

Report submitted by Western Sahara Resource Watch
and
the Association for the Monitoring of Resources
and the Protection of the Environment in Western Sahara

In view of

Morocco's third cycle Universal Periodic Review

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EXECUTIVE SUMMARY

1. **TWENTY-FIVE YEARS** after an agreement for a United Nations administered referendum in Western Sahara, the Saharawi people – the sole original inhabitants of the territory until 1975 – have yet to be allowed the opportunity to exercise their right to self-determination as a non-self-governing people. Western Sahara’s continuing status as a Non-Self-Governing Territory confers an added onus on the Human Rights Council to inquire diligently into the human rights situation in the territory. This is all the more pertinent given the responsibility of the United Nations for Western Sahara under the UN *Charter*, and as a party to the post-1988 UN/Morocco/Polisario Front cease-fire and referendum agreement. The particular status of Western Sahara must be recalled when assessing how human rights obligations have been allowed to be diminished in the territory during the period of the present review.

2. As Morocco continues to assert its presence *manu militari* in large parts of Western Sahara, it is obligated to report about and comply with a significant number of well-established human rights obligations. Morocco’s commitments under the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), together with the *Fourth Geneva Convention* operate in the parts of Western Sahara that are under Moroccan control, but also have effect for the people of Western Sahara living outside of those areas.

3. This joint submission addresses Morocco’s continuing violation of the right to self-determination and the related matter of the Saharawi people’s rights to the resources of their territory. It does so in the context of the Morocco’s third Universal Periodic Review, with reference to applicable human rights instruments, agreements of the parties concerned, and jurisprudence relevant to what the United Nations calls the “question” of Western Sahara. Recent developments concerning human rights in occupied Western Sahara are canvassed. The results of the 2015 ICESCR review of Morocco in Western Sahara are considered. The connection between the basic right of the Saharawi people and the exploitation of their resources while under occupation is assessed.

4. The report concludes with 12 recommendations for the Human Rights Council to request of Morocco, among them a confirmation of the Saharawi right to self-determination in the accepted sense, respect for international human rights and humanitarian law, a demonstrable support to the United Nations in its administration of a self-determination referendum, and an assuring of political and social space for Saharawi people and organizations inside Western Sahara to express concerns about natural resources and environmental protection matters.

THE SUBMITTING ORGANISATIONS

6. **Western Sahara Resource Watch (WSRW)** is an independent, non-governmental organization based in Brussels with an international board of directors, and operates in more than 40 countries. The organization's principal purpose is to research, monitor and provide commentary about the development and export of natural resources from occupied Western Sahara while addressing related human rights and environmental protection issues. Over the past decade, WSRW has highlighted problems of illegal fishing, phosphate rock exports and petroleum exploration in the coastal waters and territory of Western Sahara. The development of natural resources in Western Sahara has become an important part of Morocco's continuing annexation of the territory. The revenue from natural resources is neither received in Western Sahara nor publicly accounted for. Natural resources related activities serve as a cover or justification for "development" in the territory, thereby securing a deepening Moroccan presence. The substantial part of resource activities and employment is accorded to Moroccan nationals, and is used as a basis for the migration of settlers into the territory. WSRW conducts research and reports about such matters in an effort to present a factual account and actionable recommendations in order to contribute to the peaceful resolution of the question of Western Sahara. WSRW emphasizes its independence. Our organization, while supporting the right of the Saharawi people to self-determination guaranteed to them under international law and the commitment of the organized international community, is entirely independent in its governance, operations, finances and campaign work. WSRW is not funded by any direct or indirect means by any person or party involved with Western Sahara. WSRW refuses offers of financial contribution and in-kind services from the Polisario Front, the Saharawi Arab Democratic Republic, the Kingdom of Morocco, governments of all other States, and enterprises with interests in the region.

