



Problemáticas do Saara Ocidental

لوحة ميلاد الجبهة الشعبية لتحرير المساقية الحمراء ووادي الذهب

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MANIFESTE POLITIQUE DU 10 MAI 1973

Après qu'il s'est avéré que le colonialisme espagnol veut maintenir sa domination sur notre peuple arabe, en essayant de tromper par l'ignorance, la misère, ainsi que sa séparation du Maghreb arabe et la nation arabe.

Après l'échec de tous les moyens pacifiques utilisés tant par les mouvements populaires, que par les organisations légitimes, et par certains ministres.

Le Front POLISARIO est né comme expression unique de masse, optant pour la violence révolutionnaire, et la lutte armée unique moyen pour que le peuple arabe saharien, africain puisse recouvrer sa liberté totale, et débarrasser les masses de colonialisme espagnol.

Faire reconnaître de la Revolution arabe.

- Sustener la lutte des peuples contre le colonialisme, le racisme et l'oppression. Pour cela les combattants leur position vient à placer les peuples arabes sous domination toi, par le colonialisme direct, ou par le félic colonialisme.

- Considère que la coopération avec la Revolution populaire algérienne dans une étape transitaire constitue un élément essentiel pour débarrasser les masses arabes contre le Tera-Monde.

- Nous invitons tous les peuples révolutionnaires à serrer leurs rangs pour affronter l'ennemi commun.

La liberté est au bout du fusil.

Le Comité exécutif
10 mai 1973

الجبهة الشعبية لتحرير المساقية الحمراء ووادي الذهب

إراد الشعب الإسباني بقيادة سيطرا على شعبنا العربي الأسباني، وحاربه، تسببه الجاهل والظلم والظلم والظلم من الشعب العربي والأسباني العربية وواد الذهب على الشعوب العربية من قبل الشعب بها الحركات العربية والفتنات الرجعية التي تنهضها للتحرك
الكون الجبهة الشعبية لتحرير المساقية الحمراء ووادي الذهب بالشعب
جائزتي وحيدة لهذا القرن والعمل الفلاح واليهاد الثوريون بالشعب
الشعوب العربي الأسباني إلى
الحرية لشعبنا من الاستعمار الإسباني وحرب مورقو
- جزء من الثورة العربية
- دعم نضال الشعب ضد الاستعمار والسياسي المصنوعي والامبريق، ذلك
- رفضنا أي محاولة لإنهاء النضال تحت سيطرتها سواء بالأسلحة أو التمسك
الانفصالي
- التعاون مع الثورة الجزائرية في مرحلة انتقالها عمرا
لناجيا لحرب التحرير على المقادير
- دعوة كافة الشعوب لتقوية في التكاتف بين نضال الجبهة العربية
الشعبية

وإتفاقية نيل العربية
عز الدين مورو
10 ماي 1973
اللجنة التنفيذية

Modernization and tradition in the Western Sahara, the Sahrawi Constitution

Claudia Barona Castañeda* and Jorge Gamaliel Arenas Basurto**

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1. Introduction: A constitutional perspective on the Western Sahara

Ever since their independence, countries in the MENA region faced conflicts regarding who they truly were and what colonialism imposed on them as their realities and way of living. European colonial powers' meddling in the region redesigned national borders, leaving in a single territory tribal groups that had historical differences between them.

The transition to post-colonial models came together with a drift on the concept of the State and its inhabitants' role in it. Views in the Arab-Muslim world were split. Colonial land divisions segmented territories and, based on that, independence processes were feasible. But colonists' guidelines remained. Even as they were able to shape their destiny, this awakening contained an element of its deep-rooted colonial past.

There is no idea of modernization in the history of Islam (Landa, 2006). In fact, the *nahda*, the Arab cultural and political renaissance, was the work of Arab personalities, not Muslims, as an act of resistance against external factors (Balta, 1996); nor was it a natural process of State evolution. More than anything, this modernization represented the secular factor that charged against tradition and the very own founding of Islam as a civilization. Strict principles ruled over the traditional Arab Muslim community, same principles that were regulated since their origin.

This turning point between tradition and modernity will be at the core of the national identification and its ideology. Pretending to be modern and traditional at the same time leads to a contradiction; mainly when that European modernity is the one that shapes the State model (Landa, 2006: 17). National identity primarily appears as an answer to colonists; it is a response to the transition from a colony to sovereign State. In many cases, these answers will be radical as they can easily adapt to historical processes of emancipation.

Notwithstanding, the establishment of a new State was more than just the product of an identity reconquest. It is important to stress that external agents to the national identity accelerated or even carried out these processes. Current political systems tend to be mere subtleties of foreign ideologies that, whether for better or for worse were adopted and adapted to their settings. The goal repeats itself, to embrace modernity in their way, but not their pace. Still, the attempt remains.

