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# A Case for the Right to Self-Determination in Africa's Last Colony

## by Ryan Allman

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For over 40 years, the Saharawi people of Western Sahara have lived divided by a 1,700-mile sand wall.[1] The wall, or “berm,” built in the 1980s by the Kingdom of Morocco, is the longest defensive fortification in use today, littered with landmines and barbed wire and manned by tens of thousands of Moroccan troops.[2] Dividing the occupied and liberated territories of Western Sahara, the berm is a physical manifestation of Morocco's unlawful denial of the Saharawi people's right to self-determination that has resulted in a four-decade long abuse of the Saharawi people's human rights, including the rights to be free from torture, to freedom of expression, and to peaceful assembly and association. To address this abuse of human rights, the UN must facilitate a referendum for the self-determination of the people of Western Sahara.

In 1975, Morocco annexed Western Sahara, a former Spanish colony.[3] Since then, the Saharawi people have lived in the occupied territory or as refugees in exile.[4] The latest report from the UN High Commissioner for Refugees (UNHCR) estimated 170,000 Saharawi currently live in the Tindouf refugee camps in southwest Algeria.[5] In 1991, a United Nations-brokered ceasefire established the United Nations Mission for the Referendum in Western Sahara (MINURSO),[6] which ended the war between Morocco and the Saharawi liberation movement, the Polisario Front, and left Western Sahara a UN designated “Non-Self-Governing Territory.”[7] Almost thirty years later, the Saharawi people still await the referendum that would allow the people of Western Sahara to freely determine their political future.[8] Despite an opinion from the International Court of Justice in 1975 that Morocco has no valid claim to the territory of Western Sahara,[9] Morocco continues to unlawfully occupy the region and deny the Saharawi people a referendum.[10]

The right to self-determination is the legal right of people to decide their own political future. A core principle of international law,[11] self-determination is enshrined in customary international law[12] and international treaties.[13] Under international law, minority or oppressed groups have the right to self-determination, which protects the ability to freely determine their political fate and form a representative government.[14] The principle of self-determination originated to justify people's pursuit for independence from colonial governments that did not adequately represent their interests.[15]

Morocco, as the occupying power of the Western Sahara, and as State Party to the International Convention on Civil and Political Rights (ICCPR),[16] the International Covenant on Economic, Social and Cultural Rights (ICESCR),[17] and as a UN Member State, is obligated under international law, to allow the Saharawi people to realize their right to self-determination.[18] Article 1 of the ICCPR and ICESCR enshrine the right to self-determination for a Non-Self-Governing people to “freely determine their political status.”[19] The UN Committee for Economic, Social and Cultural Rights, in its 2015 ICESCR review of Morocco, stated its “concern about the failure to find a solution to the right to self-determination of the Non-Self-Governing Territory of Western Sahara.”[20] Article 2(4) of the UN Charter requires UN Member States to respect territorial integrity,[21] and Article 73 enshrines the right to self-determination.[22]

The non-realization of the Saharawi people's right to self-determination has prevented their enjoyment of other human rights, including the right to be free from torture. Human rights defenders and human rights monitoring groups report a history of disappearances, torture, intimidations, arrests, detainments, abuse in captivity, grotesque sentences, and denial of fair trials in the occupied Western Sahara.[23] Morocco is required to observe the Saharawi right to be free from torture as a State Party to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture)[24] and under the UN Charter.[25] Torture or cruel, inhuman or degrading treatment or punishment is prohibited by Article 7 of the ICCPR and the Convention against Torture.[26]



SAHARAWI WOMEN IN THE TINDOUF REFUGEE CAMPS VIA CREATIVE COMMONS USER CARLOS NÚES, LICENSED UNDER CC BY-NC-ND 2.0.

In 1993, Morocco ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, requiring the country to abolish and prevent torture or other forms of ill-treatment from undermining the right to a fair trial.[27] Morocco's constitution also forbids torture, and the country's penal code criminalizes torture.[28] Yet, despite laws to the contrary, Moroccan courts had a long-standing record of using torture and coercion to secure evidence to convict civilian prisoners.[29] Until reforms were made in 2015 to end military trials for civilians, Morocco regularly tried civilians in military courts[30] and continues to arbitrarily detain civilians based on military court sentences, as in the case of Mbarek Daoudi, a Saharawi activist held since September 2013.[31] A Moroccan military court sentenced twenty-five Saharawi to prison in 2013, based on confessions allegedly obtained by means of torture.[32] These charges were made in connection to the violent resistance against Moroccan security forces who dismantled the Gdeim Izik protest camps in 2010.[33] In response to protest from human rights organizations, these prisoners were granted a re-trial in a civilian court in 2017.[34] Since the 1960s, over 500 Saharawi

have "disappeared," after being arrested by Moroccan security forces.[35] Today, hundreds of disappeared persons remain unaccounted for, and the Moroccan government denies knowledge of the disappearances.[36] In 2016, the UN Committee Against Torture reported that Morocco breached UN Convention against Torture Articles 1 and 12 to 16,[37] with regard to the treatment of Saharawi activist Naâma Asfari, finding that Moroccan authorities failed to investigate Asfari's allegations of torture and other ill-treatment, protect him and his lawyers from reprisals, and denied him reparations including medical rehabilitation and compensation.[38]

