



## Morocco

### Universal Periodic Review (UPR) 13th Session: 21 May-1 June 2012

Joint Report submitted on November 21, 2011 by

<p><b>The Robert F. Kennedy Center for Justice and Human Rights</b> 1300 19<sup>th</sup> Street, N.W. Suite 750 Washington D.C. 20036 <a href="http://www.rfkcenter.org">www.rfkcenter.org</a></p>	<p><b>Fahamu Refugee Programme</b> 298 Banbury Road, Flat 2 Oxford OX2 7ED <a href="http://www.frlan.org/">http://www.frlan.org/</a></p>	<p><b>Cairo Institute for Human Rights Studies</b> 9 Rostom Avenue Garden City, Cairo Egypt <a href="http://www.cihrs.org/">http://www.cihrs.org/</a></p>
<p><b>CODESA</b> <b>Collective of Sahrawi Human Rights Defenders</b> <a href="mailto:collectif.shrd@gmail.com">collectif.shrd@gmail.com</a> <a href="http://www.codesaso.com">www.codesaso.com</a></p>	<p><b>The Norwegian Support Committee for Western Sahara</b> C/O Erik Hagen St. Halvardsgt 25a 0192 OSLO Norway <a href="http://www.vest-sahara.no">www.vest-sahara.no</a></p>	<p><b>Boston University Asylum &amp; Human Rights Program</b> 197 Friend Street Boston, MA 02114 United States of America <a href="http://www.bu.edu/law">www.bu.edu/law</a></p>
<p><b>U.S. Western Sahara Foundation</b> a project of the Defense Forum Foundation 3014 Castle Road Falls Church, VA 22044 United States of America <a href="http://www.defenseforum.org">http://www.defenseforum.org</a></p>		

## **I. Introduction**

1. Since 1975, the Moroccan government has occupied the territory of Western Sahara. The United Nations Mission for the Referendum in Western Sahara (MINURSO) was established in 1991 to oversee a cease-fire between Morocco and the Polisario Front, and to implement a referendum on self-determination, which has not yet taken place. The uncertain political situation in the territory, coupled with the lack of an impartial international human rights monitoring and reporting body, has had dire consequences on the rights of the Sahrawi people.<sup>1</sup>

2. This Joint Report, submitted on behalf of the Collective of Sahrawi Human Rights Defenders (CODESA), the Robert F. Kennedy Center for Justice and Human Rights (RFK Center), the Boston University Asylum & Human Rights Program, the Norwegian Support Committee for the Western Sahara, the Fahamu Refugee Programme, the Cairo Institute for Human Rights Studies (CIHRS), and the US-Western Sahara Foundation will discuss particular human rights violations towards individuals and groups, including Sahrawi human rights defenders from 2008 to 2011.

3. Since 2008 the RFK Center and CODESA have been advocating directly to members of the UN Security Council, UN Secretary General Ban-Ki-Moon, and UN High Commissioner for Human Rights Navi Pillay for an international, permanent, and impartial human rights monitoring and reporting mechanism in Western Sahara and in the refugee camps near Tindouf, Algeria.<sup>2</sup> Such a United Nations sponsored body would help de-politicize the issue of human rights in the region, and without one, the severe and ongoing human rights abuses of the Sahrawi people by Morocco documented by this and other stakeholder reports will not be curtailed. We urge the Human Rights Council to take the lead in establishing this independent permanent monitoring body with a specific mandate to monitor, report, and ensure the protection of the human rights of the Sahrawi people.

## **II. Summary of Report**

4. In its last Universal Periodic Review (UPR) in 2008, Morocco voluntarily committed to several recommendations made by the Human Rights Council.<sup>3</sup> In particular, Morocco pledged to “continue its achievements in the field of Human Rights,” to foster the development of a “human rights culture” throughout the country, and “to continue its efforts to improve prison conditions.”<sup>4</sup> Morocco has yet to comply with these conclusions and recommendations concerning its actions towards the Sahrawi people, particularly human rights defenders. This Joint Report, submitted on behalf of the Collective of Sahrawi Human Rights Defenders (CODESA), the RFK Center, the Boston University Asylum & Human Rights Program, the Norwegian Support Committee for the

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<sup>1</sup> Robert F. Kennedy Center for Justice & Human Rights, *RFK Center and CODESA Call on UN Secretary General to Establish Human Rights Mechanism in Western Sahara* (Mar. 31, 2011), <http://rfkcenter.org/node/73058>.

