



HUMAN  
RIGHTS  
WATCH

## OFF THE RADAR

Human Rights in the Tindouf Refugee Camps



## **Off the Radar**

**Human Rights in the Tindouf Refugee Camps**

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## Summary

For four decades tens of thousands of Sahrawi refugees have lived in remote refugee camps in the Sahara desert near the Algerian town of Tindouf. With the assent of Algerian authorities, the Popular Front for the Liberation of Saguia el Hamra and Rio de Oro (Polisario) administers the camps. It also administers the narrow band of Western Sahara that is not presently under Moroccan occupation. While a UN-monitored ceasefire between the two sides has held since 1991, the prospect of a lasting settlement and the return of refugees to their homeland remains elusive. The refugees, who number between 90,000 and 125,000, according to estimates by UN agencies, continue to rely primarily on international aid for basic necessities. While the Polisario says that it welcomes human rights monitoring and has posed no obstacles to visits by Human Rights Watch, monitoring by impartial organizations and agencies in the camps has been sporadic at best, in part owing to the camps' remoteness.

This report, the result of a two-week research mission to the camps in late 2013, is Human Rights Watch's first update on the human rights situation in the camps since 2008. While researchers found no evidence of any patterns of serious abuse, they identified several areas of concern.

### Freedom of Movement

Most of the refugees who spoke to Human Rights Watch said the Polisario does not prevent refugees from traveling out of and back to the Tindouf camps, including to resettle in Moroccan-controlled Western Sahara. Some refugees who resettled there mentioned that they had concealed their plans beforehand because they feared that the Polisario might prevent them from traveling. Still, only two people reported some interference by SADR authorities that, in the event, did not prevent them from completing travel. Other refugees said that they had recently visited Moroccan-controlled Western Sahara and returned to the camps without facing either obstruction from the Polisario or social stigma from their neighbors. They described such visits as increasingly commonplace.

The Polisario regulates travel to the areas of Western Sahara that it controls, but not, according to refugees, in an obstructive fashion. However, some refugees said that they face difficulties traveling through Algeria outside of Tindouf. Algerian authorities require Sahrawi

refugees to obtain permits for travel beyond Tindouf and temporarily confiscate Algerian passports held by Sahrawi refugees upon their arrival at major Algerian entry points.

## **Freedom of Speech, Association, and Assembly**

Human Rights Watch encountered no case of a person whom the Polisario Front imprisoned for his political views, expression, or activity, either during its visit in 2007 or in 2013. In between those two visits, the only case of a clearly politically motivated detention was that of Mustapha Ould Selma. In addition, the family of El Khalil Ahmed, a senior Polisario official, allege that Algerian authorities have detained him incommunicado since 2009 (see below).

The refugees describe the Polisario as generally tolerating refugees criticizing openly its management of day-to-day affairs in the camps. They say SADR authorities rarely suppress, violently or otherwise, non-violent demonstrations and sit-ins by refugees; those Human Rights Watch interviewed did not cite any instance of the Polisario suppressing the organization of dissident groups, or engaging in generalized persecution of their members. However, few dissident groups appear to have formed in recent years, and Human Rights Watch heard allegations of occasional efforts by authorities to curb political activism.

The Polisario monopolizes political discourse in the camps. Opposition to its fundamental goal of political self-determination for Western Sahara is rarely heard. Official media of the SADR do not give voice to critical or dissident viewpoints. The impact of independent media is impossible to gauge, but is most likely small since such media rely on limited internet access to reach an audience. The SADR's constitution bans political parties other than the Polisario, pending Western Sahara's independence. The Polisario has traditionally presented itself as a big-tent movement with room for diverse viewpoints provided that all embrace the goal of independence for Western Sahara. Independent civil society groups in the camps are few in number. The only prominent and well-established human rights organization, the Asociación de Familiares de Presos y Desaparecidos Saharauis, does not monitor human rights in the camps, but rather advocates only for Sahrawi victims of alleged abuses committed by Morocco.

## **The Use of Military Courts to Investigate and Try Civilians**

Few Sahrawi refugees appear to end up the subject of criminal investigations, and fewer still are tried and sentenced to prison. When Human Rights Watch visited the Tindouf camps for this report, the total prison population, according to SADR authorities, was 25 men. Of these, eight were civilians who were under investigation or had been sentenced by the SADR's military court. All eight of the men told us that authorities had kept them in pre-trial detention longer than the law allows without obtaining the required court order for extending it. In addition, authorities held two of the eight in prison beyond the completion of their sentences.

The trial of civilians by military courts goes against widely accepted international norms of human rights. As a general rule, military courts are generally less accountable to elected authorities than are civil courts, allow suspects less scope for appealing their convictions, and risk failing to be independent and impartial tribunals, especially if the judiciary are within the military chain of command and subject to military discipline. The Polisario has recently broadened the jurisdiction of its military court to include drug-related crimes, thereby increasing the powers of military judicial authorities to detain, investigate, and sentence civilians.

## **Physical Abuse by Security Forces**

Human Rights Watch heard isolated claims of SADR security forces in the Tindouf camps torturing or physically mistreating people in their custody. In two cases Human Rights Watch obtained first-person accounts of alleged physical abuse. In one case, the alleged victim said that he had been tortured by military authorities in a detention facility whose legal status and recent history SADR officials have failed sufficiently to clarify. In the second case, the alleged victim said that he filed a written complaint of physical abuse with judicial authorities. Authorities acknowledged having received the man's complaint, but said that they had declined to make even preliminary inquiries on grounds that the alleged victim did not present a medical report or show what they deemed visible signs of mistreatment.

## **Slavery**

Practices of slavery that centuries ago were a basic feature of traditional nomadic culture in the Western Sahara appear all but nonexistent among the Sahrawi refugees today. The SADR constitution guarantees equality before the law, and in 2010 SADR law was amended

expressly to outlaw slavery. However, some refugees, including alleged victims, gave credible accounts that certain practices of slavery, including enforced domestic servitude, persist among a small minority of the refugees in the Tindouf refugee camps and - perhaps in particular - in the remote areas of Western Sahara under Polisario control.

The persistence of certain forms of slavery highlights the need for continuous, on-the-ground human rights monitoring, as well as the need for SADR authorities to redouble efforts to eradicate this phenomenon.

## **Enforced Disappearance**

Human Rights Watch heard about and documented one case of alleged enforced disappearance of a Sahrawi refugee. According to his family, El Khalil Ahmed Mahmoud, a senior Polisario official, disappeared on or about January 6, 2009 in Algiers, where he was living. One of his sons said that he had been able to visit Mahmoud in an Algerian detention facility in 2011. Algerian authorities told Human Rights watch simply that they had no information about Mahmoud, while a senior Polisario official said he had known Ahmed but knew nothing about his alleged detention or current whereabouts.

## **Lack of Accountability for Past Abuses**

This report focuses on present-day human rights conditions. Before their 1991 ceasefire, both Moroccan and Polisario forces committed abuses far graver than those that either party has committed during recent times. Nongovernmental organizations have collected compelling testimony of the Polisario's practices that included torture, long-term imprisonment without charge, and forced labor. While the Polisario states that it took steps to acknowledge the abuses and make redress, it has done little over the last twenty years to investigate thoroughly and disclose in detail the severe abuses that their agents perpetrated, and to identify the perpetrators and hold them accountable.

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Algeria - which is accountable under international law for protecting the rights of all persons within its territory - has ceded de facto administration of the camps to a liberation movement and partly-recognized state that are not fully accountable in the international system for their human rights practices. However, whatever arrangements the Algerian

authorities have made, they remain, along with the Polisario, accountable for any Polisario violations committed in Algerian territory.

The Polisario has now governed the camps for nearly two generations. Camp residents are subject to the SADR constitution and laws. It operates courts, prisons, and an internal police force, controls the borders of the camps, and is the only authority with which camp residents have regular contact. Because of the protracted conflict between Morocco and Polisario this situation may endure. For this reason, although Algeria remains ultimately responsible, the Polisario needs to account for how it treats the people under its administration.

The UN maintains a permanent presence in the refugee camps in Tindouf and in Western Sahara. Yet the most prominent UN entity there, the UN Mission for the Referendum in Western Sahara (MINURSO), has no human rights mandate and conducts no ongoing human rights monitoring or reporting. Its mission has no formalized cooperation with the Geneva-based Office of the High Commissioner for Human Rights (OHCHR). The UN refugee agency (UNHCR), which has a presence in the camps and in El-Ayoun, Western Sahara, has a protection mandate with respect to Sahrawi refugees but not with respect to the population of non-refugee Sahrawis who have remained in Western Sahara under Moroccan control.

The Security Council should expand the mandate of MINURSO to include human rights monitoring and public reporting in both the Moroccan-controlled and Polisario-controlled parts of Western Sahara, as well as in the Polisario-administered camps in Algeria; or establish another mechanism by which the UN provides regular, on-the-ground human rights monitoring and public reporting in those areas. Although MINURSO's original and eponymous mandate – to organize a referendum – has been stymied since 2000, its sizable locally-based staff, resources, and long experience may make it the entity best placed to perform this function, in consultation with the OHCHR. The Security Council has defeated motions each time members have raised them to expand the mandate to include reference to human rights. The Polisario says it favors giving MINURSO such a mandate, while Morocco opposes it. Empowering MINURSO to monitor human rights would afford a measure of protection both to residents of Western Sahara and the Tindouf camps.

# Recommendations

## To the UN Security Council

- Expand the mandate of MINURSO to include human rights monitoring and public reporting in both the Moroccan-controlled and Polisario-controlled parts of Western Sahara, as well as in the Polisario-administered camps in Algeria; or establish another mechanism by which the UN provides regular, on-the-ground human rights monitoring and public reporting in those areas.

## To the Polisario Front

- Permit an appropriate UN mechanism such as MINURSO - should the UN expand its mandate - to conduct on-the-ground monitoring of human rights conditions in the Tindouf refugee camps and in any part of Western Sahara that is under de facto Polisario control.
- Ensure camp residents' unfettered right to freedom of movement and take pro-active measures so that all camp residents know that they are free to leave the camps, including, if they wish, to settle in Moroccan-controlled Western Sahara.
- Guarantee the rights of all camp residents to freedom of association, assembly, and expression, including by:
  - Ensuring that camp residents are free to challenge peacefully the leadership of the Polisario Front and to advocate options for Western Sahara other than independence.
  - Reinforcing the right to freedom of expression by eliminating, or significantly restricting the scope of, the broadly worded Article 52bis of the SADR Penal Code, which provides prison terms for distributing publications that could "damage the public interest," and by reforming or eliminating SADR Penal Code articles so as to ensure that courts may not sentence people to prison terms for non-violent speech offenses.
  - Ensuring that interpretations of the SADR's Penal Code articles relating to national security offenses are consistent with international human rights law.
  - Reinforcing the right of assembly by amending articles of the Penal Code that criminalize participating in an unarmed public assembly deemed likely to

“disturb the public order,” a standard that is too broad and subject to a repressive interpretation.

- Reform or eliminate SADR Penal Code, Criminal Procedural Code, and decree law articles to ensure that military judicial authorities cannot investigate, detain, charge, try, or sentence civilians.
- Ensure that civilians detained by SADR authorities are held only in designated detention facilities under Justice Ministry control, and that any and all extensions to suspects’ pre-trial detention are authorized by court orders, in accordance with SADR Criminal Procedural Code Article 86. This article states that if an investigating judge wishes to extend a suspect’s pre-trial detention, the judge must request a court order to that effect no later than one month before the current pre-trial detention period expires.
- Realize its pledge to eradicate all vestiges of slavery in the camps through educating the public and all civil servants, inviting and investigating without delay complaints from the public, acting decisively to end any cases of slavery-like practices, and adopting necessary measures so that serious penalties may be imposed for infractions.

## **To the Government of Algeria**

- Permit on-the-ground monitoring and human rights conditions in the Tindouf camps by an appropriate UN mechanism such as MINURSO, should the UN expand its mandate.
- Ensure that Sahrawi refugees residing in Algeria are free to enjoy full rights as refugees to freedom of movement within Algerian territory and across Algerian borders, including their rights to obtain and possess Algerian passports or refugee travel documents, and to use them without hindrance to exit and enter Algerian territory.
- Change its apparent posture of ceding to the Polisario Front entire responsibility for the protection of the human rights of the population of the Tindouf refugee camps; and publicly acknowledge its own responsibility for ensuring respect for the rights of all persons on Algerian territory. This includes intervening if and when human rights violations are taking place and ensuring that perpetrators are held responsible.

## **To Third-Party Governments and Regional Bodies, including the African Union, League of Arab States and European Union**

Third-party governments and governmental organizations engaged in seeking a solution to the Western Sahara conflict, including the African Union, League of Arab States and European Union, should

- Ensure, pending a resolution of the conflict, that the Sahrawi people, whether under de facto Moroccan or Polisario administration, enjoy their full rights to freedom of association, assembly and expression;
- To that end, support an expansion of the mandate of MINURSO to include human rights monitoring and reporting in the Polisario-administered camps as well as in both the Moroccan-controlled and Polisario-controlled parts of Western Sahara, or establish another mechanism by which the United Nations provides regular, on-the-ground human rights monitoring and reporting.
- Encourage Algeria to acknowledge and assume its responsibility to ensure respect for the human rights of the Sahrawi refugees residing in Polisario-administered camps on Algerian territory.

## **Recommendations to the US and France**

The U.S. and France have voiced qualified support for Morocco's autonomy plan. These two countries, along with any other country that supports the autonomy plan or any other proposal for resolving the Western Sahara conflict, should explicitly condition that support on a commitment by the relevant authorities to fully respect the human rights of all citizens, including the right to speak and act nonviolently in favor of their preferred vision of the political future of Western Sahara.

As allies of both Morocco and Algeria, and as permanent members of the UN Security Council, France and the United States should lead the effort at the Council to expand the mandate of MINURSO to include human rights monitoring and reporting in both the Moroccan-controlled and Polisario-controlled parts of Western Sahara, and in the Polisario-administered refugee camps, or to establish another mechanism by which the United Nations provides regular, on-the-ground human rights monitoring.

The United States should collect pertinent information both in the camps and, where appropriate, outside them, and speak publicly about human rights conditions there, including in the State Department's annual Country Reports on Human Rights Practices.

## Methodology

Human Rights Watch conducted a research mission to the Sahrawi refugee camps near Tindouf, Algeria from November 26 to December 9, 2013, and a research mission to the city of El-Ayoun, in the Moroccan-controlled part of Western Sahara, from November 8 to 14, 2013. In addition, researchers conducted certain interviews for this report in person in Rabat, Morocco, and via telephone to Western Sahara, Mauritania, and the Tindouf refugee camps. In the camps, researchers met with SADR officials, who furnished answers in writing to questions submitted. Algerian officials also responded in writing to our questions. Responses from SADR and Algerian officials are quoted throughout this report.

A Human Rights Watch team of two Arabic-speaking researchers including one native speaker of the Hassaniya dialect visited the six refugee camps (Smara, El-Ayoun, Boujdour, Aousserd, Dakhla, and Rabouni) near Tindouf, Algeria. The researchers did not visit the Polisario-controlled part of Western Sahara, although they did interview Sahrawis who regularly visit this sparsely populated area or who had resided there. The researchers interviewed at least 40 refugees residing in the camps, at least 16 Polisario officials, 8 foreigners working for UN agencies and nongovernmental organizations, and 12 Sahrawi refugees residing outside the Tindouf camps. Human Rights Watch selected the refugees for interviews through referrals by Sahrawis living outside Algeria, foreign workers living in the camps, foreign researchers who had visited the camps, and through referrals by camp residents themselves.

Those interviewed in the camps offered a range of views on the Polisario leadership. The Sahrawis interviewed outside the camps included nine who had quit the camps between 2009 and 2013 to live in Moroccan-controlled Western Sahara.

While in the Tindouf camps, Human Rights Watch researchers set their own schedule and moved about freely. Their activities included visits to the Tindouf camps' principal detention facility, Shahid Abderrahman Prison, and the Boulahi Sayed El Maati Center for Juvenile Care, a detention facility and shelter for minors. They did not conduct interviews with residents in the presence of Polisario officials. However, due to housing conditions, it was often impossible to conduct interviews in a private, one-on-one setting. The researchers conducted all interviews with Sahrawi refugees in Arabic except for one in

French and one in Spanish. They conducted interviews with foreigners in Arabic, French, or English. Human Rights Watch explained to interviewees how the information they provided would be used and offered no incentives for interviews.

We encountered no obstacles to conducting private interviews with Sahrawi camp residents and former camp residents in Morocco and in Moroccan-controlled Western Sahara.

Several of the persons interviewed for this report asked not to be named. In these cases the report provides the date and location of the interview but not the interviewee's name.

Human Rights Watch conducted research in the Tindouf refugee camps in November 2007 for a report that was published the following year. The present report updates the section on the Tindouf camps from that report and broadens the scope of inquiry. However, this report is not a comprehensive view on human rights issues in the camps. Human Rights Watch's ongoing coverage of human rights conditions in Western Sahara under Moroccan control can be found on the Morocco/Western Sahara page of <http://www.hrw.org/middle-eastn-africa/morocco/western-sahara>.

## I. Background

The Tindouf refugee camps, home to tens of thousands of Sahrawi refugees for three decades, were established during the second half of the 1970s by refugees from Western Sahara who fled advancing Moroccan forces. In 1976 the Polisario Front founded the Sahrawi Arab Democratic Republic (SADR). With Algeria's acquiescence and support, in the name of the SADR, the Polisario administers the refugee camps around Tindouf as well as a sparsely populated band of Western Sahara located south and east of that portion of Western Sahara which is under Morocco's de facto control. The SADR is recognized as a state by dozens of countries, and is a member of the African Union.

The camps' administrative center is Rabouni, the site of SADR state ministries, the main hospital, and the principal field offices of international NGO's and UN agencies that operate regularly in the camps. Rabouni is also the settlement most easily accessible by paved road from Tindouf, and is between 8 and 32 kilometers from 4 of the 5 residential camps: Aousserd, El-Ayoune, Boujdour, and Smara. Dakhla camp, the fifth, is far from the other camps, lying about 137 kilometers southeast of Rabouni. Most Sahrawi refugees residing in the five camps live in tents or in adobe huts without running water.

Western Sahara covers 266,000 square kilometers of mostly arid land between Morocco's southern border and Mauritania. Its native people are Sahrawis, a traditionally nomadic people of mixed Arab-Amazigh stock who speak Hassaniya, a dialect of Arabic that is also spoken in Mauritania.<sup>1</sup>

Spain claimed Western Sahara as a protectorate in 1884.<sup>2</sup> In 1974, under pressure at the UN to decolonize, Spain agreed to hold a referendum among Western Sahara's inhabitants that would include the option of independence.<sup>3</sup>

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<sup>1</sup> Mercer, John, "The Cycle of Invasion and Unification in the Western Sahara", *African Affairs*, Vol. 75, No. 301 (Oct. 1976), p. 498.

<sup>2</sup> Tony Hodges, *Western Sahara: The Roots of a Desert War* (New York: Lawrence Hill & Co., 1983), pp. 40-84, 135-46.

<sup>3</sup> UN General Assembly Resolution 2072 of 1965 called on Spain to implement the Sahrawi people's right to self-determination.

The UNGA had passed seven other resolutions reaffirming that right by 1973. In 1988, the Security Council explicitly affirmed the Sahrawi people's right to self-determination and its support for a referendum, United Nations Security Council, Resolution 621 (1988).



Sunset over Smara camp, the largest of five camps where Sahrawi refugees have lived since 1976. © 2013 Private

King Hassan II of Morocco argued that Spanish colonization had interrupted Moroccan rule, which should resume once Spain left. Before Spain carried out the referendum, Morocco asked the UN General Assembly to refer the question to the International Court of Justice.

The Court's October 16, 1975 advisory opinion held that while Morocco (and Mauritania) had had political relations with some of Western Sahara's inhabitants before Spanish colonization, these did not amount to sovereignty and thus "were not of such a nature as might affect the application of ... the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory."<sup>4</sup>

However, King Hassan II announced that the court had vindicated Morocco's claims. On November 6, 1975, he laid claim to Western Sahara by launching a "Green March," of

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<sup>4</sup> "Western Sahara, Advisory Opinion of 16 October 1975," International Court of Justice, para. 162.

Moroccan citizens into a 10-kilometer strip of Western Sahara that Spanish soldiers had vacated.<sup>5</sup> Moroccan army units had entered the territory further inland several days previously.<sup>6</sup>

On November 14, 1975, Spain signed an agreement transferring some of its powers and responsibilities over Western Sahara to Morocco and Mauritania. It formally withdrew from the territory the following year, and Morocco and Mauritania partitioned it among themselves.

Moroccan and Mauritanian forces encountered armed resistance from the Sahrawi independence movement known as the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (Polisario).<sup>7</sup> When Mauritania relinquished its claims in Western Sahara in 1979, Moroccan troops swiftly occupied the territory it vacated.

By January 1976, Sahrawi refugees had begun moving east to the Algerian desert, fleeing the Moroccan army's advances in Western Sahara and attacks by the Moroccan air force.<sup>8</sup> By October of that year, 50,000 Sahrawi refugees were living in eleven camps in Algeria.<sup>9</sup> More refugees would flee during the subsequent years as Moroccan forces in Western Sahara terrorized Sahrawi civilians through such means as arbitrary arrests, secret detentions and "disappearances."<sup>10</sup> Eventually, scores of thousands of Moroccan citizens would settle in Western Sahara, encouraged by government subsidies and incentives, and are today widely believed to outnumber native Sahrawis in the territory.

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<sup>5</sup> Although hundreds of thousands of Moroccans have settled in Western Sahara since 1976, the Moroccan government ordered the original marchers back home on November 18, 1975. Hodges, *Desert War*, p. 224.

<sup>6</sup> *Ibid.*, p. 220.

<sup>7</sup> *Ibid.*, p. 225. The Saguia el-Hamra, a mostly-dry riverbed near El-Ayoun, and the Rio de Oro, another one near the city of Dakhla, designated the northern and southern regions, respectively, of the Spanish Sahara.

<sup>8</sup> In mid-February, 1976, "Moroccan aircraft discovered two large concentrations of refugees, each numbering at least ten thousand, at Guelta Zemmour, about thirty-five kilometers west of the Mauritanian border, and at Oum Dreiga, further south. Scores of refugees were killed in bombing raids, which included the use of napalm, over the following two months." By late February, only 5,000 to 6,000 of an original 29,000 Sahrawis remained in El-Ayoun. Hodges, *Desert War*, p. 232-33.

