



**To Honourable: The Special Rapporteur on the promotion of truth, justice, reparation and
Guarantees of non-recurrence**

In response to the Questionnaire about:

The roles and responsibilities of non-state actors in transitional justice processes

Introduction

In relation with to your thematic report about the role of non -state actors in the transitional justice processes; we are honored as the independent commission of human rights (**CIDH**) to provide your honorable mechanism with some responses related to your questionnaire.

CIDH is based in the Western Sahara, which is a conflict zone between Morocco and the armed group polsario front sponsored and financed by Algeria. This conflict has been going since 1975 the year which Morocco regained 85 percent of his territory from Spain but Algeria within the framework of the cold war then decided to create an armed group on its soil to set refugees camps of some Sahrawis who were forced to move to those camps by the militias of polsario.

Within this contribution, we are giving instances of two non-state actors from both parts of the conflict that represents the Saharawi under Moroccan sovereignty Sahrawi Victims Coordination Committee and on the other side the armed group named front polsario backed by Algeria and it controls in the camps on Algerian land Tinduf.

So many human rights violations starting from- extrajudicial executions¹, enforced disappearance to torture, arbitrary detentions and rape² - were committed and still are within these circumstances of conflict between Morocco and Algeria represented by the non -state actor polsario that is not recognized by the UN as a state member.

1-As far as bringing responsible of violations of human rights to justice within a transitional justice process is very difficult in the case of the Sahara conflict especially in the camps of Tinduf where continually voices are raising to bring responsible for human rights violations to justice but the officials of polsario are unwillingly to respond to those demands because Algerian Government forbid that. This pushes some of the victims to escape to the Sahrawi provinces governed by Morocco benefitting from the call of reconciliation “the homeland is forgiving and

¹ Annex n°1 A communication of the special rapporteur on migrants directed to the Algerian state.

² Annex n°2 testimony of a Sahrawi girl claimed to be raped by the leader of Polisario.

merciful” launched by the king Hassan the 2nd in 1988, those forementioned victims decided to bring their cases to Spanish courts to try to hold those officials accountable because polissario systematically turns a blind eye to such demands. The challenges that are making difficult for the Sahrawi refugees to enjoy a credible transitional justice process- as their compatriot who are living under Moroccan sovereignty- is that armed group polissario can’t decide for itself but only the Algerian Army has the power to politically decide over the camps, especially when it comes to human rights issues.

In this context, we find it impossible that polissario will launch reconciliation initiative that will uncover the responsible of human rights violations in the camps especially in the early era of organizing the camps where serious violations were committed against those who refused to settle in the camps or even who accepted so. The number overcome 1700 victims.³

In Morocco responsible in human rights violations during this conflict were brought to justice neither, despite The Equity and Reconciliation initiative which were launched in 2004 and which was a basic demand of some civil society groups headed by the forum of Truth and Fairness (Mountada Al Haqiqa wa al Inssaf) , and in the context of the Moroccan Sahara , we mention the Coordination of Sahrawi Victims, which was established in 1998 in Laayoune by a group of victims of human rights violations committed by the Moroccan authorities before the announcement of the democratic transition during the reign of King Mohammed VI, who considered the process of equity and reconciliation and- before it The Special Jury of arbitration - as a Strategy for Reconciliation with the Past, Collective Reparation for Victims of Violations and Preservation of the Memory. This process was led by the Fairness and Truth Forum as a civil partner of the Moroccan royal advisory human council headed at that time by Mr. driss Benzekri -which turned into the national human rights council in 2011.

- 2- As mentioned above the front polissario didn’t participate in any kind of truth-seeking process to uncover the violations of human rights in Tinduf camps by either its officials or the Algerian authorities. Saying that there exists famous bad reputation known jails like Errachid prison and Erraboni and other unknown places of detentions that are still active. The Frente Polisario did not reveal any information about any disappeared victims or prisoners murdered under torture no serious and credible effort was recorded to investigate cases of enforced disappearance among other violations in Tinduf camps and Algerian prisons.

