

STONEWALLING ON REFUGEE RIGHTS:



ALGERIA AND THE SAHRAWI

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U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS

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Cover Photo: This inhospitable part of the Sahara, known as “The Devil’s Garden,” offers the refugees no place to hide from frequent sandstorms and scorching temperatures, which can get above 120 degrees Fahrenheit in the summer. *Credit: UNHCR*

This paper was written by Merrill Smith, Director of Government Relations and International Advocacy, based on his July 2009 site visit to Algeria, Morocco, and the Tindouf refugee camps, as well as his extensive research over many years. This report was produced by Koula Papanicolas, USCRI’s Design and Production Manager.



Credit: UNHCR/A. Hollman

INTRODUCTION AND EXECUTIVE SUMMARY

The U.S. Committee for Refugees and Immigrants' (USCRI) Director of Government Relations and International Advocacy visited the region in July 2009 in order to evaluate the situation of Sahrawi refugees from the Western Sahara in Algeria. Visits included Dakhla and Laâyoune in the Western Sahara to interview returnees from the Algerian camps near Tindouf; Algiers to speak with Algerian Government officials; and the Tindouf camps themselves.

Algeria fails to live up to its commitments under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol with respect to the Sahrawi refugees from the Western Sahara. Perhaps worse, it fails even to acknowledge its responsibility for their treatment on its territory, pretending they are actually under the jurisdiction of a state-in-exile, the "Sahrawi Arab Democratic Republic" (SADR).

While many Sahrawi travel abroad and within Algeria (beyond the border town of Tindouf) on occasion, this generally requires documented permission from both the Government of Algeria and the Polisario rebel movement. The criteria and procedures for issu-

ance of such documentation are not publicly available nor is either government willing to reveal them. Interviews with refugees inside and outside the camps reveal the process to be cumbersome and onerous and the criteria arbitrary and restrictive. Refugees can travel to Mauritania with only their Polisario identity cards but not if they declare or give rise to suspicion that they intend to continue on to the Moroccan-occupied Western Sahara. Algeria also restricts the five-day family visits organized by the Office of the UN High Commissioner for Refugees (UNHCR) to expensive and difficult to arrange air rather than land routes, resulting in a 21-year backlog. Even if refugees could travel freely throughout Algeria and reside wherever they chose, Algerian law makes it virtually impossible for them to obtain permits to work legally.

The Polisario Ministry of Justice, operating on Algerian territory, prosecutes and imprisons women who become pregnant out of wedlock for the crime of adultery, although there were none in detention at the time of USCRI's visit. The Minister of Justice orally affirmed that, as a matter of policy, the SADR would hold no woman beyond the period of imprisonment ordered by a judge, whether for her own protection

or otherwise, but would not commit to this in writing. The Ministry of Justice had responded favorably to Human Rights Watch's criticism of the size of the solitary confinement cells in its main prison, but USCRI found several prisoners in the prison who had not had trials, the longest for seven months. Also, officials declared that they were holding some prisoners on charges of "homosexuality" even as they alleged facts that would more fittingly describe rape.

Although the World Food Programme (WFP) alone provides rations for more than 125,000 refugees, it is not likely that there are even 90,000 in the camps. Algeria and the Polisario both refuse to allow a census to count and register the refugee population, furthering suspicion that its agents are diverting, smuggling, and reselling substantial amounts of international humanitarian aid. An interview with one returned refugee involved in the process corroborates this suspicion.

Although it does not grant them formal refugee status, Algeria does appear to be honoring de facto its commitments under the 1951 Convention with respect to the 4,000 to 6,000 Palestinian refugees on its territory, some of whom had been there since the early 1960s. There are no restrictions on their movement or economic activity and many appear to be thriving without international humanitarian aid. There is no evidence or reports of any poverty or

dependence among this population distinct from that of nationals. There would appear no legitimate reason why the Government of Algeria cannot offer Sahrawi refugees the same treatment. International donors ought to insist that it do so.



Sahrawi refugees subsist on mostly rice, lentils, and bread and many suffer from chronic malnutrition. As a result, nearly half of the children under five have diarrhea and report difficulties breathing. *Credit: UNHCR/A. Hollman*

BRIEF HISTORY OF SITUATION OF REFUGEES FROM WESTERN SAHARA

Spain withdrew from the Spanish Sahara, ceding half of it to Morocco and the other half to Mauritania. An indigenous independence movement, the Polisario, founded in 1973,¹ expelled the Mauritians but then Morocco caused the Polisario to flee along with thousands refugees to camps near Tindouf. In 1976, the Polisario declared the formation of the Sahrawi Arab Democratic Republic. The camps are located in a part of the Sahara known as “The Devil’s Garden” subject to summer temperatures over 50°C, frequent sand storms, and little or no vegetation. Prospects for livelihoods are virtually non-existent and the refugees are almost completely dependent upon international aid.²

ALGERIA DENIES RESPONSIBILITY FOR REFUGEES IN “SAHRAWI ARAB DEMOCRATIC REPUBLIC”

Algeria is party to the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the 1969

Convention governing the Specific Aspects of Refugee Problems in Africa, all without reservation.³

