

*Response to call for inputs with a view to issuing a joint statement on the notion of short-term enforced disappearance*

## **WESTERN SAHARA AND SHORT-TERM ENFORCED DISAPPEARANCES**

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## **1 Introduction**

This report focuses on the topic of short-term enforced disappearances in the territory of Western Sahara<sup>1</sup>, currently placed under occupation by Morocco.<sup>2</sup>

The situation in the territory remains a humanitarian crisis with systematic, gross human rights violations and breaches of international humanitarian law being committed as a direct consequence of the prolonged military occupation. Morocco has, as the Occupying Power, the *de facto* control, both over most of the territory and the people living on the occupied land, who are deprived of their civil, political, economic, social and cultural rights.

The situation in Western Sahara is currently characterized by the intensification of armed struggle since November 13, 2020 and leading to a widespread crackdown in the occupied territories both targeting Saharawi civilians and civil society. Since then, the UN Special Procedures have documented this pattern of systematic and widespread abuses against Saharawi civilians and especially targeting human rights defenders (HRDs), documenting a concentrated effort to intimidate and to deter HRDs in Western Sahara from exercising their rights to freedom of expression and association, and to retaliate against HRDs for their peaceful and legitimate

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<sup>1</sup> Western Sahara is enlisted as a non-self-governing territory, subjected to the right to self-determination in conformity with the principles contained in UN General Assembly resolutions 1514 (XV) and 1541 (XV).

<sup>2</sup> Word count of 2500 words does not include front page and annex.

activities, including membership in human rights organizations, information sharing, as well as dialogue with the UN<sup>345</sup>.

## 2 Short-term enforced disappearances and Western Sahara

Article 1 of the International Convention for the Protection of All Persons from Enforced Disappearance states that “*no one shall be subjected to enforced disappearance*” and that “*no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance*”. In the view of the submitting organizations, this prohibition is on a systematic basis violated by the Kingdom of Morocco as an Occupying Power in Western Sahara with enforced disappearances being used as a mean of punishing Saharawi activists and suppress the call for the right to self-determination.

Since its military invasion in 1975, Western Sahara has witnessed various types of gross violations of human rights and international humanitarian law, but the crime of abduction and enforced disappearance has continuously threatened all Sahrawi civilians, for the slightest gesture that suggests rejection of the Moroccan presence in Western Sahara.

Thousands of Sahrawis have suffered, women and men, and more than 321 of whom were released in 1991 from the Moroccan secret hideouts known as Kelaa M'gouna, Agdz and the PCCIM center. In occupied El Aaiún, they spent between four and sixteen years of enforced disappearance, and hundreds of abducted Sahrawi abductees remain unaccounted for. One of the victim accounts, *"The Moroccan occupation police, in civilian clothes and on-board civilian cars, carried out a kidnapping campaign for a whole week, in the city of Dakhla in 1981, which included more than seventy people of all segments and of all ages, including women and minors, many were released after that, and within six months there were only eight of us left. I was among them, and they transferred us after a year and a half to the secret hideout in the castle of M'gouna. I know many people who were kidnapped with us, and the names of some women and minors, who spent a short time with us and were released."*

According to documentation undertaken by ASVDH and LPPS, the Moroccan authorities continues to practice short-term enforced disappearances, abducting Sahrawis and then releasing them in varying periods ranging from several hours, days, weeks and even months.

One common practice documented is the abduction of victims for several hours, with the victim being kidnapped, interrogated and tortured inside of a car, before being thrown out of the car at the outskirts of the city or in the desert. This type of kidnapping is still practiced continuously against activists of the Saharawi civil resistance demanding independence. Some of the cases documented and brought publicly includes that of Saharawi activists Lahcen Dalil<sup>6</sup>, Mhamed

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<sup>3</sup> Overview of latest documentation and jurisprudence is included in the Annex. Latest communications incl AL Mar 5/ 2020 of 7 January 2021 (8 victims), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25731>

<sup>4</sup> UA Mar 5/2021 of 10 June 2021 (14 victims), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26478>

<sup>5</sup> AL MAR 4/2021 of 16 June 2021 (2 victims), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26415>

<sup>6</sup> Lahcen was on 9 May 2021 abducted in El Aaiun, tortured and thrown into the desert. See: <http://www.odhe.cat/es/comunicado-condenamos-la-brutal-agresion-al-activista-e-investigador-saharawi-lahcen-dalil/>

Hali<sup>7</sup>, Bachri Bentaleb<sup>8</sup>, Hassana Abba<sup>9</sup>, Mohammed Limam Sabbar<sup>10</sup>, Abdelharim MBairkat<sup>11</sup> and Abdettawab Attaraki.

