

**Report submitted by Western Sahara Resource Watch and  
NOVACT - International Institute for Non-Violent Action**

*In view of*

**Spain's third cycle Universal Periodic Review**

**35th session of the Human Rights Council**

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## Executive summary

**T**HREE DECADES after an agreement for a United Nations administered referendum in Western Sahara, the Saharawi people – until 1975 the original inhabitants of the territory – have yet to exercise their right to self-determination as a non-self-governing people. Western Sahara’s continuing status as a Non-Self-Governing Territory places a significant onus on the Human Rights Council to inquire 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 an agreement for a referendum with Morocco and the Saharawi national liberation movement the Polisario Front. The status of Western Sahara must be recalled when assessing how human rights norms have eroded yet further in the territory during the period of the present review.

It is Spain that is uniquely obligated to ensure self-determination of the Saharawi people. That is because the “sacred trust” to ensure self-determination of Non-Self-Governing peoples falls first to colonial administering states. Nothing in law or the actions of the organized international community concerning Western Sahara have diminished this responsibility since 1975. Spain’s obligations under the United Nations *Charter* and commitments to the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) along with the international humanitarian law framework of the *Fourth Geneva Convention* and the *Rome Statute* of the International Criminal Court reinforce the responsibility to decolonize Western Sahara, end the territory’s occupation and effectively protect the Saharawi people’s human rights.

This submission addresses Spain’s responsibility to ensure the Saharawi people’s 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 UN *Charter* and the norms expressed in the ICCPR and ICESCR, with reference to other human rights instruments, agreements of the parties concerned, and jurisprudence relevant to what the United Nations calls the “question” of Western Sahara. Recent legal developments in Europe and beyond are canvassed. The connection between the basic right of the Saharawi people and the exploitation of their resources while under occupation is assessed.

The report concludes with recommendations for the Human Rights Council to put before Spain, including 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 restraint directly, and with other states and international organizations, from supporting or entering into agreements for the acquisition of natural resources from the occupied area of Western Sahara.

## **The submitting organizations**

1. Western Sahara Resource Watch (WSRW) is an independent, non-governmental organization based in Brussels with an international board of directors, operating in more than 40 countries. Established in 2004, the organization's mission is to research, monitor and provide commentary about the development and export of natural resources from the Moroccan occupied parts of 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. To an extent, WSRW's research covers the responsibility - abandoned by the international community and by Spain in particular - of providing the information on the economic and social conditions in non-self-governing territories as required by article 73 of the UN *Charter*.
2. NOVACT (International Institute for Non-Violent Action) promotes social transformation processes based on human rights, justice and democracy in the Euro-Mediterranean region. With over 15 years dedicated to research, scope and international cooperation, NOVACT has contributed to generating bridges among social movements, academics and institutions. Created in 1999 under the name NOVA (Center for Social Innovation) by a group of former conscientious objectors to the Spanish military service during the Franco dictatorship, it is rooted in the shared experiences of conflict-transformation among peoples and individuals who organize against the violation of their rights. The name was changed to NOVACT, a non-profit interdisciplinary institute specialized in promoting non-violent action.

## **The right to self-determination**

3. The UN *Charter* is the pre-eminent international law instrument applicable to Western Sahara, animating how self-determination must be assured for the Saharawi people through human rights agreements and universal practice. We begin by observing that two *Charter* provisions continue to be violated in the case of Western Sahara: (a) the requirement to respect territorial integrity (Article 2(4)), and (b) the failure to ensure the Saharawi people are able to exercise their right to self-determination (Article 73). Self-determination is so transcendent a right that it is expressed in Common Article 1 of the ICCPR and ICESCR that a Non-Self-Governing people must be allowed to "freely determine their political status".
4. Instead of organizing a process of decolonization, Spain negotiated and signed the so-called Madrid Agreement in November 1975, purporting to cede its territorial control and responsibilities over Western Sahara to Morocco and Mauritania. The Saharawi people were not represented in this process and have protested it ever since. Mauritania abandoned its claim to the southern part of the territory in 1979, and in 1984 recognized Western Sahara as an independent state (the SADR, Saharawi Arab Democratic Republic, proclaimed in 1976). It should be noted that the Madrid Agreement is considered null and void by the UN. As asserted by the UN Legal Counsel in 2002: The Madrid Agreement did not transfer

sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred.”<sup>1</sup>

5. Throughout Spain’s Universal Periodic Reviews of the past decade, no material progress has been made to 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 Committee recommended:

[Morocco should] *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.*<sup>2</sup>

6. The same concern over the failure of progress toward self-determination in Western Sahara prompted the Human Rights Committee 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.”<sup>3</sup>
7. No party to what the UN calls the “question” of Western Sahara has denied that the Article 73 right of self-determination applies. However, in recent years we have observed a sophistry that is presented in an effort to erode the right, including by fostering political compromise in the organized international community. This phenomenon can be found in: (a) the claim that the entire present population in Western Sahara somehow has a right to self-determination and (b) the right of self-determination as not including the option of political independence. Both are incorrect under international law and settled post-colonial practice among an overwhelming majority of states.
8. The right to self-determination is inalienable. At a formal level, the Saharawi themselves are unable to competently yield or relinquish the right. While they might acceptably choose a political status that has the result of subsuming the right by incorporation into (joining) a third state, it is the ability to exercise the right which cannot be denied to them.

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<sup>1</sup> Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, 12 February 2002, S/2002/161, §6.

<sup>2</sup> 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.

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

9. It is important to underscore that the right of self-determination is one for the original inhabitants, the Saharawi people, and not otherwise a heterogeneous population of the occupied part of Western Sahara as a whole. As for the international community as a whole, therefore, a colonially-responsible Spain: Assuring Saharawi self-determination is an *erga omnes* responsibility that entails a positive obligation to realize that right and correspondingly to denounce efforts to extend it to an illegally resettled Moroccan population in the territory.

### **Spain's continuing obligation to assure Saharawi self-determination**

10. Decolonization is one of the originating purposes of the United Nations organization. Nowhere else in the UN *Charter* – or any universal human rights instrument including the ICCPR and the ICESCR – is the phrase “sacred trust” employed to define the obligations of states and individuals. The International Court of Justice (ICJ) commented to such effect in its recent *Chagos Archipelago Advisory Opinion*: “Having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the *Charter* included provisions that would enable non-self-governing territories ultimately to govern themselves.”<sup>4</sup> Article 73 confers a heavy burden on states and individuals to ensure the self-determination of non-self-governing peoples:

*Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories and, to this end:*

*(a) to ensure, with due respect for culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and protection against abuses;*

*(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement[.]*<sup>5</sup>

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<sup>4</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion* (25 February 2019), paragraph 148 (*Chagos Archipelago Advisory Opinion*). The Court added that “[t]he wording used in [UN General Assembly] resolution 1514 (XV) has a normative character, in so far as it affirms that ‘[a]ll peoples have the right to self-determination’. Its preamble proclaims ‘the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations’ and its first paragraph states that ‘[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations.’” *Idem* at paragraph 153, citation omitted.

<sup>5</sup> *Charter of the United Nations*, 1 UNTS XVI (24 October 1945) (UN *Charter*).

11. For a colonial administering state, such obligation is non-derogable and continuing. Recent examples include an *apartheid* South Africa enjoined by the UN General Assembly to decolonize Namibia. A parallel example of state acceptance of responsibility for interrupted decolonization – one of a Non-Self-Governing Territory invaded and annexed by a neighboring state – is that of East Timor (Timor-Leste). The eventual agreement for the conduct of an exercise of self-determination in Timor was originated by Portugal in its accepted role as colonially administering state.<sup>6</sup>
  
12. No tenable argument can be made that the government of Spain lawfully transferred or delegated the assurance of self-determination for the Saharawi people under the so-called *Madrid Accords* of 14 November 1975 to its counterparties Mauritania and Morocco. In any event, while Morocco and Mauritania were to administer the territory of Western Sahara, Spain accepted in the agreement that it continued to be jointly responsible to assure Saharawi self-determination.<sup>7</sup> Such commitment to decolonize Western Sahara was ratified in a statute of the Spanish parliament authorizing the government “to carry out the acts and adopt the measures that are necessary to carry out the decolonization of the non-autonomous territory of the Sahara”.<sup>8</sup> The statute cannot be construed as operating contrary to what was then settled international law, a matter confirmed by the ICJ in the *Chagos Islands Advisory Opinion*.<sup>9</sup>
  
13. In the case of Western Sahara, the duty to ensure Saharawi self-determination grounded in Article 73 and UN General Assembly Resolution 1514 is stipulated in three declarations or commitments.<sup>10</sup> The first of these had already been defined by the ICJ in its October 1975 *Western Sahara Advisory Opinion*.<sup>11</sup> The second source of obligation, as noted, came in the

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<sup>6</sup> *Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor* (5 May 1999), 2062 UNTS 8.