<sup>2</sup> *Id.*; Robert F. Kennedy Center for Justice & Human Rights, *RFK Center Sends Letter to United Nations Security Council Members About MINURSO* (Apr. 14, 2011), <http://rfkcenter.org/node/489>.

<sup>3</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review: Morocco, ¶ 77, U.N. Doc. A/HRC/8/22 (May 22, 2008) [hereinafter Working Group Report].

<sup>4</sup> *Id.* ¶75.

Western Sahara, the Fahamu Refugee Programme and the Cairo Institute for Human Rights Studies (CIHRS), will discuss particular human rights violations towards individuals and groups, including Sahrawi human rights defenders from 2008 to 2011. Morocco has continued to violate fundamental norms of treaty and customary law, as detailed in specific sections below.

5. This Report highlights recent human rights violations affecting Sahrawi communities under Moroccan jurisdiction, including the events surrounding the violent dismantling of the Gdaim Izik camp on November 8, 2010; the arrests and arbitrary detentions of over 100 people following the camp's dismantling; reports of torture and sexual abuse of detained or arrested Sahrawi defenders; the forced expulsion of human rights defender Aminatou Haidar; unfair trials of Sahrawi people; Moroccan interference with Sahrawi freedoms of expression, association and assembly; and the extreme deterioration of the Sahrawi community's economic and social rights.

6. This submission has been prepared based on first-hand information obtained from independent human rights organizations, in particular, CODESA. CODESA is a grassroots collective of Saharawi human defenders distributed throughout occupied Western Sahara who operates under severe risk and constant surveillance. They are deemed illegal and unable to register as an association. Many of the facts related here were obtained primarily through a fact-finding mission conducted in January 2011 by delegates from the RFK Center, who met with CODESA representatives and gathered information in meetings and interviews with Sahrawi victims of human rights abuses, victims' families, human rights defenders, lawyers, representatives of the United Nations Mission for the Referendum in Western Sahara, and Moroccan officials.<sup>5</sup>

### **III. International Covenant on Civil and Political Rights (ICCPR)**

#### **Torture, Cruel and Abusive Treatment, and Due Process**

7. Morocco has consistently demonstrated a lack of respect for basic elements of due process, particularly when confronting Sahrawi human rights defenders. On November 8, 2010, security forces violently destroyed the Gdaim Izik camp, housing between 7,000 and 20,000 people that had been set up outside the city of El Aiun to protest the deteriorating conditions of the Sahrawi living under Moroccan occupation. Despite over a month of negotiations between Moroccan government authorities and the Sahrawi representatives over grievances, Moroccan security forces violently dismantled the camp, abused and mistreated camp residents, and arbitrarily arrested or detained many Sahrawi protesters.

8. Following the dismantling of the camp, Moroccan authorities began a crackdown on Sahrawi human rights defenders. On November 13, 2009, Moroccan authorities at the El Aiun airport detained prominent Sahrawi human rights defender and CODESA's President Aminatou Haidar for claiming Western Sahara rather than Morocco as her place of residence.<sup>6</sup> Ms. Haidar non-violently advocates the civil, political, economic,

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<sup>5</sup> ROBERT F. KENNEDY CTR. FOR JUSTICE & HUMAN RIGHTS, WESTERN SAHARA: ACCOUNTS OF HUMAN RIGHTS ABUSES PERSIST IN WAKE OF NOVEMBER UNREST 2 (2011) [hereinafter RFK REPORT].

