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## Parliamentary contribution to resolving the Western Sahara conflict

### Committee Opinion<sup>1</sup>

Committee on Legal Affairs and Human Rights

Rapporteur: Ms Maria Teresa BERTUZZI, Italy, Socialist Group

### A. Conclusions of the committee

The Committee on Legal Affairs and Human Rights congratulates the Committee on Political Affairs and Democracy and its rapporteur, Ms Liliane Maury Pasquier, on its well-balanced and comprehensive report and draft resolution. The committee largely subscribes to the draft resolution's conclusions and recommendations.

The committee is particularly pleased to note that the draft resolution makes explicit mention of a referendum determining the status of Western Sahara, as a requisite means for the people of Western Sahara to exercise their internationally recognised right to self-determination.

The committee wishes, however, to propose some amendments in order to further strengthen the draft resolution from a legal and human rights perspective.

### B. Proposed amendments

#### *Amendment A (to the draft resolution)*

After paragraph 4.2, insert the following paragraph:

*“encourages the parties to enhance the involvement of Sahrawis in political negotiations, in line with the ‘principle that the interests of the inhabitants of [non-self-governing] territories are paramount’, as laid down in Article 73 of the United Nations Charter;”*

#### *Amendment B (to the draft resolution)*

At the end of paragraph 4.7, replace the words “without waiting for a final political settlement of the conflict, which is the goal to aim for that will allow for the full enjoyment of human rights and fundamental freedoms” with the following words:

*“without prejudice to a political resolution of the conflict regarding the status of the territory”*

#### *Amendment C (to the draft resolution)*

In paragraph 4.8, insert the word “allegedly” before the word “committed”.

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1. Reference to committee: [Doc. 12603](#), Reference 3783 of 20 June 2011. Reporting committee: Committee on Political Affairs and Democracy. See [Doc. 13526](#). Opinion approved by the committee on 23 June 2014.



*Amendment D (to the draft resolution)*

Replace paragraph 5.2 by the following paragraph:

*“fully and speedily implement the recommendations made by the United Nations human rights bodies, and continue to co-operate effectively with and facilitate visits by these mechanisms to Western Sahara;”*

*Amendment E (to the draft resolution)*

At the end of paragraph 5.7, insert the following words:

*“and eradicate practices of arbitrary arrests and detention”*

*Amendment F (to the draft resolution)*

Replace paragraph 6.2 by the following paragraph:

*“continue to co-operate effectively with and facilitate visits by the United Nations human rights bodies to the refugee camps near Tindouf,”*

*Amendment G (to the draft resolution)*

At the end of paragraph 6.3, replace the words “and the fulfilment of their obligations regarding humanitarian rights” with the following words:

*“and undertake to guarantee the full enjoyment by the camp population of their basic human rights, including their economic, social and cultural rights”*

*Amendment H (to the draft resolution)*

Replace paragraph 6.7 with the following paragraph:

*“develop a culture of human rights in the camps of Tindouf and ensure their respect, in order to protect the displaced populations from any kind of violence.”*

*Amendment I (to the draft resolution)*

In paragraph 8.1, before the words “implement all the recommendations made”, insert the words “fully and speedily,”.

*Amendment J (to the draft resolution)*

In paragraph 9.1, after the words “find a just and final political solution to the conflict”, insert the words “in the light of Security Council Resolution 2152 (2014),”.

*Amendment K (to the draft resolution)*

After paragraph 9.2, add the following paragraph:

*“support, within the United Nations, the inclusion of human rights monitoring in the mandate of MINURSO.”*

**C. Explanatory memorandum by Ms Bertuzzi, rapporteur for opinion**

I can only congratulate Ms Liliane Maury Pasquier on her excellent report and the comprehensive recommendations made.

I should like, however, to propose some amendments to the draft resolution, with a view to strengthening it with regard to legal terminology and by putting special emphasis on certain human rights related issues.