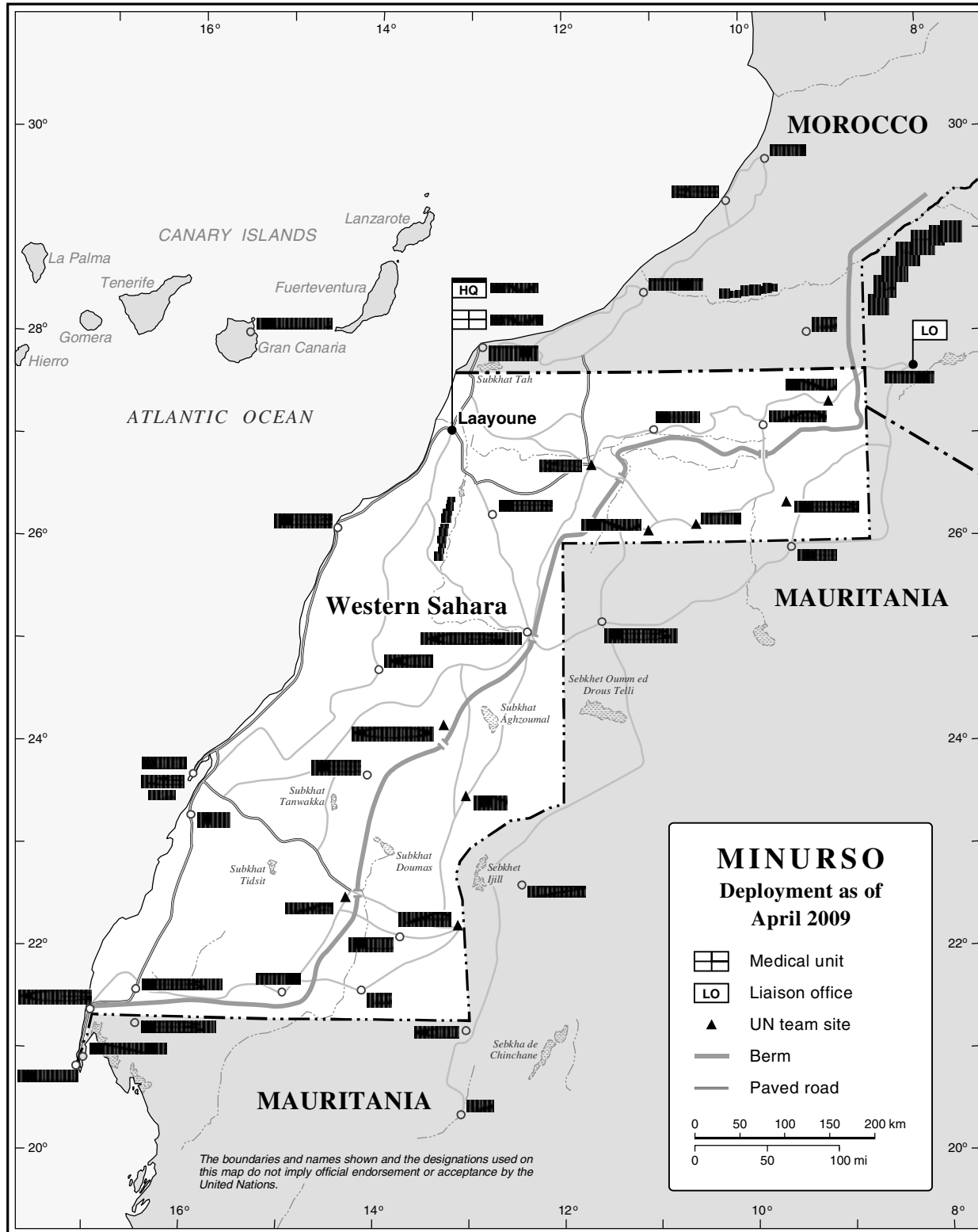
In 2006, Algerian authorities told a UN delegation that responsibility for human rights and related matters in the camps around Tindouf lay with the “Sahrawi Arab Democratic Republic,” Polisario’s government-in-exile which administers the camps in the far western corner of Algeria, outside Tindouf.⁴

USCRI made repeated attempts to meet with and interview relevant Algerian officials including Lazhar Soualem, Director of Human Rights, Social Development, and International Cultural, Scientific, and Technical Affairs, Ministry of Foreign Affairs; Ahmed Saadi, Deputy Director for Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs; and Fallah Medjoub, Minister Plenipotentiary, Algerian Office for Refugees and Stateless Persons (BAPRA). USCRI had approached Mr. Soualem initially during the previous meeting of UNHCR’s Standing Committee and told him of its coming visit, whereupon he expressed willingness to meet in Algiers and exchanged contact information. He even offered some views then on the Palestinian refugees, including his opinion that there



Sahrawi refugees are among the longest warehoused refugee groups in the world. In a situation lasting over 30 years, more than 90,000 refugees wait in four remote refugee camps—Laayoune, Awserd, Smara, and Dakhla—in the desolate Sahara Desert in southwest Algeria. *Credit: UNHCR/S. Hopper*

MAP OF WESTERN SAHARA



Source: UN Security Council, "Report of the Secretary-General on the situation concerning Western Sahara," April 13, 2009, S/2009/2000



Mr. Aboh Sghair spent close to three months chained inside a food container like the ones shown above. He was jailed after the Polisario caught him and his wife as they were heading for the Berm.
Credit: USCRI/M. Smith



were none left in the country as they had all returned to the Israeli-occupied territories and various countries of first asylum. Nevertheless, despite repeated emails, telephone messages, and personal visits to their offices over a period of several weeks, none of these officials would meet with USCRI to discuss the Sahrawi or even respond to the requests. For further information, see Appendix B: USCRI's August 5, 2009 Letter to Chief Algerian Official for Refugees, Lazhar Soualem, to which USCRI has received no reply.

FREEDOM OF MOVEMENT

The Polisario and/or Algerian military maintain checkpoints at roadways leading to, from, and in between the camps and Algerian police operate checkpoints throughout the country. The Polisario alone, however, staffs the main border post between Algeria and Mauritania.

