

The Western Sahara Conflict: impact on Sahrawi people's human rights: intended solidarity or breach of international responsibility

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Abstract: When the Spanish government appeared to explain its change of position on the Sahara conflict, the commitment to humanitarian aid to the refugee population was expressly highlighted. The government argued that its support for Morocco's proposed solution, contrary to international law and Spain's responsibility as an administering power, was a step towards unblocking the stalemate in the conflict. However, the allegation that its commitment to the refugee population was evidence of its position in favour of the Sahrawi people is not such a claim, but only represents the fulfilment of part of its obligations as an administering power of the territory. This paper will examine the obligations of administering powers in the protection of local populations and Spain's traditional position as a donor of humanitarian aid and the human rights situation in order to argue that the government's alleged commitment is not such, and that the humanitarian aid promised to the refugee population is no different from previous years and does not go beyond Spain's obligations as an administering power of the territory.

Keywords: Humanitarian aid, refugees, human rights, solidarity

“Meanwhile, ladies and gentlemen, Spain maintains and strengthens its solidarity with the Sahrawi people. We continue to be the main bilateral donor of humanitarian aid to the camps. One more year, after the pause due to the pandemic, we are going to organise the Holidays in Peace Programme so that thousands and thousands of Sahrawi children can enjoy a few weeks in our country. Ladies and gentlemen, forty-seven years of unresolved conflict over the Saharawi question should be enough for us to understand that we have to move our positions, actively avoid a worsening of the conflict and favour a framework of dialogue for an agreed political solution. Spain has a special interest in the resolution of this conflict and it cannot continue to be managed as an indeterminate wait and see; it is a question of resolving it, especially in the current geopolitical context”.

Appearance of Pedro Sánchez Castejón, President of the Government ¹

(A) INTRODUCTION

In a context of growing war and nuclear threat, frozen and low-intensity conflicts are doomed to oblivion and inaction by the international community. This often results in a protraction of the humanitarian emergency and undeniably affects the human rights of the populations. This is certainly the case with the conflict in Western Sahara and the Sahrawi people.

¹ Journal of Sessions of the Congress of Deputies, N192, DSCD-14-PL-192(8 June 2022) p.14. (Translated by the author)

Much has been said and written about the political and legal repercussions of the Spanish government's change of position last March, but this change also has undeniable humanitarian and human rights repercussions. Since the beginning of the conflict, it has been addressed from the perspective of the unfinished decolonisation process and the peace negotiation, placing special emphasis on the Sahrawi people's right to self-determination. However, it was not until 2012 with the publication of "The Oasis of the Memory" (Beristain & González 2012) that the conflict was analysed from the perspective of the multiple human rights violations that took place during the conflict. Directly related to the human rights situation, humanitarian assistance and the permanent emergency in which Sahrawi refugees survive in Algeria has been the subject of several articles, as it is clear the impact it has on the population and on the perpetuation of the conflict status quo (López Belloso & Mendi Azkue 2009; Grande-Gascón 2017; Schechla 2019)

In the different appearances of the Prime Minister, such as the one at the beginning of this paper, has expressed his commitment to the Sahrawi refugee population, but he has made no reference to the human rights situation in the occupied territories. We do not believe this omission to be coincidental. The aim of this paper is to analyse the impact that the Spanish government's policy shift can have and has already had on the situation of the Sahrawi population, both in the Sahrawi refugee camps and in the occupied territories, and to determine whether Spain, as the administering power of the territory, exercises solidarity with the Sahrawi people through its foreign policy of development and humanitarian aid, or whether, on the contrary, support for the Sahrawi population is part of its international obligations.

To achieve this objective, we will address three main questions: the obligations of the administering powers with respect to the Non-Self-Governing Territories according to the United Nations Charter; the situation of human rights in the territories occupied by Morocco, and the current situation of Spanish humanitarian assistance to the Sahrawi refugee population in Tindouf.