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7. The **Association for the Monitoring of the Resources and for the Protection of the Environment in Western Sahara (AMRPENWS)**, operating from the city of El-Aauin, was created in 2015. As a Saharawi civil society organization, it is independent of all governments and parties with an interest in the resources of Western Sahara. The Association operates with a distributed membership throughout Western Sahara, the Tindouf refugee camps and the Saharawi diaspora. In occupied Western Sahara it conducts business on an informal basis given the prohibition on Saharawi civil society organizations and widespread human rights abuses against persons concerned with resources and related matters. AMRPENWS's principal objective is to work toward exposing the abuse of the territory's natural resources in the context of human rights and Saharawi sovereignty over resources. The Association's mission is to promote awareness of the possibilities for the territory's resources and related economic and social development. AMRPENWS's activities include researching the exploitation and export of resources from Western Sahara, as well as engaging corporations and other commercial stakeholders in their activities in the territory. An additional goal is to promote the conservation and protection of the environment, including efforts to reduce pollution, protect important flora and fauna, and conserve ocean resources and biodiversity. AMRPENWS places considerable importance on understanding and safeguarding water in Western Sahara, researching and commenting on scarcity of surface and groundwater reserves.

THE RIGHT TO SELF-DETERMINATION

8. The UN *Charter* is the pre-eminent international law instrument applicable to Western Sahara, animating how other human rights instruments and norms apply in the territory. We begin by observing that two *Charter* provisions continue to be violated by Morocco: (a) the requirement to respect territorial integrity (article 2(4)) and (b) the failure to ensure for the Saharawi people the exercise of their right to self-determination (article 73). The latter right is consistent with common Article 1 of the ICCPR and ICESCR which makes paramount the right of self-determination for a Non-Self-Governing people to “freely determine their political status”.

9. Since Morocco’s last UPR in 2012, absolutely no progress has been made to implement or advance the right to self-determination in Western Sahara. This was noted by the UN Committee for Economic, Social and Cultural Rights in its 2015 ICESCR review of Morocco: “The Committee reiterates its concern about the failure to find a solution to the issue of the right to self-determination of the Non-Self-Governing Territory of Western Sahara”. The CESCR recommended that Morocco:

*Strengthen its efforts, under the auspices of the United Nations, to find a solution to the issue of the right to self-determination for Western Sahara, as established in article 1 of the Covenant, which recognizes the right of all peoples to freely determine their status and freely pursue their economic, social and cultural development. The Committee recalls that States parties to the Covenant are obligated to promote the realization of the right of self-determination in Non-Self-Governing Territories and to respect that right, in conformity with the provisions of the Charter of the United Nations.*¹

10. The same concern over the failure of any progress toward self-determination in Western Sahara prompted the Human Rights Committee - which at time of writing is conducting a review of Morocco’s performance with regard to its obligations under the ICCPR - to request Morocco to describe “the progress achieved in the realization of the right to self-determination for the people of the non-autonomous territory of Western Sahara, as well as the measures taken to resolve issues that are impeding the holding of a referendum.”²

11. Protests calling for the exercise of self-determination or pro-independence manifestations take place almost daily in the parts of Western Sahara under Moroccan military control. These protests are routinely met with well-documented violence by Moroccan authorities. The UN Secretary-General most recently reported the problem in his 2016 report to the UN Security Council:

The Moroccan authorities continued to routinely prevent or disperse gatherings focused on the right to self-determination, discriminatory employment policies and other socioeconomic issues during the reporting period. [...] Moroccan law enforcement officials also blocked

¹ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the fourth periodic report of Morocco, 22 October 2015, E/C.12/MAR/CO/4*, §5-6.

² Human Rights Committee, List of Issues in relation to the sixth periodic report of Morocco, 9 May 2016, CCPR/C/MAR/Q/6, §3.

*access to demonstrations and often used excessive or unnecessary force in repressing demonstrations, including during the OHCHR mission.*³

12. Morocco's manifest contravention of the long-settled norm of self-determination prevents the meaningful realization of what are otherwise long-accepted human rights. The rights of the Saharawi people to basic human security, to exercise civil, educational and political rights, remain grossly impaired because the UN *Charter* is not in good faith respected by Morocco. We maintain that the continued denial of the Saharawi people's right to self-determination is the root cause of all other human rights violations in the territory of Western Sahara.

