



# General Assembly

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## Human Rights Council

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Agenda item 2

**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

**Joint written statement\* submitted by American Association of Jurists, Asociación Española para el Derecho Internacional de los Derechos Humanos AEDIDH, Association Mauritanienne pour la promotion du droit, Association mauritanienne pour la transparence et le développement, Association Nationale des Echanges Entre Jeunes, Fundación Latinoamericana por los Derechos Humanos y el Desarrollo Social, Habitat International Coalition, International Association of Democratic Lawyers (IADL), International Fellowship of Reconciliation, Paz y Cooperación, Right Livelihood Award Foundation, World Barua Organization (WBO), non-governmental organizations in special consultative status, Indian Council of South America (CISA), International Educational Development, Inc., Liberation, Mouvement contre le racisme et pour l'amitié entre les peuples, World Peace Council, non-governmental organizations on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[04 June 2020]

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\* Issued as received, in the language(s) of submission only.



## **Western Sahara: the illegal exploitation of the natural resources and the economic activities which affect the interests of the Sahrawi People**

### **Introduction**

Since 1884, Western Sahara was under Spanish colonial rule. In December 1963, the United Nations General Assembly (UNGA) added Western Sahara into the list of the 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 Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory. Since then, Western Sahara became the only Non Self-Governing Territory (NSGT) that has not an internationally recognized Administering Power.

Since the military invasion of the Territory by the Kingdom of Morocco in November 1975, Western Sahara became and still is today the only Non Self-Governing Territory under the illegal military occupation of a third country.

The invasion of Western Sahara was launched few days after the International Court of Justice released its Advisory opinion<sup>1</sup> establishing unambiguously that "...the Court's conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco... the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."

An occupation that both, the UN Security Council (res. 380) and UNGA (A/RES/34/37 and A/RES/35/19), have condemned. Since then, UNGA has repeatedly reaffirmed its interpretation of the legal status of Western Sahara as a NSGT, including in its resolution 74/97 where UNGA reaffirms the inalienable right to self-determination of the Sahrawi people and the responsibility of the UN towards the people of Western Sahara.

### **The illegal occupation and annexation of Western Sahara by the Kingdom of Morocco**

The Principle of equal rights and self-determination of peoples contained in UNGA Resolution 2526 (XXV)<sup>2</sup> states that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

The same Principle, also affirms that the territory of a colony or other NSGT has 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 NSGT have exercised their right of self-determination in accordance with the Charter.

Although the Kingdom of Morocco has signed the Settlement Plan<sup>3</sup> in 1990, which led to the creation of the MINURSO<sup>4</sup>, it spared no efforts to impede the United Nations and the Organisation for the African Unity to organize the referendum in Western Sahara.

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<sup>1</sup> Western Sahara, Advisory Opinion, I.C.J. Reports 1975, par. 162.

<sup>2</sup> Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations (24/10/1970).

<sup>3</sup> Report of the Secretary General S/21360 (18/06/1990).

<sup>4</sup> UNSC res. 690 (29/04/1991).

Throughout the years, the Kingdom of Morocco has included the large portion of the NSGT of Western Sahara it occupies in its administrative order, holding illegal legislative elections there to represent the Sahrawi people under occupation in its national parliaments.

The illegal military occupation and annexation of the large portion of the NSGT of Western Sahara has caused and continue to be the cause of serious and systematic violations of human rights, as well as of serious breaches of International Humanitarian Law.

In particular, it is to be highlighted the violations of Articles 31 - 32 (prohibition of coercion, torture, degrading and inhuman treatments); Article 33 (prohibition of collective penalties, intimidation, pillage, reprisals); Article 49 (prohibition of deportations, transfers, evacuations); Article 53 (prohibition of destruction of real or personal property belonging, individually or collectively, to private persons); and Article 76 (on the treatment of detainees) of the Fourth Geneva Convention. Some of these violations may amount to war crimes, crimes against humanity and cultural genocide.

### **The illegal exploitation of the natural resources in the Occupied Western Sahara**

UNGA resolution 1803 (XVII)<sup>5</sup> provides that the exploration, development and disposition of the peoples and nations natural resources, as well as the import of the foreign capital required for these purposes, should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities.

In his letter addressed to the President of the UN Security Council,<sup>6</sup> the Under-Secretary-General, M. Hans Corell recalled that "...UNGA has consistently condemned the exploitation and plundering of natural resources and any economic activities which are detrimental to the interests of the peoples of those Territories and deprive them of their legitimate rights over their natural resources."

In its recent judgments,<sup>7</sup> the Court of Justice of the European Union (CJEU), when considering the application of the various agreements concluded between the European Union and the Kingdom of Morocco, has constantly reaffirmed that Western Sahara cannot be considered as part of the Kingdom and therefore that the agreements were not applicable to Western Sahara.

