

# Truth, justice and reparation in the Western Sahara

## The Oasis of Memory

Carlos Martín Beristain

Eloísa González Hidalgo





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*As long as there is no real justice and truth, there will also be no reconciliation.*

Daoud El Khadir.

This chapter includes an analysis of Sahrawi victims of serious human rights violations' demands for truth, justice and reparation under international standards and in accordance with good practices by truth commissions and reparation programs in various countries throughout the world. In the case of the Western Sahara, the demands by victims are, of course, part of their individual rights, although they also have a more collective dimension as will be evident when analysing their expectations and demands.

In addition, an analysis is made of international human rights law (henceforward IHRL) standards on truth, justice and reparation in the context of political change or the search for a new social consensus after armed conflicts and the relevance thereof in the case of the Western Sahara. An analysis is also made of the need for research, the need to find people who have "disappeared", the need to recognize human rights violations and to provide guarantees of non-recurrence. The role of justice and change in the human rights situation in the Western Sahara are likewise analysed, including the situation of the refugees. This text also includes an analysis of the response by the Moroccan to such demands, especially in the case of the population living in the Western Sahara, as well as the total lack of consideration of the refugee population and of the human rights violations they have suffered are also addressed. It is necessary to take into account that, in the light of analysis and criteria of international human rights law and international human rights law, many of these violations constitute war crimes and crimes *against humanity*, especially the bombing of civilians and the systematic practice of enforced disappearance and torture.

At the end of this chapter, and also at the end of this report, some of the elements that emerge from this analysis are introduced so as to contribute to the agenda for rebuilding the social fabric in the Western Sahara conflict. Also included are some of the issues that should be taken into account in the conflict transformation agenda and policies seeking ways out of the conflict, taking into account the impact caused by human rights violations and by a situation of respect for human rights, which are key elements for such a transformation to take place.

## **Needs and demands for reparation**

In the final part of the interviews with victims, they were asked for their opinion on which measures would be appropriate to reparation the damage caused. Even though human rights violations, torture, bombings or enforced disappearances imply irreparable realities, victims' right to reparation is something that should be considered an obligation of the State. This is an essential element in order to be able to have victims' perceptions, needs and participation.



Most human rights violation victims have little knowledge about international standards. In the case of the Western Sahara, victims who belong to associations or who made their claims before the Arbitration Committee or the IER later manage to acquire a certain knowledge of the matter and have had experiences that are also discussed in this chapter. On the other hand, victims living in the refugee camps have had much less knowledge of such actions or of the possibilities and obligations in terms of international law against the human rights violations committed there.

In order to collect the demands and perceptions of the victims, an open question was made. The following frequencies refer to the spontaneous narrative of the interviewed people, as they were not specifically asked about the importance of the various measures. That is, these frequencies show the most relevant aspects in the spontaneous narratives of the victims. From the results it follows that for almost half of the interviewed population ( $n = 125$ ; 47.89%), reparation is part of a more general demand for the right to self-determination of the Sahrawi people and for the prevention of human rights violations in the future. This sense, in terms of reparation, more relevance is placed on what are considered to be guarantees of non-recurrence; i.e. putting a stop to human rights violations and carrying out institutional or legal changes in order to prevent recurrence. Since for most human rights violation victims such abuse is closely linked to the occupation of their territory, prevention and reparation imply the ability to decide on their status in a referendum on self-determination, recovering their land and returning. In many ways, such a demand for non-recurrence also has to do with whatever would contribute to making sense of the grief and suffering experienced, by finally achieving what they point out as the main reason why they had gone through repression, bombings, torture or enforced disappearances.

The second most important demand is that those responsible for the violations committed are taken to trial. Almost four out of ten victims (37.16%) spontaneously stated that would have a repairing effect and that it would contribute to changing the situation in which they live, given the power still wielded at present by many of the perpetrators and the continuity of human rights violations up to the present day. One third of the victims interviewed (31.42%) referred to measures that had to do with knowing the truth of what happened and for 12.26% of the victims reparation is linked to the investigation of the whereabouts or of the fate of the “disappeared”. One out of every six victims (16.48%) considered that reparation involved the return of the land and territory to the population, something that particularly affects the refugee population. Also, one out of ten (10.34%) referred to economic measures such as compensation.

