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ISBN 978-0-578-03838-4

Group Rights and International Law: A Case Study on the Sahrawi Refugees in Algeria

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Inter-University Center for Legal Studies
Moroccan American Center for Policy

September 2009

*Group Rights and International Law:
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A Project of the Moroccan American Center for Policy

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ISBN 978-0-578-03838-4

Manufactured in the United States of America

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FOREWORD

For more than fifty years, the International Law Institute has published many books meant to focus the attention of the international community on issues of great importance arising under international law, and the application of international law as the best means by which to resolve them.

The International Law Institute believes that the situation of the Sahrawi refugees in Algeria, and their rights under international law, is a subject in urgent need of consideration by the rest of the world.

While the opinions expressed herein are solely those of the authors, it is our hope that this report will prompt concerted action among all the nations and stakeholders involved, together with the United Nations and other international organizations, to resolve the decades-old situation of the Sahrawi refugees, and the improvement of their circumstances through the instruments of international law.

*Don Wallace, Jr.
Chairman
International Law Institute*

ABSTRACT

This report is a case study of the violation of refugee rights resulting from the three decades old warehousing of Sahrawi refugees in Algeria. It includes a brief introduction to the background of the factors that generated the refugee situation, an analysis of the current deplorable state of refugees in camps near the city of Tindouf in southwestern Algeria, and an assessment of how their rights are being violated under international refugee law. Drawing on international refugee and human rights law, particularly the 1951 Convention relating to the Status of Refugees and the work of the United Nations High Commissioner for Refugees (UNHCR), it outlines both the legal rights of Sahrawi refugees and the legal responsibilities of UNHCR and the host country, Algeria. By assessing the responsibilities and shortcomings of UNHCR and Algeria in derogating from their obligations under international law, this report seeks to call international attention to the problem of refugee warehousing and to offer realistic suggestions for further international action that is urgently needed to improve the lives of the Sahrawi refugees and guarantee their rights under international refugee law.

More than 30 years ago, Spain gave up its colonial rule of the Western Sahara, and the Kingdom of Morocco claimed the area based on historic ties to the tribes that live in the region. Morocco's claims were then – and still are today – opposed by the Polisario Front, which had previously engaged in hostilities over the region with Spain and challenged Morocco's desire to reunite with the Western Sahara. As a result of the ensuing conflict and uneasy ceasefire, tens of thousands of refugees have become sequestered in refugee camps in southwest Algeria near the town of Tindouf since 1991. As refugees and as people warehoused on "foreign soil" the Sahrawi refugees have a substantial number of rights under international law, which, unfortunately, have not been protected by the parties with direct responsibility for their welfare: Algeria, the Polisario Front, and the United Nations High Commissioner for Refugees (UNHCR).

There are several key sources of international law regarding refugee rights including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, the 1969 Convention governing the Specific Aspect of Refugee Problems in Africa, statutes defining the role and responsibilities of the UNHCR, and the proceedings of the Executive Committee (EXCOM) of the UNHCR. In addition, refugee rights are supported by human rights regimes and codes ranging from the 1948 Universal Declaration of Human Rights to the 1966 International Covenant on Civil and Political Rights (ICCPR) and related documents. Among the rights that are reviewed in this paper are those related to juridical status, gainful employment, welfare, freedom of movement, and documentation. The systematic violation of the refugees' rights extends to their human rights as well including: freedom of movement and return to their own country, the right to nationality, the right to own property, work, freedom of association, and freedom to have a basic standard of living including access to education.

Although Algeria is signatory to the legal conventions regarding refugee rights and participates in the functions of the UNHCR, it has not discharged its responsibilities vis-à-vis the refugees on its land. Finally, the role of the UNHCR as the implementing international agency for the protection of refugees, has largely been absent in ensuring the rights of the refugees, preferring to take on a secondary role of providing food and materiel to the camps. Given the abuses that have existed for more than 30 years, it is imperative that this be changed so that another generation of Sahrawi refugees is not robbed of their rights, opportunities, and future.

UNHCR has the power to seek the intervention of other United Nations institutions, such as the Security Council (UNSC), in order to advance and protect refugee rights. Unfortunately, while the UNSC has been actively seeking a solution to the problem in the Western Sahara, and despite clear evidence that abuses and violation of refugee rights exist, UNHCR has failed to seek UNSC assistance to resolve and remedy these refugee rights issues.

Though sufficient in and of themselves, there are more than just legal and moral imperatives for promoting the rights of Sahrawi refugees. It is also in the interest of UNHCR, Algeria, and donors to open the Tindouf camps as they drain scarce humanitarian resources. Long-term care and maintenance programs come at a significant human and material cost. Over the past 30 years, the facts and realities on the ground have changed, while UNHCR's and Algeria's policies relating to refugees have not. Promoting a rights- and development-based strategy would be beneficial to the surrounding states, UNHCR, and most importantly, the refugees.

Now is the time to take action. UNHCR must:

- Monitor the Sahrawi situation more effectively to ensure accountability and transparency in aid distribution.
- Call for an immediate census.

- Establish a significant presence in the camps to ensure the protection of refugee rights, especially freedom of movement.
- Establish an intimidation-free, voluntary repatriation program for those Sahrawi refugees who wish to return to their previous homes and families in Morocco or otherwise leave the camps to settle elsewhere.
- Prevent the militarization of the camps.
- Reconstitute its humanitarian approach into a rights-based approach that bridges the gap between relief and development to ensure the realization of all refugee rights.

Likewise, under its obligations to collaborate with UNHCR, Algeria must remove all obstacles standing in the way of this rights-based approach, including its opposition to the census and documentation, its continued support for the Polisario jurisdiction over the camps, and its military cooperation with the Polisario that contributes to restrictions on freedom of movement. Sahrawi refugees must not continue to suffer for the failures of UNHCR, Algeria, and the Polisario. It is legally, morally, and financially imperative that the Sahrawi refugees in Algeria be granted all of the rights they are entitled to under international law so that they do not have to live as warehoused refugees for another 30 years.

INTRODUCTION

This report, a case study of the violation of refugee rights in the three-decades-old warehousing of Sahrawi refugees in Algeria, will provide a detailed analysis of international refugee law as it pertains to the Sahrawi refugees in camps outside the city of Tindouf in southwest Algeria. Following background information on the origins of the problem in the mid-1970s and a description of the origins of international refugee law and the Office of the United Nations High Commissioner for Refugees (UNHCR), the report will detail specific rights under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol relating to the Status of Refugees that are most relevant. The report also will examine the continued evolution of international refugee law from 1951 to the present day. While not exhaustive, this section will provide a systematic analysis of the international instruments available to refugees and Contracting States (those that sign the various conventions) that are useful for enforcing and ensuring the international rights of refugees. Throughout this report, the significance of these rights for Sahrawi refugees will be explained using information from a wide variety of international sources.

With this background, the next section will detail the rights of refugees as civilians in order to further underscore their rights as refugees and demonstrate that a host state's responsibility is not limited to commitments under international refugee law. The final section will assess the responsibilities and shortcomings of UNHCR and Algeria in derogating from their obligations under international law, which has contributed to the current, deplorable state of the refugees in the Tindouf refugee camps. In conclusion, the report will offer suggestions for further action, in line with UNHCR's 2009 objectives for the region, and describe why international action is urgently needed to improve the lives of the Sahrawi refugees and guarantee their rights under international refugee law.

THE ORIGINS OF THE SAHRAWI REFUGEES IN ALGERIA

The conflict that led to the creation of the Sahrawi (“people of the Sahara”) refugee population has its roots in the post-colonial history of Africa. In the mid-1970s, following Spain’s withdrawal from the area then known as the Spanish Sahara, the Kingdom of Morocco moved to reclaim the area over which it asserted it had historic sovereignty. This move was opposed by an insurgency group, the Polisario Front, which initially sought independence for the territory from Spain. As part of the Cold War legacy of that period, the Polisario Front was supported in its armed efforts against Spain, and then Morocco, by the governments of Algeria, Libya, and Cuba. At that time, the Polisario Front was largely a Marxist-Leninist revolutionary independence movement closely allied with the Eastern Bloc while Morocco maintained its historically close ties with Western Europe and the United States. The war over the Western Sahara, as the territory came to be called following Spain’s withdrawal, was another of the “proxy wars” between the two camps that defined the international system during the Cold War period. The period of active armed hostilities between the Kingdom of Morocco and the Polisario Front lasted from 1975 until a ceasefire was negotiated by the United Nations and a peacekeeping mission, known by its initials MINURSO, was established in 1991.

At the outbreak of hostilities, some thousands of Sahrawi refugees fled the area with the Polisario Front into safe havens in Algeria where both armed and civilian camps were established to continue the war. Estimates of the number of those who fled the area at the time vary, but current estimates dating from the period puts the number at between 25,000 and 30,000 people. Some were clearly supporters of the Polisario Front and shared the Polisario goal of seeking independence for the region. Others simply fled the fighting. Still others, according to first-hand testimonies from hundreds who later returned to Morocco, were forcibly removed from the territory

under Morocco’s control by the Polisario Front and made to settle in the Algerian refugee camps.



The ceasefire and peacekeeping mission established by the UN originally was intended as a temporary arrangement while the Sahrawi population could be registered to conduct a vote to determine the future of the territory. Both Morocco and the Polisario Front agreed to this procedure at the outset. However, a major problem with conducting such a referendum of the population in question soon arose as it became evident that Morocco and the Polisario Front had mutually incompatible ideas about who would be allowed to vote in the referendum. The Polisario Front wished to restrict the voter list to those Sahrawis who were included in a 1974 census of the population conducted by Spain before it withdrew from the territory. Morocco, on

the other hand, sought to establish a more inclusive voter list that would have allowed all those Sahrawis whose tribal origins were within the area previously known as Spanish Sahara to register and vote. In advancing this position, Morocco argued that those Sahrawis who had been forced out of the territory or had fled Spanish colonial rule should not be prevented from voting on the future of the region as would their kinsmen who remained in the territory under Spanish colonial occupation. After more than eight years of seeking to resolve this registration issue between Morocco and the Polisario Front, the UN was unsuccessful and essentially abandoned the registration process.

At the time of the last registration activities in 1999, roughly 90,000 people had been registered to vote in Morocco, Mauritania, and the Algerian refugee camps with nearly 145,000 appeals still pending from those not yet successfully registered. At the repeated urging of the UNSC, the parties to the dispute have been encouraged to negotiate a political solution to the problem that would be based on a compromise between Morocco and the Polisario Front and that would protect the Sahrawis “right to self determination.” In this regard, Morocco proposed in April 2007 that the territory be granted a broad autonomy for self government, but remain as a sovereign Moroccan territory. By the end of 2008, Morocco and the Polisario Front had engaged in four rounds of direct negotiations under the auspices of the UN, but were no closer to a solution. A fifth round of negotiations has yet to be scheduled. Morocco continues to pursue a compromise based on the sovereignty/autonomy formula. However, the Polisario Front continues to insist that a referendum be conducted and continues to threaten war if its demands are not met.

In the meantime, some tens of thousands of Sahrawi refugees remain warehoused in the camps in Algeria in deplorable physical and moral circumstances. A third generation of children is now being born into a seemingly hopeless problem with no prospect in sight for a solution. As this report describes, the international system has done little to protect the rights of these warehoused refugees in what has

now become – after more than three decades – one of the longest encamped refugee situations in the world today. The location of the camps in southwest Algeria imposes certain obligations on the Algerian government, which under international law is responsible for the well being of the refugees and the protection of their rights. This report will show that neither Algeria nor the Polisario Front, which claims for itself the role of “the sole legitimate representative of the Sahrawis,” have fulfilled their responsibilities towards the refugees.

THE ORIGINS OF INTERNATIONAL REFUGEE LAW

Beginning after World War I and expanding significantly after World War II, states began creating an international refugee regime that was designed to safeguard sovereignty while coordinating their desire to protect refugees. As Michael Barnett, the Harold Stassen Chair of International Relations at the Humphrey Institute of Public Affairs at the University of Minnesota, argues, “only a world of sovereign states that had categories of people called ‘citizens’ and was intent on regulating population flows could produce a legal category of ‘refugees.’...Statism and sovereignty shaped the concept of protection.”¹ Defining refugees by borders guaranteed state sovereignty and limited state obligations. It also concretized the term ‘refugee’ as a specific social category of person in the 1951 Convention relating to the Status of Refugees. Algeria has been a signatory to the legally binding 1951 Convention and 1967 Protocol relating to the Status of Refugees since 1963 and 1967, respectively. As such, it is required to accept and treat refugees accordingly. The 1951 Convention relating to the Status of Refugees gives refugee status to any person who:

[O]wing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence ...is unable or, owing to such fear, is unwilling to return to it.²

¹ Barnett, Michael. “Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow.” *International Migration Review* 35, 1 (Spring 2001): 244-277, p. 251-252.

² Convention relating to the Status of Refugees. *United Nations* (1951), <www.unhcr.org/3b66c2aa10.html>.

The 1967 Protocol relating to the Status of Refugees omitted certain temporal and geographic limitations, but otherwise the relevant terms of the convention remained the same.

