agenda is not the strongest of the current global policies, particularly given the background of the deliberate neglect of its custodian agency, UN-Habitat, to implement, monitor or evaluate its predecessor, the Habitat II Agenda. Nonetheless, the agency has demonstrated the capability to carry out reconstruction and institution building in conflict zones under occupation such as Iraq and Afghanistan.<sup>27</sup>

Humanitarian assistance is fundamentally civilian in function and character. In situations in which military capacity and assets are used, these are applied as a last resort to support the implementation of humanitarian assistance in the field. The need for their use to be undertaken with the consent of the affected State and in conformity with international law, including international humanitarian law, as well as humanitarian principles. Emergency response, rehabilitation and development form points on a continuum. In order to ensure a smooth transition from relief to rehabilitation and development, emergency assistance must be provided in ways that will be supportive of short-term and medium-term recovery, leading to long-term development that involves indigenous institution building. Thus, emergency measures should be seen as steps toward sustainable development,<sup>28</sup> beyond the mere return to the status quo ante embodied in the contemporary concept of resilience.

The World Humanitarian Summit (2016) reflected a similar commitment of integrated response to humanitarian needs. The states and other actors at the Summit assumed five core responsibilities: (1) political leadership to prevent and end conflicts; (2) upholds the norms that safeguard humanity; (3) leave no one behind; (4) change people's lives: from delivering aid to ending need; and (5) invest in humanity.<sup>29</sup> The Summit recognized that humanitarian actors need to move beyond repeatedly carrying out short-term interventions year after year toward contributing to the achievement of longer-term development results,<sup>30</sup> including national institution building as part of core responsibility 5.<sup>31</sup>

"Transforming our world: the 2030 Agenda for Sustainable Development" claims to enshrine a supremely ambitious and transformational vision. In paragraph 18, states have reaffirmed their "commitment to international law[,] and emphasize that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law."<sup>32</sup>

This promised transformation requires states to operationalize this transformative vision. The Core Integrated Functions of the UNDS to support implementation of the 2030 Agenda effectively involve:

- Drawing on diversity and expertise across the UN system, tools and analysis utilized by the different pillars of the UN – human rights, humanitarian action, peace and security, political economy and climate change.
- Normative support to countries to establish, implement, monitor and report on norms, normative standards and agreements, including on international human rights commitments [sic]...<sup>33</sup>

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<sup>26</sup> New Urban Agenda, A/RES/71/256, 21 January 2017, at: <http://habitat3.org/the-new-urban-agenda/>.

<sup>27</sup> UN Habitat, "Afghanistan Projects," at: [http://www.fukuoka.unhabitat.org/projects/afghanistan/index\\_en.html](http://www.fukuoka.unhabitat.org/projects/afghanistan/index_en.html); "Iraq Projects," at: <http://unhabitat.org/iraq/iraq-projects/>.

<sup>28</sup> International cooperation on humanitarian assistance in the field of natural disasters, from relief to development, A/RES/70/107, 13 January 2016, at: <https://undocs.org/en/A/RES/70/107>.

<sup>29</sup> Outcome of the World Humanitarian Summit, Report of the Secretary-General, A/71/353, 23 August 2016, at: <https://undocs.org/A/71/353>.

<sup>30</sup> One humanity: shared responsibility, Report of the Secretary-General for the World Humanitarian Summit, A/70/709, 2 February 2016, Deliver collective outcomes: transcend humanitarian-development divides, paras. 124–26, at: <https://undocs.org/A/70/709>.

<sup>31</sup> *Ibid.*, paras. 34, 42–43, 45, 84(b), 88, 143, 152–53.

<sup>32</sup> Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1, at: [https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf).

<sup>33</sup> ECOSOC Dialogue on the longer-term positioning of the UN development system in the context of the 2030 Agenda, UNGD key messages for Workshop 5, 13 April 2016.



