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### **Written statement\* submitted by France Libertés : Fondation Danielle Mitterrand, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 August 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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## Western Sahara: the open wound of enforced disappearances

### Introduction<sup>1</sup>

The Report of the Office of the United Nations High Commissioner for Human Rights entitled “Compilation on Morocco” mentions<sup>2</sup> that “The Human Rights Committee recommended that Morocco pursue and step up its efforts to shed light on the circumstances surrounding all unsolved cases of enforced disappearance, including those linked to events in Western Sahara, and proceed without delay to conduct investigations with a view to identifying, bringing to trial and punishing the persons responsible for them.”

The Report of the Office of the United Nations High Commissioner for Human Rights entitled “Summary of stakeholders’ submissions on Morocco” quotes<sup>3</sup> Amnesty International’s, ASVDH’s and AFAPREDESA’s submissions in relation to the fate of many victims of enforced disappearance.

Nonetheless, the Draft report of the Working Group on the Universal Periodic Review on the Kingdom of Morocco contains no specific recommendations about this sensitive issue.

### Historical and legal background

In 1963, the UN General Assembly recognized Western Sahara as a Non Self-Governing Territory<sup>4</sup> and subsequently mandated the Administering Power, Spain, to determine, at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara the procedure for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination<sup>5</sup>

Western Sahara was a Spanish colony from 1884 until 26 February 1976, when Spain informed the UN Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory.

On 6 November 1975, the Kingdom of Morocco invaded militarily Western Sahara and brought thousands of Moroccan civilians into the Territory (Green march). The same day, the International Court of Justice released an Advisory Opinion<sup>6</sup> in which it states, inter alia, that “The inferences to be drawn from the information before the Court... are in accord in not providing indications of the existence,... of any legal tie of territorial sovereignty between Western Sahara and the Moroccan State.”

Recent judgments of the Grand Chamber of the Court of Justice of the European Union<sup>7</sup> (December 2016) and of the High Court of South Africa in Port Elisabeth<sup>8</sup> (June 2017) reaffirmed that Western Sahara has a separate and distinct status in relation to that of any State, including the Kingdom of Morocco and that the Moroccan occupation of a large part of Western Sahara has not affected the international status of the Territory as a Non Self-Governing Territory.

### Applicability of the International Humanitarian Law

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1 This written contribution benefited from the assistance of the Association of Families of Prisoners and Disappeared Saharawis (AFAPREDESA) – Tindouf (Algeria)

2 A/HRC/WG.6/27MAR/2 (par. 37)

3 A/HRC/WG.6/27MAR/3 (parr. 26 – 27 - 34)

4 UNGA Resolution 1956 (XVIII)

5 UNGA Resolution 2229 (XXI)

6 Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.12

7 <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-12/cp160146en.pdf>

8 <http://www.saflii.org/za/cases/ZAECPEHC/2017/31.html>

The invasion and occupation of a large part of Western Sahara by the Kingdom of Morocco obliges the latter to respect the International Humanitarian Law.

From late 1975 to 1977, the Moroccan Army began a campaign of plunder, arrests and expulsion of nomads who were in the desert. It is necessary to bear in mind that nomadism has been a traditional practice of the Sahrawis from ancient times. In these cases of plunder, it is also necessary to add cultural impact to the economic impact, since the strategy of searching for the population, plundering it, and forcibly displacing it out of the desert put an end to the nomadic lifestyle of the Sahrawis for decades.<sup>9</sup>

This practice may amount to war crime, crime against humanity and cultural genocide as defined by international law.

By largely practicing coercion, corporal punishment, torture, degrading and inhuman treatments on the members of the Polisario Front<sup>10</sup> before the Ceasefire Agreement of 1990 and on the Sahrawi civil population until our days, the Kingdom of Morocco severely violated and continues to violate Articles 31 and 32 of the IVth Geneva Convention.

By deporting the indigenous people of Western Sahara during the military campaign of invasion of Western Sahara and continually promoting on a large scale the transfer of Moroccan citizens into the Occupied Territory of Western Sahara, the Kingdom of Morocco also constantly violates, since 1975, Article 49 of the IVth Geneva Convention.

### **Enforced disappearances in Western Sahara**

Since 31 October 1975, enforced disappearances of Saharawi soldiers and civilians were widely practiced by Moroccan troops. The lowest estimations are around 1000 cases, 80% of which occurred between 1975 and 1977. While AFAPREDESA has registered more than 4500 cases, nowadays, more than 400 cases are unsolved, including the 351 identified by the Moroccan CNDH in 2010.

Enforced disappearance is a continuing offense, which continues being committed until the fate and whereabouts of the victim are clarified, and reliable information is provided on the fate of missing persons and their families. Denying information to the families about the fate of disappeared people is a violation of their psychological integrity, a form of psychological torture, given the fact that, because of this, relatives are denied the possibility to cope with their mourning.<sup>11</sup>

In the late 80's, the discovery of clandestine detention centers as PCCMI Laayoune, Galaat Magouna and Tazmamert has allowed to start campaigning to disclose the whereabouts of missing persons. On 22 June 1991, 322 missing Sahrawis were released thanks to international pressure.

