

# African Court upholds the right to self-determination and independence of the Sahrawi people

*In a recent landmark ruling, the African Court denounced the Moroccan occupation of Western Sahara as a serious violation of the right to self-determination.*

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In a landmark ruling of 22 September 2022, the African Court on Human and Peoples' Rights denounced the Moroccan occupation of Western Sahara as a serious violation of the right to self-determination."

*Dr Femi Falana SAN*

2022, the African Court on Human and Peoples' Rights issued a landmark ruling, unprecedented on the African continent, condemning the illegal presence of Moroccan forces in Western Sahara as a military occupation, in violation of international law.

This was the first time that the Court had dealt with a case dealing with the right to self-determination and independence, and the Court gave full importance to this principle which has been a constituent part of states in Africa, as part of the vast decolonisation movement.

The Court considers that this right, enshrined in Article 20 of the African Charter on Human and Peoples' Rights, constitutes a peremptory norm of international law, falling within the scope of jus cogens, which does not tolerate any derogation. This entails an obligation erga omnes for all states not to recognise a situation created in violation of this right. Similarly, States must assist oppressed peoples. In this regard, they must refrain from any act incompatible with the nature of the right to self-determination or the full enjoyment of this right by the peoples concerned.

Having established this principle, the Court ruled that "both the UN and the AU recognise the situation of the SADR as one of occupation and consider its territory as one of those territories whose decolonisation process is not yet fully completed". This is why direct negotiations between the two AU members SADR and Morocco should be concluded, with the sole purpose of "organising a referendum to guarantee the right to self-determination of the people of Western Sahara".

From this reality, which is obvious to all, the Court finds that the Moroccan occupation of part of the territory of the SADR seriously violates the right to self-determination and independence of

the Sahrawi people. Consequently, the Court finds, AU Member States have an obligation to assist the Sahrawi people in the realisation of their right to self-determination and not to recognise the situation and violations resulting from this illegal occupation.

Indeed, the right to self-determination and independence “imposes an international obligation on all States Parties to take positive steps to realise this right, including assisting oppressed peoples in their struggle for freedom and refraining from actions incompatible with the nature or the full enjoyment of this right. The Court emphasises that “in view of the fact that part of the territory of SADR is still occupied by Morocco, there is no doubt that the States Parties to the Charter have an obligation, individually and collectively, towards the people of SADR to protect their right to self-determination, in particular by assisting them in their struggle for freedom and by not recognising the Moroccan occupation and any violation of human rights which may have resulted from that occupation”.

The Court concludes that the admission of the Kingdom of Morocco to the African Union does not confer any legality on the occupation of Western Sahara, and on the serious violations of fundamental rights required by its maintenance. Indeed, the Kingdom of Morocco made no reservation in Article 4(b) of the Constitutive Act as to “respect for the inherited borders existing at the time of accession to independence”. Consequently, having been admitted within its internationally recognised borders, excluding Sahrawi territory, the Kingdom of Morocco sits in the continental organisation alongside the Sahrawi Arab Democratic Republic, which is a founding member of the African Union.

The Court concludes, “all AU member states have a responsibility under international law to find a permanent solution to the occupation and to ensure the enjoyment of the right to self-determination of the Sahrawi people and to do nothing that would recognise such occupation as legitimate or impede the enjoyment of that right.”

Femi Falana SAN represented the Applicant, Bernard Anbataayela Mornah, a Ghanaian national and National Chairman of Convention of People’s Party of Ghana who filed the case on behalf of the Sahrawi Arab Democratic Republic.

Quoting Dr Femi Falana SAN, who represented the Applicant in this case: "With this epochal judgment the African Court on Human and Peoples Rights has joined the International Court of Justice and the Court of Justice of the European Union in giving judicial endorsement to the right of the people of the Sahrawi Arab Democratic Republic to independence and self-determination. No doubt, the judgment of the African Court has denounced the illegal occupation of the territory of Western Sahara by the Kingdom of Morocco. It is particularly gratifying to note the Court has reminded the members of the African Union of their legal obligation under international law to find a permanent solution to the illegal occupation of the territory and to ensure the enjoyment of the right to self-determination of the Sahrawi people and to do nothing that would recognise such occupation as legitimate or impede the enjoyment of that right.

Therefore, Morocco and its few allies in the African Union and the members of the European Union as well as the Governments of United States must adopt urgent measures to comply with the judgment of the African Court by according recognition to the Saharawi Arab Democratic Republic without any delay."

The Respondents' States were represented by the following lawyers:

1. Irene Aclombessi, Republic of Benin;
2. Yaounde Lamoussa, Burkina Faso;
3. Kudiatou Sangare, Republic Cote d'Ivoire;
4. Dorothy Afriyie-Ansah, Republic of Ghana;
5. Youssouf Diara, Republic of Mali;
6. Pacharo Kayira, Republic of Malawi;
7. Gabriel Malata, United Republic of Tanzania;
8. Chedly Rhamani, Republic of Tunisia.

Interveners

1. Mr. Ahmed Sidi ALY, Sahrawi Arab Democratic Republic and Mr. Manuel Devers;
2. Ambassador H. Dillum, Republic of Mauritius.

Amicus curiae, Pan African Lawyers Union was represented by Donald Deya.

For further details on the case, see: <https://www.african-court.org/cpmt/latest-decisions/judgments>

Case Application 028/2018 - Bernard Anbataayela Mornah v. Republic of Benin  
Republic of Burkina Faso  
Republic of Cote d'Ivoire  
Republic of Ghana  
Republic of Malawi  
Republic of Mali  
Republic of Tunisia  
United Republic of Tanzania

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