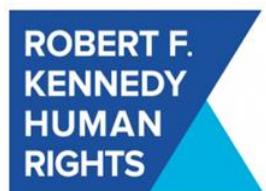


Alternative Report

On the Occasion of the Human Rights Committee's 2016 Review of the
Kingdom of Morocco's Implementation of the International Covenant on Civil
and Political Rights

Submitted on September 19, 2016

Robert F. Kennedy Human Rights
Collective of Sahrawi Human Rights Defenders
Sahrawi Association of Victims of Grave Violations of Human Rights Committed by Morocco
The Association of Families of Prisoners and Disappeared Sahrawis
Bureau des Droits de l'Homme au Sahara Occidental
Fondation Danielle Mitterrand/France Libertés
French Association of Friendship and Solidarity with African Peoples
AdalaUK



Signatories of This Report

Robert F. Kennedy Human Rights (RFK Human Rights) is a nongovernmental organization based in Washington, D.C. Founded in 1968 as a living memorial, it strives to achieve Robert F. Kennedy's vision of a more just and peaceful world. Robert F. Kennedy Human Rights' core programs focus on the power of the individual and providing sustained advocacy, litigation, and capacity-building support to grassroots leaders to advance social justice movements around the globe.

The **Collective of Sahrawi Human Rights Defenders** (CODESA) is a grassroots nongovernmental organization based in El- Aaiún/Western Sahara, whose registration has been denied by Moroccan authorities. Its members are former disappeared persons and political prisoners. CODESA's objectives are to: document the violations of and attacks on human rights in the Western Sahara territories occupied by Morocco; disseminate and promote the culture of human rights principles and values; contribute to the construction of a modern civil society that believes in peace and peaceful, nonviolent resistance; and defend the legal and inalienable right of the Sahrawi people to self-determination, as recognized by international law.

The **Sahrawi Association of Victims of Grave Violations of Human Rights Committed by the State of Morocco** (ASVDH) is a nongovernmental organization based in El-Aaiún which defends the interests of victims of enforced disappearances and all victims of grave violations of human rights. Its mission is to defend the rights of victims and their beneficiaries, to promote a culture of universal human rights, to lead the youth in a nonviolent struggle to assert their rights, and to provide psychological support to individuals, especially women, who have been "disappeared."

The **Association of Families of Prisoners and Disappeared Sahrawis** (AFAPREDESA) is a human rights NGO created in 1989 in the Sahrawi refugee camps and is principally focused on questions relating to forced disappearances, arbitrary detentions, and torture in Western Sahara. AFAPREDESA is an observer for the African Commission of Human and Peoples' Rights as well as a member of the International Coalition against Forced Disappearances (ICAED).

Fondation Danielle Mitterrand/France Libertés was created by Danielle Mitterrand in 1986, France Libertés is a non-profit foundation that has consultative status with the Economic and Social Council (ECOSOC) of the United Nations. France Libertés' mission is to defend human rights and the common good, and in particular the fundamental right of everyone to access to water. The Fondation Danielle Mitterrand contributes to building a more interdependent world.

The **Bureau des Droits de l'Homme au Sahara Occidental** (BIRDHSO) is an international nongovernmental organization based in Geneva. Its work focuses principally on the various UN human rights mechanisms in order to draw their attention to human rights violations in Western Sahara, including the special procedures, treaty bodies, Human Rights Council, and High Commissioner for Human Rights.

French Association of Friendship and Solidarity with African Peoples (AFASPA) is a French anticolonial organization that is independent of governments and parties in France and Africa. It was founded in 1972, is based in Bagnolet, and has regional committees. Its purpose

is to inform French public opinion about African realities, support the independence struggles of African peoples, and denounce violations of human and peoples' rights. As such, it has dispatched observers to the trials of Sahrawi activists before Moroccan courts.

Adala UK is a British organization that aims to raise awareness of the conflict and of human rights violations in Western Sahara. It works with a number of Sahrawi human rights activists who are based in the occupied territories of Western Sahara and in Morocco. Adala UK gives the Sahrawi human rights movement a unified voice at an international level, predominantly by organizing and participating in speaker events and by sending letters and petitions to the appropriate decision makers and authorities.

* * * *

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A. Introduction

The above-listed nongovernmental organizations and associations submit this report in connection with the Committee's review of the Kingdom of Morocco's implementation of the International Covenant on Civil and Political Rights (ICCPR) in the Non-Self-Governing Territory of Western Sahara. This report addresses the following rights enshrined in the ICCPR: the rights to self-determination and to freely dispose of natural resources (Article 1); the right to life (Article 6); the prohibition on torture (Article 7); the right to be protected from arbitrary detention (Article 9); the right to humane treatment of persons deprived of their liberty (Article 10); the right to freedom of movement (Article 12); the right to equality before courts and tribunals and to a fair trial (Article 14); the right to privacy (Article 17); the rights to freedom of expression and peaceful assembly (Articles 19 and 21); and the right to freedom of association (Article 22).

Our review of the Committee's prior Concluding Observations with regard to the Kingdom of Morocco has revealed several gaps in the Committee's treatment of the rights of the Sahrawi people by Morocco. In this report, we provide information based on data gathered by the signatories to this report, interviews with sources in Western Sahara, and publically available research conducted in the territory by academics and NGOs. Many of our sources have requested to remain anonymous over fears of harassment and detention if their identity is known.

We also include an analysis of the legal and historical framework that should guide this Committee's review with regard to violations of the ICCPR in Western Sahara. In this regard, we believe that the Committee's analysis of Israel's violations of the Covenant in the Occupied Territories is especially pertinent.¹

We conclude each of the sections below with a list of recommendations we urge the Committee to adopt.

B. The Covenant's Application in Western Sahara

Since the Spanish withdrawal from the former Spanish Sahara in 1976, Morocco has exercised varying levels of control over the territory of Western Sahara. Today, Morocco occupies roughly 80% of Western Sahara.² As a State party to the ICCPR, the Kingdom of Morocco is obligated to implement the treaty's provisions in any territory where it exercises effective control.

Article 1 expressly contemplates the situation presented in Western Sahara, by providing that "States Parties [...] including those having responsibility for the administration of Non-Self-

¹ Israel administers the Palestinian territory as an occupied territory, while Morocco claims Western Sahara as a part of its own sovereign jurisdiction. Both, however, exercise control over territories, acquired by force, and in violation of the right to self-determination of the peoples of those territories. While distinctions can be drawn between Israel's actions in the Occupied Territories and Morocco's actions in the Western Sahara, there are also important commonalities. These include the Kingdom of Morocco's maintenance of a barrier that excludes a sizable proportion of the Sahrawi people from their homeland, its encouragement of Moroccan resettlement in the territory, and its expropriation of natural resources. The Committee commented on these issues in its 2014 Concluding Observations with regard to Israel, but has thus far refrained from addressing these same issues with regard to Morocco's occupation of Western Sahara. See Human Rights Committee, Concluding Observations of the Human Rights Committee: Israel, 21 Nov. 2014, UN Doc. CCPR/C/ISR/CO/4, ¶ 17.

² CIA World Fact Book, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/wi.html>.

Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall protect that right....”³ This Committee has already found that States Parties’ obligations under the ICCPR extend to all of the territories and populations that are effectively under their control.⁴ The International Court of Justice (ICJ) reaffirmed this principle in its 2004 advisory opinion concerning Israel’s construction of a wall in Palestine, concluding that “the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory” regardless of an ongoing conflict.⁵ Using various forms of a control test, other international bodies have recognized a similar underlying principle: control creates responsibility.⁶

In 1979, the UN General Assembly urged the Kingdom of Morocco to end its “occupation” of Western Sahara, and UN officials have categorized the Kingdom as the sole administering power of the territory.⁷ The Kingdom manages all aspects of governance, including domestic security and foreign relations, and has entered into agreements with foreign states and transnational corporations regarding the exploitation of Western Sahara’s natural resources.⁸ There is no requirement that the State’s jurisdiction first be accepted as valid by the

³ International Covenant on Civil and Political Rights, art. 1., ¶ 3, Dec. 19 1966, 999 U.N.T.S. 173.

⁴ Human Rights Committee, Concluding Observations of the Human Rights Committee: Israel, 21 August 2003, UN Doc. CCPR/C/78/ISR, ¶ 11 (noting that “the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party’s authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law”).

⁵ See International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, ¶ 111 (July 9, 2004). In interpreting the scope of article 2(1), the ICJ observed that “while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory. Considering the object and purpose of the International Covenant on Civil and Political Rights, it would seem natural that, even when such is the case, States parties to the Covenant should be bound to comply with its provisions. The constant practice of the Human Rights Committee is consistent with this.”

⁶ Human Rights Comm., Gen. Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/ Add.13, ¶ 10 (May 26, 2004) (“[A] State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party.”); Human Rights Comm., Concluding Observations: United States of America, ¶ 10, UN Doc. CCPR/C/USA/CO/3 (Dec. 18, 2006) (noting the Committee’s concern about the restrictive view taken by the United States with respect to denial of rights for individuals under its jurisdiction but not in its territory); Loizidou v. Turkey, 310 Eur. Ct. H.R. (ser. A) at ¶ 62 (1995) (Judgment on Preliminary Objections) (rejecting Turkey’s jurisdictional argument that the Convention for the Protection of Human Rights and Fundamental Freedoms does not apply to its actions in northern Cyprus because Cyprus is not within Turkey’s national territory); Coard v. United States, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/Ser.L/V/II.106, doc. 3 rev. ¶ 37 (1999) (finding jurisdiction for a claim based on the American Declaration of the Rights and Duties of Man where the United States allegedly detained individuals during its invasion of Grenada in 1983); see generally, John Cerone, *Human Dignity in the Line of Fire: The Application of International Human Rights Law During Armed Conflict, Occupation, and Peace Operations*, 39 VAND. J. TRANSNAT'L L. 1447, 1471–85 (2006); Sarah H. Cleveland, *Embedded International Law and the Constitution Abroad*, 110 Colum. L. Rev. 225, 248–70 (2010) (examining international law on the effective control test to determine possible extraterritorial applications of the U.S. Constitution).

⁷ G.A. Res. 34/37, ¶ 5, UN Doc. A/RES/34/37 (Nov. 21, 1979); Hans Corell, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, Addressed to the President of the Security Council, ¶ 7, UN Doc. S/2002/161 (Feb. 12) [hereinafter *Corell Letter*]. Mr. Corell, Under-Secretary-General for Legal Affairs, examined the issue in the context of the exploitation of Western Sahara’s natural resources, where he asserted that the Kingdom must respect the interests of the population of Western Sahara. *Id.*, ¶ 22. Though basing his opinion on Article 73 of the United Nations Charter, he clarified that the same principles were reaffirmed by the ratification of subsequent covenants, including the ICESCR.

⁸ See STEPHEN ZUNES & JACOB MUNDY, *Western Sahara: War, Nationalism, and Conflict Irresolution* 251 (Syracuse Univ. Press ed., 2010); *The Resource Curse*, WESTERN SAHARA RESOURCE WATCH (Sept. 16, 2009), <http://www.wsrw.org/a137x519>.

international community for the Covenant's obligations to be triggered. In fact, the UN General Assembly, the ICJ and the Organization of African Unity (now the African Union) have all recognized that Morocco cannot exercise legal sovereignty over Western Sahara.⁹

As the *de facto* occupying power in a Non-Self-Governing Territory, the Kingdom of Morocco must respect and implement the rights protected by the ICCPR in Western Sahara. Nevertheless, the NGOs and associations listed above wish to emphasize that, under international law, the Kingdom of Morocco has no legitimate sovereignty over Western Sahara.¹⁰

C. Observations Regarding Violations of the ICCPR in Western Sahara

1. Article 1, para. 1: The Right to Self-Determination

a. The rights of the Western Saharan people to self-determination

Art. 1, para. 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The history of Western Sahara is a history of rights recognized, but not realized. To a large extent, the international community has tolerated Morocco's persistent refusal to acknowledge the rights of the Western Saharan people and its opposition to even the most modest effort to provide them redress. This "Moroccan exceptionalism" should no longer be tolerated. This Committee, in particular, should demand accountability for the clear and long-standing violations of Article 1 of the Covenant.

The UN General Assembly has repeatedly recognized Western Sahara's right to self-determination due to its status as a Non-Self-Governing Territory.¹¹ In 1979, the UN General Assembly noted that the Moroccan control over Western Sahara rose to the level an "occupation."¹² The territory of Western Sahara is claimed by Morocco to constitute a part of the pre-colonial "Greater Morocco," and today, Morocco administers the territory as if it were

⁹ International Court of Justice, Advisory Opinion on Western Sahara, 1975 I.C.J. 12 (Oct. 16), available at, <http://www.icj-cij.org/docket/index.php?sum=323&p1=3&p2=4&case=61&p3=5> [hereinafter *ICJ Advisory Opinion on Western Sahara*]; UN General Assembly, Question of Spanish Sahara, Resolution 3458, A/RES/3458 (XXX), 2435th Plenary Meeting, 10 December 1975 [hereinafter *2435th Plenary Meeting*]; The Assembly of Heads of State and Government of the Organization of African Unity, meeting in its Eighteenth Ordinary Session in Nairobi, Kenya, from 24 to 27 June 1981, Resolution on Western Sahara, AHR/Res. 103 (XVIII) (24 to 27 June, 1981).

¹⁰ ICJ Advisory Opinion on Western Sahara *supra* note 9. No state or intergovernmental institution has recognized Morocco as a sovereign power over Western Sahara.

¹¹ For example, UN General Assembly Resolution 2983 reaffirmed "the inalienable right of the people of the Sahara to self-determination and independence." UN General Assembly, Question of Spanish Sahara, Resolution 2983, A/RES/2983 (XXVII), 2110th Plenary Meeting, 14 December 1972. *See also, 2435th Plenary Meeting, supra* note 9 ("Reaffirms the inalienable right of the people of Spanish Sahara to self-determination, in accordance with General Assembly resolution 1514 (XV)"; Susan M. Akram, *Self-Determination, Statehood, and the Refugee Question under International Law in Namibia, Palestine, Western Sahara and Tibet in Still Waiting for Tomorrow: The Law and Politics of Unresolved Refugee Crises* (eds. Susan Akram and Tom Syring 2014), 92-95 [hereinafter Akram].

¹² *Question of Western Sahara*, G.A. Res. 34/37, UN Doc. A/RES/34/37 (Nov. 21, 1979).

a part of Morocco proper.¹³ Morocco's claim, however, runs counter to customary international law, which prohibits territory from being acquired by force.¹⁴

The right of the Sahrawi people to self-determination was reinforced in the 1975 advisory opinion of the ICJ on Western Sahara.¹⁵ The ICJ concluded that the principle of self-determination requires "a free and genuine expression of the will of the peoples of the Territory."¹⁶ This principle was reiterated in the ICJ's Advisory Opinion on Kosovo, where the Court concluded that people of Non-Self-Governing Territories and people subject to alien subjugation, domination, and exploitation have a right to independence.¹⁷ Given that ICJ opinions are binding on all UN institutions as a matter of law, any proposal the UN supports for self-determination for Western Sahara must allow for the "free and genuine expression" of the Sahrawi people.¹⁸

In 2004, following its review of the Kingdom of Morocco's fifth periodic report, the Committee stated that it "remains concerned about the lack of progress on the question of the realization of the right to self-determination for the people of Western Sahara" and urged the Kingdom of Morocco to allow the people of Western Sahara "to enjoy fully the rights recognized by the Covenant."¹⁹ Despite the Committee's exhortation more than sixteen years ago to "move expeditiously and co-operate fully in the completion of the necessary preparations for the referendum (articles 1 and 2),"²⁰ the Kingdom of Morocco is unwilling to resolve the question of self-determination in conformity with binding principles of international law.

In its State Report, the Kingdom of Morocco announces that "Sahara has been an integral part of the Kingdom of Morocco since time immemorial"²¹ and characterizes it as a "southern province."²² It asserts that it has a "margin of discretion in regard to the forms and procedures by which the right to self-determination is to be implemented," and that self-determination does not equate with independence.²³ It proposes to give Western Sahara a certain measure of

¹³ See Jacob Mundy, *Moroccan Settlers in Western Sahara: Colonists or Fifth Column?*, 15 ARAB WORLD GEOGRAPHER 95, 96–101 (2012) [hereinafter *Settlers*].

¹⁴ UN Charter art. 2(4). The clearest statement to this effect was given by the UN General Assembly's "No territorial acquisition resulting from the threat or use of force shall be recognized as legal," see *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, G.A. Res. 2625/XXV, UN Doc. A/RES/25/2625 (Oct. 24, 1970) [hereinafter *Friendly Relations*]; S.C. Res. 242, UN Doc. S/RES/242 (Nov. 22, 1967); Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J.14, 181 (June 27).

¹⁵ ICJ Advisory Opinion on Western Sahara, *supra* note 9, at ¶162.