<sup>9</sup> UNHCR Document A/CR.96/534, August 9, 1978, quoted in Hodges, *Desert War*, p. 233.

<sup>10</sup> Arbitrary arrests, secret detentions, and "disappearances" of Sahrawis as well as of Moroccans by state security services are documented and acknowledged in the 2005 final report of the Moroccan Equity and Reconciliation Commission. This body, inaugurated by King Mohammed VI in 2004, examined abuses committed between 1956 to 1999 and set up a mechanism to compensate victims. A summary in French of the Commission's findings is at [www.ier.ma/article.php3?id\\_article=1496](http://www.ier.ma/article.php3?id_article=1496) (accessed September 17, 2014).

On February 27, 1976, the Polisario's leaders founded the Sahrawi Arab Democratic Republic (SADR). The Organization of African Unity admitted the SADR as a member and dozens of countries recognized it. The UN does not recognize the SADR as a state, but has consistently addressed the Polisario as a party to the Western Sahara conflict and involved it in negotiations.<sup>11</sup>

According to the SADR's constitution, the Polisario will remain the sole representative of the Sahrawi people until the achievement of national sovereignty over Western Sahara.<sup>12</sup>

In 1991, the UN brokered a ceasefire between Morocco and the Polisario and provided for a "UN Mission for the Referendum in Western Sahara" (known as MINURSO and established by Security Council resolution 690 of April 29, 1991).<sup>13</sup> The mission was to monitor the ceasefire and organize a referendum that would allow eligible Sahrawis to choose between independence and integration with Morocco.<sup>14</sup> In September of that year the Polisario and Morocco ceased active hostilities.

After vetting 198,000 applicants, MINURSO issued a list of some 86,000 eligible voters. The Moroccan government responded by collecting and submitting some 124,000 appeals, which MINURSO was obliged to consider.<sup>15</sup> This confronted the UN with "the prospect of, in effect, having to begin the voter identification process all over again."<sup>16</sup>

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<sup>11</sup> "Report of the United Nations Visiting Mission to Spanish Sahara, 1975," in The Report of the Special Committee on the Situation With Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/10023/Add.5, Annex (1975); and "Report of the Secretary-General on the situation concerning Western Sahara," p. 5.

<sup>12</sup> Article 32 of the SADR constitution (2011), the Polisario says that the system of government will change upon Western Sahara's gaining independence. Human Rights Watch interview with M'hammed Khaddad, the Polisario's liaison with MINURSO, Smara camp, November 10, 2007.

<sup>13</sup> United Nations Security Council, Resolution 690 (April 29, 1991), The Situation Concerning Western Sahara: Report by the Secretary General.

<sup>14</sup> The website of MINURSO states, "The settlement plan, as approved by the Security Council, provided for a transitional period for the preparation of a referendum in which the people of Western Sahara would choose between independence and integration with Morocco. The Special Representative of the Secretary-General was to have sole and exclusive responsibility over matters relating to the referendum..." <http://www.un.org/en/peacekeeping/missions/minurso/> (accessed April 20, 2014)

<sup>15</sup> Jacob Mundy, "'Seized of the Matter': The UN and the Western Sahara Dispute", *Mediterranean Quarterly*, vol. 15, no. 3 (Summer 2004), pp. 130-148. See Report of the Secretary-General on the Situation Concerning Western Sahara, February 20, 2001, and Human Rights Watch, "Keeping It Secret: The United Nations Operation in Western Sahara," October 1995, <http://www.hrw.org/reports/1995/Wsahara.htm> (accessed September 10, 2014).

<sup>16</sup> International Crisis Group, "Western Sahara: Out of the Impasse," *Middle East/North Africa Report No. 66*, June 11, 2007, p. 2.

The Polisario continues to insist on a referendum that includes independence as an option. Morocco rejects this demand while proposing regional “autonomy” under its sovereignty. The UN quietly backed away from the idea of a MINURSO-organized referendum, and none has taken place. Successive UN secretary-generals have assigned special envoys to find a political solution to the Western Sahara conflict. However, none has been able to break the impasse.

The Polisario has effective control in two contiguous areas. In addition to the refugee camps it governs in the Algerian desert, it controls the sparsely populated 15 percent of Western Sahara that lies east of the “Berm,” a series of Moroccan defensive earthworks and fortifications more than 1,500 kilometers long built during the war that splits the territory in two.

Human Rights Watch did not observe a direct Algerian security presence in the camps; several informants said there was none. The Algerian military has a significant presence in the nearby city of Tindouf. The population figure for the camps is disputed. The Polisario and Algeria estimate that there are about 165,000 refugees.<sup>17</sup> The World Food Program (WFP) and the UN High Commissioner for Refugees (UNHCR) currently estimate the total population of the camps to be between 90,000 and 125,000.<sup>18</sup> Morocco alleges that these numbers are inflated and has urged the UN to conduct a new census.<sup>19</sup>

The camps are administratively divided into districts and sub-districts. The Polisario, as the sole governing authority of the SADR, administers a justice system, with a system of courts and prisons; local qadis (Sharia law judges) have jurisdiction over personal status and family law issues.

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<sup>17</sup> This estimate is cited in the UNHCR’s November 2013 assessment of its program of “confidence-building measures” between Morocco and the Polisario: UNHCR, “Bridge over troubled desert: A review of the UNHCR confidence building measures programme in the Western Sahara Territory and in the refugee camps near Tindouf,” November 2013, p. 9, <http://www.unhcr.org/52861b9b9.pdf> (accessed September 10, 2014).

<sup>18</sup> According to the UNHCR, it and the World Food Program (WFP) operate with a base planning number of 90,000 refugees, plus an additional 35,000, for whom the WFP provides food rations. UNHCR, “Bridge over troubled desert: A review of the UNHCR confidence building measures programme in the Western Sahara Territory and in the refugee camps near Tindouf,” November 2013, p. 9, <http://www.unhcr.org/52861b9b9.pdf> (accessed September 10, 2014).

<sup>19</sup> Maghreb Arab Press, “Le Maroc réitère son appel pour opérer un recensement de la population séquestrée dans les camps de Tindouf,” March 27, 2014, <https://www.maroc.ma/fr/actualites/le-maroc-reitere-son-appel-pour-operer-un-recensement-de-la-population-sequestree-dans> (accessed September 11, 2014).

Since 1976, Mohammed Abdelaziz has been the secretary general of the Polisario, having won reelection at each of the Polisario's general congresses. As secretary general, his position also comprises the roles of president of the SADR and commander-in-chief of the Saharawi People's Liberation Army (SPLA).

Westerners wishing to visit the camps must obtain entry visas to Algeria, which the government generally grants if the Polisario endorses the application. There are no foreign media based in the camps or in their vicinity. While hundreds of foreigners visit the camps every year or work there for various humanitarian, development, and solidarity nongovernmental organizations, few if any of them are there to conduct human rights monitoring; nor are they specialized in such work.

The UN maintains a permanent presence in the refugee camps in Tindouf and in Western Sahara. Yet the most prominent UN entity there, MINURSO, has no human rights mandate and conducts no ongoing human rights monitoring or reporting. Its mission has no formalized cooperation with the Geneva-based OHCHR. The Security Council has defeated proposals, whenever they have been tabled, to expand MINURSO's mandate to include reference to human rights.<sup>20</sup> The Polisario says it favors giving MINURSO such a mandate.<sup>21</sup> Morocco, however, strongly opposes the idea on the grounds that it would undermine "Moroccan sovereignty" over Western Sahara.<sup>22</sup>

The UNHCR has offices in both the Moroccan-controlled territory and the Tindouf refugee camps. The staff includes a number of protection officers who help MINURSO administer a program of visits between the two zones for families separated by the conflict, and who circulate in the refugee camps to monitor aid projects and make themselves available to any refugees who might wish to speak with them. The UNHCR office in Tindouf also assists

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<sup>20</sup> What's in Blue, "Western Sahara Mission Mandate Renewal", April 24, 2013, <http://www.whatsinblue.org/2013/04/western-sahara-mission-mandate-renewal.php> (accessed September 25, 2014).

<sup>21</sup> UN Security Council, "Report of the Secretary-General on the situation concerning Western Sahara," April 10, 2014, para 84, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S\\_2014\\_258.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2014_258.pdf) (accessed September 25, 2014). See also footnote 50 in Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, (New York: Human Rights Watch, 2008), <http://www.hrw.org/en/reports/2008/12/19/human-rights-western-sahara-and-tindouf-refugee-camps-0/p.31>.

<sup>22</sup> See Response from the Government of Morocco, dated May 30, 2008, to letter from Human Rights Watch, reprinted as Appendix 2 in Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, p. 159.

in the legal documentation of refugees, provides legal advice and training with regard to sexual and gender-based violence, and trains the Polisario police on international refugee law and human rights law.<sup>23</sup>

In recent years, SADR and Algerian authorities have taken steps to tighten security in the Tindouf camps and their vicinity, citing the growing danger posed by militant groups and smuggling networks in the deep Sahara and Sahel regions.<sup>24</sup> Two events, in particular, have motivated authorities in this regard: one was the October 23, 2011 kidnap by unknown gunmen of three foreign aid workers from Rabouni, who were released the following July by Islamist militants who had been holding them in northern Mali; the other was the takeover of northern Mali during most of 2012 by Islamist militants.<sup>25</sup>

Since the 2011 kidnaps, SADR authorities have raised earth berms about a meter high around individual camps and other settlements such as Rabouni, which are intended to force all automobile traffic to pass through checkpoints. SADR and Algerian authorities have also instituted compulsory armed escorts for visitors, international aid groups, and UN staff when traveling in certain places, such as the roads leading from the main camp zone to the city of Tindouf and to Rabouni camp, as well as the road between Rabouni and Dakhla camp.<sup>26</sup> Algerian authorities have extended paved roads leading south-east from Tindouf, and which now serve both Dakhla camp and Algerian military installations nearby.

On February 19, 2012, a decree law issued by President Abdelaziz expanded the jurisdiction of the SADR's military court to include the possession, sale, transport, and use

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<sup>23</sup> UN Security Council, "Report of the Secretary-General on the situation concerning Western Sahara," April 10, 2014, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_258.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_258.pdf) (accessed September 25, 2014).

<sup>24</sup> "Algeria beefs up army presence on Mali border," *al-jazeera.com*, February 4, 2013 (citing Agence France Presse), <http://www.aljazeera.com/news/africa/2013/02/201324152820629866.html> (accessed September 11, 2014).

<sup>25</sup> The aid workers, two Spaniards and an Italian, were kidnapped on October 23, 2011 by unknown gunmen. They ended up in the hands of the Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest, which took part in an armed Islamist takeover of northern Mali during most of 2012. The group released all three in July 2012.

<sup>26</sup> UNHCR, "Bridge over troubled desert: A review of the UNHCR confidence building measures programme in the Western Sahara Territory and in the refugee camps near Tindouf," November 2013, p. 9, <http://www.unhcr.org/52861b9b9.pdf> (accessed September 10, 2014). Human Rights Watch was obliged by Algerian and SADR authorities to travel with armed escorts between Tindouf airport and the main camp zone in November and December 2013; a SADR armed escort was also obligatory for the UNHCR convoy to Dakhla camp on December 9, 2013 that Human Rights Watch joined.

of illegal narcotics. SADR officials justified this on the grounds that drug-trafficking constitutes a security threat because it helps fund militant groups.<sup>27</sup>

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Human Rights Watch takes no position on the final status for Western Sahara.

The situation in Western Sahara is an occupation under the laws of armed conflict. However, our main framework in the Sahrawi refugee camps is that of international human rights law. Our chief concerns include violations of the rights of expression, association and assembly -- all human rights law violations, not a matter of occupation law.

The UN classifies Western Sahara as a non-self-governing territory and does not recognize Moroccan sovereignty over it. Nor does it recognize the SADR as a state or grant it an official status with the UN. The SADR is thus not a party to the core UN human rights treaties. However, the Polisario, which exercises de facto governmental authority within the camps, has ratified several regional human rights treaties as the SADR government, an AU member,<sup>28</sup> and has formally declared its adherence as a liberation front to the Geneva Conventions<sup>29</sup> and to a ban on the use of anti-personnel landmines.<sup>30</sup>

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<sup>27</sup> Human Rights Watch interview with Justice Ministry officials, Rabouni, 6 December 2013; Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>28</sup> The Sahrawi Arab Democratic Republic has signed or ratified: the African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986 (ratified on May 2, 1986); the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999 (signed on October 23, 1992); and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005 (signed on June 20, 2006).

<sup>29</sup> In 1975, the Polisario Front sent to the Swiss Federal Council a Declaration of Implementation of the Geneva Conventions of 1949. France Libertés, Report of 2003 Mission, p. 10. As well, "on 24 November 1981, the ICRC offered its services to both Morocco's King Hassan and the POLISARIO secretary-general Abdel Aziz, to visit the detainees held by the POLISARIO forces. The offer was sent in 1982 to the OAU Committee on Western Sahara chaired by President Daniel Arap Moi of Kenya. On 6 March 1982 POLISARIO accepted the ICRC offer as a mark of its will to respect IHL and ICRC activities." Churchill Ewumbue-Monono, "Respect for international humanitarian law by armed non-state actors in Africa," *International Review of the Red Cross*, vol. 88, no. 864, December 2006.

<sup>30</sup> Polisario signed a Deed of Commitment under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action, and destroyed 3,321 anti-personnel mines at the SADR's 30th anniversary in 2006. Reuters, Polisario destroys mines in Western Sahara – group," March 3, 2006.

The Algerian government assists the Polisario financially and diplomatically, and has allowed it to administer the Sahrawi refugee population on its territory for more than three decades. Algeria has said the Polisario alone is responsible for ensuring the human rights of Sahrawis in the Tindouf refugee camps.<sup>31</sup> Such a position by a sovereign state does not conform to international law. Notwithstanding Algeria's delegation of authority to the Polisario, the Algerian government remains ultimately responsible according to its international legal obligations, for the human rights of all persons in its territory,<sup>32</sup> including in the refugee camps around Tindouf.<sup>33</sup> As a matter of state responsibility, actions by the Polisario within Algeria that violate Algeria's human rights obligations are attributable to Algeria itself, regardless of whether Algeria empowered the Polisario to exercise authority.<sup>34</sup>

As a party to the 1951 Refugee Convention and its 1967 protocol, Algeria is bound to respect the rights of refugees to freedom of movement within Algeria to the same degree as other aliens, and to issue travel documents to Sahrawi refugees for the purpose of travel outside Algeria – an obligation that it may limit only as “require[d]” by “compelling

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<sup>31</sup> OHCHR mission, “While the refugees are present in the territory of Algeria, the authorities reiterated during meetings with the Head of the delegation that despite this presence, the responsibility for human rights and any other related matters lies with the Government of the SADR.” Unpublished report of OHCHR mission, June 2006, para. 39.

<sup>32</sup> ICCPR art. 2. The Human Rights Committee has made clear that “States Parties are required by art. 2, para.1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction.” Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

<sup>33</sup> Unpublished report of OHCHR mission, paras. 39 and 40: “...The Government of Algeria is obliged to ensure that all rights stipulated in these [human rights and refugee treaties to which it is party] are upheld for all persons on Algerian territory. It should be underlined that UNHCR works directly with the Government of Algeria as the country of asylum/host government on all matters related to the Sahrawi refugee programme.” On September 12, 1989, Algeria ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Algeria has also ratified or acceded to, inter alia, the Convention relating to the Status of Refugees (Refugees Convention); the Protocol Relating to the Status of Refugees, the Convention on the Rights of the Child (CRC), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as regional rights instruments. According to art. 2 of the ICCPR, the UN Human Rights Committee has made clear that “States Parties are required by art. 2, para.1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction.” Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

<sup>34</sup> Draft arts. 9 and 4, Responsibility of States for internationally wrongful acts, International Law Commission (2001).

reasons of national security or public order.”<sup>35</sup> Similarly, Algeria may not impose, for the protection of the national labor market, restrictive measures on the employment of Sahrawis who have been in Algeria for three years or more.<sup>36</sup> Protections afforded by Algeria’s human rights treaty obligations are complementary to its obligations under refugee law, in particular where human rights law provides for stronger protection than refugee law.<sup>37</sup> Thus, Algeria is responsible for upholding, inter alia, the freedom of expression and assembly of Sahrawi refugees, as part of its obligations as a party to the International Covenant on Civil and Political Rights.

The UNHCR has offices in El-Ayoun and in the Polisario-run refugee camps. It has never registered the Sahrawis in Algeria individually and has not made a one-by-one determination of whether they should be considered refugees. Rather, the UNHCR has recognized the Sahrawis residing in the camps on a collective and prima facie basis, as refugees.

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<sup>35</sup> Convention Relating to the Status of Refugees, adopted July 25, 1951, United Nations, *Treaty Series*, vol. 189, p. 137, entered into force April 22, 1954, arts. 26, 28.

<sup>36</sup> *Ibid.*, art. 17(2)(a).

<sup>37</sup> “Refugee law does not supersede human rights law as *lex specialis* if the human rights norm offers more protection. [...] art. 5 of the 1951 Convention [...] reads as follows: “Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.” In 2003, Conclusion No. 95 of the Executive Committee of the United Nations High Commissioner’s Programme explicitly acknowledged “the multifaceted linkages between refugee issues and human rights” and recalled “that the refugee experience, in all its stages, is affected by the degree of respect by States for human rights and fundamental freedoms”: (No. 95 (LIV) – 2003) para. (k).

## II. Past Abuses and Accountability

An important dimension of the current state of human rights in the Tindouf refugee camps is the Polisario's apparent lack of political will to hold accountable those responsible for the Polisario's own alleged abuses. From the start of their conflict in 1975 until the 1991 ceasefire, both Moroccan and Polisario forces committed abuses that were generally far graver than any that either party has committed since. Both parties tortured suspected opponents and held them in detention for years at a time without charge or trial. Detainees on both sides died under torture or during years in secret captivity.<sup>38</sup>

There is little detailed documentation of the Polisario's war-time abuses. In a 1996 report, Amnesty International urged that allegations of past abuse be investigated.<sup>39</sup> While Polisario authorities had acknowledged that abuses had occurred, Amnesty said, Polisario had "failed to provide any specific information about detentions, torture and ill-treatment and deaths in custody" or to remove the individuals responsible for these abuses from positions of authority.<sup>40</sup>

Apparently well-funded organizations based in Moroccan-controlled Western Sahara and led by Sahrawis who quit the Tindouf camps seek to document and publicize the Polisario's past abuses. The groups publish reports in various languages and tour international

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<sup>38</sup> For Moroccan abuses, see, e.g.: Amnesty International, "Morocco/ Western Sahara: Human Rights Violations in Western Sahara," AI Index: MDE 29/04/96, April 18, 1996, <http://archive.amnesty.org/library/Index/ENGMD290041996?open&of=ENG-2D3> (accessed December 3, 2008); for Polisario abuses, see, e.g., France Libertés, "The Conditions of Detentions of the Moroccan POWs Detained in Tindouf (Algeria), Report of the International Mission of Inquiry, 11th-25th April 2003," an English translation of the French original, at [www.arso.org/flreport\\_tindouf.pdf](http://www.arso.org/flreport_tindouf.pdf) (accessed December 3, 2008).

<sup>39</sup> Amnesty International, "Human Rights Violations in Western Sahara," AI Index: MDE 29/04/96, April 18, 1996, pp. 15-16; <http://archive.amnesty.org/library/Index/ENGMD290041996?open&of=ENG-MAR> (accessed December 1, 2008). The Amnesty International report cites as examples: "Those detained in the late 1980s include Khalif Laroussi Zaougai, who was detained in 1987 upon arrival in the camps, and Salama Khbaou, who was detained at the end of 1989, three months after he had arrived in the camps. They were both reportedly detained until mid-1991. Some detainees died in custody, reportedly as a result of torture and ill-treatment. Among them was El Mehdi Othman Souayah, who was reported to have been detained in 1976 and to have died in detention in late 1977, and Mohamed Moussa ould Mokhtar, who was reported to have been detained at the beginning of 1983 and to have died in custody in subsequent years."

<sup>40</sup> Ibid. The report further noted that Morocco had failed to investigate "former Polisario figures who held positions of responsibility in the Polisario security apparatus, and who are alleged to have been responsible for human rights abuses in the refugee camps" and who now reside in Morocco after having left the camps.

capitals to voice their claims, and receive vigorous coverage from Morocco's state and mainstream media.<sup>41</sup> Regardless of the sources of their support, these organizations have collected compelling first-hand evidence of Polisario's war-time abuses, including torture, long-term imprisonment without trial or charge, and forced labor. Human Rights Watch has heard similar accounts of Polisario abuse during the 1975 – 1991 war from victims and eyewitnesses contacted through channels independent of these organizations.

SADR Justice Minister Hamada Selma told Human Rights Watch in 2008 that before the 1991 ceasefire, Morocco and the Polisario were fighting an all-out war that included foreign agents infiltrating the camps and carrying out assassinations. He acknowledged that the Polisario committed abuses in this context. According to him, the Polisario's seventh congress in Sa'ifa in 1989 adopted resolutions calling upon itself to acknowledge abuses, compensate victims, release detainees, dismiss the Polisario chief of security, close prisons, enact new laws to facilitate the monitoring of prisons, hold abusers accountable, and create a human rights monitoring committee directed by the prime minister. The Polisario's senior leadership took steps to implement these resolutions, Selma said.<sup>42</sup>

Human Rights Watch is not in a position to verify the extent to which the above-listed measures were carried out. From the absence of publicly available documentation of investigations conducted by the Polisario and from recent interviews with victims of past abuses, it is clear that Polisario leaders have done little over the last twenty-five years to investigate thoroughly and disclose in detail the severe abuses that their agents perpetrated, including serious and well documented abuses of Moroccan prisoners of war held in harsh conditions for as much as 14 years after the ceasefire, or to identify the perpetrators and hold them accountable.

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<sup>41</sup> See, e.g., Committee for the Bringing Together of Sahrawi Families, Association of Parents of Sahrawi Victims of Repression within the Camps of Tindouf, Association of al-Massira for the Defense of the Rights of the Confined Persons and of the Moroccan Prisoners within the Camps of Tindouf, *The Truth about the Polisario Prisons in the South of Algeria*, Salé (Morocco), no date.

<sup>42</sup> Response of the Polisario Front, dated May 6, 2008, to the letter of Human Rights Watch of April 1, 2008, reprinted as an appendix to Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*.

