

I. Executive Summary

1. The Kingdom of Morocco occupies roughly 80% of the non-self-governing territory of Western Sahara.¹ Morocco's control over the territory is reinforced by a fortified wall, surrounded by an estimated seven million landmines, that cleaves the territory in two. Over 2,500 kilometers long, the wall is the longest operational military barrier in the world.² As with the wall constructed by Israel in the West Bank, the Moroccan Wall deprives Sahrawis living east of the wall of access to the territory's natural resources, employment, and prevents them from traveling freely throughout the territory.

2. Since the Kingdom was last reviewed by this Council, the Kingdom has consistently refused efforts to promote the right to self-determination in Western Sahara and has obstructed the efforts of the United Nations Mission for Organization of a Referendum in Western Sahara (MINURSO) to organize a referendum on the question. Morocco's so-called "autonomy initiative" falls far short of fulfilling the right to self-determination to which the Western Saharan people are entitled.

3. It is clear that States Parties' obligations under human rights covenants extend to all of the territories and populations that are effectively under their control.³ Nevertheless, the Kingdom of Morocco continues to harass, torture, and imprison Sahrawi human rights activists, particularly those who have opposed the occupation. At the same time, the Kingdom has unlawfully exploited the natural resources of Western Sahara, including phosphate mines, fisheries, agricultural products (particularly tomatoes), and even the sand used for certain European beaches. Morocco's policies and actions have also diluted Sahrawis' distinct history and culture, tearing apart families and limiting the expression of Sahrawi identity to a revised and folklorized version expropriated by Moroccan officials to support tourism to the region.

II. The Rights of the Western Saharan People to Self-Determination

4. The right to self-determination is one of the cornerstones of the international legal order, memorialized in Article 1 of the UN Charter and reaffirmed as a human right in Article 1 of both the ICCPR and ICESCR.⁴ The Kingdom of Morocco's failure to recognize the right of the Western Saharan people to self-determination is therefore a question of direct concern to the Human Rights Council.

5. The UN General Assembly has repeatedly recognized Western Sahara's right to self-determination as a Non-Self-Governing Territory, and over forty years ago urged the Kingdom of Morocco to end its "occupation" of Western Sahara.⁵ Nevertheless, Morocco continues to administer the territory as if it were a part of Morocco proper.⁶

6. In its reports to both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights (CESCR), the Kingdom of Morocco claimed that it would grant Western Sahara a degree of autonomy through the "Moroccan Initiative for Negotiating an Autonomy Statute for the Sahara Region."⁷ The "Autonomy Initiative"

falls far short of what is required to meet the Kingdom's international obligations. Most important, 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.⁸

7. The 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."⁹ In response, Morocco accused the CESCR Committee of "flagrant partiality"¹⁰ and "categorically reject[ed] the observations, recommendations, and conclusions presented by the Committee."¹¹ Morocco's rigid refusal to comply with its international legal obligations violates the Sahrawi people's right to self-determination and jeopardizes international peace.¹²

The Kingdom Has Obstructed MINURSO's Mandate

8. Security Council Resolution 690 established the United Nations Mission for Organization of a Referendum in the Western Sahara (MINURSO) to protect the ceasefire and to implement a referendum on self-determination.¹³ As a result of the Kingdom's rejection of a series of proposals regarding the referendum, MINURSO has been unable to fulfill its mandate.

9. The Kingdom has obstructed MINURSO at the highest administrative levels as well as in its everyday operations. In May 2014, the Secretary-General appointed Kim Bolduc as the new Special Representative of the UN Secretary-General for Western Sahara. The Kingdom refused her appointment and blocked her entry until February 2015.¹⁴ Most recently, Morocco expelled dozens of MINURSO staff members from the country after UN Secretary-General Ban Ki-Moon's expression of sympathy for the plight of the Western Saharan refugees, and his reference to Western Sahara as under occupation.¹⁵

10. Although MINURSO remains in Western Sahara, its mandate is inadequate to promote a peaceful resolution to the situation. Peacekeeping operations must be carried out in conformity with human rights.¹⁶ This is why nearly all of them proceed with a mandate to protect human rights. The broadening of MINURSO's mandate would enable impartial monitoring of the human rights situation in Western Sahara.

