



## Constructing legitimacy without legality in long term exile: Comparing Western Sahara and Tibet



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### ABSTRACT

While scholars agree that political legitimacy, or the legitimacy to rule, is sought by governing authorities, the concept itself is often considered to be problematically vague. This article explores how the very ambiguity of the concept of legitimacy may make it 'good to think with'. Calling into question two problematic assumptions in discussions of legitimacy—whether legitimacy is the prerogative of state authorities, and whether legality is a necessary basis from which to make claims for legitimacy—this article uses the cases of two exiled governing authorities, for Western Sahara and Tibet, to examine how legitimate government can be produced in the absence of full legality as a recognised sovereign state. Attending to similarities and differences between these governments-in-exile we trace the sources of political legitimacy in each case and the techniques through which legitimacy is constructed in exile. Key to this has been the enactment of forms of rational-legal authority, including the establishment of state-like bureaucracies, the provision of services to their diasporic populations and aspirations to develop democratic structures. With the latter presented as a strategy both of securing internal legitimacy and of being seen to adhere to international norms of 'good governance', legitimacy in these cases emerges not so much as an achieved status, but as a set of techniques of government. We conclude by reflecting on how liminality – both territorially in terms of displacement and legally in terms of lack of full recognition – can counter-intuitively provide creative grounds for producing legitimacy.

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### Introduction

Bashir drives about 8 km from his home to work in a car provided for him by the government, for whom he works. He is the secretary general of the Ministry of Trade. Recently, his work has involved mediating disputes among ministry employees about pay, managing a new profit-sharing scheme for ministry employees who use public resources for private commercial initiatives, and meeting foreign delegates who are visiting the ministry.

Phuntsok has been a civil servant for 25 years and, sitting in his office with files and folders filling each wall, he is keen to stress the importance of giving service to his community. Having started as a junior clerk in the Department of Home, he has worked his way up the ranks and now holds a senior position at the Department of Finance where he monitors expenditure flows across government institutions.

Bashir's and Phuntsok's working portfolios might sound familiar to many bureaucrats. But Bashir and Phuntsok do not work for ordinary governments. They work for the Sahrawi Arab Democratic Republic (SADR) and the Tibetan Government-in-Exile (TGiE) respectively. These governments provide services and administer resources to a Sahrawi and Tibetan population – but neither the governments nor the populations to whom they provide (most) services are in Western Sahara or Tibet. Operating from exile in Algeria and India, SADR and TGiE make strong claims to political legitimacy, by which in this article we mean legitimacy to rule. This is despite both polities being denied full legality in the international system in the sense that neither has membership of the United Nations General Assembly as a state recognised by (most) other members. For scholars of the state and governance, their situation thus presents something of an apparent paradox. It has often been assumed that claims to legality are one of the means through which the political legitimacy of a government is secured (cf. Franck, 1990; Weber, 1968). The cases of SADR and TGiE, however, suggest how an absence of full legality may not preclude the production of political legitimacy. In this article, we undertake an innovative comparative study of SADR and TGiE, probing their

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claims to and production of political legitimacy, in order to suggest fresh angles on the nature of legitimacy and its relationship to legality and to the state. Where legitimacy has been seen as an ambiguous concept (e.g. [Shain, 1989](#): 166), we explore how this very ambiguity may make it particularly susceptible to being taken up in creative ways by polities that work from contexts of liminality – both territorially in terms of displacement and legally in terms of lack of full recognition. We ask: might legitimacy thrive in the absence of full legality?

SADR and TGiE are the products of longstanding disputes over territory that hail from different geopolitical contexts. The ongoing conflict over Western Sahara between the liberation movement for Western Sahara and the Kingdom of Morocco (see [Roussellier and Boukhars, 2014](#); [Zunes and Mundy, 2010](#)) took shape in 1975. In the context of UN pressure for decolonisation across Africa, Spain opted to relinquish its former colony of the Spanish Sahara.<sup>1</sup> Morocco partially annexed the territory, leading many Sahrawis to flee, going into exile in Algeria. Following Spain's departure, the liberation movement for Western Sahara, Polisario Front (henceforth Polisario), founded SADR in 1976. Polisario and SADR work in close administrative fusion to govern both the exiled Sahrawi population in refugee camps in Algeria, as well as parts of Western Sahara under Polisario control. In exile, SADR operates ministries, a Parliament and provides welfare services. Abroad, it operates embassies in some of the states which have recognised SADR, as well as offices in various countries which do not recognise SADR.

In the case of Tibet controversy has long surrounded the legal and political status of this territory. Chinese authorities maintain that Tibet has been and remains an 'inseparable part of China' ([Wei, 1989](#): 27) whereas Tibetans assert that Tibet was an independent state between 1913 and 1950. This independence ended when troops from China's People's Liberation Army entered Eastern Tibet in 1950 and, a year later, China declared Tibet's 'peaceful liberation'. Following a failed national uprising in the capital Lhasa in 1959, the Dalai Lama, his government officials and tens of thousands of Tibetans fled across the Himalayas to seek refuge in India. The Tibetan Government was re-established as the TGiE in north-west India in 1960 and, although not recognised by any state, this exiled administration has instituted formal state-citizen relations with its diaspora, established a functioning bureaucracy in India and a series of foreign missions abroad, and has instituted a representative democracy for the first time in Tibet's history.