On March 8, 2014, the SADR's president, Mohamed Abdelaziz, signed a decree to create a national human rights commission.<sup>43</sup> It is unclear what the exact make-up and mandate of the commission will be, whether it might have the power to investigate alleged human rights violations or turn over evidence to the judiciary for possible prosecution. Members of a preparatory committee for the new commission told Human Rights Watch that the basic thrust of the initiative was to establish awareness of and respect for human rights through Sahrawi society and SADR institutions.<sup>44</sup> Committee members also want the SADR's laws to be harmonized with international human rights conventions. A working paper drawn up by the preparatory committee proposes measures such as creating a national office to examine human rights complaints from citizens, and training civil servants, security forces, and judicial officials.<sup>45</sup>

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<sup>43</sup> Sahara Press Service, "Establishment of National Commission for Human Rights," March 9, 2014. <http://www.spsrasd.info/en/content/establishment-national-commission-human-rights> (accessed September 11, 2014).

<sup>44</sup> Human Rights Watch interview with Khatri Addouh, head of the preparatory committee and SADR parliament president, SADR parliamentary building, near Rabouni, December 9, 2013; Human Rights Watch interview with Abdesalam Omar, president of the Asociación de Familiares de Presos y Desaparecidos Saharauis, member of the preparatory committee, Rabouni, December 3, 2013.

<sup>45</sup> A copy of the working paper is on file with Human Rights Watch.

### III. Freedom of Movement

Moroccan officials, and pro-Moroccan media and organizations, habitually describe the Sahrawi refugees as captives (*séquestrés*) whom the Polisario Front holds in the Tindouf camps against their will.<sup>46</sup> Polisario officials insist that the refugees are free to come and go as they please, including to Moroccan-controlled Western Sahara. Already, a minority of the refugees, some of whom were interviewed for this report, have left the camps over the years to resettle there. Human Rights Watch did not find evidence in interviews with dozens of refugees that SADR or Algerian authorities impose significant or arbitrary restrictions on Sahrawi refugees traveling between the Tindouf camps, or to Mauritania or Western Sahara.

Some of those refugees who had left the camps in recent years to settle in Moroccan-controlled Western Sahara said that they had concealed their travel plans because they feared that SADR authorities might prevent them from departing, but in the end, they traveled without serious obstacles. Some refugees residing in the Tindouf camps also told Human Rights that they had recently made visits of up to several months to Moroccan-held Western Sahara and returned to the camps without incident.<sup>47</sup>

The SADR's constitution does not contain a provision guaranteeing freedom of movement. However, freedom of movement is guaranteed by the African Charter on Human and Peoples' Rights, to which the SADR is party, and to which the SADR constitution pledges in its preamble the "adherence" of the Sahrawi people.<sup>48</sup> The SADR's justice minister,

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<sup>46</sup> One recent example of this discourse is remarks by Omar Hilale, at the time Morocco's ambassador to the United Nations in Geneva, at an April 2014 forum on Morocco's human rights engagement held by the country's state news agency, Maghreb Arab Press. Mr. Hilale is reported to have said that Algeria had "failed in its responsibility to protect the séquestrés of Tindouf," in reference to the Sahrawi refugees. "L'expérience marocaine fruit d'un long processus de réformes," *Le Matin*, April 8, 2014. [www.lematin.ma/express/2014/droits-de-l-homme-\\_l-experience-marocaine-fruit-d-un-long-processus-de-reformes/200077.html](http://www.lematin.ma/express/2014/droits-de-l-homme-_l-experience-marocaine-fruit-d-un-long-processus-de-reformes/200077.html) (accessed September 1, 2014).

<sup>47</sup> While SADR and Algerian authorities generally do not appear to prevent Sahrawi refugees from returning to the Tindouf camps after short-term travel or periods of residency elsewhere, a recent notable exception is Mustapha Ould Selma Sidi Mouloud, a former SADR security official who traveled to Moroccan-controlled Western Sahara in 2010 and has publically supported Morocco's proposal of autonomy under Moroccan rule for the territory. SADR authorities refused to allow him to return to the camps in 2010, and, he told Human Rights Watch, Algerian authorities have continued to bar him from entering Algeria. Selma's case is addressed in the section of this report on freedom of speech, association, and assembly.

<sup>48</sup> Article 12 of the African Charter on Human and Peoples' Rights describes and guarantees freedom of movement in five subsections: "12.1: Every individual shall have the right to freedom of movement and residence within the borders of a State

Hamada Selma, informed Human Rights Watch that there is “no restriction on the movement of [Sahrawi] citizens either by Saharawi authorities or Algerian authorities.”<sup>49</sup>

According to Sahrawi refugees residing in the Tindouf camps, travel within a zone that includes Rabouni, the five main residential camps, and satellite settlements such as boarding schools, is essentially unhindered, though regulated by SADR security checkpoints and a nighttime curfew.<sup>50</sup> Human Rights Watch researchers noted checkpoints at camp entrances typically consisting of a small guard post manned by several apparently unarmed gendarmes and, sometimes, removable physical barriers placed in the road. Generally, guards waved traffic through. However, SADR and Algerian authorities impose regulations on Sahrawi refugees’ travel outside the area of the Tindouf camps that in some cases complicate their ability to move about freely.

## Travel within Algeria beyond Tindouf

Refugees told Human Rights Watch that Algerian authorities require them to obtain a travel permit, typically valid for three months, for travel inside Algeria beyond the zone of the camps. Refugees said that they normally request travel permits via the SADR’s coordination office in Tindouf and receive them after two days. According to Algerian authorities, Algeria’s military communications office in Tindouf approves travel permits for Sahrawi refugees as a matter of course upon request from SADR’s interior ministry via the SADR coordination office in Tindouf.<sup>51</sup>

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provided he abides by the law. 12.2: Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. 12.3: Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. 12.4: A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. 12.5: The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.”

<sup>49</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>50</sup> Refugees told Human Rights Watch variously that the nighttime curfew is in force from 23:00 to 06:00 or from 00:00 to 07:00, and that authorities may impound the cars of people caught driving during curfew hours and impose a fine of 1,000 Algerian dinars (US\$12.42) on them. Researchers did not have an opportunity to verify these details with SADR authorities, and did not meet anyone who said he or she had been penalized for breaking curfew rules.

<sup>51</sup> Letter from Abdallah Baali, Algeria’s ambassador in Washington, to Human Rights Watch, April 7, 2014.

## Temporary Confiscation of Algerian Passports

While the SADR issues passports to Sahrawis residing in the Tindouf camps, these are not recognized abroad save by the minority of countries that recognize the SADR itself; most Sahrawi refugees rely for travel outside their immediate region on Algerian passports.<sup>52</sup> However, refugees said that they can wait months or years to obtain these passports. Refugees who hold Algerian passports also said that Algerian authorities at major entry points such as Algiers and Oran typically confiscate these passports temporarily when their bearers enter Algeria from abroad; the bearers are required to retrieve their passports in person at the SADR embassy in Algiers, often after waiting at least several weeks.<sup>53</sup> Algerian authorities said that Algerian border police's temporary confiscation of Sahrawis' Algerian passports upon the latter's reentry from abroad into Algeria is a longstanding procedure, but did not explain the reasons for it.<sup>54</sup> SADR Justice Minister Selma stated that the procedure of retrieving Algerian passports is "purely administrative and constitutes no hindrance to freedom of movement."<sup>55</sup>

## Travel to Polisario-Controlled Western Sahara and Mauritania

In addition to traveling in Algeria beyond Tindouf and, in some cases, through Algerian ports and airports, Sahrawi refugees also visit and transit through Polisario-controlled areas of Western Sahara. Refugees who leave the camps to resettle in Moroccan-controlled areas of Western Sahara seem mostly to travel overland. Some enter Polisario-held Western Sahara and travel west to cross the Moroccan berm directly into Moroccan-held territory; others follow established routes south through Polisario-held Western Sahara to

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<sup>52</sup> Human Rights Watch was shown examples of such Algerian passports. According to their Sahrawi bearers, the passports are valid Algerian passports, not special travel documents, and are meant to function as such.

<sup>53</sup> In some cases, Algerian authorities' confiscation and protracted withholding of Algerian passports from their Sahrawi bearers can have serious consequences. According to Mahdjoub Abdelhay Djouli, the loss of his Algerian passport for five months resulted in him also losing the Spanish residency status he had held previously held. On May 20, 2008, Algerian authorities at the port of Ghazouet (Oran) confiscated his Algerian passport when he arrived from Spain. A document issued to Djouli by police at Ghazouet, of which Human Rights Watch has a copy, attests to the confiscation. It was not until late October 2008 that Djouli was permitted to retrieve his passport, he said, via the SADR embassy in Algiers. By then, his residency permit in Spain had expired because he was unable to travel there to perform the procedures required for its renewal. Human Rights Watch has seen his most recent Spanish residency card, whose expiration date is October 24, 2008. Djouli told Human Rights Watch that he remained unable to renew his Spanish residency. Human Rights Watch interview with Mahdjoub Abdelhay Djouli, Smara camp, November 29, 2013.

<sup>54</sup> Letter from Ambassador Abdallah Baali to Human Rights Watch, April 7, 2014.

<sup>55</sup> Letter from the Justice Ministry to Human Rights Watch, , April 5, 2014.

Mauritania, from which they travel north into Moroccan-held Western Sahara.<sup>56</sup> Some also make use the United Nations' program of family visits via U.N. flights between the camps and Moroccan-controlled Western Sahara.

No paved roads lead from the Tindouf refugee camps to Western Sahara. Instead, there are tangles of well-worn vehicle tracks that mark the route over the desert. The route appears to cut southwest across the very topmost corner of Mauritanian territory to avoid a section of the Moroccan berm that runs just a few miles inside the adjacent part of Western Sahara. It is about 50 kilometers from Rabouni along this route to the Algerian border, and about 193 kilometers to the first settlement, Bir Lehlou. Further south, the main route into Mauritania goes via the Mauritanian town of Bir Moghreïn, where travelers register their presence with Mauritanian authorities.<sup>57</sup>

Before leaving the Tindouf camps for Western Sahara and beyond, vehicle drivers - but not passengers - are required to obtain a permit from SADR authorities certifying that they have enough fuel and other supplies for their intended travel.<sup>58</sup> Refugees said that authorities typically issue such permits on the spot after a quick check of a vehicle's contents. According to some refugees, authorities forbid drivers from carrying more than 200 liters of fuel as a measure against fuel trafficking. Travelers heading toward Western Sahara pass through two checkpoints as they leave the immediate area of the camps, refugees said: the first manned by SADR soldiers, the second by Algerian soldiers. Travelers also pass through a checkpoint staffed by Algerian customs agents near where the borders of Algeria, Mauritania, and Western Sahara meet, refugees told us. They also pass through SADR checkpoints inside Western Sahara at settlements such as Bir Lehlou.

Sahrawi refugees increasingly appear to be turning to trade and animal husbandry to help provide for their families, making travel outside the zone of the Tindouf camps more

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<sup>56</sup> One reason for this is may be that Algeria's land border with Morocco has been closed since 1994. Mauritania, by contrast, has operational border crossings with both Polisario-controlled and Moroccan-controlled Western Sahara.

<sup>57</sup> Human Rights Watch has a copy of a Mauritanian *fiche d'accès au territoire*, or entry slip, registering the bearer's entry into Mauritania and bearing stamps from Mauritanian gendarmerie in Bir Moghreïn. Sahrawi refugees told Human Rights Watch that they are typically able to enter Mauritania without obstacles and move about freely.

<sup>58</sup> Human Rights Watch has a copy of one such permit on file It was issued for travel on September 5, 2013, bears official stamps, and states that the bearer is authorized to travel to the settlement of Tifariti and is carrying 70 liters of fuel, plus food.

important to refugees' ability to maintain basic nutrition and living standards. Trade and animal husbandry provide income, household goods, and meat, milk, vegetables, and fruits, which are not typically included in international food aid.<sup>59</sup> Livestock herders in the Tindouf area bring their animals to graze in the less arid lands in Polisario-controlled Western Sahara. Traders visit Tindouf and Mauritania to buy food and household goods. Fuel traders transport Algerian gasoline to Polisario-controlled Western Sahara and Mauritania for sale.



**Shops in the market of Smara camp, where residents buy household goods as well as foods such as fruits, vegetables, and meat, which are not typically included in UN food aid. © 2013 Private**

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<sup>59</sup> According to an October 2011 assessment by the UNHCR and World Food Program (WFP), monthly UN food aid consisting of staples such as wheat flour, rice, and cooking oil was not enough to cover a typical family's needs for a whole month. Refugees were obliged to buy food from traders to make up the difference, as well as to supplement WFP food aid with items such as meat, milk, fruits, and vegetables, according to the assessment. UNHCR /WFP, "Joint needs assessment of Sahrawi refugees in Algeria, 4 – 14 October 2011," <http://www.unhcr.org/50221e236.html> (accessed September, 1, 2014, p. 8. Refugees told Human Rights Watch in November-December 2013 that that situation remained essentially unchanged.

Travel for the purposes of trade has at times raised tension between Sahrawi refugees on one side and SADR or Algerian authorities on the other, according to some refugees.<sup>60</sup> For example, on October 31, 2013, in Polisario-controlled Western Sahara, several dozen refugees tried to prevent SADR security officers from impounding a truck loaded with fuel, triggering a brawl that ended with 25 arrests, according to one of the refugees involved.<sup>61</sup>

On January 5, 2014, Algerian border police are alleged to have opened fire on cars carrying Sahrawi refugees near the Mauritanian border. According to Algerian authorities, soldiers near the Mauritanian border intercepted the cars along with other vehicles in an alleged smuggling convoy and fired warning shots; when the cars failed to stop, soldiers fired on them, killing two of their occupants. The soldiers seized four trucks from among the vehicles carrying 31,000 liters of fuel, Algerian authorities said.<sup>62</sup>

Relatives of the two dead men who said they had spoken with witnesses to the incident told Human Rights Watch that those killed were en route to visit one of the men's father. They had been unable to obtain a vehicle travel permit from SADR authorities in time for their journey, and joined a group of other vehicles in hopes of entering Mauritania with them, according to the relatives. Near the border, the relatives said, Algerian forces fired on the cars for reasons that remained unclear.<sup>63</sup>

## Travel to Moroccan-Controlled Western Sahara to Resettle or Visit

As part of our research on freedom of movement, Human Rights Watch interviewed in El-Ayoune, the effective capital of Moroccan-controlled Western Sahara, nine Sahrawi men who said that they had settled there after leaving the Tindouf refugee camps between 2009 and 2013.

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<sup>60</sup> In particular, gasoline merchants said that what they described as efforts by authorities to combat fuel smuggling sometimes led to confrontations between refugees and security forces. Human Rights Watch interview with Boulahi Mokhtar Ali Lahsem, Mohamed Nah Mohamed, Ahmed Hamada Tayeb, Mohamed Hamada Bilahi, Abidin Moulay Ahmed, Smara camp, December 5, 2013.

<sup>61</sup> Human Rights Watch interview with Mohamed Nah Mohamed, Smara camp, December 5, 2013.

<sup>62</sup> Letter from Algerian authorities to Human Rights Watch on April 7, 2014. The letter names the two Sahrawi men killed in the incident as Ahmed Aleyeen Abih Al-Mahfouz and Khatary Hamadha Khandoud. In the latter name, "Khandoud" appears to be a misspelling of "Khandour."

<sup>63</sup> Human Rights Watch interview with Yerba Sellami and Yahajbou Hamadha Khandour, Rabat, February 18, 2014. Yahajbou Hamadha Khandour is the brother of Khatary Hamadha Khandour, one of the two men killed.

All nine expressed frustration with life in the camps, and some accused SADR authorities of corruption, abuse of power, or tribal favoritism. At least three of the men said that they had deliberately concealed their plans to leave the Tindouf camps for fear that SADR authorities might stop them. However, the men all described encountering no serious obstacles when they set out to depart from the refugee camps in the direction of Mauritania or Moroccan-controlled Western Sahara. Some of them later returned to visit the refugee camps after having settled in Moroccan-controlled Western Sahara. Mustapha Mohamed Ali Rguibi, a former soldier in the SADR army, said that he traveled to Moroccan-controlled Western Sahara in 2009 via the United Nations' family visits program to be with his grandmother, who was ill.<sup>64</sup> When the other participants in his group returned to the refugee camps, he remained in Western Sahara. Later, in 2010 he visited the camps to see his father. The visit coincided with the controversy over Mustapha Ould Selma Sidi Mouloud, a Sahrawi dissident whom SADR authorities arrested in September 2010 after he declared his intent to promote Morocco's autonomy plan for Western Sahara.<sup>65</sup> Three SADR soldiers came to where Rguibi was visiting his father on or about the same day and detained him overnight. Security officers asked him if he intended to help Selma; Rguibi said that he did not. The next morning they released him, he said, and did not interfere with him when he later returned to Moroccan-held Western Sahara.

Mehdi Malainin Abdalla Idrissi said a series of run-ins with Algerian and SADR authorities over several years prompted him to resettle with his family in Moroccan-controlled Western Sahara in June 2011.<sup>66</sup> Idrissi resettled via the U.N. family visits program in order to bring his family with him with relative ease. They concealed their plans out of fear that SADR authorities might prevent them from traveling. He, his mother, his two sisters, his brother-in-law, his wife, and three of their four children traveled to Moroccan-controlled Western Sahara with the family visits program in June 2011. However, he had not registered his youngest child, who had to stay in the camps.

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<sup>64</sup> Human Rights Interview with Mustapha Mohamed Ali Rguibi, El-Ayoun, September 2013.

<sup>65</sup> Mr. Selma's case is discussed in the section on freedom of speech, association, and assembly.

<sup>66</sup> Human Rights Watch interview with Mehdi Malainin Abdalla Idrissi, El-Ayoun, November 12, 2013, and by telephone on April 1, 2014.

In November 2012, he returned to Tindouf with his wife and three children via Mauritania to retrieve their child. At a checkpoint in Polisario-controlled Western Sahara, he said, SADR security forces insulted him and accused him of betraying his people and their “martyrs.” The checkpoint commander, a SADR customs official whom he identified as Hamahou, confiscated his Moroccan passport before allowing him and his family to continue their journey to the camps. Idrissi’s wife and all four of their children traveled back to Moroccan-controlled Western Sahara via Mauritania. However, lacking a passport, Idrissi said he opted to cross the Moroccan berm. He did so in March 2013.

These cases appeared to be exceptional. Most of the refugees Human Rights Watch spoke to indicated that travel between Moroccan-controlled Western Sahara and the Tindouf refugee camps is increasingly common and trouble-free.

We also interviewed two Sahrawi refugees residing in the Tindouf camps who told us that they had in 2013 traveled outside the framework of the UN family visit program to Moroccan-controlled Western Sahara to visit family there and returned to the camps after stays of several months. Our aim in carrying out these two interviews was to get a sense of how Sahrawi refugees travel back and forth between the camps and Moroccan-controlled Western Sahara.

Both of the refugees -- a man and a woman -- traveled separately via Mauritania. Neither said that he or she concealed travel plans beforehand, or had faced suspicion or interference from other Sahrawis or SADR, Mauritanian, or Moroccan officials. However, both asked not to be cited by name because they planned to visit Moroccan-controlled Western Sahara again and did not want to risk becoming known to Moroccan officials.<sup>67</sup>

The man told us that he had visited El-Ayoun in early 2013 using his Mauritanian passport, driving with his father and brother as far as Bir Moghreïn and continuing by train and shared taxi. When applying for a Moroccan visa at the Moroccan consulate in the city of Nouadhibou,

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<sup>67</sup> The woman also expressed general concern that her name appearing in this report might cause problems for her relatives in Moroccan-controlled Western Sahara. Human Rights Watch interview with Sahrawi woman, name withheld at her request, Smara camp, November 30, 2013.

he said, officials indicated that they recognized him as a Sahrawi refugee.<sup>68</sup> The woman told us that she had traveled to El-Ayoun in mid-2013 with four family members. She and three others used their Algerian passports, while the fifth person entered Mauritania with his SADR national ID card and obtained a Mauritanian passport in Nouadhibou. From there, they took a taxi to El-Ayoun. They made the return journey three months later, for which their taxi driver was also a Sahrawi refugee returning to the Tindouf camps.<sup>69</sup>

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<sup>68</sup> Human Rights Watch interview with Sahrawi man, name withheld at his request, Rabouni, 4 December 4, 2013. The man told us that his family had been registered as Mauritians years earlier, at a time when they had moved around a lot in the desert.

<sup>69</sup> Human Rights Watch interview with Sahrawi woman, name withheld at her request, Smara camp, 30 November 30, 2013.

## IV. Freedom of Speech, Association, and Assembly

From its interviews with refugees, Human Rights Watch found no pattern of SADR authorities silencing dissent in the areas under their control. Sahrawis residing in the Tindouf refugee camps said they had been able to openly criticize authorities through private media and in public gatherings in recent years, generally without facing interference or reprisals. Sahrawis have also been able to form civil society groups that authorities have not shut down. However, there have been instances where authorities allegedly attempted to suppress public criticism of SADR leaders and public discussion of politically sensitive topics.

Article 30 of the SADR's constitution states that freedom of expression is guaranteed but that its practice is subject to the law. In addition, the preamble of the SADR constitution affirms the "adherence" of the Sahrawi people to the "principles of justice and democracy expressed in the Universal Declaration of Human Rights (10 December 1948) and in the African Charter on Human and Peoples' Rights (28 June 1981)." Article 9 of the latter commits states parties, which include the SADR, to guaranteeing that "[e]very individual shall have the right to receive information" and that "[e]very individual shall have the right to express and disseminate his opinions within the law."

However, SADR legislation that regulates freedom of expression is sweeping and open to various interpretations. Article 52bis of the Criminal Penal Code mandates a prison sentence of one to five years and a fine of 20,000 to 50,000 Algerian dinars (US\$251 to \$627) for anyone found guilty of "distributing, selling, making public, or owning for the purpose of selling, copies, leaflets, tapes, audio recordings, CD's containing images, communiqués, films, songs, or using electronic means, or anything that harms security, public order, or the stability of citizens, or denigrates a public or private body or institution."