11. The Security Council has the authority to strengthen the MINURSO mandate on the basis of Chapter VII.¹⁷ The Security Council has already had occasion in the past to broaden the mandate of a peace-keeping mission—notably in the case of the MONUC in the Democratic Republic of Congo.¹⁸

III. Violations of the Right to be Protected from Torture and Cruel, Inhuman or Degrading Treatment

12. States must not only prohibit torture and cruel, inhuman, or degrading treatment, but must also investigate allegations of torture, prevent the introduction of evidence obtained through torture, punish the perpetrators, and provide redress for victims. The Kingdom of Morocco has failed to comply with these international obligations, subjecting Saharawi human rights defenders and others to police brutality, torture, and other forms of cruel, inhuman or degrading treatment.

Moroccan Police Routinely Brutalize Sahrawi Human Rights Defenders

13. 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, thrown into a van, stripped naked, beaten, kicked, insulted, abused, and threatened with rape.¹⁹ 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 a group of Sahrawis and taken 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.²⁰

Moroccan Police Have Beaten and Tortured Sahrawi Children

14. Sahrawi children have also been victims of torture and police brutality amounting to cruel, inhuman, or degrading treatment. 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.²¹ Children reported incidents of verbal, physical, and psychological abuse. They reported being handcuffed, beaten, kicked, and threatened with rape.²² 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.²³

Police Extract Confessions through Torture and Cruel, Inhuman or Degrading Treatment

15. In August 2014, the UN Working Group on Arbitrary Detention reported that torture and cruel, inhuman, or degrading treatment are commonly used to extract confessions of guilt in criminal cases involving Sahrawi detainees.²⁴ Ali, a fourteen-year-old, reported to Adala UK that he confessed after mistreatment by the police. "It wasn't true but after being hit so much I just told them I did it so they would stop."²⁵ Several Sahrawi children reported being forced to sign papers in languages they did not understand.²⁶ Sahrawi activists involved in demonstrations or associated with promotion of the right to self-determination are typical targets of security forces.

Morocco Has Failed to Conduct Adequate Investigations or Punish the Perpetrators of Torture

16. The cases of Sahrawi detainees prosecuted in connection with demonstrations at the Gdeim Izik tent camp in 2010 further illustrate the inadequacy of Morocco's response to police torture.

17. In November 2010, Moroccan authorities violently intervened to dismantle the Gdeim Izik protest camp formed by approximately twenty thousand Sahrawis to call for Morocco to respect their economic, social and cultural rights, including the right to self-determination and the right to freely dispose of their natural resources.²⁷ More than 300 Sahrawis were arrested; most were released after short periods of detention, but 168 were sent to the "Black Prison" in El Aaiun. Of those, all but twenty-five were released after a period of several months without facing trial. The twenty-five remaining Sahrawis had their trial in February 2013 in Rabat before a military tribunal, despite their civilian status, in violation of international law.²⁸ Charged with having formed a criminal gang aimed at committing violent acts against Moroccan law enforcement authorities, some of them were condemned to twenty years' imprisonment while others were condemned to life imprisonment.²⁹ The Gdeim Izik Group was convicted mainly based on confessions that they claim were extracted through police torture.³⁰

18. Naâma Asfari, a Sahrawi activist who was prosecuted 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.³¹

19. 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 days I suffered interrogations in the middle of the night. [They said,] "You are not allowed to look into my eyes, get on your knees."³²

20. 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 was 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.³³

21. In February 2013, the Special Rapporteur on Torture, Juan Méndez, observed that the military court in the Gdeim Izik case 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.”³⁴ 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.”³⁵ These findings were reiterated in 2014 by the UN Working Group on Arbitrary Detention.³⁶

IV. Violations of the Rights of Human Rights Defenders

22. The Kingdom of Morocco routinely persecutes Sahrawi human rights defenders and interferes with their rights to freedom of expression, peaceful assembly, and association.

