



**Universal Periodic Review - 3rd cycle**

**27th meeting - Review of the Kingdom of Morocco,**

**Written contribution of the Association of Families of Prisoners**

**and Disappeared Saharawis (AFAPREDESA)**

September 2016

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## I. Introduction

1. This communication is made by the Association of Relatives of Saharawi Prisoners and Disappeared (AFAPREDESA), a non-governmental organization on human rights issues related to enforced disappearances, arbitrary arrests and torture. AFAPREDESA was created in 1989 in the Saharawi refugee camps. AFAPREDESA is an observer member of the African Commission on Human and Peoples' Rights. AFAPREDESA is also a member of the International Coalition Against Enforced Disappearance (ICAED).

2. AFAPREDESA discussed in this contribution principally violations of human rights relate to enforced disappearances in Western Sahara.

3. Western Sahara was a Spanish colony from 1884 until 26 February 1976. Since 1963, Western Sahara is considered as a non-self-governing territory by the UN General Assembly. In 1976, Spain had withdrawn unilaterally, violating its responsibilities as administering power.

4. From 31 October 1975, enforced disappearances were widely practiced by Moroccan troops. The enforced disappearance is a cruel and inhumane practice, not only constitutes an arbitrary deprivation of freedom but also violates personal integrity, security and the right to life. The victim of enforced disappearance is in a state of total vulnerability with a serious violation of the right to justice, protection against arbitrary detention and the right to a fair trial.

5. The new elements on enforced disappearances<sup>1</sup> in Western Sahara since Morocco's second cycle of the Universal Periodic Review, in 2012, is the discovery of several mass graves containing victims identified by Spanish experts. However, the report of the Equity and Reconciliation 2006 and the Royal Advisory Council for Human Rights in 2010 specify that these same people have died in other places and other circumstances<sup>2</sup>.

6. After these discoveries<sup>3</sup>, AFAPREDESA questions the content of the two previously mentioned reports and all information provided by the Moroccan authorities on enforced disappearances in Western Sahara, which input, are far from reflecting the reality of what has happened since 1975.

7. The Spanish Justice<sup>4</sup> has recognized, in April 9, 2015, the genocide committed against Saharawi people and ordered processing 11 high commanders Moroccan involved. Their extradition and trial have not yet taken place due to lack of cooperation of Morocco with the Spanish Justice. ANNEX 1

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<sup>1</sup> Given its continuous nature, enforced disappearances continue to be current while does not know the whereabouts of missing persons.

<sup>2</sup> In a military barracks in Smara (Western Sahara)

<sup>3</sup>. Other mass graves have been discovered, lack of will and cooperation of the Moroccan authorities impede the work of experts [http://www.hegoa.ehu.es/mapa\\_sahara/index.html](http://www.hegoa.ehu.es/mapa_sahara/index.html)

<sup>4</sup> Sentence of Juge Pablo Ruz.

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## **II Legal status of the territory of Western Sahara and Moroccan constitutional conventional framework**

8. Morocco occupies a part of the territory of Western Sahara since October 1975<sup>5</sup>.

9. This aggression and occupation is a grave violation of the right of Saharawi people to self-determination, as recognized by the General Assembly of the UN<sup>6</sup>, the International Court of Justice<sup>7</sup>, resolutions of the Security Council<sup>8</sup>, resolutions of African Union<sup>9</sup> and international human rights conventions, including the International Covenant on Civil and Political rights and the International Covenant on social, economic and cultural rights.

10. The current relation between Morocco and Western Sahara is an occupation. Morocco is therefore obliged to apply the law of occupation: International Law and International Humanitarian Law<sup>10</sup>, regarding the amendment of laws, property relations,...

11. The absence of a binding legal framework in the Kingdom of Morocco, which is compatible with the requirements of international conventions ratified by this State, such as the Convention for the Protection of All Persons from Enforced Disappearance. The Moroccan authorities continue to deny to missing persons and their relatives the rights related to enforced disappearance and reflected in the relevant instruments, to which Morocco is a party, including the right to truth, the right to justice and right to reparation. The same occurs in the case of arbitrary detention and torture, despite the new Constitution adopted in July 2011 and new laws adopted by the Kingdom of Morocco and imposed to Western Sahara. Violations of human rights are still widely tolerated against Saharawi citizens and impunity continues to establish as unfounded.

12. Conventional and constitutional framework is a major problem, which affects the situation in Western Sahara, considered by the Kingdom of Morocco as a part of its national territory, in violation of its internationally recognized status as a non-self-governing territory under occupation. Worse, the concept of territoriality as provided in Article 42 of the Constitution of Morocco "territorial integrity

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<sup>5</sup> See UNGA in its resolution 34/37 of 1979. This occupation is facilitated by a wall of 2720 Km dividing Western Sahara into two parts and the presence of 2/3 of the Moroccan army.