To a lesser extent, there was also spontaneous mention of measures such as health care (6.9%), protection of victims (5.36%), returning properties (4.6%), psychosocial care (4.21%), legal change (3.83%), and labour support (3.07%), forms of memory for victims (3.07%), legal rehabilitation measures (1.9%) or educational measures for victims or their children (1.15%). Such lower frequencies are probably due not only to the pre-eminence of the above. There is no doubt also the influence of a different level of reflection on the



meaning of reparation for victims who had not been involved in human rights groups and who, as a result, were less knowledgeable on the various dimensions of reparation. The most noteworthy narrative has to do with the political aspects of reparation and conflict resolution as the most important measures for victims.

The factor analysis of such responses produced five factors or groups of replies<sup>1</sup>. The first of such factors focused on measures in the fields of health, protection and memory for victims, which were referred to by 11.1% of those interviewed. The second focused on measures of rehabilitation and socio-educational integration, stated by 4.6% of the people. The third includes measures related to the restitution of real estate and the demand for self-determination of the Sahrawi people, reported by almost half of the testimonies (48.9%). A fourth factor grouped the items of truth and justice that were reported by over half of the people interviewed (51.1%). Finally, a fifth group voiced material compensation demands such as compensation or the return of seized properties, which were reported by 13.7% of those interviewed.

Care for victims	Rehabilitation and reintegration	Self-determination and territory	True and justice	Compensation and properties
Psychosocial care	Legal rehabilitation measures	Restitution of real estate	Knowledge of the truth	Compensation measures
Forms of memory for victims	Educational measures for their children		Investigation on the whereabouts or fate of victims	
Protection of victims	Labour support	Right to self-determination	Prosecution of those responsible	Return of properties
Health care				
11.1%	4.6%	48.9%	51.1%	13.5%

Reparation measures that focus on victims (factor 1) and those of economic characteristics (factor 5) are referred to more by the population residing in the Western Sahara, whereas the population in the refugee camps make significantly more reference to measures such as the return of the land and self-determination (factor 3).

The population living in the refugee camps attributed significantly more importance than the Sahrawi population to the restitution of real estate and the right of self-determination, probably because their situation is related with situations of uprooting and dispossession, and because the transience in their situation that has lasted for nearly four decades now

<sup>1</sup> This accounted for 61.15% of the variance

hinges on their right to return and on the referendum as part of the political solution to the conflict. Conversely, the population in the Western Sahara attributed more importance to actions such as health care and those responsible for violence are brought to trial compared to direct victims. Such measures, even though referred to by many surviving victims, have a greater impact on those who have lost relatives as victims of enforced disappearance. Conversely, the survivors made more reference to measures such as ensuring the health of victims compared with relatives, because of the greater effect thereof in their lives and because of the consequences that the impact of torture and violence have had and still have on their health at present.

Finally, the level of exposure to violence shows that indirect victims or relatives made more reference to measures such as restitution of real estate, knowledge of the truth, researching the whereabouts of victims and that those responsible for violence are brought to trial compared to direct victims. Such measures, even though referred to by many surviving victims, have a greater impact on those who have lost relatives as victims of enforced disappearance. Conversely, the survivors made more reference to measures such as ensuring the health of victims compared with relatives, because of the greater effect thereof in their lives and because of the consequences that the impact of torture and violence have had and still have on their health at present.

## **The right to reparation and relevant international standards**

In International Human Rights Law, the right to truth, justice and reparation for victims of gross violations of human rights have been part of a growing debate and the production of documents and international standards. From the experience gained in many truth commissions throughout the world (Hayner, 2012)<sup>2</sup> to the principles established by expert Joinet in 1997 in the United Nations Economic and Social Council and finally approved by the Human Rights Commission on 21 April 2005<sup>3</sup>, the international debate and the evolution of International Human Rights Law have made considerable headway in terms of principles, standards and best practices concerning the rights to truth justice and reparation (De Greiff, 2006; Orentlicher, 2004)<sup>4</sup>. Moreover, these principles have been gaining such importance that the United Nations Human Rights Council, in its Resolution 18/7 dated 29 September 2011 has established a new mandate, namely the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

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2 HAYNER, P. y HAYNER, P. (2009), *Verdades innombrables*, Fondo de Cultura Económica, México

3 CONSEJO ECONOMICO Y SOCIAL, *Conjunto de Principios actualizado para la protección de los derechos humanos mediante la lucha contra la impunidad*, E/CN.4/2005/102/Add.1. 8 de febrero de 2005.