¹⁶ *Id.*

¹⁷ ICJ Advisory Opinion on Accordance with International Law of the Unilateral Declaration of Independence of Kosovo, 2010 I.C.J. Reports 403 (July 22), at ¶79, available at <http://www.icj-cij.org/docket/files/141/15987.pdf>. The ICJ observed:

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, domination and exploitation . . . A great many new States have come into existence as a result of the exercise of this right.

¹⁸ See also Akram, *supra* note 11, at 96.

¹⁹ Human Rights Committee, 82nd session, Concluding Observations of the Human Rights Committee: Morocco, Dec. 1, 2004, UN Doc. CCPR/CO/82/MAR, ¶ 8.

²⁰ Human Rights Committee, Concluding Observation of the Human Rights Committee: Morocco, Nov. 1, 1999, UN Doc. CCPR/C/79/Add.113 ¶ 8.

²¹ Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Morocco, Aug. 31, 2015, UN Doc. CCPR/C/MAR/6 ¶ 31 [hereinafter "Morocco 2015 State Report"].

²² *Id.* at ¶34.

²³ *Id.* at ¶30.

regional “autonomy” through a vaguely-defined process of “advanced regionalization.”²⁴ This, it claims, satisfies its obligations to respect the right to self-determination.

What the Kingdom fails to acknowledge is that the right to self-determination necessitates the freedom of the people to choose among the forms of self-determination the UN General Assembly recognized more than sixty years ago. Resolution 1541 specifies that “[a] Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.”²⁵ In other words, there can be no predetermined solution to the right of self-determination. Rather, the people of Western Sahara have the right to choose among these three options for its political status according to UN standards.²⁶ This right to choose through a referendum was reaffirmed in the 1991 Peace Accords adopted by the Security Council in Resolution 690 that ended the armed conflict between the Moroccan government and the Polisario Front.²⁷

Under international law, the Sahrawi people are entitled to determine their own political future through a referendum on self-determination. The UN General Assembly, the ICJ, and the Organization of African Unity (now the African Union) have all recognized that Morocco cannot exercise sovereignty over the Non-Self-Governing Territory of Western Sahara and have called for a referendum to be organized in order for the Sahrawi people to pronounce itself on its political status.²⁸ Additionally, as noted by the European Union General Court in a recent decision, “neither the UN nor any other international body has granted the Kingdom of Morocco a mandate to administer this territory.”²⁹

b. The Kingdom of Morocco’s Extended Autonomy Initiative Proposal Fails to Meet UN Standards.

In its report to this Committee, the Kingdom of Morocco claims that it would grant Western Sahara a degree of autonomy through the “Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region.”³⁰ According to the State Report, the initiative “is the product of a wide-ranging process of consultation.”³¹ Notably, Morocco seems to have retreated from

²⁴ *Id.* at ¶40

²⁵ G.A. Res. 1541 (XV), Principles Which Should Guide Members in Determining Whether or not an Obligation Exists to Transmit the Information called for under Article 73e of the Charter, UN Doc. A/4651 (Dec. 14, 1960).

²⁶ In 1953, Resolution 742 also stressed that “[T]he manner in which Territories . . . can become fully self-governing is primarily through the attainment of independence” G.A. Res. 742 (VIII), Factors which should be Taken Into Account in Deciding whether a Territory is or is not a Territory Whose People not yet Attained a Full Measure of Self-Government, UN Doc. A/2556 (Nov. 27, 1953).

²⁷ See generally Report of the Secretary-General on the situation concerning Western Sahara, 18 June 1990, S/21360, §§ 1, 23, 31, 47(f); Report of the Secretary-General on the situation concerning Western Sahara, 19 April 1991, S/22464, §9, 37.

²⁸ See *id.*; UN General Assembly, Question of Spanish Sahara, Resolution 3458, A/RES/3458 (XXX), 2435th Plenary Meeting, 10 December 1975; The Assembly of Heads of State and Government of the Organization of African Unity, meeting in its Eighteenth Ordinary Session in Nairobi, Kenya, from 24 to 27 June 1981, Resolution on Western Sahara, AHR/Res. 103 (XVIII) (June 24 to 27, 1981).

²⁹ Action for Annulment, *Frente Polisario v. Council*, Case T-512/12, ¶ 233, European Union General Court, Dec. 10, 2015,

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=172870&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=227279>.

³⁰ Morocco 2015 State Report, *supra* note 21, ¶ 35.

³¹ *Id.* at ¶ 36. Morocco characterizes this as a “wide-ranging process of consultation at national and local level, involving the political parties and the people and elected representatives of the Saharan region.” Yet the report

its claim, advanced in its State Report to the Committee on Economic, Social and Cultural Rights, that the question of autonomy would be decided by the population through a referendum.³²

The “Autonomy Initiative” falls far short of what is required under international law to meet the Kingdom’s obligations under Article 1 of the ICCPR. Most importantly, Morocco’s proposal fails to recognize the cardinal principle of free choice that undergirds the right to self-determination. The Sahrawi people must be given the opportunity to choose among all the UN-approved forms of self-determination, *including independence*. Thus, the “regionalization” of Western Sahara would not lead to a “free and genuine expression” of the Sahrawi people, as determined by the ICJ.³³

In 2015, at a speech to mark the fortieth anniversary of the Green March, King Mohammed VI said that the autonomy initiative “is the most Morocco can offer... Those who are waiting for any other concession on Morocco’s part are deceiving themselves.”³⁴ Morocco’s rigid refusal to comply with its international legal obligations violates the Sahrawi people’s right to self-determination and jeopardizes international peace.³⁵ Presenting independence as an option for the people of Western Sahara would not be a “concession” on the part of Morocco, as mischaracterized by King Mohammed VI; it is what the law of Non-Self-Governing territories requires in order for the people of the territory to realize their right to self-determination.

The Committee on Economic, Social and Cultural Rights (CESCR) recognized the inadequacy of Morocco’s proposal in its 2015 Concluding Observations, where it stated: “While taking note of the Moroccan Extended Autonomy Initiative, 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.”³⁶ Consequently, the CESCR called upon Morocco to:

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 political 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

fails to list the parties and individuals who were consulted, and notably omits any mention of the refugees residing in the camps in Algeria.

³² See Committee on Economic, Social and Cultural Rights, Fourth periodic Rep. of the State of Morocco, Mar. 24, 2014, E/C.12/MAR/4, § 26.

³³ ICJ Advisory Opinion on Western Sahara, *supra* note 9, at ¶162; Akram, *supra* note 11, at 96.

³⁴ *On 40th Anniversary of Green March, King Mohammed VI Lauds Autonomy Plan, Pledges to Turn Western Sahara Into African Hub*, MARKETWIRED (Nov. 7, 2015), <http://www.marketwired.com/press-release/on-40th-anniversary-green-march-king-mohammed-vi-lauds-autonomy-plan-pledges-turn-western-2071332.htm>.

³⁵ Though there are circumstances under which internal autonomy measures satisfy a people’s right to self-determination, the history of the conflict in Western Sahara and the Kingdom’s oppression of the Sahrawi people renders this impossible. Given Western Sahara’s status as a Non-Self-Governing Territory subject to colonial domination, Morocco cannot rely on precedent like the Québec case, where internal measures to grant greater autonomy were sufficient to satisfy the self-determination issue. See *Re Secession of Quebec*, [1998] 2 SCR 217 (Supreme Court of Canada).

³⁶ 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 [hereinafter Concluding Observations on the Fourth Periodic Report].

Territories and to respect that right, in conformity with the provisions of the Charter of the United Nations.³⁷

In response, Morocco accused the CESCR of “flagrant partiality”³⁸ and “categorically reject[ed] the observations, recommendations, and conclusions presented by the Committee”³⁹ on self-determination and the militarized wall that cleaves Western Sahara in two.³⁹

In its very essence, self-determination is a collective pursuit of dignity and freedom. The Sahrawi people are entitled to this pursuit, and most importantly, in choosing the way to exercise this right. Yet the Kingdom of Morocco has hindered even the United Nations’ efforts to promote the right to self-determination in the region through the United Nations Mission for Organization of a Referendum in the Western Sahara (MINURSO), as described below.

c. The Kingdom of Morocco Has Continually Obstructed the Mandate of MINURSO to Organize a Referendum

In 1991, the Kingdom and the Polisario agreed to a UN-brokered ceasefire.⁴⁰ Shortly thereafter, the Security Council adopted Resolution 690, calling for a referendum in Western Sahara and establishing the United Nations Mission for Organization of a Referendum in the Western Sahara (MINURSO) to protect the ceasefire and to implement the referendum.⁴¹

The Security Council resolution tasked MINURSO with identifying eligible voters who could participate in the referendum, the most controversial of the outstanding issues. In the years after the ceasefire, MINURSO sought to identify eligible voters but was thwarted by Morocco’s efforts to undermine its work.⁴² In 2000, the Security Council effectively abandoned the registration process without holding Morocco responsible for its failure to live up to its commitment to support a referendum.⁴³

MINURSO’s ineffectiveness is directly linked to the consensual basis of its mandate. MINURSO was created on the basis of Chapter VI of the United Nations Charter, and more specifically on the basis of Article 34. The Security Council’s use of Chapter VI places MINURSO in a situation of dependence vis-a-vis the Kingdom of Morocco. All of its

³⁷ *Id.* at ¶ 6.

³⁸ Comments and Responses of the Moroccan Government to the Observations and Recommendations of the Committee on Economic, Social and Cultural Rights, Following the review of the 4th national report related to the implementation of ICESCR provisions, http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MAR/INT_CESCR_COB_MAR_21960_E.pdf.

³⁹ *Id.* at 4.

⁴⁰ UNITED NATIONS MISSION FOR THE REFERENDUM IN WESTERN SAHARA, MINURSO BACKGROUND, <http://www.un.org/en/peacekeeping/missions/minurso/background.shtml> (last visited September 19, 2016).

⁴¹ S.C. Res. 690, para. 4, UN Doc. S/RES/690 (Apr. 29, 1991).

⁴² ZUNES & MUNDY, *supra* note 8 at 192-203; Fatemeh Ziai, *Keeping It Secret: The United Nations Operation in Western Sahara*, HUMAN RIGHTS WATCH (Oct. 1995), available at, <http://www.hrw.org/reports/1995/Wsahara.htm>. See also, ZUNES & MUNDY, *supra* note 8 at 192–93 (“Morocco, under false pretenses, presented thousands of its own citizens as native Western Saharans—both Arabs and Berbers in addition to ethnic Sahrawis of non-Western Saharan origin.... Out of the candidates from Morocco proper, only 5 percent qualified to vote, and a little less than half of Moroccan-sponsored candidates from the occupied Western Sahara qualified to vote.”); See, e.g., Section (C)(1)(d).

⁴³ ZUNES & MUNDY, *supra* note 8 at 193.

activities are subordinated to Morocco's good will and Morocco can to a certain extent determine the scope of its prerogatives.⁴⁴

The Kingdom's obstruction of MINURSO has affected the mission at the highest administrative levels as well. In May 2014, the UN Secretary-General appointed Kim Bolduc as the new head of MINURSO. The Kingdom refused her appointment and blocked her entry until February 2015.⁴⁵ For nearly ten months, Morocco forced her to carry out her duties from United Nations headquarters in New York.⁴⁶ This is not the first time the Kingdom has denied entry to a representative of the United Nations: in 2012, it similarly barred the Secretary-General's Special Envoy, Ambassador Christopher Ross, from entering the region until a 2015 phone conversation with Secretary-General Ban Ki-Moon resulted in a negotiated re-entry.⁴⁷ Most recently, Morocco expelled dozens of MINURSO staff members from the country and asked the MINURSO military liaison office in Dakhla to promptly close after UN Secretary-General Ban Ki-Moon's expression of sympathy for the plight of the Sahrawi refugees, and his reference to Western Sahara as under "occupation."⁴⁸

As of the submission of this report, Morocco has allowed 25 staff members of MINURSO to return to Morocco, but the President of the Security Council has said that MINURSO has not yet been returned to "full functionality," as required by Security Council Resolution 2285.⁴⁹

Although MINURSO remains in Western Sahara, its mandate is a source of controversy. While many argue that it should take a stronger role in rights monitoring, the Kingdom asserts its only role is to maintain the ceasefire. The latter effectively limits MINURSO's focus to military matters, where the balance of forces since the ceasefire has swung strongly in favor of the Kingdom. In 2013, MINURSO noted reports of human rights violations and the precarious nature of the ceasefire. Consequently, the UN Secretary-General concluded that there was a "need for independent, impartial, comprehensive and sustained monitoring of the

⁴⁴ Morocco also plays an active role diplomatically in limiting the mandate of MINURSO. As an illustrative example, Morocco has repeatedly shown hostility towards any human rights protection mechanisms. All the initiatives, undertaken by civil society and some Security Council members to broaden its mandate in this way have been met with intense resistance by other Security Council members, notably France, after intense pressure from Morocco.

⁴⁵ See, e.g., *Western Sahara: UN Special Representative Kim Bolduc Embarks On Visit to Saharawi Refugee Camps*, ALLAFRICA (Feb. 6, 2015), <http://allafrika.com/stories/201502061536.html>;

⁴⁶ See Press Release, United Nation Mission for the Referendum in Western Sahara, SRSG Kim Bolduc Arrives in Laayoune (Feb. 6, 2015) (<https://minurso.unmissions.org/LinkClick.aspx?fileticket=aLhbWmZXOxs%3d&tabid=9530&mid=12538&language=en-US>); *UN Security Council Analyzes Diplomatic Breakdown in Western Sahara*, GLOBAL POST (Oct. 28, 2014), <http://www.globalpost.com/dispatch/news/agencia-efe/141028/un-security-council-analyzes-diplomatic-breakdown-western-sahara>;

⁴⁷ *Sahara: Christopher Ross in Rabat*, SAHARA NEWS (Oct. 20, 2015), <http://sahara-news.org/1204-sahara-christopher-ross-in-rabat.html>; *Morocco Sahara Conflict*, WALL STREET INTERNATIONAL (June 19, 2016), <http://wsimag.com/economy-and-politics/20634-morocco-sahara-conflict>.

⁴⁸ In March 2016, the Secretary-General visited the Sahrawi refugee camps in Algeria, where thousands of Sahrawi reside. He commented on the difficult conditions of the camps, and noted that "[t]he children who were born at the beginning of *this occupation* are now 40 or 41 years old. So forty years of a very difficult life" (emphasis added). Secretary-General's remarks to press with Foreign Minister of Algeria, March 6, 2016, <http://www.un.org/sg/offthecuff/index.asp?nid=4406> (reprinting remarks in French and English). *Morocco Asks That UN Close Western Sahara Military Office*, THE NEW YORK TIMES, (MAR. 21, 2016) http://www.nytimes.com/2016/03/22/world/africa/morocco-asks-that-un-close-western-sahara-military-office.html?_r=0.

⁴⁹ *UN wants more staff to return to Western Sahara mission*, Yahoo News (July 26, 2016), <https://www.yahoo.com/news/un-wants-more-staff-return-western-sahara-mission-232458049.html>.

human rights situations....”⁵⁰ Attempts by any party to expand MINURSO’s mandate to include this monitoring have been met with a strong negative reaction from the Kingdom.

The impasse over the mandate has led to uncertainty over the nature of the activities that MINURSO may carry out within the territory. Its official role is peacekeeping, but efforts to implement this mandate are continually thwarted by the Kingdom, which restricts opportunities for the mission to interact with civil society. In his 2014 report to the Security Council, the Secretary-General noted that, “the ability of MINURSO to form its own picture of the situation in Western Sahara for the purpose of operational awareness [. . .] remains limited.”⁵¹

The Kingdom has attempted to divert MINURSO’s attention from human rights violations within the Moroccan-occupied territory by alleging that terrorist groups are operating out of Polisario-run refugee camps in Algeria.⁵² While testifying in front of Congress in 2012, the Coordinator for Counterterrorism at the United States Department of State characterized these reports as “spurious.”⁵³

At each renewal of the mission’s mandate, the Kingdom has sought a rollover to maintain the status quo. Intense lobbying has led some to believe that the mission has become the “security blanket” of the Kingdom⁵⁴—empowered to maintain a divided peace amongst the parties, but powerless to intervene to stop or even report human rights violations that occur in the open.

Leaked diplomatic cables from the Kingdom reveal the intensity of Morocco’s campaign to maintain the current limited mandate. The political pressure placed on MINURSO by the Kingdom and its allies in the UN has not gone unnoticed by those serving on the mission.⁵⁵ Former UN officials have spoken about the potential consequences of offending the Kingdom, which include censure and termination.⁵⁶ Worse yet, many of the Kingdom’s most brutal repressions are targeted at Sahrawis who participate in demonstrations asking for an expanded mandate.

The Kingdom’s acts make it clear that MINURSO’s current mandate is inadequate to promote a peaceful resolution to the situation in Western Sahara. The Security Council has the authority to strengthen the MINURSO mandate on the basis of Chapter VII, which would enable the mission to act without prior consultation with the Kingdom of Morocco and therefore to actively ensure that the latter respect its obligations.⁵⁷ The Council has already had occasion in the past to broaden the mandate of a peace-keeping mission—notably in the

⁵⁰ UN Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, ¶ 116, UN Doc. S/2013/220 (April 8, 2013).

