



**OBSERVATIONS AND TOPICS TO BE INCLUDED IN THE LIST OF ISSUES**

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

To the attention of the Committee on Economic, Social and Cultural Rights

Submitted by Western Sahara Resource Watch on 27 January 2015

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## Executive Summary

2015 marks forty years since the invasion and occupation of what has come to be regarded as Africa's last colony, Western Sahara. A significant number of well-established human rights obligations apply in the territory. International law contains clear prescriptions for the protection, political independence and advancement of the Saharawi people, who were the original inhabitants of Western Sahara, then Spanish Sahara, until they were abandoned by Spain in 1975. Foremost is the right of self-determination of non-self-governing peoples. Such rights prescribed by the *International Covenant on Economic, Social and Cultural Rights* have been consistently violated in Western Sahara.

This submission for the Committee on Economic, Social and Cultural Rights has been prepared by Western Sahara Resource Watch, a non-governmental organization in Brussels. It is intended to highlight the significant failure of Morocco as the occupying power or State with responsibility for the territory of Western Sahara and the Saharawi people to ensure even the most basic compliance with the *International Covenant on Economic, Social and Cultural Rights*. The submission presents evidence of the problem, and discusses remedial responses that may be adopted by the Committee.

The submission begins with a review of the application of the *Covenant* in Western Sahara. It then addresses the right of self-determination of the Saharawi people, noting the clear legal basis for such a right both in the *Covenant* and international law at large, including with it the elective choice of independence that Morocco as occupying power has proposed to derogate from in a so-called autonomy proposal made in 2007. The continuing violation of Article 1 of the *Covenant* in this respect is reviewed, and inquiries are proposed to the Committee.

The second part of the submission surveys the problem of the violation of the Saharawi people's rights to their natural resources, offering details about the taking of the resources without the required minimal conditions of consent by and a benefit from their realization to the Saharawi people, and the attendant consequences of the acceptability of resource development serving as a cover for the illegal in-migration of Moroccan nationals into the occupied area of Western Sahara and for entrenching the annexation of the territory. Inquiries are also presented here to the Committee for further consideration and accountability in the context of the *Covenant's* requirements for the respect for rights to natural resources.

The submission concludes with suggested recommendations to be made by the Committee to Morocco in an effort to reveal the continuing dimensions of a failure to comply with the *Covenant*, including specific measures to ensure the organization of a self-determination referendum in Western Sahara for the Saharawi people within prescribed international legal requirements, and the further urging of meaningful compliance with the *Covenant* upon Morocco.

## I. Western Sahara Resource Watch

1. Western Sahara Resource Watch (WSRW) is an independent, non-governmental organization based in Brussels, with an international board of directors, operating in more than 40 countries. Our principal purpose is to monitor and comment about the taking of natural resources from occupied Western Sahara, and to address related human rights and environmental protection issues. For several years, our organization has called attention to the problems of illegal fishing, phosphate rock exports and seabed petroleum exploration in the coastal waters of Western Sahara. The taking of natural resources from Western Sahara has proven to be an important dimension of Morocco's continuing annexation of the territory, enriching that country and allowing it to justify expanded infrastructure and the illegal immigration of settlers. WSRW conducts research and reports about the problems in occupied Western Sahara that result from a combination of the territory's armed occupation, human rights abuses, environmental degradation and the taking of natural resources.

2. We emphasize the importance of our organization's independence. WSRW, while supporting the right of the Saharawi people to self-determination as guaranteed them by international law (and the commitments of the organized international community), is completely independent in its governance, operations and campaign work. It is not funded by any direct or indirect means by any person or party under or involved in the occupation of Western Sahara.

## II. The applicability of the International Covenant on Economic, Social and Cultural Rights in occupied Western Sahara

3. The *International Covenant on Economic, Social and Cultural Rights* (the ICESCR and the Covenant) applies throughout Western Sahara, both the larger area occupied by Morocco and the inland part held by the Saharawi government east of the sand wall that divides the territory.<sup>1</sup> Morocco, the occupying power, ratified the ICESCR on 3 May 1979, and Spain, the colonial and *de jure* administering power with continuing responsibility for the people and territory of Western Sahara, gave its ratification on 27 April 1977.<sup>2</sup> In addition, the near-universal accession to and acceptance of the ICESCR as a matter of customary international law together with the application of Article 73 of the UN *Charter* in the circumstances of the Saharawi as a non-self-governing people result in the Covenant having effect in the occupied part of Western Sahara.<sup>3</sup>

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<sup>1</sup> ICESCR, UN General Assembly Resolution 2200A (XXI), 21 UNGAOR Supp. (No. 16) at 49, UN doc. A/6316 (1966), 993 UNTS 3 (in force 3 January 1976).

<sup>2</sup> Neither State has made a declaration or reservation to the ICESCR. On 23 September 2010 Spain ratified the 2008 Optional Protocol to the ICESCR (in force 5 May 2013).

