

## **INTRODUCTION**

The Democratic Arab Republic of Western Sahara forms an integral part of Africa. It is proud of belonging to this continent with so many cultures and civilizations and feels honoured of the respect it has been enjoying since its proclamation of independence in 1976, a respect which it continued to maintain through its commitment to all just causes in the world.

The people of Western Sahara are determined to remain free. They maintained their unity within their national liberation movement, the POLISARIO Front, which is their sole lawful representative in the struggle to achieve national independence. History has demonstrated that this movement has made tremendous sacrifices in this regard so as to maintain adherence to its consistent and unshakeable right to self-determination and independence, rejecting dealings, prevarications and the reality of the occupation imposed on it by a neighbouring country (the Kingdom of Morocco).

Aware of the need for African Unity, the Democratic Arab Republic of Western Sahara has enshrined this concept in the preamble of its Constitution which provides for "the need to commit the country to work towards African Unity and the establishment of international relations based on cooperation, understanding, mutual respect and peace in the world."

The Republic of Western Sahara has proved this commitment through its efforts within the Organization of African Unity which it aims to promote with its African partners in the African Union for the protection and promotion of human and peoples' rights.

Faithful to its commitments, the Democratic Arab Republic of Western Sahara acceded and ratified without delay the African Charter on Human and Peoples' rights on 2<sup>nd</sup> May 1986, conscious of the importance of this asset which constitutes a guarantee for African generations to preserve their diversified civilization and cultural African heritage, promote human rights and strengthen them as humanity's supreme values.

The Western Sahara State has been following with interest the activities of the African Commission on Human and Peoples' Rights, and it translated this interest into action by sending its representatives to the various sessions of the Commission, including the sessions in Nouakchott (1996), Algiers (2000) and South Africa (2002).

In February 2001, the State was visited by a delegation of the Commission led by Commissioner Rezzag Bara in the framework of the missions mounted by the members of the Commission for the promotion and development of human rights on the continent.

The State of Western Sahara supports the strategic policies of our continental Organization. In this connection, it has ratified a number of conventions

(African Charter on Human and Peoples' Rights, the Convention establishing the African Economic Group, the Constitutive Act of the African Union, the Additional Protocol to the Convention establishing the African Economic Group, the OAU Convention for the Prevention and Fight against Terrorism). It has also signed the African Charter on the Welfare of the Child.

Pursuant to Article 62 of the Charter, the State of Western Sahara was required to submit its initial report in May 1988 and its periodic reports in 1990, 1992, 1994, 1996, 1998 and 2002. In this connection, this report should be considered both as its initial report and a summary of the previous periodic reports.

The delay in submitting the above mentioned reports was due to a set of reasons and objective considerations, particularly the war situation, the fact that a substantial part of our territory is under occupation, the hard reality of refugees situation and the efforts of the State to put in place mechanisms, institutions and constitutional bodies to address all the noble objectives enshrined in the African Charter on Human and Peoples' Rights.

The war situation prevailing in Western Sahara since 1975 combines with other factors mentioned earlier to explain the method adopted in the preparation of the report presented to the African Commission on Human and Peoples' Rights, particularly with regard to some statistics and economic and social data.

The Republic of Western Sahara has the honour to submit this report to the African Commission, hoping that the discussions that it will generate will be constructive and effective. The State of Western Sahara avails itself of this opportunity to hail the leading role of your august Commission in the development and promotion of the importance of human and peoples' rights in our continent, and express its full readiness to strengthen its cooperation, consultation and continuous dialogue with the Commission.

## **Title I: General information on the Democratic Arab Republic of Western Sahara**

### Part I: Geography and surface area

The Democratic Arab Republic of Western Sahara is situated north west of Africa on the tropic of Cancer which crosses it at the southernmost tip of Oued El Dahab (Rio de Oro), (Dakhila).

Its surface area is about 284 000 km<sup>2</sup>. Its coast skirts the Atlantic Ocean over a distance of 1062 km. It has borders with the Kingdom of Morocco in the north, the Islamic Republic of Mauritania in the south and south west, and the Peoples' Democratic Republic of Algeria in the east.

Like most African countries which have been under European occupation, its borders have been drawn on the basis of longitudes and latitudes. Thus its borders with Morocco stretch from latitude 27°40 north to longitude 11° and follow this line up to latitude 26° until it reaches longitude 14°20 and then the tropic of Cancer. The borders of the Republic of Western Sahara were fixed under agreements between France and Spain signed between 1900 and 1912.

Though the territory of Western Sahara consists of a desert particularly in the east, it is divided into two principal zones that are geographically distinct: the Saguiet El Hamra in the north and the Rio de Oro in the south. These regions generally consist of plains and some hills and plateaux of more than 400 m of altitude. Across Saguiet El Hamra and over 400 km flows a river that bears the same name. On the banks of the river grow wheat and barley as well as trees and various grasses meant for pasture.

Concerning the central and southern zones, i.e. Rio de Oro, they mainly consist of plains and bands of sand dunes. In the south are found mountain ranges (Adrar Sاتف) and in the southernmost area is the Tirs region formed of large plains on which grows grass during the rainy season used for pasture and camel breeding.

The presence of underground water in the region has made it possible to practise agriculture of crops such as barley and maize et to successfully carry out experiments of other crops, particularly around Dakhila.

There are two types of climates in the region. On the coast, the climate is a mild and temperate due to the effect of the Atlantic Ocean. On the other hand, the combination of the continental climate and the hot and dry climate on the mainland results in abrupt variations of temperatures during daytime, with the summer experiencing a torrid heat and the winter a severe cold.

The coast of Western Sahara is considered as one of the richest and the most diversified coasts in sea fishery. Given its geographical location at the crossroads between Europe and Africa and its proximity with the Canary

Islands which are only 100 km away, European sailors since the XIV century had to go via Western Sahara.

## Part II: Population

According to the last Spanish census carried out in the region, the population of Western Sahara was 74 963 people. In January 2000, the United Nations Mission for the Organization of the Referendum in Western Sahara (MINURSO) published the lists of the electorate authorized to vote in the referendum and their number was 86 412.

According to the non comprehensive preliminary census carried out in the autumn of 2000 by the United Nations High Commission for Refugees, the number of Western Sahara refugees in the camps under its control and included in its census was about 155 000 people. Given the prevailing conflict since 1975, it is difficult to give reliable statistics on the size of the population because a significant part of the country is still under Moroccan occupation, while the other part lives in exile in neighbouring countries.

Until recently, the population of Western Sahara living on the mainland was mainly nomadic depending for their livelihood on animal breeding (camels, goats, cattle), unlike the coastal area where the population is settled and has been carrying out communal activities in urban centres (traders, technicians, civil servants, soldiers, etc...).

At the beginning of the 1970s, the country went through a severe drought which pushed a considerable part of the rural population to abandon the nomadic life and the quest for pasture for their animals and look for the advantages of the urban life.

At the beginning of the Moroccan invasion of the Democratic Arab Republic of Western Sahara, i.e. by the end of 1975, more than half the population of Western Sahara was living in the major towns: El Ayoun, Smara, Dakhila, Boudjour, Aousard, El Mahbass, Tafari, Galtat Zammour, etc...

The special situation prevailing in the Democratic Arab Republic of Western Sahara is that of self-defense which is the result of colonization by the Moroccan Army of the big part of the country by the end of 1975, leading to compulsory exile of a big part of the population. This has made us to divide our report into two parts, just like the Democratic Arab Republic of Western Sahara: the areas under Moroccan occupation, then the liberated areas and the refugee camps.

## Part III: Areas under Moroccan occupation

Faced with the impossibility of obtaining information from reliable sources, we cannot in our report rely on the propagandist publications by the Moroccan Authorities such as "Le Progrès Economique". However, articles written by a

few reporters who managed to sneak into the region confirm that most of the people of Western Sahara capable of working in the occupied zones are permanently unemployed and have no hope of getting employment. In fact, the occupying authorities give special preference to the Moroccan settlers who came in big number to settle under the hatched plot of modifying the population plan and inflate the lists of the electorate with a view to the referendum on self-determination in Western Sahara organized by the United Nations in collaboration with the OAU.

Furthermore, information and studies from the many international Non Governmental Organizations working in the field of human rights are generally from reliable sources, reflecting the realities of the population of Western Sahara which since 1975 live totally besieged in the occupied zones.

Amid considerable economic power and potentialities of the occupied zones of Western Sahara, the people of Western Sahara are deprived of the benefits derived from the unbridled and unlawful exploitation of these resources (fish, phosphate). They do not either have access to other rights such as education and medical care. Even those who receive retirement annuities paid by the authorities of the former occupying power of Spain cannot go to neighbouring Canary Islands for medical services. Before the Moroccan invasion, all workers for the phosphate mining company were Western Saharans. To day, they are not more than 10% among Moroccan workers and they are despoiled of their rights.

The presence of the United Nations Mission for the Organization of the Referendum in Western Sahara in the region since 6<sup>th</sup> September 1991 to administer the territory in principle during the transitional period prior to the organization of the referendum has changed nothing to the state of emergency in force as it has not ended the excesses committed against the people of Western Sahara in the occupied zones. It has not either made the Moroccan Authorities show the slightest intention of providing employment to Western Saharan workers who live in dramatic economic conditions.

Morocco has often justified the discrimination of Western Saharan people and their being put under surveillance in Morocco by pretending that there are no educational facilities. In fact, for more than 25 years of Moroccan occupation, the absence of higher institutions of learning (universities, institutes, etc...) has compelled Western Saharan students to go to Morocco, thus exposing themselves to loss of their Western Saharan personality. Furthermore, Western Saharan students admitted in Moroccan universities are constantly harassed and oppressed by Moroccan police. These violations and many others committed against the Western Saharan population will be dealt with in Title V of this report.

#### Part IV: Refugee camps

Following the Moroccan invasion that took place by the end of 1975, thousands of Western Saharans were forced to abandon, individually or in families, their abodes and properties. This exodus over hundreds of kilometres was done on foot by many Western Saharans fleeing the horrors and atrocities perpetrated by the Moroccan army in the villages and towns militarily occupied.

At the beginning, the people's liberation army of Western Sahara concentrated its action on the military invasion of the territory. However, given the considerable number of the people fleeing their homes without any means of transport, it became necessary for the liberation army to devote part of its efforts to the security and transport of civilians to areas far away from the battlefield, and to regions which were geographically capable of accommodating refugee camps whose number continued to grow. This mission was extremely painful particularly after the genocide of Oum Drika, Galta Roumouz, Ettafriti, etc... when the Moroccan aviation bombed the displaced persons using weapons that are prohibited worldwide such as napalm and phosphorus.

As a result of the advances of Moroccan troops in the north and Mauritanian troops in the south of Western Sahara, the only safety exit for the displaced persons was to abandon their land and flee to the nearest safe borders. These people were given a warm welcome and support by the State of Algeria and camps started to mushroom around the town of Tindouf situated near the borders with Western Sahara.

With the continuous flow of refugees during the first years of the war, refugee camps were established and given the names of some of the big towns of Western Sahara such as El Ayoun, Smara, Dakhila, Ousserd.

Considering that these camps were situated in a desert and arid area called Lahmada which is known for its harsh climate during the only two seasons of the year, summer and winter, the State of Western Sahara made considerable efforts to ensure that the refugees are accommodated and live in better conditions. These efforts bore some significant results such as the successful establishment of administrative, economic and social structures for the people living in the liberated areas and in the refugee camps.

Through the participation of the citizens in the management and administration of their various affairs, the foundation of a pioneer and specific democratic experience was laid despite the harsh reality of the situation of the refugees. It is an experience where the Western Saharan women play a big role as witnessed by the various observers and numerous international organizations.

Furthermore, several agricultural projects were initiated with a view to promoting efforts in the field of food security, particularly for the weakest and poorest groups such as the elderly, the children and the hospitalized. Several projects were also launched in the field of water supply, with the support and contribution of some international and foreign organizations. From this policy adopted by the State, significant progress was made in different political, economic and social fields which we are going to address in Title IV, dealing with the application of the provisions of the African Charter on Human and Peoples' Rights.

However, the scarcity of resources, the difficult climatic conditions and the exceptional character of the harsh reality continue to be hindrances and obstacles for the refugees, particularly with regard to food, the impossibility to undertake big agricultural projects likely to meet their needs and the scarcity of water essential for these projects.

Though the efforts of the State and the foreign contribution and aid have been able to cover a significant part of the basic needs of the people, one of the major concerns of the Western Saharan authorities is still the supply of a balanced diet and medical services for the people, particularly for the weakest groups of society such as the children, the people with disabilities, the elderly and pregnant women.

## Religion

The population is muslim and practises the sunnite malekite doctrine. Article 2 of the Constitution stipulates that Islam shall be the religion of the State. Given the nature of the nomadic life handed down from father to son, religion is characterized by tolerance and the absence of any extremism and segregation among the people of Western Sahara, and this is demonstrated by coexistence with other religions in the course of history.

