



Statement of Kerry Kennedy
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Tom Lantos Human Rights Commission
Human Rights Threatened, Self-Determination Deferred:
The Status of Western Sahara
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Co-Chairman McGovern, Co-Chairman Pitts, members of the Tom Lantos Human Rights Commission, thank you for the opportunity to appear before you today to share critical information impacting United States policy toward Western Sahara, especially as it pertains to the human rights situation. I commend the Commission for holding this important and timely hearing.

Introduction

This hearing comes at a critical point in time for the people of Western Sahara. The territorial dispute has been ongoing for 40 years, and this April will mark 25 years since the United Nations Security Council approved Resolution 690 (1991) and established the United Nations Mission for the Referendum in Western Sahara (MINURSO). A formal UN-brokered ceasefire entered into effect later that year. For a quarter century, the parties and the international community have failed to reach a political solution, and have failed to ensure that the Sahrawi people can exercise their right to self-determination, making Western Sahara the last colony in Africa. While the political stalemate drags on, Morocco occupies Western Sahara, routinely perpetrating human rights abuses against the Sahrawi people. These abuses include arbitrary arrests, due process violations, abuses to political prisoners in detention, and restrictions on the rights to freedom of movement, expression, association, and assembly. They also include violations of the rights of the Sahrawi to access land and resources, to return to their land as refugees, to access healthcare and education, and to enjoy cultural life.

In fact this month we've seen the political crisis deepen. After visiting the Sahrawi refugee camps in Tindouf, Algeria just a few weeks ago, Ban Ki-moon said he was:

"... very saddened to see so many refugees and, particularly, young people who were born there. The children who were born at the beginning of this occupation are now 40 or 41 years old. So 40 years of a very difficult life."

Responding to the Secretary General's expression of compassion, Morocco cancelled three million dollars of support for MINURSO, and ordered 84 people—including almost

all of MINURSO's international civilian staff—expelled from the country within three days. Such cynical overreaction by Morocco shows how far the government is willing to go to perpetuate its colonial hold on Western Sahara.

This latest escalation will have a dramatic impact on MINURSO's ability to carry out its current mandate, but it is important to remember that MINURSO also suffers from a structural failing: it continues to lack a human rights monitoring and reporting mechanism, making it the only U.N. peacekeeping mission established since 1978 that is still operating without a mandate to monitor human rights.

MINURSO's lack of a human rights mandate is part of a systemic problem of getting good, reliable information about what is happening in Western Sahara, particularly as it pertains to human rights abuses. Moroccan law severely restricts the ability of the media to discuss matters relating to Western Sahara. A culture of self-censorship has taken hold, and local media cannot be relied on to comprehensively disseminate news of human rights abuses. Moroccan authorities also restrict movement into and inside Western Sahara, making it nearly impossible for foreign journalists to cover issues related to the Sahrawi people. Finally, Morocco severely represses Sahrawi human rights defenders and non-governmental organizations (NGOs), making it very difficult for them to collect, verify, and disseminate information about human rights abuses.

This dearth of information—and the fact that those in the territory who peacefully speak out are forcefully silenced—allows Morocco to operate a highly sophisticated diplomatic effort and a highly funded public relations campaign to, as the King said in 2014, ensure that “Morocco will remain in its Sahara, and the Sahara will remain in its Morocco until the end of time....” In fact, today Morocco occupies roughly 80% of Western Sahara. It manages all aspects of governance, including domestic security and foreign relations, and has—in violation of international law—entered into agreements with foreign states and transnational corporations regarding the exploitation of Western Sahara's natural resources.

In this testimony I will discuss an overview of the on-going human rights abuses taking place in Western Sahara and recommendations for the United States in response to these violations. The bottom line is that the international community, including the United States government, has shamefully failed to respond to consistent allegations of significant human rights abuses perpetrated by Moroccan authorities in Western Sahara. The United States must play a constructive role in changing this.

Western Sahara and the Right to Self-Determination

Western Sahara is formally categorized by the United Nations as a non-self-governing territory, which means that it is effectively still a colony. As such, its people are entitled under international law to self-determination. This right has been recognized for Western Sahara by the United Nations General Assembly, the African Union, and the International Court of Justice (ICJ). Additionally, Morocco has ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both of which bind Morocco to “promote the realization” of and respect the right to self-determination.