The Secretary General has interpreted the repositioning the United Nations development system to mean:

- [the] peace, development and human rights pillars of the United Nations, provide a clear road map for Member States and the United Nations system alike...<sup>34</sup>
- advancement of all human rights: economic, social and cultural rights, as well as civil and political rights.<sup>35</sup>

New Development Understanding of the International Team of Advisors to the ECOSOC Dialogue on longer-term positioning of UN Development System in the context of the 2030 Agenda for Sustainable Development "...envisage a world:...reconciling humanitarian assistance with longer-term development objectives, within the framework of human rights."<sup>36</sup>

Of course, that human rights framework involves both its remedial and preventive dimensions.

Interestingly, paragraph 35 of the General Assembly resolution A/RES/70/1 of 2015 is even more explicit as to what is required. It affirms that:

35. Sustainable development cannot be realized without peace and security; and peace and security will be at risk without sustainable development. ... We call for further effective measures and actions to be taken, in conformity with international law, to remove the obstacles to the full realization of the right of self-determination of peoples living under colonial and foreign occupation, which continue to adversely affect their economic and social development as well as their environment.

Likewise, in 2015, the UN Committee on World Food Security adopted its Framework for Action for Food Security and Nutrition in Protracted Crises, which promotes a set of "overarching values" that include:

- respect for human rights and international humanitarian law; [addressing] underlying causes of protracted crises.
- policy coherence in line with the progressive realization of the human right to adequate food in the context of national food security, by fostering coordination of policies and actions taken in the fields of humanitarian assistance, development and human rights.<sup>37</sup>

## Conclusion

To have any integrity, this new system-wide promise calls for a hybrid approach also in the case of Western Sahara, requiring the deliberate alignment of (1) short-term relief and humanitarian aid with (2) longer-term institution-building development approaches within (3) the framework of human rights with its dual remedial and preventive dimensions.

In other words, it is no longer sufficient to provide short-term relief without that assistance contributing also to the building of institutions and capabilities that give legs to the people's exercise of the inalienable right to self-determination with the realization of all the human rights that are conditioned on that exercise. And by definition, that means that all humanitarian assistance—as well as other obligatory international cooperation—must aid the Sahrawi people, "for their own ends, freely [to] dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. [And i]n no case may [the Sahrawi] people be deprived of its own means of subsistence," including the people's land and other natural resources.

This indispensable hybrid approach is not merely a matter of positioning, sympathy or bias. These are requisites to upholding international law and the maintenance of world order. It is also the formula for maintaining the integrity of the international system that is so clearly needed in this current era of plummeting trust in politics and the otherwise declining integrity of, and faith in our international system.

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<sup>34</sup> Repositioning the United Nations development system to deliver on the 2030 Agenda: ensuring a better future for all, Report of the Secretary-General, A/72/124–E/2018/3, 11 July 2017, para. 2.

<sup>35</sup> *Ibid.*, para. 14.

<sup>36</sup> Independent Team of Advisors Findings and Conclusions, ECOSOC Dialogue on longer-term positioning of UN Development System in the context of the 2030 Agenda for Sustainable Development, 16 June 2016, pp. 72, 74, at: <https://www.un.org/ecosoc/sites/www.un.org.ecosoc/files/files/en/qcpr/ecosoc-dialogue-publication.pdf>.

<sup>37</sup> Framework for Action for Food Security and Nutrition in Protracted Crises, CFS 2015/42/4, 13 October 2015, paras. 15–16, at: [http://www.fao.org/fileadmin/templates/cfs/Docs1415/FFA/CFS\\_FFA\\_Final\\_Draft\\_Ver2\\_EN.pdf](http://www.fao.org/fileadmin/templates/cfs/Docs1415/FFA/CFS_FFA_Final_Draft_Ver2_EN.pdf).