⁵¹ UN Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, ¶ 48, S/2014/258 (April 10, 2014).

⁵² ZUNES & MUNDY, *supra* note 8, at 52, 164.

⁵³ LRA, *Boko Haram, al-Shabaab, AQIM, and Other Sources of Instability in Africa: Hearing Before the H. Comm. On Foreign Affairs*, 112th Cong. (2012) (statement of U.S. State Dep’t Coordinator for Counterterrorism Daniel Benjamin).

⁵⁴ *Western Sahara: Ambassador Bolton’s Meeting with Peter Van Walsum, SRSG Bastagli*, WIKILEAKS, https://wikileaks.org/plusd/cables/06USUNNEWYORK1018_a.html (last visited April 22, 2015).

⁵⁵ ZUNES & MUNDY, *supra* note 8, at 149.

⁵⁶ Ziai, *supra* note 42

⁵⁷ Invoking Chapter VII would allow the Security Council to achieve its plan of peaceful conflict resolution by settling the disputes between the parties that are hindering the process. It is difficult to imagine that after over 20 years of negotiations an agreement can be reached. Only the intervention of a third party with coercive authority will allow a fair and equitable solution to be reached.

case of the MONUC in the Democratic Republic of Congo.⁵⁸ More recently, we have seen the Security Council rely on the existence of human rights violations in some states to acknowledge a threat against international peace and trigger Chapter VII.⁵⁹

Peacekeeping operations must be carried out in conformity with human rights. This is why most missions proceed with a mandate to protect human rights.⁶⁰ The broadening of MINURSO's mandate would enable impartial monitoring of the human rights situation in Western Sahara. It is essential for independent observers not invested in the conflict to observe, document and report on the rights violations suffered by the Sahrawi population and its human rights defenders. Many NGOs support this proposal: for example, in a letter addressed to Security Council members in April 2013, Human Rights Watch asked the Council to "put an end to this anomalous situation" and broaden MINURSO's mandate to include human rights protection.⁶¹ For several years, Robert F. Kennedy Human Rights, the Movement against Racism and for Friendship Between Peoples (MRAP) and France Libertés – Fondation Danielle Mitterrand have repeatedly advocated for such an expansion before the Human Rights Council.

d. The Kingdom of Morocco's Movement of Settlers into Western Sahara Undermines the Right to Self-determination

Over the course of its four-decade occupation, Morocco has facilitated the transfer into Western Sahara of 200,000 to 300,000 Moroccan citizens; Moroccan settlers now constitute the majority population of the occupied territory. This settlement—highlighted by the two so-called "Green Marches," whereby Morocco sent waves of Moroccans into the territory—are "highly suggestive of a state-coordinated campaign to populate Western Sahara."⁶² As of 2004, Moroccan settlers accounted for approximately 75–80% of the population of occupied Western Sahara.⁶³

The Israeli occupation and settlement of the Palestinian territory offers an instructive analogy to the situation of occupied Western Sahara. Since 1967, Israel has occupied the West Bank, the Gaza Strip and East Jerusalem, encouraging and enabling the settlement therein of Israeli civilians. Despite Israel's withdrawal from Gaza in 2005, roughly 350,000 Israeli settlers still reside in the West Bank and East Jerusalem.⁶⁴

⁵⁸ On 1 July 2010, by its Resolution 1925 of 23 May 2010, the UN Security Council changed the name of the MONUC (United Nations Organization Mission in the Democratic Republic of the Congo) to MONUSCO to account for the country entering into a new phase. The new Mission was authorized to use all necessary means to fulfill its mandate (<http://www.un.org/fr/peacekeeping/missions/monusco/mandate.shtml>), which included protecting civilians, humanitarian personnel and human rights defenders exposed to imminent threats of physical violence and helping the government to stabilize and consolidate peace.

⁵⁹ This was the case with its intervention in Libya. Following the Human Rights Council's Resolution A/HRC/RES/S-15/1 of 25 February 2011, the UN Security Council adopted Resolution 1973 (2011) on 17 March 2011 on the basis of Chapter VII of the UN Charter, exhorting the Libyan authorities to "*comply with their obligations under international law, including international...human rights...law.*"

⁶⁰ See http://pbpu.unlb.org/pbps/library/capstoneDoctrine_eng.pdf. The Capstone doctrine, which aims at regulating the framework of Peacekeeping Operations, states that as a matter of principle human rights law are inherently part of the objectives and principles defined in the United Nations Charter. It is on the basis of this doctrine that several current UN operations occurred (MANUA, MINUK, MINUL, MINUSS, MONUSCO and ONUCI) include effective human rights protection mechanisms.

⁶¹ Letter from Human Rights Watch to All Members of the Security Council, April 17, 2013, available at <https://www.hrw.org/news/2013/04/17/letter-un-security-council-western-sahara>.

⁶² *Settlers*, *supra* note 13, at 99, 104, 106–108.

⁶³ See *id.* at 110.

⁶⁴ *Netanyahu and the Settlements*, New York Times, March 12, 2015, available at

The occupations and settlement enterprises of Israel and Morocco implicate grave matters of international law. Both Israel and Morocco exercise control over territories whose indigenous populations are entitled, under international human rights law, to self-determination. At the same time, both occupations constitute territorial acquisitions by the use of force and therefore implicate international humanitarian law.

Article 49(6) of the Fourth Geneva Convention prohibits occupying Powers from “deport[ing] or transfer[ing] parts of its own civilian population into the territory it occupies.”⁶⁵ Article 2 of the Fourth Geneva Convention applies “to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”⁶⁶ In its 2004 advisory opinion on the construction of a wall in the occupied Palestinian territory, the ICJ accordingly held that Israel’s settlement policy violated Article 49(6) of the Fourth Geneva Convention.⁶⁷ Similarly, this Committee has stated that Israel’s settlement policies undermine the right to self-determination and has demanded that Israel “cease [...] the transfer of its own population thereto, and take measures aimed at the withdrawal of all settlers from those territories.”⁶⁸ The Committee, in its review of Israel’s actions in the occupied territories, has noted that both international human rights and international humanitarian law are applicable, yet it has remained silent on Morocco’s decades-long policy of moving Moroccan settlers into Western Sahara.⁶⁹

It bears mentioning here a critical difference between Israel’s settlement enterprise and Morocco’s settlement enterprise. While the former is predicated on differentiating the land and legal structures between Israelis and Palestinians, the latter is geared toward the integration of Western Sahara into Morocco proper. Still, both the Israeli settlement enterprise and the Moroccan settlement enterprise affect what Article 49(6) of the Fourth Geneva Convention sought to prevent. By diluting the demographic makeup of the occupied territories, the settlement enterprises imperil the peoples’ right of self-determination. In occupied Western Sahara, Moroccan resettlement has had a direct impact on the Western

http://www.nytimes.com/interactive/2015/03/12/world/middleeast/netanyahu-west-bank-settlements-israel-election.html?_r=0

⁶⁵ According to the Commentary of the International Committee of the Red Cross (ICRC), Article 49(6) was intended “to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories. Such transfers worsened the economic situation of the native population and endangered their separate existence as a race.” OSCAR UHLER & HENRI COURSIER, COMMENTARY ON THE GENEVA CONVENTIONS OF 12 AUGUST 1949 VOLUME IV (1958).

⁶⁶ Article 6 of the Fourth Geneva Convention also provides that “in occupied territories, the application of the present Convention will cease a year after the end of military operations; however, the Occupying Power will be bound for the duration of the occupation, as long as it exercises governmental functions on the territory in question, by the following articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, and 143.”

⁶⁷ See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *supra* note 5, at ¶ 120.

⁶⁸ Concluding Observations of the International Covenant of Civil and Political Right: Israel ¶ 17, UN Doc. CCPR/C/ISR/CO/4 (Nov. 21, 2014).

⁶⁹ See, e.g., *id.* “The Committee regrets that the State party continues to maintain its position on the non-applicability of the Covenant to the Occupied Territories, by claiming that the Covenant is a territorially bound treaty and does not apply with respect to individuals under its jurisdiction, but outside its territory, despite the interpretation to the contrary of article 2, paragraph 1, supported by the Committee’s established jurisprudence, the jurisprudence of the International Court of Justice (ICJ) and State practice. It is further concerned at the position of the State party that international human rights law does not apply when international humanitarian law is applicable.”

Saharan people's access to resources and employment. In addition, it has further complicated efforts to determine which individuals are eligible to vote in a referendum on self-determination.

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 1(1) of the Covenant. We also ask the Committee to urge the Kingdom of Morocco:

- To accept, without reservations, a schedule proposed by the Secretary-General, with the aid of MINURSO, in order to enable within a reasonable timeframe, the organization of a referendum allowing the Sahrawi people to exercise their right to self-determination unambiguously and in a democratic manner.
- To accept an expanded mandate for MINURSO that would permit the monitoring of human rights in the occupied territory, consistent with nearly all contemporary UN peacekeeping missions.
- To cease the transfer of Moroccan settlers in Western Sahara and take measures aimed at the withdrawal of all settlers.

2. Article 1, para. 2: The Right to Freely Dispose of Natural Resources

Art. 1, para. 2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The UN General Assembly has clearly stated that the exploitation and pillaging of natural resources in colonial or Non-Self-Governing Territories by foreign economic interests compromises the integrity and the prosperity of these territories, and that "any administering Power that deprives the colonial peoples of Non-Self-Governing Territories of the exercise of their legitimate rights over their natural resources, or subordinates the rights and interests of those peoples to foreign economic and financial interests, violates the solemn obligations it has assumed under the Charter of the United Nations."⁷⁰ Under international law, administering powers must respect two conditions for the exploitation of natural resources in a Non-Self-Governing Territory: first, the resources must be exploited for the benefit of the peoples in the territory; and second, the resources must be exploited in the peoples' name, or in consultation with their representatives.⁷¹ The latter condition requires that the population—or its legitimate representatives—be consulted *prior* to such exploitation.

⁷⁰ UN General Assembly Res. 48/46, Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, 22 March 1994, § 2, 48 UN GAOR Supp. (No. 49) at 124; UN General Assembly Res. 49/40, Activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, 30 January 1994, § 2.

⁷¹ Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, Legal Counsel Hans Corell, addressed to the President of the Security Council, S/2002/161, § 24 ("The recent State practice, though limited, is illustrative of an *opinio juris* on the part of both administering Powers and third States: where resource exploitation activities are concluded in Non-Self-Governing Territories for the benefit of the peoples of these territories, on their behalf, or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering Power, and in conformity with the General Assembly resolutions and the principle of 'permanent sovereignty over natural resources' enshrined therein."). See also *id.* § 9 ("Members of the United Nations who assumed responsibilities for the administration of these territories have whereby recognized the principle that the interest of the inhabitants of these territories are paramount, and have accepted

Morocco violates these principles in the occupied territories of Western Sahara. The encouragement of Moroccan resettlement into the Non-Self-Governing Territory of Western Sahara is an aggravating factor in the exploitation of the territory's resources, as well as a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.⁷²

Article 1, para. 2 will be addressed at length by an alternative report submitted by Western Sahara Resource Watch; to avoid duplication, we have refrained from discussing the same material here.

We ask the Committee to adopt the recommendations suggested in that report, including to urge the Kingdom of Morocco:

- To refrain from entering into contracts with private entities and foreign governments for the purposes of exploiting Western Sahara's natural resources, unless and until the legitimate representatives of the Sahrawi people have assented to such contracts, particularly with regards to the:
 - o Exploitation and export of phosphates;
 - o Negotiation of fisheries agreements;
 - o Authorization of oil exploration, exploitation, or extraction, including any of these activities in the territorial waters of Western Sahara;
 - o Exploitation and irrigation of lands to grow fruits and vegetables, and in particular tomatoes;
 - o Exportation of sand, salt, crystal rocks, algae, and uranium.
- To provide transparent and verifiable data to civil society on how the benefits from the exploitation of these resources are shared with the Sahrawi population.
- To accurately label products exported from Western Sahara as products of Western Sahara.

3. Articles 6 and 9: The Right to Life and the Right to be Free from Arbitrary Detention.

Art. 6, para. 1: Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Art. 9, para. 1: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

Art. 9, para. 2: Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

as a sacred trust the obligation to promote to the utmost the well-being of the inhabitants of these territories."). The Legal Service of the European Parliament has also noted that "compliance with international law requires that economic activities related to the natural resources of a Non-Self-Governing Territory are carried out for the benefits of the people of such Territory, and in accordance with their wishes." Legal Opinion of the Legal Service of the European Parliament, 13 July 2009, ¶ 27.

⁷² Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949, art. 49.

Art. 9, para. 3: Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Art. 9, para. 4: Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Art. 9, para. 5: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Over the last few decades, hundreds of people from Western Sahara have been subjected to enforced disappearances in violation of Articles 6 and 9. This Committee has made clear that States parties have an obligation to provide “specific and relevant information concerning the steps taken” to establish the fate and whereabouts of missing persons and to locate their mortal remains.⁷³ The Kingdom of Morocco has failed to meet its obligation to conduct these investigations. Numerous organizations estimate that as many as 500 Sahrawis remain missing, with little or no information as to their whereabouts.⁷⁴ For many of these victims, the Kingdom of Morocco has failed to conduct an adequate investigation regarding their fate, contrary to its obligations under this Covenant⁷⁵ as well as Article 3 of the International Convention for the Protection of all Persons from Enforced Disappearances, to which Morocco is also a State party.⁷⁶ It has likewise failed to prosecute the perpetrators of enforced disappearances, as mandated by the Convention on Enforced Disappearances.⁷⁷ An independent team from the Spain identified eight bodies found in mass graves at Meheris without assistance from the Moroccan government.⁷⁸

⁷³ *Ičić v. Bosnia and Herzegovina*, Communication No. 2028/2011, CCPR/C/113/D/2028/2011 (2015), ¶ 9.6.

⁷⁴ Human rights organizations and governmental bodies have released differing estimates of the number of Sahrawi who remain missing. See, e.g., EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, EMHRN MISSION REPORT: THE HUMAN RIGHTS SITUATION IN MOROCCO AND THE WESTERN SAHARA 26 (2015) (noting that “[s]everal NGOs have put the number of missing persons whose fate is still unknown at 551”); CARLOS MARTÍN BERISTAIN & FRANCISCO ETXEBERRIA GABILONDOLO, MEHERIS: A POSSIBILITY OF HOPE: MASS GRAVES AND THE FIRST SAHRAWI DISAPPEARED WHO HAVE BEEN IDENTIFIED (SUMMARY), at 5 (Sept. 2013), [http://publicaciones.hegoa.ehu.es/assets/pdf2s/298/Meheris_SUMMARY_\(Ingles_Francés_arabe\).pdf?13789015](http://publicaciones.hegoa.ehu.es/assets/pdf2s/298/Meheris_SUMMARY_(Ingles_Francés_arabe).pdf?13789015) (noting there are “over 400” Sahrawi victims of enforced disappearance); African Comm. on Human & Peoples’ Rights, Rep. of the Fact-Finding Mission to the Sahrawi Arab Democratic Republic, ¶ 35-36 (Sept. 24-28, 2012), http://www.achpr.org/files/sessions/12th-eo/mission-reports/promotion_mission-2012/mission_report_sahrawi_cpta_eng.pdf.pdf (noting that while Sahrawi witnesses claimed there were at least 500 remaining victims of enforced disappearance, the Moroccan National Human Rights Commission had only recognized 352 such cases); HUMAN RIGHTS WATCH, *supra* note 78, at 42-43 (noting that the former President of Equity and Reconciliation Commission estimates the numbers of missing or “disappeared” Sahrawi to be much lower than estimates provided by NGOs).

⁷⁵ See Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), ¶ 18.

⁷⁶ International Convention for the Protection of All Persons from Enforced Disappearance art. 6, Dec. 20, 2006, 2761 U.N.T.S. 3; see also BERISTAIN & GABILONDOLO, *supra* note 74, at 7.

⁷⁷ International Convention for the Protection of All Persons from Enforced Disappearance, *supra* note 76, at art. 6.