SADR Justice Minister Selma informed Human Rights Watch that "the practice of journalism is still open [in the camps] and not regulated save by a few procedural and administrative regulations that govern professional ethics or by texts in the penal code that relate to libel and insults directed at individuals or institutions." He cited as examples of legal regulations on media articles 148 – 151 of the SADR penal code. (Articles 148 – 153 deal with crimes classed as "assaults on honor or divulging secrets.") Several of these articles,

which Justice Minister Selma said can be applied to media, provide for prison sentences of up to six months for offenses such as libel and slander.<sup>70</sup>

## Telecommunications in the Tindouf Camps

Telecommunications infrastructure in the Tindouf refugee camps has improved in recent years, but remains limited overall. Fixed line telephones are almost entirely absent from the camps and appear absent altogether from private homes. Meanwhile, though, mobile phone penetration has increased. Sahrawi refugees can buy phones, as well as SIM cards and pre-paid scratch cards for Algeria's mobile phone operators, from shops in the camps. Some households also own small satellite dishes that provide access to international satellite television channels. Public internet access appears limited to a handful of cybercafés, which refugees said exist in all five residential camps.<sup>71</sup>

## Public Media in the Tindouf Camps

Most news media operated by Sahrawis residing in the Tindouf refugee camps are state organs under the direction of the SADR media ministry. These include state television and radio, a weekly newspaper, and the state news agency. In addition to providing news on current events, coverage by state media is intended “to tell the world what is happening with the Sahrawi cause,” says Salama Najem, a former news director for the state radio who lives in El-Ayoun camp.<sup>72</sup> Coverage of international affairs focuses on how they relate to the Western Sahara conflict, from developments at the United Nations to pro-independence activism by Sahrawis in Western Sahara. State media typically avoid giving voice to criticism of the Polisario or opposition to its political goals, says Najem. For example, he says, when protests occur in the Tindouf camps that are critical of SADR leadership, state media “will talk in general terms about a group of people having a sit-in.”<sup>73</sup>

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<sup>70</sup> For example, SADR penal code art. 148 stipulates a prison sentence of between two and six months, and/or a fine of between 10,000 and 20,000 Algerian dinars (US\$123 and US\$246 respectively) for libel. SADR penal code art. 149 stipulates a prison sentence of between two and six months, and/or a fine of 10,000 and 20,000 Algerian dinars (US\$123 and US \$246 respectively), for “immodest expression” that constitutes a personal insult or an attack on someone’s personal dignity.

<sup>71</sup> These cybercafés connect to the internet via Algerian fixed-line internet service providers. Human Rights Watch visited one such cybercafé in Boujdour camp, as well as a cybercafé in Dakhla camp that was set up in 2011 by the UNHCR and accesses the internet via a satellite connection. UNHCR, “Global Report 2011”, <http://www.unhcr.org/gr11/index.xml> p. 149.

<sup>72</sup> Human Rights Watch interview with Salam Najem, El-Ayoun camp, December 2, 2013.

<sup>73</sup> Ibid.

In the summer of 2012, Najem, who was then news director for the state radio, and fellow state radio journalist Bashir Mohamed Lhassen appear to have exceeded SADR authorities' tolerance for critical reporting with articles they wrote for a private media outlet. As a result, Najem says, authorities transferred him and Lhassen from their jobs at the state radio to administrative posts in the media ministry.

According to Najem, both men had recently written articles for *Al-Mustaqbal as-Sahrawi* (The Sahrawi Future), an independent Sahrawi news website, about the rumored -- and, at the time, controversial -- resignation of the minister of cooperation, Al-Haj Ahmed Berikalah. Within days of Najem's articles appearing online, the information minister summoned him and Lhassen to reprimand them for what they had written in *Al-Mustaqbal as-Sahrawi*.

"You are journalists for the state radio, you're supposed to talk about the broad lines of the news, not enter into details such as possible resignations," the information minister said, according to Najem's account of their conversation.<sup>74</sup>

The information minister then told both Najem and Lhassen not to return to work at the radio for at least a month, and on August 1, 2012, he assigned both men to his cabinet. Najem continued to receive a salary. As of September 2014 he was still officially assigned to the minister's cabinet but was generally not permitted to do more than token work there.<sup>75</sup>

Najem believes that he and Lhassen were transferred from their jobs in reprisal for the articles they had written for *Al-Mustaqbal as-Sahrawi*, and said that he and Lhassen had made an oral complaint to the media ministry's internal ombudsman committee.<sup>76</sup>

SADR Justice Minister Selma said that the decisions to transfer Najem and Lhassen from their jobs as journalists to administrative posts was permitted by the internal regulations of the information ministry, and that neither man had subsequently made a written

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<sup>74</sup> Human Rights Watch interview with Salama Najem, El-Ayoun camp, December 2, 2013.

<sup>75</sup> Human Rights Watch interview by telephone with Salama Najem, September 11, 2014.

<sup>76</sup> Human Rights Watch interview with Salama Najem, El-Ayoun camp, December 2, 2013.

complaint over the matter with ombudsman committees. However, he did not provide a reason for the transfer.<sup>77</sup>

## Private Media in the Tindouf Camps

Sahrawis residing in the Tindouf refugee camps operate private online media, covering international news as well as internal affairs in the refugee camps. The most prominent is arguably the above-mentioned *Al-Mustaqbal as-Sahrawi*, which four young Sahrawis in the camps launched as a print newspaper in 1999 before creating an online edition<sup>78</sup> in 2001, [www.futurosahara.net](http://www.futurosahara.net). Before its demise in 2004, the print edition appeared only sporadically due to financial constraints, said Salek Saloh, a founding editor of *Al-Mustaqbal as-Sahrawi* who is still on its editorial board. The website has gained readers in the Tindouf refugee camps as internet access has spread, said Saloh. Still, internet penetration remains low overall, and most of the website's Sahrawi readers reside in Moroccan-controlled Western Sahara and Spain, according to Saloh. The site makes a point of reporting on what Saloh describes as instances of alleged corruption in the Tindouf camps. "When we see corruption, whether at the level of the leadership or of the citizens, we write about it," he says.<sup>79</sup>

In the summer and fall 2013, *Al-Mustaqbal as-Sahrawi's* work ran afoul of SADR authorities, says Saloh. The gendarmerie briefly detained Saloh, and officials questioned him about articles published by *Al-Mustaqbal as-Sahrawi* that were critical of military leadership.

At around 5 p.m. on October 2, 2013, he was in the office of the Sahrawi Youth Union, of which he is an official, in Rabouni, when he received a call on his cellphone from a man who identified himself as a military court official requesting a meeting. Saloh agreed, and about an hour later the military court official arrived at the youth union office bearing an order from the military prosecutor to detain members of the editorial board of *Al-Mustaqbal as-Sahrawi*. At the official's suggestion, Saloh went to the office of the military

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<sup>77</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>78</sup> According to Salama Najem, others include: [www.adamir.net](http://www.adamir.net), [www.masir.net](http://www.masir.net), and [www.tgheir.net](http://www.tgheir.net).

<sup>79</sup> Human Rights Watch interview with Salek Saloh, Rabouni, November 28, 2013. The account of this incident comes from Saloh, except where noted.

prosecutor. The official went inside and reemerged with a handwritten order signed by the military prosecutor to detain him.

The military court official brought Saloh to the gendarmerie headquarters in Rabouni. There, a gendarmerie officer questioned him about *Al-Mustaqbal as-Sahrawi* and a series of articles published by the website during the summer of 2013 that were critical of leaders of the SADR's military. Saloh refused to tell the officer who had written the articles, which were published without bylines. The atmosphere was relaxed, he says.

Gendarmerie officers held Saloh overnight at their headquarters. The following day Saloh received visits from the lawyer, who had been with him the day before, and from friends and family members. He remained held at the gendarmerie headquarters throughout the day.

At around 6 p.m. on October 3, 2013, the military prosecutor arrived at the gendarmerie headquarters. The prosecutor questioned him about *Al-Mustaqbal as-Sahrawi* and certain of its articles. Saloh refused to answer questions, arguing that as a civilian he should not be investigated by military authorities. The military prosecutor then urged Saloh to stop publishing articles about sensitive topics.

“Please, ask your friends and colleagues, other journalists, please, to stop writing about military affairs,” the military prosecutor told Saloh.

Later on October 3 authorities released Saloh from the gendarmerie headquarters. Since then he has not been detained again and no charges have been brought against him.

SADR Justice Minister Hamada Selma confirmed Saloh's claim that gendarmes detained him and the military prosecutor questioned him, while emphasizing that Saloh was freed within 24 hours.<sup>80</sup> It is a serious human rights concern that Saloh was detained apparently over his journalistic work, and in particular by military judicial authorities who seem, in this case, to have usurped the role of civil courts.

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<sup>80</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014. Article 27.5 of the SADR constitution states that authorities may not detain people longer than 72 hours without an order authorizing this from a judge.

In general, Saloh says, SADR authorities do not seek to interfere with the work of websites such as *Al-Mustaqbal as-Sahrawi* and have apparently made no attempt to block access to them. Still, the absence of a press law leaves media without clear definitions and legal guarantees of their rights, he says.<sup>81</sup>

## Civil Society Groups

Quasi-political organizations under the umbrella of the Polisario Front, such as the National Women’s Union and National Youth Union, have long dominated areas where civil society might otherwise play a role. Few independent civil society groups operate in the refugee camps, and their activities are constrained by logistical problems and lack of money. However, Human Rights Watch found no evidence that SADR authorities hindered the formation or work of civil society groups.<sup>82</sup>

The best-established human rights organization is the Asociación de Familiares de Presos y Desaparecidos Saharauis (AFAPREDESA), founded in 1989, which works to document and raise awareness of cases of alleged forced disappearance and alleged torture of Sahrawis in Moroccan-controlled Western Sahara. Other groups that we met include the Asociación Saharai de Víctimas de Minas (ASAVIM), which documents and lobbies on behalf of Sahrawi land mine victims, and the Freedom and Progress Association, which seeks to document and raise awareness of alleged slavery in areas under SADR control.

According to Abdesalam Omar, AFAPREDESA’s president, SADR law does not provide a legal framework to define and guarantee the rights of civil society groups operating under its jurisdiction.<sup>83</sup> Similarly, the SADR constitution does not contain explicit guarantees of the rights to free association and assembly. However, these rights are guaranteed in articles 10.1 and 11, respectively, of the African Charter on Human and People’s Rights, to which the SADR is party.<sup>84</sup>

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<sup>81</sup> Human Rights Watch interview with Salek Saloh, Rabouni camp, November 28, 2013.

<sup>82</sup> This report refers to “civil society groups” to describe structured, politically independent organizations whose primary concerns are social, rather than political, in nature.

<sup>83</sup> Human Rights Watch interview with Abdesalam Omar, Rabouni camp, December 3, 2013.

<sup>84</sup> Article 10.1 of the African Charter on Human and Peoples’ Rights states: “Every individual shall have the right to free association provided that he abides by the law.” art. 11 of the same charter states: “Every individual shall have the right to

## Political Dissidence in the Tindouf Camps

The SADR's laws do not guarantee to Sahrawis living under its jurisdiction the right to form groups of a political nature or whose purpose is to work toward political goals. Article 31 of the SADR constitution states that the "right to set up political associations and parties is recognized and guaranteed *after independence*." [Emphasis added]. Article 32 expands on the preceding article, stating that "until the full attainment of national sovereignty, the [Polisario Front] is the political framework to which Sahrawis are politically affiliated to express their hopes, their ambitions, their legitimate right to self-determination and independence, the defense of their national unity, and the completion of building their independent state."

Camp residents can criticize Polisario governance and leadership publicly. They do so via independent online media, and also at the town-hall style meetings that precede each triennial General Popular Congress.<sup>85</sup> Critics – such as some civil society activists whom we interviewed -- typically accuse SADR officials of corruption, nepotism, favoritism of one tribal group over another, and abuses of power. Some also say that the SADR's political system is insufficiently democratic.

However, it is rare to hear camp residents vocally oppose the Polisario Front's goal of independence for Western Sahara. According to refugees Human Rights Watch interviewed, this is due more to the lack of support for Moroccan rule among camp residents than to the repression by the Polisario leadership of those who would challenge the Front's central political objective.

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assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

<sup>85</sup> No such meetings took place during Human Rights Watch's visit to the Tindouf refugee camps to research this report. However, Human Rights Watch observed such a meeting while visiting the camps in November 2007 and interviewed participants in other, similar meetings. At those meetings, participants criticized "Polisario's management of socioeconomic problems, such as the shortage of medicine and water, the lack of employment opportunities for young people with diplomas, and low salaries for teachers. Some criticized the Polisario for having achieved little politically by agreeing to a ceasefire with Morocco in 1991, and called for a resumption of the military war." Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, (New York: Human Rights Watch, 2008), <http://www.hrw.org/en/reports/2008/12/19/human-rights-western-sahara-and-tindouf-refugee-camps-0> p. 134.

In private conversations with refugees, as well as with international organizations operating in the camps and with refugees who left the camps definitively, Human Rights Watch did not meet or hear about any refugees in the camps who opposed independence for Western Sahara, except for that of Mustapha Selma Ould Sidi Mouloud (see below). It was not possible to gauge the number of camp residents who might hold this view. Some refugees also told Human Rights Watch that the social stigma attached to pro-Moroccan views might deter people from questioning the notion of independence for Western Sahara both in public and in private. Journalist Salek Saloh, who supports independence for Western Sahara, said that SADR authorities excluded pro-Moroccan views from public media, but, that “At the level of society, you can talk.... Someone can mention to a taxi driver, for example, that he supports autonomy, and they might argue about it.”<sup>86</sup>

In at least once case, authorities sought to silence an advocate of the Moroccan position of autonomy for the Western Sahara. Mustapha Selma Ould Sidi Mouloud, a former SADR security officer, approached the camps in September 2010, after a visit to Moroccan-controlled Western Sahara where he had publicly announced his intention to promote Morocco’s position.<sup>87</sup> SADR authorities detained him in the part of Western Sahara that they control, accused him of spying for Morocco, and said that they would try him for espionage and treason, crimes that carry punishments of life in prison or execution.<sup>88</sup> Both activities are classified as state security crimes by the SADR penal code, and as such fall under the jurisdiction of military courts.<sup>89</sup>

In December 2010, SADR authorities released Selma, after holding him for more than two months, to representatives of the United Nations High Commissioner for Refugees (UNHCR), who escorted him to Mauritania.<sup>90</sup> He is currently residing in Mauritania, but told Human Rights Watch by telephone in February, 2014 that he wished to return to the Tindouf camps

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<sup>86</sup> Human Rights Watch interview with Salek Saloh, Rabouni, November 28, 2013.

<sup>87</sup> Details of Mustapha Selma Ould Sidi Mouloud’s detention can be found in Human Rights Watch, “Western Sahara: Polisario Arrests Rare Dissenter,” September 23, 2010, [www.hrw.org/news/2010/09/22/algeria-polisario-arrests-rare-dissenter-refugee-camps](http://www.hrw.org/news/2010/09/22/algeria-polisario-arrests-rare-dissenter-refugee-camps).

<sup>88</sup> Articles 36-41 of the SADR Penal Code.

<sup>89</sup> Article 399 of the SADR’s Criminal Procedural Code states that military courts shall handle cases relating to state security crimes.

<sup>90</sup> Agence France Presse, “Polisario releases policeman held for spying: UNHCR,” December 5, 2010, <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=4cfc8e975> (accessed June 12, 2014).

to be with his wife and children, who still live there. According to Selma, the UNHCR has informed him that Algerian authorities currently bar him from entering Algerian territory.<sup>91</sup> Human Rights Watch asked Algerian authorities whether they were preventing Selma from entering Algeria, and if so, on what basis. The Algerian authorities did not respond.<sup>92</sup>

Whether it is Algeria or the Polisario Front, or both, that is preventing Selma from returning to the camps, where his family resides, that refusal appears politically motivated. Other refugees, by contrast, have gone to Moroccan-controlled Western Sahara and returned freely to the camps. M'hammed Khaddad, the Polisario's coordinator with MINURSO, contended that Selma's current exclusion did not amount to political discrimination, explaining that while other refugees may travel to Moroccan-controlled Western Sahara discreetly and unbeknownst to SADR authorities, Selma broadcast his presence while there.<sup>93</sup> According to this line of reasoning, Mustapha Selma, by his activities, demonstrated publicly that he no longer needed the protection offered by residing in the refugee camps.

In at least two instances in recent years, groups of Sahrawis in the camps with grievances have formed dissident groups to demand change from SADR leaders.

Al-Khat ash-Shahid ("The Line of the Martyr") was formed in 2003 by a Sahrawi named Mahjoub Salek. Al-Khat ash-Shahid has presented itself as a reformist strand within the Polisario that seeks to return it to its true mission. In a magazine interview in 2006, Salek urged "a definitive break with the prevalent corruption, irresponsible policies and arbitrary decisions ... and an end to the never-ending succession of [President] Mohamed Abdelaziz to himself at the summit of corruption and arbitrariness."<sup>94</sup> Salek told Human Rights Watch in a January 2008 phone call that Al-Khat ash-Shahid had canceled a planned inaugural congress in the camps in 2006, and that he had left for Mauritania, after sensing

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<sup>91</sup> Human Rights Watch telephone interview with Mustapha Selma Ould Sidi Mouloud, February 12, 2014. The UNHCR declined to comment for the record on this point.

<sup>92</sup> Letter from Abdallah Baali, April 7, 2014.

<sup>93</sup> Human Rights Watch interview with M'hammed Khaddad, New York, April 28, 2014.

<sup>94</sup> Interview Mahjoub Salek, "Le Maroc n'a rien compris au Sahara," *TelQuel*, October 14-20, 2006. Cited in Human Rights Watch, *Human Rights in Western Sahara and the Tindouf Refugee Camps*, p. 135.

surveillance by SADR authorities. The Polisario denied having put Al-Khat ash-Shahid members under surveillance to intimidate them and prevent them from holding the planned conference. Salek and Mohamed Mouloud Ould Mohamed Sid Ahmed, Al-Khat ash-Shahid's spokesman in the camps as of 2007, told Human Rights Watch the SADR authorities had not arrested anyone for being a member or sympathizer of the group.<sup>95</sup> When Human Rights Watch visited the camps for this report, Al-Khat ash-Shahid appeared to have faded from view. (Saloh, for example, from *Al-Mustaqbal as-Sahrawi*, said that he had never seen the group's members in the camps.<sup>96</sup>) Human Rights Watch did not seek to contact the group in the course of researching this report.

The most prominent dissident group currently operating in the Tindouf refugee camps appears to be the March 5<sup>th</sup> movement, a grassroots movement founded on March 5, 2011 by Sahrawis residing in the camps. Human Rights Watch met with Ahmad Mahmud Ada, as well as March 5<sup>th</sup> activist Moulay Abu Zeid, while visiting the camps for this report. The movement has no official leadership, and the number of regularly active members has fluctuated from around 100 in 2011 to around 60 in late 2013, the men told us. According to the Abu Zeid, the movement has called for reforms in SADR governance, including sweeping changes of leadership, while fundamentally supporting the Polisario Front's goal of independence for Western Sahara.<sup>97</sup> "We're not against the Front; we're against people from the Front," Abu Zeid says. "We want the departure of certain people."<sup>98</sup>

The March 5<sup>th</sup> movement was inspired at least partly by the 2011 uprisings in Tunisia, Egypt, Libya, and other Arab countries, and appears to have been most active during 2011. Starting on March 5, 2011, the movement held demonstrations on the fifth day of each month outside the SADR president's office.<sup>99</sup> The demonstrations culminated in a sit-in from November 19, 2011 to January 9, 2012, timed to coincide with a General Popular Congress of the Polisario Front. "We were asking voters to vote against the [SADR] leadership," says Abu

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<sup>95</sup> Human Rights Watch, *Human Rights in Western Sahara and the Tindouf Refugee Camps*, p. 136.

<sup>96</sup> Human Rights Watch interview with Salek Saloh, Rabouni, November 28, 2013.

<sup>97</sup> According to Abu Zeid, the March 5<sup>th</sup> movement's name is intended to evoke a reformist, rather than rejectionist, spirit by commemorating both the movement's founding in 2011 and the creation of the first SADR government on March 5, 1976.

<sup>98</sup> Human Rights Watch interview with Moulay Abu Zeid, Smara Camp, November 29, 2013.

<sup>99</sup> Ibid.

Zeid. “After the congress, our demand was the departure of the leadership. The government elected was the same government, the same people as before.”<sup>100</sup>

While styling themselves a leaderless movement, March 5<sup>th</sup> activists formed committees charged with tasks such as organizing demonstrations, making leaflets, and media relations.<sup>101</sup> Their demands included ending corruption and making politics more inclusive. Pictures and videos provided to Human Rights Watch by Abu Zeid of what he says are March 5 activists show men waving Polisario flags and lined up behind banners bearing slogans such as, “The youth of the revolution demand revising the path to liberation” and, “The people want the reform of the regime.”<sup>102</sup> A March 5<sup>th</sup> movement communiqué dated July 5, 2011, contains an article calling for political reform of the SADR, titled “The world has changed around us and the Polisario still has not!!!”<sup>103</sup> The article draws unflattering comparisons between the SADR’s General Popular Congresses and the structure of popular committees in Muammar Gaddafi’s Libya, stating that the latter had proven to mask a tribal mentality that fueled violence during Libya’s 2011 war.

According to Abu Zeid and other refugees active in or close to the March 5<sup>th</sup> movement, SADR authorities have typically not attempted to prevent the movement from organizing itself, holding demonstrations, and distributing leaflets and communiqués. However, Abu Zeid said gendarmes prevented him and Amrabih from giving a letter to UN envoy Christopher Ross when the latter visited the Tindouf camps in March 2013.<sup>104</sup> Moreover, state media have typically refrained from reporting on the movement’s activities.<sup>105</sup>

SADR authorities also appear to have allowed a sit-in by Sahrawi refugees outside the office of the UNHCR in Rabouni. According to Maarouf Hamdi Dadah El Maleh, who took part in the sit-in from its beginning on January 19, 2014, protestors wanted the UNHCR to

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> This phrase is an apparent twist on the slogan “The people want the downfall of the regime,” which became a rallying cry for anti-government protestors in the 2011 Arab-world uprisings in known as the Arab Spring.

<sup>103</sup> Communiqué on file at Human Rights Watch.

<sup>104</sup> This claim is discussed in more detail in the chapter of this report on physical abuse by security forces.