Morocco Represses Expressions of Support for Self-Determination

23. Since the Kingdom of Morocco was last reviewed under the UPR, it has systematically repressed public demonstrations in support of self-determination and the right of a people to control their natural resources.³⁷ CODESA reported that Moroccan security forces had repressed 177 peaceful demonstrations through excessive force in 2014 alone.³⁸ From January 2014 to March 2016, Robert F. Kennedy Human Rights documented eighty-four violations of the rights to freedom of expression, assembly, and association.³⁹ The home of Aminatou Haidar, human rights defender and president of CODESA, was recently attacked during a peaceful protest in her neighborhood while she was meeting with representatives from the United Nations Office of the High Commissioner on Human Rights.⁴⁰

24. Authorities are slow to respond to these complaints or to allow affected parties to track their status.⁴¹ 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.”⁴² After breaking up demonstrations, authorities typically sweep the streets, invade homes, and “hunt down” activists and Sahrawi journalists and bloggers.⁴³ They will then often brutally beat protestors before arresting them, and have been known to try and hide the abuse from visiting delegates.⁴⁴ Still, websites like “WITNESS” host numerous eyewitness videos confirming the brutality of Moroccan officers in their determination to end protests.⁴⁵

25. Moreover, Moroccan authorities have detained and interrogated students in response to their participation in political protest.⁴⁶ Some Sahrawi children have been detained for months, and among Sahrawi detainees complaining of torture since April 2014, at least seven are minors.⁴⁷ A 2014 study found that 8 out of 13 Sahrawi girls interviewed were prevented from entering schools because they participated in public protests or were Sahrawi.⁴⁸

Morocco Harasses Human Rights Defenders and Subjects Them to Intrusive Surveillance

26. 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.⁴⁹ They also attempt to discredit journalists by spreading rumors about their personal lives, accusing them of belonging to terrorist organizations,⁵⁰ and intimidating them through selective prosecution.⁵¹

27. Morocco also violates the right to privacy of Sahrawi human rights defenders by subjecting them to surveillance and unjustified searches.⁵² 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.”⁵³ 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.⁵⁴ Activist groups such as CODESA report that their meetings are subject to surveillance by Moroccan security forces.⁵⁵ Security forces also conduct surveillance in and around schools, targeting students who support the right to self-determination.⁵⁶ All of these programs create considerable fear and intimidation.

V. Violations of Social, Economic and Cultural Rights

28. Through its policies and actions in the Non-Self-Governing territory of Western Sahara, the Kingdom of Morocco has violated the economic, social and cultural rights of the Sahrawi people.

The Moroccan Wall Separates Families and Prevents Sahrawis East of the Wall from Accessing their Natural Resources

29. As noted above, Morocco maintains a fortified wall, or berm, that stretches the entire length of the Non-Self-Governing territory of Western Sahara. The wall is made of rock and sand, fortified with trenches, barbed wire, and an estimated seven million landmines.⁵⁷ It is monitored by sophisticated electronic movement detection devices, and guarded by Moroccan soldiers.⁵⁸ Despite a demining program, Moroccan authorities recorded no less than 2,171 accidents due to mines and other explosive remnants between 1975 and 2008.⁵⁹ Another 87 have been reported since 2009.⁶⁰ Every year more individuals are wounded and killed.⁶¹ Furthermore, the mines located east of the wall prevent the refugee camp population from freely moving their herds of livestock.⁶² 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.

30. 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.⁶³ 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.⁶⁴

31. 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.⁶⁵ In 2013, MINURSO recorded 42 violations by the Royal Moroccan Army of military agreements between the Kingdom of Morocco and the United Nations.⁶⁶ 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."⁶⁷

32. The Moroccan wall is longer, older, and more militarized than the Israeli wall condemned both by international experts and the ICJ.⁶⁸ In Western Sahara, the wall stretches for 2500 kilometers and has only five crossing points: four are for the exclusive use of MINURSO staff, one is open to civilians, but all five are blocked to Sahrawis. Sahrawis are prohibited from crossing over the wall, even when they possess another nationality.