(B) SPANISH RESPONSIBILITY AS AN ADMINISTERING POWER IN WESTERN SAHARA

The territory of Western Sahara forms part of the list of 17 Non-Self-Governing Territories (NSGT) pending decolonisation according to the United Nations. Article 73 of the Charter states that these territories are those that "have not yet attained a full measure of self-government". This same article states that:

"Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government (...) accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

1. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses" Article 73.1.

From the literal wording of this article it is clear that the administering powers have the obligation to: (1) promote the well-being of the inhabitants of the territory; (2) ensure their fair treatment and protection against abuses. While it is true that the first of these aspects may be more abstract, due to the lack of specificity of the term “well-being”, the second leaves no room for interpretation: the administering powers must protect the populations of the (NSGT) from abuses. The role of Spain as an administering power in Western Sahara has been detailed by authors such as Juan Soroeta (2014; 2017), Carlos Ruiz Miguel (2010), the UN Legal Counsel himself, Hans Corell (UNSC S/2002/161), or the National High Court (AAN 256/2014 4th July 2014). Therefore, if Spain is, according to international law, the administering power of the territory, it is its responsibility to guarantee the well-being of its inhabitants and their protection against abuses. Although the various Spanish governments have tried to disassociate themselves from this responsibility (this is not, therefore, part of the current government's change of position), according to Juan Soroeta it is clear from the wording of resolutions such as UNGA Res 58/10217 of December 2003 that since “full self-government in accordance with Chapter XI of the Charter has not been achieved, the administering power still has to comply with its duty to inform” (Soroeta Licerias, 2014:39) and accordingly, the responsibility persists.

Thus, considering Spain's nature as an administering power, we will attempt to specify how the two previously mentioned aspects are materialised: the promotion of the well-being of the population, and the guarantee of their fair treatment and protection against abuses in connection with other relevant international documents.

(1) The promotion of the well-being of the inhabitants of the territory of Western Sahara

The concept of well-being is directly related to the International Development Agenda and specifically to sustainable development and human development. *A priori*, the contexts in which humanitarian assistance is implemented do not seem relevant to the discussion on well-being. However, the particularity of the Sahrawi context and its protraction as a permanent emergency has led to the well-being of Sahrawi refugees being analysed in several studies (Dubois-Migoya, Guridi Aldanondo and López Belloso 2011; Milner 2011; Schechla 2019). The approaches adopted in assisting Sahrawi refugees have evolved, adapting to the different stages of the conflict (Dubois-Migoya, Guridi Aldanondo and López Belloso 2011), but have been mainly conditioned by: (1) the situation of “neither war nor peace” that has prevailed during these 47 years (Martín Beristain and Lozano Urbieto 2001), (2) the Polisario Front's commitment to the well-being of the refugee population, and (3) the role played by Sahrawi women (López Belloso and Mendia Azkue. 2009).

This prolongation of the Saharawi conflict directly hinders the well-being of the population, both in the occupied territories and in the refugee camps. Although the Spanish government has expressly stated that the change in its position would not affect its commitment to solidarity and cooperation with the refugee population (Europapress 2022), it cannot be ignored that this commitment derives directly from its obligations not only as an administering power (the aforementioned Article 73 expressly mentions

the “well-being of the population”) but also from the obligations acquired in the international sphere, especially the global political frameworks such as the 2030 Agenda and the results of the Global Humanitarian Summit (2016).

In adapting the 2030 Agenda for Sustainable Development to Spanish policy, the Spanish Government has defined 8 “Country Challenges” that respond to current challenges that must be addressed to comply with the Agenda and the SDGs (2030 2020). Challenge 7, stated as: “to put an end to global injustice and threats to human rights, democratic principles and the sustainability of the planet”, details the commitment to increase “investment in Official Development Assistance (ODA), through the commitment to reach 0.5% of Gross National Income (GNI) in the next three years and 0.7% before 2030” (MINISTERIO DE DERECHOS SOCIALES Y AGENDA 2030, 2020:194). In this same challenge, a cooperation model aligned with Human Development and with a preventive approach to conflicts that “reaffirms the commitment to the principle of the responsibility to protect” is advocated (MINISTERIO DE DERECHOS SOCIALES Y AGENDA 2030, 2020).

