

**THE HUMAN RIGHTS  
SITUATION IN OCCUPIED  
TERRITORIES OF WESTERN  
SAHARA**

**Responsibilities of Morocco,  
responsibilities of the international  
community and corporate  
responsibilities**

**EXECUTIVE SUMMARY**

January 2008

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# **THE HUMAN RIGHTS SITUATION IN OCCUPIED TERRITORIES OF WESTERN SAHARA**

## **Responsibilities of Morocco, responsibilities of the international community and corporate responsibilities**

### **INTRODUCTION**

The Western Sahara conflict appears to be forgotten. In fact, after more than thirty two years since Spain's withdrawal from the territory, it seems to have officially become a conflict that is off the agenda. One too many. Of no interest.

It's a safe bet that, just as stated in the "Mission Report of the United Nations High Commissioner for Human Rights in Western Sahara and the Tindouf refugee camps" after the visit to the region in May and June, 2006, (a document which for some strange reason has still not been made public by the Organization although its content is hardly unknown today to anyone who has studied the subject)<sup>1</sup>, "almost all human rights violations to the people of Western Sahara, under the de facto authority of the Moroccan Government or the POLISARIO Front, stem from the non realization of this fundamental human right", referring to the right to self-determination.

In any case, going beyond the purely political concerns for the future of the Saharawi people in the dispute with the Kingdom of Morocco, the universality principle of human rights implies that the defence of these must transcend the ideological or political sensibilities and identities of each side. In the framework of talks that have been resumed in recent months through the United Nations between the POLISARIO Front and Morocco, human rights do not appear to be on the table. Still, it should not be forgotten that an eventual political negotiation cannot overlook the human rights problems which ravage the territory's population. In Western Sahara, as in other places on the planet, there can be neither peace nor viable political concord without attending to human rights and ensuring repair for the victims.

### **FREEDOM OF MOVEMENT RESTRICTIONS IN A MILITARY OCCUPIED TERRITORY**

#### **One of many walls of shame.**

The Western Sahara is a territory occupied by the Moroccan military. The main barrier to freedom of movement in Western Sahara is a wall barely visible from the air and camouflaged to the same colour as the desert sand. It divides the Territory between the occupied zone and the "free" zone where the Saharawi Arab Democratic Republic authorities exercise their jurisdiction.

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<sup>1</sup> The Catalán version used for the elaboration of this report is the unofficial translation made for Um Draiga, Friends of the Saharawi People of Aragón.

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This wall is the fruit of the central military action of the Moroccan army that began in June, 1982 and developed during the climactic years of the armed conflict. The building of this castrating work was a key element in the war strategy of the Moroccan army.

The wall which divides Western Sahara is patrolled by a large number of Moroccan military effectives and a significantly inferior number of members of the Saharawi Army. The wall, along with the deplorable humanitarian situation of the refugees in the Tindouf camps, constitutes one of the major concerns for the General Secretary of the United Nations due to the minefield planted around it, whose existence is resulting in a loss of human life and producing great pain among the Saharawi people and members of the United Nations Mission for the Referendum in Western Sahara (MINURSO).

**Defenders of Saharawi human rights: a difficult and dangerous job.**

As denounced by various international human rights defence organizations such as Front Line, Human Rights Watch and Amnesty International<sup>2</sup>, as well as the United Nations High Commissioner for Human Rights, human rights associations in Western Sahara are the habitual target of repressive actions from Moroccan authorities.

In open confrontation with the universal parameters of human rights, Moroccan authorities frequently resort to intimidatory actions going as far as closing some human rights organizations' headquarters in Western Sahara and confiscating the passports of Saharawi activists who had planned to leave the Territories to participate in international forums with the specific intention of denouncing the grave human rights situation in the region.

To be precise, the Saharawi Section of the Forum for Truth and Justice, the Saharawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State and the Saharawi section of the Moroccan Association of Human Rights have seen their headquarters shut down, their investigations and accusations criminalized and many of their members persecuted and imprisoned.

In February, 2006, after suffering abuse at the hands of the police, El Mami Amar Salem was abandoned by Moroccan security forces on the border which separates Western Sahara from Mauritania, in "No Man's Land". Moroccan officials immediately confiscated his identity papers and he has not been allowed entry into the Territory since. In exchange for permission to enter Mauritania, the Kingdom of Morocco authorities forced his family to return to the border and hand over all their personal documents. This is the first time that Morocco has stripped a Saharawi of his passport outside Western Sahara Territories.