In clarifying the applicable law, the CJEU underlined that it is not necessary to determine whether such implementation is likely to harm [the Sahrawi people] or, on the contrary, to benefit it" (§106). It is sufficient to point out that, "in either case, that implementation must receive the consent of [the people of Western Sahara]". The Court refers twice to the aforementioned UNGA Resolution 34/37 that recognizes the Polisario Front as "the representative of the people of Western Sahara".

Despite those judgments, the European Commission and the European Parliament decided to violate the European Union's Treaty and the Principles of the Union's external action by signing new agreements that cover the Occupied NSGT of Western Sahara.

It is to be stressed that several companies and investment funds, like the Austrian chemical giant Borealis have withdrawn from Western Sahara.<sup>8</sup>

<sup>5</sup> Permanent sovereignty over natural resources (14/12/1962).

<sup>6</sup> S/2002/161 (29/01/2002).

<sup>7</sup> <http://curia.europa.eu/juris/documents.jsf?page=1&oqp=&for=&mat=or&lgrc=en&jge=&td=%3BALL&jur=C%2CT%2CF&dates=&pcs=Oor&lg=&parties=Polisario&pro=&nat=or&cit=none%252C%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2295424>.

<sup>8</sup> See <https://www.wsrw.org/IEN>.

Last May 7, the German Federal Ministry for Economic Cooperation and Development declared that the existing contracts for development credit explicitly exclude the financing of economic activities in Western Sahara.<sup>9</sup>

### **The economic activities which affect the interests of the Sahrawi People**

In its resolution on “Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories”<sup>10</sup>, UNGA reaffirms that the natural resources are the heritage of the peoples of the NSGT and expresses its concern about any activities aimed at exploiting the natural and human resources of the NSGT to the detriment of the interests of the inhabitants of those Territories.

It further reaffirms the need to avoid any economic or other activities, including the use of the NSGT for military activity, that adversely affect the interests of the peoples of the NSGT and calls upon all Governments that have not yet done so to take legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the NSGT that are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises.

UNGA also 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 NSGT over their natural resources is fully respected and safeguarded in accordance with the relevant UN resolutions on decolonization.

### **Recommendations**

The 212 undersigning organizations call upon:

- the UN Human Rights Council to implement OP5 of UNGA resolution “Universal realization of the right of peoples to self-determination”<sup>11</sup> and to effectively give special attention to violations of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation and to create a mandate of Special Rapporteur on the Human Rights situation in the Occupied Western Sahara;
- the UN High-Commissioner for Human Rights to implement OP8 of UNGA resolution “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”<sup>12</sup> and to effectively provided assistance to the Non-Self-Governing Territory of Western Sahara as soon as possible;
- the UN High-Commissioner for Human Rights to implement OP22 of the same UNGA resolution and to report to the Secretary-general on the implementation of that resolution;
- the Working Group on the issue of human rights and transnational corporations and other business enterprises to consider analyzing the economic and financial activities which affect the interests of the peoples of the Non-Self-Governing Territories;
- the Special Rapporteur on the independence of judges and lawyers to consider analyzing the legal treatment at the national and international levels of the illegal economic activities in the Non Self-Governing Territory of Western Sahara.

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<sup>9</sup> [https://www.wsrw.org/files/dated/2020-05-11/antwort\\_schriftliche\\_frage\\_nr.\\_04-503-1.pdf](https://www.wsrw.org/files/dated/2020-05-11/antwort_schriftliche_frage_nr._04-503-1.pdf)

<sup>10</sup> A/RES/74/94 (13/12/2019).

<sup>11</sup> A/RES/74/140 (18/12/2019).

<sup>12</sup> A/RES/74/.