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This paper seeks to group and to understand certain notions of the Sahrawi population and what makes them configure themselves into a State, their cultural transformation, and the historical elements that grant them a very particular spot in political studies. However, it is important to mention that there is a noticeable bias in the bibliography of this phenomenon that hinders the reading and interpretation of key moments of its development. The key moments addressed in this paper were chosen with a particular goal– to disclose the social structure and political organization of the Sahrawi from a historical perspective– so that they could ease our understanding of the State’s work and its institutions.

When addressing the Constitution and the participation of people from the Western Sahara, many observers tend to highlight their results, even as a far-off State and one away from the image of not only Arabs but in general. Despite the tingling optimism of some scholars’ and the Polisario Front (the Polisário, from now on), the results are barely there.

Far beyond the failure of implementing the constitution, there is a success story. In the latter, the Sahrawi used their chance to legislate with customs and traditions in several occasions.

The Sahrawi community, every time a bit more trans-territorial, survived the severe conditions of living in exile, highlighted by the shortage of means, while Polisario and SADR –as government authorities that work as political figures– worked on giving this *sui generis* State a legal coherence. The aforementioned due to reforms that remain on their constitutions.

This paper explores those achievements accomplished by the Polisario, SADR, and the Sahrawi civil society in the context of a war with a purpose that remains uncertain. For the latter, this paper will go a different way as compared to conventional studies on the Western Sahara because, based on the distinctive figures of their constitutions together with the Sahrawi society, it will trace the structural changes where tradition and modernization present themselves in the implementation of a legal framework.

2. Tradition vs. Modernization, the Sahrawi state through its Constitution

The Sahrawi Arab Democratic Republic, SADR, appeared on 1976 in the midst of war. A year before the apparition of the SADR, the kingdom of Morocco and Mauritania started the occupation of the former province¹ after they signed with Spain the Madrid Accords, which gave them access to the territory (Barona, 2004: 290-296). By then, a diaspora had already emerged, directed to the camps created by the Polisario in the Tindouf Province, an Algerian area.

It is important to remember that the Sahrawi are no strangers in the Tindouf Province, particularly the Erguibat. Since a pre-colonial period and a central point during the colonial era, this territory was a significant enclave as it eased for both Spain and Algeria a control of the natives.

¹ The occupation of the Western Sahara began on November 6th, 1975, with the *Green March*. The King Hassan II called out for a “peaceful” recovery of the Sahara, a decision that the Moroccan population actively supported. Consequently, thousands of Moroccans marched to the border with the former Spanish province. At the end of the latter, the Royal Armed Forces initiated an armed conflict that lasted until 1991. See: Barona Castañeda, Claudia (2004), *Los hijos de la nube desde 1958 hasta la debacle*, San Lorenzo del Escorial: Cuadernos de Langre.

A handling from the Ambassador in Algiers to Minister Castiella dated back to 1967² highlights a convergence in the interests of Spain and Algeria to boost the city's infrastructure due to Moroccan advances that sought to bring the Erguibat to Tarfaya. On the same document, the Spanish diplomat, and Minister Abdelaziz agreed on both countries' worry regarding Moroccan actions and the latter's interest to take the Erguibat to Tarfaya which made them reach out for Algerian support. However, the document's author pondered that one must pay attention to this request due to the *Algerianization* of nomads.

This text confirms a couple of hypotheses about the participation of Algeria in the creation of the Sahrawi State and the support they gave to the Erguibat tribe as a permanent ally. Furthermore, it is also important to ask ourselves the following: was Algeria part of the exodus from the territory to the Tindouf province in 1975 from that attraction process? How spontaneous was it? How much of it was incited? How did such a massive and distant exodus prepare itself?

Since then, the settlements at the Tindouf grew under Algeria's protection³. It was at that moment that the Polisario leaders used this situation to give legal support to Uali Mustafa Sayed's project via a provisional record. Uali saw a Sahara where its inhabitants were socially equal, humanly different, and completely free.⁴ At that time, they sought to build a society that replaced tribal loyalties with fraternity and national unity (Solano, 2011: 11). For that, they had to eliminate tribal the character boosted by the metropolis, even if tradition was to remain in an institutional and social level.

On February 27th 1976, Polisario proclaimed the creation of the Sahrawi Arab Democratic Republic (SADR) in Algerian territory. This action was a result of the options available at that moment. They did not accept that any administration that they did not get to choose would rule them, nor did they want to adopt the anonymous and apolitical identity of international refugees. The constitution of the SADR was an act of political resistance itself (Solano, 2011: 5).