⁷⁸ See BERISTAIN & GABILONDOLO, *supra* note 74, at 5 (noting that Morocco had provided “fragmented, limited and partial information” regarding the fate and whereabouts of 207 of these victims in a report issued by the

In 2011, the Kingdom of Morocco amended its Constitution to prohibit enforced disappearances,⁷⁹ but it has not yet made enforced disappearances a crime under the Penal Code.⁸⁰ Moreover, the Constitution fails to incorporate the definition of enforced disappearance provided in Article 2 of the International Convention for the Protection of all Persons from Enforced Disappearance.⁸¹

The case of El Hafed El Kotb is one of many unresolved enforced disappearances. According to his family, Mr. El Kotb was disappeared from his home in 1992 by Moroccan authorities led by Officer Hariz El Arbi. In 2010, the CCDH (now Conseil National des Droits de l'Homme (CNDH)) issued a report noting that Mr. El Kotb was arrested by the police and died at the hospital, and offering compensation to the family.⁸² The report failed to indicate how he died and who was responsible. Mr. El Kotb's family has sought information on his supposed death from the Ministry of Health, written to prosecuting authorities, and requested that an investigation be launched into his disappearance. They have also demanded proof of death or access to where the body was buried. The family has refused all compensation.⁸³ Morocco has never carried out a full investigation of his disappearance, nor has it punished the perpetrators. Hariz El Arbi was reportedly promoted to chief officer in Dhakla and remains in a position of authority.⁸⁴

Since this Committee last reviewed the Kingdom of Morocco's implementation of the Covenant, there have been several new cases of enforced disappearances. In December 2005,

Human Rights Advisory Council (HRAC) in December 2010). *See also* Human Rights Council, Rep. of the Working Group On Enforced or Involuntary Disappearances, ¶ 45, UN Doc. A/HRC/13/31/Add.1 (Feb. 9, 2010), http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-31-Add1_fr.pdf (noting complaints that the Equity and Reconciliation Commission had failed to fully investigate cases of enforced disappearance in Western Sahara, and observing that the ERC had cancelled its only public meeting scheduled to take place in Western Sahara). For an overview of the work of the Equity and Reconciliation Commission, whose mandate was to investigate enforced disappearances and arbitrary detentions in Morocco between 1956 and 1999, see generally HUMAN RIGHTS WATCH, MOROCCO'S TRUTH COMMISSION: HONORING PAST VICTIMS DURING AN UNCERTAIN PRESENT (Nov. 2005),

<https://www.hrw.org/sites/default/files/reports/morocco1105wcover.pdf>.

⁷⁹ Jefri J. Ruchti, trans., Draft text of the Constitution adopted at the Referendum of 1 July 2011 (HeinOnline World Constitutions Illustrated Library 2011), http://www.constitutionnet.org/files/morocco_eng.pdf. Article 23 provides, in pertinent part: “*No one may be arrested, detained, prosecuted or condemned outside of the cases and forms provided by the law. Arbitrary or secret detention and [enforced] disappearance are crimes of the greatest gravity and expose their authors to the most severe punishments. Any detained person has the right to be informed immediately, in a fashion which is comprehensible to him, of the reasons [motifs] of his detention and of his rights, including that of remaining silent. He must benefit, as well, from juridical assistance and of the possibility of communication with his relations, in accordance with the law.*” *See also* Rep. of the Working Group on Enforced or Involuntary Disappearances Addendum, Follow-up report to the recommendations made by the Working Group, Missions to El Salvador and Morocco, UN Doc. A/HRC/22/45/Add.3 (Mar 1, 2013) http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.45.Add.3_EFS.pdf.

⁸⁰ Rep. of the Working Group on Enforced or Involuntary Disappearances, *supra* note 79, at ¶ 18.

⁸¹ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2761 U.N.T.S. 3, provides:

“enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

⁸² CARLOS MARTÍN BERISTAIN & FRANCISCO ETXEBERRIA GABILONDO, SABER AL FIN: FOSAS COMUNES, DESAPARICIÓN FORZADA Y DERECHO A LA VERDAD EN EL SÁHARA OCCIDENTAL 49 (Sept. 2015).

⁸³ Telephone Interview with Hamma Alqotb, brother of El Hafed El Kotb (Apr. 14, 2016).

⁸⁴ *Id.*

15 young Sahrawi disappeared during an attempt to illegally immigrate to the Canary Islands. Their families alleged that they were arrested by the Moroccan police and Royal Navy.⁸⁵ According to a report submitted to the UN Working Group on Enforced or Involuntary Disappearances, the fifteen Sahrawi were all participants in the 2005 Intifada who were seeking to publicize human rights violations in Western Sahara. Their families have sought information from the Moroccan authorities as to their whereabouts, to no avail.⁸⁶

In addition, two mass graves have recently been discovered. In February 2013, a shepherd found human remains scattered over the sands in the area of Fedret Leguiaa. A forensic investigation confirmed the existence of two mass graves containing the remains of several Sahrawi who had been “disappeared” in 1976.⁸⁷ A published report on the investigation illustrates the inadequacy of Morocco’s response to the cases of missing Sahrawi:

The report of the Equity and Reconciliation Commission (*Instance Equité et Réconciliation* - IER, 2006) does not provide information on this case. No members from that institution interviewed relatives of these victims who were in the Tindouf camps. Of the eight arrested people who have gone missing and who are included in this case of the Fadret Leguiaa graves, the aforementioned list from the Moroccan CCHR, published online in 2010, provides some data on four of them. About the rest no information is provided, although they were arrested on the same day and in the same place.⁸⁸

On December 18, 2015, Spanish experts discovered three new mass graves in the territory of Western Sahara. According to Omar Abdeslam, the president of the Sahrawi Association for Prisoners and Families of the Disappeared (AFAPREDESA), the exhumation of the skeletons and their autopsy analysis are in the first stage. The first mass grave contains ten people. The largest of the three contains sixty skeletons of Sahrawi victims who were buried alive.⁸⁹ Morocco has made no public comments on the discovery of these graves.

⁸⁵ Working Group on Enforced or Involuntary Disappearances, Report on Enforced or Involuntary Disappearances, Case No. 10002788, 13 January 2010 (on file with authors); Telephone Interview with Nhabouha Lakhli, spokesperson of the committee of the family of the disappeared and the sister of two of the fifteen Sahrawi (April 15, 2016). Ms. Lakhli provided further clarification regarding the status of the fifteen Sahrawi. She explained that the families of the fifteen disappeared received an anonymous tip informing them that the fifteen were first detained at the headquarters of the El-Aaiún navy and then at Temara, a detention center near Rabat. On February 22, 2006, the families filed a complaint against Morocco in the local court, in El-Aaiún. The families were called to the court in El-Aaiún three times; February 2006, 2012, and 2014. They were informed that some bodies were discovered on the shore and the authorities wanted to run DNA tests. The families refused DNA testing unless it was carried out by an impartial party. They also asked the court for permission to see the bodies or to read the report, to know what condition the bodies were in and why an autopsy or fingerprinting had not been used to reveal the identities. According to Ms. Lakhli, Morocco has refused these requests.

⁸⁶ Working Group on Enforced or Involuntary Disappearances *supra* note 85.

⁸⁷ BERISTAIN & GABILONDOLO, *supra* note 74, at 11–13. Also, in February 2015, ASVDH contacted the Moroccan National Human Rights Council regarding the discovery of human remains near El-Aaiún.

⁸⁸ *Id.* at 10. According to ASVDH, the IER has only processed twenty cases of Sahrawi who have been disappeared.

⁸⁹ RFK HUMAN RIGHTS, WESTERN SAHARA: REPORTED HUMAN RIGHTS VIOLATIONS JULY 1, 2015 – DECEMBER 31, 2015, at 14 (Jan. 2016),

http://rfkcenter.org/media/filer_public/6b/01/6b01c129-6075-42ad-a3f8-30818c35553b/western_sahara_human_rights_periodic_report-july-december_2015.pdf;

Descubren tres fosas communes en el Sahara Occidental, LA VANGUARDIA (Dec. 18, 2015), available at,

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Articles 6 and 9 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To publish and make available data on reported cases of enforced disappearances in Western Sahara from 2004 to present. For each reported case, include (1) the name of the disappeared; (2) the efforts made by Morocco to investigate the circumstances surrounding the disappearance; (3) the status of any prosecution of the perpetrators; and (4) the nature and amount of compensation provided to the victims and/or their next of kin.
- To take all measures necessary to review complaints of enforced disappearances filed with the authorities since 1991, investigate such cases, prosecute the responsible parties with criminal sanctions, and adequately compensate the victims or their next of kin and provide transparent and verifiable data on such actions to civil society.

4. Articles 7 and 10: Torture; Cruel, Inhuman or Degrading Treatment; and the Right to Humane Treatment of Persons Deprived of Their Liberty

Art. 7, para. 1: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Art. 10, para. 1: All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Under Article 7 of the Covenant, State parties must not only prohibit torture and inhumane treatment but must investigate allegations of torture, prevent the introduction of evidence obtained through torture, punish the perpetrators, and provide redress for victims within the general spirit of Article 2(3). The Kingdom of Morocco has failed to comply with these international obligations.

Since the Committee last reviewed Morocco's implementation of the Covenant, human rights organizations have reported that hundreds of Sahrawi have been subjected to police torture or cruel and degrading treatment.⁹⁰ Reports of torture have continued unabated since Morocco ratified the Optional Protocol to the Convention Against Torture in 2014.⁹¹ Over the last two years alone, human rights organizations have documented several dozen cases in which Sahrawi detainees, including minors, were tortured by the police.⁹² In February 2013, the Special Rapporteur on Torture found that "torture and ill-treatment were used to extract

<http://www.lavanguardia.com/politica/20151218/30901567585/descubren-tres-fosas-comunes-en-el-sahara-occidental.html>; *Crimes committed by Morocco: Three new mass graves discovered in Sahrawi territories*, ALGERIA PRESS SERVICE (Dec. 18, 2015), <http://www.aps.dz/en/world/9915-crimes-committed-by-morocco-three-new-mass-graves-discovered-in-sahrawi-territories>.

⁹⁰ Juan E. Méndez (Special Rapporteur on torture), *Rapport du Rapporteur Special sur la torture et autres peines ou traitements cruels, inhumains ou dégradants*, UN Doc. A/HRC/22/53/Add.2 (Feb 28, 2013) [hereinafter Special Rapporteur on Torture]; JOANNA CHRISTIAN ALLAN & HAMZA LAKHAL, ACTING WITH IMPUNITY: MOROCCO'S HUMAN RIGHTS VIOLATIONS IN WESTERN SAHARA AND THE SILENCE OF THE INTERNATIONAL COMMUNITY 6 (April 2015), <https://saih.no/assets/docs/Acting-With-Impunity-Western-Sahara-report.pdf>.

⁹¹ Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec 18, 2002, 2375 U.N.T.S. 237; Amnesty Int'l, *Shadow of Impunity: Torture in Morocco and Western Sahara* 6–7, AI Index MDE 29/001/2015 (May 18, 2015); ALLAN & LAKHAL, *supra* note 90, at 18.

⁹² ALLAN & LAKHAL, *supra* note 90, at 18.

confessions and that protestors were subjected to excessive use of force by Moroccan law-enforcement officials. The testimonies received indicate that members of the Sahrawi population are specifically, but not exclusively, victims of such violations.”⁹³

For example, on March 23, 2013, Abdelkrim Mbairkat was arrested for carrying the Sahrawi flag in a peaceful demonstration in Smara avenue in El-Aaiun. He was attacked by police officers both in uniform and plain clothes. He was thrown into a van, stripped naked, beaten, kicked, insulted, abused, and threatened with rape. He was also injected with an unknown substance.⁹⁴

Sahrawi children have also been victims of torture and police brutality amounting to cruel, inhuman, or degrading treatment or punishment. Adala UK conducted 300 interviews with Sahrawi children and families between February and October 2014. Children between the ages of four and seventeen were interviewed.⁹⁵ Children reported incidents of verbal, physical, and psychological abuse. They reported being handcuffed, beaten, kicked, and threatened with rape.⁹⁶ Mahmoud, thirteen years old, told investigators that he was beaten with a bar, hand, and baton. He was kicked until he could no longer move, and then he was dragged off his feet and thrown on the floor repeatedly. He broke his arm trying to protect his head.⁹⁷ Moroccan authorities abducted some of the children from their homes between midnight and five AM. As a result, children described being too scared to sleep; when they did fall asleep, they had constant nightmares.⁹⁸

At least eight Sahrawi prisoners have died in suspicious circumstances since the Committee last reviewed Morocco’s implementation of the Covenant.⁹⁹ For example, Sahrawi prisoner Abdul Baqi reportedly died in 2014 as a result of severe torture in a prison in El-Aaiún.¹⁰⁰ The Kingdom of Morocco has failed to investigate the cause of his death, and the death of the other seven Sahrawi prisoners, and prosecute the perpetrators.¹⁰¹

Article 293 of the Moroccan Code of Criminal Procedure declares inadmissible any confession obtained through torture.¹⁰² The existence of such provisions seems to have very little effect on judges or prosecutors. In August 2014, the UN Working Group on Arbitrary Detention reported that torture and ill-treatment are commonly used to extract confessions of guilt in criminal cases involving Sahrawi detainees.¹⁰³ Ali, a fourteen-year-old, reported that he confessed to throwing stones after mistreatment by the police. “It wasn’t true but after

⁹³ Special Rapporteur on Torture, *supra* note 90, at ¶ 62.

⁹⁴ Telephone Interview with Abdelkrim Mbairkat, Sahrawi activist and advocate of human rights in Western Sahara (Apr. 14, 2016).

⁹⁵ ADALA UK, THE SITUATION FACED BY SAHRAWI CHILDREN UNDER MOROCCAN OCCUPATION IN WESTERN SAHARA 3 (Jan. 2015).

⁹⁶ *Id.* at 6–9.

⁹⁷ *Id.* at 11.

⁹⁸ *Id.* at 5.

⁹⁹ Local NGOs report that fifty-three to seventy-one Sahrawi have died in Moroccan detention as a result of torture between 1975 and 2013. U.S. DEP’T OF STATE, WESTERN SAHARA 2013 HUMAN RIGHTS REPORT 2 (2014), <http://www.state.gov/j/drl/rls/hrpt/2013/nea/220383.htm>; ALLAN & LAKHAL *supra* note 90 at 18.

¹⁰⁰ ALLAN & LAKHAL, *supra* note 90, at 18.

¹⁰¹ *Id.*

¹⁰² Special Rapporteur on Torture, *supra* note 90, at ¶ 27.

¹⁰³ Rep. of the Working Group on Arbitrary Detention Addendum: Mission to Morocco, ¶ 30, UN Doc. A/HRC/27/48/Add.5, (Aug. 4, 2014),

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A-HRC-27-48-Add5_en.doc [hereinafter Rep. of the Working Group on Arbitrary Detention Addendum].

being hit so much I just told them I did it so they would stop.”¹⁰⁴ Several Sahrawi children reported being forced to sign papers in languages they did not understand. Abu Jihad Abdidi signed and wrote his name on thirteen pages written in French and Berber, even though he did not understand either language.¹⁰⁵ Sahrawi involved in demonstrations or associated with promotion of the right to self-determination are typical targets of security forces.

Police assaults often combine physical beatings with insults and humiliation. Nguia El Haouassi¹⁰⁶ (also known as Nguia Mohamed) was abducted on August 27, 2009 by police officers Khalid Barakt and Aziz Anouch. They drove her to the area of Sakia El Hamrand and handed her over to other police officers in plain clothes. They blindfolded her, beat her brutally, verbally abused her, and interrogated her about her views on Morocco and Western Sahara. Nguia claims agents of the Moroccan secret services were also present; although she could not see them, she identified them from their voices. Nguia was violently beaten because she refused to record a video calling Sahrawi human rights activists a group of separatists. The officers tore off her clothes, leaving her naked while they continued to torture her. The entire episode was allegedly videotaped. Nguia was continuously beaten until she agreed to record a statement. She was abandoned around 2:00 AM and left naked on the outskirts of El-Aaiún.¹⁰⁷

More recently, on October 15, 2014, Abdelahy Toubali was cornered in a small, narrow street during a peaceful demonstration. The agents arrived in an official car but wore plain clothes. Mr. Toubali was beaten, kicked, insulted, and abused continuously until he fainted. Later, he was found by some Sahrawi who took him to the hospital. After a few hours, the hospital discharged Mr. Toubali but refused to give him a medical certificate indicating that he had sustained injuries. Mr. Toubali eventually obtained a medical certificate from a private doctor. Mr. Toubali’s injuries were so severe that he could not move for sixteen days.¹⁰⁸

Although Articles 74(8) and 135(5) of the Moroccan Code of Criminal Procedure require courts to initiate investigations or order immediate independent medical examinations into allegations of confessions obtained by torture, judges rarely do so.¹⁰⁹ When a court does order a medical examination pursuant to a complaint of torture, the complaint is rarely upheld.

¹⁰⁴ ADALA UK, *supra* note 95, at 9.

¹⁰⁵ *Id.* at 9–10.

¹⁰⁶ Nguia El Haouasi was part of the “Oxford Six,” a group of students who were invited to take part in a course on conflict resolution at St Edward’s School, Oxford. On August 5, 2009, the students were stopped at Agadir airport. The Moroccan authorities refused to let the students leave even though they had visas and tickets and had already checked in. The students staged a hunger strike in the airport terminal. The Moroccan police arrived and took the students to the police station. The six students were beaten and interrogated by the Moroccan police. International pressure from human rights organizations such as Amnesty International forced the release of the six students within 36 hours. The students returned to their homes only to face further harassment and abuse by the Moroccan Authorities. *Torture and Discrimination in Western Sahara*, 4 EQUAL RIGHTS REV. 77, 82-84 (2009). The case of Nguia El Haouassi was mentioned in the list of issues submitted for consideration during the fourth periodic report of Morocco to the Committee Against Torture in 2011. Morocco was asked to provide information regarding allegations of torture in several cases, including specifically the case of Nguia El Haouassi. *List of issues to be considered during the examination of the fourth periodic report of Morocco*, ¶ 46(a); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/MAR/Q/4, 20 June 2011.