The Humanitarian Summit recognized that humanitarian actors need to transcend short-term interventions and contribute to the achievement of longer-term development results, as well as placing the person at the centre, to transform short-term, supply-driven response efforts into demand-driven outcomes that reduce need and vulnerability².

(2) The guarantee of fair treatment and protection against abuses in Non-Self Governing Territories

So far, we have addressed the well-being of refugees linked to the provision of humanitarian aid, but the government cannot ignore the fact that there is also a core Sahrawi population living under Moroccan occupation, who should also be protected and guarantee their “political, economic, social and educational advancement, fair treatment and protection against abuses” (Article 73). This protection and well-being of the population residing in the occupied territories must be understood in the framework of the economic obligations of the administering powers, especially in the context of the “permanent sovereignty over their resources and natural wealth” established in UNGA Resolution 1314 (XIII)³ and which has been developed by resolutions UNGA Resolution 48/46 (XLVIII)⁴, UNGA Resolution 62/120 (LXII)⁵ and UNGA Resolution 62/113 (LXII)⁶. It is not the purpose of this reflection to delve into the implications of these obligations of the administering power in plundering the territory’s natural resources; as there are already numerous studies on the subject⁷. However, in the political context of the development cooperation that concerns us, it seems necessary to point out that the previously mentioned Sustainable Development Strategy adopted by Spain

² UNGA/70/709 One humanity: shared responsibility, Report of the Secretary-General for the World Humanitarian Summit, 2 February 2016, retrieved from <https://undocs.org/A/70/709>. Last accessed 22 October 2022

³ UNGA/RES/1314 (XIII), of 12 December 1958

⁴ UNGA/RES/48/46 (XLVIII) of 22 March 1994

⁵ UNGA/RES/62/120 (LXII) of 17 December 2007

⁶ UNGA/RES/62/113 (LXII) of 10 January 2008

⁷ See among others Smith 2015; Wrangle 2019; Allan & Ojeda-García 2021; Suárez-Collado & Contini 2021.

expressly mentions in Challenge 7 that “[o]ur country will equip itself with the necessary mechanisms and instruments to protect human rights from the possible negative impact of business activities outside our borders and, to this end, will address the obligations of companies to respect human rights in their activities, as well as redress in the case of violations or abuse” (MINISTERIO DE DERECHOS SOCIALES Y AGENDA 2030, 2020:197). This statement, linked to the commitment to promote a “Business and Human Rights Due Diligence Act” in practical terms and the responsibility of companies to prevent and remedy the eventual impact of their business activity on human rights is particularly important to ensure the well-being of the population of the occupied territories.

But in addition, in the case of the Occupied Territories, this obligation to protect the population from abuses should also be translated into a correct application of existing international treaties on the protection of civil and political rights. However, as we will see below, the Spanish government ignores the continuous violations of the Saharawis’ human rights by Morocco, even going so far as to deny them the international protection established by international law.

In the following section, we will analyse how the consequences of the Spanish government’s political shift in these two areas materialise, contrasting political declarations with concrete actions in both areas.

(C) CONSEQUENCES OF THE POLITICAL SHIFT IN THE PROTECTION OF HUMAN RIGHTS AND HUMANITARIAN AID TO REFUGEES

(1) The protection of human rights in the Occupied Territories

In the context of the Western Sahara conflict, the protection of human rights has been linked to the realisation of the right to self-determination. While it is true that the denial of this right to self-determination is the origin of most of the human rights violations in the territory, it is also necessary to admit that until the beginning of the 21st century, the protection of human rights in the territory did not occupy a prominent place on the international agenda (López Belloso, 2019: 85 et seq.). This has not been exclusive to the context of Western Sahara, but as Samuel Moyn argues, for developing states in their independence processes, self-determination prevailed over the notion of universal human rights, and when they claimed human rights they did so only as a discursive political strategy to achieve national sovereignty (Moyn 2012).

