



Housing and Land Rights Network
Habitat International Coalition

Human Rights Related to Habitat (Land, Housing, Population Transfer, Natural Resources) in Moroccan-occupied Western Sahara

Stakeholder Report submitted for the Universal Periodic Review of Morocco
41st Session, 22 February 2022

by The Sahrawi Association in the United States of America (SAUSA) and
Housing and Land Rights Network – Habitat International Coalition

The Sahrawi Association in the United States of America (SAUSA):

SAUSA is a non-profit organization founded in 2016 and based of New York with the aim to enhance world attention to the suffering of the people of Western Sahara, and to advocate for the peaceful resolution to Morocco’s illegal occupation of Western Sahara through a referendum for self-determination under the auspices of the United Nations and the African Union. SAUSA also seeks to serve the people of Western Sahara by empowering Sahrawi youth, financing projects, and raising awareness of the gross violations of human rights abuses endured by the indigenous people of Western Sahara.

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Housing and Land Rights Network – Habitat International Coalition (HIC-HLRN)

Habitat International Coalition – Housing and Land Rights Network is an independent international nonprofit Coalition of organizations and individuals working in the field of human settlements. HIC members include some 450 non-governmental and community-based organizations, academic and research institutions, social movements and like-minded individuals from over 80 countries in both North and South. Their binding commitment is expressed in a shared set of objectives that shape HIC’s dedication to communities working to realize their human right to adequate housing and improve their habitat conditions.¹

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Background

1. The Western Sahara, a former Spanish colony, has remained on the UN list of non-self-governing territories since 1963,² throughout Morocco's domestically popularized and militarily enforced claim to, and occupation of Western Sahara in 1975.
2. International law prohibits the acquisition of territory by force.³ When the invader establishes its own administration over a territory beyond the internationally recognized borders and jurisdiction, the situation becomes one of occupation.⁴ Thus, Morocco occupies 80% of the territory of the Sahrawi Arab Democratic Republic (SADR), the self-determination unit that the Sahrawi people's representative declared before Morocco's invasion.⁵ Morocco's occupation persists despite the 1975 International Court of Justice (ICJ) rejecting all six of the Moroccan kingdom's claims to sovereignty over Western Sahara,⁶ rendering its effective control of the territory and denial of the Sahrawi people's self-determination violations of peremptory norms of international law.⁷
3. Morocco's prolonged occupation has caused severe deprivation of the indigenous Sahrawi people, both inside the country and in exile, notably by restricting the Sahrawi people's access to, use and control of their land, natural wealth and resources, thus depriving its means of subsistence.⁸ The continuing occupation has also prolonged a refugee situation, primarily, in Algeria, with at least 174,000 refugees exiled for 47 years.⁹

Normative Framework

4. Morocco's refusal to respect its internationally recognized borders,¹⁰ and its use of force to invade, occupy and acquire the lands of another people's territory, denies the exercise of their collective human rights, constituting a continuous breach of the UN Charter and the Human Rights Covenants.¹¹
5. Moreover, under the law of occupation, including The Hague Regulations (1907) and the Convention relative to the Protection of Civilian Persons in Time of War (1949), Morocco's imposition of its laws in the occupied territory violates norms established for over a century,¹² and implantation of its population in the occupied Sahrawi territory constitute a grave breach.¹³ The serious crime of population transfer in Western Sahara also has involved expulsion and deportation of indigenous Sahrawis.
6. The serious crime of population transfer was prosecuted at the International Military Tribunals at Nuremberg and Tokyo,¹⁴ as well as codified in the Rome Statute of the International Criminal Court.¹⁵ However, it continues with impunity under Moroccan occupation.
7. The pillage and plunder of natural resources conducted by the Moroccan monarch, occupation forces and commercial enterprises since 1975 also violate international humanitarian law (IHL).¹⁶

