



General Assembly

Distr.: General
24 September 2020

English only

Human Rights Council

Forty-fifth session

14 September–2 October 2020

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by France Libertes : 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.

[20 August 2020]

* Issued as received, in the language(s) of submission only.

GE.20-12431(E)



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Western Sahara: the illegal occupation by Morocco and the violation of the rights of Sahrawi prisoners

Introduction

Western Sahara was included in the list of Non-Self-Governing Territories (NSGT) in December 1963. Since then it has been on the agenda of the Special Committee in charge of the case study regarding the application of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

In November 1975, Morocco invaded Western Sahara militarily, which was under Spanish colonial rule, mandated by the United Nations General Assembly to organize a referendum for self-determination in the territory.

On 26 February 1976, Spain informed the Secretary-General that as of that day, it would end its presence in Western Sahara and relinquish its responsibilities in the region. Since that day, Western Sahara has become the only Non-Self-Governing Territory that has no internationally recognized administering Power and is subject to the illegal military occupation of another country.

In December 1979, the General Assembly strongly condemned the situation resulting from the continued occupation of Western Sahara by Morocco (A/RES/34/37).

In violation of the principles and rules of international law, including those enshrined in the Charter of the United Nations, Morocco has illegally annexed the majority of the NSGT and considers any manifestation for independence by the Sahrawi population as a threat to its territorial integrity.

Violation by Morocco of Article 76 of the 4th Geneva Convention

Since Morocco invaded and continues to illegally occupy the NSGT of Western Sahara with a heavy military presence and further considering the declaration deposited on 23 June 2015 by the Polisario Front in conformity with article 96.3 of Additional Protocol I, International Humanitarian Law fully applies to Western Sahara.

Consequently, the Sahrawi people originating from the NSGT have to be considered as “protected persons”, in accordance with article 4 of the Fourth Geneva Convention. In this context, the imprisonment of Sahrawi’s by the Occupying Power outside Western Sahara contravenes the provisions of article 76 of the Fourth Geneva Convention, which provides that “Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein...”.

The situation of Sahrawi’s civilian prisoners in Moroccan prisons and arbitrary detention practices adopted by Morocco

These events and facts cannot be isolated from the legal and political status of Western Sahara, as all violations that occurred in the territory since 1975 until now are mainly related to the change that Morocco has made to the borders inherited from colonialism and denies the right of the Sahrawi people to self-determination.

The Working Group on Arbitrary Detention and the Committee against Torture have already taken some decisions¹ concerning the situation of Sahrawi political prisoners and are still pending various cases of Sahrawi human rights defenders.

¹ A/HRC/WGAD/2013/19, A/HRC/WGAD/2017/11, A/HRC/WGAD/2018/31, A/HRC/WGAD/2018/60, A/HRC/WGAD/2019/23, A/HRC/WGAD/2019/67, CAT/C/59/D/606/2014.

Despite the pledges and commitments made by Morocco with regard to procedures and ensuring the rights of prisoners, what is noticeable is what the The League for the Protection of Sahrawi Prisoners has documented the violation of the rights of Sahrawi political prisoners in a systematic and continuous manner by the Moroccan authorities, which is often within a framework outside the law, such as the fabrication of transcripts signed under duress and torture.

The Sahrawi Prisoners Protection League (La Liga para la Proteccion de los Presos Saharaouis en las carceles marroquies-LPPS) collected the following data, concerning the arbitrary detention practices adopted with regard to Sahrawi political prisoners, as well as violations of fundamental rights through testimonies of Sahrawi prisoners themselves or through families' witnesses during their visits:

- 11th 2019, human rights activist Ali Al-Saadouni was illegally arrested by a group of policemen in civilian clothes, after he suspended the flags of the Sahrawi Republic on the main street.
- 19th July 2019, the occupation authorities arrested a group of youth and activists of the independence uprising against the background of the demonstration in the occupied city of El-Ayoune on 07/19 on the occasion of the victory of the Algerian national team: Sufian Boughanbour - elHafed Ayyash - Ali Mahrouk - khalil Blousa - AbdeRahman ETalbi - Elhafed Riahi - Agai Aduihi - Muhammad Aali elKouri - ergaibi sid elyazid - Salek Bossoula.
- 10th 2019, the political prisoner, Mohammed Bourial, was subjected to abuse during his transfer from Buzkarn prison to Telft prison.
- 1 of October 2019, the political detainee Sidi Abdullah Abha submits a complaint to the General Delegate of Prisons and to the Moroccan Minister of Justice about the detention conditions and the prison administration's lack of interaction with previous complaints.
- 15th October 2019, the political detainee Sidi Ahmed al-Mjaid was deprived of the date of his scheduled treatment, without giving an explanation of the reason for that.
- 4th November 2019 the political prisoner Elhousin Amaadour has been denied the right to a family visit, and his transfer from Ibn Zahr University in Agadir towards the Qadi Ayyad University in Marrakech has been refused.
- 31th December 2019, the husband of the Sahrawi political prisoner Mahfouda Bamba Lafkir and her children were denied the right to visit her.
- 20th 2020, the prison administration refuses to follow up the health condition of the Sahrawi political prisoner, Sidi Abdullah Abhah, (Kohl Prison in the occupied city of Al-Aaiun), who suffers from chronic diseases, allergies to the skin and gums, and was also placed in a solitary cell.
- 24th February 2020, the political prisoner Mansour Othman Bouzid became infected with scabies due to the detention conditions in Lakhel prison, in the occupied city of El-Aaiun.
- 25th February 2020, the deterioration of the health condition of the political prisoner, ElHussein Boujemaa Zawi, who suffers from kidney disease, which constitutes a threat to his psychological and health safety due to the negligence of the Kuneitra prison administration.
- 27th March 2020, the violation of the right to education by the administration of Tiflet prison in not provision of conditions conducive to the discussion of political prisoner ELbachir Brahim KHada on his thesis of the master, preventing him from entering the library, and contacting the supervisor.
- 1 of April 2020, the political prisoner Elbachir Alali Boutngiza went on hunger strike for 48 days to protest the procrastination of the Kenitra prison administration for carry out analysis demanded by the specialist in orthopaedics.
- 8th April 2020, political prisoner Abdelahi LAKhfaoui expresses his protest that the Quneitra prison administration did not take any preventive measures against the spread

of Covid-19, especially after the spread of news that there were cases in some Moroccan prisons.

- 12th April 2020, threat to the health safety of political prisoner Abdelmoula Elhafidi after he was prevented from bathing for a month in Ait Melloul prison.
- 22th April 2020, the mistreatment and humiliation of political prisoner Agay Elhadeg Duihi by the prison staff, such as punishments in front of the rest of the prisoners.
- 7th August 2020, the Sahrawi civilian prisoner, Mohamed Hassanna Ahmed Salem Bouriel - Gdiem Izik - , who is in the local prison Tiflet 2 / Morocco, declared a 24-hour hunger strike denouncing the discrimination and racist practices against him.

In violation of the norms of International Humanitarian Law, the occupying Power uses its judicial system to discourage Sahrawi human rights defenders from carrying out their work, such as the documenting and complaining about the non-respect by the Moroccan Authorities of the fundamental rights provided in the Standard Minimum Rules for the Treatment of Prisoners, recommended by the first United Nations Congress on the Prevention of crime and the treatment of offenders, held in Geneva in 1955 and endorsed by the Economic and Social Council in its resolutions 663C (XXIV) of 31 July 1957 and 2076 (622) of 13 May 1977.

Recommendations

France Libertés-Fondation Danielle Mitterrand calls upon:

1. all High Contracting Parties to the Geneva Conventions to ensure that Morocco respects the Fourth Geneva Convention in Western Sahara;
2. Morocco to fully respect the Fourth Geneva Convention in Western Sahara;
3. to release of all Saharawi's political prisoners in Moroccan prisons;
4. the members of the Human Rights Council to create the mandate of "Special Rapporteur on the Human Rights situation in the Occupied Territory of Western Sahara".