In the case at hand, the government’s change of position, human rights and the deterioration of their situation have also been absent from the public declarations of the Spanish authorities, despite the deterioration of the human rights situation in the occupied territories after the breakdown of the ceasefire especially of human right defenders. This deterioration in the situation of human rights defenders in the territory was denounced by the UN Special Rapporteur on the situation of human rights defenders in July 2021, noting not only their harassment but also their disproportionate sentences linked to their activism (OHCHR 2021).

While the harassment and persecution of Sahrawi activists have been widespread and on the rise since the ceasefire broke down⁸, one case is particularly significant because of its gravity and the inaction of the Spanish government: that of the Saharawi activist Sultana Khaya, president of the Saharawi League for the Defence of Human Rights and Against the Plundering of Natural Resources in Boujdour. Sultana is a well-known human rights activist who has already been a victim of torture and as a result of which she lost an eye. She was under arbitrary house arrest for more than 18 months since 19 November 2020, and was subjected to harassment, attacks and rape throughout this period⁹. In addition to being subjected to arbitrary house arrest contrary to Art. 9 of the International Covenant on Civil and Political Rights (ICCPR)¹⁰, the numerous attacks on her¹¹, are also against the aforementioned article¹². Finally, thanks to the mediation of a group of American activists, Sultana was able to leave the territory and travel to Spain, where she receives treatment for the after-effects of the attacks and denounces the situation in the territory. The repression and aggressions were not only limited to the activist and her social and family environment but also exercised on other Saharawi activists (AI 2022).

Sultana's case was so notorious that the activist was nominated for the Sakharov prize in October 2021. However, the Socialist Party voted, together with VOX, against her application. The lack of involvement in the protection of Saharawi activists has also been reflected in the obstruction and denial of asylum to Saharawi activists. (EL PAIS 2022).

Hence, the government's change of position has not changed its stance on the protection of human rights in the territory, which has been characterised by a lack of involvement in defending the rights of the Sahrawi population. However, for human rights activists and victims of systematic human rights violations, this change of position represents an alignment with the occupying power and the legitimisation of these abuses. Moreover, as we have seen previously, Spain is not in a position to ignore the grave human rights situation in the territory, since as the administering power, obligations under Art 73, including the protection of population from abuses remains.

⁸ See: (AI 2021 MDE 29/4404/2021); (AI 2022 MDE 29/5488/2022)

⁹ See: AI 2021 (MDE 29/5058/2021) Urgent action: Sahrawi activists raped by Moroccan forces, 30 November 2021, www.amnesty.org/en/documents/mde29/5058/2021/en ; AI 2022 (MDE 29/5457/2022) Urgent action: Investigate violations against raped activist, 6 April 2022, www.amnesty.org/wp-content/uploads/2022/04/MDE2954572022ENGLISH.pdf

¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR). As detailed in commentary 35 to Article 9 of the International Covenant on Civil and Political Rights, any form of deprivation of liberty will be considered arbitrary, including house arrest, if it is not carried out through the appropriate judicial procedure. This is stated for example in the case of *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002 10 May 2005), párr. 5.4: "The Committee further notes that this house arrest was imposed on him after his acquittal and release by virtue of a final judgment of the Military Tribunal. The Committee recalls that article 9, paragraph 1, is applicable to all forms of deprivation of liberty"

¹¹ Different NGOs and civil society organisations have echoed the attacks on the activist. See for example the report carried out by the NGO Democracy now (Report available here: https://www.democracynow.org/es/2020/11/27/four_days_in_occupied_western_sahara), or the communiqués of associations such as Cantabria por el Sahara (<https://cantabriaporesahara.com/nuevo-ataque-a-la-activista-saharai-sultana-jaya/>) or the information gathered by the press: (<https://www.europapress.es/internacional/noticia-activista-saharai-denuncia-asalto-fuerzas-especiales-marroquies-domicilio-2021108205617.html>).