The basis of both the Convention and Protocol is the principle of *non-refoulement*, which means that refugees cannot be forcibly repatriated, except under extreme circumstances relating to national security and criminality. The refugees in Algeria are also provided protection under the 1969 Convention governing the Specific Aspect of Refugee Problems in Africa. The definition of refugees remains similar to that of the UN Convention, but expands to include those affected by external aggression, occupation, foreign domination and events seriously disturbing the public order.³ The basic tenets of the Convention and Protocol, which will be further detailed with reference to Sahrawis below, are:

Chapter I: the right to be defined as a refugee under international law and receive all the rights enshrined therein

Chapter II: the right to juridical status, including the right to personal status, moveable and immovable property, and right of association

Chapter III: the right to be gainfully employed, including wage-earning employment and self employment

Chapter IV: the right to welfare, namely a right to housing, education, and public relief

³ Convention governing the Specific Aspects of Refugee Problems in Africa. *Organization of African Unity* (1969).

Chapter V: the right to administrative measures, including a right to freedom of movement, identity papers, and travel documents⁴

The African Union Refugee Convention incorporates the 1951 Convention by reference and further enshrines these rights, reiterating the importance of issuing travel documents to refugees and strengthening the principle of *non-refoulement*; essentially, that all repatriation should be on a voluntary basis. This legal regime provides the basis for the protection of refugees under international law. Along with the creation of a legal framework for refugee protection, the UN also established a refugee agency, the UNHCR.

UNHCR was created in 1950 by the UN Security Council. According to the UNHCR statute, the organization is to “assume the function of providing international protection to refugees and...[to seek] permanent solutions to the problem of refugees by facilitating the voluntary repatriation of such refugees or their assimilation within new national communities.”⁵ The organization was designed to be humanitarian and apolitical. Rather than work to eliminate the causes of refugee problems, which was deemed too political, UNHCR had a mandate to coordinate operational responses and provide legal assistance to refugees. UNHCR’s statute calls for cooperation with states and other interested parties in the following areas: admitting refugees to territories, assisting in voluntary repatriation, promoting the assimilation of refugees, and providing refugees with travel and other documents as needed.⁶ UNHCR is also tasked with resettlement and repatriation within the limits of resources placed at its disposal.

⁴ Convention relating to the Status of Refugees.

⁵ Statute of the Office of the United Nations High Commissioner for Refugees. *UNHCR* (1950) and Wolfson, Steven. “Refugees and Transitional Justice.” *Refugee Survey Quarterly* 24:4 (2005): 55-59, p. 56.

⁶ Statute of the Office of the United Nations High Commissioner for Refugees.

The initial mandate of UNHCR is still relevant today, as evident in the wording of its current mission statement: to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems. Its primary purpose is to safeguard the rights and well being of refugees, and it seeks to reduce situations of forced placement and to consolidate the reintegration of returning refugees in their country of origin.⁷ Nevertheless, the mission of the organization has evolved in response to global developments and has re-formed in response to the changing political climate. For example, as Michael Barnett notes, “during the Cold War UN organizations routinely presented themselves as ‘apolitical’ and ‘humanitarian’ as a signal to states that they understood their place and recognized sovereignty’s canon of non-interference.”⁸ As the Cold War drew to a close, however, UN agencies became more directly involved in the domestic affairs of states in response to changing political dynamics, namely the emergence of global human rights movements and the growing significance of non-state actors. While UNHCR continued to cooperate with host governments, it began to play more of a role in protecting people regardless of sovereign borders. UNHCR became increasingly active in the areas of refugee reintegration and in addressing the root causes of refugee flight. Since those causes had changed significantly after the Cold War, UNHCR was forced to alter its approach to refugee management. The end of the Cold War also brought about a modification in the usual profile of refugees. Some continuing interstate conflicts were no longer at the forefront of global instability. Rather, internal wars and large-scale violent civil unrest, often in illiberal states, created massive internal and external displacements of people. UNHCR has thus become increasingly involved in the protection of internally displaced persons and its humanitarian space has expanded considerably.

⁷ “Mission Statement – The United Nations Refugee Agency.” *UNHCR*, <<http://www.unhcr.org/publ/PUBL/4565a5742.pdf>>.

⁸ Barnett, p. 244.

SPECIFIC RIGHTS IMPORTANT FOR SAHRAWI REFUGEES IN CAMPS IN ALGERIA

There are three sources that define, recognize, and assess the overall regime for treatment of refugees: (1) the 1951 Convention and 1967 Protocol; (2) other international agreements that reinforce the rights of refugees as “global citizens”; and (3) initiatives by private and non-governmental organizations (NGOs) that have been undertaken to supplement the legal regimes. The 1951 Convention and 1967 Protocol continue to be the basis for determining refugee status, state responsibility, and the international rights of refugees. The “global citizen” rights deal with the welfare issues of refugees according to host country status. The private initiatives seek to promote and protect refugee rights in international law by focusing on specific issues under the law. Of particular importance to Sahrawi refugees in Algeria is the global anti-warehousing campaign of the United States Committee for Refugees and Immigrants (USCRI). The anti-warehousing campaign, which defines warehousing as the “practice of keeping refugees in protracted situations of restricted mobility, enforced idleness, and dependency, with their lives on indefinite hold,” seeks to end this practice and grant refugees their international rights.⁹ In its August 2008 *Statement Calling for Solutions to End the Warehousing of Refugees*, USCRI called on the international community to “develop and implement strategies to end the practice of warehousing, including examining how refugee assistance can enable greater enjoyment of Convention rights...and...to monitor refugee situations more effectively for the realization of all the rights of refugees under the Convention.”¹⁰ The anti-warehousing campaign seeks to persuade states to allow refugees to work, run businesses, practice professions, move freely, chose their place of residence within the national territories of countries of first asylum, and to have internationally valid

⁹ Smith, Merrill. “Warehousing Refugees: A Denial of Rights, a Waste of Humanity.” *World Refugee Survey* (2004): 38-56, p. 38.

¹⁰ “Statement Calling for Solutions to the End of the Warehousing of Refugees.” *U.S. Committee for Refugees and Immigrants* (August 2008).

travel documents.¹¹ It thus seeks to restore their dignity as humans and allow them to reclaim their lives and livelihoods.

The following section provides an analysis of the rights most pertinent to the Sahrawi refugees in Algeria, based on the basic tenets of refugee rights regimes and the anti-warehousing movement, and explains how those refugee rights are being violated.

Background

The Sahrawi refugee situation is one of the oldest and most protracted cases of warehousing refugees in the world. Richard Black, co-Editor of the *Journal of Refugee Studies* and co-Director of the Sussex Centre for Migration Research, describes the camps as “tented cities supplied wholly from the outside,” perhaps the most obvious example of warehousing.¹² According to UNHCR’s Global Appeal for 2009, Sahrawi refugees in Algeria remain totally dependent on humanitarian aid as they lack access to livelihoods and face the extremely harsh climactic conditions of the Sahara desert. They rely on aid for food and non-food items, health care, education, water, sanitation, transportation, and other basic services. Anemia and malnutrition remain high, water resources are insufficient, primary school and health care centers operate with meager resources and supplies, and there is a dearth of secondary education facilities.¹³ According to a nutritional and food security survey conducted in February/March 2008 by the World Food Program (WFP), Médicos del Mundo, Norwegian Church Aid, and Akershus University College, food distribution in the camps was irregular and insufficient, leading to significant malnutrition among the population.¹⁴ The food

¹¹ Smith, Merrill. “Development without Refugee Rights? A Civil Society Response.” *Fordham International Law Journal* 28 (2004-2005): 1479-1503, p. 1479.

¹² Black, Richard. “Putting Refugees in Camps.” *Forced Migration Review* 2 (August 1998): 4-7, p. 4.

¹³ “Algeria.” *UNHCR Global Appeal 2009 Update* (2009): 230-233, p. 230-231.

¹⁴ “Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria.” *World Food Programme* (October 2008): 1-73, p. 7.

consumption score at the household level showed that 15% of households were found to have poor consumption. The prevalence of global acute malnutrition was 18%, up from 8% in 2005.¹⁵ Severe acute malnutrition increased from 2% in 2005 to 5% in 2008, and the prevalence of chronic malnutrition was 32%, with 9% of those cases marked as severe. Anemia, which affects both children and women, was similarly high. The anemia rate among children was 62%, among pregnant women 54%, and among non-pregnant women 66%.¹⁶ These numbers reveal serious long-term nutritional problems in the camps in Tindouf, evidence that is substantiated by previous surveys. A micronutrient survey conducted in the camps in 2002 by UNHCR, WFP, and the Centre for International Child Health similarly revealed that the supply of food in the camps at that time was also erratic and that chronic malnutrition was rampant, often beginning at an early age and leading to rapid growth faltering throughout childhood.¹⁷ The UNHCR survey also acknowledged the lack of an onsite food distribution monitoring system, which helps explain why such food insecurity is occurring despite aid delivery. Reports by the Office of the Inspector General of both UNHCR and the WFP completed in 2005 further document decades of systematic waste, fraud, and abuse in the delivery of humanitarian assistance to the camp residents, problems which remain largely unaddressed at this writing, according to dozens of direct interviews with recent camp residents as reported in various news stories in 2008.¹⁸

¹⁵ "Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria.", p. 54.

¹⁶ Ibid, p. 9.

¹⁷ "Anthropometric and Micronutrient Nutrition Survey." *UNHCR/UNFIP Micronutrient Project* (September 2002): 1-42, p. 7.

¹⁸ "Report of the Inspector General's Office" *UNHCR* (12 May 2005),

<<http://www.cfif.org/htdocs/archives/UNHCR-IG-Report.pdf>>.

"Report of the Office of the Inspector General." *World Food Programme* (23 May 2005),

<<http://www.cfif.org/htdocs/archives/WFP-IG-Report.pdf>>.

Andersen, Ericka. "The Polisario 'Berlin Wall'." *Human Events* (16 May 2008),

<<http://www.humanevents.com/article.php?print=yes&id=26544>>.

Buckley, Cara. "Western Sahara's Conflict Traps Refugees in Limbo." *The New York Times*

In addition to these physical deprivations in the camps, Sahrawis experience a wide range of social and political abuses. According to testimony from Sahrawi refugees, they are often separated from their families, many of whom live in the Saharan provinces of Morocco, have limited freedom of movement, and limited educational and employment opportunities.¹⁹ The passage to adulthood of Sahrawi youth is often not complete, given their inability to receive a proper secondary education or employment. Cultural norms are violated due to the encampment of a previously nomadic population. The psychological impact of isolation in the desert cannot be underestimated and dependency on foreign aid has detrimental impacts on human dignity and self empowerment. From a political perspective, refugees are denied rights granted to them under international refugee law and are also subject to violations of their human rights. Based on these realities, the rights enshrined in the Convention and Protocol most significant for Sahrawi refugees are rights relating to juridical status, gainful employment, welfare, freedom of movement, and documentation.

Juridical Status

While the Sahrawis in the camps outside Tindouf have been granted legal status as refugees by Algeria, under the guidelines of the Convention, rights concerning their juridical status continue to be

(4 June 2008),

<http://www.nytimes.com/2008/06/04/world/africa/04sahara.html?_r=3&ref=africa&oref=slogin&oref=slogin&oref=slogin>.

"Charge: Sahara Tribal Women Jailed For Adultery." *Women's eNews* (28 May 2008),

<<http://www.womensenews.org/article.cfm/dyn/aid/3615/context/archive>>.

"The Conditions of Detention of the Moroccan POWs detained in Tindouf (Algeria)." *France Libertés* (11-25 April 2003): 1-56, p. 34.

"The forgotten tribes of the Sahara." *Middle East Times* (15 May 2008),

<<http://www.metimes.com/>

International/2008/05/15/the_forgotten_tribes_of_the_sahara/3891/>.

"Sahara refugees' stories highlight hardships and propaganda war between rebels and Morocco." *International Herald Tribune* (16 May 2008),

<<http://www.iht.com/articles/ap/2008/05/16/america/NA-GEN-US-Sahrawis-Woes.php>>.

¹⁹ Ibid.

violated. Chapter II of the Convention relates to the juridical status of refugees, who, under Article 12 are governed “by the law of the country of his domicile, or if he has no domicile, but the law of the country of his residence.” Therefore, Sahrawi refugees should be subject to Algerian law, but in reality they are under the jurisdiction of the Polisario, which Algeria claims has jurisdiction over the camps for all legal issues, despite the fact that all of the camps are located in Algeria itself. This ambiguity in their personal status, whether they are refugees in Algeria or “citizens” of the self-proclaimed state established by the Polisario Front has significant implications for their treatment and their various internationally guaranteed rights to maintain property and access courts.

Articles 13, 15, and 16 of the Convention elucidate the juridical rights of refugees. Under Article 13 of the Convention, refugees have the right to maintain movable and immovable property:

The contracting states shall accord to a refugee treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.²⁰

This right is further enshrined in the Algerian Constitution, which protects the property of foreigners as follows: “Any foreigner being legally on the national territory enjoys the protection of his person and his properties by the law.” However, in spite of these legal rights, refugees in Algeria are only allowed to own moveable property according to the rules and regulations of the Polisario.²¹

²⁰ Convention relating to the Status of Refugees, Article 13.

²¹ “Algeria.” *United States Committee for Refugees and Immigrants* (2008), < <http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=2116>>.

