

September 3, 2012

## **PRELIMINARY OBSERVATIONS**

### **Robert F. Kennedy International Delegation Visit to Morocco Occupied Western Sahara and the Refugee Camps in Algeria**

On Friday, August 31, 2012 an international delegation of the Robert F. Kennedy Center for Justice and Human Rights (RFK Center) concluded a visit to evaluate the human rights situation in Moroccan-controlled Western Sahara and the Sahrawi refugee camps near Tindouf, Algeria. The RFK Center delegation met with victims of human rights violations, a broad range of representatives of civil society, representatives of the international community, and government officials.

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

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

## **Introduction**

For nearly 40 years, Morocco and the independence movement Popular Front for the Liberation of Saguía el Hamra and Río de Oro (Polisario Front) have claimed sovereignty over Western Sahara, a former Spanish colony. In 1976, the Polisario Front formed the Sahrawi Arab Democratic Republic (SADR), establishing a government in exile in the refugee camps near Tindouf, Algeria. A presidency and several governmental institutions such as the Ministries of Foreign Affairs, Interior, Justice, and Defense form the government in exile.

In 1974, Morocco asked the International Court of Justice (ICJ) to adjudicate its claims to sovereignty over Western Sahara, an effort that was later joined by Mauritania. In October 1975, the ICJ rendered its opinion that neither Morocco nor Mauritania presented any information that supported their claims to sovereignty over the territory. The matter was referred to the UN Decolonization Committee, as Western Sahara is considered a non-self governing territory. Since then, over 100 UN resolutions reaffirm the right of self-determination of the Sahrawi, the indigenous people of Western Sahara. The SADR is a member of the African Union (AU) and has been recognized as a state by approximately 50 countries. The United Nations and the League of Arab States have not recognized the SADR as the government of an independent state. No country has recognized the sovereignty of Morocco over Western Sahara.

In 1988, Moroccan and Polisario Front representatives agreed on a joint UN/OAU (Organization of African Unity, predecessor of the African Union) settlement proposal for a referendum, but due to disagreements over who could vote and what options of self-determination could be voted on, it never took place. In 1991, the UN brokered a ceasefire and established the United Nations Mission for the Referendum in Western Sahara (known by its French acronym, MINURSO), which deployed a monitoring force to the territory comprised of approximately 200 persons. MINURSO's mandate includes the monitoring of the ceasefire agreement and the administration of the referendum that has yet to take place.

Over the last decades, many local and international organizations have denounced human rights violations by the Moroccan government against the Sahrawi people living in Western Sahara, particularly Sahrawi who criticize the government of Morocco. The Moroccan government, as well as some local civil society organizations, has also expressed concern regarding human rights violations by the Polisario Front in the refugee camps.

While the delegation recognizes that the political context of this conflict has an impact on the full enjoyment of human rights, and stirs an emotional debate for people on all sides of the conflict, the RFK Center delegation does not take sides regarding the status of Western Sahara. **However, the failure of the parties to enact a permanent solution to the future of Western Sahara does not limit the international responsibility of the current administrations, to abide by international norms regarding respect for the human rights of people under their jurisdiction.**

The RFK Center delegation visited El-Ayoun, the capital of Western Sahara, and refugee camps in Algeria to evaluate the human rights situation. The delegation also held meetings in Casablanca, Rabat, and Algiers with human rights experts, members of civil society, and government officials. The RFK Center will write a comprehensive report based on the findings from the visit. At this time, the delegation has prepared the following preliminary observations.

### **Preliminary Observations In Moroccan-Controlled Western Sahara**

The RFK Center delegation recognizes the positive changes made to the Moroccan Constitution that include the criminalization of torture, arbitrary detention, and enforced disappearances. Additional important changes in the Constitution include greater gender equality and freedom of expression. These constitutional changes should be implemented with appropriate mechanisms to allow for the full enjoyment of the rights of the people under Moroccan jurisdiction without discrimination.

The delegation recognizes the importance of the creation of the Moroccan National Human Rights Council (CNDH). The delegation met with representatives of the CNDH and received information about initiatives to promote civil society participation and the procedures to present claims of human rights violations. The RFK Center delegation reminds the Moroccan government of the importance to follow the Paris Principles for National Human Rights Institutions, particularly in regard to strengthening and respecting the CNDH's capacity to operate independently.