The war pushed the Polisario to write a first interim document, the Provisional Constitutional Act of 1976. The goal was to strengthen the new State because, as the conflict arose, it was of utmost importance for the project of self-determination to have international recognition and, for this a Magna Carta came in handy. The Constitutional Act acquired a formal character by the end of that year.⁵ It was a simple text, not longer than four chapters and eighteen articles that briefly, cited the principles of a State that stood in the midst of exile and war.

All of the mentioned above framed under the revolutionary discourse of the 70's and very close to the Algerian model, ... *La souveraineté appartient au peuple, lequel fait partie de la Nation arabe, de la famille africaine et de la communauté des peuples du Tiers-Monde* (Sovereignty belongs to the people, who are part of the Arab nation, the African family, and the community of Third World peoples) (SADR Const. Art. 2. 1976 [Author's Translation]). On the same year, they replaced the interim document with one that was just as simple: five chapters and thirty-one articles. Just like the provisional, this new document addressed the core principles of the State; territorial boundaries, government, and the judiciary. From the latter, three articles stand out:

² *Archivo General Francisco Franco* – Statement. Letter to the Minister of Foreign Affairs Castiella to the Ambassador in Algiers. Issue: It looks like Algeria is trying to bring all the Sahrawi to the Tindouf Province, 05-07-1967.

³ The first camp that the Polisario Front settled in the Tindouf Province was the Nasser Camp. This settlement was the cornerstone of the future *wilayas*. Interview with Ali Beina Rabuni, December 2016.

⁴ FDS – Letter, Uali Mustafa Sayed, Folder on the Polisario Front, 1978.

⁵ Constitution of the SADR. August 26-30, 1976. Approved on the III Polisario Front Popular Congress, the Congress of the martyr "El Uali Mustafa Sayed."

- Art. 5.º *La Famille, base de la société, est fondée sur la morale et la religion* (The family is the base of the society, founded on the values of Islam and ethics) (SADR Const., 1976 [Author's Translation]). This eliminated the idea of the tribe as an element of cohesion.
- Art. 9.º *Le paiement des impôts et taxes est un devoir pour les citoyens; ils sont définis par la loi* (The payment of taxes and duties is an obligation contemplated in the law) (SADR Const., 1976 [Author's Translation]). The Sahrawi that wrote this first documents, inspired in many others, included in them what they felt was necessary to strengthen the State's institutions. Notwithstanding, the aforesaid belong better in a Civil Code than in a Magna Carta.
- Art. 10.º *Le droit d'asile politique est garanti* (The right to political exile is granted) (SADR Const., 1976 [Author's Translation]).

To this first Magna Carta we must add the sixteen Founding Principles of the Polisario Movement. These series of commandments marked the life of the inhabitants of the firsts camps. These sixteen principles were: 1) revolutionary violence, 2) discipline, 3) sacrifice, 4) secrecy, 5) self-confidence, 6) revolutionary science, 7) time factor, 8) save time, 9) take chances, 10) criticism and self-criticism, 11) revolutionary sincerity, 12) responsibility, 13) democratic equality, 14) objective analysis of reality, 15) fidelity, 16) exemplariness.⁶ These documents, together with the National Action Program, a document formulated every General Congress; marked the camp construction era.⁷ The purpose was evident, to keep the unity of a group that was ideologically-busy and morally-compromised with the cause.

After 1976, every Sahrawi became a member of the national liberation movement, except those that proposed something different or that defended Morocco's proposals. It was then a debate present since the colonies reappeared: Who are the Sahrawi? Who are the Polisario's followers? What differences are there between the Sahrawi and the Bidani? This concept has been used in multiple ways, going from the sense of belonging to individual elements, political militancy, national identity, or even as a demonym. The result of this is a social fragmentation that remains present.

While society resettled in camps, it was important to consolidate the State. Men old enough to join the armed forces started enlisting against Morocco while women, together with seniors, administrated the many institutions that were part of the SADR. The effort to reactivate the population and to create institutions in the midst of exile was clear. It was not a sovereign State, but it acted like one.

In 1982, the Sahrawi signed a new and better structured Constitution Act. Said document was a tad more appropriate concerning the long-time project and institutional framework they sought for the SADR. The text began with a preface that framed the State's ideological background at that time: pan-Arab, socialist, and non-aligned. The State sought to act like one, even if their Constitution appeared in a camp crisis (Garcia, 2010).

In the late eighties, the situation at the camps became more unstable and uncertain. Desertions in the Polisario affected the bases and, consequently, the populations started suspecting on their neighbors and reporting them. Meanwhile, a discourse on tradition and a sense of belonging reemerged in both the institutions and the society, reaching out to the use of *mefah* and *derrah* as distinguishing components. Sophie Caratini (2006: 12)

⁶ In *Le Front Polisario*, Ahmed Baba Miske makes a rather interesting analysis on the birth of the Liberation Front that marked many of its ideological principles. See: Miske, Ahmed Baba (1978), *Front Polisario l'âme d'un peuple*, Paris: Editorial Rupture.

⁷ At Fondo Documental del Sahara one can have access to notes and drafts of the first Polisario Congresses. The documentation belongs in the personal carpet of Colonel Rodriguez de Viguri.

points out that to the pre-eminence of security in times of war made some government officials mistook their solely political role with one of authority and that could use force. When all government officials are combatants, the separation of powers is not possible. In fact, it evokes an inherent conflict and rearises past differences; the crisis, be it a party or tribal one, emerges.⁸ The crisis starts to show with the arrival of Mauritanian refugees and the State institutions' lack of capacity to meet the needs of the people, which breaks the principle of asylum/exile present in the first and the coming Sahrawi constitutions. Tribalism made itself evident in the social discourse while the population started to cover the shortage thanks to the informal economy, which was already accepted by the Sahrawi State. This was happening by the time they signed the ceasefire in 1991.

Despite of tribalism, it was at this moment that there was a substantial advance on the document as compared to the previous ones, although some articles that belonged better in a Civil Code rather than on a Magna Carta remained. Another important element is that, due to these circumstances, the Polisario gained strength because *le secrétaire général du Front Polisario est le Chef de l'État* (The Front Polisario's Secretary General is the Head of State) (SADR Const. Art. 13, 1982 [Author's Translation]).

From then on, the institutions' legal framework was defined thanks to women networks that hoisted the refugee camps until the ceasefire in 1991. In that year, they expected to go back to territories under Moroccan administration as they waited for the referendum. It is clear that a Constituent must give priority to the State as a long-term project of legal framework for the institutions rather than to a circumstantial one. Notwithstanding, in the case of the SADR, the need to justify many of the changes taking place inside the State, particularly those in camps, was more important.

To close this section, it is important to remember that, as stated before, the ceasefire took place in 1991 together with the preparations for the referendum and the return to the Western Sahara. The following constitutions⁹ framed in the Polisario Congress went in different directions: gave a legal framework to the executive and institutions, a new role for society, an economic framework, and an ideological structure. While the latter may come off as shallow and greedy, each one of them tried to cover a particular challenge that appeared during the impasse in 1991, and that remains.

2.1. Sahrawi camps and the exiled State

The Camp-State dichotomy pushed the Polisario to change its policies to avoid bigger internal problems. The Sahrawi reorganization reflected on the Magna Carta eased the establishment of refugee camps, the social restructuring to face the war, and the international recognition of the SADR. But, they were not ready for the impasse of war. In this sense, the State, as a fictional object, was only an image built from the idea of a conglomerate to understand a non-existent function on an earthly plane. But government representatives carried out political actions and gave continuity to the concept of the stoic State. Besides, the vast critique to State-centric stances was that they tended to perceive the State as a subject and that decisions were taken based on men and women.

At first, some expected that the arrival to camps was going to be a significant step for a tribal society towards a new citizenship. At this point, the multiple constitutions highlighted equality amongst Sahrawi people, particularly on economic and social

⁸ Interview with Fatima Mehdi, 2008.

⁹ See: Universidad de Santiago de Compostela, USC (n. d.), Western Sahara Reseach Centre, *SADR Constitution*. [Online]. [Consult. 3.Oct.2017]. Available at: <http://www.usc.es/en/institutos/ceso/RASD-Constituciones.html>.

rights.¹⁰ The end of the armed conflict pushed them to rethink of their situation and the future of this society. Following the latter, they eliminated at the formal level the tribe and made the land public except for farm estates.¹¹

At this point, people were loyal to a new institution, the Polisario Front, that represented the State and the liberation movement. The first Constitution of the impasse of war picked up on this matter and built the document around this and the new role of the Sahrawi society. The latter appeared as a first miscalculation as they both covered the role of the other. On the contrary, the negative of the tribe appeared as something counter-productive as it is a constant in their activities that reemerges when either society or the individual need it.

Women and seniors rose the camps while men went to war or pursued diplomacy. The constitution of 1991 acknowledged their work as it pinpointed that *the State would safeguard for the protection of every political, economic, social, and cultural right of the Sahrawi woman as it would assure their participation in society and the country's development* (SADR Const. Art. 30, 1991 [Author's Translation]). But, even if women were of utmost importance in the organization of the latter, they did not make it to national leadership. On the contrary, seniors took upon civil authority. Later on, men would do the same once they came back from war.

The way we see it, the Constitution of 1991 closed many of the bases that were left open in previous constitutions. This document covered the roles of the three branches of government (the Executive, the Legislative, and the Judiciary) just like it enounced the rights and obligations of the Sahrawi society. According to its reading, it presented elements on both a long and short-term. But, even if we faced a clearer document, it still remained shallow in some parts.

Camps were more than a haven for refugees. They were meant to represent the State and, just like this paper asserted, this dual ability was hard to carry out. Since the very beginning, it was necessary to conceive refugees as citizens of a democratic State and to create cadres. Because who would govern them if they achieved their independence? The first matter they acted upon was to divide the population into *wilayas*, or provinces, according to the cities they came from, this eased a tribal break-up. The next step was to create the first social institutions together with neighborhood and provincial committees. Health, education, food production and distribution, and justice were the issues that solved and involved civil society (Caratini, 2006: 6).

Via the National Action Plan, they decide their budget and public expenditure, which is regulated by the Constitution. Humanitarian aid gets controlled by the State, passing through a filter to reach civil society. But corruption could easily end up controlling this sector in the detriment of the Sahrawi society and the consequent loss of credibility from the international community.

The activity sector was structured in a pyramidal way with the principles of democratic centralism at the base. The Sahrawi needed to address immediate shortages. Nevertheless, time, the installation of money, and the informal market had worn down this model. Social instability is already present and, therefore, so is discontent. The younger population sees in migration a chance to help their families and develop their professional abilities while they keep a sense of belonging to the Bidan.

Work was for the community and, at the same time, an agreement. The goal was to be self-sufficient with the support of international NGO's, particularly those from Spain. But,

¹⁰ The Constitution of 1991, Spanish. *Constitución Política De La RASD*. [Online]. [Consult. 12.Oct.2016]. Available at: http://www.usc.es/export/sites/webinstitucional/gl/institutos/ceso/descargas/Constitucion-RASD_1991_es.pdf.

¹¹ Interview with Emboirik, Leboihi y Mohamed Abdelkader, December 2007.

how can a State survive only with the help of aid? There is a national determination that calls out on a different thing, the will to live, to organize themselves towards a common aim, and their aspiration for a State. These circumstances and collective will are legally covered. It is the right to a State (Palacios, 2001: 43-86).

The social decay due to the war and the conditions that followed the ceasefire paved the way for an already weak state to stagnate itself. The much-needed step forward to get away from their dependency to aid has not appeared, nor is there a political will to do so as it is nothing but another business to the high echelon of the Polisario. Something similar occurred in the constitutions that followed the one of 1991 as they got further away from reality.

The opposition is not shy to openly criticize what they call “a revolving door democracy” while a critical media that still holds onto the idea of self-determination blooms.¹² The paths both of them propose subtly suggest an estrangement from the Polisario.

The opposition thinks it is necessary to find new options, to open the doors to younger generations, to rethink the State, and to separate the State from the liberation movement. They do not drift away from the goal to get their land back, but perhaps a more viable option is required to do so. However, the real question here is who wants to be this opposition? As of now, there is no visible political or social figure to do so.

The opposition is in need of political maturity, although they do denounce the senior leaders of the Polisario. The Modern Constitutions, as many call the constitutions that came after the end of the armed conflict, accept the right to association and multi-party system after they achieve their independence.¹³ Another important query is that of what do they mean when they say independence? Do they refer to Spain's recognition as an administering power or Morocco's?

The strategy, better yet, the demand of the Sahrawi people is change. New politicians, new strategies regarding Morocco, a State rearrangement, and a modern discourse that does not leave tradition behind. The latter is an urgent and crucial process as people's discontent can be a dangerous thing. They can lose previous achievements such as the recognition and cornerstones of the State, something unconventional in Africa.

Before proceeding any further, we insist that the various institutions are a proof of the rather complicated situation of this State. War, a fragile structure, and an urgency of obtaining international recognition pushed the Sahrawi to write a Magna Carta on the go. Adding and eliminating elements that can be correct, unlikely, vague, with contradictory translations, or even incorporating articles that differ from one another in-between different versions.

The constitution of 1991 represents the first landing of a relatively modern and better-structured constitution that will go prior to other five constitutions, including the latest version, the one from 2015.¹⁴ The first and the last documents help us see many of the contradictions in this exiled State.

The surrounding of the SADR directly influenced the constitutions. Similarly, the influence of Libya and Algeria is quite evident on very particular sections like the ideological pan-Arab model and organization. Regarding the former, it is important to stress that there

¹² The journal *Sahrawi Future* became popular on social media after the Gdeim Izik events. The Sahrawi found in it an answer to many of their questions while they voice the Sahrawi dissatisfaction. They are currently on Twitter, Facebook, and even have their own blog. [Online]. [Consult. 27.Oct.2017]. Available at: <http://futurosahara.blogspot.mx/>.

¹³ See Universidad de Santiago de Compostela, USC (n. d.), Western Sahara Reseach Centre, *SADR Constitution*. [Online]. [Consult. 27.Oct.2017]. Available at: <http://www.usc.es/en/institutos/ceso/RASD-Constituciones.html>.

¹⁴ The Constitution of 2015, in Arabic. [Online]. [Consult. 23.Oct.2017]. Available at: http://www.usc.es/expoarty/sites/webinstitucional/gl/institutos/ceso/descargas/RASD_Const_2015_ar.pdf.

was a shift towards Islam that evolved up to the Constitution of 2015. It went from stating that *Islam [was] the State's religion* (SADR Const. Art. 4, 1991 [Author's Translation]) to affirming that *Islam shall be the State religion and a main source of the law* (SADR Const. Art. 2, 2015 [Author's Translation]).

At this point, we can conclude that every modification of the constitution is a consequence of a political or ideological evolution. The Constitution of 1991 took place in a very particular context, the end of the Cold War. Meanwhile, the Constitution of 2015 appeared in a very different geopolitical, international, and regional context; not only for the Polisario but for every other actor in the region where there was a shift from pan-Arabism to pan-Islamism.

From this law concept and source, many other articles' faculties derive. An example of this dilemma is Art. 5 of the Constitution Act of 2015: *The flag, the national anthem, and the coat of arms of the SADR shall be defined by law* (SADR Const., 2015 [Author's Translation]). If we consider Islam as the only source of law in this new State, is Islam the one defining the national anthem, the flag, and the coat of arms of the SADR? To have a body of sources of law could come off as a good idea, but which of these would be secondary sources? Not on a single iteration of the many constitutions do they mention this, not even on the last one of them, the one enacted in 2015.

Likewise, Art. 8 brings out another interesting situation. As stated in said article, *sovereignty shall belong to the people who shall be the source of all power* (SADR Const., 2015 [Author's Translation]). According to the Sahrawi people, what power are we talking about? How do they define it? What faculties does it give to them? In this context, Islam was the primary source of law but, was not Islam the one that held power? Or, does it not concentrate on those who interpret it for its implementation?

Another example that elicits numerous questions is that found in Art. 47 which commands citizens to respect the Constitution and the laws of the SADR. What laws is the article talking about? Where can we find those laws? Is it exclusively referring to those defined in the Constitution? These ambiguities scatter many doubts regarding the proper structure of the SADR. The latter, summed up with recent reports of corruption in the Polisario, aligned with the Algerian government, can lead to the manipulation of private interests rather than to its primary function.

In addition to the above, there are contradictions between the articles of a same document. Quite in fact, there are even some irregularities within the same article. Art. 7 of the Constitution Act of 2015, for instance, states that *the family is the foundation of the society; it shall be based on religious, ethical and national values and on the historical heritage* (SADR Const., 2015 [Author's Translation]). This article presents a fundamental inconsistency: the family versus the historical heritage. As seen in previous sections, the tribe is the cornerstone of the Sahrawi society, and its conversion from a tribal to a family matter rejects the former for a less complex notion with a higher chance of being susceptible as time goes by. Like so, to say that family stands as the core of the Sahrawi society due to its historical heritage is wrong.

One of the articles that we found that stood out from the rest was Art. 19 because we perceived in it many of the Sahrawi's social points of view. Just like the articles mentioned above, this one is concisely written: *holding office in the State shall not be a source of personal enrichment nor a mean to serve private interest or the interests of a group based on regionalism, nepotism or tribalism* (SADR Const., 2015 [Author's Translation]). By presenting tribalism as something negative that could be an object of interest at the expense of the State, this article evidences an internal struggle between Sahrawi historical traditions and its need to modernize itself. To deny tribalism on one hand while

referring to its historical heritage as the basis of society on the other is nothing short of a big contradiction. One cannot understand the Sahrawi people if the analysis does not begin with its basic unit: the tribe.

The experience of the different phases in which they tried to consolidate the Sahrawi Constitution and built a Nation State take us back to various fundamental aspects related to a review of the goals and the sense of the different constitutions in an international historical context. Generally speaking, the constitutions provide a shape and structure for the administration, just like they grant legitimate concentrations of power. These are crucial in the state and national government building process. Constitutions seek to identify the supreme law that will regulate political behavior, the construction of a public sphere, and the creation of binding rules for society as a whole.

Aristotle (2011) noted that there was not an unambiguous model for a constitution and that the many variants sought to adapt to the conditions of a social context. The Sahrawi case and its multiple adaptations of the text help us to understand this pragmatic aspect of the constitution as it goes through different elements. Mores, costumes and traditions inherited from their history and put together on a civil society due to the tribes' influence, the impact of Islam's cultural values and the ideological interpretations that turn into religious practices, a strong international tendency that urged them to be modern, and the weight of their not-as-distant colonial experience.