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<sup>2</sup> For more information, see the bibliography mentioned in the report.

## **ARBITRARY DETENTIONS, TORTURE AND OTHER ABUSE, FORCED DISAPPEARANCES AND THE FIGHT AGAINST IMPUNITY**

### **Defenders of Saharawi human rights: a difficult and dangerous job. (Bis).**

The signs of concern demonstrated by the Human Rights Committee, the United Nations Committee against Torture and other international human rights organizations are a clear indication that torture and ill-treatment are a constant in Moroccan detention centres in Western Sahara, a fact which does not prevent that “the officials who are guilty of such acts are generally liable to disciplinary action only, where any sanction exists.”. Especially disturbing is that “no independent inquiries are conducted in police stations and other places of detention in order to guarantee that no torture or ill-treatment takes place”<sup>3</sup>.

In Western Sahara territories human rights defendants and political activists are the prime targets of violent actions from police authorities in the form of illegal detention, torture and other forms of abuse.

When the “Saharawi Intifada” began in May, 2005, more than a hundred individuals were arrested during or in connection with the demonstrations. Around 90 were subsequently released without charges after being held for between several hours and several days. Some 25 were accused of criminal conspiracy, disruption of public order, damage to public property and other offences. Many of those detained claim to have been tortured or ill-treated, either to make them sign a confession, to dissuade them from continuing with the protests or as punishment for advocating Western Sahara’s independence from Morocco.

It is even more dangerous and difficult, if that is possible, for Saharawi women activists. The Saharawi woman has traditionally played a fundamental role in the development of the traditional Saharawi life, and still does today, both in the territories known as Western Sahara and in the refugee camps of Tindouf. Undoubtedly, this factor bears a direct relation to the way in which many Saharawi women have been and still are the object of grave abuses to their human rights.

One of the most recent cases of human rights violations against Saharawi women is that of the young student, 27-year-old Sultana Jaya. Sultana was an active participant in the student protests in Marrakech until, in a demonstration in May of 2007, she lost an eye. One of the police officers sent to suffocate the demonstration became enraged with Sultana and bludgeoned her right eye out of its socket with a truncheon. Accused of protesting with violence and spying for the POLISARIO Front, she was tried and at first condemned to eight months in prison which, after an appeal, was reduced to three, although thanks to a Swedish NGO's intervention she was able to leave the country and avoid serving the sentence.

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<sup>3</sup> Concluding observations of the Human Rights Committee, December 1, 2004, UN index: CCPR/CO/82/MAR, paragraph 14.

**A glance at the recent past. The fight against impunity for crimes committed during and after the armed conflict.**

In its 2004 report<sup>4</sup>, the United Nations Committee for Human Rights, as on previous occasions (in the 1994 and 1999 reports), showed its concern that those responsible for the forced disappearances of people originating from Western Sahara by agents under official Moroccan mandate have still not been identified, tried and punished.

Even though the Equity and Reconciliation Commission put together by King Mohammed VI as a truth commission issued a report in November 2005, and in spite of promises from the Moroccan government, to date no official and exhaustive list of the forced disappearances registered in Western Sahara has been published and no progress has been made on providing victims with effective access to justice and holding accountable those responsible for the crimes<sup>5</sup>.

International jurisprudence on the issue of human rights has stated repeatedly that in the quest for truth, justice and reparation for the victims of human rights violations, the respective functions of truth commissions and justice tribunals are not interchangeable and cannot be confused, but are complementary.

In this sense, Morocco's obligation according to the International Law of Human Rights is judicial collaboration between the Alaouite Kingdom and Spanish authorities to investigate and purge individual penal responsibilities for torture and genocide. The investigation of these crimes based on the universality principle has led to the recognition of their jurisdiction on October 29, 2007, by Magistrate-Judge Baltasar Garzón of the Central Instruction.

## **OMISSION OF PROCEDURAL GUARANTEES AND VIOLATION OF THE RIGHT TO DUE PROCESS**

Studies in the region carried out by diverse organisations like Amnesty International and the Spanish General Council of the Judiciary leave no doubt that in reality the inadequacies of the Moroccan judicial system, especially when it comes to trying Saharawi people, are structural and not mere occasional deficiencies<sup>6</sup>.

Similarly, the mission of the Office of the United Nations High Commissioner for Human Rights, based on their observations during a visit to the area in May and June, 2006, stated their concerns about the existence of serious deficiencies with regard to securing the right to a fair trial<sup>7</sup>.

