

# Human Rights to Habitat in Western Sahara: Land, Housing, Population Transfer, Natural Resources





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SAUSA is a non-profit organization founded in 2016 and based of New York with the aim to enhance world attention to the suffering of the people of Western Sahara, and to advocate for the peaceful resolution to Morocco’s illegal occupation of Western Sahara through a referendum for self-determination under the auspices of the United Nations and the African Union. SAUSA also seeks to serve the people of Western Sahara by empowering Sahrawi youth, financing projects, and raising awareness of the gross violations of human rights abuses endured by the indigenous people of Western Sahara.

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Housing and Land Rights Network is part of Habitat International Coalition, an independent international nonprofit Coalition of organizations and individuals working in the field of human settlements. HIC members include some 350 non-governmental and community-based organizations, academic and research institutions, social movements and like-minded individuals from over 80 countries in both North and South. Their binding commitment is expressed in a shared set of objectives that shape HIC’s dedication to communities working to realize their human right to adequate housing and improve their habitat conditions. HIC-HLRN is committed to creating knowledge and developing HIC Member and ally capacities to apply and further develop international human rights norms in their local, regional and global forums to promote remedies applying the human right to adequate housing and human rights-based methods to issues affecting the human habitat.

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## Abbreviations

AOAV	Action on Armed Violence
ASAVIM	Asociación Saharaui de Víctimas de Minas (Saharawi Association of Landmine Victims)
bln	billion
bn	billion
CESCR	Committee on Economic, Social and Cultural Rights
EO	explosive ordnance
EU	European Union
ha	hectare
HIC	Habitat International Coalition
HLRN	Housing and Land Rights Network
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICTfY	International Criminal Tribunal for the former Yugoslavia
IFC	International Finance Corporation
IHL	international humanitarian law
km	kilometer
KoM	Kingdom of Morocco
MASEN	Moroccan Agency for Sustainable Energy
MEM	Ministère de l'Énergie, des Mines et du Développement Durable [Ministry of Energy, Mines, and Sustainable Development]
MINURSO	United Nations Mission for the Referendum in Western Sahara
MoI	Ministry of Interior
MW	megawatt
NGO	non-governmental organization
NSGT	non-self-governing territory
OCP	Office Chérifien des Phosphates
OHCHR	Office of the High Commissioner for Human Rights
ONA	Omnium nord-africain
ONHYM	Office National des Hydrocarbures et des Mines [National Office of Hydrocarbons and Mines]
POLISARIO	[Frente] Popular de Liberación de Saguía el Hamra y Río de Oro
RES	resolution (UN)
RMA	Royal Moroccan Army
SADR	Sahrawi Arab Democratic Republic
SAUSA	Sahrawi Association in the USA
SMACO	Sahrawi Mine Action Coordination Center
UN	United Nations
UNGA	UN General Assembly
UNHCR	UN High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNMAS	United Nations Mine Action Service
UNSC	UN Security Council
US	United States
USA	United States of America
WFP	World Food Programme

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Figure 1: General map of Western Sahara, 1989. Source: Central Intelligence Agency, published by University of Texas Libraries.

## Background

Western Sahara is a territory on the northwest coast of Africa, south of the Kingdom of Morocco (KoM) and southeast of the Canary Islands. Covering 266,000 square kilometers (km<sup>2</sup>) mainly consisting of desert flatlands, Western Sahara is the second most-sparsely populated country in the world and the most-sparsely populated in Africa. The indigenous people, combining Amazigh language and culture with Bani Hasan Arabs migrating from Yemen in the 13<sup>th</sup>–15<sup>th</sup> centuries. The Sahrawis traditionally have worked mainly in fishing and camel herding, and speak the Hasaniyya dialect of Arabic dialect.

Following the Berlin Conference of European states dividing Africa into territories for their respective colonization, Spain informed the other Conference parties<sup>1</sup> of its claim to a protectorate over the coast from Cape Bojador to Cap Blanc. Between 1884 and 1976, the territory had been one of Spain's most-recent acquisitions, as well as one of the last remaining holdings, of the former Spanish Empire, which had once extended from the Americas to the Spanish East Indies.

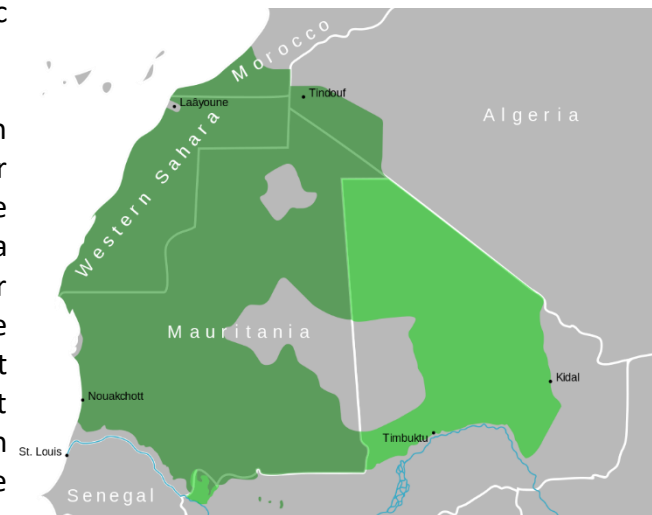


Figure 2 Current reach of the Hasaniyya dialect. Source: Wikipedia.

On entering the territory in 1884, Spanish forces met stiff resistance from the indigenous tribes of the Sahrawi people who lived in many oases and coastal villages. A rebellion in 1904 was led by the powerful Smara-based Muslim religious leader and teacher (*marabout*), Shaykh Ma` al-`Aynayn, was put down in 1910 by France, which had colonized neighbouring Algeria. This was followed by a wave of uprisings under Ma` al-Aynayn's sons, grandsons and other political leaders.

The borders of the territory were not clearly defined until treaties between Spain and France in the early 20<sup>th</sup> century. Spanish rule thus consolidated Río de Oro and Saqia al-Hamra' in 1924, the same year that the Spanish government cancelled the autonomy of Catalonia. Meanwhile, Spain collaborated with the colonial French in putting down the `Abd ul-Krim rebellion of Morocco's northern region Rif, forcing `Abd ul-Krim's surrendered in 1926.

The Spanish colonial authority extended its area of control during 1946–1958, amalgamating the nearby Spanish-protected Cape Juby and Spanish Ifni to form a new colony, Spanish West Africa. By 1958, Spain declared the previously separate northern Sahrawi districts of Saguia el-Hamra [Spanish transliteration] and southerly Río de Oro as the overseas province of "Spanish Sahara," while then unilaterally ceding the province of the Cape Juby strip (which included Villa

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<sup>1</sup> On 14 January 1985. Robert Rézette, *The Western Sahara and the Frontiers of Morocco* (Paris: Nouvelles Éditions Latines, 1975), p. 60.

Bens) to recently liberated Morocco. In 1969, Spain ceded the non-contiguous enclave of Ifni to Morocco, but continued to retain Spanish Sahara.

In 1960, UN General Assembly (UNGA) adopted resolution 1514 (XV), also known as the Declaration on the Granting of Independence to Colonial Countries and Peoples. Thereafter, the UNGA added Western Sahara to the list of the Special Committee on the Situation with regard to the Implementation of resolution 1514 (XV). The principle of equal rights and self-determination of peoples contained in the UNGA resolution 2526 (XXV)<sup>2</sup> states, *inter alia*, that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Sahrawi resistance to foreign occupation and colonization had continued for over 80 years when, in 1967, Spanish rule was challenged by the *Harakat Tahrir* (Liberation Movement). However, the Moroccan government clandestinely organised that protest movement. Spanish Legion forces suppressed the related Zemla uprising by perpetrating a massacre in 1970.<sup>3</sup> The suppression of the Zemla demonstration pushed the Spanish Saharan anti-colonial movement to embrace armed struggle ahead of nationalist Polisario Front's formation three years later.<sup>4</sup>

Shortly after the passing of General Francisco Franco, Spain's *caudillo* and dictator (1939–1975), Spain informed the UN Secretary-General on 26 February 1976 of its immediate termination of its presence in Western Sahara, relinquishing its responsibilities over the territory. Since Spain withdrew from the Saharan colonized territory, Western Sahara became the only Non-Self-Governing Territory (NSGT) without an internationally recognized Administering Power.

An irredentist movement in Morocco, led by Istiqlal Party (est. 1937) and serial monarchs, has asserted that the territory of Western Sahara was under Moroccan "royal" sovereignty at the time when the Spanish claimed it in 1884. To back its claims, Moroccan proponents raised two sixteenth-century treaties, the Treaty of Alcáçovas and the Treaty of Cintra, between Spain and Portugal, whereby both countries had recognized that the authority of Morocco extended beyond Cabo Bojador. Morocco cited other treaties such as one between the sharifian<sup>5</sup> sultanate and Spain in 1767<sup>6</sup> and the Anglo-Moroccan Agreement of 1895.<sup>7</sup> However, the International Court of Justice (ICJ) found in its October 1975 Advisory Opinion on Western Sahara that those treaties only proved ties of allegiance (*bay`a*), but did not constitute legal ties extending sovereignty to Morocco over territories outside Morocco. The ICJ even cast

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<sup>2</sup> UN General Assembly, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/2625, 24 October 1970, <https://www.un.org/ruleoflaw/files/3dda1f104.pdf>.

<sup>3</sup> H. Michael Tarver and Emily Slape, eds., *The Spanish Empire: A Historical Encyclopedia*, Volume I (Santa Barbara CA: American Library Association, 2016). p. 36.

<sup>4</sup> Ana Camacho, *Terrorism and war in the Sahara* (Zürich: Eidgenössische Technische Hochschule Zürich, 2018), <http://www.css.ethz.ch/en/services/digital-library/articles/article.html/88674/pdf>.

<sup>5</sup> Adjective pertaining to a descendant of the Prophet Muhammad (pbuh) through his daughter Fatima, or otherwise claiming noble ancestry and having political prominence, as in the case of the Moroccan monarchy.

<sup>6</sup> International Court of Justice (ICJ), *Western Sahara, Advisory Opinion*, I.C.J. Reports, 16 October 1975, <https://www.icj-cij.org/en/case/61>; Fouad Ammoun, "Separate Opinion of Vice-President Ammoun," p. 79.

<sup>7</sup> Ammoun, *op. cit.*, p. 81.



aspirations at Morocco's claim to historical sovereignty over certain southern territories within its internationally recognized border.<sup>8</sup>

The Court established its unambiguous conclusion 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...Thus, the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) 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 peoples of the Territory.”<sup>9</sup>

UNGA resolution 2526 had added the principle of three options in the exercise of self-determination: independence, association or integration. However, the Court regarded “the free exercise of the will of the peoples concerned” as a prerequisite in any case.<sup>10</sup>

## Illegal Occupation and Attempted Annexation

Rejecting the ICJ's Advisory Opinion, in November 1975, KoM launched a military invasion of Western Sahara, facilitating a parallel *Marche Verte* of Moroccan citizens. This acquisition of territory by both military force and civilian mobilization has made Western Sahara today's only internationally recognized Non-Self-Governing Territory under the illegal military occupation and recolonization by a third country.<sup>11</sup>

The principle of equal rights and self-determination of peoples contained in the UNGA resolution 2526 (XXV)<sup>12</sup> states, *inter alia*, that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

The same principle also affirms that the territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the state administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter.

As of 1975, both the UN Security Council (UNSC)<sup>13</sup> and UNGA<sup>14</sup> have condemned the Moroccan occupation. Since then, the UNGA has repeatedly reaffirmed its interpretation of the legal

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<sup>8</sup> ICJ, *Western Sahara, Advisory Opinion, op. cit.*

<sup>9</sup> *Ibid.*, para. 162.

<sup>10</sup> *ICJ Report, op. cit.*, p. 32–33.

<sup>11</sup> The State of Palestine is also internationally recognized as under illegal military occupation, but its status differs from Western Sahara, because of the latter's status as a Non-Self-Governing Territory at the time of the UN Charter. That is not to say that other territories are not under military occupation, although those may lack international recognition of their illegal status.

<sup>12</sup> UN General Assembly, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/2625, 24 October 1970, <https://www.un.org/ruleoflaw/files/3dda1f104.pdf>.

<sup>13</sup> UNSC, S/RES/380 (1975), [https://digitallibrary.un.org/record/93734/files/S\\_RES\\_380%281975%29-EN.pdf?ln=en](https://digitallibrary.un.org/record/93734/files/S_RES_380%281975%29-EN.pdf?ln=en).

<sup>14</sup> UNGA, Question of Western Sahara, A/RES/34/37, 4 December 1979,

status of Western Sahara as a Non-Self-Governing Territory, including in its most-recent resolution reaffirming the Sahrawi people's inalienable right to self-determination and the responsibility of the United Nations toward the people of Western Sahara.<sup>15</sup>

Although KoM has signed the 1990 UN-brokered Settlement Plan involving the referendum on self-determination,<sup>16</sup> which led to the creation of the UN Mission for the Referendum in Western Sahara (MINURSO)<sup>17</sup> in April 1991, the occupying power has consistently impeded the United Nations and the Organisation for the African Unity to organize the referendum in Western Sahara ever since.<sup>18</sup>

### An 'Occupied' Territory

International law prohibits the acquisition of territory by force as a peremptory norm, obligating all states, whether members of the UN or not.<sup>19</sup> When the invader establishes its own administration over a territory beyond its internationally recognized borders and jurisdiction, the situation becomes one of occupation.

