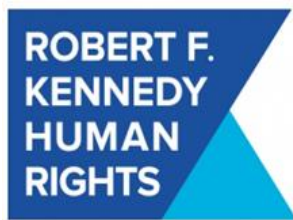


Observations and Topics to be Included in the List of Issues

On the occasion of the Kingdom of Morocco's fourth periodic report
on the implementation of the International Covenant on Economic,
Social and Cultural Rights

Submitted by:

Robert F. Kennedy Human Rights
Collective of Sahrawi Human Rights Defenders
Association Française d'Amitié et de Solidarité avec les Peuples d'Afrique
Bureau des Droits de l'Homme au Sahara Occidental
Fondation Danielle Mitterrand/France Libertés
Sandblast
Action by Christians for the Abolition of Torture-France



Bureau International pour le
Respect Des Droits de
l'Homme au Sahara
Occidental



January 2015

Signatories of this Report

Robert F. Kennedy Human Rights is a non-governmental organization based in Washington, D.C. Founded in 1968 as a living memorial, it strives to achieve Robert F. Kennedy's vision of a more just and peaceful world. Robert F. Kennedy Human Rights' core programs focus on the power of the individual, providing sustained advocacy, litigation, and capacity-building support to grassroots leaders to advance social justice movements around the globe.

The **Collective of Sahrawi Human Rights Defenders** (CODESA) is a grassroots, non-governmental organization based in El-Aaiún which monitors violations throughout occupied Western Sahara. Through its reporting and international advocacy, CODESA seeks to promote and protect the values of human rights.

AFASPA (French Association of Friendship and Solidarity with African Peoples) is a French anti-colonial organization that is independent of governments and parties in France and in Africa. It was founded in 1972, is based in Bagnolet and has regional committees. Its purpose is to inform French public opinion about African realities, support the independence struggles of African peoples and denounce violations of human and peoples' rights. As such, it has dispatched observers to the trials of Sahrawi activists before Moroccan courts.

The **Bureau des Droits de l'Homme au Sahara Occidental** (BIRDHSO) is an international non-governmental organization based in Geneva. Its work focuses principally on the various UN human rights mechanisms in order to draw their attention to human rights violations in Western Sahara, including the special procedures, the treaty bodies, the Human Rights Council, and the High Commissioner for Human Rights.

Fondation Danielle Mitterrand/France Libertés : Created by Danielle Mitterrand in 1986, France Libertés is a non-profit foundation that has consultative status with the Economic and Social Council (ECOSOC) of the United Nations. France Libertés' mission is to defend human rights and the common good, and in particular the fundamental right of everyone to access to water. The Fondation Danielle Mitterrand contributes to building a more interdependent world.

Sandblast is a UK human rights charity promoting the voices and visions of the indigenous Saharawi from Western Sahara through culture and the arts.

ACAT-France (Action by Christians for the Abolition of Torture-France) is a Christian non-governmental organization for the defense of human rights based in Paris, which was created in 1974 as a non-profit organization. Basing its advocacy on international law, ACAT-France fights against torture, the death penalty, and for the protection of victims, by means of its network of 33,000 members and supporters.

This report was prepared with the assistance of the legal clinic on fundamental rights of the Université de Caen Basse-Normandie. In particular, we would like to thank the following students for their assistance in the drafting of this report: Fatoumata Bamani, Anthony Basley, Charles-Antoine Colombe, and Clément Pontvianne. Professor Sandra Babcock of Cornell University School of Law, Professor Marie-Joëlle Redor-Fichot of the Université de Caen, and Expert Consultant Delphine Lourtou all assisted in the preparation of this report.

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A. Introduction

The above-listed non-governmental organizations and associations submit this report to provide guidance to the pre-session Working Group in its preparation of the list of issues to be examined during the Committee's review of Morocco's fourth periodic report. Our report aims to highlight several violations of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the Kingdom of Morocco in the non-self-governing territory of Western Sahara. We hereby submit a condensed summary of the facts relating to the violations of the following rights enshrined in the ICESCR: the right to self-determination (Article 1.1), the right to freely dispose of one's natural resources (Article 1.2), the right to work (Article 6), the right to education (Article 13) and the different rights encompassed in the right to cultural life (Article 15). We also touch upon various obstacles to the realization of the rights enshrined in the ICESCR in this territory, particularly the repression of human rights defenders. Finally, you will find in this document a list of issues that we believe are essential to consider during your review.

This Committee and the International Court of Justice have already found that States Parties' obligations under the ICESCR extend to all of the territories and populations that are effectively under their control.¹ As the *de facto* Occupying Power in a non-self-governing territory, it is clear that the Kingdom of Morocco must respect and implement the rights protected by the ICESCR in Western Sahara. Nevertheless, the NGOS and associations listed above wish to emphasize that under international law, the Kingdom of Morocco has no legitimate sovereignty over Western Sahara.²

B. Observations Regarding Violations of the ICESCR in Western Sahara

1. Article 1

a. Article 1, para. 1: The Right to Self-Determination.

Art. 1, para. 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."

From a legal perspective, there is no doubt that the Sahrawi people are entitled to determine their own political future through a referendum on self-determination. The United Nations General Assembly, the International Court of Justice and the Organization of African Unity have all recognized that Morocco cannot exercise sovereignty over the non-self-governing territory of Western Sahara and have called for a referendum to be organized in order for the Sahrawi people to pronounce itself on its political status.³

In 2006, following its review of the Kingdom of Morocco's third periodic report, the Committee stated that it "again encourages the State Party to make every effort to find a clear and definitive solution to the issue of self-determination for the people of Western Sahara. The Committee calls on the State party to take steps to protect the rights of persons displaced by the conflict in Western Sahara and to ensure their safety".⁴ Despite the international community's unanimous position in favor of self-determination and despite the Committee's encouragement, the Kingdom of Morocco seems unwilling to resolve the question of self-determination in conformity with binding principles of international law.

In its state report, the Kingdom of Morocco asserts that it is “moved by a spirit of reconciliation and recognition of the rights of Saharan communities in their Moroccan homeland.” Morocco’s proposed solution is to grant Western Sahara a degree of autonomy through the “*Moroccan Extended Autonomy Initiative*.” According to the state report, the autonomy status will be decided by the population through a referendum.⁵ This proposal does not specify who will be consulted or when, and fails to clarify whether the Sahrawi people will also be given an opportunity to choose independence over regional autonomy. Morocco’s proposal, therefore, violates the principle of self-determination, which recognizes the right of a non-sovereign people to choose their political regime. Consequently, it is not a “*clear and definitive solution to the issue of self-determination for the people of Western Sahara*” as was recommended by the Committee in 2006.⁶

Furthermore, the proposed solution demonstrates that Morocco refuses to recognize any form of Sahrawi independence. This refusal was publicly expressed in King Mohammed VI’s speech of November 6th 2014 on the occasion of the 39th anniversary of the Green March, in which he stated that: “*Morocco will remain in its Sahara, and the Sahara will remain in its Morocco until the end of time.*” He then added that “*Moroccan sovereignty in the whole of its territory is unalterable, inalienable and nonnegotiable.*”⁷ This obstinacy violates the Sahrawi people’s right to self-determination and jeopardizes international peace.

We thus recommend that the Committee ask Morocco to accept without reservations a schedule proposed by the Secretary General, with the aid of the United Nations Mission for the Referendum in Western Sahara (MINURSO), in order to enable, within a reasonable timeframe, the organization of a referendum allowing the Sahrawi people to exercise its right to self-determination unambiguously and in a democratic manner.