<sup>6</sup> The UN General Assembly proclaims the right of the Saharawi people to self-determination since 1965 (Resolution 2072 XX) asking the Government of Spain take all necessary measures for the liberation of Spanish Sahara.

<sup>7</sup> In its opinion on the Western Sahara, the ICJ concluded that "The Court has not established the existence of legal ties to modify the implementation of resolution 1514 (XV) of the United Nations General Assembly in when the decolonization of Western Sahara and in particular the principle of self-determination through the free and genuine will of the people of the territory expression."

<http://www.icj-cij.org/docket/files/61/6196.pdf>

<sup>8</sup> In all of its resolutions, the UN Security Council reaffirms its commitment in finding a solution that provides for the right to self-determination of the Saharawi people.

<sup>9</sup> See the 1<sup>st</sup> Interim Report of the President of the African Commission on Western Sahara

<http://www.peaceau.org/uploads/cua.rapport.sahara.occidental..pdf>

<sup>10</sup> The Kingdom of Morocco and the Polisario Front are party to Geneva Conventions.

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within its authentic borders" raises several doubts as to the interpretation that gives the Kingdom of Morocco, not only for Western Sahara but for all countries in the region. Moroccan law and institutions are mobilizing against any contrary to the official line position on Western Sahara.

13. Morocco even attacked the UN Secretary General for the simple fact of having used the word "occupation" in reference to the Western Sahara, during his visit to the region on 5 March 2016. After a campaign of attacks, denigration and insults against Ban Kim Moon, the Moroccan authorities expelled 74 members of the civilian component of MINURSO and ordered the closure of a military post mission, in Dakhla<sup>11</sup>. During 2016, at least 200 international observers have been expelled from Western Sahara.

### **III Enforced Disappearances on Western Sahara**

#### **Cooperation with Human Rights mechanisms.**

14. Following the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, on 14 May 2013, Morocco should have submitted its initial report to the experts of the Committee on Enforced Disappearances. There is no fixed date for the submission of the report. Moroccan official reports address rarely the issue of enforced disappearances and when they do it is through a policy of denial of the magnitude of the problems related to crime of disappearance. Very often, the Kingdom of Morocco is limited to praise the results of the Equity and Reconciliation Institution (IER).

#### **Right to life, liberty and security of person.**

15. The Kingdom of Morocco has denied, for many years, the existence of disappearances. In the late 80s, the discovery of clandestine detention centres as PCCMI Laayoune, Galaat Magouna and Tazmamert has allowed the start of campaigns to know the whereabouts of missing persons. What had been supported by Human Rights Association of Spain (APDHE) and Amnesty International (AI), among others.

16. On 22 June 1991, 322 missing Sahrawis were released thanks to international pressure.

17. In 1999 and after the intervention of Mr. James Baker, Personal Envoy of the United Nations for Western Sahara, the Kingdom gave an answer to 207 cases to the UN. Except its recognition of the death of 43 cases proven by the testimony of survivors of Kalaat Magouna, the Kingdom of Morocco gave totally false answers. For most of the cases raised, the Moroccan authorities claimed that persons were established in the Tindouf camps, in Mauritania or in Spain. For the rest, they claimed they were unknown or were killed during military operations.

18. In 2004, the Kingdom of Morocco created the Equity and Reconciliation Institution (IER) responsible for conducting investigations on enforced disappearances and other serious violations,

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<sup>11</sup> Since then, the situation is tense and MINURSO could not even return to full functionality.

from the independence of Morocco until 1999, date of the death of Hassan II. However, the IER revealed no verified information on the hundreds of cases of enforced disappearances in Western Sahara. This institution only offered to some of the victims, financial compensation and make recommendations on impunity and guarantees of non-repetition, which have never been implemented.

19. In December 2010, the Royal Advisory Council for Human Rights (CCHR) released a report "On following of the implementation of the recommendations of the Equity and Reconciliation Institution, Annex 1: cases of enforced disappearances". In this report, the Kingdom of Morocco recognized the existence of a total of 940 missing persons, including 638 Saharawi among whom 351 have died in custody, and the rest released. Although these figures are far from reflecting the reality of enforced disappearances in Western Sahara and Morocco, the authorities acknowledge that more than 2/3 of the victims were Saharawi. See ANNEX 2 and ANNEX 3.