<sup>6</sup> Robert F. Kennedy Center for Justice & Human Rights, *Kerry Kennedy Urges Morocco: Allow Return of Illegally Expelled Saharawi Rights Defender, Aminatou Haidar* (Nov. 24, 2009), <http://rfkcenter.org/node/418>.

social and cultural rights of the Sahrawi people.<sup>7</sup> Authorities interrogated Ms. Haidar and held her overnight before forcing her to board a plane for the Canary Islands, retaining her passport and telling her that she would not be allowed to return until she denied that she was a citizen of Western Sahara.<sup>8</sup> Ms. Haidar went on a 32 day hunger strike while stranded at the Lanzarote airport in the Canary Islands.<sup>9</sup> Ms. Haidar was only allowed to return to her home after several prominent international officials from all over the world placed pressure on Morocco, including from the European Union<sup>10</sup> and the U.S. Department of State,<sup>11</sup> as well as United Nations Secretary General Ban Ki Moon,<sup>12</sup> United Nations High Commissioner for Refugees António Guterres,<sup>13</sup> and United Nations High Commissioner for Human Rights Navi Pillay<sup>14</sup>

#### Article 6

9. Article 6 of the ICCPR guarantees an “inherent right to life.”<sup>15</sup> The Human Rights Committee has interpreted this to prohibit enforced disappearances.<sup>16</sup> The Human Rights Committee has also interpreted Article 6 to mandate a State party to investigate allegations of enforced disappearances.<sup>17</sup> Nonetheless, family members of 15 young men who disappeared in December 2005 are still awaiting word on the fate of their relatives.<sup>18</sup> These family members believe that these young men are still alive and being held in detention facilities, in violation of Article 6.<sup>19</sup>

#### Article 7

10. Moroccan forces have subjected Sahrawi human rights defenders to cruel and

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<sup>7</sup> RFK REPORT, *supra* note 5 at 2.

<sup>8</sup> *Id.*

<sup>9</sup> See Robert F. Kennedy Center for Justice & Human Rights, *Aminatou Haidar Returns Home* (Dec. 17, 2009), <http://rfkcenter.org/node/429>.

<sup>10</sup> European Union, *EU presses Rabat over W Sahara activist*, EUBUSINESS (Dec. 10, 2009, 23:02), <http://www.eubusiness.com/news-eu/morocco-spain.1w9>.

<sup>11</sup> Press Statement of Ian Kelly, Department Spokesman, United States Department of State, *Sahrawi Activist Aminatou Haidar* (Nov. 26, 2009), <http://www.state.gov/r/pa/prs/ps/2009/nov/132451.htm>.

<sup>12</sup> Reuters, *UN chief proposes way out on Sahara hunger striker* (Dec. 11, 2009, 5:48 AM), <http://af.reuters.com/article/topNews/idAFJ0E5BA01S20091211>.

<sup>13</sup> UNHCR, *Appeal on humanitarian grounds by UN High Commissioner for Refugees, Mr. António Guterres, in respect of Ms. Aminatou Haidar* (Dec. 4, 2009), <http://www.unhcr.org/4b18f6909.html>.

<sup>14</sup> Radio Netherlands Worldwide, *UN Calls for Right of Return for Hunger Striker* (Dec. 8, 2009, 8:47 PM), <http://www.rnw.nl/english/article/un-calls-right-return-hunger-striker>.

<sup>15</sup> International Covenant on Civil and Political Rights art. 6(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>16</sup> Human Rights Committee, General Comment No. 06: The right to life (art. 6) (1982), in *Human Rights Instruments Volume I: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies* 176, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. 1) (May 27, 2008). (“States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life.”).

<sup>17</sup> *Id.* (“States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”).

<sup>18</sup> RFK REPORT, *supra* note 5, at 4.

<sup>19</sup> *Id.*

degrading treatment in violation of Article 7 of the ICCPR.<sup>20</sup> In the wake of the destruction of the Gdaim Izik camp, those arrested and detained reported poor prison conditions and abusive treatment; such abuses were rampant and well documented.