13. Morocco committed to ensuring the self-determination of the Saharawi people in the 1990-91 UN/Morocco/Polisario Front Agreement, guaranteeing a ceasefire arrangement to ensure a self-determination referendum could be conducted under UN auspices.⁴ After the UN *Charter*, such a treaty commitment of the three parties makes for a paramount human rights duty. Accordingly, there is much in law, the expectations of the organized international community and the stated commitments of the parties which animates Article 1 of both Covenants in Western Sahara.

14. The Moroccan monarch's annual 6 November speeches which commemorate the 1975 invasion of Western Sahara are emblematic of Morocco's manifest unwillingness to uphold the right to self-determination in Western Sahara. Speaking in November 2015 on the 40th anniversary of the Green March he claimed that the 2007 Autonomy Plan "is the most Morocco can offer. Its implementation will hinge on achieving a final political settlement within the framework of the United Nations Organization. Those who are waiting for any other concession on Morocco's part are deceiving themselves. Indeed, Morocco has given all there was to give."⁵

15. This recalcitrance was also revealed in 2014 remarks: "Morocco will 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."⁶

16. Morocco's National Report submitted to the Human Rights Council in view of its 2012 UPR review made no mention Western Sahara nor the right to self-determination for the people of Western Sahara. Morocco's manifest denial of the Saharawi right to self-determination, and suppressing its obligation to promote and respect that right, is evident by complete omission in

³ Report of the Secretary-General on the situation concerning Western Sahara, 19 April 2016, S/2016/355, §68.

⁴ 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." UN doc. S/22464 §9. See also UNSC Resolution 621 (1988) (September 1988).

⁵ Morocco World News, 6 Nov 2015, King Mohammed VI's Speech On Occasion of 40th Anniversary of the Green March, <http://www.moroccoworldnews.com/2015/11/172038/king-mohammed-vis-speech-on-occasion-of-40th-anniversary-of-the-green-march/>

⁶ Morocco World News, 6 November 2014, King Mohammed VI Calls on U.N, U.S to Clarify Their Positions on "Western Sahara", <http://www.moroccoworldnews.com/2014/11/143398/king-mohammed-vi-calls-on-u-n-u-s-to-clarify-their-positions-on-westem-sahara/>

literally every State report Morocco has submitted to the UN monitoring mechanisms. At most, such reports are used to market an 'autonomy proposal' as being the sole solution to the conflict – a proposal well outside the principle of self-determination as provided in the UN *Charter* and treaties, as it would consist of a referendum with the single option of autonomy, and not the required options ranging from independence to integration. When the CESCR reminded Morocco in October 2015 of its duty to “promote and respect the right to self-determination in conformity with the UN Charter”, it was met with a vehement response, accusing the Committee of an “askew and partial approach”, “flagrant partiality” and “surprising political stands passed on by other hostile parties to Morocco’s territorial integrity”.⁷

17. Since its conception in 1991, Morocco has obstructed the operation of the UN Mission for the Referendum in Western Sahara (MINURSO). In March 2016, Morocco expelled the civilian staff of MINURSO, once again demonstrating that it is compelled to preventing the administration of the process leading to the conduct of a self-determination referendum in Western Sahara.⁸ The UN Secretary General later in the year expressed his concern over Morocco’s violation of the ceasefire.⁹

18. The African Union Summit in June 2015 asked “the UN General Assembly to determine a date for the holding of the self-determination referendum for the people of Western Sahara and protect the integrity of the Western Sahara as a Non-Self-Governing territory from any act which may undermine it.”¹⁰

19. In December 2015, the Court of Justice of the European Union annulled the EU-Morocco agricultural expansion of the Free Trade Agreement in so far as it applied to Western Sahara. In its judgment, the Court stated that Western Sahara “is not included in the recognized international frontiers of [Morocco] and “that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of [Western Sahara]”.¹¹

20. The CJEU decision was consistent with a decision issued on 4 July 2014 by Spain's criminal appeals court, the *Audencia Nacional*, confirming that Spain, not Morocco, is the administering power over Western Sahara, and that the "territory cannot be considered Moroccan". The judgment states that 1975 Madrid Agreement partitioning the then Spanish Sahara to Morocco and Mauritania in 1975, is "null and without legal effect".¹² The CJEU’s Advocate General,

7 Comments and Responses of the Moroccan Government to the Observations and Recommendations of the Committee on Economic, Social and Cultural Rights, following the review of the 4th national report related to the implementation of ICESCR provisions.