<sup>105</sup> This claim is consistent with the claim of Salama Najem, a former journalist for the SADR’s state television channel, that state media deliberately avoid giving a platform to public criticism of SADR authorities. Najem’s case is discussed toward the beginning of the present chapter of this report, on freedom of speech, association, and assembly.

guarantee what they deem to be their rights as refugees.<sup>106</sup> These include more access to jobs, more international aid, and more protection from drug trafficking and other criminal activities.<sup>107</sup> At the beginning, the sit-in drew about 30 people, but in time and owing to inclement weather it evolved into a once-a-week gathering each Sunday. As of March 2014, only Hamdi and another man named Abdelhay were keeping a constant vigil outside the UNHCR office, although they had a list of 69 other Sahrawis who supported their demands and dropped by from time to time.<sup>108</sup> Gendarmes consistently monitored the sit-in and had forbidden protestors from setting up tents but had not used violence against them or otherwise tried to disperse them. Hamdi was not aware of any instance of authorities attempting to harass or pressure protestors' families.<sup>109</sup>

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<sup>106</sup> Human Rights Watch telephone interview with Maarouf Hamdi Dadah El-Maleh, March 26, 2014.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

## V. Use of Military Courts to Investigate and Try Civilians

Among the rights guaranteed by the SADR's constitution to citizens accused of crimes are equality before the law, the right to a trial, the presumption of innocence, the right to choose their own legal defense before courts, and protection from torture and illegal detention.<sup>110</sup>

Human Rights Watch found no pattern of torture, prolonged arbitrary detention, or denial of access to a lawyer, based on interviews with detainees, defense lawyers, and judges, and a study of case documents. However, we documented several recent instances of civilians being detained by military authorities, held in detention on the orders of military judicial officials apparently in defiance of standard legal procedure, and in some cases tried by military courts. This in itself is troubling; it is a norm of international law that civilians shall not be tried by military courts. These cases, though few in number, suggest a pattern of unaccountability and disregard for the law on the part of military judicial authorities.

While the Tindouf camps are on Algerian soil, they and the areas of Western Sahara under Polisario Front control fall under the de facto jurisdiction of the SADR judicial system. SADR law is applied within the camps; a Sahrawi accused of committing a crime elsewhere in Algeria would be subject to Algerian law. An Algerian citizen accused of committing a crime in the Tindouf camps would typically be surrendered to Algerian authorities.<sup>111</sup>

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<sup>110</sup> Here is the section of SADR constitutional articles on citizens' core rights with respect to the courts in full: art. 26: "All citizens are equal before the law in protection and punishment." art. 27: "Personal freedom is protected, and a person may not be prevented from exercising his freedom except in accordance with the law." art 27.1: "All citizens are innocent unless their guilt is proven by the judiciary." art. 27.2: "The right to defense includes the choice of one's defender." art. 27.3: "A person may not be detained or imprisoned except in accordance with the law." art. 27.4: "There is no crime or punishment save under the law." art. 27.5: "The length of pre-arraignment detention may not exceed 72 hours, which may not be extended save by order of the competent judicial authority and in accordance with the law." art. 28: "Violation of the sanctity of the person, or touching his public image or his honor, or practicing torture against him, or any physical or moral violence, or any prejudice against his dignity, is forbidden." art. 28.1: "It is forbidden to violate the sanctity of the dwelling of any citizen." art. 28.2: "Homes may not be searched except under the law, and based on a written order issued by the competent judicial authority." art. 29: "Every citizen has the right to defense of his rights before the competent judicial authority."

<sup>111</sup> Human Rights Watch interview with Mohamed Salem Omar, investigating judge and youth judge of the appeals court; Abidi Abbah El Qaid, counseling judge of the penal chamber of the high court; Hamdi Khalili Lehib, appeals court president; Mohamed Embarak Mohamed Ahmed, high court president. Rabouni, November 30, 2013.

Article 127 of the SADR constitution outlines a three-tiered court structure for the civil judicial system: first degree courts, appeals courts, and the high court. First degree courts hear civil cases, which may be appealed at the single appeals court that currently exists. The appeals court also acts as a first degree court for serious crime cases, which may be appealed at the high court.<sup>112</sup>

The SADR's constitution does not address the structure of its military justice system, which the defense ministry oversees. Military courts have no appeals level: while the civil high court may overturn military court decisions, it does not act as an appeals court as such, in that it does not consider the content of cases or questions of procedure.<sup>113</sup> The SADR constitution does not provide a guarantee that civilians shall not face military justice.<sup>114</sup>

The military courts' jurisdiction has traditionally encompassed the investigation and trial of people accused of crimes against state security.<sup>115</sup> In February 2012, President Abdelaziz issued a decree law that transferred drug-related crimes from the jurisdiction of civil courts to that of military courts.<sup>116</sup> In effect, SADR authorities have decided to view drug-related

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<sup>112</sup> Human Rights Watch interview with Mohamed Salem Omar, investigating judge and youth judge of the appeals court; Abidi Ayat El Qaid, counseling judge of the penal chamber of the high court; Hamdi Khalili Lehbib, appeals court president; Mohamed Embarak Mohamed Ahmed, high court president. Rabouni, November 30, 2013; Human Rights Watch interview with Sahrawi lawyer, name withheld at the lawyer's request, November 28, 2013. art. 5 of the SADR's penal code offers a partial definition of what constitutes a serious crime. The article states that basic punishments for felony offenses are execution, life imprisonment, prison terms of between five and 20 years, and fines of over 100,000 Algerian dinars (US \$1,236) "unless the law provides otherwise."

<sup>113</sup> According to the high court's president, Mohamed Embarak Mohamed Ahmed, the high court considers only whether the law has been correctly applied in a given case. Human Rights Watch interview with Mohamed Embarak Mohamed Ahmed, Rabouni, November 30, 2013.

<sup>114</sup> The only reference in the constitution to military courts appears to be art. 127.1, which describes their jurisdiction in terms of the kinds of cases they may handle but not in terms of which categories of persons may be tried in them. The article states: "Military courts are competent in the handling of cases particular to the military establishment. Their organization and competences are defined by law."

<sup>115</sup> Article 399 of the SADR Criminal Procedural Code states that "military courts are competent to hear and decide on cases of crimes that touch state security, and what is provided for them in the penal code." The SADR Penal Code defines and classifies state security crimes under the headings of "Treason and Espionage" (arts. 36 – 41) and "Crimes Perpetrated against the Authority of the State and the Safety of Citizens" (arts. 42 – 53).

<sup>116</sup> Decree Law 01/2012, published on 19 February 2012. The first article of the decree law, of which Human Rights Watch has obtained a copy, states that it "is aimed at fighting crimes related to working for the benefit of the enemy, and terrorism, and drugs, and organized crime, and to facilitate follow-up actions of these crimes." The article identifies drug crimes as those covered in Chapter 3, Section 4 of the penal code, which lists a range of drug-related offenses including: possession or introduction [into the camps] of drugs or alcohol with the intent to promote or sell them; possession, storage, transport, or offering for sale of drugs or mind-altering substances; using drugs or mind-altering substances; and consuming or supplying medicinal drugs for recreational use. The penal code does not specify quantities of drugs, alcohol, or other mind-altering

crimes as potentially serious threats to state security.<sup>117</sup> This view is based on the perceived link in the Sahara and Sahel region between drug trafficking and armed violence.<sup>118</sup>

Militant groups including Al Qaeda in the Islamic Maghreb are widely believed by governments and security analysts to fund kidnaps, terrorist attacks, and armed campaigns against regional governments in part through leeching off smuggling networks.<sup>119</sup> According to Justice Minister Selma, the February 2012 decree law was prompted by the unprecedented kidnap by gunmen of three foreign aid workers from Rabouni.<sup>120</sup> The law stipulates that its provisions apply retroactively to as far back as October 22, 2011, a day before the kidnap took place.<sup>121</sup> The minister told Human Rights Watch that as of April 2014, 12 people had been tried by military courts under the decree law's provisions, and that "preparations are under way to enable regular courts to investigate and decide upon [drug-related] crimes."<sup>122</sup>

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substances in question. Art. 13 of the decree law states: "Cases associated with the crimes set forth in the first article of this decree are subject to the same jurisdiction stipulated in art. 399 of the Criminal Procedural Code. And it does not entail dropping a civil case or reconciling the matter without the initiation of public action at any stage." In other words, drug-related crimes are considered to fall under the jurisdiction of military courts.

<sup>117</sup> These drug-related crimes are described in Chapter 3, Section 4 of the SADR penal code, and encompass activities including the transport, storage, possession, and sale of unspecified quantities of drugs, alcohol, and other mind-altering substances, as well as the use or provision of medicinal drugs for recreational purposes.

<sup>118</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014. As one SADR official who requested anonymity explained it in an interview with Human Rights Watch in Rabouni on December 6, 2013, the SADR's perspective is that, "terrorists provide protection, drug traffickers provide funding....We don't see a difference between drug trafficking and terrorism."

<sup>119</sup> According to a September 2013 report by Wolfram Lacher, a Sahel analyst with the German Institute for Security and International Affairs (Stiftung Wissenschaft und Politik), for the West Africa Commission on Drugs, drug trafficking appears to help fund some militant groups in the Sahara/Sahel region. However, the report says, other factors contribute to drug trafficking, while militants appear to gain more money through kidnap for ransom than through collusion with smuggling networks: [www.wacommissionondrugs.org/wp-content/uploads/2013/08/Challenging-the-Myth-of-the-Drug-Terror-Nexus-in-the-Sahel-2013-08-19.pdf](http://www.wacommissionondrugs.org/wp-content/uploads/2013/08/Challenging-the-Myth-of-the-Drug-Terror-Nexus-in-the-Sahel-2013-08-19.pdf) (accessed September 11, 2014).

<sup>120</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014. The aid workers - two Spaniards and an Italian - ended up in the hands of the Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest, which took part in an armed Islamist takeover of northern Mali. The group released all three of the aid workers in July 2012.

<sup>121</sup> Article 219 of the SADR Penal Code states that "[c]rimes shall be punished according to the law in force at the time of their commission, and if, after the act occurs and before the final judgment, a law is issued that is better for the accused, this law shall be followed and no other." However, Article 16 of the decree law exempts it from these provisions, stating: "The provisions of Article 219 of the Penal Code do not apply to the crimes set forth in the first article of this decree, and its provisions apply retroactively from 22 October 2011."

<sup>122</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

We have documented the cases of eight civilian men who are under investigation or have been sentenced to prison by military courts. Some of the men appear to have been held in pre-trial detention beyond the period provided by law or, in two cases, appear to have been kept in prison after having completed their court-imposed sentences. The standard legal limit for pre-trial detention under SADR law is four months, and the maximum possible length of pre-trial detention is twelve months.<sup>123</sup>

Investigating judges may request an extension of pre-trial detention from the accusation chamber of the competent court, provided they do so no later than one month before the current pre-trial detention period expires.<sup>124</sup> SADR authorities told us that the eight men whose cases are described below were held in accordance with the law. However, authorities did not offer evidence – such as written court orders – to demonstrate that judicial officials had followed necessary legal procedures to extend or renew the men’s periods of pre-trial detention.<sup>125</sup>

In the cases that follow, Human Rights Watch takes no position on whether the defendants were guilty as charged. It highlights apparent instances where authorities have violated the rights of defendants not to be held in custody except in accordance with the law.

### *The Cases of Mokhtar Mohamed Embarek, Ahmed Salem Said, and Salama Lmhaba Badi*

On July 19, 2013, SADR security forces arrested Mokhtar Mohamed Embarek, Ahmed Salem Said, and Salama Lmhaba Badi in the desert near the Moroccan town of Assa.<sup>126</sup> The military prosecutor charged them with drug trafficking, which they deny. Military

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<sup>123</sup> Article 85 of the SADR Criminal Procedural Code states that the legal limit for pre-trial detention in normal circumstances is four months. According to the same article, the maximum possible length of extensions to an initial four-month pre-trial detention period is eight months. Thus, the maximum total length of pre-trial detention is twelve months.

<sup>124</sup> Article 86, SADR Criminal Procedural Code. In addition, art. 27.5 of the SADR constitution, from the section on the rights of citizens, states: “The length of pre-arraignment detention may not exceed 72 hours, which may not be extended save by order of the competent judicial authority and in accordance with the law.”

<sup>125</sup> Letter from the Justice Ministry to Human Rights Watch, November 5, 2013 and April 5, 2014.

<sup>126</sup> The three men believe that they were on Moroccan territory at the time of their arrest, since their satellite phone registered a connection with a network in Morocco. Human Rights Watch interview with Mokhtar Mohamed Embarek, Shahid Abderrahman Prison, December 1, 2013.

authorities appear to have held the three men in pre-trial detention for months longer than the law allows.<sup>127</sup>

Embarek, Said, and Badi were traveling in the desert northwest of the Tindouf refugee camps, on a holiday excursion. The previous day they had bought and slaughtered a goat to eat from local herders. At around 6 p.m., as the men were driving, four cars pulled alongside. Machine-guns were mounted on three of the cars, and all four were carrying four or five men armed with Kalashnikov assault rifles.

Embarek said the men were SADR security forces, but he did not know to which service they belonged. “We’re from your government,” one of the men said, according to Embarek’s account of the encounter.<sup>128</sup>

The security forces detained Embarek and his companions, and drove them and their car to the gendarmerie headquarters in Rabouni, where they held the three men for four days. Security officers then brought them to the Shahid al-Ouali military school, south of Rabouni, where the military prosecutor and two military investigators questioned Embarek. During their detention at both of these places, the three men were allowed no contact with their families or lawyers.<sup>129</sup>

In late July or early August 2013, security officers brought Embarek and Said back to the place of their arrest, where the security officers photographed them, videotaped them, and pressured them to confess to drug trafficking. On August 3, 2013, security officers brought all three men to Shahid Abderrahman Prison.<sup>130</sup>

The military prosecutor charged Embarek, Said, and Badi with drug-trafficking, and a military investigative judge opened an investigation against them on August 12, 2013. The three men appeared to have completed four months of pretrial detention in December

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<sup>127</sup> The account of the men’s detention presented here is based primarily on Human Rights Watch interviews with Mokhtar Mohamed Embarek Shahid Abderrahman Prison, December 1, 2013 and a source familiar with the case who requested anonymity.

<sup>128</sup> Human Rights Watch interview with Mokhtar Mohamed Embarek, Shahid Abderrahman Prison, December 1, 2013.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

2013. However, authorities continued to hold the men in prison after that date despite having neither begun their trial nor asked courts to extend their pre-trial detention period.<sup>131</sup> On February 24, 2014, the accusation chamber of the military court rejected a request by the men's lawyers to release them on the grounds that their legal pre-trial detention period had expired. The same day, the accusation chamber also referred the men's cases to trial and authorized an extension of pre-trial detention.<sup>132</sup>

SADR Justice Minister Selma contends that Embarek, Said, and Badi were at that time legally held in pre-trial detention. However, the minister did not provide the legal basis for holding them in detention between their arrest in July or August 2013 and the accusation chamber's decision seven months later.<sup>133</sup> On May 17, 2014 the military sentenced Badi to eight months in prison with an additional three-year suspended sentence.<sup>134</sup> Therefore not only has a military court, in this case, investigated civilians, tried and sentenced one of them, and intends to try two others, but also military authorities appear to have held the three men in prison illegally for two months, between December 2013 and February 2014. On June 16, 2014, the court granted Embarek and Said provisional release pending their trial.<sup>135</sup>

### *The Cases of Saleh Mohamed Salem and Mohamed Lamine Said Laroussi*

SADR security forces arrested Saleh Mohamed Salem and his nephew, Mohamed Lamine Said Laroussi, on July 24, 2012, after the two men said they were attacked and robbed by gunmen in the desert and sought help from SADR gendarmerie in Rabouni.<sup>136</sup> The military prosecutor charged both men with drug trafficking, forming an armed group, and illegal possession of weapons. Authorities appear to have held the men in prison for almost a year longer than the law allows.<sup>137</sup>

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<sup>131</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>132</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>133</sup> Ibid.

<sup>134</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>135</sup> Ibid.

<sup>136</sup> During the July 24, 2012 attack, the gunmen allegedly killed another of Salem's nephews, Ahmed Henna Maatallah, who was with him and Laroussi. Salem was wounded in the neck by a bullet, and showed Human Rights Watch a scar he said resulted from the wound. Upon detaining him, he said, gendarmes in Rabouni took him to a hospital for treatment. The account presented here of Salem and Laroussi's detention is based primarily on a Human Rights Watch interview with Salem in Shahid Abderrahman Prison on December 1, 2013.

<sup>137</sup> Ibid.

Authorities held Salem and Laroussi in Shahid Abderrahman Prison. The military prosecutor and a military investigating judge questioned the men several times over five months and accused them, without formally charging them, of drug trafficking, forming an armed group, and illegal possession of weapons. Both men reject these accusations.<sup>138</sup>

Military judicial authorities prepared a document listing accusations against Salem and Laroussi as drug trafficking, forming an armed group, and possession of weapons without a permit. Salem refused to sign this document, apparently because he feared it would amount to a confession. He did sign a statement concerning his interrogation after authorities read it to him.<sup>139</sup>

On December 6, 2012, an investigating judge questioned the men in the presence of their lawyers, and they signed a statement.<sup>140</sup> On December 26, 2012, an investigating judge formally opened an investigation against them on charges of drug trafficking, forming an armed group, and illegal possession of weapons, and placed them in pre-trial detention.<sup>141</sup> Salem's and Laroussi's four-month pre-trial detention period ended on April 26, 2013. The justice ministry informed Human Rights Watch that the high court had reviewed the men's case on May 26, 2013, but had deferred making a decision on whether it should go to trial as ordered by the military court accusation chamber. The ministry contended that the men's continued detention, as of November 5, 2013, was legal under Criminal Procedural Code article 85, but did not explain the legal grounds for this contention.<sup>142</sup>

On March 11, 2014, the military court accusation chamber ordered that Salem's and Laroussi's case go to trial, according to the justice ministry.<sup>143</sup> The accusation chamber also authorized what the ministry described as an extension of the men's pre-trial detention.

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<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>142</sup> Letter from the Justice Ministry to Human Rights Watch, November 5, 2013.

<sup>143</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

According to SADR penal code article 85, the maximum time that a suspect may be held in pre-trial detention is 12 months. For Salem and Laroussi, this period ended in December 2013. A military court has, in this case, not only investigated and intends to try civilians, but military authorities also appear to have held Salem and Laroussi in prison illegally for at least 10 months, and perhaps longer.

*The Cases of Mohamed Ahmedou Dahmi, Brahim Mohamed Said Rabah and Mohamed Lebih Al-Mahjoub Ahmed Mahmoud Lemhidi*

The final case concerns three men who were arrested separately but convicted together of drug trafficking, and in one case, also of a weapons charge, by a military court on January 30, 2013. The Justice Ministry informed Human Rights Watch that on May 26, 2013 the high court had overturned the men's convictions by the military court.<sup>144</sup> However, authorities kept all three men in prison. Two of them said they were kept in prison even having completed their initial sentences, and one of these also said that security officers abused him while in detention.<sup>145</sup> The three men's accounts of their arrests and detention follow.

Mohamed Ahmedou Dahmi, a mechanic who lives in Aousserd camp, told Human Rights Watch that he was arrested in early March 2012 and convicted of drug trafficking by a military court. He was later held in prison despite his conviction having been overturned by the high court, and was finally reconvicted and again sentenced to a prison term. He contends that he is innocent and was coerced into incriminating himself.<sup>146</sup>

In February 2012, Dahmi was at his home in El-Ayoun camp when a group of security officers appeared and asked him to accompany them. Dahmi declined, explaining that he and his family were having a wedding, but promised to speak to the men later. In early March he reported voluntarily to security authorities as promised, and was promptly detained.<sup>147</sup>

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<sup>144</sup> Letter from the Justice Ministry to Human Rights Watch, November 5, 2013.

<sup>145</sup> In both cases, the men argue on the grounds that their sentences were intended to include time served. According to Military Criminal Procedural Code 186, a suspect's period in pre-trial detention counts toward the time he has to serve if he receives a prison sentence.

<sup>146</sup> The account of Mohamed Ahmed Dahmi's detention presented here is based primarily on Human Rights Watch interviews with him and with a source familiar with the case who requested anonymity.

<sup>147</sup> Human Rights Watch interview with Mohamed Ahmed Dahmi, Shahid Abderrahman Prison, December 1, 2013.

Authorities held Dahmi in solitary confinement for the next four months in a detention facility that he identified as Errachid Prison and repeatedly questioned him. On one occasion, four interrogators in civilian clothing accused him of involvement in the October 2011 kidnap of three foreign aid workers from Rabouni and threatened to surrender him to Algerian authorities if he did not cooperate. Later, the military prosecutor also threatened to surrender Dahmi to Algerian authorities if he refused to sign a statement.<sup>148</sup> At no time during this period did Dahmi speak with a judge.<sup>149</sup>

“I signed the military prosecutor’s [statement] because the military prosecutor told me that if I don’t sign they would charge me with kidnapping the foreigners and hand me to the Algerians,” Dahmi said, referring to the aid workers kidnapped in October 2011.<sup>150</sup>

Dahmi signed the statement presented to him by the military prosecutor without reading it, he said, with the understanding that in return he would be charged only with drug trafficking.<sup>151</sup>

In June 2012, authorities brought Dahmi to a facility that he identified as Bouharra.<sup>152</sup> There he was questioned in the presence of lawyers by a military investigating judge who he identified as Hamoudi Ould al-Mahjoub, and read and signed a statement.<sup>153</sup> On June 26, 2012, the military prosecutor charged him with drug trafficking and on July 16, 2012, authorities transferred him to Shahid Abderrahman prison.<sup>154</sup>

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<sup>148</sup> Ibid.

<sup>149</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>150</sup> Human Rights Watch interview with Mohamed Ahmed Dahmi, Shahid Abderrahman Prison, December 1, 2013.

<sup>151</sup> Ibid.

<sup>152</sup> Dahmi described this facility as being located west of Rabouni, and said that Moroccan prisoners of war (POWs) had previously been held there. The Polisario released the last Moroccan POWs in its custody in 2005. When Human Rights Watch asked the Polisario coordinator with MINURSO, M’hammed Khaddad, about the Bouharra facility in an April 28, 2014 interview, he gave its name as “Bougarfa” and said it had housed some 200 Moroccan POWs whom the Polisario had released in 1989, but whom Morocco refused to accept until six years later. Human Rights Watch visited the facility housing that group of POWs in August 1995, and identified the facility as the “Abraham Serfaty Center” in a report on Western Sahara and the Tindouf camps. According to Khaddad, there is currently a garden there. Also according to our information, the Bouharra facility belongs to the SADR defense ministry and is not normally used today as a place of detention.

<sup>153</sup> Human Rights Watch interview with Mohamed Ahmed Dahmi, Shahid Abderrahman Prison, December 1, 2013.