4 GREIFF, P. (2006), *The Handbook of reparations*, Oxford University Press, Oxford. ORENTLICHER (2004), "Best practices to assist states in strengthening their domestic capacity to combat all aspects of impunity" presented to the Commission on Human Rights by the Secretary-General pursuant to resolution 2003/72, UN e / CN.4 / 2004/88, and reports by the Secretary-General of the United Nations: "The Rule of Law and transitional justice in societies that suffer or have suffered conflict" (2004 and 2011).

The first such Rapporteur was appointed on March 2012. Since 2010, March 24, the anniversary of the assassination of Monsignor Romero in El Salvador, has been declared by United Nations as the *International Day for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims*<sup>5</sup>.

On December 16, 2005, by means of its resolution 60/147, the General Assembly approved the United Nations “*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*”. These Principles and Guidelines are part of *soft-law* and provide international benchmarks for the implementation of measures of truth, justice and reparation in the context of political change, transition from repressive rule or situations in which gross human rights violations are widespread. Also, the content of these principles is reinforced by other mandatory international standards both in International Human Rights Law and International Criminal Law, including the Convention against torture and the Convention against enforced disappearance, and the Rome Statute of the International Criminal Court<sup>6</sup>.

As regards the establishment of truth commissions, it should be noted that the aforementioned *Basic Principles* were updated for the protection of human rights by means of the provision of measures to combat impunity, and provide a set of fundamental guidelines. First they state that every people “*have the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations*” In this sense, the Set of Principles indicates a number of safeguards to make the right to know effective together with the criteria to be respected when establishing a truth commission that is independent, impartial and effective. Finally, the updated Set of Principles outlines the obligations of States in terms of the administration of justice and the right to obtain reparation<sup>7</sup>.

In particular, the Principles emphasize that in cases of gross violations of international human rights and humanitarian law standards, states have the obligation to investigate, prosecute and punish those responsible. Also, the Principles underline that serious

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5 See the following email address: <http://www.un.org/es/events/righttotruthday/>.

6 Including the jurisprudence of regional human rights courts, especially the Inter- American Court of Human Rights since the 1988 Velasquez Rodriguez case in which the 5 key obligations in terms of Reparation are set

7 The aforementioned Principles and Guidelines imply filing appeals and obtaining reparation They are the most punctual and specific instrument of International Human Rights Law which recognizes the rights of victims to truth, access to justice and reparation. They are structured in thirteen sections, of which reparation is the most extensive, and includes nine principles. The other sections set out the obligations to respect and implement international human rights and humanitarian law; the scope of such obligations; violations of international human rights and humanitarian law that constitute international crimes; prescription; a section on the victims of such violations, their treatment and their right to have resources; access to justice and to information concerning human rights violations and reparation mechanisms; as well as sections on non-discrimination, non-suspension and the rights of others.

violations of human rights or humanitarian law attributed by State action or omission generate the right to reparation for the victims. In turn, the Principles state that full, effective and prompt reparation must promote justice and be proportionate to the gravity of the violations and the consequent damages suffered. Furthermore, States are to establish national programs for reparation and effective mechanisms to ensure the enforcement of sentences requiring the repair such damages.

The right to reparation is based on ethical and legal terms, by means of a growing legislation and a growing number of international treaties that support it. In this growing legislation there are five dimensions that have been very broadly developed by international jurisprudence and reparation programs<sup>8</sup> have been set up in various countries that have experienced armed conflicts or dictatorships. Such dimensions are:

- *Restitution*, which seeks to restore the previous situation of the victims. This includes, among other things, the restoration of rights, their return to their place of residence, the restitution of goods, property or employment, if they were affected by the human rights violations that took place.
- *Compensation* which refers to monetary compensation for damages. This includes much material damage as physical and moral damages (fear, humiliation, stress, mental problems, and reputation).
- *Rehabilitation* refers to measures such as medical and psychological care as well as legal and social services to help victims readapt to society.
- *Satisfaction* measures, which refer to the verification of the facts, public knowledge of the truth and acts of atonement; sanctions against perpetrators; commemoration and tribute to the victims. This also includes the search for the “disappeared”, exhumations, the delivery of the remains to relatives or determining the fate of those who remain “disappeared”.
- *Guarantees of non-recurrence*, which seek to ensure that serious human rights violations that had been perpetrated are never repeated again and that victims are never subjected to human rights violations again. Such guarantees in terms of behaviour require the State to respect human rights, judicial, institutional and legal reforms, and changes in law enforcement, human rights promotion and education, in order to prevent the recurrence of human rights violations.