## 1. Amendment A (to the draft resolution)

### *Explanatory note*

I would submit that the draft resolution could be further strengthened by explicitly highlighting that “the interests of the inhabitants of [non-self-governing] territories are paramount”, as laid down in Chapter XI, Article 73 of the United Nations Charter. All political negotiations – including, but not limited to those concerning the resolution of the dispute about the territory – should be governed by this principle. This was recently recalled by United Nations Secretary-General Ban Ki-Moon, who voiced concern that the exploitation of Western Sahara’s national resources might run counter the interests of indigenous Saharans.<sup>2</sup>

## 2. Amendment B (to the draft resolution)

### *Explanatory note*

This proposal aims to put more emphasis on Morocco’s obligations under international human rights law and corresponding constitutional guarantees, in particular by eradicating ambiguities in the draft resolution. In its current wording, paragraph 4.7 is somewhat contradictory and arguably open to diverging interpretation. I would prefer to avoid giving the impression that the unresolved status of Western Sahara can be used, by either party, as an excuse for any delay in undertaking to improve the human rights situation in the region. I therefore propose to amend paragraph 4.7 in order to expressly recall the Moroccan authorities’ obligation to guarantee the full scope of human rights and fundamental freedoms as set forth in the relevant international and national legal instruments by which they are bound, to everyone within their jurisdiction, irrespective of any political settlement of the dispute over the territory.

## 3. Amendment C (to the draft resolution)

### *Explanatory note*

Having regard to the principle of the presumption of innocence, this amendment aims to use more concise legal terminology and highlight the need to differentiate between convicted criminals and persons who are alleged to have committed a crime, but who have not been found guilty of any wrongdoing in a court of law.

## 4. Amendment D (to the draft resolution)

### *Explanatory note*

This amendment aims to make the draft resolution more concise, by reinforcing paragraph 5.2 in three ways.

First, I propose to specify that the said recommendations should be implemented by the Moroccan authorities “fully and speedily”. This appears necessary in light of the fact that, despite the progress achieved in some areas and acknowledged in Ms Maury Pasquier’s explanatory report, certain recommendations are yet to be implemented (see paragraphs 43 and 52 of the report).

Second, and as a matter of clarity and comprehensiveness, I propose to refer to the recommendations emanating from all relevant United Nations human rights bodies, whether Charter-based (including, but not limited to the Special Procedure mechanisms mentioned in Ms Maury Pasquier’s report) or treaty-based.

Finally, I suggest that the Moroccan authorities be encouraged to continue to co-operate fully with the said monitoring mechanisms, notably by facilitating *in situ* visits to the territory of Western Sahara. This insertion would make the draft resolution more balanced, in the light of the fact that paragraph 6.2 calls on the Polisario Front and Algeria to invite the independent human rights experts (“Special Procedures”) of the United Nations Human Rights Council to visit the camps. I consider it important to encourage all parties involved to continue and further enhance their co-operation with the United Nations human rights mechanisms.

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2. Report of the United Nations Secretary General to the United Nations Security Council on the situation concerning Western Sahara, [document S/2014/258](#), 10 April 2014, paragraphs 22 and 97.

## **5. Amendment E (to the draft resolution)**

### *Explanatory note*

In paragraph 41 of her report, Ms Maury Pasquier notes that several international non-governmental organisations (NGOs) have reported cases of arbitrary arrests and detention of Sahrawi pro-independence protesters. Such information is corroborated by United Nations sources.<sup>3</sup> In my opinion, this should be reflected in the draft resolution, especially against the background that the apprehension of protesters is reported to have led to a first-ever violation, in January 2014, of the Status of Forces Agreement by Moroccan soldiers.<sup>4</sup>

## **6. Amendment F (to the draft resolution)**

### *Explanatory note*

This proposed amendment has the two-fold purpose of, on the one hand, balancing the draft resolution, and, on the other, clarifying one technical point from a legal perspective.

Firstly, as can be seen from the explanatory note regarding proposed Amendment D, I fully support the lead committee's call for visits by United Nations human rights mechanisms to Western Sahara and the refugee camps. I am convinced that such visits will also contribute to the creation of an environment conducive to intensified political dialogue built on mutual trust. In this connection, I was pleased to learn from Ms Maury Pasquier's report that the Polisario Front seems to support and be willing to facilitate human rights monitoring in the camps.<sup>5</sup> In my opinion, the draft resolution should reflect that the Polisario Front has already invited the Office of the High Commissioner for Human Rights (OHCHR) to visit the camps. At the same time, it should refer not only to the Special Procedures of the United Nations Human Rights Council, but to all United Nations human rights mechanisms. For these reasons, I suggest using the same wording as in proposed Amendment D relating to paragraph 5.2.