20. With respect to the 351 people who, according to the report, have died, 144 people have died during military battles, without specifying their identity or the exact circumstances of the deaths and other people who have died in detention or were executed (115 persons in various military barracks, including 14 children aged from 3 months to 15 years and 11 women, 43 people in Agdez and Galaat Magouna centres, including two women, 23 people in El Aaiún, in all these cases suffered extreme conditions due to the inhuman treatment, as recognized in the report itself and probably causing death and 13 people executed by military sentence, without reproducing a copy of it ...).

21. The report of the CCDH merely admits the death of these people, without giving any proof. The terminology used is vague and does not meet the expectations of families. In most cases, the CCDH simply says that the death was due to "detention conditions" or that "there is strong and consistent evidence that he died during detention." The versions provided by the IER and / or the CCDH are stereotyped, fragmented and show no specific analysis for each case, avoiding talking about the real causes of death or responsibilities.

22. Information is scarce and contradictory. In many cases, they are incompatible with those provided by relatives and witnesses.

23. The report recognizes that the authors belong to various Moroccan military forces, including the army, the gendarmerie and auxiliary forces. However, no prosecution measures have been taken against the perpetrators of enforced disappearances.

24. In January 2013, a joint application was submitted to the Court of Military Order of Rabat, by a group of families of disappeared Saharawis, to obtain a copy of the judgment which had ordered the alleged execution of 13 missing persons, on 19 of October 1976. This request was denied. Finally, in April 2013, another request to the National Human Rights Council on the same subject was sent. The families are still waiting for a response from the CNDH. At this time, the fate and whereabouts of the 13 people remain unknown.

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25. More seriously, the discovery of two mass graves in 2013 Fadret Leguía puts the answers and all information contained in the report of the CCDH in doubt. In fact, it is clear that such information is untrue, and in flagrant contradiction with forensic evidence from independent team of experts from the University of the Basque region. No convincing evidence, families of the disappeared continue to demand the fate of their loved ones. See ANNEX4 and ANNEX5.

26. The eight people found and identified are: Salma Sidi Daf SALEC (DIN Spanish: A-4525013), Bachir Salma Daf (child), Sidahmed Segri Yumani (DNI Spanish: A-3136048), Mohamed Ali Salama Sidahmed Elkarcha (DNI Spanish : B-1324045), Salma Sidi SALEC (child), Salma Mohamed Sidahmed (DNI Spanish: A-3509018), Mohamed Mouloud Mohamed Lamin (DNI Spanish: A-4520032) and Mohamed Ramdan Abdelah (DNI Spanish: A9013149). All of them had Spanish citizenship. See ANNEXE6.

27. The only reaction from the Moroccan authorities on this discovery came from the CNDH who made a statement, in September, 16 2013, in which "the CNDH underlines its readiness to receive any information duly to establish the truth. Similarly, will contact the families of the eight persons mentioned to pick up any new information element, taking into account that the Moroccan courts may be requested permanently under Moroccan law and international law ". Three years later, no contact has been established with families and no criminal proceedings have been initiated against those responsible for crimes of enforced disappearances. See ANNEX 7.

#### **International cooperation in criminal matters against enforced disappearance:**

28. The Kingdom of Morocco and the Kingdom of Spain are obliged to cooperate and help in opening criminal proceedings by the Spanish High Court in relation to the crime of enforced disappearance, including by the communication of all the evidence concerning its scope and which are necessary for the end of the process.

#### **IV Recommendations:**

29. The solution of the issue of missing persons in Western Sahara should not be dissociated from the global solution of the Saharawi question, which is to allow decolonization of this non-self-governing territory, by exercising the right to self-determination of the Saharawi people.

30. Allow the payment of human rights in Western Sahara as a non-autonomous territory, while final future has not been decided by the United Nations, through the United Nations Mission for the Referendum in Western Sahara.

31. The Government of Morocco must submit its initial report to the Committee of enforced disappearances and ensure that associations of relatives of missing persons and NGOs are consulted throughout the stages of preparation, implementation and monitoring of Moroccan conventional commitments.

32. Conduct a prompt and impartial investigation on facts relating to enforced disappearances and other serious violations against Saharawi citizens, especially to know the fate of all missing Sahrawis,

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locate and deliver the bodies of the victims to families to allow their burial with dignity. This investigation must be credible with the support of independent experts and participation of Saharawi, Moroccan and international human rights organizations.

33. Establish the responsibility of those who are directly or indirectly involved in enforced disappearances, and receive the adequate legal sanctions.

34. Provide adequate compensation to compensate for material and moral damages suffered by the families of the victims. Recognize the responsibility for the events, including guarantees of non-repetition, as provided for in international law and the principles of the right to reparation.

35. Cooperate fully and in good faith with the Spanish justice by communicating all the data available and which is necessary for the ongoing process of genocide against the Saharawi people.

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