<sup>154</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

On January 30, 2013, a military court convicted Dahmi of drug trafficking and sentenced him to two years in prison. That conviction was overturned on May 26, 2013 by the high court, according to the justice ministry.<sup>155</sup>

However, authorities continued to hold Dahmi in prison and did not ask courts to renew or extend his period of pre-trial detention.<sup>156</sup> The SADR Justice Ministry informed Human Rights Watch that authorities had held Dahmi in prison even after the high court had overturned his conviction because he still faced the initial charge of drug trafficking. However, the ministry did not clarify the legal basis for keeping Dahmi in prison pending a new trial.<sup>157</sup> On May 17, 2014, the military court sentenced Dahmi to two years in prison plus three years suspended.<sup>158</sup> A military court is, in this case, trying a civilian, and military authorities apparently held Dahmi in prison illegally for nearly a year after his original conviction was overturned.

Brahim Mohamed Said Rabah told us that he was arrested in March 2012, and was convicted of drug trafficking by a military court. Authorities later held him in prison beyond the end of his sentence, and despite his conviction having been overturned by the high court. A military court later reconvicted him in absentia and again sentenced him to a prison term.<sup>159</sup>

Rabah said that, in the wake of the October 2011 kidnap of aid workers from Rabouni, SADR security authorities desperate for leads took to soliciting information from Sahrawis who knew the surrounding desert.<sup>160</sup>

“[Security authorities] summoned all the people living in the desert to ask them for information,” he said. “I’m well-known as a herder. I went voluntarily. I thought I was going to offer information – basically, that I didn’t know anything.”<sup>161</sup>

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<sup>155</sup> Letter from the Justice Ministry to Human Rights Watch, November 5, 2013.

<sup>156</sup> Human Rights Interviews with a source familiar with the case who requested anonymity.

<sup>157</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>158</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>159</sup> The account of Brahim Mohamed Said Rabah’s detention presented here is based primarily on Human Rights Watch interviews with him, at Shahid Abderrahman Prison on December 1, 2013, and with a source familiar with the case who requested anonymity.

<sup>160</sup> Human Rights Watch interview with Brahim Mohamed Said Rabah, Shahid Abderrahman Prison, December 1, 2013.

In March 2012, Rabah accompanied security officers to a meeting with a security official whom he named as Brahim Ahmed Mahmoud, where he was arrested. Security authorities brought him to a detention facility that he identified as Errachid prison, where he was held in solitary confinement.<sup>162</sup> Rabah did not speak to a judge during the approximately three months that he says he was held in Errachid prison.<sup>163</sup>

Authorities brought Rabah to the Bouharra facility in June 2012. The military prosecutor charged him with drug trafficking on June 26, 2012, and on July 16, 2012, authorities transferred him to Shahid Abderrahman prison.<sup>164</sup> On July 30, 2012, the military court convicted him of drug trafficking and sentenced him to 18 months in prison. Taking into account the time he has spent in detention since his arrest in March 2012, he said, he should have been released in October 2013.<sup>165</sup>

On May 26, 2013, the high court overturned Rabah's conviction by the military court. However, authorities kept him in prison.<sup>166</sup>

Meanwhile, as Rabah's original release date approached, the military prosecutor gave prison officials a written order stating that, by order of the defense minister, Rabah had to be held in prison until further notice.<sup>167</sup> Authorities have not asked courts to renew or extend Rabah's period of pre-trial detention.<sup>168</sup> According to the justice ministry, Rabah remained in prison after the high court overturned his conviction because he still faced the original charge of drug trafficking. However, the ministry did not clarify the legal basis for his pretrial detention.<sup>169</sup>

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<sup>161</sup> Ibid.

<sup>162</sup> Ibid.

<sup>163</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

<sup>166</sup> Letter from the Justice Ministry to Human Rights Watch, November 5, 2013.

<sup>167</sup> Human Rights Watch has obtained what appears to be a copy of this order, which is dated September 23, 2013, and bears an official stamp from the military prosecutor.

<sup>168</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>169</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

Rabah escaped from Shahid Abderrahman Prison on February 14, 2014. On May 17, 2014 the military court reconvicted Rabah in absentia on his original charge and sentenced him 15 years in prison, plus an additional two years for his escape.<sup>170</sup>

In this case not only has a military court tried a civilian and sought to re-try him, but military authorities also appear to have kept Rabah in prison illegally for nine months after the high court overturned his original conviction and four months beyond the end of his original sentence, and presumably would have continued holding him had he not escaped.

Mohamed Lebih Al-Mahjoub Ahmed Mahmoud Lemhidi said he was arrested in early December 2011, and that security officers tortured him while he was in detention.<sup>171</sup> A military court convicted him of drug trafficking and illegal possession of weapons. Authorities later held him in prison beyond the end of his sentence, and despite his conviction having been overturned by the high court. The military court later reconvicted him in absentia and again sentenced him to a prison term.

According to Lemhidi, after the October 2011 kidnap of three foreign aid workers from Rabouni, an SADR security official whom he identified as Mohamed Laakik asked him to help search for the three aid workers in the desert south of the Tindouf camps.<sup>172</sup>

After he searched for the aid workers for 48 hours, SADR authorities arrested Lemhidi along with six other men, handcuffed and blindfolded them, and brought them to a detention facility that he identified as Errachid prison.<sup>173</sup> Authorities held Lemhidi in solitary confinement and interrogated him repeatedly. During two interrogation sessions, Lemhidi said, authorities tortured him; in one case, this included beating him with a cable and hanging him by his feet.<sup>174</sup>

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<sup>170</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>171</sup> The account of Mohamed Lebih Al-Mahjoub Mahmoud Lemhidi's detention presented here is based primarily on Human Rights Watch interviews with him, in Shahid Abderrahman Prison on December 1, 2013, and with a source familiar with the case who requested anonymity.

<sup>172</sup> Human Rights Watch interview with Mohamed Lebih Al-Mahjoub Mahmoud Lemhidi, Shahid Abderrahman Prison, December 1, 2013.

<sup>173</sup> Ibid. It is unclear where exactly Lemhidi was at the time of his alleged arrest. The desert south and southeast of the Tindouf refugee camps is sparsely populated, and national borders often not clearly marked.

<sup>174</sup> Ibid.

Lemhidi said that he ultimately confessed falsely to drug-trafficking, and then signed a statement without reading it.<sup>175</sup> He did not, to Human Rights Watch's knowledge, file a complaint with SADR authorities about any alleged mistreatment by security officers.

At no time during the approximately six months that Lemhidi said he was held at Errachid Prison did he speak with a judge.<sup>176</sup> Authorities brought Lemhidi to the Bouharra facility in June 2012, and on June 20, 2012, a military prosecutor charged him with drug trafficking and illegal possession of weapons. On July 16, 2012, authorities transferred him to Shahid Abderrahman prison, and on January 30, 2013, a military court convicted him of both charges and sentenced him to two years in prison.<sup>177</sup>

Accounting for the time he spent in detention since his arrest in December 2011, Lemhidi was due for release in December 2013. Moreover, according to the Justice Ministry, the High Court on May 26, 2013, overturned Lemhidi's conviction by the military court.<sup>178</sup>

However, authorities continued to hold him in prison. The Justice Ministry said that authorities had held Lemhidi in prison after the high court overturned his conviction because he still faced the original charges of drug trafficking and illegal possession of weapons. However, the ministry did not clarify the legal basis – that is, the existence of a court order -- for his pretrial detention.<sup>179</sup> Lemhidi escaped from Shahid Abderrahman Prison on February 14, 2014.<sup>180</sup> On May 17, 2014 the military court reconvicted Lemhidi in absentia on his original charges and sentenced him to 15 years in prison, plus an additional two years for his escape from Shahid Abderrahman Prison.<sup>181</sup>

In this case a military court has tried a civilian and sought to re-try him, and military authorities appear to have kept Lemhidi in prison illegally for nine months after the high

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<sup>175</sup> Ibid.

<sup>176</sup> Human Rights Watch interviews with a source familiar with the case who requested anonymity.

<sup>177</sup> Ibid.

<sup>178</sup> Letter from the Justice Ministry to Human Rights Watch, November 5, 2013.

<sup>179</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>180</sup> Human Rights Watch interview with a source familiar with the case who requested anonymity.

<sup>181</sup> Ibid.

court overturned his original conviction and two months beyond the end of his original sentence, and presumably would have continued holding him had he not escaped.

International legal standards deem the trial of civilians in military courts, in principle, to be incompatible with the right to a fair trial, and in particular the right to be tried before an independent and impartial tribunal. Trials before military courts are often incompatible with international standards due to the lack of independence of judges, who tend to remain in the military chain of command, and often offer reduced due process safeguards. The prohibition against trying civilians before military courts is particularly strong in the regional African system.<sup>182</sup> The African Commission on Human and Peoples' Rights, interpreting the African Charter on Human and Peoples' Rights, has prohibited the trial of civilians in military courts.<sup>183</sup> The charter, to which the SADR is a party, guarantees the right to equality before the law and equal protection of the law, fair trial, and judicial independence.<sup>184</sup> The charter does not admit any exceptions to the rule against the use of military courts to try civilians, such as emergency situations.

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<sup>182</sup> Other regional courts have also unambiguously stated that civilians should not be tried by military courts. The Inter-American Court on Human Rights has also been consistent in its rejection of the use of military courts to try civilians in several cases. In the case of *Loayza Tamayo v. Peru*, the court found that the composition of military tribunals, by military personnel appointed by the executive and subject to military discipline, did not meet the required standards of independence and impartiality. See Inter-American Court of Human Rights, *Loayza Tamayo v. Peru*, Judgment of September 17, 1997, Series C No. 33. Similarly when a retired member of the armed forces was tried before a military tribunal in *Cesti Hurtado v. Peru*, the Inter-American Court concluded that he should not be judged by the military courts and that his trial violated the right to be heard by a competent tribunal. See Inter-American Court of Human Rights, *Cesti Hurtado v. Peru*, Judgment of September 29, 1999, Series C No. 56. In *Castillo Petruzzi et al. v. Peru*, in which several civilians had been tried and convicted by a Peruvian military court for treason, the court noted that "transferring jurisdiction from civilian courts to military courts, ... means that the competent, independent and impartial tribunal previously established by law is precluded from hearing these cases. ... Having no military functions or duties, civilians cannot engage in behaviors that violate military duties. When a military court takes jurisdiction over a matter that regular courts should hear, the individual's right to a hearing by a competent, independent and impartial tribunal previously established by law and, a fortiori, his right to due process are violated." See Inter-American Court of Human Rights, *Castrillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999, Series C No. 52. In *Cantoral Benavides v. Peru*, the court reiterated that "military jurisdiction is established in several laws, in order to maintain order and discipline within the armed forces. Therefore, its application is reserved for military personnel who have committed crimes or misdemeanors in the performance of their duties and under certain circumstances." Inter-American Court of Human Rights, *Cantoral Benavides v. Peru*, judgment of August 18, 2000, Series C No. 69.

<sup>183</sup> *Law Office of Ghazi Suleiman v. Sudan*, Comm. Nos. 222/98 and 229/99, para. 64 (African Commission on Human and Peoples' Rights 2003); *Media Rights Agenda v. Nigeria*, Comm. No. 224/98, paras. 60-66 (African Commission on Human and Peoples' Rights 2000).

<sup>184</sup> African Charter on Human and Peoples' Rights, arts. 2, 3, 7, and 26.

While UN human rights bodies still accept a limited use of military courts to try civilians in times of armed conflict, the United Nations Human Rights Committee, the expert body that monitors state compliance with the International Covenant on Civil and Political Rights, has held that “as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations.”<sup>185</sup>

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<sup>185</sup> Human Rights Committee, General Comment 29, States of Emergency (art. 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16; See also, UN Commission on Human Rights, Draft Principles Governing the Administration of Justice Through Military Tribunals (“Decaux Principles”), UN Doc. E/CN.4/2006/58 at 4 (2006), January 13, 2006, no. 3 (in emergency situations any derogation from the ordinary administration of justice, “strictly required by the exigencies of the situation,” need to comply with the fundamental principles of fair trial).

## VI. Physical Abuse by Security Forces

Human Rights Watch researchers encountered no claims that SADR authorities practice torture either as a matter of policy or routine. Similarly, researchers did not hear accounts of SADR security forces systematically or habitually using excessive force when responding to demonstrations, detaining and questioning criminal suspects, and in their handling of prisoners.<sup>186</sup>

However, two refugees Human Rights Watch interviewed said that SADR security forces had beaten them and inflicted other forms of physical abuse on them while they were in detention. One of these cases is discussed in the section of this report on the use of military courts to try civilians.<sup>187</sup> The second is detailed below.

Moulay Abu Zeid told Human Rights Watch that gendarmes arrested him and another man, Amrabih Ahmad Mahmud Ada, when they went to the governorate building in Smara camp on March 26, 2013, intending to give a letter to Christopher Ross, the UN Secretary General's personal envoy for Western Sahara, who was attending a public meeting with refugees and Polisario officials.<sup>188</sup> Both men say that they are prominent members of the "March 5 Group," which criticizes what they describe as corruption, nepotism, and abuse of power by SADR authorities.<sup>189</sup>

The letter Abu Zeid and his companions intended to give Ross harshly criticized the UN mission to Western Sahara (MINURSO).<sup>190</sup>

At the gate to the governorate building, guards refused entry to Abu Zeid and Ada on the grounds that neither man had obtained a required badge for the event. However, Abu Zeid

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<sup>186</sup> For more detailed discussion of SADR authorities' handling of demonstrations, see the section of this report on freedom of speech, association, and assembly. Further information on authorities' treatment of prisoners can be found in the section on places of detention, and in the section on the use of military courts to try civilians.

<sup>187</sup> See the chapter of this report on the use of military courts to try civilians.

<sup>188</sup> Human Rights Watch interview with Moulay Abu Zeid, Smara camp, December 5, 2013.

<sup>189</sup> Ibid. The "March 5 Group" is discussed in greater detail in the chapter of this report on freedom of speech, assembly, and association.

<sup>190</sup> Ibid.

said that other people without badges were allowed into the event, and he and Ada were excluded because of their activism.<sup>191</sup>

Abu Zeid and Ada waited until the event finished and a car carrying Ross began driving out the gate. Ada dashed in front of the car, waving a copy of the men's letter; the car stopped for an instant, shifted direction, and continued forward. Abu Zeid, also carrying a copy of the letter, tried to approach the car from farther away. As the car drove off, gendarmes detained him and Ada.<sup>192</sup>

The following is Abu Zeid's account of what occurred next. Gendarmes put Abu Zeid and Ada into a gendarmerie car and six gendarmes climbed in with them. As they drove to the Smara gendarmerie station the gendarmes slapped and punched the two men on their faces and bodies.

In the courtyard of the gendarmerie station, gendarmes forced Abu Zeid and Ada to strip naked while they searched them, and confiscated their mobile phones and the two copies of the letter for Ross. Afterward gendarmes allowed them to dress on orders from the station chief, but forced them to remain standing for half an hour in the courtyard.

After that, gendarmes brought the men inside the station for tea and lunch, followed by individual questioning. Abu Zeid said he was questioned by a gendarmerie officer whom he identified as Mahmoud. Both the officer and Abu Zeid accused one another of lying. Finally Mahmoud halted the questioning and called another investigator to replace him. Mahmoud explained to Abu Zeid that he intended to file a complaint against Abu Zeid for assault. He added that the chief of Smara camp police would file a similar complaint.

Presently two gendarmerie officers empowered to question suspects on behalf of judicial authorities arrived and resumed Abu Zeid's questioning. Abu Zeid identified them as Baba El Mekki and Mohamed Salem Aouda. They told him that he was now accused of assaulting Mahmoud and the chief of Smara camp police. Abu Zeid denied having assaulted anyone.

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<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

Mahmoud then sent Abu Zeid to a solitary cell and forced him to strip naked once again. For about ten minutes, first Mahmoud and then a gendarme slapped Abu Zeid's face and punched his torso in full view of the two investigators who had come from Rabouni. Afterward he was confined naked in the cell for several hours.

Gendarmes confined Abu Zeid and Ada in another room overnight, and the next morning brought them to Rabouni and released them. The following day, March 28, 2013, Abu Zeid filed a complaint with civil prosecutor Salama Horma over his alleged beating by gendarmes. However, he said SADR authorities made no effort to investigate his allegations. Human Rights Watch is not aware of any charges that authorities may have brought against Abu Zeid.

Justice Minister Hamada Selma told Human Rights Watch the authorities detained Abu Zeid because he allegedly tried to block an official motorcade, and released him the same day. The minister neither confirmed nor denied Abu Zeid's allegation that authorities physically abused him. However, he said that authorities did not investigate Abu Zeid's complaint because Abu Zeid showed no visible signs of abuse and did not present supporting evidence such as a medical report.<sup>193</sup>

Any form of torture or physical abuse is a serious violation of human rights, and allegations of it merit investigation regardless of the circumstances. The prohibition of torture is firmly enshrined in international law, as well as in the laws of many countries. Article 28 of the SADR constitution states that the "violation of the sanctity of the person, or touching his public image or his honor, or practicing torture against him, or any physical or moral violence, or any prejudice against his dignity, is forbidden." The African Charter on Human and Peoples' Rights, to which the SADR is party and to which the preamble of the SADR constitution pledges the "adherence" of the Sahrawi people, also expressly prohibits torture.<sup>194</sup>

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<sup>193</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>194</sup> Article 5 of the African Charter on Human and Peoples' Rights states: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

## VII. Slavery

Human Rights Watch did not find evidence of widespread practices of slavery in the Tindouf refugee camps or the areas of Western Sahara under SADR jurisdiction. Nor did we find evidence or hear claims that SADR authorities practice, profit from, or encourage slavery. However, members of civil society and alleged slavery victims said that to a small degree, practices of slavery still occur among the Sahrawi refugee population. Activists interviewed by Human Rights Watch say they have documented several recent cases of alleged practices related to slavery. In at least one instance, according to alleged victims, authorities appear to have disregarded an alleged case of slavery for several years before intervening.

The roots of slavery in the area go back at least to the late Middle Ages, when the Hassaniya-speaking nomadic culture of the western Sahara desert took shape. Nomads inhabited a stratified society, with slaves of sub-Saharan origin at the bottom.<sup>195</sup> Some slave families eventually adopted the language and customs of the nomads, who then sometimes freed them.<sup>196</sup> Spanish colonizers officially banned slavery but did little to eradicate it. A United Nations mission that visited then-Spanish Sahara in 1975 found that slavery still existed.<sup>197</sup>

From its earliest days, the Polisario Front called for the eradication of slavery.<sup>198</sup> The SADR's constitution guarantees the equality of all citizens before the law and stipulates

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<sup>195</sup> In his book "Spanish Sahara", an oft-cited reference work on Western Sahara, British historian John Mercer writes that traditional nomad society in the western Sahara desert was composed of four main castes, each defined in part by a certain social function: first, dominant warrior tribes; next, tribes that specialized in teaching and religious matters; then weaker, tributary tribes sometimes called zenaga, which reflected a supposed Amazigh (as opposed to Arabian) heritage; and finally black slaves. In addition, there were independent castes of artisans and musicians, also of relatively low social status. See: Mercer, John, *Spanish Sahara*, (George Allen & Unwin Ltd., London 1976), pp. 125 – 127.

<sup>196</sup> Mercer, John, *Spanish Sahara*, (George Allen & Unwin Ltd., London 1976), p. 130.

<sup>197</sup> Hodges, T and A Pazzanita, *Historical Dictionary of the Western Sahara*, Second edition, (Scarecrow, Metuchen, N.J. 1994), pp. 408 – 410.

<sup>198</sup> *Ibid.*, p. 410 and San Martín, P., *Western Sahara: The Refugee Nation*, (University of Wales Press, Cardiff: 2010), p. 120.

that no person shall be deprived of his or her freedom save in accordance with the law.<sup>199</sup> Slavery is prohibited by the African Charter on Human and Peoples' Rights, to which the SADR is party, and to which the SADR constitution pledges in its preamble the "adherence" of the Sahrawi people.<sup>200</sup> In 2010 the SADR Penal Code was amended to outlaw slavery explicitly.<sup>201</sup>

Nevertheless, some practices of slavery have persisted among Sahrawis. As a rule, the alleged victims are from the minority of dark-skinned Sahrawis. While visiting the camps in November 2007, Human Rights Watch was told by dark-skinned Sahrawis that the ownership aspect of the relationship between a white "owner" and dark-skinned "slave" was typically limited to the ability of the "owner" to withhold consent for a "slave" woman to marry.<sup>202</sup>

The Freedom and Progress Association, a civil society group formed by mainly dark-skinned Sahrawis in the Tindouf camps in June 2008, documents cases of alleged slavery and lobbies SADR authorities to combat it. According to the group's president, Abnou Bilal Embarak, it held demonstrations outside the SADR president's office in Rabouni between April and June 2013 to call on authorities to address slavery, as well as ethnic discrimination in the public sector.<sup>203</sup> He gave Human Rights Watch a list dated April 17, 2013 of more than 10 then-current or recent individual cases that the Freedom and

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<sup>199</sup> Article 26 of the SADR constitution states: "All citizens are equal before the law in protection and punishment." Art. 27 states: "Personal freedom is protected, and a person may not be prevented from exercising his freedom except in accordance with the law."

<sup>200</sup> Article 5 of the African Charter on Human and Peoples' Rights states: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

<sup>201</sup> Article 147 bis of the SADR Penal Code states: "All who practice the enslavement of another person because of their color, race, gender, social status, or any other reason, or force them to perform work free of charge, [which is] the practice of slavery upon them, shall be punished with imprisonment of five to ten years and a fine of 5,000 to 10,000 Algerian dinars. A lawsuit for slavery shall not be initiated save on the basis of a complaint from the injured party, and shall be withdrawn only upon concession by the competent judge."

<sup>202</sup> Human Rights Watch documented one such case during its November 2007 visit to the camps: "One woman, Halima Abbi Bilal, told Human Rights Watch that she and her three sisters had moved to the refugee camps from Western Sahara with their owner in 1978, and at that time the Polisario successfully pressured the owner to stop forcing the sisters to unpaid domestic labor....Yet one of Halima's three daughters, N'keltoum Mahmoud, said that her families "owner" had, since October 2006, refused to give his consent to her marriage to a neighbor's son." Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, pp. 143 – 144.

<sup>203</sup> These demonstrations took place on April 10, 2013, April 20, 2013, June 12, 2013, and June 17, 2013, Bilal Embarak said.