8. Meanwhile, arbitrary arrest, detention without trial, forced disappearance, torture and extrajudicial killings carried out by Moroccan forces in Western Sahara violate international human rights treaties,¹⁷ including those to which the Kingdom of Morocco (KoM) is a ratifying party.¹⁸
9. This written submission focuses on the consequences of the IHL breaches and gross violations of the human rights to adequate housing, property, land and natural resources (the Sahrawi people's means of subsistence¹⁹ continuing through the review period. Arising from these and other violations,²⁰ we recommend that these be remedied through the entitlements of reparation, as set out by the UN General Assembly.²¹

Dispossession of Land, Forced Eviction, House Demolition and Plunder of Natural Resources

10. Many Sahrawis who fled the territory after the 1975 Moroccan military invasion left their homes and cultivated lands, most of which Moroccan invaders have appropriated. Other owners were compelled to sell properties at a loss from exile, or before taking refuge outside their country.²²
11. In general, Moroccan laws, imposed in breach of IHL, at least tolerate, if not facilitate dispossession of Sahrawi lands. These unjust and illegitimate laws encourage land grabbing and abuse human rights of the indigenous Sahrawi people under guise of "legality."
12. Morocco seeks to incorporate Western Sahara into Morocco, as affirmed in various official Moroccan pronouncements.²³ One means is the artificial earthen barrier (berm), whose construction and operation have partitioned the territory to secure a tenuous Moroccan presence toward annexation. A second is the illegal transfer into Western Sahara of Moroccan population. Pillage of the territory's natural resources is a third and effectively irreversible gross violation. Nonetheless, all these gross violations entitle the Sahrawi people to reparations.²⁴

Grabbing Grarat Land

13. Western Sahara's *grarat* (sing. *grayer*) are tribal lands of customary tenure with palm groves or desert trees such as acacia. They contain wells, obviating the need to collect rainwater. In most cases, these *grarat* act as natural storage of scarce water for agriculture and drinking.
14. Usually, each *grayer* hosts small, informally built brick houses, some dating to the Spanish colonization, with tents erected nearby as needed. There, Sahrawis pursue their distinct, traditional lifestyles and culture, which are central to national identity. *Grarat* are traditionally bequeathed from father to son.
15. Sahrawis have named the *grarat* to facilitate desert navigation and mark their local territories and corresponding tenure. Nowadays, some Saharawi families inhabiting these rural settlements engage in goat and camel breeding. Some have chosen to live there to escape repression, threats, and intimidation from the Moroccan occupation authorities,

which have been particularly virulent amid pandemic restrictions.

16. The Moroccan occupation's disrespect for traditional tenure has involved further altering the legal system in occupied Western Sahara²⁵ to enable to Moroccan acquisition of Sahrawi land and property. No complete inventory yet quantifies all this dispossession since 1975. However, the territory that the Moroccan forces have taken by force amount to 21,280,000 hectares (ha), equivalent to 80% of Western Sahara territory, all of which is subject to restitution to the Sahrawi people for all losses, costs and damages incurred since the 1975 invasion, withstanding individual cases presented here.²⁶

Demolition chronicled

17. Although a comprehensive inventory of property destruction also has yet to be developed, the following cases illustrate the pattern of losses, costs and damages that the Sahrawi people have incurred under Morocco's policy of demolishing Sahrawi homes, violating the human right to adequate housing.²⁷

18. Many individual Sahrawis also have fallen victim to land and house confiscation and acquisition multiple times. For example, in 1976, occupation forces confiscated and seized Sidi Omar Duih's 4 ha at Lamrayyat, 3 km east al-`Ayun, plus another 8ha at Lamghaymim in 1997. Moroccan authorities also seized his land holdings at Gaflat-5, east al-`Ayun, and his house in Colomina Erdess (Essaada Quarter) in 2008.²⁸

19. In a November 2011 aggression on Brarik Stayallou northwest of al-`Ayun, Moroccan authorities demolished 42 Spanish-era Sahrawi huts used as shelter from summer heat. The occupiers' Rapid Intervention Unit then attacked the protesting Saharawi victims without respect to older persons, women and children present. The victims filed many complaints to all local and Moroccan institutions, but to no avail, despite their diligent follow-up.²⁹