The latest documented case relates to Abdettawab Attaraki who was kidnapped at 9pm on 17 May 2023 by plain clothed police officers in a police car, before he was handed over to a civilian car where he was tortured and threatened with physical liquidation and dissolving in acid. He had a bag placed over his head so that he could not see and was thrown out of the car, north of the city. He could not contact anyone and was forced to walk back and arrived home after three hours running in the dark. The kidnapping of Abdel Tawab Al-Turkzi came in response to him having made a video statement to a Spanish tourist where he expressed his rejection of the Moroccan occupation of Western Sahara and the definition of himself as a Saharawi belonging to the Sahrawi Republic, saluting the Polisario Liberation Front.

The Moroccan authorities also regularly conduct short-term enforced disappearance of activists before they are, after hours or days, brought to the police station and faced with criminal accusations and brought to court. One of the many examples includes the case of Sahrawi activist Mohamed Dihani, who served his sentence, not counting the six months he spent in the secret hideout in the city of Atmara, Morocco (in 2010)<sup>12</sup>. The case of Yahya Mohamed Elhafed Iaazza (arrested in 2008 and spending 15 years in prison) also falls into this category, with the practice of short-term enforced disappearance of Yahya Mohamed first in a Moroccan police station and one month in prison was documented by the UN Working Group on Arbitrary Detention in its opinion concerning his case<sup>13</sup>.

The same practice of short-term enforced disappearance, where the activist is arrested without being informed of his/her arrest, held at either a secret location or at the police station for several days whilst undergoing torture and forced to sign pre-written confessions before brought in front of a court, was similarly detected in the case of the Gdeim Izik prisoners.

One of the examples includes the illegal arrest of Hassan Eddah, El Bachir Khadda and Mohammed Thalil who was abducted on 4 December 2010 by men wearing civilian clothes and masks covering their face, before they were taken to an unknown location and tortured for four days. Not before 8 December was the three activists brought to the police station in El Aaiún where all three were tortured and forced to sign pre-written confessions before they were transported on a military plane to Rabat and presented in front of the Military Court. The three activists belong to the so-called Gdeim Izik group, a group of currently 19 Saharawi activists who was sentenced to prison sentence ranging from 20 years to life in prison as punishment for their activism and following the Saharawi uprising of 2010 where thousands of Saharawi's joined a peaceful protests camp named Gdeim Izik.

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<sup>7</sup> Hali was abducted on 18 August 2007 and held for 8 days, before he was released.

<sup>8</sup> Bentaleb was abducted on 19 October 2013 in El Aaiún, tortured and thrown out of the city in the desert, after having participated in a demonstration.

<sup>9</sup> Abba was abducted on 19 October 2013, and subjected to torture before he was thrown out into the desert outside of the city.

<sup>10</sup> Sabbar was kidnapped on 20 July 2006, on his way to visit his brother Brahim Sabbar and in front of the local prison in El Aaiun. He was tortured and threatened, and after six hours, he was thrown into the desert, and was expelled from the city of El Aaiun, preventing him for attending the trial of his brother Brahim Sabbar (arrested 17 July 2006). See: <http://sahara-libre.blogspot.com/2006/07/mesure-de-rtortion-contre-limam-sabbar.html?m=1>

<sup>11</sup> Abdelkarim was kidnapped on 23 March 2013, tortured and thrown into the desert outside of the city of El Aaiún.

<sup>12</sup> Amnesty International, Saharawi human rights defender Mohamed Dihani in Italy to seek international protection, 7 September 2022, <https://www.amnesty.org/fr/wp-content/uploads/2022/09/EUR3060152022ENGLISH.pdf>

<sup>13</sup> Opinion No. 46/2021 concerning Yahya Mohamed Elhafed Iaazza. URL: <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-46-Maroc-AEV.pdf>

### 3 Concluding remarks

Enforced disappearance, no matter how short its duration, is a complex crime, which renders the victim outside the scope of legal protection, affecting his right to physical integrity and in some cases, his right to life. It is systematically used by the Moroccan authorities, occupying the non-self-governing territory of Western Sahara, placed on the list of colonial countries approved by the United Nations General Assembly. These practices are used in order to silence dissenting opinions, muzzle and intimidate civil society and the call for independence and the right to self-determination, knowing that the shorter the period of enforced disappearance, the greater the psychological impact, leaving the victim paralyzed and terrorized.