In light of the above facts, we recommend that the Committee ask the Kingdom of Morocco to provide information on the following issues:

- Provide clear and precise information on the process by which the right to self-determination process of the Sahrawi people will be implemented, and in particular:
 - o The concrete measures that will be implemented to hold a referendum on self-determination, including a schedule
 - o The method the State party intends to employ to determine eligible voters in regard to the referendum mentioned in paragraph 26 of the state report. Would the Sahrawi people be the only ones to vote or would individuals born outside the non-self-governing territory (and their descendants) also be involved in the process?
 - o The consequences of the voters’ rejection of the “autonomy” proposal mentioned in paragraph 26. Will Morocco accept the popular will if it rejects autonomy in favor of independence?

b. Article 1, para. 2 : The Right to Freely Dispose of Natural Resources

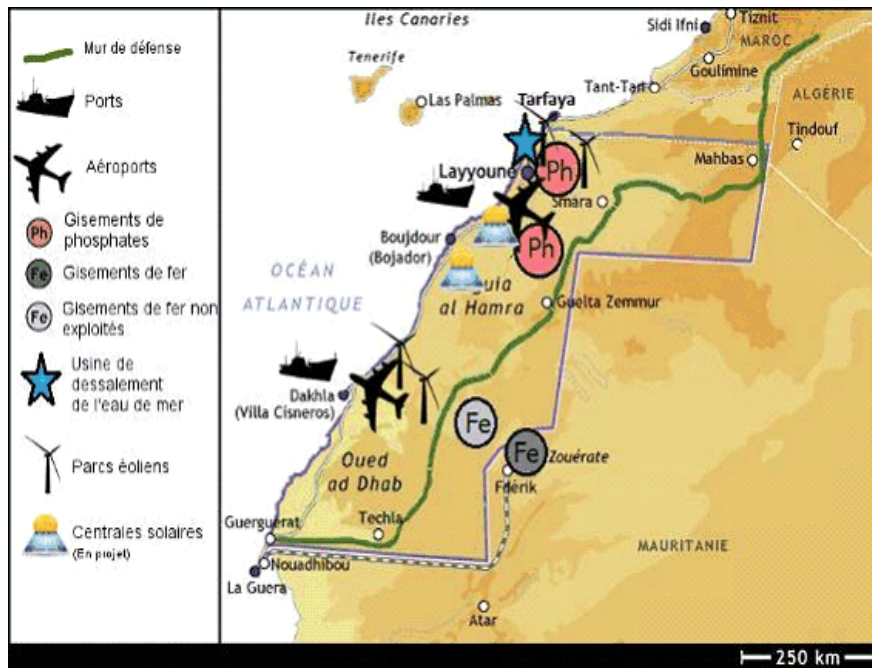
Art. 1, para. 2: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of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

The General Assembly has emphasized that the exploitation and pillaging of natural resources in colonial or non-self-governing territories by foreign economic interests compromise the integrity and the prosperity of these territories, and that “any administering Power that deprives the colonial peoples of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources, or subordinates the rights and interests of those peoples to foreign economic and financial interests, violates the solemn obligations it has assumed under the Charter of the United Nations.”⁸ Hans Corell, Under-Secretary General for Legal Affairs and Legal Counsel of the United Nations, reminded the President of the Security Council in his letter dated January 29, 2002, that administering powers must respect two conditions for the exploitation of natural resources in a non-self-governing territory to conform with international law: first, the resources must be exploited for the benefit of the peoples in the territory; and second, the resources must be exploited in their name or in consultation with their representatives.⁹ The latter condition requires that the population—or its legitimate representatives—be consulted *prior* to such exploitation.

In Western Sahara, however, the principle of permanent sovereignty of peoples under foreign occupation over their natural resources¹⁰ is not respected, not only because the construction and maintenance of the wall by the Kingdom of Morocco has impeded a large segment of the Sahrawi population living east of the wall from freely accessing their natural resources, but also because these resources are exploited neither in their name nor with their consent. The transfer of the Moroccan population to the non-self-governing territory of Western Sahara is an aggravating factor in the exploitation of the territory’s resources, as well as a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.¹¹

1. The Wall Built by Morocco Impedes Free Access to Natural Resources by the Sahrawi People Living to the East of the Wall.

In Western Sahara, natural resources are principally found in the enclave occupied by the Kingdom of Morocco, which is located between the coast and the Moroccan wall (see map below). Over 1,500 miles long, the “Great Wall” of Morocco is the longest operational military barrier in the world, allowing the Kingdom of Morocco to control 80 percent of Western Sahara. The wall is topped with barbed wire, monitored by sophisticated electronic movement detection devices and guarded by Moroccan soldiers.¹² According to reports by the United Nations Secretary General, Moroccan forces continue to maintain the wall.¹³ Despite a demining program, Moroccan authorities registered no less than 2,171 accidents due to mines and other explosive remnants between 1975 and 2008.¹⁴ Every year more individuals are wounded and killed.¹⁵ According to observers, there are no crossing points allowing the Sahrawi population to cross from one side of the wall to the other.



In its Advisory Opinion of July 9, 2004¹⁶ on the “*legal consequences of the construction of a wall in occupied Palestinian territories*,” the International Court of Justice acknowledged that several ICESCR rights were affected by the construction of a similar wall, in particular the right to an adequate standard of living and the right to work. The Court specified that the fewer the crossing points and the more limited the opening hours, the more severe the rights violations.¹⁷

The effects of the construction of the wall in Western Sahara are arguably even more destructive since, unlike in the Palestinian case, the wall has no crossing points at all. A large part of the Sahrawi population to the east of the wall is thus deprived of any possible access to work opportunities west of the wall and to natural resources on occupied lands.¹⁸ The wall built by Morocco therefore does not give the Sahrawi people in the Tindouf refugee camps any physical access to its resources, notably phosphate deposits, fisheries and cultivable lands. Moreover, the mines located east of the wall prevent the refugee camp population from freely exploiting its resources and livestock.¹⁹

The Committee should follow the example of the International Court of Justice and recommend that Morocco “*dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.*”²⁰

In light of the above facts, we recommend that the Committee request that the Kingdom of Morocco provide information on the following issues:

- Explain the measures that the State Party intends to take to dismantle the wall dividing the territory of Western Sahara. Provide specific information regarding:
 - o The check points allowing inhabitants of the territory to pass through the wall;
 - o The number of land mines around the wall, the mine-clearing program put in place and the concrete objectives for mine-clearing in the future;
 - o The number of injuries and deaths caused by the land mines around the wall since the start of the conflict;

- The existence of a system to compensate victims and their families for such injuries and deaths.

2. The Violation of the Conditions for the Exploitation of Natural Resources Imposed by International Law

In Western Sahara, the principle according to which resources must be exploited in the name and in the interest of the population of non-self-governing territories is not respected even though, as clarified by Hans Corell, the “*the General Assembly. . . called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration do not adversely affect the interests of the peoples of such territories, but are instead directed to assist them in the exercise of their right to self-determination.*”²¹

Morocco should, at a minimum, exploit these resources in the interest of the Sahrawi people and in its name or after prior consultation with its legitimate representatives. This is not, however, its practice when it comes to exploiting phosphates, fisheries, oil or farmlands in the occupied territories of Western Sahara.