Secondly, given that the recommendation is addressed at both the Polisario Front and Algeria, and in keeping with the scope of the draft resolution and report, it should be clarified that the "region" referred to in paragraph 6.2 in its current wording is the refugee camps near Tindouf.

## **7. Amendment G (to the draft resolution)**

### *Explanatory note*

The purpose of this amendment is to use more concise legal terminology. Given that the intention of paragraph 6.3 is to highlight the need for improvement of the humanitarian situation of the refugees at the Tindouf camps, it may be misleading to refer to norms of international humanitarian law. Instead, reference should be made to international human rights law, including, in particular, the economic, social and cultural rights of those living in the camps.

## **8. Amendment H (to the draft resolution)**

### *Explanatory note*

Since paragraph 6 of the draft resolution is addressed to both the Polisario Front and Algeria, and assuming that its scope is restricted to the situation in the refugee camps near Tindouf, I propose the deletion of the reference to judges, prosecutors, members of the institutions and civil society representatives.

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3. See [document S/2014/258](#), *ibid.*, paragraph 80. The report states that there have even been allegations of children having been arrested for participating in demonstrations.

4. The incident referred to here concerned the unauthorised entry of a group of Moroccan soldiers onto MINURSO premises in order to arrest five unarmed Saharans seeking to protest inside the site. *Ibid.*, paragraph 38.

5. See [document S/2014/258](#), *supra* footnote 2, paragraphs 21 and 84.

**9. Amendment I (to the draft resolution)***Explanatory note*

In a similar manner to proposed Amendment D, the present proposal is intended to strengthen the draft resolution by urging the Moroccan Parliament to speedily step up their efforts to ensure the full implementation of all relevant recommendations by the United Nations and the Moroccan National Human Rights Council (CNDH).

**10. Amendment J (to the draft resolution)***Explanatory note*

By means of the proposed insertion, I suggest recalling that the key prerequisites for finding “a just and final political solution to the conflict” have already been acknowledged in the framework of the United Nations. Notably, the need to respect the right of Sahrawis to self-determination was recognised in Security Council Resolution [S/RES/377\(1975\)](#) and has since consistently been reaffirmed in numerous subsequent resolutions by both the Security Council and the General Assembly (most recently in Resolution [S/RES/2152 \(2014\) of 29 April 2014](#), and in Resolution [A/RES/68/91](#) of 11 December 2013, respectively). This amendment would also strengthen the consistency of the draft resolution by aligning the wording of paragraph 9.1 to that of paragraph 4.1.

**11. Amendment K (to the draft resolution)***Explanatory note*

As I noted in relation to proposed Amendments D and F, it is my firm belief that the value of independent, impartial and professional human rights monitoring for preventing and effectively remedying human rights violations (as well as for building trust and thus fostering the resolution of the conflict) can hardly be overestimated. With regard to the refugee camps, the need for more comprehensive information on the human rights situation has been highlighted by international NGOs,<sup>6</sup> and paragraph 6.2 of the draft resolution takes account of that. Similarly, my proposed Amendment D aims to put more emphasis on the need for thorough scrutiny of the situation in the territory of Western Sahara.

While all parties should be strongly encouraged to ensure unimpeded access to the region by local and international observers, notably the Special Procedures of the United Nations Human Rights Council, I am convinced that independent, impartial and sustained human rights monitoring, in both the territory and the camps, and with a broad focus on a variety of issues, can best be undertaken within the framework of MINURSO's operation. MINURSO could report regularly and directly to the United Nations Security Council, and would be less dependent on the co-operation of the parties in monitoring the situation and thus capable of responding quickly to situations necessitating immediate action. Furthermore, I am confident that human rights monitoring and reporting by MINURSO would be perceived as impartial, well-balanced and independent by the Moroccan authorities and the Polisario Front. Member States should therefore be encouraged to promote, within the United Nations, the inclusion of corresponding competences into the mission's mandate in debates concerning the latter's likely renewal in April 2015.

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6. Amnesty International, [UN “miss opportunity” to allow Western Sahara human rights monitoring](#), 25 April 2013.