20. In 2015, after similar forced evictions and destruction of brick Sahrawi houses at a *grayer* 3 km north of al-`Ayun. Occupation forces confiscated the land, where they built a training center for Rapid Intervention agents.³⁰

21. The Moroccan occupation has criminalized erecting a tent by the seashore, permitting tents only in the desert on conditions that they be temporary and not form a cluster. This restriction followed the autumn 2010 Gdeim Izik events, in which thousands of Sahrawis joined a weeks-long protest camp on the outskirts of al-`Ayun, denouncing Morocco's social and economic exclusion of the Saharawi people in their own country. On 8 November 2010, Moroccan troops stormed and incinerated the camp, arresting hundreds in the immediate aftermath. While most were released over time, occupation authorities condemned 25 men to severe sentences.³¹

22. On 26 September 2018, in Edaoura, 40 km north of al-`Ayun, occupation authorities confiscated land belonging to Sahrawis and coerced the inhabitants to leave. The

gendarmes also use force to compel the Sahrawi families to sign contracts, or cede their land-tenure rights to the Moroccan National Agency for Land Conservation, Cadaster and Cartography in favor of Moroccan Agency for Sustainable Energy (MASEN) for the planned PV II solar-power generation project.³²

23. Local landowners have been demonstrating and filing lawsuits in local courts, but Moroccan authorities have taken no action to remedy or cease this cruel destruction, forced eviction and dispossession. Many Sahrawi protesters and landowners are dispersed in the desert, claiming their land rights and opposing Moroccan state-led attempts to register their lands in the name of Moroccan legal and natural persons. In August 2021, Moroccan helicopters, gendarmerie, auxiliary battalions and law-enforcement agents besieged protesters about 100 km east of al-`Ayun, in the Khattari area, on the route to Smara City. Others have been protesting the Moroccan dispossession of their lands north of al-`Ayun, all the way to Daoura village, which area is guarded by the same Moroccan forces.³³
24. In the southern city of Dakhla, Sahrawis have undergone seizure of many hectares of land in the Argoub area, which Moroccan authorities falsely claim as *terra nullius*. In April 2021, A group of local landowners staged a sit-in at the Land Registry in Dakhla to reclaim their land rights. The protesters asserted their legitimate tenure of those lands, inherited over centuries from their ancestors.
25. On 18 September 2021, Moroccan bulldozers, trucks and excavators surrounded the Tadhast area, southwest of al-`Ayun, and proceeded to demolish 100 Sahrawi permanent and seasonal dwellings.³⁴ Four days later, Moroccan forces similarly attacked and demolished the homes of six Sahrawi families at Brareik Ethamban, southwest of al-`Ayun, between the airport and Boutabaa Grayer. This was the third time that occupation forces had demolished the Boutabaa family home, the first of which homes was built in 1960. A military helicopter monitored the demolition and eviction operations.³⁵
26. Morocco's demolition campaign has also razed Sahrawi houses in the northwest of al-`Ayun, near the seashore, and in the desert to the northeast. The Moroccan occupation gendarmerie has beaten and prosecuted Sahrawis who protested the demolition of their houses. Helpless against this demolition, some have fled with their children to al-`Ayun.
27. In January 2022, at nearby Swayhla and Puerto Rico, Moroccan gendarmerie and auxiliary forces evicted tens of Sahrawis and local landowners and forbade them from erecting tents, or even having any physical presence there. The Moroccan occupation authorities then declared it a "restricted area" under gendarmerie guard.³⁶
28. Meanwhile, under the order of a Moroccan official named "Said Ouassou," occupation forces seized the home of Mohamed Brahim Sidi Ahmed, and confiscated the home of Sahrawi activist Hmad Hammad, in al-`Ayun, as well as the home of Mokhtar Elaoui and land belonging to Eddah Laaroussi Brahim Maatallah, west of al-`Ayun toward the port. Occupation authorities then turned over the homes and lands to Moroccan investors and