Reports on the exploitation of phosphate mines in Bou Craa denounce discrimination against Sahrawi employees, demonstrating that phosphate mining for export does not serve the interest of the indigenous population. While Moroccan state organizations estimate that over 50% of phosphate mine employees are Sahrawi, Sahrawi organizations allege that there are fewer than 200 Sahrawi among the 1,900 mine workers, all of them forced to work in manual labor positions.²²

The exploitation of fisheries has led to several fisheries agreements, notably between Morocco and the European Union.²³ These agreements appear to allow fishing in waters under the sovereignty or jurisdiction of the Kingdom of Morocco and do not expressly exclude fishing off the coast of Western Sahara.²⁴ Thus, one current protocol provides in an appendix defining fishing zones that small-scale fishing can be carried out south of the 30°40'00"N parallel, without indicating any meridian limit.²⁵ European fishing in Sahrawi waters is nevertheless contrary to international norms because of the absence of consent from the Sahrawi people and because it competes with traditional Sahrawi fishing practices.²⁶

The exploitation of oil resources is also problematic. While it is true that Hans Corell determined in 2002 that oil reconnaissance and evaluation activities in the Western Sahara do not violate international law,²⁷ Corell goes on to state that such activities must be differentiated from the exploitation and physical capture of mineral resources, which must be conducted in accordance with the wishes of the Sahrawi people. According to the NGO Western Sahara Resource Watch, the oil company Kosmos Energy and its partners have dispatched an oil drilling platform and will start pumping oil by April 2015.²⁸ Morocco has not consulted any of the legitimate representatives of the Sahrawi people regarding these activities.

Finally, the exploitation of Western Sahara farmlands is also problematic, especially as it relates to water resources. According to the United States government, the tomatoes grown in the Dakhla region draw upon a phreatic table containing non-renewable water resources, thus endangering the ecosystem of the region.²⁹ This farming operation allows a French company to profit from the exportation of several tons of tomatoes every year on the international

market, without sufficiently taking into account the interest of the Sahrawi population.³⁰ According to multiple observers, tomatoes and other agricultural products from Western Sahara are exported under the label “product of the Kingdom of Morocco,” which does not reflect their true origin.

Morocco therefore currently controls the exploitation of all of these natural resources without having previously consulted the legitimate representatives of the Sahrawi people and without their interests being sufficiently taken into account. This violates Article 1 of the ICESCR.

In light of the above facts, we recommend that the Committee request that the Kingdom of Morocco provide information on the following issues:

- Provide information on the concrete measures the State party has taken to ensure the Sahrawi people consent to the exploitation of natural resources in the occupied territory of Western Sahara, with particular regard to:
 - o Exploitation and export of phosphates;
 - o Negotiation of fisheries agreements;
 - o Authorization of oil exploitation and extraction;
 - o Exploitation and irrigation of lands to grow fruits and vegetables, and in particular tomatoes.

- Provide precise and detailed information on how the benefits from the exploitation of these resources are shared with the Sahrawi population.

Article 6: The Right to Work

Article 6: “1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

States Parties to the ICESCR recognize the right to work (Article 6) and commit to ensuring that this right is implemented without any discrimination (Article 2.2). These provisions of the Covenant are far from being respected in Western Sahara where employment discrimination against Sahrawi individuals is so severe that the Sahrawi suffer from a very high unemployment rate. Sahrawis are under-represented in almost every labor sector, including restaurant and retail services, the police force, education, and public administration in general.³¹ The situation is further complicated by the fact that, according to experts, the Kingdom of Morocco provides certain Sahrawis with “ghost jobs,” particularly for management positions. This practice aims to silence dissent through financial incentives.

In light of the above facts, we recommend that the Committee request that the Kingdom of Morocco provide information on the following issues:

- Provide information regarding the employees from the Bou Craa mines: the number of Sahrawi employees, the number of employees born outside of Western Sahara and

their descendants, and the percentage of employees in management positions that are Sahrawi.

- Provide information regarding the fisheries licenses (for traditional fishing) granted to persons living in Western Sahara: the number of licenses granted to Sahrawi individuals and number of licenses granted to persons born outside of Western Sahara and their descendants.
- Provide information regarding the percentage of Sahrawi employees in the public sector in the non-self-governing territory of Western Sahara, as compared to the percentage of Moroccans (including individuals born outside of Western Sahara and their descendants).
- Indicate the measures that have been taken to denounce, prevent and combat discrimination in all its forms against the Sahrawi people.
- Provide numbers regarding the unemployment rate of the Sahrawi population as compared to the Moroccan population in the non-self-governing territory of Western Sahara.

Article 13: Right to education

Article 13: "The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

The "right of everyone to education" enshrined in the Covenant is not fully respected in Western Sahara. Several observers report the existence of discriminatory practices so severe that they prevent Sahrawi students from receiving an adequate education.

Sahrawi students are, according to these reports, neglected, insulted or beaten by teaching staff and school administrators, especially when they speak Hassaniya at school.³² Moreover, older Sahrawi students who are politically active are often expelled from school under various pretexts.³³ The content of school curricula also violates the provisions of the Covenant. Unlike schools in Berber regions of Morocco, which teach Berber language and culture, schools in Western Sahara do not teach Sahrawi history, culture or geography, and do not teach the Hassaniya language,³⁴ thus playing a key role in the acculturation of the Sahrawi people through its children. Far from promoting "*friendship among all nations and all racial, ethnic or religious groups,*" the realities of school contribute to racist stereotypes and "ethnic" tensions. As the Hassaniya language is the main vector for the transmission of Sahrawi culture and values, its systematic absence from school programs constitutes a serious assault on the integrity and transmission of the culture.

Several observers also describe an alarming phenomenon: the presence of Moroccan law enforcement forces inside secondary schools and around their perimeters.³⁵ Purportedly

designed to prevent fights and conflicts, the presence of these security forces completes the intimidation of Sahrawi students. We received several testimonies of arbitrary violence perpetrated by security forces against Sahrawi children, ranging from stealing food to sexual harassment and serious physical assaults.³⁶ The combination of these conditions causes some Sahrawi students to drop out of school.³⁷

Access to higher education for young Sahrawis is also hindered by discriminatory practices. There is not a single university in the territory of Western Sahara and very few professional training programs are available. This forces young Sahrawis to move far from home to Moroccan cities in order to pursue university studies, imposing significant additional financial burdens on them.³⁸ Once Sahrawi students register in a Moroccan university, testimony indicates that they face significant obstacles to attend class. Some students reported that upon their arrival at university, the administration informed them that their classes had been cancelled and that they should come back in a couple of weeks. This process was repeated several times in a row, depriving Sahrawi students of any education while their Moroccan counterparts were attending regularly scheduled classes.³⁹ In practice, it is also extremely difficult for Sahrawi students to obtain a university degree in law or medicine, and one observer reports that very few Sahrawi doctors or lawyers practice in Western Sahara.⁴⁰

In light of the above facts, we recommend that the Committee request that the Kingdom of Morocco provide information on the following issues:

- Provide precise information on the measures taken to ensure equal access of Sahrawi pupils and students to education and professional training, from primary school to higher education.
- Provide information on the number of Sahrawi schools (managed by Sahrawis) and on the use of the Hassaniya language, which is recognized as a national language in the Constitution of Morocco (2011), in subjects taught in schools in Western Sahara.
- Indicate if school books have been revised and updated to present Sahrawi culture and history.

Article 15: Right to take part in cultural life

Article 15: *“The States Parties to the present Covenant recognize the right of everyone: a. To take part in cultural life”*

Article 15 of the Covenant affirms that State Parties should recognize the right of everyone to “take part in cultural life” and binds State parties *“to respect the freedom indispensable for [...] creative activity”*. The Kingdom of Morocco is in violation of both of these provisions in Western Sahara.

The Moroccan government exerts intense pressure on the content of Sahrawi cultural productions, leading in practice to the censorship of Hassaniya culture. In the past few years, a number of state-led initiatives—including the creation of a multimedia library, a museum, a music institute and cultural festivals⁴¹--have been implemented with the apparent goal of promoting Hassaniya culture but are in reality aimed at exploiting a simplified, “folklorized”

and decontextualized version of Sahrawi culture in order to better control it and reduce it to an asset of Morocco's tourism industry.

