



Spanish Society for International
Human Rights Law

In special consultative status with the United Nations

Western Sahara: Violations of economic, social and cultural rights
Geneva, Palais des Nations, 25 June 2019

Statement by Prof. Carlos Villán Durán
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Ladies and gentlemen, dear friends:

Since 1976 a great part of the Non-Self-Governing Territory of Western Sahara is illegally occupied by Morocco, which refuses the Sahrawi people to exercise its right to self-determination. In accordance with Art. 1 of both Covenants, by virtue of this right the Sahrawi people shall freely determine its political status and freely pursue its economic, social and cultural development. It also shall freely dispose of its natural wealth and resources.

The prolonged military occupation produces flagrant and systematic violations of all human rights, including economic, social and cultural rights of the Sahrawi people. In 2006, an OHCHR Mission sent to Western Sahara and the Sahrawi refugees' camps concluded that the Sahrawi people are not only denied their right to self-determination, but equally are severely restricted from exercising a series of other rights and that almost all human rights violations and concerns with regard to the people of Western Sahara, stem from the non-implementation of the right to self-determination¹.

In 2015, the UN **Committee on Economic, Social and Cultural Rights** recommended that Morocco “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”; and recalled 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”².

The Committee also recommended that Morocco “take measures to ensure that the rights of Sahraouis refugees are respected upon their return”. It further recommended that 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”³.

¹ <http://www.arso.org/OHCHRrep2006en.pdf>

² Concluding Observations to the fourth periodic report of the Kingdom of Morocco (E/C.12/MAR/CO/4), adopted on 8 October 2015, para. 6(a).

³ *Ibidem*, para. 6(b).



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The Committee further recommended that Morocco “enable the Sahraouis to access their land and natural resources and rejoin their families”. It also urged Morocco “to expedite its mine clearance programme along the Berm⁴.”

In addition, the Committee recommended that Morocco “give effect to the Covenant in the domestic legal system”, including “information on judicial or administrative decisions taken in that regard”. It also encouraged Morocco “to conduct campaigns to raise awareness among judges, lawyers and the general population of the provisions of the Covenant and of its primacy over domestic laws so that it may be applied directly”, in accordance with its general comment No. 9 (1998) on the domestic application of the Covenant⁵.

The Committee also recommended that Morocco “adopt and apply a comprehensive anti-discrimination law, which should contain a general prohibition of all forms of direct and indirect discrimination”. In particular, Sahraouis should “enjoy the rights recognized in the Covenant, particularly access to employment, social services, health care and education”⁶.

The Committee reiterated to Morocco its recommendation to “bring article 288 of the Criminal Code into line with article 8 of the Covenant and make it easier to establish a trade unión”. It further recommended that Morocco “adopt legislation on the exercise of the right to strike and on trade unions” and “facilitate the establishment of trade unions on the basis of article 8 of the Covenant”⁷.

The Committee remained concerned about the fact that poverty continues to affect, inter alia, the Sahraouis. Morocco should “reduce poverty, in particular by adopting a human rights-based poverty reduction strategy that specifically targets the needs of disadvantaged and marginalized individuals and groups, allocating sufficient financial and other resources to their implementation and ensuring that these resources are fairly distributed among those affected by poverty”⁸.

The Committee also expressed concern about “the difficulties the Sahraouis experience in accessing education, especially at the university level”. Therefore, it recommended that Morocco “consider the specific needs of the Sahraouis with a view to providing them with an education that enables them to play a useful part in a free society and encourages understanding, tolerance and friendship between nations and ethnic groups”⁹.

⁴ *Ibidem*, para. 8. The Berm is a sand-wall fortified by anti-personnel mines built by Morocco to separate the Moroccan-controlled part of Western Sahara from the rest of the territory.

⁵ Concluding Observations to the fourth periodic report of the Kingdom of Morocco (E/C.12/MAR/CO/4), adopted on 8 October 2015, cit., para. 10.

⁶ *Ibidem*, para. 14 (a) and (d).

⁷ *Ibidem id.*, para. 34.

⁸ *Ibidem id.*, para. 42.

⁹ *Ibidem id.*, paras. 47-48.



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Finally, the Committee expressed its concern at the fact that “the Saharo-Hassani language and culture are not sufficiently supported”. Morocco should guarantee Sahraouis “full and unrestricted enjoyment of their right to take part in cultural life”; and “to protect cultural diversity” and permit Sahraouis “to preserve, develop, express and disseminate their identity, history, culture, language, traditions and customs”¹⁰.

