

# NOWHERE TO TURN:

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THE CONSEQUENCES OF THE  
FAILURE TO MONITOR **HUMAN RIGHTS**  
VIOLATIONS IN **WESTERN SAHARA**  
AND TINDOUF REFUGEE CAMPS

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Based on United Nations Map  
February 2010 (Colour)

Department of Field Support  
Cartographic Section

## I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Sahrawi are the indigenous people of Western Sahara, who descended from Berber and Arab tribes.<sup>1</sup> The following is a report on the human rights situation facing the Sahrawi people who reside in the disputed territory of Western Sahara under Moroccan control and in the Sahrawi refugee camps near Tindouf, Algeria. Much of the information contained in this report is based on information gained from interviews and meetings during a visit to the region of an international delegation led by the Robert F. Kennedy Center for Justice and Human Rights (RFK Center).

For nearly 40 years, both the Kingdom of Morocco and the Popular Front for the Liberation of Saguía el Hamra and Río de Oro (POLISARIO Front) have claimed sovereignty over Western Sahara, a former Spanish colony. After years of armed conflict, in 1991 the United Nations (UN) established the Mission for the Referendum in Western Sahara (MINURSO), a peacekeeping mission to oversee the cease-fire between the Kingdom of Morocco and the POLISARIO Front and to organize and ensure a referendum on self-determination. Today, 22 years after the establishment of MINURSO, the referendum has yet to take place. Each side charges the other with failure to cooperate and the conflict between Morocco and the POLISARIO Front continues.

Meanwhile, the UN has failed to resolve the conflict, leaving nearly the entire Sahrawi population, comprised of roughly 500,000 people, without effective human rights protection.<sup>2</sup> The situation is particularly urgent for the more than 125,000 Sahrawi refugees who subsist in what were intended to be temporary camps established near Tindouf, Algeria in 1976.<sup>3</sup> In spite of numerous independent assessments that confirmed human

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<sup>1</sup> Tony Hodges, *Western Sahara: Roots of a Desert War* 3-15 (1983).

<sup>2</sup> U.S. Dept. of State, *Country Reports on Human Rights Practices for 2011: Western Sahara* 1 (2011), <http://www.state.gov/documents/organization/186653.pdf>.

<sup>3</sup> The number of people who currently reside in the refugee camps is a matter of dispute. Algeria claims that there are 165,000 in the camps, Tony Hodges, *Western Sahara: Roots of a Desert War* 233 (1983); the World Food Programme (WFP) informed the delegation that it provides rations to the 125,000 most vulnerable refugees. According to the United Nations Refugee Agency (UNHCR), there are 116,413 refugees originating from Western Sahara. Western Sahara Territory, UNHCR, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4861f6&submit=GO> (last visited Feb. 3, 2013). The UNHCR reports that there are 90,000 Sahrawi refugees residing in Algeria. Algeria, UNHCR, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e485e16&submit=GO> (last visited Feb. 3, 2013). The Moroccan government informed the RFK Center delegation on August 29, 2012 that it contends the population of the camps has been overestimated, and has called for the UN to conduct a new census. No registration exercise has been conducted by either MINURSO or the UNHCR since 2000/2001. World Food Programme and High Commissioner for Refugees, *Joint Assessment Mission Algeria October 2011* 4, n.6 (2011). For the purposes of this report, the RFK Center will use the WFP estimate of 125,000 refugees in the camps.

rights violations, the negotiations between Morocco, the POLISARIO Front, and the UN have primarily revolved around the issues of self-determination, autonomy, and independence.

The absence of a permanent solution to the conflict has a direct impact on the denial of human rights to the Sahrawi people. During the RFK Center's visit to the region in August 2012, the delegation received hundreds of testimonies from Sahrawi men and women victims of human rights violations at the hands of Moroccan authorities.

There is near-absolute impunity for human rights violations against the Sahrawi people, who live in a state of fear and oppression under the impassive watch of the UN peacekeeping mission. In Moroccan-controlled Western Sahara, the overwhelming presence of security forces, the violations of the rights to life, liberty, personal integrity, and freedom of expression, assembly, and association create a state of fear and intimidation that violates the rule of law and respect for human rights of the Sahrawi people. There is virtually no prosecution of human rights violations, and officials responsible for the violations and torture walk freely on the streets. While the Equity and Reconciliation Commission established by Morocco in 2004 played an important role in initiating a process to deal with the atrocities of the past, many people believe that it has failed to satisfy scores of victims on both sides of the conflict and that their recommendations have not been fully implemented, denying access to justice, truth, and reparation to many victims.

Morocco's reforms have failed to effectively enhance protection of human rights in Western Sahara. Royal discretionary powers allow the King to operate with outside the realms of adequate checks and balances. In practice, therefore, the reforms that have been made on paper do not provide substantial or realistic protection for the Sahrawi people on the ground. Those who advocate for their right to self-determination or who denounce human rights violations committed by Moroccan authorities remain particularly at risk.

Unless the UN takes action immediately, human rights violations against the Sahrawi people will continue. The UN Secretary General, UN Special Envoy to Western Sahara, UN Members of the Security Council and Human Rights Council, the Office of the High Commissioner for Human Rights, and the UN High Commissioner for Refugees must work together and with the parties to the conflict to find and implement an effective human rights mechanism to protect the Sahrawi people.

**The parties to the conflict and the United Nations should:**

- 1. Work with the Office of the High Commissioner for Human Rights (OHCHR) to facilitate an immediate mission to both Moroccan-controlled Western Sahara and Sahrawi refugee camps. Such a mission should be able to receive complaints and issue a public report.**
- 2. Work toward the inclusion of a permanent human rights monitoring and reporting mandate to the UN Mission for the Referendum in Western Sahara (MINURSO), which may also receive individual complaints and investigate alleged human rights violations.**

The Government of Morocco must put an end to the pattern of violence and impunity that affect the Sahrawi people who support the independence of Western Sahara.

**The Government of Morocco should:**

- 1. Take immediate steps to end the harassment, violence, persecution, and intimidation of Sahrawi people.**
- 2. Investigate, prosecute, and punish those involved in past and ongoing human rights violations.**
- 3. Establish an effective vetting program and immediately suspend government agents who are under investigation for human rights violations.**
- 4. Ensure effective access to due process and judicial guarantees, without discrimination and regardless of political beliefs.**
- 5. Release prisoners falsely accused of committing crimes while exercising their right to freedom of expression and association**
- 6. Make stronger efforts to implement the constitutional reforms that will allow for the full enjoyment of civil and human rights without discrimination**

The RFK Center delegation expresses its appreciation to those who helped organize and coordinate the visit. Special thanks to the victims of human rights violations who bravely shared their experiences. We thank civil society organizations, the governments of Morocco and Algeria, as well as the POLISARIO Front for their support and cooperation. We also thank the members of the UN Mission for the Referendum in Western Sahara (MINURSO) and the Office of the UN High Commissioner for Refugees (UNHCR) for taking the time to meet with the delegation.

## II. METHODOLOGY

This report was prepared with information gathered through interviews and meetings conducted during the RFK Center's August 2012 international delegation to the region.

The delegation was comprised of Kerry Kennedy (United States), President, RFK Center; Santiago A. Canton (Argentina), Director, RFK Partners for Human Rights, RFK Center; Marselha Gonçalves Margerin (Brazil), Advocacy Director, RFK Center; Mary Lawlor (Ireland), Director, Front Line Defenders; Margarette May Macaulay (Jamaica), Judge, Inter American Court of Human Rights; Marialina Marcucci (Italy), President, RFK Center–Europe; Stephanie Postar (United States), Advocacy Assistant, RFK Center; María del Río (Spain), Board of Trustees, José Saramago Foundation; Eric Sottas (Switzerland), former Secretary-General, World Organization Against Torture (OMCT); and Mariah Kennedy-Cuomo, student and granddaughter of Robert F. Kennedy.

The RFK Center delegation traveled to Casablanca and Rabat, Morocco; Laayoune, Western Sahara; as well as Algiers and the Sahrawi refugee camps near Tindouf, Algeria.

The delegation met with hundreds of Sahrawi who came from several cities in Western Sahara, including Laayoune, Dahkla, and Smara, as well as Sahrawi living in cities south of Morocco. These men and women disclosed information regarding cases of disappearances, torture, arbitrary detention, police brutality, threats, intimidation, and extrajudicial executions. The delegation also received information about violations to the rights of free expression, assembly, and association.

The delegation met with and received written information from civil society organizations and individuals representing a broad spectrum of views, including: Coordination Europeenne au Sahara Autonome du Maroc (CESAM); Association des Portés Disparus au POLISARIO (APDP); Colectivo de Asociaciones de Derechos Humanos en el Sahara; Asociación de la Unión y Desarrollo; Porte Parole de l'Association des Tribus Sahraouies Marocaines en Europe (ATSME); La ligue des défenseurs des Droits de Humains au Sahara; Association Sakia al-Hamra Pour la Renaissance Féminine; the Collective of Sahrawi Human Rights Defenders (CODESA); Association of Sahrawi Victims of Grave Human Rights Violations Committed by the Moroccan State (ASVDH); Committee for the Defense of Self-Determination of the People of Western Sahara (CODAPSO); Group of Sahrawi Workers at Phosboucraa Company; Forum of the Sahrawi Women; Gdeim Izik Coordination

Committee; Group of Unemployed Sahraoui Master's Graduates; and the Moroccan Association for Human Rights (AMDH), Laayoune branch.