Enforced disappearance has survived to the present day in Western Sahara, even if on a smaller scale and for shorter durations. Forced disappearance is a multiple violation of several human rights and constitutes a form of torture.<sup>12</sup>

Following the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, on 14 May 2013, the Kingdom of Morocco has not yet submitted its initial report to the Committee on Enforced Disappearances and it is not scheduled in the planning of the Committee before 2019.

In January 2013, a joint application was submitted to the Court of Military Order of Rabat, by a group of families of disappeared Saharawis, to obtain a copy of the judgment which had ordered the alleged execution of 13 missing persons, on 19 of October 1976. This request was denied. In April 2013, the same request was addressed to the

9 PhD. C. M. Beristain and PhD. E. G. Hidalgo – The Oasis of Memory: Historical memory and human rights violations in the Western Sahara – Edited by Universidad del País Vasco and Instituto de Estudios sobre Desarrollo y Cooperación Internacional (2012); p. 43– [www.hegoa.ehu.es](http://www.hegoa.ehu.es)

10 The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro, formally constituted on 10 May 1973, has been recognized by the UN General Assembly as the legal representative of the Non Self-Governing Territory of Western Sahara (UNGA Resolution 34/37 – 21 Nov. 1979)

11 Ibid ; p. 47

12 Idem

Moroccan National Human Rights Council (CNDH). The families are still waiting for a response. At this time, the fate and whereabouts of the 13 people remain unknown.

Since the Kingdom of Morocco went through its second cycle of the Universal Periodic Review in 2012, several mass graves have been discovered, containing victims identified by Spanish experts<sup>13</sup>.

For instance, in 2013, two mass graves were discovered at Fadret Leguía, the experts were able to establish the identity of 8 bodies: Salma Sidi Daf SALEC (DNI Spanish: A-4525013), Bachir Salma Daf (child), Sidahmed Segri Yumani (DNI Spanish: A-3136048), Mohamed Ali Salama Sidahmed Elkarcha (DNI Spanish : B-1324045), Salma Sidi SALEC (child), Salma Mohamed Sidahmed (DNI Spanish: A-3509018), Mohamed Mouloud Mohamed Lamin (DNI Spanish: A-4520032) and Mohamed Ramdan Abdelah (DNI Spanish: A9013149). All of them were Spanish citizens.

### **Truth, Justice and Reparation**

For many years the Kingdom of Morocco has denied the existence of disappearances' cases in Western Sahara.

However, the report submitted to the King of Morocco by the Equity and Reconciliation Commission (IER) on 30 November 2005 mentions a number of cases. Inexplicably, it is reported that the abovementioned victims, discovered in the mass graves, died in other places and in other circumstances.

It is to be underscored here that, in no circumstances, neither the work of the Moroccan Equity and Reconciliation Commission, nor the financial compensations given to a number of Sahrawi families, can be interpreted as a mechanism of transitional justice in Western Sahara considering that, on one hand, the people originating from the Non Self-Governing Territory has yet to exercise their right to self-determination in accordance with UNGA resolution 1514 (XV) - Declaration on the Granting of Independence to Colonial Countries and Peoples – and on the other, that the Territory is still under the Moroccan illegal occupation<sup>14</sup>.

### **Recommendations**

The Human Rights Council should complete the Report of the Working Group on the Universal Periodic Review on the Kingdom of Morocco with the following recommendations:

- Calls upon the Kingdom of Morocco to pursue and step up its efforts to shed light on the circumstances surrounding all unsolved cases of enforced disappearance, including those linked to events in Western Sahara and proceed without delay to conduct investigations with a view to identifying, bringing to trial and punishing the persons responsible for them;
- Calls upon the Kingdom of Morocco to submit its initial report to the Committee of Enforced Disappearances and ensure that the relatives of missing persons and NGOs are consulted throughout the stages of preparation, implementation and monitoring of Moroccan conventional commitments.
- Calls upon the Kingdom of Morocco to agree on the establishment of a permanent Human Rights monitoring mechanism in Western Sahara under the auspices of the UN.
- Urges the Kingdom of Morocco to terminate the occupation of the Non Self-Governing Territory of Western Sahara and to fully and loyally cooperate with UN Mission for the Referendum in Western Sahara (MINURSO) with the view of achieving its mission by organizing the referendum in order to implement the inalienable right of the people of Western Sahara to self-determination and independence in accordance with the Charter of the United Nations.

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<sup>13</sup> [http://publicaciones.hegoa.ehu.es/assets/pdfs/235/Meheris\\_SUMMARY\\_\(Ingles\\_Frances\\_arabe\).pdf?1488539792](http://publicaciones.hegoa.ehu.es/assets/pdfs/235/Meheris_SUMMARY_(Ingles_Frances_arabe).pdf?1488539792)

<sup>14</sup> UNSC Resolution 380 (6 November 1975) and UNGA Resolutions 34/37 (21 November 1979) and 35/19 (11 November 1980)