If we forget about these factors when analyzing the *sui generis* experience of the Sahrawi community, it is rather easy to make simplifications. For instance, the incongruities mentioned above in Art. 8 of the Sahrawi Constitution of 2015 immediately lead us to the issue of the constitution as a mean of sovereignty and a way to express the will of the people; but this is a very American and European thing.

In a Western context, the discussion on the constitution revolves around the power that governments are to receive so that they do not affect individual freedoms and that the State turns into a Leviathan (Hobbes, 1984). Meanwhile, in the Sahrawi experience, the dialogue circles around the weight they ought to give to Islamic values in both the interpretation and application of popular sovereignty which draws into a scenario where religion plays a prominent role in politics. The latter is also addressed in the contradictions of Art. 5, on whether Islam could be the law to create the anthem, symbols, and coats of arms of the Sahrawi community.

Other considerations on the social space that seek to build democratic institutions are those found in Art. 7 and Art. 19 of the Constitution of 2015, which refer to the unavoidable reality of the social weight of the tribes in the Sahrawi historical experience. The Modern Constitutions seek to secure the concept of citizenship, understood as the group of rights and duties that citizens have, at the heart of liberal democracy. The effort to pinpoint these rights and obligations in modern constitutions is also part of the freedom of speech and dissent with powerful social groups. It is almost as if these notions of citizenship do not go with the weight ancient intermediate organizations hold, such is the case of the Sahrawi tribes that structured the identity of the Sahrawi people.

Following the latter, the normative part that refers to the formation of citizens in liberal democracies subsumes in the Sahrawi Constitution another relevant traditional unit like the family. But, far beyond the document condemning the presence of tribes, the Sahrawi Constitution highlights the importance of the family as the core unity center in society.

Maybe the distance that the cited articles of the Sahrawi Constitution observe, particularly Art. 19, regarding tribalism and nepotism in the use of resources, alludes to the absence of mechanisms of social and redistributive justice that limit the resource appropriation of elite groups in power like Polisario, the SADR, and those tribes that work together

with these two groups. Under these circumstances, it is easy to perceive that there are inconsistencies at the social level in conjunction with those found in the Constitution. It is true that some parts of this analysis may come off as *recherché*. But in the situation of what could possibly be a new nation in which traditional processes of a State constitution hurriedly took place with goals that go beyond the ruling of a constitution, it is necessary to distinguish what elements of this constitution-building process are wobbly, what others keep a good government as its primary goal, and which ones seek for a short-term international affinity.

3. Final considerations

The study on the Western Sahara and the Sahrawi State leaves us with far too many questions in an already complicated scenario. Throughout this text, we analyzed how did a State configure itself in the midst of exile with a unique set of contradictions. We can link most of these discrepancies to the prevalence of tradition in the face of modernity.

First, there is a dilemma between the Polisario Front and the Sahrawi State insofar as these tend to be seen as synonyms because their roles are yet to be defined. The constitution is clear when it pinpoints that the Head of State is the leader of the liberation movement. Hence, why their functions can overlap in several occasions and may end up hindering State development.

The Polisario is a typical popular front where people try to put together everyone and everything under a single goal which, typically, has to do with resisting a stronger enemy. In this case, these adversaries were colonialism at first and, soon after, Morocco. This dispute over hegemony or the power of the many different actors has been postponed by Sahrawi people, although the contradictions become more and more evident. A strong opposition to the Polisario is yet to appear, although some critical voices started to emerge. On the contrary, the SADR pretends to be a State even if it needs to halt the development of its institutions, getting caught in an old-fashioned discourse with a population that no longer see themselves represented by the movement's leaders. They limit themselves to gathering humanitarian aid and resources, making themselves nothing but an administrators.

Similarly, the power of the SADR limits itself to the deploy of its military units and the protection of the wall. Up to date, the political will to resettle the area is yet to develop, as it relies on small Bedouin groups that survived thanks to their very limited agricultural activities. Contrary to the camps where Algeria has the last word, in these liberated territories the commands of MINURSO, the United Nations Mission for the Referendum in Western Sahara, limits its monopoly in the area while the tribes get some of their power back.

Up to this moment, the SADR made a significant use of diplomacy but its spheres of influence stifle the latter. The SADR obtained the recognition of several countries, the vast majority of them located in Africa due to Algerian influence. There were important advances in Latin America under the ruling of self-determination but the lack of monitoring of some delegations and embassies made many neglect the humanitarian crisis that takes place at the Algerian Hamada.

Furthermore, the absence of a political identity that entails the use of essential values like freedom and democracy resulted in many of the vital elements, such as the Constitution, elections, parliament, and the procedures for administering justice, to be nothing but a façade to gain international recognition.