¹⁰⁷ *Id.*; Konstantina Isidoros, *Morocco Uses Torture to Silence Sahrawi Activists*, PAMBAZUKA NEWS (Sept. 10, 2009), <http://www.pambazuka.org/governance/morocco-uses-torture-silence-sahrawi-activists>.

¹⁰⁸ Telephone Interview with anonymous source (Apr. 15, 2016).

¹⁰⁹ Special Rapporteur on Torture, *supra* note 90, at ¶ 27.

Medical examinations are typically carried out in the presence of police or authority figures who intimidate the medical expert and the victim.¹¹⁰

The cases of Sahrawi detainees prosecuted in connection with demonstrations at the Gdeim Izik camp further illustrate the inadequacy of Morocco's response to police torture. Naâma Asfari, a Sahrawi activist who was arraigned before the military tribunal as part of the Gdeim Izik trials, was deprived of sleep for seven nights, forced to remain in a crouched position for extended periods, handcuffed, blindfolded, stripped, beaten, and deprived of food and water while in detention.¹¹¹

Etaki Elmachdoufi, a college student who was also brought before the military tribunal on account of his alleged participation in the Gdeim Izik protests, described his treatment as follows:

My hands were bound by lines of plastic, which were tighter than handcuffs. I fainted. When I came to the gendarmes were dragging me on stairs. I was tortured for five days before being presented to a judge[...] I was deprived of water, food, prevented from passing urine and drenched in urine.[...] I was beaten, handcuffed, and abandoned on the cold floor. I was hungry all night in solitary confinement. Delegates from the Moroccan prisons visited and told me, "Get on your knees, traitor." For five months I suffered interrogations in the middle of the night. [They said,] "You are not allowed to look into my eyes, get on your knees."¹¹²

Laaroussi Abdeljalil also testified before the military tribunal regarding his torture:

They undressed me with their large hands and threw me against a wall. The superior demanded that they blindfold me[...] The superior stated that I must sign the statement to be released. I felt I would not be freed. I state that I could not say what I had not done[...] I received a strong slap. I pulled by the hair and taken away; they tore out my toenails with pliers[...] One person said, "We must kill him." They suspended me, knocked me and placed a bar beneath my knees. They stripped me naked. I bled. They fondled my genitals... while I was suspended, I received electric shocks on my knees and ankles. As I screamed, they laughed.¹¹³

Mohammed Bachir Bouteguinza stated that he was beaten, suspended by his hands, stripped naked, urinated on by officials, and had a police baton inserted into his anal cavity. Another detainee, Brahim Ismail, also reported being stripped naked, threatened with rape, and beaten repeatedly until he was rendered unconscious. Mohamed El Ayoubi and Abdallah Lekhaouni testified that they were raped by officials after their arrest.¹¹⁴ In court, several detainees explained that following their torture, they had been forced to sign (or fingerprint) statements

¹¹⁰ Amnesty Int'l, *supra* note 91, at 8-9.

¹¹¹ Joelle Toutain, Tribunal Militaire du 8 au 17 Février, Mission d'observation, Procès de 24 détenus Sahraouis de Gdeim Izik, ASSOCIATION DES AMIS DE LA REPUBLIQUE ARABE SAHAROUIE (2013); Comité Contre la Torture, La Décision Adoptée par le Comité dans sa Cinquante-Quatrième Session 20 Avril - 15 Mai 2015, CAT/C/54/D/606/2014 (finding Naama Asfari's complaints of torture leveled against Morocco to be admissible and requesting that Morocco respond to the allegations of torture).

¹¹² Toutain, *supra* note 111.

¹¹³ *Id.*

¹¹⁴ *Id.*

that they had not read. The military tribunal failed to investigate the detainees' claims and "refus[ed] to order medical examinations in relation to the allegations of rape raised by several of the defendants."¹¹⁵ The tribunal ultimately relied on their "confessions" to convict them.¹¹⁶

In February 2013, the Special Rapporteur on Torture, Juan Méndez, observed that the military court had rejected "all requests to investigate the allegations of torture" and had "refus[ed] to order medical examinations in relation to the allegations of rape raised by several of the defendants;" the Special Rapporteur expressed concern "regarding the fact that the allegations of torture and ill-treatment during the almost two years of pre-trial detention have not been investigated."¹¹⁷

These findings were reiterated in 2014 by the UN Working Group on Arbitrary Detention in its report. The working group indicated that the allegations of torture during the almost two years of pretrial detention of the Gdeim Izik detainees have not been investigated¹¹⁸ and denounced Morocco's practice of obtaining confessions under torture.¹¹⁹

In addition to prohibiting torture, the Kingdom of Morocco must also hold those committing torture accountable for their acts. Government reports obtained by the Special Rapporteur on Torture show that investigations of some 220 officials were opened from 2009 to 2012.¹²⁰ The Special Rapporteur noted that many officials have not been prosecuted and those that have were either acquitted or sentenced to minimal penalties for assault rather than torture.¹²¹

Far from investigating allegations of torture and sanctioning those responsible, the Kingdom of Morocco intimidates victims who file complaints relating to their mistreatment. For example, charges were filed against ACAT after they filed a complaint on behalf of Naâma Asfari, a Sahrawi human rights defender. Moroccan officials charged them with "defamation, outrage to public officials, use of fraudulent means in order to provoke false testimony, [and] public slander."

Finally, prison conditions for Sahrawi detainees violate Articles 7 and 10 of the Covenant. In February 2013, the Special Rapporteur on Torture reported that he had received "credible testimonies relating to torture and ill-treatment in the prison of Laayoune [El-Aaiún], including rape, severe beating and isolation up to several weeks, particularly of inmates accused of participating in pro-independence activities."¹²² The Special Rapporteur also observed "extreme overcrowding, which had a negative impact on the level of hygiene, quality of nutrition, access to health care and general health of the inmates. In addition, he received reports about denial of health care."¹²³

Sidi Bouamid is one of the human rights activists who has been placed in solitary confinement at the Taroudant Agricultural Prison. He was detained in 2012 for participating in a self-determination protest, and was later sentenced to four years in prison for "forming a criminal

¹¹⁵ Special Rapporteur on Torture, *supra* note 90, at ¶ 66.

¹¹⁶ Amnesty Int'l *supra* note 91 at 81.

¹¹⁷ Special Rapporteur on Torture, *supra* note 90 at ¶ 66.

¹¹⁸ Rep. of the Working Group on Arbitrary Detention Addendum, *supra* note 103, at ¶ 68–69.

¹¹⁹ *Id.* at ¶ 30–34.

¹²⁰ Special Rapporteur on Torture, *supra* note 90 at ¶ 28.

¹²¹ *Id.*

¹²² Special Rapporteur on Torture, *supra* note 90, at ¶ 66.

¹²³ *Id.*

group,” “provocation and participation in riots,” “vandalism,” and “throwing stones and incendiary charges”—he has denied all charges and has suffered from deteriorating health as a result of the solitary confinement.¹²⁴

On March 1, 2016, thirteen Gdeim Izik prisoners at the prison in Salé embarked on a hunger strike to protest the conditions under which they have been held while in detention and to draw the attention to their plight.¹²⁵ The detainees sought to be recognized as political prisoners and to compel Morocco to transfer Sahrawi prisoners from Salé prison in Rabat to the prison in El-Aaiún, which is closer to their families.¹²⁶

As a result of the hunger strike, the general poor conditions of their detention, and the lack of medical care, the Gdeim Izik prisoners are also suffering from numerous medical complications. In a 2014 report, the UN Working Group on Arbitrary Detention noted the testimonies of torture and mistreatment of the Gdeim Izik prisoners and observed their deteriorating health conditions as a result of the conditions of their detention.¹²⁷

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Articles 7 and 10 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To stop the torture and cruel, inhuman or degrading treatment of Western Saharans.
- To review all complaints of torture and cruel, inhumane or degrading treatment filed with the authorities since 2004, investigate each case, prosecute the responsible parties with criminal sanctions, and adequately compensate the victims or their next of kin, and provide transparent and verifiable data on such actions to civil society.
- To ensure that judges abide by article 74(8), 135(5), and 293 of the Moroccan Code of Criminal Procedure by initiating investigations or ordering immediate independent medical examinations into allegations of confessions obtained by torture and excluding any confession obtained through torture.
- To mandate that all hospitals provide the appropriate medical certificates when a potential victim of a human rights violation presents with injuries.
- To take all measures necessary to improve the quality of detention centers and prisons. These measures must in particular address the extreme overcrowding, lack of hygiene, lack of nutrition, and poor access to healthcare. To mandate that all medical examinations are carried out without the presence of police or authority figures who intimidate the medical expert and the victim.
- To ensure that all Sahrawis who are convicted of any offense remain in detention centers in Western Sahara under conditions which adhere to the Fourth Geneva Convention.

¹²⁴ RFK HUMAN RIGHTS, *supra* note 89, at 9.

¹²⁵ See Press Release, Déclaration du Comité de Grève, Grève de la Faim Illimitée Des Prisonniers De Gdeim Izik à Partir du 1^o Mars 2016.

¹²⁶ See *id.* The prisoner demand is also supported by Article 76 of the Fourth Geneva Convention which states that: “Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.”

¹²⁷ Rep. of the Working Group on Arbitrary Detention Addendum, *supra* note 103, at ¶ 68–69; see also U.S. DEP’T OF STATE, WESTERN SAHARA 2015 HUMAN RIGHTS REPORT 6–8 (2015), available at, <http://www.state.gov/documents/organization/253165.pdf>.

5. Article 12: The Right to Freedom of Movement

Art. 12, para. 1: Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Art. 12, para. 2: Everyone shall be free to leave any country, including his own.

Art. 12, para. 3: The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

Art. 12, para. 4: No one shall be arbitrarily deprived of the right to enter his own country.

a. The Moroccan-constructed wall separates the Sahrawi people from their land and divides families.

The Moroccan wall, also referred to as a “berm,” is the physical manifestation of the political and social subjugation of the Sahrawi people. Over 2,500 kilometers long, the “Great Wall” of Morocco is the longest operational military barrier in the world, allowing the Kingdom of Morocco to control 80% of Western Sahara. It stretches through the entire length of the disputed territory of Western Sahara, separating the Moroccan-occupied territory from the Polisario-controlled Free Zone.¹²⁸

In Western Sahara, natural resources such as phosphate deposits, fisheries, and arable land are principally found in the enclave occupied by the Kingdom of Morocco, which is located between the coast and the Moroccan wall (see map below).¹²⁹ The inability to cross effectively bars Sahrawi people living east of the wall from accessing Western Sahara’s many physical resources located west of the wall, and bars those living west of the wall from their lands in the east. Because there are almost no natural resources east of the wall, let alone any pastures suited to rearing livestock, the Sahrawi people east of the Wall live in refugee camps in Algeria where they rely on international humanitarian assistance for survival.¹³⁰

The wall is made of rock and sand, fortified with trenches, barbed wire, and an estimated seven million landmines.¹³¹ It is monitored by sophisticated electronic movement detection devices, and guarded by Moroccan soldiers.¹³² Despite a demining program, Moroccan authorities recorded 2,171 accidents due to mines and other explosive remnants between 1975 and 2008.¹³³ Another 87 have been reported since 2009.¹³⁴ Every year more individuals are

¹²⁸ 2014 Report of the Secretary-General on the situation concerning Western Sahara *supra* note 51 §43.

¹²⁹ *Id.* §11, 43.

¹³⁰ *Id.* §54–59. See also Paul R. Williams and Francesca J. Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 STAN. J. INT’L L. 347, 348 (2004) (noting over fifty thousand Sahrawi refugees have lived in refugee camps in Algeria for over twenty years).

¹³¹ See ZUNES & MUNDY, *supra* note 8, at 21–23. See also Pamela Epstein, *Behind Closed Doors: “Autonomous Colonization” in Post United Nations Era – The Case For Western Sahara* (2009), p. 116 (referring to the berm as “the world’s largest landmine field”).

¹³² See ZUNES & MUNDY, *supra* note 8 at 21–23.

¹³³ Rep. of the Secretary-General on the Situation Concerning Western Sahara, 14 Apr. 2008, S/2008/251, § 27.

¹³⁴ Report of the Secretary-General on the situation concerning Western Sahara, 6 April 2010, S/2010/175, §40 (15 accidents); Report of the Secretary-General on the situation concerning Western Sahara, 11 April 2011, S/2011/249, §61 (8 accidents); Report of the Secretary-General on the situation concerning Western Sahara, 5 April 2012, S/2012/197, §49 (7 accidents); Report of the Secretary-General on the situation concerning Western

wounded and killed.¹³⁵ Furthermore, the mines located east of the wall prevent the refugee camp population from freely utilizing its resources and livestock.¹³⁶ The problem of mines constitutes a great menace to the life of the Sahrawi population in the occupied territory of Western Sahara. Morocco has not undertaken sufficient steps to map the mined zones or to mark them with special signals.

According to reports by the United Nations Secretary-General, Moroccan forces continue to fortify the wall, which is patrolled by an estimated 120,000 soldiers.¹³⁷ In 2013, MINURSO recorded 42 violations by the Royal Moroccan Army of military agreements between the Kingdom of Morocco and the United Nations.¹³⁸ These violations “included and continued to relate to increases in the length of trenches, the construction of new observation posts, tactical reinforcement and the construction of an antenna tower for a global system of mobile communication in the restricted area.”¹³⁹ Furthermore, “long-standing violations” relating “to the reinforcement of existing observation posts and increases in the length of trenches” increased by seven between April 2012 and April 2013.¹⁴⁰

The Moroccan wall is longer, older, and more militarized than another wall condemned both by this Committee and the ICJ. In its Advisory Opinion of July 9, 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the ICJ specified that the fewer the crossing points and the more limited the opening hours, the more severe the rights violations.¹⁴¹ For comparison, the Moroccan wall contains only five crossing points: four are for the exclusive of MINURSO staff, one is open to civilians, but all five are blocked to Sahrawis. The ICJ concluded that the construction of the wall in Israel violated the right to freedom of movement under Article 12 of the Covenant.¹⁴² As a result of its illegal construction of that wall, the ICJ noted that Israel was obligated to cease its construction of the wall, dismantle the existing barrier, and make reparations for all damage caused by the construction of the wall.

Sahara, 8 April 2013, S/2013/220, §54 (34 accidents); 2014 Report of the Secretary-General on the situation concerning Western Sahara *supra* note 51 §43 (13 accidents); Report of the Secretary-General on the situation concerning Western Sahara, 30 April 2015, S/2015/246, §30 (10 accidents).

¹³⁵ Rep. of the Secretary-General on the Situation Concerning Western Sahara, 8 Apr. 2013, S/2013/220, § 54.

¹³⁶ 2014 Rep. of the Secretary-General on the Situation Concerning Western Sahara *supra* note 51 § 43 (“Widespread contamination caused by landmines and explosive remnants of war throughout Western Sahara continues to endanger the lives of the local, nomadic and refugee populations, along with MINURSO military observers and logistical teams. East of the berm, two civilians were injured in a mine accident. In addition, Frente Polisario reported a significant loss of livestock to mines, especially in the buffer strip. The Royal Moroccan Army reported 12 accidents, in which 1 person was killed, 18 were injured and 1 was unharmed, west of the berm. MINURSO, through its Mine Action Coordination Centre, continues to strive to reduce the threat and impact of landmines and explosive remnants of war and to improve cooperation on mine action initiatives with both parties.”).

¹³⁷ Report of the Secretary-General on the situation concerning Western Sahara, 8 April 2013, S/2013/220, §39.

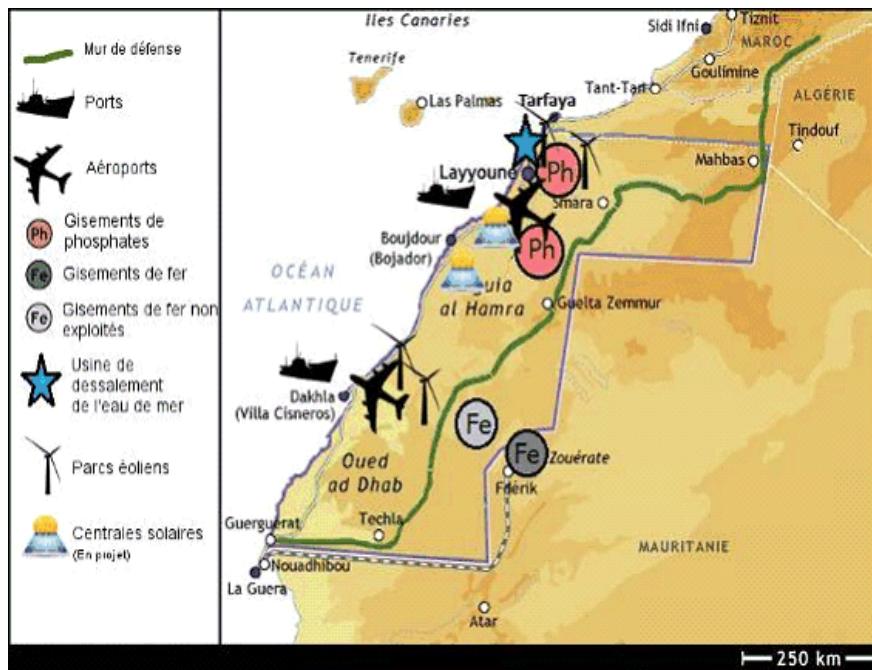
¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *supra* note 5, § 133 (“They are aggravated by the fact that the access gates are few in number in certain sectors and opening hours appear to be restricted and unpredictably applied.”).

