

**Office of the United Nations  
High Commissioner for Human Rights (OHCHR)**

**Report of the OHCHR  
Mission to Western Sahara and the  
Refugee Camps in Tindouf**

***15 / 23 May and 19 June 2006***

**OHCHR, Geneva, 8 September 2006**

## **INTRODUCTION**

1. Subsequent to the street protests and demonstrations in Laayoune and other towns in Western Sahara in May 2005, which continued throughout the following months and resulted in numerous injuries, the arrest of hundreds of protesters, allegations of torture and a hunger strike by several detainees, the High Commissioner for Human Rights proposed to the parties concerned to carry out a mission to the region.

2. The mission was designed to gather information about the human rights situation in Western Sahara and in the refugee camps in Tindouf, Algeria. The mission was then to report to the High Commissioner about the human rights situation and make recommendations on how to assist the concerned parties to improve the promotion and protection of human rights of the people of Western Sahara. With a view to continuing the constructive dialogue with those concerned in implementing the recommendations of this report, this report is not a public report.

3. After several months of negotiations concerning its terms of reference, its itinerary and its dates of travel, the mission went to Rabat, Laayoune, and Tindouf between 15 and 23 May 2006 and to Algiers on 19 June 2006.

4. In Rabat, the members of the delegation met with Moroccan officials from the Ministries of Foreign Affairs, Interior and Justice, Parliamentarians, non-governmental organizations (NGOs), ex-prisoners of war, families of disappeared and members of the Consultative Council for Human Rights as well as members of the former Equity and Reconciliation Commission. In Laayoune, the delegation met with local authorities and officials of the Ministry of Interior and Justice, the Police and the Auxiliary Forces, civil society activists, lawyers, families of disappeared persons and NGOs, and was available to meet with any other individual who wished to meet the delegation. In the refugee camps in Tindouf, the members of the delegation met with officials from the Frente Polisario and representatives of mass organizations and unions as well as families of disappeared persons. In Algiers, the head of the delegation met with officials from the Ministry of Foreign Affairs.

5. Despite heavy agendas set up by the parties upon the delegation's arrival, its members were able to meet with whomever they deemed useful. Security arrangements were extremely tight during the entire visit in Laayoune and particularly during one half day in Laayoune, when the delegation was required to negotiate the lifting of a security net which effectively would have prevented interlocutors from meeting the delegation. Overall, the delegation enjoyed a very good level of cooperation extended by all parties during its mission.

## **BACKGROUND**

6. The issue of Western Sahara is an issue pertaining to decolonization and self-determination (cf. A/RES/1514 (XV) of 14 December 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples). In 1963, the territory of Western Sahara was designated as “non-autonomous” by the United Nations. In its Advisory Opinion of 16 October 1975, the International Court of Justice (ICJ) concluded that “the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of General Assembly resolution 1514 (XV) of 14 December 1960 in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the people of the Territory.” The former Commission on Human Rights in its last resolution on the question of Western Sahara (E/CN.4/RES/2004/4) dated 8 April 2004 reaffirmed the inalienable right for all people to self-determination and independence relative to the principles of the UN Charter and the GA resolution 1514 (XV). The Human Rights Committee<sup>1</sup> as well as the Committee on Economic, Social and Cultural Rights<sup>2</sup> reiterated the right of people of Western Sahara to self-determination in accordance with Covenant provisions during their most recent consideration of the reports of Morocco in 2004 and 2006, respectively.

7. The Frente Popular para la Liberación de Saguia el Hamra y Río del Oro (Frente Polisario), founded in 1973, claims that its aim is to institute a Sahrawi Arab Democratic Republic (SADR) in Western Sahara. The Government of SADR was constituted in exile in February 1976. The SADR has been a full member of the African Union since 1984, but is not recognized by the United Nations. It has ratified the African Charter on Human and Peoples' Rights in 1986 and submitted its initial report to the African Commission on Human and Peoples' Rights (ACHPR) in January 2003. This report was examined at the 33rd ordinary session of the ACHPR held in Niamey, the Republic of Niger, from 15 to 29 May 2003.

8. The UN Security Council has repeatedly reaffirmed “its commitment to assist the parties to achieve a just, lasting and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations”. In its most recent resolution (S/RES/1675) of 28 April 2006, the Security Council “reiterated its call upon the parties and States of the region to continue to cooperate fully with the United Nations to end the current impasse and to achieve progress towards a political solution”. In as

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<sup>1</sup> The Human Rights Committee in its concluding observations (CCPR/CO/82/MAR) of November 2004 remained concerned about the lack of progress on the question of the realization of the right to self-determination for the people of Western Sahara. The Committee recommended that the State party should make every effort to permit the population groups concerned to enjoy fully the rights recognized by the Covenant.