settlers.³⁷

29. On 1 February 2022, Moroccan forces demolished 23 modest Sahrawi homes in Amgriou (Tarfaya province). The perpetrators carried out the operation violently, giving no advance warning for Sahrawi inhabitants to collect their belongings, nor did they provide reparation for this gross violation. Moreover, the Moroccan occupation authorities enabled dozens of Moroccan settlers to remain and profit from algae harvesting and the plunder of the abundant fisheries there.³⁸

Population transfer

30. The serious crime of population transfer, involves push and pull factors, including expulsions of the indigenous population and the implantation of settlers and settlements through a range of human rights violations, including those cited above.³⁹ Many of the associated violations and international crimes (see **Normative Framework** above) may be acts of state, as in Morocco's occupation of Western Sahara, implemented by actors with state authority, consent, or by proxy.

31. Beyond the 1975 state-organized Green March invasion, KoM also incentivizes Moroccan civilian settlers to put down roots in the region. This takes the subtler form of KoM providing exemptions from taxes and customs duties, subsidized raw materials, facilitating all fields of investment, and housing subsidies denied to their indigenous counterparts, as in such royal enterprises as the Phos Boucraa phosphate mine, seized in 1975.⁴⁰ While much of KoM's exploitation of Sahrawi natural resources finances the ongoing occupation, at least 77% of Morocco's revenue from the current EU Fisheries Agreement is spent in occupied Western Sahara, including on Moroccan settler housing.⁴¹

32. With Morocco's irredentist political culture, sovereignty over Western Sahara cannot be realized without physically removing and/or demographically neutralizing the Saharawi people. The so-called Green March introduced some 350–360,000 Moroccan citizens, 15% of whom worked for the Moroccan army and/or were part of a plan of the Ministry of the Interior (Moi) to replace and forcibly transfer the Sahrawis from their homeland to neighboring countries, deporting some to Morocco's interior cities, while starving and/or physically eliminating those who remained.⁴²

33. To facilitate effective control, KoM evicted nomads and Bedouins from their ancestral land into the cities and forced them to leave their natural desert habitat, where they had freely dwelt for centuries. In the 1970s–80s, Moroccan forces arrested without trial and forcibly disappeared many Sahrawis, seeking to break the Sahrawis' spirit.

34. Accordingly, many were forced to flee to the refugee camps in neighboring Algeria, while others sought refuge in Mauritania. A few could escape to the neighboring Canary Islands, and have remained there. The Moroccan army forcibly conscripted some Sahrawis,

mostly into service in Moroccan territory.

A typology of settlers

35. Moroccan intelligence and MoI agents entered the territory, setting up residence in abandoned buildings or houses and apartments formerly inhabited by Spaniards. These agents operated under orders and with impunity, breaking down doors of any vacated house and, often, evicted Sahrawi families from their dwellings to occupy them. By day, these agents searched for intel and performed another covert operation under darkness of night: Prowling like ghosts armed with sticks and batons to raid Sahrawi homes and neighborhoods, terrorizing Sahrawi families, especially women and children, wherever they went.
36. Another type of settler were the soldiers and auxiliary forces, who also played their part in terrorizing the Sahrawis in their cities and villages. KoM granted them impunity to enter Sahrawi towns and spread chaos and terror to compel the Saharan population to leave their homes. These tools of the Moroccan regime assisted in abducting Sahrawis. In recent years, many mass-graves from that period have been discovered across Western Sahara.⁴³
37. A third type of settler whom the Moroccan regime has used to change the demographic composition of the region were the ordinary Moroccans who migrated to the cities in search of a livelihood. They harassed and crowding the locals out of work and housing. The Moroccan MoI was telling them that Western Sahara was their “Moroccan” land, offering an exit from poverty, if they took this right into their own hands. They quickly took over vacated housing and began their new life, exploiting the opportunity left by the many Sahrawis displaced and in asylum.
38. Estimates of settler numbers vary. By 1985, some statistics indicated the number of Moroccan settlers in Western Sahara had reached over 400,000, doubling the number of the indigenous population.⁴⁴ In the 1990s, KoM transferred some 170,000 of its own population in advance of an anticipated referendum on final status.⁴⁵ Currently, Moroccan settlers illegally inhabiting Western Sahara are estimated at over 300,000.⁴⁶