8 Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2016/355 (19 April 2016), §3-5.

9 Morocco had sent armed troops and equipment into the part of the territory that is controlled by Polisario, without prior notice to the UN Mission. See e.g. UN News Centre, Ban “deeply concerned” over tensions in south-western Western Sahara, 28 August 2016, <http://www.un.org/apps/news/story.asp?NewsID=54770#.V-JFtq02YgY>

10 African Union, Assembly of the Union, Twenty-Fifth Ordinary Session, 14-15 June 2015. “Decision on the Report of the Peace and Security Council on its activities and the State of Peace and Security in Africa”, Assembly/AU/Dec.583(XXV), §18. [http://summits.au.int/en/sites/default/files/Assembly%20AU%20Dec%20569%20-%20587%20\(XXIV\)%20_E.pdf](http://summits.au.int/en/sites/default/files/Assembly%20AU%20Dec%20569%20-%20587%20(XXIV)%20_E.pdf).

11 Judgment of the General Court, Case T-512/12, 10 December 2015, ECLI:EU:T:2015:953, §232-233, available via InfoCuria: curia.europa.eu

12 Spanish National High Court. Criminal Division, 4 July 2014, ECLI:ES:AN:2014:256A, English official translation available via: http://wsrw.org/files/dated/2016-04-19/audiencia_nacional_4.7.2014_-_gdeim_izik.pdf

presenting his Opinion 13 September 2016 in the context of the appeal from the December 2015 decision, arrived at the same conclusion:

In that capacity, Western Sahara has, under the Charter, 'a status separate and distinct from the territory of the State administering it ... until the people of the ... Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles'.¹³

THE RIGHT TO RESOURCES

21. In its October 2015 report, the CESCR notes its concern “that the Sahraouis’ right to participate in the use and exploitation of natural resources is still not respected.” It was on this basis that the Committee recommended Morocco to “guarantee respect for the principle of the prior, free and informed consent of the Sahraouis, and thus that they are able to exercise their right to enjoy and utilize fully and freely their natural wealth and resources.”¹⁴ With regard to the Saharawis living as refugees in Algeria, the Committee furthermore recommended Morocco to “take appropriate steps to enable the Sahraouis to access their land and natural resources”.¹⁵

22. A year later, Morocco has not taken any steps in that direction: The taking of resources continues uninterrupted, and there has been neither consent of the Saharawi people (by their civil society organizations and their government alike) and no discernable benefit to them, notably those residing in the Tindouf refugee camps.¹⁶

23. Morocco has never sought the consent of the Saharawi people with regard to any resource-related activity it has undertaken in the parts of Western Sahara that it holds under military control. The Saharawis, on the other hand, have continuously spoken out against Morocco’s ongoing exploration and exploitation of their resources. As with protests rooted in the call for self-determination, protests opposing the resource plunder, or demanding social and economic rights or equal benefits from the resource-based activities, are routinely met with violent dispersals by the Moroccan police or security apparatus, harassment of protesters and their family members, arrests and arbitrary detentions, house ransacking, convictions based on false grounds or false testimonies obtained through torture, and incarcerations.¹⁷

¹³ Opinion of Advocate General Wathelet, 13 September 2016, Case C-104/16 P, Council of the European Union v Popular Front for the Liberalisation of Saguia-el-Hamra and Río de Oro (Polisario Front), §75, available via www.curia.europa.eu

¹⁴ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the fourth periodic report of Morocco, 22 October 2015, E/C.12/MAR/CO/4*, §5-6.