<sup>2</sup> The Committee on Economic, Social and Cultural Rights in its concluding observations (E/C.12/MAR/CO/2) of 19 May 2006, raised concerns about the fact that there has still not been a clear solution to the question of self-determination of the people of the Western Sahara. The Committee encouraged the State party to deploy all its efforts to find a clear and definite solution to the question of the self-determination of the people of Western Sahara.

much as it calls for a political solution, the question of self-determination is a fundamental human right. Its implementation must be considered in a most constructive manner and all efforts by the international community through the Security Council should be supported and encouraged by all concerned.

#### **HUMAN RIGHTS SITUATION**

9. The question of the right to self-determination of the people of Western Sahara is paramount to the consideration of the overall human rights situation in the respective territories. It is a human right enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The respect of all human rights of the people of Western Sahara must be seen in tandem with this right and a lack of its realization will inevitably impact on the enjoyment of all other rights guaranteed, inter alia, in the seven core international human rights treaties in force.

10. The question of missing persons, both civilians and combatants, is still an outstanding issue on the part of both sides, for which families are continuing to seek clarity and resolution. Each party claims to have answered to the best of its knowledge and abilities the fate of the missing, both accusing the other side of not cooperating to bring a resolution to the matter.

#### **WESTERN SAHARA**

11. The territory of Western Sahara is currently under the de facto administration of Morocco, which claims sovereignty over the territory. Therefore the law applied de facto in the territory is the Moroccan constitution and laws and this report will thus evaluate the facts which occurred in the territory administered by Morocco on the basis of Moroccan laws and in light of Morocco's legal obligations entered into under the relevant international human rights treaties. The latter however shall not be interpreted as constituting a position vis-à-vis the status of the territory according to international law or attributing any legitimacy to claims of sovereignty, but rather constitutes an evaluation of the de facto enjoyment of human rights by the people of Western Sahara.

#### **Right to life, liberty and security of person and the prohibition of torture or cruel, inhuman or degrading treatment**

12. Demonstrations began in Laayoune in May 2005, as a result of relatives and activists protesting against the transfer of a Sahrawi prisoner to Agadir, which, according to witnesses interviewed was violently dispersed by Moroccan security forces, prompting more demonstrations to protest police violence and calling for the right to self-determination and/or independence, also raising flags of the Frente Polisario. According to reports, demonstrations had started peacefully, but became violent over the next few days, with some protestors burning Moroccan flags and throwing petrol bombs at security forces resulting in material damage and physical injuries of several officers. By the end of May, protests had spread to Smara and Dakhla, and were accompanied by Sahrawi student demonstrations in Agadir, Casablanca, and Rabat. More demonstrations have taken place in Laayoune since late October 2005.

13. According to testimonies of Sahrawi activists who met with the delegation, demonstrations started peacefully, but became violent after Moroccan police, auxiliary forces and the Groupes Urbains de Sécurité (GUS) used excessive force to disperse protestors against demonstrators and bystanders, beating them with batons, injuring hundreds of protestors and arresting a significant number. Individuals interviewed reported numerous cases of excessive violence and the use of excessive force, alleging that officers beat them severely on the head, arms, legs, back and knees with truncheons. Some one hundred protesters were arrested during or in connection with the demonstrations. Some of those arrested alleged that they were ill-treated during the arrest or during the transfer to the place of custody, and that they were subsequently tortured or ill-treated in custody, believed to have been for the purpose of forcing them to sign confessions confirming the official version of the events, and intimidating them from expressing their political views on the question of Western Sahara.

14. Violence used by security forces during the demonstrations resulted in the death, on 30 October 2005, of Hamdi Lembarki, who was participating in pro-referendum demonstrations in the streets of Laayoune and died from his wounds in Hassan Hospital. According to eye-witnesses, several Moroccan police officers arrested him during the aforementioned demonstration, took him to a nearby wall, surrounded him and repeatedly beat him with batons on the head and other parts of his body. One eye-witness reported to the delegation that Mr. Lembarki had been found unconscious on the ground by some people who drove him to the hospital where he died. An initial autopsy indicated that his death was the result of injuries to the skull. The father of Mr. Lembarki filed a complaint with the King's Prosecutor at the Laayoune Appeal Court, requesting an investigation into the circumstances of his son's death and an investigation was opened. In addition, the Office of the Public Prosecutor in Laayoune ordered a second autopsy. Officials of the Ministry of Justice in Rabat informed the delegation that two police officers are currently in custody and have been charged with having inflicted injuries with a weapon and thereby unintentionally causing death while acting in their capacity of public employees. The results have been submitted to the General Prosecutor who transferred the officers to the court of first instance, where the latter are awaiting trial.

