

WESTERN SAHARA

ACCOUNTS OF HUMAN RIGHTS ABUSES
PERSIST IN WAKE OF NOVEMBER UNREST

I. About the RFK Center and Work in Western Sahara

The Robert F. Kennedy Center for Justice & Human Rights (RFK Center) was founded in 1968 by Robert Kennedy's family and friends as a living memorial to carry forward his vision of a more just and peaceful world. The Center for Human Rights engages in strategic long-term partnerships with RFK Human Rights Award Laureates, augmenting the effectiveness of grassroots leaders to support sustainable social justice movements.

The RFK Center presented Aminatou Haidar with its annual Human Rights Award in 2008, and since then has been promoting protection of human rights in Western Sahara. As one of Western Sahara's most prominent human rights defenders, and president of the *Collectif des défenseurs sahraouis des droits de l'homme* (CODESA Collective Organization for Sahrawi Human Rights Defenders), Aminatou Haidar promotes the civil, political, social, cultural, and economic rights of the people of Western Sahara. Ms. Haidar works through non-violent means to organize peaceful demonstrations to denounce human rights abuses perpetrated by the Moroccan government. Despite years of illegal imprisonment, torture, and abuse under Moroccan authorities, Ms. Haidar continues to encourage Sahrawis to seek, through non-violent means, the realization of their fundamental human rights. In January 2011, the RFK Center conducted its first visit to Western Sahara since beginning the partnership with Ms. Haidar.¹

II. Scope of Visit and Report

The scope of the RFK Center visit to Western Sahara was to meet with the RFK Center Laureate and her colleagues and to examine the human rights context of the region. The RFK Center focused on investigating alleged human rights violations committed by state actors. Due to recent unrest, the majority of our meetings addressed the violence committed on and after November 8, 2010, when the Gdaim Izik camp was dismantled. During the course of the visit, the RFK Center delegation met with victims of torture and abuse, families of victims, human rights defenders, lawyers, representatives of the United Nations Mission for the Referendum in Western Sahara (MINURSO), and government officials, including the Mayor of El Aaiun, the Governor (*wali*) of El Aaiun, the Deputy General Prosecutor, and other officials at the *tribunal civil de l'appelation* (civil court of appeals). The information gathered is exclusively from interviews conducted and observations made from January 11 to 14, 2011. The RFK Center was not present at the time of the events discussed in this report, was not an eyewitness to events, did not visit prisons, and did not conduct investigations or act as a legal representative to any of the individuals with whom the delegation met. During the visit, the RFK Center heard consistent and troubling statements that reinforced reports of several forms of abuse in the wake of the dismantling of the Gdaim Izik camp.

The purpose of this report is to share the stories of the individuals we interviewed during our visit to El Aaiun and discussions with human rights organizations after our return. Although the delegation did not conduct in-depth investigations into personal accounts, consistent facts and evidence

¹ The RFK Center delegation included Lynn Delaney, Executive Director, Monika Kalra Varma, Director of the Center for Human Rights, and Mary Beth Gallagher, Advocacy Officer.

strongly indicate human rights violations were committed by state entities in violation of national and international law. Our findings, consistent with those highlighted in the Amnesty International report released in December 2010, entitled “Rights Trampled,” demonstrate the urgent need for a continuing, neutral, international presence to monitor the human rights situation. The RFK Center likewise urges other human rights organizations to travel to Western Sahara to observe the human rights situation, speak with victims, and help promote accountability for violations of human rights.

III. Overview of the Human Rights Context

A. Historical Background

Western Sahara was formerly a Spanish colony, and its decolonization process began in the early 1960’s after the United Nations (UN) Special Committee on Decolonization declared Western Sahara a “non-self-governing territory” and the General Assembly confirmed this by resolution. In October 1975, the International Court of Justice (ICJ) formally rejected both Morocco’s and Mauritania’s claims to the Spanish Sahara and declared that the right of self-determination for Western Sahara was paramount. A month later, the Kingdom of Morocco launched its famous “Green March” toward Western Sahara, where 350,000 Moroccans marched to settle in Western Sahara. In early November 1975, Spain partitioned its former colony between Mauritania and Morocco leaving no possibility for the people of Western Sahara to exercise their right to self-determination. By late 1975, heavy fighting had begun between the Polisario² and Moroccans. Various UN resolutions were passed calling for a cease-fire among the two parties as well as a peace agreement that would provide for a free and fair general referendum on self-determination. In 1991, the current UN Peacekeeping Mission in Western Sahara (MINURSO) began, with a mandate to oversee the referendum and observe the ceasefire between the parties. The referendum was supposed to take place in 1992, but it never happened. A new round of negotiations began in 2007, which continue presently without a resolution.

B. Human Rights Situation

While the conditions of human rights have improved within Morocco’s internationally recognized borders since periods of extreme violence in the 1980s and 1990s, human rights violations occur on a daily basis in the occupied territories of Western Sahara, and conditions continue to deteriorate.