Determining the start of an occupation is essentially a question of fact, which must be distinguished from invasion.<sup>20</sup> The international law term "occupation" refers to a "period following invasion and preceding the cessation of hostilities," which fact "imposes more onerous duties on an Occupying Power than on a party to an international armed conflict."<sup>21</sup>

According to Lauterpacht,

"Invasion is the marching or riding of troops—or the flying of military aircraft—into enemy country. Occupation is invasion plus taking possession of enemy country for the purpose of holding it, at any rate temporarily. The difference between mere invasion and occupation becomes apparent from the fact that an occupant sets up some kind of administration, whereas the mere invader does not."<sup>22</sup>

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[https://digitallibrary.un.org/record/10608/files/A\\_RES\\_34\\_37-EN.pdf?ln=en](https://digitallibrary.un.org/record/10608/files/A_RES_34_37-EN.pdf?ln=en) [in Arabic: [N7934305.pdf \(un.org\)](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_35_19.pdf)] and Question of Western Sahara, A/RES/35/19, 11 November 1980, [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_res\\_35\\_19.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_35_19.pdf) [in Arabic: <https://daccess-ods.un.org/tmp/1179675.60887337.html>].

<sup>15</sup> UNGA, Question of Western Sahara, A/RES/74/97, 26 December 2019, <https://daccess-ods.un.org/tmp/876963.73462677.html>.

<sup>16</sup> Report of the Secretary General S/21360, 18 June 1990, <https://digitallibrary.un.org/record/94688?ln=ar>.

<sup>17</sup> UNSC, The Situation concerning Western Sahara, S/690, 29 April 1991, <http://unscr.com/ar/resolutions/doc/690>.

<sup>18</sup> African Union. "The African Union calls for renewed efforts to resolve the conflict in Western Sahara," 15 April 2014, <https://au.int/fr/node/25648>.

<sup>19</sup> Report of the International Law Commission, Seventy-first session (29 April–7 June and 8 July–9 August 2019) Chapter V: "Peremptory norms of general international law (jus cogens)," A/74/10, pp. 141–208, <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>. UN, *Repertory of Practice of United Nations Organs and Repertoire of the Practice of the Security Council: report of the Secretary-General UN Secretary-General*, Supplement 7, Vol 1, Article 2 (New York: UN, 2016), [https://legal.un.org/repertory/art2/english/rep\\_supp7\\_vol1\\_art2\\_4.pdf](https://legal.un.org/repertory/art2/english/rep_supp7_vol1_art2_4.pdf).

<sup>20</sup> See Lord Arnold Duncan McNair and Sir Arthur Watts, *The Legal Effects of War* (Cambridge: Cambridge University Press, fourth edition, 1966), pp. 377–78; and Georg Schwarzenberger, *International law as Applied by International Courts and Tribunals*, Vol. II: "The Law of Armed Conflict" (London: Stevens & Sons, 1968), p. 324.

<sup>21</sup> ICTFY, *Prosecutor v Naletilić and Martinović*, Case No.IT-98-34-T (2003), 73, para. 214, <http://www.icty.org/sid/8274>.

<sup>22</sup> Hersch Lauterpacht, "Disputes, war and neutrality," in Lassa Francis Lawrence Oppenheim, *International law: a treatise*, Vol. II: (London: Longman, 7<sup>th</sup> edition, 1952) p. 434. See also Re Lepore, *Annual Digest of Public International Law Cases*, Vol. 13, p. 354 (Supreme Military Tribunal, Italy: 1946), p. 355; Disability pension case, *International Law Reports*, Vol. 90 (Federal

Corroborating this view, International Criminal Tribunal for the former Yugoslavia (ICTFY) has found that: “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”<sup>23</sup>

This distinction flows from The Hague Regulations (1907), which has the status of customary international law<sup>24</sup> and provides a definition of occupation upon which, on the whole, the Fourth Geneva Convention relies. Article 6 of the Fourth Geneva Convention conveys a wider meaning than in Article 42 of The Hague Regulations:

“So far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation within the meaning of Article 42 ... The relations between the civilian population of a territory and troops advancing into that territory, whether fighting or not, are governed by the present Convention. There is no intermediate period between what might be termed the invasion phase and the inauguration of a stable regime of occupation. Even a patrol which penetrates into enemy territory without any intention of staying there must respect the Convention in its dealings with the civilians it meets.”<sup>25</sup>

In response to the serious violations of the denial of self-determination and the acquisition of territory by force, the most-fundamental principles of international law and world order affirm that “It is the right and duty of all States, individually and collectively, to eliminate colonialism, apartheid, racial discrimination, neocolonialism and all forms of foreign aggression, occupation and domination, and the economic and social consequences thereof, as a prerequisite for development.”<sup>26</sup>

Today, Morocco occupies 80% of the territory of the Sahrawi Arab Democratic Republic (SADR), the self-determination unit that the Sahrawi people’s representative declared before Morocco’s invasion,<sup>27</sup> which at least 89 other states in the international system have recognized.<sup>28</sup>

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Social Court, F. R. Germany: 1985), p. 403; Gerhard von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis: University of Minnesota Press, 1957), pp. 28–29.

<sup>23</sup> ICTFY, *op. cit.*, p. 73, para. 215.

<sup>24</sup> As declared by the International Criminal Tribunal at Nuremberg in the Trial of German Major War Criminals, Cmd. 6964 (1946), p. 65. Numerous other courts have affirmed the customary status of The Hague Regulations; see, for example, Krupp case (International Military Tribunal at Nuremberg), *Annual Digest of Public International Law Cases*, Vol. 15, pp. 620, 622 (subsequently retitled *International Law Reports*, which title now applies to the entire series) *R. v Finta*, 1 S.C.R. 701 (Canadian High Court of Justice), *International Law Reports*, Vol. 82, p. 439; *Affo v IDF Commander in the West Bank* (Israel High Court), *International Law Reports*, Vol., 83, p. 163; *Polyukhovich v. Commonwealth of Australia* (Australian High Court), *International Law Reports*, Vol. 91, p. 123; Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989), pp. 38–40.

<sup>25</sup> Jean Pictet, ed., *Commentary to Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958), pp. 59–60. See also Guénaél Mettraux, *International Crimes and the ad hoc Tribunals* (Oxford: Oxford University Press, 2005), pp. 64–71; and *Prosecutor v Naletilić and Martinović*, *op. cit.*, pp. 74–75, paras. 219–21.

<sup>26</sup> *Charter of Economic Rights and Duties of States*, GA Res. 3281(xxix), UN GAOR, 29<sup>th</sup> Session, Supplement No. 31 (1974), p. 50, Article 16, <https://legal.un.org/avl/ha/cerds/cerds.html>.

<sup>27</sup> On 10 May 1973. See European Union, *Judgment of the General Court (Eighth Chamber) ECLI:EU:2015:953*, 10 December 2015, <https://curia.europa.eu/juris/document/document.jsf?docid=172870&doclang=EN>.

<sup>28</sup> “Countries That Recognize the Sahrawi Arab Democratic Republic,” *Western Sahara Online*/Public Broadcasting Service (PBS) (2023), <https://www.pbs.org/wnet/wideangle/uncategorized/sahara-marathon-countries-that-recognize-the-sahrawi-arab-democratic-republic/1052/>.



Figure 4: Map of Western Sahara, 2007, with the red line showing the location of the Moroccan-built berm, separating the occupied territories from the liberated territories as of 1992. Source: MINURSO.

The illegal military occupation and annexation of the bulk of the Non-Self-Governing Territory of Western Sahara have caused and continue to cause serious and systematic violations of human rights, as well as of serious breaches of international humanitarian law (IHL).

Throughout the years, KoM has included the Non-Self-Governing Territory of Western Sahara it occupies within its administrative order, holding illegal legislative elections there to represent the Sahrawi people under occupation in its national parliaments. This and other administrative

actions violate the IHL prohibition under The Hague Regulations (1907) against an occupying power altering the legal system in the occupied territory.<sup>29</sup>

Other practices of Moroccan forces and authorities violate the Fourth Geneva Convention. In particular, these include Articles 31 and 32 (prohibition of coercion, corporal punishment, torture, degrading and inhuman treatments); Article 33 (prohibition of collective penalties, intimidation, pillage, reprisals); Article 49 (prohibition of deportations and transfers of population); Article 53 (prohibition of destruction of real or personal property belonging to private persons individually or collectively); and Article 76 (on the treatment of detainees). Some of these violations constitute grave breaches<sup>30</sup> and may amount to war crimes, crimes against humanity and cultural genocide.

The serious crime of population transfer<sup>31</sup> was prosecuted at the International Military Tribunals at Nuremberg and Tokyo,<sup>32</sup> as well as codified to be both a war crime and crime against humanity in the Rome Statute of the International Criminal Court.<sup>33</sup> However, population transfer, with its combined push and pull factors of displacing and expelling indigenous population, as well as implanting its own colonial settlers and settlements,<sup>34</sup> continues with impunity under Moroccan occupation.

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<sup>29</sup> Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Article 43, <https://ihl-databases.icrc.org/ihl/INTRO/195>.

<sup>30</sup> Convention relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, Articles 49, 146–47, [https://ihl-databases.icrc.org/ihl/INTRO/380#:~:text=Convention%20\(IV\)%20relative%20to%20the,combatants%20only%2C%20not%20with%20civilians](https://ihl-databases.icrc.org/ihl/INTRO/380#:~:text=Convention%20(IV)%20relative%20to%20the,combatants%20only%2C%20not%20with%20civilians).

<sup>31</sup> Defined as “a practice or policy having the purpose or effect of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory, without the free and informed consent of the transferred population and any receiving population. It involves collective expulsions or deportations and often ethnic cleansing.” European Parliamentary Assembly, “Enforced population transfer as a human rights violation,” Assembly debate on 27 January 2012 (9<sup>th</sup> Sitting), Doc. 12819, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Vareikis; Doc. 12853, opinion of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Türkeş. Text adopted by the Assembly on 27 January 2012 (9<sup>th</sup> Sitting), <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18069&lang=en>.

<sup>32</sup> See the infamous cases of Nuremberg Tribunal defendants Alfred Rosenberg and Alfred Jodl. Avalon Project, *Nazi Conspiracy and Aggression, Volume 2, Chapter XVI, Part 7, Alfred Jodl*, [http://avalon.law.yale.edu/imt/chap16\\_part07.asp](http://avalon.law.yale.edu/imt/chap16_part07.asp) and *Judgement: Sentences*, <http://avalon.law.yale.edu/imt/judsent.asp>; Avalon Project, *Trials of the War Criminals before the Nuernberg Military Tribunals Under Control Council Law No. 10*. <http://avalon.law.yale.edu/imt/indict4.asp>.

<sup>33</sup> As a crime against humanity, Article 7, and a war crime, Article 8 of the Rome Statute of the International Criminal Court, Rome, A/CONF.183/9, 17 July 1998 and corrected by *procès-verbaux* of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

<sup>34</sup> Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, “The human rights dimensions of population transfer, including the implantation of settlers and settlements,” E/CN.4/Sub.2/1993/17, 6 July 1993, <http://www.refworld.org/docid/3b00f4194.html>.



As already noted, Morocco's refusal to respect its internationally recognized borders,<sup>35</sup> and its use of force to invade, occupy and acquire the lands of another people's territory breach IHL and international criminal law. Moreover, the occupation also denies the exercise of the Sahrawi people's individual and collective human rights, including the inalienable right to self-determination, constituting a continuous breach of the UN Charter and the Human Rights Covenants.<sup>36</sup>



Figure 5: Over 175,000 Sahrawi refugees live in the region of Tindouf, Algeria, in the heart of the desert, in four refugee camps. Source: EU Civil Protection and Humanitarian Aid/Flickr.

### Habitat Consequences of the Moroccan Occupation

Morocco's prolonged occupation has caused severe deprivation of the indigenous Sahrawi people, both inside the country and in exile, notably by restricting the Sahrawi people's access to, use and control of their land, natural wealth and resources, thus depriving its means of

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<sup>35</sup> As long established under the Treaty of Lalla Maghnia (18 March 1845), which set the border between French Algeria and Morocco. Treat of demarcation, 18 March 1845, between France and Morocco. M. de Clercq, *Recueil des traités de la France*, t. 5 : 1843-1849, Paris, Amyot, 1865, p. 271–75, <https://books.google.fr/books?id=BvYWAQAAIAAJ&pg=PA271#v=onepage&q&f=false>; « Le Maroc : XIXème siècle, » (extracts) *Wikiwix Archive* (11 September 2021 cached version), <https://archive.wikiwix.com/cache/index2.php?url=http%3A%2F%2Fwww.efmaroc.org%2Fcea%2Fpdf%2Fdosh1.pdf%2Findex.html#federation=archive.wikiwix.com>.

<sup>36</sup> In contravention of the Charter of the United Nations (1945) (UN Charter), Articles 1.2 and 55, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>; common Article 1 of the International Covenant on Civil and Political Rights (ICCPR), <https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>, and the 1966 Covenants: International Covenant on Economic, Social and Cultural Rights (ICESCR), <https://www.ohchr.org/documents/professionalinterest/cescr.pdf>; Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly (GA) resolution 1514 (XV), [https://undocs.org/A/Res/1514\(XV\)](https://undocs.org/A/Res/1514(XV)); and the 1975 ICJ ruling, *op. cit.*

subsistence.<sup>37</sup> The continuing occupation has also prolonged a refugee situation, primarily, in Algeria, with at least 174,000 refugees<sup>38</sup> exiled and likely undercounted<sup>39</sup> for 47 years.