15. According to the authorities of the Ministry of Interior and Justice as well as local authorities, violence during the demonstrations - which were described as illegal as the procedures prescribed by law had not been followed - was provoked by the demonstrators and the police response was entirely justified. The authorities assured the delegation that police used only force strictly required by the circumstances of the situation. They insisted that demonstrations had not been peaceful, that protestors burned Moroccan flags, and that stones and petrol bombs had been thrown at police officers, endangering their safety. In cases where there had been doubts as to the use of force in accordance with law and procedures, prompt investigations had been launched into the matter, as in the case of Mr. Lembarki. According to the authorities, all complaints presented to the General Prosecutor are investigated promptly and the delegation was provided with statistics in this regard covering the entire country. The delegation notes that only three cases relating to Laayoune appear in those statistics, with only one case, the case of Mr. Lembarki having led to any tangible result until now. The two remaining cases

relate to two detainees who allege that they were tortured and ill-treated in detention, and are noted as being under investigation. No information was provided by the authorities as to steps taken fully and impartially to investigate the disturbances or that there was any intention to do so in the near future.

16. Based on the number of allegations regarding excessive use of force by law enforcement officials received from individuals who had been present during the demonstrations, the delegation notes the categorical rejection by the authorities of any responsibility for the violence which occurred since May 2005. It should be recalled that in the dispersal of unlawful but non-violent assemblies, law enforcement officials shall avoid the use of force, or, where this is not practicable, restrict force to the minimum necessary.<sup>3</sup> Regarding the reference by the authorities to the fact that the protests and demonstrations were illegal, the delegation notes that it has received information from several sources alleging a series of administrative hurdles imposed by Moroccan authorities to organize assemblies lawfully. The fact remains that the use of force should be avoided or restricted to the minimum necessary. In light of the above, the delegation is led to the preliminary conclusion that a) Moroccan law enforcement officials seem to have used force in an indiscriminate and disproportionate manner when exercising their responsibilities in the course of exercising their duty to maintain public order and security; and b) administrative hurdles imposed by authorities may compromise the ability of the people of Western Sahara to fully exercise their right to freedom of expression and assembly.

17. Activists and human rights defenders told the delegation that after the May 2005 demonstrations, Moroccan authorities intensified measures aimed at intimidating and harassing human rights activists and other pro-referendum activists and supporters, severely restricting their rights to expression, assembly and association. Numerous people interviewed informed the delegation that in the aftermath of the May 2005 demonstrations, arbitrary arrests increased, both during demonstrations and prior to and after meetings with other human rights defenders or activists, as well as after having given statements to international media. Many activists and human rights defenders who met with the delegation reported that they had been detained repeatedly and interrogated for periods ranging from several hours to one night about their activities and political views, before being released, sometimes at the outskirts of the city. Moreover, it was reported to the delegation that in many instances, human rights defenders' or activists' homes were searched while demonstrations were taking place, often causing material damage.

18. The delegation received several allegations from ex-detainees, lawyers and local human rights organizations concerning the use of torture and other ill-treatment of detainees by law enforcement personnel, as well as the lack of prompt investigations into such allegations. Ill-treatment reportedly also occurred during transfers from Laayoune prison to other prisons in Morocco or from prison to the court. Some ex-detainees also reported that they had been severely beaten in a separate room at Laayoune Appeal Court prior to their appearance in court.

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<sup>3</sup> UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990, principle 13.

19. The delegation was shown some bruises on bodies of human rights defenders and activists, with whom it met, which were alleged to have been inflicted by security forces during demonstrations and through torture. While victims interviewed had shown the delegation medical certificates related to their injuries, the delegation was not able to confirm the causes of any of these injuries. The delegation presented several allegations of ill-treatment and torture to officials of the Ministry of Justice who replied by making general reference to the applicable law and obligations of relevant authorities. The Ministry also provided statistics of complaints filed with the Prosecutor's Office and the results of any investigations conducted. The delegation notes that only three cases, including the case of Mr. Lembarki noted above, appear in those statistics. Authorities in Rabat and Laayoune assured the delegation that prompt action is taken in all cases as prescribed by the relevant legal provisions i.e. that in all cases where complaints are lodged or where relevant authorities observe injuries inflicted on detainees, prompt and thorough investigations are launched and perpetrators held accountable. Furthermore, several officials highlighted that evidence obtained under torture was inadmissible in court proceedings, and that Morocco had adopted, on 14 February 2006, a new law banning torture and punishing abuses committed by law enforcement personnel. However, the statistical records of investigations carried out which were provided to the delegation, and the explanations provided by the Prosecutor and other authorities, did not provide conclusive evidence as to whether or not any investigation had in fact been carried out in response to claims of torture made by victims. The delegation received conflicting statements as to whether medical examinations have been granted when requested, but was not able to verify the veracity of claims and counter-claims as well as reasons provided during the brief period of its mission. However, it seems that police and prosecutors as well as examining magistrates, have a broad discretion in making decisions to grant medical examinations and launching investigations when presented with claims of torture and ill-treatment during the different stages of the procedure. Urgent measures should be taken to ensure the full application of the obligations undertaken by Morocco under the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in practice.