In the course of its work aimed at calming the demonstrations organized by tribes in the camps, especially to reveal the fate of the kidnapped **Khalil Ahmed**⁴, the former human rights advisor, who has since disappeared. polissario concluded that he was arrested by Algerian special forces in the capital, Ouran, before being taken to the army barracks. Where it confirmed that he is still alive, despite the evidence to the contrary. The Front's statements did not include the names of any victims, despite the calls of their families in the camps.

³ Annex n°3 list of some victims who decided to bring their cases to Spanish courts.

⁴ Annexn°4 Article about Al Khalil Ahmed.

As far as in the Moroccan part of the Sahara the victim families benefited from the truth-seeking process launched by the commission of Equity and Reconciliation established in 2004. This commission included independent members from all specialties that help revealing the truth and study the cases on professional basis some Saharawi human rights activists were active collaborators with this committee to help investigating the cases locally and set listening sessions and interviews with the victims and their families so as to shape the real story about the destiny of victims in case of enforced disappearance or adapt the violations and evaluate the damage of the present ones and get information about possible unknown cemeteries

The forum of Truth and Fairness represented by The Sahrawi Victims Coordination Committee in the Moroccan Sahara started investigations to identify the number of victims and their families and provide legal advice to them before meeting the independent commission of the National Council for Human Rights - the Equity and Reconciliation Commission, in order to assess the damage and issue the arbitration decision for each victim.

Among the challenges that were faced in this truth-seeking process is the limited and fragility of some testimonies besides some former officials didn't contribute the truth finding efforts and official agencies didn't provide enough information to the commissions. Moreover, the council and the government didn't give enough funds to civil society especially in the Sahara which limited their capacity to reach effective results to reveal the truth which effected the victims who we think didn't get fair financial compensation and full social integration comparing to the victims from the North of Morocco who were supported by lawyers and well-funded civil society.

- 3- The Equity and Reconciliation Commission is a national commission for truth, equity and reconciliation, with non-judicial competences in the field of settling the file of past grave human rights violations. Its scope of competence covers a long period of time from 1956 - the date of Morocco's independence - to 1999. It consists of a president and 16 members, half of whom are members of the Advisory Council for Human Rights, and the other half represent diverse experiences and specializations united by an interest in the protection of human rights. It was chaired by the late human rights defender Idriss Benzekri, followed by the human rights activist Ahmed Herzni.

The members of the commission were organized into three working groups, the first in charge of investigations, the second in charge of reparations, and a third team in charge of research and studies. With the help of the aforementioned non-governmental organizations in the Sahara and northern Morocco, the commission was able to provide material compensation to the victims and their families, uncover the secret cemeteries in which the bodies were buried, transform detention centers into places of memory, and launch educational and legislative programs for reconciliation with the past. In the context of the conflict in Western Sahara, the investigations of The Equity and Reconciliation Commission along with its civil partners led to the clarification of the fate of 211 cases of people⁵ who were considered among the disappeared as follows: 144 died during the armed clashes, the identities and places

⁵ Annex n°5 the final report of the commission of Equity and Reconciliation the third book.

of death and burial of forty of them were determined, while the identities and locations of the remains of 88 of them were determined without being able to locate the graves. The commission was unable to determine the identities of 12 people among the dead, while the commission made sure that four people were arrested and taken to hospitals as a result of injuries during the clashes, and they died and were buried in ordinary cemeteries. And it concluded that 67 people were considered among the disappeared, and it was proven to the Commission that they had been handed over to the International Committee of the Red Cross on October 31, 1996.

As for material compensation, the Equity and reconciliation has provided financial compensations to 1200 Sahrawis between 7000 Euros and 400.000 Euros each based on the decisions of the commission. Moreover, 800 were reintegrated in the social and economic circuit by either full insertion in the public section or provide them with direct martial funds mostly 25000 Euros and guarantee them their social security to cover their medical expenses. these were some instances of the steps taken by the commission in the framework of reconciliation with the past.