The delegation is grateful to the Governor and to the Mayor of El-Ayoun, and to more than 70 people representing NGOs and civil society organizations who are pro autonomy or integration for meeting with us and sharing their views. Their willingness to meet with us, their expressions of concern about their family members and colleagues in the refugee camps, the information they shared about disappearances and other human rights abuses committed during the war years, and their expressions of concern about future generations helped us understand the current climate in Western Sahara.

The delegation is particularly grateful to the members of Parliament with whom the delegation met in Rabat, for their open exchange and willingness to address the issues the delegation raised. The RFK Center looks forward to working with them in the future.

The delegation met with civil society organizations and individuals from several cities in Western Sahara and the South of Morocco, including El-Ayoun, Dahkla, and Smara, who presented information about cases of disappearances, torture, arbitrary detention, police brutality, threats, intimidation, and extrajudicial executions. The delegation also received complaints about the violation of the rights to freedom of expression, freedom of assembly, and freedom of association.

**During the visit to El-Ayoun, the delegation observed two or more police or military vehicles stationed on almost every street corner.** Most of the Sahrawi interviewed expressed concerns about being intimidated by the large presence of police and military personnel, both uniformed and plain-clothed, that followed them on the street and verbally abused them with pejorative and discriminatory remarks. The RFK Center delegation was also constantly surveilled by plain-clothed security officers during the entire stay in El-Ayoun. Many of the Sahrawi interviewed described living in a “climate of fear.”

**The delegation also received testimony of many cases of police brutality against non-violent demonstrators.** The delegation witnessed one such incident in which one uniformed police officer and three individuals, identified by civil society organizations as State agents, attacked a woman who was peacefully protesting. The delegation documented the instance of the violation, the attempts by security forces to block the delegation from witnessing the incident, the verbal and physical assault on the delegation by security forces, and the survivor of the attack receiving medical treatment in the hospital. In an effort to discredit the delegation's report of the incident, an official State press release reported by Moroccan media claimed the woman fainted on the street and injured herself. The following day when the delegation showed the photograph of the woman beaten by the police to a representative of the Minister of Interior, El Arbi Mrabet, he insinuated that the photograph was not good evidence because it could have been tampered with. Two of the individuals who participated in the beating were identified as Mohamed Al Hasouni and the vice-governor for the region (Basha) Mohamed Natichi. Both are identified in multiple victim testimonies for their repeated involvement in human rights violations. The RFK Center delegation asked the Moroccan government to immediately suspend the state agents responsible for this human rights violation, pending investigation. Furthermore, the delegation asked for assurances that neither man would be transferred to a position where victims could be vulnerable to attack.

**The RFK Center delegation also received testimony of the repeated brutality inflicted by police on a mentally handicapped man who participated in protests.** According to the human rights organization representing the man, the police beat him during protests in 2005, 2008, and 2012, and appear to single him out for brutality.

**The delegation met with the family of Said Dambar, 26, who was shot and killed by a Moroccan police officer after being beaten on December 21, 2010.** The family believes that Said was targeted because the family's participation in demonstrations for the independence of Western Sahara. After the incident, the police went to the family's house to inform them that Said had been beaten and requested his documentation. The police claimed that he only had a minor arm injury, which was being treated at the hospital. Dambar's family went to the hospital and waited for several hours without knowing his condition or whether he was alive. On December 23, he was officially pronounced dead and his family was only permitted to see his head, which clearly evidenced a bullet wound.

A court ruled that the murder was an accident and the police officer was sentenced to 15 years in prison. In spite of several requests by human rights organizations to fully investigate the causes of Dambar's murder and conduct an autopsy, Morocco has not advanced any serious investigation or autopsy. Despite Dambar's family refusal to bury Said until a complete autopsy was performed, on June 4, 2012, at 8:30 am, Moroccan authorities presented Dambar's family with a court order requiring that his body be buried at 9:00 am that same day. The family refused to sign the order and continues to call for an autopsy and demands to know the whereabouts of the body. Dambar family members are consistently followed by plain-clothed police officers.

**A major concern for the delegation is the nearly absolute impunity for human rights violations.** For instance, in spite of the numerous denunciations of cases of torture received by the delegation, the Prosecutor of First Instance in El-Ayoun informed the delegation that, over the past five years, only one state agent was successfully prosecuted for committing an act of torture.