#### **The right to a fair trial**

20. Fourteen Sahrawi defendants including several human rights activists were convicted by the Laayoune Appeal Court in January 2006. Charges allegedly mainly related to the following: establishment of criminal bands, criminal conspiracy in order to commit crimes, attempt of voluntary destruction of buildings with the use of explosives, blocking traffic, violence against police officers during the performance of their duties, participation in unauthorized demonstrations while giving instructions to disobedience and/or belonging to unauthorized organizations. All defendants denied the charges throughout the trial proceedings and two of them allege having been tortured during questioning. The defendants were convicted to periods of imprisonment ranging from 6 months to 3 years.

21. The delegation met with lawyers and some of the above mentioned prisoners who had been pardoned by the King in March and April 2006. They raised serious concerns about the fairness of the trial, including the fact that convictions were based exclusively on confessions by the defendants in written

police statements. In these statements, defendants implicated themselves in provoking and committing violent acts. Defendants interviewed by the delegation claimed that these confessions had been fabricated and two of them had been extracted under duress, but were nevertheless used during the trial as evidence. Defendants declared their innocence on all charges related to violent disturbances during the trial proceedings. They claimed that they had been advocating peacefully for the right to self-determination of the people of Western Sahara. They consider that the lawsuit against them was of a purely political character, related to their activities in documenting events in Western Sahara, expressing their views on the right to self-determination of the people of Western Sahara, and disseminating this information internationally, including to international human rights organizations, as well as OHCHR.

22. In addition, lawyers told the delegation that their request to call witnesses for the defense, which would have challenged the content of the written police statements were dismissed by the court, allegedly without justification. Furthermore, the hearings were postponed several times in the course of the court proceedings, which lawyers attributed to the fact that international and local trial observers had been present, and that the repeated postponement was intended to create obstacles for their attendance. Finally, it is believed by many that the international attention given to the trial of these activists had an impact on the sentences, in that they were relatively light vis-à-vis the charges raised.

23. Two ex-detainees informed the delegation that they had not been at the crime scene at the time they had allegedly committed the crime. They were nevertheless convicted for those crimes, i.e., participating in and inciting violent protest activities. Other ex-detainees told the delegation that they had been tortured, but that the follow-up by the authorities pursuant to their complaints had been insufficient, and that medical expertise had not been available in a timely fashion. They and other ex-detainees also told the delegation that they and members of their families had been ill-treated by judicial police immediately prior to their trial, the facts of which they stated during the hearings. They alleged that no follow-up action was initiated to investigate their complaints.

24. Lawyers of some of the human rights defenders who had been detained, informed the delegation about several procedural shortcomings prior to and during the hearings, including inspections of homes of defendants without search warrants; insufficient access to the case file of their clients and the refusal of the police to inform the defendants, or any other person, of the reason for their arrest.<sup>4</sup>

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<sup>4</sup> The Human Rights Committee in its concluding observations (CCPR/CO/82/MAR) of November 2004 considered the period of custody during which a suspect may be held without being brought before a judge - 48 hours (renewable once) for ordinary crimes and 96 hours (renewable twice) for crimes related to terrorism - to be excessive. The Committee recommended that the State party should review its legislation on custody with a view to bringing it into line with the provisions of article 9 and all the other provisions of the Covenant. Furthermore, the Committee was concerned that the accused may have access to the services of a lawyer only from the time at which their custody is extended (that is after 48 or 96 hours). It recalled that, in its previous decisions, it had held that the accused should receive effective assistance from a lawyer at every stage of the proceedings. It recommended that the State party amend its legislation and practice to allow a person under arrest to have access to a lawyer from the beginning of their period in custody.



25. The delegation conveyed a number of concerns related to respect for fair trial guarantees to the President of the Laayoune Appeal Court, who informed the delegation that he was newly designated (15 days before the arrival of the mission) and had not studied the case files. He was thus not in a position to discuss the concerns raised by the delegation but reiterated that Morocco's legislation was in full compliance with international obligations and that all rights were fully respected.