Some Sahrawi artists have been banned from taking part in Hassaniya cultural festivals organized by the state. Other artists have had their work reviewed by a committee authorized to ask them to change the lyrics of traditional songs or modify performances that were deemed inappropriate.⁴² Artists who benefit from the support of Moroccan authorities are obliged to produce work in praise of Morocco.⁴³ State funds are available for the organization of such festivals and for other cultural events, but disproportionate amounts are reserved for foreign artists. The Special Rapporteur in the field of Cultural Rights noted that “[s]uch practices, which limit the free expression of cultural diversity that should be otherwise promoted and fulfilled, seem contrary to the right to freedom of expression and artistic freedom.”⁴⁴ Moreover, during the “Sea and Desert” festival in February 2011, over 70 Sahrawi houses were burned.⁴⁵

Sahrawi cultural figures are sometimes harassed and arrested by Moroccan authorities. Several years ago, for example, Sadati Salemi, who hosted a cultural radio show in Hassaniya, had his personal collections of Hassaniya poetry and recordings of Sahrawi music confiscated and destroyed on several occasions by the Moroccan police;⁴⁶ since poetry serves as the archive of this oral culture, this kind of destruction amounts to prohibiting an entire people's memory and the transmission of its artistic traditions and history. Moreover, a reliable observer has reported that no publications in Hassaniya are available in bookstores in Western Sahara. Only a few collections of Sahrawi poetry self-published by the authors are privately distributed. In particular, Hassaniya dictionaries and language textbooks are impossible to find in Western Sahara.⁴⁷ In addition, there are no libraries in Western Sahara. The territory's first library is currently under construction and is set to be completed within 2 years, but to date there has never been a university or a library in Western Sahara.⁴⁸

Moroccan policies also endanger the Sahrawis' traditional nomadic lifestyle and impede the organization of cultural and leisure activities in the desert, a space that is central, both geographically and symbolically, to Sahrawi culture. First, landmines prohibit access to many traditional territories,⁴⁹ and Moroccan checkpoints at city exits further infringe upon freedom of movement in the desert.⁵⁰ Finally, the separation of Sahrawi families and the division of their communities by the wall, which as noted above has no points of passage, make the transmission and sharing of Hassaniya language and culture very difficult.⁵¹ The family visitation program organized by the United Nations High Commissioner for Refugees has certainly enabled around 20,000 visits since 2004, but these figures represent only a small portion of the number of separated families and, furthermore, the duration of these visits is limited. Moreover, some politically active individuals are considered *persona non grata* by the Kingdom of Morocco and have been deprived of the benefit of these visits. Family reunification should be promoted as much as possible.

The Kingdom of Morocco's restrictions on Sahrawi cultural life also take more indirect forms. Moroccan authorities sometimes prevent Sahrawi parents from registering the Hassaniya names they choose for their children, especially if they are hyphenated names which are common in Sahrawi culture,⁵² or names which according to the authorities have sovereignist connotations.⁵³ Some Sahrawi adults have also had to adopt a Moroccan name, sometimes one imposed by administrative staff, in order to be granted an identification document.⁵⁴ Moreover, no administrative services are offered in Hassaniya and

administrations do not offer translation or interpretation services. In practice, this prevents some Sahrawi from accessing rights and services to which they are entitled.⁵⁵

Additionally, as will be discussed further below, numerous Sahrawi associations, whether their aim is to promote human rights or cultural activities, encounter difficulties obtaining an official registration, even after presenting all the necessary documents.⁵⁶

Finally, some Sahrawi individuals report that they have stopped wearing traditional clothing when they travel in Moroccan provinces because they fear being harassed and threatened.⁵⁷ As the Occupying Power, the Kingdom of Morocco has the obligation to ensure the full realization of cultural rights protected by the ICESCR, including by protecting them from interference by third parties.

In light of the above facts, we recommend that the Committee request that the Kingdom of Morocco provide information on the following issues:

- Indicate the measures taken by the State party to ensure the preservation of Sahrawi cultural identity, and in particular, the availability of Hassaniya translators in public services, especially administrative offices and tribunals.
- Indicate the conditions under which the freedom of expression of Sahrawi artists may be limited, especially the selection criteria used for the Sahrawi artists who participate in festivals organized by the State.
- Provide information on the respect of cultural rights for Sahrawi prisoners (language, artistic and literary expression, clothing, etc.).

C. Obstacles to the Effective Implementation of the Rights Guaranteed by the ICESCR.

1. The Repression of Human Rights Defenders

Human rights are universal, interdependent and indivisible.⁵⁸ Human rights defenders play a critical role in the application of the ICESCR. As recognized in the United Nations Declaration on Human Rights Defenders, the work of individuals and associations is essential in bringing about the effective elimination of human rights violations stemming from “the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources.”⁵⁹ It is because they enjoy civil rights that human rights defenders are entitled to form associations, protest peacefully and circulate freely to monitor compliance with the ICESCR. Several observers, however, have noted that the Kingdom of Morocco systematically represses Sahrawi associations working to defend their economic, social and cultural rights, particularly the right to self-determination.

a. Consequences of Violations of Freedom of Expression Relating to the Right to Self-Determination

The right to freedom of association is limited by the law and practice of local authorities of the Kingdom of Morocco. Article 2 of the Moroccan law regulating freedom of association

provides that all “associations of persons can freely form without authorization subject to the provisions of article 5.”⁶⁰ There are no provisions in the Moroccan Constitution limiting freedom of association in relation to independence claims. However, Article 3 of the law of associations prohibits “associations that have an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, *the integrity of national territory, or the monarchical regime*, or that calls for discrimination.”⁶¹ Additionally, local authorities refuse to accept applications from any Sahrawi association whose object is the defense of the right to self-determination.⁶² An illustrative example highlighted by Human Rights Watch is the case of ASVDH (*Sahrawi Association of Victims of Grave Violations of Human Rights*). This organization filed a lawsuit demanding its right to an official receipt acknowledging the filing of its declaration. Both the trial court and the court of appeal vindicated ASVDH’s claim, but local authorities have nonetheless refused to implement the courts’ judgments.⁶³ Robert F. Kennedy Human Rights has also extensively reported on the lack of legal recognition for CODESA (Collective of Sahrawi Human Rights Defenders).⁶⁴ Human Rights Watch’s 2014 World Report confirms that Sahrawi rights to freedom of association are still being violated.⁶⁵

Moreover, the overly vague language of Article 3 of the law on associations, which was amended in 2002, gives the State very broad powers to refuse to recognize an association for political reasons.⁶⁶ In June 2003, a court decision dissolved the Sahrawi branch of the Forum for Truth and Justice Association on the alleged basis that it was involved in illegal activities endangering public order and the territorial integrity of Morocco.⁶⁷ According to a November 2014 report from the FIDH (Fédération Internationale des Ligues des Droits de l’Homme), members of the FEMED delegation (Euro-Mediterranean Federation against Forced Disappearances), had key advocacy documents confiscated upon their arrival at Marrakech airport on the eve of the Global Forum on Human Rights.⁶⁸

b. Consequences of Violations of the Freedom to Protest and to Assemble

Gatherings in support of the independence of Western Sahara are not tolerated by Morocco. In November 2010, Moroccan authorities violently intervened to dismantle the Gdeim Izik resistance camp formed by approximately twenty thousand Sahrawi to defend their economic, social and cultural rights, including the right to self-determination (Article 1.1 of the ICESCR) and the right to freely dispose of their natural resources (Article 1.2 of the ICESCR). According to Human Rights Watch, following these events 25 Sahrawi civilians were arrested and most of them spent 26 months in pre-trial detention without trial.⁶⁹ The trial of these individuals, known as “the Gdeim Izik Group,” was held in February 2013 in Rabat before a military tribunal despite their civilian status. Charged with having formed a criminal gang aiming at committing violent acts against Moroccan law enforcement authorities, some of them were condemned to twenty years’ imprisonment while others were condemned to life imprisonment.⁷⁰

c. Consequences of Violations of Freedom of Movement

The Kingdom of Morocco, as the Occupying Power, has the responsibility to ensure that the Sahrawi people can freely circulate to promote and protect human rights and to denounce their violation.⁷¹ Human rights defenders in Western Sahara, however, do not enjoy these rights. Many of them have been sentenced to lengthy prison terms as a result of the demonstrations in favor of self-determination at Gdeim Izik, including Enaama Asfari, President of the Commission for the Defense of Human Rights in Western Sahara;⁷² Ahmed