In Laayoune, the delegation met with local authorities, representatives of the UN Mission for the Referendum, and the United Nations High Commissioner for Refugees. The delegation was received by the Governor (Wali) of the region during a meeting that included more than 30 tribal leaders and elected officials, and also had a private meeting with the Mayor of Laayoune and local elected officials. In addition, the delegation met with the Prosecutor, a representative from the office of the regional Minister of Interior, and with the National Council for Human Rights, Laayoune Chapter. The delegation held meetings with members of the Moroccan Parliament and the National Council of Human Rights in Rabat. In the refugee camps, the delegation interviewed refugees, visited detention centers, and met representatives from the POLISARIO who formed the Saharawi Arabic Democratic Republic (SADR) government in exile. The delegation also met with the representatives of the UN High Commissioner of Refugees (UNHCR), MINURSO, World Food Program, Algerian Red Crescent, Association of Sahrawi Victims of Land Mines (ASAVIM), Doctors of the World, Mundabat, the Journalist and Writers Union (UPES), Sahrawi Campaign to Ban Landmines, National Union of Sahrawi Women, and the Association of the Families of Sahrawi Prisoners and Disappeared (AFAPREDESA) as well as POLISARIO officials, civilians we met while walking through the refugee camps, and the National Registry for the Referendum present in the camps. In Algiers, the delegation met with the Ministry in Charge of Maghreb and African Affairs.

All victims included in this report agreed to make their stories public. For safety reasons, individual identities have been withheld in certain circumstances; in such instances, the use of a pseudonym is footnoted.

## III. BACKGROUND

### A. HISTORICAL CONTEXT OF THE WESTERN SAHARA CONFLICT

For nearly 40 years, the government of Morocco and the Popular Front for the Liberation of Saguía el Hamra and Río de Oro (POLISARIO Front) have vied for control of Western Sahara, a former Spanish territory. Morocco's claim to sovereignty over Western Sahara is based largely on a historical argument that Sahrawi tribal leaders were loyal to the Moroccan sultan.<sup>4</sup> The POLISARIO rejects this argument, claiming that Sahrawi tribal leaders only pledged allegiance to the Moroccan sultan as a short-term alliance. The POLISARIO claims that the Sahrawi leaders entered similar arrangements with Spain, France, and Mauritanian emirates, and never relinquished their independence.<sup>5</sup>

From 1904 until 1975, Spain occupied the entire Western Sahara territory, which is divided into a northern portion, the Saguía el Hamra, and a southern two-thirds, the Río de Oro. In 1973, the POLISARIO Front was formed to contest this occupation. During this time, while Western Sahara (or Spanish Sahara as it was known then) was still under Spanish rule, Morocco maintained its claims to the territory.

In 1974, Morocco asked the International Court of Justice (ICJ) to decide its claims of sovereignty over Western Sahara, with Mauritania later joining the claim. In 1975, the ICJ issued an advisory opinion, concluding that “the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity.”<sup>6</sup>

On November 6, 1975, immediately after the decision of the ICJ, King Hassan II of Morocco mobilized 350,000 unarmed Moroccan citizens who entered Western Sahara in what came to be known as the Green March. Morocco refused to end the march until Spain signed an agreement transferring sovereignty to Morocco. This “national unity” or “Green” march is celebrated by Moroccans as the “liberation of its southern provinces” from Spanish rule. For the Sahrawi, this marked the beginning of Morocco's occupation.

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<sup>4</sup> Comm. on the UN, N.Y. City Bar Assn., *And The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 79 (2012).

<sup>5</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 8 (2012).

<sup>6</sup> I.C.J., *Summary of the Summary of the Advisory Opinion of 16 October 1975*, <http://www.icj-cij.org/docket/index.php?sum=323&code=sa&p1=3&p2=4&case=61&k=69&p3=5>.

On November 14, 1975, Spain, Morocco, and Mauritania announced a tripartite agreement for an interim administration under which Spain agreed to share administrative authority with Morocco and Mauritania without addressing the issue of sovereignty.<sup>7</sup> With the establishment of a Moroccan and Mauritanian presence throughout the territory, however, Spain's role in the administration of the Western Sahara *de facto* ceased.<sup>8</sup>

The armed conflict commenced in 1975 and lasted until 1991 when the UN mediated a ceasefire. During the conflict, thousands of Sahrawi civilians sought refuge in neighboring Algeria. In addition, hundreds of people were disappeared or detained at the hands of forces loyal to Morocco and the POLISARIO.<sup>9</sup> In 1980, Morocco built a fortified wall around three-fourths of Western Sahara to solidify its territorial gains.<sup>10</sup>

In 1976, the POLISARIO created the Sahrawi Arab Democratic Republic (SADR). The government in exile is headquartered in Tindouf, Algeria,<sup>11</sup> and has been recognized as the government of an independent state by 49 countries and the African Union.<sup>12</sup> The UN and the League of Arab States have not recognized the SADR.

At the Organization of African Unity (OAU-now the African Union) summit in June 1981, King Hassan II announced his willingness to hold a referendum on the issue of independence or integration of Western Sahara.<sup>13</sup> Subsequent meetings of an OAU Implementation Committee proposed a cease-fire, a UN peacekeeping force, and an interim administration to assist with an OAU-UN-supervised referendum.<sup>14</sup> In 1984, the OAU recognized the Sahrawi Arab Democratic Republic (SADR). This led Morocco to withdraw from the OAU, and it has not rejoined.<sup>15</sup>

In 1988, Moroccan and POLISARIO representatives agreed on the joint OAU-UN Settlement Plan, which envisioned a cease-fire and a transitional period followed by a referendum, which would enable the people of Western Sahara to choose between independence and integration.<sup>16</sup>

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<sup>7</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 12 (2012).

<sup>8</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 13 (2012).

<sup>9</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 75 (2012).

<sup>10</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 75 (2012).

<sup>11</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 13 (2012).

<sup>12</sup> For a list of countries that have recognized the Sahrawi Arab Democratic visit: <http://www.arso.org/03-2.htm>.

<sup>13</sup> UN Mission for the Referendum in Western Sahara, Milestones in the Western Sahara Conflict, <http://minurso.unmissions.org/LinkClick.aspx?fileticket=b675KR4JLk%3D&...>

<sup>14</sup> Erica Miller, *The Fight Over Western Sahara: The Issue of Decolonization*, *Int'l Inst. Justice and Dev.*, Oct. 24, 2012, <http://iijd.org/news/entry/the-fight-over-western-sahara-the-issue-of-decolonization>.

<sup>15</sup> Erica Miller, *The Fight Over Western Sahara: The Issue of Decolonization*, *Int'l Inst. Justice and Dev.*, Oct. 24, 2012, <http://iijd.org/news/entry/the-fight-over-western-sahara-the-issue-of-decolonization>.

<sup>16</sup> Comm. on the U.N., N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 15 (2012).

In 1991, the United Nations Security Council established the United Nations Mission for the Referendum in Western Sahara (known by its French acronym, MINURSO), which deployed a 200-person monitoring force.<sup>17</sup> MINURSO's mandate included monitoring the cease-fire agreement and the administration of the referendum, but did not include a human rights mandate.

After years of sustained deadlock, lack of progress on voter registration, and a number of failed compromises,<sup>18</sup> in 2003, former United States Secretary of State James Baker – in his capacity as Personal Envoy of UN Secretary General Kofi Annan – formulated a peace plan. The plan included three key elements: independence, integration, and continuation of the semi-autonomous Western Sahara Authority, which was to govern the territory in a 4–5 year transitional period leading up to the referendum.<sup>19</sup> The POLISARIO Front accepted the plan, while Morocco rejected it, expressing that it would not agree to any referendum that includes independence as an option.<sup>20</sup>

The Baker plan was supported by the UN Secretary General and the Security Council as a political solution on the basis of agreement between the two parties.<sup>21</sup> After a seven-year effort to assist the parties in coming to an agreement, James Baker resigned in June 2004.<sup>22</sup> In August of the same year, Kofi Annan appointed Alvaro de Soto as Special Representative for Western Sahara. Special Representative de Soto left his position in May 2005 and Peter van Walsum of the Netherlands took his place. Van Walsum oversaw four rounds of talks until August 2008.<sup>23</sup>

In January 2009, U.S. Ambassador Christopher Ross was appointed as the new Personal Envoy of the Secretary General.<sup>24</sup> From August 2009 to April 2012, Ross conducted nine rounds of informal talks between Morocco and the POLISARIO, with Algeria and Mauritania attending as observers.<sup>25</sup> The May 2012 Secretary General Report on the Situation concerning Western Sahara raised concerns over a lack of UN access and the undermining

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<sup>17</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 16 (2012).

<sup>18</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 17 (2012).

<sup>19</sup> The Peace Plan also changed the electorate for the referendum, in order to be eligible; a voter would have to be on the provisional voters list published by MINURSO or UNHCR as of October 31, 2000, or to have resided in the territory continuously for a set period prior to December 30, 1999. It also detailed the authority that would be exercised by the local inhabitants in the territory during the transitional period. Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 19 (2012).

<sup>20</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 20 (2012).

<sup>21</sup> S/RES/1495 (July 31, 2003).

<sup>22</sup> Comm. on the UN, N.Y. City Bar Ass'n, *The Legal Issues Involved in the Western Sahara Dispute: The Principle of Self-Determination and the Legal Claims of Morocco* 21 (2012).

<sup>23</sup> UN Mission for the Referendum in Western Sahara, *Milestones in the Western Sahara Conflict*, <http://minurso.unmissions.org/LinkClick.aspx?fileticket=b67SKR4JLk%3D&....>

<sup>24</sup> UN Mission for the Referendum in Western Sahara, *Milestones in the Western Sahara Conflict*, <http://minurso.unmissions.org/LinkClick.aspx?fileticket=b67SKR4JLk%3D&....>

<sup>25</sup> UN Secretary-General, *Report of the Secretary-General on the situation concerning Western Sahara*, ¶¶ 10-14, UN Doc. S/2012/197 (April 5, 2012), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/197](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/197).

of MINURSO's ability to fulfill its mandate as a neutral party.<sup>26</sup> Following the release of the report, Morocco announced the withdrawal of confidence in Christopher Ross.<sup>27</sup> The UN maintained confidence in Ross and in October 2012 Ambassador Ross was allowed to visit Western Sahara for the first time since his nomination as Envoy.<sup>28</sup>

## B. MINURSO

In 1991, the UN Security Council adopted Resolution 690, which established MINURSO with a mandate to oversee the referendum and observe the cease-fire between the parties.<sup>29</sup>

One of the main elements of the mandate is that the UN would be empowered to "monitor other aspects of the administration of the Territory, especially the maintenance of law and order, to ensure that the necessary conditions exist for the holding of a free and fair referendum."<sup>30</sup>

The OHCHR conducted a mission to Western Sahara in 2006, producing a report confidentially transmitted to Algeria, Morocco, and the POLISARIO.<sup>31</sup> The report, which called for continuous monitoring of the human rights situation in Western Sahara and the refugee camps, was leaked and quoted on several websites and in news articles.<sup>32</sup> The UN Committee Against Torture (CAT) and the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment have also reported about human rights violations in Western Sahara.