**High-Level side-event at the 42<sup>nd</sup> session  
Human Rights Council**

**Human rights in the context of Humanitarian aid**

**Mr. Yahia Buhubeini**

**President**

**Geneva, 10 September 2019**

In 1975, thousands of Saharawi Refugees left their country, Western Sahara, fleeing the Moroccan military invasion after Spain abandoned the territory without accomplishing its engagements regarding the creation of the appropriate conditions for a free exercise of self-determination for the Saharawi people as recommended by the UN General Assembly's resolutions and as ruled in the International Court of Justice legal opinion of October 1975 regarding this territory identified as a Non-Self-Governing territory.

In respect to The Geneva Convention of 1951 relative to the protection of the refugees and the 1961 of OAU/AU convention on protection of refugees, Algeria has hosted refugees since their arrival, and provided them humanitarian assistance. Currently, thes Refugees are living in five camps (Aiun, Smara, Auserd, Dajla and Bujador) near Algerian town Tindouf,

In 1986, the Government of Algeria invited the United Nations humanitarian agencies to provide humanitarian assistance to these refugees. UNHCR and WFP naturally stepped in and were quickly followed by UNICEF.

March 2018, the total in-camp population was found to be 173600 Refugee. This figure was a result of work of UNHCR expert technical mission.

The Saharawi Refugees in Algeria are living in extreme meteorological and geographical conditions where the temperatures can reach 50 degrees in the summer and become freezing cold in the winter in addition to sand storms.

The Government of Algeria has provided extensive support for water, education, and health sectors in the refugee camps, in addition to ensuring an adequate roads, communication network, and electrical supply to all the camps. In 2018, Algeria gave more than 7400 scholar ship to Saharawi students and hosted more than 2300 patients in its hospitals. 30 000 families in the camps had already access to electricity.

The situation becomes more vulnerable

### **Food and nutrition**

It remains a big challenge to achieve the two main results in this sector: (1) Everyone has access to food and (2) No one suffers from malnutrition and anemia. This year, a lack of funding has forced the WFP to reduce the quantity of the monthly food rations to the most vulnerable refugees, and school feeding rations to 42000 children were reduced by half. Breaks in food pipeline become more frequent, and fresh food rations were cut by 2third.

The last UNHCR/WFP nutrition survey indicated that malnutrition reaches 25% among kids less than 5 years old while anemia reaches in them 53%. Among pregnant women anemia reaches 72%, while among milking women it reaches 67% and 45% for women in procreative age.

March 2018, WFP conducted a food security assessment: 30% of total refugee population is food insecure, 58% at risk of food insecurity and 12% are food secure.

June 2019, WFP Executive Board approved a three year strategy to assist 133672 vulnerable persons of Saharwi Refugees.

The yearly Basket dry food financial requirement is 19.5 million and the gap is 32%. Fresh food estimated need is 5 million and the gap is 70%.

### **Water, Sanitation and Hygiene**

In a context of scarce water resources and extreme weather conditions, with virtually no rain for most of the year, Saharawi refugees have access to an average of 14 liters of drinkable water per person and per day. This falls well short of the humanitarian standard of 20 liters per person and per day.

The only existing water in the area is an underground water aquifer which is very deep, making the extraction through a deep bore hole extremely challenging. Once extracted, the water must be treated for suspended solids and chemical elements. The water network only reaches about 30% of the population, so water trucking is still required to cover the remaining 70%. The majority of the water trucks are over 20 years old. Requiring regular maintenance and repairs, and should be gradually replaced.

The existing water supply system needs to be maintained and upgraded through continuous and efficient operation and maintenance of existing water facilities, with the installation of new facilities. It is necessary to find new water resources and drill additional boreholes. Bleach and soap are produced in camp-based workshops. However, due to low production, only half of the humanitarian standard of 500 grams per person per month can be distributed. Hygiene kits for women of production age need to be distributed throughout the year as there is no availability in the markets and refugees cannot offer to purchase them.

Solid waste management is another challenge in all five camps. Open garbage pits are used in all the camps and waste collection is conducted by very old trucks for which costs of maintenance are very high.