¹⁴² *Id.* § 134 (“To sum up, the Court is of the opinion that the construction of the wall and its associated régime impede the liberty of movement of the inhabitants of the occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto) as guaranteed under Article 12, paragraph 1, of the International Covenant on Civil and Political Rights. They also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child.”).



This Committee has likewise condemned the violations of the Covenant brought about by the continued construction and existence of the Israeli wall. In 2014, the Committee recommended that Israel “[r]eroute the Wall . . . and ensure that Palestinians have full access to their lands and livelihoods.”¹⁴³ The Committee likewise expressed concern regarding (1) the limited allocation of permits for Palestinians to access their agricultural lands situated on the other side of the wall; (2) the restricted number and opening hours of access gates; (3) the continuing construction and expansion of settlements throughout the Occupied Palestinian Territory; and (4) the transfer of the State party’s settlers to that Territory,¹⁴⁴ noting that these measures “undermine the enjoyment by Palestinians of a wide range of their Covenant rights, including the right to self-determination (arts. 1, 2, 9, 12, 17, 18 and 26).”¹⁴⁵

There are striking parallels between the effects of Israel’s actions on the Palestinians, and the effects of Morocco’s actions on the Western Saharan people. On April 19, 2016, in its most recent report on Western Sahara, the Secretary-General of the United Nations alerted the international community to the disastrous humanitarian conditions associated with the lack of access to natural resources west of the wall.¹⁴⁶ Yet this Committee has not yet commented on the existence of the wall or its devastating consequences for the divided territory. Morocco continues to move settlers into the territory and deprives most of the Western Saharan people of access to their natural resources. The Committee should be consistent with the position it has taken with respect to Israel, and should recommend that Morocco dismantle the wall, allow the Western Saharan people control over their natural resources and access to employment opportunities, and cooperate with an internationally-organized referendum on the political future of Western Sahara.

¹⁴³ Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Israel, 21 November 2014, CCPR/C ISR/4, ¶ 17.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ Report of the Secretary-General on the situation concerning Western Sahara, 19 April 2016, S/2016/355, § 77.

b. The Kingdom of Morocco routinely restricts the movement of Sahrawi human rights defenders from entering or leaving the country and moving freely within its borders.

The Kingdom of Morocco also routinely prevents Sahrawi human rights defenders and foreigners working on Western Sahara human rights issues from entering and leaving the country or moving freely within its borders. Since 2014, Robert F. Kennedy Human Rights has documented one hundred and nineteen instances of such unjust restrictions.¹⁴⁷

For example, on January 15, 2013, Moroccan authorities in Rabat prevented eighteen ASVDH activists from attending an international meeting of human rights defenders.¹⁴⁸ In April 2015, Moroccan authorities prevented El-Aaiún-based human rights defender Mbarka Alina Baali from attending the World Social Forum in Tunisia.¹⁴⁹ In November 2014, they prevented her from traveling to France to attend La Fête de l'Humanité.¹⁵⁰ Activist and President of Freedom Sun Association, Hamadi Nasiri, was also twice refused permission to leave the country: once for a Human Rights Council session on June 2, 2015 and again for the Polisario Congress in December 2015.¹⁵¹ Mbarka is a member of the board of ASVDH and is regularly barred from leaving the country because of his activism. On April 27, 2015, Moroccan police in El-Aaiún accosted Sidi Ahmed Abdala Mohamed Fadel, President of the human rights NGO Adala UK, and told him he would be arrested if he failed to leave El-Aaiún immediately.¹⁵² And on February 20, 2016, the Moroccan government refused to give human rights defender Abdallah Muhammad Dagimi approval to leave the country for an international trip to advocate for Western Saharan self-determination.¹⁵³

These restrictions have gone as far as confiscation of passports and expulsion to a foreign country.¹⁵⁴ On November 14, 2009, Moroccan authorities confiscated the passport of CODESA President Aminatou Haidar on her way to El-Aaiún from the United States because she refused to declare her nationality as “Moroccan.” They expelled her to Spanish territory, and only after a month-long hunger strike and an international outcry did Morocco permit her return.¹⁵⁵ More recently, Moroccan police assaulted and invasively searched human rights

¹⁴⁷ RFK HUMAN RIGHTS, WESTERN SAHARA: ALLEGED HUMAN RIGHTS VIOLATIONS (JANUARY-JUNE 2016); *See Human Rights Threatened, Self-Determination Deferred: The Status of Western Sahara*, TOM LANTOS HUMAN RIGHTS COMMISSION (MAR. 23, 2016), (statement of Kerry Kennedy, President, Robert F. Kennedy Human Rights) [hereinafter Kennedy]

<https://humanrightscommission.house.gov/sites/tlrc.house.gov/files/documents/2016-3-23%20Kerry%20Kennedy%20Remarks%20Final.pdf>.

¹⁴⁸ *Communiqué de l'Association Sahraouie Des Victimes des Violations Graves des Droits de l'Homme Commises par l'Etat du Maroc*, SAHARADOC (Jan. 22, 2013), <https://saharadoc.wordpress.com/2013/01/22/communique-de-lassociation-sahraouie-des-victimes-des-violations-graves-des-droits-de-lhomme-commises-par-letat-du-maroc/>.

¹⁴⁹ Email correspondence with a reliable and informed source requesting anonymity for security reasons, Nov. 9, 2015 [hereinafter Nov. 9, 2015 Reliable Source Correspondence].

¹⁵⁰ *Id.*

¹⁵¹ Interview with Hamadi Nasiri, Apr. 2, 2016.

¹⁵² Interview with Sidi Ahmed Abdala Mohamed Fadel, President of Adala UK, Nov. 23, 2015.

¹⁵³ RFK HUMAN RIGHTS, *supra* note 147 at 10.

¹⁵⁴ *See ASS’N OF FRIENDS OF THE SADR OF ALAVA, THE HUMAN RIGHTS SITUATION IN OCCUPIED TERRITORIES OF WESTERN SAHARA 3* (Jan. 2008), <http://www.fmyv.es/ci/in/HR/6.pdf> (describing the case of El Mami Amar Salem, a Sahrawi whom Moroccan security forces stripped of his identity papers and sent to Mauritania).

¹⁵⁵ *See, e.g., RFK Center Applauds Return of Aminatou Haidar to Western Sahara*, RFK HUMAN RIGHTS (Dec. 18, 2009); *Statements for US and International Officials in Support of the Return of Aminatou Haidar*, RFK HUMAN RIGHTS (Dec. 11, 2009); *Kennedy Urges Morocco: Allow Return of Illegally Expelled Saharawi Rights Defender, Aminatou Haidar*, RFK HUMAN RIGHTS (Nov. 24, 2009); *Morocco: Reverse Expulsion of Sahrawi*

activist Leila Lili upon her return to the Casablanca Airport from pro-Sahrawi meetings in Algiers.¹⁵⁶ Even when the authorities allow activists to travel, they will invasively search them and their belongings at the airport, sometimes for hours on end, and confiscate documents as they see fit.¹⁵⁷

Restrictions also take the form of intimidation and surveillance surrounding activists' homes. When police hear of a demonstration to occur later in a day, they may put the house of an activist planning to attend under surveillance and prevent him or her from leaving for several hours.¹⁵⁸ On July 12, 2015, Moroccan authorities surrounded Sahrawi activist Ahmed Tanji's house in El-Aaiún, threatening him for having hosted an Al-Jazeera English TV correspondent.¹⁵⁹ Similarly, on December 29, 2015, authorities surrounded Elmahfouza Elfaqeer's El-Aaiún home following her participation in a peaceful protest calling for a referendum. Family members attempting to visit Elfaqeer were denied entry.¹⁶⁰

Moroccan authorities also pressure activists to discontinue their activities by threatening them, their friends and families, or their property with harm. On October 8, 2009, during his detention following an activist trip to the Tindouf camps, Hamadi Nasiri's home was ransacked and his wife and teenage son were beaten by authorities.¹⁶¹ Activists may also be "blacklisted" for their activities, in which the government prevents them getting a public or private job, or obstructs their efforts to obtain a higher education.¹⁶² This works to drive them out of the country, at which point Morocco will not allow them reentry.¹⁶³

c. Under Article 12(4), the Sahrawis residing in the refugee camps in Algeria have a right of return to Western Sahara.

Article 12(4) of the Covenant guarantees that no one shall be arbitrarily deprived of their right to enter his or her own country. This right tracks Article 13(2) of the Universal Declaration of Human Rights, which states that everyone has the right to leave and return to his or her country.¹⁶⁴ Morocco's military aggression against the Sahrawi people and subsequent occupation of Western Sahara have led to the displacement of more than 100,000 Sahrawis, who have been living in refugee camps in southern Algeria for the last four decades.¹⁶⁵ The Kingdom of Morocco has an obligation to facilitate their return to Western Sahara under conditions that would enable them to fulfill their rights to self-determination.

¹⁵⁶Activist, HUMAN RIGHTS WATCH (Nov. 19, 2009), <https://www.hrw.org/news/2009/11/19/morocco-reverse-expulsion-sahrawi-activist>.

¹⁵⁷RFK HUMAN RIGHTS, *supra* note 89, at 10.

¹⁵⁸See, e.g., Interview with Twaiyssa, Apr. 14, 2016.

¹⁵⁹Interview with a reliable and informed source requesting anonymity for security reasons, Mar. 19, 2016 [hereinafter Mar. 19, 2016 Reliable Source Interview].

¹⁶⁰RFK HUMAN RIGHTS, *supra* note 89, at 9.

¹⁶¹*Id.* at 10.

¹⁶²Interview with Hamadi Nasiri, *supra* note 151.

¹⁶³Interview with Lahcen Dalil, Chairman, Association for the Monitoring of Resources and for the Protection of the Environment in Western Sahara, Apr. 13, 2016; Interview with a reliable and informed source requesting anonymity for security reasons, Apr. 11, 2016 [hereinafter Apr. 11, 2016 Reliable Source Interview]; Mar. 19, 2016 Reliable Source Interview, *supra* note 158.

¹⁶⁴Apr. 11, 2016 Reliable Source Interview, *supra* note 162.

¹⁶⁵Universal Declaration of Human Rights art. 13(2) (Dec. 10, 1948).

¹⁶⁶See generally HUMAN RIGHTS WATCH, HUMAN RIGHTS IN WESTERN SAHARA AND IN THE TINDOUF REFUGEE CAMPS (2008), <https://www.hrw.org/report/2008/12/19/human-rights-western-sahara-and-tindouf-refugee-camps>.

i. Humanitarian Conditions of the Sahrawi Refugee Camps

The Sahrawi refugee camps are located near Tindouf, Algeria.¹⁶⁶ Their collective population ranges anywhere from 125,000 (one UN agency estimate) to 165,000 (the Algerian government's and Polisario's count).¹⁶⁷ Roughly 80% of refugees are women and children.¹⁶⁸ The camps are run entirely by the Sahrawi Arab Democratic Republic (SADR), Polisario, and some Sahrawi civil society organizations. The UN High Commissioner for Refugees (UNHCR) and World Food Program (WFP) provide tents (a complement to sturdier brick homes) and food, but little else.¹⁶⁹

Refugees in the camps are vulnerable to many environmental hardships. For one, they are extremely isolated, occupying a remote, militarized desert region. Temperatures are sweltering by day and freezing by night. The lack of water resources makes breeding livestock for independent food production economically infeasible.¹⁷⁰ In summer, the heat is so intense that many children are temporarily “adopted” by families in Spain and other European countries to spend the season abroad.¹⁷¹

Sandstorms are prevalent. Heavy flash rainstorms may happen for days on end. 90,000 of the most “vulnerable” refugees were affected by massive flooding in October 2015.¹⁷² Resources are scarce; inhabitants have little electricity or running water and, after the flooding many already-rudimentary latrines required rebuilding to prevent further water contamination.¹⁷³ Many people live almost exclusively from humanitarian aid.¹⁷⁴

¹⁶⁶ There are five primary large camps, called *wilayas* (districts) in Hassaniya: Smara, El Aaayoun, Aouser, Boudoir, and Dakhla (the most distant, 170km southwest). Each *wilaya* is named after a main town in Western Sahara. These in turn are divided into six or seven regions (*dairas*), each made up of four neighborhoods (*hays* or *barrios*). “Every *daira* has its own primary school, health clinic, and administration. Between 6,000 and 8,000 refugees live in each *daira*.” There are also two more distinct camps, “February 27” (a smaller satellite camp surrounding a boarding school for women) and Rabouni (the camps’ administrative center). See *Living in the Refugee Camps*, WESTERN SAHARA (1995), <http://www.arso.org/05-3.htm> (describing the districts, regions, and neighborhoods of the refugee camps); see also *Western Sahara – Causes and Consequences*, FORCED MIGRATION ONLINE (last updated Aug. 17, 2011), <http://www.forcedmigration.org/research-resources/expert-guides/western-sahara/causes-and-consequences> (explaining the composition of the *dairas*).

¹⁶⁷ HUMAN RIGHTS WATCH, OFF THE RADAR: HUMAN RIGHTS IN THE TINDOUF REFUGEE CAMPS (2014), <https://www.hrw.org/report/2014/10/18/radar/human-rights-tindouf-refugee-camps>.

¹⁶⁸ Abdel-Rahman Ghandour, *Algeria’s Forgotten Refugees: After 35 Years, Conditions in Sahrawi Camps Remain Harsh*, UNICEF (June 24, 2010), http://www.unicef.org/education/algeria_54061.html.

¹⁶⁹ *Tindouf Refugee Camps*, ORG. FOR STATEHOOD & FREEDOM (2010), <http://statehoodandfreedom.org/en/the-saharawi-struggle/tindouf-refugee-camps>.

¹⁷⁰ WORLD FOOD PROGRAMME, PROTRACTED RELIEF AND RECOVERY OPERATION (PRRO) ALGERIA: ASSISTANCE TO WESTERN SAHARAN REFUGEES 3–4 (2010).

¹⁷¹ *Tindouf Refugee Camps*, *supra* note 169. The Vacaciones En Paz program is the result of a cooperation between the UJSARIO (the youth organization of the Polisario Front) and 300 Spanish solidarity associations. Every summer, 7000-1000 Sahrawi children are hosted by families in Spain where they gain a new world perspective and have access to healthcare through medical check-ups and a better diet. It also aims to increase the awareness of the Spanish people on the issues confronting Sahrawi refugees. Gina Crivello, Elena Fiddian-Qasmiyah, & Dawn Chatty, *Holidays in Peace: Sahrawi Children Visit Spain*, 25 FORCED MIGRATION REV. 59 (2006) <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR25/FMR2534.pdf>; Vacaciones en Paz, ARAPAZ, <http://www.arapaz.org/vacaciones-en-paz/>.

¹⁷² *UNHCR Airlifts Emergency Relief to Algeria Flood Victims*, UNHCR (Oct. 30, 2015), <http://www.unhcr.org/563338686.html>; *Devastating Flooding Affects 25,000 Sahrawi Refugees in Tindouf Camps*, UNHCR (Oct. 23, 2015), <http://www.unhcr.org/562a19706.html>.

¹⁷³ *Devastating Flooding Affects 25,000 Sahrawi Refugees in Tindouf Camps*, *supra* note 172.

¹⁷⁴ Abdel-Rahman Ghandour, *Algeria’s Forgotten Refugees: After 35 Years, Conditions in Sahrawi Camps Remain Harsh*, UNICEF (June 24, 2010) http://www.unicef.org/education/algeria_54061.html; Alavari

Limited food can be procured from local markets, but additional food aid is often irregular and covers very little of the nutritional requirements.¹⁷⁵ The amount of potable water available per person on a daily basis falls just short of the minimum humanitarian standard of twenty liters.¹⁷⁶ As such, malnutrition and anemia—while on the decline—remain prevalent in the camps.¹⁷⁷ The main health concerns include hypertension, diabetes, and kidney failure.¹⁷⁸ Health care is universally accessible at the five regional hospitals and a more “central” hospital in Rabouni.¹⁷⁹

ii. The right of return under Article 12(4): Legal Framework

The *travaux préparatoires* of the ICCPR, and particularly debates about Article 12(4), suggest three categories of people who can legitimately exercise a claim to a right of return: (1) citizens or nationals of a country; (2) aliens that have a strong parental or ancestral attachment to the country; and (3) permanent residents, who for whatever reason have not adopted the nationality of the state.¹⁸⁰ The Sahrawi in the refugee camps settled there after fleeing Morocco in the 1970s.¹⁸¹ As refugees, their identity is still very much connected to that of Sahrawi that reside in Western Sahara today. In other words, most refugees in the refugee camps in Algeria fall into either the first or second categories of people who have a right of return to Western Sahara.