The delegation met with family members of victims of forced disappearances who informed the delegation about the prevailing impunity. The impunity affects the cases of force disappearances from the 60s, to more recent cases.

The delegation also received numerous testimonies regarding impunity for past human rights violations. The delegation was informed of the work of the Moroccan Equity and Reconciliation Commission (ERC), a Truth Commission created with the mandate to investigate forced disappearances and arbitrary detentions carried out between 1956 and

1999 and to recommend reparations for the victims. While the ERC played an important role in initiating a process to deal with the atrocities of the past, many people believed that it has failed to satisfy scores of victims on both sides of the conflict and that the recommendations have not been fully implemented, denying access to justice, truth, and reparation to many victims.

**The delegation received information regarding the violation of the rights to freedom of expression, right to assembly, and right to association against the Sahrawi people.** The delegation met with representatives of a group of seven people criminally prosecuted under spurious charges for expressing their opinions. The group was arrested and charged with treason upon their arrival in Morocco after criticizing the Moroccan government from Algeria. The group was imprisoned and is now on provisional release, pending a final decision.

**A major concern expressed by Sahrawi human rights defenders is their inability to register as civil society organizations.** This is particularly the case for many organizations whose opinions are in opposition to the Moroccan government. For instance, the organization Collective of Sahrawi Human Rights Defenders (CODESA) has not received a response to the application for registration presented in 2007. In a similar situation are the Association of Victims of Grave Human Rights Violations (ASVDH) and the El-Ayoun chapter of the Association of Moroccan Human Rights Defenders (AMDH). Registration is essential for allowing the organizations to effectively advocate in their communities.

**The delegation received information indicating a pattern of attacks and intimidation against human rights defenders.** Assaults, threats, illegal searches, surveillance, criminal prosecutions, and statements by high-level authorities discrediting and stigmatizing the work of human rights defenders, are some of the activities designed to hamper and discourage their work.

A group of lawyers informed the delegation of the permanent harassment and obstacles they face for representing victims of human rights violations that have been detained and tortured for participating in peaceful demonstrations.

The case of Aminatou Haidar best symbolizes the state of oppression confronted by human rights defenders in Western Sahara for more than three decades. Aminatou Haidar is one of Western Sahara's most prominent human rights defenders. After years of illegal imprisonment, torture, and abuse under the Moroccan occupation, Ms. Haidar courageously maintains a firm commitment to non-violence. In 1987 Aminatou was "disappeared" after participating in a peaceful demonstration. While in detention,

Aminatou was tied to a wooden plank with her head down, and repeatedly kicked, had chemical-soaked cloths forced in her mouth, and received electrical shocks all over her body. During the entire period of her detention, Ms. Haidar was blindfolded, kept in inhumane conditions and totally isolated from the outside world. Her health has been permanently damaged by the abuse suffered at the hands of the Moroccan police.

On June 17, 2005, again Ms. Haidar was brutally beaten and injured by the police during a peaceful demonstration in El-Ayoun. She was then arrested at the hospital, after being treated for a wound requiring 12 cranial stitches and for three broken ribs. She spent seven months of detention in the infamous “Black Prison” of El-Ayoun.

Today, the Moroccan authorities continue to harass Aminatou Haidar by restricting her freedom of movement, violating her right to trial, denying the registration of her CODESA, and by having plain-clothed police officers constantly follow her.

**The RFK Center’s Mission was also subjected to intimidation and harassment that obstructed our ability to work.** During our stay in El-Ayoun, the delegation was permanently followed by two or more cars and plain-clothed police officers attempted to stop the delegation from viewing and documenting the beating of a peaceful protester.

**The delegation is deeply concerned about the possibility of retaliation to the people that collaborated with the RFK Center.** The drivers of the delegation have been intimidated for helping us during our stay and the hospital personnel that allowed the members of the delegation to visit the woman beaten during the peaceful demonstration was threatened with losing their jobs. In addition, police monitoring of Aminatou Haidar’s movement has significantly increased before and after the delegation visit.