## Language

The official and national language is Arabic in conformity with Article 3 of the Constitution. Spanish is the second official language, while the Hassaniya dialect, which is derived from Arabic with amazigh connotations, is the language commonly used for communication.

## Part V: Economic data

Concerning the economic potential of Western Sahara and apart from the traditional resources such as animal breeding and agriculture in the plains, the waters and the coast of Western Sahara shelter enormous wealth which the people of Western Sahara have not been able to exploit for obvious reason: the occupation of the territory by Morocco. Due to this fact, our presentation of economic data will be limited in scope and incomplete. It should be noted that fishery and phosphate deposits are not the only natural



resources of the country; there are indicators that prove the existence of petroleum, gas, iron, etc...

## 1. Maritime fishery

With a coast stretching over more than 1062 km, Western Sahara has one of the richest and most varied fishing areas in the world. The people of the Canaries who are professional fishermen, were the first to discover the wealth of the coast of Western Sahara. Its inhabitants used the waters of Western Sahara as far back as the XV and XVI centuries, and it was the discovery of this wealth that attracted Spain to come and colonize the region.

In the waters of Western Sahara, which are an extension of the maritime area covered by the coast of Mauritania and Senegal, there is an immense variety of marine life. There are more than 190 species of fish (sardine, grouper, goatfish,...), tens of molluscs (cephalopods) and shellfish, particularly prawns and lobsters. In this connection, it should be pointed out that a relatively recent study has shown that it was possible to harvest more than 2 million tons of fish per year in the sole waters of Western Sahara which stretch from the north of the town of Dakhila to the Negreta region on the border with Morocco.

During Spanish colonization, and more recently at the beginning of the 1970s, the volume of maritime fishing recorded by Spanish vessels and vessels from other nationalities amounted to 1.28 million tons. If we take into account the latest estimates of maritime fishery, this figure would probably rise to twofold today. However, Western Saharan fishing areas which were continuously exploited by foreign fleets from different continents have been subjected to unprecedented plunder following the Moroccan colonization of the country.

The conventions on maritime fishery signed in the past between the Kingdom of Morocco and the European Union were concluded irrespective of international legitimacy. In the light of these conventions, European fleets crisscrossed the waters of Western Sahara, plundering thousands of tons of fish and molluscs, often in breach of the necessary conditions for biological regeneration. However, the plunder of fish resources in the waters of Western Sahara was not carried out by Moroccan and European fleets alone. Huge industrial fleets from different continents have participated in the exploitation of the maritime wealth of Western Sahara.

It is worth noting at this stage that Western Saharans have never benefited from earnings derived from this important resource though it is stipulated by international law that natural resources and wealth of a territory not enjoying self-determination and, in conformity with the United Nations Charter, going through the phase of decolonization, cannot be exploited without the consent of the genuine holders of the territorial sovereignty.



## 2. Petroleum

The advisory opinion (S/2002/161) formulated on 29<sup>th</sup> January 2002 by Mr. Hans KOREL, legal advisor of the UN Secretary General, on Morocco's granting of exploration permits to foreign companies in Western Sahara expressly stressed the unlawfulness of such agreements and their inconsistency with international law.

Paragraph 6 of the above mentioned advisory opinion stipulates that "the Madrid Agreement has not transferred territorial sovereignty nor granted the status of administering State to any of the signatory States; Spain could not unilaterally make any such transfer of status. The transfer of the authority for territorial administration to Morocco and Mauritania in 1975 did not either affect the international status of Western Sahara..."

The opinion was based on Article 73 of the United Nations Charter which sets out the fundamental principles applicable in cases of territories not enjoying self-determination, by expressly stipulating that economic activities in the territories not enjoying the right to self-determination should be carried out for the benefit of the people of these territories.

In this regard, paragraph 11 of the opinion adds that "the General Assembly reiterates that "the exploitation and plunder for the benefit of foreign economic interests of maritime and other natural resources of colonized territories and territories not enjoying self-determination shall constitute violation of related United Nations resolutions and shall be construed as a threat to the security and the development of such territories..."

It is thus clear that the agreements concluded in October 2001 between the Government of Morocco and two American (KERR-McGEE) and French (TOTAL FINA ELF) companies for exploration in the waters of Western Sahara have no legal value, considering that they violate the provisions of the United Nations Charter on decolonization.

The existence of oil fields inland and on the coast of Western Sahara has increased the greed and incomes of foreign multinational oil companies which signed agreements with the Moroccan occupying authorities. Furthermore, studies carried out during colonization have confirmed too the existence of significant oil fields. Even if we do not have at the moment accurate information on Western Sahara's energy potential, it should be recalled that during the colonial era, many oil companies carried out explorations in several regions of the country and that, if they have the required information, they prefer not to make them known for obvious reasons associated with the air of uncertainty prevailing in the territory waiting for decolonization.

It is however clear that Western Sahara has important energy resources which will be known only when the political situation will have been cleared.

## 2. Phosphate

The importance of phosphate in Western Sahara was proved with the discovery in 1947 of the Boukraa deposits by Spanish engineers. From the beginning of the mining of these deposits under Spanish administration, and particularly during the 1960s, it was proved that phosphate was present in considerable quantities and higher quality. Its volume was estimated at 10 billion tons over a surface area of more than 253 km<sup>2</sup>, in addition to the fact that it was found closer to the surface, making its mining easier. The overall capacity of the Boukraa deposits amounts to 1.6 billion Po (phosphoric anhydride), knowing that the phosphoric anhydride contained in Western Saharan phosphate is higher than that of Moroccan, even American phosphate (34.31 – 36.6%).

The exploitation of this resource was interrupted during the last years of the war, because the road used for its transport linking the mines to the port of the occupied town of El Ayoun were subjected to military attacks to put an end to the plunder and its unlawful mining. By the end of 1980s, exports to Morocco from Western Saharan deposits were estimated at nearly 1 million tons per year.

Morocco, by passing as a supplier of phosphate through the exploitation of Western Saharan phosphate which is characterized by its superior quality, aims at controlling the price on the world market, strengthening thus its reserves and position on the market.

## 4. Iron

Iron, with its high rate of Vanadium, was discovered in the Z'Milat Ghracha area near the town of Tirs situated in the Rio do Oro region. Like many other materials, the presence of iron was proved revealed during the colonial era though it was not mined at the time. The statistics on the available quantities et capacity of mining, return, etc... have not yet been revealed to the public due to the prevailing situation in the territory.

## **Title II: Process of application of the right to self-determination in Western Sahara**

In conformity with the provisions of the African Charter on Human and Peoples' Rights, particularly Article 20 which provides in its subparagraphs:

- 1: "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen".
- 2: "Colonised and oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community."
- 3: "All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural."

And given that under the Universal Declaration of Human Rights self-determination is part of the sacred human rights and constitutes one of the fundamental principles of the United Nations and the African Union,

We, in the Democratic Arab Republic of Western Sahara whose people has been for 27 years subjugated to the yoke of Moroccan colonialism that deprives them from the exercise of their consistent and unshakeable right to self-determination and independence, consider that it is essential to submit to the august African Commission on Human and Peoples' Rights in this report, a presentation, even if succinct, on the legitimate struggle of the Western Saharan people for the defense of their right to self-determination and independence as well as obstacles which today hinder their liberation from colonial domination, making Western Sahara the last African country where decolonization has not yet been completed.

As you well know, the issue of Western Sahara is one of the most sensitive – if not the most sensitive - international cases included on the agenda of the Security Council for three basic reasons:

**Firstly:** It concerns the right to self-determination, which is a fundamental principle of the United Nations

**Secondly:** The continuation of the conflict without any perspective of a solution constitutes a continuous danger for the security and stability of the country

**Thirdly:** The success or failure of the United Nations will strengthen or lessen the credibility of the established world order.

Even if we looked at only one of these three reasons, its political weight would be enough for the Security Council to get seriously involved in the search for a definitive and fair solution of the Western Saharan conflict which has more than lasted and in which not a single day goes without increasing the suffering of the Western Saharan people. For more than 30 years, this people has been subjected to unlimited human tragedy, and yet they aspire to the exercise of their right to self-determination, hoping that the international community, represented by the United Nations and its Security Council, the African Union, the Non Aligned Movement and all the international and continental organizations will honour their political, legal, moral and humanitarian commitments to the people of Western Sahara.

History has demonstrated that any solution which is contrary to or ignores the right to self-determination will never be permanent or definitive. This historic lesson has unfortunately been ignored by powers and countries of lesser importance, but it has all the time demonstrated its credibility and value in the world. The recent independence of East Timor is another proof of this reality, which came to add to the case of the African people who fought for their freedom and whose struggle for self-determination has been recognized as one of the fundamental pillars of the world order, headed by the United Nations.

Deriving from this established fact, the case of Western Sahara cannot be considered as a new problem. It is simply a question of decolonization whose settlement cannot be divorced from the lessons of history. If Morocco made a gross error, the international community should not do the same.

#### Part I: Armed struggle for self-determination

##### 1. The case of Western Sahara is a question of decolonization:

In 1966, after including Western Sahara, former Spanish colony (1884 – 1976), in the resolution on non independent territories, the UN General Assembly, in its resolution A/RES/21/2229 adopted in 1966, asked Spain, which was the administrative power, to take the necessary measures and organize a referendum on self-determination for the people of Western Sahara.

In 1967, the first independence movement for Western Sahara was created with a view to attaining territorial independence through peaceful means. A very well attended peaceful demonstration was organized on 17 July 1970 claiming independence, but the Spanish armed forces savagely quashed it by killing tens of victims and arresting many Western Saharan citizens, among them the leader of the movement whose fate has never been known. Three years later on 10 May 1973, the POLISARIO Front was created with the aim of leading the armed struggle for freedom and independence.

As a result, Spain indicated in 1974 its willingness to implement the relevant resolutions of the United Nations, but Morocco and Mauritania were quick to declare their sovereignty over the territory, forcing the United Nations to refer the matter to the International Court of Justice and send a delegation to the region.

The International Court of Justice issued an opinion on 16 October 1975 containing the following response to the vague impulse of Morocco's and Mauritania's sovereignty over the territory of Western Sahara: "The arguments and information submitted cannot prove any relationship of sovereignty of Western Sahara with neither Morocco nor Mauritania. The International Court of Justice has found no relevant legal link that may affect the implementation of the resolution of the General Assembly 1514 (XV) on the decolonization of Western Sahara, particularly the principle of self-determination through free and authentic expression of the will of the people of Western Sahara." Concerning the allegations that there was no people nor regime ruling Western Sahara, the reply of the International Court of Justice was as follows: "The information submitted to the Court makes it clear that just after the Spanish colonization, Western Sahara had a population which, though nomadic, was organized politically and socially under the leadership of those who had been duly mandated to represent them. This information indicate also that soon after the colonization of Western Sahara, Spain had not exercised its domination on a territory without leaders. In the royal decree of 26 December 1884, it was certified that the King of Spain granted his protection to Rio de Oro in conformity with the agreements concluded with the leaders of the natives."

Furthermore, the fact finding mission which visited the whole territory and had direct contact with the population underlined in its report submitted on 14 October 1975, that is two days before the Court issued its opinion, the will of the people of Western Sahara to attain independence and their strong conviction that the POLISARION Front was their legitimate representative. "The people of Western Sahara strongly expressed their will for independence and their rejection of Morocco's and Mauritania's territorial claims, and they expressed hope that regional (OAU, Arab League) and international (UN) organizations will lend them assistance for the attainment of their independence" (paragraph 420).

## 2. Western Sahara's occupation is unlawful:

In spite of the decision of the International Court of Justice and the report of the fact finding mission, Morocco and Mauritania invaded immediately Western Sahara and occupied it unlawfully. Using force and bribes, the Government of Morocco, protected by its armed forces, brought together nearly 300,000 Moroccans to participate in what was called "the green march" with a view to invading and settling in Western Sahara. The Security Council however, in accordance with its resolution 375 (1975), demanded the immediate withdrawal of the "green march" from the territory, a demand that

for more than 27 years has remained dead letter since Morocco is until now still occupying Western Sahara unlawfully.

On 14 November 1975, the Spanish Authorities, under a secret agreement known today as the "Madrid Agreements", divided "Spanish Sahara" between Morocco and Mauritania, regardless of the international legitimate resolutions and in total disregard of the will of its people. To justify their military invasion and sharing of the territory, the new invaders paraded the Madrid Agreements as representing a legal argument in conformity with the recommendations of the United Nations and the principle of self-determination stipulated by the Charter.

However, Mr Kurt KOREL, representative of the Secretary General for legal affairs and legal advisor, recently announced that: **"the Madrid Agreement has not transferred territorial sovereignty nor granted the status of administering State to any of the signatory States; Spain could not unilaterally make any such transfer of status. The transfer of the authority for territorial administration to Morocco and Mauritania in 1975 did not either affect the international status of Western Sahara which remains a non independent territory"** (letter addressed to the President of the Security Council on 29 January 2002).