In 2006, *Revista Futuro Saharaui*, an independent newsletter published in the camps reported the results of a survey of 540 camp residents between the ages of 17 and 35:⁵

almost nine out of ten desire a visa to a foreign country to be able to emigrate. ... "It is really a stupid waste of time to ask such a question to any young Saharawi, who has suffered from marginalisation, because a visa is our only dream left ..." is the answer from "Said", one of the young men living in the Algerian refugee camps...

The survey included all layers of the Saharawi refugee society: intellectuals, students, pupils, civil servants of the exiled Western Sahara gov-

ernment, workers, unemployed and even businessmen and employers. The desire to migrate was strong in all groups.

In a follow-up question, those desiring a visa were also asked why they wanted to migrate. Reasons given were ample, sometimes demonstrating a wide discontent with the situation in the camps. ...

No state official however wanted to comment on this issue before printing deadline.

Salek Saluh, the 'Futuro Saharai' reporter who conducted the survey, says ... "those of us with education do not understand - or actually nobody understands - how we can be given less opportunities than those belonging to the lineage of the so-called 'patriots' and their relatives," Mr Saluh adds, referring to advantages given to family members of the ruling Polisario movement.

Sahrawi refugees can travel to and enter neighboring Mauritania with nothing more than their Polisario identity cards. Nevertheless, every refugee USCRI spoke to that had returned to the Western Sahara declared that they could not have done so had they let the Polisario know or even suspect that they intended to continue on from Mauritania around to the Moroccan-held territory or they would stop them. Every one left family members or substantial assets (including a herd of camels, in one case) behind in order to allay any such suspicion.⁶

CONFIDENCE BUILDING MEASURES

Since 2004, a limited number of refugees have been able to visit relatives in the territory for five-day periods through the UNHCR's Confidence Building Measures program which organizes more or less weekly flights of some 30 or so beneficiaries from either side. In the program's first five years, about 8,600 persons benefited but eligibility criteria are stringent, as UNHCR must match family identities and willingness to participate on both sides. Both the Government of Morocco and the Polisario must also approve the passenger lists and, in the first registration application opportunity which took place in 2004, the Polisario reportedly refused to allow entire families to participate together in order to deter defections. UNHCR declares that this did not

occur in the second and last registration which closed January 2008 but declines to comment publicly on the first registration and some 4-5 individuals did indeed refuse to return to the camps in the first seven months of 2009. The registration is no longer open and more than 41,000 remain in the queue. At present rates, it would take more than 21 years for all of them to participate although UNHCR could remove some from the list should they or their relatives die in the meantime.

The most severe limitation on the program is Algeria's refusal to allow the exchanges overland. Instead, UNHCR must rely upon the single, aging Antonov plane the UN's MINURSO forces can spare, when they can spare it, at an average cost of over \$900 per person, per flight for the 300-mile journey. As of July, Algerian customs had also refused to release some four vehicles needed by program staff in the camps for nearly a year.

RETURN TO WESTERN SAHARA THROUGH BERM

It is also possible, although dangerous, to enter the Moroccan-held portion of the territory from the Polisario held portion through the "Berm," a nearly 1,000-mile construction of fortifications and earthworks Morocco built in 1986, separating a narrow eastern strip of about 15% of the territory from the rest, and two returned refugees with whom USCRI spoke had done so. One obvious danger is the presence of thousands of landmines and unexploded ordinance in the area and the need to alert Moroccan soldiers guarding the Berm and convince them that one's intentions are not hostile. Nevertheless, one refugee with the help of an experienced human smuggler did manage to overcome these dangers. The other danger is that the Polisario will stop and catch them. Unlike travel to Mauritania, approaching the Berm leaves no plausible explanation except an attempt to return to the Moroccan-held side.

That is the predicament that Aboh Sghair (b. 1983, Smara camp) and his wife encountered in May 2008, as they related to USCRI. According to Mr. Sghair, the Polisario stopped them outside the town of Tifariti in the Polisario-held portion heading for the Berm. After asking for their papers, the Polisario took them back to Rabouni, in Algeria, and separated them, jailing his wife for 15 days and him for three months and confiscating their truck. As Mr. Sghair related:



The unexploded shell was found near the Berm, a sand wall built to separate Moroccan-controlled land from the Polisario-run section of the territory. The minefield along the Berm endangers the lives of Sahrawi refugees and prevents freedom of movement throughout Western Sahara. *Credit: USCRI/M. Smith*

The place where they held me was not a regular jail for people but a container like those in which they ship food from Spain. They kept me alone. There were chains on my feet and a third chain leading outside of the container. Although the container was about five and a half meters long, I only had about one meter in which to move. I could not stand up. They only gave me one liter of water per day. I had no toilet facilities. They gave me lentils twice a day, once around 9 am and again around 8 pm. I became sick and thin after about one month. In the second month, my stomach began to swell and then burst. After two days, I lost consciousness. They took me to the hospital in Tindouf where I spent five days.

Members of my family came to visit me and bribed staff to get me out of there and to the hospital in Rabouni where I underwent surgery to remove the burst appendix from 6 pm to mid-

night. The Cuban doctor in Rabouni, transferred me back to Tindouf around 1 am with my stomach still open because they could not remove everything they needed to. Lahrach, the Algerian doctor at Tindouf did not want to re-admit me, however, until the surgeon from Rabouni came so they sent a car and he arrived around 5 am. They inserted tubes in my nose, I vomited, and enough dark matter came out to fill a bottle. I then spent 15 days in the intensive care unit of the Tindouf hospital.

After release, I spent about a month in the camps before contacting a driver to take us to Mauritania when I recovered.

They kept my wife for 15 days in the women's detention facility. A Spanish-speaking American NGO worker came to visit one day and they took me out of the container and put me in the

regular building. I think Christina knew they were holding me in the container and asked to speak with me in private but the jailer, Sloiliki Nin, was there and threatened me so I dared not speak about it.