In spite of all the evidence of human rights violations, the UN Security Council has extended MINURSO's mandate more than 20 times, but has not approved a human rights mandate for MINURSO.

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<sup>26</sup> UN Secretary-General, *Report of the Secretary-General on the situation concerning Western Sahara*, UN Doc. S/2012/197 (Apr. 5, 2012), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/2012/197](http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/197).

<sup>27</sup> Morocco Slams "Biased" UN Western Sahara Envoy, North Africa United, May 18, 2012, [http://www.northafricaunited.com/Morocco-slams-biased-U-N-Western-Sahara-envoy\\_a1487.html](http://www.northafricaunited.com/Morocco-slams-biased-U-N-Western-Sahara-envoy_a1487.html)

<sup>28</sup> *Accepting status quo on Western Sahara 'serious miscalculation,' warns UN envoy*, UN News Centre, Nov. 28, 2012, <http://www.un.org/apps/news/story.asp?NewsID=43629&Cr=western+sahara&Cr1=#.UO4pW2hm3ww>.

<sup>29</sup> S.C. Res. 690, ¶ 4, UN Doc. S/RES/690 (Apr. 29, 1991), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/690\(1991\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/690(1991)).

<sup>30</sup> UN Secretary-General, *The Situation Concerning Western Sahara: Rep. of the Secretary-General*, ¶ 47(g), UN Doc. S/21360 (June 18, 1990), [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/21360](http://www.un.org/ga/search/view_doc.asp?symbol=S/21360).

<sup>31</sup> High Commissioner of Human Rights, *Report of the OHCHR Mission to Western Sahara and the Refugee Camps in Tindouf* (Sept. 8, 2006), <http://www.arso.org/OHCHRrep2006en.pdf>.

<sup>32</sup> UN Secretary-General, *Report of the Secretary-General on the situation concerning Western Sahara*, ¶ 47, UN Doc. S/206/817 (Oct. 16 2006), <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/MINURSO%20S2006817.pdf>.

## IV. LEGAL FRAMEWORK

In February 1976, Spain terminated its presence in Western Sahara and relinquished its responsibilities over the Territory.<sup>33</sup> Since then, Morocco has been the *de facto* administrator of Western Sahara. In 1990, the UN General Assembly reaffirmed that Western Sahara was a non-self governing territory that needed to be decolonized and that its final status should be decided by its indigenous inhabitants.<sup>34</sup>

The Kingdom of Morocco is a constitutional monarchy, and has an elected parliament, but ultimate authority under Moroccan law still resides with the King, currently Mohammed VI.<sup>35</sup> The King is the “Guarantor of the Independence of the country and of the territorial integrity of the Kingdom within its authentic frontiers” as well as the official responsible for overseeing “respect for the international commitments of the Kingdom.”

In the aftermath of the Arab Spring, King Mohammed VI announced a new Moroccan Constitution in 2011 allowing for greater democracy and human rights guarantees.<sup>36</sup> The new Moroccan Constitution contains provisions against torture and protective measures for those subject to criminal and judicial proceedings, as well as protections for freedoms of association, expression, and assembly.<sup>37</sup>

On March 3, 2011, King Mohammed VI announced by royal decree the creation of the National Human Rights Council (CNDH).<sup>38</sup> The King’s royal decree provides the CNDH with a broad mandate to protect and defend, as well as promote human rights both at the national and regional levels.<sup>39</sup> Specifically, the Council is mandated to examine alleged

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<sup>33</sup> “On 26 February 1976, the Permanent Representative of Spain to the United Nations informed the Secretary General that ‘the Spanish Government, as of today, definitely terminates its presence in the Territory of the Sahara and deems it necessary to place the following on record: . . . (a) Spain considers itself henceforth exempt from any responsibility of an international nature in connection with the administration of the said Territory, in view of the cessation of its participation in the temporary administration established for the Territory. . . .’” UN Secretary General, *Information from Non-Self-Governing Territories transmitted under Article 73 e of the Charter of the United Nations: Rep. of the Secretary-General*, UN Doc. A/55/77/Add.1 at 3 n.3 (June 27, 2000), <http://www.un.org/documents/ga/docs/55/a5577add1.pdf>.

<sup>34</sup> UN and Decolonization, Non Self-governing Territories, <http://www.un.org/en/decolonization/nonselfgovterritories.shtml#foot2>.

<sup>35</sup> Morocco Const. art. 1, 19-20, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>36</sup> Morocco Const. arts. 41-42, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>37</sup> Morocco Const. arts. 41-42, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>38</sup> *Situation of Human Rights Defenders*, FIDH, May 2011, [http://www.fidh.org/-Morocco?id\\_mot=813](http://www.fidh.org/-Morocco?id_mot=813); Morocco Const. art. 161, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf) (establishing the National Council of the Rights of Man).

<sup>39</sup> Protection of Human Rights: Presentation, National Human Rights Council, <http://www.ccdh.org.ma/spip.php?article99> (last visited Feb. 10, 2013).

human rights violations and conduct any necessary investigations; prepare reports and recommendations based on its observations and submit them to the proper authorities; intervene on an urgent basis; and visit sites where the population might be particularly vulnerable, including places of detention, child protection centers, reintegration centers, and hospitals treating mental and physical illness.<sup>40</sup> The CNDH is also mandated to analyze and reconcile national laws or proposed legislation with the provisions of international human rights conventions and international humanitarian law.<sup>41</sup>

In addition to its national authority, CNDH has a regional mandate, providing for the appointment of presidents of regional commissions that monitor the human rights situation at the local level.<sup>42</sup> These regional commissions receive and investigate individual complaints and submit reports on measures taken for processing these cases.<sup>43</sup> King Mohammed VI has said that the CNDH will enjoy “autonomy vis-à-vis the government” and have extensive powers to protect and promote human rights.

In addition to its obligations under the Moroccan Constitution, the state is bound in its actions towards the Sahrawi people by the many international treaties to which it is a party. As a member of the UN, Morocco has accepted its obligations under the Charter of the UN and the Universal Declaration of Human Rights.<sup>44</sup> Morocco has also signed and ratified several international human rights treaties.<sup>45</sup> These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>46</sup>

Additionally, under the United Nations Declaration on Human Rights Defenders, all states have a duty and a responsibility to promote and implement protections for those active in the struggle for human rights.<sup>47</sup> While the Declaration itself is not legally binding, it

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<sup>40</sup> Protection of Human Rights: Presentation, National Human Rights Council, <http://www.ccdh.org.ma/spip.php?article99> (last visited Feb. 10, 2013).

<sup>41</sup> Protection of Human Rights: Presentation, National Human Rights Council, <http://www.ccdh.org.ma/spip.php?article99> (last visited Feb. 10, 2013).

<sup>42</sup> Protection of Human Rights: Presentation, National Human Rights Council, <http://www.ccdh.org.ma/spip.php?article99> (last visited Feb. 10, 2013).

<sup>43</sup> Protection of Human Rights: Presentation, National Human Rights Council, <http://www.ccdh.org.ma/spip.php?article99> (last visited Feb. 10, 2013).

<sup>44</sup> UN Charter art. 4, para. 1, <http://www.un.org/en/documents/charter/chapter2.shtml>; Universal Declaration of Human Rights, G.A. Res. 217A (III), UN Doc. A/810 at 71 (1948), <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>45</sup> Univ. of Minn. Human Rights Library, Ratification of International Human Rights Treaties: Morocco, <http://www1.umn.edu/humanrts/research/ratification-morocco.html> (last visited Feb. 10, 2013).

<sup>46</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm> (signed Jan. 19, 1977 and ratified May 3, 1979); International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, 993 UNT.S. 3, <http://www2.ohchr.org/english/law/cescr.htm> (signed Jan. 19, 1977 and ratified May 3, 1979); International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> signed Sept. 18, 1967 and ratified Dec. 18, 1970; International Convention for the Protection of All Persons from Enforced Disappearance Dec 20, 2009 (signed Feb. 6, 2007, never ratified).

<sup>47</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, UN Doc. A/RES/53/144 (Mar. 8,

reiterates principles of other international treaties and was adopted by the UN General Assembly.<sup>48</sup>

## V. HUMAN RIGHTS IN MOROCCO-CONTROLLED WESTERN SAHARA

From the start of Moroccan occupation in 1975, the Sahrawi in Western Sahara have been subjected to a range of human rights violations. Between 1975 and 1991, more than 300 Sahrawi were detained and tortured in secret prisons<sup>49</sup> and denied legal counsel.<sup>50</sup> In the early years of the occupation, several Sahrawi civilian camps were bombed. The survivors were rounded up and forced to take residence in highly militarized areas.<sup>51</sup> Families were denied information as to their relatives' whereabouts or condition and were often subjected to police surveillance.<sup>52</sup> These mass relocations tore apart families and destroyed the Sahrawi's traditional nomadic lifestyle.<sup>53</sup>

The Sahrawi population has lived in a state of oppression for nearly four decades,<sup>54</sup> causing long-term negative effects on its culture and general well-being.<sup>55</sup> Many Sahrawi are unable to find work, maintain a steady household or keep in contact with their families. Individuals who participate in peaceful protests who are known to sympathize with the POLISARIO face discrimination, harassment, beatings, and detention by police and other agents of the Moroccan state.<sup>56</sup>

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1999), <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

<sup>48</sup> Declaration on Human Rights Defenders, UN Office of High Commissioner for Human Rights, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

<sup>49</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 49 (2012).

<sup>50</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 214, 235 (2012).

<sup>51</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 485-86 (2012).

<sup>52</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 234 (2012).

<sup>53</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 486-87 (2012).

<sup>54</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 47 (2012).

<sup>55</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 47 (2012).

<sup>56</sup> I Carlos Martín Beristain and Eloísa González Hidalgo, *El oasis de la memoria: Memoria histórica y violaciones de Derechos Humanos en el Sáhara Occidental* 522 (2012).

## 1. RIGHT TO LIFE

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that every human being has the inherent right to life, that this right shall be protected by law, and that no one shall be arbitrarily deprived of life.<sup>57</sup> Morocco signed the ICCPR in 1977 and it was ratified in 1979. Similarly, the Moroccan Constitution states that, "The right to life is the first right of any human being."<sup>58</sup>

### SUMMARY EXECUTION

***"Our ordeal did not come to an end with the loss of our son. We have been attacked many times. Stones were thrown at our house, family members were beaten during the peaceful protest we organized for our son and whenever we met with international NGO delegates or journalists. Countless Sahrawi have been injured."***<sup>59</sup>



Figure 1: Family of Said Dambar show damage in their family house left by Moroccan security agents. Photo by Mariah Kennedy-Cuomo. Laayoune, August 24, 2012.

The delegation met with the family of Said Dambar, 26, who was shot and killed by a Moroccan police officer on December 22, 2010, after being beaten the day before.<sup>60</sup> The family believes that Dambar was targeted because of the family's participation in demonstrations for the independence of Western Sahara. After the incident, the police went to the

family's home to inform them that Dambar was being treated at

the hospital because he was beaten and had a minor arm injury. Dambar's family went to the hospital and waited for several hours without being informed of his condition or whether he was alive. On December 23, he was officially pronounced dead and his family was only permitted to see his head, which clearly showed a bullet wound.

<sup>57</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>58</sup> Morocco Const. art. 20, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>59</sup> From written testimony dated 8/25/2011 on file with the RFK Center.

<sup>60</sup> L'Association Sahraouie des Victimes des violations graves des Droits de l'Homme commises par l'État du Ma-roc ASVDH, Le Droit à l'Autopsie [Assn of Sahrawi Victims of Grave Human Rights Violations Committed by the Moroccan State (ASVDH), The Right to Autopsy] In file with the RFK Center.

A court ruled that the murder was an accident and a police officer was sentenced to 15 years in prison. In spite of several requests by family members and human rights organizations, Morocco has not conducted an autopsy or a thorough investigation of the causes of Dambar's murder. Despite the family's refusal to bury Dambar until a complete autopsy was performed, on June 4, 2012, at 8:30 am, Moroccan authorities presented Dambar's family with a court order requiring that his body be buried at 9:00 am that same day. The family refused to sign the order but was unable to stop the burial. They continue to call for an autopsy and information on the whereabouts of the body. To this day, Dambar's family continues to be harassed and threatened by Moroccan security agents.

## 2. ENFORCED DISAPPEARANCE

***"The National Human Rights Council has the same policy of exclusion and marginalization against Sahrawi victims of human rights as other Moroccan institutions. As family members of victims of enforced disappearances we were not consulted by the Council, and were excluded from participating in meetings." Statement of the Committee of the families of Sahrawi victims of enforced disappearances dated January 13, 2013***

The International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) defines "enforced disappearance" as an arrest, detention, abduction, or any other form of deprivation of liberty by agents of the State or by persons or groups of persons on behalf of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, placing such a person outside the protection of the law. Article 1 states: "No one shall be subjected to enforced disappearance." Morocco signed the treaty but has not yet ratified it.<sup>61</sup>

Under international law enforced disappearances are a continuous violation and the responsibility of the State continues "as long as perpetrators continue to conceal the fate and whereabouts of persons disappeared."<sup>62</sup>

During the war, Moroccan security agents arrested and disappeared hundreds of civilians. Victims were taken to secret detention centers, tortured, and murdered. Moroccan authorities have acknowledged the deaths of over 200 Sahrawi who were forcibly disappeared during the war, but have failed to provide additional information, return the

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<sup>61</sup> International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. 61/177, UN Doc. A/RES/61/177 (Jan. 12, 2007), <http://www2.ohchr.org/english/law/disappearance-convention.htm> (signed Feb. 6, 2007 and ratified Apr. 2009).

<sup>62</sup> UN Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearance as a Continuous Crime 2*, <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf> (quoting UN Declaration on the Protection of all Persons from Forced Disappearance art. 17 § 1).

bodies to the families, or hold perpetrators accountable.<sup>63</sup> Victims' representatives claim there are at least 124 Sahrawi whose whereabouts remain unknown.<sup>64</sup>

In June 1991, after the UN brokered cease-fire, the Moroccan government freed 324 former Sahrawi that were initially disappeared. In 2001, Morocco created the Equity and Reconciliation Commission (ERC) to address the many remaining cases of forced disappearance carried out between 1956 and 1999 and to recommend reparations for the victims and their families.<sup>65</sup> The Commission report, published in January 2006, referred only to 36 unresolved Sahrawi cases, while also noting that of those, 23 individuals were killed while in prolonged arbitrary detention and 13 were sentenced to death.<sup>66</sup>

Many families of the disappeared are not satisfied with the Commission's findings. They expressed to the RFK Center Delegation that they were not consulted by the ERC, and continue to demand truth, justice, and reparations; they specifically demand the return of the bodies for an appropriate burial, the prosecution of perpetrators, a public apology, and reparations.<sup>67</sup> While the RFK Center recognizes that the work of the ERC represented an important step forward, the information presented by family members of the victims demonstrates that the ERC is an insufficient mechanism to address all human rights violations.

The RFK Center delegation to Western Sahara in 2011 met with family members of 15 young men who disappeared. The families provided testimony that they participated in a demonstration for self-determination in December 2005, which was broken up by Moroccan authorities who chased and followed the participants. The families believe that the 15 youths were captured by the Royal Gendarmerie and taken to a detention center near Agadir, Morocco.

Since 2005, the families have tried to get information from the government about their relatives, but the Moroccan authorities have not cooperated and have provided contradictory information. On one occasion, the government told the families they found four bodies; on a separate occasion, the government claimed it had two bodies. In 2011, Moroccan officials told the RFK Center delegation that the 15 were dead and had "drowned in the sea."<sup>68</sup> At the time of this report, the RFK Center has not received any new information regarding the whereabouts of the disappeared or clarification on the discrepancies in the Moroccan government's account of their disappearance.

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<sup>63</sup> Carlos Martín Beristain and Eloísa González Hidalgo, *The Oasis of Memory: Historical memory and human rights violations in the Western Sahara* summary 79 (2012)

<sup>64</sup> January 13, 2013 Statement from the Committee of Families of the Disappeared or Abducted Sahrawi. On file with the RFK Center.

<sup>65</sup> Equity and Reconciliations Commission, Dahir No. 1.00.350, of 15 Muharram 1422 art. 1 § 2 ¶ 2 (Apr. 10, 2001).

<sup>66</sup> January 13, 2013 Statement of the Committee of the families of Sahrawi victims of enforced disappearances.

<sup>67</sup> After the ASVDH as denied access to a meeting on transition justice hosted by the National Human Rights Council on February 1, 2013 ASVDH issued a memorandum on transitional justice and crimes of the past laying out recommendations to involved the Sahrawi families. ASVDH, *Memorandum addressed to: All human rights organizations and its bodies* (Jan. 14, 2013), <http://asvdh.net/7088>.

<sup>68</sup> RFK Center, *Western Sahara: Accounts of Human Rights Abuses Persist in Wake of November Unrest* (2011), [http://rfkcenter.org/images/stories/attachments/rfk\\_center\\_western\\_sahara\\_report\\_final.pdf](http://rfkcenter.org/images/stories/attachments/rfk_center_western_sahara_report_final.pdf)

### 3. RIGHT TO PERSONAL INTEGRITY

The right to personal integrity is enshrined in several international conventions.<sup>69</sup> Both Article 5 of the Universal Declaration of Human Rights<sup>70</sup> and Article 7 of the ICCPR<sup>71</sup> establish that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” ICCPR article 10 states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>72</sup>

Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) establishes that “each State Party” to the Convention “shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,” and that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

The Moroccan Constitution states that “the physical or moral integrity of anyone may not be infringed.”<sup>73</sup> The 2003 amendment of Article 293 of the Moroccan Criminal Procedure Code render inadmissible as evidence any confession made under “violence or coercion.”

The delegation received testimony of many cases of ill-treatment and torture committed by Moroccan police and state agents perpetrated against Sahrawi people.

#### TORTURE

*On December 8, 2010 at 6:00 am, my friend and I were arrested in a residence in Casablanca. A group of men broke into the home, handcuffed and blindfolded both of us. We were taken away without being allowed to tell our families that we were arrested and we were not told the reason why we were being arrested. The group took the two of us to the city of Mohammadiya, and turned us over to a group belonging to the Royal Gendarmerie in Laayoune. They put a black lid over our heads, covering our entire faces, and forced us onto a plane. Our legs were bound with iron chains, and we were beaten and insulted for the duration of the flight. Though the plane landed in Laayoune, the duration of the flight lasted longer than what it would take to drive between Mohammadiya and Laayoune. In Laayoune, we transferred by car to the headquarters of the Task Royal Gendarmerie, where we were finally allowed to see each other.*

<sup>69</sup> Javier Alfonso Galindo, *Content of the Right to Personal Integrity*, 23 *Revista Derecho del Estado* 89-129 (2009), <http://ssrn.com/abstract=1537249>.

<sup>70</sup> Universal Declaration of Human Rights, art.5, <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>71</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNT.S. 171, art.7, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>72</sup> International Covenant on Civil and Political Rights art.10, Dec. 16, 1966, 999 UNT.S. 171, art.7, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>73</sup> Morocco Const. art. 22, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

*It was at the headquarters where they beat us with sticks; suffocated us by plastic until we were unconscious. They stripped us nude, poured urine in our bodies, and threatened us with rape. We were interrogated with an iron column, then kept in isolation inside a dark room for a long period of time. Following this torture, the captors took me to the interrogation room where the gendarme officer, Boukhabza, and several others began to interrogate me. They asked if I had a relationship with the POLISARIO Front, but each time I answered, they hit me on both sides of my head. After about four days of being detained, I was forced to sign documents without knowing their contents. On December 13, 2010, I was referred to the Court of Appeal in Laayoune. The investigating judge ordered everyone to the Black Prison in Laayoune without the chance to defend ourselves.*

*Immediately after receiving the prison sentence, together with several other men, we were taken from the police car to the prison yard. During that time, prison officers forced us to strip nude and do humiliating acts. I was prisoner inside a small cell which could not accommodate more than 20 people, but there were more than 60 persons crowded into the cell. This especially proved a problem when we tried to sleep. We were not allowed blankets during the winter season, and we were denied doctor visits by the order of the prison director Abdel Ilah Zanfouri.<sup>74</sup> There was no running water in the room and we had only five containers of five (5) liters per day for all 60 of us. Our families were not allowed to give us clothes because the investigating judge's order prohibited the introduction of clothes and cigarettes. We were also denied the opportunity to leave the cell and to go to the yard. This contributed to the worsening psychological situation of detainees, especially those who already had mental illness.*

*After twenty days of staying in the same room without leaving, we were allowed to go to the courtyard for five minutes a day for four months. When we went out to the courtyard, we were prohibited from looking at the sky, and talking with each other. We were made to put our hands behind our backs and bend our heads down toward the ground. If someone did not follow these rules, we were beaten by a group of auxiliary forces that were in charge of watching us. We were also cut off from the rest of the prisoners. We were forbidden from using the telephone. During visits, our families were exposed to insults while waiting to visit the detainees. Moreover, the director erected a fence in the visitors' room in order to prevent direct communication with our families. The visits were only for ten minutes a week. We were constantly beaten by prison employees and auxiliary forces brought from other cities to torture us. Those employees and soldiers stole the food our families brought us.*

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<sup>74</sup> Also referred to as Abdelilah Zanfouri, Abdel-ilah Zanfouri, Abd Alillah Zenfori. Mr. Zanfouri is the director of the Laayoune Prison known as the Black Prison. Numerous Sahrawi individuals and organizations have cited and referred to Mr. Zanfouri as a cruel, perverse, and known torturer.

***I spent six and a half months in prison and was finally released with 11 other detainees on 17 June 2011.*** – As told to the delegation by one of the victims

The United Nations Committee Against Torture (CAT) has reported allegations of torture by security forces in Western Sahara, as well as “arbitrary arrest and detention, incommunicado detention, detention in secret places, torture, ill-treatment, the extraction of confessions under torture, and the excessive use of force.” Torture is committed with impunity. In its 2011 report, the CAT stated it had received no reports of convictions under the Moroccan Criminal Code for detentions in which torture took place.<sup>75</sup>

UN Special Rapporteur on Torture Juan Méndez’s final report on his visit to Morocco and Laayoune, Western Sahara, states “torture and ill-treatment were used to extract confessions and that protestors were subjected to excessive use of force by Moroccan law-enforcement officials... and that members of the Sahrawi population are specifically, but not exclusively, victims of such violations.”<sup>76</sup> The Special Rapporteur also cited a “pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population.”<sup>77</sup> Mr. Méndez expressed concern with the alleged abandonment of those arrested in rural areas.<sup>78</sup> Méndez received complaints indicating a pattern in which victims were beaten, insulted, and forced to reveal names of other protestors while transported by police or upon arrival at the police station.<sup>79</sup> The Special Rapporteur also visited the Laayoune prison and reported receiving “credible testimonies relating to torture and ill-treatment... including rape, severe beating and isolation up to several weeks, particularly of inmates accused of participating in pro-independence activities.”<sup>80</sup>

Méndez’s findings were consistent with the hundreds of testimonies documented by the RFK Center. On September 25, 2011, skirmishes broke out between Moroccans and Sahrawi after a soccer game that took place in Dahkla. After a small fight, a group of Moroccans attacked the Sahrawi side of the city and the Moroccan police did not intervene. Mohamed B., a member of the Sahrawi Committee Against Torture was detained by police

<sup>75</sup> Committee Against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture*; Morocco, UN Doc. CAT/C/Mar/CO/4 (Dec. 21, 2011),

<sup>76</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: Mission to Morocco, A/HRC/22/53/Add2 ¶ 62* (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf).

<sup>77</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: Mission to Morocco, A/HRC/22/53/Add2 ¶ 63* (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf).

<sup>78</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: Mission to Morocco, A/HRC/22/53/Add2 ¶ 63* (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf).

<sup>79</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: Mission to Morocco, A/HRC/22/53/Add2 ¶ 63* (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf).

<sup>80</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez: Mission to Morocco, A/HRC/22/53/Add2 ¶ 66* (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf).

on November 14, 2011 with a warrant blaming him for the earlier clashes. He was arrested and officially charged with destruction of property. Moroccan authorities had allegedly monitored Mohamed B. for the previous 40 days. In prison, Mohamed B. allegedly endured two days of torture and interrogation, including the use of electric shock. He was also reportedly hung by his feet and water boarded. During these two days, Mohamed B's family went to the police station to look for him and was told he was not there. Mohamed B. was sentenced to three years in a black prison, located over 600km away. Since that time, police have denied most requests for family visits.

The National Council for Human Rights released a report in October 2012, entitled "Prison Crisis: A Shared Responsibility" with 100 recommendations for the protection of prisoner's rights, including recommendations on addressing torture.<sup>81</sup> Although the CNDH report is an important step in recognizing cases of torture within the prison system, the delegation was informed that most cases are never prosecuted.<sup>82</sup> The Prosecutor of First Instance in Laayoune informed the RFK delegation that over the past five years, only one state agent has been successfully prosecuted for torture. Moulay Hafid Benhachem,<sup>83</sup> the current head of the General Delegation of Prison Administration and Reintegration, is widely recognized as responsible for the torture of Sahrawi detainees since the reign of the King Hassan II. He has never been held accountable for crimes despite hundreds of witnesses and victims.<sup>84</sup>

#### 4. RIGHT TO LIBERTY

The right to liberty is protected under Article 9 of the International Covenant on Civil and Political Rights, stating that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention."<sup>85</sup> Article 10 of the Moroccan Constitution establishes that "no one shall be arrested or put into custody or penalized except under the circumstance and procedure prescribed by the law."<sup>86</sup>

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<sup>81</sup> National Human Rights Council, *Prison Crisis: A Shared Responsibility* 8-12, Executive Summary (2012), [http://www.ccdh.org.ma/IMG/pdf/exe\\_Re\\_sume\\_A4\\_exe\\_cutif\\_prison-\\_Vuk\\_30\\_oct.\\_.pdf](http://www.ccdh.org.ma/IMG/pdf/exe_Re_sume_A4_exe_cutif_prison-_Vuk_30_oct._.pdf).

<sup>82</sup> The Prosecutor of First Instance in Laayoune informed the delegation that, over the past five years, only one state agent has been successfully prosecuted.

<sup>83</sup> *Le Roi nomme Moulay Hafid Benhachem délégué général de l'Administration pénitentiaire et de la réinsertion*, Marrakesh, Apr. 30, 2008, [http://www.emarrakech.info/Le-Roi-nomme-Moulay-Hafid-Benhachem-delegue-general-de-l-Administration-penitentiaire-et-de-la-reinsertion\\_a14645.html](http://www.emarrakech.info/Le-Roi-nomme-Moulay-Hafid-Benhachem-delegue-general-de-l-Administration-penitentiaire-et-de-la-reinsertion_a14645.html).

<sup>84</sup> Aminatou Haidar declares Hafid Benhachem has interrogated her and ordered her to be tortured during when she was disappeared in the 80s. *Aminatou Haidar, sobre el proceso a 24 saharauis*, La Tarde en 24H (Feb. 1, 2013), <http://www.rtve.es/alacarta/videos/la-tarde-en-24-horas/aminetu-haidar-sobre-proceso-24-saharauis-juicio-militar-ofrece-garantias/1681111/>.

<sup>85</sup> International Covenant on Civil and Political Rights, art. 9, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>86</sup> Morocco Const. art. 10, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

Local human rights organizations informed the delegation that there are currently more than 44 Sahrawi political prisoners in Moroccan detention, including 17 human rights defenders.<sup>87</sup> Most Sahrawi political prisoners were arbitrarily detained and falsely charged according to eyewitnesses and NGO's.

### **ARBITRARY ARRESTS**

In Laayoune, the delegation received testimonies of many Sahrawi who were arbitrarily detained and allegedly tortured after participating in peaceful demonstrations. Moroccan police agents and authorities were identified as taking part in the violations without any investigation or accountability.

Twenty-two-year-old Yasmin E. has faced harassment and intimidation from the authorities since she was fifteen. In 2006, she was expelled from school for one year after participating in peaceful protests. In 2009 and 2010, Yasmin E.'s freedom of movement was restricted when she attempted to travel to Britain, Spain, and South Africa. Each time, Yasmin E. was prevented from leaving the country. Yasmin E. was also arrested after Gdeim Izik and held in the Black Prison for five months. While in custody, and in full view of the police chief, officials attempted to rape Yasmin E. Additionally, she said the 'Bacha' threatened to hurt her if she talked to the RFK Center Delegation.

On October 9, 2009, Fatma A. participated in a peaceful demonstration that advocated for self-determination for Western Sahara and was arrested, taken to the police station, and tortured. Police handcuffed her and tied her legs together. She was hung upside down and interrogated. She was released the day after and arrested again a few hours later. She was then stripped naked in the police station and photographed nude. Police threatened to rape her with a bottle. They released her four hours later. On December 25, 2011, Fatma A. was again arrested during a demonstration in protest of the murder of Said Dambar. She was detained for three days at the Gendarmerie Brigade and the police threatened her family. For security reasons the family decided to move away from Laayoune.<sup>88</sup>

Mustapha E. was arrested on October 10, 2010 in his home. The head of the gendarmerie and a group of soldiers forced him from his home and dragged him to a nearby police station, during which a colonel kicked his head and back. Once in the interrogation room, the same colonel punched his face until it bled. After 48 hours, he was taken to court where a judge sentenced him to prison. There was no trial. He was sent to the Laayoune Black Prison, where he was beaten and stripped of his clothes. Officials dragged him by the beard to be fingerprinted. The head of the prison, Mustapha Zanfouri, held down Mustapha E. by putting his foot on his neck. When Mustapha E. was released, he sent complaints to the Minister of Interior, but the complaints were returned without action.<sup>89</sup>

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<sup>87</sup> As of February 20, 2012, list on file with the RFK Center.

<sup>88</sup> Not real name, name changed for safety. Testimony given to delegation on August 25, 2012 on file with the RFK Center.

<sup>89</sup> Not real name, name changed for safety. Testimony given to delegation on August 25, 2012 on file with the RFK

On October 11, 2010, Layla E. was arrested about 25 km outside of Laayoune. Her husband was at work at the time, so her five children were left alone for the entire night. The authorities took her to Laayoune where she went to court at 10:00 pm. In spite of the fact that Layla E. is illiterate and had no legal representation, she was forced to sign a paper without anyone informing her of the contents. She was later transported to the Black Prison where she was kicked, beaten, and dragged by her hair. Female prison guards took her clothes and left her naked. While naked, she was detained with nine other prisoners who threaten to abuse her. She was forced to sleep on the floor with no blanket and her family was not informed of her location. Family members traveled to the prison ten times; during each visit, officials denied that Layla E. was there. On January 12, 2011, Layla E. was provisionally released.

On October 2, 2010, at 5:00pm, Yasmin Z. was at her home on the beach when policemen wearing masks arrived in military vans and arrested her. One masked police officer beat her and verbally abused her. At 9:00 pm, police transferred her from the beach brigade to a prison at Laayoune. For the first ten days when visitors tried to see her, they were informed that she had not been arrested. While in detention, she was beaten and tortured in an attempt to get information about other women who were also detained. Police attempted to force Yasmin Z. to confess to being a member of criminal gang and that she had stolen money from a bank. Yasmin Z. ultimately spent a total of two months behind bars.<sup>90</sup>

## 5. RIGHT TO FREEDOM OF EXPRESSION, FREEDOM OF ASSEMBLY, FREEDOM OF ASSOCIATION, AND FREEDOM OF MOVEMENT

***“Many Sahrawi NGOs are systematically denied their right to register. So, we are not able to get funding from international donors and are forced to do our human rights work using our houses as offices. Thanks to international organizations our voices are heard abroad.”  
Organization of Sahrawi Defenders Second Generation<sup>91</sup>***

Article 19 of the International Covenant on Civil and Political Rights guarantees everyone the right to freedom of expression, “either orally, in writing or in print, in the form of art, or through any other media of his choice.”<sup>92</sup>

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Center.

<sup>90</sup> Not real name, name changed for safety. Testimony given to delegation on August 25, 2012 on file with the RFK Center.

<sup>91</sup> Organizations of Sahrawi Human Rights Defenders (ODS2G) report hand delivered to the delegation.

<sup>92</sup> International Covenant on Civil and Political Rights, art. 19, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

The new Moroccan Constitution also guarantees freedom of expression under Article 25.<sup>93</sup> The freedom of the press is also protected under Article 28 of the constitution, which states, “The freedom of the press is guaranteed and may not be limited by any form of prior censure.”<sup>94</sup>

The right to peaceful assembly is protected under Article 21 of the International Covenant on Civil and Political Rights.<sup>95</sup> Under Article 22 of the ICCPR, freedom of association is protected for all.<sup>96</sup> The Moroccan Constitution protects the freedoms of assembly and association under Article 29.<sup>97</sup> Freedom of movement is protected under Article 12 of the International Covenant on Civil and Political Rights.<sup>98</sup> Article 24 of the Moroccan Constitution expounds the freedom to circulate for all persons.<sup>99</sup>

Despite such guarantees, these freedoms are often undermined by the King’s authority as “guarantor of the independence of the Nation and the territorial integrity.” Article 3 of the Law of Associations prohibits “associations that have an objective that is illegal, contrary to good morals or that aims to undermine the Islamic religion, the integrity of national territory, or the monarchical regime, or that calls for discrimination.” These two provisions, used in conjunction, have been used to deny the registration of Sahrawi associations that advocate for self-determination.

## CRACK DOWN ON DEMONSTRATIONS

***“While in a peaceful demonstration, we were arrested and taken to jail after being accused of robbing a bank, throwing stones at police, participating in violence, and humiliating civil servants who were working. They actually arrested us so we wouldn’t speak to a Spanish Journalist.***

***We spent almost four months in the Laayoune Black Prison. We were released from prison***



Figure 2: Uniformed police officer attacking a protester while undercover state security agents stand by. Photo by Mariah Kennedy-Cuomo. Laayoune, August 25, 2012.

<sup>93</sup> Morocco Const. art. 25, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>94</sup> Morocco Const. art. 28, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>95</sup> International Covenant on Civil and Political Rights, art. 21, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>96</sup> International Covenant on Civil and Political Rights, art. 22, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>97</sup> Morocco Const. art. 29, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>98</sup> International Covenant on Civil and Political Rights, art. 12, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>99</sup> Morocco Const. art. 24, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

***on April 18, 2011, but imprisoned, again, in August, 2011 under new accusations of violence. We served an additional eight months in Laayoune Black Prison.” Testimony by Hassan B. and Mouloud A to the RFK Center Delegation.<sup>100</sup>***

Police authorities use excessive force to disperse peaceful demonstrations. Sahrawi have been beaten, detained, and tortured because of their participation. During the visit to Laayoune, the delegation observed police and military vehicles on virtually every block. Most of the Sahrawi interviewed expressed concerns about being intimidated by the large presence of police and military officers, both uniformed and plain-clothed.

According to eyewitnesses, police targeted and beat the same mentally handicapped man during peaceful protests in 2005, 2008, and 2012.

The delegation saw a uniformed police officer and three individuals, identified by civil society organizations as state agents, attack a woman who was peacefully protesting. Nearby security personnel attempted to block the delegation from witnessing the beating. Members of the RFK Center Delegation followed the woman to the hospital where they photographed her bloodied, swollen, and bruised face.

In an effort to discredit the delegation's report, a government press release claimed that the woman fainted on the street and injured herself. The following day, the delegation showed the photograph to a representative of the Minister of Interior, El Arbi Mrabet, who, upon hearing each member of the delegation tell what they saw, dismissed the accusations and, upon seeing the picture, questioned its authenticity, remarking “photographs can lie.” Two of the individuals who participated in the beating were identified as Mohamed Al Hasouni and the vice-governor for the region (Bacha) Mohamed Natichi. Both of these individuals were identified in multiple victim testimonies for their

repeated involvement in human rights violations. The RFK Center delegation asked the Moroccan government to immediately investigate and suspend the responsible state agents.



*Figure 3: Soukaina Jed Ahlou, who was attacked by Moroccan Secret Police. She has been released from the hospital since this photo was taken. Photo by Mary Lawlor. Laayoune, August 25, 2012.*

<sup>100</sup> Not real name, name changed for safety. Testimony given to delegation on August 25, 2012 on file with the RFK Center.

Hospital employees told the delegation that state agents went to the hospital after the delegation left and threatened employees that they would lose their jobs for allowing an international human rights delegation access to the victim.

### **PROHIBITION OF ASSOCIATIONS TO REGISTER**

Sahrawi human rights defenders told the RFK Center delegation that the government regularly denies them the right to register as civil society organizations. Organizations like the Collective of Sahrawi Human Rights Defenders (CODESA), the Association of Sahrawi Victims of Grave Human Rights Violations (ASVDH), and the Laayoune chapter of the Association of Moroccan Human Rights Defenders (AMDH) have not been able to legally register. The government often cites that such organizations have mandates that are “contrary to Morocco’s territorial integrity” as a justification for denying the right to free association.

### **PROSECUTION FOR EXERCISING FREE EXPRESSION**

The delegation met with representatives of seven people that have been criminally prosecuted for expressing their opinions. On October 8, 2009, seven Sahrawi human rights activists returning from a visit to the Sahrawi refugee camps in Algeria were arrested by Moroccan police in Casablanca. The *Casablanca Group*, as they later became known, publicly criticized the government of Morocco and King Mohammed VI in a press conference that aired on Algerian television. They were referred to a military court and charged with harming external state security and treason. Four of the activists were released on humanitarian grounds and the remaining three were granted royal pardons in April 2011. The case was then referred to a civilian court in Casablanca, where two trials ensued, one on October 15, 2010, and the second on November 5, 2010. The group is currently on provisional release, pending a final decision. Among the group are three well-known human rights defenders: Ali Salem Tamek, vice-president of CODESA; Brahim Dahan, President of the ASVDH; and Degja Lachagar.

Rachid E.’s mother, Layla B., told the delegation that Rachid E. was arrested because of his participation in a protest for self-determination. Moroccan Special Forces beat him with sticks and arrested him. After his attack and arrest, Layla B. was unable to communicate with her son. Rachid E. was held for eight months in pre-trial detention. He was accused of being a part of a criminal group, which was not named by authorities. Rachid E. was subsequently sentenced to 18 months in prison.

## **6. RIGHT TO FAIR TRIAL AND DUE PROCESS OF LAW**

***“Moroccan courts discriminated against the Sahrawi for the past 30 years. In both Morocco and Western Sahara, these courts apply sentences as they please, and due process is not a consideration. Judges are corrupt. Bribery defines the sentences. The only exception is in the case of the Sahrawi political prisoners, when judges receive the sentences by phone from the capital, Rabat.”*** Lawyer representing a

***Sahrawi legal defense organization that cannot legally register  
testifying to the RFK Center delegation***<sup>101</sup>

Under Article 14 of the ICCPR, everyone is equal before the courts and tribunals, and everyone has the right to a fair trial and due process of law.<sup>102</sup> Article 5 of the Moroccan Constitution establishes that “All Moroccan citizens shall be equal before the law” and Article 8 institutes that “men and women shall enjoy equal political rights.”<sup>103</sup> Article 82 of the Moroccan Constitution established that “the judiciary shall be independent from the legislative and executive branches.”<sup>104</sup>

**GDEIM IZIK PROTEST CAMP AND TRIAL**<sup>105</sup>

To protest against the poor economic and social conditions, thousands of Sahrawi constructed the Gdiem Izik camp on the outskirts of Laayoune. In November 2010, the Moroccan security agents and two Sahrawi.

In the aftermath, many Sahrawi were detained and prosecuted by a military tribunal. Family members of “The Gdiem Izik” group complained of physical and verbal abuse from prison guards. The delegation interviewed several Sahrawi who were arrested after the dismantling of the camp who claimed to have been tortured while being transported in an airplane from one detention center to another. One of them showed members of the delegation physical marks claiming they were consequences of his mistreatment by a Moroccan Gendarme.<sup>106</sup>

On February 17, 2013, a Moroccan Military Court in Rabat convicted 25 Sahrawi, including several well-known human rights defenders, of offences related to violence during the dismantling of the Gdeim Izik camp. The military court condemned 23 of the Sahrawi to sentences ranging from 20 years to life in prison.<sup>107</sup> Two defendants were sentenced to two

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<sup>101</sup> Name withheld for safety. Handwritten complaint delivered to the delegation in Laayoune on August 28, 2012 in file with the RFK Center.

<sup>102</sup> International Covenant on Civil and Political Rights, art. 14, Dec. 16, 1966, 999 UNT.S. 171, <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>103</sup> Morocco Const. arts. 5, 8, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf).

<sup>104</sup> Morocco Const. art. 82, [http://www.ancl-radc.org.za/sites/default/files/morocco\\_eng.pdf](http://www.ancl-radc.org.za/sites/default/files/morocco_eng.pdf)

<sup>105</sup> Many people considered the Gdeim Izik protest as the precursor to the “Arab Spring.” *The Genie Is Out of the Bottle: Assessing a Changing Arab World with Noam Chomsky and Al Jazeera’s Marwan Bishara*, Democracy Now, Feb. 17, 2012, [http://www.democracynow.org/2011/2/17/the\\_genies\\_are\\_out\\_of\\_the](http://www.democracynow.org/2011/2/17/the_genies_are_out_of_the).

<sup>106</sup> Interviews on file with the RFK Center.

<sup>107</sup> In a statement dated February 17, 2013, the Collective of Sahrawi Human Rights Defenders affirmed “the prisoners confirmed that their arrest was due to their political position on the question of Western Sahara and their human rights activities.” They list the names and sentences of all condemned. The Saharawi Human Rights Defender Hasanna Aalia was sentenced to life in prison in absentia. Also sentenced to life in prison were Sahrawi human rights defenders: Ibrahim Ismaaili, Sidi Ahmad Lemjayad, Ahmad Sbaai, and Abdallah Lekhfaoui. Members of the committee appointed by Gdeim Izik protesters to negotiate with the Moroccan authorities: Abduljalil Laaroussi, and Mohamed Bachir Boutenguiza, as well as Abdallah Abhah and Mohamed Bani. Sentenced to 30 years: Sahrawi human rights defenders: Naama Asfari, Banga Cheikh, and Dah Hassan as well as Mohamed Bouryal, members of the committee appointed by Gdeim Izik protesters to negotiate with the Moroccan authorities. Sentenced to 25 years: Saharawi human rights defenders Mohamed Tahlil and Mohamed Lamine Haddi, members of the committee appointed by Gdaim Izik protesters to negotiate with the Moroccan authorities: Elbakay Elarabi, Abdallah Toubali, Zaoui Lhoucine, Daych Edhafi, as well as Mohamed Mbarek Lefkeer, and Mohamed Khouna Babait. Sentenced to 20 years imprisonment: Sahrawi human rights defender Bachir Khadda and demonstrator Mohamed Alayoubi who was on temporary release. Taqi Machdoufi and Sidi Abdulrahman Zayou were sentenced to 2 years and 3 months, which they have spent in custody.

year prison terms, which amounted to time spent in pretrial detention, and were released. The Sahrawi identified as human rights defenders received the harshest sentences, including a life sentence for one defendant in absentia who was previously tried and acquitted by another tribunal.

The Kingdom of Morocco claims that the trial was fair and transparent because it allowed for international observers to attend; however, international lawyers who were present at the trial expressed concerns with the lack of due process guarantees from the moment of the detention to the trial itself. The weapons the prosecution brought as evidence had no fingerprints on them, and no DNA tests or autopsies were conducted. In a video of the dismantling of the camp shown at the trial by the defense lawyers, none of the accused could be identified.<sup>108</sup>

The trial of civilians in military courts raises serious questions about Morocco's equitable, impartial, and independent administration of justice. Under international law, military courts are only to be used in exceptional cases. In the cases mentioned above, and in accordance with international law, Morocco should have transferred individuals out of military jurisdiction in order to ensure the right to a fair trial that is compatible with international standards. To this date, Moroccan authorities have yet to investigate credible claims that the accused were subject to torture, as well as cruel, inhuman, and degrading treatment at the time of their arrest and throughout their detention.

### **IMPUNITY**

Impunity arises from the failure of a state to meet its obligations to investigate human rights violations and to take appropriate measures in respect of the perpetrators, particularly in the area of justice. States must ensure that those suspected of criminal responsibility are prosecuted, tried, and duly punished and must provide victims with effective remedies to ensure that they receive reparation for the injuries suffered. States must also ensure the inalienable right to know the truth about violations and to take other necessary steps to prevent a recurrence of violations. Every person has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations.<sup>109</sup>

In spite of the numerous denunciations of cases of torture received by the delegation, the Prosecutor of First Instance in Laayoune informed the delegation that over the past five years, only one state agent was successfully prosecuted for committing an act of torture. The Committee against Torture and the UN Special Rapporteur Against Torture noted that the work of the Equity and Reconciliation Commission has failed to break the cycle of impunity.<sup>110</sup> The Special Rapporteur also noted an atmosphere of impunity, due to the

<sup>108</sup> Ines Miranda and Juan Francisco Soroeta. *Ocho cadenas perpetuas y largas penas de prisión en un macrojuicio a saharauis*, International Association of Jurists for Western Sahara, <http://www.iajuws.org/>.

<sup>109</sup> UN Commission on Human Rights, *Updated set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1 (Feb. 8 2005), <http://www.derechos.org/nizkor/impu/principles.html>.

<sup>110</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*,

absence of convictions and the failure to impose genuine disciplinary measures or to bring any significant number of cases against State officials accused of torture.<sup>111</sup>

Scores of Sahrawi reported being threatened or falsely accused of crimes in retaliation for criticizing the Kingdom of Morocco. Falsely accused victims have little hope of a fair trial, and due process is largely nonexistent. A group of five attorneys estimated that they had represented over five hundred Sahrawi defendants in criminal proceedings since 1999, and in all that time only one was acquitted.

## 7. HUMAN RIGHTS DEFENDERS

Moroccan police and security forces regularly and specifically target human rights defenders. Assaults, threats, illegal searches, surveillance, criminal prosecutions, and statements by high-level authorities discrediting and stigmatizing the work of human rights defenders are commonly used to hamper or otherwise halt the legitimate work of activists. A group of lawyers informed the delegation of the routine harassment and obstacles they face when attempting to represent Sahrawi victims of human rights violations.

Many of the human rights defenders in Moroccan-controlled Western Sahara are former disappeared detainees. After being released in the early 1990s after the cease-fire, they organized to demand reparations. As of February 2013, according to the Collective of Sahrawi Human Rights Defenders, there are 44 Sahrawi political prisoners currently in jail, 17 of whom are recognized human rights defenders. In addition, there are 12 rights defenders under provisional liberty without a final sentence, which means they could be detained at any time.<sup>112</sup>

The case of Aminatou Haidar is particularly emblematic of the oppression faced by human rights defenders in Western Sahara. Despite years of illegal imprisonment, torture, and abuse, Ms. Haidar has maintained a firm commitment to non-violence.

After participating in a peaceful demonstration in 1987, Haidar was arbitrarily detained and held incommunicado for four years. During this time, Haidar was tied to a wooden plank with her head down and repeatedly kicked; she had chemical-soaked cloths forced in her mouth and received electric shocks all over her body. Throughout the entire period of her detention, Haidar was kept blindfolded and held in solitary confinement. After her release from prison, Haidar faced repression from Moroccan authorities. On June 17, 2005, during a nonviolent demonstration in Laayoune, Moroccan police beat Haidar, broke three of her ribs, caused a head wound that required 12 stitches, followed her to the hospital where she was treated for her injuries and arrested her. She was then detained for seven months in Laayoune's Black Prison.

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Juan E. Méndez: *Mission to Morocco*, A/HRC/22/53/Add2 ¶ 12 (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf)

<sup>111</sup> *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez: *Mission to Morocco*, A/HRC/22/53/Add2 ¶ 29 (Feb. 28, 2013), [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf).

<sup>112</sup> List dated February 20, 2013 on file with the RFK Center.

On November 14, 2009, after arriving on a flight from the Canary Islands, Haidar was detained at the Laayoune airport. As always, on the immigration form under citizenship, Haidar wrote "Sahrawi" and on the custom forms, she wrote "Territory of Western Sahara." Moroccan authorities announced she had thereby renounced her Moroccan citizenship, seized her passport, and expelled Haidar to Lanzarote, Canary Islands. Following a 32-day hunger strike and widespread outcry from the international community, Morocco readmitted Haidar on humanitarian grounds.