Progress Association had documented and considered to involve slavery. Human Rights Watch did not have an opportunity to verify those cases. Embarak later reported that cooperation between his association and Polisario authorities had secured the freedom of several persons.<sup>204</sup>

According to Embarek, practices of slavery in the refugee camps themselves tend to be narrower than the traditional notion of all-powerful owners who can demand anything of slaves and physically punish them at will. “In the camps, slavery mostly takes the form of [non-voluntary] household work,” such as cleaning houses and laundering clothes, he said. “We have heard no report of forced sex, and only rare cases of women being obliged to seek the approval of their ‘masters’ to marry.”<sup>205</sup>

More worrying, perhaps, are the areas of Western Sahara under Polisario Front control. They are remote, and sparsely populated, which makes them difficult to monitor and police.<sup>206</sup> The SADR army troops deployed in the area are principally concerned with monitoring the Moroccan berm. The United Nations’ mission to Western Sahara, known as MINURSO, maintains several outposts in the area but does not have a mandate to monitor human rights. International aid organizations typically restrict their activities to the Tindouf refugee camps.

One case of alleged slavery in the Polisario-controlled areas of Western Sahara involved two young children, a brother and sister who, their parents say, were abducted from the Tindouf refugee camps by a family of Sahrawi herders. The family allegedly abused the children physically and forced them to work without pay helping tend livestock for over a decade, until their release in 2013.

The family claimed ownership of the children on the grounds that their father had previously owned the children’s mother, who is black and was born into slavery, according

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<sup>204</sup> Abnou Bilal Embarak, email message to Human Rights Watch, October 1, 2014.

<sup>205</sup> Human Rights Watch interview with Abnou Bilal Embarek, El-Ayoun camp, November 28, 2013.

<sup>206</sup> The settlement nearest to the refugee camps, called Bir Lehlou, is about 193 kilometers as the crow flies from Rabouni, and requires the better part of a day to reach by car given the absence of paved roads. The settlements of Tifariti and Mehres are about 290 kilometers and 340 kilometers respectively from Rabouni. These three settlements are in the north sector of the “liberated zones.” The southern sector is even more remote and less populated.

to the children’s biological father, Bilal Mohamed Salem Omar. The mother gained freedom in 1987 when she married him, he said. In May or June of 2013 SADR authorities intervened to rescue the children, but only after what Omar describes as years of delays in responding to his pleas for help. He asked Human Rights Watch not to cite the names of his children’s alleged captors because he feared reprisals. Human Rights Watch



**Salem Bilal Mohamed Salem, who says a family took him from his parents at age 4 in 1995 and forced him to tend their livestock. SADR authorities secured his freedom in 2013 after years of complaints by his biological father. © 2013 Private**

interviewed both children, their mother, and their father.<sup>207</sup>

The children’s mother, who asked not to be named, said that she witnessed the alleged abductions of her children. The first, of her son Salem Bilal Mohamed Salem, occurred in 1995. She was in her tent in the desert south of El-Ayoun camp with Salem, aged 4, and another of her sons when a green Land Rover pulled up outside and two men got out. She recognized one of them. The two men asked her to give them Salem but promised to return him later.<sup>208</sup>

“I refused to give him to them and tried to flee... but they caught me and took Salem and drove away,” she said. “I started crying and couldn’t find any help.”<sup>209</sup>

The family that abducted Salem from his biological parents forced him to work

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<sup>207</sup> The account of Salem and Yaqout Bilal Mohamed Salem’s alleged abduction and enslavement presented here is based on the following Human Rights Watch interviews: Bilal Mohamed Salem Omar, El-Ayoun Camp, December 2, 2013; the mother of Salem and Yaqout, El-Ayoun camp, December 2, 2013; Salem Bilal Mohamed Salem, El-Ayoun camp, November 28, 2013; Yaqout Bilal Mohamed Salem, El-Ayoun camp, December 2, 2013.

<sup>208</sup> Human Rights Watch interview with the mother of Salem and Yaqout Bilal Mohamed Salem, El-Ayoun camp, December 2, 2013.

<sup>209</sup> Ibid.

every day from morning until night tending their livestock, beating him when he made mistakes and giving him only cast-off clothing to wear, Salem told Human Rights Watch. They made no effort to ensure that he was educated.<sup>210</sup>

In 2001 the same family abducted Salem's younger sister, Yaqout, then aged two or three, the children's parents said. Once again, the children's mother said that she witnessed the abduction. She said she was standing outside her house, holding Yaqout, when the patriarch of the abductor family and one of his sons got out of a car and started talking with her.<sup>211</sup>

"Then [the patriarch snatched my daughter from my hands and got in the car, and the son drove away quickly," she said. "I tried to catch the door of the car but the son pushed me, and I fell on the ground and the car almost hit me."<sup>212</sup>

During Yaqout's years in captivity, her "masters" forced her to tend their animals, beat her with their hands or a cord, and sometimes choked her, for making mistakes, gave her cast-off clothing, and denied her an education. Whereas Salem remembered his biological family, Yaqout said that their captors told her that they were her true family, which she believed.<sup>213</sup>

"I remember that my real father came to the tents once, but I didn't know at that time that he was my real father and no one told me that he was my real father," she said. "[The abductor family] were warning me about cars and telling me that the cars steal children and kill them. So whenever I saw a car I felt scared."<sup>214</sup>

Meanwhile, Salem and Yaqout's father, Omar, was struggling to recover his children. After Salem's alleged abduction in 1995, he asked then-Interior Minister Salem Lebsir for help, but the minister told him that he could not intervene. According to Omar, the

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<sup>210</sup> Human Rights Watch interview with Salem Bilal Mohamed Salem, El-Ayoun camp, November 28, 2013.

<sup>211</sup> Human Rights Watch interview with the mother of Salem and Yaqout Bilal Mohamed Salem, El-Ayoun camp, December 2, 2013.

<sup>212</sup> Ibid.

<sup>213</sup> Human Rights Watch interview with Yaqout Bilal Mohamed Salem, El-Ayoun camp, December 2, 2013.

<sup>214</sup> Ibid.

minister's alleged refusal caused him to abandon hope that SADR authorities would address his complaint; consequently, he made no attempt to seek further help from authorities until recent years. Instead, he made three trips over the years to the Polisario-controlled areas of Western Sahara to try to free his children on his own. The first took place in 1999. He traveled to the region of Threika, where he confronted the patriarch of the abductor family.<sup>215</sup>

"I said that I had come to take Salem," he said. "But I didn't dare try to take him by force, because all of [the patriarch's] sons would have attacked me immediately."<sup>216</sup>

Two more attempts by Omar to recover his children in 2005 and 2007 ended similarly in defeat. Finally, in 2010, he made an oral complaint to the court in Boujdour camp, which hears criminal cases. Nothing came of it, so he approached Justice Minister Hamada Selma, who directed him to civil prosecutor Brahim Beella. On Beella's advice, and with support from the Freedom and Progress Association and a Sahrawi lawyer, Omar filed a written complaint against his children's captor with the gendarmerie.<sup>217</sup>

Finally, in May or June of 2013, men whom Salem and Yaqout identified as Sahrawi authorities and who included men in military uniform freed them and drove them back to their biological family's home in El-Ayoun camp.<sup>218</sup> Yaqout told Human Rights Watch about her initial disorientation upon meeting her biological family.

"When we arrived, I found many women in my family's house and my mother," she said. "I didn't recognize my mother. The neighbors were telling me who is my mother and also who were my brothers and sisters. I spent many weeks before learning their names."<sup>219</sup>

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<sup>215</sup> Human Rights Watch interview with Bilal Mohamed Salem Omar, El-Ayoun camp, December 2, 2013.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid. Human Rights Watch has what appears to be a copy of this complaint, which is dated January 10, 2011, and bears official gendarmerie stamps.

<sup>218</sup> Human Rights Watch interviews with Salem Bilal Mohamed Salem, El-Ayoun camp, November 28, 2013, and Yaqout Bilal Mohamed Salem, El-Ayoun camp, December 2, 2013.

<sup>219</sup> Human Rights Watch interview with Yaqout Bilal Mohamed Salem, El-Ayoun camp, December 2, 2013.

Omar has not pressed SADR authorities to pursue his children’s alleged captors. Nor have authorities done so on their own initiative, he said.<sup>220</sup> On December 6, 2013, civil prosecutor Salama Horma told Human Rights Watch that he was unaware of Omar’s 2011 complaint.<sup>221</sup>

Both Salem and Yaqout and their biological parents are particularly distressed that the children were denied an education by their alleged captors. Salem told Human Rights Watch that such deprivations now make it harder for him to rejoin mainstream society and help support his family.

“After coming back to my family, I worked for [another person] tending his camels for one month and 17 days,” he said. “I left this job and worked with a company doing road construction. I felt sick and left that job, too. Now, I want my rights I was deprived of my family for 19 years. I didn’t go to school and I haven’t earned any money during these 19 years. I have a right to compensation.”<sup>222</sup>

Justice Minister Hamada Selma said that SADR authorities received Omar’s January 10, 2011 complaint but did not investigate it or take legal measures against the abductors because Salem, a legal adult, has not made a complaint against them and because Omar had not reconfirmed his 2011 complaint. Moreover, the minister said, the accused family was located outside of Polisario-controlled territory.<sup>223</sup>

The prohibition of slavery is one of the most firmly established principles of human rights and international law. If found to be widespread or systematic, and a state policy, slavery can constitute a crime against humanity, as reflected in the 1998 statute of the International Criminal Court.<sup>224</sup> The Slavery Convention of 1926, a foundation of international law, defines it as “the status or condition of a person over whom any or all of

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<sup>220</sup> Human Rights Watch interview with Bilal Mohamed Salem Omar, El-Ayoun camp, December 2, 2013.

<sup>221</sup> Human Rights Watch interview with SADR Civil Prosecutor Salama Horma, Rabouni, December 6, 2013.

<sup>222</sup> Human Rights Watch interview with Salem Bilal Mohamed Salem, El-Ayoun camp, November 28, 2013.

<sup>223</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>224</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, [http://www.icc-cpi.int/nr/rdonlyres/eag9aeff7-5752-4f84-be94-0a655eb30e16/o/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/eag9aeff7-5752-4f84-be94-0a655eb30e16/o/rome_statute_english.pdf) (accessed September 12, 2014).

the powers attaching to the right of ownership are exercised.”<sup>225</sup> Human trafficking is defined by the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, as the “recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>226</sup>

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<sup>225</sup> The League of Nations Slavery Convention, adopted September 25, 1926, 60 LNTS 253/ [1927] ATS 11/ [1927] UKTS No. 16 (Cmd. 2910), entered into force March 9, 1927, <http://www.ohchr.org/Documents/ProfessionalInterest/slavery.pdf> (accessed September 12, 2014).

<sup>226</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention on Transnational Organized Crime (Trafficking Protocol), adopted November 15, 2000, G.A. Res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol.I) (2001), entered into force December 25, 2003, art. 3, [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%2otraff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%2otraff_eng.pdf) (accessed September 12, 2014).

## VIII. Places of Detention

According to SADR Justice Minister Hamada Selma, there is currently a single prison under his ministry's control that is operating in the Tindouf refugee camps.<sup>227</sup> That facility, Shahid Abderrahman Prison, is exclusively for men. There is also a detention center for juvenile offenders, the Boulahi Sayed Al Maati Center. At the invitation of the Justice Ministry, Human Rights Watch researchers visited both of these facilities on December 1, 2013. Human Rights Watch had previously visited Shahid Abderrahman Prison in November 2007.

### Shahid Abderrahman Prison

According to prison officials, Shahid Abderrahman Prison, which stands about 6 kilometers east of Rabouni, can accommodate up to 50 prisoners.<sup>228</sup> At the time of our visit there were 25, they said. Sentences tend to range between four months and six years, according to prison officials. In addition to administration officials, the prison is also staffed by eight security guards. Prisoners cook and clean for themselves, as there is no cleaning or cooking staff.

Human Rights Watch researchers were allowed to wander about unaccompanied and talk with prisoners - sometimes in small groups, sometimes one-on-one in their cells. Still, the small size of the prison and its population meant that few conversations with prisoners occurred in complete privacy. It is questionable whether prisoners felt that they could criticize the prison administration or authorities without their identities becoming known. In addition, prison officials did not allow the researchers to take photographs or make video recordings.

The cells are located in two one-story cell blocks in the detention area, each with an outer door that can be locked. The smaller of the two cell blocks contains two large shared cells

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<sup>227</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>228</sup> During its December 1, 2013 visit to Shahid Abderrahman Prison, Human Rights Watch interviewed five prison officials who requested anonymity but said that we could cite their job titles: Director of Prison Administration; Director of Shahid Abderrahman Prison; Deputy Director of Shahid Abderrahman Prison; Administrator of Shahid Abderrahman Prison; and Director of Health for Shahid Abderrahman Prison.

and is designated for prisoners sentenced or under investigation by military courts. In the back corner of each of these cells is a partition roughly one meter square around a combination squat toilet and shower. There is a tap on the wall beside the toilet in one of the rooms that was broken when we visited; instead, the prisoners had run a hose in from another tap in a little forecourt outside, giving them access to running water. They had furnished the rooms entirely themselves, they said. Among their belongings were floor rugs, blankets, pillows, a television, a small refrigerator, a tea set, an electric hot-plate, mobile phones, and two large kitchen knives that they used for cooking. The prisoners said that electricity was available at all times from wall sockets in their cells, and that prison officials had allowed them to keep knives because the prisoners knew one another and there was no reason to believe that they might become violent.

The larger cell block is intended for prisoners sentenced or under investigation by civil courts.<sup>229</sup> Most of the rooms are cells, although there is also a shared kitchen, several toilets and showers, and four solitary confinement cells. Some of the prisoners share the larger cells, while others have individual cells that in some cases they request because they fear or are uncomfortable with other prisoners, prison officials said. As in the military court cell block, prisoners in the main cell block furnish their cells at their own expense, including with items such as satellite dishes, televisions, and mobile phones.

SADR authorities provide food for the prisoners, which is delivered monthly, prison officials said. The overall amount of food provided remains the same regardless of how full the prison is. The main item is seven kilograms of cereals daily for the prison as a whole. Other items vary according to what is available, prison officials said. Each prisoner receives 1 kilogram of powdered milk per month. Authorities do not provide meat or vegetables, but prison officials said that they try to sell other food items for money to buy at least 32 kilograms of meat for the prisoners each month. Fruit is not available.

Prisoners said that they tried to supplement prison rations with extra food delivered by their families. One man in the military court cell block said that he and his cellmates'

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<sup>229</sup> Two men under investigation by the military court were also living there when Human Rights Watch visited Shahid Abderrahman Prison, because, they said, there was no room for them in the military court cell block.

typical rations consisted of two loaves of bread each per day, two cans of fish every two days to be shared among them, and daily servings of beans or lentils.<sup>230</sup>

Thursdays are the designated day for visits by friend and family, officials said; each prisoner also has the right for his family to spend up to two nights per month with him in private quarters designated for this purpose. Lawyers may visit clients in the prison at any time, prison officials said. All visits, including by lawyers, require prior authorization from the prosecutor.<sup>231</sup> Prisoners and a Sahrawi lawyer interviewed about lawyers' access to their clients did not cite any instances of lawyers facing obstacles in visiting their clients in Shahid Abderrahman Prison. Prisoners also said that while Thursday was the designated visiting day, their families were able in practice to visit them more or less whenever they wanted.

Prison officials said that SADR law does not set a daily routine for prisoners, and the Shahid Abderrahman Prison does not impose one apart from limiting the hours during which cell doors are unlocked and prisoners are free to move about inside the detention area.<sup>232</sup> There is no designated place of worship in Shahid Abderrahman Prison, officials said. Prisoners are free to pray wherever and whenever they wish.

According to prison officials, there is a small clinic in the prison whose sole staff member is the prison's health director. Prison staff make an effort to accommodate prisoners' healthcare needs, according to prisoners. Mokhtar Mohamed Embarek, a prisoner in the military cell block, said he has hepatitis B and showed a doctor's statement to that effect, dated August 6, 2013. Embarek is supposed to see a doctor every week, he said. Doctors

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<sup>230</sup> Human Rights Watch interview with Mokhtar Mohamed Embarek, Shahid Abderrahman Prison, December 1, 2013.

<sup>231</sup> A Sahrawi lawyer in the Tindouf refugee camps who requested anonymity explained this regulation in slightly different terms. According to him, lawyers must obtain authorization from the judicial authority that is handling the case in question in order to be allowed to visit their clients in prison.

<sup>232</sup> According to prison officials, cells are unlocked from 08:00 - 12:00 and 17:00 - 18:30 each day. Some prisoners gave slightly different accounts. Mokhtar Mohamed Embarek, in the military cell block, said that prison officials unlocked the outer door of the military cell block from 09:00 - 12:00, and from 18:00 - 19:30 in summer and 17:00 - 18:30 in winter. A prisoner in the main cell block who requested anonymity said that since August 2013, prison authorities have allowed prisoners to leave their cell doors open all the time. The cell block's main door, however, was only left open from 09:00 - 12:00 and from 17:00 - 18:30 each day, the prisoner said.

seldom visit the prison, but gendarmes bring Embarek to the hospital in Rabouni whenever he requests it, he said.

Prison officials sometimes order that prisoners be punished for violent or disruptive behavior, or escape attempts, by periods of solitary confinement. There are four small, bare cells (about 1.5 meters by 2 – 4 meters) in the main cell block that serve as solitary confinement cells. Prison officials said that periods of solitary confinement are used to punish violent behavior and in most cases do not exceed one week. The maximum period of solitary confinement, for attempted escape, is six months. When Human Rights Watch visited Shahid Abderrahman Prison in November 2007, researchers noted that the solitary confinement cells were “unfit for human habitation,”<sup>233</sup> with damp, crumbling walls; two contained prisoners at the time, one of whom was “visibly in poor health.”<sup>234</sup> The solitary confinement cells were empty when researchers visited Shahid Abderrahman Prison for this report, and seemed in better condition than in 2007, with the previously-noted dampness no longer present.

Researchers did note, however, that the main cell block seemed poorly ventilated overall, with very few windows or air shafts to the outside. Rule 10 of the UN Standard Minimum Rules for the Treatment of Prisoners states that, “[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”<sup>235</sup>

In private conversations with prisoners at Shahid Abderrahman Prison, as well as Sahrawi lawyers in the Tindouf refugee camps, Human Rights Watch researchers did not hear clear accounts of authorities at the prison torturing or otherwise mistreating prisoners. One prisoner said that while he had never himself been mistreated, members of prison staff had beaten another prisoner. It was unclear when or in what circumstances the alleged

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<sup>233</sup> Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, p. 138.

<sup>234</sup> *Ibid.*, p. 139.

<sup>235</sup> Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx> (accessed September 17, 2014).

incident may have taken place. Another prisoner, who said he had been held in Shahid Abderrahman Prison for over three years, said he had never suffered physical mistreatment from prison authorities, nor had he heard of it occurring. Some prisoners said prison authorities occasionally confiscated their mobile phones.

## Center for Unwed Mothers

In 2007 and 2008, Human Rights Watch received a series of confusing statements from SADR authorities about a justice ministry facility for unwed mothers in the Tindouf refugee camps that researchers had heard about but did not have the opportunity to visit.<sup>236</sup> It was unclear from the SADR's statements in 2008 whether the center was a state-run shelter where unwed mothers or pregnant women facing social stigma could voluntarily seek refuge, or whether authorities detained unwed mothers or pregnant women there as punishment for adultery, which is a crime under SADR law.<sup>237</sup> SADR officials said during Human Rights Watch's 2013 visit to the camps for this report that no women were presently staying at the center, and researchers did not hear complaints or accounts from refugees of the center being used as a place of detention.<sup>238</sup> Human Rights Watch did not have the opportunity to verify this.

## Errachid Prison

Prisoners at Shahid Abderrahman Prison who had been investigated or sentenced by the military court said during 2011 and 2012 military authorities had held them for months in solitary confinement at another facility, which they identified as Errachid Prison, where one prisoner alleged that security officers had tortured him.<sup>239</sup> One of the prisoners, Brahim Mohamed Said Rabah, described the facility as a walled structure standing several

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<sup>236</sup> Exchanges between Human Rights Watch and SADR authorities on this matter in 2007 and 2008 can be found in Human Rights Watch's 2008 report: *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, pp. 139 – 141.

<sup>237</sup> Article 170 of the SADR penal code states: "Adultery and/or fornication are punishable by one to five years in prison, and the same punishment is applied to any women who is proven to be pregnant illegitimately [i.e. out of wedlock]." The criminalization of adult consensual sex, including of adultery and fornication, violates international human rights law. Such "moral" crimes are often applied in a way that discriminates on the basis of sex: women are disproportionately impacted due to prevailing social attitudes and because pregnancy serves as "evidence" of the offense.

<sup>238</sup> Human Rights Watch interview with a justice ministry official who requested anonymity, Rabouni, November 27, 2013.

<sup>239</sup> The cases of these prisoners are discussed more broadly in the chapter of this report on the use of military courts to investigate and try civilians.

kilometers east of Smara camp, and sketched a simple plan of it that showed a cluster of small isolation chambers and a group of somewhat larger individual cells inside a main yard, as well as living quarters for guards and rooms for interrogation beside a forecourt.<sup>240</sup> Rabah’s description of the facility he identified as Errachid Prison appears similar to one of a group of structures 10 kilometers east of Smara camp that are visible in satellite images via Google Earth.<sup>241</sup> In a July 2003 report, the French human rights group France Libertés cited the same area as the purported location of Errachid Prison.<sup>242</sup>

Human Rights Watch did not visit the area but asked SADR authorities to clarify the status of Errachid Prison.<sup>243</sup> Justice ministry officials replied that Shahid Abderrahman Prison is the only prison currently in use in the camps: “We assure you that there is no prison by that name, and the sole existing prison under the control of the Sahrawi Justice Ministry is Shahid Abderrahman Prison.”<sup>244</sup> M’hammed Khaddad, the Polisario’s coordinator to MINURSO, also said there was no prison in the Tindouf camps named Errachid, and that Shahid Abderrahman Prison was the only place of detention in the camps.<sup>245</sup>

Neither Selma’s nor Khaddad’s response addressed our specific question concerning whether a detention facility identified by prisoners as Errachid Prison had recently - not just currently – been in use, and if so, for what purpose. The prisoners described the alleged detention facility as under the control of military authorities. Human Rights Watch made repeated requests to SADR authorities while visiting the camps for this report to interview defense ministry officials, without success.

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<sup>240</sup> Human Rights Watch interview with Brahim Mohamed Said Rabah, Shahid Abderrahman Prison, Rabouni, December 1, 2013.

