



**Observations following the Human Rights Council's
List of Issues concerning the 2016 review of Morocco's
implementation of
the International Covenant on Civil and Political Rights**

To the attention of the United Nations Human Rights Committee

Submitted by Western Sahara Resource Watch on 19 September 2016.

WSRW has taken note of the Human Rights Committee's questions in its List of Issues on the subject of Morocco's efforts to realize the right to self-determination for the people in the Non-Self-Governing Territory of Western Sahara, as well as asking the Moroccan Government to identify what measures it has taken to resolve the impediments to the holding of a United Nations-administered referendum.¹

Morocco's proposed autonomy initiative, as described in its State report submitted to the Council in August 2015, readily fails to meet the principle of self-determination as provided by Article 1 (1) of the *International Covenant on Civil and Political Rights* (ICCPR). A Non-Self-Governing people has the right to freely determine their own political status, as the Council made clear in General Comment N° 12 (GC 12).² Morocco's proposal – a referendum consisting of a single option, autonomy, that is conceived and carried out by a State with no administering mandate with regard to a Non-Self Governing Territory or its people – is the precise opposite of the essence of self-determination; people having the right to freely choose from a panoply of options, ranging from independence to integration. It is most commendable and of utmost importance that the Council continues to support such a leading requirement of the Covenant.

At the same time, WSRW regrets that the Council did not specifically ask Morocco to submit further information with regard to the people of Western Sahara's right to dispose of their natural resources, and humbly requests the Council to raise this important matter in the upcoming dialogue with representatives of the Moroccan Government.

Article 1(2) ICCPR requires that "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." Further to this, GC 12 stipulates that "States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant." GC 12 also makes clear that Article 1(3) imposes an obligation on all State parties to take positive action to facilitate realization and respect for the right of peoples to self-determination – and thus for the corollary right to "freely dispose of their natural wealth and resources".

In its State report to the Council, Morocco failed to specify what it has done to respect, protect, and fulfill the right of the Saharawi people to resources in Western Sahara generally. Given Morocco's lack of mandate vis-à-vis Western Sahara, yet having full access to the territory's resources, there is an added responsibility on Morocco to account fully in the matter. The complete omission of the right to resources is all the more remarkable in view of the specific recommendation issued by the UN Committee on Economic, Social and Cultural Rights in October 2015:

*It further recommends that the State party guarantee respect for the principle of the prior, free and informed consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.*³

It is submitted that there is an increasing urgency to review Morocco's obligations in the framework of the Saharawi people's right to resources, in part because of the scope of the problem of the taking of resources and because of the human rights abuses perpetrated on Saharawi nationals who have opposed the development and export of resources.⁴

¹ Human Rights Committee, *List of Issues in relation to the sixth periodic report of Morocco*, 9 May 2016, CCPR/C/MAR/Q/6, § 3.

² General Comment No. 12, Article 1 (The right to self-determination of peoples), HRI/GEN/1/Rev.9 (Vol. I).

³ UN Committee to the Covenant on Economic, Social and Cultural Rights, "Concluding observations on the fourth periodic report of Morocco" (22 October 2015), UN doc. E/C.12/MAR/CO/4*, § 6.

⁴ WSRW defines "taking" as the administration, development, sale and export of natural resources by the government of Morocco, state agencies and parastatal corporations, with revenues from such activities flowing to Morocco's central state treasury.

WSRW contends that Morocco's taking of Western Sahara's resources is illegal because the activity is not directed towards assisting the Saharawi people in the exercise of their right to self-determination, but instead to an opposite goal: persistently maintaining a territorial claim that was long ago rejected by the International Court of Justice.⁵ The problem has three dimensions: (a) an enrichment of Morocco through the sale of the territory's natural resources; (b) Morocco's development of Western Sahara's resources to further acceptance of its illegal presence in the territory; (c) the decreased availability of non-renewable resources to the Saharawi people when they eventually achieve self-determination.

None of the revenue from these resources is returned to the Saharawi people, and there is no public accounting of them in the territory or Morocco. Critically, the Saharawi people who reside in the refugee camps at Tindouf, Algeria do not receive the benefit of such profits. To paint a stark picture, the total amount of international aid provided to the Saharawi refugees in 2013 was less than 10% of the estimated amount Morocco earned in revenues that year by selling Western Sahara's phosphates to interested takers around the globe.⁶

An important part of a strategy to annex by resource development has been the settlement of Moroccan nationals into Western Sahara, who are the main benefactors of business and employment opportunities created on the back of resource extraction in the territory.⁷ The presence of settlers in a place that Morocco styles as part of its so-called "southern provinces" objectively deprives the Saharawi people of certain economic opportunities and serves as a pretext for a military force to ostensibly protect such settlers along with building infrastructure to extend the occupation. The presence of settlers also obscures an accurate portrayal of the wishes and the interests of the Saharawi people with regard to Morocco's exploitation of the territory's resources.⁸ For this reason, it is important to note the difference between the "population" of the territory and the Saharawi "people". As such, while the definition "population" includes Moroccan settlers who have come to the territory after 1975 (or who spend parts of the year there as seasonal workers), the term "people" can only mean the Saharawi as the sole, original inhabitants of the territory prior to Morocco's invasion. The use of settlers is not only instrumental to Morocco in propagating the misconception that the exploitation of Western Sahara's resources is beneficial to the Saharawis, it furthermore creates the false impression that the Saharawis have been consulted about and agree to the exploitation.