On 26 February 1976, the last Spanish soldier left Western Sahara and on 27 of the same month, the Democratic Arab Republic of Western Sahara was proclaimed to fill the legal gap left by the withdrawal of Spain. Internationally, the Republic was recognized on the various continents and was granted full membership of the OAU in 1982 after the big majority of African States established official relations with it.

In 1979, Mauritania officially signed a peace agreement with the POLISARIO Front, retracted all its territorial claims on Western Sahara and recognized the Democratic Arab Republic of Western Sahara as the legitimate authority of the territory. The Moroccan forces on the other hand were quick to occupy the area left by the Mauritanian army, an act that was strongly condemned by the United Nations General Assembly in its resolutions 3437 (1979) and 3518 (1980). In retaliation against the violent armed struggle launched, Morocco started inflicting the worst abuses against Western Saharan civilians remaining in the occupied areas, and this was proved by human rights organizations such as Human Rights Watch and the International Federation of Human Rights.

At the beginning of the 1980s, unable to win the war, Morocco started building a security wall covering a distance of 22 000 km to preserve the morale of its army and surround at the same time the colonized regions with a view to exploiting their mining resources. This stone and sand fortress of about 3 metres has gunports which are regularly shown, and it is protected by trenches, barbed wire and mined fields (about 3 million mines), including

anti-personnel mines. This new strategy which has been very expensive did not yield the expected results against the Western Sahara army attacks.

Part II: Peaceful efforts towards self-determination and attempts to undermine them

Firstly: Peaceful efforts

#### 1. The UN-Africa settlement plan

In 1985, the United Nations General Assembly unanimously adopted recommendation 40/50 based on the draft proposed by the President of Senegal, on behalf of African States, in his capacity current Chairman of the OAU. The recommendation directed the UN Secretary General to initiate talks with Morocco and the POLISARIO Front to ensure their cooperation in the implementation of that recommendation. The UN General Assembly recommendation which endorses all the binding clauses of recommendation 104(XIX) adopted by the OAU Summit held in Addis Ababa urges the two parties to the conflict – the Kingdom of Morocco and the POLISARIO Front – :

- a. to initiate immediately direct negotiations;
- b. to cease fire,
- c. to agree on the conditions for the organization of a free and fair referendum on self-determination for the people of Western Sahara.

Even though the recommendation of the OAU 104(XIX) was not implemented due to Morocco's impediments, it is still an essential reference for all subsequent undertakings taken by the United Nations for the peaceful resolution of the conflicts.

Accordingly, the two organizations (UN and OAU) launched joint initiatives in 1986 which culminated in 1988 by the drafting of a peace plan accepted by both parties to the conflict and adopted by the Security Council in its resolutions 658(1990) and 690(1991). This peace plan led to the formation of a United Nations Mission for the Referendum of Western Sahara (MINURSO). This progress was therefore sanctioned by:

- a. MINURSO's access to the whole territory;
- b. The proclamation of a cease-fire;
- c. The launching of the exercise for identification of the electorate based on the last Spanish population census of 1974 with a view to organizing a referendum in February 1992 and thus meet the aspirations of the people of Western Sahara.

The acceptance of the referendum by the State of Western Sahara is a contribution to peace, given that the referendum represents a peaceful and democratic solution based on the will of the people of Western Sahara whose



legitimate right to self-determination is recognized by all international and continental organizations.

However, the course of events proved that Morocco's acceptance was no more than tactics for realizing two objectives of a closet plan: on one hand, the cease-fire was going to alleviate the heavy financial burden resulting from the war. On the other, in December 1991, Morocco imposed on the United Nations a significant amendment of the clauses relating to the electorate with a view to legitimizing a falsified count of the electorate. It went as far as moving thousands of Moroccans to the major occupied towns of Western Sahara in disregard of the provisions of paragraphs 72 and 73 of the peace plan. In fact, Morocco tried to add 250 000 additional names on the voters roll, thus creating the problem of knowing who has the right to vote, and this led to the postponement of the date of the referendum by several years.

The United Nations have continued with their efforts towards the settlement of the problem of voters created by Morocco and, as a last resort, agreed to consider all the requests submitted to them, the majority of which came from Morocco, by launching by the end of 1994, an operation aimed at identifying the persons authorized to take part in the referendum in accordance with the criteria set out by the former Secretary General in the annex of his report (23299/S). Nonetheless, although it had declared itself satisfied with those criteria, Morocco's cooperation was not enough to enable the United Nations Commission to fulfil its mission. Far from it, its resistance and impediments led to the discontinuance of the identification exercise by the end of 1995.

## 2. The Houston Agreements, a new lease of life for peace efforts

In September 1997, after several rounds of direct negotiations, the two parties signed the Houston Agreements under the auspices of James Baker III, former America's Secretary of State. The Houston Agreements constituted an important settlement of the crisis and enabled the United Nations Secretary General to inform the Security Council in his report (1997/742/S) of November 1997, as follows:

“Through these Agreements and thanks to the good will and spirit of cooperation demonstrated during the talks, the points of disagreement which had hindered the implementation of the plan were all resolved satisfactorily. These developments made it possible to implement the whole plan and to resume the identification exercise.” (paragraphs 26 and 27).

Finally, MINURSO managed to complete its identification exercise and publish the names of persons eligible to vote in the February 2000 referendum (nearly 86 412 voters). These important developments made by the United Nations after many years at the cost of 500 million US dollars led to the resolution of the fundamental problem hindering the peace plan. This was an

essential step in the implementation of the settlement plan and the organization of the referendum.

Secondly: Attempts to destroy peaceful efforts

- Morocco's obstacles and failure to honour commitments

Once again, the Moroccan regime tried by all means to hinder peace efforts. It submitted 130 000 wrong appeals on behalf of Moroccans who had been removed by the United Nations Identification Mission from the lists of voters published by MINURSO.

The United Nations could have found a solution to these obstacles if the Security Council had exercised its authority with a view to securing Morocco's cooperation with MINURSO, especially if one takes into account the fact that appeals constitute a technical problem that can be resolved by the implementation of protocols and directives governing appeals knowingly signed in May 1999 by the two parties under the auspices of the United Nations.

Unfortunately, the Security Council declined to exercise its powers, and this encouraged Morocco to continue hindering the peace plan and the process of referendum and substitute it with "an alternative formula". Finally, during the meeting of Berlin in September 2000, Morocco declared clearly that it was not ready to cooperate with the United Nations in its efforts to organize the referendum. Messrs Baker and Anane recognized, as indicated in paragraph 48 of the report of the UN Secretary General presented in February 2002, that: "Morocco is not willing to cooperate in the implementation of the settlement plan". This admission proves that Morocco has misled the international community for ten years, from the time of its first agreement on the settlement plan in 1990-1991.

This clearly shows that Morocco wants "to discuss only a solution which will guarantee its annexation of Western Sahara."

- The "Draft Framework Agreement", a violation of the principle of self-determination

Between February 2000, the end of the identification exercise, and 5<sup>th</sup> May 2001, date of the first presentation of the draft framework agreement to the POLISARIO Front, the reports of the United Nations Secretary General suddenly started taking on a different tone, giving a confused picture of the situation and exaggerating the difficulties hampering the implementation of the settlement plan.

Following Morocco's attempts to stop the referendum process, the personal envoy, James Baker III, tried to find other mechanisms for the settlement of the conflict. This new approach gradually drifted to what came to be

subsequently called "the draft framework agreement", provided for by the report of the Secretary General 613/2001/S dated 9 June 2001.

Notwithstanding its ambiguity, what is called "draft framework agreement" is in fact a methodical annexation of the territory to Morocco through a fixed referendum. This is based on two principal factors:

- a. A transitional period of five years during which the territory will remain under Morocco's domination, while different elections exercises are carried out including the Moroccan population residing in the territory, with a view to electing an executive body and a legislative assembly.
- b. At the end of this transitional period, "the future of the territory will be decided through a referendum requiring that eligible voters should have lived effectively in Western Sahara one year before the date of the referendum" (paragraph 5 of the draft framework agreement). This clause which allows the inclusion of Moroccan colons in the voters roll is not in conformity with what was previously established by the United Nations for participating in the decisive referendum for self-determination, which was reserved to the people of Western Sahara.

It is worth noting that the governments of two permanent members of the Security Council have accepted to be the "guarantors" of the "draft framework agreement", if need be.

It is quite clear that the "draft framework agreement" is an attempt to satisfy the wishful thinking of Morocco and legitimize its unlawful occupation of Western Sahara. Even if the reasons that led to this radical challenge of the UN-Africa settlement plan are still unknown, it is clear that the legitimacy and the legality of the new formula contradicts the United Nations resolutions on Western Sahara as well as the decision of the International Court of Justice which had stressed that Morocco had no legitimate claim over Western Sahara.

In this connection, a careful reading of the background of the arguments presented will reveal that the "draft framework agreement" is self-contradictory:

- a. On one hand, three major "arguments" were used to justify the attempt to abandon the draft settlement as a preliminary stage of the "draft framework agreement".

The first argument provides that the processing of the 130 000 appeals submitted by Morocco will require a minimum of two years, and this will hinder the holding of the referendum before 2002.

However, the “draft framework agreement” itself provides for the holding of a “referendum” in five years. It appears contradictory, to say the least, to consider that two years are “longer” at the time when another period of five years, which is quite longer, is being recommended. What is still more important to point out is that if MONURSO had been given the necessary instructions to begin consideration of the appeals in February 2000, it could have finished and the referendum could have been held.

The second argument indicates that lack of “binding mechanisms” in the peace plan enables the parties to ignore the results of the referendum.

It seems that this argument concerns Morocco because the POLISARIO Front has always guaranteed its willingness to accept the results of a free and fair referendum organized by the UN in conformity with the settlement plan. It is inconceivable that Morocco can reject the results of a referendum it has agreed to knowingly without incurring sanctions. Even in this assumption, the Security Council is capable of taking, at an appropriate time, the measures provided for by the United Nations Charter with a view to ensuring compliance by the parties with the results of a referendum organized under its auspices.

To present at a late hour the argument of lack of “binding mechanisms” as an insoluble problem hindering the referendum – even before it is held – means the lessening of the authority of the Security Council and the Secretary General and an encouragement of Morocco to maintain its obstacles to the peace process.

Furthermore and as already indicated, two permanent members of the Security Council from two world powers have declared themselves ready to “implement” the “draft framework agreement”. In our opinion, it would have been more understandable and simpler to declare themselves ready “to guarantee” the results of a referendum that has the blessings of the Security Council in accordance with the settlement plan and the Houston agreements negotiated by the parties under the auspices of the former American Secretary of State.

The third argument points out that the referendum envisaged in the settlement plan is a solution by which “the winner takes it all”.

In other words, this third argument means that it is necessary to give the right to self-determination (which for the United Nations is the cornerstone of decolonization) a commercial perspective (winners and losers) in order to judge the value and benefits of a referendum on self-determination. Indeed, there can only be one winner, the people of Western Sahara whose right to self-determination should be upheld. The two parties (POLISARIO Front and Morocco) have willingly accepted the settlement plan and the formula for referendum which has two alternatives: the independence of the territory or its annexation by Morocco. After ten years of efforts aimed at moving forward

the process of referendum, it seems strange and contradictory to raise the so called "winner-loser" approach, a situation which is the natural consequence of any free and fair referendum or elections, as a way of justifying the discontinuance of the settlement plan.

It is unnecessary to prove the contradictory and inconsistent character of the third argument because the "draft framework agreement" itself will enable Morocco, which is the unlawful colonial power, through the fixed referendum, to "take it all" and annex Western Sahara to Morocco after a period of five years.

Morocco, and all those that defend the advantages of the "draft framework agreement" do not hesitate to pretend that it will "lead to self-determination" because the definitive status of Western Sahara will be determined by the "referendum". The question is to know why the "referendum" becomes acceptable under the "draft framework agreement" and rejected under the peace plan, and yet this plan is the only agreement between the two parties and the only solution approved by the Security Council and the international community.

Faced with this situation, one can say that the arguments advanced to justify the rejection of the settlement plan and replacing it with the annexation plan by Morocco will not stand the test of time. Unfortunately, the importance of the resolutions and achievements of MINURSO such the cease-fire, the identification of the electorate, the first census of refugees and the proposals prepared by the POLISARIO Front in May 2001 to facilitate the referendum process had been minimized like the Houston Agreements which are decisive.

- b. On the other hand, the POLISARIO Front cannot accept the "draft framework agreement" as an alternative to the settlement plan because it renounces the right of the people of Western Sahara to self-determination and legitimizes the occupation of Western Sahara by Morocco.

In this context, it is worth recalling that the objective of the "draft framework agreement" as an alternative to the settlement plan as set out in paragraph 30 of the report of the Secretary General 1029/2000/S submitted on 25 October 2000 is to require the Government of Morocco as the "administrative power" to give or support the transfer of certain government powers to the whole population (both the settlers and the natives) in an effective, fundamental and consistent with international practices".