Articles 15 and 16 state that refugees have the right to association and the right to “free access to the courts of law on the territory of all Contracting States” respectively. In this regard, refugees are entitled to the same treatment as nationals in matters pertaining to access to the courts, including legal assistance.²² In reality, the Sahrawi refugees have no freedom of association and limited access to courts other than those of the Polisario. The Polisario maintains its own penal code and judicial and detention facilities, which are manipulated by the leadership to consistently violate the human rights of the refugee population as detailed in this study and to deny them redress of any grievances in the Algerian court system. For the most part, international NGOs have not been allowed free and unfettered access to these judicial processes or penal facilities so there is little evidence to demonstrate that Polisario procedures are in line with international human rights standards. Refugees, however, have testified to the presence of “protective centers” for unwed pregnant women, which operate similarly to jails. Furthermore, camp administrators operate outside the host country’s judicial system and refugees have little legal recourse against abuses perpetuated by the Polisario. According to recent eyewitness testimony from former refugees, those who express interest in or who attempt to leave the camps and return to Morocco or elsewhere face criminal penalties including imprisonment, a direct violation of their right to freedom of movement.²³

Gainful Employment

The lack of legal rights is exacerbated by severe limitations on the economic rights of the refugees. Under the 1951 Convention, Chapter III, Articles 17, 18, and 19, refugees have the right to gainful employment and livelihood. Article 17 grants refugees the same rights to work as other foreign nationals. Furthermore, it states that any restrictive measure that would inhibit the right of any non-citizen to

²² Convention relating to the Status of Refugees, Article 16.

²³ Op. cit., Andersen and Buckley.

work in the territory, such as a protective labor law, should be lifted once the refugee is present in the territory for three years. Article 18 further grants refugees the same right to be self employed as other foreign nationals.

Most refugees who are employed in any capacity in the camps work without compensation. For example, according to refugee reports, until recently, neither teachers in the camp schools nor police officials received any salary for the performance of their duties. In the camps poverty is magnified by the loss of property and the denial of the right to work in the host country. Without those rights, it is difficult, if not impossible, to become self sufficient. Refugees who have returned to Morocco from the camps report that to meet the basic needs of a family of four it is necessary to find up to \$300 each month to purchase basic foodstuffs, clothing, and medicines to make up for the persistent shortfall of food assistance from the international community. Technically, the Polisario controls employment within the region of the camps and Algeria controls it outside the camps. However, there are very few opportunities for official or self employment in the camps, and Algeria severely restricts the rights of foreign nationals to work outside of the camps. With few commercial opportunities available in the camps and no ability to work in the Algerian economy, the ability to find the money to survive becomes a daunting task for the majority of the camp's population.

The 1951 Convention specifies that refugees maintain this right, and clearly states in Article 17 (2) that host governments must drop all restrictive measures after a refugee has been in residence for three years.²⁴ The Algerian government has not done this and its policies for foreign nationals restrict employment rights and severely limit their rights to work. The 1981 Employment Workers Law and the 1983 Order of the Ministry of Labor allow only single employer work

²⁴ Massey, Traci L. "To Keep Water, Water: How we Missed the Mark with Côte d'Ivoire's Warehoused Refugees." *North Carolina Journal of International Law and Commercial Regulation* 31 (2005-2006): 207-254, p. 218.

permits, and then only for jobs for which no nationals, even those living abroad, are qualified. Under these laws, employers have to file justifications for the employment of foreign nationals; permits are valid for no more than two years, and the employee has no right to change jobs until his/her original contract is completed – and then only under exceptional circumstances.²⁵ The 1990 Labor Law reiterated this policy without an exception for refugees. Furthermore, a 2005 decree established regional labor inspection offices to enforce laws regulating the employment of foreigners, thus highlighting the extent to which the Algerian government monitors the labor market. Self employment could be an option for refugees, but in the Algerian refugee camps they have no access to land/infrastructure for such endeavors, no labor protection, and no social security. Refugees can also, in theory, work in the informal business sector, but they risk arrest and detention for working illegally. Thus the right to gainful employment in Algeria is quite precarious.

Welfare

As a result of restrictive employment policies and the inability of the Polisario to provide for the welfare of camp inhabitants, refugees are completely dependent on UNHCR, WFP, European Commission – Humanitarian Aid Office (ECHO), and other public and private humanitarian aid organizations for food aid and non-food needs. This includes support for health and nutrition, education, water, and sanitation. As a number of studies have indicated, this aid is inconsistent due to pervasive corruption, insufficient funding, WFP and UNHCR budget cuts, the global food crisis, and the global economic crisis. Consequently, there is a lack of potable water in the camps and there is severe, acute malnutrition among a large part of the population. According to USCRI, this number is as high as 39% among children under five. This is coupled with the reality that there are inadequate health care facilities to combat disease. It is reported by

²⁵ "Algeria." *United States Committee for Refugees and Immigrants*.

returned refugees that the camps are unsanitary and health issues abound. Housing and camp infrastructure are limited both due to inhospitable desert conditions, seasonal floods, and limited maintenance. Regarding education, there are several primary schools in each of the four major camps, but only one middle school serving the four camps. Children lack adequate clothing and school supplies, and the schools lack adequate heating during the cold winters.

The basic tenets of both the 1951 Convention and 1967 Protocol are that states are ultimately responsible for protecting and promoting the welfare of refugees. Under Chapter IV of the Convention, Articles 20-24, Contracting States shall accord refugees the right to housing, public education, public relief, and social security. Of particular importance for refugees is Article 22 on education:

The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

The Contracting States shall accord to refugees treatment as favorable as possible, and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.²⁶

Despite efforts by UNHCR to establish primary schools, there is a severe dearth of educational facilities in the camps. Even in cases where there are facilities, they are inadequate, and other issues such as lack of clothing and poor health prevent complete enrollment among primary school-aged children. Furthermore, secondary education

²⁶ Convention relating to the Status of Refugees, Article 22.

opportunities are virtually non-existent in the camps, with the exception of training abroad. With regards to other issues of welfare, Article 23 states that refugees have the right to the same treatment with respect to public relief and assistance as is accorded to nationals of the Contracting State. However, as indicated by food insecurity, the lack of social security, and the lack of unemployment compensation, Sahrawi refugees are certainly not treated the same as Algerian nationals by the host nation. Additionally, while Algeria does provide a portion of donations for humanitarian aid, the majority of the costs of funding that aid are donated by UNHCR and WFP and supplemented with strategic reserves from ECHO. In fact, ECHO has been a major source of humanitarian aid for Sahrawi refugees, contributing 133 million euros since 1993.²⁷ These are not isolated problems. According to independent reports from the Office of the Inspectors General of both the UNHCR and WFP in 2005, there has been systematic mismanagement and abuse of the food and non-food aid being provided by the international community, which has further impoverished the conditions under which these refugees are warehoused.²⁸

Regarding additional issues of public relief, Article 24 accords refugees the same treatment as nationals in terms of social security benefits, including “legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme.”²⁹ This right, however, is subject to limitations according to national laws or regulations concerning benefits paid to persons who do not fulfill the contribution conditions prescribed for

²⁷ “Algeria: Sahrawian refugees facing their future.” *European Commission Humanitarian Aid Office* (18 August 2007), <http://ec.europa.eu/echo/aid/north_africa_mid_east/algeria_en.htm>.

²⁸ “Report of the Inspector General’s Office.” *UNHCR*.

“Report of the Office of the Inspector General.” *World Food Programme*.

²⁹ Convention relating to the Status of Refugees, Article 24.

the award of a normal person. In Algeria, refugees are not granted any of the benefits listed in Article 24 merely by virtue of their limited employment rights. The lack of public relief and sufficient education facilities further highlights that Algeria and the Polisario Front are not observing refugee rights.

Freedom of Movement and Documentation

Algeria allows the Polisario complete jurisdiction and control over freedom of movement in, around, and between the camps. Freedom of movement is open within the camps themselves but controlled between the camps through Polisario and Algerian security check points, which are a violation of the Convention and Protocol. Algeria and the Polisario challenge this reality and claim that refugees' freedom of movement is not restricted, that there are no such violations, and that the Sahrawi are free to live normal, independent lives in Algeria and simply prefer not to in order to make a political statement. However, there is no explicit law guaranteeing Sahrawi refugees freedom of movement either in Algeria or in the camps. Nevertheless, the Polisario continues to make the argument that Tindouf camp residents are free to leave the camps any time, an issue taken at face value by Human Rights Watch's 2009 Report, which quotes the Justice Minister Hamada Selma as saying, "The Saharan refugees are free; they came to the camps by their own free will, and they are free to leave if they so wish. There are no legal or administrative measures that would prevent their departure."³⁰ The same report then goes on to quote some Sahrawis who said they had to obtain authorization to leave for Mauritania, and others who said that those who are seeking to leave for Morocco had to conceal their final destination in order to be given approval.³¹ If this is indeed the case, why should the international community subsidize the lives of those who choose to live in refugee camps as a political statement? If it is not

³⁰ "Human Rights in the Western Sahara and in the Tindouf Refugee Camps." *Human Rights Watch* (December 2008): 1-211, pp. 122-123.

³¹ *Ibid*, pp. 126-127.

the case and freedom of movement is indeed restricted, a point recognized by both Amnesty International and USCRI, what is the reality on the ground?

Despite Polisario claims to the contrary, Sahrawi refugees' freedom of movement is severely restricted, both in Algeria and for travel to neighboring countries. In 2003, Amnesty International expressed grave concern about the denial of the refugees' right to freedom of movement by Algerian and Polisario authorities, citing that authorization was required to move even to other parts of Algeria. The briefing further notes, "Reports received by Amnesty International indicate that those refugees who manage to leave the refugee camps without being authorized to do so are often arrested by the Algerian military and returned to the Polisario authorities, with whom they cooperate closely on matters of security."³² USCRI has substantiated this evidence. Its World Refugee Survey has given Algeria a grade of F in freedom of movement and residence for the past three years, detailing that the Polisario forbids return to Moroccan-controlled Western Sahara and restricts movement to Algiers.³³ Moreover, the Algerian military guards the entrance into Tindouf, given its location as the southern headquarters for the Algerian Armed Forces, and often works in collaboration with the Polisario security forces to monitor and control movements through the checkpoints.³⁴ Refugees caught by Algerian authorities trying to leave the camps to return to neighboring Morocco or Mauritania, where most have close family, are routinely returned to Polisario authorities for punishment. Former camp refugees now living elsewhere recount incidents of refugees attempting to flee the camps being fired upon by both Polisario and Algerian police and security patrols, and also recount periods of imprisonment

³² "Algeria: Asylum-seekers fleeing a continuing human rights crisis: A briefing on the situation of asylum seekers originating from Algeria." *Amnesty International MDE* 28/007/2003 (1 June 2003): 1-20, p. 17.

³³ "World Refugee Survey." *United States Committee for Refugees and Immigrants* (2009): 1-66, p. 35.

³⁴ "Algeria." *United States Committee for Refugees and Immigrants* (2008).

in Polisario internment centers for refugees who have been caught attempting to return to family in Morocco.

Polisario officials reportedly issue identity cards for all camp inhabitants over the age of 18; however these identity cards neither serve as acceptable international travel documents nor convey a right to travel to the bearers. Neither is there any international verification of such documentation. USCRI acknowledges that the Polisario has issued such documents largely for local travel between the camps and for approved visits to Tindouf in Algeria. Refugees with travel approval from Polisario authorities have also been able to use these identity documents to enter into Mauritania. However, refugees are not given travel permission to return to Morocco unless they are participants in the UNHCR family visit program and are traveling on a UNHCR travel document expressly for this purpose.

While some refugees are allowed to leave the country for educational purposes, entire families are rarely granted permission by Polisario authorities to travel together, thus intimidating refugees who may otherwise flee the camps and settle elsewhere. According to a 2000 review by the Immigration and Refugee Board of Canada, “We were advised by the Polisario and by numerous inhabitants of the camps that they are free to travel where they wish, subject only to their means and to their work. However, it is clear that access to and from the camps and Tindouf is secured and well-enforced.....checkpoints staffed by Algerian military personnel control access to Tindouf and checkpoints staffed by Polisario control access to the region surrounding the camps.”³⁵ The restrictions on refugee freedom of movement have severe implications for all of the other rights elucidated in the Convention and Protocol. Without the degree of freedom of movement guaranteed refugees under the Convention and

³⁵ “Algeria: Whether the Polisario had mandatory military service; whether the Sahrawis in the camps near Tindouf need permission from Polisario to leave town; if so, consequences if some leave without permission (1991-2000).” *Immigration and Refugee Board of Canada* DZA34602.E (18 July 2000): 1-2, p. 2.

the Protocol, the Sahrawi refugees cannot seek gainful employment, have access to courts, or voluntarily repatriate themselves to Morocco or settle in Algeria or another country that might be willing to grant them residence status. Despite refugees’ rights to choose voluntary repatriation as a durable solution to their status and UNHCR’s obligation to facilitate such choices (this issue is discussed below with respect to specific UNHCR Executive Committee recommendations), to date, UNHCR has only facilitated voluntary repatriation for those refugees who have chosen to remain in Morocco following their participation in the UNHCR family visit program. Without freedom of movement, the Polisario is better able to control the refugee population of the camps since it has sole control over the distribution of humanitarian aid, which is the primary source of food and non-food assistance available to refugees who lack real options to move, live, or work freely elsewhere in Algeria, the host country.