26. In view of the above facts and witness testimonies, the delegation remains concerned that there are serious deficiencies with regard to ensuring the right to a fair trial. While the delegation is not in a position to assess the substance of the charges brought against the defendants, it has been presented with a series of reports about Morocco's failure to guarantee the right to a fair trial to the defendants, and was not provided with satisfactory replies by the authorities.

### **Freedom of expression, assembly and association**

27. The delegation received a series of allegations from human rights defenders and NGOs reporting that they had repeatedly been targeted, and some of them convicted, for publicly expressing their views, which are not in line with official views on the issue of Western Sahara, but rather advocate the right to self-determination for the people of Western Sahara. The delegation heard testimonies by members of associations which indicated an increase, since May 2005, of acts of harassment and physical assaults – the latter primarily in the course of pro-referendum/self-determination demonstrations - carried out by law enforcement officials, including against members of the families of activists. It was alleged that there were repeated searches of homes by the security forces without a warrant. Harassment was also reported to have occurred following statements about the situation in Western Sahara to representatives of international organizations and international media, both in Morocco and abroad.

28. According to the testimonies, it appears that limits have been established with regard to the exercise of freedom of expression in Western Sahara in practice. It has been confirmed in several meetings, both with governmental as well as non-governmental counterparts, that the sovereignty of Morocco over Western Sahara may not be questioned. Such limitations, especially in view of the internationally recognized right of the people of Western Sahara to self-determination, cannot be interpreted as falling within the permissible restrictions under article 19 of the ICCPR, such as national security, public order or public health or morals.

29. In addition, the delegation received information from local NGOs and international NGOs prior to its departure to the effect that since November 2005, several Internet web-sites advocating self-determination of Western Sahara have been blocked by the authorities. Authorities in the Ministry of the Interior confirmed that audio-visual and print media, as well as internet sites are controlled by the authorities so as to prevent assaults on the territorial integrity of Morocco. It was confirmed by the authorities that any web-site advocating for independence or judged in any way as a threat to the territorial integrity of Morocco will be banned in accordance with the law.

30. The enjoyment of the right to freedom of assembly, closely linked to the right to freedom of expression, allegedly has been affected by similar restraints in the territories of Western Sahara relating to the expression of individuals' opinions on the right to self-determination.<sup>5</sup>

31. The freedom to establish associations equally has been curtailed in the territory of Western Sahara in significant aspects. The delegation met with several activists who had attempted to establish associations, or were members of associations that had been dissolved, who outlined several administrative hurdles imposed by authorities to obstruct the registration process. For instance, three associations, the Sahara section of the Forum Vérité et Justice Marocain, based in Rabat, the Sahrawi Association of Victims of Serious Human Rights Violations Perpetrated by the Moroccan State (Association sahraouie des victimes de violations graves des droits humains commises par l'état marocain) and the Laayoune branch of the Moroccan Association for Human Rights, have either been dissolved and/or faced serious obstacles or administrative delays when trying to re-register or register.

32. The Sahara section of the Forum Vérité et Justice Marocain, was established in 1999 and legally registered until its dissolution by Court order in June 2003, following a complaint made against the section. The complaint included "conspiring with international bodies and organizations which are hostile to Morocco, with the aim of causing the diplomatic position of the Kingdom to deteriorate," and "being responsible for slogans hostile to territorial integrity." Its members told the delegation that they continue to undertake their activities, but are subject to strict police surveillance. They informed the delegation that the dissolution occurred shortly after they had met with the ad hoc Western Sahara delegation of the European Parliament on 12 February 2002, during which they had given them video recordings and documents regarding the human rights situation in Western Sahara and the right to self-determination. They also noted that the President and other members have been subject to harassment and assault by police officers on various occasions. On 11 May 2006, the Executive Committee of the Sahara section of the Forum Vérité et Justice Marocain applied for a new registration under the same name and is waiting for a response from the authorities.

33. The Sahrawi Association of Victims of Serious Human Rights Violations Perpetrated by the Moroccan State has been effectively prevented from registering its association with the authorities. According to members of the Association, the relevant authorities have repeatedly refused to accept their file and to issue a receipt, thus paralyzing the administrative process. The Moroccan Association for Human Rights equally alleged that the establishment of its branch in Western Sahara in 2003 faced a series of administrative obstacles and delays.