Sbaai, former political prisoner and Secretary General of the Committee for the Protection of Sahrawi prisoners; and members of the Sahrawi information agency ‘Equipe Media.’⁷³ Human rights defenders also face significant hurdles to travel abroad to attest to the violation of their rights, due to the threat of their passports being confiscated by Moroccan authorities.⁷⁴ In 2009, Aminatou Haidar, because of her refusal to declare her nationality as Moroccan on an immigration form upon returning to Laayoune from the United States, had her passport confiscated and was illegally expelled to Spanish territory.⁷⁵ Ms. Haidar was only allowed to return to her homeland after a 32-day long hunger strike, international outcry, and diplomatic intervention.⁷⁶ In 2013, ASVDH stated that earlier that year on January 15th, Moroccan authorities had prohibited ASVDH human rights activists from attending an international meeting of human rights defenders.⁷⁷ And on several occasions, Sahrawi human rights defenders have been prevented by Moroccan authorities from participating in the work of the former UN Commission on Human Rights and the current UN Human Rights Council.

In light of the above facts, we recommend that the Committee request that the Kingdom of Morocco provide information on the following issues:

- Explain the measures that the State party has taken to protect the freedom of association and expression of human rights defenders. Specifically :
 - o Explain the measures taken to protect organizations advocating for the right to self-determination of the Sahrawi people.
 - o Indicate the reasons why the organizations ASVDH and CODESA have not been granted legal status and have never received official acknowledgement of their declarations of association.
 - o How many associations that advocate for the right of self-determination of the Sahrawi people have received official acknowledgement of their declarations of association, such that they enjoy full legal status under the law of the Kingdom of Morocco?
 - o Are local officials penalized for failing to provide official acknowledgement of the declarations of association by organizations that advocate for the right of self-determination? If so, how?

2. The Lack of Independent Monitoring of the Implementation of the ICESCR: The Limited Mandate of the MINURSO

Broadening the MINURSO mandate is indispensable, whether it be to guarantee the effectiveness of rights on the non-self-governing territory of Western Sahara or to preserve international security.

The United Nations Mission for the Referendum in Western Sahara was established in 1991.⁷⁸ It was created on the basis of Chapter VI of the United Nations Charter, and more specifically on the basis of Article 34. The mission’s mandate was initially to establish a ceasefire between the parties and to allow for a referendum on self-determination to take place.⁷⁹ The weakness of this peacekeeping operation is directly linked to the consensual basis of its mandate. The Security Council’s use of Chapter VI places MINURSO in a situation of dependence *vis-a-vis* the Kingdom of Morocco. All of its activities are subordinated to Morocco’s good will and Morocco can to a certain extent determine the scope of its prerogatives.⁸⁰

By way of example, in 1994 the Commission on the identification of voters submitted a first report drawing up a list of individuals who could be eligible to participate in the referendum. Morocco prevented this report from leading to any effective outcome, first by attempting to influence the outcome by listing “false” Sahrawis,⁸¹ then by registering its disagreement with the report because of the exclusion of Moroccan settlers from the list of voters. According to a major study on the conflict in Western Sahara, “it is clear that the Kingdom of Morocco is the party that polluted the vote.”⁸² In 2000, the Security Council abandoned the referendum without holding Morocco responsible for its actions.⁸³ Since then, the situation has stagnated.

The Security Council has the authority to strengthen the MINURSO mandate on the basis of Chapter VII, which would enable the mission to act without prior consultation with the Kingdom of Morocco and therefore to actively ensure that the latter respect its obligations.⁸⁴ The Council has already had occasion in the past to broaden the mandate of a peace-keeping mission; notably in the case of the MONUC in the Democratic Republic of Congo.⁸⁵ More recently, we have seen the Security Council rely on the existence of human rights violations in some states to acknowledge a threat against international peace and trigger Chapter VII.⁸⁶

Peacekeeping operations must be carried out in conformity with human rights. This is why most of them proceed with a mandate to protect human rights.⁸⁷ The broadening of MINURSO’s mandate would enable impartial monitoring of the human rights situation in Western Sahara. It is essential for independent observers not invested in the conflict to observe and denounce the rights violations suffered by the Sahrawi population and its human rights defenders. Many NGOs support this proposal: for example, in a letter addressed to Security Council members in April 2013, Human Rights Watch asked the Council to “put an end to this abnormal situation” and broaden MINURSO’s mandate to include human rights protection.⁸⁸ For several years, Robert F. Kennedy Human Rights, the Movement against Racism and for Friendship Between Peoples (MRAP) and France Libertés – Fondation Danielle Mitterrand have repeatedly advocated for such an expansion before the Human Rights Council.

Furthermore, the Kingdom of Morocco’s lack of good faith has been demonstrated by the failure of the negotiation process that has been conducted under MINURSO since 1991. Most recently, the Kingdom of Morocco refused to receive Ms. Kim Bolduc, who was appointed head of the mission by the United Nations Secretary General in May 2014. The Committee should therefore recommend that MINURSO’s mandate be expanded to encompass human rights protection.

D. Conclusion

We urge the Committee to incorporate our observations into the list of issues that will be presented to Morocco in March 2015. Before the September 2015 session, we will present an alternative report which will deal in greater depth with all the above-mentioned subjects.

¹ International Court of Justice, *Legal Consequences of the construction of a wall in the occupied Palestinian territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, §112 (9 July 2004) (“The International Covenant on Economic, Social and Cultural Rights contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction. Thus Article 14 makes provision for transitional measures in the case of any

State which "at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge". . . [The Court] would also observe that the territories occupied by Israel have for over 37 years been subject to its territorial jurisdiction as the occupying Power. In the exercise of the powers available to it on this basis, Israel is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.”).

² International Court of Justice, Advisory Opinion on Western Sahara, 16 October 1975, <http://www.icj-cij.org/docket/files/61/6197.pdf>. No state or inter-governmental institution has recognized Morocco as a sovereign power over Western Sahara.

³ International Court of Justice, Advisory Opinion on Western Sahara, 16 October 1975, <http://www.icj-cij.org/docket/files/61/6197.pdf>; U.N. General Assembly, Question of Spanish Sahara, Resolution 3458, A/RES/3458 (XXX), 2435th Plenary Meeting, 10 December 1975; The Assembly of Heads of State and Government of the Organization of African Unity, meeting in its Eighteenth Ordinary Session in Nairobi, Kenya, from 24 to 27 June 1981, Resolution on Western Sahara, AHR/Res. 103 (XVIII) (24 to 27 June, 1981).

⁴ Committee on Economic, Social and Cultural Rights, 36th session, 1-19 May 2006, Consideration of the reports submitted by states parties under Articles 16 and 17 of the Covenant. Concluding observations of the Committee on Economic, Social and Cultural Rights, Morocco, 4 September 2006, E/C.12/MAR/CO/3, § 35.