It is worth pointing out that the International Court of Justice (opinion of 16 October 1975) and the legal section of the United Nations (opinion of 29 January 2002) do not recognize Morocco's sovereignty over Western Sahara, not even the status of administrative power. However, the "draft framework agreement" considers 1) that Western Sahara is a "Moroccan" territory, 2) that its population, i.e. the Western Saharan people and the settlers, are

Moroccan citizens, and 3) that the right to self-determination and independence should be replaced by the “transfer of some government powers”, which is indeed the proposal of a colonial power trying to impose a fait accompli.

Accordingly, the resolution of the Security Council 1329 of January 2001 did not approve neither the “draft framework agreement” nor the report of the Secretary General which contained the contradictory proposal. Although the “draft framework agreement” was discussed during Wyoming meetings in August 2001, the POLISARIO Front reiterated its refusal, as did Algeria in its capacity of observer of the settlement plan, while Mauritania – another observer – stated clearly that it will not support any solution that has not been accepted by the two parties. As for Morocco, it did not attend the Wyoming meetings because it felt that it had already participated fully in the formulation of the “draft framework agreement”.

In the light of the above, the “draft framework agreement” cannot be “an agreement” not even “a framework” capable of resolving the Western Sahara conflict, since it aims substantially on one hand at replacing the only agreed legitimate framework (the settlement plan) by a unilateral approach to accommodate the vague desires of a colonial power and, on the other, it enables the Moroccan settlers to decide in lieu of the natives the definitive legal status of Western Sahara “through a fixed referendum” envisaged at the end of the five-year transitional period.

Though the proponents of the “draft framework agreement” indicate that “amendments and improvements” are conceivable in the transitional period, it is nonetheless true that this is inconceivable because the problem is not so much the presence or not of certain “flaws” in the provisions relating to the planned transitional period in the “draft framework agreement”, but rather the motives of the draft itself. This draft seems to overlook the fact that the Western Sahara conflict is a question of decolonization whose settlement is to be based on the right to self-determination, and that the only legitimate people in the eyes of the international law to decide the future of the territory is the Western Saharan people established through the census of the electorate carried out by the United Nations. Accordingly, the settlement plan continues to be the most credible and most realistic way for advancing towards the attainment of a just and definitive solution of the last case of colonization in Africa.

### Thirdly: Year 2002, a test of the will of the international community

On 19 February of that year, the United Nations Secretary General presented a report on the situation of Western Sahara in which he evaluated the last ten years of negotiations. He concluded that there were four alternatives for the Security Council among which he should chose one, provided that he demands its implementation without necessarily asking for the consent of the two parties. The four alternatives are the following:



First alternative: Implementation of the settlement plan (referendum) which is the only solution agreed upon by the two parties and adopted by the Security Council.

Second alternative: Application of the draft framework agreement (annexation of Western Sahara to Morocco as part of its territories).

Third alternative: Sharing the territory between the two parties.

Fourth alternative: Declaration of the United Nations failure and withdrawal of its mission from Western Sahara.

The Secretary General recommended the extension of MINURSO's mandate until 30 April 2002 to enable the Security Council to take a decision on the proposed four alternatives. During the discussions on 27 February 2002, Mr Baker told the members of the Security Council that the proclamation of an independent State of Western Sahara was an applicable fact and could contribute to peace restoration in the Arab Maghreb region. The Security Council therefore decided to extend the mandate of the United Nations mission and began by beginning of March 2002 negotiations with the parties and experts of the Security Council on the alternatives proposed by the Secretary General and his personal envoy, Mr James Baker III.

Morocco rejected all the alternatives except the second, i.e. the application of the draft framework agreement. As for the POLISARIO Front, it reiterated that the peace plan was still the only solution agreed upon by the two parties and adopted by the Security Council, and expressed its readiness to continue cooperating with the United Nations Secretary General and his personal envoy in their efforts aimed at finding a just and definitive solution to the conflict, based on the legitimate national rights of the people of Western Sahara.

On 26 April 2002, a permanent member of the Security Council unilaterally distributed a draft recommendation approving the second alternative. However, at its meeting held on 30 April 2002 to consider the position that should be adopted with regard to the February 2002 report of the Secretary General and the alternative proposal for the settlement of the dispute, the Security Council preferred not to take a hasty decision not likely to find a definitive and fair solution to the conflict, and extended the mandate of MINURSO up to 31 July 2002, thus giving itself the necessary time to consider the proposed four alternatives. The POLISARIO Front appreciated this wise decision of the Security Council which is certainly going to give chance to peace.

At the end of July, three permanent members of the Security Council submitted again the draft recommendation already distributed by one of them in April. However, the Council opposed it in absolute majority and on 30 July 2002, adopted unanimously the recommendation (2002) 1429 where it stressed:



- I. "Its strong determination to find a fair and permanent political solution agreeable to the parties and guaranteeing to the people of Western Sahara its right to self-determination under an arrangement which is in line with the objectives and principles of the United Nations Charter."
- II. "Its rededication to the validity of the peace plan."
- III. "Its continued strong support to the efforts of the Secretary General and his personal envoy to find a political solution to the long-standing conflict. It urges its special envoy to continue his efforts taking into account the concerns expressed by the parties and recalls its readiness to consider any approach that guarantees the right to self-determination which would be proposed by the Secretary General and his personal envoy."

The Security Council decided to extend the United Nations mandate (MINURSO) to January 2003 and urged the Secretary General to submit at the end of the mandate a report on the progress of the implementation of the above mentioned recommendation and any other that he could submit to the Council.

It should be pointed out that the POLISARIO Front was pleased by the last recommendation of the Security Council and expressed its appreciation for the wisdom and fairness shown. It reiterated its respect for international resolutions, particularly those concerning the question of decolonization and the principle of self-determination, hailing at the same time its approval of the peace plan and its rejection of any other proposals that would only prolong the conflict and the suffering of the people of Western Sahara. Morocco, on the other hand, adopted an opposing position as usual and rejected the recommendations of the Council, reaffirming the Moroccan fait accompli in Western Sahara.

The interventions made at the United Nations General Assembly and its Decolonization Commission last September reiterated the need to respect the rights of the Western Saharan people to self-determination and the immediate application of the UN-Africa peace plan which is the basis of the legitimate settlement of the conflict and led to a recommendation adopted by the majority and reflecting fairly this spirit and position.

### Conclusions

The question of the decolonization of Western Sahara has been on the agenda of the United Nations since the 1960s, but the credibility and the efforts of the United Nations continue to face many challenges.

For domestic reasons, Morocco invaded Western Sahara in 1975 and continues to day to use this conflict as a means of diverting the attention of

domestic public opinion from the country's socio-economic problems. Its colonization of Western Sahara for 27 years now is unlawful and it has been systematically violating human rights in the occupied area, while proposing local resources to foreign companies so as to obtain their support of its unlawful occupation through their exploitation of these resources.

We must not allow a new forced annexation of the territory. It is unacceptable and intolerable to watch attempts aimed at using the UN as an instrument of legitimizing the colonization and violation of one of its sacred principles, the right to self-determination, when the objective of its creation was the establishment of peace, justice and support to colonized peoples.

To say the least, it is ridiculous that at the time when the UN has been able to make the people of East Timor accede to their total independence, some people are trying to adopt a contrary approach for an identical situation in Western Sahara.

It is essential to enable the people of Western Sahara to exercise their right to self-determination in an honest, transparent and democratic manner, as any other solution contrary to this fundamental right can only lead to instability and tension in the region and will not at all contribute to the credibility of the United Nations.

## **Title III: Administrative and institutional organisation in the Democratic Arab Republic of Western Sahara**

### Part I: Constitutional framework

The people of Western Sahara declared the liberation war against Spanish colonialism in 1973 under the leadership of the People's Front for the Liberation of Saguiet El Hamra and Oued El Dahab, thus starting a long battle that has not yet ended, a battle that it is fighting for its liberty and dignity, determined to exercise its self-determination and vowing to establish constitutional institutions under a republic. The people of Western Sahara are determined to translate into action its objective on the basis of the specificities of the reality experienced which reflects clearly the nature of the Western Saharan regime, a democratic framework which guarantees the participation of every individual in the formulation of the final decisions in transparency and democracy.

Since its establishment in 1976, the Western Saharan State has provided a framework for the realization of the aspirations of its people and the participation of all social categories in the legitimate liberation war. It facilitates their effective participation in the choice and building of constitutional institutions which are at the service of the people of Western Sahara, and to address its concerns and meet its needs.

Article 13 of the Constitution expressly underscores the major objectives of the people of Western Sahara which are reflected by the following motto: the State draws its legitimacy from the will of the people, it is at their unique service, its motto is: **freedom, democracy, unity.**

From this motto, we can deduct the following major objectives:

- Freedom is a sacred and historical claim of the people of Western Sahara who have been victims of colonialism and occupation.
- Democracy is the unique most sound way chosen by the people of Western Sahara for the establishment of its institutions; it has been chosen by the movement as the means to building institutions of the Western Saharan State.
- Unity of all the people of Western Sahara wherever they are and whatever their social category in the national struggle for fulfilling their legitimate aspirations of freedom, independence and building of a State based on the rule of law, justice and equality.

Since its creation, the State of Western Sahara has proved, through its first Constitution dated 30<sup>th</sup> August 1976, its will to free the Western Saharan

society from the yoke and oppression of colonialism and eradicate illiteracy and imposed marginalisation for more than a century.

The People's Front for the Liberation of Saguiet El Hamra and Oued El Dhahab (Rio do Oro) plays a determining role in the political life of the Republic of Western Sahara, considering its pioneer historical heritage in the struggle against Spanish occupation.

The Front has a congress comprising elected representatives of the people from all social categories. It is the Front that elects the Head of State. It has the mandate to amend the Constitution, develop the national programme and create State institutions as provided for in Article 9 of the Constitution which considers institutional powers as an asset which the people exercise through its elected representatives within the congress.

In this report, we will try to analyze the constitutional framework of the State of Western Sahara under the 1999 Constitution. The Constitution is above everybody, it is the supreme law, the guarantor of all the rights and freedoms. It is from it that is derived the legitimacy of the powers exercised by the institutions chosen by the people, institutions that belong to the people and which cannot be diverted from the constitutional objectives for which they were established as provided for in Articles 11 and 12 of the Constitution.

The Western Saharan regime is based on the principle of separation of powers. Therefore, the Constitution which devotes its Part II to the organization of these powers deals with each one of them (the executive, the legislative and the judiciary) in a different chapter.

## 1. The Executive

### a. The President

The first constitutional institution of the country is embodied in the President of the State who is also the Secretary General of the People's Front for the Liberation of the Saguete El Hamra and Oued El Dhahab, in accordance with Article 51 of the Constitution. He is elected from among the candidates to this position by the General People's Congress through the secret and direct vote.

In accordance with the Constitution, the President of the Republic has the following mission and powers:

- He coordinates the general policy of the country and ensures compliance with the Constitution, the application of its laws and the establishment and development of State institutions (Article 52).
- He appoints the Prime Minister and terminates his appointment (Article 53).

- He chairs the Cabinet (Article 55).
- He signs the laws that are published in his name once they have been adopted by the National Assembly (Parliament) (Article 56).
- He is the supreme Head of the Armed Forces, conducts and defines the country's foreign policy, grants pardon and commutes sentences.
- He makes appointments to senior positions of the State in the civil, diplomatic, judiciary and military fields (Articles 57 and 58).
- In the case of a vote of non confidence by the National Assembly, the Constitution gives the President the choice between the dissolution or the resignation of the Government.

#### b. The Government

The Government takes the second position among the constitutional institutions of the Executive. It is accountable to the President of the Republic and ensures the implementation of programmes, laws and regulations in the various sectors of activity (Article 64).

The Prime Minister chairs the Government Council, administers its activities and coordinates its programmes. In this connection, the Ministers are collectively accountable for the work of the Government to the National Assembly (Article 66).

The Prime Minister submits to the National Assembly the Government programme and the annual draft operational budget for adoption in their final form. He also enjoys the powers of assigning duties to the members of the Government and signs executive decrees (Article 67).

The Prime Minister dismisses members of the Government and proposes to the Head of State the appointment of new members (Article 69).

He can present the resignation of his Government to the Head of State (Article 70).

In order to entrench the foundation of good governance based on transparency and control, the Executive has put in place control mechanisms such as the National Monitoring and Inspection Directorate established in accordance with the executive decree 2000-07. This Directorate, which has branches at all the levels of the Executive (central, regional, local) follows up the application of standards and measures governing the Government's action programme. In this connection, it may establish investigation and inspection

commissions or request inspection within the framework of its monitoring mandate.

## 2. The Legislature

The legislative powers are vested in the National Assembly which is responsible for the control of the executive organs and the drafting and adoption of laws (Article 72). The 1999 Constitution has extended the prerogatives of the Legislature by conferring upon it the mandate to vote the overall operational budget, the Government programme and international agreements and conventions (Article 73). The National Assembly has the powers to set in motion a number of mechanisms for the control of the Executive, particularly the right to submit written and oral questions to the members of the Government as stipulated in the provisions of Article 92 of the Constitution and Article 69 of the organic statute defining the relations between the National Assembly and the Government. The Assembly is also authorized to summon members of the Government, collectively or individually, and establish investigation commissions responsible for considering issues deemed important as provided for by Articles 95 of the Constitution and 91 of the organic statute defining the relations between the Assembly and the Government.