TRAVEL AND RESIDENCE IN ALGERIA

Although refugees reportedly can go to the nearby garrison town of Tindouf with nothing more than their Polisario-issued identity cards, to travel elsewhere in Algeria requires a permit called an *ordre de mission* bearing the stamps of both Algerian and Polisario authorities. Although the Embassy of the Sahrawi Arab Democratic Republic in Algiers denied this, refugees inside and outside the camps affirmed it. USCRI repeatedly requested that Polisario and Algerian authorities identify the legal authority for this requirement and describe the procedures for applying for and the criteria for issuing such documents. Neither have done so.

Nevertheless, USCRI learned that to apply for such a pass refugees must have their camp leader write a letter to the Polisario Ministry of Interior in Rabouni which, in turn sends a request to the Polisario office in Tindouf, which prepares the document and obtains the Algerian stamp. Applicants must have an approved reason, such as enrolment in school or professional training. Seeking employment is reportedly not among the approved reasons for travel. One refugee reported that her aunt applied for a permit to travel to Algiers for specialized medical treatment but the Polisario denied her the permit because she had initially gone to a private doctor rather than a Polisario doctor for the referral. After she then went to a Polisario doctor, authorities approved her request in January 2009. Authorities issue some permits collectively in the form of lists of names, for example to secondary students studying in Algerian schools. The permits affirm not only a specified destination but also a purpose as specific as, in one case, to attend teachers' college. One student reported that s/he required a new permit each time s/he returned to the camp from studies even for holidays.

The Polisario Minister of Interior initially and repeatedly denied the existence of any requirement for advance permission or any additional documentation for travel within Algeria. Upon USCRI's presentation of extensive evidence to the contrary from numerous sources, he finally produced a copy of the form the Ministry uses to transmit requests to the Polisario office in Tindouf its and the Algerian authorities joint approval (attached as Appendix A). When USCRI sought

to visit the Polisario offices in Tindouf to obtain copies of an *ordre* and any information on the procedures and criteria for their issuance, the Polisario and the Government of Algeria refused permission, even though they had allowed USCRI to visit Tindouf days earlier.

USCRI sent a follow-up letter to Minister Sidi requesting the same but he replied that he had nothing further to add. USCRI's August 5, 2009 letter to Lazhar Soualem, Director of Human Rights, Development, and International, Cultural, Scientific, and Technical Affairs of Algeria's Ministry of Foreign Affairs (attached as Appendix B) also requesting this received no reply.

EMPLOYMENT

Even if Sahrawi refugees receive permission to leave the camps, it is virtually impossible for them or any other refugee (other than Palestinians, see below) to work legally in Algeria.

Although Algerian law provides for authorities to issue residence permits and employment authorization valid for three years' to recognized refugees, authorities do not formally recognize any refugees, and de facto refugees therefore have no more rights than foreigners generally. The 1981 Employment of Foreign Workers Law and the 1983 Order of the Ministry of Labor allows only single-employer work permits and then only for jobs for which no nationals, even those residing abroad, are qualified.⁷ Employers have to file justifications consistent with the opinions of workers' representatives.⁸ Permits are valid for no more than two years and renewal requires repetition of the entire procedure.⁹ Employees cannot change employers until they complete their contracts and then only in exceptional circumstances after consultation with the previous employer.¹⁰ Violators are subject to fines and/or imprisonment from ten days to a month.¹¹

The 1990 Labor Law reiterates the same national labor protection requirements, without exception for refugees.¹² A 2005 Decree establishes regional labor inspection offices to enforce laws regulating the employment of foreigners and to take action "against all forms of illegal work."¹³

Sahrawi refugees can work in informal businesses in the remote southwest garrison town of Tindouf, near the camps. They cannot, however, own property. If caught driving cars registered outside the camps, they are subject to imprisonment by the Algerian authorities as are Algerians driving cars registered in the camps.



The women kept in this facility, known as the Center for Maternity Assistance, are in fact prisoners serving a sentence for the offense of pregnancy out of wedlock, a crime punishable by one to five years imprisonment. The facility was unoccupied at the time of USCRI's visit. *Credit: USCRI/M. Smith*

DETENTION OF UNWED MOTHERS FOR "ADULTERY," RAPISTS FOR "HOMOSEXUALITY," AND OTHERS WITHOUT TRIAL

Polisario authorities maintain their own police, judiciary, and detention facilities and apply their own penal code with the acquiescence of the Government of Algeria. They detain refugees in at least two jails, Abderahmane prison for men, just outside of the Polisario's Rabouni headquarters and another for women, and a juvenile detention facility. There is also a detention center beyond Smara camp that the Polisario refers to as "the Center for Maternity Assistance" for women pregnant out of wedlock. The Polisario acknowledges three to five cases per year and interprets them legally as "adultery," a crime punishable by one to five years imprisonment under its penal code. The Polisario told USCRI that there were none in detention at the time of its visit but did not allow USCRI to go to the facility without one day's advance notice.

Minister of Justice Selma did however orally commit to the principle that authorities should not, did not, and, as a matter of policy, would not hold women convicted of such charges for any period of time beyond that which a judge may prescribe as punishment for the offence. This as an issue of contention in several letter exchanges with Human Rights Watch published in their December 2008 report wherein the Polisario repeatedly evaded any such unequivocal commitment.¹⁴ Nevertheless, Minister Selma declined to put his commitment to such a policy in writing, despite USCRI's repeated requests.

Indeed, the minister found the question irritating and took the occasion to launch into a tirade against Moroccan occupation of the Western Sahara suggesting that any shortcomings of the Polisario's administration of justice were because it Morocco denied its rightful sovereignty over the territory. This was a fairly typical, if tiresome response repeated by almost all Polisario officials in response to the least implied

criticism. Minister Selma took it a bit further than most however, suggesting that lack of independence might even cause rape as it deprived men of livelihoods and, therefore, the opportunity to marry.