Given the importance of freedom of movement to the fulfillment of other rights, the UN, in several of its instruments of international law, has placed great importance on protecting that right. Chapter V of the Convention details administrative measures relevant to refugee movement and documentation. Of utmost importance in the Sahrawi case is Article 26 detailing the right to freedom of movement:

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulation applicable to aliens generally in the same circumstances.³⁶

To accommodate this right, Article 27 requires contracting states to issue identity papers to any refugee in their territory who does not possess a valid travel document. Furthermore, Article 27 obliges states “to issue refugees legally in their territory a travel document for

³⁶ Convention relating to the Status of Refugees, Article 26.

the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.” In particular, contracting states “shall give sympathetic consideration to the issue of such a document to refugees who are unable obtain a travel document from their country of lawful residence.”³⁷ Failure to grant refugees freedom of movement and adequate documentation has severely limited the refugees’ right to voluntary repatriation, a right defined both in the African Union Refugee Convention and the UNHCR mandate. The African Union Refugee Convention details that refugees have the right to voluntary repatriation, deeming that, “The country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the safe return of refugees who request repatriation....refugees who freely decide to return to their homeland shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations to facilitate their return.”³⁸ By obstructing the refugees’ freedom of movement, the Polisario and Algeria have also significantly obstructed refugee rights to voluntarily repatriate.

³⁷ Ibid, Article 27.

³⁸ Convention governing the Specific Aspects of Refugee Problems in Africa.



Given these realities, Algeria, as a signatory to the Convention and Protocol, has not fulfilled its commitment to refugee protection. The Polisario is not a recognized state under international law so the responsibility for protecting the rights of the refugees is clearly with Algeria. By allowing the Polisario to control the Algerian territory on which the camps are located and its complicity in denying the refugees their most fundamental human rights, Algeria undercuts international law.

In addition to the Convention and Protocol, there is a wide range of other international law that applies to the refugees because of their civilian/citizen status, including international human rights law

and humanitarian law. Although the Convention and Protocol, international human rights, and humanitarian laws are the legally binding sources of refugee law, in practice, non-binding guidance for the treatment of refugees is continually evolving through UNHCR and the findings and conclusions of its Executive Committee (EXCOM). A detailed analysis of EXCOM conclusions and recommendations and their impact on refugee protection follows.

THE EVOLUTION OF REFUGEE LAW: UNHCR AND THE EXECUTIVE COMMITTEE

In addition to international treaties pertaining to refugees, there are a wide variety of UNHCR initiatives that are designed to increase support for the 1951 Convention and respond to new challenges in refugee protection. Although these initiatives are not legally binding, they provide valuable insight into refugee law in practice and serve as guidelines for interpreting the sometimes vague aspects of the Convention and Protocol. Three of the most recent initiatives are the Agenda for Protection of 2002, the Strengthening Protection Capacity Project (SPCP), and the High Commissioner's Dialogue on Protection Challenges, which reflect a broad political consensus that reaffirms the commitments of states to international refugee law.

The Agenda for Protection, the Strengthening Protection Capacity Project, and the High Commissioner's Dialogue on Protection Challenges

While recognizing that the 1951 Convention and 1967 Protocol remain the cornerstones of the international refugee protection regime, these supplemental instruments still do not address all of the pressing issues pertaining to refugee protection today. The Agenda for Protection of 2002 details a comprehensive plan of action for the UNHCR, governments, NGOs, and other partners, citing the growing need to forge links between a variety of actors in fields of humanitarian relief, peace and security, human rights, and development. The main goal of the Agenda is to strengthen the implementation of the Convention and Protocol in an effort to find durable solutions and meet the protection needs of refugees.³⁹ Through its program of action, the Agenda identifies specific objectives and activities grouped according to six interrelated goals: strengthening implementation of the

³⁹ Kelley, p. 13.

1951 Convention and its 1967 Protocol; protecting refugees within broader migration movements; sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees; addressing security-related concerns more effectively; redoubling the search for durable solutions for refugees; and meeting the protection needs of refugee women and children.⁴⁰ Under the goal of protection, the UNHCR and states are to keep refugee children safe from forcible military recruitment by ensuring that they have access to education. Another objective that is of relevance to the specific needs of Sahrawi refugees is the Agenda's dedication to voluntary repatriation and the improvement of conditions to facilitate the process.

The UNHCR has built on the Agenda's initiative and continued to implement new programs designed to meet the specific protection challenges of today. The SPCP was established in 2004 to strengthen state and community capacities to protect refugees and other populations of concern.⁴¹ Working with UNHCR field offices and other partners, the SPCP begins by using gap analysis to determine the differences between the rights of refugees in the 1951 Convention and their actual situation in the host country. From this initial protection gap analysis, the SPCP seeks to build consensus among all stakeholders on measures needed to remedy the gaps and then works with stakeholders to develop and implement projects to address these gaps, with the ultimate goal of expanding access to rights, livelihoods, and solutions over the medium- and long-term.

The UNHCR has not yet launched a capacity project for Algeria, but the Sahrawi refugees could clearly benefit from such an initiative. Current projects in other countries include legislative reform to strengthen domestic refugee law, registration and documentation training to ensure compliance with international standards for identification, capacity building in health and education

infrastructures, and the establishment of legal aid centers for refugees.⁴² All of these projects are extremely relevant to the situation in Tindouf and could go a long way in addressing many of the problems that plague Sahrawi refugees and contribute to the violation of their rights as refugees.

Another instrument of importance is the High Commissioner's Dialogue on Protection Challenges initiated in 2007 to facilitate informal consideration of global protection issues by the UNHCR, states, and other stakeholders.⁴³ While not a decision-making body, the Dialogue has provided a valuable means for informal discussion and has become quite relevant in that it allows for free and open debate among all stakeholders, often inspiring collaboration among the parties and new ways of thinking about refugee issues. The 2008 meeting on protracted refugee situations, which examined the challenges and opportunities for refugees and other stakeholders in camps, rural, and urban contexts, was particularly pertinent to the refugees in Tindouf. The discussion centered on the work of the UNHCR's Special Initiative on Protracted Situations, which aims to examine instruments that could "critically affect and unlock protracted refugee situations."⁴⁴ The Dialogue stressed the importance of collaboration and burden sharing, an issue of special importance given the presence of a wide variety of stakeholders at the meeting, including member states of EXCOM and observers to the Standing Committee, states with a special interest in the topic of protracted refugee situations, non-governmental and inter-governmental organizations, and refugee experts. The Dialogue also reiterated many of the issues raised in the Agenda for Protection: voluntary repatriation as a preferred durable solution, the enhancement of resettlement and local integration as alternatives, and

⁴⁰ "Agenda for Protection." *UNHCR* 3 (October 2003): 1-126, p. 10.

⁴¹ "Strengthening Protection Capacity Project." *United Nations High Commissioner for Refugees* (March 2008): 1-4, p. 1.

⁴² "Strengthening Protection Capacity Project." pp. 3-4.

⁴³ "High Commissioner's Dialogue on Protection Challenges." *United Nations High Commissioner for Refugees* (2008), <<http://www.unhcr.org/protect/4a12aafc2.html>>.

⁴⁴ "High Commissioner's Dialogue on Protection Challenges."

the importance of self reliance in enhancing all solutions.⁴⁵ Although it gave more attention to durable solutions than to protection and rights, the Dialogue did stress that a rights-based approach is the only way forward.

While the Dialogue does appear as simply another process with little legal authority, what makes it markedly different from other UNHCR initiatives is the participation of all stakeholders and the importance that the process places on said participation. It remains to be seen whether or not the Dialogue will be successful in addressing the needs of refugees in protracted situations, but as the chairman noted, “the Dialogue should not be an isolated event, but the beginning of a large consultative process spurring initiatives.”⁴⁶ Whether through the creation of “core groups” to address specific situations, working groups dedicated to finding durable solutions specific to each of the 30 identified protracted situations, or regional initiatives to promote collaboration, it is hoped that the Dialogue will allow all stakeholders to work together to develop meaningful responses to today’s refugee crises. Furthermore, although the Sahrawi situation was not included as a case study, since the Dialogue is open to member states of EXCOM, including Morocco and Algeria, it provides a possible forum for cooperation and resolution in the future.

Executive Committee Conclusions

Another source of international refugee law that is of utmost importance for the UNHCR is EXCOM, whose meeting summaries and conclusions detail new approaches to implementing international law. EXCOM was established in 1959 by the Economic and Social Council of the United Nations, a subsidiary of the General Assembly. It is responsible for determining general policies for the High

⁴⁵ “Chairman’s Summary, Protracted Refugee Situations, High Commissioner’s Dialogue on Protection Challenges.” *United Nations High Commissioner for Refugees* (11 December 2008): 1-5, pp. 2-3.

⁴⁶ *Ibid.*, p. 4.

Commissioner, reviewing the use of funds available to the High Commissioner, authorizing the High Commissioner to make appeals for funds, and approving assistance projects for refugees. EXCOM does not substitute for the policymaking functions of the General Assembly or the Economic and Social Council, but it has an important role to play in advising state parties to the 1951 Convention and in advising the High Commissioner for Refugees.⁴⁷ Conclusions are not legally binding; however Algeria is a member of the Executive Committee and, as such, it participates in the consensus upon which EXCOM’s conclusions are based.

EXCOM conclusions cover a wide range of issues relevant to Sahrawi refugees, including rights and recommendations regarding documentation, statelessness, protracted refugee situations, self reliance, and the specific rights of refugee women and children. EXCOM has also issued conclusions that recommend maintaining the humanitarian character of camps and the reinforcement of international humanitarian law. The following summaries detail the conclusions related to these issues.

Documentation in Protracted Refugee Situations

On the issue of documentation, EXCOM Conclusion 13 (1978) reaffirms the importance of travel documents to refugees, urges all parties to issue travel documents to refugees legally in their territories, and recommends that such travel documents should have a wide validity both temporally and geographically.⁴⁸ Conclusion 35 (1987) further enshrines this right to documentation by noting that documentation is necessary to establish refugee identity in compliance with Article 27 of the Convention.⁴⁹ EXCOM notes that states should

⁴⁷ “Executive Committee Mandate.” *UNHCR*, <<http://www.unhcr.org/excom/400e3c86a.html>>.

⁴⁸ “A thematic compilation of Executive Committee Conclusions.” *UNHCR* (August 2008): 1-515, p. 143.

⁴⁹ *Ibid.*

ensure that refugees are provided with documentation, especially in situations of large scale influx. Conclusion 35 was reiterated in Conclusion 49 of 1987, with EXCOM reaffirming the importance of travel documents and urging all states to take appropriate legislative or administrative measures to implement effectively the issuance of travel documents in line with the standards of the Convention.⁵⁰ The Final Act of the United Nations Conference on Plenipotentiaries on the Status of Refugees and Stateless Persons of 1950 also adopted recommendations calling on states to facilitate refugee travel through the issuance of travel documents, preserve the unity of the refugee family, provide welfare services, and promote international cooperation in the field of asylum and resettlement.⁵¹ Conclusion 18 (1980) calls on governments to provide repatriating refugees with necessary travel documents, visas, and entry permits in order to establish their nationality.⁵²

Issues of documentation are of particular concern in large-scale influx and protracted refugee situations. Conclusion 22 (1981) seeks to provide recommendations on the protection of asylum seekers in such situations.⁵³ EXCOM cites the necessity of ensuring the full protection of refugees and the enforcement of basic standards of treatment, including the full enjoyment of rights set out in the Universal Declaration of Human Rights and the provision of all necessary assistance including food, shelter, and basic sanitary and health facilities. Conclusion 22 goes on to stress that refugees in large-scale influx situations should enjoy free access to courts of law and other administrative authorities; that they should be located in areas a reasonable distance from the border so as to not be involved in subversive activities against their country of origin; that unity of the

⁵⁰ "A thematic compilation of Executive Committee Conclusions.", p. 144.

⁵¹ Final act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. *United Nations* (1951), <<http://www.unhcr.org/3b66c2aa10.html>>.

⁵² *Ibid.*, p. 446.

⁵³ *Ibid.*, p. 276.

family should be preserved; and lastly, that "all steps should be taken to facilitate voluntary repatriation."⁵⁴ The responsibilities of the Polisario Front and Algeria towards the refugees are clearly delineated in these conclusions, yet fulfilling those duties remains unanswered.

EXCOM Conclusions regarding Protracted Refugee Situations (PRS) are also pertinent to the case of the Sahrawi refugees in Algeria although the specific PRS initiative is targeted to a limited number of refugee situations depending on prospects for success, protection needs, host state perspective, and the costs and benefits. The Sahrawi refugees in Algeria have not been included in the PRS initiative even though it would appear that their situation warrants such treatment. Despite UNHCR's conservative approach to applying PRS to the Sahrawis, EXCOM conclusions provide a basis for the rights of refugees in such situations and PRS meetings provide a possible forum for UNHCR involvement in the future, if the Sahrawi refugees in Algeria could be established as a PRS under this initiative.

Conclusion 99 (2004) stresses "the fundamental importance of early registration as a key protection tool and the critical role of material, financial, technical, and human resources in assisting host countries in registering and documenting refugees and asylum seekers, particularly developing countries confronted with large-scale influxes and protracted refugee situations."⁵⁵ Yet Algeria has repeatedly declined to allow the UNHCR to conduct a census of the refugees in the camps and provide them valid international identity and travel documentation. Conclusions 100 (2004) and 102 (2005) stress the need for international cooperation among states and the UNHCR in addressing the specific needs of refugees in protracted situations. The June 2004 PRS Standing Committee Meeting noted that basic refugee rights remain unfulfilled after years in exile, and that refugees in these situations are unable to break free from enforced reliance on external

⁵⁴ "A thematic compilation of Executive Committee Conclusions.", p. 277.