¹² See párr.9 of Commentary 35 to Art. 9 of the International Covenant on Civil and Political Rights

(2) Humanitarian assistance to the refugee population in Tindouf

Contrary to the defense of human rights in the territory that has been absent from the Government's statements regarding its change of position, its commitment regarding the refugee population has been expressly stated, both in parliamentary speeches, as we noted at the beginning of this paper, and in statements to the media. (EUROPA PRESS 2022).

This humanitarian aid has been key to the survival of refugees and its progressive reduction has had serious consequences for the refugee population, but it is also used, as Juan Soroeta states, as “a double-edged sword” to maintain the status quo of the conflict and perpetuate its stagnation (Sororeta Licerias 2014, 44). Thus, assistance to refugee camps has been characterised by wellfarism, a permanent emergency, with refugee assistance programmes that are still residual and aligned with approaches more in line with those defined by the World Humanitarian Summit. This had a psychosocial impact on the population and the establishment of an “aid culture” in generations that have known no other context than dependence on international aid (López Belloso, 2011).

Therefore, in the context of the political framework mentioned in previous sections, we must analyse Spain's contribution to humanitarian aid to the Sahrawi population, both in terms of quantity and the type of programmes implemented. According to data provided by the WFP based on the preliminary results of the Nutrition Survey 2022, the prevalence of global acute malnutrition among children aged 6-59 months has increased significantly (from 7.6 to 10.7 per cent since 2019), as has the prevalence of stunting (from 28.2 to 28.8 per cent). Looking at cumulative data since 2016, according to the same report, the prevalence of anaemia among the same group has increased from 39 per cent (2016) to 50 per cent (2019) and risen to 54.2 per cent in 2022 (WFP, 2022). Given the worsening health and situation of the refugee population, in August this year, the UN Country Team in Algeria launched a special appeal to reinforce support for the Sahrawi population (Roukhi 2022).

According to the data provided by Spanish Cooperation (AECID 2020-2021), the amount of Spanish humanitarian aid to the Sahrawi refugee population has remained at around 5 million euros since 2015, with a one-off increase in 2017¹³. The 2021 Action Plan announced a budget “of €5 million, an increase of 43% compared to 2020” (AECID 2021, 9). However, in the absence of a breakdown of the data to date, it is difficult to understand how this 43% increase is calculated if the announced budget is similar to that of previous years. Therefore, given the magnitude of the crisis and the worsening of the population, it seems clear that the Spanish government's commitment is insufficient.

On the other hand, from the point of view of the type of aid provided, it is important to point out that the sectors of action detailed in the Spanish strategy: food security and nutrition, and health, are aimed at maintaining minimum levels of wellbeing for

¹³ According to the latest data available in the AECID Strategy 2020-2021, in 2015 the Spanish contribution amounted to 5,041,836€, in 2016 to 5,196,770€, in 2017 to 6,548,099€, in 2018 to 5,642,201€, 5,227,256€ in 2019 and 5,492,897€ in 2020 (AECID 2020-2021, 10).

the refugee population, with little potential for transformation, and certainly not in line with favouring the transition from emergency to development, despite the prolongation of the conflict¹⁴.

After the two years break caused by the pandemic, the “Holidays in Peace” programme resumed in the summer of 2022. This programme was also expressly mentioned by the President of the Government as a sign of his commitment to the Sahrawi population. Historically, this programme has been one of the main instruments for the Sahrawi people to raise awareness and publicise their situation, as well as to strengthen ties with the Spanish people. However, this year the programme has been affected, not only by the two years of inactivity, which have made it difficult to connect with host families but also by other external factors such as the war in Ukraine. In addition to this weakness, which has been reflected in the decrease in the number of children taken in by Spanish families, the programme was delayed by almost 3 weeks, starting in the third week of July, instead of the date agreed at the beginning of the month. Although this delay cannot be directly attributed to the relationship between the government and the POLISARIO Front after the change of position, the agreements of previous years’ councils of ministers were indeed approved around early to mid-June.¹⁵ and this year this agreement was reached on 21 June and published in the BOE almost two weeks later, on 1 July¹⁶.