The Moroccan authorities do not respect the International Convention for the Protection of All Persons from Enforced Disappearance, nor do they respect its laws and detention procedures, such as informing the detainee of the charge against him and notifying the family of his arrest, and being placed in “garde à vue”, i.e. the period before his presentation before the judiciary, which extends 48 hours (extendable twice), re. Article 66 of the Moroccan Code of Criminal Procedure.

The League has through their work established a systematic pattern of the use of incommunicado detention, torture and confessions signed under coercion and/or torture as the main piece of evidence used against Saharawi activists. This practice has been confirmed by the jurisprudence of the UN Working Group on Arbitrary Detention and the UN Torture Committee.

The *modus operandi* identified in cases of Saharawi activist refers that the victims are commonly arrested without learning the reason for their arrest nor being presented with a warrant before they are taken to the local police station. At the local police station, they are held incommunicado and deprived of their right to contact counsel and call their families. For periods lasting from one to four days the activists are subjected to torture and forced to sign confessions on trumped up charges. These confessions are later used against the activists in criminal proceedings where they face trumped up charges, marred by the breach of the right to defence, equality of arms and the right to be tried in front of an independent and impartial court. Despite allegations of torture raised in consecutive proceedings, no investigation is ordered by the court and the confessions are used as basis for lengthy prison sentences.

The usage of confessions in criminal proceedings as *prima facie* evidence (Article 290 of the Moroccan Criminal Code of Procedure) was thoroughly commented on by the UN Working Group after its country visit in 2013, whereas it was held in para 32-33 (A/HRC/27/48):

“32. The Working Group also learned that courts and prosecutors do not comply with their obligation to initiate an *ex officio* investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment, or to order an immediate, independent medical examination (see arts. 74 (8) and 135 (5) of the Code of Criminal Procedure) if they suspect that a detainee has been subjected to ill-treatment. This is the case even if the person recants before the judge and claims to have been tortured.

33. It appears that judges favour an interpretation of article 291 of the Code of Criminal Procedure whereby records established by the judicial police are *prima facie* evidence. Such an interpretation is tantamount to reversing the burden of proof by

requiring the accused to prove his innocence, which is contrary to the principle of the presumption of innocence, as stated in article 23 of the Constitution. It also creates conditions that encourage the torture and ill-treatment of suspects.”

The statements of the Working Group in its country report also refers to the worrying use of extension of pre-trial detention and allegations on incommunicado detention leading to a heightened risk of torture and ill-treatment.

In the view of the source, there is no doubt that the policy of impunity encourages this crime and phenomenon, although international law does not allow any amnesty for the perpetrators of the crime of enforced disappearance, but rather affirms the right of the victim to hold those responsible accountable, and to guarantee the victim's right to redress and grievance.

On the documented culture of impunity, we refer to the observations drawn by the United Nations Committee Against Torture, Concluding observations (CAT/C/MAR/CO/4, 21 December 2011):

“16. The Committee is particularly concerned that it has received no reports to date of any person being convicted under article 231.1 of the Criminal Code of having committed acts of torture. It notes with concern that police officers are, at the most, prosecuted for assault or assault and battery, but not for torture, and that the information provided by the State party indicates that the administrative and disciplinary penalties imposed on officers for such acts do not seem to be commensurate with their seriousness. The Committee observes with concern that allegations of torture, despite their number and frequency, rarely give rise to investigations and prosecution and that a climate of impunity appears to have taken hold, given the failure to impose genuine disciplinary measures or to bring any significant number of criminal cases against State officials accused of committing acts specified in the Convention, including the gross, large-scale human rights violations that took place between 1956 and 1999 (arts. 2, 4 and 12).

The State party should ensure that any and all allegations of torture and of ill-treatment are promptly, effectively and impartially investigated and that the persons who have committed such acts are prosecuted and are given sentences that are commensurate with the grave nature of their acts, as provided for in article 4 of the Convention. The State party should also amend its laws in order to explicitly stipulate that an order from a superior officer or a public authority may not be invoked as a justification of torture. The State party should also take steps to ensure that complainants and witnesses are effectively protected from any ill-treatment or act of intimidation related to their complaint or testimony.”

Changing local laws and bringing them into line with international obligations, and exerting pressure on the part of international human rights organizations and UN mechanisms would limit the practice of this crime. As in the case of Western Sahara, which is constantly witnessing cases of enforced disappearances for short periods, this phenomenon is encouraged by the absence of any human rights monitoring mechanism for the United Nations peacekeeping mission in Western Sahara "MINURSO".

