


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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18th Extraordinary Session
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**Consideration of reports submitted by States parties in accordance with Article 62
of the African Charter on Human and Peoples' Rights**

**Concluding Observations and Recommendations on the Combined Report of the
Sahrawi Arab Democratic Republic on Implementation of the African Charter on
Human and Peoples' Rights (2002-2012)**

I. Introduction

1. The Sahrawi Arab Democratic Republic (SADR) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified it on 2 May 1986.
2. This report covers the period from 2002 to 2012 and is a combination of overdue periodic reports. The Combined Report was presented to the African Commission on Human and Peoples' Rights (the Commission) at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014. The report was presented by the SADR delegation led by His Excellency Mr. Hamada Selma Daf, Minister of Justice, accompanied by:
 - Mr. Abba El Hassan Salek, Secretary General of the Constitutional Council; and
 - Mr. Sidi Mohammed Agh Ghai, Chargé d'Affaires at the SADR Embassy in Luanda, Angola.

3. The report presents progress made at the country level in the promotion and protection of human rights as well as legislative, administrative, legal and other measures established with a view to implementing the provisions of the African Charter, since the presentation of its 1988-2002 combined initial and periodic report at the 33rd ordinary session held from 15 to 29 May 2003 in Niamey, Niger.
4. The present Concluding Observations highlight the positive aspects, factors restricting the enjoyment of human rights as well as areas of concern regarding observance and implementation of human rights in the country. Finally, the Commission makes recommendations to the Sahrawi Arab Democratic Republic on measures to be taken to enhance the enjoyment of human rights guaranteed in the African Charter and other relevant regional and international human rights instruments.
5. The Commission commends the Delegation of the SADR for the open and constructive dialogue that followed the presentation of the present combined report.

II. Positive aspects

The Commission:

6. Welcomes with satisfaction the political will shown by the SADR Government to fulfil its obligations under Article 62 of the African Charter;
7. Welcomes the involvement of all stakeholders, including civil society organizations, in the preparation and validation process of this report;
8. Notes that nearly all fundamental rights and freedoms contained in the African Charter are enshrined in the SADR's 2007 Constitution as amended;

9. Commends the SADR for its tireless efforts to seek a fair and lasting solution to the Western Sahara conflict regarding the self-determination of the Sahrawi people;
10. Highly appreciates the fact that the SADR, since its previous report, has ratified key regional and international instruments on human rights promotion and protection, including:
 - the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
 - the African Union Convention for the protection and assistance of internally displaced persons in Africa (Kampala Convention);
 - the African Union Convention on the Prevention and Combating of Terrorism;
 - the African Charter on Democracy, Elections and Governance;
 - the African Union Convention on Preventing and Combating Corruption;
11. Notes the signing of the following regional and international instruments:
 - the African Charter on the Rights and Welfare of the Child;
 - the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
 - the African Youth Charter;
12. Particularly welcomes the establishment of the advisory body in charge of providing the Head of State with support for the promotion, protection and dissemination of a culture of human rights in the Sahrawi society;
13. Welcomes the signing of the Solemn Declaration on gender equality as well as measures and initiatives taken to promote and protect the fundamental rights of women;
14. Welcomes with satisfaction the establishment in 2003 of a body in charge of ensuring adoption of a gender mainstreaming approach in the formulation of national policies;

15. Commends efforts deployed by the SADR to increase women's representation in decision-making bodies;
16. Appreciates measures taken to prevent and combat violence against women as well as measures for gender equality in all areas;
17. Notes that the Sahrawi Constitution guarantees the right to a fair trial;
18. Welcomes with satisfaction the adoption of the crime prevention policy with the establishment of a reintegration and rehabilitation centre;
19. Appreciates the special emphasis on detention facilities and juvenile centres to ensure education, training and social reintegration of minors in conflict with the law;
20. Appreciates that the 72-hour legal limit for police custody is complied with and can only be extended by decision of the relevant judicial authority;
21. Welcomes the establishment of the Secretariat of State for Public Service, Training and Employment, responsible for the development of plans, programmes and legislations relative to the creation of jobs and training opportunities for citizens;
22. Appreciates efforts deployed by the Sahrawi Government to enhance the health status of populations through rehabilitation, construction and equipment of health facilities in particular;
23. Welcomes measures taken by the Government to implement the medicine distribution programme to hospitals and clinics, improve the production capacity of the national laboratory for the production of medicines, and ensure that there is a national reserve of essential drugs for emergency cases;

24. Encourages the Government's policy of free and compulsory education at all levels;
25. Notes with satisfaction mechanisms to raise education standards through in-service teacher training so as to enhance their performances, and especially the creation of evaluation networks, scaling up of field inspection visits, organization of open days as well as training of new professional teachers;
26. Welcomes the establishment of the Secretariat of State for the promotion of women and social affairs, persons with disabilities and mentally ill persons as well as specialized centres for these groups at the regional level;
27. Welcomes the establishment of specialized centres for persons with disabilities, especially hearing and visually impaired persons;
28. Further welcomes efforts deployed by the Sahrawi Government to assist and monitor health conditions of elderly persons;
29. Welcomes the availability of various mass media to facilitate public access to information;
30. Appreciates the establishment of a Children's Parliament to support emerging young Sahrawi leaders by empowering young male and female stakeholders;
31. Welcomes the establishment of a Secretariat of State for Water and the Environment in charge of the preservation of the environment and its components and prevention of pollution;
32. Notes the development process of a general policy on environmental protection and its implementing strategy at the country level;