In addition, Article 96 of the Constitution confers upon the National Assembly the right to pass a vote of non confidence on the Government (either collectively or individually) if it fails to implement its programme.

The term of office of the National Assembly is renewed every 18 months by electoral constituencies fixed by the electoral law.

Women play an important role in the Legislature and represent 14% of the members of Parliament.

The National Assembly (Parliament) contributes – despite the fact that it is a recent institution – to the development of the control powers of the Executive, the development of functional relations between the Legislative and the Executive, and the introduction of traditions in the exercise of democracy.

It should be pointed out that in 1997, the National Assembly has exercised its constitutional powers of passing a vote of non confidence on the Government, a decision endorsed by the Head of State in accordance with the prerogatives conferred upon him by the Constitution.

Many laws have been adopted with a view to organizing different aspects of public life. They come into force after their publication in the official gazette. It should also be pointed out that prioritization in the drafting of laws is dictated by the exceptional situation of the country.

### 3. The Judiciary

The Judiciary, which represents one of the constitutional powers in the country, was effectively strengthened by the establishment of the judicial system in 1996. The Judiciary has the necessary organs to ensure its independence vis-à-vis the other two powers, the Executive and the Legislature, as enshrined in the different constitutional texts. Part III of this title addresses in details the components of the Judiciary and their relations in the Democratic Arab Republic of Western Sahara.

#### Part II: Administrative organization

The administrative structure comprises the central administration which has a number of ministries and institutions that make up the Government and sees to the implementation of multiple programmes in different fields. The Ministries have regional administrations at the level of wilayas. Considering the exceptional situation prevailing in the country, and in conformity with Article 16 of the Constitution, the country is divided in four wilayas each comprising between six and seven daïra of four communes each.

The wilaya is headed by a wali representing the Government and responsible for the management and the coordination of all decentralized structures of the ministries. It enjoys a decentralized management since its units are managed by a wilaya people's council elected by secret and direct vote. Each wilaya comprises a group of directorates responsible for public service at the regional level (education, health, equipment, transport, water, construction, food, information...), in the context of the fulfilment of the principle of bringing administration and basic services closer to the people. Each daïra is headed by a locally elected daïra head. Communes are also headed by local elected officials.

The role of women is very important in the administrative management considering that there are two women out of 26 daïra, and there are 102 heads of communes out of the existing 102.

It is worth pointing out that a seminar on administration and management is organized annually so as to enable the people to put questions to their elected officials. This seminar brings together the elected assemblies at the regional and local level, the members of the Government and central directors with a view to considering the problems inherent to management and address the concerns raised by the sector.

The National School of Administration plays a dominant role in the training of executives of the State of different administrative levels. It contributes to the development of administrative skills through:

- An annual intake of executives from the central Government, including the heads of daïra.



- The programming of courses comprising many governing bodies, including the heads of daïra.

The curriculum comprises various subjects aimed at the development and modernization of administration: computer technology, foreign languages, management techniques, in addition to conferences on human rights and public freedoms and the teaching of the constitutional law.

### Part III: Judicial organization

The judicial system in the Democratic Arab Republic of Western Sahara has gone through two major periods:

#### a. First phase (1976-1996):

This period started in 1976 with the establishment of the State of Western Sahara. It was characterized by a special situation marked by the invasion of the country, the exodus of part of the population to refugee camps, the other part living in the colonized areas. The judicial system was simplified in the light of the needs of the population under the Government of Western Sahara and was based on the people's conditions and opportunities. It had the following components:

- The courts of first instance

These were established in each wilaya and took decisions in first instance in civil and private cases as well as in certain criminal conflicts which were however quite rare.

- Courts of Appeal and Courts of Cassation

These had competence in cases of appeal. They constituted the instance of last appeal and had also the prerogatives of the Judicial Service Commission considered as the supreme authority of the judiciary in the management of judicial matters.

#### b. Second phase: post-1996 phase

This period was characterized by some stability following the cease-fire. It allowed the extension of civil and commercial activities of the population living in Western Saharan State-controlled part, through the reorganization of the judiciary and its adaptation to the requirements of the new situation. The 1995 and 1999 Constitutions addressed this aspect by organizing the judiciary and defining its powers. The existing Constitution underlines the following in Articles 111 to 125:

- The independence of the judiciary and the exercise of its powers under the law (Article 111).
- The promulgation and execution of its judgements in the name of the people (Article 112).
- Justice accessible to all (Article 113)
- The obligation for all the organs and institutions of the State to execute the judgements and decisions of the judiciary (Article 118).
- The protection of those seeking justice against any excesses or abuse by the judiciary or its auxiliary organs (Article 119/1).
- The State must guarantee the protection of judges against all sorts of pressure and interference affecting the impartiality of their judgement (Article 122).

The following assignments and missions of the judiciary were defined during this phase:

a. Courts of first instance

These courts have powers to take decisions in all civil, commercial and private cases (decisions subject to appeal) and in all offenses (final judgement). The court comprises several chambers such as the civil chamber, the criminal chamber (comprising only one judge competent in offences), the private cases chamber. The courts of first instance have a registry in all the sections and chambers.

The reconciliation courts are sections of the courts of first instance established in all the daïra and have competence to conclude marital status contracts (marriage and divorce).

b. Criminal courts and courts of appeal

These courts have the powers to hear appeal in civil, commercial and private cases in respect of which they make final judgement subject to appeal by the supreme court. Their judgements are of first resort and final for crimes and minor crimes and in administrative cases.

This category of courts is composed of the following chambers:

- The criminal chamber comprising a group of judges. It consists of a judge president and counsels for minor crime cases, and a judge president, counsels and persons under oath for crime cases.
- The civil chamber
- The chamber for minors
- The investigation chamber
- The indictments chamber headed by the president of the court in the presence of counsels
- The registry headed by the president of the registry

### c. Supreme court

The supreme court represents the supreme authority of the judiciary and takes decisions on all cases of appeal on points of law submitted by other courts. It is also the court that guarantees the unification of all legal proceedings from different courts since it controls the grounds for court decisions and standards taking into account the adaptation of facts to the legal rule.

These courts consist of the following chambers:

- The appeals chamber
- The criminal chamber
- The civil chamber
- The mixed chamber which comprises at least five judges depending on the status of the supreme court

### d. Military courts

These courts have competent jurisdiction in criminal cases linked to the military institution and deal with servicemen and associated workers. They exercise their jurisdiction under the control of the supreme court which can apply for an appeal against all the judgements passed.

Military courts comprise a president, who is a judge mandated by the Minister of Justice, in addition to the members of the military appointed in accordance with the provisions of the military criminal code. Like the other courts, they must follow court proceedings: prosecution, trial, judgement.

It should be pointed out that all the courts are governed by a particular legislation defining their jurisdictions, the procedures to follow in legal appeals, their composition, the modalities for the promulgation of judgements and their execution. These aspects are addressed in Articles 114, 115 and 116 of the Constitution as well as the provisions of law no. 97-04 on the code for civil procedure, law no. 96-05 on the code for criminal procedure and law 97-04 on the organization and functions of the supreme court.

### e. The Judicial Service Commission

This is the supreme authority of the judiciary which, as stipulated in Article 120 of the Constitution, translates into action the independence of the judiciary, proposes appointments of judges to the Head of State, sees to the defense of their material and moral rights and the protection guaranteed to them by the law.

The Judicial Service Commission is made up of eight members (Article 121 of the Constitution).

1. The president of the supreme court, president of the Commission
2. Two members appointed by the Head of State
3. Two members appointed by the Legislature (National Assembly)
4. Three members elected by the general assembly of judges.

The Judicial Service Commission is the only body which can summon and control judges in accordance with Article 119 of the Constitution and the provisions of the organic statute relating to the Judicial Service Commission.

#### f. The Bar

In Article 125, the Constitution stipulates that the defense is a free and independent task exercised within the judicial administration and that lawyers enjoy the same constitutional protection as the judiciary in accordance with the provisions in the special legislation which governs and defines the conditions of the exercise of this profession and provides for the constitution of a Western Saharan Bar which plays a fundamental role in the protection of the public, their guidance and their defence.

To day, the duties of lawyers are defined in the law on defence which sets out the conditions and the modalities of the exercise of these duties as well as their relations with the judiciary. Before this, this profession was governed by a Ministerial decree 97-07 issued by the Minister of Justice on 21 May 1997. This profession is exercised by some postgraduates in law.

In conclusion, despite the difficulties encountered in this field, particularly the inadequacy of resources, lack of skills and absence of institutions specialized in the training of lawyers and counsels, as well as the dependence on conventions and cultural cooperation particularly with Algeria, Cuba and Spain, the judiciary in Western Sahara has managed to resolve all the cases referred to it, on the basis of the positive laws adopted by the Legislature and on the principles of Islamic shariaa, especially with regard to civil conflicts and private cases.

#### g. Organs of the police

Article 13 of the code of criminal procedure provides for the constitution of the police force responsible for research and investigation of crimes, enforcement of judgements and warrant to seize evidence in conformity with inter-Ministerial orders issued by the Ministers of Justice and Defence (order 97-14 of 29 March 1997) on one hand, and the Minister of Interior (order 97-13 of 27 March 1997) on the other.

The code of criminal procedure sets out the duties of this organ and puts it under the Prosecution Service and under the control of the Indictments Chamber of the criminal court which can summon police officers and even exclude them in case of minor crimes or crimes provided by the law, notwithstanding other legal proceedings and without prejudice of the

provisions of the statute governing this organ and other law enforcement organs.

The State made considerable efforts in order to provide specialized training to police officers and legal officers to give them the necessary competence in the legal and scientific fields, by organizing conferences and seminars on human rights and fundamental freedoms, particularly those that are enshrined in the Constitution and other domestic laws.

#### h. The status of prisons

Prisons are governed by a special law establishing the status of prisons (law no. 96-07 of 9 November 1996). This law stipulates that the prison is an institution of reeducation, relief, repression of crime and rehabilitation of the offender for his rehabilitation in society in accordance with the principles of human rights.

This law sets out also the rules to follow in the treatment of prisoners, particularly:

1. Enforcement of the sentence within the limits guaranteeing physical integrity and honour
2. Prohibition of any form of distinction among prisoners on the basis of ethnic group, language, religion, origin or social status (Article 3 of the status of prisons)
3. Enforcement of sentences, laws, rules, investigations without using physical or oral violence on prisoners

The prisons institution consists of a series of services and functional administrative offices which facilitate the fulfilment of the above mentioned objectives. It is subject to inspection by commissions composed of representatives of the Ministries of Justice, Interior, Health (doctors), Judges et representatives of social protection.

Prisoners enjoy the right to medical care and to practise their religion, the right to visits and to send and receive mail, including to official legal authorities, as well as the right to submit their grievances, in the knowledge that their correspondence to higher authorities of the State is not subject to any control by the prison authorities.

#### Part IV: Society and its participation in the struggle for national liberation and in the establishment of institutions

Despite the exceptional situation of the people of Western Sahara who continue to fight for their legitimate right to self-determination and the attainment of their national sovereignty, the Western Saharan civil society has gone through a remarkable evolution and maturity hand in hand with the progress achieved at national and international level. These have contributed

efficiently to the struggle for national liberation and to the establishment of State institutions based on justice, democracy and encouragement of national collection action.

The results of all these efforts manifested themselves through the following:

- Stronger international solidarity in view of the correctness of the cause and the legitimacy of the struggle of the people of Western Sahara
- Specific presence in international fora and membership in many organizations and associations at the continental, regional and international level
- Qualification of the managerial staff in different fields of interest of civil society through practical training carried out collectively
- Defence in international fora of the people of Western Sahara living in the occupied part of the country and besieged militarily, and in terms of information and security, as well as restriction of their freedoms and other flagrant violations of human rights.

Western Saharan organizations (youth, women, workers) and associations for professionals and the unskilled (lawyers, journalists, artists, doctors, farmers and associations for the defense of human rights) constitute the framework for the development and the promotion of the elements of the Western Saharan society who play a dominant role in the conception of different public policies, identification of concerns and formulation of different solutions and action programmes.

The contribution of the Western Saharan Red Crescent has been of a high quality, particularly during the first years of the liberation struggle which were characterized by lack of resources and the spread of contagious diseases. It put in place medical assistance cells for urgent primary care and conducted awareness campaigns on the dangers of diseases and anti-personnel mines. It also took care of the provision of foodstuffs, clothes and tents to new refugees flocking to refugee camps in deplorable conditions.

At present, the Western Saharan Red Crescent is involved in the distribution of foodstuffs to refugees based on well defined and equitable rations, and in collaboration with its counterparts abroad, it tries to meet the needs of refugees in terms of food, drugs and clothes.