Meanwhile, arbitrary arrest, detention without trial, forced disappearance, torture and extrajudicial killings carried out by Moroccan forces in Western Sahara violate international human rights treaties,<sup>40</sup> including those to which KoM is a ratifying party.<sup>41</sup> While such violations are grave, this review covers them only in the context of violations of human rights related to habitat: the human right to adequate housing, water and sanitation, land, peoples' sovereignty over their natural wealth and resources, and the newly recognized human right to the environment,<sup>42</sup> whose normative content and corresponding state obligations have yet to be elaborated in human rights law.

The pillage and plunder of natural resources conducted by the Moroccan monarch, occupation forces and commercial enterprises since 1975 also violate IHL.<sup>43</sup> These acts also may come under the jurisdiction of the ICC through its scope of investigating environmental damage, illegal natural resources exploitation and land grabbing in the context of existing crimes under the Rome Statute.<sup>44</sup>

IHL breaches and gross violations of the human rights to adequate housing, property, land and natural resources (the Sahrawi people's means of subsistence)<sup>45</sup> continuing till the present. The right to remedy and reparation stands to be fulfilled, whether or not perpetrators are identified, apprehended or prosecuted. Arising from the fact of these and other violations,<sup>46</sup> we

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<sup>37</sup> The 1966 Covenants: ICESCR and ICCPR, *op. cit.*, common Article 1.

<sup>38</sup> UNHCR, "Sahrawi Refugees in Tindouf, Algeria: Total In-Camp Population," March 2018, pp. 12–13, [http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR\\_Tindouf-Total-In-Camp-Population\\_March-2018.pdf](http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR_Tindouf-Total-In-Camp-Population_March-2018.pdf).

<sup>39</sup> At its most-recent census (2018), UNHCR noted the probability of undercounting. *Ibid.*, pp. 12–13, [http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR\\_Tindouf-Total-In-Camp-Population\\_March-2018.pdf](http://www.usc.es/export9/sites/webinstitucional/gl/institutos/ceso/descargas/UNHCR_Tindouf-Total-In-Camp-Population_March-2018.pdf).

<sup>40</sup> Amnesty International, "Human Rights Violations in Western Sahara," MDE/29/04/96, 18 April 1996, <https://www.refworld.org/docid/3ae6a99313.html>.

<sup>41</sup> Office of the High Commissioner for Human Rights, "UN Treaty Body Database: Morocco," [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117&Lang=EN).

<sup>42</sup> Human Rights Council, "The human right to a clean, healthy and sustainable environment," 8 October 2021, [https://digitallibrary.un.org/record/3945636/files/A\\_HRC\\_RES\\_48\\_13-EN.pdf?ln=en](https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf?ln=en); UNGA, "The human right to a clean, healthy and sustainable environment," A/RES/76/300, 28 July 2022, [https://digitallibrary.un.org/record/3983329/files/A\\_RES\\_76\\_300-EN.pdf?ln=en](https://digitallibrary.un.org/record/3983329/files/A_RES_76_300-EN.pdf?ln=en).

<sup>43</sup> Security Council, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, 12 February 2002, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/249/87/PDF/N0224987.pdf?OpenElement>; New York Bar Association, Committee on United Nations, "Report on Legal Issues Involved in the Western Sahara Dispute: Use of Natural Resources, April 2011, <https://www.nycbar.org/pdf/report/uploads/20072089ReportonLegalIssuesInvolvedintheWesternSaharaDispute.pdf>.

<sup>44</sup> Office of the Prosecutor, "Policy Paper on Case Selection and Prioritisation," 15 September 2016, [https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915\\_OTP-Policy\\_Case-Selection\\_Eng.pdf](https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf).

<sup>45</sup> ICCPR and ICESCR, *op. cit.*, common Article 1.2.

<sup>46</sup> Commission on Human Rights, "forced eviction," resolution 1993/77, 10 March 1993, <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>, para. 1, "Affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing;" para. 1; and "Prohibition of forced evictions," resolution 2004/28, 16 April 2004, para. 1, [http://www.hlrn.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf).

recommend prioritizing the application of the norms and entitlements of reparation for victims, as set out by the UN General Assembly.<sup>47</sup>

## Dimensions of Deprivation

Many Sahrawis who fled the territory with the 1975 Moroccan military invasion left their homes and cultivated lands behind, most of which Moroccan invaders have appropriated. Other owners were compelled to sell properties at a loss from exile, or before taking refuge outside their country.<sup>48</sup> This groups forms a first line of victims mostly located outside the territory of Western Sahara, but nonetheless entitled to remedy of their costs, losses and damages.

Morocco seeks to incorporate Western Sahara into Morocco, as affirmed in various official Moroccan pronouncements.<sup>49</sup> One means of doing so is the artificial earthen barrier (berm), whose construction and militarized operation have partitioned the territory to secure a tenuous Moroccan presence toward annexation. A second is the illegal transfer of Moroccan population into Western Sahara. Pillage of the territory's natural resources is a third and effectively irreversible gross violation. Nonetheless, all these gross violations entitle the Sahrawi people to comprehensive and proportionate reparations.<sup>50</sup>

In general, Moroccan laws, imposed in breach of IHL, facilitate dispossession of Sahrawi lands. These unjust and illegitimate laws encourage land grabbing and abuse human rights of the indigenous Sahrawi people under guise of "legality." This strategy complements those more visually obvious means mentioned above by replacing customary housing and land systems with alien statutes that subject Sahrawis to dispossession of their land, forced eviction, house demolition and plunder of natural resources.

On 6 July 2019, the parliament of the Saharawi Arab Democratic Republic passed its own law to "better ensure sovereign rights and protection of the natural resources" of Western Sahara. The Law No. 1/2019 specifies that the "natural resources of the Saharawi Republic include those natural resources found in the land territory of the Republic" and "those resources in the

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"Reaffirms that the practice of forced eviction that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing."

<sup>47</sup> UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, 21 March 2006, <http://www.un.org/Docs/asp/ws.asp?m=A/RES/60/147>.

<sup>48</sup> Ana Sebastián y Pablo Jiménez, *Sahara Occidental: Del abandono colonial al construcción de un estado* (), p. 101, (Zaragoza: Pregunta Ediciones, 2019), p. 101, <https://www.ohchr.org/Documents/Issues/Truth/CallLegacyColonialism/CSO/AEDIDH-Annex-2.pdf>.

<sup>49</sup> Morocco's king says Western Sahara status not up for debate," *Aljazeera* (7 November 2021), <https://www.aljazeera.com/news/2021/11/7/moroccos-king-says-western-sahara-status-not-up-for-debate#:~:text=Mohamed%20VI%20says%20the%20disputed,tensions%20with%20Polisario%2C%20neighbouring%20Algeria.&text=Morocco's%20King%20Mohamed%20VI%20has,Algeria%20over%20the%20disputed%20territory>; Embassy of Morocco Australia, New Zealand and Pacific Islands, "Presentation of Credentials to the Governor-General of Australia by H.E. Wassane Zailachi, Ambassador of the Kingdom of Morocco," 9 February 2022, <http://moroccoembassy.org.au/?q=«-western-sahara-»-moroccan>.

<sup>50</sup> A/RES/60/147, *op. cit.*

maritime territory defined by Law No. 3 of 21 January 2009, the Law Establishing the Maritime Zones of the Saharawi Arab Republic.”<sup>51</sup> The previous law declared a 200-nautical mile Exclusive Economic Zone (EEZ), affirming the SADR’s jurisdiction over its offshore fisheries and mineral and petroleum seabed resources, as provided for under the United Nations Convention on the Law of the Sea. The new legislation also provides that where the SADR’s maritime entitlements overlap with those of its neighbors, the SADR will negotiate and conclude agreements delimiting maritime boundaries in accordance with international law.<sup>52</sup>

### Grabbing Grarat Land

Western Sahara’s *grarat* (singular: *grayer*) are tribal lands of customary tenure with palm groves or desert trees such as acacia. They contain wells, obviating the need to collect rainwater. In most cases, these *grarat* act as natural storage of scarce water for agriculture and drinking.

Usually, each *grayer* hosts small, informally built brick houses, some dating to the Spanish colonization, with tents erected nearby as needed. There, Sahrawis pursue their distinct, traditional lifestyles and culture, which are central to national identity. *Grarat* are traditionally bequeathed from father to son.

Sahrawis have given names to the *grarat* that facilitate desert navigation and mark their local territories and corresponding tenure. Nowadays, Saharawi families inhabiting these rural settlements typically engage in goat and camel breeding. Some have chosen to live there to escape repression, threats, and intimidation from the Moroccan occupation authorities, which became particularly virulent amid 2020–2022 pandemic restrictions.

The Moroccan occupation’s disrespect for traditional tenure has involved further altering the legal system in occupied Western Sahara<sup>53</sup> to enable to Moroccan acquisition of Sahrawi land and property. No complete inventory yet quantifies all this dispossession since 1975. However, the territory that the Moroccan forces have taken by force amount to 21,280,000 ha, equivalent to 80% of Western Sahara territory, all of which is subject to restitution to the Sahrawi people for all losses, costs and damages incurred since the 1975 invasion, withstanding individual cases presented here.<sup>54</sup>

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<sup>51</sup> Saharawi Arab Democratic Republic Natural Resources Sovereignty Act, Law No. 1/2019, 6 July 2019, *SADR official Gazette*, No. 55, [https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/242/60ed7011a388e\\_SADR-Resources-Act-2019.pdf](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/242/60ed7011a388e_SADR-Resources-Act-2019.pdf).

<sup>52</sup> Western Sahara Resources Watch, “Western Sahara Declares Offshore Zones,” media release, 22 January 2009, [https://wsrw.org/files/dated/2009-01-23/eez\\_media\\_release.pdf](https://wsrw.org/files/dated/2009-01-23/eez_media_release.pdf).

<sup>53</sup> In violation of The Hague Convention, *op. cit.*, Article 43.

<sup>54</sup> A/RES/60/147, *op. cit.*; Housing and Land Rights Network – Habitat International Coalition (HIC-HLRN), “Reparation in the Case of Western Sahara,” Response to the Questionnaire on transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts, Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 5 May 2021, <https://www.ohchr.org/Documents/Issues/Truth/CallLegacyColonialism/CSO/Housing-and-Land-Rights-Network.-Western-Sahara-case.pdf>.

## Annexation

On the larger scale, the Moroccan military occupation proceeded to integrate more and more of Western Saharan territory under its control. The Annexation of Western Sahara was the occupation and incorporation of Western Sahara into Morocco in two stages in 1976 and 1979. On 14 April 1976 the area was annexed by Morocco and Mauritania via the Western Sahara partition agreement, following the two countries' occupation of the area which began on 30 October 1975, and on 14 August 1979 Morocco annexed the remaining territory following Mauritania's withdrawal and renunciation.

Annexation is illegal under international law. Thus, Morocco's annexation of Western Sahara is null and void, such that the territory is not a legal part of Morocco and its status remains under the international laws of military occupation.<sup>55</sup> The annexation was supported by the United States,<sup>56</sup> which in 2020 became the only country to formally recognize it as part of the Israel–Morocco normalization agreement.<sup>57</sup>

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<sup>55</sup> Adriana Kalicka-Mikołajczyk, [The international legal status of Western Sahara](http://portal.amelica.org/ameli/jatsRepo/463/4632029003/index.html), Trimestral, vol. 18, no. 4, 2020, <http://portal.amelica.org/ameli/jatsRepo/463/4632029003/index.html>; Christopher Greenwood, Karen Lee, eds., *International Law Reports* (Cambridge UK: Cambridge University Press, 2019), p. 370, [https://books.google.com/eg/books?id=IXGSDwAAQBAJ&pg=PA370&redir\\_esc=y#v=onepage&q&f=false](https://books.google.com/eg/books?id=IXGSDwAAQBAJ&pg=PA370&redir_esc=y#v=onepage&q&f=false); Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law* (Cambridge UK: Cambridge University Press, 2013), pp. 259–60, <https://books.google.com/books?id=ujd84R1TL2AC&pg=PA260>; Sven Simon, “Western Sahara,” in Christian Walter, Antje von Ungern-Sternberg, Kavus Abushov, eds., *Self-Determination and Secession in International Law* (Oxford: Oxford University Press, 2014), p. 262, <https://books.google.com/books?id=nZuzAwAAQBAJ&pg=PA262>.

<sup>56</sup> The White House, “Proclamation on Recognizing the Sovereignty of the Kingdom of Morocco over the Western Sahara,” 10 December 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-recognizing-sovereignty-kingdom-morocco-western-sahara/>.

<sup>57</sup> “Israel–Morocco normalization agreement,” *Wikipedia*, [https://en.wikipedia.org/wiki/Israel%E2%80%93Morocco\\_normalization\\_agreement](https://en.wikipedia.org/wiki/Israel%E2%80%93Morocco_normalization_agreement).