In his last report to the Security Council, the **Secretary-General** noted “gaps in reporting on the situation of human rights in Western Sahara”¹¹ and concluded that “Independent, impartial, comprehensive and sustained monitoring of the human rights situation is necessary to ensure the protection of all people in Western Sahara”¹². He also reaffirmed “the United Nations effort to reach a just, lasting and mutually acceptable political solution to the conflict in Western Sahara that will provide for the self-determination of the people of Western Sahara”¹³.

Consequently, the **Security Council** stressed “the importance of improving the human rights situation in Western Sahara and the Tindouf camps”, and encouraged the parties “to work with the international community to develop and implement independent and credible measures to ensure full respect for human rights, bearing in mind their relevant obligations under international law”¹⁴.

It also decided “to extend the mandate of MINURSO until 31 October 2019”¹⁵. And called upon the parties to resume negotiations “with a view to achieving a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations”¹⁶.

Unfortunately, the Security Council did not provide MINURSO with the mandate of monitoring human rights in Western Sahara.

A recent NGO report analyzed the violations of the ESCR in Western Sahara, with a particular focus on the rights to work, health and education¹⁷. It concluded that the negative impact of the Moroccan occupation during more than 40 years has dramatically prevented the Sahraouis from enjoying basic human rights.

¹⁰ *Ibidem id.*, paras. 49-50.

¹¹ S/2019/282, of 1st April 2019, para. 66, footnote 1.

¹² *Ibidem*, para. 76.

¹³ *Ibidem id.*, para. 83.

¹⁴ S/RES/2468, of 30 April 2019, preambular paragraph 17.

¹⁵ *Ibidem*, operative paragraph 1.

¹⁶ *Ibidem id.*, operative paragraph 4.

¹⁷ Idoia Landaluce (coord.), *A gap in the wall: Collective report on violations of economic, social and cultural rights in Western Sahara under illegal occupation by Morocco*. Vitoria (Spain), EPS Comunicación, 2018. Available at https://issuu.com/saharaaskea/docs/agapinthewall_englishreport/50



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Another NGO report highlighted the effects of the exploitation and plundering of the fisheries resources of Western Sahara¹⁸. The report underscored the responsibility of Morocco, the European Union and its Member States in the exploitation of natural resources of the Sahraouis, without their consent or benefit.

To conclude, the persistent and systematic violations of ESCR in Western Sahara deserve to strengthen their international monitoring. To this purpose, we call upon the HR Council to establish the mandate of the **Special Rapporteur on the human rights situation in the Occupied Territory of Western Sahara**. The mandate should be active until the end of the Moroccan occupation. The competence of the mandate's holder should cover all human rights universally recognized, including the right to self-determination and ESCR.

The Special Rapporteur should visit the Territory at least twice a year and report on his or her conclusions and recommendations to the HR Council, the General Assembly and, through the Secretary-General, to the Security Council. The mandate's holder will be able to transmit to Morocco letters of allegations of human rights violations, as well as urgent actions, asking for the effective investigation of all allegations. Those found guilty of human rights violations should be accountable¹⁹.

Pending the decision of the Security Council to extend the mandate of MINURSO²⁰ with a component of human rights, the High Commissioner for Human Rights should be requested by the HR Council to establish a permanent Office in the Territory. In close co-operation with MINURSO, the Office shall collect and transmit to the Special Rapporteur all information pertinent to his or her mandate. In addition, the Office shall monitor the effective implementation of recommendations made by the mandate's holder.

Thank you very much for your attention.

¹⁸ Observatorio de Derechos Humanos y Empresas en el Mediterráneo (ODHE), *Los tentáculos de la ocupación. Informe sobre la explotación de los recursos pesqueros del Sáhara Occidental en el marco de la ocupación del Estado marroquí*. Barcelona, ODHE, 2019. Available at <http://www.odhe.cat/es/los-tentaculos-de-la-ocupacion/>

¹⁹ See VILLÁN DURÁN (C.) & FALEH PÉREZ (C.): «Un Relator Especial del Consejo de Derechos Humanos sobre la situación de los derechos humanos en el Sahara Occidental ocupado», in Bahía Mahmud Awah *et al.*, *Sahara Occidental. Del abandono colonial a la construcción de un estado*. Zaragoza, Pregunta Ediciones, 2019, p. 276. Available at http://aedidh.org/wp-content/uploads/2019/06/Sahara_Occidental_Del_abandono_colonial_a_la_construccion%CC%81n_de_un_estado.pdf

²⁰ The UN Mission for the Referendum in Western Sahara (MINURSO) was established by S/RES/690, adopted in April 1991.