11. Sahrawi detainees have reported that they were subjected to rape and sexual assault, severe beatings, and inhuman and degrading treatment such as being forced to drink urine, and verbal abuse.<sup>21</sup> In one instance, a man identified as SH reported being sprayed with mace, dragged into a van, stripped of his clothing, restrained around the neck with a rope and beaten by Moroccan forces.<sup>22</sup>

12. Another first-hand report made to the RFK delegation involved a man identified as HMSA, who reported being beaten by security forces while taken from the camp and placed in a truck to be taken to a detention facility.<sup>23</sup> HMSA further alleges that he was sexually assaulted and beaten repeatedly while imprisoned.<sup>24</sup> Other allegations have included reports of sexual abuse of both men and women in detention by Moroccan police.<sup>25</sup>

13. In another instance of extreme abusive treatment, security forces shot at the car of Jhadija Oubhaya, a member of the Gdaim Izik camp, as she was trying to return to the camp, causing her car to crash. The car accident left Oubhaya with a severe head injury, for which she needed emergency medical assistance within twenty-four hours. Security forces did not allow Oubhaya to receive medical care until fifteen days after the accident, at which point she had become paralyzed. The State denied these allegations and did not follow through with any investigation into this matter.<sup>26</sup>

#### Article 9

14. Morocco's subjection of Sahrawi individuals to arbitrary arrest, failure to notify detainees of the reasons for their arrest at the time of their arrest, and failure to "promptly" bring detainees before a judge all constitute violations of Article 9 of the ICCPR.<sup>27</sup> Morocco has also violated several corresponding provisions of its own domestic law. Failing to notify family members of the whereabouts of detainees violates Article 67 of the Moroccan Code of Criminal Procedure,<sup>28</sup> while failing to bring detainees "before the Crown Prosecutor within 48 hours of their arrest" constitutes a breach of Article 66 of Morocco's Code of Criminal Procedure.<sup>29</sup>

#### Article 14

15. Morocco has subjected Sahrawi human rights defenders to trials that fail to meet the minimum standards of Article 14 of the ICCPR.<sup>30</sup> These violations have been

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<sup>20</sup> ICCPR, *supra* note 15, art. 7.

<sup>21</sup> See generally RFK REPORT, *supra* note 5.

<sup>22</sup> RFK REPORT, *supra* note 5, at 10.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 7-8.

<sup>27</sup> ICCPR, *supra* note 15, art. 9.

<sup>28</sup> *Id.* at 16.

<sup>29</sup> *Id.* at 15-16.

<sup>30</sup> ICCPR, *supra* note 15, art. 14.

numerous, consistent and flagrant, so much so that Human Rights Watch has concluded that “[Moroccan] courts seldom provide fair trials in cases with political overtones.”<sup>31</sup>

16. One individual known as HMSA was not informed of the charges against him at the time of his arrest, while others were never informed whether their release was provisional or permanent.<sup>32</sup> Moreover, in the aftermath of the destruction of the Gdaim Izik camp some detainees were forced to sign or thumbprint documents that they were not allowed to read.<sup>33</sup> All of these violate the guarantees of Article 14.

#### Freedoms of Association, Expression and Assembly

17. Morocco has violated several Articles of the ICCPR in its attempt to stop dissenting opinions concerning Western Sahara and the Sahrawi people. Moroccan policies and actions have severely curtailed the freedom of the Sahrawi people to associate, to express their opinions, and to peaceably assemble. Morocco has demonstrated intolerance for political dissent, prevented non-violent assembly, interfered with the formation<sup>34</sup> and functioning of NGOs,<sup>35</sup> persecuted those who publicly expressed dissenting viewpoints, violently dispersed those peaceably assembling at Gdaim Izik, and persecuted Sahrawi human rights defenders.<sup>36</sup>

#### Article 19.2

18. Morocco’s interference with the abilities of Sahrawi individuals to express their political beliefs constitutes a violation of Article 19.2 of the ICCPR.<sup>37</sup> This article guarantees the right of freedom of expression generally, and specifically extends this right to journalists and other members of the media.