33. Notes measures taken to promote peace and security, in particular, the signing of the Geneva Call to Criminalise the Stockpiling and Manufacture of Anti-Personnel Mines as well as the Cooperation Agreement with the Land Mine Action Organisation;
34. Takes note of measures undertaken to disseminate a culture of human rights among the personnel of the Judiciary, the Police and Sahrawi educational institutions;
35. Welcomes reforms to the Sahrawi judicial system since 2004 for respect of the rule of law, particularly the review of laws, modernization of the work of the Courts and capacity-strengthening of human resources;
36. Takes note of measures taken to preserve Sahrawi culture and the national heritage.

III. Factors restricting the enjoyment of human rights guaranteed in the African Charter

37. Morocco's occupation, since 1975, of virtually the entire territory of Western Sahara is a major concern and restricts the effective enjoyment of human rights in the State Party.
38. Despite provisions to guarantee peace and security of populations, anti-personnel landmines planted along the wall of separation are not only a constant threat to human life and the physical integrity of persons, but also restrict the movement of the Sahrawi people and their cattle.
39. The numerous forms of human rights violations perpetrated on populations living in territories occupied by Morocco have a negative impact on the exercise and enjoyment of the fundamental rights of these populations.
40. Widespread poverty of the Sahrawi people compounded by the illegal exploitation of natural resources in territories occupied by Morocco are factors restricting the promotion and protection of human rights.

41. The deplorable socio-economic situation suffered for many years by Sahrawi populations living in refugee camps is an obstacle to the enjoyment of their rights.
42. Delays in resolving the conflict between SADR and the Kingdom of Morocco.

Areas of concern

While recognizing the considerable efforts of the Sahrawi Government to promote and protect human rights, the Commission is however concerned at:

43. The failure to provide information on measures taken by the SADR to implement the Commission's recommendations in relation to the initial report;
44. The non-ratification of human rights legal instruments, particularly:
 - the African Charter on the Rights and Welfare of the Child;
 - the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
 - the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
 - the African Youth Charter;
45. The absence of a declaration under Article 34 (6) of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, enabling individuals and Non-Governmental Organizations (NGOs) to directly refer matters to the Court;
46. The maintaining of the death penalty in the SADR's legal arsenal despite the de facto moratorium observed for several years now;

47. The over 48-hour time limit for remand in custody.
48. The inadequacy of financial means, which impinges upon progress towards reaching the objectives of the Government in the area of human rights promotion and protection;
49. The lack of details on practical measures taken to implement the provisions of the African Charter and other relevant instruments duly ratified by the SADR in areas such as:
- freedom of association;
 - access to information;
 - freedom of movement;
50. The lack of information on issues relating, in particular, to:
- torture;
 - access to health and health facilities;
 - employment and the unemployment rate;
 - protection of human rights defenders;
 - access to reproductive health services and family planning for women and girls;
 - HIV/AIDS;
51. The absence of gender disaggregated statistics covering various areas of human rights, which does not allow for an objective assessment, by the Commission, of progress made in promoting and protecting human rights and of persistent challenges.

IV. Recommendations

52. In light of the above, the Commission recommends that the Sahrawi Government:

- i. Take all necessary measures to speed up the ratification process of regional instruments, in particular, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, and the African Youth Charter;
- ii. Make the declaration under article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, enabling individuals and NGOs to directly refer matters to the African Court;
- iii. Take necessary measures to abolish the death penalty through legislation;
- iv. Prescribe 48 hours as the maximum time limit for remand in custody in accordance with the Guidelines on Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa and refer to the Guidelines when adopting the relevant policies and laws;
- v. Continue to take necessary measures to enhance the protection of elderly persons and persons with disabilities;
- vi. Enhance programmes and policies on environmental protection;
- vii. Take measures to popularise the Guidelines and Measures for the Prohibition and Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines), in particular among law enforcement officers; and take into account the Guidelines when preparing its future periodic reports;

- viii. Continue negotiations with the Kingdom of Morocco with a view to achieving a fair, lasting and mutually acceptable solution, culminating in the self-determination of the Sahrawi people;
- ix. Pursue cooperation with the Office of the United Nations High Commissioner for Refugees to implement the updated Action plan on confidence-building measures adopted in January 2012;
- x. Provide, in its next report, up-to-date statistics and disaggregated data in the various areas, as well as detailed information on the exercise of freedom of association, freedom of expression and access to information, freedom of movement, management of detention centres, access to health and health facilities, employment and the unemployment rate, protection of Human rights defenders, access to reproductive health services and family planning for women and girls, the HIV/AIDS issue;
- xi. Take into account, when preparing the next periodic report, the State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Tunis Reporting Guidelines) and the Guidelines for State Reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- xii. Continue to fulfil its obligations under Article 62 of the African Charter;
- xiii. Inform the Commission, in its next periodic report, of measures taken to address aforementioned areas of concern, as well as mechanisms established by the Sahrawi Government for implementation of recommendations in the present Concluding Observations.

Adopted at the 18th Extraordinary Session of the African Commission on Human and Peoples' Rights held in Nairobi, Kenya, from 29 July to 7 August 2015