<sup>3</sup> United Nations *Charter*, 1 UNTS XVI (in force 24 October 1945). Article 73 provides in part that: "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end ... to ensure, with

4. WSRW submits that virtually all of the substantive obligations of the ICESCR – Parts I, II and III (*i.e.* Articles 1–15) – that are incumbent upon Morocco in occupied Western Sahara continue to be gravely and systematically violated. It is contended that the evidence of such violation is manifold, and the root cause of the matter can be traced to the denial of the Saharawi people’s right of self-determination that is provided for in Article 1 of the Covenant.<sup>4</sup> In view of WSRW’s objectives and competence, this submission to the Committee will focus on Morocco’s violation of Article 1 of the ICESCR, a provision to guarantee the right to self-determination and the right to freely dispose of natural resources as its corollary.

### III. Observations regarding violations of ICESCR in Western Sahara

#### A. Article 1, paragraph 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.”*

5. Article 1 is both *chapeau* of the Covenant and entirely, if generally, explains significant violations of most human rights in that part of Western Sahara which is under armed occupation today. Article 1(1) prescribes that all peoples have the right to self-determination. It is noted that this right in the context of colonized (*i.e.* non-self-governing) peoples is one binding on all States; an obligation *erga omnes*. It is also a peremptory norm of international law and therefore animates all considerations of the application of the ICESCR in occupied Western Sahara. Article 1(3) complements Article 1(1), requiring States which are a party to the ICESCR to specifically promote the realization of self-determination of non-self-governing territories.

6. The Kingdom of Morocco recognized the Saharawi people’s right to self-determination by its agreement to the 1991 UN-sponsored settlement plan, accepting there would be a referendum on self-determination, wherein the people of the territory could freely decide their future status, including that of their territory.<sup>5</sup> The UN’s *Mission des Nations Unies pour l’Organisation d’un*

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due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses ...”

<sup>4</sup> The International Court of Justice, the UN General Assembly and the UN Security Council have consistently affirmed the Saharawi people’s right of self-determination in the context of decolonization under UN General Assembly Resolution 1514 (XV) of 14 December 1960. See notably the conclusion of the ICJ in the Western Sahara Advisory Opinion, ICJ Reports 1975, 12.

<sup>5</sup> The 1991 settlement agreement, imposing a ceasefire and the requirement for a self-determination referendum is detailed in two reports of the UN Secretary-General to the UN Security Council, UN docs. S/21360 (18 June 1990) and S/22464 (19 April 1991). “The two parties, namely the Kingdom of Morocco and the Frente POLISARIO, recognize in the settlement proposals that the sole and exclusive responsibility for the organization and conduct of the referendum is vested in the United Nations.” S/22464 § 9. See also UNSC Resolution 621 (1988) of September 1988.

*Référendum au Sahara Occidental* (MINURSO) has been present in the territory since 1991 with the sole purpose of organizing the referendum.<sup>6</sup>

7. In 2006, the Committee issued the following recommendation to Morocco:

*“The State party should make every effort to find a clear and definitive solution to the issue of self-determination for the people of Western Sahara and take steps to protect the rights of persons displaced by the conflict in Western Sahara and to ensure their safety.”*<sup>7</sup>

8. In its March 2014 State report, Morocco replied to the Committee’s recommendation by describing a proposal to grant Western Sahara a degree of autonomy through the “Moroccan Extended Autonomy Initiative”. The report also notes that “His Majesty the King created a special 141-member body for the Saharans, the Royal Advisory Council on Saharan Affairs. The Council’s terms of reference include the development of an autonomy plan based on reconciliation, an initiative that broadly complies with the principle of self-determination.” The State report added that Morocco has “proposed that a referendum on the autonomy statute produced as a result of the negotiations should be held among the population concerned, in accordance with the principle of self-determination and the Charter of the United Nations.”<sup>8</sup>

9. The very idea of a top-down, occupying state -conceived autonomy initiative, ostensibly developed by a Council of 141 individuals with sworn allegiance to the Moroccan monarchy, is diametrically opposite the bottom-up character of the right to self-determination; a people having the right to choose from a panoply of options; ranging from complete independence to complete integration, rather than that of accepting or rejecting a single, government-sponsored proposal. Furthermore, Morocco’s State report does not specify who would be granted the right to vote in such a referendum or when it would take place. It gives the clear impression that those entitled to vote will not be given the option of choosing independence over regional autonomy. As such, the non-self-governing Saharawi people would not have the chance to freely decide the future political status of their homeland. Accordingly, Morocco’s proposal falls well outside the principle of self-determination provided by Art. 1, para.1 of the ICESCR.

10. Morocco’s refusal to allow the Saharawi people to exercise their internationally recognized right to self-determination was recently exemplified by a speech of the Moroccan head of state, King Mohammed VI, on the occasion of the anniversary of the 1975 Green March - an event that was part of Morocco’s invasion of Western Sahara - 6 November 2014. The King declared that “Morocco will

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<sup>6</sup> *Ibid.* See also UNSC Resolution 690 (1991), The Situation concerning Western Sahara, 29 April 1991.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, 36th session, 1-19 May 2006, Consideration of the reports submitted by State 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.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, Fourth periodic report of the State of Morocco, 24 March 2014, E/C.12/MAR/4, §25 and 26.

remain in its Sahara, and the Sahara will remain part of Morocco, until the end of time ... When Morocco opened the door to negotiations with a view to reaching a lasting solution to the artificial dispute over the Sahara, the issue was not - and never will be - our country's sovereignty and territorial integrity ... The autonomy initiative is the maximum Morocco can offer in terms of negotiation to achieve a final solution to this regional conflict."<sup>9</sup>