19. Morocco has demonstrated that it will not tolerate dissenting political views in the press, or any other sort of public criticism. Morocco has placed increased regulations on television stations in an attempt to control content, and instituted boycotts of periodicals leading to their closure.<sup>38</sup> Furthermore, human rights defenders and journalists have been punished for publicly criticizing state officials or institutions, or commenting on politically sensitive topics.<sup>39</sup>

20. In October 2009, Moroccan officials detained eight individuals at Salé Civil Prison in a blatant assault on freedom of expression. One of these individuals was a reporter, detained following his publication of an article on the health of King Mohamed VI; he was held in solitary confinement. The other seven were Sahrawi human rights defenders involved with multiple Sahrawi rights groups who were arrested following

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<sup>31</sup> Human Rights Watch, WORLD REPORT 2011 570 (2011) [hereinafter HRW REPORT].

<sup>32</sup> RFK REPORT, *supra* note 5, at 11.

<sup>33</sup> *Id.* at 12.

<sup>34</sup> See RFK REPORT, *supra* note 5, at 12; OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS, STEADFAST IN PROTEST: ANNUAL REPORT 2011 551 (2011) [hereinafter OBSERVATORY REPORT].

<sup>35</sup> See RFK REPORT, *supra* note 5, at 12-13.

<sup>36</sup> See AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2011: THE STATE OF THE WORLD’S HUMAN RIGHTS 232 (2011) (Identifying individuals, such as Taoufik Bouachrine, Chekib El Khiari, and Kaddour Terhzaz who have been imprisoned for criticizing the Moroccan government.) [hereinafter AMNESTY REPORT].

<sup>37</sup> ICCPR, *supra* note 15, art. 19(2).

<sup>38</sup> AMNESTY REPORT, *supra* note 36, at 232-33.

<sup>39</sup> *Id.*

their visit to Polisario Front camps in southwest Algeria. The cases of these seven were transferred to a military court, where the charges against them involved attacking the territorial integrity of the Moroccan state.<sup>40</sup> These detentions constitute a violation of the right of freedom of expression guaranteed under Article 19 of the ICCPR, as well as violations of due process, discussed above.

#### Article 21

21. Morocco has consistently infringed upon the rights of the Sahrawi people to assemble non-violently, in violation of Article 21 of the ICCPR.<sup>41</sup> Among the most dramatic recent examples of this was the attack on dissent involved in the destruction of the Gdaim Izik Camp in November 2010. Prior to being destroyed, the Gdaim Izik Camp had been erected in order to give Sahrawi the opportunity to express their economic grievances and protest Moroccan governmental policies.<sup>42</sup>

22. Morocco also used heavy police presence to break up non-violent assemblies of solidarity protesters shortly after the Gdaim Izik events.<sup>43</sup> Morocco has also failed to adhere to the requirements of its own domestic law, most notably the Dahir (Royal Decree) No. 1.58.376, with respect to permitting the formation of associations.<sup>44</sup>

#### Article 22

23. Morocco has used a variety of tactics to interfere with the rights of the Sahrawi people to freely associate with each other, in violation of Article 22 of the ICCPR.<sup>45</sup> Morocco has harassed and persecuted individuals associated with human rights organizations. Indeed, many human rights defenders operating within Morocco report that they “do their work at great personal risk and under intimidation by government forces.”<sup>46</sup> Individuals involved with Sahrawi human rights organizations were persecuted by the Moroccan government in the aftermath of the Gdaim Izik events,<sup>47</sup> and accounts suggest that even innocuous association with international human rights organizations can lead to harassment and persecution at the hands of Moroccan authorities.<sup>48</sup>

24. Additionally, Morocco has violated Article 22 by refusing to allow certain human rights organizations to form within the Kingdom. In particular, Morocco has refused to allow CODESA<sup>49</sup> to organize as a non-governmental organization. Additionally, the

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<sup>40</sup> Amnesty International, *Morocco/Western Sahara: Eight new prisoners of conscience in October* (Nov. 6, 2009), <http://www.amnesty.org/en/library/asset/MDE29/011/2009/en/b9eb683c-3715-4d48-a8bc-50ffca5eaa1c/mde290112009en.html>.

<sup>41</sup> ICCPR, *supra* note 15, art. 21.

<sup>42</sup> RFK REPORT, *supra* note 5, at 4.

<sup>43</sup> *Id.* at 12.