<sup>7</sup> *Declaration of Principles (Tripartite (Madrid) Accords (Mauritania/Spain/Morocco))* (14 November 1975), 14 ILM 1512; (1976) 80 *Revue Générale de Droit International Public* 380.

<sup>8</sup> Ley 40/1975, de 19 noviembre, de Descolonización del Sahara, artículo 1, B.O.E. no. 278 de 20 de noviembre de 1975.

<sup>9</sup> *Supra* note 3. The Court found the right had become universally binding by 1970, quoting in paragraph 161 from the Namibia Advisory Opinion that the law had “consolidated” in this respect. “[T]he subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them” (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 52.”

<sup>10</sup> *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, ICJ Reports 2010, page 403 at paragraph 79: “During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation.”

<sup>11</sup> *Western Sahara Advisory Opinion*, ICJ Reports 1975, 12 (*Western Sahara Advisory Opinion*). “In subsequent years, the General Assembly maintained its approach to the question of Western Sahara, and reiterated in more pressing terms the need to consult the wishes of the people of the territory as to their political future ... All these resolutions from 1966 to 1973 were adopted in the face of reminders by Morocco and Mauritania of their respective claims that Western Sahara constituted an integral part of their territory. At the same time Morocco and Mauritania assented to the holding of a referendum. These States, among others, alleging that the recommendations of the General Assembly were being disregarded by Spain,

commitment of Spain and two occupying states under the *Madrid Accords* to govern Western Sahara toward a self-determination of the Saharawi people.<sup>12</sup> Next, the third basis for particular assuring of self-determination resulted from the UN Security Council resolutions constituting the so-called 1991 Settlement Plan.<sup>13</sup>

14. It must be noted that Spain was not a party to the Settlement Plan and the Plan does not provide for Spain's participation in a referendum for Saharawi people to exercise self-determination: "[S]ole and exclusive responsibility for the organization and conduct of the referendum is vested in the United Nations." However, this role for the United Nations is limited and did not reduce or abrogate Spain's responsibility for decolonization as such, including protection of human rights until that event is completed.
15. Spanish courts have confirmed Spain's criminal law jurisdiction to have continued in Western Sahara without interruption. A first such case considered the basis for Spanish criminal jurisdiction over criminal acts alleged against Moroccan officials as a result of the November 2010 dismantling of a Saharawi protest camp outside El Aaiun, at Gdeim Izik.<sup>14</sup> It was a decision of the criminal appeals court, the *Audiencia Nacional* and was concerned with legislation earlier that year which curtailed Spain's universal jurisdiction.<sup>15</sup> The court found – significantly because of Spain's obligations to decolonize Western Sahara under Article 73 of the UN *Charter* – national jurisdiction applied to the alleged 2010 incident. The criminal complaint had been brought by the Spanish League for Human Rights for an investigation of the death of a Saharawi with Spanish citizenship, alleging crimes against humanity, murder, and torture contrary to Articles 139, 174-177 and 607 of Spain's Penal Code. The *Audiencia Nacional* observed the status of Western Sahara had been considered by the UN Legal Counsel in 2002 and a contemporary decision of the European Court of Human Rights concerning the non-refoulement of 30 Saharawi asylum seekers who fled to the Canary Islands after the Gdeim Izik incident.<sup>16</sup>
16. A second appeal decision of the *Audiencia Nacional* in 2015 was extensively reasoned because of allegations of war crimes and crimes against humanity by 11 Moroccan civil and

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emphasized the need for the referendum to be held in satisfactory conditions and under the supervision of the United Nations." *Idem* at paragraphs 64 – 65.

<sup>12</sup> *Declaration of Principles (Tripartite (Madrid) Accords (Mauritania/Spain/Morocco))* (14 November 1975), 14 ILM 1512; (1976) 80 *Revue Générale de Droit International Public* 380.

<sup>13</sup> The 1991 Settlement Plan imposed a ceasefire and a required self-determination referendum, and was 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).

<sup>14</sup> *Audiencia Nacional*, Auto N° 40/2014 (Sala lo penal – Pleno) (4 July 2014).

<sup>15</sup> Spain's 2009 and 2014 amendments to its Judicial Power Statute, *Ley Orgánica del Poder Judicial*, are discussed below. See, latterly, Organic Law 1/2014 of 13 March amending Organic Law 6/1985 of 1 July on Judicial Power, BOE 63, 14 March 2014, 63 at 23026 ("2014 Judicial Power Statute").