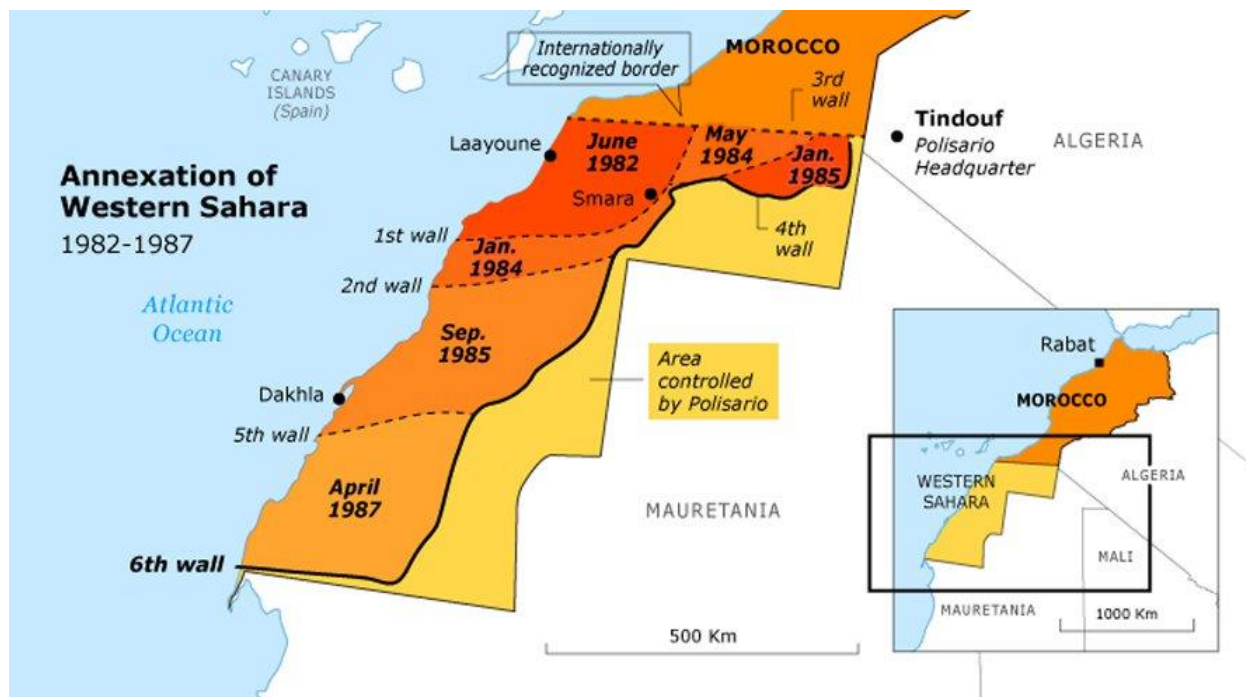


Figure 6: Morocco's gradual annexation of Western Sahara by constructing separation walls (earthen berms) throughout the 1980s. Source: [Sahara Overland](#).

### Demolition and Destruction

Although a comprehensive inventory of property destruction under the Moroccan invasion and occupation also has yet to be developed, the following cases illustrate the pattern of costs, losses and damage that the Sahrawi people have incurred under Morocco's policy of demolishing Sahrawi homes, violating the human right to adequate housing.<sup>58</sup> The documentation of cases in this report are illustrative of violations carried out in the previous 15 years only.

Many individual Sahrawis also have fallen victim to land and house confiscation and acquisition multiple times. For example, in 1976, occupation forces confiscated and seized Sidi Omar Duih's 4 ha at al-`Amrayyat) Lamrayyat, 3 km east al-`Ayun, plus another 8 ha at al-Mghayimim (Lamghaymim) in 1997. Moroccan authorities also seized his land holdings at Gaflat-5, east al-`Ayun, and his house in Colomina Erdess (Essaada Quarter) in 2008.<sup>59</sup>

In a November 2011 aggression on Brarik Stayallou, northwest of al-`Ayun, Moroccan authorities demolished 42 Spanish-era Sahrawi huts used as shelter from summer heat. The occupiers' Rapid Intervention Unit (RUI) then attacked the protesting Saharawi victims without

<sup>58</sup> Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: "the right to housing," 13 December 1991, contained in document E/1992/23, <http://www.hlrn.org/img/documents/GC4.pdf>; CESCR General Comment No. 7: "forced eviction," 20 May 1997, contained in document E/1998/22, Annex IV, <http://www.hlrn.org/img/documents/GC7.pdf>.

<sup>59</sup> Personal interview with Sidi Omar Duih, February 2018.

respect to older persons, women and children present. The victims filed many complaints to all local and Moroccan institutions, but to no avail, despite their diligent follow-up.<sup>60</sup>

In 2015, after similar forced evictions and destruction of brick Sahrawi houses at a *grayer* 3 km north of al-`Ayun. Occupation forces confiscated the land, where they built a training center for RUI agents.<sup>61</sup>

The Moroccan occupation has criminalized pitching a tent by the seashore, permitting tents only in the desert on conditions that they be temporary and not form a cluster. This restriction followed the autumn 2010 Gdeim Izik events, in which thousands of Sahrawis joined a weeks-long protest camp on the outskirts of al-`Ayun, denouncing Morocco's social and economic exclusion of the Saharawi people in their own country. On 8 November 2010, Moroccan troops stormed and incinerated the camp, arresting hundreds in the immediate aftermath. While most were released over time, occupation authorities condemned 25 men to severe sentences.<sup>62</sup>

Also in 2015, on the very 40<sup>th</sup> anniversary of the ICJ Advisory opinion, Sahrawis staged a protest in front of digging machines, supposedly owned by the Moroccan state-owned phosphate company OCP Group (OCP S.A.) (formerly Office Chérifien des Phosphates) just south of Western Sahara's capital city al`Ayun. The protesters were mainly elderly Saharawis, whose families are said to have long owned the land under development. The Saharawis oppose Morocco's confiscation of their land to clear it for foreign investments in the occupied territory.<sup>63</sup>

Sources on the ground say that the Moroccan government is confiscating land that belongs to Saharawis. Morocco would want to increase the number of foreign investors in the part of Western Sahara that it occupies in violation of international law. Offering land up to the potential investors would be a first step in that process. The instance followed the Monaco-based Crans Montana organization hosting a widely condemned<sup>64</sup> forum on "South-South Cooperation and the African Dimension" for politicians and businessmen in occupied Western Sahara earlier that year.

On 26 September 2018, in Edaoura, 40 km north of al-`Ayun, occupation authorities confiscated land belonging to Sahrawis and coerced the inhabitants to leave. The gendarmes also use force to compel the Sahrawi families to sign contracts or cede their land-tenure rights to the Moroccan National Agency for Land Conservation, Cadaster and Cartography in favor of

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<sup>60</sup> Victims' petition letters on file.

<sup>61</sup> Eyewitness testimony.

<sup>62</sup> Western Sahara Resources Watch (WSRW), "Soon 10 years of wrongful imprisonment: release Gdeim Izik group now," 8 September 2020, <https://wsrw.org/en/news/soon-10-years-of-wrongful-imprisonment-release-gdeim-izik-group-now>.

<sup>63</sup> "Saharawis protest Moroccan land grab in front of digging machines," WSRW (20 October 2015), <https://wsrw.org/en/archive/3284>.

<sup>64</sup> "AU condemns Crans Montana Forum in occupied Western Sahara," WSRW (02 February 2015), <https://wsrw.org/en/archive/3135>.

Moroccan Agency for Sustainable Energy (MASEN) for the planned PV II solar-power generation project.<sup>65</sup>

Local landowners have been demonstrating and filing lawsuits in local courts, but Moroccan authorities have taken no action to cease or remedy the cruel destruction, forced eviction and dispossession. Many Sahrawi protesters and landowners are dispersed in the desert, claiming their land rights and opposing Moroccan state-led attempts to register their lands in the name of Moroccan persons, institutions and corporations.



Figure 7: Aerial photo showing a segment of the berm with its military patrol. Source: P. Herzog/Getty Image/AFP.

In August 2021, Moroccan helicopters, gendarmerie, auxiliary battalions and law-enforcement agents besieged protesters about 100 km east of al-`Ayun, in the Khattari area, along the route to Smara City. Others have been protesting the Moroccan dispossession of their lands north of al-`Ayun, all the way to Daoura village, in the far north, which area is guarded by the same Moroccan forces.<sup>66</sup>

In the southern city of Dakhla, Sahrawis have undergone seizure of many hectares of land in the Argoub area, which Moroccan authorities falsely claim as *terra nullius*. In April 2021, A group of local landowners staged a sit-in at the Land Registry in Dakhla to reclaim their land rights. The

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<sup>65</sup> *Greenwashing Occupation: How Morocco's renewable energy projects in occupied Western Sahara prolong the conflict over the last colony in Africa* (WSRW, October 2021), pp. 11, 13, 19, 29, [https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/399/615d3ac8c4c0d\\_Greenwashing\\_Web.pdf](https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/399/615d3ac8c4c0d_Greenwashing_Web.pdf); Daniel Stemler, "Morocco Pushes Huge Renewables Agenda In Disputed Western Sahara," *Oil Price* (19 November 2016), <https://oilprice.com/Alternative-Energy/Solar-Energy/Morocco-Pushes-Huge-Renewables-Agenda-In-Disputed-Western-Sahara.html>; "Dirty green energy on occupied land," *WSRW* (21 July 2020), <https://wsrw.org/en/news/renewable-energy>.

<sup>66</sup> Video of siege and demonstration at Khattari area, *smara.voice* (15 August 2021), <https://fb.watch/bC8xuwHDrx/>.

protesters asserted their legitimate tenure of those lands, inherited over centuries from their ancestors.

On 18 September 2021, Moroccan bulldozers, trucks and excavators surrounded the Tadkhist area, southwest of al-`Ayun, and proceeded to demolish 100 Sahrawi permanent and seasonal dwellings.<sup>67</sup> Four days later, Moroccan forces similarly attacked and demolished the homes of six Sahrawi families at Brareik Ethamban, southwest of al-`Ayun, between the airport and Boutabaa Grayer. This was the third time that occupation forces had demolished the Boutabaa family home, the first of which homes was built in 1960. A military helicopter monitored the demolition and eviction operations.<sup>68</sup>

Morocco's demolition campaign has also razed Sahrawi houses in the northwest of al-`Ayun, near the seashore, and in the desert to the northeast. The Moroccan occupation gendarmerie has beaten and prosecuted Sahrawis who protested the demolition of their houses. Helpless against this demolition, some have fled with their children to al-`Ayun.

In January 2022, at nearby Swayhla and Puerto Rico, Moroccan gendarmerie and auxiliary forces evicted tens of Sahrawis and local landowners and forbade them from erecting tents, or even having any physical presence there. The Moroccan occupation authorities then declared it a "restricted area" under gendarmerie guard.<sup>69</sup>

Meanwhile, under the order of a Moroccan official named "Said Ouassou," occupation forces seized the home of Mohamed Brahim Sidi Ahmed, and confiscated the home of Sahrawi activist Hmad Hammad, in al-`Ayun, as well as the home of Mokhtar Elaoui and land belonging to Eddah Laaroussi Brahim Maatallah, west of al-`Ayun toward the port. Occupation authorities then turned over the homes and lands to Moroccan investors and settlers.<sup>70</sup>

On 1 February 2022, Moroccan forces demolished 23 modest Sahrawi homes in Amgriou (Tarfaya Province). The perpetrators carried out the operation violently, giving no advance warning for Sahrawi inhabitants to collect their belongings, nor did they provide reparation for this gross violation. Moreover, the Moroccan occupation authorities enabled dozens of Moroccan settlers to remain and profit from algae harvesting and the plunder of the abundant fisheries there.<sup>71</sup>

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<sup>67</sup> Oscar Allende, "Equipe Media denuncia la confiscación y demolición de viviendas en el Sáhara Occidental ocupado," *Equipe Media* (4 October 2021), <https://www.elfaradio.com/2021/10/02/equipe-media-denuncia-la-confiscacion-y-demolicion-de-viviendas-en-el-sahara-occidental-ocupado/>.

<sup>68</sup> *Ibid.*

<sup>69</sup> "مواطنون بالداخلة يتهمون والي الجهة وأخنوش ومزوار بمصادرة أراضيهم ويستنجدون بالملك (بالفيديو)،" *صحراء تودوس* (11 أبريل 2021)، <https://saharatodos.ma/?p=14869>.

<sup>70</sup> Phone interview with Sahrawi activist Hmad Hammad, January 2022.

<sup>71</sup> See Mohamed Laâbid, « Laâyoune : La plage d'Amgriou séduit les investisseurs » *Aujourd'hui le Maroc* (16 January 2008), <https://www.maghress.com/fr/aujourd'hui/59266>.

## Population Transfer

The serious crime of population transfer typically involves push and pull factors, including expulsions of the indigenous population and the implantation of settlers and settlements through a range of human rights violations, including those cited above.<sup>72</sup> Many of the associated violations and international crimes (see **Normative Framework** above) may be acts of state, as in Morocco's occupation of Western Sahara, implemented by actors with state authority, consent, or by proxy.

Beyond the 1975 state-organized Green March invasion, KoM also incentivizes Moroccan civilian settlers to put down roots in the region. This takes the subtler form of KoM providing exemptions from taxes and customs duties, subsidized raw materials, facilitating all fields of investment, and housing subsidies denied to their indigenous counterparts, as in such royal enterprises as the Phos Boucraa phosphate mine, which Morocco seized in 1975.<sup>73</sup>

With Morocco's irredentist political culture, sovereignty over Western Sahara cannot be realized without physically removing and/or demographically neutralizing the Saharawi people. The so-called Green March (*Marche Verte*) introduced some 350–360,000 Moroccan citizens into the territory, 15% of whom worked for the Moroccan army. These demonstrators were part of a plan of the Ministry of the Interior (Moi) to replace and forcibly transfer the Sahrawis from their homeland to neighboring countries, deporting some to Morocco's interior cities, while starving and/or physically eliminating those who remained.<sup>74</sup>

To facilitate effective control, KoM evicted nomads and Bedouins from their ancestral land into the cities and forced them to leave their natural desert habitat, where they had freely dwelt for centuries. In the 1970s–1980s, Moroccan forces arrested without trial and forcibly disappeared many Sahrawis, seeking to break the Sahrawis' spirit of resistance.

