

REPORTS / BERICHTE

Statehood in Exile: The Sahrawi Arab Democratic Republic

By *Manfred O. Hinz** and *Ahmed Mohamed Sidi Aly***

Abstract: Spain, the colonial administrator of Western Sahara, entered into an agreement with Morocco and Mauritania in 1975. The agreement conceded to territorial claims of Morocco and Mauritania. The people of Western Sahara resisted the agreement and the subsequent occupation of their country by Morocco and Mauritania. What followed was war, led by the liberation movement POLISARIO Front and the flight of many Sahrawis. Part of the resistance of the Sahrawis was the declaration of the State of Western Sahara: the Sahrawi Arab Democratic Republic (SADR) in 1976. With the declaration of the SADR, a first preliminary constitution was enacted. The constitution in force is the Constitution of 2023. The constitutional development, now spanning over 50 years, has been inspired by the expectation to exercise the right to self-determination, but also reflects the process of state-building that responds to the reality of living in refugee camps and to military encounters with Morocco.

Keywords: Western Sahara; Occupation by Morocco; Right to Self-Determination, Colony and State

A. Western Sahara: Colony and State

The Berlin Congo Conference of 1884 confirmed Spain to be the colonial power of Western Sahara. Western Sahara remained under direct Spanish administration until the seventies. On 14 November 1975, the Spanish government entered into the so-called Declaration of Principles on Western Sahara or Madrid Accords with Morocco and Mauritania.¹ With this agreement, Spain conceded to claims of Morocco and Mauritania according to which the northern, respectively its southern part belonged historically to these two countries.

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1 Declaration of principles on Western Sahara. Done at Madrid on 14 November 1975

The administering power of Western Sahara was to be transferred to a temporary tripartite administration. The presence of Spain in Western Sahara should be terminated by 28 February 1976.

The Madrid Accords violate the law on decolonization, as it was accepted in the Charter of the UN and is therefore illegal.² As the last African colony, Western Sahara is still registered in the list of the UN of non-self-governing territories in terms of article 73 of the Charter of the UN.³

The people of Western Sahara resisted the colonial administration in many ways: it resisted the claims of Morocco and Mauritania, it resisted the Madrid Accords and it resisted the subsequent occupation of its country by the two neighbouring states.⁴ What followed was war, led by the liberation movement POLISARIO Front⁵ and the flight of many Sahrawis into Algeria. Today, more than 200 000 Sahrawis live in different camps close to El Tindouf in Southwestern Algeria.

The very important political act of resistance of the Sahrawi was the declaration of the State of Western Sahara: the Sahrawi Arab Democratic Republic (SADR) on 27 February 1976.⁶ The Sahrawi State is recognized by many African, Asian and Latin American countries, is member of the African Union and party to international agreements.⁷

The legal position of Western Sahara is unique. From the perspective of international law, Western Sahara is a non-self-governing country. At the same time, Western Sahara is a state: there is a territory, there is a population and there is a government. The SADR is sovereign in the full sense when concentrating at the liberated area, i.e. the eastern part of Western Sahara. It has “domestic sovereignty” when taking into account that the bigger part of its people lives in exile, i.e. on Algerian soil.⁸ Entering the camps requires permission by the Sahrawis.⁹ The state is responsible for its people as any state is, but determined by the

2 Letter dated 29 January from the Under-Secretary for legal affairs, S/2002/161, p. 6.

3 Non-self-governing territories, <https://www.un.org/dppa/decolonization/en/nsgrt> (last accessed on 6 May 2025).

4 Maurice Barbier, *Le conflit du Sahara occidental*. Paris 1982, pp. 31 ff.

5 Frente Popular de Liberación de Saguia el-Hamra y Río de Oro.

6 Reprinted in *Manfred O. Hinz*, *Le droit à l'autodétermination du Sahara Occidental*, Bonn 1978, pp. 89 ff.

7 So far, there are some 84 states that declared their recognition of the SADR. See the list of recognition in: *Manfred O. Hinz / Ahmed Mohamed Sidi Aly / Emma Lehib*, *Western Sahara — State and Colony*, Berlin 2026, pp. 271 ff. The recognition of a political entity as state by the international community and its members is not constituent to the legal existence of the state. Political entities are states as soon as they meet the mentioned criteria of statehood. Cf. on this e.g. *Paolo Gaeta / Jorge E. Viñuales / Salvatore Zappalà*, *Cassese's international law*, Oxford 2020, pp. 80 ff.

8 So termed by: *Alice Wilson*, *Sovereignty in exile - A Saharan liberation movement governs*. Philadelphia 2016, p. 12.

9 The relationship between Algeria and the SADR, respectively the POLISARIO Front, is part of agreements between the two parties, which are not public.

right to self-determination of its people and, thus, dependent on an objective for which the political movement, the POLISARIO Front, stands.

The legal development of the SADR in general and its constitutional development in particular has so far not been a matter of substantial interest of researchers.¹⁰ What follows hereto is a first approach to research on the constitutional history of the SADR.¹¹ The constitutional development of the SADR does not only reflect the responses to demands from the socio-political environment, it expresses also the political intention to contribute to societal legitimization and acceptance of the socio-political order. In other words: The legal and, more so, the constitutional development of the SADR, can be described as process of constitutionalization, a process of establishing an accepted order of life as it is fact in the camps, but also in view of a society of home when back to Western Sahara. The constitutional development in the SADR offers also convincing arguments against the attempts to discriminate the state of the Sahrawi and POLISARIO Front as terrorist organizations.¹²

10 See e.g. Les fondements juridiques et institutionnels de la République arabe sahraouie démocratique: actes du Colloque international de juristes tenu à l'Assemblée nationale, Paris, les 20 et 21 octobre 1984; see *Mohamed-Fadel Ould Ismail Ould Es-Sweyih*, La République Sahraouie. Paris 2001; see also *Irene Fernandez-Molina / Raquel Ojeda-García*, Western Sahara as a hybrid of a parastate and a state-in-exile: (Extra)territoriality and the small print of sovereignty in a context of frozen conflict, *The Journal of Nationalism and Ethnicity* (2018), pp. 1-27. The documentation by CONASADAH (Sahrawi National Committee for Human Rights: Institutional and legal building for the consolidation of human rights in the Sahrawi State. Sahrawi Arab Democratic Republic, 2022) is a helpful source. Manfred Hinz had the opportunity to collect information on the law of the SADR during two visits to the camps of the refugees in December 2024 and April 2025.

11 An extended version of this report appeared in *Hinz et al.*, note 7 and contains the constitution of the SADR and the statute of the POLISARIO Front, both enacted in 2023..

12 See on this: The CDU/CSU parliamentary group in the German Bundestag submitted a question to the Federal Government in December 2023, in which it inquired about the Federal Government's knowledge of the "influence of Iran on worldwide terrorist networks against Israel, the United States of America and the entire international rules-based order". (Parliamentary question of 19 December 2023, German Bundestag, printed matter 20/9864.) The list of "radical and terrorist groups" that may be supported by Iran consists of seven organizations. "Polisario Front in Western Sahara" holds the first place in this list, followed by Hezbollah and Hamas. According to El Independente of 17 April 2025, the president of the USA, Donald Trump, informed Morocco that he will declare the POLISARIO Front a terrorist organization. On 24 June 2025, Joe Wilson, member of the Congress of the USA for the Republican Party, introduced a bill to provide for the imposition of sanctions with respect to the POLISARIO Front. (H.R.4119 – 119th Congress 2025 – 2026). See for further details *Otra Lectura*, Interview with John Bolton, 28 June 2025, <https://otralectura.com/2025/06/28/john-bolton-i-didnt-see-any-sign-of-marxist-jihadist-or-iranians-in-west-sahara/> (last accessed on 7 July 2025).

B. Constitutional Developments from 1976 to 2023

I. Introductory Remarks

When looking at the constitution of the SADR since its declaration in 1976, one has to consider 12 versions of the constitution.¹³ What happened in the 50 years in which the SADR existed is a process of developing the constitution from its first version, called provisional constitutional act to a comprehensive document. What later versions of the constitutions expressly state, namely that sovereignty is vested in the Sahrawi people and that the people is the source of all authority¹⁴ applies to the constitutional development since its inception. The constitutions were not granted constitutions. The constituent authority, i.e. the power to draft the constitution, has always been in the hands of the people. The Congress of the POLISARIO Front, convened every three years, is the constituent assembly that adopts the constitution and is set to remain the constituent assembly to amend, better to adopt the revised versions of the constitution.¹⁵

The composition of the congress is regulated in the statute of the POLISARIO Front. The statute does not provide for a fixed numbers of members. The number varies but usually amounts to around 2000 delegates. It is task of the Preparatory Committee of the congress to decide on the composition of the forthcoming congress and to issue rules ad hoc for the composition based on the administrative structure of districts and the electoral law in order to ensure general and equal representation of all sectors and citizens.¹⁶ Representatives from the part of Western Sahara under control of the Sahrawis, from the occupied areas and the diaspora also belong to the congress.¹⁷ Added to the elected members are government officials and officials of the POLISARIO Front.¹⁸

The way the constitutions developed prompts to distinguish two phases. The first phase is the phase of establishing the basic structures of the state in exile and lasted until 1982. The second phase is initiated by the Constitution of 1991. The Constitution of 1991

13 The texts of the constitutions (except the Constitution of 2007) are electronically accessible through the website of the Centro de Estudos sobre o Sáhara Occidental (CESO) of the Universidade de Santiago de Compostela.

14 See on this: Art. 3 of the Constitution of 1991 and arts. 8 and 9 of the Constitution of 2023.

15 Art. 73 of the Statute of the POLISARIO Front of 2023.

16 Art. 52 of the Statute of the POLISARIO Front, but see also art. 54, which determines the composition of the committee.

17 See here the Organic Law on Elections, No. 03/2009, which, in its art. 1, refers to the Constitution of the SADR and the Statute of the POLISARIO Front. The institution of “organic law” is common in French and Spanish law. See: Art. 46 of the Constitution of France of 1958 and art. 81 of the Constitution of Spain of 1978, as amended. The latter determines that organic act relate to special areas and that there “approval, amendment of repeal ... shall require the overall majority of the Members of the Congress in a final vote on the bill as a whole.”

18 Arts. 55-57 of the Statute of the POLISARIO Front.

responded to important internal and external events.¹⁹ It was again provisional in the sense that the constitution was to be revised by the next congress of the POLISARIO Front.²⁰ This happened with the Constitution of 1995. The Constitutions adopted after 1995, up to the Constitution in force, the Constitution of 2023, repeat the Constitution of 1995 in their main parts. It is therefore that, after describing the first constitutional attempts between 1976 and 1982 and references to the Constitution of 1991, the main focus of this report will be the Constitution of 2023.

II. First Constitutional Attempts: 1976 to 1982

The Provisional Constitution of 1976 has only 18 articles. Still in 1976, the second non-provisional constitution was enacted.²¹ This constitution repeats most of the provisions of the provisional constitution but was increased to 31 articles.

In its first chapter,²² Saguia el Hamra and Rio de Oro are said to be the territory of the Republic. The SADR is affiliated to the Arab world, the “family of Africans” and the “Third World”. The family, based on morality and religion, is declared to be the foundation of society. The realization of socialism and social justice are the goals of the state. Education, health care and social welfare are rights of all citizens. The obligation to pay taxes shall be defined by law. The right to political asylum is guaranteed.

Chapter two, “System of Government”,²³ consists of two sections: the section on the Council of Leadership of the Revolution and the one on the Council of Ministers. As executive organ of the POLISARIO Front, it is the supreme body of the SADR and has executive and legislative powers. The General Secretary of the POLISARIO Front presides over the Council and appoints the President of the Council of Ministers, the ministers and the secretaries of state.

The subsection on the Council of Ministers establishes that a member of the Council of the Leadership of the Revolution presides over the Council of Ministers. Apart from the president, the ministers and general secretaries of the various ministries are members of the council. The council is responsible for all administrative matters. The budget of the SADR shall be confirmed by law.

The making of law and the judiciary are given own chapters.²⁴ The National Council has legislative and advisory functions. The Constitution does not say where the members of the National Council come from, but states that the Council has 41 members. The chapter on the judiciary provides for the establishment of a Judicial Council. This Council

19 To which the report will come back below.

20 Special clauses 1 and 2 of the Constitution of 1982.

21 Enacted by the third congress of the POLISARIO Front, held from 26 to 30 August 1976.

22 Arts. 1-11 of the Constitution of 1976.

23 Arts. 12-20 of the Constitution of 1976.

24 Arts. 21-29 of the Constitution of 1976.

is composed of the presidents of the courts and chaired by the the Minister of Justice. The organization of the judiciary is its task. It appoints the judges and also dismisses them, the latter after consultation with "experts", who are not further defined. The council adopts rules of procedure of the courts and proposes rules on the organization and jurisdiction of the courts to the Council of Ministers. The constitution stipulates that the courts work in three instances: the courts of first instance, an Appellate Court and a Supreme Court. A special court is the State Security Court, whose members are appointed by the Council of the Leadership of the Revolution. The jurisdiction of this court is left to the regulation by law.

The Constitution of 1982 amended the Constitution of 1976 by adding only a few articles. In the chapter on the Council of the Leadership of the Revolution, it is clarified that the General Secretary of the POLISARIO Front is the President of the SADR.²⁵ The rules on the National Council were extended: the Council has the mandate to set rules for its work; it holds regular meetings, it may have extraordinary meetings requested by the head of the state or by two thirds of its members.²⁶

III. The Constitution of 1991

The first far-reaching change of the constitution was adopted during the seventh congress of the POLISARIO Front leading to the Constitution of 1991. The Constitution of 1991 replaced the 35 articles of the Constitution of 1982 with 97 articles.

The introduction of the Constitution of 1991 repeats the contents of the first chapter of the Constitution of 1982 but replaced the references to socialism and social justice by designating the SADR a democratic and social republic.²⁷ The chapter following the introduction, titled preliminary chapter, is in line with the first chapter of the earlier constitutions. Additionally, it addresses the right to form political associations yet postpones its implementation to the time after liberation.²⁸

The Constitution of 1991²⁹ guarantees the rights and obligations of citizens on the one hand, and social and economic rights on the other, thus going beyond the relative unspecified confirmations of human rights in the constitutions before. Rights guaranteed are the right to liberty of the person, the right to freedom of movement, the right to the inviolability of the home, the right to property, the right to express one's opinion, the right to secrecy of correspondence and the right to access to public office. Work is a right and a duty. The duration of arrests is limited to 72 hours. The death penalty is inadmissible. Torture and practices that violate human dignity are prohibited. Each citizen has the right to

25 Art. 13 of the Constitution of 1982.

26 Arts. 23-26 of the Constitution of 1982.

27 Art. 1 of the Constitution of 1982.

28 Art. 9 of the Constitution of 1982.

29 Arts. 10-24 of the Constitution of 1982.

defend his or her rights before competent judicial bodies. Defending the territory is a right and a duty. Everyone must respect the constitution and the laws of the state.

Social and economic rights³⁰ include the right to education, health, protection of motherhood and subsistence. The political, economic, social and cultural rights of women must be safeguarded. War survivors must be cared for. The economic and social rights of prisoners of war are guaranteed. Market economy and freedom of enterprise are recognized.

In four detailed chapters, the constitution regulates the division of state power into the usual three powers: legislation, judiciary and executive. The rules on the legislative authority, parliament, are very extended, but were, however, not enforced. In a special note attached to the constitutional text, the continued existence and competence of the so far provided National Council is confirmed until the time when a parliament is constituted after the liberation of the country and the end of the occupation.³¹

The chapter on the judiciary repeats what can be found in the Constitution of 1982. An addition is that the President of the Republic appoints the President of the Supreme Court on the proposal of the institution renamed the Supreme Council of the Judiciary.³² The Constitution of 1991 also introduced a new regulation on the composition of the Supreme Council of the Judiciary: the President of the Supreme Court is President of the Council. The Council has six members, two of whom are appointed by the President of the Republic, two by the National Council and two by the Supreme Court.³³

The position of the president is now regulated in a special chapter.³⁴ This was caused by the fact that the constitution consolidated the other executive powers of the government and their respective functions.. The term of office of the President is three years; re-election is permitted. When the President takes office, he / she takes the oath of office prescribed by the constitution. The President determines the guidelines of policy, is commander of the army, appoints all civilian and military officials and has the power to declare a state of emergency after consultation with the presidents of certain supreme state institutions. The President of the Republic determines the action of the government; the Council of Ministers is responsible to the President.

In view of the expected independence—1991 is the year in which the war against Morocco ended and the plan of the UN to settle the Western Sahara conflict providing for a referendum was agreed—³⁵ the Constitution of 1991 clarified in the mentioned special clauses at the end of the constitutional text that the final constitution of the SADR will be elaborated for the next Congress of the POLISARIO Front and, thereafter, be ratified by the

30 Arts. 25-33 of the Constitution of 1982.

31 Special Clause 4 annexed to the Constitution of 1991.

32 Art. 68 of the Constitution of 1991.

33 Art. 69 of the Constitution of 1991.

34 Arts. 71-88 of the Constitution of 1991.

35 See on this the contributions in parts A and B in: *Judit Tavakoli / Manfred O. Hinz / Werner Ruf / Leonie Gaiser* (eds.), *Westsahara. Afrikas letzte Kolonie*, Berlin 2021; see also *Hinz et al.*, note 7, pp. 25 ff.

Sahrawi people.³⁶ The failure of the settlement plan of the UN, the fact that the envisaged referendum did not take place³⁷ prevented the making of the expected final constitution. What happened instead was the further consolidation of living in exile and the translation of this into a constitutional process that eventually led to the Constitution of 2023.

IV. The Constitution of 2023

The preamble of the Constitution of 2023 refers like the Constitution of 1995 to the Universal Declaration of Human Rights of 1948, the African Charter on the Human and Peoples Rights of 1981 and international agreements signed by the SADR.³⁸

The chapter on the state (Chapter 3 of Part 1) notes the decentralized organization of the Sahrawi state, as it developed in the process of settlement of the refugees. The constitutional rights and duties are confirmed, as they were inserted in the Constitution of 1991. The right to equality is strengthened in the two first articles in the chapter on constitutional rights: Each Sahrawi shall enjoy the rights and freedoms recognized and guaranteed by the constitution irrespective of race, colour, sex language, religion, political opinion, and: all citizens are equal before the law and equal as far as protection and punishment are concerned.³⁹ After the article, which refers to the right to establish political parties to the time after independence, a special article describes the POLISARIO Front as a unifying and mobilizing factor of the Sahrawi people and as an institution through which the Sahrawi people expresses their right to self-determination and independence.⁴⁰

The position of the President of the Republic is regulated in detail after the chapter on the constitutional rights and duties.⁴¹ The duties and powers of the President are listed as also his / her mandate to appoint the important posts in the government.⁴² The President has the authority to issue presidential decrees in matters that do not fall within the sphere of law or are not regulated by law. He or she has the authority to make ordinances between the sessions of the National Council, after the dissolution of the Council or the proclamation of the state of emergency. In case of emergency, the constitution or parts of it may be suspended. In such case, the National Secretariat of the POLISARIO Front will be the body to make decisions and manage the implementation of emergency.⁴³ The provisions on the

36 Special clauses 1 and 2 annexed to the Constitution of 1991.

37 See here *Tavakoli et al.*, note 35; see also *Hinz et al.*, note 7.

38 See the list of treaties signed and ratified by the SADR in: *Hinz et al.*, note 7, pp. 275 ff.

39 Arts. 25-26 of the Constitution of 1991.

40 Arts. 31-32 of the Constitution of 1991.

41 Arts. 50-65 of the Constitution of 1991.

42 Arts. 57-58 of the Constitution of 1991.

43 Arts. 60-62 of the Constitution of 1991. - The National Secretariat of the POLISARIO Front is the highest political organ of leadership. It is elected by the General People's Congress of the Front. See specifically Arts. 77 ff. and also 73 of the Statute of the POLISARIO Front.

state of emergency mark a constitutional key change. Declaring the state of emergency, war, or peace were previously matters regulated in the Statute of the POLISARIO Front.

The detailed regulation of government follows the part on the President.⁴⁴ The government works under the guidance of the National Secretariat of the POLISARIO Front and is accountable to its Secretary General and President of the Republic. The Prime Minister is the chair of the Council of Government, supervises its activities and coordinates its work. The powers of the government, the organization of the ministries and the powers and duties of the ministers shall be regulated by presidential decrees. The Prime Minister drafts the programme of the government, the annual budget and submits these matters to the National Council. The members of the Government are obliged to submit an inventory of their property to the President of the Supreme Court when taking office and after terminating them.⁴⁵

The National Council is responsible to oversee the executive and has the authority “to prepare, enact, and ratify laws”⁴⁶. It is elected “by direct and secret ballot”.⁴⁷ The Constitution has no rule about the number of members of the National Council: Its members are to represent the various constituencies.⁴⁸ The candidates for membership in the National Council have to meet certain requirements. They must be at least 25 years old, have political experience and possess a university qualification.⁴⁹ The National Council meets in two regular sessions per year and can also convene in emergency sessions.⁵⁰ The areas in which the National Council is competent is listed in two articles, one listing the usual fields of legislative concern for the society and one on so called organic laws⁵¹, which determine the relationship between the various institutions of Government.⁵² The National Council also approves the annual programme of the Government and its budget.⁵³ The rejection of the annual programme can lead to the dissolution of the National Council.⁵⁴ The National Council can also express its no confidence with respect to the Government collectively or to individual members. For this, a majority of two-thirds of the member of the Council is required.⁵⁵

44 Arts. 66-77 of the Constitution of 2023.

45 Art. 77 of the Constitution of 2023.

46 Art. 78 of the Constitution of 2023.

47 Art. 82 of the Constitution of 2023.

48 Art. 80 of the Constitution of 2023.

49 Art. 82 of the Constitution of 2023.

50 Art. 93 of the Constitution of 2023.

51 See here the Organic Law on Elections, No. 03/2009, which, in its art. 1, refers to the Constitution of the SADR and the Statute of the POLISARIO Front.

52 Arts. 112-113 of the Constitution of 2023.

53 Art. 79 of the Constitution of 2023.

54 Art. 97 of the Constitution of 2023.

55 Arts. 106 ff. of the Constitution of 2023. There is one case in which this rule was practiced: In February 1999, the National Council ousted the then Prime Minister in a vote of no confidence.

The right of equality is re-ensured by stating that the judiciary—accessible to all—is based on “the principles of legality and equality”.⁵⁶ While the Constitution of 1999 had *reconciliation tribunals* for the handling of matrimonial matters, which are part of the courts of first instance,⁵⁷ later constitutions do not mention these tribunals any more. Military matters are subject of military courts.⁵⁸

The judges are accountable to the Supreme Judicial Council. If a judge violates the Constitution or breaches the law, he /she is subject to disciplinary proceedings before the Council. The Supreme Judicial Council consists of the President of the Republic as the chairperson, the Minister of Justice as Vice-President, the President of the Supreme Court, the Public Prosecutor, two judges appointed by the President of the Republic, two judges appointed by the National Council, and three judges elected by the general assembly of judges.⁵⁹ The last article on the judiciary guarantees freedom and independence of the legal profession, whose organization and work must be regulated by law.⁶⁰

The Constitution of 1995 introduced provisions on a Constitutional Council.⁶¹ The President of the Constitutional Council and three of its members are appointed by the President of the Republic, two members are elected by the National Council and two by the Supreme Council of the Judiciary.⁶² The task of the Constitutional Council is to monitor the constitutionality of laws, decide on appeals related to the final results of the election to the National Council and to deal with controversies regarding the constitution and organic laws.⁶³ The Constitution of 2023 amended the competence of the Constitutional Council to deal with constitutional problems with respect to organic laws, but took away certain competences of the Constitutional Council: According to the constitutions before the Constitution of 2023, it was also the task of the Constitutional Council to find solutions to possible constitutional conflicts that might arise regarding the implementation of the statute of the POLISARIO Front and to monitor the constitutionality of international treaties. Deleted was also the mandate to the Constitutional Council to conduct studies

Stephen Zunes / Jacob Mundy, Western Sahara: War, Nationalism, and Conflict Irresolution, New York 2022, p. 120.

56 Art. 120 of the Constitution of 2023.

57 Art. 114 of the Constitution of 1999.

58 Art. 114 of the Constitution of 1999, art. 127 of the Constitution of 2011, art. 120 of the Constitution of 2015.

59 Art. 129 of the Constitution of 2023.

60 Art. 133 of the Constitution of 2023.

61 Arts. 134 of the Constitution of 2023.

62 Art. 135 of the Constitution of 2023.

63 Art. 134 of the Constitution of 2023.

on the constitution.⁶⁴ The decisions of the Constitutional Council are binding without the possibility of appeal.⁶⁵

The Constitution of 2023 amended the rules on the Advisory Council, which found its way into the constitution in 1999.⁶⁶ The task of the Advisory Council is to deliberate on national issues and express its opinion on them.⁶⁷ In its first constitutional arrangement, the Advisory Council was to consist of notables, meaning representatives of the various Sahrawi tribes.⁶⁸ Details of the composition and the orientation of the Council were not given in the text of the Constitutions. Up to then, the representation of the notables was limited to the representation in the National Council. According to the Constitution of 1995, up to 10% of the members were to be elected notables.⁶⁹ The constitutional establishment of the Advisory Council changed this in 1999. However, later constitutions confirmed the Advisory Council but without mentioning notables.⁷⁰ The Constitution of 2023 expects “national figures from various sectors” to become members of the Advisory Council. However, the “notables” are still the dominant voice in the council, understanding themselves as the “pillars” on which the Sahrawi society is based.⁷¹

The Constitution of 2023 confirmed the Sahrawi National Human Rights Committee as a constitutional institution.⁷² The Committee monitors the situation of human rights in the occupied parts of Western Sahara and also in the areas under the control of the SADR. Its mandate is to advise the President of the Republic and to submit annual reports.

C. The SADR: Legitimate Statehood

What happened in the first phase of constitutional development was dominated by the political understanding of the liberation movement that life in the camps was a matter that would be temporary. The constitutions of the first phase, i.e. the constitution up to the Constitution of 1982 were expected to be replaced by a “proper” constitution after independence. The Constitution of 1991 marks a change, reacting to external and internal demands. As the negotiations for the settlement plan of the United Nations started, the

64 See Art. 139 of the Constitution of 2011 and art. 132 of the Constitution of 2015. According to art. 132 of the Constitution of 2019.

65 Art. 139 of the Constitution of 2023.

66 Art. 128 of the Constitution of 1999.

67 Art. 141 of the Constitution of 2023.

68 The use of the word “tribe” for the different nomadic groups of Western Sahara is criticized by many anthropologists and political scientists. The authors of this report follow, nevertheless, the widely used practice.

69 Arts. 43 ff. of the Constitution of 1995.

70 See Art. 146 of the Constitution of 2011; art. 139 of the Constitution of 2015; art. 139 of the Constitution of 2019.

71 So stated in an interview with members of the Advisory Council conducted on 21 April 2025.

72 Arts. 144 and 145 of the Constitution of 2023.

POLISARIO Front was driven to change from an organization of conducting war to a player in the field of diplomacy. The expected vote for the independence of Western Sahara caused reflections on how the legal situation in the independent country would look like. That Western Sahara would be a multi-party democracy belongs to these reflections. Internal events contributed to the change of the constitutional order: After certain incidents in the camps and manifestations of protest, there were calls to strengthen the position of individuals resulting in the insertion of an extended catalogues of human rights and duties.⁷³

The failure to conduct the referendum⁷⁴ as it was provided for in 1991 forced the Sahrawi society and its political organization, i.e. the state and the movement POLISARIO Front into accepting a reality of abnormal normality. Despite being refugees and despite longing to return to the homeland of Western Sahara, some kind of normal life was to be organized. Thus, the POLISARIO Front transformed the already existing state order into an order in its own right. The constitutionalized separation of power between the two entities was instituted in the constitutional process, manifesting in this the respect for the constitution-oriented rule of law. The POLSARIO Front, nevertheless, retained prominence in the relationship of the Front and the state. It retained prominence in particular through the remaining of the Congress as the constituent assembly.

A very noticeable result of the ongoing constitutionalization is the further improvement of the constitutional protection of human rights. That the National Human Rights Committee was constitutionally confirmed by the Constitution of 2023 supports the understanding of human rights as supreme rules. The discussed transformation of the Constitutional Council into a constitutional court would be another step in support of human rights.⁷⁵

D. Conclusion

The process of constitution making in the SADR over the 50 years since its establishment has been a societal process that characterizes the political reality of the refugee camps, characterizes the socio-political climate in the SADR and proves the legitimacy of the SADR, the legitimate order of the Sahrawi people.



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73 Cf. on human rights violations in the camps and the reactions to them: *Zunes / Mundy*, note 55, pp. 118 ff. (who talk about the events of 1991 as “revolution in the revolution”) and also *Karl Rössel*, Wind, Sand und (Mercedes-)Sterne. Der vergessene Kampf für die Freiheit, Bad Honef 1991, pp. 272 ff, with references to statements of Sahrawi politicians.

74 *Tavakoli et al.*, note 35; see also *Hinz et al.*, note 7.

75 Oral information received during the visit of the camps in April 2025. Whether such a transformation will materialize is open, as the necessary legal professionals for a constitutional court are most probably not available.