<sup>16</sup> Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, UN doc. S/2002.161 (12 February 2002) (2002 UN Legal Opinion) and see *Affaire A.C. et autres c. Espagne*, European Court of Human Rights, Arrêt 22 avril 2014 (Requête n° 6258/11).

For an account of the Gdeim Izek incident, see Robert F. Kennedy Centre for Justice and Human Rights, *Western Sahara: Accounts of human rights abuses persist in wake of November unrest* (January 2011), available at: <<http://www.rfkcentre.org>>.

military officials alleged to have taken place from 1975 until 1991.<sup>17</sup> The judgment describes extensive allegations, characterizing some as possibly amounting to genocide. The judgment addressed Spain's colonial acquisition of Western Sahara and decolonization under Article 73 of the UN *Charter*. The *Audiencia Nacional* noted, in factual terms, that Western Sahara was occupied: "The occupation of the territory of Western Sahara by Morocco was carried out by violence against the Saharawi people and resulted in the displacement of a majority of the population crossing into the Algerian desert (Tindouf)."<sup>18</sup> Both the 2014 and 2015 decisions confirmed that a continuing reach of Spanish criminal law was accepted as a matter of settled colonial responsibility for Western Sahara.

17. In such a framework, it should be noted that in Universal Periodic Reviews of the past decade, Spain's national reports to the UN Human Rights Council contain not a single reference to the country's performance under its duty to decolonize Western Sahara and, pending that process, its obligations to ensure the well-being of the people of the territory in accordance with the UN Charter. That Spain does rather the opposite is evidenced through its participation in the taking of the resources of Western Sahara.

### **Violation of the Saharawi right to natural resources pending self-determination**

18. The right of the Saharawi people to sovereignty over the natural resources in their territory is an established one.<sup>19</sup> The post-colonial law and practice is clear that, for any development, extraction and export of natural resources, the free and prior informed consent of the Saharawi people is required. It is not enough to contend only that the Saharawi people – and even less the "people of the territory" – would possibly benefit from resource development.<sup>20</sup> The taking of resources from the occupied part of Western Sahara, including a rich fishery and high quality phosphate rock, serves to entrench an illegal occupation.<sup>21</sup> This is accomplished under a pretext of "economic development" and as a basis for employment of settlers from Morocco in the territory.<sup>22</sup> The development of natural

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<sup>17</sup> *Audiencia Nacional*, Sumario 1/2015, Auto (9 April 2015).

<sup>18</sup> *Ibid.* at page 7. The court observed that from 1975 through 1991 – the period of the allegations in the case – Morocco "systemically attacked the Saharawi civil population". *Ibid.* Translation from Spanish by WSRW languages unit.

<sup>19</sup> See e.g. the ruling of the High Court of South Africa of 23 February 2018, concluding that the "the Saharawi Arab Democratic Republic is the owner of the whole cargo of phosphate presently laden on the motor vessel 'NM Cherry Blossom'", and further stipulating that the Moroccan state-owned phosphate firm was not entitled to sell the commodity. Case No. 1487/2017, High Court of South Africa, available here: [https://wsrw.org/files/dated/2018-02-23/20180223\\_south\\_africa\\_ruling.pdf](https://wsrw.org/files/dated/2018-02-23/20180223_south_africa_ruling.pdf)

<sup>20</sup> The 2002 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". *Supra* note 15 at paragraph 25.

<sup>21</sup> We define *taking* 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 received directly and indirectly into Morocco's state treasury.

<sup>22</sup> As noted in the US State Department 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*, page 15, <http://www.state.gov/documents/organization/236840.pdf>

resources in Western Sahara has become an important basis for Morocco's ongoing annexation of the territory. The revenue from natural resources is neither received in Western Sahara nor publicly accounted for.

19. Recent reports about Morocco's compliance with ICCPR and ICESCR obligations have underscored the obligation to ensure Saharawi consent and benefit to the development of resources. In its October 2015 report, the UN Committee on Economic, Social and Cultural Rights (the CESCR) observed with concern "that the Sahraouis' right to participate in the use and exploitation of natural resources is still not respected." The Committee recommended Morocco "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."<sup>23</sup>
20. In addition to protests inside the occupied area of the territory, the Polisario Front and the democratically elected government of the Saharawi Arab Democratic Republic, along with Saharawi civil society organisations, have consistently declared that they do not consent to and receive nothing from Morocco's resource extraction.<sup>24 25</sup> This was remarked upon by the UN Secretary-General as follows:

*[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 letter to me dated 26 January 2015, referred to the activities as a violation of international law.<sup>26</sup>*

These circumstances were later described by the UN Secretary-General in a report to the UN Security Council about 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.<sup>27</sup>*

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<sup>23</sup> 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.