11. Another example of Morocco's antagonism to the idea of Saharawi self-determination is the practice of not allowing Saharawi associations which are critical of autonomy and that champion human rights to register and function legally in the territory, a problem explained by the UN Secretary General in his 2014 report to the Security Council:

Civil Society organizations, including human rights groups active in Western Sahara west of the Berm, continue to face obstacles in registering as non-governmental organizations, despite a judicial decision in their favour. Such obstacles have deterred several associations from initiating the registration process, while others suspended their activities after the authorities allegedly refused to receive their applications.<sup>10</sup>

12. Another feature of the Article 1 breach is Morocco's continuing armed occupation of Western Sahara. This includes the sand wall constructed by Morocco to partition the territory with extensive mine-fields on its east side – the presence of which contravenes the CDESCR Recommendation that Morocco must "take steps to protect the rights of persons displaced by the conflict in Western Sahara and to ensure their safety". Each year, the mine-fields result in several deaths and serious injuries to civilian persons. The nature of the armed occupation, an act of aggression under the *Rome Statute* 1998 which defines international crimes, does not allow the Saharawi people to "freely pursue" their political status. There are several aspects to this breach. The first is that of the extensive presence of armed forces units and paramilitary police in the occupied area of Western Sahara, a presence that hinders or intimidates free association, the expression of political sentiment, and the public meetings of persons concerned with self-determination. The second is that the military occupation of Western Sahara has resulted in the exodus of about half the Saharawi population; now refugees in six camps south of Tindouf, Algeria, who are unable to collectively participate in activities to realize self-determination throughout Western Sahara, that is, as an entire population of the territory. A third is the violence that results from a substantial military occupation, including loss of life and injury from unexploded ordinance and land mines, and environmental degradation including along the course of the garrisoned sand wall.

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<sup>9</sup> Speech of King Mohammed VI, 6 November 2014, available in English: <<http://www.map.ma/en/discours-messages-sm-le-roi/hm-king-delivers-speech-nation-39th-anniversary-green-march>>.

<sup>10</sup> Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2014/258 (10 April 2014), § 79.

13. The most recent annual report of the UN Secretary-General about Western Sahara refers to the problem of military occupation in the territory:

That part of Western Sahara under control of Morocco, west of the berm marking the ceasefire line, continued to witness considerable Moroccan investment in infrastructure and in the social and cultural sphere. Public life proceeded peacefully, and holidays brought large numbers of people into the streets, generally without incident. This was at least in part due to the extensive presence of security forces. [...]

Demonstrations aimed at drawing attention to human rights concerns, socioeconomic issues and political demands, including the right to self-determination [were usually small in scale]. They were swiftly dispersed by Moroccan security forces. On most such occasions, there were credible reports of heavy-handedness on the part of security forces, as well as violence, such as stone-throwing, on the part of demonstrators.<sup>11</sup>

14. The obligations in Article 1 of the ICESCR are amplified by the duties of an occupying power found in international humanitarian law. This body of law includes the *Fourth Geneva Convention* 1949, the *Hague Convention* 1907 and, because Spain continues to have legal responsibility for Western Sahara and its people and is a signatory, the *Rome Statute* 1998.<sup>12</sup> In addition to its duty to protect the original population of the territory during armed conflict and a subsequent occupation, Morocco is prohibited from the in-migration and settlement of its nationals into Western Sahara. Article 49 of the *Fourth Geneva Convention* is clear: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” The Saharawi population that remains in the occupied part of Western Sahara is now outnumbered by at least two to one by such resettled Moroccan nationals.<sup>13</sup> This continues to have a number of deleterious effects of the realization of Article 1 ICESCR rights, most seriously an erosion of the right to self-determination.<sup>14</sup> The presence of settlers in a place that Morocco styles as part of its “Southern Provinces” objectively

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<sup>11</sup> Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2014/258 (10 April 2014), § 3 and 5.

<sup>12</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 75 UNTS 287 (in force 21 October 1950). Morocco and Spain have ratified the *Convention* and are signatories to its Additional Protocols I and II of 1977. *Hague Convention, Convention (IV) respecting the Laws and Customs of War on Land*, 187 CTS 227 (in force 26 January 1910). *Rome Statute of the International Criminal Court*, 2187 UNTS 90 (in force 1 July 2002). Spain has ratified the *Rome Statute*, Morocco has signed it.

<sup>13</sup> See Jacob Mundy, “Moroccan Settlers in Western Sahara: Colonists or Fifth Column?” 15 *The Arab World Geographer* 95 (2012) p. 96.

<sup>14</sup> Since 2007 Morocco has no longer offered the Saharawi people the option or choice of independence on exercising self-determination, proposing a form of autonomy in a proposal that year. This is contrary to its contracted obligation under the UN sponsored 1991 ceasefire and referendum agreement, and contrary to international law, for which see the ICJ’s advisory opinion, *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo*, ICJ Rep (2010) p. 403 at § 79.

takes away certain economic opportunities from the Saharawi and serves as a pretext for a military force to ostensibly protect such persons and the building of infrastructure to extend the occupation.

