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**Joint written statement\* submitted by Asociación Española para el Derecho Internacional de los Derechos Humanos AEDIDH, American Association of Jurists, Association Mauritanienne pour la promotion du droit, Association Nationale des Echanges Entre Jeunes, December Twelfth Movement International Secretariat, Freehearts Africa Reach Out Foundation, Fundación Latinoamericana por los Derechos Humanos y el Desarrollo Social, Habitat International Coalition, International Association Against Torture, International Association of Democratic Lawyers (IADL), International Fellowship of Reconciliation, Paz y Cooperación, Plataforma Mulheres em Acção, Society for Threatened Peoples, World Barua Organization (WBO), non-governmental organizations in special consultative status, Indian Council of South America (CISA), International Educational Development, Inc., Liberation, Mouvement contre le racisme et pour l'amitié entre les peuples, World Peace Council, non-governmental organizations on the roster**

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

[29 January 2023]

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\* Issued as received, in the language of submission only.



## **Fourth Moroccan Universal Periodic Review: Illegal Military Occupation Of Western Sahara**

The 312 member-organizations of the Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara share the views expressed in this statement.

### **Legal And Historical Background**

In 1963, the UN General Assembly approved (res. 1956) the report presented by the the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and thereafter included Western Sahara in the list of Non Self-Governing Territories paving the way for the People originating from the Territory to freely exercise their inalienable Right to Self-determination.

In 1966, the General Assembly (res. 2229) invited the administering Power (Spain) to determine at the earliest possible date the procedures for the holding of a referendum.

On 6 November 1975, when Morocco invaded the Non-Self-Governing Territory of Western Sahara, the UN Security Council (res. 380) deplored the holding of the march and called upon Morocco to immediately withdraw from the Territory all participants to the March.

In 1979, the UN General Assembly (res. 34/37) deeply deplored the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco and urged Morocco to terminate the occupation of the territory of Western Sahara.

In 1991, after 15 years of war between the Polisario Front and Morocco, the parties agreed on a cease-fire and the holding of a referendum. Thereafter, the UN Security Council approved the creation of the UN Mission for the Referendum in Western Sahara - MINURSO (res. 690).

The referendum was supposed to be held within six months after the MINURSO deployment in the Territory. The Mission was deployed on 1st September 1991 and the ceasefire entered into force on 6 September. The referendum was due to take place by the end of February 1992.

In its 2004 Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice (ICJ) determined that an occupying Power is responsible of the violations of International Humanitarian Law and of international human rights law that occur in the occupied Territory by its military forces and civilian authorities.

The longstanding illegal military occupation and annexation of the majority of the Non-Self-Governing Territory of Western Sahara is the cause of the violation of the inalienable right to self determination, enshrined in the Principles and spirit of the UN Charter, the UN General Assembly resolution 1514 - XV(1), the UN General Assembly resolution 1803 - XVII(2), the UN General Assembly resolution 2625 – XXV(3), the International Covenant on Civil and Political rights, the International Covenant on Economic, Social and Cultural Rights and numerous resolutions adopted by the UN General Assembly on the “Universal realization of the right of peoples to self-determination”.

### **The Violation Of The Right To Self-Determination**

#### **Administering Power Mandate of Spain**

Since Western Sahara has been considered by the UN General Assembly as a Non-Self-Governing Territory pending decolonisation, the Special Committee on the Situation with regard to the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples consider the situation in Western Sahara at its annual meeting.

On 16 October 1964, the Special Committee adopted its first resolution on Ifni and Spanish Sahara, regretting the delay by the administering Power in implementing the provisions of

the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in resolution 1514 (XV), and in liberating those Territories from colonial rule.

In resolution 2072 (XX), of 16 December 1965, the General Assembly requested the administering Power to take immediately all necessary steps for the liberation of the territories of Ifni and Spanish Sahara from colonial domination.

In resolution 2229 (XXI) of 20 December 1966, the General Assembly took note of the statement of the administering Power (Spain) of 7 December 1966 relating to Spanish Sahara, in particular with regard to the sending of a special UN mission to the Territory. The General Assembly invited the Administering Power to create a favourable climate for the referendum to be conducted on an entirely free, democratic, and impartial basis, to take the necessary steps to ensure that only the indigenous people of the Territory participate in the referendum, to refrain from any action likely to delay the process of decolonisation of Spanish Sahara.