## **Title IV: Enforcement of the provisions of the African Charter on Human and Peoples' Rights through the legal and institutional system in Western Sahara**

### Part I: Civil and political rights (Articles 2 – 13)

1. Right to enjoy rights and fundamental freedoms enshrined in the African Charter on Human and Peoples' Rights (Article 2 of the Charter)

The preamble of the 1999 Constitution of Western Sahara is in fully in line with the provisions of the African Charter on Human and Peoples' Rights, particularly with regard to the rights and guarantees of enjoying the rights and fundamental freedoms. Indeed, it stresses:

- The strong conviction that human freedom and dignity are possible only in a society recognizing the rule of law
- The need to establish democratic institutions guaranteeing human rights and fundamental freedoms, political, economic and social freedoms and the rights relating to the family which the basic unit of society
- The attachment to the principle of justice and democracy contained in the Universal Declaration of Human Rights and in the African Charter on Human and Peoples' Rights.

Article 11 of the Constitution of Western Sahara provides also in paragraph 5 for the obligation to "respect human fundamental freedoms as defined in the Constitution...".

2. Equality among individuals (Article 3 of the Charter)

The Constitution of Western Sahara embodies the right of equality for all, a principle which has always been clearly reflected in constitutional, legislative texts and in regulations denouncing all forms of discrimination or privilege.

In this connection, Article 32 of the Constitution stipulates that every citizen meeting the legal conditions shall have the right to be elected and to vote. This same right is highlighted in Article 33 which stipulates that: "Every citizen can aspire to public employment in conformity with the criteria defined by the law".

Furthermore, Article 133 of the Constitution enshrines the principle of equality as the basis of justice in the State of Western Sahara: "Justice shall be accessible to all: it shall be based on the legitimacy and equality and enshrine the rule of law."



### 3. Individual freedom (Article 6 of the Charter)

Considering the importance of individual freedom which constitutes one of the most important fundamental rights, the Constitution of Western Sahara deliberately enshrines its protection by providing in Article 26: "Individual freedom shall remain unalterable. No individual shall impede its exercise except under the law".

- Every citizen shall be presumed innocent until proved guilty
- No individual shall be incarcerated or imprisoned except under the law
- Article 27 stipulates: "It shall be prohibited to infringe upon the integrity, dignity or honour of a person or subject him to any form of physical or moral violence
- Any breach of domicile of a citizen shall be prohibited except where a written warrant has been issued by the competent judicial authorities.

Article 31 of the code of criminal procedure provides for the legal enforcement and the modalities for the protection of these freedoms and immunities, particularly with regard to the inviolability of domicile.

The criminal code punishes any crime committed against individuals, be it moral (libel, abuse, threats, insults...) or physical (murder, injury, abduction...)

### 4. Right to a fair trial (Article 7 of the Charter)

The right to a fair trial is guaranteed through the establishment of appropriate mechanisms enabling the embodiment of the principle of justice to all. Thus Article 113 of the Constitution stipulates that: "justice shall be accessible to every individual...". This right is strengthened by Article 1 of the criminal code which provides: "Every crime, every sentence and every measure shall be governed by the law".

Article 28 of the Constitution guarantees to every citizen "the right to defend his rights before competent judicial authorities".

Furthermore, Article 26 of the Constitution specifically provides that:

- Every citizen shall be presumed innocent until proved guilty
- No individual shall be incarcerated or imprisoned except under the law
- Every crime and every sentence shall be governed by the law.

Article 119 of the Constitution which guarantees the right to a fair trial embodies the protection of the public by the law from any excess or abuse by the judiciary.

The right to defence is addressed by Articles 122 and 125 of the Constitution which recognizes the profession of lawyers as a liberal and independent profession and guarantees them the same protection and the same rights as those stipulated by the Constitution for judges.

On the other hand, the code of criminal procedure of Western Sahara has addressed the right to a fair trial in all the stages of the procedure (investigation, enquiry, trial, decision, enforcement of the sentence) and set out the conditions embodying this right and guaranteeing the impartiality and integrity of the courts, by stipulating particularly the following:

- The secrecy of investigation without negatively affecting the right of defence (Article 9 of the code of criminal procedure)
- The right of the victim to submit independent action for damages before the examining judge (Articles 48 and 50 of the code of criminal procedure)
- The guarantee of the presence of the defence during the investigation procedure and its contact with the accused (Articles 67 and 69 of the code of criminal procedure)
- The guarantee to designate an interpreter for the witness if he is deaf, dumb or illiterate (Articles 21 and 23 of the code of criminal procedure)
- Detention on remand should not exceed the 72 hours provided for by the law (Articles 33 and 77 of the code of criminal procedure)
- The right for the cleared accused to demand the court to publish the decision of his innocence (Article 90 of the code of criminal procedure)
- The right to an expert opinion (Articles 99 to 106 of the code of criminal procedure)
- The right to appeal against the decisions of the examining judge (Article 121 of the code of criminal procedure)
- The public character of oral submissions and the decision (Articles 204 and 251 of the code of criminal procedure)
- The right to inform the accused of his right to require the report of the trial with a view to preparing his defense (Article 239 of the code of criminal procedure)
- The right to medical visit (Article 45 of the code of criminal procedure)
- The right of the detained individual to inform his family (Article 33 of the code of criminal procedure)
- Non retroactivity of the law
- The obligation for the State to compensate for miscarriage of justice (Article 307 of the code of criminal procedure)

Furthermore, the code of procedure enshrines the mechanisms of the right to a fair trial through the separation of powers of the parties involved in the consideration of judicial appeals such as the prosecution, the judicial investigation, the judgement, such that they intervene irrespective of each other and are only subject to the enforcement of the law. Thus, the fact that

the investigating party is not from the prosecution or judgement constitutes a protection for the suspect.

#### 5. Freedom of religion (Article 8 of the Charter)

Western Saharan society is muslim. The Constitution recognizes the freedom of religion. Article 43 guarantees foreigners residing in the Republic of Western Sahara the right to practise their religion and even the respect of their rites. This article draws inspiration from the Islam which advocates the freedom of choice of religion.

#### 6. Right of information and freedom of expression (Article 9 of the Charter)

The right of information is one of the fundamental rights of the citizens. It is translated into action by informing the citizens through all available means of all the issues pertaining to their fields of interest, particularly with regard to developments of the national question and the process of enforcement of the right to self-determination, with a view to disseminating them by information media (radio, newspapers, publications).

Despite the difficult situation, the State makes considerable efforts in the field of information through the programme initiated by the Ministry of Information on the national radio broadcasting in Arabic and Spanish, as well as regional radios in wilayas and their broadcasts of different national and international events and the activities of different institutions.

The newspaper "Le Sahara libre" is the favoured paper of the written press and a forum which contributes to enlightening the national public opinion.

Moreover, all the refugee camps have radio and television stations enabling the citizens to keep up to date with international developments in all the fields and poles of interest. Efforts in this sector have been strengthened by the establishment of the Western Saharan News Agency which contributes to the dissemination of national information and their connection with different sites on Internet.

The task of the press and information falls on graduates trained in universities in some States such as Algeria, Libya, Syria, Spain, Cuba, Switzerland. These journalists have formed a union of journalists which has its rules of procedure and work programme.

Civil society plays a dominant role in informing citizens about numerous important issues through seminars and meetings with citizens from all walks of life (youth, women, workers...) with a view to informing them about management programmes and others and decisions directly relevant to their daily life.

Concerning freedom of expression, the Constitution stipulates in Article 29 that "freedom of oral and written expression shall be guaranteed and exercised within the framework of the law".

#### 7. Right to form associations (Article 10 of the Charter)

Aware of the importance of this right which is a prerequisite for exercising a sound democracy, the State has enshrined it in Article 30 of the Constitution.

#### Part II: Economic and political rights (Articles 13 to 18 of the Charter)

##### 1. Participation in the country's public life (Article 13)

The Western Saharan regime is founded on the guarantee of participation of all without exception in the public life of the country, based on Article 8 of the Constitution which stipulates that power comes from the people and that national sovereignty belongs to the people. Article 10 of the Constitution stipulates the same, that : "the people exercise their sovereignty through elected representatives and constitutional institutions of the State chosen to this effect." Article 20 of the Constitution considers elected assemblies as a forum for the expression of the will of the people and control of public authorities.

The right to participation in the country's public life is embodied in Article 33 of the Constitution which provides that "Every citizen can aspire public posts in accordance with the criteria set out by the law". In this connection, Article 32 of the Constitution stipulates that every citizen who meets the legal conditions has the right to be elected and to vote.

The State attaches great importance to the participation by each and everyone in the country's public life, and this is done through meetings organised at the level of communes and wilayas with a view to airing the concerns and interests that the Government must take into consideration before adopting its annual plan.

It is worth noting in addition that Western Saharan enterprises base their management on human element. Each worker or civil servant can express his opinion and participate in the management of his enterprise. Recruitment in the enterprise is done in consideration of justice and equality in conformity with the law on individuals no. 01-06 pf 3 March 2001 which stipulates the following objectives in its preamble:

- Equality
- Equal opportunities
- Competence where priority goes to the best

Among the most important principles enshrined by the State with regard to this right is the participation of the citizen in decision making within the

framework of the general congress in which are assembled all the elected representatives from different categories of the Western Saharan society with a view to drafting and taking decisions governing the daily life of the people during the inter-congress period (three years). This participation is exercised through the following:

- Election of the Secretary General of the Front (who is the Head of State)
- Amendment of the Constitution
- Development of the general programme

It is worth noting the voluntary participation of the population in the national liberation struggle and in the establishment of State institutions without any financial or salary consideration. The democratic climate which enables every citizen to participate in public life strengthens the love of duty in everyone and confidence in the institutions which guarantee the rights and constitute a privileged framework for addressing all the concerns without discrimination, in conformity with the criteria of equality and equal opportunities.

## 2. Right to property (Article 14 of the Charter)

The Constitution of Western Sahara guarantees the right to property, particularly Article 34 which stipulates that "private property is guaranteed and governed by the law." This right is not restricted to the people of Western Sahara alone since the Constitution guarantees also this right to foreigners residing in the country by providing in Article 44 that: "The State shall guarantee the protection of the rights and private property of every foreigner residing legally on the national territory."

## 3. Right to work (Article 15 of the Charter)

The Constitution embodies the right to work in accordance with the philosophy which is in keeping with the particularities and specificities of the living conditions of the people dealt with earlier in this text, considering that employment is not only a right but also a duty, an honour and a concept consistent with the muslim religion and the values of national duty.

Therefore, the State has always worked so that each citizen finds work which enables him to fulfill his duty and have the honour to work in the service of the just cause of his people. This is the concept embodied in Article 37 of the Constitution which stipulates that: "Work is a right, a duty and an honour for every citizen."

Considering the exceptional situation characterized by the absence of productive enterprises in the economic sense, or structures for the creation of employment in the country, the State guarantees to each citizen employment and accommodation and meets all his needs in terms of food, health, education, transport, and other basic services, and this has been

accomplished in a satisfactory manner, in all fairness without discrimination or exception.

In practical terms, the State has put in place numerous production, educational, health and other institutions to enable the exercise of the right to employment for all according to their qualifications and opportunities. Since independence and within the limits of available opportunities, it has created technical training and specialization centres with a view to having qualified trainees and enable them to obtain respectable employment, in addition to training abroad for both men and women.

To these efforts should be added the decision of the Cabinet in May 2002 relating to the formation of a Higher National Commission for the guidance and development of graduates from universities, higher institutes and training centres responsible for their recruitment and assistance to find the best conditions of work adapted to their specialization and likely to strengthen their experience.

#### 4. Right to health (Article 16 of the Charter)

The Constitution enshrines the right to health in Article 36 which provides that "medical care and treatment are a right for all the citizens, the State shall be responsible for disease prevention and control." This commitment by the State has been translated into action through the creation of many hospitals and dispensaries and the establishment of a health and disease prevention system accessible to every citizen without exception. This system consists of the following:

- Availability of a doctor and a dispensary in each establishment (daïra, school).
- Establishment in each wilaya a public hospital equipped with all the necessary specialties
- Establishment of national hospitals such as:
  - The national health complex (receives foreign delegations and provides complex services)
  - The "Bella" hospital
  - The psychiatric hospital
  - The centre for tuberculosis
- Meeting the costs for the third phase patients abroad (travel, stay and treatment at the expense of the State)
- Receiving specialized medical missions for the treatment of the third phase patients
- Financing purchase of drugs and reserves for any emergency

Programmes for the prevention of contagious diseases constitute one of the priorities for the authorities who strive to:

- Establish a calendar for children vaccination in conformity with the world vaccination calendar
- Prepare specific programmes for patient management for vulnerable social categories (elderly, children...)
- Follow up of cases of endemic diseases
- Organize medical awareness seminars
- Widespread water distribution and control
- Control, transport and burn wastes and determine their disposal mound
- Control foodstuffs
- Carry out early diagnostic of contagious diseases and isolation of those affected

In the veterinary field, the authorities ensure:

- Control of animal health
- Control and monitoring of meat for human consumption

In addition, the following vaccination programme has been established:

- Tuberculosis
- Liver inflammation
- Polio
- Diphtheria, tetanus, whooping cough
- Measles, small pox, chicken pox

The following are the existing medical specialties in Western Sahara:

- General practice
- Internal medicine
- Pediatrics
- Cardiology
- Orthopedics
- Gynecology

However, the State ensures the availability of other specialties through foreign missions. In addition, maternity and pediatrics enjoy special attention through:

- Monitoring the health of pregnant women and breast feeding mothers
- Awareness programmes on the benefits of breast feeding
- Programmes for caring for children in good health (regular monitoring of the child's weight)
- Health management of children affected by internal diseases
- Monitoring children suffering from malnutrition (distribution of complementary foodstuffs for those aged between 6 and 9)



Furthermore, women in Western Sahara play an important role in the field of health since they represent 74.88% of paramedical staff and 43% of doctors. In this connection, the Ministry of Health has a medical and paramedical training school for training and advanced training of health practitioners, as well as bilateral conventions in the field of training of medical employees.