### Suggested questions for the Government of Morocco

15. In view of the above, we recommend that the Committee request the Kingdom of Morocco provide information about the following issues:

- \* Specific and independently verifiable information about the implementation of the Saharawi people's right to self-determination. Such information should specify what preparations are being made, what measures will be taken, a time-table for the organization of the referendum, a list containing the identities of those entitled to vote, and the options to be included in the referendum.
- \* Clear information about the consequences of a potential rejection by the Saharawi people of the regional autonomy initiative mentioned in paragraphs 25 and 26 of the State report.<sup>15</sup>
- \* An explanation why it refuses to allow Saharawi nationals to register organizations or associations that have the right to self-determination and/or the right to independence as a core *raison d'être*.
- \* A plan of action to remove any obstacle, legal or other, to allow Saharawi organizations that advocate for self-determination, as that right is understood in international law, to register.
- \* Accurate, current and ascertainable figures about the number of Moroccan nationals currently residing in Western Sahara, with a break-down of civilians, security personnel and armed forces members.

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<sup>15</sup> For ease of reference, State Report §25 reads: "The Moroccan Extended Autonomy Initiative (IMAE) is an integral part of the action taken by the Kingdom of Morocco to build a modern democratic State for which respect for human rights is both a *raison d'être* and a means of consummating its territorial integrity. The Kingdom plans, by means of IMAE, to guarantee that the population of the region are accorded their appropriate place and role in its organs and institutions without discrimination or exclusion. The people of the Sahara will be able to administer their affairs democratically, exercising exclusive legislative, executive and judicial powers. They will have the financial resources required to promote regional development in all areas. The new Constitution recognizes the specific components of the Moroccan nation, including the Saharan component; the Constitution also recognizes the Hassani language as a constituent element of the unified Moroccan cultural entity. It assigns responsibility to the State, as in the case of the Amazigh component, for their protection and development. With a view to ensuring that the regional components can fully express their political, economic, social and cultural interests, the Constitution enshrines the principles of advanced regionalization. This confers wide-ranging powers on the regional councils, which will be elected, according to the draft proposed by the advisory commission on regionalization, by direct universal suffrage." §26 reads: "In response to the international demand for a political, negotiated and final settlement to the Saharan conflict, since all other solutions have failed, His Majesty the King created a special 141 –member body for the Saharans, the Royal Advisory Council on Saharan Affairs. The Council's terms of reference include the development of an autonomy plan based on reconciliation, an initiative that broadly complies with the principle of self-determination. The plan was adopted by all national bodies and gave rise to the Moroccan initiative aimed at resolving the conflict. This initiative has been deemed credible and serious by international bodies. It was submitted to the United Nations on 11 April 2007 and gave rise to Security Council resolutions 1754 (2007), 1813 (2008), 1871 (2009), 1920 (2010) and 1979 (2011), all of which described it as "serious and credible". These resolutions served as the basis for the negotiations that are currently under way. Morocco has proposed that a referendum on the autonomy statute produced as a result of the negotiations should be held among the population concerned, in accordance with the principle of self-determination and the Charter of the United Nations. It has undertaken to ensure that the population has access to the financial resources required for regional development in all areas and that it plays an active part in the Kingdom's economic, social and cultural life."

- \* Detailed information on measures taken to protect the rights of persons displaced by the conflict in Western Sahara and to ensure their safety, further to the CESCR's 2006 recommendations. In view of that recommendation, Morocco should be importuned to offer a time-table for the removal of the sand wall and its surrounding mine-fields, together with the necessary environmental remediation, in order to ensure compliance with the Covenant.

## B. Article 1, paragraph 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."*

16. Article 1(2) provides that the Saharawi people - who, it should be recalled, were the original inhabitants of the then colony of Spanish Sahara until Morocco's invasion and annexation in 1975 - have the sovereign right to "freely dispose of their natural wealth and resources". In addition, the Article notes that the Saharawi people must not "be deprived of [their] own means of subsistence."

17. As the occupying power in Western Sahara, Morocco has the primary obligation to *respect, protect and fulfil* the rights enshrined in the Covenant to the benefit of the Saharawi people, including their right to dispose freely of the territory's natural resources. In this part, WSRW will demonstrate Morocco does precisely the opposite: it interferes with the enjoyment of that right, it does not prevent violations of that right by third parties and does not take any appropriate steps to progressively realize full enjoyment of that right.

18. It is telling that Morocco scarcely mentions the right to resources in the report it submitted to the Committee. Any reference to Western Sahara's resources is hidden in the obfuscating language of footnote 14, which contains the following sentence: "[Morocco] has launched ambitious programmes designed to enhance the provinces' [sic] productive capabilities and develop their economic potential in order to meet the population's needs and expectations."<sup>16</sup>

### 1. Resources used to further annexation, rather than the exercise of self-determination

19. WSRW maintains that Morocco's taking of Western Sahara's resources is illegal because it is not directed towards assisting the Saharawi people in the exercise of their right to self-determination, but rather to the opposite: maintaining and strengthening its untenable claim over the territory.<sup>17</sup> The problem here is three-fold: (i) the enrichment of Morocco through the sale of the territory's natural resources; (ii) Morocco's development of Western Sahara's resources to further acceptance of its illegal presence in the territory; (iii) the decreased availability of non-renewable resources to the Saharawi people when they will eventually realize self-determination.