Accordingly, many were forced to flee to the refugee camps in neighboring Algeria, while others sought refuge in Mauritania. A few could escape to the neighboring Canary Islands and have remained there. The Moroccan army forcibly conscripted some Sahrawis, mostly into service within Moroccan territory.

## A Typology of Settlers

Moroccan intelligence and Moi agents entered the territory, setting up residence in abandoned buildings or houses and apartments formerly inhabited by Spaniards. These agents operated

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<sup>72</sup> Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, "The human rights dimensions of population transfer, including the implantation of settlers and settlements," E/CN.4/Sub.2/1993/17, 6 July 1993, <http://www.refworld.org/docid/3b00f4194.html>.

<sup>73</sup> "Discrimination over the right to housing in OCP, local workers say," WSRW (8 April 2012), <https://wsrw.org/en/archive/2275>.

<sup>74</sup> Jacob Mundy and Stephen Zunes, "Moroccan Settlers in Western Sahara: Colonists or Fifth Column?" in Oded Haklai, Neophytos Loizides, eds., *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts* (Redwood City: Stanford University Press, 2015), pp. 40–74, <https://1lib.ch/book/3506931/6713bb>; Gabriel Davis, "Morocco's Double Infallibility: The Intergenerational Peril of the 1975 Green March," *Jadaliyya* (11 August 2020), <https://www.jadaliyya.com/Details/41535>.



under orders and with impunity, breaking down doors of any vacated house and, often, evicted Sahrawi families from their dwellings to occupy them. By day, these agents searched for intel and performed another covert operation under darkness of night, prowling like ghosts armed with sticks and batons to raid Sahrawi homes and neighborhoods, terrorizing Sahrawi families, especially women and children, wherever they went.

Another type of settler were the soldiers and auxiliary forces, who also played their part in terrorizing the Sahrawis in their cities and villages. KoM granted them impunity to enter Sahrawi towns and spread chaos and terror to compel the Saharan population to leave their homes. These tools of the Moroccan regime assisted in abducting Sahrawis. In recent years, many mass-graves from that period have been discovered across Western Sahara.<sup>75</sup>

A third type of settler whom the Moroccan regime has used to change the demographic composition of the region were the ordinary Moroccans who migrated to the cities in search of a livelihood. They harassed and crowded the locals out of work and housing. The Moroccan MoI was telling those migrants that Western Sahara was their “Moroccan” land, offering an exit from poverty, if they took this opportunity by their own hands. They quickly took over vacated housing and began their new life, exploiting the opportunity left by the many Sahrawis displaced and in asylum.

Estimates of settler numbers vary. By 1985, some statistics indicated the number of Moroccan settlers in Western Sahara had reached over 400,000, doubling the number of the indigenous population.<sup>76</sup> In the 1990s, KoM transferred some 170,000 of its own population in advance of an anticipated referendum on final status.<sup>77</sup> Currently, Moroccan settlers illegally inhabiting Western Sahara are estimated at over 300,000.<sup>78</sup>

### Displacing and Neutralizing

The military invasion introduced threatening propaganda broadcast parallel to the violence and murder applied strategically to displace and expel the Sahrawis from their homeland. The Moroccan army, for example, would bury Sahrawis alive under the sand, or throw them into

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<sup>75</sup> European Commission, “Discovery of mass grave in Western Sahara,” Raúl Romeva i Rueda (Verts/ALE), Written Question E-2551/10, 20 April 2010, [https://www.europarl.europa.eu/doceo/document/E-7-2010-2551\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-7-2010-2551_EN.html); Carlos Martín Beristain and Francisco Etxeberria Gabilondo, MEHERIS: A possibility of hope: Mass graves and the first Sahrawi disappeared who have been identified (Bilbao: hegoa, 2013), [https://vest-sahara.no/files/dated/2013-09-16/mass\\_grave\\_report\\_2013.pdf](https://vest-sahara.no/files/dated/2013-09-16/mass_grave_report_2013.pdf); Francisco Etxeberria, Lourdes Herrasti, Carlos Martin-Beristain, “Excavation and Analysis of Human Remains from Mass Graves in the Western Sahara,” in Heather M. Garvin, Natalie R. Langley, eds., *Case Studies in Forensic Anthropology: Bonified Skeletons* (Boca Raton FL: CRC Press, 1<sup>st</sup> edition, 2019).

<sup>76</sup> Erica Vásquez, “The Roots of Conflict: From Settler-Colonialism to Military Occupation in the Western Sahara” (Part 1), *Jadaliyya* (9 January 2015), <https://www.jadaliyya.com/Details/31655>.

<sup>77</sup> Mundy and Zunes, *op. cit.*, pp. 60, 74.

<sup>78</sup> In 2015, settlers made up two-thirds of the total 500,000 population. Whitney Shefte, “Western Sahara's stranded refugees consider renewal of Morocco conflict,” *The Guardian* (6 January 2015), <https://www.theguardian.com/world/2015/jan/06/morocco-western-sahara-referendum-delay>; Mundy and Zunes, *op. cit.* The total population is estimated to be 630,289 in the beginning of 2023. “Western Sahara Population,” *Country Meters*, [https://countrymeters.info/en/Western\\_Sahara#:~:text=Demographics%20of%20Western%20Sahara%202021,of%20603%2C091%20the%20year%20before.](https://countrymeters.info/en/Western_Sahara#:~:text=Demographics%20of%20Western%20Sahara%202021,of%20603%2C091%20the%20year%20before.)

the sea alive, or kill them in cold blood, and then threaten with a similar fate anyone who resisted them.<sup>79</sup> News of army and settler atrocities reached the Sahrawis everywhere, causing tens of thousands of Sahrawis to flee into the desert to find any safe place, or seek refuge in neighboring countries.

Beginning in 1987, the occupiers also separated Sahrawi youth from their families, resettling them in Morocco under the cover of education and training programs. By end 1987, over 6,000 marginalized young Sahrawis suddenly found themselves receiving KoM government-provided housing and scholarships to study in cities deep in Morocco, especially in Casablanca and Rabat. Later they would be called "Hassan II's juniors."

Morocco absorbed especially young scholars, academics and intellectuals into Moroccan cities, while refusing to build a university in Western Sahara. From KoM's point of view, a university in al-`Ayun, for example, also could become a locus of struggle and national resistance against the occupation.

However, the plan to recruit, dissipate and absorb Sahrawi youth and intellectuals in Moroccan society has largely failed. Sahrawis in the occupied cities and territories have demonstrate that they are aware of the consequences of this maneuver and have pursued a peaceful-but-steadfast resistance by building imbuing patriotism and Sahrawi culture in their children potentially compelled to emigrate.<sup>80</sup>

Another wave of settlers started in 1991, when Morocco implanted over 120,000 Moroccans from Morocco, including southern Morocco, where a community of ethnic Sahrawis also lives. This tactic was part of a larger scheme to flood the territory with settlers, to change the demographics and, thereby, to falsify the list of eligible referendum voters and prevent indigenous self-representation in Western Sahara.<sup>81</sup>

Yet another undeclared and unofficial wave of settlers has occupied fishing villages coincident with the EU-Morocco fisheries agreements. These Moroccan fishermen and their families inhabit over 12 villages (e.g., Amigriou, Marsa, Tarouma, Agti Ghazi, Intirift, Lasarga, *et al.*) along the coast between Terfaya and Dakhla. Most of these settlers have no official documents, and some are fugitive criminals. The Moroccan occupation regime provides no statistics on their number. In addition, Moroccan farm owners annually import some 12,000 seasonal workers from central Morocco, whose lodging, food and local transportation are all provided in

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<sup>79</sup> Ali Lmrabet, "Un responsable marroquí reconoce crímenes de guerra en el Sahara," *El Mundo* (17 June 2008); "2008 Human Rights Report: Western Sahara". State.gov. 25 February 2009. Archived from the original on 26 February 2009, <https://www.state.gov/g/drl/rls/hrrpt/2008/nea/119123.htm>; "Morocco abuse report criticized," *BBC News* (17 December 2005), <http://news.bbc.co.uk/2/hi/africa/4537870.stm>.

<sup>80</sup> Various Sahrawi testimonies.

<sup>81</sup> Jacob Mundy and Stephen Zunes, Moroccan Settlers in Western Sahara: Colonists or Fifth Column? "Moroccan Settlers in Western Sahara: Colonists or Fifth Column?" in Oded Haklai and Neophytos Loizides, eds., *Settlers in Contested Lands: Territorial Disputes and Ethnic Conflicts* (Redwood City CA: Stanford University Press, 2015), pp. 40–74.

addition to their salary, in part paid with revenue from European Union (EU) trade and the EU Fisheries Agreement.<sup>82</sup>

### Sahrawi Refugees and Displacement

Exiled from their homeland during the long-running Moroccan war and occupation, the Sahrawi refugees have spent the past 47 years living in refugee camps of canvas tents and mud brick huts. Protracted displacement has taken a heavy toll on their health and wellbeing. In the camps in the normally uninhabitable Algerian desert, refugees struggle with food and water insecurity, lack of medicine and healthcare. The Algerian government has worked to improve the living conditions of these refugees by providing secondary education, healthcare services, land and infrastructure improvements, also hosting and working with international organizations such as UNHCR, WFP and UNICEF.

Refugee camps are supposed to be temporary domiciles. Unfortunately, “temporary” can often mean years. Everything, from food to shelter to medical care, is donated by international aid agencies. Formerly nomadic people who inhabited a large expanse of land in the Western Sahara have become refugees after fleeing the napalm-spewing Moroccan army, when the Spanish gave up their colonies in 1975. A further blow came in the late 1980s, when Morocco built the 2,700 km “berm”—a 3-meter-high and 2,700-km-long earthen wall—longer than the Great Wall of China—guarded by at least 120,000 Moroccan soldiers and 7 million landmines.<sup>83</sup>

Half the Sahrawi refugee population—everyone under the age of 47 years—was born in the camps. More than 35% of Sahrawi refugee children suffer chronic malnutrition and, for 13%, it is so acute that it has led to severe growth stunting.<sup>84</sup> Lack of water is a further chronic problem. A family of six reported receives only 1,000 liters a month, less than one-third of the internationally accepted 3,600-liter minimum.<sup>85</sup> The health problems of the refugees are not only physical. With almost no work or recreation available to them, despondency is a major problem.<sup>86</sup>

The Sahrawi refugees remain wholly dependent on humanitarian aid. Few employment opportunities lead to frustration with the ongoing conflict, in addition to vulnerability to flash floods and sandstorms. The COVID-19 pandemic lockdown also caused many Sahrawi refugees

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<sup>82</sup> “EU’s Fishy Business with Morocco,” *Land Times*/أحوال الأرض, Issue 22 (March 2021), <http://landtimes.landpedia.org/newsdes.php?id=qGps&catid=ow==&edition=pGs=>.

<sup>83</sup> Hannah McNeish, “Western Sahara’s struggle for freedom cut off by a wall,” *Aljazeera* (5 June 2015), <https://www.aljazeera.com/features/2015/6/5/western-saharas-struggle-for-freedom-cut-off-by-a-wall#:~:text=But%20spanning%202%2C700km%2C%20the,busy%20manning%20the%20massive%20wall>; Matthew Porges, “Landmines in the Sahara,” *London Review of Books* (7 September 2018), <https://www.lrb.co.uk/blog/2018/september/landmines-in-the-sahara>.

<sup>84</sup> Peter Kessler, “Western Saharan refugees face malnutrition, warn aid agencies,” UN High Commission for Refugees (UNHCR), 29 August 2002, <https://www.unhcr.org/news/latest/2002/8/3d6e14f1a/western-saharan-refugees-face-malnutrition-warn-aid-agencies.html>.

<sup>85</sup> Samuel Loewenberg, “Displacement is permanent for the Sahrawi refugees,” *The Lancet* (9 April 2005), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(05\)61010-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(05)61010-0/fulltext).

<sup>86</sup> *Ibid.*

to lose jobs, causing them to rely more heavily on aid. Observers have called for greater awareness of the current refugee situation and the need for continued international humanitarian support.<sup>87</sup>

## Raiding Homes

In November 2020, Moroccan security forces established a near-constant heavy presence outside the house of independence activist Sultana Khaya, in Boujdour, Western Sahara.<sup>88</sup> They have provided no justification and have prevented several people, including family members, from visiting. According to Khaya, police forces raided her house several times, beating her and relatives, and smearing the house with a foul-smelling liquid. Khaya is locally known for her public displays of vehement opposition to Morocco's control of Western Sahara. The arbitrary blockade of her house was still in place at time of writing.<sup>89</sup> In May, prominent Sahrawi activist Sultana Khaya escaped house arrest and travelled to Spain to seek medical treatment for the torture she endured during various police assaults since her house arrest in 2020.<sup>90</sup> There were no investigations into the rape and other serious human rights violations against her and her family.