When USCRI visited the Abderrahmane prison authorities had substantially increased, in fact, generally doubled the size of the individual solitary confinement cells—generally by knocking out the walls between them—from the time of the visit of Human Rights Watch in November 2007 and in response to their observations and recommendations.¹⁵ Although the Minister of Justice and the Procurator General assured USCRI that authorities had duly convicted all 22 inmates at that time for common crimes, five reported that they had not yet had trials. Two reported that authorities had held them for eight days without trial, two for two months, and one for seven months. The three reporting longer periods of detention without trial gave their names and permission to raise their cases with the authorities. After USCRI apprised him of this, the Procurator-General insisted that there were only three persons held without trial. He also said that they were soldiers and referred to their charges as “homosexuality.” He described the acts for which authorities arrested them as involving coercion and assault normally associated with rape. Nevertheless, when USCRI asked to clarify whether this was what he meant, he repeated that the charge was “homosexuality.” USCRI also raised the matter with the Minister of Justice. The Ministry acknowledged receipt of the letter by a September 3 email and offered a reply but had not done so by the time this report went to press.

The “Center for Maternity Assistance,” under the administration of the Polisario Ministry of Justice was unoccupied at the time of USCRI’s visit.

REGISTRATION, POLITICS, AND AID DIVERSION

Estimates of the total population of the camps range from fewer than 90,000 to more than 165,000, with the 90,000 figure based on European Union satellite imagery commanding the widest respect. Although the size of the population was of immense significance when prospects for a referendum on the fate of the territory appeared active, such prospects have been dormant, if not moribund, for years. The Polisario, however, represents refugees’ continued presence in the camp as gestures of resistance and implicit political support for its position. This alone makes estimates of the refugee

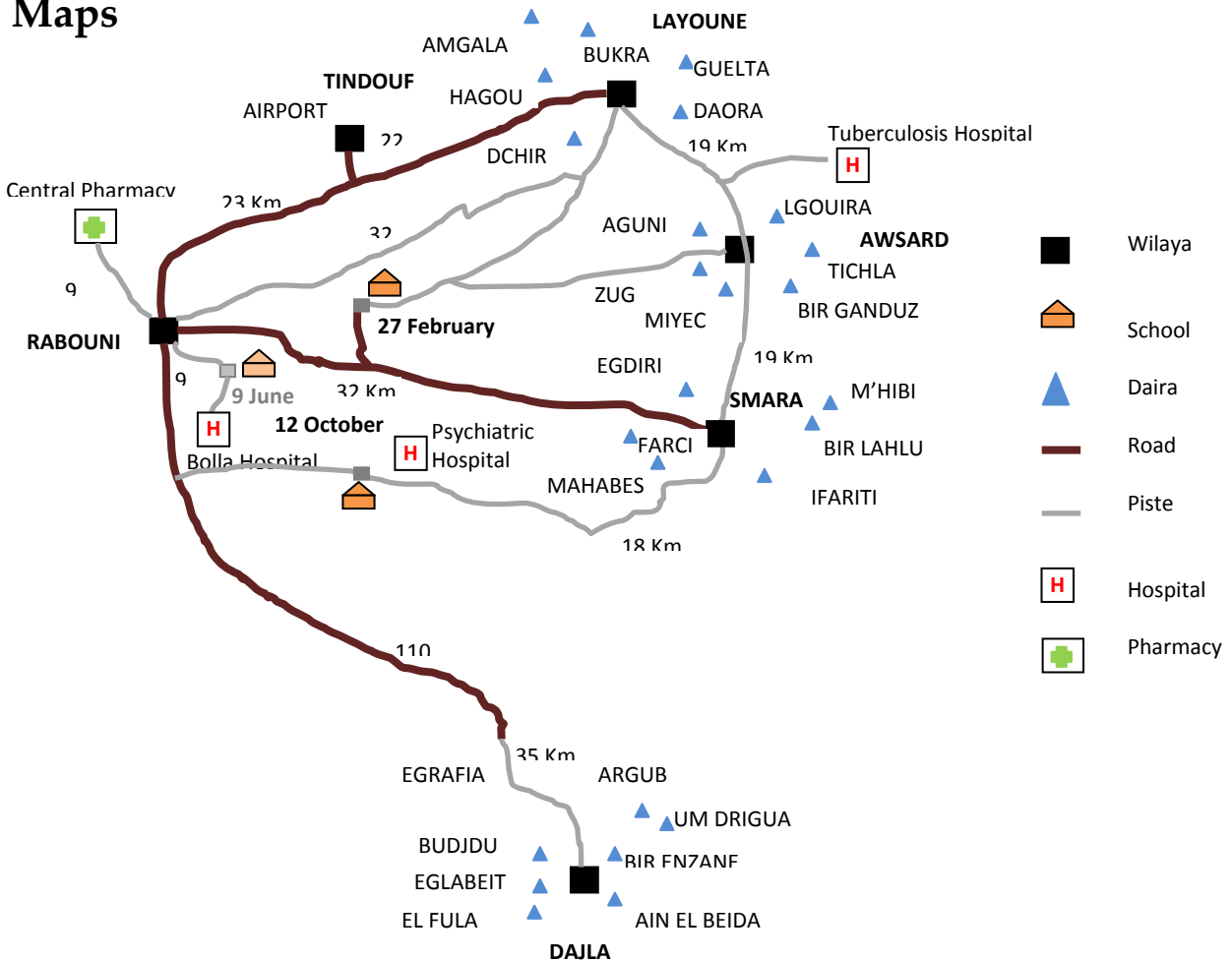
population an intensely political artifact. The Moroccan Government claims some 7,000 have returned to the Western Sahara and unknown numbers, although certainly in the thousands have dispersed to Mauritania and elsewhere. Sahrawis who can document their or their parents’ inclusion in the last Spanish colonial census of the Western Sahara are eligible for residence permits in Spain. Although the climate in the areas of the Western Sahara east of the Berm and under the control of the Polisario is generally quite harsh, relatively significant rainfall (for the area) over the past five years has rendered parts of the territory increasingly suitable for pasturage. There are no reliable estimates of this population, nor is any independent monitoring likely due to its military sensitivity, but the figure is probably in the thousands and the economic activity serious enough for Algerian authorities to restrict the entry of Sahrawi camels raised in the territory from entry into Tindouf for fear of depressing the local camel market.