#### 5. Right to education (Article 17 of the Charter)

For a whole century, the people of Western Sahara has remained illiterate, a situation which was promoted by Spanish colonialism. We can say that during the first years of the liberation war, Western Saharan intellectuals who were lucky to go and study abroad or who received traditional education could be counted on finger tips. However, the State has adopted the policy enshrined in Article 35 of the Constitution which stipulates that : "the right to education is guaranteed, the State is responsible to provide free and compulsory education."

Despite the scarcity of resources, the State fixed itself the mission of guaranteeing education to all the children and to those of schooling age, by establishing teaching structures and training teaching staff such as professors, teachers, educators and assistants. This policy has yielded positive results on the society which today is proud of counting hundreds of university graduates and thousands of graduates from training institutions in various scientific and arts specialties.

We can give an overview of the efforts made in the field of education, particularly through:

- The establishment of a school in every daïra, operating under the system of double streams
- The establishment of an educational home (nursery) at the headquarters of each daïra for all the children aged between 2 and 6
- National schools capable of big intakes and boarding facilities
- Forty national schools for the training of women in the field of education, management, computer techniques, solar energy, languages, weaving and tailoring, agriculture...
- Thirty national institutes for vocational training for men in the following specialties: mechanics, electrical mechanics, joinery, plumbing and turnery, management, computer techniques.

Women in Western Sahara play a basic role in teaching in that they represent 80% of teachers and 84% of educators (nursery). In this connection, the Ministry of Education has endeavoured to create training opportunities in the country and abroad where women have always been favoured.

Western Saharan children and scouts:

Schooling receives special attention with a view to stimulating children's talents and aptitudes, particularly through audio-visual aids and sports. Extra-curricula programmes are the responsibility of the State which believes that children are the first victims of wars and conflicts and that they have the right to play in conditions conducive to their physical and mental development. Therefore, specific attention is attached to recreation and use of free and training time for organisers.

Programmes for children and scouts aim at occupying their free time, teach them to be self-confident, inculcate in them the concepts of democracy, nationalism and respect for human values, and plant the spirit of cooperation in future generations, in addition to programmes for social and cultural education which enable the child to discover his national identity and inculcate in him the respect for nature and its preservation.

Western Saharan children enjoy annually and according to established criteria holidays abroad (Spain, Algeria, France, Italy, Switzerland, Germany, Great Britain, United States of America, Sweden). Every year, nearly 10 000 children take advantage of this arrangement which takes place in summer and which enables them to develop their potential by taking them away from the camps where occupation forces them to live.

#### Youth Programmes:

The youth, which represents the majority of the population, is accorded big importance in the society. Indeed, the State attaches considerable attention to youth programmes, particularly:

- Education, training and integration in the society by recruiting in State institutions university and other graduates without sex discrimination
- Political, cultural and social education through supervised programmes centred on the culture of democracy, pardon and respect of man
- Voluntary service programmes where the youth participate in society building and learn solidarity and cooperation, enabling them to be open to society and identify its problems
- Awareness and prevention programmes of different diseases, particularly sexually transmitted diseases such as AIDS.

Moreover, the State attaches paramount importance to the involvement of the youth and the women in decision making through their representation in bodies responsible for establishing national policies in different sectors.

Despite the lack of resources and the absence of structures for university education, the State has addressed the concerns of this sector and gives scholarships to baccalaureates for study and training in technical and arts specialization. These efforts have yielded positive results through the

modernization of national administration and management methods in State institutions.

### Literacy Programmes

The State concentrated on literacy by launching different programmes meant for the citizens in general and women and servicemen in particular, and this was done at the same time with the duties entrusted to them since Western Saharans had been facing war since the mid-70s.

The 1982-92 decade was chosen as the target for the State to eradicate illiteracy by devoting considerable human and material resources in relation to its capacities. Therefore, all adults who had no primary education followed a national literacy programme which lasted three months a year and was conducted by university students from brother and friendly countries who devoted their holidays to his national programme.

The following decade was devoted to an optional programme for those who wished to follow the literacy programme and attend courses and conferences addressing different aspects and activities of daily life, the role of the citizen in building a democratic society and the rule of law, as well as awareness in the fields of family, health, civil and moral education.

The table below shows the number of citizens who attended the programme during the first decade.

Firstly: Enrolled females

<b>Year</b>	<b>Number of enrolled beneficiaries in the programme</b>
1982	2 500
1983	6 578
1984	12 532
1985	13 078
1986	13 650
1987	13 780
1988	14 196
1989	14 092
1990	13 832
1991	13 572
1992	12 480

- The programme involved 70% of participants enrolled in primary 1 and 2. After 10 years, 40% of participants reached a higher level equivalent to primary 6, while the remaining 60% reached a lower level. All the participants managed to reach a reasonable level of reading, writing and arithmetic and other knowledge. A big number of enrolled students sat for

the end of primary education certificate organized annually by the Ministry of Education.

Secondly: Enrolled males

Year	Number of enrolled beneficiaries in the programme
1982	1 050
1983	1 320
1984	2 750
1985	3 080
1986	2 904
1987	3 120
1988	3 144
1989	3 240
1990	3 264
1991	2 959
1992	2 695

- The programme started with a percentage of 45% of illiterate men. By the end of the programme, they managed to overcome the obstacle of ignorance and 55% of the participants reached primary 6, some of them obtaining primary school leaving certificate after sitting for an examination organized annually by the Ministry of Education.

It should be pointed out that the State mobilises every year 1000 students from different levels for the realisation of the illiteracy specialised programme.

#### 6. Protection of the family (Article 18 of the Charter)

The Constitution attaches great attention to the family. While underlining the importance of the family, the preamble recalls that the people of Western Sahara "is determined to build democratic institutions which guarantee the fundamental freedoms and human rights, political freedoms, economic and social rights and the rights relating to the family which constitute the nucleus of the society", and this is total conformity with the first paragraph of the African Charter on Human and Peoples' Rights.

Article 7 of the Constitution considers the family as the foundation of society, built on religion and morals, conscious that the protection of the family can only be envisaged if special attention is attached to traditional and cultural heritage, to the prevailing customs and the morals and values of society which constitute the fortress guaranteeing its protection. The family makes it possible to guarantee education of generations according to the values of their society, a concept that is underlined in Article 8 paragraph 2 of the Charter.

Considering that women form an integral part of the family, the Constitution highlights the conditions for the defence of women against all forms of discrimination, exclusion or marginalization, and directs the State of Western Sahara itself "to work towards the emancipation of women and guarantee their political, economical, social, cultural and other participation in the building of the society and the development of the country" (Article 41).

Women hold a privileged position in society and in all fields of public life, giving them even a pioneer role in management, national administration, sectors of education, health, diplomacy and others, by entrusting them with big responsibilities in Government and Parliament.

For a long time, women in Western Sahara have been enjoying a big margin of independence by participating in all aspects of life. This independence increased its scope even at the beginning of the war against Spanish colonialism, and later against the Moroccan invasion of the territory.

The National Union of Western Saharan Women has a crucial effect on the promotion of the role of women, their training, the development of their efforts and their participation in the struggle for national liberation. In this connection, it should be pointed out that the Western Saharan society is proud of the pioneer experience of women who participate in all the fields of public life in the country and whose numerous rights are guaranteed by the State.

Concerning the rights pertaining to the family, Article 38 of the Constitution stipulates that: "the State shall protect the mothers, the children, the elderly by establishing institutions to this effect...", and this is translated into action by programmes for mothers and children that we dealt with in the section on the right to health and education.

This protection is reinforced by social programmes for the categories of the elderly and persons with disabilities under the auspices of the women organization, in collaboration with the Ministries of Education and Health. These programmes consist of the following:

- Enable the elderly and persons with disabilities to benefit from specific food programmes
- Establish specialized institutions to take care of them, particularly centres for persons with disabilities in the wilayas of Samara, Aoussard, Dakhila and El Ayoun
- Make persons with mental disabilities undergo education and training programmes in collaboration with relevant specialized foreign bodies. With regard to the elderly, all the programmes run in their families without having to move them to the centres, except those who need to be given medical treatment. Vulnerable categories (the elderly and persons with disabilities...) receive also programmed specialized medical visits.

### Part III: Peoples' Rights (Articles 19 – 23 of the Charter)

#### 1. Peoples' equality (Article 19 of the Charter)

The Western Saharan Constitution underscores this right by marking its attachment to the principles of the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. Article 24, paragraph 5 of the Constitution stipulates that: "The Democratic Arab Republic of Western Sahara directs its foreign policy towards ....the establishment of peace and international security and participation in the economic and social development of the peoples of the world based on justice and reciprocal equality."

#### 2. Peoples' right to self-determination (Article 20 of the Charter)

The fact that the people of Western Sahara continue to fight for the exercise of their unshakeable self-determination does not exempt the State of Western Sahara from giving its support to juste causes in the world, particularly through its diplomacy in support of South Africa, Namibia, East Timor, Palestine....

The Republic of Western Sahara has shown the importance it attaches to this right by acceding to the Charter of the Organization of African Unity, the Constitutive Act of the African Union and the African Charter on Human and Peoples' Rights. The support of the State to this right is reinforced by the provisions of paragraph 2 of Article 24 of the Constitution which stipulates: "The support of the right of the people to their political and economical self-determination."

#### 3. Peoples' right to peace, security and development (Articles 21, 22 and 23 of the Charter)

International peace and security are strategic choices of the State of Western Sahara which are underlined in the preamble and in Article 24 of the Constitution. Despite its attachment to the traditions of good neighbourliness and mutual respect, it has been invaded and occupied by a neighbouring State, Morocco, which has violated all the customs and decisions relating to international legitimacy and savagely and unlawfully exploited the natural resources of Western Sahara, as highlighted in Part I of this report. Article 24 of the Constitution enshrines the peoples' right to sovereignty over their resources, convinced that they belong to their legitimate owners and that they must be utilized for their development.

In this context, the State supports the efforts of the Organization of African Unity (now African Union) for the promotion of political stability in Africa and the realization of economic complementarity among its States.

#### Part IV: Duties (Articles 25 to 29 of the Charter)

1. Duty to promote and ensure the respect of the rights and freedoms contained in the Charter (Article 25 of the Charter)

The efforts made by the State for the promotion of the rights and freedoms contained in the Charter – and as provided for in domestic laws – and ensuring their respect through teaching, education and information are also reflected in the training programmes of the Ecole Nationale d'Administration. This institution is responsible for training and developing the staff of the national administration and civil servants from different organs of the State through the teaching of constitutional law which inculcates various constitutional principles, including the organization of powers within the State, the importance of the Constitution and the fundamental freedoms and rights enshrined in it, as well as the obligation for different institutions of the State to strengthen the protection modalities enabling the citizens to enjoy their constitutional guarantees. In addition, all the classes of this institution attend public conferences on human rights and fundamental freedoms.

Furthermore, in the past years, the media acted as a forum for the defence of the rights of our citizens in the occupied areas and revealed the abuses of their rights and fundamental freedoms by the Moroccan regime. These media of information were used to disseminate law-oriented programmes meant for the citizens to explain the rights and defence mechanisms at their disposal (appeals, petitions...)

Numerous round tables were organized on the national radio on the occasion of human rights world day, involving national associations dealing with human rights issues such as the association of the parents of detainees and missing persons, the union of lawyers, judges and representatives of the youth and women. Among the most important guarantees, it is worth noting that the foundation of the constitutional institutions as provided for by Article 11 of the Constitution are "the respect of the fundamental human freedoms". This is strengthened by the provisions of Article 12 which stipulates that: "the peoples' institutions belong to them, it is impossible to exploit them or deviate them from their constitutional vocation and objectives in respect of which they were established."

Moreover, police officers and law enforcement agents have been trained in the respect and preservation of the rights and freedoms of the citizens, and on the penalties imposed in case of their violation and negligence. Some of the most important courses are those held at Ammi school in 1997, at Baou Sard for bailiffs the same year, the one held on 27 February 2001 at the national school and the one for police officers organized at the national school on 12 October 2002.