34. Given the de facto illegality of their organizations, several human rights defenders have been prosecuted for membership in an illegal organization as

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<sup>5</sup> The Human Rights Committee, in its concluding observations (CCPR/CO/82/MAR), of November 2004 remained concerned that the process of issuing a receipt for advance notice of meetings is often abused, which amounts to a restriction on the right to assembly, as guaranteed by article 21 of the Covenant. The Committee recommended that the State party should eliminate the obstacles to the exercise of the right of assembly.

they continued to carry out their work despite the lack of registration. Officials of the Ministry of Interior affirmed to the delegation that no association will be authorized if it aims to question the territorial integrity of Morocco. As for the Sahara section of the Forum Vérité et Justice Marocain, the authorities informed the delegation that it had been dissolved by a court judgment in conformity with the law at the request of their headquarters.

35. Officials at the Ministry of Interior informed the delegation that registration of associations is governed by the dahir 1-58-376 of 15 November 1958 on the right to association, which was modified in January 1959 and April 1973. According to the officials, various provisions guaranteed freedom of association, with an obligation on the administrative authority to issue a receipt for the application within 60 days at the most. The delegation notes that article 3 of the above mentioned dahir provides that "if the purpose of an association requesting a registration attacks the integrity of the territory, it is null". Such limitations on the right to freedom of association, guaranteed by article 22 of the ICCPR raise similar questions as indicated earlier with regard to freedom of expression, and there are serious doubts as to whether such restriction can be interpreted as falling within the restrictions permissible under article 22.

#### **Freedom of movement**

36. Several activists informed the delegation that passports of some Sahrawis have been confiscated by Moroccan officials at international airports, preventing them from traveling abroad.<sup>6</sup> The delegation raised this issue with Ministry of Interior officials, who indicated that all such cases, if any existed, would be solved immediately and that people concerned could recover their passports at any time. In Laayoune, the delegation presented a list of nine specific cases of confiscation of passports to the Wali, who indicated that he would inquire about the passports and hand them over to their owners within a few days. However, one month after the mission returned to Geneva, the passports were still withheld.

#### **REFUGEE CAMPS, TINDOUF (Algeria)**

37. Refugees living in the camps in Tindouf are organized under a republic in exile, the Sahrawi Arab Democratic Republic (SADR) governed by the Frente Polisario, which, while in exile, is recognized by Algeria and 52 other countries<sup>7</sup>. The SADR is a member of the African Union and has ratified the African Charter on Human and People's Rights, but has no status with the United Nations and has no international obligations under international human rights treaties. The SADR defines itself in the Constitution of 1976 (amended in 1999), as an independent and sovereign State, which is governed by a democratic system on the basis of free popular participation. The Frente Polisario claims to be the sole and legitimate representative of the people of Western Sahara. It aims at

<sup>6</sup> The Human Rights Committee in its concluding observations (CCPR/CO/82/MAR), of November 2004 was concerned that some representatives of non-governmental organizations had their passports confiscated and were thus prevented from attending a meeting of non-governmental organizations on the question of Western Sahara at the fifty-ninth session of the Commission on Human Rights in Geneva. The Committee recommended that the State party should apply article 12 of the Covenant to all its nationals.

<sup>7</sup> Information according to Frente Polisario in Geneva.

leading it to realize its right to self-determination in order to establish the SADR in an independent Western Sahara.

38. Pending a durable solution to the question of Western Sahara, the United Nations High Commissioner for refugees (UNHCR), in coordination with Algeria as the asylum country, continues to carry out assistance and protection activities for the benefit of the Sahrawi refugees. Other UN agencies, the European Community Humanitarian Office (ECHO) and various international NGOs have also provided assistance within their respective mandates.

39. Algeria, the country of asylum, is party to the seven core human rights treaties, under which it has obligations to respect and ensure the rights guaranteed in those treaties to all persons in its territory. It is also party to the 1951 Convention relating to the Status of Refugees (since 1963), its 1967 Protocol, as well as several regional human rights treaties. While the refugees are present in the territory of Algeria, the authorities reiterated during meetings with the Head of the delegation that despite this presence, the responsibility for human rights and any other related matters lies with the Government of the SADR. As indicated below, as a State party to these instruments, the Government of Algeria is obliged to ensure that all rights stipulated in these instruments are upheld for all persons on Algerian territory.

40. It should be underlined that UNHCR works directly with the Government of Algeria as the country of asylum/host government on all matters related to the Sahrawi refugee programme.

#### **Political participation**

41. Whilst the SADR Constitution envisages a multiparty system after achieving independence of Western Sahara, Frente Polisario is currently the only political party in the camps. The functions of the President of the SADR have been exercised by the Secretary General (SG) of the Frente Polisario, who is at the same time the chief of the Sahrawi Popular Liberation Army (SPLA). In addition, the members of the SADR Government and various community structures are members in the Frente Polisario.

42. Officials of the Frente Polisario described the political, administrative and legal system currently applied in the territory under its control to the delegation. The delegation raised with officials the gap between the constitutional multiparty principle and its implementation in practice. Officials emphasized the temporary nature of the current state of affairs due to the extraordinary circumstances linked to the unsolved status of the question of Western Sahara, which has inevitably had an impact on the normal functioning of governmental structures. Accordingly, several paragraphs in the Constitution were described to the delegation as suspended until the achievement of "full independence of Western Sahara". It was also asserted that exceptionally, any political representation is through the Frente Polisario, the one and only legitimate representative of the Sahrawi people. The right of the people of Western Sahara to self-determination and independence as the key determinant of living conditions and the functioning of the State was consistently emphasized to the delegation.

**Freedom of association**

43. The delegation met with several mass organizations present in the camps, all linked to the Frente Polisario. Members of the General Workers' Union, the labor organization of the Frente Polisario highlighted that unemployment is near total, with existing work, which is compulsory and unpaid, being organized by the camp administration of the Frente Polisario. The President and members of the National Union of Sahrawi Women, the women's organization of the Frente Polisario, highlighted the achievements of the union in improving the situation of women, as well as their international work in support of women's rights as well as the Sahrawis' right to independence. Almost all representatives of associations and unions met by the delegation emphasized the right to an independent Western Sahara as the single most important goal.

44. The delegation did not receive any complaints about attempts to establish an association being stopped. However, all associations met by the delegation are linked to the Frente Polisario and the delegation was not able to establish the extent to which refugees in the camps are able to exercise the right to freedom of association in practice.

**Freedom of expression**

45. The Frente Polisario organized several more or less spontaneous mass gatherings during the visit of the delegation, during which Sahrawis reiterated their right to independence. While the Constitution stipulates that the right to freedom of expression is guaranteed, the delegation notes that it heard only one view concerning the future of Western Sahara and the right to self-determination of the people of Western Sahara leading to an independent Western Sahara, including about who would eventually govern the independent state.

**Freedom of assembly**

46. Public gatherings witnessed by the delegation were all organized by the Frente Polisario or its mass organizations. All claimed the right of the Sahrawi people to the independence of Western Sahara, the longing for an independent Western Sahara and praised the glorious role of the Frente Polisario to achieve this goal. Demonstrators were waving the SADR flag and chanting slogans on independence. The delegation, whilst meeting with Sahrawis in the camps, did not receive any allegations of the violation of the right to the freedom of assembly.

**Freedom of movement**

47. As refugees, the population living in the camps faces difficulties in traveling since it does not have identity papers that are recognized worldwide. Prior to its arrival to Tindouf, the delegation had received allegations that Sahrawis in the Tindouf camps had to obtain permission from the authorities controlling the camps to travel outside the boundaries of the camps. Sahrawis who met with the delegation denied such allegations. The delegation was not in a position to obtain evidence to confirm allegations as to the restrictions on movement.

48. The UNHCR supervises and organizes, with the help of the MINURSO, a programme of Confidence Building Measures (CBM), consisting of visits between Western Sahara and Tindouf benefiting families from both sides. The delegation met with Sahrawi refugees who claimed that families in Western Sahara under Moroccan rule were not free to register in the list of those wishing to travel to Tindouf, while some sources in Western Sahara claimed that the leadership of the Tindouf camps had not been allowing some Sahrawis to register in the visiting programme. The delegation was not in a position to confirm the claims on either side.

### **Economic, social and cultural rights**

49. The refugees in the camps around Tindouf are lacking adequate housing, with most of them living in shacks made of brick or mud, have a precarious access to healthcare, have scarce access to food and water, all rationed, and lack the means to adequately educate their children.

50. In view of the limited opportunities for education in Tindouf, the refugee leadership has been undertaking bilateral agreements with various countries to ensure a framework of scholarships for Sahrawi children. These scholarships are for secondary and university education, notably in Algeria, Spain, Cuba and other destinations. Prior to its arrival in Tindouf, the Moroccan Ministry of Foreign Affairs and cooperation handed over to the delegation a Note verbal dated 15 May 2006, in which the Ministry reported, inter alia, lack of consent of the parents of Sahrawi students, prior to their enrolment in Cuban schools. The delegation was not in a position to obtain evidence in this regard.

51. According to the Labor Union representatives who met with the delegation, the arid nature of the desert and remote location of the camps are the two main factors preventing refugees from pursuing income-generating activities. The lack of economic opportunities has determined the dependency of the refugees on external assistance.