Human rights violations, including torture, disappearances, violations of due process, freedom of assembly, and freedom of movement, have been noted in Western Sahara. Human Rights Watch (HRW) reported in 2008, that Morocco’s justice system fails to provide fair trials to Sahrawis.³ In addition, HRW cited that in spite of legislative limitations, torture by state actors occurs with impunity. A 2006 report by the UN Office of the High Commissioner for Human Rights (OHCHR) criticized the Moroccan government for denying the right of self-determination to the Sahrawi people, accused Morocco of using excessive force against protestors, stated that administrative

² The Frente Para la Liberación de Saguia Al Hamra y Rio de Oro (Polisario) was founded in 1973 with the purpose of obtaining independence for Western Sahara.

³ HUMAN RIGHTS WATCH, HUMAN RIGHTS IN WESTERN SAHARA AND IN THE TINDOUF REFUGEE CAMPS (2008).

hurdles interfere with the right to freedom of expression and assembly, cited serious deficiencies in regard to ensuring the right to a fair trial, stated that Sahrawi human rights defenders are often prosecuted because of membership in human rights organizations which the Moroccan authorities refuse to recognize, and expressed that urgent measures are needed to ensure Morocco's compliance with the Convention against Torture. The U.S. Department of State 2009 Country Report on Human Rights Practices for Western Sahara states that Moroccan security forces occasionally engage in torture, beatings, excessive use of force, and other mistreatment of detainees.⁴ It notes that government investigations of these abuses are rare, despite attempts within the government to reduce impunity. The Department of State reported that prison conditions are poor, citing abuse and overcrowding.

Emblematic of these abuses is a group the RFK Center delegation met with. Family members of fifteen young men who disappeared on December 25, 2005, and have yet to be accounted for, told the delegation that they suspect the young men are still alive and being held in detention. The families have regularly met with government ministers and local officials over the past several years and continue to organize peaceful protests in order to determine the fate of their relatives, to no avail. Despite assurances in 2007, from the *wali* at the time, that the case would be resolved and that the young men would soon return home, when the RFK Center delegation asked the current *wali* about this case, he stated that the young men "had drowned in the sea," and there was nothing further to investigate.

C. Gdaim Izik Camp

On October 9, 2010, a camp was erected to protest the distressing economic and social conditions faced by Sahrawis. During its visit, the RFK Center confirmed reports that many educated Sahrawis are unable to find employment, leading to economic and social marginalization of these individuals. Further, Sahrawis are not given the right to participate in the negotiation of agreements involving their own natural resources, in particular with the European Union regarding their fisheries activities, and often receive little to no benefit from the resources extracted from the territory.

The Gdaim Izik camp was located approximately twelve kilometers outside El Aaiun and was home to between 7,000 and 20,000 people. The population fluctuated throughout the week as individuals traveled between the camp and El Aaiun to work, visit family, or get supplies. Moroccan authorities claim that individuals were sequestered in the camp against their will by the protest organizers, but the RFK Center did not receive evidence to support this claim. At points throughout the month that the camp was in place, negotiations were taking place between a dialogue committee of camp residents and Moroccan government officials, including the Minister of Interior, Taïeb Charkaoui. Ongoing negotiations were reportedly close to reaching resolution at the time the Gdaim Izik camp was dismantled.

⁴ U.S. Department of State Country Report on Human Rights Practices: Western Sahara (2009) *available at* <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136076.htm>.

On November 8th, Moroccan security forces dismantled the Gdaim Izik camp. Violence and looting spread to the city of El Aaiun after this, fueled by frustration and anger about the ill-treatment of people, especially women, during the dismantling of the camp. Incidents of violence by both the Moroccan authorities and Sahrawis have been widely reported by other organizations. A detailed account of the events that took place at the Gdaim Izik camp during the dismantling is beyond the scope of this report. However, the RFK Center condemns the violence used by any parties on November 8th.

D. Moroccan Government and Human Rights

While the government has undertaken initiatives to address past human rights abuses, it is clear that accountability for human rights violations remains a significant problem. In 1990, Morocco established the Advisory Council on Human Rights (CCDH) as a national institution for the protection and promotion of human rights. In late 2003, King Mohammed VI accepted the recommendation of CCDH and established the Equity and Reconciliation Commission (IER), with a mandate to investigate gross human rights violations occurring in Morocco between 1956 and 1999. In 2004, the Commission received 20,046 requests for reparations but found that only 16,861 applications were admissible. By 2005, reparations were provided in 9,779 cases. Nonetheless, the Commission was criticized for not holding hearings in Western Sahara, and for not naming those responsible for human rights violations or bringing them to justice. In addition, over five years after the publication of the IER's report in 2005, only a few of the Commission's recommendations for structural and legal reforms to prevent repetition of human rights abuses were implemented. While this has been a positive attempt to provide a comprehensive review of the human rights situation and an avenue for justice, these mechanisms have failed to put in place the structures needed to address ongoing abuses, including those detailed in this report.

Most recently, the Moroccan Parliamentary Commission conducted an investigation into the incidents at the Gdaim Izik camp and released a report on January 12, 2011, entitled the "Report of the Commission on the Truth about the events of the Gdaim Izik camp and the city of Laayoune."⁵ The thirteen-member Commission met with authorities and Ministers in Rabat and at the scene of the incident, and collected documents and data. However, the report contradicts the findings of other groups who investigated these events. The Commission found that numerous national and international NGOs were on the ground in El Aaiun and were able to undertake necessary investigations, despite findings of human rights groups, including the RFK Center, to the contrary. The Commission reported that it carried out the investigation in accordance with international norms of impartiality, independence, and objectivity.