## 2. Duty to guarantee the independence of the courts (Article 26 of the Charter)

The independence of the courts is specifically recognized in the Republic of Western Sahara in the various articles of the Constitution. Article 111 stipulates that: "The courts in the Republic of Western Sahara are independent and operate under the law". This independence is underlined in Article 120: "The Judicial Service Commission is the supreme authority of the judiciary which translates its independence, proposes the appointment of judges to the Head of State and guarantees the defence of the material and moral rights and their protection that is guaranteed by the law", and this is reiterated in Article 1 of the rules of procedure of the Commission.

The criminal code also enshrines the independence of the courts, particularly Article 75 which provides for penalties for any interference committed by any natural person or leader whatever his position in the duties of the courts or who impedes the execution of the judgements or decisions taken.

Article 202 of the criminal code provides for penalties for walis, heads of daïras, leaders and others in charge of administration who interfere in the work of justice contrary to the law.

## 3. Duties to the family and individuals (Articles 27, 28 and 29 of the Charter)

The Constitution attaches particular attention to the family and considers it as the foundation of any society and its grassroots unit as indicated explicitly in its preamble and Article 7.

Even though the law in Western Sahara guarantees the rights of the citizens and provides for mechanisms for their protection, it also sets out their duties towards the family and the society. In this connection, Article 50 of the Constitution stipulates reciprocal duties within the family.

Article 47 of the Constitution provides for the duty to respect the Constitution and the laws of the Republic, and that nobody should disregard the law.

Article 48 of the Constitution sets out some of the duties and considers the following as "the compulsory and sacred duty for every citizen:

- The defense of the nation and contribution to its liberation
- The defense of national unity.

Furthermore, the law condemns strongly treason, spying, plotting with the enemy and all crimes committed against State security, and this is also reflected in the provisions of the criminal code.

## **Title V: Serious violations of human rights committed by the Kingdom of Morocco in the occupied areas of Western Sahara**

This report addresses in the preceding titles the most important efforts made by the State of Western Sahara in the promotion and strengthening of human rights, thus implementing the provisions of the African Charter on Human and Peoples' Rights and the modalities guaranteeing these rights.

It is however essential for us to draw the attention of the august African Commission on Human and Peoples' Rights on the suffering of a big part of the population living in the occupied areas of Western Sahara, under the yoke of Morocco's occupation, oppression, torture, terrorism, unjustified detentions, genocide, expulsions and disappearances.

We can summarize this situation as follows:

### **1. Forced disappearances and unjustified arrests**

Since Morocco's invasion, the occupation forces have arrested and throwing in prisons and secret detention centres thousands of Western Saharan citizens regardless of sex or age (children, women, young, elderly) submitting them to the worst abuses of power and torture. Different repressive bodies have been involved in these campaigns, particularly the Royal Armed Forces (FAR), the Royal Police (GR), the Back-up Forces (FA), Military Intervention Forces (CMI), the Security Forces (DST) and the Intelligence Department (DRG)...in addition to the mobilisation of the Makhzen institutions such as the Ministry of Interior, the caïds, their assistants and the bailiffs... More than 15 000 citizens were victims of unjustified arrests and more than 2000 people were subjected to forced and involuntary disappearances. 526 persons were again reported missing. Forced disappearances are one of the worst violations of human rights because they cause permanent anxiety in the families of the victims, disregarding their parents who continuously wonder where their missing relatives are. Are they dead or alive? In which conditions are they if they are alive? The Moroccan regime refuses to recognize the situation of the missing people and rejects any cooperation with human rights defence organizations by denying the arrests committed by its armed forces and pretending that they are not in their secret jails.

However, this is contradicted by the fact that since 1991, Morocco has freed 322 missing persons, though it had denied their imprisonment. Subsequently, the POLISARIO Front presented a first list of 207 names of missing persons. Unfortunately, the Government of Morocco denied the detention like it had done before over many years of the existence of secret camps and jails such as the citadel of Makouna, Tazmamart, Akdez and many other where Moroccan and Western Saharans opponents are imprisoned.

Concerning incarcerated political prisoners, apparently after a semblance of trial or without trial at all, they are subjected to the worst forms of torture and abuses for periods ranging from some weeks to more than 20 years.

## 2. Torture

Western Saharans incarcerated by Morocco are subjected to all forms of torture, both physical and moral. Among these are:

- Cigarette burns on sensitive parts of the body
- Torture by electric currents (particularly on sexual organs)
- Dipping the head in a container full of dirty water (containing natural and industrial polluting agents) until loss of conscience
- Kicks and punches everywhere
- Forcing the detainee to eat his feces
- Preventing the detainee from sleeping
- Forcing the detainee to remain standing for a long period
- Suspending the detainee for a long time in a certain position (like a chicken being roasted)
- Threatening the detainee of death by pointing a gun to him
- Rapes (for women)
- Extended imprisonment in a small cell
- Preventing the detainee from practising his religion or allowing it only in inappropriate moments
- Total isolation from the outside world
- Torturing a member of the family in front of the detainee and threaten to kill him/her.

Apart from these abuses, the conditions of detention are very harsh, lacking the simplest conditions of living (toilets, clothes, beddings, blankets...) and medical care, while it is forbidden for detainees to go out in the sun.

To all this, add the case of the Lakhel prison in the town of El Ayoun, which is overcrowded since it accommodates more than 800 prisoners when its capacity is only 200 prisoners at the maximum.

## 3. Freedom of movement and mines hazards

The citizens of Western Sahara do not enjoy their freedom of movement in the country and cannot go freely abroad. The Moroccan authorities demand a special authorization to move in the country which is permanently under military siege. Likewise, the issuance of passports is subjected to draconian conditions. The militant Sidi Mohamed Dadach, who spent 22 years in Moroccan jails and was released through an international campaign towards the end of 2001, could obtain his passport only thanks to international pressure exerted on the Government of Morocco to enable him to go to Norway to receive the RAFTO human rights award for 2002 awarded by RAFTO, a Norwegian institute of defenders of human rights in the world.

The policy of mining applied by the Moroccan regime is one of the most important obstacles restricting the freedom of movement. Indeed, the army built a big security wall made of sand and barbed wire belts and bullwalks covering more than 2000 km. This big wall has several parts guaranteeing its security: 4 sand walls, one 2 m high stone wall and half a metre of mixture of mud and sand.

The danger is that all along this big wall, there are anti-tank and anti-personnel mixed mine fields in addition to booby-trapped electromechanical mines. These mines, which are laid around the wall, are only 50 cm apart, while the width between mine fields is only 1 to 1.5 m, and some fields are planted with a double row of mines. Considering the distance separating the mines (50 cm) which are planted over a distance of 2000 km, one can imagine the considerable number of mines there is which constitute a real danger of the life of the citizens and impedes their freedom of movement.

It should be pointed out that this big wall is the sixth of the kind built by the Moroccan regime, which is the remnants of five other wars still visible and representing a real obstacle for freedom of movement.

#### 4. Freedom of forming associations

The Moroccan regime continues to restrict the formation of Western Saharan non governmental associations and to carry out acts of persecution, resulting in reducing the activities of the existing associations such as human rights associations: the circle for truth and equity Sahara section, the coordination commission for involuntary and forced disappearances and unjustified arrests in Western Sahara, and the association of the unemployed in Western Sahara. The regime bans also the association of the parents of detainees and missing persons from carrying out any activity in the occupied areas. Included in the forms of persecution of these associations are the stoppage of activities, their expulsion from their employment or exile inside Morocco, being kept under surveillance and tailed by the police. One can cite the example of the arrest of Ali Salem Ettamek, a lawyer involved in the circle for truth and equity Sahara section, the dismissal of Hasein Mouthek from employment and the forced exile of Hamed Mahmoud, a known lawyer involved in the circle at Dar El Beida.

#### 5. Freedom of expression

Any person who expresses an opinion contrary to that of Morocco earns himself judicial proceedings and imprisonment by the police. Likewise, peaceful demonstrations organized by Western Saharan citizens to claim their rights are prohibited. Furthermore, the territory is closed to neutral and foreign press, and independent observers are not allowed in the country. We can cite the example of the refusal of entry served on the president of the organisation France Libertés, Mrs Danielle Mitterrand, and the expulsion of

the Spanish Parliamentary delegation from the airport of the occupied town of El Ayoun early 2002.

#### 6. Authors of violations and non application of sanctions

Moroccans and Moroccan institutions who committed flagrant violations of human rights in the occupied areas continue being protected by the Makhzen system in Morocco, although this system has recognized these acts through the Moroccan Human Rights Advisory Council. The list of these individuals has been published by many associations involved in the field of human rights, but they have not been punished or any legal action taken against them by law enforcement agents, the army and the prosecution.

#### 7. Impoverishment and famine

In order to impose their domination on the people of Western Sahara, the occupying forces have used different policies aimed at impoverishing and causing famine to the citizens. One can mention the following:

- Elimination of all types of herds of animals, knowing that the people of Western Sahara breed them as their main source of food
- Burning tents of the rural population and forcing them to move to towns, causing them real suffering as this deprives them of their source of income
- Banning traders from their activities, replacing them with Moroccan settlers
- Dismissing many workers from enterprises (particularly those at Phos Boukrâa company)
- Destroying water wells and poisoning them to prevent people in rural areas from using the water.

#### 8. Depletion of local resources

Since the Moroccan invasion of Western Sahara, the Moroccan authorities launched a systematic depletion of its resources, using all unlawful means such as the conclusion of agreements and sending thousands of settlers into Western Sahara, so much that the majority of workers in the sector of fishery and in Phos Boukrâa company are Moroccans, i.e. almost 200 000 workers. An agreement was signed with foreign companies for oil exploration, thus violating the principle of preserving the resources of the Western Saharan people who are still labouring under the yoke of colonialism. This resource is still being exploited at the risk of being depleted, causing thus imbalance in the ecological system in the region.

#### 9. Cultural and educational rights

Education in the occupied areas of Western Sahara has been systematically "morocanised" since it is compulsory for all the children of Western Sahara to

learn the culture, the traditions and the history of Morocco instead of Western Sahara. Furthermore, a big number of children are deprived of their right to education, particularly those from rural areas, poor families or those suspected to belong to the POLISARIO Front. Worst still, there are no structures or higher educational institutions such as universities and institutes. Even those who were lucky to receive university education do not go for post-graduate studies, which proves the true segregationist intent of the Moroccan regime against the population of the occupied areas of Western Sahara.

Western Saharans are also compelled to adopt Moroccan names for themselves and their children, and they are not allowed to practise their traditions and customs inherited from their forebears.

In order to destroy the authenticity of the people of Western Sahara, the Government of Morocco has killed the spirit of struggle in the occupied areas through the policy of collectively moving young Western Saharans into the hinterland of Morocco, imposing on them an exile and integration contrary to the reality of their traditions and morals, while introducing networks for prostitution, drug trafficking and alcohol and facilitating mafia activities specialized in clandestine trips to the Canary Island.

The situation in the occupied areas of Western Sahara puts the credibility of the United Nations in a difficult situation since the territory is under international control while waiting for the conclusion of the process of decolonization and the preparation of the referendum on self-determination. However, the people of Western Sahara living in the occupied areas are still suffering under the yoke of occupation and are subjected to military, police and information siege.

The release of political prisoners, the disclosing of the fate of missing persons and the opening of the occupied areas to international journalists and independent observers is the best way of getting to know the reality of the situation of human rights and give transparency and credibility required for the action of the United Nations and the reality of human rights in the region.

## **Conclusion**

As an African State, the Democratic Arab Republic of Western Sahara is aware of the great importance of the contribution of each African State in the promotion and strengthening of culture and the exercise of human and peoples' rights, as well as the paramount role of our continent in the enshrining and development of this culture and the current challenges it is facing, together with the scope it gives to our multiple African civilisation heritage.

In this context, and based on its policies, programmes, legislation and institutional system, the Democratic Arab Republic of Western Sahara will work towards disseminating the democratic culture based on the respect of

the freedoms, rights and duties enshrined in the African Charter on Human and Peoples' Rights.

Side by side with the struggle of the people of Western Sahara for their liberation and the attainment of their national sovereignty on the whole territory, the State has taken a series of legislative and institutional measures to enable each citizen to enjoy his rights and freedoms within the framework of the principles guaranteed in the Constitution and advocated in the African Charter on Human and Peoples' Rights.

The State of Western Sahara believes that preventing the people of Western Sahara from enjoying freely and in transparency their legitimate and consistent right to self-determination and their facing the reality of occupation and life of refugees renders their enjoyment of the rights and freedoms contained in the African Charter incomplete, given the considerations mentioned and dealt with earlier in the different parts of this report.

However, the Democratic Arab Republic of Western Sahara will spare no effort with a view to promoting and developing human and peoples' rights, and strengthening the establishment of State institutions to enable each and everyone to contribute to the building of the rule of law and justice and anchor the traditions of good governance.

The State of Western Sahara avails itself of this opportunity to reiterate to the august African Commission on Human and Peoples' Rights its continuous readiness to cooperate and remain open to constructive dialogue on subjects and issues of common interest.