⁵⁵ *Ibid.*, p. 373.

assistance—clearly the case with the Sahrawi refugees. Also pertinent is the note of the Standing Committee that PRS cases stem from political impasses, and that while initial warehousing might potentially save lives in the emergency phase of a refugee crisis, continued warehousing only wastes lives in the long term as current policies perpetuate poverty, voicelessness, and powerlessness. The Standing Committee also indicated that camps can serve as incubators for future problems by nurturing instability and conflict. Large disaffected populations relying on subsistence level handouts are prime targets for recruitment into armed groups.⁵⁶ This is a particularly worrisome situation in the Sahel region where radical terrorist groups have become substantially more active in the last few years. The June 2008 EXCOM Standing Committee Meeting on Protracted Refugee Situations highlighted the need to capitalize on emerging new opportunities for solutions. Noting that long-term solutions must be matched by interventions to ameliorate the present situations of refugees, EXCOM cited the need for the UNHCR to ensure that refugees can enjoy basic rights and engage in productive activities as a basis for sustainable livelihoods.⁵⁷

Economic Self Sufficiency

Other EXCOM conclusions have reinforced the importance of employment, self sufficiency, and self reliance for refugees as a means to combat food insecurity. Conclusions 50 (1988), 64 (1990), and 95 (2003) call upon states to remove obstacles to refugee employment, ensure that the needs of refugees are fully understood and provided for, specifically with regard to women and girls, and strengthen protection capacities in host countries as well as initiatives enhancing the ability of refugee communities to become self reliant.⁵⁸ Conclusion

⁵⁶ "Protracted Refugee Situations." *Executive Committee of the High Commissioner's Programme* EC/54/SC/CRP.14 (10 June 2004): 1-12, p. 3.

⁵⁷ "Protracted Refugee Situations: Revisiting the Problem." *Executive Committee of the High Commissioner's Programme* EC/59/SC/CRP.13 (2 June 2008): 1-8, p. 3.

⁵⁸ "A thematic compilation of Executive Committee Conclusions.", pp. 180-181.

104 (2005) notes the significance of self reliance in the economic dimension of local integration and refugee dignity and recognizes that the protection of basic civil, economic, and social rights, including freedom of movement and the right to engage in income-generating activities is essential to achieving self reliance. It urges states to facilitate refugee employment through education, skills development, and an examination of national employment laws.⁵⁹ None of these conclusions or recommendations have found a sympathetic audience with either the Algerian or Polisario Front authorities.

Refugee Women and Children

As noted, increased self reliance and refugee protection for women and children is a particular priority as they are often the most vulnerable victims of humanitarian crises. The urgency of protecting refugee children's rights as enshrined in the 1989 Convention on the Rights of the Child (CRC) has been consistently articulated by EXCOM. Conclusions 47 (1987), 59 (1989), and 84 (1997) deplore the exposure of refugee children to forced military recruitment, family separation, and political exploitation, and call for national and international action to prevent such violations.⁶⁰ Conclusion 47 reaffirms the fundamental right of refugee children to nationality and education, and calls upon states to take appropriate measures to register children born in camps and to ensure that all children benefit from primary education of a satisfactory quality.⁶¹ It notes in particular the detrimental effects that extended stays in camps have on the development of refugee children. Conclusion 59 "notes with serious concern the increasing incidence of nutritional deficiency diseases and malnutrition amongst refugee children dependent upon food aid and calls upon the UNHCR to initiate as a matter of urgency formal discussions with relevant United Nations bodies, donors and other humanitarian organizations to develop collaborative strategies for alleviating the nutritional problems

⁵⁹ "A thematic compilation of Executive Committee Conclusions.", pp. 181-182.

⁶⁰ *Ibid*, p. 217.

⁶¹ *Ibid*, pp. 215, 218.

of refugee children.”⁶² It also reiterates the link between education and durable solutions, and encourages the UNHCR to strengthen its efforts in assisting host-country governments to ensure the access of refugee children to education. Conclusion 87 calls upon states to respect and observe rights and principles in accordance with international human rights and humanitarian law, especially for safeguarding child and adolescent refugees, including the rights of children to education, adequate food, and the highest standards of health, and the rights of children affected by armed conflict to special protection from risks of exploitation.⁶³ It urges states to prevent family separation, safeguard the physical security of children by taking steps to preserve the civilian character of camps, and by ensuring access to education. Conclusion 102 (2005) stresses the importance of refugee childhood education in line with the Millennium Development Goals and reiterates the necessity of early and effective registration in promoting protection for refugee children.⁶⁴ Conclusion 107 (2007) reinforces the importance of putting the child’s best interests first via preventing family separation, enhancing the use of resettlement as a protection and durable solutions tool, and using a rights-based approach to protect the needs and international rights of children.⁶⁵ This includes providing children with individual documentation and taking the appropriate measures to prevent the recruitment of children for military purposes.⁶⁶ Conclusion 107 also emphasizes the need to address food insecurity and malnutrition by adopting programs to closely monitor food distribution, creating targeted nutrition programs for children and women, and reinforcing self-reliance initiatives.

Each of the conclusions noted here have specific application to the Sahrawi children in the Algerian camps. There are very limited educational opportunities available to children in these camps where

⁶² Ibid, p. 77.

⁶³ “A thematic compilation of Executive Committee Conclusions.”, p. 218.

⁶⁴ Ibid, p. 80.

⁶⁵ Ibid, p. 75.

⁶⁶ Ibid, pp. 90-91.

the third and potentially fourth generation of children now live after their families have been warehoused for more than 30 years. Family separation issues are also especially important as many families in the camps have been split apart over the past three decades with different elements of the nuclear family living either in the camps, in Morocco or elsewhere. The UNHCR family visit program between the camps and Morocco was designed to help alleviate some of the family issues caused by these long-term separations, but the very limited nature and availability of the program has hardly made a dent in the need for family reunification. More than 12,000 people in the camps and in Morocco are still on waiting lists to participate. At current rates, it would be another decade, at a minimum, before these families could enjoy even a single visit with their immediate family members from whom they are separated.

With regard to women, Conclusions 39 (1985), 54 (1988), and 64 (1990) stress the need to take all necessary measures to ensure that women receive adequate protection, both physically and materially, through self-sufficiency programs and education.⁶⁷ Recognizing that women in refugee camps need special protection, EXCOM urges states to target programs especially for women consistent with their rights under The 1979 Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and other international human rights bodies. Conclusion 105 (2006) focuses on specific actions to ensure the protection of women and girls who face particular problems in exercising their rights because of their gender. EXCOM recommends a wide range of protection strategies to states since they hold primary responsibility for protecting women and girls, including the strengthening of identification, assessment, and monitoring programs relating to the risks faced by women and girls in the wider protection environment, the individual documentation of refugee women, and the establishment of codes of conduct in camps to protect

⁶⁷ “A thematic compilation of Executive Committee Conclusions.”, pp. 495-499.

women.⁶⁸ Without verification to the contrary, none of these protections are being afforded to women and girls in the camps. Indeed, there are credible reports of women being sequestered in prison facilities for becoming pregnant out of marriage and equally credible reports of women in these facilities being abused by their jailers.⁶⁹

Refugee Protection

Other conclusions reaffirm the UNHCR's protection responsibilities under humanitarian law. Conclusions 68 (1992) and 75 (1994) define the primary nature of UNHCR's protection responsibilities as a non-political, humanitarian, and social function within the framework of international refugee law, with due regard for human rights and humanitarian law.⁷⁰ Conclusions 81 (1997), 84 (1997), and 98 (2003) call on all states to take necessary measures to ensure that refugees are effectively protected through national legislation in compliance with their obligations under international human rights and humanitarian law instruments bearing directly on refugee protection.⁷¹ EXCOM also stressed the importance of preserving the humanitarian character of refugee camps and settlements in Conclusions 84 and 94 (2002):

Recognizing that the presence of armed elements in refugee camps of settlements; recruitment and training by government armed forces or organized armed groups; the use of such camps, intended to accommodate refugee populations on purely humanitarian grounds, for the interment of prisoners of war; as well as other forms of exploitation of refugee situations for the purpose of promoting military

objectives are likely to expose refugees, particularly women and children, to serious physical danger, inhibit the realization of durable solutions, in particular voluntary repatriation, but also local integration, jeopardize the civilian and humanitarian characters of asylum and may threaten the national security of states, as well as inter-state relations.....acknowledging that host states have the primary responsibility to ensure the civilian and humanitarian character of asylum by maintaining law and order, curtailing the flow of arms into refugee camps, preventing their use for the internment of prisoners of war, as well as through the disarmament of armed elements, and the identification, separation and internment of combatants....[EXCOM] recommends that action be taken by states to ensure respect for civilian character guided by the following principles: refugee camps should benefit from adequate security arrangements to deter infiltration by armed elements and the strengthening of law and order, states should ensure that measures are taken to prevent the recruitment of refugees by organized armed groups, in particular of children.⁷²

There are no indications that these recommendations are being implemented by Algeria or the Polisario. Young men in the camps are subject to obligatory conscription, military training, and military service by the Polisario Front. Armed elements of the Polisario Front are common features in the camps. For more than 25 years, thousands of Moroccan prisoners of war were also kept in or near the camps and forced to labor among the refugees.

Most recently, at EXCOM's 56th Session (2005), interventions by NGOs noted the importance of the campaign against refugee

⁶⁸ Ibid, pp. 500-505.

⁶⁹ "Charge: Sahara Tribal Women Jailed For Adultery."

⁷⁰ "A thematic compilation of Executive Committee Conclusions.", p. 214.

⁷¹ Ibid, p. 215.

⁷² "A thematic compilation of Executive Committee Conclusions.", pp. 296-298.

warehousing and declared that anti-warehousing campaigns should be linked to poverty reduction strategies and the Millennium Development Goals. Acknowledging that innovative measures were required to ensure that refugee needs are met, the summary record stated that, “regional partnerships between advocates, NGOs, refugees, and the UNHCR should be consolidated so as to resolve protracted refugee situations. Refugee communities must be empowered to have some autonomy in camps. Self reliance should be encouraged as early as possible and the failure to do so by states should be addressed.” As evidenced by this summary record, the goals of the refugee warehousing campaign are unquestionably linked to the UNHCR’s objective of finding durable solutions.⁷³ While all of these initiatives certainly show great effort on the part of the UNHCR, they all suffer from the same fundamental problem: lack of enforceability and political will on the part of the UNHCR to confront uncooperative states and to seek political assistance of other Contracting States to pursue necessary initiatives to end these long term warehousing situations. This also remains the case with international human rights law and international humanitarian law – two other potentially useful instruments to promote refugee rights.

⁷³ “Summary Record of the 597th Meeting.” *Executive Committee of the Programme of the United Nations High Commissioner for Refugees* A/AC.96/SR.597 (25 October 2005): 1-15, p. 10.

INTERNATIONAL HUMAN RIGHTS LAW, INTERNATIONAL HUMANITARIAN LAW, AND THE PROTECTION OF REFUGEES

The 1948 Universal Declaration of Human Rights is the primary source of human rights standards and confers several important rights also granted in the Convention and Protocol. Article 13 of the Universal Declaration protects freedom of movement as follows: 13 (1) Everyone has the right to freedom of movement and residence within the borders of each state; 13 (2) Everyone has the right to leave any country, including his own, and to return to his country.⁷⁴ Article 15 states that everyone has a right to a nationality and that no one shall be denied the right to change his nationality. Article 17 grants people the right to own property, and Article 20 guarantees right to freedom of association. Article 23 establishes the basic right to work, to just and favorable conditions of work, and to protections against unemployment. Article 25 states that everyone has the right to secure an adequate standard of living including food, clothing, housing, medical care, and necessary social services; and Article 26 states that everyone has the right to education. Algeria is a signatory of the Declaration.

The 1966 International Covenant on Civil and Political Rights (ICCPR) further strengthens the rights clarified in the Universal Declaration, and reaffirms the rights specifically guaranteed to refugees in the 1951 Convention and 1967 Protocol. Article 12 protects the right to freedom of movement, but does not regard it as an absolute right: 12 (1) Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence; 12 (2) Everyone shall be free to leave any country, including his own; 12 (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to the protection of national security, public order, public health, morals, or the rights or freedoms of others, and are consistent

⁷⁴ Universal Declaration of Human Rights, Article 13. *United Nations* (1948).

with other rights recognized in the present Covenant.⁷⁵ Despite this derogation clause, the presence of the right to freedom of movement in this covenant highlights that it is a basic human right that must be respected. The ICCPR also grants the right to peaceful assembly and association (Articles 21, 22) and the right of children to acquire a nationality and be properly registered (Article 24). Algeria is a signatory to the ICCPR, yet Sahrawi refugees in the camps are denied these rights.

Several other instruments add force to these international human rights documents. The 1966 International Covenant on Economic, Social, and Cultural Rights promotes the rights of citizens to work, receive social security, and obtain an adequate standard of living, including adequate food, clothing, and housing. It also reaffirms the right of everyone to an education, with a view of achieving full primary enrollment.⁷⁶ The 1979 Convention on Elimination of All Forms of Discrimination against Women (CEDAW) recognizes the equal rights of women before the law, and promotes their rights to education, fair employment, and a nationality.⁷⁷ Additionally, the 1989 Convention on the Rights of the Child (CRC) specifies rights applicable to children, many of which EXCOM articulated in its conclusions pertaining to children. Of particular importance to Sahrawi children are Article 10, which protects freedom of movement, and Article 22 (1), which articulates the rights of refugee children: "State parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accord with applicable international or domestic law shall....receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention."⁷⁸ Moreover, Article 7 (1) of the CRC

⁷⁵ International Covenant on Civil and Political Rights, Article 12. *United Nations* (1966).