33. In its 2004 Advisory Opinion on the Israeli wall, the ICJ concluded that the construction of the wall violated the right to freedom of movement under Article 12 of the ICCPR.⁶⁹ 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.⁷⁰

34. There are striking parallels between the effects of the Israeli wall on the Palestinians, and the effects of Morocco's wall on the Western Saharan people. Moreover, Morocco—like Israel—continues to move settlers into the occupied territory. Unlike Israel, however, Morocco has not been held accountable by the international community for its actions violating the rights of the Western Saharan people.

The Kingdom of Morocco's Denial of Sahrawi History, Culture and Identity

35. Schools in Western Sahara do not allow the Hassaniya language and do not teach Sahrawi history, culture or geography.⁷¹ As the Hassaniya language is one of the main vectors for the transmission of Sahrawi culture, its absence from school constitutes a serious assault on the integrity of Sahrawi culture.

36. Moroccan authorities also exert intense pressure on the content of Sahrawi cultural productions, leading in practice to the censorship of Sahrawi culture, denying it even the name "Sahrawi" in favor of calling it "Hassaniya." In the past few years, a number of state-led initiatives—including the construction of a multimedia library, plans for a "museum of the Sahara," a music institute and a center for Saharan studies, and the organization of cultural and theatre festivals⁷²—have been launched with the apparent goal of promoting "Hassaniya" culture but are in reality aimed at exploiting a simplified,

“folklorized” and decontextualized version of Sahrawi culture in order to better control it and reduce it to an asset of Morocco’s tourism industry.

37. Morocco censors Sahrawi cultural productions and cultural voices. Sahrawi artists who refuse to support Moroccan authority over Western Sahara are banned from taking part in cultural life and may be subjected to harassment, arbitrary detention, and beatings.⁷³

38. The Kingdom of Morocco’s restrictions on Sahrawi cultural life also take more indirect forms. Moroccan authorities sometimes prevent Sahrawi parents from registering the Hassaniya names they choose for their children, especially if they are hyphenated names which are common in Sahrawi culture,⁷⁴ or names which according to the authorities have “sovereignist” connotations.⁷⁵ Some Sahrawi adults have also had to adopt a Moroccan name, sometimes imposed by administrative staff, in order to be granted an identification document.⁷⁶ Moreover, no administrative services are offered in Hassaniya and administrative offices do not offer translation or interpretation services. In practice, this prevents some Sahrawi from accessing rights and services to which they are entitled.⁷⁷

VI. Recommendations

The Signatories of this Submission Recommend that Morocco:

- 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 its right to self-determination unambiguously and in a democratic manner;
- 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;
- Take all measures necessary to stop the torture and cruel, inhuman or degrading treatment of Western Saharans. Specifically, the Kingdom of Morocco should review all complaints of torture and cruel, inhuman, or degrading treatment filed with the authorities, investigate each case, prosecute the responsible parties with criminal actions, and adequately compensate the victims or their next of kin, and provide transparent and verifiable data on such actions to civil society;
- 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;
- Ensure that the prisoners subjected to military trials, such as those in the Gdeim Izik protest case, receive new trials before a civilian court at which any evidence obtained through torture is excluded;
- Take all necessary measures to protect the freedoms of human rights defenders in Western Sahara by removing any obstacles to their ability to meet, travel, form organizations, and organize peaceful protests;

- Investigate and prosecute state agents who have engaged in the surveillance, harassment, arbitrary detention or assault on any child;
- Cease the monitoring, surveillance, and discrediting of Sahrawi human rights defenders;
- Dismantle the wall dividing the territory of Western Sahara and implement an effective and expeditious mine-clearing strategy;
- Adequately compensate victims and families of mine accidents for related injuries and death;
- Design and implement pedagogical programs focused on teaching Hassaniya language, literature, history, geography and culture, in consultation with Sahrawi leaders;
- Cease the harassment, arrest, arbitrary detention or physical assault of any artist.