UNHCR and the World Food Programme (WFP) have repeatedly requested permission to conduct a census of the population to develop a credible data base for aid distribution. After his historic September 2009 visit to the camps, High Commissioner Guterres responded to Polisario complaints of insufficient aid by declaring that increasing the amount was contingent upon such a census. Still, Algeria refused.¹⁶ When an independent journalist among the refugees asked him at a press conference why Sahrawi refugees did not have regular UNHCR documentation like other refugees, Yahia Buhobeini, President of the Polisario-controlled Sahrawi Red Crescent, brought the press conference to a close before the High Commissioner could answer.

Since January 2008, WFP has provided rations for 125,000 persons¹⁷ and other donors give undisclosed amounts. For three years and four months prior, WFP had provided rations for 158,000 persons.¹⁸ Although there may be only 90,000 or fewer refugees in the camps, according to an October 2008 survey international agencies conducted in the Tindouf camps in March and April there was an 18 percent prevalence of global acute malnutrition (GAM) in the camps and a five percent prevalence of severe acute malnutrition. This was “a drastic increase compared to the findings in 2005[c] when the prevalence of GAM was 8 % with 2 % being severe.” There was a 32 percent prevalence of stunting with nine percent severely stunted and 62 percent of children aged 6-59 months suffered from anemia, six percent of them severely, with the highest rates among those 30 months old and younger.

MAP OF CAMPS AND THEIR “DAÏRA” OUTSIDE TINDOUF, ALGERIA

Maps



Source: DARA, "Evaluation of DG ECHO's Action in the Saharawi Refugee Camps, Tindouf, Algeria (2006-2008)," August 17, 2009, p. 2.

Anemia ran 54 percent among non-pregnant women but 66 percent among the pregnant with 15 percent severely so. Erratic delivery causes daily caloric intakes to fluctuate from month to month and they dropped to only 500 kcal during in July and October of 2007. Nearly half of children under five had diarrhea, of which 30 percent reported bloody diarrhea; more than half reported difficulties breathing.¹⁹

Based upon the discrepancies in the population estimates, the opportunity for diversion might seem obvious. In fact, the problem is not new and was the subject of a 2005 confidential report of UNHCR's Inspector General's Office²⁰ which noted:

According to various protected sources, food and [non-food items (NFI)] were being diverted at the Port of Oran, en route to Tindouf and after arrival at the Rabouni warehouse in Tindouf, and were then transported to parts of Algeria, Mauritania and Western Sahara. Again according to OLAF [Office Européen de Lutte Anti-Fraud], those responsible for the diversion of humanitarian aid were Algerian and Sahrawi nationals working for NGOs such as the Algerian Red Crescent Society ([Croissant-Rouge Algérien] or CRA) and the

Sahrawi Red Crescent Society ([*Croissant-Rouge Saharaoui* or] CRS). ...

[The issue of the number of refugees in the camps and their registration] is intrinsically linked to the allegations of diversion of food aid... [I]f diversion is occurring, it is likely to be at the level of the Rabouni warehouse and because the number of beneficiaries is lower than the number for whom food is provided by the international community. ...

[T]he UNHCR office in Tindouf did not conduct regular monitoring of food and NFI distributions. In fact, such monitoring had not taken place regularly since 2001. ... WFP was not able to proceed to the camps without authorization and an escort by CRS. ...

[A] reliable protected source shared their view with the IGO that it was not unlikely that food aid in particular was being sent to Western Sahara to supply troops. ...

The most striking aspect of this inquiry is that many of these issues (problems with refugee numbers, lack of registration, lack of CRA accountability, lack of monitoring) arose as early as 1977 and 28 years later the same problems persist.

One refugee returned to the Western Sahara in May 2009 and told USCRI that he smuggled food and gasoline for officials in the Polisario and the Sahrawi Red Crescent between the camps in Algeria and the Mauritanian town of Zerouat. He reported that he smuggled 20-ton shipments about twice per month in 2008 and loaded his truck in Rabouni, generally at night. Rabouni is the headquarters of the Polisario and terminal for any independent transport of international aid before agencies turn it over to the Polisario. On one occasion, he reports, rival Polisario officials stopped him and extracted a \$600 bribe for which his original clients reimbursed him.

POSITIVE ALTERNATIVE: ALGERIA'S TREATMENT OF PALESTINIAN REFUGEES

Algeria is also host to some 4,000 to 6,000 Palestinian refugees who enjoy rights equivalent to those of Algerian nationals with respect to movement, residence, and economic activity. Many of them or their ancestors arrived shortly after Algeria's independence in the early 1960s with various forms of documentation. Algeria does not issue them refugee documents but, in cooperation with the Embassy of Palestine which upon request verifies their identities, regularly issues and renews their residence cards and waives restrictions on employment otherwise applicable to foreigners.