Displacing and neutralizing

39. The military invasion broadcast threatening propaganda parallel to violence and murder to displace and expel the Sahrawis from their homeland. The Moroccan army, for example, would bury Sahrawis alive under the sand, or throw them into the sea alive, or kill them in cold blood, and then threaten anyone who resisted them with a similar fate.⁴⁷ News of army and settler atrocities reached the Sahrawis everywhere, causing tens of thousands of Sahrawis to flee into the desert to find any safe place, or seek refuge in neighboring countries.
40. Beginning in 1987, the occupiers resettled Sahrawi youth into Morocco under the cover of education and training programs. By end 1987, over 6,000 marginalized young Sahrawis suddenly found themselves receiving government-provided housing and scholarships to study in cities deep in Morocco, especially in Casablanca and Rabat. Later they would be called “Hassan II’s juniors.”

41. Morocco absorbed especially young scholars, academics and intellectuals into Moroccan cities, while refusing to build a university in Western Sahara. From KoM's point of view, a university in al-`Ayun, for example, also could become a locus of struggle and national resistance against the occupation.
42. However, the plan to recruit, dissipate and absorb Sahrawi youth and intellectuals in Moroccan society failed. Sahrawis in the occupied cities became aware of the consequences of this maneuver and began to arm their children, compelled to emigrate, with the weapon of a peaceful inner sense of resistance, patriotism and Sahrawi culture.
43. Another wave of settlers started in 1991, when Morocco implanted over 120,000 Moroccans from Morocco, including southern Morocco, where a community of ethnic Sahrawis also live. This tactic was part of a larger scheme to flood the territory with settlers, to change the demographics and, thereby, to falsify the list of eligible referendum voters and prevent indigenous self-representation in Western Sahara.⁴⁸
44. Yet another undeclared and unofficial wave of settlers has occupied fishing villages coincident with the EU-Morocco fisheries agreements. These Moroccan fishermen and their families inhabit over 12 villages (e.g., Amigriou, Marsa, Tarouma, Agti Ghazi, Intrift, Lasarga, *et al*) along the coast between Terfaya and Dakhla. Most of these settlers have no official documents, and some are fugitive criminals. The Moroccan occupation regime provides no statistics on their number. In addition, Moroccan farm owners annually import some 12,000 seasonal workers from central Morocco, whose lodging, food and local transportation are all provided in addition to their salary, also paid with revenue from EU trade and the EU Fisheries Agreement.⁴⁹

Sahrawi Refugees and Displacement

45. Exiled from their homeland during the long-running Moroccan war and occupation, the Sahrawi people have spent the past 47 years living in refugee camps of canvas tents and mud brick huts. Protracted displacement has taken a heavy toll on their health and wellbeing. In the camps in the normally uninhabitable Algerian desert, refugees struggle with food and water insecurity, lack of medicine and healthcare. The Algerian government has worked to improve the living conditions of these refugees by providing secondary education, healthcare services, land and infrastructure improvements, working also with international organizations such as UNHCR, WFP and UNICEF.
46. Refugee camps are supposed to be temporary domiciles. Unfortunately, “temporary” can often mean years. Everything, from food to shelter to medical care, is donated by international aid agencies. Formerly nomadic people who inhabited a large expanse of land in the Western Sahara have become refugees after fleeing the napalm-spewing Moroccan army, when the Spanish gave up their colonies in 1975. A further blow came in the late 1980s, when Morocco built the 2,700 km “berm”—a 3-meter-high and 2,700-km-long earthen wall—longer than the Great Wall of China—guarded by at least 120,000 Moroccan soldiers and 7 million landmines.⁵⁰