In the frame work of Compensating the collective damage and preserving the memory, the irregular detention camp **Al-Mssaid** is being built and transformed into a site of memory , as well as to lift the siege on the area of Al-mssaid that was designated for the forcibly disappeared, by constructing a paved road towards it, building schools and a clinic, and linking the area to the Internet to ensure its integration into development programs, and that is without concealing the signs of crimes and Violations committed in the past and not to hide the jail to clear the difficult past . In the same context prisons where the Sahrawis were jailed were planned to be transformed into places of memory and like in **Agadez** where the cemetery of prisoners was reformed and the prison was also rebuilt especially that it was a traditional castle in the past.

Places like **Jdayria** and **Hawza** in the Sahara should be treated the same

Conclusion

This This contribution was in order to present some examples of the contribution of non-governmental actors in the process of transition towards democracy, ensuring human rights, redress and non-repetition of violations.

The experience of transition in the conflict zone in the was characterized, according to our monitoring, by the presence of two different models.

The first represents civil society associations, stakeholders and victims of human rights violations - working in the Sahara provinces under Moroccan governance- in partnership with the National Council for Human Rights and its independent bodies for comprehensive reconciliation and reparation for individual and collective harm, that is, by involving all civil components in the process. And this we record that part of the truth is still hidden due to the challenges we mentioned above.

The second model represents the armed group polsario which is based on Algerian soil (Tinduf) in forms of refugees camps who forcibly departed in the seventies. Since then, no conviction or will has been shown by the polsario officials to take real steps towards reconciliation in order to permit the victims to enjoy their rights and to know the fates of their disappeared and murdered victims. This model is the one that should be encouraged to acknowledge violations and ensure that they do not recur, especially since we have evidence that the same crimes continue to be committed as in the past systematically to intimidate the residents of the Tindouf camps and ensure their loyalty forcibly.

Laayoune Western Sahara: January 11th 2022

Annexes

Annex 1 : Communication Of The special Rapporteur On Migrants and direct to Algerian State

<https://www.thenewsagency.in/amp/story/world/unhrc-castigates-algeria-over-the-murder-of-two-saharawi-gold-miners-in-tindouf>

Annex 2 : Testimony Of Sahrawi girl claimed to be raped by The leader Of Polisario .

Khadijatou Mahmoud

<https://www.laprovincia.es/videos/canarias/2021/04/27/mujer-denuncia-violacion-brahim-gali-49810776.amp.html>

Annex 3 : List of victims who decided to bring their cases to Spanish Court .

Crimes Committed by Armed Non state actor Polisario.

- El fadel Braika.Arbitrary detentions .
- Bahiya Essalek Baali . killing of his father in Errachid prisons
- Lamaadla El Kouri .killing of her father in Errachid prisons
- Mohamed Salem. Torture
- Mahmud Zaydan .Arbitrary detentions
- Ahmed Kher . Torture
- El Kabech Mohamed Nafaa. Torture
- Kharachi Lahbib .Torture
- Echouear Mohamed . Torture
- Saadani Mailainine .Killing of her father
- Khadijatou Mahmiud. Rape by the leader of Armed Non state actor
- Moulay Aba Bouzid Arbitrary detentions

- Khalili Ahmed . Enforced Disappearances till now

Annex 4 : Article about Khalili Ahmed and other Sahrawis

<https://www.moroccoworldnews.com/2019/12/289128/letter-sahrawi-prisoners-polisario-human-rights-violations>

<https://www.alkarama.org/en/documents/working-group-arbitrary-detention-opinion-072020-fadel-breica>

Annex 5 : The Final Report of The commission Of equity and Reconciliation .

<https://www.cndh.ma/an/rubriques/documentation/publications/report-equity-and-reconciliation-commission-ier>