Only 40% of the financial requirements of US\$37 million (2018 budget), has been met.

## **Health**

The health care system in the Sahrawi refugee camps is entirely managed and implemented by the Sahrawi refugees. Health centers and hospitals are run by Saharawi medical staff. Interventions in the health sector provide the support necessary to sustain and enhance existing health care services and structures set up by the Saharawi Authority. It would also help ensure that programs are in line with national and international standards. Efforts should also improve effective access and coverage.

The main challenges include poor infrastructure, lack of adequate medical equipment, shortages of medicines, the need to continue to renew the ambulance fleet, and retention of skilled staff. This has a direct impact on refugees, especially on children. The improvement in mortality and morbidity indicators since 2015 confirms the efficiency of the health system when it is well supported. However maintaining a level of good coverage, access and efficiency requires constant and continuous support to the staff and maintenance of health infrastructure, as well as to auxiliary services (laboratories, X-ray).

The collection of epidemiological data needs is improved and the identification and prevention of communicable and non-communicable diseases (NCD) in the camps is getting better. Diabetes and hypertension are reportedly the most prevalent health problems and risk factors could be reduced through sensitization.

It remains top priority the access to health care services by covering the cost of medical consultations performed by Sahrawi doctors. Immunization system strengthening was accomplished through provision of vaccines for all children between 0-4 years old; training of vaccinators; but provision of cold chain with necessary equipments is needed. Health personnel should be trained in neonatal care and the use of heating tables and incubators. The quality of health care services in the hospitals will be improved through provision of new laboratory and X-ray supplies. The provision of medical equipment and medicines and support to the midwives' school will improve reproductive health and HIV services for Sahrawi refugees in the camps.

It is a matter of concern the important increase of diseases such as glycerin, diabetic and blood pressure and anemia in pregnant and lactated women.

Medication is insufficient, and there is an important shortage in those dedicated to chronic diseases. There is also need of training and recycling the personnel of the health system, especially specialized doctors.

### **1- Shelter and Non Food Items**

Shelter in the five Sahrawi refugee camps must resist extreme conditions of heat and cold. In summer, temperatures can rise to 50 degrees Celsius while during winter temperatures fall below zero degree Celsius at night. In addition, the area is prone to frequent sandstorms. Sahrawi refugees usually live in traditional tents that are adapted to the hot season. There are currently an estimated 14,000 families in need of such shelter, as these tents need to be replaced regularly due to the climatic conditions and accelerated wear-and-tear.

Adobe-brick houses provide a more permanent shelter especially for winter. These constructions are, however, not resistant and their design requires improvements to adapt to the local climate. In general, the new houses under construction are using cement bricks, which are more durable but also more costly.

In 2016 and 2017, after the floods of October 2015 that damaged over 17,800 adobe brick houses, 2,700 families of the most vulnerable families were able to reconstruct or build new houses from the shelter materials distributed (cement, timber, and zinc for roofs) according to an improved design. This new design was developed together with Sahrawi refugees to be more resistant against any future heavy rains or flooding.

Provision of full tent kits (comprised of bamboo poles, iron pegs, ropes and canvas) will continue on an annual basis, with each kit received making possible the building of a traditional Sahrawi tent with a size of about 60 m<sup>2</sup>. Such distributions, across all sectors, require significant logistical support, including maintenance and reparation of vehicles providing humanitarian assistance.

Four out of five camps are already connected to the Algerian electricity network. In addition, generators and solar panels provide energy in the camps. Sahrawi refugees rely on gas for cooking, heating and refrigeration. Priority assistance provide gas cylinder refilling all year around for 28,000 families and provision of 2,000 new gas cylinders per year to newlywed families.

Yet the aid only covers 45% of the needed tents. Each family should receive 60 meters of canvas to make the tent every 5 years. And since the families are over 28.000 then there is a need for 5.800 tent per year. The gap remains high (14000 tents).