47. Half the Sahrawi refugee population—everyone under the age of 47 years—was born in the camps. More than 35% of Sahrawi refugee children suffer chronic malnutrition and, for 13%, it is so acute that it has led to severe growth stunting.⁵¹ Lack of water is a further chronic problem. A family of six reported receives only 1,000 liters a month, less than one-third of the internationally accepted 3,600-liter minimum.⁵² The health problems of the refugees are not only physical; with almost no work or recreation available to them, despondency is a major problem.
48. The Sahrawi refugees remain wholly dependent on humanitarian aid. Few employment opportunities lead to frustration with the ongoing conflict, in addition to vulnerability to flash floods and sandstorms. The pandemic lockdown also has caused many Sahrawi refugees to lose jobs, causing them to rely more heavily on aid.
49. Amid many challenges in refugees' daily lives, humanitarian aid has allowed them to survive. Until the conflict in Western Sahara is resolved, greater awareness of the current refugee situation and continued international humanitarian support are still needed.

Plunder of natural resources

50. Contemporary land grabbing is the capturing or control of vast tracts of land and other natural resources—the Sahrawi people's means of subsistence—through a variety of mechanisms and forms that involve large-scale capital that often shifts resource use toward extractive activities, whether for international or domestic purposes, as capital's response to the convergence of food, energy and financial crises, climate change mitigation imperatives demand resources from fewer sources of global capital.

Colonial Agriculture: The "Conflict Tomato" Trade

51. In 1989, after dispossessing the indigenous population, King Hassan II launched a pilot farming project around the city of Dakhla. Already in 2008, Moroccan occupation authorities had dedicated around 600 ha of Sahrawi land to the production of greenhouse vegetables, mainly tomatoes, cucumbers, and melons, extending this allotment to 2,000 ha by 2020. This production is entirely for export, to no benefit of the local population.⁵³
52. All farms in occupied Western Sahara are owned either directly by Morocco's king, Moroccan holdings, or French enterprises. *Les Domaines Agricoles*, a subsidiary of the King Muhammad VI-owned SIGER holding company,⁵⁴ is Morocco's largest agribusiness. Among other enterprises, it profits from the occupation by producing vegetables in almost 100 ha of greenhouses near the Western Sahara city of Dakhla.
53. This kind of production requires copious irrigation, using non-renewable groundwater. The over-exploitation of these water resources depletes and salinates the aquifer. In a region with no surface water such as Western Sahara, this practice eventually denies access to clean water and consequently render human life unsustainable by natural means.

54. The Sahrawis are not even benefiting from this industry as employees, as the labor force is entirely formed of Moroccan settlers. The Moroccan government strategy prioritizes migration of Moroccan colonists to the Western Sahara to sustain a Moroccan majority. Therefore, these industries are key to settling more Moroccans and achieving that end by annexation of the occupied territories. The strategy is as old as colonialism itself. In the Western Sahara case, the Moroccan king already has claimed the settler population's right to vote in any referendum on the country's future final status, thereby advancing ambitious ultra-nationalist aspirations of a "Greater Morocco."⁵⁵
55. KoM's occupation of Sahrawi lands also enables the illegal exploitation of multiple resources, ranging from minerals and mining, solar and wind energy, fisheries in Sahrawi territorial waters, and human resources. Many international companies continue to invest in these enterprises, despite the prohibitive legal status of Western Sahara.⁵⁶ Operating their projects in lands that belong solely to Sahrawis, all appear to be accomplices to the Moroccan regime's plunder and sustain illegal annexation of Western Sahara.
56. All lands grabbed for these projects benefit from the illegal situation without any consultation with, consent of, or benefit to the indigenous people or its legal representative, POLISARIO Front. No rightful landowners were ever consulted or compensated for their untold losses. Many of them have tried to demonstrate or complain by peaceful means, but Moroccan authorities have repressed and threatened them. Sahrawis and international human rights defenders have demanded these companies and their domicile states cease their criminal collaboration with the illegal situation, but most respond with only silence and hypocrisy.