In accordance with international law regarding self-determination, the people of Western Sahara have the right to choose among three choices: “(a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.” In other words, there can be no predetermined solution to the right of self-determination. This right to choose was also reinforced by the 1991 Peace Accords between the Moroccan government and the Polisario Front that ended their armed conflict.

Despite international law and its binding treaty commitments, Morocco has put forward a proposal for an “Extended Autonomy Initiative.” While Morocco states that its proposal would grant Western Sahara a degree of autonomy and that Sahrawis would decide on their autonomy status through a referendum, the proposal explicitly rules out “the possibility for the independence option to be submitted.” By limiting the options available to the Sahrawi people, Morocco constrains the “free and genuine expression” mandated by the ICJ, and fails to provide a “clear and definitive solution to the issue of self-determination for the people of Western Sahara” as recommended by the United Nations Committee on Economic, Social, and Cultural Rights.

Instead, it seems clear that implementing the autonomy initiative would result in Morocco absorbing the Sahrawi people into the Moroccan state. On the anniversary of the Green March in 2014 King Mohammed VII stated unequivocally that “Morocco will remain in its Sahara, and the Sahara will remain in its Morocco until the end of time[,]” and that, “...Moroccan sovereignty in the whole of its territory is unalterable, inalienable and nonnegotiable.” In his 2015 speech on the same anniversary, the King said the autonomy initiative is “the most Morocco can offer” and that “[t]hose who are waiting for any other concession on Morocco’s part are deceiving themselves.”

Human Rights in Western Sahara

In 2008, I presented Aminatou Haidar, head of the Western-Sahara-based Collective for Sahrawi Human Rights Defenders (CODESA), with the Robert F. Kennedy Human Rights Award, setting forth an active partnership in Western Sahara that continues today. Over the last eight years, Robert F. Kennedy Human Rights and Ms. Haidar have together advocated for self-determination, freedom of expression, association, and assembly, contributing to civic space in Western Sahara. Together we have amplified the work of local human rights defenders inside and outside of the territory, and promoted labor, educational, and other cultural rights.

CODESA is a grassroots NGO based in El Aaiun, Western Sahara. Its members are former disappeared persons and political prisoners. CODESA's objectives include documenting the human rights violations perpetrated against the Sahrawi population in Western Sahara; disseminating and promoting the culture of human rights principles and values; and contributing to the construction of a modern civil society that believes in peace.

As a human rights activist, Ms. Haidar has been subject to arrest, beatings and torture by Moroccan authorities. After participating in a peaceful protest in 1987, Ms. Haidar was disappeared for four years, during which she was held in a secret prison without charge or trial. She was subjected to various forms of torture during this time, including the forcing of chemical-soaked cloths into her mouth and electric shocks.

Ms. Haidar was detained again for seven months in 2005, after participating in another peaceful protest, and beaten to the point of hospitalization. She was arrested again at the hospital. She protested prison conditions and torture with 37 other prisoners in a hunger strike lasting more than a month.

In 2009, Ms. Haidar, refused to declare her nationality as Moroccan on an immigration form upon returning to Western Sahara from the United States. Morocco responded by confiscating her passport and illegally expelling her from the country. Ms. Haidar was only allowed to return to her homeland after a 32-day long hunger strike, international outcry, and diplomatic intervention.

Most recently, her home was attacked in April of 2015 during a peaceful protest in her neighborhood while she was meeting with representatives from the United Nations Office of the High Commissioner on Human Rights (OHCHR).

Unfortunately, the human rights violations perpetrated against Ms. Haidar are not unique in Western Sahara.

In November 2010, Moroccan forces violently dispersed the Gdeim Izik protest camp which housed about 20,000 Sahrawis. On February 17, 2013, after a procedurally

flawed trial, the Rabat Military Court sentenced 25 Sahrawi civilians to prison over the Gdeim Izik protests, 21 of whom were sentenced to terms between 20 years and life. They remain in detention today. This week, thirteen of the Gdeim Izik prisoners remain on an open-ended hunger strike that they began on March 1, 2016. They are protesting their sentence and detention conditions, and demand that the appeal to their case be heard by a civilian court.