Cooking gas is an essential need for families. Every family should get one gas cylinder for each 30 days, knowing that the cylinder of gas only covers 12 to 15 days of the needs. The distribution of gas doesn't cover the needs, and register a shortage of 30%.

## **2- Education**

School is mandatory for all children from 6 to 15 years. Access to primary and intermediate education is available and enrolment rates are high. About 42,000 refugee children are enrolled in pre-school (8,000 children) and primary and intermediate schools (34,000 children). However, refugee school children face challenges in terms of quality of teaching, inadequate infrastructure and unavailability of education supplies and equipment. In addition, activities aimed at retention and enrolment rates such as school feeding are impacted by funding shortfalls.

Education facilities in all five camps are old and in need of rehabilitation to offer a safe learning environment. The floods in October 2015 worsened the situation, damaging 57 of the 64 pre-schools and schools. Around 70% of educational facilities currently do not meet safety and accessibility standards. A five-year Infrastructure Rehabilitation and Reconstruction Strategy was established in 2017, but funding has not yet been secured. Equipping education facilities, developing a sports complex, providing recreational and sports equipment and increasing school supplies to cover the whole school year are additional critical needs to address.

Furthermore, there are almost no secondary schools in the camps. This means that children who graduate from intermediate schools at around age 16 need to leave their homes to continue their studies in other cities in Algeria. Constructing and equipping a camp-based secondary school is therefore a priority to ensure that Sahrawi refugee children can complete their education in the camps. As for higher education, a large number continue their education in Algerian universities or abroad. While this should continue to be encouraged, the lack of training opportunities within the camps for those unable to study abroad should be addressed.

Additional teacher training and provision of attractive incentives is critical to retain skilled and engaged refugee teachers, thus ensuring the possibility of continued education for refugee children. Currently, the low rate of incentives provided to refugee teachers leads to a high turnover of staff and this instability affects children's learning progress.

Finally, the Saharawi Red Crescent would like to express its gratitude and recognition to humanitarian community in particular to African Union, UN Agencies and NGOs and donors from different countries for the support and generosity with which it supported the Saharawi refugees since 1975.

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## ***Human Rights in the context of Humanitarian Aid***

***Geneva, 10 September 2019***

***Monica Alonso San Millán***  
***Human Rights and Humanitarian Aid Coordinator***

Good afternoon ladies and gentlemen,

First of all, let me start by thanking the Geneva Support Group for Western Sahara for organising this side event and for inviting the Mundubat Foundation to present the humanitarian situation in Saharawi population camps in Algeria and its impact on the enjoyment of human rights. The Mundubat Foundation has been present in the Saharawi refugee camps for over 20 years, two decades, which, however, is not even half the time that a large part of the Saharawi people have been forced to spend in refuge. This long lasting crisis of refugee population is the second longest that humanity has ever undergone.

During these years, the Mundubat Foundation has witnessed the impasse of the political dialogue processes which must guarantee the fulfilment of the right to self-determination internationally recognized to the whole of the Saharawi people, but also the continuous deterioration of the humanitarian situation of the Saharawi population in the Algerian refugee camps. In April this year<sup>38</sup>, the United Nations Security Council noted *“with deep concern the continued hardships faced by Saharawi refugees and their dependency on external humanitarian assistance”* and further noted *“with deep concern insufficient funding for those living in Tindouf refugee camps and the risks associated with the reduction of food assistance”*.

These risks exist for 75% of the population of the five refugee camps —Awserd, Boujdour, Dakhla, Laayoun and Smara— in situation of vulnerability<sup>39</sup>. The Saharawi population in the camps –totally dependent on international humanitarian aid in order to meet their basic dietary needs-<sup>40</sup> have had the amount and variety of food in the basic basket provided by the World Food Programme reduced since 2014. Likewise, the amount of fresh produce in the monthly distributions have gone down from 3 kg per person in 2016 to a little more than 1 kg in 2018<sup>41</sup>, when food safety standards establish the need to consume between 9 and 12 kg of fresh produce per month. This limitation in quantity combines with a continuous reduction in the variety of the food. The number of different types of fresh produce distributed in the camps decreased from 8 to 4 in 2017 and to 3 in 2018<sup>42</sup>.

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<sup>38</sup> Resolution S/RES/2468 of the Security Council. 30 April, 2019. <https://undocs.org/es/S/RES/2468>

<sup>39</sup> UNHCR and WFP Joint Assessment Mission Algeria. 2016. [https://docs.wfp.org/api/documents/WFP-0000103522/download/?\\_ga=2.7571378.1443174801.1567754195-659183971.1567754195](https://docs.wfp.org/api/documents/WFP-0000103522/download/?_ga=2.7571378.1443174801.1567754195-659183971.1567754195)

<sup>40</sup> According to the analysis carried out in 2018 by the World Food Programme, in more than 90% of the households, the food came from food assistance. PMA. 2018. Food Security Assessment for Saharawi Refugees. <https://docs.wfp.org/api/documents/WFP-0000103413/download/>.

<sup>41</sup> These amounts are supplemented with occasional donations.

<sup>42</sup> Data from the Humanitarian Consortium made up of 19 NGOs with presence in the CRS, among which we find Mundubat.

In this situation, the right to adequate food of the Saharawi refugee population is seriously compromised. The requirements established by the Committee on Economic, Social and Cultural Rights are not being met. Their general comment number 12 establishes that the right to adequate food requires “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of the individuals”.

In Saharawi refugee camps only 20% of the children under the age of two have access to an acceptable minimum diet, which leads to one fifth of the children experiencing stunted growth and seven out of ten pregnant women suffering anaemia<sup>43</sup>. In addition to nutritional factors, this situation is caused by poor hygiene and health conditions as well as the condition of the water supply.

In fact, the exercise of the right to water by part of the refugee population is seriously undermined. On average, they have access to only 14 litres of drinking water per person, quite below the 20 litres established as the minimum in the humanitarian standards<sup>44</sup>. Moreover, 70% of the distribution is still carried out using tanker trucks, which has a negative effect on the quality of the water. This quality worsens with the poor condition of most of the family water storage tanks.

With regard to the waste management system, the 19 collection trucks existing at present are not sufficient to guarantee that the collection ensures a healthy environment in view of the ever-increasing volume of waste. It is urgent to strengthen the capacity and effectiveness of the waste management system so as to contribute to guaranteeing the right to health.

This right, the human right to health, is recognized in the Saharawi national legislation. However its realization faces the serious limitations of a health system which, despite being entirely administered by the Saharawi authorities (there are currently 27 health clinics, 5 hospitals and a national hospital), it is financially dependent on the humanitarian aid. The provision of health care faces a serious deficit of resources to cover the economic incentives of the health staff who provide essential health services, as well as to guarantee the coverage of necessary equipment and medicines and the access to secondary and tertiary health care. More than 10,000 women of reproductive age do not have access to the distribution of hygiene kits, including sanitary pads, and the healthy practices programmes do not reach the entire vulnerable population.

In a context in which temperatures may exceed 50° C in summer and fall below 0° in winter nights, with frequent sand storms and periodical torrential rains, the guarantee of the fulfilment of the right to adequate housing must ensure protection against this inclement weather. However, the basic housing in which families live reflects their temporary link to the Algerian territory. Even though 768 homes damaged by the floods which took place in October 2015 have been totally rebuilt, the housing needs continue to grow.

In the refugee camps, the exercise of the right to education is in keeping with Article 13 of the International Covenant on Economic, Social and Cultural Rights, which specifies that “*primary education must be compulsory and available free to all*”, since compulsory and free education from the age of 6 to the age of 17 has been recognized. However, the public education system is facing serious challenges to guarantee “*secondary education in its different forms, including technical and vocational secondary education*”. With regard to the “accessibility of higher education”, the lack of higher education institutions has not been mitigated with the agreements signed by the Saharawi authorities and third countries (such as Algeria and Cuba). All the educational levels have serious deficiencies in terms of infrastructure, equipment and supplies as well as difficulties in guaranteeing the adequate financial recognition of the teaching activity.

The right to education is a catalyst for other rights, especially for the younger population; consequently, the difficulties in the exercise of this right determine an uncertain future with regard to labour rights,

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<sup>43</sup> Inter-Agency group. Humanitarian Needs Assessment of Saharawi Refugees in Algeria, 2018-2019.

<sup>44</sup> Idem.



gender equality and quality of life of each individual. This is clearly shown in the report “The Mirage of Human Rights: Saharawi youth and the occupation of Western Sahara”<sup>45</sup> elaborated by the Mundubat Foundation. But this lack of educational opportunities has also an impact in the resolution of the unacceptable postponement of the exercise of the right to self-determination of the Saharawi people.

This situation described above worsens for the population with disabilities. In spite of all the efforts made by the Saharawi authorities as well as the humanitarian actors, the needs of the people with disabilities are not understood and dealt with properly. Hence, the principles of non-discrimination and “not leaving anyone behind” assumed at the World Humanitarian Summit held in Istanbul in 2016 are seriously compromised in the Saharawi refugee camps.

Due to time constrictions, only the situations of some essential humanitarian sectors and their correlation with the human rights of the Saharawi population have been described here. The critical situation of the right to food, water, adequate housing, health or food, the situation of vulnerability of the Sahrawi refugee population can only be resolved through the legitimate exercise of the right of self-determination of the Saharawi people and it is an affront to the basic principles that led to the international community to be endowed with a legal corpus regarding the inalienable rights of the human being.

This humanitarian crisis, which corresponds to a crisis of the fundamental rights of the Saharawi population and which has its origin in the illegal occupation of Western Sahara by Morocco, together with the inaction of the international community, must receive urgent attention by the Office of the United Nations High Commissioner for Human Rights. It is urgent that it takes the necessary measures to keep watch on the human rights of the Saharawi population, making periodical visits and publishing detailed reports with regard to the Saharawi population in general, including the Saharawi refugee population.

Thank you very much for your attention.

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<sup>45</sup> Full report <https://www.saharaconderechos.org/>



**Sahrawi Arab Democratic Republic**  
**H.E. Mr. Brahim Boumajruta**  
**Minister for Water and Environment**

**Human rights in the context of Humanitarian Aid**

**Geneva, 10 September 2019**

Excellences, distinguished guests, ladies and gentlemen,

First of all let me express my gratitude to the members of the Geneva Support Group, including the American Association of Jurists, for having organised this important side-event. I wish in particular to thank the Government of South Africa and H.E. Amb. Nozipho J. Mxakato-Diseko – Permanent Representative of the Republic of South Africa for her participation to this very timely side-event; I wish to thank her for his words of solidarity which also remember to all of us that international law must prevail on geopolitical games and any others interests. I should also thank you for leading the Geneva Support Group this year.

Let me also warmly thank all panelists for their very interesting and accurate presentations, which allow me to enter directly into the matter.

When speaking about the suffering of the Sahrawi People, I refer to the consequences for the Sahrawi families of 44 years of military illegal occupation of the Non-Self-Governing Territory of Western Sahara. A territory that has been separated by the Occupying power by a sand wall, 1'700 kilometers long, along which the Kingdom of Morocco has disseminated millions of landmines.

For the last 44 years dozens of thousands of Sahrawis are living in very dare conditions in the Algerian desert and can survive only thanks to the Algerian and the international community support. According to the UN Humanitarian Agencies these is one of the longest humanitarian situation: a situation that, as has been said before, concerns more than 170'000 people.

