

**Saharawi National Commission for Human Rights**

## Written contribution to the draft general comment on Land and Economic, Social and Cultural Rights

## July 2021

## INTRODUCTION

## The Saharawi National Commission for Human Rights praises the UN Committee on economic, social and cultural rights’ members for taking the initiative of producing a General comment on Land and Economic, Social and Cultural Rights.

## In its contribution, the Saharawi National Commission for Human Rights will focus on the specific situation of the Occupied[[1]](#footnote-1) Non-Self-Governing Territory of Western Sahara[[2]](#footnote-2) and the implications on the enjoyment of the economic, social and cultural rights, notably the right to land, by the Saharawi people.

## The Saharawi National Commission for Human Rights always assumes that human rights are interrelated, interdependent and indivisible and stresses that the denial of the right to self-determination implies the violation of all human rights, including the right to land, the permanent sovereignty over the natural resources and the right to development. In other words, the violation of the right to land is conducive to the violation of the right to self-determination and the right to development.

## The military invasion of the Non-Self-Governing Territory of Western Sahara launched by the Kingdom of Morocco in November 1975 and the subsequent longstanding illegal military occupation and illegal annexation of the majority of the Territory, as well as the construction of a 2’700 km. wall dividing the Territory from North to South, have caused and continue to cause systematic and serious violations of human rights, including all economic, social and cultural rights and they have led to the separation of families, damaged the traditional economic structure of the Saharawi people and permanently impoverished the tens of thousands of refugees who live in the Algerian desert only thanks to the support of international solidarity.

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## The longstanding illegal military occupation and illegal annexation of the majority of the Non-Self-Governing Territory of Western Sahara also has caused serious breaches of International Humanitarian Law, including continuing colonisation and illegal plundering of natural resources.

## It is to be stressed here that Western Sahara is the only Non-Self-Governing Territory that has not an internationally recognised administering Power (although Spain can still be considered as the *de jure* administering Power) and the only that is under illegal military occupation.

## COMMENTS

## Article 1 of the Covenant provides that the States Parties to the Covenant shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## In its Concluding observations on the fourth periodic report of the Kingdom of Morocco[[3]](#footnote-3), the Committee on Economic, Social and Cultural Rights 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. It also expressed its concern that the Sahrawis’ right to participate in the use and exploitation of natural resources is not respected.

## The control of land by an occupying Power deprives the people originating from that territory to freely administer the land, exert their sovereignty over the natural resources and exercise their right to development.

## In recalling that Article 1 of the Fourth Geneva Convention imposes an obligation to all High Contracting Parties to respect and to ensure respect for the Convention in all circumstances, the Saharawi National Commission for Human Rights highlights that Article 33 prohibits reprisals against protected persons and their property and Article 49 prohibits forced transfer of civilian population.

## Throughout the years, the occupying Power has proceeded to a large number of Saharawi transfer or property dispossession, while encouraging thousands of Moroccan settlers to move to the Non-Self-Governing Territory of Western Sahara.

## In his 2002 letter to the UN Security Council[[4]](#footnote-4), the Under-Secretary-General for Legal Affairs, Mr. Hans Corell, stressed that:

## *“Article 73 of the Charter of the United Nations lays down the fundamental principles applicable to Non-Self-Governing Territories…”*

## *“In the resolutions adopted under the agenda item entitled “Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination”, the General Assembly reiterated that “the exploitation and plundering of the marine and other natural resources of colonial and Non-Self-Governing Territories by foreign economic interests, in violation of the relevant resolutions of the United Nations, is a threat to the integrity and prosperity of those Territories”…”*

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## Furthermore, the UN General Assembly[[5]](#footnote-5), reaffirming its concern about any activities aimed at the exploitation of the natural resources that are the heritage of the peoples of the Non-Self-Governing Territories, calls upon all Governments to take, in accordance with the relevant provisions of General Assembly resolution 2621 (XXV) of 12 October 1970, legislative, administrative or other measures in respect of their nationals and the bodies corporate under their jurisdiction that own and operate enterprises in the Non-Self-Governing Territories that are detrimental to the interests of the inhabitants of those Territories, in order to put an end to such enterprises.

## In doing so, the UN General Assembly reaffirms that a Non-Self-Governing Territory has a distinct and separate status from that of its administering Power[[6]](#footnote-6) (not mentioning that of an occupying Power) and, in the case of an occupied Territory, it consolidates the application of the principle of non-recognition of and non-assistance to an illegal occupation.

## In this context, it appears that the right to land must be considered as a personal and collective right and the basis for the enjoyment of all civil, political, economic, social and cultural rights, including the right to self-determination and the right to development.

## It is also to be assumed that not only the illegal occupying Power exercising the control of a territory is responsible for violations of the right to land, but the responsibility of third parties shall also be considered.

## In its 21 December 2016 judgment, the Grand Chamber of the European Court of Justice, when considering the applicability of the EU-Moroccan association agreement to Western Sahara, ruled that the people of Western Sahara must be regarded as a ‘third party’ within the meaning of the principle of the relative effect of treaties and that the implementation of such agreement must receive the consent of such a third party.