⁵ Committee on Economic, Social and Cultural Rights, Fourth periodic report of the state of Morocco, 24 March 2014, E/C.12/MAR/4, §26.

⁶ Committee on Economic, Social and Cultural Rights, Final observations, 4 September 2006, E/C.12/MAR/CO/2, §35.

⁷ Speech of King Mohammed VI, 6 November 2014, available in French: <http://www.bladi.net/discours-roi-mohammed-6-jeudi-6-novembre.40587.html>.

⁸ U.N. General Assembly Res. 48/46, Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, 22 March 1994, §2, 48 U.N. GAOR Supp. (No. 49) at 124; U.N. General Assembly Res. 49/40, Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, 30 January 1994, §2.

⁹ Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, Legal Counsel Hans Corell, addressed to the President of the Security Council, S/2002/161, §24 “*The recent State practice, though limited, is illustrative of an opinio juris on the part of both administering Powers and third States: where resource exploitation activities are concluded in Non-Self-Governing Territories for the benefit of the peoples of these territories, on their behalf, or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power, and in conformity with the General Assembly resolutions and the principle of "permanent sovereignty over natural resources" enshrined therein*”; see also §9 (“*Members of the United Nations who assumed responsibilities for the administration of these territories have whereby recognized the principle that the interest of the inhabitants of these territories are paramount, and have accepted as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these territories.*”) The Legal Service of the European Parliament has also noted that “*compliance with international law requires that economic activities related to the natural resources of a Non-Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes.*” Legal Opinion of the Legal Service of the European Parliament, 13 July 2009.

¹⁰ See U.N. General Assembly Res. 68/235, Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources, 7 February 2014, A/RES/68/235.

¹¹ Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, art. 49.

¹² Stephen Zunes and Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution* (2010), pp. 21-23.

¹³ Report of the Secretary-General on the situation concerning Western Sahara, 8 April 2013, S/2013/220, §39.

¹⁴ Report of the Secretary-General on the situation concerning Western Sahara, 14 April 2008, S/2008/251, §27.

¹⁵ Report of the Secretary-General on the situation concerning Western Sahara, 8 April 2013, S/2013/220, §54.

¹⁶ International Court of Justice, Legal Consequences of the construction of a wall in the occupied Palestinian territory, Advisory Opinion, 9 July 2004, §134: “*To sum up, the Court is of the opinion that the construction of the wall and its associated régime impede the liberty of movement of the inhabitants of the occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto) as guaranteed under Article 12,*

paragraph 1, of the International Covenant on Civil and Political Rights. They also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child.”

¹⁷ *Id.*, §133: “They are aggravated by the fact that the access gates are few in number in certain sectors and opening hours appear to be restricted and unpredictably applied.”

¹⁸ *Id.*, §133: The Special Rapporteur on the Right to Food of the United Nations Commission on Human Rights states that construction of the wall “cuts off Palestinians from their agricultural lands, wells and means of subsistence.”

¹⁹ Report of the Secretary General on the situation concerning Western Sahara, 10 April 2014, S/2014/258, §43: “Widespread contamination caused by landmines and explosive remnants of war throughout Western Sahara continues to endanger the lives of the local, nomadic and refugee populations, along with MINURSO military observers and logistical teams. East of the berm, two civilians were injured in a mine accident. In addition, Frente Polisario reported a significant loss of livestock to mines, especially in the buffer strip. The Royal Moroccan Army reported 12 accidents, in which 1 person was killed, 18 were injured and 1 was unharmed, west of the berm. MINURSO, through its Mine Action Coordination Centre, continues to strive to reduce the threat and impact of landmines and explosive remnants of war and to improve cooperation on mine action initiatives with both parties.”

²⁰ International Court of Justice, Legal Consequences of the construction of a wall in the occupied Palestinian territory, Advisory Opinion, 9 July 2004, §163.

²¹ Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, Legal Counsel Hans Corell, addressed to the President of the Security Council, S/2002/161, §10: “The legal regime applicable to Non-Self-Governing Territories was further developed in the practice of the United Nations and, more specifically, in the Special Committee and the General Assembly. Resolutions of the General Assembly adopted under the agenda item “implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,” called upon the administering Powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration do not adversely affect the interests of the peoples of such territories, but are instead directed to assist them in the exercise of their right to self-determination. The Assembly also consistently urged the administering Powers to safeguard and guarantee the inalienable rights of the peoples of these territories to their natural resources, and to establish and maintain control over the future development of those resources (GA res 35/118 of 11 December 1980; 52/78 of 10 December 1997; 54/91 of 6 December 1999; 55/147 of 8 December 2000; and 56/74 of 10 December 2001).”

²² Toby Shelly, *Endgame in the Western Sahara: What Future for Africa’s Last Colony* (2004), p. 91. See also Kristen Chick, *In remote Western Sahara, prized phosphate drives controversial investments*, The Christian Science Monitor, 24 January 2013, <http://www.csmonitor.com/World/Africa/2013/0124/In-remote-Western-Sahara-prized-phosphate-drives-controversial-investments>.

²³ See the protocol to the most recent fisheries agreement between the EU and Morocco: *Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*, European Union Council Decision n° 14165/13, 5 November 2013, approved by the European Parliament on 10 December 2013, Official Journal of the European Union, 7 December 2013, No. L328, pp. 2 *et. seq.*

²⁴ See *ibid.*, *Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*, Appendix 4 “Coordinates of fishing zones.”

²⁵ See *ibid.*, *Protocol between the European Union and the Kingdom of Morocco setting out the fishing opportunities and financial contribution provided for in the Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco*, Appendix 2, Fishing Datasheet No. 3 “Small-scale fishing in the south.” See also Fishing Datasheets Nos. 4, 5, and 6.

²⁶ See Opinion of Legal Service of the European Parliament, 13 July 2009: “Following a series of parliamentary questions to the Commission, it appears that EU-flagged vessels have fished in the waters off Western Sahara. Not only this can be deducted from the data provided by the Member States to the Commission pursuant to their obligations established by Community legislation on “control,” but also it has also been explicitly acknowledged in several Commission declarations. ... In its previous legal opinion of 20 February 2006, the Legal Service noted that, failing a clear delimitation in the FPA of the fishing zones in which EU vessels were entitled to fish, it could not be excluded that Community vessels would operate in the waters off Western Sahara. ... In the event that it could not be demonstrated that the FPW was implemented in conformity with the principles of international law concerning the rights of the Sahrawi people over their natural resources, principles which the Community is bound to respect, the Community should refrain from allowing vessels to fish in the waters off Western Sahara.”

In 2013, according to a press release from the European Parliament dated 10 December 2013, “Morocco will have to prove that this money is invested in a way that benefits the Sahrawi population. On the other side, the fishing possibilities for 11 member states will allow 1,500 fishermen, 500 of whom are Moroccan, to go ahead and fish”, said rapporteur Carmen Fraga Estévez (EPP, ES). ... MEPs from several political groups again voted against the agreement on the grounds that “it does not respect international law provisions, as it does not exclude the waters of the Western Sahara coast”, and underlined that the Sahrawi population had not been consulted.” See Press Release, Fisheries, 10 December 2013, <http://www.europarl.europa.eu/news/en/news-room/content/20131206IPR30021/html/MEPs-approve-renewed-EU-Morocco-Fisheries-agreement> (last accessed 22 December 2014).

²⁷ 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/2002/16, §25: “it must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council’s request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the international law principles applicable to mineral resource activities in Non-Self-Governing Territories.”

²⁸ Western Sahara Resource Watch, “According to last available sources, Kosmos and Cairn still plan to initiate its controversial drilling in occupied Western Sahara before the end of the year,” 2 December 2014, <http://www.wsrw.org/a105x3071>.