In accordance with paragraph 5 of resolution 3292 (XXIX), of 13 December 1974, the Special Committee decided that a three-member mission would visit Spanish Sahara during the first week of May 1975.

In its report to the General Assembly, the Mission stressed that it had numerous private meetings with representatives of every section of the Saharan community. From all of these, it became evident to the Mission that there was an overwhelming consensus among Saharans within the Territory in favour of independence and opposing integration with any neighbouring country.

On 26 February 1976, Spain informed the Secretary-General that as of that date it had terminated its presence in Western Sahara and relinquished its responsibilities over the Territory. Since then, Western Sahara is the only Non-Self-Governing Territory that has not an acting internationally recognized administering Power.

#### **The Moroccan illegal occupation and annexation**

On 16 October 1975, the ICJ released its Advisory Opinion (Western Sahara, Advisory Opinion, I.C.J. Reports 1975) determining that the materials and information presented to the Court do not establish any tie of territorial sovereignty between the territory of Western Sahara and Morocco. The very same day, King Hassan II announced the launching of the Green March in order “to recover the integrity of the Kingdom’s territory”.

On 6 November 1975, the Moroccan army opened the way to the Moroccan population for the occupation of Western Sahara.

In 1991, the parties agreed on a cease-fire and the holding of a referendum. Thereafter, the UN Security Council approved the creation of the UN Mission for the Referendum in Western Sahara (MINURSO).

Since that time, Morocco has spared no effort to impede the holding of a free referendum of self-determination in Western Sahara.

#### **The Systematic Violations Of International Humanitarian And Human Rights Laws**

The longstanding illegal military occupation and annexation of the Non Self-Governing Territory of Western Sahara by Morocco has caused numerous, systematic and serious breaches of International Humanitarian Law.

In particular, it is to be highlighted the violations of Articles 31 and 32 (prohibition of coercion, corporal punishment, torture, degrading and inhuman treatments); Article 33 (prohibition of collective penalties, intimidation, pillage, reprisals); Article 49 (prohibition of deportations, transfers, evacuations); Article 53 (prohibition of destruction of real or personal property belonging, individually or collectively, to private persons); and Article 76 (on the treatment of detainees).

Some of these violations may amount to war crimes, crimes against humanity, and cultural genocide.

The longstanding illegal military occupation and annexation of the Non-Self-Governing Territory of Western Sahara by Morocco has also caused numerous, systematic and serious violations of all fundamental freedoms and human rights of the Saharawi people.

All civil and political rights of the Saharawi people are violated, notably the rights to freedom of opinion and expression, to freedom of association and peaceful assembly; as determinate by the UN-WGAD human rights defenders and journalists are targeted and arbitrarily detained because being Saharawi and defending political ideas (A/HRC/WGAD/2019/23 - A/HRC/WGAD/2020/68 - A/HRC/WGAD/2021/46).

All economic, social and cultural rights of the Saharawi people are violated, including their rights to development, to education, to health, to use their own language and their permanent sovereignty over their natural resources.

## **Conclusions And Recommendations**

The submitting organisations deeply regret the failure of the administering Power (Spain) to properly fulfil the mandate that was given to it by the General Assembly.

The submitting organisations also deeply regret that the overwhelming majority of the members of the UPR Working Group have ignored the situation in the occupied Western Sahara.

The submitting organisations condemn the military, financial and political support given to the occupying Power by permanent members of the Security Council and other countries, which reinforce the impunity of the Moroccan authorities for their systematic and serious violations of International Humanitarian and Human Rights Laws.

The submitting organisations call upon Morocco to:

- 1/ respect all norms of International Humanitarian Law and in particular the provisions of the Fourth Geneva Convention of 1949;
- 2/ immediately release all Saharawi protected persons detained in Moroccan jails;
- 3/ take all necessary measures to suspend all illegal economic activities affecting the permanent sovereignty of the Saharawi people over their natural resources and
- 4/ allow MINURSO to accomplish its main mandate: the organisation of a free and democratic referendum, enabling the indigenous population to exercise its right to self-determination.

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- (1) Declaration on the Granting Independence to Colonial Countries and Peoples
  - (2) Declaration on the Permanent sovereignty over natural resources
  - (3) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations