

WESTERN SAHARA

KEEPING IT SECRET THE UNITED NATIONS OPERATION IN THE WESTERN SAHARA

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SUMMARY

The conflict over the Western Sahara has defied resolution for over twenty years. As Spain prepared to withdraw from its colonial territory in 1975, Morocco stepped in and occupied most of the Western Sahara. What had begun as an issue of decolonization erupted into armed conflict, as the Popular Front for the Liberation of Saguia el Hamra and Rio de Oro (Polisario Front), the Western Saharan liberation movement, fought for independence from Morocco, and over 100,000 Western Saharan (Sahrawi) refugees fled to southwestern Algeria, where they settled in tent camps.

In 1988, both Morocco and the Polisario Front agreed to a United Nations (U.N.) Settlement Plan (the "Settlement Plan.") The plan, which the Security Council approved on April 29, 1991, called for a referendum, to be organized and conducted by the United Nations Mission for the Referendum in the Western Sahara (MINURSO).¹ The referendum would ask Sahrawis to choose between independence or integration into Morocco. The U.N. would carry out an identification process to determine, based on a census conducted by Spain in 1974, who was eligible to vote in the referendum. After sixteen years of war, a cease-fire formally took effect in the Western Sahara in September 1991.

In August 1995, Human Rights Watch conducted a fact-finding mission to Tindouf, Algeria and to Laayoune, the capital of the Western Sahara. The objective of our visit was to investigate the human rights situation in these two regions. In Tindouf, we visited Sahrawi refugee camps, where we found conditions to be satisfactory, taking into account the difficulties posed by the climate and desolate location. We also visited two prisoner of war camps that house hundreds out of over two thousand Moroccan prisoners of war held by Polisario.² Human Rights Watch had asked to visit all prisoner of war camps in Tindouf but this request was denied. Moroccan prisoners, who live in cramped, remote quarters in the harsh, desert climate, reported instances of ill-treatment by Polisario guards, inadequate food and long hours of compulsory and unpaid work, in violation of international standards. We also visited 184 elderly, wounded and disabled Moroccan former prisoners of war who were released by Polisario in 1989, as a humanitarian gesture, but have been denied the right to enter their own country by the Moroccan government. Eight released prisoners have died during the past six years.

Human Rights Watch also visited MINURSO headquarters in both Laayoune and Tindouf. Human Rights Watch takes no position on the issue of self-determination. Rather, our purpose was to investigate allegations that the voter identification process is not being carried out in an impartial and transparent manner and that conditions in the Western Sahara are not conducive to holding a free and fair referendum, as required by the Settlement Plan and agreed to by the parties.

¹ Security Council Resolution 690, April 29, 1991.

² Human Rights Watch takes no position on whether the armed conflict between Morocco and the Polisario Front was of an internal or an international character, as defined in the Geneva Conventions of August 12, 1949. However, we refer to the combatants captured during the armed conflict as "prisoners of war," in order to be consistent with the terminology used in the United Nations Settlement Plan for the Western Sahara, as well as by the secretary-general and the Security Council.

Human Rights Watch has determined that Morocco, which is the stronger of the two parties both militarily and diplomatically, has regularly engaged in conduct that has obstructed and compromised the fairness of the referendum process. In addition, a lack of U.N. control over the process has seriously jeopardized its fairness. The U.N. has already been present in the Western Sahara for four years without being able to exercise the "sole and exclusive responsibility" over the referendum that it was to have assumed under the Settlement Plan. The Settlement Plan contemplated a "transitional period," which was supposed to start immediately after the cease-fire took effect in September 1991. The transitional period included, among other provisions, a timetable for the reduction of Moroccan troops in the territory, the exchange of prisoners of war by the parties and repatriation of refugees. During this period, the U.N. would have certain powers including responsibility for monitoring law and order in the territory in order to ensure that conditions for a free and fair referendum existed, as well as the right to ensure that laws or measures that could obstruct a free and fair referendum were suspended.³ However, citing slow progress in the voter identification process, which began two and a half years behind schedule, and a consequent inability to meet other deadlines set forth in the transitional plan, the secretary-general has repeatedly recommended the postponement of the transitional period. This has delayed indefinitely the assumption of essential powers the U.N. was to have exercised during the identification process.

From the outset, the U.N. relinquished control over the identification process by agreeing that the parties, and not MINURSO, would be responsible for distributing and submitting application forms to potential voters, with the exception of applicants located in Mauritania. MINURSO's involvement at this stage was crucial, in order to guarantee that all individuals who wanted to participate in the process had the opportunity to do so. Now, in the words of one member of the U.N. identification commission, "There is no way of knowing who may have been excluded."⁴ This is of particular concern because an incentive exists for Morocco to exclude Sahrawis living in the Moroccan-controlled territory who Moroccan authorities believe would be likely to vote for independence.

The opportunity exists, in principle, for those who have been excluded or overlooked to submit individual applications to the U.N. However, at least in the Western Saharan capital of Laayoune, omnipresent Moroccan security forces routinely prevent access to the U.N. headquarters and identification center, to Sahrawis seeking to submit voter applications. A report by the under-secretary-general for internal oversight services de-emphasized the issue of access, stating that "The deputy special representative has stated that if it is true that people are prevented from coming to be identified, there will be ample opportunity for such individuals to present themselves at later stages in the process, since he has made a ruling that individuals could continue to present applications after the formal deadline of receipt of applications through the parties."⁵ This is an inadequate response to a clear violation of the right of individuals to participate in the referendum process.

Morocco has also intimidated applicants in the Moroccan-controlled Western Sahara. Individuals who are to be identified in the Moroccan-controlled territory cannot come to the identification center on their own; rather, they are gathered in a central location and brought to the identification center in Moroccan vans. At the conclusion of the identification process, applicants are taken back to the central location, where registration receipts have sometimes been illegally confiscated by Moroccan authorities. This creates a situation in which the wrong people could later present confiscated registration receipts and obtain voter cards. The report of the under-secretary-general for internal oversight services dismissed this problem on the grounds that "MINURSO retains full files on all applicants, including their

³ United Nations Security Council, "The Situation Concerning Western Sahara: Report of the Secretary-General," (New York: United Nations Publications, 1990), S/21360, paras. 47 and 71.

⁴ Human Rights Watch interview, Laayoune, August 15, 1995.

⁵ United Nations General Assembly, "Review of the Efficiency of the Administrative and Financial Functioning of the United Nations: Note by the Secretary-General," (New York: United Nations, 1995), A/49/884, para. 12.

photographs and fingerprints, which could be used to verify the identity at a later stage.”⁶ This does not explain why the U.N. has not investigated these allegations, which bear directly on the fairness of the referendum. Nor does it address the difficulties and fear that Sahrawis whose receipts have been confiscated may face, should they wish to come forward at a later stage to demand the right to vote.

According to senior U.N. officials, both parties have been responsible for obstructionist behavior. However, MINURSO staff members assert that Morocco, which is the stronger of the two parties both militarily and diplomatically, has pressured the United Nations into making concessions in its favor and deliberately obstructed the process. This has ranged from the initial insistence that all U.N. flags be removed from U.N. identification centers, leaving only Moroccan flags, to Morocco's interception of U.N. supplies arriving in the port of Agadir, which held up U.N. operations for months.

⁶ *Ibid.*, para. 13.

Opportunities for independent outsiders to observe and analyze the identification process are strictly limited. A U.N. rule limits the presence of representatives of non-governmental organizations and journalists in the MINURSO identification center in Laayoune to thirty minutes, a period that is too brief to permit meaningful observation of a complex process. In addition, MINURSO staff members, including military observers, are subjected to constant surveillance by Morocco. This, and internal pressure from MINURSO, made them reluctant, even frightened, to speak to our organization, except on the explicit condition of anonymity.⁷ Moroccan security forces tried to prevent Human Rights Watch from entering the U.N. headquarters, stating that entry was forbidden to non-MINURSO staff unless it had been cleared with local Moroccan authorities first. Moroccan authorities' harassment of Human Rights Watch, as well as their strict surveillance of its activities, impeded the organization's ability to conduct a thorough investigation of human rights abuses in the Moroccan-controlled Western Sahara.

The obstruction of the work of independent observers sends the signal that the referendum process is not being carried out in a transparent manner. This is particularly troubling in light of evidence that Morocco has improperly influenced Sahrawi tribal leaders who live in the Moroccan-controlled Western Sahara and are involved in the identification process. This has occurred through intimidation, either in advance or by Moroccan observers present in the identification room, who have signaled to tribal leaders to indicate how they should rule in individual cases. In addition, certain senior MINURSO staff have intimidated and pressured members of the U.N. identification commission to make decisions that are contrary to the accepted procedures.

Nor is there an opportunity for scrutiny of the procedures or guidelines that the U.N. will use in deciding which applicants will ultimately be considered eligible. Indeed, although over 50,000 applicants have come before the commission and been identified so far, MINURSO will not announce any decisions as to voter eligibility until the identification process is complete. This makes it impossible for either the parties or independent observers to assess the evidentiary basis for eligibility decisions. Applicants will have an opportunity to appeal the U.N.'s decisions on eligibility, but this process is also flawed. MINURSO will not provide any reasons in cases where eligibility is denied, making it difficult to assess whether decisions were made fairly and objectively. Moreover, with such an ill-defined basis for eligibility, the number of appeals is likely to be overwhelming, and may well amount to a virtual repetition of the entire identification process.

⁷ Even former MINURSO members, many of whom are still employed by the U.N. or plan to work with the U.N. again in the future, would only speak to Human Rights Watch on the condition that their names not be revealed in our report.

In addition, Morocco has apparently interpreted the December 1991 broadening of the voter eligibility criteria as a license to submit applications on behalf of individuals with questionable ties to the Western Sahara. Out of a total of 180,000 voter applications submitted by Morocco, 100,000 are on behalf of individuals who reside outside of the territory. Polisario, meanwhile, has submitted a total of 40,000 applications.⁸ Members of the MINURSO identification commission stated that a large number of the applicants submitted by Morocco have no documents proving links to the Western Sahara, are not familiar with the tribal structure of the region and have clearly memorized answers to the factual and biographical questions posed by the Commission. Since each and every applicant must be individually interviewed, frivolous applications slow down completion of the identification process.

In 1991, neither MINURSO nor the Security Council took steps to halt Morocco's transfer of 40,000 individuals, who it claimed were Sahrawis, into the territory. This transfer violated paragraphs 71 and 72 of the Settlement Plan, which permit Western Saharans resident outside of the territory to return to the Western Sahara only after their eligibility to vote has been established by the Identification Commission.⁹ Access to "tent cities" housing this population, which lives under twenty-four hour guard and receives food and other benefits from the Moroccan government, is tightly restricted by Moroccan police and secret service agents.

Morocco also continues to engage in human rights abuses in the Moroccan-controlled Western Sahara. Since the September 1991 cease-fire, Morocco has arrested and detained hundreds of Sahrawis, who have been held incommunicado, without any information on their whereabouts, and then released days or sometimes months later. There have also been allegations of torture during detention.¹⁰ Freedom of expression and assembly are also restricted: on May 11, 1995, for example, eight young men were arrested in Laayoune following a peaceful, pro-independence demonstration, and sentenced to fifteen to twenty years by a military court in Morocco. Citing this incident and other "violations of the peace process," Polisario temporarily suspended its participation in the identification process on June 23, 1995 and, on July 9, 1995, the king commuted the eight Sahrawis' sentences to one year.

In June 1991, the Moroccan government released over two hundred individuals, most of whom had "disappeared" because they or their families had challenged the government's claims to the Western Sahara.¹¹ The victims were usually held in secret detention centers and subjected to torture, some for almost two decades.¹² The released Sahrawis have never received any compensation from the Moroccan government; nor has the government made any effort to investigate its history of "disappearances," or hold accountable those who were responsible. Moreover, hundreds of cases of individuals who reportedly "disappeared" up to two decades ago remain unresolved.

The Settlement Plan for the Western Sahara was an opportunity to resolve a longstanding conflict that had given rise to suffering and countless human rights violations. However, until June 1995 and the visit of a Security Council mission sent to "assess progress and identify problems," the Security Council took no action to investigate criticism of MINURSO or allegations of intimidation and improper conduct by Morocco. As a result, the Security Council has not exerted adequate pressure on Morocco to cease practices that have jeopardized the transparency and free and fair nature of the identification process and the referendum. According to diplomats at the U.N., Morocco's

⁸ Statistics from MINURSO Press Office in Laayoune, August 15, 1995.

⁹ U.N. Doc. S/21360, paras. 72 and 73.

¹⁰ Amnesty International "Continuing Arrests, 'Disappearances' and Restrictions on Freedom of Expression and Movement in Western Sahara," (London) AI Index MDE 29/03/93, February 1993, p. 2.

¹¹ However, a July 8, 1994 general amnesty, pursuant to which 424 Moroccan political prisoners were released, explicitly excluded those who had advocated independence for the Western Sahara.

¹² Amnesty International, "Breaking the Wall of Silence: The Disappeared in Morocco," (London), AI Index MDE 29/01/93, April 1993.

membership in the Security Council in 1992 and 1993, and the fact that it has strong allies on the Council, has strengthened its position.

Senior U.N. officials in the field have taken their cue from the Security Council. When asked why MINURSO has not taken a stronger position in the face of Moroccan challenges to its control over the process, senior officials simply responded that "MINURSO's hands are tied until the transitional period begins," when the U.N. will be authorized to exercise powers such as the responsibility to monitor law and order.¹³ Human Rights Watch was also told that the U.N. will correct these problems at a later stage of the process.¹⁴ Even if that is possible, however, insufficient U.N. control over the operation and a perception of bias during the four or more years leading up to the transitional period could ultimately cause the referendum process to fail. Rather than confronting these issues, MINURSO seems to be taking mechanical steps towards holding a referendum, without considering measures to counteract the extent to which the process has already been compromised, and whether the referendum's present framework is even realistic in the current climate.

As the secretary-general and the Security Council have noted, logistical complexities, difficult operational conditions and a lack of cooperation between the parties have delayed the referendum, which was originally scheduled for January 1992. The Security Council is understandably frustrated by an operation that is proceeding at a painfully slow pace, at a current cost of over \$5 million a month.¹⁵ However, the United Nations must recognize that Morocco's regular obstruction of the process and challenges to its fairness ultimately pose a greater threat to the viability of MINURSO. If MINURSO is not promptly provided with the tools and authority to organize and conduct a free and fair referendum, there is a danger that it will be forced to withdraw. Since Morocco continues to control most of the Western Sahara, this would determine the region's future not through a free and fair referendum, but from the collapse of a misdirected U.N. operation, which Morocco succeeded in manipulating. Even more ominous is the prospect that termination of MINURSO could lead to a resumption of the sixteen-year armed conflict.

In his September 8, 1995 report to the Security Council, the secretary-general stated that "progress in the last three months has been disappointing" but proposed that MINURSO's mandate nevertheless be extended until January 31, 1996.¹⁶ On September 22, 1995, the Security Council extended the mandate until January 31, 1996, as proposed, but took note of the secretary-general's "intention, if, before then, [the secretary-general] considers the that the conditions necessary for the start of the transitional period are not in place, to present the Security Council with alternative options for consideration, including the possibility of the withdrawal of MINURSO."¹⁷ Rather than abandoning the operation in mid-course, however, the Security Council should reexamine and modify the mandate of MINURSO in order to permit it promptly to conduct a free and fair referendum. Instead of MINURSO waiting with "its hands tied" until the transitional period begins, the Security Council should authorize a heightened presence of MINURSO military and civilian police in the Moroccan-controlled territory, in order to prevent intimidation and restrictions on access and movement that have adversely affected the transparency and fairness of the referendum process. In addition, the Security Council must order an independent review of the identification process so far in order to eliminate any results that have been improperly or unfairly obtained. Once there is certainty that the remaining

¹³ Human Rights Watch interview with Riccardo Shedid, Deputy District leader of MINURSO in Tindouf, August 10, 1995.

¹⁴ Human Rights Watch interview with Jean Edeline and Martin Bentz, Executive Assistant and Administrative Liaison, respectively, Office of the acting special representative of the secretary-general, Laayoune, August 14, 1995.

¹⁵ United Nations, "The Situation Concerning the Western Sahara: Report of the Secretary-General," (New York: United Nations, 1995), S/1995/779, para 40. The report also notes that "unpaid assessed contributions to the MINURSO special account since the inception of the Mission amounted to \$55.8 million." *Ibid.* at para. 42.

¹⁶ *Ibid.*, paras. 43 and 50.

¹⁷ Security Council Resolution 1017, September 22, 1995, para. 6.

results are fair and credible, the identification process must continue in an open and transparent manner, with known rules and guidelines, and with an on-going announcement of voter eligibility results, in order to permit scrutiny of the process.

Moreover, based on independent evidence from Human Rights Watch, as well as that gathered by its own fact-finding mission in June 1995, the Security Council must send a strong signal to the Moroccan government that its interference with the MINURSO operation must immediately cease. Both Morocco and Polisario have engaged in rhetoric and exhibited pettiness and a lack of cooperation at various stages of this process. Rhetoric is one thing, however, but obstruction of a crucial and expensive United Nations operation is another, and only Morocco has engaged in regular actions that have compromised the free and fair nature of a future referendum. The Security Council must either put an end to this conduct, or withdraw its support for MINURSO and admit, once and for all, that the U.N. has been engaged for four years in a political exercise that has squandered tens of millions of dollars a year, because the creators of MINURSO lack the political will to ensure that it succeed in carrying out a free and fair referendum.

RECOMMENDATIONS

To the United Nations Security Council:

- Reexamine and modify the powers of MINURSO in order to ensure that the referendum can be carried out in a free and fair manner. This includes the need to:

authorize a heightened presence of MINURSO military forces and civilian police in the Moroccan-controlled territory, in order to prevent intimidation and restrictions on access and movement that have adversely affected the transparency and fairness of the referendum process. In particular, the Security Council should require that (i) U.N. civilian police, alone, be responsible for controlling access to U.N. headquarters and identification centers; and that (ii) U.N. civilian police be posted at the locations where applicants are gathered by the Moroccans prior to and following identification by the U.N.

make explicit MINURSO's mandate to protect human rights, which is implicit in the powers to have been assumed during the transitional period of the Settlement Plan. This authority should be effective immediately.

condition the continuation of MINURSO on the cooperation of the parties and their abidance by the new parameters of the MINURSO mandate.

- Order an independent review of the identification process so far in order to investigate allegations of conduct compromising the free and fair nature of the referendum, including the:

undue influence placed on Moroccan tribal leaders living in the Moroccan-controlled Western Sahara and on U.N. identification commission members participating in the identification process;

confiscation of registration receipts and intimidation of potential applicants prior to and following the identification process; and

denial of entry by Moroccan security guards to prospective Sahrawi applicants seeking to enter MINURSO headquarters or the identification center in Laayoune.

- Eliminate any results that have been improperly or unfairly obtained in the identification process so far.

- Require that MINURSO seek out potential voters who may have been excluded due to the fact that the application process was placed in the hands of the parties at the outset, and insist that Morocco permit MINURSO to use the official Moroccan media for this purpose.
- Require that MINURSO devise, within a specified period of time, a fair procedure for screening applicants currently living outside of the territory prior to the identification process, in order to eliminate unqualified applicants knowingly presented by the parties, while ensuring that any individual who feels that he or she has a valid basis for participation in the referendum has the opportunity to do so.
- Ensure an open and transparent identification process by requiring MINURSO to:
 - announce publicly the rules and guidelines that will be used in drawing up the final voter list;
 - announce voter eligibility results on an ongoing basis, in order to permit timely and meaningful scrutiny of the U.N.'s decisions by the parties and by outside observers;
 - eliminate the thirty minute time limit on the presence of outsiders, including representatives of international nongovernmental organizations, in the U.N. voter identification centers and ensure their access to information and a meaningful opportunity to observe the identification process.
- Call publicly on the Moroccan government to end obstruction of the U.N. operation.
- Ask the secretary-general to order an independent investigation of MINURSO staff who may have undermined the U.N.'s role as an impartial facilitator of the referendum by siding with Morocco in the identification process or pressuring subordinates to engage in improper and unfair conduct.
- Ask the secretary-general to report to the Security Council in a timely and detailed manner regarding developments and problems experienced on the ground by MINURSO.
- Ask the secretary-general to provide the Security Council with the opportunity to review and comment on aspects of the referendum process, such as the new procedures for screening applicants, and the draft Code of Conduct that will govern the campaign and referendum periods.
- Monitor the effectiveness and impartiality of the referendum process in a detailed manner and on a regular basis. The June 21, 1995 report of the Security Council mission to the Western Sahara contained important observations and recommendations, but did not make sufficient enquiries into the issues of fairness and impartiality at the heart of the referendum process.
- Demand that the government of Morocco take back 184 prisoners of war who have been denied the right to return to Morocco, in violation of Article 12 of the International Covenant on Civil and Political Rights, since their release in 1989 by the Polisario Front.

To the Moroccan Government:

- Stop actions that obstruct the identification process or jeopardize the free and fair nature of the referendum.
- Stop preventing free access of Sahrawis and others to MINURSO headquarters and the identification centers, and withdraw those Moroccan security forces responsible for such actions.
- Stop obstruction of the activities of international nongovernmental organizations who seek access to information regarding the MINURSO operation and human rights observance in the region.

- Stop the intimidating surveillance of MINURSO staff members and restrictions on their movements in the Moroccan-controlled Western Sahara.
- Respect the right of Sahrawis to freedom of expression and assembly, guaranteed in Articles 19 and 22 of the International Covenant on Civil and Political Rights.
- Stop the practice of “short-term disappearance,” in which individuals are detained and held incommunicado, without notification of family members or a lawyer, and without any charges or a trial.
- Take immediate steps to establish the fate and whereabouts of all Sahrawi victims of the practice of “disappearance.”
- Provide reparations to the former “disappeared” released in 1991, as well as to the families of those who did not survive, in order to compensate them for wrongful detention, torture and the inhumane conditions to which they were subjected. Such reparations must include full disclosure of all the circumstances surrounding the “disappearances.”
- Investigate past human rights abuses such as torture, ill-treatment and “disappearance” of Sahrawis and punish, to the full extent of the law, those found guilty of committing such abuses.
- Stop violating the right, guaranteed in Article 12 of the International Covenant on Civil and Political Rights, of the 184 Moroccan prisoners of war released in 1989 by the Polisario Front to enter their own country.

To the Polisario Front:

- Stop creating obstacles, based on non-substantive issues, that only serve to slow down the identification process.
- Improve conditions in the prisoner of war camps in Algeria, by taking immediate steps to:
 - halt any ill-treatment of prisoners;
 - increase quantities of food; and
 - make all efforts to ensure that prisoners receive adequate medical treatment.

To the Government of Algeria:

- Ensure that conditions in Polisario prisoner of war camps located in Algeria conform with international standards.

HISTORY OF THE CONFLICT

The Western Sahara, or former Spanish Sahara, is an expanse of desert measuring over 260,000 square kilometers, bordered by Morocco, Algeria and Mauritania. The territory, which traditionally had a tribal, nomadic population, was under Spanish occupation from 1904 until 1975.¹⁸ Following the second world war, the rise of nationalist sentiment had a destabilizing effect on the European colonial powers. The United Nations eventually responded to the growing demands for self-determination by adopting a resolution on decolonization in 1960.¹⁹ In 1966, the United Nations called on Spain to make arrangements for a U.N.-sponsored referendum, enabling the population of the territory to exercise its right to self-determination.²⁰ However, Spain did not take any action towards organization of a referendum and, on May 10, 1973, the Popular Front for the Liberation of Saguia el Hamra and Rio de Oro, known as the Polisario Front, was formed to fight for Sahrawi independence from Spain. After two years of guerrilla warfare, Spain agreed to undertake a U.N.-sponsored referendum, scheduled to be held in the territory in 1975. In preparation for the process, Spain conducted a census in 1974 of the population present in the territory.

In the meantime, Morocco had put forth its own claims to sovereignty over the Western Sahara. Following Moroccan independence in 1956, the Istiqlal Party, which had been the major force behind the Moroccan nationalist struggle against France, began to make claims that "Greater Morocco" had historically encompassed not only the Western Sahara, but Mauritania, and parts of Algeria and Mali as well.²¹ Morocco's claims to the Western Sahara, in particular, remained very much alive. On December 13, 1974, the United Nations General Assembly asked the International Court of Justice (ICJ) to provide an advisory opinion on whether the Western Sahara was, at the time of colonization by Spain, a *terra nullis* (no man's land) and, if not, what the legal ties were between this territory and the Kingdom of Morocco and Mauritania. The court's opinion, issued on October 16, 1975, found that there was no evidence "of any tie of territorial sovereignty" between the Western Sahara and either Morocco or Mauritania, but that there were "indications of a legal tie of allegiance between the [Moroccan] sultan and some, although only some, of the tribes in the territory." In addition, the court found "the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity ... and the territory of the Western Sahara." However, the court concluded that it "has not found legal ties of such a nature as might affect the application of [General Assembly] resolution 1514 (XV) in the decolonization of the Western Sahara and, in particular, of the principle of self-determination...."²²

¹⁸ Spain colonized the territory between Tarfaya and Villa Cisneros, currently known by its Arabic name Dakhla, in 1884.

¹⁹ United Nations General Assembly, "Declaration on the Granting of Independence to Colonial Countries and Peoples," (New York: United Nations, 1960), A/15/1514.

²⁰ United Nations General Assembly, "Question of Ifni in Spanish Sahara," (New York: United Nations, 1966), Res. 2229 [XXI].

²¹ John Damis, "The Western Sahara Conflict: Myths and Realities," *The Middle East Journal*, vol. 17, no. 2, spring 1983, pp. 173-74.

²² Anthony G. Pazzanita and Tony Hodges, *Historical Dictionary of Western Sahara* (London: The Scarecrow Press, 1994), pp. 228 - 230.

Despite the ICJ's support for the principle of self-determination, King Hassan II of Morocco chose to interpret the opinion as an affirmation of Morocco's claims to the territory. Thus, King Hassan launched what has come to be known as the "Green March," during which an estimated 350,000 Moroccan citizens marched across the border into the Western Sahara; at the same time, the government began to build up its troops on the territory. The United Nations Security Council and General Assembly passed resolutions denouncing the Green March and calling for the withdrawal of all the participants in the march.²³ However, on October 31, 1975, additional Moroccan forces entered the Western Sahara and armed conflict broke out between the Polisario Front and the Moroccan Royal Armed Forces. Two months later, Mauritania joined the conflict on the side of Morocco.

On November 14, 1975, Spain, Morocco and Mauritania concluded the secret "Madrid Accords," pursuant to which Spain agreed to cede administrative control of the territory to Morocco and Mauritania upon the official expiration of its mandate over the Western Sahara on February 27, 1976. The day after the Spanish withdrawal, Polisario proclaimed an independent Western Saharan state: the Sahrawi Arab Democratic Republic (SADR), with Polisario as its political wing. The SADR and Polisario would subsequently receive the bulk of their financial, military, diplomatic and humanitarian assistance from the government of Algeria.²⁴

The military conflict between Polisario, Morocco and Mauritania continued until July 10, 1978, when the Mauritanian government was overthrown in a military coup. Polisario immediately declared a cease-fire and on August 5, 1979, signed a peace treaty with Mauritania, ending the latter's involvement in the conflict. Soon thereafter, however, Morocco occupied most of the Western Saharan territory relinquished by Mauritania, and the armed struggle between Morocco and Polisario continued. From 1980 until 1987, Morocco constructed a series of long defensive sand walls (the "berm"), which were heavily mined and fortified with barbed wire, observation posts and sophisticated early warning systems.²⁵ At the same time, these walls served to enclose all of the major population centers of the Western Sahara and the territory's rich phosphate deposits.

Beginning in 1979, the Organization of African Unity (OAU) sought a resolution of the Western Sahara conflict and called for a cease-fire and a referendum to provide the right of self-determination. However, when the Sahrawi Arab Democratic Republic was admitted to the OAU in 1984, Morocco withdrew from the organization.²⁶ The absence from the organization of one party to the conflict effectively terminated the leading role that the OAU had played. This marked the beginning of U.N. involvement in devising a plan for settlement of the Western Saharan conflict. In September 1988, following the adoption of a series of resolutions related to the conflict, the U.N. proposed a settlement plan (the "Settlement Plan") for the region, which provided for a cease-fire, the organization and conducting of a referendum, the repatriation of refugees and the exchange of prisoners of war. Both parties eventually accepted the Settlement Plan and a cease-fire formally took effect in September 1991, with Morocco controlling the vast majority of the territory and Polisario controlling a sliver along the eastern and southern borders.

SIGNIFICANCE OF THE TERRITORY

²³ United Nations Security Council, "Situation Concerning Western Sahara," (New York: United Nations, 1975), S/RES/380, and United Nations General Assembly, "Question of Spanish Sahara," (New York: United Nations, 1995), A/30/3458.

²⁴ From 1973 until the early 1980s, Polisario also received significant assistance from Libya.

²⁵ John Damis, "Morocco and the Western Sahara," *Current History* vol. 89, no. 546, April 1990, p. 165.

²⁶ To date, no country has recognized Moroccan sovereignty over the Western Sahara. The SADR, for its part, has diplomatic relations with seventy-six countries, primarily from Africa, Latin America and Asia. Human Rights Watch interview with Boukhari Ahmed, Polisario representative to the United Nations, September 19, 1995.

The seemingly intractable nature of the Western Sahara conflict can be explained by several factors. One is the economic significance of the territory, for what otherwise appears to be a forbidding expanse of desert actually contains rich deposits of phosphates, iron ore and significant marine fishing reserves.²⁷ The territory is also believed to contain oil deposits.

In addition, for each side, success in the referendum has become a matter of political survival. For Polisario, this is a struggle for national liberation, and the Settlement Plan offers the final hope for victory following years of war and harsh conditions in desert refugee camps. For Morocco, sovereignty over the Western Sahara has become one of the central themes of the monarchy and a significant unifying force in the country. In the early 1970s, when two *coup d'état* attempts and widespread social discontent challenged the stability of his kingdom, King Hassan built a national consensus on the Western Sahara issue and won considerable support in doing so.²⁸ Even the political opposition in Morocco, which is usually quick to criticize the government, is united on the issue of the "Moroccanness" of the Western Sahara. Morocco's official position, as stated to Human Rights Watch by the Moroccan coordinator with MINURSO, does not leave much room for compromise: "The Sahara will remain Moroccan until the end of time. I repeat, the Sahara will remain Moroccan until the end of time. And that is because it has always, throughout history, been a part of Morocco."²⁹

This explains, in part, why Morocco has steadfastly refused to recognize Polisario as an independent party to the conflict, or as a movement, even following adaption of the Settlement Plan. Due to Moroccan pressure, the first United Nations resolutions on the Western Sahara conflict referred only to "the parties," because Morocco felt that to do otherwise would amount to recognition of Polisario.³⁰ Instead, Morocco refers to the other party in the conflict as the government of Algeria, although Algeria has never asserted a claim to the Western Sahara. Morocco has consistently argued that Polisario consists of mercenaries, not freedom-fighters, and was artificially created and supported by Algeria in order to weaken the Moroccan government and advance its own geopolitical agenda in the region.

Since the late 1980s, however, there has been a considerable thaw in relations between Algeria and Morocco, and diplomatic relations, which were severed following Algeria's recognition of the SADR, were restored in May 1988. This, combined with the severe political and economic crises within Algeria, has led to a reduction in its assistance to Polisario.

OBSTACLES TO IMPLEMENTATION OF THE SETTLEMENT PLAN

²⁷ George Joffe, "The Conflict in the Western Sahara," in Oliver Furley, *Conflict in Africa* (London: Tauris Academic Studies), pp. 115-16.

²⁸ *Ibid.*, pp. 118-19.

²⁹ Human Rights Watch discussion with Governor Mohammed Azmi, Parador Hotel, Laayoune, August 15, 1995.

³⁰ Human Rights Watch interview with U.N. diplomat, New York, August 6, 1995.

In April 29, 1991, the United Nations approved the establishment of the Mission for the Referendum in the Western Sahara (MINURSO.) The Settlement Plan provided for a "transitional period," which was intended to commence with a cease-fire and continue until the announcement of the results of the referendum. During this period, the secretary-general's special representative for the Western Sahara would have "sole and exclusive responsibility over all matters relating to the referendum," and the United Nations would monitor the maintenance of law and order in the territory to ensure that conditions for a free and fair referendum were present.³¹ MINURSO would form an identification commission to identify and register, on the basis of the 1974 Spanish census, those eligible to vote in the referendum. The Settlement Plan included a timetable for voter identification, a phased reduction of Moroccan troops from the territory, an exchange of prisoners of war under the auspices of the International Committee of the Red Cross (ICRC), and the repatriation of refugees under the auspices of the United Nations High Commissioner for Refugees (UNHCR).

Investigations into MINURSO

From the start, the MINURSO operation did not proceed smoothly. The voter identification process, for example, did not get under way until August 1994, three years behind schedule and, even then, progress was slow. For over three and a half years, however, the U.N. did not conduct an investigation into the repeated delays. On January 25, 1995, Ambassador Frank Ruddy, former deputy chairman of the MINURSO identification commission, testified before the United States Congress, alleging MINURSO mismanagement as well as obstructionist tactics by Morocco. Ruddy told Human Rights Watch that his contract with MINURSO had been terminated in December 1994, due to his outspokenness about these issues.³² In response to Ruddy's allegations, the under-secretary-general for internal oversight services (sometimes referred to as the inspector general) conducted an investigation and issued a report confirming some of Ruddy's allegations, including reports of inefficiency and wasted resources, but failing to find evidence of mismanagement. The report also concluded that Ruddy's contract had not been extended due to "his past performance and behavior as well as his inability to work constructively with Moroccan authorities."³³ The report of the under-secretary-general for internal oversight services did not address obstruction of the process by Morocco or issues of fairness. In June, a Security Council delegation visited the region and issued a report of its own (see below.)

These two reports indicate that the U.N. has been reluctant to use investigative opportunities to inquire into allegations of unfairness, collect information and seek to correct problems. This was further reinforced on October 10, 1995, when Ambassador Ruddy attempted to address the U.N. Special Political and Decolonization Committee (Fourth Committee.) According to the committee's practice, any bona fide request to petition the committee will be considered. The Moroccan ambassador to the United Nations, Ahmed Snoussi, sought to block Ruddy's appearance, by calling for the U.N. legal counsel to opine on Ruddy's right to petition the committee. The under-secretary-general for legal affairs concluded that "the secretary-general has evaluated Mr. Ruddy's request ... and has concluded that he is not prepared to authorize Mr. Ruddy, a former senior staff member, to address a committee or the assembly on the precise area on which he previously worked, and upon which experience he draws."³⁴ Following this opinion, the Fourth Committee rejected Ruddy's request, in a vote of 38 to 32.

The Role of the Security Council and the U.N. Secretariat

³¹ U.N. Doc. S/21360, para. 47.

³² Human Rights Watch interview, Washington, D.C., July 25, 1995.

³³ U.N. Doc. A/49/884, para 32.

³⁴"W. Sahara: Morocco, Algeria Row Over Ruddy," *International Report*, vol. 1, no. 135, October 10, 1995.

Despite reports that Moroccan conduct has tainted and stalled the referendum process, the U.N. Security Council did not investigate the MINURSO operation until June 1995, when it sent a fact-finding mission to the region to “assess progress and identify problems.” The mission, which consisted of Security Council representatives from Botswana, Argentina, France, Honduras, Oman and the United States, issued a report that focused primarily on the slow pace of identification, and only alluded to issues related to the fairness of the referendum.³⁵ According to one U.N. diplomat, “The report did not go to the root of the issue. It avoided the details necessary to understand what has really happened over there. The parties involved in the delegation had differing positions and the resulting text was a political compromise.”³⁶

More important, the Security Council has not used its considerable influence to call on Morocco to cease practices that have jeopardized the transparency and free and fair nature of the referendum. According to one U.N. diplomat, Morocco’s membership in the Security Council in 1992 and 1993 and the presence of strong allies on the Council “certainly made it easier for Morocco.”³⁷ A U.N. diplomat told Human Rights Watch,

MINURSO has failed because of political reasons. It can only be explained by political motives and interests that facts on the ground have never been disclosed to their full extent. Political considerations that are extraneous to the resolution of the conflict prohibit an impartial and balanced approach. There is a clear tendency in the Council not to antagonize Morocco, which is in a much stronger position [than Polisario].³⁸

U.N. diplomats also fault the U.N. secretariat for withholding information on the issues and problems confronting MINURSO, even though it is the Security Council that authorizes the MINURSO mission and is empowered to pass resolutions determining the course of MINURSO’s actions. One diplomat told Human Rights Watch,

The secretary-general’s report [of November 5, 1994] published after the end of registration of applicants that were to be identified did not give the most important information -- that is, the total number of applicants -- in a straightforward manner. To get a rough idea, it had to be calculated by using some approximate numbers. The consequence of this was that the Security Council mission, when it visited the region [in June 1995], was confronted with approximately 100,000 [additional] applications from people residing in Southern Morocco, even though earlier reports of the secretariat were based on a much lower [total] number of applications -- approximately 125,000. This meant an increase by almost 80 percent. No explanation was given by the secretariat as to why these applications had not been included in earlier reports to the Council.³⁹

The same source concluded that

³⁵ U.N. Doc. S/1995/498.

³⁶ Human Rights Watch interview, New York, September 6, 1995. All the diplomats and staff members at U.N. headquarters in New York who spoke to Human Rights Watch in this series of interviews, did so on the condition that they not be identified in our report.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

The secretariat is trying to conceal what is happening on the ground. For example, if you look at the secretary-general's reports, they always talk about the difficulties in the process, but they never go into detail to enable outsiders to know what is really going on. Ever since the report of the Security Council delegation demanded it, the secretary-general receives bi-weekly reports with details about the problems in the operation. But the Security Council only gets a meager oral report on these issues and no context is given. What had been intended as an instrument to help MINURSO become more effective and have the means to put pressure on Morocco is not being used by the secretariat.⁴⁰

Another example is the failure of the U.N. secretariat to provide the Security Council with drafts of critical documents such as the "Code of Conduct," which will govern the pre-referendum campaign and which both parties have rejected. One diplomat told Human Rights Watch, "From what we hear, the draft is very problematic. For example, it is unclear on what will happen to applicants currently living in the territory but who are found ineligible to vote. There are also problems regarding the accreditation of journalists during the campaign and a vague provision saying that permits for assemblies of more than fifty people will be issued by MINURSO, with the concurrence of Morocco. The Security Council should at least have the opportunity to see the draft and express its opinions. But it is all being kept at the level of the secretariat."⁴¹

Another complaint concerns the negligible role played by the secretary-general's current Special Representative for the Western Sahara, Sahabzada Yaqub Khan. One diplomat noted that "[Yaqub Khan] is not engaged. He is never in the Western Sahara and does not intervene directly with the parties. The report of the Security Council mission asked that [Deputy Special Representative Erik] Jensen be promoted to Special Representative because there has to be someone on the ground who can exercise this authority. But the secretary-general declined to make him Special Representative."⁴²

PROBLEMS ASSOCIATED WITH THE IDENTIFICATION PROCESS

Identification of Voters

The identification process finally began on August 28, 1994. At present, there are a total of eight identification centers: four in the Moroccan-controlled Western Sahara and four in the refugee camps in Algeria.⁴³ Applicants are individually interviewed by a two-member U.N. identification team, consisting of an identification commissioner and a registration officer. Applicants answer questions related to their application and submit any further documentary evidence, particularly official documents issued by the Spanish colonial power. They are then questioned by two leaders of their tribal subfraction, one living in the Moroccan-controlled Western Sahara and the second living in Algeria.⁴⁴ Tribal leaders (*sheikhs*) were elected by members of their tribes in 1973 and this position has no political affiliation with either Polisario or the Moroccan government. In cases where tribal leaders have died or are otherwise unavailable for the identification process, both parties have agreed upon a tribal elder or other individual to be substituted for the identification process. The task of the tribal leaders is to confirm, under oath, the identity of the applicant and whether he or she belongs to a valid tribal subfraction.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Human Rights Watch interview, New York, September 7, 1995. After the Security Council's report, Jensen was made acting special representative instead.

⁴³ In addition, identification of 14,500 applicants currently residing in Mauritania is scheduled to commence soon in that country. U.N. Doc. S/1995/779, para. 18.

⁴⁴ Eligible voters must belong to a "subfraction" of one of the Saharan tribes included in the Spanish census. Tribes are divided into "fractions" and "subfractions."

The U.N. identification commissioner's decision regarding eligibility is supposed to be based on the conclusions of both tribal leaders, the application form and oral responses to questions posed by the identification commission members, and any documentary or other "convincing" evidence (see below.) A MINURSO legal review committee then reviews these decisions on an on-going basis and will announce a list of eligible voters once all applicants have been identified. When identification is complete, the applicant is given a registration receipt. Applicants who, at some future date, are identified as eligible voters, will have to produce the registration receipt in order to receive a voter card.

Also present during the identification procedure are two observers from each party, as well as an observer from the OAU.⁴⁵ Observers are not permitted to raise objections during the process, but must submit them to MINURSO in writing within forty-eight hours. Every week, the United Nations flies a delegation of Moroccan observers and tribal leaders to Tindouf and a delegation of Polisario observers and tribal leaders to the Moroccan-controlled Western Sahara, so that identification can proceed in each of the eight centers.

Identification Criteria

The most controversial and problematic aspect of the Settlement Plan has been the critical issue of who is eligible to vote in the referendum. In the Settlement Plan, both parties had agreed that the Spanish census of 1974, conducted just prior to Spain's departure from the Western Sahara, would serve as the basis for determining the pool of those eligible to participate in the referendum.⁴⁶ The census had counted 73,497 Sahrawis. However, Morocco consistently argued for less restrictive criteria, such as the inclusion of great grandchildren of people born in the territory.⁴⁷ Meanwhile, Polisario argued that overly-broad criteria would bring in people with insufficient ties to the territory. In December 1991, Secretary-General Javier Perez de Cuellar expanded the eligibility criteria beyond the 1974 census. The new list of criteria set forth by the secretary-general were:

- (1) persons whose names are included in the revised 1974 census list;
- (2) persons who were living in the territory as members of a Saharan tribe at the time of the 1974 census but who could not be counted;
- (3) members of the immediate family of the first two groups;
- (4) persons born of a Saharan father born in the territory; and
- (5) persons who are members of a Saharan tribe belonging to the territory and who have resided in the territory for six consecutive years or intermittently for twelve years prior to 1 December 1974.

While the purpose behind expansion of the criteria -- i.e. to include Sahrawis who had been living beyond the borders of the territory during the time of the census and had thus been overlooked by the Spanish -- may have been appropriate, the unilateral manner in which this important modification was made did not bode well for the future of the Settlement Plan.

⁴⁵ Many OAU observers do not speak Arabic, although the identification sessions are conducted in Arabic.

⁴⁶ U.N. Doc. S/21360, para. 61.

⁴⁷ "The U.N.'s Unknown Effort," *Africa Report*, March/April 1995, p. 62.

Morocco appears to have interpreted the broadening of the voter eligibility criteria as a license to introduce applications by individuals with questionable ties to the Western Sahara. Just prior to the October 25, 1994 deadline for submission of applications by the parties, Morocco submitted 120,000 additional applications, 100,000 of them on behalf of individuals who reside in southern Morocco.⁴⁸ This brought up to 180,000 the number of applications submitted on the Moroccan side, while the Polisario side submitted 40,000 applications.⁴⁹ The 1974 Spanish census had counted only 73,497 Sahrawis. Testimony from members of the MINURSO identification commission indicates that many of the applicants proposed by Morocco and identified so far have no documents proving links to the Western Sahara, do not speak the Hassaniya dialect of the region, are not familiar with the tribal structure of the region and have clearly memorized answers to the factual and biographical questions posed by the identification commission. Because each and every applicant is individually interviewed, frivolous applications slow down the identification process.

Sheikh Mohammed Fadel, a tribal leader living in Algeria, described a May 1995 identification session in the city of Boujdour to Human Rights Watch:

There were 813 people to be identified and there were only nine people from my tribe. Four of them had always lived in the Sahara and the other five had lived in southern Morocco but they were from my tribe. The Moroccan sheikh said he knew all [813] of them. But, for example, one man claimed to be the son of a man who I knew had later remarried. When I named the woman and asked if he knew her he said no. I told him, with surprise, 'But it's your father's second wife -- you didn't know her?' He said he didn't remember her. Most of them did not even understand how the tribe and fraction system works. I have written a letter of complaint to Mr. Jensen [the acting special representative] and told him that I will not go to the next identification if this sort of thing continues. I do not want to be part of this game. I want to participate in the identification of my tribe, not of Moroccans.⁵⁰

In order to qualify as an eligible voter, an applicant has to fulfill at least one of the five criteria. Morocco had maintained that oral testimony alone, in the absence of documentary evidence, was sufficient to establish identity in any of the five categories. Polisario, on the other hand, objected to the expanded criteria, particularly to criteria 4 and 5. It was concerned with difficulties of proof, and the unreliability of oral testimony, citing "the limitations of memory and the risk of psychological and economic pressure that could be exerted on the [tribal leaders] by the parties."⁵¹

Now that the identification process is underway, Polisario maintains that many of its fears regarding the unreliability of oral testimony have been born out. In a meeting with the U.N. Security Council mission in June 1995, tribal leaders living in Algeria "pointed out that in 75 percent of the cases they had disagreed [with the tribal leader living in the Moroccan-controlled Western Sahara] over an applicant's identification."⁵²

Another significant point of contention has been the question of tribal affiliation:

⁴⁸ Potential voters may still continue to submit applications on an individual basis.

⁴⁹ MINURSO Press Center, Laayoune, August 15, 1995.

⁵⁰ Human Rights Watch interview, Camp Auserd, Algeria, August 11, 1995.

⁵¹ Jarat Chopra, *United Nations Determination of the Western Sahara Self* (Oslo: Norwegian Institute of International Affairs, 1994), p. 15

⁵² U.N. Doc. S/1995/498, p. 6.

... [T]he Polisario argued that membership in a sub-fraction establishes eligibility for an individual outside the territory only if the majority of the members of the subfraction were counted in the 1974 census and can legitimately be regarded as 'belonging to the territory.' Otherwise, it argued, populations not linked with the territory would decide the future of its true inhabitants. This would be comparable, according to one example, to the Masai in Kenya voting in a Tanzanian election because of the existence of Masai in the latter. Morocco rejected this interpretation and argued in favour of including the sub-fraction as a whole regardless of the numbers linked with the colonially-defined territory, as well as other sub-fractions excluded from the territory because of unrepresentative boundaries.⁵³

Based on this issue, Polisario has expressed major reservations with respect to three tribal groupings: "Chorfa," "Tribes of the North" and "Coastal and Southern" tribes.⁵⁴ The secretary-general's September 8, 1995 report notes that "at the time of the census, these groups were not individually represented in the Territory by a large number of people," adding that, "with respect to applicants residing in southern Morocco [i.e. the 100,000 applications submitted by Morocco in October 1994], some 50 percent belong to these contested groups."⁵⁵

Exclusion of Voters

The very means of solicitation of applicants for the referendum was problematic and potentially unfair. The United Nations gave the parties until October 25, 1994, to submit applications on behalf of individuals. Application forms were provided to Moroccan and Polisario authorities, who were supposed to distribute them, assist applicants in filling them out, and then return the forms to the U.N.⁵⁶ According to the report of the under-secretary-general for internal oversight services, "It was agreed by the parties that applicants would have to be assisted in completing the applications Otherwise, MINURSO would have required vast staff to complete all the forms."⁵⁷ As expensive or logistically complex as it may have been for MINURSO to distribute and collect application forms, however, this step would better have ensured that all individuals who wanted to participate in the process had the opportunity to do so.

According to one member of the identification commission,

The entire identification process was placed in the hands of the parties, instead of MINURSO, from the start, when applications were distributed by the parties instead of by MINURSO. There is no way of knowing who may have been excluded.⁵⁸

Not only was the U.N. not directly involved, but Morocco also denied it the opportunity to publicize the identification process. According to Ruddy,

You need government permission to buy space on Moroccan media, and Morocco has always denied MINURSO permission to buy space in the Moroccan newspapers or radio to alert people to register to vote and participate in the identification process.⁵⁹

⁵³ Jarat Chopra, "Breaking the Stalemate in the Western Sahara," *International Peacekeeping*, vol. 1, no. 3, Autumn 1994, p. 312.

⁵⁴ "Tribus del Norte" and "Costeras y del Sur."

⁵⁵ U.N. Doc. S/1995/779, paras. 15 and 17.

⁵⁶ The only exceptions were the 14,500 applicants in Mauritania, to whom applications would be distributed by MINURSO.

⁵⁷ U.N. Doc. A/49/884, para. 9.

⁵⁸ Human Rights Watch interview, Laayoune, August 15, 1995.

Another identification commission member told Human Rights Watch,

⁵⁹ Frank Ruddy, "Review of United Nations Operations and Peacekeeping," Statement before the Subcommittee on the Departments of Commerce, Justice and State, the Judiciary and Related Agencies, January 25, 1995.
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This is especially a problem on this side [i.e. in the Moroccan-controlled Western Sahara], where our access to the people is so restricted. We can't undo the damage that has already been done. We can't encourage people who may have been excluded to come in and apply, because we don't see them or interact with them in any way. Besides, even if someone hears about the process and is not too scared to come and apply on his own now, do you think he will even get past the U.N. door? You experienced yourself what happens when someone tries to get into the U.N. headquarters [the Human Rights Watch representative was stopped by Moroccan security and denied entry to U.N. Headquarters in Laayoune on August 14, 1995.]⁶⁰

Improper Influence

Tribal leaders living in Algeria and participating in the identification process allege that Morocco has exerted improper influence on tribal leaders living in the Moroccan-controlled Western Sahara, so that they will identify positively applicants presented by Morocco. One tribal leader told Human Rights Watch,

The sheikhs on the other side are Sahrawi too; they have no problems identifying Sahrawis. The problem is Moroccan pressure. The physical presence of the Moroccan observers in the identification room is enough to influence the sheikhs from the Moroccan side. We knew these sheikhs twenty years ago. They swear on the *Qur'an* [prior to the identification] that they recognize these people, but they are lying.⁶¹

Another tribal leader living in Algeria described the following identification session:

It was in Smara. They presented 3,000 people and only 107 were in the [1974 Spanish] census. They all said they had come to the Western Sahara in 1991 or 1992. Only about one percent of them had any documents at all; the rest had nothing -- not even Moroccan papers. They said they had never had any! They all said they had left during the Spanish days, but not a single one had any relatives left behind here. None of them knew other people from our subfraction. I personally did not recognize a single one of these people. The Moroccan sheikh said he recognized all of them. It was incredible. But later he was embarrassed. He told me privately, he even apologized. He told me that he had to say it because he had pressure. His family lives there [in the Moroccan-controlled Western Sahara] and he is scared.⁶²

When asked about the 3,000 people identified in Smara, Abderrahman Laibek, a Moroccan observer, responded:

The Moroccan sheikh knew these people because he lives with them. But the Polisario sheikh had not seen them for twenty years. So it's normal that he wouldn't recognize them. And it's not true that the people who came did not have documents, although some did forget to bring their documents. But the Polisario sheikh automatically refused all who were not in the census.⁶³

In other instances, tribal leaders told of signals given to the tribal leader from the Moroccan-controlled Western Sahara by a Moroccan observer present in the identification room.

⁶⁰ Human Rights Watch interview, Laayoune, August 16, 1995.

⁶¹ Human Rights Watch interview with Sheikh Mohammed Salem Abderrahman, Camp Auserd, Algeria, August 11, 1995.

⁶² Human Rights Watch interview with Sheikh Sveilan Brahim Med Ali Belkheir, Camp Auserd, Algeria, August 11, 1995.

⁶³ Human Rights Watch interview with Abderrahman Laibek, Laayoune, August 16, 1995.

In one identification, a man being identified kept making errors, contradicting himself. The Moroccan sheikh did not know what to do. He looked at the Moroccan observer who signaled to him not to identify -- that he should say he didn't recognize the applicant. This was obvious, because we [the two sheikhs] sit next to each other and the observers sit across from both of us. The same thing happened when I was identifying at Boujdour -- the Moroccan observer signaled to the sheikh five times in two days.⁶⁴

A former member of MINURSO told Human Rights Watch, "a couple of times, I saw a Moroccan observer take one of the Moroccan sheikhs aside during the break and yell at him, because he was deciding the wrong way. But usually it was more subtle: we would identify people from a subfraction in one of the identification centers and we were supposed to continue with the same subfraction in other identification centers [on subsequent days]. But a certain [Moroccan] sheikh, who had been voting the wrong way, would suddenly not appear again the next day."⁶⁵

The Moroccan observers, for their part, have complained that the tribal leaders living in Algeria have systematically denied recognition of each applicant associated with certain tribes. The Moroccans attribute this to political motives, rather than to an actual lack of recognition, while Polisario claims that it is because these individuals do not have sufficient ties to the territory and are thus unknown to tribal leaders. Since the testimony of the tribal leader is an essential component of proof, particularly in cases where no documentary evidence exists, improper influence over the tribal leaders seriously compromises the fairness of the process. The U.N. has not made a formal inquiry into these allegations.

MINURSO staff members also complained that the Moroccan observers who, along with Polisario observers, are permitted to observe the identification process to ensure that there are no irregularities, often disrupt the process. "The observers are not supposed to talk during the process, according to the instructions they receive. Both parties interrupt and ask questions, but in Tindouf, especially, I have seen that the Moroccans raise objections and then just walk out. This stops the whole process. Then the Moroccans complain that the number of people identified on [the Tindouf] side is low."⁶⁶

Certain MINURSO officials have also sought to influence the decisions of members of the U.N. identification commission, specifically with regard to the three "contested" tribal groupings. Several members of the identification commission complained to Human Rights Watch about pressure from MINURSO officials who did not "want any trouble from the Moroccans" and thus warned identification commissioners not to deny eligibility to such applicants. One member of the UN identification commission described the following incident:

⁶⁴ Human Rights Watch interview with Sheikh Sveilan Brahim Med Ali Belkheir, Camp Auserd, Algeria, Algeria, August 11, 1995.

⁶⁵ Human Rights Watch telephone interview, September 11, 1995.

⁶⁶ Human Rights Watch interview with member of MINURSO identification commission, Tindouf, August 9, 1995.

The particular applicants we were to interview originated from the north, the Marrakech area, and were supposed to be part of a category of tribes referred to as 'Chorfa.' They didn't produce any evidence that they were Sahrawi -- no documents at all -- and they did not speak the Sahrawi dialect. They didn't even understand how the tribal structure worked because when we asked them what tribe they were from, they all answered 'Chorfa' but Chorfa is not the name of a tribe. There were many signals to anyone who understands the region and the culture that these people were not legitimate. The [MINURSO] center leader had a meeting with [us] before the identification and told us 'if you are going to give "uncertain" or "fail" to these applicants [referring to their eligibility], be prepared to give your resignation tomorrow.'⁶⁷

Another member of the identification commission told Human Rights Watch:

What happens in the identification is that the identification commission member asks the sheikhs if they recognize the applicant. If the applicant is from the sheikhs's tribe, he should recognize them. But once, there were all these applicants from the Moroccan side -- they had no documents and seemed to have memorized their answers. It was very unconvincing. When we asked the sheikhs if they recognized them, the Moroccan sheikh would always say yes and the Polisario sheikh would say no. The problem is, the Moroccan sheikh may have seen the person before and could say that he recognized him, but that doesn't prove anything. It was too vague. So I started to ask additional questions, just to make sure, but the Moroccan observer protested vigorously. First of all, the observer is not supposed to talk during the session -- he must give his complaints in writing later. But nobody stopped him. Later, the center leader told me that I was not permitted to ask supplementary questions. What he was telling me is that I was not permitted to do a good job of identifying these people."⁶⁸

Sheikh Mohammed Fadel, a tribal leader living in Algeria, described the following incident,

Of the 813 people I had to identify [in Boujdour] there were only nine people from my tribe But when I would say I did not know someone, the U.N. identification commissioner kept asking me questions, trying to see if I knew of *someone* with *some* relation to this person -- he was looking for some basis to be able to accept this person later on, even though it was obvious that I did not believe that these people were from my tribe.⁶⁹

A former member of MINURSO told Human Rights Watch, "In [MINURSO] meetings, anytime anyone suggested that there were irregularities in the process, they would immediately be told, "Hush, hush -- the rooms could be tapped. Then people would stop reporting the problem. The message was that you shouldn't talk too much."⁷⁰

One former member of MINURSO, Mahassen Mara Hanna, told Human Rights Watch that her contract with MINURSO was terminated because she had been outspoken about problems in the operation:

⁶⁷ Human Rights Watch telephone interview with former member of MINURSO identification commission, August 30, 1995.

⁶⁸ Human Rights Watch interview, Laayoune, August 15, 1995.

⁶⁹ Human Rights Watch interview, August 11, 1995.

⁷⁰ Human Rights Watch telephone interview, September 11, 1995.

During the identification I saw irregularities; I would raise questions, or try to document things during the identification, or even just discuss these things with my colleagues. This blacklisted me. They tried to make things really unpleasant for me so I would leave: exiling' me to Tindouf, even denying me my home leave. In February [1995,] Mr. Jensen told me 'We are not going to extend your contract because you don't fit into this highly politicized environment.' This meant I was talking too much. Mr. Jensen said that my supervisors had problems with me. I had conflicts with one supervisor because I felt he was covering things up. So I raised that man's name and asked Jensen which other supervisor had a problem with me except him? I knew the others didn't have a problem. Mr. Jensen told me 'If your team leader tells you to do something, you should follow his orders, whether he's right or wrong.' He said I was slowing down the ID process. I had to leave the U.N. on March 31, 1995. I have been following this with the U.N. since I left because I don't want my record to be incorrect. They told me that if I want to work for the U.N. again, I shouldn't go around and talk.⁷¹

According to another former member of MINURSO,

They tried to build a case that Mara's work was not good. But she was very good -- she had the languages and she worked very hard. But she was Frank Ruddy's assistant and she was outspoken, so that made her suspect. After what happened to Ruddy and Mara, we all learned to be quiet.

Even those who are less outspoken but express discomfort with what they see around them, risk being discredited:

Anyone who didn't tow the Moroccan line -- anyone who was in the middle with no opinion about the parties, but raised questions about whether things were free and fair -- that automatically labeled them 'pro-Polisario.'⁷²

Control Over Applicants

Morocco has also sought to control and intimidate the applicants on the Moroccan side and illegally confiscate registration receipts. According to Ruddy,

People coming to be identified on a given day cannot just walk in. They are rounded up by the Moroccans at some central point and sent by van to the MINURSO identification center. In this way, the Moroccans can control who gets identified.⁷³

At the conclusion of the identification process, applicants are taken to a central location where they are reportedly debriefed. Then, according to Ruddy,

Each person who appears before the identification commission gets a receipt, and when the findings are made public, the persons who are found eligible to vote [will] turn those receipts in for a voter's card. What was happening in Laayoune is that Sahrawis returning from the identification centers on those same vans that I was talking about before were being forced to turn in their receipts to the Moroccans before they can leave the vans. This opens up the real possibility that the wrong people may [later present] receipts and [get] voter cards.⁷⁴

⁷¹ Human Rights Watch interview, Washington, D.C., September 17, 1995. Hanna's termination letter states that the decision not to renew her appointment was taken "after taking into account the overall interests of the mission." Letter to Mahassen Mara Hanna from Erik Jensen, Deputy Special Representative, dated March 3, 1995.

⁷² Human Rights Watch telephone interview, September 15, 1995.

⁷³ Ruddy, "Review of the United Nations Operations and Peacekeeping."

⁷⁴ Ibid.

The impropriety of this practice was also raised by other members of MINURSO who, during discussions with individuals coming to be identified, would learn that the receipts of their family members, who had previously been identified, had been confiscated. Senior MINURSO officials Jean Edeline, executive assistant, office of the acting special representative of the secretary-general, and Riccardo Shedid, deputy district leader for the identification commission in Tindouf, confirmed the fact that the applicants on the Moroccan-controlled side are rounded up beforehand and brought to the identification center in vans. When questioned about this issue, Shedid responded "We don't know what goes on outside of the U.N. compound. It's not our business."⁷⁵ The report of the under-secretary-general for internal oversight service also dismissed this problem on the basis that "MINURSO retains full files on all applicants, including their photographs and fingerprints, which could be used to verify the identity at a later stage."⁷⁶ Erik Jensen echoed this sentiment, and stated that this was a problem of the past.⁷⁷ This does not explain why the U.N. has not investigated these allegations, which bear directly on the fairness of the referendum. Nor does it address the possibility that Sahrawis whose receipts have been confiscated may face difficulties or be afraid to come forward at a later stage to demand the right to vote.

Ruddy also noted that,

During the days of the opening sessions in Laayoune, Moroccan "journalists" photographed and videotaped every minute of every day and took the picture of each Sahrawi who came to be identified. These "journalists" were, as our press people and the head of our police observers (CIVPOL) noted, Moroccan state security people. The proof was that not one second of these hours of television coverage ever appeared on Moroccan television.⁷⁸

Mara Hanna told Human Rights Watch, "When the identification process first started, there were Moroccans with film cameras in the halls of the identification center. They would stop the Sahrawis and ask them 'what do you think about the Sahara? What do you think about the king?' They would intimidate people and make them give 'interviews'."⁷⁹

Sheikh Abderrahman, a tribal leader living in Algeria, told Human Rights Watch that, "in the beginning, the Moroccans were always there, intimidating people, filming -- there were even Moroccan police in the waiting rooms, intimidating people who were waiting to be identified. But Polisario complained and we noticed that this had stopped."⁸⁰

Lack of Transparency

In order for the referendum to be "free and fair," as agreed to in the Settlement Plan, and for its results to be accepted and recognized, it must be conducted in a transparent manner. The identification process, in particular, must be conducted openly and in accordance with known and verifiable criteria.

Transparency of Procedures

The lack of information about the rules under which MINURSO operates and the procedures that it will use to determine voter eligibility, makes it impossible to assess the fairness of the process. With the exception of the

⁷⁵ Human Rights Watch interview, Tindouf, August 10, 1995.

⁷⁶ U.N. Doc. A/49/884, para. 13.

⁷⁷ Human Rights Watch meeting with Erik Jensen, New York, October 11, 1995

⁷⁸ Ruddy, "Review of the United Nations Operations and Peacekeeping."

⁷⁹ Human Rights Watch interview, Washington, D.C., August 15, 1995.

⁸⁰ Human Rights Watch interview, Camp Auserd, Algeria, August 11, 1995.

Settlement Plan and the five identification criteria, there are no publicly-available rules or guidelines governing the identification process, and daily procedures seem to have developed in an *ad hoc* way.

One of the most problematic issues is that so little is known about the procedures that the U.N. will use in determining the final list of eligible voters. In addition to reducing transparency, the ill-defined basis for eligibility is also likely to lead to an endless cycle of frivolous appeals. Although more than 50,000 people had been identified by September 1995, it has not been possible to subject the U.N.'s decision-making to scrutiny, because MINURSO will not announce any decisions as to eligibility to vote until the identification process is complete. Moreover, according to Acting Special Representative Erik Jensen,

in the event that an applicant was not included in the Spanish census, did not present any documentation confirming his/her identity and substantiating his/her claim for admission under one of the remaining criteria, and if the two sheikhs who were called upon to provide the relevant oral testimony disagreed, the burden of proof would rest with the applicant to offer convincing evidence to the Identification Commission that he/she qualified for inclusion in the electoral roll.⁸¹

The ambiguity of the statement "convincing evidence" has led to a certain amount of controversy. In a discussion with Human Rights Watch, Jensen stated that he had meant the use of "convincing evidence" to be limited to cases where the parentage of an individual cannot be established, but the parentage of his or her sibling has already been proven.⁸² However, although he stated it orally to Human Rights Watch, the U.N. has not formally established the definition of "convincing evidence," where both documentary proof and agreement in oral testimony are absent.

Moreover, one of the recommendations set forth in the report of the Security Council mission that visited the region in June 1995 was that there should be "preliminary vetting of the 100,000 applicants currently not residing in the Territory" by the government of Morocco "prior to examination by the Identification Commission."⁸³ In an oral briefing on September 20, 1995, Under-Secretary-General Chinmaya Garekhan informed the Security Council that Morocco had eliminated some applications that were duplicative or from individuals who are underage, but that this had not made a significant change in the total number of applicants from the Moroccan-controlled side.⁸⁴ However, when the standard of proof for eligibility is unknown, it is unclear on what basis Morocco was to have screened out applicants whom it presumably considered eligible less than a year ago.

The announcement of the final voters list will be followed by an opportunity to appeal decisions. According to the Settlement Plan, an appellant will be required to present new "circumstances or facts which might lead to a reconsideration of his case, accompanied by appropriate evidence." However, applicants will not be informed of the basis on which they were denied in the first instance.

⁸¹ U.N. Doc. S/1995/49, para. 9.

⁸² Human Rights Watch meeting with Erik Jensen, acting special representative for the Western Sahara, New York, October 11, 1995.

⁸³ *Ibid.*, para. 46.

⁸⁴ United Nations Department of Political Affairs, New York, September 25, 1995.

Where written rules exist, they are not available to outsiders. For example, executive assistant Jean Edeline told Human Rights Watch that, according to the rules, observers had to be present in the identification room at all times. However, when asked for a copy of the rule, he responded "These are internal rules. I will not give you a copy."⁸⁵

Access to Information

According to a MINURSO military observer, "Following the publication of [a U.S. Senate Foreign Relations Committee] report in January 1992 and an article in the *Washington Post* on 14 March 1992, both of which criticized Morocco's obstruction of the process, Morocco demanded that visitors obtain permission before speaking with the U.N., including in Polisario-held areas."⁸⁶ This clearance must be obtained in advance, from U.N. headquarters in New York.

Getting clearance from U.N. headquarters in New York to visit the U.N. operation in the Western Sahara does not necessarily lead to full access and information, however. As visitors to the region quickly discover, the identification is proceeding under a cloak of secrecy. Except the three officials who provided official interviews, not a single member of MINURSO would speak on the record to Human Rights Watch about the identification process, because internal rules forbid them to speak to outsiders. Most were unwilling to answer any questions at all, even off the record. In explaining their reluctance even to provide information about the mechanics of the identification process, most MINURSO staff said that it was too "sensitive" and that they had been warned that speaking to outsiders would jeopardize the entire referendum process. Numerous people volunteered to provide interviews and information to Human Rights Watch in three or six months, when their contracts had ended, but said that they could not speak while they were still in the territory.

According to Jean Edeline, the rule against speaking to journalists, a category into which he also placed nongovernmental organizations such as Human Rights Watch, is a U.N. rule. However, a MINURSO staff member who had served in a number of other United Nations operations throughout the world, told Human Rights Watch,

This is a general U.N. rule but I have never seen it enforced -- they don't care about it in most other operations. Here, you have the feeling that there is something to hide, and everyone is afraid that the consequences will be serious if they say something. I don't mean that people will be fired, although a few have been. But people know that it will affect their career in the U.N. and their future postings, so the threat works.⁸⁷

This view was expressed by several other staff members as well, who said that those who have been most outspoken in their criticism of the MINURSO operation are individuals who are not in the U.N. system, but were hired for this particular mission only, and thus do not risk their future careers by speaking out. At the same time, a member of the identification commission said "A very large number of people in this mission are not career U.N. people -- they are here on contract and very worried that their contracts will not be renewed." Nevertheless, the turnover rate has been high: "at first, you feel threatened and turn silent. But many people have eventually left because they felt they were losing their integrity and they felt disillusioned."⁸⁸

Access to U.N. Headquarters and the Identification Center in Laayoune

⁸⁵ Human Rights Watch interview, Laayoune, August 16, 1995.

⁸⁶ Chopra, *United Nations Determination of the Western Sahara Self*, p. 49.

⁸⁷ Human Rights Watch interview, Laayoune, August 15, 1995.

⁸⁸ Human Rights Watch telephone interview with former member of MINURSO identification commission, August 30, 1995.

The silence of MINURSO personnel would be more acceptable if outsiders were permitted to have a meaningful opportunity to observe the proceedings. However, access to the identification center and to U.N. headquarters in Laayoune is tightly restricted by Moroccan police and secret service agents -- both uniformed and plainclothes. The Moroccan government says that Moroccan security are present only in order to protect MINURSO personnel, but the evidence indicates otherwise. It is not clear why the United Nations has not insisted that the U.N. civilian police be present outside the U.N. buildings, particularly as this force, whose primary responsibilities will not begin until the transitional period, is under-utilized at the moment. In his September 8, 1995 report, the secretary-general stated that the ninety-two-member U.N. civilian police force maintains "a 24-hour presence at the identification centres" but neglected to mention that this presence is limited to the interior of the centers.⁸⁹

Every MINURSO staff member questioned about access to U.N. buildings responded that Sahrawis seeking to fill in applications for the referendum are routinely denied access to the premises in Laayoune. Martin Bentz, administrative liaison, said that this had been a bigger problem before but that "some Sahrawis do manage to get in now."⁹⁰ However, the press officer, the executive assistant and the administrative liaison officer in the assistant special representative's office were all unable to provide Human Rights Watch with any figures on the number of individuals who have managed to submit applications to the U.N. in Laayoune.

The report of the under-secretary-general for internal oversight services de-emphasized the issue of access, stating that "The Deputy Special Representative has stated that if it is true that people are prevented from coming to be identified, there will be ample opportunity for such individuals to present themselves at later stages in the process, since he has made a ruling that individuals could continue to present applications after the formal deadline of receipt of applications through the parties."⁹¹ This is an inadequate response to a clear violation of the right of individuals to participate in the referendum process. Moreover, the report failed to answer the question of whether access is denied to MINURSO facilities.

The Human Rights Watch representative was also initially prevented from entering MINURSO headquarters for an appointment on August 14, 1995. Moroccan police and secret service agents told her that entry was forbidden to non-MINURSO staff without the prior approval of the local Moroccan authorities. The matter was finally resolved following the intervention of several different MINURSO staff members. Governor Mohammed Azmi, the Moroccan coordinator with MINURSO, apologized to Human Rights Watch about this incident and said that it was an aberration: "[The guards'] orders are clear. They are there only to protect MINURSO and someone must have just misunderstood the instructions. I have yelled at them and it will not happen again."⁹² Azmi categorically denied reports that access to the U.N. compounds is routinely restricted and said that this was the first case that had ever occurred. The very next day, however, the Human Rights Watch representative was stopped once again when trying to enter MINURSO headquarters for an appointment.

When visiting the identification center in Laayoune, the Human Rights Watch representative had to be accompanied at all times by Sophie Jacquin, the press officer for MINURSO, and her time in the identification center was limited to half an hour. The Human Rights Watch representative was informed that she could not return the next day, as MINURSO rules limited access to the identification center to a total of half an hour during the course of an entire visit. MINURSO stated that this internal rule had been established in response to the Moroccan observers' unwillingness to have outsiders present during the identification.

⁸⁹ U.N. Doc. S/1995/779, para. 35.

⁹⁰ Human Rights Watch interview, Laayoune, August 14, 1995.

⁹¹ U.N. Doc. A/49/884, para. 12.

⁹² Human Rights Watch interview, Laayoune, August 14, 1995.

Human Rights Watch raised this issue with Abderrahman Laibek, the Moroccan observer participating in identification in Laayoune on August 14, as well as with Governor Azmi, the Moroccan coordinator with MINURSO. Both stated that they had no objections to the presence of outside observers in the identification center and denied that they had asked for time limits.⁹³ Thus, the reason for the MINURSO rule is, at best, unclear. If such demands have been made, they should not be complied with, since the U.N. cannot accomplish its mission in a credible, impartial and independent manner if it is not allowed to determine who can be present on its premises and for how long. A restriction on presence in the identification center, particularly a time limit that is as unreasonable as half an hour, prevents meaningful observation of voter identification and precludes transparency in the process.

It is not immediately apparent why the observation of the identification process or presence in the center would be considered sensitive. Indeed, the identification process is a straightforward one where the individual being interviewed is asked a series of factual questions. Each interview generally does not last longer than a few minutes. However, while the identification centers are heavily guarded by Moroccan security, they are no longer permitted inside the compound. On the other hand, on any given day there may be over one hundred Sahrawis present in the center, waiting their turn to be identified. This would provide Human Rights Watch or journalists with the opportunity to speak informally with residents of the Western Sahara, without the fear of being observed or intercepted by Moroccan security.

THE QUESTION OF CONTROL

Each party accuses the other of obstructing the identification process. In July 1994, the Sahrawi Arab Democratic Republic's Prime Minister Mahfoud Ali Beïba remarked,

... we believe that Morocco will attempt something at every stage: a few months ago it was [breaches of] the cease-fire, now it is the criteria, then it will be over the elections, then over the transfer of power. All these obstructions are to prolong the process as much as possible to demoralize the U.N., the Polisario and the international community so [the process] is no longer sustainable. Being too costly, MINURSO will have to pack its bags. Therefore, Morocco is (i) trying to delay and (ii) trying to reach the referendum under its terms.⁹⁴

Morocco claims otherwise. Mohammed Azmi, the Moroccan coordinator with MINURSO, told Human Rights Watch, "If I say Polisario is at the root of all the problems, I am not credible. But if you talk to high level officials in MINURSO they will tell you the real situation. Just take the number of Polisario sheikhs who die or don't show up for identification. Morocco has never posed any obstacles to the process; on the contrary, it has done everything to ensure that the process move forward."⁹⁵

⁹³ Human Rights Watch also spoke with Polisario observers, including the Polisario representative to North America, who stated that they not only do not oppose the presence of outside observers in the identification room, but actually favor it.

⁹⁴ Chopra, *United Nations Determination of the Western Sahara Self*, p. 47.

⁹⁵ Human Rights Watch interview, Laayoune, August 14, 1995.

Jean Edeline told Human Rights Watch that the parties have been equally responsible for creating unnecessary obstacles to the fulfillment of MINURSO's mission.⁹⁶ However, according to MINURSO staff members, the balance is heavily tilted towards Morocco, which they claim has engaged in a deliberate effort to obstruct the settlement process, particularly during its early stages. Obstruction is often based on minor or symbolic issues. For example, in August 1994, Moroccan authorities refused to participate in the identification process unless the U.N. flag was removed from the identification center in Laayoune, leaving only the Moroccan flag. It is only since 1995 that the U.N. flag has been permitted.⁹⁷ In addition, until January 1992, Moroccan authorities refused to clear MINURSO supplies through the port city of Agadir.⁹⁸ The blockage of supplies has continued periodically. Morocco's opposition to the participation of OAU observers in the identification process, although this had already been agreed to by the parties, caused another two and a half month delay in the commencement of the identification process.⁹⁹

In his testimony before the United States Congress, former deputy chairman of MINURSO Frank Ruddy stated, "The identification process began in earnest on August 28, 1994 One can say that surely, as of this date, MINURSO ceased to be a U.N.-run operation and became the instrument for Morocco's domination of the identification process."¹⁰⁰ According to a member of the U.N. civilian police, "MINURSO has no power here at all. Right now it is mainly a peace-keeping mission, to monitor the cease-fire. For the rest, we have no control."¹⁰¹

The failure of the U.N., from the beginning, to stand up to challenges to its control by Morocco -- stronger both politically and militarily than Polisario and currently administering the disputed territory -- has led to accusations that the U.N. has not operated as a neutral party in the Western Sahara. According to one member of the identification commission, "From the start, the Moroccans were unreasonable and obstructionist; they did not want the referendum to happen. But if it was going to continue, they insisted that everything be done their way. The U.N. let them get away with it, just so the process wouldn't collapse. Morocco is the stronger party so its natural that it happened that way."¹⁰² According to another member of the identification commission, "Now the parties both spend their time presenting obstacles, it is true. But the Polisario tends to react to Moroccan obstacles by raising objections of its own. That's really all that they can do now, because they know -- everybody knows -- that they have lost on all of the big issues. They blame the U.N. for that and say that it has been biased."¹⁰³

The U.N. has postponed the transitional period until the identification process has proceeded farther along, and other aspects of the plan (including repatriation of refugees, exchange of POWs, etc) can proceed in accordance with the original timetables. However, the repeated postponement of the transitional period has prevented the U.N. from exercising the full powers it was intended to have under the Settlement Plan. Since the U.N. is reluctant to move away from the established timetables, even though the past four years have shown these deadlines to be unworkable and

⁹⁶ Human Rights Watch interview, Laayoune, August 14 and 16, 1995.

⁹⁷ A former member of MINURSO told Human Rights Watch, "When we opened the identification center in Smara in March 1995, the whole flag episode was repeated, with the Moroccans insisting that we remove the U.N. flag. Polisario objected -- they said 'How can we have our people vote under a Moroccan flag, with no U.N. flag?' This disrupted the identification process again." Human Rights Watch telephone interview, September 11, 1995.

⁹⁸ "The Western Sahara: The Referendum in Danger," A Staff Report to the Committee on Foreign Relations of the United States Senate, January 1992, p. 6.

⁹⁹ Human Rights Watch interview with Ambassador Frank Ruddy, Washington, D.C., September 14, 1995.

¹⁰⁰ Ruddy, "Review of United Nations Operations and Peacekeeping."

¹⁰¹ Human Rights Watch interview, Tindouf, August 13, 1995.

¹⁰² Human Rights Watch interview, Laayoune, August 15, 1995.

¹⁰³ *Ibid.*

unrealistic, the Security Council must take other steps to remedy the lack of U.N. control on the ground. One important step would be to authorize a heightened presence of MINURSO military and civilian police in the Moroccan-controlled Western Sahara, including at the entrances to U.N. headquarters, all the identification centres and the locations where applicants are gathered by the Moroccans prior to and following identification by the U.N.

FREEDOM OF MOVEMENT AND SURVEILLANCE

MINURSO staff members living in the Moroccan-controlled Western Sahara are under permanent surveillance. The MINURSO staff are housed primary in three hotels: the Parador, El-Massirah and an-Nagjir, all of which are heavily guarded. Non-MINURSO staff cannot enter these hotels unless Moroccan security permits it. As MINURSO staff members live in the same hotels as Moroccan officials and dine in the same facilities, many told Human Rights Watch that they feel that they have no freedom to express their views.¹⁰⁴ In addition, the vast majority of those with whom Human Rights Watch spoke said they believe that "every single Moroccan employed in these hotels works for the secret service -- the receptionists, the waiters, the bartenders; they are here to watch and listen."¹⁰⁵

The freedom of movement of MINURSO in the territory is also restricted. Based on Moroccan orders, MINURSO has forbidden its staff members to visit the "tent cities," where Moroccans transferred to the territory in 1991 currently live, or the surrounding areas. A few MINURSO staff members were not sure if such visits are still explicitly banned, but said that "no one really bothers as it would just create an issue."¹⁰⁶ Mingling with local Sahrawis is frowned upon. Even in the absence of explicit restrictions, however, such interaction would be difficult because the MINURSO personnel are so closely monitored.¹⁰⁷

According to Frank Ruddy,

A few weeks [after the identification process started] telephone taps were found on local and all international lines at MINURSO headquarters. The taps went to a local Moroccan line. This was hushed up. There was no investigation but the person most likely to have installed the taps was transferred. Mail had regularly been tampered with and rooms of MINURSO personnel were regularly searched, but this was a new wrinkle. Big brother was listening to, as well as watching us, and New York was never informed.¹⁰⁸

¹⁰⁴ Human Rights Watch interview with a group of MINURSO staff members, Laayoune, August 14, 1995.

¹⁰⁵ Ibid.

¹⁰⁶ Human Rights Watch interview with a group of MINURSO staff members, Laayoune, August 15, 1995.

¹⁰⁷ Ibid.

¹⁰⁸ Ruddy, "Review of United Nations Operations and Peacekeeping."

Even the U.N.'s military observers in the Moroccan-controlled territory are restricted in their movements. Jarat Chopra, an expert on U.N. peacekeeping operations who has visited the region several times, was told by MINURSO military observers that "[t]hey were not permitted in security areas where Moroccans had not given them permission to go. U.N. cars would be cut off; if the observers continued they would be cut off again and eventually halted at gunpoint. One officer who had served in Smara was followed everywhere he went and was specifically told not to approach the tent city there, a demand he was forced to comply with."¹⁰⁹

It was impossible for Human Rights Watch to obtain any first hand information from Sahrawi residents on the status of human rights in the Moroccan-controlled Western Sahara, because we were too closely monitored in the region. Our representative was followed and questioned continuously and photographed against her will by secret service agents. As mentioned above, our representative's time in the identification center was limited to thirty minutes, so she was unable to speak with applicants waiting to be identified by the U.N..

The Human Rights Watch representative was detained and questioned for almost two hours by Moroccan soldiers, police officers, and plain-clothes secret service when attempting to visit a "tent city" in Laayoune (Camp *Wahda* or Unity). When the police learned that she had taken a photograph of the camp, they tried to confiscate the film. According to the authorities, the tent city is off limits because "the people need their privacy; the film has to be confiscated in case one of the residents of the camp files a complaint tomorrow that a foreigner was taking pictures."¹¹⁰

Visitors to the region immediately experience limitations on their ability to move around, beginning with the checkpoints on all the roads leading to and from the city of Laayoune. Those who manage to get in find that their access to people and information is restricted. Peacekeeping expert Jarat Chopra recounted the following experience when he first arrived in Laayoune:

I arrived at the Hotel Parador and tried to enter. Two Moroccan secret servicemen dressed in civilian suits would not let me pass. I told them I wished to meet with MINURSO officials and had authority from New York to do so. There seemed nowhere in or out of the hotel for MINURSO personnel to walk without secret servicemen being present. The parking lot had some U.N. vehicles, but was also filled with small cars in which servicemen behind the wheels were always ready to follow.... I was told in a threatening manner that this hotel is for MINURSO and that I must go away. This scene was repeated at hotels La Kouara and El Massira. At one of these an Australian officer emerged through the front door and I approached him for help. Within a second or two a young secret serviceman standing by the reception desk separated us and said that contact was forbidden.¹¹¹

CREATING FACTS ON THE GROUND

Both Morocco and Polisario have formally agreed to accept the results of the referendum. Nevertheless, pending the referendum, Morocco seems to be entrenching itself more firmly in the Western Sahara with each passing day, taking steps that have dramatically altered the demography and other aspects of the territory. Indeed, the government has been pouring money into the territory since 1975, much of it reportedly funded by Saudi Arabia. According to analyst John Damis::

¹⁰⁹ Jarat Chopra, Testimony Before the Committee on Foreign Relations of the United States Senate Subcommittee on African Affairs, Hearing on "U.N. Peacekeeping in Africa: The Western Sahara and Somalia," October 1, 1992.

¹¹⁰ Human Rights Watch discussion with the Camp Wahda liaison with the Referendum Identification Committee, Laayoune, August 15, 1995.

¹¹¹ Chopra, Testimony Before the Committee on Foreign Relations of the United States Senate Subcommittee on African Affairs.

Much of the cost of Morocco's Sahara campaign was covered by generous aid from Saudi Arabia, conservatively estimated at \$1 billion a year from 1979 to 1981 ... and averag[ing] less than \$500 million a year since then.¹¹² Morocco, which was estimated to have [deployed] over 120,000 troops in its Saharan military campaign, [accrued] military expenditures amounting to about \$250 million a year for the period 1976 to 1986 alone.¹¹³

The Moroccan government, which is in administrative control of most of the Western Sahara, has also carried out a variety of infrastructure projects, ranging from construction of roads, ports and administration buildings to the supplying of water, and provided social services, including housing, schools and hospitals:

Civilian expenditures in the four provinces of the Western Sahara totaled about US\$2.5 billion between 1976 and 1989, or about \$180 million a year.... Most of the total was allocated to Laayoune province, where nearly two-thirds of the population lives. The primary objective of these expenditures was to win the hearts and minds of the resident Sahrawi population. Over the longer term, the Moroccan government hopes to recoup its investment from profits from Saharan fisheries and phosphates."¹¹⁴

MINURSO personnel also point to lucrative financial incentives provided to Moroccans who move to the Western Sahara, including tax-free salaries and subsidized food.¹¹⁵ These incentives succeeded in increasing the population of the Western Sahara from the 74,000 figure of the 1974 Spanish census to 162,000 in 1981, according to a Moroccan census.¹¹⁶

Despite the disputed status of the territory and the presence of a U.N. operation aimed at resolving this very issue, Morocco included the population of the Moroccan-controlled Western Sahara in a constitutional referendum that took place on September 4, 1992, and in parliamentary elections in June 1993. This led to the view, "in legal terms, at least, [that] Morocco had effectively annexed the Western Sahara before the referendum supposed to determine its status could even be held."¹¹⁷

¹¹² Damis, "Morocco and the Western Sahara," p. 167.

¹¹³ *id.*, p. 166.

¹¹⁴ *Ibid.*

¹¹⁵ Human Rights Watch interviews, Laayoune, August 16, 1995.

¹¹⁶ Joffe, "The Conflict in the Western Sahara," p. 126.

¹¹⁷ *id.*, pp. 112 -13.

The most visible examples of Moroccan attempts to populate the region with its supporters are the “tent cities” that were created near the major Western Saharan cities in September and October of 1991. These encampments house 40,000 people who were transported to the Western Sahara in order to vote in the referendum. According to Moroccan authorities, these individuals are of Sahrawi origin, but had left the territory for a variety of reasons. The most common explanation provided for this mass migration, by Moroccan authorities and by individuals, from among the 40,000, who have already completed the identification process, is that there was a significant population flow from Western Sahara in the 1950s in order to escape the Spanish colonial power. Once plans for the referendum were announced, they moved back immediately, to vote for “integration of the Western Sahara into Morocco.”¹¹⁸

Shortly after the population transfer in 1991, Johannes Manz, the secretary-general's special representative for the Western Sahara resigned his post, informing the secretary-general that

Concerning the non-military violations, the movement of unidentified persons into the Territory, the so-called ‘Second Green March,’ constitutes, in my view, a breach of the spirit, if not the letter of the peace plan. It was therefore, with great sadness that I took note of the content of your letter on this subject to the king of Morocco dated November 18, which was sent without my prior consultation or my knowledge, although I had made very clear recommendations on this matter¹¹⁹

In fact, the population transfer clearly violated the letter of the Settlement Plan, specifically paragraphs 72 and 73, which only permit Western Saharans resident outside of the territory to return to the Western Sahara after their eligibility to vote has been established by the Identification Commission.¹²⁰

The transferred population has lived, for four years, in guarded tent cities and received free food and other benefits from the Moroccan government. One MINURSO staff member who knew a family in the tent city of Smara said “We were forbidden by MINURSO to go to the tent cities. They said the Moroccans had requested this and, for the sake of good cooperation, we were supposed to oblige them. They were aware that I would visit this family, but the family was so pro-Moroccan, pro-king, that it was permitted. The mother is responsible for distributing free food to the residents of the tent city.”¹²¹

It is commonly alleged that the tent people are not Sahrawi at all but were brought in, and are being kept in the region, by force, in order to increase Moroccan votes in the referendum. Human Rights Watch was unable to investigate this issue, since our representative was detained by Moroccan security forces when she attempted to enter a tent city in Laayoune (see section entitled “Freedom of Movement.”) Indeed, the area is strictly off limits to foreigners, except during visits conducted in the presence of government authorities. Jarat Chopra, who visited the region as part of an American bi-partisan delegation visiting the region in July 1993, remarked,

The rows of white tents bear black symbols of the Moroccan royal family. This is not a spontaneous movement of people but appears an orchestrated effort..... A local inhabitant of Taroudant in southern Morocco told us later that 'all the Sahrawis I have seen in the area around Tiznit and Taroudant are going to Laayoune, but they do not want to. They are being paid 70 dhiraams [about \$10] a day to stay

¹¹⁸ Human Rights Watch discussion with Camp Wahda liaison with the Referendum Identification Committee, Laayoune, August 15, 1995.

¹¹⁹ *id.*, p. 13.

¹²⁰ U.N. Doc. S/21360, paras. 72 and 73.

¹²¹ Human Rights Watch telephone interview with former member of MINURSO, August 30, 1995.

there until the process is over. They also have free food and accommodations. The money is coming from Saudi Arabia.¹²²

¹²² Chopra, *United Nations Determination of the Western Sahara Self*, p. 33.

Following a trip to the region in 1992, Chopra testified before the U.S. Senate Foreign Relations Committee that, "If any [of the inhabitants of the tent cities] have come to vote and keep the Sahara Moroccan there is no evidence that they will stay. These are temporary camps, not settlements, where civilians can do nothing but wait. One year later, many are trying to leave but are threatened with arrest if they do."¹²³

OTHER HUMAN RIGHTS ISSUES RELATED TO THE WESTERN SAHARA CONFLICT

Freedom of Expression and Assembly in the Moroccan-Controlled Western Sahara

Since the September 1991 cease-fire, Morocco has arrested and detained hundreds of Sahrawis in the Moroccan-controlled Western Sahara.¹²⁴ In addition to individual arrests, hundreds of people were arrested in January 1992, following demonstrations in Assa, Smara and Laayoune. According to the Association of Families of Prisoners and Disappeared Sahrawis (AFAPREDESA), most "disappearances" since 1991 have been "short-term." In such cases, the victim "disappears" without the family having any knowledge of his whereabouts. He is detained incommunicado without any charges or a trial, but is then released days or perhaps months later.¹²⁵ There have also been allegations of torture during detention.¹²⁶ When asked about short-term "disappearances" in the Moroccan-controlled Western Sahara, Governor Azmi, the Moroccan coordinator with MINURSO and a senior official in the Moroccan ministry of interior, denied that this practice exists.¹²⁷

In a recent incident, eight young men were arrested in Laayoune on May 11, 1995, following a peaceful, pro-independence demonstration. On June 21, 1995, a military court in Morocco sentenced them to periods ranging from fifteen to twenty years. The Moroccan Organization for Human Rights (OMDH) received reports that five other young Sahrawis were also arrested in relation to the demonstration; one reportedly died in detention, while the whereabouts of the other four are currently unknown.¹²⁸ Neither the OMDH nor Human Rights Watch were able to confirm these reports.

Citing this incident and other "violations of the peace process," Polisario suspended its participation in the identification process on June 23, 1995. On July 9, 1995, the king commuted the eight Sahrawis' sentences to one year. The next day, the pro-government newspaper *Le Matin* printed a letter, purportedly written by the parents of the detainees, in which they declared their "devotion, loyalty, attachment and allegiance" to the king and asked that he extend a pardon to the eight young men despite the acts of "pillage, injury, arson, theft and other grave crimes" that they had committed, "lured by false propaganda." The letter and the accompanying article made no mention of the fact that the eight had been arrested during a peaceful demonstration. Polisario resumed its participation in the identification process in late July.

¹²³ Chopra, Testimony Before the Committee on Foreign Relations of the United States Senate Subcommittee on African Affairs.

¹²⁴ Amnesty International "Continuing Arrests, 'Disappearances' and Restrictions on Freedom of Expression and Movement in Western Sahara," p. 2.

¹²⁵ Ibid. and Human Rights Watch interview with Mahjoub Naama, chargé d'Information of AFAPREDESA, Rabouni, Algeria, August 13, 1995.

¹²⁶ Ibid.

¹²⁷ Human Rights Watch interview, Laayoune, August 14, 1995.

¹²⁸ Human Rights Watch telephone interview with Moroccan Organization for Human Rights, August 2, 1995.

According to a former MINURSO staff member who was in Laayoune at the time of the demonstration, "We heard that one hundred people were actually arrested, not just the eight that everyone talked about. But what I know for sure is that, after that demonstration, the square in front of the An-Nagjir hotel [a hotel occupied primarily by MINURSO staff] was always empty. It had always been full before, especially at night, when people would stroll around."¹²⁹

Hundreds of cases of individuals who reportedly "disappeared" up to two decades ago also remain unresolved. In June 1991, the Moroccan government released over two hundred individuals, most of whom "disappeared" because they or their family members had challenged the government's claims to the Western Sahara.¹³⁰ The victims were usually held in secret detention centers and subjected to torture, some for almost two decades.¹³¹ The released Sahrawis have never received any reparations from the Moroccan government; nor has the government acknowledged its history of "disappearances," held those responsible accountable for their actions, or accounted for the hundreds of detainees still among the "disappeared."

Hundreds of Sahrawi families are still searching for missing sons, brothers and husbands. The 1991 releases gave these families hope that their loved ones may still be alive as well. The Moroccan government has been pressed to address the fate of 258 individuals, mostly Sahrawis but some Moroccans, whose names have been provided by the United Nations Working Group on Enforced and Involuntary Disappearances. According to the Moroccan minister of human rights, sixty of these cases have been resolved, although details were not provided to Human Rights Watch, and the government is trying to determine how many of the remainder were cases of forced "disappearances" and how many of these individuals are still living.¹³² Based on testimony from family members and from the former "disappeared," AFAPREDESA reports that at least 526 Sahrawis are still "disappeared" and may be detained in Morocco or in the Moroccan-controlled Western Sahara.¹³³

The Refugee Camps in Tindouf

The armed conflict in the Western Sahara caused the displacement of tens of thousands of Sahrawis to the eastern border of the territory. In January 1976, the Moroccan bombardment of camps that had been set up outside the Western Saharan cities caused thousands of casualties and forced tens of thousands of Sahrawi to flee once again, this time taking refuge in southwestern Algeria. Four camps, named after the Western Saharan cities of Laayoune, Dakhla, Smara and Auserd, were established in the desert, near the Algerian military city of Tindouf. Twenty years later, they are home to 165,000 refugees, according to Polisario, which administers the camps. The refugees live in tents and some have also built small "houses" out of mud bricks. These structures offer more protection from the extreme temperatures of the desert summer, but are vulnerable to harsh winter rains and floods that can wash away the delicate bricks in hours. In October 1994, for example, floods in El Aayoune Camp killed at least seven people.¹³⁴ The refugees face other difficult conditions as well, including frequent sandstorms and occasional shortages of water in Auserd and Smara camps, which have no wells and must have water transported to them from other areas.

¹²⁹ Human Rights Watch telephone interview with former member of MINURSO, August 30, 1995.

¹³⁰ However, a July 8, 1994 general amnesty, pursuant to which 424 Moroccan political prisoners were released, explicitly excluded those who had advocated independence for the Western Sahara.

¹³¹ Amnesty International, "Breaking the Wall of Silence: The Disappeared in Morocco."

¹³² Human Rights Watch interview with Mohammed Ziane, Moroccan Minister of Human Rights, Rabat, June 2, 1995.

¹³³ Human Rights Watch interview with Mahjoub Naama, Chargé d'Information of AFAPREDESA, Rabouni, Algeria, August 13, 1995.

¹³⁴ Human Rights Watch telephone interview with Boukhari Ahmed, Polisario representative to the United Nations, September 19, 1995.

International relief organizations, the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme and the European Community provide assistance in the form of shelter materials, food, medication and support for education, to Sahrawi refugees. Polisario is responsible for distributing this assistance to Sahrawi refugees and appears to do so on a timely and equitable basis. The government of Algeria also provides significant assistance to Polisario, although recent events in Algeria have caused a reduction in this aid. In addition, security concerns in Algeria have sharply reduced the number of relief organizations willing to send personnel to Tindouf to provide assistance in the field, as the only flights to the remote city of Tindouf operate out of Algiers.

According to Peter O'Rourke, an American who taught English in the Sahrawi refugee camps in 1994,

The Sahrawi have developed a system of education which both requires and guarantees schooling from kindergarten to twelfth grade for all boys and girls. Boarding schools within the refugee camps and Algerian high schools provide all students with the opportunity to earn their Baccalaureate. Many students earn their undergraduate, and often their graduate, degrees in Algeria. Others ... travel at the expense of the host nation to countries in Europe, North America and Latin America to earn university and other higher education degrees."¹³⁵

As described above, the living conditions in the desert are harsh and the location of the camps is remote and desolate. Nevertheless, the camps are free of the epidemics and other health problems rampant in many other African refugee camps. A representative of the relief organization Medecins du Monde, which has conducted several extended missions to the region, told Human Rights Watch that, after spending two months in the region, she had observed that there are no food shortages in the camps, but that there are nutritional deficiencies caused by an unbalanced diet, particularly a lack of fresh vegetables. In addition, she stated that, while there are no epidemics, there are high rates of certain medical conditions such as rheumatism, cataracts and other eye complications, which could be due to the climate. Finally, she noted a lack of certain medications and equipment in the hospitals, but attributed this to the fact that Polisario is, for the most part, dependent upon whatever it receives from the international community. Although there are hospitals and dispensaries for the camps, Polisario also evacuates camp residents to hospitals in Algiers or Madrid when there are unusual medical complications.

Morocco has alleged that Polisario has turned women into "human cows," referring to an alleged program of forcing women to become pregnant and give birth continuously, in order to keep the Sahrawi population high. Human Rights Watch did not find any evidence of this practice. However, women questioned about birth control in the camps responded: "There is no birth control available, officially. There is a sort of policy that it is good to have children. This was especially true in the early years. But so many people go abroad -- to study and for different things -- they just bring back birth control. A lot of people actually use it. But it's true that Polisario does not give it to us."¹³⁶

¹³⁵ Peter O'Rourke, *The Conflict in the Western Sahara*, p. 3.

¹³⁶ Human Rights Watch interview, Camp Auserd, Algeria, August 9, 1995.

Morocco also challenges Polisario's claim that there are 165,000 refugees in the camps in Tindouf. Morocco suggests that there are no more than 20,000 - 30,000 Sahrawis living in the camps, and that international assistance based on the higher numbers provided by Polisario "ends up in the pockets of the Algerian military. Food stuffs are sold in nearby *souks* [bazaars]."¹³⁷ Moreover, Morocco charges that the UNHCR has not been permitted to conduct a census in the camps. UNHCR confirms that it has never taken a formal census in the camps, but according to Pierre Von Gunten, head of the North Africa desk for UNHCR in Geneva, "UNHCR has been able to estimate, through its visits, what is the needy population. At present, we provide assistance to 80,000 of the most needy and vulnerable persons in the camp. UNHCR is free to visit the camps as often as it likes; we usually visit at least four to five times a year."¹³⁸

Freedom of Movement in the Camps

There are Polisario checkpoints surrounding the camps and Algerian checkpoints guarding entry to Tindouf, which is an Algerian military zone. Although the Human Rights Watch representative was encouraged by members of Polisario to move about freely in the camps and speak to whomever she chose, the remoteness of the camps, the unfriendly desert terrain and the absence of transportation ultimately make a visitor dependent upon Polisario for moving about. Staff members of other nongovernmental and international organizations who have had a longer presence in the camps, such as Gérard Portier, the UNHCR logistics officer in Tindouf, report that they are free to move wherever they like in the camps.¹³⁹

The structure of life in the camps is described by Sahrawis in utopian terms, with everyone working for free, for the "cause." In fact, the freedom of the refugees is subject to certain restrictions. For example, the entire work force in the camps, schools, hospitals and in the "governmental" structure comes from the camps, but no one receives a salary. Instead, they receive payment in kind, through the food, shelter and other assistance that is provided to each refugee. The refugees explain that they work as volunteers because they are committed to the cause of Sahrawi liberation and because, in any event, Polisario does not have the money to pay them. There was no evidence of forced labor. But when asked whether it is possible not to work, a Polisario representative responded "Everyone wants to work."¹⁴⁰

Refugees interviewed by Human Rights Watch were quite open about their dislike of living in the camps and their obvious desire to live in different conditions. The following view was echoed by several people: "Recently, many people have left the camps -- I know at least ten or fifteen myself who have left in the last year and that had never happened before -- because they had gotten fed up with waiting and wasting their lives living like this in the desert. There are many other people who would leave if they had somewhere to go or if they had the money to live someplace else."¹⁴¹ Many of the refugees, who come from traditional nomadic backgrounds, leave the camps for periods at a time to live in the desert, outside of the camps, in the Polisario-controlled section of the Western Sahara.¹⁴²

In order to provide young Sahrawis with experiences outside of the camps, Polisario makes arrangements for many Sahrawi students to study or receive specialized training at universities and institutions abroad. In addition, several European organizations sponsor summer programs and camps in Europe for Sahrawi children and teenagers. Moving away permanently, however, is another matter. Indeed, one of the allegations that has been made against Polisario is that it is keeping people in the camps against their will, through force, in order to use them as pawns in a

¹³⁷ Chopra, *United Nations Determination of the Western Sahara Self*, p. 21, citing discussions with Moroccan foreign ministry officials.