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<sup>4</sup> Concluding Observations of the Human Rights Committee: Morocco, December 1, 2004, UN index: CCPR/CO/82/MAR, paragraph 12.

<sup>5</sup> Amnesty International Report 2007, "Morocco and Western Sahara", index AI: POL 10/001/2007.

<sup>6</sup> In the report information is given relating to diverse cases which are being followed up by Amnesty International.

<sup>7</sup> Mission report of the Office of the United Nations High Commissioner for Human Rights, September, 2006, paragraphs 20-26.

## **ECONOMICAL, SOCIAL AND CULTURAL RIGHTS AND THE PLUNDERING OF WESTERN SAHARA'S NATURAL RESOURCES**

One of the main links in the chain of abuses committed on the human rights of the Saharawi population is the plundering of their natural resources. Spawned by the relentless policy exercised by Morocco since the beginning of the occupation, this violation would not have been possible without the acquiescence and, on occasions, active participation of third countries like Spain, international organizations such as the European Union and numerous transnational businesses with economic interests in the zone.

The looting and erosion of Western Sahara's natural resources puts the development of the Saharawi people in serious crisis and questions the judicial duties of the Moroccan state in relation to the protection and realization of the economic, social and cultural rights in the territories where they exercise de facto authority, as in the case of Western Sahara.

During the last thirty years, bilateral agreements between Morocco and foreign states or private international companies have led to the rupture of the "permanent sovereignty over natural resources" principle, recognised in the United Nations General Assembly Resolutions and the International Pacts of 1966 concerning Civil and Political, and Economic, Social and Cultural Rights.

Among the varied methods of usurpation the most notorious are the concession pacts for the exploitation of the fishing banks off the Saharawi coast (as in the case of the Fishing Agreement between the European Union and Morocco of July, 2005) and hydrocarbon and phosphate prospecting in the territory. (Two examples of hydrocarbon prospecting are particularly noteworthy since they gave rise to the well-known report from the United Nations Legal Counsel, Hans Corell of January 29, 2002: the United States company Kerr-McGee and the French TotalFinaElf.) In none of these cases has the participation of the legitimate representatives of the Western Sahara people been sought.

## **CONCLUSIONS**

- In Western Sahara, the question of human rights runs parallel to the issues concerning the right to self-determination, though the universality principle of human rights compels us to look beyond the strictly political debates and appreciate the authentic human problem which derives from the grave situation of these rights in Occupied Territories of Western Sahara.
- A host of responsibilities and blame can be laid at the door of multiple political agents with respect to human rights in Western Sahara. Within the international community, leading powers such as the United States and the European Union and the States which comprise it have played a crucial role in sketching the political panorama of Western Sahara, and continue to do so, thus casting an

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undoubtedly malignant shadow over the reality of human rights. There is no doubt that Spain has a key role to perform as the Territory's "administrative power", a status it has never lost. In any case, the prime responsibility for what is happening in Western Sahara concerning human rights lies with the Kingdom of Morocco, due to its condition as "occupying authority".

- In tandem with the responsibility of the States, globalization gives a boost to the power quotient of transnational businesses enabling them to exert enormous pressure on public policies which, as a consequence, often result in aggressions to human rights, for which the companies must be held accountable. In the case of Western Sahara, certain transnational companies have played leading roles in the plundering of the natural resources of the Saharawi people.
- Defenders of human rights are a habitual target of repressive actions by the Moroccan authorities. The abuse to which women activists are subjected is especially disturbing. These violations to human rights take the form of restrictions to freedom of movement, freedom of expression and freedom of association. They also translate to torture and other ill-treatments and to the lack of procedural guarantees.
- The violation of the right to due process for detainees of Saharawi origin, fundamentally when they are human rights defenders or political activists, constitutes a pathological evil of the Moroccan judicial system in the Territories.
- An authentic reparation for the victims of abuse committed during the armed conflict and in subsequent years, especially in regard to the cases of forced disappearance, should be founded as much on the quest for truth as on the basic pillar of justice and the fight against impunity.
- Due to the close link that exists between the principle of sovereignty over human resources and the right to development, on one hand, and between this and economic, social and cultural rights on the other, it must be emphatically stated that the aggressive policy of usurpation of natural resources by Morocco constitutes a blatant aggression to the human rights of the Saharawi people.
- In Western Sahara, as in other places on the planet, there can be neither peace nor viable political concord between the parties without first finding a solution to the motives of concern regarding human rights and without guaranteeing the just reparation that the victims deserve.