Moroccan authorities systematically prevent gatherings supporting Sahrawi self-determination, obstruct the work of some local human rights NGOs, including by blocking their legal registration, and on occasion beat activists and journalists in their custody and on the streets, or raid their houses and destroy or confiscate their belongings,<sup>91</sup> as exemplified in the case of independence Sahrawi activists Hassana Duihi in May 2021.<sup>92</sup>

## Mining the Land

The entire expanse of Western Sahara's territory has been impacted by the continuing presence of landmines and explosive ordnance (EO), including cluster munitions, as a result of the conflict that took place from 1975 and 1991 between the Royal Moroccan Army (RMA) (and, until 1979, with Mauritanian armed forces), and the military forces of Frente POLISARIO. Morocco built the 2,700-km-long sand berm, stretching from inside southern Morocco to the Atlantic Ocean at Guerguerat, during the conflict, of which 1,465 km divide the territory into western (occupied) and eastern (liberated) parts. The berm and the immediate areas around it are heavily contaminated by landmines planted by Moroccan forces.

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<sup>87</sup> Gerardo Valladares. "Sahrawi Refugees Living in Algeria: The Forgotten Crisis," *The Borgen Project* (26 April 2021), <https://borgenproject.org/sahrawi-refugees-living-in-algeria/>.

<sup>88</sup> Amnesty International, "Western Sahara: Harassment of Independence Activist," 18 December 2020, <https://www.hrw.org/news/2021/03/05/western-sahara-harassment-independence-activist>.

<sup>89</sup> Roth, *op. cit.*

<sup>90</sup> Amnesty International, "Morocco/Western Sahara: Further information: Activist successfully leaves home after 18 months: Sultana Khaya," 16 September 2022, [https://www.amnesty.org/en/documents/mde29/6031/2022/en/?utm\\_source=annual\\_report&utm\\_medium=epub&utm\\_campaign=2021](https://www.amnesty.org/en/documents/mde29/6031/2022/en/?utm_source=annual_report&utm_medium=epub&utm_campaign=2021).

<sup>91</sup> HRW, "Morocco/Western Sahara: Video Captured Police Violence," 12 March 2020, <https://www.hrw.org/news/2020/03/12/morocco/western-sahara-video-captured-police-violence>.

<sup>92</sup> *Ibid.*

The 1991 ceasefire led to the UNSC established United Nations Mission for the Referendum in Western Sahara (MINURSO), whose mandate includes reduce the threat of unexploded ordnances (UXOs) and mines.<sup>93</sup> The most-recent extension of the mandate was authorized in 2022, extending the mandate to 31 October 2023.<sup>94</sup>

The total number of mine/ERW casualties in Western Sahara is unknown. However, estimates put the number of ERW casualties until 2017 at 1,427, including 56 killed, 1,351 injured, and 20 unknown/unharmed.<sup>95</sup> Sources of casualty data include a casualty survey conducted by the Saharawi Association of Landmine Victims (Asociación Saharaui de Víctimas de Minas, ASAVIM) with the support of Action on Armed Violence (AOAV) in 2012, and ongoing casualty surveillance.<sup>96</sup> ASAVIM had collected detailed information on 1,006 mine, cluster munition, and other ERW victims who are living in and around the Rabouni refugee camps on the Algerian border with Western Sahara.<sup>97</sup> The Polisario authorities reported a total of 1,413 people killed and injured by mines/ERW through April 2014.<sup>98</sup> UNMAS data included 1,427 casualties east and west of the berm in total. This total contains 1,213 adults, 18 children, and 196 of unknown age. Out of all casualties, 311 victims were recorded with a military/police status and 41 victims were deminers.<sup>99</sup> Morocco reported a total of 2,536 mine/ERW casualties (831 killed; 1,705 injured) from 1975 to the end of 2012; it was not reported how many of these occurred in Morocco versus Moroccan-controlled Western Sahara.<sup>100</sup>

In 2017, the majority of casualties (19), have were reported in the Morocco-occupied zone (west of the berm), with five in POLISARIO-controlled Western Sahara (east of the berm). The United Nations Mine Action Service (UNMAS) reported confidence that almost all casualties in 2017 were recorded.<sup>101</sup> As of May 2018, UNMAS and the Sahrawi Mine Action Coordination Center (SMACO) were in the process of updating the casualty database.

### *Cluster munition casualties*

In total, 184 cluster munition casualties have been identified in Western Sahara. ASAVIM identified 177 casualties of unexploded submunitions between 1975 and 2012.<sup>102</sup> in September

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<sup>93</sup> Security Council resolution 690 of 29 April 1991

<sup>94</sup> S/RES/2654, 2022

<sup>95</sup> "Western Sahara Casualties," *Landmine and Cluster Munitions Monitor* (21 October 2018), <http://www.the-monitor.org/en-gb/reports/2020/western-sahara/casualties.aspx>. Data for 2017 is based on email from Mischa Kaufmann, Information Management Officer, UNMAS, 27 February, and 5 April 2018.

<sup>96</sup> Interview with Mischa Kaufmann, UNMAS, in Tindouf, 18 May 2018, cited in *Ibid*.

<sup>97</sup> Email from Awala Lehib, ASAVIM, 10 August 2014, cited in *Ibid*.

<sup>98</sup> SADR, Convention on Cluster Munitions voluntary Article 7 Report (reporting period 2005 to June 2014), submitted 16 June 2014, Form H; and email from Awala Lehib, ASAVIM, 10 August 2014. POLISARIO authorities cited the ASAVIM database as the source for their casualty data, though ASAVIM was unable to confirm the total reported by the POLISARIO authorities.

<sup>99</sup> Email from Mischa Kaufmann, UNMAS, 27 February 2018, and other sources cited in "Western Sahara Casualties," *op. cit*.

<sup>100</sup> Morocco, Mine Ban Treaty Voluntary Article 7 Report (for calendar year 2012), Form I, April 2013, [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/28118C250E4AB79EC1257B980045C264/\\$file/Matoc+2012.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/28118C250E4AB79EC1257B980045C264/$file/Matoc+2012.pdf).

<sup>101</sup> Email from Mischa Kaufmann, UNMAS, 27 February 2018, cited in "Western Sahara Casualties," *op. cit*.

<sup>102</sup> Email from Gaici Nah Bachir, Advisor, ASAVIM, 24 July 2013, cited in "Western Sahara Casualties," *op. cit*.



2013, a boy was injured by an unexploded submunition.<sup>103</sup> Four unexploded cluster submunition casualties in 2015, including at least one child.<sup>104</sup> Two unexploded cluster submunition casualties were reported in 2017, an increase over 2016 when none were reported.

In the liberated territory of Umm Degan on 13 December 2018, a mine exploded under a vehicle carrying three people who were on their way to investigate an explosion nearby. The incident resulted in the death of citizen Mahfoud Shakrad, and serious injuries to his brother Sid-Ahmed Shakrad, in addition to the driver, Ambarak Meskeh, who also suffered injuries. Another explosion took place on 14 December 2018 affecting a vehicle in the area of Akhneig Lajawad, although details are not known.

The resumption of military action in November 2020 broke the 1991 ceasefire, and the ongoing low-intensity conflict that ensued also renewed the threat from explosive ordnance, including in areas previously deemed safe. ASAVIM has condemned the plantation by the Moroccan occupation army of thousands of anti-personnel and anti-tank mines, around the newly Moroccan-constructed wall in the Guerguerat area, southwest of Western Sahara, further threatening the safety of MINURSO personnel, the local population and nomadic herdsman. In a communiqué, ASAVIM called on the international community and its relevant bodies and all actors, in particular the International Campaign to Ban Landmines (ICBL) and the Cluster Munition Coalition (CMC), to exert pressure on Morocco to implement the requirements of international humanitarian law and human rights law, including the prohibition of the use of anti-personnel mines and cluster bombs in Western Sahara.

Added to the risks of landmines, EOs, UXOs and other ERW, Morocco has introduced the military use of drones in Western Sahara, including kamikaze drones. These are reportedly of Israeli origin,<sup>105</sup> while Israel also is establishing two military equipment factories inside Morocco.<sup>106</sup>

## Plundering Natural Resources

Contemporary land grabbing involves the capture and control of vast tracts of land and other natural resources—the Sahrawi people’s means of subsistence—through a variety of mechanisms and forms that involve large-scale capital shifting resource use toward extractive activities, whether for international or domestic purposes. As global investment responds to

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<sup>103</sup> Email from Jonas Tappolet, MINURSO Mine Action Coordination Centre, 4 June 2014, cited in “Western Sahara Casualties,” *op. cit.*

<sup>104</sup> Casualty data provided by email from Graeme Abernethy, Programme Manager, UNMAS, 6 February 2016, cited in “Western Sahara Casualties,” *op. cit.*

<sup>105</sup> Pasha Magid, Andrea Prada Bianchi, “Israel Ramps Up Drone Sales to Morocco for Its Colonial War in Western Sahara,” *The Intercept* (1 July 2023), <https://www.atalayar.com/en/articulo/new-technologies-innovation/morocco-receives-state-of-the-art-israeli-drones/20230620170237186987.html#:~:text=The%20Israeli%20press%20reports%20that,Systems%2C%20strengthening%20their%20military%20capabilities>; Aya Benazizi, “Morocco Purchases 150 Israeli Military Drones,” *Morocco World News*, 22 September 2022, <https://www.morocoworldnews.com/2022/09/351475/morocco-purchases-150-israeli-military-drones/>; “Morocco Uses Israeli Drones for Its Military Operations,” *The Maghreb Times* (28 September 20122), <https://themaghrebtimes.com/morocco-uses-israeli-drones-for-its-military-operations/>.

<sup>106</sup> Darek Liam, “Israeli Elbit Systems to manufacture military hardware in Morocco,” *Military Africa* (18 July 2023), <https://www.military.africa/2023/07/israeli-elbit-systems-to-manufacture-military-hardware-in-morocco/>.

the convergence of food, energy and financial crises, amid climate-change mitigation, demand for, and competition over resources by fewer sources of concentrated global capital. In Western Sahara under Moroccan occupation, this competition has on the agricultural, fisheries, mining and energy sectors.

### Colonial Agriculture: The “Conflict Tomato” Trade

In 1989, after dispossessing the indigenous population, King Hassan II launched a pilot farming project around the city of Dakhla. With a total area of Western Sahara region amounts to 24 million ha, with about 21.3 million ha (equivalent to 80%) under Moroccan control. That territory includes 130,000 ha of agricultural land in a region otherwise dominated by camel and other cattle breeding. The irrigated area is 500 ha devoted mainly to crops and vegetables. During wet years, large areas of 50,000 ha are irrigated by flood waters.<sup>107</sup>

Already by 2008, Moroccan occupation authorities had dedicated around 600 ha of Sahrawi land to the production of greenhouse vegetables, mainly intensely irrigated tomatoes, cucumbers, and melons, extending this allotment to 2,000 ha by 2020. This production is entirely for export, to no benefit of the local population.<sup>108</sup>

A dozen foreign agricultural sites operate in the vicinity of Western Sahara’s Dakhla Peninsula, located along the mid-coast of occupied Western Sahara. Tomatoes and melons are the main crops in the area. Cherry tomatoes yield between 80 and 120 tonnes per ha annually, destined for export. Today, four big agro-operators cultivate the Dakhla plantations; Rosaflor, Soprofel, Azura and Les Domaines Agricoles. All of these are either owned by the Moroccan king, powerful Moroccan conglomerates or by French companies, selling their produce under brand names as Azura, Idyl, Etoile du Sud and Les Domaines Agricoles. From 2021, some of the same companies have also starting blueberry production in the occupied territory.<sup>109</sup>

All farms in occupied Western Sahara are owned either directly by Morocco’s king, Moroccan holdings, or French enterprises. Les Domaines Agricoles, a subsidiary of the King Muhammad VI-owned Siger/Ergis<sup>110</sup> holding company,<sup>111</sup> is Morocco’s largest agribusiness. Among other enterprises,<sup>112</sup> it profits from the occupation by producing vegetables in almost 100 ha of greenhouses near the Western Sahara city of Dakhla.

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<sup>107</sup> Conseil royal consultatif pour les affaires sahariennes, “Saharan Development,” 2023, <http://www.sahara-developpement.com/Western-Sahara/AgricultureEtElevage--117.aspx>.

<sup>108</sup> Ian Black, “Western Sahara’s ‘conflict tomatoes’ highlight a forgotten occupation,” *The Guardian* (4 March 2015), <https://www.theguardian.com/world/2015/mar/04/western-sahara-conflict-tomatoes-occupation-morocco-labelling-tax>.

<sup>109</sup> WSRW, “Farming in the occupied desert,” 14 April 2022, <https://wsrw.org/en/news/agriculture>.

<sup>110</sup> Siger is the leading holding company of Mohammed VI, evolving out of a holding of the same name that belonged to Hassan II, but was renamed to Ergis (now belonging to the Heirs of Hassan II). Both names, Ergis and Siger, form two anagrams of *regis*, the Latin word for king.

<sup>111</sup> “L’autre face de l’accord agricole UE-Maroc,” *bilaterals.org* (14 February 2012), <https://www.bilaterals.org/?l-autre-face-de-l-accord-agricole>.

<sup>112</sup> WSRW, “The tomato barons of the occupied Western Sahara,” 19 June 2012, <https://wsrw.org/en/archive/2312>.

Currently, Morocco is pursuing a project that aims to turn 52km<sup>2</sup> of unused land near the city of Dakhla into farms irrigated by a wind-powered desalination plant with the collaboration of investors providing US\$213 million in response to a tender issued in September 2022. The project will be 77% state funded as part of a US\$7 billion development plan that Morocco rolled out in 2015 to upgrade Western Sahara's infrastructure, including the construction of a \$1 billion port in Dakhla.<sup>113</sup>

The types of Moroccan agricultural production in occupied Western Sahara typically require copious irrigation, using non-renewable groundwater. The over-exploitation of these water resources depletes and selenates the aquifer. In a region with no surface water such as Western Sahara, this practice eventually denies access to clean water and consequently renders human life unsustainable by natural means.