⁷⁶ International Covenant on Economic, Social, and Cultural Rights, Articles 6,9,11,13. *United Nations* (1966).

⁷⁷ Convention on Elimination of All Forms of Discrimination against Women, Articles 9,10,11. *United Nations* (1979).

⁷⁸ Convention on the Rights of the Child, Article 22. *United Nations* (1989).

protects the right of a child to acquire a nationality and outlines measures that should be taken to facilitate this process via naturalization or otherwise to confer the nationality of the state in which he is born/living.⁷⁹ This does not mean that the child is entitled to citizenship based on the place of birth (*jus soli*), merely that every person has the right to a nationality of the state in whose territory he was born *if* he does not have the right to any other nationality. The UNHCR clarified this right as follows: "States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born."⁸⁰ To ensure that this right is upheld, registration after birth is necessary.

This aspect of international law is interesting given its potential applicability to Sahrawi children born in refugee camps. It raises a question about the validity of Polisario's "territorial jurisdiction" and Algerian responsibility under international law. Unfortunately, the ambiguity in international law as to what constitutes a legitimate "nationality" has been largely unexplored. Yet it does highlight the responsibility of the state to ensure proper and effective registration of all relevant elements of identity, and to grant access to those records to children and their parents, ideally by way of an identification card, which is the only true way to validate identity during displacement.

International humanitarian law, which applies to the territory of the parties to a given conflict, contains rules, whether embodied in treaties or based on custom, which aim to contain the horrors of war by limiting the means and methods of warfare and by protecting victims.⁸¹ Since the Sahrawi refugees were displaced by war, how does the law of armed conflicts, which was adopted to limit the evils of war, protect

⁷⁹ Doek, Jaap E. "The CRC and the Right to Acquire and to Preserve a Nationality." *Refugee Survey Quarterly* 25:3 (2006): 26-32, p. 26.

⁸⁰ Ibid, p. 27.

⁸¹ Bugnion, François. "Humanitarian Law and the Protection of Refugees." *Refugee Survey Quarterly* 24:4 (2005): 36-42, p. 37-38.

refugees? The primary legal instrument of international humanitarian law, the Geneva Conventions of 1949 and their additional protocols contain only a few provisions relating to refugees. Since most refugees are civilians, they are protected by laws pertaining to civilians during wartime. Common Article 3 of the Geneva Conventions protects civilians (“persons taking no active part in hostilities”) from indiscriminate violence and states that in all circumstances they shall be treated without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.⁸² This article has relevance if refugees/civilians with contrary political views to those of the leadership, are treated discriminately. Article 17 of Additional Protocol II prohibits the displacement of the civilian population for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.⁸³ These Articles may have special relevance in those cases where refugees claim to have been forcibly relocated to the camps by the Polisario. Despite existing eyewitness testimony, it is difficult to determine the number of those who were forcibly moved into the camps because of the lack of unfettered access to the refugees in the camps.

In conclusion, international human rights and humanitarian law provide viable tools for reinforcing refugee law and making a stronger case for the shared responsibility in the denial and non-enforcement of the rights of the Sahrawi refugees. The state actor (Algeria), the non-state actor (the Polisario Front), and the inter-governmental agency (the UNHCR), all have specific obligations under the laws discussed in this section that are being inadequately observed and often ignored. The UNHCR, by not only failing to protect refugees, but also failing to forthrightly acknowledge the gaps between the requirements of the 1951 Convention and the treatment of the Sahrawi refugees in Algeria, must accept some of the responsibility and change its current policies accordingly.

⁸² Bugnion, pp. 37-38.

⁸³ Ibid

UNHCR RESPONSIBILITIES AND FAILURES

In assessing the responsibility and failures of the UNHCR in the situation of the Sahrawi refugees in Algeria, it is necessary to view its policies in light of its mandate. The primary function of the UNHCR, under its mandate, is “to provide international protection aimed at safeguarding the rights and legitimate interests of refugees.”⁸⁴ The UNHCR was also specifically mandated to facilitate durable solutions to refugee problems through one of three methods: repatriation to their country of origin when conditions were permitting, resettlement in a third country or integration into the society of the host country. Material assistance was to be distributed only as host governments requested and then only with the approval of the UN General Assembly. In choosing to focus on humanitarian relief and refugee material needs rather than refugee protection and rights, the UNHCR has not observed its initial mandate of rights promotion, and has avoided dealing with the political, economic, and social environment in which it works.⁸⁵ Further, the UNHCR has neglected its mandate to work towards a durable solution through the approved methods in the mandate with respect to the Sahrawi refugees in the Algerian camps. The UNHCR makes no effort to identify or facilitate the return to Morocco of those refugees who might wish to exercise this option. Evidence indicates that the UNHCR has made no visible attempt to persuade Algerian authorities to allow the refugees to settle elsewhere in Algeria outside the camps, and very few Sahrawi refugees have been resettled elsewhere with the exception of those who were able to establish some other nationality or successfully applied for humanitarian residence status – mostly in Spain.

While the UNHCR has indeed been constrained by states and their lack of political will, the notion that it is a passive mechanism with no independent agenda is incorrect.⁸⁶ Even though respect for

⁸⁴ Smith. “Development.”, p. 1481.

⁸⁵ Ibid, p. 1483.

⁸⁶ Loescher, Gil. “The UNHCR and World Politics: State Interests vs. Institutional

state sovereignty and power has placed the UNHCR in a compromised position, it has an obligation to pressure governments into action and cooperation. By yielding to state interests, the UNHCR has compromised its autonomy and its role in providing refugees with mandated protections. "International law, which provides the essential framework of rule and principle for the protection of refugees, has been relegated to an inferior position vis-à-vis the political concerns of UN member states."⁸⁷ This has grave implications. By limiting itself to giving material assistance to political refugees, the UNHCR has lost the capacity/mandate to insist on protection for the refugees. The UNHCR has a special responsibility under its existing mandate to ensure that refugee rights are respected by governing authorities. It must not abandon this responsibility by claiming that it needs local cooperation to deliver humanitarian assistance to a refugee population that has now been warehoused for more than three decades.

Warehousing

There is nothing explicit in the 1951 Convention, 1967 Protocol, or mandate of the UNHCR about the warehousing of refugees in camps. However, warehousing, which curtails many of the rights discussed in this study, goes against the basic tenets of refugee law and the UNHCR mandate, in that it does not facilitate local integration, the camps are not a durable solution, and violations of international law are a reality within the camps. This violation of refugee rights is what the USCRI's anti-warehousing campaign is based on, defining warehoused refugee populations as those of "10,000 or more restricted to camps or segregated settlements or otherwise deprived of rights to freedom of movement or livelihoods in situations lasting five years or more."⁸⁸ As such, warehousing is a violation of international refugee

law, and, based on this definition, the UNHCR has been complicit in its violation. Furthermore, warehousing is wasteful, counterproductive, unlawful, and morally unacceptable.⁸⁹ Isolating refugees in camps where they are subject to arbitrary control and unable to enforce their rights goes against the principles upon which the UNHCR was founded.⁹⁰ For the UNHCR and other donors, warehousing has "practical advantages," such as the facilitation of service delivery, easy humanitarian access, and cost effectiveness for central relief operations, particularly in cases of mass influx. In theory, encampment can also help humanitarian agencies monitor refugee status and ensure transparency and accountability in aid distribution.⁹¹ However, the rationale of pursuing the administrative convenience of aid agencies does not justify human rights violations and what amounts to detention for the refugees.

The Lack of Transparency in Aid Distribution

Even if the UNHCR is an apolitical institution, it is still responsible for monitoring aid distribution and ensuring that aid is given to appropriate recipients. In the Algerian camps, aid is distributed through the Polisario Sahrawi Red Crescent Society. The UNHCR and the WFP, the two international agencies charged with these responsibilities, have limited oversight regarding the transparency of the aid distribution process (see the 2005 reports of the Inspectors General of the WFP and the UNHCR noted above). The refusal of Algeria to allow the international documentation of the refugees has prevented the UNHCR from profiling their humanitarian and protection needs or monitoring aid distribution. As the reports demonstrate, the aid process has been politicized and corruption and abuse flourish. In March 2008, Interfaith International testified before

Autonomy." *International Migration Review* 35:1 (Spring 2001): 33-56, p. 34.

⁸⁷ Bhatia, Michael. "Repatriation under a Peace Process: Mandated Return in the Western Sahara." *International Journal of Refugee Law* 15 (2003): 786-822, p. 790.

⁸⁸ "Warehoused Refugee Populations." *United States Committee for Refugees and Immigrants* (2008).

<http://www.refugees.org/uploadedFiles/Investigate/Publications_&_Archives/WRS_Archives/2008/warehoused%20refugee%20populations.pdf>.

⁸⁹ Smith, "Warehousing Refugees," p. 38.

⁹⁰ Ibid, pp. 38-39.

⁹¹ Black, p. 5.

the UN Human Rights Council that the Polisario diverted and sold aid to other countries and spent lavishly on military parades and festivals, which contribute to their ability to maintain control over the population in the name of national unity and self determination.⁹² The Polisario not only uses aid distribution as a means of social and political control, but humanitarian aid has also allowed the Polisario to use its own income for other purposes, rather than for caring for its population. This situation begs the question: Is aid supporting the Polisario or the refugees? If it is the former, then the UNHCR and WFP bear important responsibility for fulfilling their mandates, protecting the refugees, and at least minimizing the abuse and fraud in the aid system.

Militarization and Politicization of the Camps

The UNHCR has allowed the camps to be militarized by the Polisario. As Michael Van Bruane, a scholar who published an article on Tindouf as a protracted refugee situation for the UNHCR's Evaluation and Policy Analysis Unit, has noted with reference to Sahrawi refugees, "Tindouf was obviously selected for political and military, rather than humanitarian reasons. In some protracted situations, elderly, charismatic, and historical leadership tend to embody rigid political agendas, needlessly detrimental to the well being of their own vulnerable population...A good example is that although Tindouf is totally unsuitable for the support of a refugee population, any idea of temporary scattering to more fertile areas is unmentionable."⁹³

There is a notable Algerian army and air force presence throughout the region as well as Polisario military encampments, which violate the UNHCR's mandate to maintain the humanitarian

and civilian character of the camps.⁹⁴ Algerian police and security forces work in cooperation with the Polisario on guarding the camps and controlling freedom of movement. It is a violation of international law when authorities prevent repatriations and maintain power in the camps through the control over valuable resources.⁹⁵ While armed conflict has been suspended since 1991, the possibility of future security issues arising from the militarization of camps cannot be overlooked. This is especially troubling in that the Polisario continues to threaten a resumption of hostilities, which requires diverting limited resources to military purposes. As Gil Loescher, a Visiting Professor at the Refugee Studies Centre at the University of Oxford, has noted, "Relief supplies provided by humanitarian organizations can feed war economies, thus helping to sustain and prolong war."⁹⁶

Furthermore, according to a review by the Immigration and Refugee Board of Canada, during the war against Morocco, the Polisario recruited boys age 12 to 17 for educational and military training. At age 17, boys were forcibly recruited into the armed forces. The Polisario claims that following the ceasefire, conscription was voluntary, but the fact remains that military recruitment did occur in camps under the watch of the UNHCR.⁹⁷ According to a USCRI country report from 2008, as well as credible eyewitness testimony from refugees who have fled the camps within the last two years, the Polisario maintains this system of forced military training, both in Tindouf and Cuba, which is again in breach of international covenants.⁹⁸

⁹⁴ Bhatia, p. 291.

⁹⁵ Jacobsen, Karen. "A Framework for exploring the political and security context of refugee populated areas." *Refugee Survey Quarterly* 19:1 (2000): 3-21, p. 9.

⁹⁶ Loescher, p. 45.

⁹⁷ "Algeria: Whether the Polisario had mandatory military service; whether the Sahrawis in the camps near Tindouf need permission from Polisario to leave town; if so, consequences if some leave without permission (1991-2000)." *Immigration and Refugee Board of Canada DZA34602.E* (18 July 2000): 1-2, p. 2.

⁹⁸ "Algeria." *United States Committee for Refugees and Immigrants*.

⁹² "Algeria." *United States Committee for Refugees and Immigrants*.

⁹³ Smith, "Warehousing Refugees.", p. 49.

Durable Solutions?

In addition to taking what appears to be an apolitical stance on the protection of refugee rights, the UNHCR has also used impartiality claims to justify any lack of progress in achieving a durable solution to the situation. In its 2006 Country Operations Plan for Algeria, the UNHCR justified its lack of progress in promoting durable solutions by citing a difficult political environment in Algeria, which “is not conducive to any reasonable initiatives other than the routine assistance program for Western Sahara refugees.”⁹⁹ The report went on to say that the case was unique due to its political nature and that the success of voluntary repatriation depended on the progress of pending political issues and an agreement between the parties to a political solution to the conflict.