Harvesting the Wind

57. Many International companies invest in Western Sahara despite the territory's special legal status of Western Sahara. They also illicitly operate their projects in lands that belong solely to Sahrawis. Wind farm investors offer no compensation to land-owners and continue the plunder without the Sahrawis' consent and benefit.
58. For example, the German-Spanish Siemens Gamesa corporation labels Western Sahara as "Southern Morocco" in its press releases and letters.⁵⁷ By 2017, the corporation had erected 56 wind turbines, with a cumulative capacity of 850MW, at Boujdour and Aftissat in Western Sahara.⁵⁸ These are in addition to wind-energy enterprises of Nareva Holding, created in 2005 by the industrial and financial group *Omnium nord-africain* (ONA),⁵⁹ which the Moroccan king acquired in 1980.⁶⁰ In early September 2020, Siemens Gamesa confirmed a new contract for the 300MW wind park at Boujdour, in cooperation with Nareva.⁶¹ These wind-energy projects currently operate at six sites on Sahrawi land near Tan Tan, Terfaya, al-`Ayun, and Dakhla, with three further operations under development at al-`Ayun, Boujdour and Dakhla.⁶² All of these, as well as numerous solar energy projects, operate through a decade of silent defiance of the rulings of the European Court of Justice and the UN Legal Advisor.⁶³
59. All lands grabbed for these projects have benefitted from the support of the Moroccan occupation authorities and corporations domiciled in third states, without any consultation

with, consent of, or benefit to the indigenous Sahrawi people or their legal representative the POLISARIO Front. All local landowners were never contacted nor compensated for the loss of their lands. Many of them have tried to demonstrate in protest, or complain, but are met with violent repression of the Moroccan-occupation authorities. Sahrawis have demanded these companies get out of their lands and to stop their projects, but were faced with only political hypocrisy of the beneficiary corporations and their host governments.

Recommendations:

60. In this UPR, we recommend that states call on Morocco to:

- **Implement its IHL obligations in Western Sahara;**
- **Discharge its duty as occupying Power to protect the Sahrawi people's lives, livelihoods, lands and means of subsistence;**
- **Cease its opposition to the Security Council expanding the mandate of MINURSO to include human rights monitoring;**
- **Protect and restore all Sahrawi personal and collective properties under Moroccan occupation;**
- **Provide full reparations for all individual and collective losses, costs and damages Sahrawis have endured at Moroccan hands since 1975.**

61. We further demand that all states participating in the UPR of Morocco:

- **“Ensure respect for” the Fourth Geneva Convention and other IHL norms applicable to Morocco's occupation of Western Sahara;**
- **Fulfill the *erga omnes* duty not to recognize, cooperate or transact with the illegal situation;⁶⁴**
- **Implement their extraterritorial human rights obligations with respect to the Sahrawi people, including through their conduct of foreign policy and by regulating all natural and legal persons operating in their jurisdiction and territories of effective control in accordance with Human Rights Treaty obligations and peremptory norms.**

Endnotes

¹ For more information see <http://www.hlrn.org/>.

² United Nations (UN), “Non-Self-Governing Territories,” undated, <https://www.un.org/dppa/decolonization/en/nsqt>; UN, “Western Sahara,” undated, <https://www.un.org/dppa/decolonization/en/nsqt/western-sahara>.

³ UN, *Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council : report of the Secretary-General UN Secretary-General*, Supplement 7, Vol 1, Article 2 (New York: UN, 2016), https://legal.un.org/repertory/art2/english/rep_supp7_vol1_art2_4.pdf.