<sup>24</sup> See Fadel Kamal, "The role of natural resources in the building of an independent Western Sahara". (2015). *Global Change, Peace & Security*, 27(3), 345-359.

<sup>25</sup> The annual multilateral aid given to the Saharawi refugees is less than 10% of the estimated amount of the revenue Morocco earns from selling Western Sahara's phosphates to purchasers around the globe. See WSRW's "P for Plunder" reports for the years 2014 through 2018, inclusive, available at: <<http://www.wsrw.org>>

<sup>26</sup> Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2015/246 (10 April 2015), § 62.

<sup>27</sup> Report of the Secretary-General on the situation concerning Western Sahara, UN doc. S/2016/355 (19 April 2016), §77.

*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.*”<sup>28</sup>

21. Specifically in respect of the Saharawis living as refugees in Algeria, the CESCR Committee furthermore recommended Morocco to “take appropriate steps to enable the Sahraouis to access their land and natural resources”.<sup>29</sup> The UN Human Rights Committee came to the same conclusion in a 2016 review report about Morocco’s compliance with the ICCPR:

*[Morocco] should: (a) continue and increase the efforts undertaken within the framework of negotiations concerning the status of the Western Sahara under the auspices of the Secretary-General of the United Nations so that the people of the Western Sahara may enjoy their right to self-determination; (b) enhance meaningful consultations with the people of Western Sahara with a view to securing their prior, free and informed consent for development projects and resource extraction operations ...*<sup>30</sup>

22. As a colonial administering power, Spain has the obligation under Common Article 1 of the ICCPR and the ICESCR to respect, protect and fulfill the Saharawi “right to freely dispose of natural resources.” Spain has most notoriously fallen short of that responsibility. It is directly involved as the flag state of commercial fishing vessels operating in the coastal waters of Western Sahara. In addition, the Spanish fish import and distribution sector is closely linked to the fishing sector in occupied Western Sahara. Imported products are often sold as having originated in Morocco.<sup>31</sup> It is worth recalling that only in 2002 did Spain relinquish its 35% ownership in the Bou Craa phosphate mines in Western Sahara, operated and exploited by the Moroccan state-owned phosphate company OCP S.A. from the outset of Morocco’s 1975 invasion. In absence of any guidance by the state on the rules pertaining to business-activities in Non-Self-Governing Territories - notably the principle of obtaining prior, free and informed consent of the people of the territory - Spanish companies can be found in all economic sectors in Western Sahara. WSRW has documented shipments of petroleum from Spain to occupied Western Sahara, where it is used to sustain the occupation: either for military purposes or for the exploitation of the territory’s resources.<sup>32</sup> Sand from Western Sahara - the very soil of the territory - continues to be imported into Spanish ports for use in the construction industry or for developing artificial beaches. It is a Spanish company, SiemensGamesa, that is spearheading Morocco’s renewable energy projects in occupied Western Sahara: through the connection of these gigantic projects onto

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<sup>28</sup> *Ibid.* §103.

<sup>29</sup> *Ibid.* §7-8.

<sup>30</sup> UNHRC, “Concluding observations on the sixth periodic report of Morocco” (1 December 2016), UN doc. CCCPR/C/MAR/CO/6, paragraph 10.

<sup>31</sup> ODHE, NOVACT, Et Al. “Los tentáculos de la ocupación”, (February 2019)

<<http://www.odhe.cat/es/los-tentaculos-de-la-ocupacion>>

<sup>32</sup> WSRW, “Fueling the Occupation” (June 2014), available at: <<http://www.wsrw.org>>

Morocco's national grid, Morocco becomes even more economically dependent on the territory it holds under military occupation. It is evident that Spain is manifestly failing its duties under the UN *Charter* in order to satisfy its own hard-nosed economic interests, rather than the interests of the people of Western Sahara for whom it bears responsibility.