The right of return of displaced refugees is not a new concept. In 1995, the UN Subcommittee on Prevention of Discrimination and Protection of Minorities passed a resolution stating, “practices of forcible exile, mass expulsions and deportations...and other forms of *forcible displacement of populations within a country or across borders* deprive the affected populations of their right to freedom of movement.”¹⁸² Forcible displacement is why the Sahrawi refugee camps in Algeria still exist today. After the Green March in 1975, where King Hassan II called on approximately 350,000 Moroccans to move and settle into Western Sahara, the story of many Sahrawi turned into one of forcible displacement and refugee life.¹⁸³

Jeevathol, *Healthcare in the Sahrawi Refugee Camps*, 7 A GLOBAL VILLAGE (MAY 2012). <http://www.aglobalvillage.org/site/assets/files/1034/issue7.pdf>.

¹⁷⁵ NUTRITION SURVEY: WESTERN SAHARA REFUGEE CAMPS, TINDOUF, ALGERIA 7–8 (2013), http://www.vastsaharaaktionen.se/files/2012_nutrition_survey_report_final_eng.pdf.

¹⁷⁶ UNHCR, ALGERIA: UNHCR OPERATIONAL UPDATE 1 (2016), <http://www.unhcr.org/555dd69e9.pdf>.

¹⁷⁷ This is partially attributable to “poor feeding habits” and poor food preparation and storage. WORLD FOOD PROGRAMME, *supra* note 170, at 1, 4–5.

¹⁷⁸ 2016 Report of the Secretary-General on the situation concerning Western Sahara, *supra* note 146, at ¶ 58.

¹⁷⁹ WORLD FOOD PROGRAMME, *supra* note 170, at 14.

¹⁸⁰ Ilias Bantekas, *Repatriation as a Human Right Under International Law and the Case of Bosnia*, 7 D.C.L.J. INT'L L. & PRAC. 53, 57 (1998).

¹⁸¹ HUMAN RIGHTS WATCH, *supra* note 165.

¹⁸² Res. 1995/13, UN ESCOR, 47th Sess., UN Docs. E/CN.4/Sub.2/1995/51 (1995) (emphasis added). The history of the Sahrawi refugee camps begins around late 1975, when Sahrawi refugees began arriving in Tindouf, Algeria. This was shortly after Spain withdrew from Western Sahara and fighting broke out over its control between Morocco and Mauritania. Most Sahrawi refugees have been living there ever since. In 1976, the Polisario Front proclaimed the Sahrawi Arab Democratic Republic (SADR) across the camps. In 1979, Western Sahara saw a lesser exodus after Mauritania withdrew and Morocco annexed the rest of the region. Morocco then encouraged roughly 350,000 settlers to immigrate to Western Sahara to boost its planned new economy. See HUMAN RIGHTS WATCH, *supra* note 165. Almost half of the Sahrawi then fled to Algeria, which offered them land for what were only meant to be temporary camps. Michael Palin, *Sahara with Michael Palin – Day 14: Tinfou to Tindouf*, PALIN'S TRAVELS, <http://palinstravels.co.uk/book-2044> (last visited Apr. 20, 2016).

¹⁸³ HUMAN RIGHTS WATCH, *supra* note 165.

Today, thousands of Sahrawi refugees reside in Algeria with the hope of returning to a Western Sahara where their right to self-determination is recognized and fulfilled. Their plight is interlaced with Morocco's ongoing violations of the right to self-determination in Western Sahara. UN committees and the Secretary-General have already recognized how closely tied the Sahrawi refugees are to Western Sahara. For example, the Committee on Economic, Social, and Cultural Rights reviewed Morocco's record in 2015. In its Concluding Observations, the Committee recommended that Morocco:

Take measures to ensure that the rights of Sahraouis refugees are respected *upon their return*. It further recommends that the State party 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.¹⁸⁴

This Committee should reach a similar conclusion based on identical facts.

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 12 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To dismantle the wall dividing the territory of Western Sahara and implement an effective and expeditious mine-clearing strategy.
- To adequately compensate victims and families of mine accidents for related injuries and death.
- To take all necessary measures to ensure that the rights of Sahrawi refugees are respected upon their return, including the right to self-determination.
- To stop the surveillance and intimidation of activists, as well as of their family and friends.
- To stop the preventing activists from moving freely to pursue economic, social, and educational opportunities
- To allow Sahrawi human rights defenders to freely enter and exit Western Sahara and to move within its borders.
- To allow all Sahrawis, including those living in the Tindouf camps, the right to fully enjoy the natural resources of Western Sahara.

6. Article 14: Right to equality before courts and tribunals and to a fair trial

Art. 14, para. 1: All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law

Art. 14, para. 3: In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
- (c) *To be tried without undue delay;*

¹⁸⁴ Concluding Observations on the Fourth Periodic Report, *supra* note 36, at ¶ 6(b) (emphasis added).

(g) Not to be compelled to testify against himself or to confess guilt.

Art. 14, para. 5: Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

The Kingdom of Morocco has violated the due process rights established by Article 14 of the ICCPR, most notably in its detention and prosecution of individuals connected with the 2010 demonstration at Gdeim Izik.

In October 2010, between 6,500 and 28,000 Sahrawi erected a tent camp at Gdeim Izik, a town on the outskirts of El-Aaiún, to protest violations of their human rights—most notably, their rights to self-determination under Article 1 of the Covenant.¹⁸⁵ On November 8, 2010, Moroccan security forces moved to dismantle the camp, setting off violent confrontations that resulted in the deaths of eleven security officers and at least two civilians.¹⁸⁶

More than 300 Sahrawi were arrested when the camp was dismantled. Most were tortured in police stations in El-Aaiún. More than half of the detainees were released after a relatively short detention, but 168 were sent to the “black prison” and were not released for several months. For those sent to and released from the “black prison,” it is unclear whether criminal charges brought against them have ever been closed officially; in theory, those charges could be reactivated at any time. Such a delay violates the “undue delay” provisions of Article 14(3)(c).¹⁸⁷

Twenty-five of the Gdeim Izik detainees were subsequently prosecuted before a military tribunal. Human rights monitors reported that the defendants were not provided lawyers during their pre-trial interrogation,¹⁸⁸ where, as noted above, they were forced to confess under torture. At trial, the prosecution failed to produce eyewitness testimony or physical evidence linking the defendants—many of whom were well-respected human rights activists—to acts of violence.¹⁸⁹ Trial began only in February 2013, twenty-seven months after the camp was dismantled and more than fifteen months after the close of the investigation. This undue delay was all the more prejudicial to the defendants who were detained until trial.

¹⁸⁵ Human Rights Watch at the time placed the number at approximately 6,500. See *Western Sahara: Beatings, Abuse by Security Forces*, HUMAN RIGHTS WATCH (Nov. 26, 2010), <https://www.hrw.org/news/2010/11/26/western-sahara-beatings-abuse-moroccan-security-forces>. However, those on the ground have consistently placed the size of the camp at somewhere between 20,000 and 28,000 people.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*; see AMNESTY INT'L, RIGHTS TRAMPLED: PROTESTS, VIOLENCE AND REPRESSION IN WESTERN SAHARA 12–15 (2010), <https://www.amnesty.org/download/Documents/40000/mde290192010en.pdf>; *Rapport de l'ASVDH sur le campement de Gdeim Izik*, SAHARADOC (Jan. 8, 2011), <https://saharadoc.wordpress.com/2011/01/08/rapport-de-lasvdh-sur-le-campement-de-gdeim-izik/>.

¹⁸⁸ See Micheal Ellman, Procès “Gdaim Izik”, Tribunal Militaire Permanent Rabat-MAROC, Rapport d’observation (Oct. 2012– Février 2013), at 6, <http://euromedrights.org/wp-content/uploads/2013/06/Rabat-Trial-Obs-Report-EN.pdf>.

¹⁸⁹ *Id.*; EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK (2012–2013); *Gdeim Izik: The Trial*, WESTERN SAHARA RESOURCE WATCH (Feb. 21, 2014, 9:09 PM), <http://wsrw.org/a131x2834>. Aside from the coerced confessions, the primary evidence against the defendants was a video of the Gdeim Izik demonstrations in which none of the defendants could be identified. *Morocco: Tainted Trials of Sahrawi Civilians*, HUMAN RIGHTS WATCH (Apr. 1, 2013), <http://www.hrw.org/news/2013/04/01/morocco-tainted-trial-sahrawi-civilians>.

On February 17, 2013, a Moroccan military court sentenced twenty-three of the detained Sahrawi activists to prison. Nine received life sentences and fourteen received terms between twenty and thirty years. Two were sentenced to time served and released.¹⁹⁰

The trial of twenty-five detainees from the Gdeim Izik protests before a military tribunal in Morocco violates the Covenant and Moroccan law. In its General Comment 32, this Committee stated that trials of civilians by military courts should be “exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where . . . the regular civilian courts are unable to undertake the trials.”¹⁹¹

The trial of the Gdeim Izik defendants before a military tribunal also limits their right to appeal, in violation of Article 14. Whereas defendants convicted by Moroccan civilian courts have the right to appeal issues of fact before the Court of Appeal, military court verdicts may only be appealed to the Court of Cassation, which reviews issues of procedure, jurisdiction, abuse of power, and application of law, but does not review the facts.¹⁹² In General Comment 32, this Committee noted that an appeal “that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.”¹⁹³

In its 2014 report, the Working Group on Arbitrary Detention expressed concern over the competence of the military tribunal to try Gdeim Izik detainees. The group also noted the availability of only non-civilian lawyers and judges and the inability to appeal military court judgments as some of the factors that affect the competence of military tribunals to try civilians.¹⁹⁴

On March 14, 2014, Morocco adopted new legislation providing that civilians shall no longer be tried before military courts.¹⁹⁵ The bill limits the jurisdiction of military courts to military offences and offences committed in the time of war.¹⁹⁶ As of the writing of this report, it is unclear whether the benefits of this reform will be extended to all of the Sahrawi detainees prosecuted in connection with the protests at Gdeim Izik. News outlets have reported that the Cour de Cassation has vacated the judgment of the military court and ordered a civilian trial,¹⁹⁷ but as of September 19 we have not been able to obtain a copy of the judgment. It is also unclear whether the law is being applied to ongoing cases. Mbarek Daoudi, a former soldier but current civilian, was charged and tried before a military court in March 2015 on trumped-up weapons charges.¹⁹⁸

¹⁹⁰ See *Morocco: Tainted Trials of Saharawi Civilians*, *supra* note 189.

¹⁹¹ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007).

¹⁹² *Morocco: Tainted Trials of Saharawi Civilians*, *supra* note 189.

¹⁹³ Human Rights Committee, General Comment No. 32, *supra* note 191 ¶ 48.

¹⁹⁴ Rep. of the Working Group on Arbitrary Detention Addendum, *supra* note 103 ¶ 70.

¹⁹⁵ Statement by Mr. Driss El Yazami CNDH Chairman, KINGDOM OF MOROCCO HUMAN RIGHTS COUNCIL (Mar. 14, 2014), available at <http://www.ccdh.org.ma/an/press-releases/statement-mr-driss-el-yazami-cndh-chairman>.

¹⁹⁶ *Id.*

¹⁹⁷ Amnesty International, *Sahrawi Defendants Granted Civilian Re-Trial*, August 8, 2016, available at <https://www.amnesty.org/en/documents/mde29/4615/2016/en/>.

¹⁹⁸ See *Case History: Mbarek Daoudi*, FRONTLINE DEFENDERS (last updated Feb. 11, 2016), <https://www.frontlinedefenders.org/zh/case/case-history-mbarek-daoudi>.

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 14 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To conduct all criminal proceedings in compliance with Article 14 of the ICCPR, including trials of all those charged in connection with their activities in support of self-determination for Western Sahara.
- To apply the new military justice reform bill to individuals detained or convicted in connection with the events at Gdeim Izik.
- To conduct a new fair trial in a civilian court in the territory of Western Sahara to review the issues of fact raised in the trials of the twenty-five Gdeim Izik detainees.

7. Article 17: Right to Privacy

Art. 17, para. 1: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Art. 17, para. 2: Everyone has the right to the protection of the law against such interference or attacks.

Both Article 17 of the Covenant and the Constitution of the Kingdom of Morocco guarantee the significant protections to homes and correspondence.¹⁹⁹ Despite this, Morocco consistently violates the right to privacy of Sahrawi human rights defenders by subjecting them to surveillance and unjustified searches.²⁰⁰ Moroccan authorities reportedly use the country's communication companies to monitor phone calls and internet usage.²⁰¹ This is accomplished through contracts with companies such as Hacking Team, FinFisher, and Amesys, which provide software to create back doors in computers, monitor people's web usage and access their webcams.²⁰² A state-sponsored group called the Hawks of Moroccan Sahara also often hacks into Sahrawi activists' online accounts to subject them to further surveillance.²⁰³ In at least one case, Moroccan authorities interrogating an activist reportedly coerced him into revealing his internet passwords, then read over his private emails and webpages at the police station before releasing him.²⁰⁴ Some activists have also had authorities confiscate their phones to make a copy of the SIM card, allowing them to monitor calls later made to that phone.²⁰⁵

¹⁹⁹ DUSTUR AL-MAMLAKAH AL-MAGHRIBIYAH [CONSTITUTION] July 1, 2011, art. 24 (Moro.).

²⁰⁰ See generally, e.g., PRIVACY INT'L, THEIR EYES ON ME: STORIES OF SURVEILLANCE IN MOROCCO (Apr. 7, 2015), https://www.privacyinternational.org/sites/default/files/Their%20Eyes%20on%20Me%20-20English_0.pdf.

²⁰¹ Police have played back recorded calls during their interrogations of activists to obtain confessions. Nov. 9, 2015 Reliable Source Correspondence, *supra* note 149.

²⁰² Id.; see also Bill Marczak, *Research on Hacking Team and Finfisher highlighted in Motherboard*, CITIZENLAB (Nov. 17, 2015), <https://citizenlab.org/2015/11/research-on-hacking-team-and-finfisher-highlighted-in-motherboard/>.

²⁰³ Nov. 9, 2015 Reliable Source Correspondence, *supra* note 149.

²⁰⁴ Eric Goldstein, *Dispatches: Not-So-Free Expression Online in Western Sahara*, HUMAN RIGHTS WATCH (Feb. 16, 2014), <https://www.hrw.org/news/2014/02/16/dispatches-not-so-free-expression-online-western-sahara>.

²⁰⁵ Interview with a reliable and informed source requesting anonymity for security reasons, Apr. 17, 2016 [hereinafter Apr. 17, 2016 Reliable Source Interview].

The Moroccan government also reportedly operates a website, which releases scandalous false information about Sahrawi activists. It will accuse them of being spies, terrorists, or, in the case of one female demonstrator (Mahfouda Lafqui), having an abortion as part of an affair with a Polisario member.²⁰⁶ Such slander is designed to tarnish their reputations in the eyes of both their colleagues and the Moroccan people.

These intrusions are not limited to cyberspace. In February 2013, the Special Rapporteur on Torture reported that “Moroccan police forces regularly raid private homes of alleged or known supporters of the independence of Western Sahara, in procedures that include beating and ill-treatment of the inhabitants.”²⁰⁷ During his stay in El-Aaiún in spring 2015, Moroccan police perpetually monitored the Adala UK President Sidi Ahmed Abdala Mohamed Fadel’s family home and outdoor movements.²⁰⁸ Activist groups such as CODESA report that their meetings are subject to surveillance by Moroccan security forces.²⁰⁹ Those forces also conduct surveillance in and around schools, targeting students who support the right to self-determination under Article 1 of the Covenant.²¹⁰ All of these programs create considerable fear and intimidation.

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 17 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To stop the surveillance programs that target or Sahrawi activists and their communities.
- To refrain from raiding the homes of Sahrawi human rights defenders.
- To properly address all the complaints to any authority about these surveillance programs and prosecute and discipline those responsible for overbroad or misapplied surveillance.

8. Articles 19 and 21: Right to Freedom of Expression and Opinion and Right to Peaceful Assembly

Art. 19, para. 1: Everyone shall have the right to hold opinions without interference.

Art. 19, para. 2: Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Art. 19, para. 3: . . . [Restrictions] shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

²⁰⁶ Interview with Lahcen Dalil, *supra* note 162.

²⁰⁷ Special Rapporteur on Torture, *supra* note 90, at ¶ 64.

²⁰⁸ *Western Sahara: Moroccan Police Terrify Residents*, PRAVDAREPORT (May 4, 2015), http://www.pravdareport.com/society/stories/04-05-2015/130480-western_sahara-0/; *Western Sahara: Moroccan Plain Clothes Police Officers Is Monitoring Family Home of Adala UK President*, ALLAFRICA (May 3, 2015), <http://allafrica.com/stories/201505040830.html>; Interview with Sidi Ahmed Abdala Mohamed Fadel, *supra* note 152, and accompanying text.