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<sup>16</sup> Committee on Economic, Social and Cultural Rights, Fourth periodic report of the State of Morocco, 24 March 2014, E/C.12/MAR/4, footnote 14, p.13.

<sup>17</sup> Taking is defined for the present purpose 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.

### *a) Saharawis do not share in the exploitation of their resources*

20. The first problem is the enrichment of Morocco by the sale of the territory's natural resources. There are three principal resources and three secondary (or minor) resources of concern, namely (in order of estimated market value in 2014): (i) phosphate mineral rock (\$220 million); (ii) the Atlantic coastal fishery (\$60 million); (iii) seabed petroleum (\$0); followed by (iv) agricultural products (\$4 million); (v) sand aggregates (< \$1 million); (vi) salt (< \$1 million).<sup>18</sup>

21. None of the revenues from these resources is returned to the Saharawi people, and no accounting of them is publicly available, including in Morocco.<sup>19</sup> Critically, the Saharawi people who reside in the refugee camps at Tindouf do not receive the benefit of such revenues. To paint a stark picture, the total amount of multi-lateral aid given to the Saharawi refugees in 2013 is less than 10% of the estimated amount Morocco earned in revenues from selling Western Sahara's phosphates to interested takers around the globe in the same year. The larger purchasers, including Canada's Potash Corporation and Lithuania's Lifosa AB have each paid more for Western Saharan phosphate than the international community has accorded Saharawi refugees. WSRW follows the trade continuously, and tracks all vessels departing the territory. The 2012-2013 trade was the subject of a WSRW report published in June 2014.<sup>20</sup>

### *b) Western Saharan resources used to legitimize illegal occupation*

22. The second problem, Morocco's strategy of using Western Sahara's resources to build an international acceptance of its illegal presence in the territory, is evident by the Moroccan government's own admissions. An example can be seen in an internal document from the Moroccan government published by a Moroccan whistle-blower<sup>21</sup> on 21 November 2014. It demonstrates how Morocco employs Western Sahara's resources to build acceptance by other States of its presence in

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<sup>18</sup> These figures are estimates as of 25 January 2015, and are derived from direct observations and calculations of WSRW. No commercial petroleum has yet been recovered from the seabed on the coast of Western Sahara, although such activity began in the last days of 2014. Phosphate mineral rock remains the territory's largest value resource. See WSRW's 2014 report "P for Plunder" at: <[www.wsrw.org](http://www.wsrw.org)>.

<sup>19</sup> A telling example of Morocco's refusal to publicly disclose details about the taking of resources or even about investments in the territory, came when the European Commission asked Morocco to produce information that clearly demonstrated how Western Sahara benefitted from the sectoral support accorded under the EU Morocco Fisheries Partnership Agreement. After a series of requests, Morocco provided a powerpoint presentation that did not even make the distinction between the two territories, making it impossible to draw any conclusions on the amount of sectoral support that could have been allocated to Western Sahara. The former UN Legal Counsel deemed the European Commission's request to have Morocco report about benefits of the Fisheries Partnership Agreement to the Saharawis "simply not acceptable". See Hans Corell, "Western Sahara – status and resources", 4 *New Routes* (2010), pp. 10-13.

<sup>20</sup> WSRW, "WSRW report gives complete overview of controversial clients", 12 June 2014, <<http://www.wsrw.org/a105x2905>>.

<sup>21</sup> The Moroccan government has never contested the many leaked documents' validity, and sees it as an Algerian attack. See e.g. TelQuel, Chris Coleman: le gouvernement dénonce finalement une campagne <enragée>, 12 December 2014. Le Monde, L'étrange <Wikileaks> marocain, 4 January 2015. Le Monde, Un hacker ne peut déstabiliser à lui tout seul la monarchie marocaine, 6 January 2015.

the territory. The document, called “La Fédération de Russie et la Question du Sahara Marocain”, contains the following paragraphs:

“To this objective, Morocco has to ... implicate Russia in activities in the Sahara, as is already the case in the field of fisheries. Oil exploration, phosphates, energy and touristic development are, among others, the sectors that could be involved in this respect ... In return, Russia could guarantee a freeze on the Sahara file within the UN, the time for the Kingdom to take strong action with irreversible facts with regard to the *marocanité* of the Sahara.”<sup>22</sup>

23. Central to this strategy is the presence of Moroccan settlers in Western Sahara, who predominantly benefit from resource extraction in the territory. Their presence is also used to obscure the debate on the wishes and the interests of the Saharawi people with regard to Morocco’s exploitation of the territory’s resources. For this reason, it is important to note the difference between the notions “population” and “people”. While the concept of a population is generally accepted as describing the group of persons residing in the territory at a given time, the term people refers to the group of persons that are of the territory. Accordingly, whereas the definition “population” would include the Moroccan settlers that have moved into the territory over the years or who spend significant parts of the year there as seasonal workers, the term “people” only applies to the Saharawi people as the sole, original inhabitants of the territory prior to Morocco’s invasion in 1975. It is worth repeating the single sentence from Morocco’s report to the CESCR that refers to the use of Western Sahara’s resources: “It [Morocco] has launched ambitious programmes designed to enhance the provinces’ productive capabilities and develop their economic potential in order to meet the population’s needs and expectations.”