More recently, Robert F. Kennedy Human Rights has issued four human rights monitoring reports from September 2013 to December 2015. The reports contain credible information regarding human rights abuses gathered from reputable human rights organizations based in Western Sahara, Arabic and English media sources, and substantiated social media accounts.

Over a period of about two years, we have been able to document 56 incidents of arbitrary arrest and/or due process violations, 50 abuses in detention and/or violations to prisoners' right to health, 31 incidents of unjustified restrictions on freedom of movement, and 84 incidents of violations to the rights to freedom of expression, association, and/or assembly. The reports also documented 9 landmine blasts that caused injuries or casualties.

This includes Sahrawi human rights defender Embarek Daoudi, who was arbitrarily arrested on September 28, 2013 from his home for his activities in support of self-determination. He was kept in pretrial detention and tortured. He was ultimately sentenced by a Moroccan court in Agadir on December 4, 2015 to five years in prison on the charges of "possession of hunting cartridges" and "attempting to manufacture a firearm," both of which he denied.

The detention conditions for political prisoners are abysmal. On January 27, 2015 Sahrawi prisoner Abdelbagi Aliyen Antahah, who had been in solitary confinement for nearly one week for protesting prison conditions, died as a result of reported torture and lack of medical attention in Black prison in El-Aaiun. Two other detainees who witnessed the torture, Jamal Ifli and Adda Rabagah, were moved to an unknown location after his death.

There is also the case of twenty-one year old Sahrawi Mohamed Haidala, who was attacked, beaten, and stabbed in the neck by five Moroccan men on January 31, 2015. Despite being the victim of a vicious attack, he was arrested and held in detention without medical care. After eventually being released, he was repeatedly refused care by numerous hospitals because he was Sahrawi. He eventually died on February 8, 2015 due to complications resulting from his wounds. After his death, and despite the family's protests, his body was confiscated by Moroccan police and buried in an unknown location.

Those who protest for respect for human rights are subjected to violent repression. On December 30, 2015, Moroccan plainclothes and uniformed police surrounded and violently dispersed a peaceful sit-in of unemployed Sahrawis in El Aaiun. The crackdown resulted in the injury of at least 20 protesters.

These are just some of the human rights violations that we have been able to document, but there are likely many additional abuses that remain un-reported.

During a delegation I took to Western Sahara in 2012, I personally 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 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 photographs 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 delegation asked the Moroccan government to immediately investigate and suspend the responsible state agents, but no action was taken. Instead, 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.

In addition to violations of civil and political rights, Morocco also dramatically restricts the enjoyment of economic, social, and cultural rights for Sahrawis. There are very few opportunities for education for Sahrawis in Western Sahara. Sahrawi students are neglected, insulted, and sometimes beaten by teaching staff and school administrators, especially when they speak Hassaniya, a form of Arabic spoken by Sahrawis, at school. Although primary and secondary education facilities exist within the territory, there are no universities. Youth must travel to Morocco or another foreign country to pursue tertiary education. Even for youth who decide to study elsewhere and return to Western Sahara, finding employment at home is often difficult, contributing to a sense of deep frustration. Sahrawis are under-represented in almost every labor sector, including restaurant and retail services, the police force, education, and public administration.

In October 2015, the U.N. Committee on Economic, Social, and Cultural Rights (CESCR) issued its Concluding Observations on the Fourth Periodic Report of Morocco, emphasizing the necessity to find a solution to the right to self-determination, and expressing its concern at restrictions to the rights of the Sahrawi people to access land and resources, return to their land as refugees, access healthcare, pursue education, and enjoy cultural life.

Press Freedom, Civil Society, and Independent Human Rights Monitoring

Despite the abuses taking place, information regarding what is happening in Western Sahara is notoriously difficult to ascertain due to minimal news coverage, a lack of international media attention, limited civil society capacity, and a lack of credible human rights monitoring.