¹ CIA World Fact Book, *available at*

<https://www.cia.gov/library/publications/the-world-factbook/geos/wi.html>.

² UN Secretary-General, *Report of the Secretary-General on the Situation Concerning Western Sahara*, ¶ 43, S/2014/258 (April 10, 2014). See STEPHEN ZUNES & JACOB MUNDY, *Western Sahara: War, Nationalism, and Conflict Irresolution* 21–23 (Syracuse Univ. Press ed., 2010) 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 bermas “the world’s largest landmine field”).

³ See Human Rights Committee, *Concluding Observations of the Human Rights Committee: Israel*, August 21 2003, UN Doc. CCPR/C/0/78/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”); 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).

⁴ International Covenant on Civil and Political Rights, art. 1., ¶ 3, Dec. 19 1966, 999 U.N.T.S. 173; International Covenant on Economic, Social and Cultural Rights, art. 1., ¶ 1, Dec. 16 1966, 993 U.N.T.S. 3.

⁵ 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; UN General Assembly, *Resolution Adopted on the Report of the Fourth Committee, Question of Western Sahara*, A/RES/34/37, 75th Plenary Meeting, 21 November 1979; UN General Assembly, *Resolution Adopted on the Report of the Fourth Committee, Question of Western Sahara*, A/RES/35/19, 56th Plenary Meeting, 11 November 1980. See also, UN General Assembly, *Question of Spanish Sahara*, Resolution 3458, A/RES/3458 (XXX), 2435th Plenary Meeting, 10 December 1975 (“Reaffirms the inalienable right of the people of Spanish Sahara to self-determination, in accordance with General Assembly resolution 1514 (XV).”). The International Court of Justice (ICJ) has squarely rejected Morocco’s territorial claims over Western Sahara. See International Court of Justice, *Advisory Opinion on Western Sahara*, 1975 I.C.J. 12 (Oct. 16). See also 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].

⁶ See Jacob Mundy, *Moroccan Settlers in Western Sahara: Colonists or Fifth Column?*, 15 ARAB WORLD GEOGRAPHER 95, 96–101 (2012) [hereinafter *Settlers*].

⁷ Morocco 2015 State Report, CCPR/C/MAR/6, ¶ 35 ; Morocco 2014 State Report, E/C.12/MAR/4, ¶ 25.

⁸ International Court of Justice, *Advisory Opinion on Western Sahara*, 1975 I.C.J. 12 (Oct. 16) at ¶ 162 *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*]; Akram, *supra* note 5, at 96.

⁹ 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].

¹⁰ 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 3

http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MAR/INT_CESCR_COB_MAR_2196_0_E.pdf.

¹¹ *Id.* at 4.

¹² 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).

¹³ S.C. Res. 690, para. 4, UN Doc. S/RES/690 (Apr. 29, 1991).

¹⁴ *See, e.g., Western Sahara: UN Special Representative Kim Bolduc Embarks On Visit to Saharawi Refugee Camps*, ALLAFRICA (Feb. 6, 2015), <http://allafrica.com/stories/201502061536.html>; Press Release, United Nations 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>); *U.N. Security Council Analyzes Diplomatic Breakdown in Western Sahara*, GLOBAL POST (Oct. 28, 2014), *available at* <http://www.globalpost.com/dispatch/news/agencia-efe/141028/un-security-council-analyzes-diplomatic-breakdown-western-sahara>.

¹⁵ 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/s/g/offthecuff/index.asp?nid=4406>; *Morocco Asks That U.N. 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.

¹⁶ *See* United Nations Peacekeeping Operations: Principles and Guidelines (January 8, 2008), *available at* http://www.un.org/en/peacekeeping/documents/capstone_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 (MANUA, MINUK, MINUL, MINUSS, MONUSCO and ONUCI) include effective human rights protection mechanisms.

¹⁷ 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.

¹⁸ 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, 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. *See* United Nations Organizations Stabilization Mission in the Democratic Republic of the Congo: Mandate, *available at* <http://www.un.org/en/peacekeeping/mis%20missions/monusco/mandate.shtml> (last visited, September 21, 2016).