Aminatou Haidar's children have also been targeted by authorities due to her activism. On July 8, 2012, a group of Moroccans attacked 17-year old Hayat and 13-year old Mohamed while they traveled by bus from Agadir, Morocco, to Laayoune. According to several reports, when the passengers of the bus learned that Hayat and Mohamed were Haidar's children, they began yelling racial slurs and became violent. Both children sustained head injuries, including bloody noses, swollen eyes, and blurred vision. Upon learning of the attacks, Haidar filed a complaint against the aggressors. However, the court refused to investigate the charge and instead accused the children of violent conduct and summoned them to appear in court.

In November 2012, after meeting with the UN Secretary General's Personal Envoy to Western Sahara, Christopher Ross, Moroccan police shoved Haidar to the ground, beat her and threatened her with a knife. When Haidar escaped to her home, police slashed the tires and damaged Haidar's car.<sup>113</sup>

On April 18, 2012 the Court of Appeal sentenced six human rights defenders to three years in prison. Al Mahjoub Awlad Al Cheih, Mohamed Manolo, Hasna Al Wali, Atiqu Barraï, Kamal Al Tarayh, and Abd Al Aziz Barraï, members of the Western Sahara Organization Against Torture, were accused of forming a criminal gang, complicity in murder, violence against public employees, and other related charges. They have denied the charges against them and denounced torture and ill treatment while in detention incommunicado. The claims of torture were ignored by the Court and have never been investigated.<sup>114</sup>

Other known defenders such as Sidi Mohamed Daddach and Sultana Haya were also victims of police violence during the UN Envoy's second visit to the territory in March 2013.<sup>115</sup>

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<sup>113</sup> *Human Rights Defender Brutally Attacked by Moroccan Police*, RFK Center, Nov. 2, 2012, <http://rfkcenter.org/human-rights-defender-brutally-attacked-by-moroccan-police?lang=en>.

<sup>114</sup> *Western Sahara: Trial and sentencing of human rights defenders*, Frontline Defenders, Apr. 30, 2012, <http://frontlinedefenders.org/node/18191>.

<sup>115</sup> Report of the Collective of Sahrawi Human Rights defenders dated April 3, 2012 on March 23, 2013 violence.

## VI. HUMAN RIGHTS IN SAHRAWI REFUGEE CAMPS

The delegation visited the Sahrawi refugee camps near Tindouf, Algeria, located in the Sahara desert. The refugees are divided in five camps: Smara, Laayoune, 27 of February, Ausserd, and Dajla. The refugee camps provide temporary housing in very harsh conditions for at least 125,000 Sahrawi people.<sup>116</sup> The delegation stayed for only two days due to the logistical difficulty in accessing and communicating with the camps. The short time in the camps makes it impossible to provide a comprehensive assessment of the human rights situation. Nevertheless, the delegation was able to interview many refugees, NGO representatives, the President of the Sahrawi Arab Democratic Republic (SADR), and other leaders of the POLISARIO Front.

The delegation visited three detention facilities in the camps. The men's detention facility did not have adequate sleeping quarters, sanitation facilities, and record keeping is rudimentary. In addition, inmates recounted incidents of being beaten by authorities while in detention, as well as insufficient food. The children's detention center had classroom facilities, including a computer lab and a library. However, the center is used both for children who are in detention, as well as for those who are removed from their families as part of a child protection system.<sup>117</sup> There were no child detainees at the time of our visit, and the children under protection appeared to have a very warm and healthy relationship with the authorities. At the time of our visit there were no women in custody at the women's detention facility.

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<sup>116</sup> *Preliminary Observations*, RFK Center, Sept. 3, 2012, <http://rfkcenter.org/images/attachments/article/1703/Final091012.pdf>.

<sup>117</sup> During the delegation's visit, there were no children in detention at the children's detention facility. The children living in the center were removed from their families for their welfare.

Sahrawi refugees have subsisted in isolated refugee camps under extreme conditions for almost four decades. In spite of international efforts to provide more than 125,000 people with the basic necessities of life, conditions in the refugee camps have negative



Figure 4: A jaima, or a traditional Sahrawi tent, in the Tindouf refugee camp. Photo by Santiago Canton. Tindouf, August 29, 2012.

consequences for the physical and psychological integrity of the inhabitants.<sup>118</sup> The delegation observed conditions in the camps that cannot be accepted as part of any permanent standard of living. These conditions include, among others, permanent exposure to extreme heat, limited electricity and sanitation, lack of variety in diet, and very limited career alternatives.<sup>119</sup>

In 47C/115F degree heat, the delegation experienced the harsh conditions Sahrawi refugees have

endured over the past 37 years. Refugees and UNHCR personnel expressed concerns about food ration quantity and quality and the lack of opportunity amongst a highly educated population. We were informed that the women's literacy rate is around 95 percent, one of the highest in the Arab world (as compared to 43.9 percent literacy for women in the Kingdom of Morocco according to UNESCO) and heard stories that reflect longing and anxiety produced by family separation and the urgency to find solutions to human rights violations of the past, especially disappearances of family members during the war.

The camps are situated in a harsh desert environment that does not allow for farming. The residents are dependent on humanitarian assistance from the World Food Programme, ECHO, AECID, and UNHCR.<sup>120</sup> A Joint UNHCR and WFP Assessment Mission report found that "the majority of the Sahrawi population living in the refugee camps in Tindouf remains chronically food insecure and their nutrition situation is not satisfactory."<sup>121</sup> While a number of projects have been implemented to supplement humanitarian aid, such as family gardening and animal husbandry, the harsh natural conditions of the area have produced varied results.<sup>122</sup>

<sup>118</sup> RFK Center interview with UNHCR, WFP, and Algerian Red Cross on August 29, 2012.

<sup>119</sup> *Preliminary Observations*, RFK Center, Sept. 3, 2012, <http://rfkcenter.org/images/attachments/article/1703/Final091012.pdf>.

<sup>120</sup> World Food Programme and High Commissioner for Refugees, *Joint Assessment Mission Algeria October 2011* 6 (2011).

<sup>121</sup> World Food Programme and High Commissioner for Refugees, *Joint Assessment Mission Algeria October 2011* v (2011).

<sup>122</sup> World Food Programme and High Commissioner for Refugees, *Joint Assessment Mission Algeria October 2011* 21 (2011).

The challenges of refugee life are reflected in the many health problems the Sahrawi refugees experience. Malnutrition is the most common problem.<sup>123</sup> About 35 percent of Sahrawi children who are being raised in the refugee camps are malnourished, with about 13 percent experiencing severe growth stunting.<sup>124</sup> These children also demonstrate higher-than-normal rates of celiac disease, a permanent intolerance to gluten and the negative affects thereof.<sup>125</sup> Between 5 and 6 percent of Sahrawi refugee children experience kidney stones, likely due to impure drinking water,<sup>126</sup> a large number when compared with 0.2-0.5 percent rate experienced by European children.<sup>127</sup> Celiac disease and malnutrition are both associated with anemia, which is a common problem among Sahrawi women and children.<sup>128</sup>

Prior to arriving at the camps, the delegation was asked by representatives of the Moroccan government to look into the situation of Mustapha Ould Sidi Mouloud and his cousin, the Sahrawi poet Allal Alnajem,<sup>129</sup> allegedly victims of crimes by the POLISARIO Front. The delegation repeatedly reached out to the two men and their relatives to arrange a meeting but neither came to the agreed appointment.<sup>130</sup>

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<sup>123</sup> Samuel Loewenberg, *Displacement is permanent for the Sahrawi refugees*, 365.9467 *The Lancet* 1295 (Apr. 9, 2005), [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(05\)61010-0/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(05)61010-0/fulltext).

<sup>124</sup> Samuel Loewenberg, *Displacement is permanent for the Sahrawi refugees*, 365.9467 *The Lancet* 1295 (Apr. 9, 2005), [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(05\)61010-0/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(05)61010-0/fulltext).

<sup>125</sup> Carlo Catassi & Isle-Maria Rättsch, *Coeliac disease: a potentially treatable health problem of Saharawi refugee children*, 79.6 *Bull. World Health Organ.* 542 (Jan. 2013), [http://www.scielosp.org/scielo.php?pid=S0042-96862001000600010&script=sci\\_arttext&tlng=pt](http://www.scielosp.org/scielo.php?pid=S0042-96862001000600010&script=sci_arttext&tlng=pt).

<sup>126</sup> Stop the Sahrawi Children Stones, W.I.T.H. YOU, <http://www.withyouonlus.org/Stop-The-Saharawi-Children-Stones/Stop-The-Saharawi-Children-Stones-II-Progetto.html> (last visited Jan. 31, 2013).

<sup>127</sup> Sostegno a distanza dei bambini celiaci saharawia, Kabara Lagdaf, <http://www.kabaralagdaf.org/progetti/sostegno-a-distanza-dei-bambini-celiaci-saharawi/> (last visited Jan. 31, 2013).

<sup>128</sup> Carlo Catassi & Isle-Maria Rättsch, *Coeliac disease: a potentially treatable health problem of Saharawi refugee children*, 79.6 *Bull. World Health Organ.* 542 (Jan. 2013), [http://www.scielosp.org/scielo.php?pid=S0042-96862001000600010&script=sci\\_arttext&tlng=pt](http://www.scielosp.org/scielo.php?pid=S0042-96862001000600010&script=sci_arttext&tlng=pt).

<sup>129</sup> *Sahara Question: Tindouf Camps: Polisario Releases Sahrawi Oponent Allal Alnajem*, Sahara Question, Nov. 5, 2012, <http://sahara-question.com/en/news/tindouf-camps-polisario-releases-saharawi-opponent-allal-alnajem>.

<sup>130</sup> In a meeting in Laayone a man who identified as a family member of both Sidi Mouloud and Allal, gave their cellular numbers to an RFK Center Staff. This Staff left at least two voicemails to Sidi Mouloud without a response and had several phone conversation with Allal. Allal had agreed to meet with the delegation member at two different places and did not show up.

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