### **THE INTERNATIONAL COMMUNITY**

52. Realization of the right to self-determination of the people of Western Sahara is the responsibility not only of Morocco as administrative authority but also of the international community. Almost all violations of human rights noted above stem from the non-realization of this right, including civil and political rights as well as economic, social and cultural rights of the people of Western Sahara in all locations where they currently reside. In accordance with international obligations with respect to the question of Western Sahara, the international community should take all necessary measures to ensure the right of self-determination of the people of Western Sahara. It should also be recalled that article 1 of both the ICCPR and the ICESCR requires States parties to "promote the realization of the right of self-determination" and to "respect that right in conformity with the provisions of the Charter of the United Nations."

### **CONCLUSIONS**

53. Overall, the human rights situation is of serious concern, particularly in the Moroccan-administered territory of Western Sahara. Currently, the Sahrawi

people are not only denied their right to self-determination, but equally are severely restricted from exercising a series of other rights, and specially rights of particular importance to the very right of self-determination, such as the right to express their views about the issue, to create associations defending their right to self-determination and to hold assemblies to make their views known. In order to comply with its international obligations, particularly under the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, serious changes to both legislation as well as government practice on the issue of Western Sahara are required.

54. Despite the level of cooperation extended to the delegation during its visit of some of the camps, it was unable to obtain sufficient information to draw extensive and well-founded conclusions with regard to the *de facto* enjoyment of human rights by the refugees in the camps. Therefore, serious further inquiries are required.

55. States parties to human rights treaties are under an obligation to respect and ensure those rights to all persons who may find themselves on the territory of the State party<sup>8</sup>, including aliens, refugees and asylum seekers. Algeria, as the country of asylum of some 90,000 Sahrawi refugees<sup>9</sup>, holds that it bears no responsibility with regard to the human rights situation of the Sahrawi people. According to the Algerian authorities, respect for human rights is a matter for the Sahrawi Arab Democratic Republic, a state recognized by Algeria and several other countries, to ensure that human rights of its people are respected, and to implement the obligations it voluntarily assumed, including by ratifying the African Charter on Human and People's Rights. No international human rights treaty body has specifically validated this view with regard to the international human rights obligations accepted by Algeria. It is our opinion that all possible efforts should be made towards the fulfillment of all human rights of the people of Western Sahara. Accordingly, Algeria should take all relevant measures to ensure that all individuals present on its territory benefit from the protection of the international human rights conventions to which it is a party.

56. In view of the stalemate in reaching a political settlement for Western Sahara, the planning of the voluntary repatriation and of the care and maintenance activities in the camps are carried out without UNHCR being in a position to factor in unexpected political developments beyond its control. In operational terms, UNHCR co-operates with MINURSO as recently shown by the efficient co-operation achieved in respect of the organisation of family visits within the CBM programme.

57. Considering the seriousness of the human rights situation in Western Sahara, and considering as well the expectations from the international community – be it Member States or UN actors – the following recommendations are put forward:

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<sup>8</sup> See, for instance, Human Rights Committee, General Comment No. 31, paragraph 10; also see CRC/C/15/Add.269 of 30 September 2005, in which the Committee recommends “that the State party take all feasible measures to ensure full protection and care, as well as access to health and social services and to education, of Western Saharan refugee children living in refugee camps in Algeria...”

<sup>9</sup> This is the latest, revised UNHCR figure which is strongly disputed by the Frente Polisario who puts the figure at some 160,000 persons living in the camps.

## RECOMMENDATIONS

1. As has been stated in various UN fora, the right to self-determination for the people of Western Sahara must be ensured and implemented without any further delay. As underlined above, the delegation concludes that almost all human rights violations and concerns with regard to the people of Western Sahara, whether under the de facto authority of the Government of Morocco or of the Frente Polisario, stem from the non-implementation of this fundamental human right.

2. The efforts by the international community through the Security Council and the Secretary-General aiming at assisting the parties to achieving a just, lasting and mutually acceptable political solution consistent with the right to self-determination of the people of Western Sahara should be fully supported and upheld. However, in addition, urgent measures should be taken by the concerned parties to ensure that all human rights are protected fully. It is of extreme importance that human rights issues cease to be instrumentalized and that all human rights be implemented in a less politicized manner.

3. Closer monitoring of the human rights situation both in Western Sahara and in the refugee camps in Tindouf is indispensable. The United Nations should explore with all relevant actors the best way to ensure adequate and continuous monitoring of the human rights situation in the region, and to offer effective capacity building, protection and redress. All concerned should fully cooperate with the United Nations in the implementation of this task.

4. This report is not a public report. It is shared exclusively with Algeria, Morocco and Frente Polisario, who were consulted prior to and in the course of the Mission of OHCHR to Western Sahara and the refugee camps in Tindouf in order to ensure the continuation of this constructive and fruitful engagement. Ultimately, the rights of the people of Western Sahara will be best served by enhancing this cooperation on the basis of continuous human rights monitoring.