²⁰⁹ EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, *supra* note 74 at 23.

²¹⁰ Apr. 17, 2016 Reliable Source Interview, *supra* note 205.

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

*Art. 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.*

Since this Committee last reviewed Morocco's compliance with the Covenant, the Kingdom has systematically repressed public demonstrations in support of the rights set forth in Article 1 of the Covenant: namely, the right to self-determination and the right of a people to control their natural resources.²¹¹ CODESA reported that Moroccan security forces had repressed 177 peaceful demonstrations through excessive force in 2014 alone.²¹² From January 2014 to March 2016, Robert F. Kennedy Human Rights has documented eighty-four violations of the rights to expression, assembly, and association.²¹³ Nineteen such violations occurred from July to December 2015 alone,²¹⁴ and at least seven more between January and April 2016.²¹⁵

Authorities are slow to respond to these complaints or to allow affected parties to track their status.²¹⁶ In February 2013, the Special Rapporteur on Torture indicated that he had received "numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population."²¹⁷ After breaking up demonstrations, authorities typically sweep the streets, invade homes, and "hunt down" activists and Sahrawi journalists and bloggers.²¹⁸ By cutting off Smara Avenue (a prominent location for protests), they can readily besiege the entire area where a demonstration is taking place.²¹⁹ Security forces will then often brutally beat protestors before arresting them, and have been known to try and hide the abuse from visiting delegates.²²⁰ Still, websites like "WITNESS" host numerous eyewitness videos confirming the brutality of Moroccan officers in their determination to end protests.²²¹

Although protests about self-determination are most frequently broken up, police have violently dispersed all kinds of peaceful demonstrations. On January 7, 2016, police beat

²¹¹ See generally RFK HUMAN RIGHTS, WESTERN SAHARA: HUMAN RIGHTS VIOLATIONS REPORTED BETWEEN JANUARY 1, 2015 AND JUNE 30, 2015, 9–14 (2015), http://rfkcenter.org/media/filer_public/b9/be/b9bed235-e905-4674-8aeb-bfe33697ee20/western_sahara_human_rights_report_for_january_-_june_2015.pdf; see also ALEXIS ARIEFF, CONG. RESEARCH SERV., WESTERN SAHARA 9 (Oct. 8, 2014), <https://www.fas.org/sgp/crs/row/RS20962.pdf> ("Moroccan security forces reportedly use disproportionate force to break up periodic protests by Sahrawi.").

²¹² CODESA, 2014 REPORT 3. Sahrawi victims filed over 156 complaints about these violations of their right to assembly with prosecutors in Moroccan courts and regional human rights committees.

²¹³ Kennedy, *supra* note 147.

²¹⁴ RFK HUMAN RIGHTS, *supra* note 89, at 2.

²¹⁵ RFK HUMAN RIGHTS, *supra* note 147.

²¹⁶ See, e.g., U.S. DEP'T OF STATE, *supra* note 127, at 11.

²¹⁷ Special Rapporteur on Torture, *supra* note 90, at ¶ 63.

²¹⁸ ADALA UK, VISIT REPORT: OCCUPIED WESTERN SAHARA & MOROCCO, CITIES OF LAAYOUNE, AGADIR AND RABAT 27TH OCTOBER - 7TH NOVEMBER 2014, 10 (2014), <https://adala.uk.files.wordpress.com/2014/04/visit-report-by-member-of-adala-uk-to-the-occupied-territories.pdf>.

²¹⁹ Mar. 19, 2016 Reliable Source Interview, *supra* note 158.

²²⁰ See Kennedy, *supra* note 147.

²²¹ *Watching Protests in Western Sahara*, WITNESS MEDIA LAB, <https://lab.witness.org/watching-protests-in-western-sahara/> (last visited June 27, 2016).

teacher trainees participating in a cross-city protest against job security reductions.²²² Moroccan authorities also violently dispersed at least eleven demonstrations protesting poverty and unemployment from July through December 2015.²²³ In October 2014, police roughly dragged the Association for the Monitoring of Natural Resources and for the Protection of the Environment in Western Sahara (AMRPENS) Chairman, Lahcen Dalil, out of a protest against resource exploitation. They then kicked and beat him until his shoulder dislocated. The surgery required three months of therapy, for which he was not compensated.²²⁴ According to witnesses interviewed for this report, children as well as adults have been arrested for participating in protests.²²⁵ Finally, in April 2015, Moroccan police officers raided activist Aminatou Haidar's home as she was meeting with representatives of the UN High Commissioner on Human Rights.²²⁶

Morocco further violates the right of the Sahrawi people to free expression and opinion by employing media blackouts and mass censorship. Authorities control print media and block websites to ban any messages advocating self-determination for Western Sahara.²²⁷ They also attempt to discredit journalists by spreading rumors about their personal lives, accusing them of belonging to terrorist organizations,²²⁸ and intimidating them through selective prosecution.²²⁹ Additionally, Moroccan police have physically abused pro-Sahrawi journalists attempting to attend their colleagues' trial.²³⁰

Those who videotape protests and report for websites are often the first victims of repression.²³¹ For example, authorities have harassed or threatened to arrest several members of Equipe Media. Moroccan officers have threatened female Equipe Media workers with rape, as well as revoked a man's taxi license.²³² Still other demonstrators have been detained, tortured, and convicted of trumped-up offenses.²³³ On March 19, 2016, Moroccan officials carried out a violent crackdown on peaceful protests across El-Aaiún demanding Sahrawi

²²² *Morocco: Protests Violently Dispersed*, HUMAN RIGHTS WATCH (Jan. 18, 2016), <https://www.hrw.org/news/2016/01/18/morocco-protests-violently-dispersed-0>. For more examples of Moroccan police violently dispersing a protest see: <https://www.youtube.com/watch?v=Td67CUv0t4Y>.

²²³ RFK HUMAN RIGHTS, *supra* note 89, at 11–13.

²²⁴ Interview with Laheen Dalil, *supra* note 162.

²²⁵ *Morocco: Moroccan Occupation Authorities Arrest Sahrawi Young in the Occupied Dajla*, ALLAFRICA (Sept. 30, 2015), <http://allafrica.com/stories/201509301356.html>; *Western Sahara: Moroccan Police Arrests Young Sahrawi*, ALLAFRICA (July 26, 2015), <http://allafrica.com/stories/201507271398.html>; Interview with Hamadi Nasiri, *supra* note 151.

²²⁶ RFK HUMAN RIGHTS, *supra* note 211, at 12.

²²⁷ OFFICE OF THE UN HIGH COMM'R FOR HUMAN RIGHTS, REP. OF THE OHCHR MISSION TO WESTERN SAHARA AND THE REFUGEE CAMPS IN TINDOUF 9 (Sept. 8, 2006), <http://www.arso.org/OHCHRep2006en.pdf>.

²²⁸ Interview with Sidi Ahmed Abdala Mohamed Fadel, *supra* note 152.

²²⁹ U.S. DEP'T OF STATE, *supra* note 127, at 9; *see also* Aida Alami, *Moroccan Government Cracks Down on Journalists and Activists*, New York Times (Oct. 11, 2015), available at http://www.nytimes.com/2015/10/12/world/africa/moroccan-government-cracks-down-on-journalists-and-activists.html?ref=africa&_r=2.

²³⁰ *Adala UK denounces increase in violence against human rights activists in Occupied Territories of Western Sahara*, ADALA UK (Mar. 23, 2015), <https://adala.uk.org/2015/03/23/adala-uk-denounces-increase-in-violence-against-human-rights-activists-in-occupied-territories-of-western-sahara/>.

²³¹ EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, *supra* note 74 at 24.

²³² Mar. 19, 2016 Reliable Source Interview, *supra* note 158.

²³³ *See Sahrawi Media Activist Mohamed Mayara Exposed to Harassment and Provocation*, SAHARA PRESS SERV. (Sept. 13, 2015, 10:59 AM), <http://www.spsrasd.info/en/content/sahrawi-media-activist-mohamed-mayara-exposed-harassment-and-provocation>; Karlos Zurutuza, *Breaking the Media Blackout in Western Sahara*, INTER PRESS SERV. (Aug. 23, 2015), <http://www.ipsnews.net/2015/08/breaking-the-media-blackout-in-western-sahara/>; *see also* Alami, *supra* note 229.

rights, injuring over twenty people.²³⁴ Authorities will also threaten and harass activists' friends and family members, or create smear campaigns to impugn the activists' credibility.²³⁵

Morocco has fined or sentenced people for criticizing the government and for reporting on human rights violations in Western Sahara.²³⁶ In June 2014, a journalist for RASD TV (another Sahrawi media group) was detained after producing a documentary on police repression.²³⁷ Security forces have also detained and beaten people for flying Western Saharan flags or wearing clothing that demonstrates an opposition to Morocco.²³⁸

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 19 and 21 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To take all necessary measures to adequately investigate complaints of harassment, threats, suppression of peaceful demonstrations, and police mistreatment of Sahrawi human rights defenders and journalists, appropriately prosecute and discipline those responsible for harassment, threats, suppression of peaceful demonstrations, and police mistreatment, and compensate those who have been the victims of excessive use of force by the police or security forces.
- To refrain from censoring the free speech of Sahrawi activists through media blackouts and control of the internet.

9. Article 22: Freedom of Association

Art. 22, para. 1: Everyone shall have the right to freedom of association with others...

Art. 22, para. 2: No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others...

Article 2 of the Moroccan law regulating freedom of association provides that all "associations of persons can freely form without authorization subject to the provisions of article 5."²³⁹ However, Article 3 of the Moroccan law regulating freedom of association

²³⁴ AMRPENWS *Condemns the Violent Crackdown on Saharawi Peaceful Demonstrators*, AMRPENWS (Mar. 19, 2016), <http://sahararesources.org/?p=360>; *A peaceful [sic] demonstration in occupied El Aaiun cracked down by Moroccan occupying [sic] forces*, WITNESS (Mar. 24, 9:33 PM, 2016),

<https://witness.checkdesk.org/en/report/102> ("At first, plainclothes officers attack a man protesting individually, and appear to lead him into an alley. Then, a plainclothes officer appears to grab a sign from four women. In the third scene, uniformed officers attempt to surround four women, who continue to chant, wave a peace sign in the air.").

²³⁵ Apr. 11, 2016 Reliable Source Interview, *supra* note 162.

²³⁶ See *Annual Report: Morocco/Western Sahara 2013*, AMNESTY INT'L (May 23, 2013), <http://www.amnestyusa.org/research/reports/annual-report-moroccowestern-sahara-2013?page=show>.

²³⁷ ADALA UK, *supra* note 218, at 11.

²³⁸ See RFK HUMAN RIGHTS, WESTERN SAHARA: HUMAN RIGHTS VIOLATIONS REPORTED BETWEEN MARCH 1, 2014 AND DECEMBER 31, 2014, 4 (2014), http://fr.birdhso.org/images/upload/EN_rfkh_report_2014.pdf.

²³⁹ Dahir 1-58-376 of November 15, 1958, relating to the right of association, as amended by Law 75.00 (2002) and Law 36.04 (2006) https://www.imolin.org/doc/amlid/Morocco/Morocco_Dahir_no_1-58-376.pdf.

prohibits “associations that have an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, *the integrity of national territory, or the monarchical regime*, or that calls for discrimination.”²⁴⁰

The Kingdom of Morocco has repeatedly violated the right to freedom of association under Article 22 by refusing to accord legal status to Sahrawi nongovernmental organizations that advocate for the right to self-determination.²⁴¹ Despite its prominence in the region, CODESA remains unregistered. When it attempted to hold a founding meeting anyway, local Moroccan authorities intervened and prevented the gathering.²⁴² NGOs that have sought official recognition to no avail include AMRPENS, the Saharawi Observatory for Women and Children, Saharawi League for the Protection of Natural Resources in Western Sahara, and the Organization of the Natives of Saguia el-Hamra and Rio de Oro.²⁴³

In the few cases where organizations have been granted official recognition, the process has taken years. ASVDH has received a receipt indicating that its organizational paperwork was properly filed, which, absent any official objections within sixty days, allows the group to operate.²⁴⁴ Still, ASVDH applied for legal recognition a decade ago, and for nine years Morocco ignored an Agadir administrative court’s ruling that the authorities had illegally prevented the group’s registration.²⁴⁵ Despite finally having their receipt of recognition, ASVDH reports that they continue to face harassment for their activities.

Even when groups are able to form, Moroccan authorities will attempt to block their meetings by arriving early and sealing the planned premises to prevent entry.²⁴⁶ Since July 2014, the Moroccan Human Rights Association has had over fifteen of its meetings blocked. The Moroccan League for Human Rights has experienced similar difficulty in its attempts to convene.²⁴⁷

376_règlementant_le_droit_dassociation_1958.pdf (in French). Article 5, translated, reads: “*Every association must be declared before the head of the administrative authority in the district where the headquarters of the association are located When the declaration meets all the conditions listed in the paragraph below, the final acknowledgment must be delivered within a maximum of 60 days, failing which the association may conduct its activities as they are defined in its constitutive status.*”

²⁴⁰ *Id.* at art. 3 (emphasis added).

²⁴¹ See, e.g., *World Report 2015: Morocco/Western Sahara*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2015/country-chapters/morocco/western-sahara> (last visited Nov. 20, 2015); HUMAN RIGHTS WATCH, FREEDOM TO CREATE ASSOCIATIONS: A DECLARATIVE REGIME IN NAME ONLY 4–5 (2009), <http://www.hrw.org/sites/default/files/reports/morocco1009webwcover.pdf>; OFFICE OF THE UN HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 227, at 10–11.

²⁴² See, e.g., RFK HUMAN RIGHTS, THE MOROCCAN GOVERNMENT CONTINUES SYSTEMATIC VIOLATIONS AGAINST THE SAHRAWI PEOPLE: REPORTED HUMAN RIGHTS VIOLATIONS, SEPTEMBER 2013–FEBRUARY 2014, 3 (2014); RFK HUMAN RIGHTS, NOWHERE TO TURN: THE CONSEQUENCES OF THE FAILURE TO MONITOR HUMAN RIGHTS VIOLATIONS IN WESTERN SAHARA AND TINDOUF REFUGEE CAMPS 26 (2013), <http://www.saharamarathon.org/wp-content/uploads/2013/04/NowhereToTurnLoRes.pdf>.

²⁴³ Nov. 9, 2015 Reliable Source Correspondence, *supra* note 149. In many cases, organizations have attempted to file the necessary paperwork, but Moroccan officials have either refused to accept it or to provide an official receipt acknowledging the filing. HUMAN RIGHTS WATCH, *Morocco/Western Sahara: Rights Group Legalized*, (Aug. 24, 2015), available at, <https://www.hrw.org/news/2015/08/24/morocco/western-sahara-rights-group-legalized>.

²⁴⁴ HUMAN RIGHTS WATCH, *Morocco/Western Sahara: Rights Group Legalized*, *supra* note 243, (“[T]he ASVDH had received no notification of . . . objections and is now presumably definitively registered. Authorities should now deliver the group’s final receipt”).

²⁴⁵ *Id.*; Nov. 9, 2015 Reliable Source Correspondence, *supra* note 149.

²⁴⁶ Apr. 17, 2016 Reliable Source Interview, *supra* note 205.

²⁴⁷ *Morocco: Human Rights Gatherings Blocked*, HUMAN RIGHTS WATCH (Nov. 7, 2014), <https://www.hrw.org/news/2014/11/07/morocco-human-rights-gatherings-blocked>.

Such resistance has discouraged many more groups from even filing paperwork.²⁴⁸ For that reason, at least two pro-Sahrawi media organizations must risk their safety by working unregistered: the Sahrawi Center for Media and Communication and Equipe Media.²⁴⁹

In light of the above facts, we ask the Committee to find the Kingdom of Morocco in violation of Article 22 of the Covenant. We also ask the Committee to urge the Kingdom of Morocco, as long as it continues to occupy Western Sahara and until the Sahrawi people exercise their right to self-determination:

- To investigate complaints of barred or excessively-delayed legal paperwork from organizations whose registration papers have not been accepted.
- To adopt regulations that would facilitate the registration process for human rights defenders advocating on behalf of the Sahrawi people.

D. Conclusion

We urge the Committee to adopt the above-listed recommendations in its Concluding Observations subsequent to its review of the Kingdom of Morocco's implementation of its obligations under the Covenant.

²⁴⁸ This includes CODAPSO, Forum for the Future of the Saharawi Woman, Saharawi Committee for the Elimination of Torture, Freedom Sun Organization, and the Saharawi Committee for the Support of the UN Peace Plan and for the Protection of the Natural Resources. Nov. 9, 2015 Reliable Source Correspondence, *supra* note 149.

²⁴⁹ *Id.*; OFFICE OF THE UN HIGH COMM'R FOR HUMAN RIGHTS, *supra* note 227, at 11 (discussing how human rights defenders can be prosecuted for being part of an illegal or unregistered organizations).