<sup>44</sup> OBSERVATORY REPORT, *supra* note 34, at 551.

<sup>45</sup> ICCPR, *supra* note 15, art. 22.

<sup>46</sup> RFK REPORT, *supra* note 5, at 13.

<sup>47</sup> AMNESTY INTERNATIONAL, RIGHTS TRAMPLED: PROTESTS, VIOLENCE AND REPRESSION IN WESTERN SAHARA 21 (2010) [hereinafter RIGHTS TRAMPLED] (“Members of Sahrawi human rights organizations and Sahrawi political activists who have previously been detained or harassed by the authorities were among those arrested by the Moroccan authorities on 8 November and in following days and weeks.”).

<sup>48</sup> RFK REPORT, *supra* note 5, at 14 (“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.”).

<sup>49</sup> *Id.* at 12.

National Association of Unemployed Graduates in Morocco (ANDCM), the Group Against Racism and for Assisting and Defending Foreigners and Migrants (GADEM), the Ennassir Association for the Support of Islamist Prisoners, the Amazing Network for Citizenship or the Saharawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State/L'Association Sahraouie des Victimes des Violations Graves des Droits de l'Homme Commises par l'Etat Marocain (ASVDH) have also been deprived of legal status.<sup>50</sup>

#### **IV. Convention Against Torture (CAT)**

##### *Article 1*

25. In its October 2011 submission to the CAT report, CODESA has informed that different security agencies of the Moroccan government continue to perpetrate acts of physical and psychological torture against Sahrawi people including ‘suspending the detainees from an iron bar tied by hands and feet with a dirty piece of cloth placed in their mouth soaked in liquid acid until the victims lose consciousness’, ‘attaching an electric current to genital organs’, ‘forced ingestion of human excrement’, ‘immersing the detainee’s head into a small swimming pool filled with acid water, excrement, urine, and chemical products like detergent until asphyxiation’, ‘keeping detainees naked in prisons cells over several days’, ‘sleep deprivation’, and ‘threatening rape against the detainee or the detainee’s relatives’ among many others. A number of independent reports conducted in Western Sahara in the aftermath of the Gdaim Izik camp documented abuses that meet the CAT’s Article 1 definition of torture. Such abuse also violates Moroccan Law No 43-04, which criminalizes acts of torture using language broadly consistent with Article 1 of the CAT.<sup>51</sup> Some of these reports describe instances in which Sahrawi prisoners were subjected to rape, beatings so severe that detainees “sustained fractured limbs, open wounds, and loss of consciousness.”<sup>52</sup> Others describe instances of degrading treatment, including reports that detainees were forced to drink urine.<sup>53</sup> In some cases, the objective of this treatment seems to have been to coerce a confession to a crime.<sup>54</sup> In others, the objective appears to have been “to punish protesters for their advocacy of their right to self-determination for the people of Western Sahara.”<sup>55</sup> In its October 2011 submission to the CAT report, CODESA also reported the specific case of Daoudi Brahim, a Sahrawi man detained on November 8, 2010, at the police station in the city of El Aaiún after the dismantlement of the Gdeim Izik camp by Moroccan forces. Some detainees reported that he was seriously tortured during his detention. He was taken to the military hospital because of the deterioration of his condition, where he died later on.

##### *Article 12*

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<sup>50</sup> OBSERVATORY REPORT, *supra* note 34, at 551.

<sup>51</sup> RIGHTS TRAMPLED, *supra* note 47, at 16.

<sup>52</sup> UNITED STATES DEPARTMENT OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES – WESTERN SAHARA 5 (2011), available at <http://www.state.gov/documents/organization/160080.pdf> [hereinafter US REPORT].

<sup>53</sup> RFK REPORT, *supra* note 5, at 7.

<sup>54</sup> See US REPORT, *supra* note 52.

<sup>55</sup> RIGHTS TRAMPLED, *supra* note 47, at 11.