Given the distinct geopolitical contexts and histories of these cases it is unsurprising that there are important differences between them.<sup>2</sup> Tibet has, in the Dalai Lama, a charismatic leader who has significantly raised the international profile of the 'Tibetan cause'. Western Sahara is mostly unknown outside immediately concerned parties (neighbouring states, the former colonial power Spain, and the UN). Tibet's exiles in India do not have official status as refugees ([Garratt, 1997](#); [McConnell, 2013a](#)) whereas Sahrawi refugees in Algeria do, albeit the UNHCR is kept somewhat at arm's length by Polisario. The fact that Polisario is an armed movement and combines (the potential for) armed resistance with non-violent demonstrations in the Moroccan-controlled areas ([Mundy, 2006](#))

also contrasts with the exiled Tibetan leadership's promotion of and adherence to a strict policy of non-violence ([Ardley, 2002](#); [McConnell, 2014](#)). Significantly, Polisario controls some 20% of its claimed territory and performs some governance activities there (it deploys its army, administers SADR law from a court in Mijek, provides schooling and health care, and hosts political events and national commemorations). In contrast the TGiE does not control any of its claimed homeland and, although Tibetans in Tibet continue to demonstrate allegiance to the Dalai Lama, the exile government has no formal contact with this population. Finally, Polisario's SADR claims to be a state and remains in a limbo of partial recognition and non-recognition,<sup>3</sup> whereas the TGiE has not claimed to be a state, has not been recognised as a government by any other state and is no longer seeking such recognition. Whilst questions of (non)recognition—and the denial of the 'gold standard' of full international legality that goes with this—form an important backdrop to the discussions that follow, they are not the focus of our attention here (cf. [Talmon, 1998](#)).<sup>4</sup> Instead, in attending to constructions of legitimacy rather than the denial of full legal recognition, we approach these polities not in terms of what they lack, but in terms of what their unusual circumstances may allow them to achieve.

It is through a focus on the situations of exile and the everyday functioning of SADR and TGiE that striking similarities between these two governing authorities come to the fore. Both cases share the challenge of governance without being located in a territorial base that is recognised as 'their own territory'. This location outside the home territory is key to the fact that neither case fits conventional understandings of a de facto or unrecognised state—a polity that has de facto sovereignty within its claimed territory, but is denied international recognition ([Bahcheli et al., 2004](#); [Caspersen, 2012](#); [Pegg, 1998](#))—or a 'failed state'—a recognised state that has ceased to operate a functional government within its own territory (e.g. [Reno, 1995](#)). In addition, despite being labelled as 'governments-in-exile' and often self-identifying as such,<sup>5</sup> neither polity fits the conventional image of a government-in-exile as cabinet ministers seeking refuge in an allied host state during wartime occupation but without a direct relationship with their national population ([Conway and Gotovitch, 2001](#)).

SADR and TGiE have both proved remarkably durable, dating back at the time of writing 38 and 54 years respectively, which is considerably longer than many cases of de facto/unrecognised states ([Caspersen, 2012](#); [Pegg, 1998](#)). Another similarity, further addressed in this article, is that both have formed or re-established governments that have state-like qualities, with ministries, directly elected parliaments and mechanisms for the appropriation of resources. Both authorities have also demonstrated an ability to foster nationalism, and, through welfare services and structures for political participation, a broader sense of political unity within their diasporic populations.

Given the parallels between the cases, it is somewhat surprising that, with the exception of isolated calls for the strategic solidarity of peoples displaced due to occupation of their homeland (e.g. [de Weichs de Wenne, 1996](#); [ker Krog, 2012](#)), there have been very

<sup>1</sup> Spain signed the Madrid Accords, agreeing to hand over the colony to Morocco and Mauritania, on 14th November 1975. Morocco had organised a symbolic civilian 'reclaiming' of the Sahara, the Green March, between November 6th and 9th 1975. Following the Madrid Accords Morocco began to annex the territory. Spain formally ended its administration of the territory on 26th February 1976.

<sup>2</sup> Geopolitical differences also encompass Tibet and Western Sahara's respective opponents, China and Morocco. China combines formidable economic power and permanent membership of the UN Security Council. Morocco is nevertheless a strategic ally for the US and France, and in practice has received such strong support from these permanent members of the UNSC (see [Zunes and Mundy, 2010](#)) that the possibility of greater pressure from the UNSC in the case of Western Sahara remains remote.

<sup>3</sup> As at 2006, SADR had received 80 recognitions by other states, including 22 cancellations or suspensions ([Pazzanita, 2006](#): 376–378). SADR is also a full member of the African Union (from which Morocco has withdrawn), but it is not a member of the League of Arab States (where Palestine is a member). On recognitions for SADR, see [Tisseron, 2014](#).

<sup>4</sup> Complexities around the vexed issue of non/de-/re-recognition are vast, especially in the case of disputed territories, and warrant a far more thorough investigation than we have space to provide here.

<sup>5</sup> Whilst the title Tibetan Government-in-Exile is widely used to describe this polity, 'Central Tibetan Administration' has been used as the official name in English since the mid-1990s and the Tibetan name was somewhat controversially changed to *Tsenjol Bod Mei Zhung Gi Drik Tsuk* ('Institution of Tibetan People') in 2011 (see [Tibet Justice Center, 2011](#)).

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