¹³⁸ Human Rights Watch telephone interview, September 1, 1995.

¹³⁹ Human Rights Watch interview, Laayoune, August 17, 1995.

¹⁴⁰ Human Rights Watch discussion with Dadah Babana, Polisario Front protocol officer, Rabouni, Algeria, August 11, 1995.

¹⁴¹ Human Rights Watch interview, Camp Auserd, Algeria, August 9, 1995.

¹⁴² Human Rights Watch interview with Peter O'Rourke, Washington, D.C., September 5, 1995.

political resolution of the conflict. However, Human Rights Watch found no evidence of the use of force to keep people in the refugee camps; rather, it found that what keeps them there is the fact that most of the refugees have nowhere else to go. As mentioned above, most Sahrawis receive no salaries or other money. There are a few exceptions: those who had worked for the Spanish colonial regime and still receive pensions from the Spanish government, those who live or study abroad and are able to send money back to the camps for their families and a small number of refugees who work in Tindouf. Accordingly, it is very difficult, if not impossible, for Sahrawis, whose families tend to be large, to move abroad. Even if they had the financial means, the refugees would be highly unlikely to receive travel documents, let alone residency permits, from most foreign governments.

When asked whether they are free to leave the camps, most responded "Where would we go? What country would take us in?" The prospect of moving to other Algerian cities was also not considered a realistic one; in light of the current political and economic crisis and high rate of unemployment in Algeria, Sahrawis feel that they would never find the means to support themselves. As one woman put it "Algerians can't find jobs in Algiers. Why would an Algerian give *us* jobs?"¹⁴³

The only real option is to move back to Morocco or to the Moroccan-controlled Western Sahara. Whether based on genuine fear and dislike of the Moroccan regime, or due to fears propagated by Polisario and the unwillingness to become a "traitor" to the cause, this option is one that most Sahrawis do not consider, or at least exercise. However, there have been a number of high-profile Polisario defections in the past few years, most notably the former foreign minister Brahim Hakim, who left for Morocco in August 1992.¹⁴⁴ According to Mohammed Abdelaziz, the president of the SADR,

The Moroccan intelligence services have money and means. We are a very poor movement living in extreme conditions. If an individual needs money or a retirement plan, we cannot cover that. We do not have the resources. Members of the foreign service, the military officials, technicians are not paid. We cannot pay anybody. Working has to be a voluntary contribution.... We say to Morocco ... : here are people who have worked for 18 years because of commitment; and if you believe we have no freedom of movement or expression, let's have a referendum and if Polisario are so bad let the people vote for someone else.¹⁴⁵

Thus, while there are clear and important restrictions upon the freedoms that Sahrawi refugees can exercise, most of the difficulties they face are a result of their remote situation and the harsh climate in the desert, the economic and political difficulties of the region and the realities of being a stateless refugee population.

Prisoners of War Camps

¹⁴³ Human Rights Watch interview in Camp Auserd, Algeria, August 9, 1995.

¹⁴⁴ There are also recent cases of Sahrawis leaving the Moroccan-controlled Western Sahara to move to Tindouf and join Polisario.

¹⁴⁵ Chopra, *United Nations Determination of the Western Sahara Self*, p. 67.

Over 2,400 prisoners of war (POWs), both Moroccan and Sahrawi, captured in the course of the armed conflict, have been held in difficult conditions for up to twenty years. Morocco states that it holds only seventy-two POWs, all of whom are kept in a camp in Agadir, in southern Morocco.¹⁴⁶ Polisario refutes this figure, asserting that Morocco actually holds 200 - 300 prisoners.¹⁴⁷

The International Committee of the Red Cross (ICRC) registered eighteen Polisario prisoners held by Morocco in April 1978 but, following that visit, Morocco denied access to the ICRC until May 1993. Since that date, the ICRC has made four additional visits to Sahrawi prisoners in the southern Moroccan city of Agadir; to date, it has registered a total of seventy-two prisoners. Polisario permitted the ICRC access to Moroccan prisoners it was holding during the first two years of the conflict. Then, from 1976 until 1984, Polisario suspended ICRC visits, presumably in protest of continued denial of access to the ICRC by Morocco. Since 1984, the ICRC has attempted to make regular visits to the Moroccan prisoners held Polisario. To date, the ICRC has registered 2,155 Moroccan prisoners held by Polisario in different camps, and estimates that another two hundred prisoners may remain to be seen. The ICRC has visited four camps close to Rabouni, but has never visited the centers in more remote locations. Polisario usually gathers prisoners from various different camps and brings them to one location, where they are visited by the ICRC.

Polisario states that prisoners of war are held in five camps in southwestern Algeria. There may also be smaller camps scattered in remote locations in the region, but Human Rights Watch was unable to confirm this. Prior to its visit to the region, Human Rights Watch had specifically asked to visit all of the locations where POWs are being held and Polisario had agreed. Once Human Rights Watch arrived, however, it was only permitted to visit two of the locations: the Centre Mohammed Lasyad and the Centre Hamdi Aba Sheikh, both located within about thirty-five kilometers of Polisario headquarters outside of Tindouf. According to one POW who had been moved around between several different camps during the past fifteen years, "those are the two centers that they show to foreigners. You shouldn't believe that the conditions are like this in the other camps."¹⁴⁸

Even in these two camps, however, the conditions are harsh, particularly due to the desolate desert location, intense heat, and the constant threat of sudden sandstorms. In many ways, the conditions are not dissimilar to those in the refugee camps; however, while life is already extremely difficult for the Sahrawi refugees, it is even less bearable for the Moroccan POWs, many of whom had been accustomed to more temperate climates and city-living prior to being captured. The two centers are not like conventional prisons; there are no cells, no bars and no barbed wire, as there is nowhere to escape to. Rather, the POWs live in somewhat cramped, domed structures, which offer some protection against the heat and were built by the POWs themselves. Prisoners are assigned living quarters according to their region of origin because "this makes it easier for everyone to get along."¹⁴⁹

Some of the POWs appeared frightened to speak to the Human Rights Watch representative, while others simply showed no interest. According to one visitor to the camps, this may be due to the fact that "so many journalists and so on have visited the POWs over the past twenty years without being able to assist them in gaining their freedom that they have lost interest in speaking." Other POWs were willing to speak, however, and discussed their complaints and conditions openly. Some complained about their physical treatment at the hands of prison guards, while others emphasized that this had improved since 1986 or 1987. "We don't like them and they don't like us -- we are enemies. But it has improved since a few years ago." Indeed, conditions in the camps appear to have fluctuated over the past

¹⁴⁶ Human Rights Watch takes no position on whether the armed conflict between Morocco and the Polisario Front was of an internal or an international character, as defined in the Geneva Conventions of August 12, 1949. However, we refer to the combatants captured during the armed conflict as "prisoners of war," in order to be consistent with the terminology used in the United Nations Settlement Plan for the Western Sahara, as well as by the secretary-general and the Security Council.

¹⁴⁷ Human Rights Watch telephone interview with Boukhari Ahmed, Polisario Representative to the United Nations, September 19, 1995.

¹⁴⁸ Human Rights Watch interview with a prisoner of war, Centre Mohammed Lasyad, August 12, 1995.

¹⁴⁹ Human Rights Watch interview with a prisoner of war, Centre Hamdi Aba Sheikh, August 12, 1995.

twenty years, in accordance with the political tide, and the most marked improvement seems to have occurred since 1987.

Everyone complained about medical problems, particularly the lack of medication. Three of the Moroccan POWs are doctors, and they are rotated around the different camps to tend to sick prisoners. One doctor told Human Rights Watch, "We ask for specific medications and sometimes obtain them, but it depends on what Polisario receives from [the international community.]"¹⁵⁰ Prisoners complained about a lack of vitamins and diseases such as rheumatism, hepatitis, diabetes and cardiovascular complications. Prisoners who are very sick are taken to nearby Polisario hospitals.

It is compulsory for prisoners to work outside of the camps, in Polisario-administered locations, doing work ranging from construction to mechanics to tailoring. They are not paid for their labor, in violation of international standards.¹⁵¹ The prisoners told Human Rights Watch that their treatment differs depending on the type of work and the individual supervisor, but all complained that the hours were very long: "We start working at 6:00 or 7:00 a.m. and stop at around 3:00 p.m.; it is very difficult in the heat. Before, it used to be much worse; until 1987, we did what you would call 'hard labor' and we used to work much longer hours and even through the night."¹⁵² The climatic conditions in which the prisoners work, as well as their long working hours, also fall short of international standards.¹⁵³

The POW diet, which is heavy on rice, chick peas, vermicelli and beans, is similar to that of the refugees, because Polisario distributes food to them from the same international aid shipments as those destined for refugees. POWs in both camps visited by Human Rights Watch complained that the quantity of food they receive is low. Thus, according to the POWs, the only way to survive is "to steal from the places where we work. Polisario know that we do this; they close their eyes to it. This is in fact why the quantities of food we receive have diminished -- because they know most of the prisoners can supplement it by stealing."¹⁵⁴ According to another POW, "All the prisoners have different things to eat and different amounts of food -- it depends on who has the capability to steal more, and what they can steal. One might go hungry while another is doing fine. This creates bad feelings."¹⁵⁵

¹⁵⁰ Human Rights Watch interview with a prisoner of war, Centre Mohammed Lasyad, August 12, 1995.

¹⁵¹ Article 62 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War requires that "prisoners of war be paid a fair working rate." Similarly, Rule 76 (1) of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 30 August 1955, requires that "There shall be a system of equitable remuneration of the work of prisoners." These rules are not part of a binding treaty, but constitute an authoritative interpretation of international norms and, as such, are binding on Morocco.

It should also be noted that, due to its lack of monetary resources, Polisario does not pay Sahrawi refugees either, regardless of the capacity in which they work.

¹⁵² Human Rights Watch interview, Centre Hamdi Aba Sheikh, August 12, 1995. The temperature in Tindouf can rise to as high as 140 degrees Fahrenheit during the summer.

¹⁵³ See, e.g., Articles 51 and 53 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War which, even if were not binding, would serve as a guideline for detention conditions.

¹⁵⁴ Human Rights Watch interview, Centre Mohammed Lasyad, August 12, 1995.

¹⁵⁵ Human Rights Watch interview, Centre Hamdi Aba Sheikh, August 12, 1995.

The prisoners do not have access to books or magazines, although some have received radios from their workplaces. "There are sometimes nice people, from Polisario, who work there and they try to help."¹⁵⁶ Prior to 1993, POWs could only communicate with their families through unofficial channels. Since 1993, however, prisoners have been able to send and receive messages, mail and even packages on a regular basis, principally through the ICRC.

There was a sense of weariness as the POWs answered questions put forth by Human Rights Watch with respect to detention conditions. One prisoner explained, "We don't want our conditions improved. We want to be liberated. I was captured as a youth and now I am thirty-eight. All of us here are disgusted by life"¹⁵⁷ Another prisoner who appeared to be in his late sixties but said he was only forty-two years old told Human Rights Watch, "I care about my country, my family. Why should we have to pay the price of war with our youth and our lives? We took up arms to defend our country, under orders from our superiors."¹⁵⁸

Released Prisoners of War

Perhaps most tragic, however, is the plight of 184 elderly, ill and disabled Moroccan POWs who were released by Polisario for humanitarian reasons on May 8, 1989, prior to the signing of the Settlement Plan.¹⁵⁹ In an astonishing move, Morocco has refused to take these prisoners back because it believes that this act would constitute a recognition of Polisario and be exploited by Polisario for public relations purposes. Instead, Morocco has insisted that it will not take back any prisoners until all POWs are released. This violates the right to enter one's country, guaranteed in Article 12 of the International Covenant on Civil and Political Rights, ratified by Morocco on August 3, 1979.

According to Governor Azmi, "This is all a game being played by Polisario. These people are not free." Azmi also denied that the ICRC "or anyone else has ever contacted Morocco with regard to this matter."¹⁶⁰ In fact, the ICRC has been involved in this issue from the outset and has made countless demarches to the Moroccan government, but to no avail.¹⁶¹ In addition, U.S. and Argentine diplomats at the U.N. have formally requested that Morocco cooperate with the ICRC and immediately take back these released prisoners, but there has been no response from Morocco. The Argentine ambassador to the U.N. told Human Rights Watch that he raises this issue "every other week during formal consultations at the Security Council, but nothing has happened."¹⁶²

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Polisario actually released 200 prisoners in 1989, but eight have since died. Another eight were Sahrawis who had lived in Morocco and were members of the Moroccan army. The Sahrawis were allowed to return to live with their family members in the refugee camps. Human Rights Watch was unable to meet with any of these individuals, some of whom may have left Algeria.

¹⁶⁰ Human Rights Watch interview, Hotel Parador, Laayoune, August 14, 1995.

¹⁶¹ Human Rights Watch telephone interview with François Robadey, ICRC headquarters in Geneva, Switzerland, August 31, 1995.

¹⁶² Human Rights Watch interview with Ambassador Emilio Cardenas, New York, September 1995.

In the meantime, the former POWs can do nothing but wait. They live in circumstances similar to the POWs who are still in captivity: their camp, the "Abraham Serfaty Center," is located in an equally remote part of the desert, and they also live in small, dome-like structures and receive the same food as the POWs. Eight of the men, many of whom are old and disabled, have died since 1989 -- the last death occurred just two days before the Human Rights Watch visit on August 11, 1995. One man told Human Rights Watch, "We have been freed, but this is not freedom. We have become prisoners of the desert."¹⁶³ According to Mouloud Said, the Polisario representative to North America,

These people have nowhere to go. They can wander around the area, but if one got lost, I guarantee that he would die within a day without food or water. There is nowhere to walk to, nothing to escape to near here. Or, even worse, if he ended up in one of the refugee camps by accident, what do you think would happen? Don't forget that these are Moroccan soldiers -- the 'enemy.' The people in the camps would kill them. So someone has to watch over them. What else can we do? Until Morocco agrees to take them back, these people will not really be free.¹⁶⁴

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Human Rights Watch/Middle East

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¹⁶³ Human Rights Watch interview, Centre Abraham Serfaty, August 11, 1995.

¹⁶⁴ Human Rights Watch interview, Rabouni, Algeria, August 11, 1995.