²⁹ American Embassy in Rabat, “Western Sahara: Economic Considerations,” Cable of 18 May 2005, 5RABAT1052.

³⁰ Western Sahara Resource Watch, “Agriculture,” 30 January 2011, <http://www.wsrw.org/a201x1837>.

³¹ Erica VASQUEZ, *Living Under Occupation in the Western Sahara: Women, Resistance and Self-Determination*, Georgetown Institute for Women, Peace and Security, November 2014.

³² *Id.*

³³ Interview with Danielle Smith, Sandblast, December 8, 2014.

³⁴ *Id.*

³⁵ Interview with Alice Wilson, Durham University, 10 Nov. 2014 ; Interview with Isabel Lourenço, Adala UK, 21 Nov. 2014 ; Meeting with Tara Deubel, University of South Florida, 25 November 2014.

³⁶ Interview with Isabel Lourenço, Adala UK, 21 November 2014.

³⁷ Erica VASQUEZ, *Living Under Occupation in the Western Sahara: Women, Resistance and Self-Determination*, Georgetown Institute for Women, Peace and Security, November 2014.

³⁸ *Id.*

³⁹ Interview with Isabel Lourenço, Adala UK, 21 November 2014.

⁴⁰ Erica VASQUEZ, *Living Under Occupation in the Western Sahara: Women, Resistance and Self-Determination*, Georgetown Institute for Women, Peace and Security, November 2014.

⁴¹ Human Rights Council, Twentieth Session, Report of the Independent Expert in the Field of Cultural Rights, Mme Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011), A /HRC/20/26/Add.2, 2 May 2012, § 70.

⁴² *Id.*, § 80; Interview with Alice Wilson, Durham University, 10 November 2014; Interview with Tara Deubel, University of South Florida, 25 November 2014.

⁴³ Interview with Tara Deubel, University of South Florida, 25 November 2014.

⁴⁴ Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, § 80.

⁴⁵ *Id.*, §76.

⁴⁶ Interview with Tara Deubel, University of South Florida, 25 November 2014.

⁴⁷ *Id.*

⁴⁸ Erica VASQUEZ, *Living Under Occupation in the Western Sahara: Women, Resistance and Self-Determination*, Georgetown Institute for Women, Peace and Security, November 2014.

⁴⁹ Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, § 80; Interview with Alice Wilson, Durham University, 10 November 2014; Interview with Tara Deubel, University of South Florida, 25 November 2014.

⁵⁰ Interview with Andrea Brandt von Lindau, Adala UK, 18 November 2014; Interview with Alice Wilson, Durham University, 10 November 2014.

⁵¹ Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, § 73.

⁵² Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, § 77.

⁵³ Interview with Alice Wilson, Durham University, 10 November 2014.

⁵⁴ Interview with Isabel Lourenço, Adala UK, 21 November 2014.

⁵⁵ Interview with Tara Deubel, University of South Florida, 25 November 2014; Interview with Isabel Lourenço, Adala UK, 21 November 2014.

⁵⁶ Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, § 74; Human Rights Watch, *2014 World Report*, 21 January 2014, p. 586; Interview with Isabel Lourenço, Adala UK, 21 November 2014.

⁵⁷ Human Rights Council, Twentieth session, Report of the Independent Expert in the field of cultural rights, Ms. Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011) A /HRC/20/26/Add.2, 2 May 2012, §75; Interview with Alice Wilson, Durham University, 10 November 2014.

⁵⁸ Preamble to the Universal Declaration on Human Rights, 1948.

⁵⁹ U.N. General Assembly Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, 8 March 1999.

⁶⁰ Morocco Dahir N° 1-58-376 of 3 jourmada I 1378 (15 November 1958) regulating the right to free association, as amended and completed, Official Journal N° 2404 bis of 27 November 1958, available in French: [https://www.imolin.org/doc/amlid/Morocco/Morocco_Dahir_no_1-58-](https://www.imolin.org/doc/amlid/Morocco/Morocco_Dahir_no_1-58-376_reglementant_le_droit_dassociation_1958.pdf)

[376_reglementant_le_droit_dassociation_1958.pdf](https://www.imolin.org/doc/amlid/Morocco/Morocco_Dahir_no_1-58-376_reglementant_le_droit_dassociation_1958.pdf). Article 5: “Every association must be declared before the head of the administrative authority in the district where the headquarters of the association are located [...]. When the declaration meets all the conditions listed in the paragraph below, the final acknowledgment must be delivered within a maximum of 60 days, failing which the association may conduct its activities as they are defined in its constitutive status.”

⁶¹ *Id.*, article 3 (emphasis added).

⁶² Human Rights Watch, *Freedom to Create Associations: A Declarative Regime in Name Only*, 2009, pp. 4-5, <http://www.hrw.org/sites/default/files/reports/morocco1009webwcover.pdf>. HRW qualifies this practice of interference in the life of associations as the result not of isolated acts of certain public officials, but of a repressive governmental policy implemented at a national level. This permits the government to keep Sahrawi human rights associations vulnerable from a legal standpoint.

⁶³ Human Rights Watch, *Freedom to Create Associations: A Declarative Regime in Name Only*, 2009, pp. 22-23: “The al-Ayoun-based ASVDH remains an unrecognized association because the bacha in al-Ayoun has refused since 2005 to accept the set of founding documents the association submitted. This refusal persists despite a ruling by the administrative court of Agadir in September 2006 that the bacha had exceeded his powers under the law on associations when he refused to accept the ASVDH’s founding documents. Despite this court ruling, the bacha refused again in 2008 to accept the documents from ASVDH president Brahim Dahhan and filed an appeal before an administrative appeals court in Marrakesh against the ruling in first instance by the Agadir court. The Marrakesh court on December 17, 2008, dismissed the appeal on the grounds that it had not been filed within the required deadline for such filings. Despite these administrative court rulings against him, the bacha of al-Ayoun continues to refuse to receive the papers from the ASVDH.” (Al-Ayoun Court of First Instance Case No. 2317/2007 and Al-Ayoun Court of Appeals Decision No. 931, 10 October 2008, Appeals Case No. 101/2008).

⁶⁴ See, e.g., Robert F. Kennedy Human Rights, *The Moroccan Government Continues Systematic Violations against the Sahrawi People: Reported human rights violations, September 2013-February 2014* (2014) 3; Robert F. Kennedy Human Rights, *Nowhere to Turn: The Consequences of the Failure to Monitor Human Rights*

Violations in Western Sahara and Tindouf Refugee Camps (2013) 26, available at <http://rfkcenter.org/images/attachments/article/1884/NowhereToTurnLoRes.pdf>.

⁶⁵ Human Rights Watch, World Report 2014: Morocco/Western Sahara (21 January 2014): “In Western Sahara, authorities withheld legal recognition for all local human rights organizations whose leaders support independence for that territory, even associations that won administrative court rulings that they had wrongfully been denied recognition.”

⁶⁶ Morocco Dahir N° 1-58-376 of 3 jomada I 1378 (15 November 1958), regulating the right to free association, as amended and completed, Official Journal N° 2404 bis of 27 November 1958. Article 3: “Any association founded for a purpose that is illicit, contrary to the law or good morals, or that aims at undermining the Islamic religion, the integrity of the national territory, or the monarchical regime, or that calls for discrimination is void.”

⁶⁷ Aujourd’hui Le Maroc, “Forum Justice et Vérité” perd une section, [“Forum Justice and Truth” loses a section], 26 March 2013, available in French: <http://www.aujourdhui.ma/maroc/societe/%C2%ABforum-justice-et-verite%C2%BB-perd-une-section-30909#.VHXVyPldXSE>.