26. Morocco's failure to effectively investigate allegations of abuse and torture violates both Article 12 of the CAT and its own domestic law. Article 12 imposes a duty for a state party to commence "prompt and impartial" investigations whenever it has a "reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."<sup>56</sup> Additionally, Moroccan Law No. 43-04 makes torture a domestic criminal offense, implying that Morocco has an internal responsibility to investigate and prosecute individuals who have allegedly violated this law.<sup>57</sup> Morocco's failure to start independent investigations into allegations of torture constitutes a violation of both international and domestic law. CODESA, Amnesty International and Human Rights Watch routinely have received and continue to document cases of torture by Moroccan authorities.<sup>58</sup>

### Article 13

27. Article 13 of the CAT provides that "any individual who alleges he has been subjected to torture . . . has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities."<sup>59</sup> Furthermore, under Article 134 of the Moroccan Code of Criminal Procedure, prisoners have the right to medical examination in order to ascertain injuries or bruises on prisoners.<sup>60</sup>

28. In addition to failing to independently initiate its own investigations into allegations of torture, Morocco has also obstructed the ability of victims to report such abuses. In the aftermath of Gdaim Izik, victims of torture and abuse "sought to lodge formal complaints but had been unable to do so because guards had blocked their access to the office of the prosecutor or because staff there refused to receive or register their complaints."<sup>61</sup> Additionally, Moroccan judges failed to refer detainees for medical examination, even after detainees complained of abuse.<sup>62</sup>

## **V. International Covenant on Economic, Social and Cultural Rights (ICESCR)**

29. The Sahrawi people continue to be severely economically and socially marginalized. The GDP per capita in the Western Sahara is approximately half of the GDP per capita in Morocco proper.<sup>63</sup> Unemployment statistics in Western Sahara are shocking. While recent estimates suggest that the unemployment rate in Morocco proper

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<sup>56</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT].

<sup>57</sup> RIGHTS TRAMPLED, *supra* note 47, at 16.

<sup>58</sup> AMNESTY REPORT, *supra* note 36, at 233; Human Rights Watch, *Morocco/Western Sahara: Dissidents in Prison, Unfair Trials* (Jan. 24, 2011), <http://www.hrw.org/news/2011/01/24/moroccowestern-sahara-dissidents-prison-unfair-trials>.

<sup>59</sup> CAT, *supra* note 56.

<sup>60</sup> RIGHTS TRAMPLED, *supra* note 47, at 15.

<sup>61</sup> *Id.* at 16.

<sup>62</sup> *Id.* at 15.

<sup>63</sup> See Central Intelligence Agency, *Morocco*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html> (last updated Nov. 15, 2011); Central Intelligence Agency, *Western Sahara*, CIA World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/wi.html> (last updated Nov. 10, 2011) GDP per capita in Morocco was \$4,800 as of 2010, while the GDP per capita in Western Sahara was \$2,500 as of 2007.

is at 9.8%, these estimates show that the unemployment rate in the Saharan region under Moroccan control are a staggering 28%.<sup>64</sup> Some sources indicate that this disparity is the result of institutional discriminatory practices against the Sahrawi people.<sup>65</sup> This lack of ability to find employment has contributed to the economic and social marginalization of the Sahrawi community as a whole.<sup>66</sup>

### Article 2

30. Morocco has failed to fulfill its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) with respect to the Sahrawi people in its jurisdiction. The ICESCR requires State Parties to respect and ensure the economic and social rights of all persons under its jurisdiction, including adopting legislation to protect such rights.<sup>67</sup> The Committee on Economic, Social and Cultural Rights has concluded in General Comment 3 that: “a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant.”<sup>68</sup> “[E]ven where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.”<sup>69</sup> By failing to take action to correct the disparities between Moroccans and the Sahrawi, and allowing the Sahrawi people to be economically marginalized, Morocco is failing to comply with its obligations under this instrument.

## **VI. Conclusions and Recommendations**

31. In Morocco’s last Universal Periodic Review in 2008, it pledged to “continue its achievements in the field of human rights,” “to continue its efforts to improve prison conditions,” “[t]o promote a culture of human rights and . . . consolidate the human rights culture in the country,” and “[t]o continue to harmonize . . . its domestic law with regard to its international obligations on human rights.”<sup>70</sup> During the four years since Morocco agreed to these directions, Morocco has failed to meet the Human Rights Council’s recommendations, specifically concerning the Sahrawi people, as this Report describes.