The Commission linked the creation of the camp to social problems, including housing and unemployment. The report denied other human rights organizations' allegations that crimes against humanity and broad human rights abuses took place. The report claims that the peaceful and legitimate grievances of the protesters were exploited as part of a plan by terrorists and others

⁵ The Moroccan Embassy to the United States provided a brief French summary of the report to the RFK Center.

backed by Algeria to damage Moroccan stability and unity. It notes that there were limited instances of excessive use of force in operations and investigations, and highlighted the need to address complaints lodged related to these problems. The report claims that the Moroccan institutions have the capacity to respond to allegations of human rights violations and states that credible, national NGOs exhaustively addressed this situation and presented concrete recommendations for moving forward.

IV. Victim Testimony

The RFK Center delegation heard numerous stories of violations of political and civil rights in the wake of the dismantling of the Gdaim Izik camp. As a result, people emphasized there has been a climate of fear and repression.

A. Political & Civil Rights

Several individuals reported that they or members of their family were victims of arbitrary arrest and detention. Over the course of the camp's dissolution, twenty people were arrested and sent to a prison in Salé, approximately 1,200 km away from El Aaiun, to face military jurisdiction. More than 160 people were arrested and sent to the Black Prison in El Aaiun. All members of the camp dialogue committee were reportedly arrested. Charges lodged against them included formulation of a criminal gang, impersonation of a police officer, sequestration of persons using a vehicle, and participation in a killing.

The RFK Center met with family members and friends of several of the individuals detained in Salé and defense attorneys who represent some of them. Individuals who were sent to Salé were not presented with clear legal justification for being brought under military jurisdiction instead of civilian jurisdiction in El Aaiun. Individuals noted that a high proportion of the detainees sent to Salé are either human rights defenders or were part of the Gdaim Izik camp dialogue committees.

Family members and lawyers indicated that torture and abuse of prisoners was severe in Salé, including brutal beatings and breaking of limbs. Some family members also reported that they had difficulty visiting detained relatives, and at times were not permitted to visit them in Salé while others were permitted visits of only ten minutes per week. According to Moroccan law, family members should be permitted detainee visits every weekday. Two individuals indicated that when they went to visit family members at Salé, they were forced to speak to them through two sets of bars while three security guards were present. These constraints in communication limited access to information about prison conditions for individuals who are still in detention.

1. Torture, Ill Treatment, Arbitrary Arrest, and Excessive Use of Force

Numerous individuals reported excessive use of force or torture by Moroccan security or police to the RFK Center delegation. This often occurred when individuals posed no apparent threat to the security, yet the authorities responded with excessive force. This includes force exerted either in the course of arrest and transport, during holding at the *garde à vue*, the holding cell at the police station,

or at the prison. In follow up conversations, the RFK Center has been informed that arbitrary arrests continue, with the most recent being the arrest of a 30-year-old man implicated in Gdaim Izik on February 11, 2011.

Morocco ratified the Convention against Torture in 1993, and according to Article 2.2 the state is prohibited from using torture, even in circumstances of internal political instability. Furthermore, Article 12 indicates the state must undertake an investigation when there is evidence of torture and Article 13 provides that any complaint lodged alleging torture is fully investigated. When the RFK Center raised these concerns with the Deputy General Prosecutor, he responded that the Moroccan Government never uses excessive force or torture and has never received such a complaint, however, if such a complaint was ever filed, it would be appropriately investigated. Defense lawyers told the RFK Center delegation that several attempts were made to file complaints, however clerks would not receive them.

The Case of HMSA, 40-year-old male

HMSA⁶ told the RFK Center about alleged abuses perpetrated against him as well as torture and abuses endured by fellow prisoners. HMSA was arrested at approximately 7:30 am on November 8, 2010, and loaded into a lorry with several other Sahrawis. He and other detainees were allegedly beaten while in the truck that was transporting them from Gdaim Izik camp to the El Aaiun prison. Their hands were tied with plastic handcuffs that were tied so tightly that, in some instances, they cut into the flesh of those who were arrested and caused bleeding. When the detainees arrived they were forced to undress and guards fondled their genitals with their hands and batons. He reported that sixty-eight people were held in overcrowded conditions in a space that was 3x2m. HMSA stated that at the Black Prison, where he spent two months, guards wearing black masks severely beat him with iron bars while they interrogated him. After being hit in the head with the bars, he lost consciousness. Guards also beat him and other detainees with plastic blades with their faces to the wall. He reported that nurses kicked injured detainees that were being held at the hospital with their high heels. At night, cold buckets of water were poured on them. On one occasion the guards forced detainees to drink urine. When HMSA refused, the guards poured urine on him and the other detainees. Prison officials also refused to give him his medication. HMSA recounted several stories of other detainees being beaten as well. HMSA was released on January 12th without being told the conditions of his release.