¹⁹ Telephone Interview with Abdelkrim Mbairkat, Sahrawi activist and advocate of human rights in Western Sahara (April 14, 2016).

²⁰ Telephone Interview with reliable and anonymous source (Apr. 15, 2016).

²¹ ADALA UK, THE SITUATION FACED BY SAHRAWI CHILDREN UNDER MOROCCAN OCCUPATION IN WESTERN SAHARA 3 (January 2015) (on file with authors).

²² *Id.* at 6–9.

²³ *Id.* at 11.

²⁴ 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].

²⁵ ADALA UK, *supra* note 21, at 9.

²⁶ *Id.* at 9–10.

²⁷ *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>. Human Rights Watch at the time placed the number at approximately 6,500. Those on the ground, however, have consistently placed the size of the camp at somewhere between 20,000 and 28,000 people.

²⁸ Human Rights Watch, *Morocco: Sahrawi Activist Facing Military Tribunal*, 22, Dec. 2014, available at <http://www.hrw.org/news/2014/12/22/morocco-sahrawi-activist-facing-military-tribunal>.

²⁹ See Robert F. Kennedy Human Rights, *Nowhere to Turn: The Consequences of the Failure to Monitor Human Rights Violations in Western Sahara and Tindouf Refugee Camps* (2013) 27–28, available at <http://www.vastsaharaaktionen.se/files/RFK%20Center%20-%20NowhereToTurnLoRes.pdf>. News outlets have reported that the Cour de Cassation has vacated the judgment of the military court and ordered a civilian trial, but as of September 19 we have not been able to obtain a copy of the judgment. See Amnesty International, *Sahrawi Defendants Granted Civilian Re-Trial*, August 8, 2016, available at <https://www.amnesty.org/en/documents/mde29/4615/2016/en/>.

³⁰ Western Sahara Resource Watch, *Gdeim Izik, the Trial*, 21 Feb. 2014, <http://wsrw.org/a131x2834>. The Special Rapporteur on Torture has found that Moroccan courts and prosecutors do not investigate reasonable allegations of torture or order medical investigations, contrary to Morocco’s Code of Criminal Procedure. See, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, UN Doc. A/HRC/22/53/Add.2 ¶ 27 (Feb 28, 2013) [hereinafter Special Rapporteur on Torture].

³¹ 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).

³² Toutain, *supra* note 31.

³³ *Id.*

³⁴ Special Rapporteur on Torture, *supra* note 30 at ¶ 66.

³⁵ *Id.*

³⁶ Rep. of the Working Group on Arbitrary Detention, *supra* note 24 at ¶ 68–69.

³⁷ 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.”).

³⁸ 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.

³⁹ See Human Rights Threatened, Self-Determination Deferred: The Status of Western Sahara, TOM LANTOS HUMAN RIGHTS COMMISSION (March 23, 2016), (statement of Kerry Kennedy, President, Robert F. Kennedy Human Rights) [hereinafter Kennedy]

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

⁴⁰ Robert F. Kennedy Human Rights, *Home of Robert F. Kennedy Human Rights Award Laureate Aminatou Haidar is Attacked; Disturbing Reports of Police Brutality Against Peaceful Protestors in Western Sahara* (April 17, 2015), <http://rfkcenter.org/home-of-robert-f-kennedy-human-rights-award->

laureate-aminatou-haidar-is-attacked-disturbing-reports-of-police-brutality-against-peaceful-protesters-in-western-sahara-2.

41 *See, e.g.*, U.S. DEP'T OF STATE, WESTERN SAHARA 2015 HUMAN RIGHTS REPORT 11 (2015), <http://www.state.gov/documents/organization/253165.pdf>.

42 Special Rapporteur on Torture, *supra* note 30 at ¶ 63.

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

44 *See Kennedy, supra* note 39.