¹⁵ Ibid. §7-8.

¹⁶ 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.

¹⁷ Our organizations have published numerous reports and engage in prolific correspondence with government, resource companies and investment stakeholders. See e.g. “P for Plunder” WSRW’s annual phosphate rock investigative report, at: www.wsrw.org. For reports about socio-economic protests in Western Sahara, see www.sahararesources.org

24. Since mid-2015, a veritable upsurge in protests rooted in social and economic grievances has been observed in the territory under Moroccan military control.¹⁸ Saharawis are increasingly upset over the fact that Moroccan settlers are reaping the employment opportunities created on the back of the resource exploitation in Western Sahara. Unemployed Saharawis are taking to the streets several times each week, mainly in the towns of El Aaiun, Dakhla, Smara and Boujdour. Young jobless Saharawis have resorted to hunger strikes.¹⁹ A leading figure of the Saharawi unemployed graduates movement was reportedly tortured, resulting in his death.²⁰ One group even entered the headquarters of the Moroccan state-owned phosphate company *Office Chérifien des Phosphates*, located in Casablanca, in Morocco proper.²¹ Their demand is uniform: a Saharawi share of or access to their homeland's natural wealth.

25. The reprised protests can be viewed as a continuation of the 2010 Gdeim Izik protest – a mass tent camp in the desert, where thousands of Saharawis gathered in protest of their socio-economic marginalization as a people, while Morocco continued to acquire the revenues from the exploitation of their land's resources. The Moroccan government's response – invading and burning down the camp, arresting hundreds of Saharawis in the aftermath and sentencing a group of known Saharawi activists from 20 years to life imprisonment by a military tribunal in 2013 – was sufficiently oppressive to cause a temporary semi-paralysis in the actions of Saharawi civil society. Public protests became less frequent and took largely place indoors. Today's heightened frequency in protests point to a reinvigorated civil society in the territory annexed by Morocco. It should be noted that 22 Saharawis to date remain in jail in relation to the Gdeim Izik protest.²²

26. In addition to protests inside the territory, the Saharawi people's United Nations accepted representative organization the Polisario Front, together with their government (the Saharawi Arab Democratic Republic), along with Saharawi civil society organisations, have firmly declared that they do not consent to and receive nothing from Morocco's resource extraction.²³ The problem has been remarked upon by the UN Secretary-General:

[The] Frente Polisario and Western Sahara organizations spoke out against these [oil exploration and exploratory drilling] activities repeatedly, pointing out that they had not been consulted and that any exploitation of resources, if found, would violate the legal opinion provided in the letter cited above. The Secretary-General of Frente Polisario, in a

¹⁸ WSRW, Protests spread throughout Western Sahara, 25 January 2016, <http://wsrw.org/a243x3363>

WSRW, Reports of siege as El Aaiun protests continue, 18 January 2016, <http://wsrw.org/a243x3353>.

WSRW, Saharawis protest Moroccan land grab in front of digging machines, 20 October 2015, <http://wsrw.org/a240x3284>

WSRW, Saharawis on San Leon Energy's oil block protest, 27 July 2015, <http://wsrw.org/a240x3256>

¹⁹ See e.g. Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2016/355 (19 April 2016), §69. See also WSRW, Hunger striking against OCP discriminatory employment, 12 January 2016, <http://wsrw.org/a243x3346>

²⁰ WSRW, Leading figure of unemployed Saharawi graduates dies following torture, 18 April 2016, <http://wsrw.org/a105x3448>

²¹ WSRW, Saharawis protesting inside OCP HQ in Casablanca, 20 January 2016, <http://wsrw.org/a243x3357>

²² Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2016/355 (19 April 2016), §70.

²³ See footnote 18. See also Fadel Kamal, "The role of natural resources in the building of an independent Western Sahara". (2015). *Global Change, Peace & Security*, 27(3), 345-359.