32. The Human Rights Council issued a series of recommendations to Morocco in its prior Periodic Review to improve prison conditions, improve domestic law to bring it more in line with international human rights obligations, and to continue promoting human rights.<sup>71</sup> Despite the issues identified in the Periodic Review, and further recommendations by the Human Rights Council, Morocco has failed to make progress on the recommendations with regard to the Sahrawi people. Morocco has failed to comply

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<sup>64</sup> RFK REPORT, *supra* note 5, at 15.

<sup>65</sup> Equal Rights Trust, *Torture and Discrimination in Western Sahara*, 4 EQUAL RTS. REV. 77, 80 (2009), available at <http://www.equalrightstrust.org/ertdocumentbank/testimony%20new.pdf>.

<sup>66</sup> RFK REPORT, *supra* note 5, at 4.

<sup>67</sup> International Covenant on Economic, Social and Cultural Rights art. 2, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>68</sup> Rep. of the Comm. on Econ., Soc. and Cultural Rights, 5th Sess., Nov. 26-Dec. 14, 1990, 85-86, U.N. Doc. E/1991/23 (1991).

<sup>69</sup> *Id.*, ¶ 11.

<sup>70</sup> Working Group Report, *supra* note 3, at ¶75.

<sup>71</sup> *Id.*

with the critical concerns about torture, abuse, enforced disappearances, arbitrary arrests and detentions, lack of due process, interference with speech, expression and assembly, and in particular, political expression rights of the Sahrawi people. The prior recommendations remain essentially unimplemented.

33. Based on the failure to implement recommended reforms, far more is needed from the UN human rights machinery to monitor and report on abuses against the Sahrawi people by the Moroccan authorities. The submitting organizations join other human rights groups in proposing the establishment of an independent international monitoring body to oversee Morocco's treatment of the Western Saharan and the Sahrawi people. The submitting organizations suggest any of the three main international human rights organs as an appropriate monitoring body: one of the treaty-based bodies, the Office of the High Commissioner for Human Rights, or the special procedures.<sup>72</sup> Any of these three options would be effective because they are "independent, international, and permanent."<sup>73</sup> Unlike NGOs and National Human Rights Institutions (NHRIs), international monitoring bodies do not have the same funding or registration restrictions.<sup>74</sup> Moreover, they are international and thus will not be coerced or fearful of conflict with the state government—issues which have prevented NHRI investigations into arbitrary arrests and torture to date.<sup>75</sup> Lastly, due to their permanence and their mandate towards all the relevant countries in the region, any of these bodies can provide an ongoing presence to monitor the situation in the Western Sahara and the Sahrawi refugee in the region.<sup>76</sup>

34. The Sahrawi people must be protected from repression from the Moroccan government. Sahrawi held in *incommunicado* detention must be accounted for, and all Sahrawi political prisoners must be released. Human Rights violations must be investigated and due process of law guaranteed. The Sahrawi must be guaranteed their civil, political, economic, social and cultural rights under international norms and Moroccan law. We call on the United Nations Human Rights Council to implement an effective permanent, and impartial human rights monitoring, and reporting body in Western Sahara and designate a Special Rapporteur for Western Sahara within Special Procedures without delay, in order to protect the rights of the Sahrawi people.

**For more information, please contact:**

Marselha Gonçalves Margerin  
Advocacy Director, RFK Partners for Human Rights  
The Robert F. Kennedy Center for Justice & Human Rights  
(202) 463-7575 ext. 224  
gmargerin@rfkcenter.org

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<sup>72</sup> *Id.* at 15–19.

<sup>73</sup> *Id.* at 19.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 5.

<sup>76</sup> ROBERT F. KENNEDY CTR. FOR JUSTICE & HUMAN RIGHTS, RECOMMENDATIONS FOR EFFECTIVE HUMAN RIGHTS MONITORING IN WESTERN SAHARA (2011).