Residence cards for foreigners are valid for only two years. Renewals are generally contingent upon demonstration that the original reasons for their issuance, e.g., legal employment, enrolment in studies, etc., still apply. If Palestinians originally had such bases, they have not uniformly retained them over the years as Algeria would normally require for renewal of residence permits. Nevertheless, should Palestinians' studies or employment or other bases lapse by the time renewals are due, the Embassy of Palestine in Algiers vouches for the refugees to the Algerian authorities, who renew the cards.

USCRI toured the headquarters of Al Aseel Stationary & Office Supplies outside Algiers employing a number of Palestinian refugees alongside Algerian nationals.

CONCLUSION AND RECOMMENDATIONS

Algeria's treatment of Palestinians is evidence, were any required, that Algeria need not restrict the movement, residence, and employment rights of Sahrawi refugees. Instead, it should honor its commitments under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Donors should reserve a significant portion of aid that would otherwise go to the camps for hosting alternatives in Algeria consistent with the rights of refugees under those instruments and set progressively larger amounts of aid aside for such purposes in coming years.

ENDNOTES

- 1 Office of the UN High Commissioner for Human Rights (OHCHR), "Report of the OHCHR Mission to Western Sahara and the Refugee Camps in Tindouf 15/23 May and 19 June 2006," Sept. 8, 2006, www.birdhso.org/ohchr.html (OHCHR 2006), ¶7: "The Frente Popular para la Liberación de Saguia el Hamra y Rio del Oro (Frente Polisario), founded in 1973, claims that its aim is to institute a Sahrawi Arab Democratic Republic (SADR) in Western Sahara. The Government of SADR was constituted in exile in February 1976."
- 2 World Food Programme, Médicos del Mundo, et al., "Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria," October 2008, p.10.
- 3 UNHCR, States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, 11/1/7, www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf (21 Feb 1963d; 08 Nov 1967a); UNHCR, Declarations and Reservations to the 1951 Convention relating to the Status of Refugees, March 1, 2006, www.unhcr.org/protect/PROTECTION/3d9abe177.pdf. AU, List of States Party to the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa, 5/26/7, www.africa-union.org/root/au/Documents/Treaties/List/Convention%20on%20Refugees.pdf (Signature, ratification, deposit: 10/09/1969, 24/05/1974, and 20/06/1974).
- 4 Office of the UN High Commissioner for Human Rights (OHCHR), "Report of the OHCHR Mission to Western Sahara and the Refugee Camps in Tindouf 15/23 May and 19 June 2006," Sept. 8, 2006, www.birdhso.org/ohchr.html (OHCHR 2006), ¶39: "While the refugees are present in the territory of Algeria, the authorities reiterated during meetings with the Head of the delegation that despite this presence, the responsibility for human rights and any other related matters lies with the Government of the SADR. As indicated below, as a State party to these instruments, the Government of Algeria is obliged to ensure that all rights stipulated in these instruments are upheld for all persons on Algerian territory. ¶40. It should be underlined that UNHCR works directly with the Government of Algeria as the country of asylum/host government on all matters related to the Sahrawi refugee programme. ... ¶55. States parties to human rights treaties are under an obligation to respect and ensure those rights to all persons who may find themselves on the territory of the State party (8), including aliens, refugees and asylum seekers. Algeria, as the country of asylum of some 90,000 Sahrawi refugees (9), holds that it bears no responsibility with regard to the human rights situation of the Sahrawi people. According to the Algerian authorities, respect for human rights is a matter for the Sahrawi Arab Democratic Republic, a state recognized by Algeria and several other countries, to ensure that human rights of its people are respected, and to implement the obligations it voluntarily assumed, including by ratifying the African Charter on Human and People's Rights. No international human rights treaty body has specifically validated this view with regard to the international human rights obligations accepted by Algeria. It is our opinion that all possible efforts should be made towards the fulfillment of all human rights of the people of Western Sahara. Accordingly, Algeria should take all relevant measures to ensure that all individuals present on its territory benefit from the protection of the international human rights conventions to which it is a party."
- 5 Salek Saluh, "87% de los Jovenes Saharauis Desea Emigrar al Extranjero," *Revista Futuro Saharaui*, October 4, 2006, <http://www.futurosahara.jeeran.com/es10.htm> (translation by afrol News, <http://www.afrol.com/articles/21719>).
- 6 Similarly, Human Rights Watch found that those who have left the camps for Western Sahara "uniformly said that they kept their ultimate destination secret, fearing that the Polisario might prevent them from traveling if it became known. This fear causes many to leave without belongings and relatives they might otherwise take with them... [A] culture of 'Don't ask, don't tell' surrounds the process." Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 19, 2008, pp. 15, 123-26.
- 7 Loi n° 81-10 du 11 juillet 1981 relative aux condi-