The Case of Jhadija Oubhaya

Jhadija indicated that Moroccan security forces shot at the vehicle she was in on October 23rd as she was returning to the Gdaim Izik camp, causing a car accident. As a result, she was badly wounded and suffered severe trauma to her head. Security forces initially brought her for medical treatment in El Aaiun, where doctors indicated that if she did not see a neurologist within twenty-four hours, she would become paralyzed. The state failed to take her immediately to Casablanca for the treatment as

⁶ Individuals' real names have been withheld, initials have been used where permission is provided, and names have been omitted for people who chose to remain anonymous for fear of their safety.

recommended. She did not have surgery until fifteen days later. The security forces that accompanied her kept her location secret for weeks. She is now paralyzed from the waist down, is in continuous pain, had two toes amputated, a skin graft from her thigh, bones removed from her hip and placed in her skull, and needs ongoing medical treatment. When she and her family members requested state assistance for medical treatment, it was denied. When the RFK Center delegation asked the *wali* about this incident, they denied that the state played any role in causing the accident and, therefore, bore no responsibility for the payment of her treatment. Two days after the RFK Center met with her, a state agent visited her house to explain how to get insurance, but has failed to follow up.

The Case of Said Damber

Said Damber was allegedly shot and killed by a police officer on December 22, 2010. While he and members of his family spent time at the Gdaim Izik camp and his brother had a heated argument with the police the morning of his death about his car being destroyed there, this confrontation does not appear to be directly linked to the incidents at the camp.

The RFK Center met with Said Damber's family members who reported that they were not told of his death or whereabouts at the time of the incident. At 3:00 am on December 22nd, the police came to the Damber house asking for Said's identity documentation, and stated that Said had beaten a police officer. At this time, the police neither informed the Damber family that he was dead nor that his body was in police custody. Instead, they were told that Said had a minor arm injury and was at the hospital for treatment. The Damber family waited at the hospital for several hours with no information from the police, without knowing whether he was alive or not. On December 23rd, Said Damber was officially declared dead, and the family was able to see only his head, which had a bullet wound in the middle of his forehead. The family received conflicting reports of what occurred on December 22nd, and as of January 15th, had not yet been granted access to his medical records or autopsy report, which would provide more clarity as to the cause of his death. Norwegian, Spanish, and Argentinian citizens visited the Damber family. Subsequent to these meetings, Moroccan authorities forcibly removed them from the country. As of the moment of publication, the Damber family has refused to bury Said's body until they have access to the information surrounding his death.

The Case of MB, 27-year-old male

MB told the RFK Center he was living in El Aaiun and not at the Gdaim Izik camp. His family, including his mother, father, brother, and sister were living in Gdaim Izik. He received a phone call from his family at 6:00 am on November 8th and was informed that the camp was being stormed. He immediately got in his car and drove toward Gdaim Izik. At the outskirts of the city, he found that all exits to the city were blocked. Therefore he left his car at a checkpoint and then attempted to reach the camp on foot. He stated that as he was attempting to enter the Gdaim Izik camp on foot to see his family, police fired a live bullet at him from the side, with no warning. He said he was not provoking the police or doing anything to warrant this response. A bullet entered his left leg and he

lost consciousness. A friend took him to the hospital, where police refused to allow him to enter. He was then brought to a traditional healer who removed the bullet without pain-killer and did not stitch the wound. MB showed his scar to the RFK Center delegation, which was consistent with the reported events. MB is currently in hiding. Police have since visited his house searching for him, but as of January 15th, he had not returned home for fear of arrest.

The Case of EB, 26-year-old male

EB told the RFK Center that he was living at the Gdaim Izik camp with his family to protest social and economic conditions. He tried to return to the camp on Sunday, November 7th from El Aaiun, and was prevented from returning. He noticed mounting tension, including the arrival of fire trucks from Morocco, so he went back to his home in El Aaiun. He received a phone call from the camp on November 8th between 6:30 am and 7:00 am. He was not sure what had happened, but he told the delegation that he was scared, and he got in his car to go to the Gdaim Izik camp to get his family. He got as far as Smara Street, within the city limits, before he was blocked, so he joined protests in the city. At 1:30 pm, he saw police and auxiliary forces and people protesting. He was caught by surprise when a police officer shot at him; a bullet entered his right thigh and went through his left leg. Traditional medicine was used to remove the bullet four days later, on Thursday, November 11th. His relatives later returned from the camp on foot.

The Case of BEB, 25-year-old male

BEB told the RFK Center that he was asleep at the Gdaim Izik camp on November 8th, and awoke to the sound of helicopters at 5:30 am. The helicopter announcer stated that camp residents had five minutes to leave the camp. At the same time, BEB saw soldiers approaching him. BEB stated that around him, the security guards started to take down tents and burn cars, and people were being trampled. Residents were being attacked with hot water from fire trucks. BEB recounted the security guards beating women, mothers, and sisters, and in response he became angry. He got in a car to bring back some injured people, but people could not easily leave the vicinity. Police placed boulders in the road to block access. BEB exited the car to remove the boulders, and heard bullet shots. He was then shot in the left arm and a Sahrawi volunteer took care of him. He indicated that he was afraid to go to the hospital, fearing he would be taken to prison. He stated that when he returned to El Aaiun, there were attacks and it felt like “us versus them.” BEB recounted that after 3:00 pm, Moroccan settlers (militias) joined the Moroccan forces to attack people in their homes.