## It is therefore incontrovertible that any economic activity developed in the Non-Self-Governing Territory of Western Sahara, by a public or private entity, must receive the free, prior and informed consent of the people of Western Sahara[[7]](#footnote-7); in the contrary they must be considered as illegal and violating the right to self-determination and the permanent sovereignty over the land and the natural resources of the people of Western Sahara.

## Saharawi human rights defenders and journalists investigating and reporting on human rights violations, including the right to self-determination and the permanent sovereignty over the land and the natural resources are systematically harassed, arbitrarily arrested, tortured and arbitrarily detained[[8]](#footnote-8). In its consistent jurisprudence, the Working Group on Arbitrary Detention considers that Saharawis are targeted and subjected to discrimination because of their political views on the right to self-determination of the Saharan people.

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## RECOMMANDATION

## General comment No. 26 on land and economic, social and cultural rights should include a specific section dedicated to Non-Self-Governing Territories and occupied Territories, addressing:

## the responsibilities of the administering Powers, in the framework of the UN Charter, relevant UN General Assembly’s resolutions, the Fourth International Decade for the Eradication of Colonialism[[9]](#footnote-9) and the relevant Opinions and Decisions of the International Court of Justice;

## the responsibilities of an occupying Power and that of third Powers, in the framework of the relevant norms of International Law, including International Humanitarian Law and the relevant Opinions and Decisions of the International Court of Justice.

## Bir Lehlu, 27 July 2021

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**ANNEX 1**

**CASE LAW OF THE UN HUMAN RIGHTS MECHANISMS**

**UN Working Group on Arbitrary Detention**

* Opinion No. 68/2020, 23-27 November 2020, concerning Walid Salek El Batal
* Opinion No. 52/2020, 24- 28 August 2020, concerning Ali Saadouni
* Opinion No. 67/2019, 18-22 November 2019, concerning the Student Group/Group of El Wali
* Opinion No. 23/2019, 24 April – 3 May 2019, concerning Ndor Laaroussi
* Opinion No. 60/2018, 20-24 August 2018, concerning Mbarek Daoudi
* Opinion No. 31/2018, 17-26 April 2018, concerning Mohamed Al-Bambary
* Opinion No. 11/2017, 19-28 April 2017, concerning Salah Eddine Bassir

**Communications of the UN Special Procedures**

* Communication AL MAR 5/2020 dated 7 January 2021, concerning Naziha El Khalidi, Aminatou haidar, Mahfouda Bamba Lafgir (Lekfir), Yahya Mohame Elhafed Iaazza, Al-Hussein Al-Bashir Ibrahim, Mohamed Radi Elili, Ali Saadouni and Nour Eddin El Aargoubi
* Communication AL MAR 2/2020, dated 7 September 2020, concerning Hussein Bachir Brahim
* Communication AL MAR 3/2020, dated 21 July 2020 concerning Khatri Dadda
* Communication AL MAR 3/2019 dated 8 November 2019 concerning Walid Salek El Batal
* Communication AL MAR 2/2019 dated 4 June 2019 concerning Naziha El Khalidi
* Communication AL MAR 1/2019 dated 3 April 2019 concerning Naziha El Khalidi
* Communication AL MAR 3/2017 dated 20 July 2017 concerning the Gdeim Izik Group
* Communication AL MAR 5/2016 dated 12 December 2016 concerning Amidan Said and Brahim Laajail
* Communication AL MAR 2/2016 dated 6 May 2016 concerning expulsion of defence lawyers
* Communication AL MAR 1/2016 dated 22 March 2016 concerning El Ghalia Djimi
* Communication AL MAR 6/2015 dated 3 August 2015 concerning Fatimetou Bara, Ghalia Djimi and Alouat Sidi Mohamed
* Communication JAL AL MAR 7/2014 dated 13 November 2014 concerning M. Hassanna al-Wali
* Communication UA MAR 5/2014 dated 30 July 2014 concerning Mahmoud El Haissan
* Communication MAR 2/2014 dated 9 April 2014
* Communication JUA 1/2013 dated 24 May 2013
* Communication MAR 1/2012 dated 23 March 2012 concerning ASVDH
* Communication MAR 8/2011 dated 29 November 2011 concerning ASVDH
* Communication MAR 6/2011 dated 4 November 2011
* Communication MAR 1/2011 dated 3 February 2011 concerning the Gdeim Izik camp

**UN Committee against Torture**

 Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 606/2014 – CAT/C59/D/606/2014 (15/11/2016)

1. UN Security Council resolution 380 (6 Nov. 1975) and UN General Assembly resolution 34/37 (21 Nov. 1979) [↑](#footnote-ref-1)
2. UN General Assembly resolution 1956 (XVIII) – 11 Dec. 1963 [↑](#footnote-ref-2)
3. E/C.12/MAR/CO/4 [↑](#footnote-ref-3)
4. S/2002/161 [↑](#footnote-ref-4)
5. A/RES/75/103 [↑](#footnote-ref-5)
6. UN General Assembly 2625 (XXV) [↑](#footnote-ref-6)
7. In adopting resolution A/RES/34/37, the UN General Assembly recognizes the Frente POLISARIO as the legitimate representative of the people of Western Sahara [↑](#footnote-ref-7)
8. See Annex 1 [↑](#footnote-ref-8)
9. A/RES/75/123 (10/12/2020) [↑](#footnote-ref-9)