Morocco is required to also observe the Saharawi right to freedom of assembly. In particular, Articles 21 and 22 of the ICCPR[39] and Article 8 of the ICESCR enshrine the right to freedom of peaceful assembly and association.[40] Moreover, Moroccan authorities systematically restrict freedom of expression, association and peaceful assembly in Western Sahara, preventing gatherings supporting Saharawi self-determination, obstructing the work of local human rights NGOs,[41] and threatening and abusing activists and journalists.[42] Human Rights Watch reported that, in June 2018, Moroccan police beat up at least seven activists who organized a pro-independence protest.[43] According to Amnesty International, human rights defenders are intensely surveilled, sometimes amounting to harassment.[44] U.S. journalists reporting for Democracy Now! recently documented heavy surveillance by Moroccan authorities when visiting the occupied territories in 2016.[45] These actions are in conflict with Morocco's responsibility as a State Party to the ICCPR and the ICESCR to protect the Saharawi people's freedom of expression, association and peaceful assembly. Furthermore, human rights abuses in the region go largely under-reported. MINURSO remains the only modern UN peacekeeping mission established since 1978 without a mandate to monitor human rights.[46] This lack of a human rights mandate leaves the conflict region without an independent and impartial mechanism to monitor human rights abuses in both Western Sahara and the Tindouf camps. Moroccan authorities claim that the Moroccan National Council of Human Rights (CNDH) protects human rights in the territory.[47] However, the King of Morocco appoints the president and at least nine of CNDH's twenty-seven members.[48]

The violations of human rights in Western Sahara are a consequence of the Moroccan denial of the Saharawi people's right to self-determination.[49] For the Saharawi people to realize their human rights, the UN must facilitate a referendum. Until the people of the Western Sahara determine their political future, the UN must facilitate international monitoring and observance of human rights in both Western Sahara and the refugee camps to ensure human rights violations do not occur.

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## The Link Between Tourism and Child Abuse in Cambodian ‘Orphanages’

by Madison Bingle

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In February 2019, the U.S. Attorney’s Office in Oregon sentenced Daniel Stephen Johnson to a lifetime in prison for repeatedly sexually abusing children in an unlicensed orphanage that he operated under the guise of a missionary in Cambodia.[1] This case is one of many, and exemplifies the pressing need for the implementation of comprehensive protective policies to safeguard children living in Cambodian orphanages.

The link between child abuse in Cambodian orphanages and tourism is a complex issue stemming from Cambodia’s recent history of war and genocide. In 1992, the United Nations Transitional Authority in Cambodia (UNTAC) and many foreign NGOs entered the country in an effort to aid in Cambodia’s

reconstruction.[2] In the process, UNTAC and NGOs expanded the market for Western tourism, as well as highlighted the vulnerabilities of Cambodian people during the post-genocide era.[3] However, as tourists began flocking to Cambodia’s historical memorials and ancient temples, the country also drew two other types of tourists — those looking to volunteer, and those looking to engage in sex tourism.[4] More specifically, “orphanage tourism” became a tourist commodity in Cambodia.[5] While orphanage tourism and sex tourism are different, the prevalence of sex tourism in Cambodia and orphanage tourism has significant overlap.[6] Rising tourism rates coincided with increasing amounts of children living in residential care institutions, commonly known as orphanages.[7] Children in these facilities are particularly vulnerable to abuse and exploitation.[8]

According to UNICEF estimates, the number of orphans decreased substantially between 2009 and 2014.[9] Despite there being fewer orphans, the number of orphanages and children living in orphanages has doubled.[10] In 2005, there were approximately 150 orphanages, and in 2019, there were over 400.[11] Additionally, an inspection by the Cambodian government revealed that out of the 16,000 Cambodian children housed in orphanages, 68 percent have at least one living parent.[12] The problem became so great that UNICEF began referring to so-called orphanages as residential living institutions.[13] Many low income families are persuaded by institution directors to place their children in residential care facilities, thinking that their children will have better lives there, with access to food, education, and medical care.[14] But, the reality is that many children in residential care institutions are subjected to abuse and neglect.[15] Some institutions force children to make handicrafts or force them to perform dances for visiting tourists — making these institutions the means of a type of modern slavery.[16] Thus, the demand for this type of tourism led to an increased number of children in residential care institutions who are significantly more likely to be exposed to physical and sexual abuse, as well as deliberate under-nourishment to solicit more donations.[17]

Cambodia has ratified the UN Convention on the Rights of the Child.[18] Article 20 states that children displaced from their family units “shall be entitled to special protection and assistance provided by the