The Case of LK, 35-year-old female

LK told the RFK Center that she was living at the Gdaim Izik camp with her two children, who routinely returned to the city during the week for school. On Friday, November 5th, she left her children with their grandparents in El Aaiun and went to Gdaim Izik. When she was prevented from returning to the city on Sunday, she realized something was wrong. She heard helicopters hovering over the camp around 6:30 am on November 8th. Security forces were destroying tents and she was worried about her safety. She went with a female neighbor to her car. As she was attempting to leave Gdaim Izik camp that morning, security forces allegedly shot at the car with rubber bullets,

shattering the windshield. LK was sitting in the rear right seat and was struck with one of the bullets on her right hand. This caused severe pain and left her unable to move her right hand. She exhibited conditions consistent with these allegations. LK climbed out of the shattered window and received traditional treatment from a neighbor. She reported that she was overpowered by the smell of tear gas and that tents were on fire.

The Case of SH

One individual, SH, who is mentally disabled, reported that on Friday, November 5th, security forces approached him at his home in El Aaiun and sprayed mace directly in his face, causing him to lose consciousness. The police then dragged him to a van, drove him to a river, forced him out of the car, removed his clothes, verbally assaulted him, tied a rope around his neck, and dragged him behind the car. SH displayed scars on his chest, arms, legs, and knees consistent with his statement. When he was eventually brought back home, his parents attempted to take him to the hospital where they were refused entry.

The Case of 31-year-old female

A 31-year-old female reported that she was arbitrarily stopped by the police on December 28, 2010, with a group of friends, outside the house of Said Damber (see above). The police demanded her name, and she was arrested upon giving it to them. This is the fifth time she has been arrested and she believes she was arrested because of her activism in the Sahrawi independence movement.

Multiple Reports of Sexual Assault

The 31-year-old female arrested on December 28th also reported that the police sexually harassed her at the time of her arrest. The harassment included fondling her breasts and other parts of her body and kicking her vagina with military boots.

Defense attorneys told the RFK Center delegation that male prisoners have been raped using bottles and batons. Human rights defenders from the Moroccan Association of Human Rights (AMDH) El Aaiun Section, a legally registered organization, reported that there are regular instances of this form of ill treatment during the investigation period. In particular, they stated that three men came to AMDH indicating that they were raped with glass bottles at the *brigade gendarmerie* and prison. As stated above, the RFK Center was told that male detainees were fondled after being arrested on November 8th.

2. Failure to Follow Procedures

The delegation heard several accounts indicating that criminal procedures are not consistently being followed for all detainees. Specifically, the right to a fair trial and a defense are not regularly respected, in addition to the right to know the charges brought against them at the time of arrest. Article 9.2 of the International Covenant on Civil and Political Rights, to which Morocco is a party, states that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his

arrest and shall be promptly informed of any charges against him. The RFK Center was told that this requirement was not followed during the dismantling of Gdaim Izik.

Ten individuals arrested on or around November 8th, including HMSA, were released from prison on January 12, 2011. HMSA reported that he was not informed at the time of his arrest of the charges against him. Four of those individuals were told they had served their term, and the others were not informed as to whether they were permanently or provisionally released.

Families of the individuals arrested on November 8th indicated that they were not informed of their family member's arrest or provided with information about the individual's whereabouts, including those families whose relatives had been taken to Salé. Article 67 of the Moroccan Code of Criminal Procedure states that detaining authorities should immediately notify families of detainees of the decision to place their relatives in detention.

3. Prison Conditions

Individuals reported that there were inhumane conditions in both the *garde à vue* and the Black Prison in El Aaiun. One individual reported that he endured verbal assault, intimidation, insults, and threats, including a statement by prison guards that "there is no Amnesty International or Human Rights Watch to protect you now." When families delivered food, medication, or supplies, on at least three occasions recounted to the RFK Center delegation, the guards refused to deliver those materials to the detained individual. Several individuals reported that they were not brought to the General Prosecutor within forty-eight hours of arrival at the *garde à vue*, in violation of Article 66 of the Moroccan Code of Criminal Procedure.

One individual, CO, explained to the RFK Center delegation that he was shot with a rubber bullet on November 8th at the Gdaim Izik camp after he and others threw stones at police in self-defense. He was taken to the military hospital where he was detained for a period of sixteen days, where he was forced to wear handcuffs for the majority of the time. When he told them he was a civilian, they refused to treat him. After four days of abuse, he finally received treatment for the injuries sustained on November 8th. Throughout the duration of his detention, he was deliberately beaten in the area where he was shot, and endured verbal abuse including humiliation and intimidation. As with other prisoners, his family was not informed of his whereabouts.

Other individuals reported that they received severe bruises and bloody wrists as a result of the plastic handcuffs and in some cases they had to cut through their skin to remove the embedded plastic. Yet the causes of these injuries were never investigated. This is contrary to Article 74 of the Moroccan Code of Criminal Procedure which states that detainees bearing signs of torture or other ill-treatment should be referred for medical examination and Article 134 of the Moroccan Code of Criminal Procedure, which states that a medical examination should be conducted to ascertain the cause of detainee bruises and other injuries.

Furthermore, under Moroccan law, an ill prisoner should be provided with medical treatment. However, as of January 14th, one detainee, AA, who suffers from asthma, is currently being held in

a room with forty-two other prisoners and has not been given the proper asthma treatment he requires. Sanitation also remains poor as many detainees report being forced to urinate into bottles.