The Sahrawis are not even benefiting from this industry as employees, as the labor force is entirely formed of Moroccan settlers. The Moroccan government strategy prioritizes migration of Moroccan colonists to the Western Sahara to sustain a Moroccan majority. Therefore, these industries are key to settling more Moroccans and achieving that end by annexation of the occupied territories. As old as colonialism itself, the strategy applied in the Western Sahara case has seen the Moroccan king claiming that the settler population would have a right to vote in any referendum on the country's future final status. The strategy echoes the ambitious ultra-nationalist aspirations of an irredentist "Greater Morocco."<sup>114</sup>



Figure 8: Intensive Moroccan greenhouse agriculture in Western Sahara. Source: WSRW.

<sup>113</sup> "New farming project as Morocco pushes development in Western Sahara," *The Arab Weekly* (10 September 2022), <https://the arabweekly.com/new-farming-project-morocco-pushes-development-western-sahara>.

<sup>114</sup> "Greater Morocco," [https://en.wikipedia.org/wiki/Greater\\_Morocco](https://en.wikipedia.org/wiki/Greater_Morocco).

## Harvesting the Wind

Numerous international companies invest in Western Sahara despite the territory's special legal status of Western Sahara. They also illicitly operate their projects in lands that belong solely to Sahrawis. Wind farm investors offer no compensation to Sahrawi individual and collective land-owners and continue the plunder the territory without the Sahrawis' consent and benefit.

For example, the German-Spanish Siemens Gamesa corporation labels Western Sahara as "Southern Morocco" in its press releases and letters.<sup>115</sup> By 2017, the corporation had erected 56 wind turbines, with a cumulative capacity of 850 megawatt (MW), at Boujdour and Aftissat in Western Sahara.<sup>116</sup> These are in addition to wind-energy enterprises of Nareva Holding, created in 2005 by the industrial and financial group Omnium nord-africain (ONA),<sup>117</sup> which the Moroccan king acquired in 1980.<sup>118</sup> In early September 2020, Siemens Gamesa confirmed a new contract for



Figure 9: Tarfaya Wind Farm. Source: Siemens.

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<sup>115</sup> Letter of Andreas Nauen, "Siemens Gamesa Renewable Energy, S.A.: Inside Information," 2 September 2020, <https://www.siemensgamesa.com/en-int/-/media/siemensgamesa/downloads/en/investors-and-shareholders/inside-information-communications/2020/20200902-ip-boujdour-eng-def.pdf>; Safaa Kasraoui, "Spain's Siemens Gamesa to Install 87 Wind Turbines in Southern Morocco," *Morocco World News* (2 September 2020), <https://www.morocoworldnews.com/2020/09/317168/spains-siemens-gamesa-to-install-87-wind-turbines-in-southern-morocco>.

<sup>116</sup> WSRW, "Siemens: the Moroccan king's wind turbine supplier in Western Sahara," 7 December 2017, <https://wsrw.org/en/archive/4018>.

<sup>117</sup> Nareva, "Search research for Morocco," undated, <https://www.nareva.ma/en/search/?q=morocco>.

<sup>118</sup> Fahd Iraqi, «Il était une fois l'ONA», *TelQuel*, n° 456 (11 January 2011), <http://moumendiouri.blogspot.com/2011/01/saga-il-etait-une-fois-lona-article.html>; Catherine Graciet and Éric Laurent, *Le Roi prédateur* (Paris: Édition du Seuil, 2012), [https://www.hlrn.org/img/documents/Laurent\\_eric\\_Le\\_Roi\\_predateur\\_fr.pdf](https://www.hlrn.org/img/documents/Laurent_eric_Le_Roi_predateur_fr.pdf).



the 300MW wind park at Boujdour, in cooperation with Nareva.<sup>119</sup> These wind-energy projects currently operate at six sites on Sahrawi land near Tan Tan, Tarfaya, al-`Ayun, and Dakhla, with three further operations under development at al-`Ayun, Boujdour and Dakhla.<sup>120</sup> All of these, as well as numerous solar energy projects, operate through a decade of silent defiance of the rulings of the European Court of Justice and the UN Legal Advisor.<sup>121</sup>

Built in just two years and launched in 2015, the Tarfaya wind energy complex stretches more than 100 km<sup>2</sup> across the Western Sahara desert, with 131 wind turbines producing enough electricity to power a city the size of Marrakech (ca. 1,050,000) every day.<sup>122</sup>



Figure 10: Sahrawis protesting Siemens 50 MW complex at its Forum El Oued, September 2016. Source: WSRW.

All these projects have benefitted from lands grabbed by the Moroccan occupation authorities and corporations domiciled in third states, without any consultation with, consent of, or benefit to the indigenous Sahrawi people or their legal representative the POLISARIO Front. All local

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<sup>119</sup> "Siemens Gamesa secures a 301 MW wind turbines contract in Morocco," *Enerdata* (3 September 2020), <https://www.enerdata.net/publications/daily-energy-news/siemens-gamesa-secures-301-mw-wind-turbines-contract-morocco.html>.

<sup>120</sup> Aïssa Benazzouz, Hassan Mabchour, Khalid El Had, Bendahhou Zourarah and Soumia Mordane, "Offshore Wind Energy Resource in the Kingdom of Morocco: Assessment of the Seasonal Potential Variability Based on Satellite Data," *Journal of Marine Science and Engineering*, Vol. 9, Issue 31 (2021), <https://www.mdpi.com/2077-1312/9/1/31/pdf>; Carmen, "Noor Laayoune Solar PV Park, Morocco," *Market Data* (14 December 2021), <https://www.power-technology.com/marketdata/noor-laayoune-solar-pv-park-morocco/>.

<sup>121</sup> S/2002/161, *op. cit.*; "10 years of silence from Siemens," WSRW (25 February 2022), <https://wsrw.org/en/news/10-years-of-silence-from-siemens>; General Court of the European Union, "The General Court annuls the Council decisions concerning, first, the agreement between the European Union and Morocco amending the tariff preferences granted by the European Union to products of Moroccan origin and, second, the Sustainable Fisheries Partnership Agreement, Press Release No 166/21, Luxembourg, 29 September 2021, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210166en.pdf>; A/2002/161, *op. cit.*

<sup>122</sup> Arthur Neslen, "Africa's Biggest Wind Farm Sparks Controversy in the Desert," *The Guardian* (28 November 2016), <https://ourworld.unu.edu/en/africas-biggest-wind-farm-sparks-controversy-in-the-desert>.



landowners were never contacted nor compensated for the loss of their lands. Many of them have tried to demonstrate in protest, or complain, but are met with violent repression of the Moroccan-occupation authorities. Sahrawis have demanded these companies quit their lands and to cease their projects, but have faced only political hypocrisy of the beneficiary corporations and their host governments.

### Extracting Mineral Wealth

Morocco's extraction of Western Sahara's mineral wealth is a main driver of the occupation. The phosphate deposits in Morocco and Western Sahara combined amount to 72% of the world's total reserves. (The second-highest percentage of these reserves is in China, which has about 6%). In 2021, OCP reported revenue of 57.6 billion dirhams (US\$ 5.474 billion).<sup>123</sup> By facilitating investments and tax incentives Morocco projects to increase revenue from non-phosphate mining to more than 15 billion dirhams (US\$1.7 billion) by 2030.<sup>124</sup> end of November 2021, the government of Morocco announced that it had earned \$6.45 billion from the export of phosphate from the kingdom and from the occupied territory of Western Sahara.<sup>125</sup>

Morocco not only enjoys impunity for these illicit operations, but also finds complicit states also breaching peremptory norms of international law in Western Sahara. The imports to India, Mexico and New Zealand together make over 92% the entire trade in Western Sahara's phosphate rock in recent years.

In New Zealand, the Ravensdown company continues to explore ways to avoid Western Sahara mineral imports, but Ballance Agri-Nutrients has maintained the highest annual purchase of these conflict minerals since daily monitoring began in 2011.<sup>126</sup> Despite earlier promises to cease phosphate rock procurement from Western Sahara, the US company Innophos Holdings has resumed its imports from the occupied territory Sahara into Mexico as the leading importer during the second half of 2021, taking in 43% of all phosphate rock from occupied Western Sahara in seven shipments that totaled 391,000 tonnes.<sup>127</sup>

In Switzerland, OCP operates an office in Geneva under the name Saftco, and Zug-based EuroChem has exported 400,000 tonnes of Sahrawi phosphate to Estonia, with the participation of Swiss shipping companies. The conduit has been Lifosa AB, a Russian-owned Lithuanian

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<sup>123</sup> Jihane Rahhou, "Morocco's OCP Generated MAD 57,6 billion in Net Revenues," *Morocco World News* (1 December 2021), <https://www.morocoworldnews.com/2021/12/345803/moroccos-ocp-generated-mad-57-6-billion-in-net-revenues>.

<sup>124</sup> "Morocco targets \$1.7 bln in non-phosphate mining revenue by 2030," *Reuters* (21 June 2021), <https://www.reuters.com/article/morocco-mining/morocco-targets-1-7-bln-in-non-phosphate-mining-revenue-by-2030-idUSL5N2O3348>.

<sup>125</sup> Rahhou, *op. cit.*

<sup>126</sup> WSRW, "New Report: Mexico becoming top plunder partner," 6 April 2022, <https://wsrw.org/en/news/new-report-mexico-becoming-top-plunder-partner>.

<sup>127</sup> *Ibid.*

company.<sup>128</sup> Until recently, EuroChem's main shareholder was sanctioned oligarch Andrey Melnichenko.<sup>129</sup>

Some corporations have taken steps to avoid breaching international law by trading with Morocco's plunder of Western Saharan minerals. The Chinese company China Molybdenum has promised its investors not to repeat Sahrawi phosphate imports to its subsidiary in Brazil. Ever since vessels transporting Western Saharan phosphate were detained in Panama and South Africa in 2017, no shipments have gone via Cape of Good Hope or through the Panama Canal.

Nonetheless, Morocco has increased its development of the mining sector under occupation. Since the occupation began in 1975, Morocco had sold only raw phosphate rock. Under current plans, Morocco seeks to sell Sahrawi phosphates will also be sold in a more valuable, processed form. This more diverse product range will further increase the lucrative nature of the trade.

In recent years, the phosphate rock exports from Western Sahara's Bou Craa mine have amounted to around 10% of Morocco's total rock export, varying between 1 and 2 million tonnes over the last decade,<sup>130</sup> contributing substantially to finance the occupation of the territory and the depletion of the resource that forms part of the Sahrawi people's means of subsistence. The revenues from phosphate mining and export directly benefit the occupying power, with earnings for the year 2021 estimated at \$349 million.<sup>131</sup> And the war in Ukraine since 2022 has only redounded to the further benefit of OCP, boosting operating profit to \$3.65bn in the first nine months of that year, up from \$1.99bn for the same period in 2021.<sup>132</sup>

However, phosphates are not the only conflict mineral that Morocco extracts from Sahrawi territory. In general, the Office National des Hydrocarbures et des Mines [National Office of Hydrocarbons and Mines] (ONHYM) is the primary agency responsible for the exploration of mineral resources and the promotion of investment in the hydrocarbon and mining sectors. Its studies prepare for exploration of base metals (cobalt, copper, iron ore, lead, nickel, and zinc), industrial minerals, mineral fuels (uranium), precious metals (gold), and other high-value mineral commodities, such as molybdenum, niobium, tantalum, and rare-earth elements.<sup>133</sup>

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<sup>128</sup> European Parliament, "Morocco's phosphate mining in Western Sahara," Question for written answer E-004499-15 to the Commission, Rule 130 (answer in writing), Bart Staes (Verts/ALE), 19 March 2015, [https://www.europarl.europa.eu/doceo/document/E-8-2015-004499\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-8-2015-004499_EN.html).

<sup>129</sup> Terres des hommes Schweiz, "Occupied Western Sahara: Lucrative trade in conflict minerals," 6 April 2022, <https://www.terredeshommeschweiz.ch/en/occupied-western-sahara-lucrative-trade-with-conflict-mineral/>.

<sup>130</sup> WSRW, "The conflict phosphates - four decades of plunder," 11 May 2023, <https://wsrw.org/en/news/the-phosphate-exports>.

<sup>131</sup> WSRW, "New Report," *op. cit.*

<sup>132</sup> Heba Saleh, "Ukraine war fallout benefits one of world's biggest fertiliser groups," *Financial Times* (8 February 2023), <https://www.ft.com/content/850d8c0a-a853-4b0e-aba3-d63d18ab0c93>.

<sup>133</sup> *Rapport annuel 2017* (Rabat: ONHYM, 2018), p. 28, [http://www.onhym.com/pdf/Publications/RAPPORT\\_ar\\_fr\\_2018.pdf](http://www.onhym.com/pdf/Publications/RAPPORT_ar_fr_2018.pdf); "Retrait de Kosmos Energy et Capricorn des permis de Boujdour Maritime," *Maroc diplomatique* (7 February 2018), <https://maroc-diplomatique.net/retrait-de-kosmos-energy-capricorn-permis-de-boujdour-maritime/>.