⁴ The international law definition of the term “occupation” refers to a “period following invasion and preceding the cessation of hostilities” that “imposes more onerous duties on an Occupying Power than on a party to an international armed conflict.” *Prosecutor v Naletilić and Martinović*, International Criminal Tribunal for the Former Yugoslavia, Case No.IT-98-34-T (2003), 73, para. 214, available at: <http://www.icty.org/sid/8274>.

Determining the start of an occupation is essentially a question of fact, which must be distinguished from invasion: See Lord Arnold Duncan McNair and Sir Arthur Watts, *The Legal Effects of War* (Cambridge: Cambridge University Press, fourth edition, 1966), pp. 377–78; and Georg Schwarzenberger, *International law as Applied by International Courts and Tribunals*, Vol. II: “The Law of Armed Conflict” (London: Stevens & Sons, 1968), p. 324. “Invasion is the marching or riding of troops—or the

flying of military aircraft—into enemy country. Occupation is invasion plus taking possession of enemy country for the purpose of holding it, at any rate temporarily. The difference between mere invasion and occupation becomes apparent from the fact that an occupant sets up some kind of administration, whereas the mere invader does not. Hersch Lauterpacht, “Disputes, war and neutrality,” in Lassa Francis Lawrence Oppenheim, *International law: a treatise*, Vol. II: (London: Longman, 7th edition, 1952) p. 434; see also Re Lepore, *Annual Digest of Public International Law Cases*, Vol. 13, p. 354 (Supreme Military Tribunal, Italy: 1946), p. 355; Disability pension case, *International Law Reports*, Vol. 90 (Federal Social Court, F. R. Germany: 1985), p. 403; and Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis: University of Minnesota Press, 1957), pp. 28–29.

This distinction flows from The Hague Regulations, which has the status of customary international law, which has the status of customary international law and provides a definition of occupation upon which, on the whole, the Fourth Geneva Convention relies. Article 6 of the Fourth Geneva Convention conveys a wider meaning than in Article 42 of The Hague Regulations: “So far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of Article 42 ... The relations between the civilian population of a territory and troops advancing into that territory, whether fighting or not, are governed by the present Convention. There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Convention in its dealings with the civilians it meets.” Jean Pictet, ed., *Commentary to Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958), pp. 59–60. See also Guénaël Mettraux, *International Crimes and the ad hoc Tribunals* (Oxford: Oxford University Press, 2005), pp. 64–71; and *Prosecutor v Naletilić and Martinović*, supra. note1, pp. 74–75, paras. 219–21.

“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” See *Prosecutor v. Naletilic and Martinovic* (International Criminal Tribunal for the former Yugoslavia), www.un.org/icty/naletilic/trialc/judgement/naltj030331-e.pdf, p. 73, para. 215.

The customary nature of The Hague Regulations was declared by the International Criminal Tribunal at Nuremberg in the Trial of German Major War Criminals, Cmd. 6964 (1946) 65. Numerous other courts have affirmed the customary status of The Hague Regulations; see, for example, Krupp case (International Military Tribunal at Nuremberg), *Annual Digest of Public International Law Cases*, Vol. 15, pp. 620, 622 (subsequently retitled *International Law Reports*, which title now applies to the entire series) *R. v Finta*, 1 S.C.R. 701 (Canadian High Court of Justice), *International Law Reports*, Vol. 82, p. 439; *Affo v IDF Commander in the West Bank* (Israel High Court), *International Law Reports*, Vol., 83, p. 163; *Polyukhovich v. Commonwealth of Australia* (Australian High Court), *International Law Reports*. Vol. 91, p. 123; Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989), pp. 38–40.

The most-fundamental principles of international law and world order affirm that “It is the right and duty of all States, individually and collectively, to eliminate colonialism, apartheid, racial discrimination, neocolonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development.” *Charter of Economic Rights and Duties of States*, GA Res. 3281(xxix), UN GAOR, 29th Session, Supplement No. 31 (1974), p. 50, Article 16, at: <https://legal.un.org/avl/ha/cerds/cerds.html>.

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