24. Examples of asymmetrical benefits from resource extraction for Moroccan settlers abound. Because it is a single discrete employer engaged in the production of one commodity, the example of Phos-Boucrâ (the local production subsidiary of *Office Chérifien des Phosphates SA*), responsible for phosphate rock mining, processing and exports including from occupied Western Sahara, is useful. Of some 1,400 to 1,800 employees in that enterprise, less than half, and perhaps only one-quarter are Saharawi persons by any definition.<sup>23</sup> Saharawis who are still employed by OCP claim the company

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<sup>22</sup> The document was made available via the whistle-blower’s twitter account @chris\_coleman24 on 21 November 2014, but the account has repeatedly been taken offline. See *e.g.* TelQuel, Twitter a supprimé le compte de Chris Colement, sans s’expliquer, 17 December 2014. A recovered version is available at <[http://www.arso.org/Coleman/Note\\_Russie\\_Saharacorrige.pdf](http://www.arso.org/Coleman/Note_Russie_Saharacorrige.pdf)>.

<sup>23</sup> The first organization to investigate the situation of the Saharawi phosphate workers was France Libertés, Fondation Danielle Mitterrand, in their Report: International Mission of Investigation in Western Sahara, January 2003, available via <[http://www.vest-sahara.no/files/pdf/France\\_Libertes\\_occupied\\_2003.pdf](http://www.vest-sahara.no/files/pdf/France_Libertes_occupied_2003.pdf)>. Protests by redundant Saharawi phosphate workers continue to denounce what they call “a policy of segregation”. See *e.g.* WSRW, 14 Saharawis injured when protesting the plunder, 2 August 2010, <<http://www.wsrw.org/a159x1554>>.

offers certain benefits to Moroccan employees that it does not provide to Saharawis.<sup>24</sup> Reports of similar underemployment, that is, minority presence in the agricultural industry<sup>25</sup> and in the coastal fishing industry also make out the continuing problem.<sup>26 27</sup> Saharawis who have had the opportunity to complete a higher education in Morocco<sup>28</sup>, lament discrimination in the job market of their Saharawi origin.<sup>29</sup>

25. Statements from corporations that purchase phosphate rock from occupied Western Sahara illustrate the presence of Moroccan settlers as a cover for what is a continuing annexation project:

We believe that Phos-Boucrâ's [the Western Sahara subsidiary of Morocco's Office Chérifien des Phosphates SA] operations and investments in the region have significantly contributed to the development of Western Sahara and continue to provide substantial and sustainable economic and social benefits to the Saharawi population [sic], all of which create enhanced opportunity for, and capacity building within, the local population.<sup>30</sup>

26. The result is a creeping recognition that resource development in occupied Western Sahara is acceptable, and seemingly confers benefit to the Saharawi people. Such a conclusion can be rejected when the social and economic marginalization of the Saharawi present in the occupied area of the territory is recalled.

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<sup>24</sup> WSRW, "Discrimination over the right to housing in OCP, workers say", 5 April 2012, <<http://www.wsrw.org/a214x2275>>.

<sup>25</sup> WSRW, Report: Label and Liability, June 2012, available via <<http://www.wsrw.org/a214x2321>>.

<sup>26</sup> See e.g. WSRW, "9 detained, threats of jail if demonstrating against EU fisheries", 14 March 2014, <<http://www.wsrw.org/a228x2859>>, WSRW, "Demands of Saharawi fishermen in Dakhla, 25 May 2013", 30 May 2013, <<http://www.wsrw.org/a217x2596>>.

WSRW, "Saharawi fishermen ordered to explain themselves", 29 June 2013, <<http://www.wsrw.org/a217x2594>>.

WSRW, "Saharawi fishermen block harbor of Dakhla", 27 June 2013, <<http://www.wsrw.org/a217x2592>>.

WSRW, "Saharawi in Dakhla keep protesting", 04 February 2013, <<http://www.wsrw.org/a217x2496>>.

WSRW, "Statement by Saharawi fishermen in Dakhla regarding protest", 11 January 2013,

<<http://www.wsrw.org/a217x2480>>

WSRW, "Saharawi fishermen protest exclusion from employment", 29 June 2012, <<http://www.wsrw.org/a214x2342>>.

WSRW, "Saharawi fishermen boarded foreign trawler in protest", 02 May 2012, <<http://www.wsrw.org/a214x2291>>.

<sup>27</sup> The rights that pertain to the benefits and conditions within work, as prescribed by Article 7 ICESCR, are significantly violated when it comes to the Saharawi people in occupied Western Sahara. They are most readily denied by the presence of extensive security forces, as the UN Secretary-General notes in his most recent report, above, and by the in-migration of Moroccan nationals. (There is also an indirect effect of the occupation-annexation of the territory, and that has been a much larger population than present resources and economic facilities can support, leading to marginal economic conditions for those most vulnerable – the Saharawi. The evidence of such an indirect effect is unclear, but the accepted notably higher rates of unemployment and underemployment of Saharawi establishes the result, if empirically.)

<sup>28</sup> Please note that during the nearly 40 years of occupation, Morocco did not establish a single university in Western Sahara. As a result, only few Saharawis can foster the necessary funding to afford an education, often hundreds of miles away from home.