(D) CONCLUSION

Human rights have not been high on the agenda of the Western Sahara conflict, despite the fact that they have been systematically violated since its the beginning of the conflict. Neither the international community nor Spain has paid attention to their protection, and the clearest reflection of this is that MINURSO (United Nations Mission for the Referendum in Western Sahara) still does not include human rights monitoring in the territory in its mandate. However, Spain is not just another actor in the international community that can change its position in the conflict without legal repercussions.

¹⁴ Resolution adopted by the United Nations General Assembly in December 2015 on “International co-operation on humanitarian assistance in the field of natural disasters, from relief to development”- GA/RES/70/107, 13 January 2016, at: <https://undocs.org/en/A/RES/70/107>. Date accessed 25 October 2022

¹⁵ In 2015: Resolution of 10 June 2015, of the General Secretariat for Immigration and Emigration, publishing the Agreement of the Council of Ministers of 5 June 2015, published in BOE no. 140, of 12 June 2015, pages 49683 to 49686. In 2016: Resolution of 15 June 2016, of the General Secretariat for Immigration and Emigration, publishing the Agreement of the Council of Ministers of 10 June 2016, published in BOE no. 147 of 18 June 2016, pages 42318 to 42321. In 2017: Resolution of 5 June 2017, of the General Secretariat for Immigration and Emigration, publishing the Agreement of the Council of Ministers of 2 June 2017, published in BOE No 137 of 9 June 2017, pages 48039 to 48042. In 2018: Resolution of 19 June 2018 of the Directorate General for Migration, published in BOE No 149 of 20 June 2018, pages 62974 to 62978. In 2019, the Resolution of 18 June 2019, of the Secretary of State for Migration, published in BOE no.146, of 19 June 2019, pages 65082 to 65086.

¹⁶ Resolution of 29 June 2022, of the Secretary of State for Migration, publishing the Agreement of the Council of Ministers of 21 June 2022, approving the instructions determining the procedure for authorising the temporary residence of minors and the stay of monitors of Saharawi origin in Spain within the framework of the “Holidays in Peace 2022” Programme, published in BOE No 157 of 1 July 2022, pages 93243 to 93244.

Spain continues to be the administering power of the territory and is therefore subject to the obligations attributed to it as such by the UN Charter.

In the Spanish government's various appearances to explain and try to justify its support for the Moroccan proposal, it has tried to divert attention from the consequences of the territory's administering power clearly siding with the occupier by affirming its commitment to humanitarian assistance to the refugee population and the holidays in peace programme. Nevertheless, these government representatives forget that Spain's position is conditioned by its international commitments, not only as administering power, but also in the context of international development policies. Then, this contribution to the Sahrawi population is not an added value, but rather an alignment with international policies. On the other hand, it would seem that this humanitarian aid contribution could compensate for the prolongation of the status quo of the conflict and the consequences this has for the Sahrawi population, both in the refugee camps and in the occupied territories. However, the type of aid that Spanish cooperation, far from following the guidelines of the World Humanitarian Summit and Human Development, barely contributes to covering the basic needs of the refugee population. If we add to this the fact that in a context of international crisis it is likely that aid from other donors will be reduced, thus worsening the situation of the population, the amount and type of Spanish cooperation is clearly insufficient.

On the other hand, the deterioration of the human rights situation in the territories occupied by Morocco, especially since the breakdown of the ceasefire, which has been reported by human rights organisations, highlights Spain's failure to protect the Sahrawi population from abuses. Not even in cases as flagrant as that of Sultana Khaya has the Spanish government responded to protect the activist.

Therefore, the Spanish government's change of stance has certainly not changed its traditional stance on the protection of the territory's inhabitants, but it is also evidence of its failure to comply with its international obligations. The government should adopt a firm stance in defence of fundamental human rights in the territory and a real commitment to the needs of the refugee population, given that it has renounced the role and responsibility assigned to it by international law.

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