4. Use of Fraudulent Evidence and Forced Confessions

The RFK Center spoke with several individuals who indicated they were forced to sign, with a thumbprint, documents whose contents were unknown—they were not permitted to read them nor were they read aloud. This enabled the creation of fraudulent evidence and coerced confessions. One individual was forced to put his thumbprint on a document stating that the twenty individuals detained in Salé are responsible for all the violent activities that took place following the dismantling of the Gdaim Izik camp and subsequent protests. A 31-year-old female stated that security forces attempted to force her to confess that Algeria forced her against her will to support independence. She refused.

5. Restrictions on Freedom of Speech, Expression, and Assembly

The RFK Center delegation noted a heavy police presence on the street and a generally repressive environment. Although the delegation was under constant surveillance by both uniformed and undercover police, this did not impede the staff's ability to work, move freely around El Aaiun, or meet with affected communities and persons. Individuals told the RFK Center delegation that they are now afraid when they see police on the street. The delegation observed a peaceful protest outside the Black Prison in El Aaiun where sisters and mothers of the men who were arrested on or around November 8th gathered to express solidarity with their family members and to call for their release. This protest of approximately fifty women attracted significant police attention and the women felt forced to disperse.

Individuals also explained that there has been repression and abuse of human rights defenders who were implicated in the Gdaim Izik camp and the November 8th activities. In contrast, when we spoke with the Mayor of El Aaiun and the governor, known as the *wali*, about concerns related to freedom of expression, they stated that individuals are free to organize as long as it does not pose a threat to national security.

In addition, Aminatou Haidar's organization, CODESA, which promotes and advances human rights protection, has not been permitted to register as an NGO by the Government of Morocco. When the RFK Center delegation mentioned this to the *wali*, he responded that CODESA is a political organization and they will not be permitted to register. The inability to register has been reported to interfere with CODESA's ability to meet on a regular basis, collect information about the human rights situation, respond to complaints lodged by victims, and educate youth about principles of peaceful resistance and human rights.

Moroccan Association of Human Rights (AMDH) El Aaiun Section, a legally registered organization, told the RFK Center during a call following the visit, that it is prohibited from publicly organizing in spite of its registration. Local government, including the *wali* and police, breaks up any public

gatherings claiming they are expressing political opinions. He reported that it is very difficult for human rights organizations to work effectively in El Aaiun.

6. Access for Outside Parties

The RFK Center received reports that at least two Spanish journalists were denied access or entry to Western Sahara in the week prior to November 8th. In addition, MINURSO reported that it was denied access to the Gdaim Izik camp on their first three attempts, despite the Status of Forces Agreement which grants them freedom of movement twenty-four hours a day. MINURSO representatives were denied entry three times prior to November 8, 2010, and then were permitted entry three days after the dismantling of the camp on November 11, 2010.

When the RFK Center inquired about the lack of access, the *wali* replied by stating that certain foreign journalists were denied entry because they support self-determination. MINURSO's access is controlled through a coordinating office in the Ministry of Interior and as the RFK Center did not meet with this office, the delegation was unable to ascertain why they were denied access.

B. Economic, Social, and Cultural Rights

The erection of the Gdaim Izik camp was rooted in social and economic discontent among the Sahrawi population. Several individuals and families the RFK Center met with indicated extreme ongoing difficulties in finding work and frequently being denied employment, despite high levels of education. The individuals at the camp had held meetings with the Moroccan government to address these grievances, yet as of the time of our visit, they did not indicate there had been an improvement in state sponsored services.

When the RFK Center delegation questioned the *wali* about employment discrimination, he replied that "Sahrawis are biologically different than Moroccans, because they are people of the desert" and due to their historic nomadic lifestyle, were not accustomed to work, and this was one reason they faced high unemployment. The *wali* also attributed the unemployment to the economic crisis across the globe, which has impacted Western Sahara as well.

The RFK Center heard numerous accounts from women who were discriminated against when they wore traditional Sahrawi dress, the *melfa*. They stated that this was a particular problem when traveling outside El Aaiun. As a result, the women had to cover their traditional dress with a Moroccan Jalaba, particularly when traveling to see family members in Salé.

C. Human Rights Defenders

The RFK Center also spoke with many human rights defenders who indicated that they continue to do their work at great personal risk and under intimidation by government forces. Throughout the duration of the trip, the RFK Center noticed a constant police presence monitoring our movement, as well as undercover police stationed outside human rights defenders and abuse victims' homes.

Intimidation against human rights defenders takes various forms. The private chauffeur for the RFK Center delegation, Ali, was questioned and intimidated by government officials on at least four occasions during the delegation's visit. After the RFK Center departed, the intimidation continued. Ali was undertaking a small business project with a group of ten individuals through the local government. The application process began on January 24, 2010, and the *wali* accepted the project on June 11, 2010. The other nine individuals received their funding to begin the project and have started work. However, on February 9, 2011, when Ali went to inquire about the status of his check, he was told that his file is blocked. They reproached him for his involvement with separatists and asked why he had worked with the RFK Center delegation.

Intimidation of human rights defenders has been a historical problem in Western Sahara. At least six members of CODESA informed the delegation that they had undergone a period of arrest and torture. Some members were detained for several weeks, while others, including Aminatou Haidar, who was disappeared and tortured for four years and was detained seven months in prison.