All of the Saharawi groups that WSRW has been in contact with over the course of 11 years maintain that the Saharawi people have never been consulted about, consented to or benefit from Morocco's exploitation of their homeland's resources.⁹ To the contrary, the Saharawis have continuously voiced their opposition against such activities.¹⁰ In addition to the continuous protests on the matter inside the territory, the Saharawi people's legitimate (and United Nations accepted) representative organisation, in its dual capacities as the Polisario Front

⁵ International Court of Justice, *Western Sahara*, Advisory Opinion of 16 October 1975, <http://www.icj-cij.org/docket/files/61/6197.pdf>

The Court of Justice of the European Union (CJEU) is likely to reach the same conclusion, that Morocco has no territorial right or claim to Western Sahara. See the opinion of the CJEU Advocate-General issued 13 September 2016 at:

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-09/cp160094en.pdf> and at:

<http://curia.europa.eu/juris/celex.jsf?celex=62016CC0104&lang1=en&type=TXT&ancre=>

⁶ WSRW, Report: P for Plunder 2015: Morocco's exports of phosphates from occupied Western Sahara, April 2016, <http://wsrw.org/files/dated/2016-04-07/p-for-plunder-2015-web.pdf>

⁷ As noted in the US Department of State's 2014 Country Report on Human Rights in Western Sahara: "As an inducement to relocate to the territory, wage-sector workers earned up to 95 percent more than their counterparts in internationally recognized Morocco. The government also provided fuel subsidies and exempted workers from income and value-added taxes". *Western Sahara 2014 Human Rights Report*, p. 15, <http://www.state.gov/documents/organization/236840.pdf>

⁸ The UN Legal Opinion on the extraction of mineral resources in Western Sahara, concluded that "if further exploration and exploitation activities were to proceed in disregard of the interest and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories". S/2002/161, para. 25.

⁹ See e.g. the protest letter sent by Saharawi civil society groups to Kosmos Energy, asking the company to leave their homeland, <http://wsrw.org/a228x2984>.

¹⁰ See e.g. protest letters sent by the Saharawi Association for the Monitoring of Resources and the Protection of the Environment at <http://sahararesources.org/>.

and the Saharawi Arab Democratic Republic, together with a significant number of Saharawi civil society organisations, have firmly declared that they do not consent to and receive nothing from Morocco's resource extraction. This opposition has been remarked upon by the UN Secretary-General in his reports to the Security Council.¹¹

The result is to foster a perception that resource development in occupied Western Sahara is acceptable, and is an activity that purports to result in benefits to the Saharawi people. The absence of actual, verifiable information in this regard is one reason why the Court of Justice of the European Union on 10 December 2015 set aside free trade arrangements between the EU and Morocco in Western Sahara. The Court specifically noted that the lack of information provided by Morocco suggested that Morocco might not recognize the rights of the people of the territory under Article 73 of the UN Charter.¹²

Suggested questions to the Government of Morocco

We respectfully ask the Committee to raise the following questions with Morocco's representatives during the interactive dialogue;

- How has Morocco assured itself of the free, prior and informed consent of the Saharawi people - which includes both the Saharawis living inside the territory and those living as refugees in Algeria as a direct consequence of Morocco's invasion – to its continuing taking of the territory's natural resources?
- How do the Saharawi people, including those living as refugees in Algeria as a direct consequence of Morocco's invasion, benefit from Morocco's taking of their territory's resources?
- Is Morocco prepared to allow for a separate accounting by a credible, independent third party about the extraction and export of Western Sahara's natural resources, independently arrived at from Morocco's own national accounting?
- What measures does Morocco take to promote the Saharawi people's right to freely dispose of the natural resources of their homeland?

Suggested recommendations to the Government of Morocco

- To adhere to its obligation to promote the realization of the right to self-determination in Western Sahara, by allowing the United Nations to proceed with its 1991 promised administration of a free, fair and transparent referendum whereby the Saharawi people can determine their political status.
- To guarantee respect for the principle of prior, free and informed consent of the Saharawis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.

¹¹ See e.g. Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2015/246 (10 April 2015), § 62.

¹² Front Polisario c. Conseil de l'Union européenne et Commission Conseil de l'Union européenne, Arrêt du Tribunal, 10 décembre 2015, affaire T/512-2012, § 235, at: curia.europa.eu. The paragraph reads that "The failure by the Kingdom of Morocco to transmit the information provided for by Article 73(e) of the UN Charter with regard to Western Sahara is, at the very least, likely to give rise to doubt as to whether the Kingdom of Morocco recognises the principle of the primacy of the interests of the inhabitants of that territory and the obligation to promote to the utmost their wellbeing, as laid down in that article."