### **Proposed Recommendations**

23. In view of the foregoing, Western Sahara Resource Watch and NOVACT respectfully request the Human Rights Council to commend the following recommendations to Spain in consequence of the present third cycle Universal Periodic Review:

- (1) To declare its continuing support for application of the organized international community's principal human rights and humanitarian law instruments in Western Sahara, including the UN *Charter*, the ICCPR, the ICESCR, the *Fourth Geneva Convention* and the *Rome Statute* of the International Criminal Court;
- (2) To lend effective substance to the right of self-determination, as guaranteed in the UN *Charter* and Common Article 1 of the ICCPR and ICESCR, Spain 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;
- (3) To assume its responsibility by taking a leading role in the Group of Friends of Western Sahara in the context of UN Security Council discussions about the "question" of Western Sahara, to assure a fulfilling of UN resolutions on self-determination;
- (4) To regularly report to the UN Secretary General about economic, social and educational conditions in Western Sahara pursuant to Article 73 of the UN *Charter* and UN General Assembly Resolution 1541 (14 December 1960);
- (5) To extend a cordial invitation to relevant UN Special Rapporteurs to visit the areas of Western Sahara under Moroccan control and east of the military berm;
- (6) As the colonial administering power responsible for the decolonization of Western Sahara and notwithstanding the role of the United Nations to administer a referendum of the Saharawi people for self-determination, Spain should undertake an independent, free-ranging and continuous assessment of human rights situation in Western Sahara that in part accounts for the impact of exploitation of the territory's resources on the human rights of the Saharawi people;
- (7) To restore the *status-quo-ante* of its early resource exploitation in the territory - in particular of the Bou Craa mine and reserves until 2002 - and to ensure full and transparent accounting of revenues of all resource-related activities in the territory, through the establishment of a Development Fund for Western Sahara;

- (8) To work in its continuing role as a colonial administering power to ensure that the Saharawi refugees at Tindouf and elsewhere have access to and benefit from revenues resulting from the exploitation of Western Sahara's natural resources;
- (9) To ensure specific and full implementation of the UN *Guiding Principles on Business and Human Rights* in the context of the exploitation of Western Sahara's natural resources;
- (10) To refrain from engaging in any economic activities in or relating to the territory of Western Sahara that do not have the free, prior and informed consent of the people of the territory, in compliance with international and recent EU jurisprudence;
- (11) To refrain from providing any *materiel* to Morocco for use in Western Sahara that jeopardizes the chances of ever exercising of the right to self-determination;
- (12) To ensure that any international agreement to which it is a member state or proposes to be a party which agreement may extend to the territory and coastal waters of Western Sahara unambiguously provides that the free and prior informed consent of the Saharawi people shall in every instance be assured before application of the agreement to Western Sahara;
- (13) To enact appropriate national legislation to ensure that Spanish individuals and corporations do not unlawfully participate in the taking of Western Sahara's resources;
- (14) To exclude companies that operate in occupied Western Sahara from public procurement agreements and public tenders' marketplaces;
- (15) To carry out rigorous controls of origin of products imported from Morocco, with a view to prevent any further imports from occupied Western Sahara;
- (16) To review and move to repeal all national laws in relation to Western Sahara that may conflict with or otherwise impede application in the territory of the foregoing human rights and humanitarian law instruments;
- (17) To appoint a senior level cabinet minister as Secretary of State for Western Sahara, charged to ensure cross-ministerial compliance with the duty to respect, protect and fulfill Spain's obligation to provide for self-determination in the territory, with a view to formally and legally completing the process of decolonization;
- (18) To ensure its criminal justice system, including relevant penal code and related statutes, continue to apply with clarity to Western Sahara and notably to the safeguarding of human rights and of natural resources in the occupied part of Western Sahara;

- (19) To ensure a full accounting of human rights in all territory under its responsibility and jurisdiction - including Western Sahara which *de jure* constitutes one-third of Spain's national territory - in the consultation exercise to prepare a national report for its fourth UPR cycle;
- (20) To ensure the legal status of the Saharawi as the indigenous population of its former 53rd province in the form of citizenship, residency, or refugee status, and end the any conceding of statelessness consistent with its accession to the *Convention on the Reduction of Statelessness*;
- (21) To undertake a review of its readmission agreement with Morocco with respect to Saharawi refugees and asylum-seekers, amending it as necessary to ensure human rights guarantees in line with international standards, in particular the principle of non-refoulement;
- (22) To actively engage to prevent deportations of Spanish citizens by Moroccan security forces from the territory over which it still holds colonial administrative responsibilities; and
- (23) To address historical injustices in Western Sahara and protect the rights of the victims of such injustices, both at national and international levels.

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