The RFK Center also heard about attempts to implicate human rights defenders in the events at the Gdaim Izik camp. SM, a 37-year-old male told the delegation about his friend, who is a member of Moroccan Association of Human Rights (AMDH) and was a former member of the Equity and Reconciliation Commission in El Aaiun. SM was an eyewitness to his friend's arrest on November 7th at approximately 8:00 pm. His friend was then sent to Salé. However, on the arrest documents, the police indicated that he was arrested on November 8th at the Gdaim Izik camp and accused of committing crimes on that day. His family and friends were not informed of his arrest or location, but his brother eventually uncovered that he was sent to Salé and visited him there.

The RFK Center met with the Association of Victims of Human Rights Defenders (ASVDH) whose members are all victims of human rights violations, including several cases of disappearance and torture. Many of the organizers were liberated in 1991, and created this association to defend human rights. They now work to organize individuals and respond to human rights abuse by gathering information, releasing reports, and coordinating with international organizations. They work under difficult conditions, and at the moment, both their President and Secretary General are in prison. Like CODESA, they have not been permitted to legally register because the Moroccan government claims they are political activists and separatists, rather than human rights defenders.

Intimidation of family members of human rights defenders is also common. Shortly after the RFK Center visit, Aminatou Haidar's daughter, Hayat El Kassimi who is sixteen years old, was harassed while walking on Avenue Smara with her aunt. Three young Moroccans brandished a knife and threatened to cut her. A member of the traffic police was present and did not respond. A complaint was filed with the police and the victim provided a description of the alleged perpetrators. However, no police action has been taken on this case.

V. Meetings with Government Officials

During the meetings with government officials, the RFK Center received inconsistent responses—even within the same meeting or from the same person. The delegation raised the concern that the

state had failed to fulfill its responsibility to follow legal procedures during arrest and detention, especially during and subsequent to the dismantling of the Gdaim Izik camp. All accusations were denied.

A. Mayor of El Aaiun

During the meeting with Hamdi Errachid, the mayor of El Aaiun, he informed the RFK Center about several social services provided in the city. The mayor stated that 2,000 people of the population of 200,000 are receiving social services, including a monthly stipend. However, he did not specify which programs began before or after the incidents at the Gdaim Izik camp. He explained that the local government provides housing, and other social services to the residents of the city based on an individual being selected by tribal leaders. He stated that the city allows freedom, liberty, and equality for all under law including respect for women's rights and freedom of speech, unless there is violence and vandalism, "which causes problems." He acknowledged the existence of social unrest that led to the establishment of the camp, but indicated that as far as the government was concerned, the problems began once there was violence. He alleged that violence was incited by elements within the camp. He confirmed that the police presence in the city has increased since November 8th.

B. Governor of El Aaiun

The governor, known as the *wali*, El Jhalil Djhil, took office on November 26, 2010. The *wali* also explained the government services that are provided throughout the region. For example, he spoke about electricity, water, and sanitation, public health, and mentioned a stadium devoted to sports and leisure activities. However, during our visit, the RFK Center found that the Mohamed Lagdaf Stadium he spoke about was occupied by military forces and used as storage place for military supplies.

Similarly to the mayor, the *wali* presented social programs—it was unclear whether these programs began before or after the dismantling of the Gdaim Izik camp—and the extent of their coverage, despite repeated questions by the RFK Center delegation. Several Sahrawis that the RFK Center met with had not benefited from the described social programs, and instead, spoke of high levels of unemployment among educated Sahrawis, therefore the delegation questioned the *wali* on this unemployment. As stated above, he attributed this to their biological difference from Moroccans. Official estimates show that the unemployment rate in Western Sahara is 28%, as compared with the national average of 9.8% in Morocco.

The RFK Center presented information and findings from discussions with individuals about cases where legal procedures had not been followed. Some of the issues were beyond the scope of the *wali's* capacity. At certain instances, other government officials who were in the room commented as well. However, on issues within his jurisdiction, he denied that the information we communicated to him was accurate and instead claimed that facts were being distorted for a political motivation.

The RFK Center also requested a copy of the complete government videotaping taken by helicopter on November 8th at the Gdaim Izik camp. This request was denied.

C. Tribunal and Deputy General Prosecutor

The RFK Center met with the deputy general prosecutor, Abdallah Chamaoui, to inquire about specific cases as well as general concerns regarding failure of state actors to follow legal procedures. Under Article 66, 67, and 79 of the Moroccan Code of Criminal Procedure, the general prosecutor oversees the conditions at the *garde à vue* and Royal Gendarmerie. The deputy general prosecutor was not able to provide specific information about the individual cases. In addition, he denied that law enforcement officials neglected to follow procedures. He stated there has never been a complaint filed judicially regarding government use of torture in prisons. Individuals told the RFK Center that when they attempted to file complaints for torture in person, they were told instead to send it by mail. When they would check on the status after sending it, the Prosecutor's office would respond that they had received an empty envelope.

The RFK Center met with a *juge d'instruction*, an administrative judge named Ahmadi Abdurrahmen,⁷ to ask about specific failures to follow criminal procedure that had been brought to the delegation's attention.

The delegation specifically inquired about the procedures the Damber family must follow to obtain the medical certificate and autopsy report which they had been denied. The Prosecutor first claimed he could respond, and then said that we must see the judge. After waiting a significant period, the judge received the delegation. He provided conflicting information and incomplete accounts of events. After much delay, the judge explained the procedure the family's lawyer must follow to obtain this particular information. As of the time of publication, the family has still not received the documentation that would help them understand the circumstances of their son's death. The RFK Center found a demonstrated lack of transparency and accessibility within the office of the prosecutor and the administrative judge the delegation met with.