Acción Solidaria Aragonesa (ASA), African Law Foundation (AFRILAW), Agrupación Chilena de Ex Presos políticos, Amigos por un Sahara Libre, Arabako SEAD en Lagunen Elkartea - Asociación de Amigos y Amigas de la R.A.S.D. de Álava, ARCI Città Visibili, A.R.S.P.S. - Rio de Oro, Asociación Amal Centro Andalucía, Asociación Amal Nanclares, 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 de Apoyo al Pueblo Saharaui de Jaén, Asociación ARDI HURRA, Asociación Asturiana de Solidaridad con el Pueblo Saharaui, Asociación Canaria de Amistad con el Pueblo Saharaui (ACAPS), Asociación Chilena de Amistad con la República Árabe Saharaui Democrática, Asociación de la Comunidad Saharaui en Argon (ACSA), Asociación Cultural Peruano Saharaui, Asociación de Discapacitados Saharaui, Asociación Ecuatoriana de Amistad con el Pueblo Saharaui (AEAPS), Asociación de Familiares de Presos y Desaparecidos Saharaui (AFAPREDESA), Asociación Hijas de Saguia y el Rio, Asociación por la Justicia y los Derechos Humanos, Asociación de Médicos Saharaui en España, Asociación Mexicana de Amistad con la República Árabe Saharaui A.C. (AMARAS), Asociación Navarra de Amigos y Amigas de la R.A.S.D. (ANARASD), Asociación Navarra de Amigos y Amigas del Sahara (ANAS), Asociación Panameña Solidaria con la Causa saharai (APASOCASA), Asociación Pro Derechos Humanos de España (APDHE), Asociación Profesional de Abogados Saharaui en España (APRASE), Asociación por la Protección de los Presos Saharaui en las Cárceles Marroquí, Asociación Riojana de Amigos de la R.A.S.D., Asociación Sahara Euskadi Vitoria, Asociación Sahara Gasteiz Vitoria, 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 Saharaui en Alicante, Asociación de Saharaui en Ávila, Asociación de Saharaui en Bal, Asociación de Saharaui en Fuerteventura, Asociación de Saharaui en Jerez de la Frontera, Asociación de Saharaui en Lebrija, Asociación de Saharaui en Navarra, Asociación de Saharaui en Tenerife, Asociación de Saharaui en Valdepeñas, Asociación Tawasol Ludio, Asociación Um Draiga de Zaragoza, Asociación Venezolana de Solidaridad con el Sáhara (ASOVESSA), Asociación de Víctimas de Minas (ASAVIM), Asociación de Zamur Valencia, Associação Amigos e Solidaridade ao Povo Saharaui (ASAHARA), 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 for the Monitoring of Resources and for the Protection of the Environment in Western Sahara (AMRPENWS), 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 la vie maghrébine pour la solidarité et le développement (AVMSD), Associazione bambini senza confini, Associazione Jaima Sahrawi per una soluzione giusta e non violenta nel Sahara Occ., Associazione Nazionale di Solidarietà con il Popolo Saharaui, Australia Western Sahara Association, 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, Central Unitaria de Trabajadores de Chile, 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 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 Ecueménica 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 Belge de soutien au Peuple Sahraoui, 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 Saharaui, Comité de Jumelage et d'Echange Internationaux / Gonfreville l'Orcher, 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 Victimas 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-Governmentals 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, European Association of Lawyers for Democracy and World Human Rights (ELDH), 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), Fondation Frantz Fanon, Forum Futuro de la Mujer Saharaui, Freiheit für die Westsahara e.V., Fundación Constituyente XXI, Fundación Mundubat, Fundación Sahara Libre-Venezuela, Fundación Sahara occidental, Giuristi Democratici, Global Aktion - People & Planet before profit, Groupe Non Violence Active (NOVA SAHARA OCCIDENTAL), Grupo por la renuncia de la Nacionalidad Marroquí, Housing and Land Rights Network, Ibsar Al Khair Association for the Disabled in Western Sahara, Liga de Defensa de los Presos Políticos Saharaui, Liga de Deportistas Saharauis en España, Liga de Estudiantes Saharauis en España, Liga de Mujeres Saharauis en España, Liga Nacional dos Direitos Humanos, Liga de Periodistas Saharauis en España, Liga Saharaui de defensa de Derechos Humanos y Protección de RW-Bojador, Ligue des Jeunes et des Etudiants Sahraouis en France, Ligue pour la Protection des Prisonniers Sahraouis dans les prisons marocaines (LPPS), National Television Team, Nigerian Movement for the Liberation of Western Sahara, 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, 1514 Oltre il muro, Organización Contra la Tortura en Dakhla, Organización Saharaui por la Defensa de las libertades y la dignidad, Pallasos en Rebeldía y Festiclown, Plataforma de Organizaciones Chile Mejor Sin TLC, Por un Sahara Libre, 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, Sandblast Arts, Schweizerische Unterstützungskomitee für die Sahraouis, Sindicato Español Comisiones Obreas (CCOO), Solidariedade Galega col Pobo Saharaui (SOGAPS), Stichting Zelfbeschikking West-Sahara, Tayuch Amurio, The Icelandic Western Sahara Association, The Swedish Western Sahara Committee, TIRIS - Associazione di Solidarietà con il Popolo Saharawi, Unión de Asociaciones Solidarias con el Sáhara de Castilla y León, Union des Ingénieurs Sahraouis, Unión de Juristas Saharauis (UJS), Unión Nacional de Abogados Saharauis, 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 Saharauis (UNMS), Unión Nacional de Trabajadores de Saguia El Hamra y Rio de Oro (UGTSARIO), Unión de Periodistas y Escritores Saharauis (UPES), US Western Sahara Foundation, VZW de Vereniging van de Sahrawi Gemeenschap in Belgie, Werken Rojo - Medio de comunicación digital, Western Sahara Resource Watch España (WSRW España), Western Sahara Times, NGO(s) without consultative status, also share the views expressed in this statement.