As stated in the most recent constitutions, civil society organizations and political parties cannot exist until the Sahrawi get their independence. Notwithstanding, it is not entirely clear whether they seek this independence from Morocco or Spain. In the meantime, it is important to ask ourselves about the legal status of the Western Sahara.

On this very own purport is that the young Sahrawi opposition affirms that *it is their tribal nature, competency, distribution, and alliances, that remains as the decisive factor of social organization and the authentic key to interpreting the political future*.¹⁵ An excellent example of this quote is the paradox of the political-constitutional design and a low feasibility to choose a Secretary-General for the Polisario who, as mentioned before, is the President of the SADR at the same time.

Additionally, all public officials in the SADR are natural members of the Congress of the Front. These born and non-elected congressmen represent over 50 % of Congress. Furthermore, the administration of justice, one that has *shari'a* as its primary source, limits itself to crime, offenses, and disputes between the population, exerting no control over to the Administration of the Polisario or the SADR.

Regarding the Sahrawi Constitution, the SADR's and the Polisario's performance together with their association with the Sahrawi State take us back to what Giovanni Sartori (1992) called "nominal constitutions." By this, the Italian political scientist referred to solely organizational constitutions but that somehow limited civil and political rights. In other words, some fractions in power get to set limits on civil and political rights under the excuse of "the will of the people," creating clientelistic networks that vacate the constitution of its normative component; that is the supreme law of the nation that sets limits on political power and warrants fundamental rights.

Moreover, an essential aspect of these modern constitutions is their need to promote civil order and a social sphere that allow proper conditions to negotiate and accommodate the law according to the needs of multiple social groups that form the society. That is the constitution's *raison d'être* in a democracy: to create a shared space where no exclusion takes place and that has a presence amongst the various groups within a society. The aforementioned goes together with the core idea of constitutionalism that refers to the concept of institutional engineering to pave the way for a system of checks and balances within the groups that the State represents.

But that is not the case for the Polisario or the SADR. In these political organizations of the Sahrawi community, the concept of power prevails on a single organization that represents the people's notion of sovereignty. Under these particular conditions, some may perceive that any room for conflict, negotiation, and discussion is a menace to stability and social order. As a matter of fact this results in a limited vision on the content of the Sahrawi Constitution which explains its briefness and contradictory laws.

At this point, the Sahrawi ought to ask themselves about the rationale of the Western State versus their own. If there is progress on their project, this must be from the inside-out to be one with a solid structure.

Authors like Joel S. Migdal (2011) have asked themselves about the legitimacy of the State as an autonomous and independent body that holds the legitimate use of force that can use it over other actors and organizations within society. In regions like Latin America, Asia, and Africa, their experiences tell of a need for concrete empirical studies to portray some of the particularities acquired due to State control. A peculiar weakness characterizes this State, together with an overlapping tangled mess of social organizations that determine its capacity to create and enforce rules.

¹⁵ Interview with Sahrawi Saburini students, 2016.

Based on this approach, we identify two central components of the State. First, the State has an almost-chronic weakness to impose itself on other organizations or actors with either a local or regional influence via ethnic communities, social organizations with or without an armed wing, clans, tribes, or chiefs. Secondly, the State is in permanent need to negotiate with civil society organizations to ensure its survival and to control certain pieces of land and sectors. It is because of these two components that the State comes off as a weak one. This approach helped in the understanding of very particular cases in Latin America (Olvera, 2012); perhaps it could come in handy when studying the Sahrawi experience.

The establishment of the Nation-State has been a hard and devious one. Ancient structures and configurations of colonialism based on different criteria like religious and cultural variables, ethnic groups, political power, charismatic leaders, amongst others, remain. These elements tend to reflect themselves in organizations that, under the threat of rivaling government policies and resource management, create tensions that neutralize their stances. Hence, they aspire to become States themselves. In these complex situations, privilege structures, political clientelism, and corporatism tend to become part of negotiation procedures between the many organizations that rival the State.

The interaction between various competing organizations that clash due to State legitimacy and the monopoly of the legitimate use of physical force are two key elements in the Weberian concept of the Modern State (Weber, 1977: 98). In the latter, designations based on personal loyalty, cooptation, and ethnic negotiations are of utmost importance as they can delimit the *State capacity to dictate the binding rules of society* (Migdal, 2011: 98). The aforementioned is relevant because it is possible to apply it to Migdal's criteria to suggest that the Polisario Front and the SADR maximize *the use of group influence for personal gain* (Migdal, 2011: 98). In this sense, the Constitution drifts away from the reality of Sahrawi territory.

Acronyms

MENA – Middle East and North Africa

MINURSO – United Nations Mission for the Referendum in Western Sahara

SADR – Sahrawi Arab Democratic Republic

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