Cement and phosphate rock production, and offshore crude petroleum and natural gas exploration were the main mining activities that were carried out in the occupied territory.<sup>134</sup> Ciments du Maroc owned and operated a clinker mill at Laayoune. Clinker was shipped from the Safi cement plant in western Morocco. The mill had the capacity to produce 500,000 tonnes per year of cement. Other cement components, such as limestone, gypsum, and pozzolan, were sourced from nearby quarries located in Western Sahara.<sup>135</sup> However, ONHYM carried out seven exploration studies for metals in Western Sahara in 2017, located at al-Warma (gold), Chenna (gold), Lafhouda (iron ore, niobium, and rare-earth elements), Lafhouda-Drag (niobium, rare-earth elements, tantalum, and uranium), Tlayha (gold and uranium), Tizegzaouine (copper, gold, and silver), and Twihinata-Lamlaga (gold, iron ore, molybdenum, niobium, rare-earth elements, tantalum, and uranium). Metalex Ventures Ltd. of Canada conducted exploration studies for copper and gold at the Tichla Awserd region in partnership with ONHYM in 2017.<sup>136</sup>

Several petroleum companies have been exploring for crude petroleum and natural gas offshore of and onshore in Western Sahara. They included San Leon Energy plc of Ireland, which operated the Tarfaya onshore block and the Zag offshore block through its subsidiary San Leon Morocco Ltd.; Glencore plc of Switzerland, which held an exploration license at the Boujdour Offshore Shallow block; Cairn Energy PLC; Eni Maroc B.V. of Italy, which was exploring for oil at the Tarfaya Offshore Shallow; New Age (African Global Energy) Ltd., Petromaroc Corp. plc, Teredo Oils Ltd., and Xplorer PLC (all of the United Kingdom); and Kosmos Energy Ltd. of the United States, which was exploring at the Boujdour Maritime block.<sup>137</sup>

The Directorate of Mines, which is under the Ministère de l'Énergie, des Mines et du Développement Durable [Ministry of Energy, Mines, and Sustainable Development] (MEM), enforces the law through Executive orders. Exploration permits are awarded for an initial 3-year period for an area that covers up to 16 km<sup>2</sup> and are renewable for four additional years. Mining permits are awarded for 4 years and are renewable in 4-year increments for a maximum of 12 years.

The Government provides incentives for mining companies, such as tax exemptions on imported equipment for investments that exceed \$25 million and a reduced tax rate of 17.5% for companies that export their output and for companies that supply ores to domestic mineral-processing and beneficiation companies. The Government also contributes 5% of a mining project value with more than a US\$25 million investment. The Government's contribution goes to infrastructure development, such as building roads and supplying electricity and water to the project areas. When the projects take place in Western Sahara, they further anchor the matrix of occupation.<sup>138</sup>

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<sup>134</sup> U.S. Central Intelligence Agency, "Western Sahara," *The world factbook*, 15 January 2019, <https://www.cia.gov/library/publications/the-world-factbook/geos/wi.html>.

<sup>135</sup> Ciments du Maroc, "Centre de broyage Laâyoune: Ciments du Maroc," <https://www.cimentsdumaroc.com/fr/centre-de-broyage-de-laayoune>.

<sup>136</sup> Mowafa Taib, "The Mineral Industries of Morocco and Western Sahara," 2017–2018 Minerals Yearbook, "Morocco and Western Sahara" [advance release] (Washington: U.S. Department of the Interior and U.S. Geological Survey, 2018), pp. 60.1, 60.7, <https://pubs.usgs.gov/myb/vol3/2017-18/myb3-2017-18-morocco-western-sahara.pdf>.

<sup>137</sup> ONHYM, *Rapport annuel 2017*, *op. cit.*, p. 22–23.

<sup>138</sup> Taib, *op. cit.*, pp. 60.1–60.2.

These extractive occupation enterprises are integrated with the exploitation of Sahrawi lands for agriculture and energy harvesting. The Saharawi people have been consistently outspoken against this illicit trade, both before the UN, generally, and to specific companies. Sahrawi protests against OCP operations are partly fueled by an OCP subsidiary's claim that 95% of its energy came from a nearby wind farm. However, these voices have fallen on deaf ears also within multilateral agencies. Meanwhile, OCP has signed an agreement with the World Bank's investment arm, the International Finance Corporation (IFC), on a €100 million (US\$110 million) loan to build four solar plants to power its industrial operations as part of an investment plan worth 130 billion dirhams (US\$12.8 billion) to increase fertilizer production using renewable energy by 2027.<sup>139</sup>



Figure 11: Satellite view of Bou Craa open pit phosphate mine, Western Sahara, 16 June 2018. Source: NASA earth observatory.

## Territorial Waters

While much of KoM's exploitation of Sahrawi natural resources finances the ongoing occupation, its off-shore activities and extractive arrangements with third parties is not directly a matter of housing and land rights. However, with a view to the ongoing practice of population transfer and the implantation of settlers on Sahrawi land, the Moroccan government has

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<sup>139</sup> "Morocco's OCP borrows \$110 million to build four solar plants," *Reuters* (13 April 2023), <https://www.reuters.com/business/energy/moroccos-ocp-borrows-100-million-build-four-solar-plants-2023-04-12/>.



reported that at least 77% of Morocco’s revenue from the current EU Fisheries Agreement is spent in occupied Western Sahara, including on Moroccan colonial settler housing.<sup>140</sup>

## Silencing a Taboo Topic

In order to give legal color to these operations, KoM administers Moroccan law through Moroccan institutions in the territory it controls. Part of that legal apparatus is Moroccan law that prohibits questioning three untouchable topics: the institution of the monarchy; Islam as the state religion, including the repression of political Islam; and Morocco's claim to sovereignty over Western Sahara. After the Moroccan king announced, in a November 2009 speech, a policy of decreased tolerance for individuals who hold pro-independence views, individuals and the media engaged in self-censorship, and no views appeared in the media during the year supporting either independence or a referendum that included independence as an option.<sup>141</sup> Western Sahara has remained a taboo issue of discussion within Morocco as well, with draconian laws used by prosecutors to punish even peaceful advocacy for self-determination.<sup>142</sup> Moroccan authorities systematically prevent gatherings supporting Sahrawi self-determination and obstruct the work of some local human rights groups, including by blocking their legal registration.<sup>143</sup>

Morocco’s penal code punishes nonviolent speech offenses with prison and fines. Such offenses include “causing harm” to Islam or the monarchy, and “inciting against” Morocco’s “territorial integrity,” a reference to its claim to Western Sahara. While the Press and Publication Code does not provide prison as a punishment, journalists and people who speak out on social media have been prosecuted under the penal code for their critical, nonviolent speech.<sup>144</sup>

During the CoP 22 climate summit at Marrakesh in 2016, Ali Salem Tamek, the vice-president of Codesa, a Sahrawi human rights collective, wrote in an email: “It is amazing to have green energy. It is our responsibility as human beings to protect the world we live in, but if you occupy your neighbor’s yard to produce that green energy — and sell it to them at the end — believe me, your neighbors will not be happy about it.” Amid a security clampdown at the time, Moroccan security forces arrested Sahrawi activists and deported at least one Algerian journalist, Hamza Hamouchene, from Western Sahara to Agadir. This is while Morocco was ranked 131<sup>st</sup> out of 180 countries for press freedom.<sup>145</sup> Today, Morocco ranks 144<sup>th</sup>.<sup>146</sup>

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<sup>140</sup> Moroccan government reporting of Sustainable Fisheries Partnership Agreement revenues. See “EU’s Fishy Business with Morocco,” *Land Times* /أحوال الأرض, Issue 22 (March 2021), <http://landtimes.landpedia.org/newsdes.php?id=qGps&catid=ow==&edition=pGs=>.

<sup>141</sup> United State Department of State, “Western Sahara,” <https://2009-2017.state.gov/documents/organization/160080.pdf>.

<sup>142</sup> Amnesty International, “Morocco: Denying imprisoned academics and journalists access to read and write violates their right to freedom of expression,” 3 May 2023, <https://www.amnesty.org/en/latest/news/2023/05/morocco-denying-imprisoned-academics-and-journalists-access-to-read-and-write-violates-their-right-to-freedom-of-expression/>.

<sup>143</sup> Tirana Hassan, “Morocco and Western Sahara: Events of 2022,” *World Report* (New York: Human Rights Watch, 2023), <https://www.hrw.org/world-report/2023/country-chapters/morocco-and-western-sahara>.

<sup>144</sup> Kenneth Roth, “Morocco and Western Sahara: Events of 2021,” *World Report* (New York : Human Rights Watch, 2022), <https://www.hrw.org/world-report/2022/country-chapters/morocco-and-western-sahara>.

<sup>145</sup> Neslan, *op. cit.*,

<sup>146</sup> Reporters sans frontières, *World Press Freedom Index*, 2023, <https://rsf.org/en/2023-world-press-freedom-index-journalism-threatened-fake-content-industry>.



## Conclusion

KoM's occupation of Sahrawi lands also enables the illegal exploitation of multiple resources, ranging from minerals and mining, solar and wind energy, fisheries in Sahrawi territorial waters, and human resources. However, the occupation is rarely seen through the lens of the human rights to adequate housing and land. The violation of enjoyment of adequate housing forms a core function of any foreign occupation involving the serious crime of population transfer. Forced eviction as a practice also has been recognized as a "gross violation" of human rights, in particular the human right to adequate housing.<sup>147</sup> These breaches entitle their victims to full reparations in the framework provided in general principles of international law made specific by the UN General Assembly.<sup>148</sup>

Many international companies continue to invest in these enterprises, despite the prohibitive legal status of Western Sahara.<sup>149</sup> Operating their projects in lands that rightfully belong solely to Sahrawis, all are complicit in the Moroccan kingdom's plunder and sustain illegal annexation of Western Sahara and also bear liability for the consequences.

All lands grabbed for these projects benefit from the illegal situation without any consultation with, consent of, or benefit to the indigenous people or its legal representative, POLISARIO Front. No rightful landowners were ever consulted or compensated for their yet untold losses. Nor has any Sahrawi seen remedy for the damage, destruction, dispossession or displacement (forced eviction) from homes and other properties. Many of them have tried to demonstrate or complain by peaceful means, but Moroccan authorities have repressed and threatened them, as well as other who speak out, or even inquire about these gross violations and grave breaches. Sahrawis and international human rights defenders have demanded the KoM and the complicit other states and their domiciled companies cease their collaboration with the illegal situation. However, the prescribed remedy to this long-standing illegal situation leads this inquiry to propose the following recommendations.

## Recommendations

We recommend that states call on Morocco to:

- **Implement its extraterritorial human rights and IHL obligations in Western Sahara;**
- **Discharge its duty as occupying Power to protect the Indigenous Sahrawi People's lives, livelihoods, lands and means of subsistence;**
- **Withdraw both its military forces and civil population from all occupied territory;**

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<sup>147</sup> Commission on Human Rights, "forced eviction," resolution 1993/77, 10 March 1993, para. 1, <http://www.hlrn.org/img/documents/ECN4199377%20en.pdf>; and "Prohibition of forced evictions," resolution 2004/28, 18 April 2004, para. 1, [http://www.hlrn.org/img/documents/E-CN\\_4-RES-2004-28.pdf](http://www.hlrn.org/img/documents/E-CN_4-RES-2004-28.pdf).

<sup>148</sup> A/RES/60/147, *op. cit.*

<sup>149</sup> On legality, see "Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, 12 February 2002, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/249/87/PDF/N0224987.pdf?OpenElement>.

- Cease its opposition to the Security Council expanding the mandate of MINURSO to include human rights monitoring;
- Protect and restore all Sahrawi personal and collective properties under Moroccan occupation;
- Provide full reparations for all individual and collective losses, costs and damages Sahrawis have endured at Moroccan hands since 1975.

We likewise call upon all states to:

- “Ensure respect for” the Fourth Geneva Convention and other IHL norms applicable to Morocco’s occupation of Western Sahara;
- Fulfill the *erga omnes* duty not to recognize, cooperate or transact with the illegal situation by scrupulously avoiding recognition of Moroccan sovereignty claims of the occupied territory, and by preventing all natural and legal persons operating in their jurisdiction and territories of effective control from cooperating with the occupation economy in Western Sahara;<sup>150</sup>
- Implement peremptory norms *erga omnes* and their extraterritorial human rights obligations with respect to the Sahrawi people by explicitly recognizing the Sahrawi people’s right to self-determination and taking effective measures toward that realization.

To UN bodies, specialized organizations and multilateral institutions, we call on:

- The Office of the High Commissioner for Human Rights (OHCHR) to promptly dispatch a fact-finding mission to investigate the human rights situation in occupied Western Sahara;
- The Human Rights Council to mandate a Special Rapporteur to report annually under an agenda item dedicated to Western Sahara until the Sahrawi People exercise their self-determination;
- All international financing institutions, multinational development bodies and climate-finance institutions to scrupulously refrain from supporting activities in Western Sahara without the consent and cooperation of the Sahrawi People’s bona fide representatives.

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<sup>150</sup> Tom Moerenhout, “The Obligation to Withhold from Trading in Order Not to Recognize and Assist Settlements and Their Economic Activity in Occupied Territories,” *Journal of International Humanitarian Legal Studies* Volume 3, Issue 2, 2012 (2014), 344–88, <http://booksandjournals.brillonline.com/content/journals/18781527/3/2>; Pål Wrange, *Occupation/annexion d'un territoire: Respect du droit humanitaire international et des droits de l'homme et politique cohérente de l'Union européenne dans ce domaine* (Brussels: Parlement Européen, Direction Générale des Politiques Externes, Département Thématique, 2015), p. 46, [https://www.europarl.europa.eu/RegData/etudes/STUD/2015/534995/EXPO\\_STU\(2015\)534995\\_FR.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2015/534995/EXPO_STU(2015)534995_FR.pdf).