<sup>29</sup> WSRW, Unemployed Saharawi graduates rally in Rabat, 22 July 2010, <<http://www.wsrw.org/a105x1540>>.

<sup>30</sup> Statement of Potash Corporation of Saskatchewan Ltd., "Phosphate rock from Western Sahara" (1 August 2014), available at: <[www.potashcorp.com](http://www.potashcorp.com)> Potash Corporation was in 2012 and 2013 the largest purchaser of phosphate rock from Western Sahara, more than \$150 million in the two years. See "P for Plunder", above note 18.

27. In early October 2010, thousands of Saharawis pitched their tents in the desert not far from Western Sahara's capital city El Aaiun, at a place called Gdeim Izik to protest their socio-economic marginalization as a people while Morocco continued to acquire the revenues from selling the resources of their territory. On 8 November 2010, the Moroccan military invaded the camp site and burned it to the ground.<sup>31</sup> In addition to protests within the territory, the Saharawi people's legitimate (and United Nations accepted) representative organization, in its dual capacities as the Polisario Front and the Saharawi Arab Democratic Republic, together with a significant number of civil society organizations have firmly declared that they do not consent and receive nothing from resource extraction. The problem has been remarked upon by the UN Secretary-General:

The Secretary-General of Frente Polisario wrote to me repeatedly to condemn Morocco's exploitation of the Territory's resources and publicly announced his intention to consider a possible judicial appeal against the [2007 EU-Morocco fisheries] agreement. The agreement was also the subject of some of the demonstrations [in the occupied area of Western Sahara] cited earlier.

Frente Polisario also sent me letters indicating its concern that Morocco has renewed contracts with foreign oil companies that have announced their intention to accelerate plans for further seismic surveys and to drill exploration and appraisal wells in the territorial waters and seabed areas of Western Sahara. Such contracts were addressed by the [United Nations] Legal Counsel, at the request of the Security Council, in a legal opinion dated 29 January 2002. The opinion states 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 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).<sup>32</sup> [Emphasis added in bold.]

28. The problem of seeming normalcy and desirability of development of Western Sahara's resources, which has such clear, well-established legal norms that prohibit the taking of those resources in the present circumstances, is one that also damages the rule of law generally. The States which have a particular obligation to deliver that most obvious of rights – self-determination – are

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<sup>31</sup> Camp residents reported the use of rubber bullets, real bullets, hot-water cannons, tear-gas, truncheons and stones. As panic took over, clashes between the army and the protesters ensued, leading to casualties and injuries on both sides. An exact figure on the number of victims does not exist, as Morocco did not allow independent observers – including MINURSO personnel - to access the area. Moroccan security officials proceeded to arrest hundreds of Saharawi in connection with the events. Many of those were held for much longer than 48 hours - the maximum period someone can be held without being charged under the Moroccan penal code. They would be provisionally released over time, often after having spent months in jail without any official charges against them. A group of 25 men remained in jail, however, and were transferred to Rabat for investigation by a military court. On 17 February 2013, based on wrongful accusations lacking any credible evidence, 23 of these detainees were condemned to sentences ranging from 20 years to life imprisonment.

<sup>32</sup> Report of the Secretary-General on the situation concerning Western Sahara (2014), above note 5, § 11-12.

emboldened in such inaction by the absence of consequences for their involvement in the ongoing taking of Western Sahara's resources.

29. In that respect, Morocco's petroleum development in the territory and its adjacent waters merits attention. Notwithstanding the 2002 Legal Opinion, and the continuous protests of the Saharawi people and the Frente Polisario, Morocco has proceeded to further its oil program in the territory. Morocco has, at present, and as far as WSRW can ascertain, awarded seven oil and gas licences in Western Sahara. There are four offshore blocks and three onshore blocks. In each block, the Moroccan state owned oil company ONHYM (Office National des Hydrocarbures et des Mines) holds an interest together with international oil companies. In addition, Morocco has allocated four other blocks in Western Sahara to new oil companies. On 19 December 2014, the American company Kosmos Energy spudded in the Al Khayr well, previously known as the Gargaa-1 site, in the Cap Boujdour exploration block of the Aaiun basin. The block covers 7,3 million acres, with water depths ranging from 50 metres to 3000 metres. The targeted reservoirs are said to contain a probable 1 billion barrels of oil (or the petroleum equivalent).<sup>33</sup> Kosmos aims to complete the drilling by mid-March 2015, before the UN Security Council's next scheduled hearing on Western Sahara at the end of April. On two occasions in 2014 Moroccan security personnel assailed small, peaceful demonstrations of Saharawis protesting the planned drilling.<sup>34</sup> WSRW contends that if commercial quantities of oil are discovered in Western Sahara, Morocco will have even less incentive to engage in the UN mediated talks, so diminishing the chances of a peaceful outcome. A concern that is shared by the Saharawi government, who raised the matter with the UN Secretary General:

The Saharawi government concludes that the present petroleum activity is illegal and impedes progress toward the conduct of a "free and fair referendum" as that has been accepted by the parties. (See report of Secretary-General 18 June 1990, UN document S/21360, paragraph 47(g).) The activity underscores to the Saharawi people that a violation of well-settled, universal rules of international law is allowed to continue. That suggests the organized international community is unwilling to ensure the paramount obligation of self-determination flowing from Article 73 of the UN Charter.<sup>35</sup>

### *c) Depletion of non-renewable resources*

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<sup>33</sup> Kosmos Energy, Investor Presentation, December 2014, p. 13 <<http://www.kosmosenergy.com/pdfs/kosmos-energy-presentation-2014-December-v2.pdf>>.