Now, we are here in the framework of the 42<sup>nd</sup> session of the UN Human Rights Council and I have to stress that the illegal military occupation and subsequent illegal annexation of a large part of Western Sahara by the Kingdom of Morocco have generated severe violations of the International Humanitarian Law, some of which may amount to war crime and crime against humanity. It has also generated systematic and serious violations of all kind of Human Rights: economic, social, cultural, civil and political.

Since the acceptance of the Settlement Plan and the creation of MINURSO, the Occupying power has spared no effort in order to avoid the organization of the referendum for the self-determination of the Sahrawi people, which has to be considered as the basis for the enjoyment of all Human Rights by the Sahrawi people.

The Kingdom of Morocco, supported by the former colonial powers of Morocco and Western Sahara, respectively France and Spain, is constantly opposing the inclusion of the Human Rights monitoring into the MINURSO mandate.

At the same time, the UN General Assembly constantly reaffirms the inalienable right of the Sahrawi people to self-determination and independence. The Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, commonly called Special Committee on Decolonization, yearly reaffirms the applicability of that Declaration to the Sahrawi people.

The UN Committee on economic, social and cultural rights as well as the UN Human Rights Committee, in recent years, have expressed their concern about the prolonged delay in the organization of the referendum.

I must emphasize here that, since Spain withdrew from the Territory in February 1976, Western Sahara has become and still is today the only Non-Self-Governing Territory that has not an internationally recognized Administering power; which gives to the United Nations system, as a whole, a primary responsibility over Western Sahara.

Following the 1993 World Conference on Human Rights in Vienna, the UN General Assembly decided to create the post of the High Commissioner for Human Rights and decided that the High Commissioner's responsibilities shall be, inter alia, to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world; including Western Sahara of course.

Furthermore, the UN General Assembly, in adopting annually, by consensus, a resolution on the "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations", 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 and urges those specialized agencies and other organizations of the United Nations system that have not yet provided assistance to Non-Self-Governing Territories to do so as soon as possible.

The protection and promotion of Human Rights is one of the main priorities of the Sahrawi Arab Democratic Republic's policy. With the limited resources at its disposal and thanks to the international solidarity, the Sahrawi government gives a high priority to the alphabetization and the education of the youth, as well as to the enjoyment of the highest attainable health standard, in a very difficult humanitarian situation.

A situation that should compel the Office of the High Commissioner for Human Rights and the High Commissioner herself to actively engage for the protection and promotion of Human Rights of the Sahrawi people: those living under occupation and those who need humanitarian aid.

At the 20.16 World Humanitarian Summit in Istanbul, the Office of the High Commissioner for Human Rights committed itself, inter alia:

- to continue monitoring, investigating, analyzing and reporting on human rights violations and abuses, as well as violations of international humanitarian law where relevant, by mandating and conducting fact-finding missions;
- to support increased efforts to track and collect data in situations of armed conflict on alleged violations of international human rights law and where relevant international humanitarian law;
- to continue to speak out and systematically condemn violations of international human rights law and international humanitarian law;
- to continue providing direct assistance to victims of torture;
- to continue advocating for accountability and the right of victims to an effective remedy.

Regrettably, the Sahrawi people have not yet been able to see the fulfillment of these commitments by the Office of the High Commissioner for Human Rights in Western Sahara, despite the arbitrary arrests, torture and unfair sentences of human rights defenders, despite the separation of the Territory and of the Sahrawi families, despite the plundering of the natural resources of the Sahrawi people by the Occupying power and despite the continuing violations of all Human Rights of the Sahrawi refugees related to the illegal military occupation of Western Sahara by the Kingdom of Morocco.

The Sahrawi Arab Democratic Republic calls upon the UN High Commissioner for Human Rights to implement in Western Sahara the commitments taken at the World Humanitarian Summit, to resume the technical missions to Western Sahara and the refugee camps and to implement a programme of technical cooperation and capacity building with the representative of the people of Western Sahara, the Polisario Front.

I thank you for your attention.

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