VI. Meeting with MINURSO

The RFK Center met with officials of the United Nations Mission for the Referendum in Western Sahara (MINURSO). We discussed our support for an international human rights monitoring mechanism and explored whether MINURSO might be the appropriate vehicle to host such a responsibility. We also spoke about some of the challenges the mission would need to overcome to undertake human rights monitoring.

MINURSO staff explained that according to the status of forces agreement with Morocco, they should have freedom of movement without restrictions. However, as stated above, the MINURSO staff was denied access to the Gdaim Izik camp three times before November 8th. They were granted access three days after the dismantling, on November 11, 2010, to examine the conditions

⁷ When the RFK Center delegation asked him for his name, however, he refused to provide it. It was only upon asking another court official that the delegation was told the judge's name.

post-November 8th. They indicated they were anticipating a confrontation before November 8th because, among other factors, they were asked by the local government to move their vehicles inside the UN compound. MINURSO informed New York Headquarters of these concerns on November 5, 2010. The officials stated they have noticed an increase in security presence on the street since November 8th. They cited the lack of international investment in industry as a cause for the high unemployment.

VII. Recommendations

The situation in Western Sahara requires constant neutral, international monitoring with a mechanism to ensure accountability by state actors. It is evident that tensions remain high and human rights defenders are the target of government aggression. Furthermore, the capacity of human rights organizations—defending the broad spectrum of rights—must be strengthened, beginning with the right for national organizations to legally register.

A. Establish an International Presence to Monitor the Human Rights Situation

Human rights abuses by the Moroccan government have taken place since Morocco invaded Western Sahara in 1975 and took possession of the territory. Due to the ongoing political situation, the human rights situation has become highly politicized. As a result, many national human rights organizations have been prohibited from registering. Registered national NGOs, including the *Organisation Marocaine des Droits Humains* (OMDH), reported that they have access to prisons and tribunals to monitor the situation, however the U.S. Department of State 2009 Country Report on Human Rights Practices for Western Sahara indicated that human rights organizations sometimes have difficulty accessing prisons. In addition, the registered NGOs represent only one perspective of the human rights situation in their reporting analysis. Their activities have also failed to secure accountability from perpetrators of human rights violations. Without an independent institution human rights violations will persist.

MINURSO's mandate states that the general principles of UN Peacekeeping Operations apply to its operations in Western Sahara. Yet, while the United Nations Department of Peacekeeping Operations identifies respect for human rights as a critical component for achieving sustainable peace, MINURSO was created and continues to operate as the only contemporary UN peacekeeping mission without a human rights component. Instead, MINURSO's mandate provides for monitoring the "maintenance of law and order" in Western Sahara, which does not in fact permit MINURSO staff to visit rule of law institutions.

Both MINURSO and outside parties have faced intermittent interference with access to information, freedom of movement, and entry to the country, which raises concern about government control of information. The Moroccan government's failure to allow journalists and MINURSO to visit the Gdaim Izik camp leading up to, on and immediately after November 8th further highlights the urgent need for a constant monitoring body that has unconditional authority and a mandate to travel throughout the country as needed to investigate human rights violations.

In April 2011, the UN Security Council will again review MINURSO's mandate. As the UN Office of the High Commissioner for Human Rights declared in 2006, the creation of a mechanism for ensuring adequate and continuous monitoring of the human rights situation in both occupied territories and in POLISARIO-run refugee camps in Tindouf is needed. Human rights monitoring can be undertaken through the expansion of the mandate of MINURSO to include human rights. An alternative or interim option might include adding a rule of law mandate to MINURSO.

Alternative impartial mechanisms should also be explored to monitor the human rights situation. These must allow for broad access to rule of law institutions, have the capacity to monitor and investigate, have the means to seek redress for violations, and be able to hold the state and individuals accountable for violations of human rights. Reporting to the Security Council is an important component of an effective monitoring mechanism.

The parameters of this monitoring mechanism must be defined and agreed to by both the Moroccan and Algerian governments, as it should monitor the situation in both Western Sahara and the Tindouf camps.⁸

B. Register National NGOs and Allow Access for International NGOs

Freedom of expression and freedom of association are important human rights that promote a free and just society. All organizations, regardless of their position or political beliefs, should be permitted to register and operate in Western Sahara, including CODESA, and other human rights organizations including ASVDH (Association of Victims of Human Rights Defenders). Registered organizations must also be permitted to organize and address human rights abuses without state interference.

C. Investigate Events on November 8, 2010

Based on the observations of the RFK Center delegation, it is clear that there has not been accountability for accusations of human rights violations resulting from the dismantlement of the Gdaim Izik camp and subsequent protests. The RFK Center again calls for a thorough and impartial investigation to seek truth, justice, and accountability for the victims of acts of violence or excessive use of force committed by state actors.

The Moroccan Parliamentary Commission investigation was an important initiative, but cannot substitute for an impartial internationally directed investigation and ongoing monitoring of the situation, including ensuring accountability for violations.

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⁸ The RFK Center does not work in the Tindouf camps; its advocacy is limited to the territory of Western Sahara, where 2008 Laureate Aminatou Haidar works.

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