*letter to me dated 26 January 2015, referred to the activities as a violation of international law.*²⁴

27. We observe that the Saharawi Arab Democratic Republic, acting as the government-in-exile of the Saharawi people, recently gave to the UN Secretary General during his visit to the Tindouf refugee camps details illustrating its long-standing maritime claim.²⁵ "In clarifying the outer limits of Western Sahara's EEZ, the SADR Government made clear it will not tolerate the illegal exploitation of its natural resources, including rich offshore fisheries resources, or the ongoing efforts of Morocco and complicit foreign companies to explore the seabed resources in Western Sahara's waters", the SADR government stated.²⁶

28. Morocco has the primary obligation to respect, protect and fulfil the "right to freely dispose of natural resources" as guarded in Article 1 of both the ICESCR and the ICCPR. We contend that Morocco does precisely the opposite: it interferes with the enjoyment of that right, it actively promotes violations of that right by third parties and does not take any appropriate steps to progressively realize full enjoyment of that right. Morocco's taking of Western Sahara's natural resources is not directed towards assisting the Saharawi people in the exercise of their right to self-determination, but rather to strengthening and maintaining its untenable claim over the territory. The problem has three dimensions: (a) the enrichment of Morocco through the sale of the territory's natural resources; (b) Morocco's development of Western Sahara's resources to further acceptance of its illegal presence in the territory; (c) the decreased availability of non-renewable resources to the Saharawi people when they will eventually realize self-determination.

29. None of the revenues from the resource-exploitation is returned to the Saharawi people, and no accounting of them is publically available, including in Morocco. The exploitation of Western Sahara's resources is managed by Moroccan state-owned ministries and agencies.

30. We note three principal and three secondary resources of concern, in order of their estimated market value in 2015: (i) phosphate mineral rock (\$168 million); (ii) the Atlantic coastal fishery (\$60 million); (iii) petroleum (\$0); followed by (iv) agricultural products (\$5 million); (v) sand aggregates (<\$1 million); (vi) salt (<\$1 million).²⁷ It is worth observing that over the course of the last four years, several mid-range companies have ended their imports of phosphate rock from Western Sahara as a result of civil society pressure over human rights, as well as due to active engagement and divestments by institutional investors internationally. To date, there are only eight known importers of phosphates remaining.

31. While there are indeed a few Saharawi individuals who actually profit from the exploitation of Western Sahara's resources through the ownership of exploitation licenses in various sectors, they are – without exception – persons who have sworn allegiance to the King of

²⁴ Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2015/246 (10 April 2015), §62.

²⁵ WSRW, Western Sahara Republic declares its exact EEZ, 6 March 2016, <http://wsrw.org/a105x3422>

²⁶ Front Polisario, Western Sahara declares the outer limits of its 200-mile Exclusive Economic Zone (EEZ), 5 March 2016, http://wsrw.org/files/dated/2016-03-06/fp_media_release_05.03.2016.pdf

²⁷ These figures are estimates based on the available evidence as of 1 September 2016, derived from direct observations of our organizations and through calculations done by WSRW. No commercial petroleum has yet been recovered in Western Sahara, although exploratory drilling began in late 2014. Phosphate mineral rock remains the territory's largest value resource. See WSRW's 2015 report "P for Plunder" at www.wsrw.org.

Morocco. Every Saharawi group and individual that our two organizations have contacted (WSRW for its part for more than a decade) insists that the overwhelming majority of the Saharawi people does not profit from Morocco's exploitation of their homeland's resources.²⁸

32. Critically, the Saharawi people who reside in the refugee camps at Tindouf do not receive any benefit from such resources. Strikingly, the total amount of annual multi-lateral aid given to the Saharawi refugees is less than 10% of the estimated amount Morocco earns annually in revenues from selling Western Sahara's phosphates to interested purchasers around the globe.²⁹

33. These circumstances are ably described by the UN Secretary-General stated in his latest reports to the UN Security Council about the "question" of Western Sahara:

The dire humanitarian situation, coupled with the absence of access to the natural wealth and resources in Western Sahara west of the berm, prevented the Western Saharans in the refugee camps from enjoying their economic, social and cultural rights".³⁰ In the light of continued interest in the exploration and exploitation of the natural resources of Western Sahara, I reiterate my call on all relevant actors to "recognize the principle that the interests of the inhabitants of these territories are paramount [...] in accordance with Article 73 of the Charter of the United Nations" – the right to self-determination.³¹

34. An important part of a strategy to annex by resource development has been the settlement of Moroccan nationals into Western Sahara. This introduced population continues to be the main beneficiaries of business and employment opportunities created on the back of resource extraction in the territory.³² The presence of settlers in a place that Morocco styles as part of its so-called "southern provinces" objectively deprives the Saharawi people of economic opportunities and serves as a pretext for a military force to ostensibly protect such settlers along with building infrastructure to extend the occupation. Such a presence of settlers also obscures an accurate portrayal of the wishes and the interests of the Saharawi people with regard to Morocco's exploitation of the territory's resources.³³

²⁸ See e.g. WSRW, Biggest Saharawi groups from occupied territory tell Kosmos to leave, 15 October 2014, <http://wsrw.org/a228x2984>

WSRW, 26 Saharawi organisations ask Total to leave Western Sahara, 8 February 2013, <http://wsrw.org/a217x2509>

WSRW, Open letter from HR activist Aminatou Haïdar to European Parliament, 9 December 2013, <http://wsrw.org/a217x2764>

WSRW, 31 Saharawi NGOs call for change in EU's trade policy, 26 June 2012, <http://wsrw.org/a214x2338>

²⁹ WSRW, "P for Plunder", April 2016, <http://wsrw.org/files/dated/2016-04-07/p-for-plunder-2015-web.pdf>

³⁰ Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2016/355 (19 April 2016), §77.

³¹ Ibid. §103.

³² As noted in the US Department of State's 2014 Country Report on Human Rights in Western Sahara: "As an inducement to relocate to the territory, wage-sector workers earned up to 95 percent more than their counterparts in internationally recognized Morocco. The government also provided fuel subsidies and exempted workers from income and value-added taxes". *Western Sahara 2014 Human Rights Report*, p. 15, <http://www.state.gov/documents/organization/236840.pdf>

³³ The UN Legal Opinion on the extraction of mineral resources in Western Sahara, concluded that "if further exploration and exploitation activities were to proceed in disregard of the interest and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories". UN document S/2002/161, §25.

35. For this reason, it is important to note the difference between the “population” of the territory and the Saharawi “people”. As such, while the definition “population” includes Moroccan settlers who have come to the territory after 1975 (or who spend parts of the year there as seasonal workers), the term “people” can only mean the Saharawi as the sole, original inhabitants of the territory prior to Morocco’s invasion. The use of settlers is not only instrumental to Morocco in propagating the misconception that the exploitation of Western Sahara’s resources is beneficial to the Saharawis, it furthermore creates the false impression that the Saharawis have been consulted about and agree to the exploitation.³⁴

36. The result is to foster a perception that resource development in occupied Western Sahara is acceptable, and is an activity that purports to result in benefits to the Saharawi people. The absence of actual, verifiable information in this regard is one reason why the Court of Justice of the European Union on 10 December 2015 set aside free trade arrangements between the EU and Morocco in Western Sahara. The Court specifically noted that the lack of information provided by Morocco suggested that Morocco might not recognize the rights of the people of the territory under Article 73 of the UN *Charter*.³⁵

37. The African Union Peace and Security Council (PSC) has recently condemned the exploitation of Western Sahara’s natural resources. “A hostile act likely to perpetuate the conflict and colonialism in Western Sahara”, the PSC called such actions.³⁶ The PSC has indicated that companies working in Western Sahara will not be welcome in other African Union Member States.³⁷ A later Legal Opinion issued by the African Union concluded that “the people of Western Sahara and their legitimate representatives must not only be consulted but they must consent and effectively participate in reaching any agreement that involves the exploitation of natural resources in the Territory of Western Sahara”.