<sup>34</sup> WSRW, Letter from Elfayda to Kosmos Energy, 15 April 2014, <<http://www.wsrw.org/a228x2883>>, WSRW, Alouat protested against Kosmos - was cut with razor blade, 13 June 2014, <[www.wsrw.org/a228x2913](http://www.wsrw.org/a228x2913)>.

<sup>35</sup> Letter of the Saharawi Government to the UN Secretary-General, 26 January 2015, <<http://www.spsrasd.info/en/content/president-republic-urges-un-security-council-stop-seabed-oil-drilling-coast-occupied-western>>.

30. The third problem from the Article 1 ICESCR violation is that the present development and export of non-renewable resources means that they will be less available when the Saharawi people realize their self-determination. This erodes the present viability of a future independence should that be the elective choice of the Saharawi people in a referendum. The problem is that less natural wealth will be available when the “question” of Western Sahara is eventually resolved. The organized international community had the preservation of natural wealth in mind when the United Nations Council for Namibia prohibited the taking of resources from that territory when under *apartheid* occupation. The legal duties have not changed in Western Sahara today.<sup>36</sup>

## 2. Suggested questions to the Government of Morocco

31. In view of the above, we recommend that the Committee request that Morocco provide information about the following issues:

- \* An explanation as to why the State report makes no reference to the right to freely dispose of natural resources.
- \* How Morocco has assured itself of the meaningful consent (*i.e.* free, prior and informed) of the Saharawi people - both those living in the areas under its occupation and as refugees in Algeria as a direct consequence of its occupation - to the continuing taking of the territory’s natural resources.
- \* Unambiguous proof as to how the Saharawi people, including those living in Algerian refugee camps as a direct consequence of Morocco’s occupation of Western Sahara, benefit from Morocco’s development of their territory’s resources.
- \* Complete information and data relating to the exploitation, sales, export and research of Western Sahara’s natural resources for assessment by the United Nations and the Frente Polisario.
- \* A separate accounting by a credible third party about the use of Western Sahara’s natural resources (one separate from Morocco’s own national accounting).
- \* Details about measures taken to promote the right to freely dispose of natural resources to the Saharawi people.
- \* Information about those persons and entities holding licenses pertaining to economic activities in Western Sahara, *e.g.* in the fields of fisheries, agriculture, sand excavation, and mining.

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<sup>36</sup> Seabed petroleum, and prospectively land-recovered petroleum, together with phosphate rock are Western Sahara’s current non-renewable resources. There are problems with the sustainability of coastal fishery that is not well regulated, is alleged to be subject to corrupt practices, and which demonstrably faces the pressure of overfishing from time to time. On overfishing, see Oceanic Développement, “Framework Contract Fish/2006/20 Convention Spécifique N°26: Evaluation ex-post du protocole actuel d’accord de partenariat dans la domaine de pêche entre l’union européenne et le royaume du Maroc, étude d’impact d’un possible future protocole d’accord – Rapport - Décembre 2010” (the Oceanic Développement Report), p. 91, <<http://www.fishelsewhere.eu/files/dated/2012-03-05/evaluation-app-maroc-2010.pdf>>.

## IV. Recommendations to Morocco

32. WSRW respectfully suggests to the Committee that it urge the following recommendations upon Morocco. In commending these recommendations to the Committee, WSRW notes the well-developed international legal obligations which apply in the case of Western Sahara. The legal norms and the obligations under the ICESCR are clear. They have been evident since the International Court of Justice issued its Western Sahara advisory opinion and were accepted by Morocco under the 1991 settlement agreement. No project of law reform is needed when it comes to the “question” of Western Sahara. Equally, the obligation of all States, and notably of Spain and Morocco under the Covenant in Western Sahara are apparent. It is the respectful submission of WSRW that the Committee need only look to present international law in its consideration of the extent of the violation of the Covenant in Western Sahara.

**Recommendation I** - To make expeditious effort to organize a self-determination referendum that includes the option of independence, for the Saharawi people as such.

**Recommendation II** - To take into account and in good faith, in negotiations and bilateral agreements, all the obligations incumbent upon it under the Covenant, so as not to impinge upon the Saharawi people’s right to self-determination.

**Recommendation III** - To take into account and in good faith, in negotiations and bilateral agreements, all the obligations incumbent upon it under the Covenant, so as not to impinge upon the Saharawi people’s right to freely dispose of their natural resources.

**Recommendation IV** - To remove any hurdle, administrative, legal and social, to the exercise of the right to organize and to freedom of expression in the universally understood meaning of the right, for the Saharawi people.

**Recommendation V** - To immediately terminate all petroleum licences, export of phosphate mineral rocks fisheries agreements and other commercial activity in Western Sahara done without the express consent (*i.e.* the prior informed consent) of the Saharawi people.

**Recommendation VI** - To release all Saharawi political prisoners, such persons defined or classified by their having been tried by military tribunal contrary to international humanitarian law.

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