Regardless of its justifications, the UNHCR has failed in its primary mandate to protect refugee rights. Options such as promoting local integration and self sufficiency, which would allow Sahrawi refugees the option of settling elsewhere within the country to pursue their lives pending a solution to the political conflict, are not pursued with Algeria. Attempts at self reliance by individual Sahrawi refugees confined to the camps are constantly frustrated by the strict controls on freedom of movement, access to markets and goods, and other impediments such as lack of individual documentation of their status. Neither has the UNHCR seriously attempted to establish any secure process, free of intimidation, which would allow refugees in the camps to seek voluntary repatriation. In a majority of similar warehousing refugee situations elsewhere in the world, the UNHCR has advocated repatriation as the best solution while running assistance operations on

⁹⁹ “Algeria: Country Operations Plan.” *UNHCR* (2006): 1-8, p. 2.

an emergency basis. However, in the case of the Sahrawi camps in Algeria, the UNHCR continues to stand by and take no visible action to institute any process for voluntary repatriation of refugees despite clear evidence that many of the refugees would likely accept such a durable solution if it were freely available to them. Several thousand Sahrawi refugees already have fled the camps at considerable risk to themselves to resettle elsewhere or return to Morocco, where they are accepted freely and reestablish themselves as Moroccan citizens. A continuing tragedy is the enduring family separations, many of which could be ended if the refugees were allowed to repatriate with the UNHCR’s active assistance. In only rare instances have entire families been able to escape the camps at the same time through surreptitious means. Rather than raise international awareness of these circumstances and appeal for assistance from the UN Security Council, which remains focused on the peacekeeping mission in the Western Sahara, the UNHCR has evidently chosen to abandon an active effort to effectively observe the rights of the Sahrawi refugees in order to sustain minimally acceptable conditions for the delivery of basic assistance requirements. When subsistence programs are a substitute for defending refugee’s rights, the integrity of the UNHCR mandate seems precarious.

Documentation

As previously discussed, the UNHCR is supposed to undertake rule of law activities in the areas of citizenship, property, amnesties, documentation, financial and legal support for drafting of legislation, implementation and monitoring of the enforcement of refugee law, and promotion of the issuance of identity documents and other documentation.¹⁰⁰ In the case of Western Sahara, it is wanting on all of these issues. This has been especially critical in the case of providing documentation for individual refugees in the camps. The UNHCR has periodically requested permission from the government of Algeria and the Polisario Front to be allowed to conduct a census of

¹⁰⁰ Wolfson, p. 56.

the refugee population and provide individual refugee identification, as is the norm in most similar cases of refugees who are being warehoused in camps on a long-term basis. However, both Algeria and the Polisario Front have refused to allow the UNHCR to go forward with a documentation process. The UNHCR has, to date, failed to bring this clear violation of refugee rights to the attention of the Security Council with a formal request for assistance to move the project forward. As a safety measure, providing documentation gives some measure of protection for refugees from possible abuse by the authorities who have jurisdiction over them. This is especially the case when local authorities undertake strict measures to ensure conformity with the objectives of a group, such as the Polisario Front. Beyond this critically important security consideration, documentation for individual refugees is also essential for the UNHCR, the WFP, and other international relief organizations to determine how many refugees need adequate food and non-food humanitarian assistance. The waste, fraud, and abuse of relief being provided to Sahrawi refugees in Algeria over the last three decades is well documented in the Inspector General reports noted earlier in this report, and has also been documented by individual accounts of refugees who have fled the camps as well as other international humanitarian relief and human rights organizations. One such independent report, completed by France Libertés, reviewed both the situation of the Moroccan prisoners of war held by the Polisario Front and the fraud involved in the provision of relief to the refugees.¹⁰¹ Again, despite widespread knowledge of this abuse among both public and private relief organizations, neither the UNHCR nor the WFP have sought the assistance of the Security Council to protect supplies for the refugees through transparent operations and documentation.

¹⁰¹ "The Conditions of Detention of the Moroccan POWs detained in Tindouf (Algeria)."

STATE RESPONSIBILITY: ALGERIA

Ultimate responsibility for the status of the refugees rests with state actors, as the provisions of international treaties and customary international law find outlets in national legislation. The primary actors in enforcing refugee law are states themselves, which may often be those guilty of creating the initial refugee situations. Refugees, therefore, even under international law, are subject to the political will of states, even though, in theory, under law they are entitled to international protection from such states. Algeria has consistently derogated from its responsibilities under international law by claiming that it does not hold authority over the camps, since it granted administrative territorial jurisdiction over the camps to the Polisario in 1976. The legality of this decision under international law is tenuous and unclear, since *jus cogens* for the recognition of governments/non-state actors has not yet been established. However, it is clear Algeria has a moral and likely also a legal duty to care for persons living within their defined international legal borders, and it has a duty to protect them from human rights violations perpetuated in its territory.

In terms of its responsibilities under international law, Algeria did legally accept Sahrawi refugees into its territory. A 1963 decree established the Algerian Office for Refugees and Stateless Persons (BAPRA), located in the Ministry for Foreign Affairs. While it originally requested guidance from the UNHCR, BAPRA never followed through on the request. BAPRA stipulates its recognition of those groups the UNHCR has already recognized. With regard to the Sahrawi refugees, Algeria admitted them on a *prima facie* basis. It is important to note that under international law, the basis for granting such status is to provide refugees with immediate protection and humanitarian aid in situations of mass influx.¹⁰² Algeria's recognition, therefore, granted refugees the rights and protections entitled to them under international law. There

¹⁰² Rutinwa, Bonaventure. "Prima facie status and refugee protection." *UNHCR Working Paper 69* (October 2002): 1-27, p. 1.

are two schools of thought as to whether or not *prima facie* status entitles refugees to complete or temporary protection. According to some, the concept refers to provisional consideration without the requirement to complete status determination formalities to establish definitely the qualification or not of each individual. Their individual status thus remains presumptive until there is a decision to the contrary.¹⁰³ The second group claims that the determination that a group of people are refugees grants refugees individual refugee status as part of that group. These refugees can benefit from international protection and assistance from the UNHCR, and can retain their status. In this latter line of thinking, *prima facie* status is presumptive, yet conclusive.

Unfortunately, the UNHCR and EXCOM have remained silent on the procedural standards for granting group status. However, they do recognize this type of admission as a standard and necessary procedure for protection of refugees in situations of large-scale influx. Conclusion 22 (1981) sets minimum standards for refugees in large scale arrivals and explicitly states that asylum seekers in mass influxes “should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health and public order; and they should enjoy the fundamental civil rights internationally recognized, in particularly those set out in the Universal Declaration of Human Rights.”¹⁰⁴ Other EXCOM conclusions confirm the importance of socio-economic rights, including employment and educational opportunities. It is clear that in long-term refugee circumstances such rights are essential, and the receiving state has a clear obligation under the law to provide them, even when eventual voluntary repatriation is the expected long-term solution.¹⁰⁵

What is interesting in this case is that it was Algeria, as a state party, that was responsible for international recognition of Sahrawi

¹⁰³ “*Prima facie* status and refugee protection.”, p. 3.

¹⁰⁴ Rutinwa, p. 15.

¹⁰⁵ *Ibid*, p. 23.

refugees when it voluntarily admitted them to its territory. That Algeria later attempted to change course and claim that these same refugees are the sole responsibility of the UNHCR and the Polisario does not relieve Algeria of its responsibilities towards these refugees and the protection of their rights under international conventions to which Algeria is a signatory.

Algeria has also been negligent in enacting national legislation to protect and enforce refugee rights. The Algerian 2008 National Poverty Strategy did not include a strategy for Sahrawi refugees, highlighting that Algeria maintains its claim that the refugees are the responsibility of the UNHCR and the Polisario Front. Algeria has also not fulfilled its international promises to reduce statelessness and provide the Sahrawi refugees with an internationally recognized nationality. Chapter 11 of the Algerian Nationality Law of December 1970 allows claims to nationality based on descent and birth as follows: Article 6 grants nationality by descent to children born of an Algerian father, an Algerian mother and unknown father, or Algerian mother and stateless father. Article 7 grants nationality by birth to children born in Algeria of unknown parents, however the child shall not be considered to have ever been Algerian if, before he comes of age, it is established that he is also of foreign descent and if he possesses the nationality of his foreign parent in accordance with the law of that country.¹⁰⁶ Children born in refugee camps thus have no rights under the legislation, even though they were born on the internationally recognized territory of Algeria. In its 2009 Global Appeal, the UNHCR stated, “The most critical need in Algeria is increasing protection space though the adoption of refugee legislation and asylum procedures that are consistent with international standards,”¹⁰⁷ thus framing Algeria’s responsibility in this regard. Some unknown number of Sahrawi

¹⁰⁶ “Algeria: Whether a Sahrawi who lived several years in the Sahrawi camps in Algeria, who was born in Algeria to nomadic parents, themselves born in Western Sahara, can obtain Algerian citizenship or a permanent resident’s visa in Algeria.” *Immigration and Refugee Board of Canada* DZA35560.E (18 October 2000): 1-2, p. 1.

¹⁰⁷ “Algeria.” *UNHCR Global Appeal 2009 Update*, p. 230.

refugees whose tribal origins are in the region surrounding Tindouf and who are currently living in the camps in Algeria may also have a legitimate claim to Algerian nationality. Algeria granted nationality to most Sahrawis whose origins were in this region following the withdrawal of French colonial forces. It did so in an attempt to buttress its own territorial claim to a region that had few internationally recognized boundaries other than those established by French and Spanish colonial authorities in the region. In 1966, Algeria updated its own civil registry for the region based on civil documentation that had been provided by the departed French colonial authorities and the civil documents that had been issued by local Algerian authorities since the departure of the French colonial administration. Some Sahrawis who were aware of this and who had been living in the camps subsequently were able to obtain Algerian national identification documents as well as an Algerian passport and use this documentation to leave Algeria and return to Morocco. However, the number of refugees in the camps who might be in similar circumstances cannot be known without a reliable census, documentation of the camp residents, and open access to Algerian civil registry documentation.

Under the convention, Algeria is required to collaborate with the UNHCR and enforce its recommendations. Article 35 states that “Contracting States undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the applications of the provisions of this Convention,” including the provision of reports and statistical data regarding the condition of refugees, the implementation of the Convention, and laws, regulations, and decrees relating to refugees.¹⁰⁸ Algeria is thus responsible for doing everything in its capacity to support the UNHCR and thereby fulfill its obligations under international refugee law. Doing so is vital to the well being of Sahrawi refugees because “most of the legal and social

¹⁰⁸ Convention relating to the Status of Refugees, Article 35.

disabilities suffered by refugees can only be overcome by state action – by changes in domestic law and in administrative practice.”¹⁰⁹ Despite its denials, under international law, Algeria, as a state, is responsible for the welfare of the Sahrawi refugees in its territories.

What is most remarkable about this situation is that Algeria has already supplied its own solution to refugee integration and resettlement for one group of refugees living within its borders: Palestinian refugees. Unfortunately, this solution has only been applied to 4,000 Palestinian refugees in Algeria and not to the Sahrawi population. Unlike the Sahrawis, the Palestinian refugees in Algeria have been fully integrated into Algerian society. As a result, they have required neither humanitarian aid nor international legal protection from the UNHCR.¹¹⁰ The Palestinian refugees have been able to integrate because they have been treated quite favorably by Algerian authorities, granted access to the labor market under a special policy, and allowed freedom of movement within Algerian territory. Why should the Sahrawi refugees be treated any differently? Algeria clearly has the capacity to implement reform and grant the Sahrawi refugees the rights they are due under international law, but it has lacked the political will to do so and instead has chosen to place responsibility solely upon the United Nations. The recommendations outlined in this paper are achievable, and both Algeria and the UNHCR have the capacity to enforce and protect Sahrawi refugee rights. They must be urged to do so, not only for the benefit of the Sahrawi refugees, but also to ensure that international humanitarian aid can be used more wisely.

¹⁰⁹ Lewis, Corinne. “UNHCR’s Contribution to the Development of International Refugee Law: Its Foundations and Evolution.” *International Journal of Refugee Law* 17:1 (March 2005): 67-90, p. 86.

¹¹⁰ “Algeria.” *United States Committee for Refugees and Immigrants*.

CONCLUSION

As demonstrated in this report, Sahrawi refugees have a substantial number of rights under international law that are being either routinely violated or just as routinely ignored by the Polisario, Algeria, and the UNHCR. The UNHCR may be an apolitical organization of the United Nations, but that does not mean it should be politically unaware. It must understand political forces and opportunities, and exploit entry points for solutions. The UNHCR can play a role in identifying barriers to rights and self reliance, including legal obstacles, restrictions on movement, employment, and land access, even though ultimately it is the responsibility of Algeria, as the host government, to work toward lifting such obstacles.¹¹¹ The UNHCR can certainly target the lack of transparency and accountability in the aid distribution process to ensure that aid is not being used to fund Polisario activities. It can also seek the intervention of other UN institutions, such as the Security Council, in order to advance and protect refugee rights. Although the UN Security Council has been actively seeking a solution to the problem in the Western Sahara since 1991, the UNHCR has not sought its assistance to resolve issues related to refugee rights, and there is no discussion of them or recommendations concerning them in the frequent renewals of the mandate for the UN peacekeeping mission to the region, MINURSO.

Yet, there are not only legal and moral imperatives to promoting the rights of Sahrawi refugees. It is in the interest of the UNHCR, Algeria, and donors to open the camps, given the reality that the Tindouf camps drain scarce international humanitarian resources. Long-term care and maintenance programs come at a significant human and material cost. The most important point is that over the past 30 years, the facts and realities on the ground have changed, while the UNHCR and Algeria's policies relating to refugees have not. Promoting a rights- and development-based strategy would be

¹¹¹ "Protracted Refugee Situations", p. 4.

beneficial to the surrounding states, the UNHCR, and – most importantly – the refugees.