³⁴ As the CESCR noted in its Concluding Observations following Morocco’s 2015 review, it is the Saharawi people who have the right to free, prior and informed consent, not the population of the territory. See; UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the fourth periodic report of Morocco, 22 October 2015, E/C.12/MAR/CO/4*, §5-6.

³⁵ *Front Polisario v. Conseil de l’Union européenne et Commission Conseil de l’Union européenne*, Arrêt du Tribunal, 10 décembre 2015, affaire T/512-2012, § 235, at: curia.europa.eu. The paragraph reads that “The failure by the Kingdom of Morocco to transmit the information provided for by Article 73(e) of the UN Charter with regard to Western Sahara is, at the very least, likely to give rise to doubt as to whether the Kingdom of Morocco recognises the principle of the primacy of the interests of the inhabitants of that territory and the obligation to promote to the utmost their wellbeing, as laid down in that article.”

³⁶ Press Statement of 575th PSC Meeting on Natural Resources and Conflicts in Africa, http://www.peaceau.org/en/article/press-statement-of-575th-psc-meeting-on-natural-resources-and-conflicts-in-africa?utm_source=Email_marketing&utm_campaign=Wednesday_February_17_2016_-_1&utm_medium=HTMLEmail

³⁷ Communiqué of the Peace and Security Council of the African Union at its 496th meeting held on 27 March 2015, on the situation in Western Sahara, §11, <http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-of-the-african-union-au-at-its-496th-meeting-held-on-27-march-2015-on-the-situation-in-western-sahara>

PROPOSED RECOMMENDATIONS

39. In view of the foregoing, the AMRPENWS and WSRW respectfully request the Members of the UN Human Rights Council to issue the following recommendations to Morocco during its third cycle Universal Periodic Review:

- I. Morocco should declare formally its acceptance of the right of the Saharawi people to self-determination, and their right to establish an independent sovereign state in Western Sahara, if they so choose. No new decision for such a declaration is needed, given the overt commitment to Saharawi self-determination expressed in the post-1988 UN/Morocco/Polisario Front referendum agreement.
- II. Morocco ought to give substance to the right of self-determination, as guaranteed in the UN *Charter* and Common Article 1 of the ICCPR and ICESCR, Morocco should guarantee and support realization of the right through unrestricted support to the United Nations in its administration of a free, fair and transparent referendum by which the Saharawi people can determine their political status.
- III. Moroccan authorities should implement measures which safeguard the principle of prior, free and informed consent of the Saharawis, in order that they may exercise their right to enjoy and utilize fully and freely their natural wealth and resources.
- IV. Morocco should allow an independent, free-ranging and continuous assessment of the human rights situation in Western Sahara in a manner that accounts for the impact of the exploitation of the territory's resources on the human rights of the Saharawi people.
- V. Morocco should immediately allow all persons in occupied Western Sahara the assurance and the protection of their rights of freedom of conscience, of peaceful assembly and association, and of expression, including such persons and groups concerned with the protection of the environment and development of natural resources.
- VI. Morocco should accurately inform its trading partner states and companies about the status of Western Sahara as a Non-Self-Governing Territory not being part of Morocco, and about the resulting obligations for those trading partners vis-à-vis the Saharawi people.
- VII. Morocco should ensure that the Saharawi refugees at Tindouf and elsewhere have access to and benefit from revenues Morocco derives from the exploitation of Western Sahara's natural resources.
- VIII. Morocco should immediately cease all incentives and actions that would alter the demographic composition of the population in Western Sahara.

- IX. Morocco should increase accountability and transparency in the derivation and use of profits from natural resources in Western Sahara by allowing for third party, neutral accounting of resource development and exports.

- X. Morocco should ensure the Working Group on Business and Human Rights can freely visit throughout Western Sahara.

- XI. Morocco should commit to its obligations as an occupying power in the conservation of natural resources and protection of the environment in occupied Western Sahara.

- XII. Morocco should engage in full cooperation with Spain as the colonial administering state with principal or first responsibility among states for the protection of human rights in Western Sahara a proper and complete implementation of the UN *Charter*, ICCPR and ICESCR throughout the territory.

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