⁶⁸ Fédération Internationale de Droits de l’Homme, Morocco: the advocacy documents of the NGO FEMED confiscated by Customs on the eve of the World Human Rights Forum and defenders prevented from participating, 28 November 2014, available in French and in English: <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/morocco/16560-morocco-the-advocacy-documents-of-the-ngo-femed-confiscated-by-customs-on>: “Involved? An official map of the High Commissioner for Human Rights on the status of ratification of the International Convention for the Protection of All Persons against Enforced Disappearance, mentioned in the brochure of presentation of the association. All these brochures of the FEMED team were confiscated by Moroccan customs on the basis that the map representing the Western Sahara as a territory without status was “a threat to internal security.””

⁶⁹ Human Rights Watch, *Morocco: Tainted Trial of Sahrawi Civilians*, 1 April 2013, <http://www.hrw.org/news/2013/04/01/morocco-tainted-trial-sahrawi-civilians..>

⁷⁰ See Robert F. Kennedy Human Rights, *Nowhere to Turn: The Consequences of the Failure to Monitor Human Rights Violations in Western Sahara and Tindouf Refugee Camps* (2013) 27-28, available at <http://rfkcenter.org/images/attachments/article/1884/NowhereToTurnLoRes.pdf>. See full list of prisoners in French: *Écrire pour les libérer : 72 prisonniers politiques sahraouis*, <http://www.ecrirepourlesliberer.com/liste-des-64-prisonniers/>.

⁷¹ International Covenant on Civil and Political Rights, article 12; see also Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, arts. 31, 33, 35.

⁷² With respect to this case, ACAT-France filed a complaint before the UN Committee Against Torture on February 12, 2014 to denounce the arbitrary detention and torture of Enaama Asfari.

⁷³ See *Écrire pour les libérer: 72 prisonniers politiques sahraouis*, <http://www.ecrirepourlesliberer.com/liste-des-64-prisonniers/>.

⁷⁴ See, e.g., Robert F. Kennedy Human Rights, *Kerry Kennedy urges Morocco: Allow Return of Illegally Expelled Saharawi Rights Defender, Aminatou Haidar*, 24 November 2009, <http://rfkcenter.org/kerry-kennedy-urges-morocco-allow-return-of-illegally-expelled-saharawi-rights-defender-aminatou-haidar?lang=en>.

⁷⁵ See *ibid.*; Amnesty International, *Morocco/Western Sahara: Expulsion of human rights defender reflects growing intolerance*, AI Index: MDE 29/012/2009, 17 November 2009, <http://www.amnesty.org/en/library/asset/MDE29/012/2009/en/9168fdcd-6f76-4f8f-949a-e3346239b061/mde290122009en.html>:

“On 14 November, Morocco’s official new agency said that Aminatou Haidar had left to the Canary Islands after refusing to complete standard airport police procedures and had “renounced” her Moroccan nationality and “reconfirmed” her support of “separatists”. The following day, Morocco’s Minister of Foreign Affairs repeated allegations that Aminatou Haidar has “renounced her Moroccan citizenship.” Aminatou Haidar, who travels frequently, says that she has regularly since 2006 completed airport landing cards in the same manner, without identifying herself as a Moroccan national and stating her address to be in Western Sahara.”

⁷⁶ See Robert F. Kennedy Human Rights, *RFK Center Applauds Return of Aminatou Haidar to Western Sahara* 18 December 2009, <http://rfkcenter.org/rfk-center-applauds-return-of-aminatou-haidar-to-western-sahara?lang=en>; Robert F. Kennedy Human Rights, *Statements for US and International Officials in Support of the Return of Aminatou Haidar*, 11 December 2009, <http://rfkcenter.org/statements-from-us-and-international-officials-in-support-of-the-return-of-aminatou-haidar-updated-1211?lang=en>.

⁷⁷ ASVDH, Press Release, 22 January 2013, <http://saharadoc.wordpress.com/2013/01/22/communiqué-de-l'association-sahraouie-des-victimes-des-violations-graves-des-droits-de-l'homme-commises-par-letat-du-maroc>.

⁷⁸ U.N. Security Council, Resolution 690, 29 April 1991.

⁷⁹ U.N. Charter, Art. 34: “The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or

situation is likely to endanger the maintenance of international peace and security.” The U.N. Security Council deliberately chose to invoke Chapter VI with the goal of reaching a peaceful dispute settlement. As a result, it has not been able to do more than issue recommendations to Morocco and the Polisario Front, the latter of which has considerably weakened power today. The ceasefire seems currently to be respected, but the referendum on independence has been excluded from negotiations since late 2001.

⁸⁰ Every peacekeeping operation based on Chapter VI gives the state the authority to accept or reject the mission’s activities. As an illustrative example, Morocco has repeatedly shown hostility towards any human rights protection mechanisms. All the initiatives, undertaken several times in the last few years, to broaden its mandate in this way have been met with a Security Council veto, notably by France.

⁸¹ Stephen Zunes and Jacob Mundy, *Western Sahara: War, Nationalism, and Conflict Irresolution* (2010), pp. 192-193: “Morocco, under false pretenses, presented thousands of its own citizens as native Western Saharans—both Arabs and Berbers in addition to ethnic Sahrawis of non-Western Saharan origin. . . . Out of the candidates from Morocco proper, only 5 percent qualified to vote, and a little less than half of Moroccan-sponsored candidates from the occupied Western Sahara qualified to vote.”

⁸² Stephen Zunes et Jacob Mundy, *Western Sahara : War, Nationalism, and Conflict Irresolution* (2010), p. 193.

⁸³ *Ibid.*

⁸⁴ Invoking Chapter VII would allow the Security Council to achieve its plan of peaceful conflict resolution by settling the disputes between the parties that are hindering the process. It is difficult to imagine that after over 20 years of negotiations an agreement can be reached. Only the intervention of a third party with coercive authority will allow a fair and equitable solution to be reached.

⁸⁵ On 1 July 2010, by its Resolution 1925 of 23 May 2010, the U.N. Security Council changed the name of the MONUC (United Nations Organization Mission in the Democratic Republic of the Congo) to MONUSCO to account for the country entering into a new phase. The new Mission was authorized to use all necessary means to fulfill its mandate (<http://www.un.org/fr/peacekeeping/missions/monusco/mandate.shtml>), which included protecting civilians, humanitarian personnel and human rights defenders exposed to imminent threats of physical violence and helping the government to stabilize and consolidate peace.

⁸⁶ This was the case with its intervention in Libya. Following the Human Rights Council’s Resolution A/HRC/RES/S-15/1 of 25 February 2011, the U.N. Security Council adopted Resolution 1973 (2011) on 17 March 2011 on the basis of Chapter VII of the UN Charter, exhorting the Libyan authorities to “*comply with their obligations under international law, including international ... human rights ...law.*”

⁸⁷ See http://pbpu.unlb.org/pbps/library/capstone_doctrine_eng.pdf. The Capstone doctrine, which aims at regulating the framework of Peacekeeping Operations, states that as a matter of principle human rights law are inherently part of the objectives and principles defined in the United Nations Charter. It is on the basis of this doctrine that several current UN operations occurred (MANUA, MINUK, MINUL, MINUSS, MONUSCO and ONUCI) include effective human rights protection mechanisms.

⁸⁸ In a common letter addressed to the U.N. Security Council on the eve of the presentation of U.N. Secretary-General Ban Ki-Moon’s April 2014 report, 115 organizations and associations, among them Sahrawi associations and international NGOs, called for an expansion of the MINURSO mandate. They affirmed that “*the only way to accurately monitor the reality of the human rights situation is through independent investigations and MINURSO reports.*”