For local reporters, covering Western Sahara is almost impossible. Freedom House lists Morocco's press status as "Not Free." In a recent example, on February 9, Moroccan journalist Ali Anouzla spoke to a German media outlet, allegedly calling Western Sahara "occupied." Despite immediately stating that he was misquoted, the Moroccan government is currently prosecuting him on charges of harming "territorial integrity," which could result in five years in prison and a fine.

Morocco also blocks foreign journalists and observers from traveling to the region, further preventing unbiased information on the situation in Western Sahara from reaching beyond the territory's boundaries. According to Amnesty International, at least 39 foreign journalists and activists were expelled from Western Sahara by Moroccan authorities in 2014 alone

In the vacuum of credible media reports, Morocco engages in an aggressive public relations and lobbying effort designed to create a positive narrative about Morocco's role in Western Sahara and block any action inconsistent with Morocco's policies. According Al Monitor, Morocco spent \$3.1 million on lobbying and public relations in the United States in 2014.

Meanwhile the various civil society organizations in Western Sahara do their best to amplify the voices of citizens on a diversity of political and social issues from human rights to youth empowerment to demining activity. Though ultimately they lack the financial and technical support to carry out activities, and their members face a number of constraints resulting from Morocco's failure to respect their rights to freedom of expression, association, and assembly.

A principle difficulty has been Morocco's refusal to register Western Sahara civil society organizations until very recently. Without being able to register with the state, civil society organizations in Western Sahara face severe challenges in securing funding to carry out their activities, holding public events for citizens, and maintaining official

offices. The lack of official recognition makes civil society especially vulnerable to dissolution and severely constrains their ability to appropriately, securely, and effectively function.

To date, the Sahrawi Association of Victims of Grave Violations of Human Rights Committed by the Moroccan State (ASVDH) is the only Western Sahara-based civil society organization formally registered with the Moroccan government. By comparison, according to the International Center for Not-for-Profit Law, there are 116,836 registered civil society organizations based in Morocco.

With media and civil society severely restricted, it is imperative that there be a credible, international human rights monitoring and reporting presence in Western Sahara. We continue to believe that such a mechanism is best and most efficiently placed within MINURSO, but OHCHR also has a critical role to play. Regardless of the exact structure of such a mechanism, the international community needs a more accurate view of the human rights situation on the ground if it is going to play a serious and fair role in the development of a political solution that is acceptable to all parties.

United States Foreign Policy Towards Western Sahara

United States policy on human rights in Western Sahara in recent years has been relatively weak. The recent high-water mark for U.S. foreign policy toward Western Sahara came in April 2013, when then-United Nations Ambassador Susan Rice circulated a draft of a Security Council resolution to provide MINURSO with a human rights mandate. The proposal never got a vote after intense pressure from Morocco and its allies.

Unfortunately, for the last two years, the U.S. has backed Security Council resolutions that—while stating the importance of respecting human rights—do nothing more than extend the current deficient mandate of MINURSO.

The U.S. position on self-determination is also exceedingly weak. Amid diplomatic tensions of recent weeks, a U.S. government spokesperson stated via Twitter that:

“We consider #Morocco autonomy plan serious, realistic, credible; it represents a potential approach that could satisfy the aspirations of #WesternSahara.”

This is the same autonomy plan that fails to meet international human rights requirements for self-determination, and undermines the U.N. Secretary General’s call for all parties to return to the negotiating table without preconditions in order to find a political solution to this conflict.

Recommendations for United States Congress

We are convinced it is in the United States' best interest to support the full enjoyment of all human rights in Western Sahara, including the right to self-determination. Accordingly, we fervently recommend the United States:

- Resume support for a human rights monitoring mandate during MINURSO's reauthorization next month before the Security Council;
- Make clear that the United States is willing to allocate funding to replace funds for MINURSO that were slashed by Morocco, so the mission can continue operations;
- Play an active role in negotiations to achieve a political solution that fully respects the Sahrawi people's right to self-determination;
- Raise concerns about human rights violations during the U.S.-Morocco Strategic Dialogue and through other diplomatic interactions with Morocco; and
- Provide direct support and funding for civil society in Western Sahara responding to human rights abuses on the ground.

We are grateful for the opportunity to testify today, and will happily respond to questions.