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

46 Interview with a reliable and informed source requesting anonymity for security reasons, April 17, 2015.

47 JOANNA CHRISTIAN ALLAN & HAMZA LAKHAL, ACTING WITH IMPUNITY: MOROCCO'S HUMAN RIGHTS VIOLATIONS IN WESTERN SAHARA AND THE SILENCE OF THE INTERNATIONAL COMMUNITY 18 (April 2015), <https://saih.no/assets/docs/Acting-With-Impunity-Western-Sahara-report.pdf>.

48 Interview with Erica Vasquez, Georgetown University, June 3, 2015 [hereinafter *Vasquez Interview*].

49 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.arsso.org/OHCHRrep2006en.pdf>.

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

51 U.S. DEP'T OF STATE, *supra* note 41, at 9. *See also* Aida Alami, *Moroccan Government Cracks Down on Journalists and Activists*, N.Y. TIMES (Oct. 11, 2015), http://www.nytimes.com/2015/10/12/world/africa/moroccan-government-cracks-down-on-journalists-and-activists.html?ref=africa&_r=2.

52 *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.

53 Special Rapporteur on Torture, *supra* note 30, at ¶ 64.

54 *Western Sahara: Moroccan Police Terrify Residents*, PRAVDAREPORT (May 4, 2015), http://www.pravdareport.com/society/stories/04-05-2015/130480-westem_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 50.

55 EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, EMHRN MISSION REPORT: THE HUMAN RIGHTS SITUATION IN MOROCCO AND THE WESTERN SAHARA 23 (2015)

56 Apr. 17, 2016 Reliable Source Interview, *supra* note 46.

57 *See See* STEPHEN ZUNES & JACOB MUNDY, *Western Sahara: War, Nationalism, and Conflict Irresolution* 21-23 (Syracuse Univ. Press ed., 2010). *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").

58 *See ZUNES & MUNDY, supra* note 57, at 21–23.

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

60 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 Sahara, 8 April 2013, S/2013/220, §54 (34 accidents); Report of the Secretary-General on the Situation Concerning Western Sahara, 10 April 2014, S/2014/258 §43 (13 accidents); Report of the Secretary-General on the situation concerning Western Sahara, 30 April 2015, S/2015/246, §30 (10 accidents).

61 2013 Rep. of the Secretary-General on the Situation Concerning Western Sahara, *supra* note 60, at §54.

62 2014 Rep. of the Secretary-General on the Situation Concerning Western Sahara *supra* note 60, at §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.”).

⁶³ *See id.* § 11, 43.

⁶⁴ *Id.* at § 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).

⁶⁵ 2013 Report of the Secretary-General on the situation concerning Western Sahara, *supra* note 60, at § 39.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, *supra* note 3, § 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.”).

⁶⁹ *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.”).

⁷⁰ *Id.* § 163.

⁷¹ Interview with Danielle Smith, Sandblast, December 8, 2014.

⁷² Human Rights Council, Twentieth Session, Report of the Independent Expert in the Field of Cultural Rights, Mme Farida Shaheed, Addendum, Mission to Morocco (5-16 September 2011), A/HRC/20/26/Add.2, 2 May 2012, § 70 [hereinafter 2012 Rapporteur Morocco Report on Cultural Rights]; National Human Rights Council, Kingdom of Morocco, Submission to the Committee on Economic, Social and Cultural Rights, paras. 71, 77-79, February 2015, *available at* http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MAR/INT_CESCR_IFL_MAR_19657_F.pdf.

⁷³ Tara Deubel, Poetics of diaspora: Sahrawi poets and postcolonial transformations of a trans-Saharan genre in northwest Africa, pp. 5-11, *The Journal of North African Studies*, 2011.

⁷⁴ 2012 Rapporteur Morocco Report on Cultural Rights, *supra* note 72, at § 77.

⁷⁵ Interview with Alice Wilson, Durham University, 10 November 2014.

⁷⁶ Interview with Isabel Lourenço, Adala UK, 21 November 2014.

⁷⁷ Interview with Tara Deubel, University of South Florida, 25 November 2014; Lourenço Interview, *supra* note 76.