- tions d'emploi des travailleurs étrangers, Arts. 2, 3, 15: Journal Officiel de la République Algérienne Démocratique et Populaire (JORADP), 7/11/81, pp. 683-84.
- 8 Art. 6, p. 684.
- 9 Art. 10, p. 684.
- 10 Art. 15, p. 684.
- 11 Art. 25, p. 685.
- 12 Loi n° 90-11 du 21 avril 1990 relative aux relations de Travail modifiée et complétée au 11 janvier 1997, *Titre III - Relations individuelles de travail*, Art. 21: "L'employeur peut procéder au recrutement de travailleurs étrangers dans les conditions fixées par la législation et la réglementation en vigueur lorsqu'il n'existe pas une main d'oeuvre nationale qualifiée." See also UNHCR Country Operations Plan, September 1, 2005, p. 5 (referring to administrative and documentary barriers for refugees).
- 13 Décret executive no. 05-05 du 25 Dhou El Kaada 1425 correspondant au 6 janvier 2005 protant organization et fonctionnement de l'inspection générale du travail, JORADP, January 9, 2005, pp. 7, 10.
- 14 Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 19, 2008, pp. 139-42, 197-98.
- 15 Human Rights Watch, *Human Rights in Western Sahara and in the Tindouf Refugee Camps*, December 19, 2008, pp. 138-39, 188, 197.
- 16 Agence France Presse, "Sahara occidental : Le HCR veut un recensement des camps de Tindouf, Alger refuse, » Sept. 13, 2009 (« Le haut-commissaire des Nations unies pour les réfugiés (HCR), Antonio Guterres, a affirmé, vendredi 11 septembre... qu'une augmentation de l'aide humanitaire onusienne en faveur des Sahraouis vivant dans les camps de Tindouf (sud algérien) était liée à leur recensement. 'Nous avons reçu de l'Algérie une indication [selon laquelle] cette aide n'est pas suffisante et nous avons dit qu'il fallait faire un recensement.' A déclaré M. Guterres. Cependant, a-t-il ajouté, 'l'Algérie n'a pas accepté et nous n'avons pas changé nos estimations.' »)
- 17 UN Security Council, "Report of the Secretary-General on the situation concerning Western Sahara," April 13, 2009, S/2009/200, ¶¶34-35.
- 18 World Food Programme, Médicos del Mundo, et al., "Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria," October 2008, p. 11.
- 19 World Food Programme, Médicos del Mundo, et al., "Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria," October 2008.
- 20 UNHCR Inspector General's Office, Investigation Unit, Inquiry Report INQ/04/005, May 12, 2005.

APPENDIX A: FORM FOR TRANSMITTING APPLICATIONS FOR ORDRES DE MISSION FROM POLISARIO MINISTRY OF INTERIOR TO ITS TINDOUF OFFICE.

التاريخ: / 2008
إلى: مكتب التنسيق الجهوي
تصحر اوي بتندوف.

الجمهورية العربية
الصحراوية الديمقراطية
وزارة الداخلية

الموضوع: طلب تسفير. 0000441

نرجو تسفير الإخوة الواردة أسمائهم في الجدول التالي:

الرقم	الاسم الكامل	رقم البطاقة	الجهة	الاتجاه	الغرض
01					
02					
03					
04					
05					
06					

عدد النسخ:

التوزيع: - م. التنسيق
- الأرشيف.

التوقيع: الإدارة العامة.

English translation of headings

Upper left: “2008/ / To Sahrawi Office in Tindouf”

Upper right: “Sahrawi Arab Democratic Republic
Ministry of the Interior”

Title: “Request for Travel”
[nine-digit number]

“Names of the people who will travel:”

Column headings: “number,” “name,” “ID number,” “Wilaya of residence,” “Destination,” and “Purpose.”

Bottom right: “One copy to MoI, one for Tindouf”

Bottom left: “signature and stamp”

APPENDIX B: USCRI'S AUGUST 5, 2009 LETTER TO CHIEF ALGERIAN OFFICIAL FOR REFUGEES, LAZHAR SOUALEM

August 5, 2009

Lazhar Soualem
Directeur des Droits de l'Homme, du Développement Social et des Affaires Culturelles,
Scientifiques, et Techniques Internationales
Ministry of Foreign Affairs
El Mouradia (Ex-Golf)
Algiers
Algeria

Dear Mr. Soualem,

I am sorry it was not possible to meet with you when I was in Algiers last month although I am grateful for our brief encounter earlier at UNHCR's Standing Committee in Geneva. Perhaps our paths will cross again, but I will put my questions in writing just in case and look forward to your response.

1. Could you please describe the process whereby a Sahrawi refugee may travel in Algeria beyond the town of Tindouf and any restrictions that may apply under Algerian law, regulations, or policies? Specifically, could you please identify for me the office of the Government of Algeria that adjudicates applications for *ordres de mission* from Sahrawi refugees? Could you also please give me a copy of such an *ordre de mission* and any regulations or instructions governing their adjudication and issuance? Do you have any statistics on the number of such orders *de mission* that were issued in a given period, say, 2008, and for what reasons, the number of applications, and, if any were rejected, the reasons for their rejection?
2. Could you please describe the process whereby a Saharawi refugee might obtain a *carte de sejour* or residence permit to live in portions of Algeria beyond Tindouf and any restrictions that may apply under Algerian law, regulations, or policies? Do you know how many Sahrawi refugees currently hold such permits and for what reasons, the number who may have applied in a given year and, if any applications were denied, the typical reasons for the denials?
3. Could you please describe the process whereby a Sahrawi refugee might obtain legal employment in Algeria and any restrictions that may apply under Algerian law, regulations, or policies? Do you know how many Sahrawi refugees are working legally in Algeria beyond Tindouf? Do you have reason to believe any might be working illegally and, if so, can you estimate how many?

4. It appears that a number of Palestinians remain in Algeria—the Embassy of Palestine estimates as many as 6,000 and UNHCR estimates at least 4,000, citing earlier Government of Algeria figures—and I had the pleasure of meeting several during my visit. It appears that, although they do not formally hold refugee status under Algerian law, they do enjoy protection from *refoulement*. They also appear, in fact, to enjoy all the rights of the 1951 Convention relating to the Status of Refugees, including the rights to work, to engage in enterprises and even own property, to move about freely, and to choose their place of residence. Could you please describe the legal regime that permits this? Specifically, could you please describe how they obtain and maintain their *cartes de sejour* or residence permits, including during periods when the originally specified reasons, such as education or employment, may no longer be valid, i.e., due to temporary unemployment or end of studies?

Thank you very much for your time and attention to this matter. Should you have any questions or comments, please do not hesitate to contact me. My direct line is +1 703 310-1164 and my email is Msmith@USCRIDC.org.

Very truly yours,

Merrill Smith
Director of Government Relations and International Advocacy