State interference with the work of human rights defenders is contrary to Morocco's critical role in the approval of the United Nations Declaration on the Protection of Human Rights Defenders (UNDPHRD). Morocco cosponsored the Human Rights Defenders Declaration that represented an extraordinary first step in the international protection of human rights defenders and Morocco should be proud of that contribution. **Unfortunately, Morocco is not applying the principles of the Declaration when it comes to defenders in Western Sahara.**

The RFK Center delegation considers that in Moroccan-controlled Western Sahara, the overwhelming presence of security forces, the violations of the right to life, liberty, personal integrity, freedom of expression, assembly, and association creates a state of fear and intimidation that violates the rule of law and respect for human rights of the Sahrawi people. **The Robert F. Kennedy Center asks the Government of Morocco to put an**

**end to the pattern of violence that affect the Sahrawi people that support the independence of Western Sahara.**

The delegation would like to note that Morocco has signed and ratified several international human rights treaties establishing international responsibility for human rights violations. Among others, the treaty on the International Convention for the Protection of All Persons from Enforced Disappearance, the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), the Convention on the Elimination of all Forms of Discrimination Against Women, the United Nations Declaration on the Protection of Human Rights Defenders (UNPHRD). The delegation also reminds Morocco of the recent draft recommendations of the Universal Periodic Review (UPR) in the United Nations Human Rights Council (HRC), which called for respect for human rights, specifically in Western Sahara.

### **Preliminary Observations in the Sahrawi Refugee Camps**

The delegation also conducted an assessment of the human rights situation in the Sahrawi refugee camps near Tindouf, Algeria in the Sahara desert. Whereas it is an UNCHR recognized refugee camp, the Sahrawi Arab Democratic Republic (SADR), the Polisario Front government in exile, has established institutions to administer the camps. The refugee camps have been in existence since the conflict began in 1975, and provide temporary housing in very harsh conditions for more than 100,000 Sahrawi people.

The refugees are divided in five camps, Smara, El Aaiun, 27 of February, Ausserd, and Dajla. Seven small camps, administered by elected mayors and a governor, form each camp. Each camp elects their own members of parliament. Central institutions and international humanitarian organizations are located in the Rabuni administrative center near Tindouf.

The delegation walked freely in the camps and interviewed several people, including members of civil society and individual refugees. The delegation also visited the prisons for men, women, and children and interviewed several of the detainees. The delegation also met with UNHCR, the Algerian Red Crescent, the World Food Program, and MINURSO's liaison office present at the camps. The Sahrawi Red Crescent is responsible for distribution of food rations to the population. The delegation also met with the organization Doctors of the World and other international volunteers assisting the population. Civil society appears to be free to associate and women have a very prominent role in society and in the administration of the camp.

Under 47C/115F degree heat, the delegation had a glimpse of the harsh conditions Sahrawi refugees have endured during the past 37 years. We heard concerns about food ration quantity and quality, and the lack of opportunity amongst a highly educated population, where women's literacy rate is around 95 percent. We heard stories that reflect longing and anxiety produced by family separation and the urgency to find solutions to human rights violations of the past, especially disappearances of family members during the war.

**While the organization and the administration of the camps have brought a sense of stability and normalcy, the delegation would like to express its concern at the vulnerability of this large population living in isolated refugee camps for almost four decades.** In spite of the international collaboration to provide more than 100,000 people with the basic necessities of life, representatives from international organizations supporting the refugees expressed to the delegation that the conditions in the refugee camps could have negative consequences for the physical and psychological integrity of the inhabitants. The delegation observed conditions in the camps, which cannot be accepted as part of any permanent standard of living. These conditions include, among others, permanent exposure to extreme heat, limited electricity and sanitation, lack of variety in diet, and very limited career alternatives.

The parties to the conflict along with the international community have the responsibility to renew and strengthen the efforts to find a sustainable living situation for the more than 100,000 people living in the refugee camps. **While basic living standards may be adequate in refugee camps as part of a temporary solution, after four decades these standards are no longer acceptable and are seriously affecting the life's dreams and aspirations of more than 100,000 people.**

The RFK Center will write a comprehensive report of the visit that will cover additional aspects not included in these preliminary observations. The delegation hopes that this visit, the preliminary observations, and the report that the RFK Center will prepare in the coming months will help governments and people develop plans and implement changes to advance the protection of human rights. The RFK Center will continue its collaboration and support.

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. RFK Partners 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.