Now is the appropriate time to take action. The UNHCR recently released its UNHCR Global Appeal 2009 Update, which categorizes the refugee situation in Tindouf under the Country of Algeria, thus highlighting the state responsibility of Algeria under international law. Among its recommendations for 2009, the UNHCR seeks to:

- Ensure protection and respect for fundamental rights, including free access to the judiciary, for refugees in Algeria.
- Promote the creation of a responsible asylum framework through the adoption of national legislation and asylum procedures consistent with international standards.
- Ensure that all refugee children have access to quality primary education.
- Promote the well being of Sahrawi refugees in Tindouf camps by providing them with humanitarian assistance and other basic services.
- Improve the nutrition, health, and hygiene of refugees.
- Find durable solutions for people of concern, including voluntary repatriation and resettlement.¹¹²

Despite conspicuously abandoning any effort to promote the Sahrawi refugees' rights to work and to freedom of movement in Algeria, to achieve even the truncated objectives the UNHCR has set out for itself, it must monitor the Sahrawi situation more effectively to ensure accountability and transparency in aid distribution. To do so, the UNHCR must call for an immediate census. The UNHCR must establish a significant and unrestricted presence in the camps to ensure the protection of refugee rights, especially freedom of movement, to prevent the militarization of the camps, and to end the use of

¹¹² "Algeria." *UNHCR Global Appeal 2009 Update*, p. 231.

international resources for political means. The UNHCR must also reconstitute its humanitarian approach into a rights-based approach that bridges the gap between relief and development to ensure the realization of all refugee rights. Under its obligations to collaborate with the UNHCR, Algeria must remove all obstacles standing in the way of this rights-based approach, including its opposition to the census and the issuing of status documentation, its continued support for Polisario jurisdiction over the camps, and its military cooperation with the Polisario that contributes to restrictions on freedom of movement. The UNHCR must be allowed to establish a voluntary repatriation program free of intimidation for those Sahrawi refugees who might wish to return to Morocco or settle elsewhere. It must also actively work to reform national legislation in line with its obligations under international law. Sahrawi refugees must not continue to suffer for the failures of the UNHCR, Algeria, and the Polisario. It is legally, morally, and financially imperative that the Sahrawi refugees in Algeria be granted all of the rights to which they are entitled under international law, so that they do not have to live as warehoused refugees for another 30 years.

WORKS CITED AND CONSULTED

- Abdi, Awa M. "In Limbo: Dependency, Insecurity, and Identity amongst Somali Refugees in Dadaab Camps." *Refuge* 22:2 (2005): 6-14.
- Adelman, Howard. "From Refugees to Forced Migration: The UNHCR and Human Security." *International Migration Review* 35:1 (Spring 2001): 7-32.
- "Agenda for Protection." *UNHCR* 3 (October 2003): 1-126.
- Alexander, Michael. "Refugee Status Determination Conducted by UNHCR." *International Journal of Refugee Law* 11:2 (1999): 251-289.
- "Algeria." *UNHCR Global Appeal 2009 Update* (2009): 230-233.
- "Algeria." *United States Committee for Refugees and Immigrants* (2008), <<http://www.refugees.org/countryreports.aspx?subm=&ssm=&cid=2116>>.
- "Algeria: Asylum seekers fleeing a continuing human rights crisis: A briefing on the situation of asylum seekers originating from Algeria." *Amnesty International* MDE 28/007/2003 (1 June 2003): 1-20, p. 17.
- "Algeria: Country Operations Plan." *UNHCR* (2006): 1-8.
- "Algeria: Sahrawian refugees facing their future." *European Commission Humanitarian Aid Office* (18 August 2007), <http://ec.europa.eu/echo/aid/north_africa_mid_east/algeria_en.htm>.

- "Algeria: Whether the Polisario had mandatory military service; whether the Sahrawis in the camps near Tindouf need permission from Polisario to leave town; if so, consequences if some leave without permission (1991-2000)." *Immigration and Refugee Board of Canada* DZA34602.E (18 July 2000): 1-2.
- "Algeria: Whether a Sahrawi who lived several years in the Sahrawi camps in Algeria, who was born in Algeria to nomadic parents, themselves born in Western Sahara, can obtain Algerian citizenship or a permanent resident's visa in Algeria." *Immigration and Refugee Board of Canada* DZA35560.E (18 October 2000): 1-2.
- Andersen, Ericka. "The Polisario 'Berlin Wall'." *Human Events* (16 May 2008), <<http://www.humanevents.com/article.php?print=yes&id=26544>>.
- "Anthropometric and Micronutrient Nutrition Survey." *UNHCR/UNFIP Micronutrient Project* (September 2002): 1-42.
- Barnett, Michael. "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow." *International Migration Review* 35:1 (Spring 2001): 244-277.
- Bhatia, Michael. "Repatriation under a Peace Process: Mandated Return in the Western Sahara." *International Journal of Refugee Law* 15 (2003): 786-822.
- Bhatia, Michael. "The Western Sahara under Polisario Control." *Review of African Political Economy* 28:88 (2001): 291-298.
- Black, Richard. "Putting Refugees in Camps." *Forced Migration Review* 2 (August 1998): 4-7.

- Buckley, Cara. "Western Sahara's Conflict Traps Refugees in Limbo." *The New York Times* (4 June 2008), <http://www.nytimes.com/2008/06/04/world/africa/04sahara.html?_r=3&ref=africa&oref=slogin&oref=slogin>.
- Bugnion, François. "Humanitarian Law and the Protection of Refugees." *Refugee Survey Quarterly* 24:4 (2005): 36-42.
- "Chairman's Summary, Protracted Refugee Situations, High Commissioner's Dialogue on Protection Challenges." *United Nations High Commissioner for Refugees* (11 December 2008): 1-5.
- "Charge: Sahara Tribal Women Jailed For Adultery." *Women's eNews* (28 May 2008), <<http://www.womensenews.org/article.cfm/dyn/aid/3615/context/archive>>.
- Clapham, Andrew. *Human Rights Obligations of Non-State Actors*. New York: Oxford University Press (2006): 1-613.
- "The Conditions of Detention of the Moroccan POWs detained in Tindouf (Algeria)." *France Libertés* (11-25 April 2003): 1-56.
- Convention on Elimination of All Forms of Discrimination against Women. *United Nations* (1979).
- Convention governing the Specific Aspects of Refugee Problems in Africa. *Organization of African Unity* (1969).
- Convention Plus. *UNHCR* (2004), <<http://www.unhcr.org/convention-plus>>.
- Convention relating to the Status of Refugees. *United Nations* (1951), <<http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b66c2aa10>>.

Convention on the Rights of the Child. *United Nations* (1989).

Crisp, Jeff. "Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process." *International Migration Review* 35:1 (Spring 2001): 168-191.

Crisp, Jeff. "No solutions in sight: the problem of protracted refugee situations in Africa." *UNHCR Working Paper* 75 (January 2003): 1-36.

DeJong, Cornelis. "The Legal Framework: The Convention relating to the Status of Refugees and the Development of Law Half a Century Later." *International Journal of Refugee Law* 10:4 (1998): 688-699.

Doek, Jaap E. "The CRC and the Right to Acquire and to Preserve a Nationality." *Refugee Survey Quarterly* 25:3 (2006): 26-32.

Dukic, Natali and Alain Thierry. "Sahrawi Refugees: Life After the Camps." *Forced Migration Review* 2 (August 1998): 18-21.

"Executive Committee Mandate." *UNHCR*,
<<http://www.unhcr.org/excom/400e3c86a.html>>.

"The forgotten tribes of the Sahara." *Middle East Times* (15 May 2008),
<http://www.metimes.com/International/2008/05/15/the_forgotten_tribes_of_the_sahara/3891/>.

"Guiding Principles on Internal Displacement." *United Nations* (1998),
<<http://www.unhcr.ch/html/menu2/7/b/principles.htm>>.

Harvey, Colin and Robert P. Barnidge, Jr. "Human Rights, Free Movement, and the Right to Leave in International Law." *Global Commission on International Migration* (September 2005): 1-21.

"High Commissioner's Dialogue on Protection Challenges." *United Nations High Commissioner for Refugees* (2008),
<<http://www.unhcr.org/protect/4a12aafc2.html>>.

Horst, Cindy. "Refugee Livelihoods: Continuity and Transformations?" *Refugee Survey Quarterly* 25:2 (2006): 6-22.

"Human Rights in the Western Sahara and in the Tindouf Refugee Camps." *Human Rights Watch* (December 2008): 1-211.

International Covenant on Civil and Political Rights. *United Nations* (1966).

International Covenant on Economic, Social, and Cultural Rights. *United Nations* (1966).

Islam, M. Rafiqul. "The Sudanese Darfur Crisis and Internally Displaced Persons in International Law: The Least Protection for the Most Vulnerable." *International Journal of Refugee Law* 18:22 (2006): 354-385.

Jacobsen, Karen. "A framework for exploring the political and security context of refugee populated areas." *Refugee Survey Quarterly* 19:1 (2000): 3-21.

Juss, Satvinder S. "Free Movement and the World Order." *International Journal of Refugee Law* 16:3 (2004): 289-335.

Kelley, Ninette and Jean-Francois Durieux. "UNHCR and Current Challenges in International Refugee Protection." *Refugee* 22:1 (2004): 6-17.

Lewis, Corinne. "UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution." *International Journal of Refugee Law* 17:1 (March 2005): 67-90.

- Loescher, Gil. "The UNHCR and World Politics: State Interests vs. Institutional Autonomy." *International Migration Review* 35:1 (Spring 2001): 33-56.
- Lynch, M. "Lives on Hold: The Human Costs of Statelessness." *Refugees International* (February 2005): 1-52.
- Massey, Traci L. "To Keep Water, Water: How we Missed the Mark with Côte d'Ivoire's Warehoused Refugees." *North Carolina Journal of International Law and Commercial Regulation* 31 (2005-2006): 207-254.
- "MINURSO: The United Nations Mission for the Referendum in Western Sahara." *United Nations*, <<http://www.un.org/Depts/dpko/missions/minurso/>>.
- "Mission Statement – The United Nations Refugee Agency." *UNHCR*, <<http://www.unhcr.org/publ/PUBL/4565a5742.pdf>>.
- Napier-Moore, Rebecca. "Entrenched Relations and the Permanence of Long-term Refugee Camp Situations." *Sussex Migration Working Paper* 28 (2005): 1-21.
- "Nutritional and Food Security Survey among the Saharawi Refugees in Camps in Tindouf, Algeria." *World Food Programme* (October 2008): 1-73.
- "Protracted Refugee Situations." *Executive Committee of the High Commissioner's Programme* EC/54/SC/CRP.14 (10 June 2004): 1-12, p. 3.
- "Protracted Refugee Situations: Revisiting the Problem." *Executive Committee of the High Commissioner's Programme* EC/59/SC/CRP.13 (2 June 2008): 1-8.

- Protocol relating to the Status of Refugees. *United Nations* (1967), <<http://www.unhcr.org/cgi-bin/texis/vtx/protect/openssl.pdf?tbl=PROTECTION&id=3b66c2aa10>>.
- "Refugee Reports: Refugee Warehousing Issue." *Immigration and Refugee Services of America* 24:3 (May 2004): 1-16.
- "Report of the Inspector General's Office." *UNHCR* (12 May 2005), <<http://www.cfif.org/htdocs/archives/UNHCR-IG-Report.pdf>>.
- "Report of the Office of the Inspector General." *World Food Programme* (23 May 2005), <<http://www.cfif.org/htdocs/archives/WFP-IG-Report.pdf>>.
- Rutinwa, Bonaventure. "Prima facie status and refugee protection." *UNHCR*, Working Paper 69 (October 2002): 1-27.
- "Sahara refugees' stories highlight hardships and propaganda war between rebels and Morocco." *International Herald Tribune* (16 May 2008), <<http://www.ihf.com/articles/ap/2008/05/16/america/NA-GENUSSahrawis-Woes.php>>.
- Smith, Merrill. "Development without Refugee Rights? A Civil Society Response." *Fordham International Law Journal* 28 (2004-2005): 1479-1503.
- Smith, Merrill. "Warehousing Refugees: A Denial of Rights, a Waste of Humanity." *World Refugee Survey* (2004): 38-56.
- "Statement Calling for Solutions to the End of the Warehousing of Refugees." *U.S. Committee for Refugees and Immigrants* (August 2008).
- "Strengthening Protection Capacity Project." *United Nations High Commissioner for Refugees* (March 2008): 1-4.

“Statute of the Office of the United Nations High Commissioner for Refugees.” *UNHCR* (1950).

“Summary Record of the 597th Meeting.” *Executive Committee of the Programme of the United Nations High Commissioner for Refugees*, A/AC.96/SR.597 (25 October 2005): 1-15, p. 10.

“A thematic compilation of Executive Committee Conclusions.” *UNHCR* (August 2008): 1-515.

Universal Declaration of Human Rights. *United Nations* (1948).

Wolfson, Steven. “Refugees and Transitional Justice.” *Refugee Survey Quarterly* 24:4 (2005): 55-59.

“Warehoused Refugee Populations.” *United States Committee for Refugees and Immigrants* (2008), <http://www.refugees.org/uploadedFiles/Investigate/Publications_&_Archives/WRS_Archives/2008/warehoused%20refugee%20populations.pdf>.

“World Refugee Survey.” *United States Committee for Refugees and Immigrants* (2009): 1-66.