## ANNEX

### CASE LAW UN HUMAN RIGHTS MECHANISMS Time period 2017 – 2023

#### The UN Working Group on Arbitrary Detention

- ▶ Opinion no. 11/2017 concerning Salah Eddin Bassir. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2017/11&Lang=E>
- ▶ Opinion No. 31/2018 concerning Mohamed Al-Bamary. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2018/31&Lang=E>
- ▶ Opinion No. 58/2018 concerning Ahmed Aliouat. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2018/58&Lang=E>
- ▶ Opinion No. 60/2018 concerning Mbarek Daoudi. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2018/60&Lang=E>
- ▶ Opinion No. 23/2019 concerning Laaroussi Ndour. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2019/23&Lang=E>
- ▶ Opinion No. 67/2019 concerning the Student Group. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2019/67&Lang=E>
- ▶ Opinion No. 52/2020 concerning Ali Saadouni. URL: <https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/WGAD/2020/52&Lang=E>
- ▶ Opinion No. 68/2020 concerning Walid Salek El Batal. URL: <https://daccess-ods.un.org/tmp/9849299.19242859.html>
- ▶ Opinion No. 46/2021 concerning Yahya Mohamed Elhafed Iaazza. URL: - <https://www.ohchr.org/sites/default/files/2022-03/A-HRC-WGAD-2021-46-Maroc-AEV.pdf>
- ▶ Opinion No. 50/ 2022 concerning Sultana Khaya and Luara Khaya. URL: <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session94/hrc-wgad-2022-50-maroc-aev.pdf>

#### The UN Special Procedures

- ▶ Communication AL Mar 3 / 2022 of 4 October 2022 (Mhamed Hali). URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27599>
- ▶ Communication AI Mar 5/ 2020 of 7 January 2021 (8 victims). URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25731>
- ▶ Communication UA Mar 5/2021 of 10 June 2021 (14 victims). URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26478>
- ▶ Communication AL MAR 4/2021 of 16 June 2021 (2 victims). URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26415>
- ▶ Communication AI Mar 2/2020, dated 7 September 2020, Hussein Bachir Brahim. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25422>
- ▶ Communication AI Mar 3/2020, dated 21 July 2020 concerning Khatri Dadda. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25448>
- ▶ Communication AL MAR 3/2019 dated 8 November 2019 concerning Walid Salek El Batal. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24936>

- ▶ Communication AL MAR 2/2019 dated 4 June 2019 concerning Naziha El Khalidi. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24651>
- ▶ Communication AL MAR 1/2019 dated 3 April 2019 concerning Naziha El Khalidi. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24506>
- ▶ Communication AL MAR 3/2017 dated 20 July 2017 concerning the Gdeim Izik Group. URL: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23226>

### UN Torture Committee

- ▶ CAT/C/72/650/2015, UN CAT decision Omar N'Dour, URL: <https://trialinternational.org/wp-content/uploads/2016/02/Omar-Ndour-v.-Morocco.pdf>
- ▶ CAT/C/72/D/923/2019, UN CAT Decision Mohammed Bouryal. URL: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f72%2fd%2f923%2f2019&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f72%2fd%2f923%2f2019&Lang=en)
- ▶ CAT/C/74/D/891/2018, UN CAT decision Abdeljalil Laaroussi. URL: <https://digitallibrary.un.org/record/4002629?ln=en>
- ▶ CAT/C/72/D/871/2018, UN CAT decision Sidi Abdallah Abahah. URL: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f72%2fd%2f871%2f2018&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f72%2fd%2f871%2f2018&Lang=en)
- ▶ CAT/C/59/D/606/2014, UN CAT decision Naama Asfari. URL: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f59%2fd%2f606%2f2014&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f59%2fd%2f606%2f2014&Lang=en)

### Country reports

- ▶ CAT/C/MAR/CO/4, Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, concluding observations of the Committee against torture (2011). URL: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMAR%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMAR%2fCO%2f4&Lang=en)
- ▶ A/HRC/22/53/Add 2, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco (2013). URL: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F22%2F53%2FAdd.2&Language=E&DeviceType=Desktop&LangRequested=False>
- ▶ A/HRC/27/48/Add5, Report of the Working Group on Arbitrary Detention. Mission to Morocco (2013). URL: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F27%2F48%2FAdd.5&Language=E&DeviceType=Desktop&LangRequested=False>