<sup>241</sup> 27°30'27.05"N, 7°43'39.29"W - accessed with Google Earth, April 17, 2014. The images appeared to date from late 2011 or afterward, since defensive sand berms that SADR authorities raised since late 2011 around the Tindouf camps and outlying structures are clearly visible.

<sup>242</sup> France Libertés, “Les conditions de détention des prisonniers de guerre marocains détenus à Tindouf (Algérie),” July 2003, p. 42.

<sup>243</sup> Human Rights Watch letter to SADR President Mohamed Abdelaziz, March 14, 2014.

<sup>244</sup> Letter from the Justice Ministry to Human Rights Watch, April 5, 2014.

<sup>245</sup> Human Rights Watch interview with M’hammed Khaddad, New York, April 28, 2014.

## IX. El Khalil Ahmed Mahmoud: An Alleged Forced Disappearance

El Khalil Ahmed Mahmoud, a former senior Polisario official, was allegedly the victim of forced disappearance. If confirmed, it would be the only recent case known to Human Rights Watch of enforced disappearance involving a Sahrawi refugee in Algeria. If true, the allegations implicate Algerian authorities.

Human Rights Watch interviewed Ahmed's son, El Bachir El Khalil Ahmed, as well as other members of Ahmed's family, who live in the Tindouf camps.<sup>246</sup> They said Ahmed went missing on or around January 6, 2009 in Algiers, where he was living. At the time, he was a counselor to SADR president Mohamed Abdelaziz on human rights in Moroccan-controlled Western Sahara. As such, he was often in contact with media and human rights organizations.

The family said that about two weeks after his alleged disappearance, SADR officials informed them that Algerian authorities had confirmed having detained him. The family tried repeatedly to get in contact with him, including by submitting a formal request for a visit to Algerian military court officials, via the SADR embassy in Algiers in June 2009.<sup>247</sup>

According to SADR judges interviewed by Human Rights Watch, Sahrawi refugees are subject to Algerian court jurisdiction for any crimes they might commit outside the camps.<sup>248</sup>

El Bachir, Ahmed's son, said that in April 2011 he succeeded through non-official contacts to gain access to a detention center associated with the Algiers military court, where authorities allowed him to see and speak with his father. However, Algerian authorities

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<sup>246</sup> Human Rights Watch interview with El Bachir El Khalil Ahmed, Smara camp, November 29, 2013 and with El Bachir El Khalil Ahmed, Adnan El Khalil Ahmed, Mohamed El Khalil Ahmed, and Berah Nafaa Belgasm, El-Ayoun camp, December 2, 2013.

<sup>247</sup> Ibid.

<sup>248</sup> Human Rights Watch interview with Human Rights Watch interview with: Mohamed Salem Omar, investigating judge and youth judge of the appeals court; Abidi Ayat El Qaid, counseling judge of the penal chamber of the high court; Hamdi Khalili Lehibb, appeals court president; and Mohamed Embarak Mohamed Ahmed, high court president. Rabouni, November 30, 2013.

have at no time officially acknowledged having arrested Ahmed, nor explained to his family the reason for his alleged detention,<sup>249</sup>

Algerian authorities have furnished no official document that might constitute evidence that they had custody of Ahmed. Since April 2011, said El Bachir, he has made three more attempts to gain permission to see his father, without success.<sup>250</sup>

Human Rights Watch inquired with both Polisario and Algerian authorities about Ahmed's alleged detention and judicial status.<sup>251</sup>

Algerian authorities informed Human Rights Watch in a letter: "There is no information about this citizen."<sup>252</sup> The Polisario's coordinator with MINURSO, M'hammed Khaddad, told Human Rights Watch that he knew and had worked with Ahmed but had no information on his alleged detention or current whereabouts.<sup>253</sup>

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<sup>249</sup> Human Rights Watch interview with El Bachir El Khalil Ahmed, Smara camp, November 29, 2013 and with El Bachir El Khalil Ahmed, Adnan El Khalil Ahmed, Mohamed El Khalil Ahmed, and Berah Nafaa Belgasm, El-Ayoun camp, December 2, 2013.

<sup>250</sup> Ibid.

<sup>251</sup> Human Rights Watch letter to Abdallah Baali, Algerian Ambassador to the U.S., March 14, 2014.

<sup>252</sup> Letter from Abdallah Baali, Algeria's ambassador to the United States, to Human Rights Watch, April 7, 2014.

<sup>253</sup> Human Rights Watch interview with the Polisario's coordinator with MINURSO, M'hammed Khaddad, New York, April 28, 2014.

## Acknowledgments

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Grace Choi, publications director, Kathy Mills, publications specialist, and Fitzroy Hepkins, administrative manager, prepared the report for publication.

Human Rights Watch thanks the many Sahrawis who spoke with us, either as individuals or as officials of the government-in-exile, as well as the many non-Sahrawis who live in or have visited the camps, who also shared their observations.

*Note: These letters were translated into English by Human Rights Watch, which made minor deletions to them.*

## **Appendix I: Reply from the SADR Justice Ministry, Dated November 5, 2013, to Letter Sent by Human Rights Watch**

We have the honor of submitting this response to your letter of November 2, 2013 pertaining to a request for clarification on two cases involving the following Sahrawi citizens:

1. Brahim Mohamed Said Rabah
2. Saleh Mohamed Salem (Slouh)
3. Mohamed Lamine Said Laroussi

### **1. The case of Brahim Mohamed Said Rabah:**

He was referred to the High Court on appeal with a group of other persons similarly convicted of the crimes of transporting and trafficking drugs, which are punishable under Article 09 of Law 01/2012. The High Court ruled on the appeal, overturning all the convictions, and referred all the cases and parties involved to the same court with a new judicial panel for adjudication, pursuant to Article 209 of the Code of Criminal Procedure.

As such, Brahim Mohamed Said Rabah and the other parties enjoy the same status they had enjoyed prior to the issuance of the appealed conviction and are awaiting a retrial on the same charges. They remain in the court's custody until their trial, as of the date of the High Court's ruling on May 26, 2013.

### **2. The case of Saleh Mohamed Salem (Slouh) and Mohamed Lamine Said Laroussi:**

Their case was referred to the investigating judge within the legal time limit to do so (the first four months), pursuant to Article 85 of the Code of Criminal Procedure. The most recent order issued by the accusation chamber referring the defendants to criminal trial was issued on April 10, 2013. It is this ruling that is the subject of the appeal before the High Court, filed by the defendants' counsel on April 11, 2013. The High Court considered the appeal on May 26, 2013, which is within the legal time limit as set forth in Article 303 of the Code of Criminal Procedure. The court ruled to adjourn the case.

Legally, this means that a consideration of the matter of pretrial detention remains with the last body to have ruled on the matter, pursuant to Article 93 of the Code of Criminal Procedure, and is consistent with the opinion of the High Court in its interpretation of this article, issued on December 21, 2012.

In turn, this means that the period [of pretrial detention] thus far served by the defendants is within the legal limit of pretrial detention set forth in the Code of Criminal Procedure, based on Article 85, paragraphs 02 and 03.

NB: The reference to the defendants' "detention" [*i'tiqal*] in the letter does not apply to general crimes; the term set forth in the laws of the Sahrawi Arab Democratic Republic is "in the custody of the judicial police" [*al-tawqif taht al-nazar*, (garde à vue)] and "jail" [*habs*] in the event of judicial investigation; in sentencing, persons convicted of misdemeanors are sentenced to jail and persons convicted of felonies are sentenced to prison.

[signed]

Mohamed Embarek Mohamed Ahmed  
Chief Justice of the High Court

## **Appendix II: Letter from the SADR to Human Rights Watch, Dated April 5, 2014**

**The Sahrawi Arab Democratic Republic  
The Ministry of Justice and Religious Affairs  
Office of the Minister**

**14/04/26**

Ms. Sarah Leah Whitson  
Director of MENA Division, HRW

I would like to begin by giving thanks to your esteemed organization for its interest in human rights around the world, and particularly in the Western Sahara. Thanks are also due for your reports on the issue, and your following up on our country. It pleases me to supply you, in this letter, with the formal response of Sahrawi authorities to your March 14, 2014 letter to H.E. President Mohamed Abdelaziz.

Your letter was received with great interest by Sahrawi authorities, at the government level and that of the political leadership of the Polisario Front, as well as at the level of Sahrawi institutions concerned with human rights, including the National Sahrawi Commission of Human Rights, which started its operations recently. As usual, we conducted a thorough investigation into the concerns you raised in your letter, and have the following to say:

The Western Sahara region is the last remaining African colony registered by the UN in an incomplete decolonization process, since the Kingdom of Morocco confiscated the Sahrawi people's right to self-determination in 1975 and occupied large swaths of their territory until now, and in spite of the UN presence in the region since 1991, when an armistice was declared, along with a settlement plan that envisaged a self-determination referendum under UN supervision. The Sahrawi people are still waiting for this referendum today. For Morocco is not only rejecting the democratic solution of a self-determination referendum, as stipulated by UN resolutions, but is also engaging in practices that you have documented, which include systematic human rights abuses in the occupied part of the Western Sahara, and the rejection of any UN mandate that would enable MINURSO to

monitor human rights in the region. However, and in the face of harsh circumstances and meager resources, the Polisario Front and the Sahrawi government-in-exile have from the beginning initiated programs for education, training and healthcare, and for the empowerment of women and ensuring their political participation, and for the participation of all members of society in enhancing the democratic experience. On the other hand, foundations were laid down for a national justice system that guarantees the constitutional rights of all citizens, and which evolves on a daily basis in response to the needs of society, as a unique paradigm among liberation movements. All this serves to confirm the willingness of the Sahrawi state already to take all steps toward the rule of law, and not wait for complete sovereignty over the entirety of the national territory.

The Polisario Front and the Sahrawi government were among the first to accept, and call for the implementation of, the recommendation in your December 19, 2008 report on the Western Sahara calling, along with most other rights organizations and legislative institutions around the world, for a UN mandate allowing MINURSO to monitor and report on human rights in the region. Both the Front and the government had publicly declared their unconditional support for this demand, and their willingness to fully cooperate with the UN in monitoring human rights in refugee camps and the liberated areas of the Western Sahara. We believe that such a mandate remains the best way possible to enable international rights bodies, including your respected organization, to obtain all relevant information on the human rights situation in the region, factually and thoroughly, independent of any non-founded claims that may be made by any individual.

Regarding **the trial of civilians in front of military courts**, which is related to an enshrined principle of international law, that no civilian may be tried before a military court under any circumstances, I would like to inform you that this principle is one of the general principles of Sahrawi law. The exception established in law 12/01, adopted on February 18, 2012, is confined to the crimes of terrorism, possession of weapons and drug trafficking. This law was exceptionally adopted to deal with an exceptional security situation that arose after the abduction of several foreign volunteers from Sahrawi refugee camps on October 22, 2011 by drug gangs associated with terrorist groups in the north of Mali. Those gangs controlled large areas of that country and created an unusual security situation in the region that resulted in international intervention in Mali. A compounding factor was the activity of organized crime ... I hereby formally assert that the Sahrawi government has no intention of continuing or extending the remit of this exceptional law. On the contrary,

preparations are underway to enable regular courts to investigate and decide upon such crimes. In any event, the number of defendants tried before military courts under this law has been limited, and has so far been 12 in total.

Regarding **the lack of a second degree of courts (appellate courts)** in the military judicial system, this has been the case so far in criminal cases across the Sahrawi judicial system, whether military or civilian. The main cause is the lack of means and the scarcity of qualified judges, in light of our experiment's young age. Courts and laws have been in place only since 1997. However, work is in progress to speed up the adoption of a two-degree judicial system, in both the military and civilian systems, since it was stipulated in the National Action Program issued by the Front's 13th conference (please see the Justice section in the NAP document, December 15-22, 2011). This document is the authoritative reference of all programs implemented by the Sahrawi government in the 4-year interval between a conference and the next one.

Regarding the **possible legal basis for the pre-trial holding** of Mokhtar Mohamed Embarek, Ahmed Salem Said, Salama Lmhaba Badi, Saleh Mohamed Salem and Mohamed Lamine Said Laroussi those individuals had appealed to the Supreme Court on March 6 and 21, 2014, contesting the decisions of the pre-trial chamber to refer them to trial on February 24 and March 11, 2014. The Supreme Court has ruled on some of their requests while still considering others. The pre-trial detention had in this case been extended by order of the pre-trial chamber, in the same hearing where the trial referrals, contested by the defendants, were issued. This is legally sound, and we have written to you in further clarification, in the Minister of Justice's letter dated November 5, 2013.

Regarding the possible legal basis for the remanding in custody of Brahim Mohamed Said Rabah, Mohamed Lebih Al-Mahjoub Ahmed Lemhidi, and Mohamed Ahmedou Dahmi, in spite of a May 26, 2013 Supreme Court order overturning their convictions, it is based on the fact that the Supreme Court's decision did not acquit the individuals in question of the charges against them, but only dealt with irregularities in the application of some legal aspects, which required that the sentencing court try the case again, after its reconstitution. This called for keeping the defendants in custody, since they had not served their sentences.

Regarding the verification of Mr. Rabah and Mr. Al-Mahjoub remaining in prison after serving their sentences, we confirm that these two individuals are currently not in prison.

Regarding the clarification of **the status of the Errachid prison**, we assert that there are no prisons of that name, and the only prison under the authority of the Sahrawi Ministry of Justice is that of Shahid Abderrahman.

Regarding the **allegations, by Moulay Abu Zeid, of being subjected to physical assault by security forces**, the said individual tried to forcibly stop an official motorcade, in violation of recognized security procedures designed to maintain the security of officials and high-level guests. This necessitated his arrest to verify his identity, and he was released on the same day, without evidence to support his allegations. He himself presented no supporting evidence, such as a medical report or signs of abuse visible to the general prosecution, to serve as justification for follow-up or investigation. In addition, the Sahrawi penal code is clear when it comes to assaults on individuals and the procedures followed in this respect, be they complaints to security agencies and the prosecution, or civil litigation before an investigative judge.

**Regarding allegations of enslavement**, you know only too well the mighty efforts made by the Sahrawi government to eradicate this phenomenon, and the applied legal and constitutional provisions that criminalize all forms of abuses and ensure equality to all Sahrawi citizens in rights and obligations. As to the complaint submitted by Mr. Bilal Mohamed Salem Omar to the Sahrawi judiciary in 2011, claiming the enslavement of two of his children, an investigation was opened at the time. It turned out that Salem Bilal, born in 1990, and Yaqout Bilal, born in 1999, were both outside Sahrawi territories. However, in June 2013 both individuals accompanied the family with whom they had been living back into Sahrawi territory, enabling Sahrawi security to contact them and communicate the wish of their father that they join him, which they were able to do. Salem Bilal, a legal adult, has not yet filed a suit against the family with which he lived, and has not made to the competent authorities any of the allegations which he may have made before you, to enable any legal proceedings. Similarly, the father of Yaqout, Mr. Bilal Salem, has not reapplied to the Sahrawi courts to confirm the suit he brought in 2011. Moreover, the residence of the concerned family outside Sahrawi territory is a hindrance to follow-up.

On enslavement in general, we can assure you that no such cases are currently known to us, and that Sahrawi courts have not received any complaints in this regard.

**Freedom of expression, and specifically the incident of Mr. Salek Saloh.** The concerned individual was indeed summoned by the national gendarmerie on October 1, 2013, for questioning about allegations of slander against the Sahrawi military and associated agencies, on a website run by him that is called "Sahrawi Future." But he was never taken to a place of detention. Instead he was placed in the guesthouse of the Sahrawi gendarmerie, and was never mistreated. He was heard by a military prosecutor who released him in under 24 hours.

Journalism here is largely free and open, unregulated except by a few administrative regulations that relate to the professional code of ethics or penal code provisions that criminalize calumny and insults directed at individuals or institutions (like articles 148, 149, 150, 151, etc.).

Regarding the **transfer of journalists Salama Najem and Bashir Mohamed Lhasen** from positions in the state-run radio service to administrative jobs, this was within the mandate of the Minister of Information, considering that the radio service is a Ministry of Information entity. According to the ministry, this was not the first time that a journalist was transferred to an administrative position or vice versa.

Furthermore, the Sahrawi Public Post Law allows any transferred, dismissed or otherwise arbitrarily harassed employee to file complaints with local and national ombudsman committees, which the concerned individuals have not done.

Concerning **Najem Allal**, he was never arrested by any security unit, let alone tortured or his freedom of expression curtailed.

**Regarding freedom of movement**, it has to be asserted that this freedom is not limited at all, neither by Sahrawi nor by Algerian authorities. The allegations of Mustapha Selma are handled by the UNHCR, and that agency has better knowledge of his and his family's situation, having conducted several visits to them.

On the subject of **Algerian passports**, these are given to Sahrawi refugees living on Algerian soil, and reclaiming the passports from them is a purely administrative business that constitutes no hindrance to their freedom of movement. In any event, Sahrawi authorities issue Sahrawi passports to all citizens applying for them, enabling them to travel to, and move freely in, Algeria and other countries that recognize the Sahrawi Republic.

Hoping to have responded to all the concerns expressed in your letter, I seize this opportunity to reiterate the constant willingness of the Polisario Front and the Sahrawi government to cooperate with you. Please accept my highest appreciation and respect.

Hamada Selma  
Minister of Justice  
The Sahrawi Arab Democratic Republic

## **Appendix III: Letter from Algerian Authorities to Human Rights Watch, Dated April 7, 2014**

**Embassy of the People's Democratic Republic of Algeria**  
**Washington, D. C.**  
April 7, 2014

Ms. Sarah Leah Whitson  
Executive Director, MENA Division  
Human Rights Watch

Pursuant to your March 14, 2014 letter, concerning the human rights status in the Tindouf Sahrawi refugee camps, I am honored to provide the following responses to your concerns:

**Regarding the Sahrawi refugees' [freedom of] movement:** the movement of Sahrawi refugees into Tindouf is not subject to any special procedure and takes place normally. However, moving outside Tindouf into other states requires special procedures, and accordingly a permit of movement to Sahrawi refugees is issued in response to an advance request made via the Sahrawi Ministry of Interior. The request is addressed to the Sahrawi coordination bureau in Tindouf, where an official of said bureau formulates a movement permit and files it with the military communications office for signing and notation.

**Regarding the withdrawal of special passports on Sahrawis' return to Algeria:** this is a long-standing procedure. Those passports are collected by border police agencies in ports and airports in exchange for a receipt. The passports are then sent to the Sahrawi Arab Democratic Republic's embassy in Algeria, where their owners claim them. As for chartered flights from abroad into Tindouf, the passports [of their passengers] are collected by border police for the purpose of delivery to the Sahrawi Coordination Bureau in Tindouf.

**Regarding the two smugglers killed on January 5, 2014:** A fuel smuggling convoy was intercepted by a platoon of the National Popular Army near the Algerian-Mauritanian border. When the drivers of those vehicles failed to obey the orders of the army or heed the warning shots, members of the army shot those drivers, leading to the death of Ahmed Aleyeen Abih Al-Mahfouz, born October 20, 1992 in Haqouneya, and Khatary Hamadha

Khaldoud, born July 5, 1990 in Ain Al-Baidaa in the [Polisario-controlled part of Western Sahara], and the escape of four others.<sup>254</sup> Four trucks carrying 31,000 liters of fuel were seized.

**Regarding Mr. Khalil Ahmed Mahmoud:** we have no information on this citizen.

**Regarding Mr. Mustapha Ould Selma Sidi Mouloud:** this Sahrawi citizen formerly held a post as a Sahrawi police inspector before being let go in 2007.... He went to Morocco and later settled in Mauritania. On September 21, 2010 he was apprehended by Sahrawi authorities upon entering the liberated Sahrawi territories on charges of espionage for the Kingdom of Morocco. He remained there until October 6, 2010, when Sahrawi authorities released him in response to requests from international humanitarian organizations calling for Sahrawi self-determination. He was then transferred to the UN High Commissioner for Refugees and transported by land to Mauritania.

Ambassador  
Abdallah Baali

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<sup>254</sup> “Khaldoud” appears to be a misspelling of “Khandour.” See the section of this report on freedom of movement, where this incident is discussed.

# OFF THE RADAR

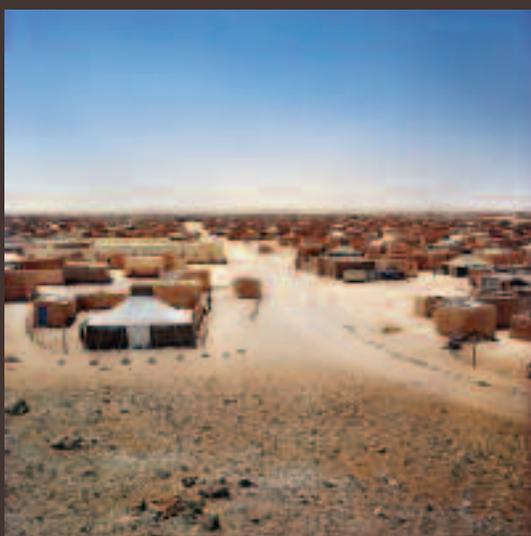
## Human Rights in the Tindouf Refugee Camps

For nearly four decades since Morocco's invasion of Western Sahara, thousands of Sahrawi refugees have lived in camps run by the Polisario Front deep in the Algerian desert. Based on first-hand research, *Off the Radar: Human Rights in the Tindouf Refugee Camps*, examines conditions in the camps, which outside human rights observers seldom visit.

Human Rights Watch found that Sahrawi critics of the Polisario Front were able to hold small, sporadic public demonstrations and found no cases of persons imprisoned for their political views. However, the report documents the cases of some individuals who encountered harassment for openly criticizing the Polisario. Human Rights Watch also found that a recent decree transferring drug offenses to the jurisdiction of Polisario military courts has undermined the rights of suspects in such cases, some of whom have been held in custody for many months without a valid judicial order.

The report found no evidence that the Polisario Front imposes arbitrary restrictions on the freedom of refugees to leave the camps, including to return permanently or temporarily to Moroccan-controlled parts of Western Sahara. However, the report does document the persistence, in isolated cases, of certain forms of slavery.

In order to enhance human rights protections for the Sahrawi people, Human Rights Watch recommends that the U.N. Security Council enlarge the mandate of the MINURSO peacekeeping mission to include human rights monitoring both in Moroccan-controlled Western Sahara and the Tindouf refugee camps, or establish an alternative regular mechanism to monitor and report on conditions.



*A Sahrawi refugee camp near Tindouf, Algeria, Tindouf.*

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