In the case of the Western Sahara, individual claims for reparation placed by victims before the Moroccan authorities since 1999 (CAI) and 2004 (IER) are associated with a wider policy that addresses all human rights violations and the causes that brought them about or continue producing them today. Furthermore, although most serious human rights violations took place during the Hassan II regime, continuing violence has been

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8 Such reparation programs are usually built based on individual / collective, symbolic / material dimensions, but should include those principles.

one of the characteristics of the Sahrawi process. This calls into question the fact that such measures are directed only to human rights violations in the past without their having a projection to the current situation in terms of the freedom and quality of life of the Sahrawi population living in the Western Sahara or in refugee camps in Algeria.

*This is not just my claim; it is rather much more a general claim shared by all the Sahrawi people. All Sahrawis have suffered, have lost their economies, they have lost everything they had. We want nothing from the Moroccans, we just want them to give us back our dead, their remains or their ashes and then we can start making accounts with them.* Embarec Mohamed.

As from 1998 when small groups of victims began to get organized in order to defend their rights in a very hostile environment, to the setting up of certain human rights organizations both within the Western Sahara and in the refugee camps, the demands of these organizations and victims combine this dimension of truth and reparation with a political transformation of the conflict.

*At the very first congress of our association on May 7, 2005 our motto was “There is no justice without truth”; they have to tell people the whole truth for that to be justice for us. There is no reconciliation without a total solution to the problem of the Western Sahara. They need to tell us why they died, in what circumstances, where their bodies are and where those still “disappeared” are, and why they did this. And for there to be reconciliation, they have to deal with the legitimate representative of the Sahrawi people, which is POLISARIO Front.* Brahim Dahane.

## **Irreparability and the context of truth, justice and reparation measures**

However, although there is talk of reparation from a political and legal perspective, there are many things that are quite irreparable, and this awareness of irreparability should be the first step in establishing a policy to prevent further human rights violations, in recognising the victims and in attending to their rights and needs. The following example describes the experience of a woman who had been made to “disappear” for fifteen years in various clandestine centres; she lost her sense of reality for several years when her daughter, who had been born in captivity, was torn away from her arms. The girl had been given to her relatives, who had told her that her mother had died. Several of her children had serious health problems during her absence.

*For me, there is nothing they can compensate me with, no way. Nothing will give me back the youth that I have lost, nobody is going to make up for the years I have lost, of for my family problems, nobody is going to compensate me for the eye my son has lost, nobody is going to give me any reparation for my daughter. There are a lot of grief and lots of things that are irreparable. Besides, we are victims with*

*no crime, because we did not commit any offense whatsoever against them: they violated our rights and for no reason at all. There are people who were responsible for this, we want them to be taken to trial and taken before justice. Compensation and those things, those things will never be any reparation for me.* Salka Bukhari.

In the case of the Western Sahara, many victims interviewed demanded knowledge of truth and justice, while questioning the sense of reparation for victims in a context in which their lives have been marked for decades by the human rights violations committed by the Moroccan authorities. This continuity of violence has resulted in them questioning the sense of change in the State's attitude towards victims that should, instead, bring about political transition processes. Mamia Salek and her sister Fatma were fourteen and seventeen years old, respectively, when they were made to "disappear" together with their parents. Their parents were later to die in two clandestine detention centres where they themselves were also detained.

*The Sahrawi territory under Moroccan occupation is being subjected to a systematic blockade denying access to political delegations, non-governmental organizations, human rights institutions and international observers. Police deployment is permanent and repression is the method used every day by the Moroccan regime against Sahrawi peaceful demonstrators demanding their right to self-determination and independence in accordance with international law. The ordeal I have gone through with my family is an example of the atrocities and violation of elementary rights carried out by the invading Moroccan regime, a fact that has been suffered the Sahrawi people as a whole.* Mamia Salek.

Similarly, many of the victims interviewed question the meaning of the policies of compensation internationally displayed as a sign of political change in Morocco reference to the Western Sahara, as their lives are still marked by frequent violations of human rights, and the ongoing limitations of their freedom of expression and association, and the continuing practice of arbitrary detention and torture.

*What we need, so such things do not happen again, is a real solution for the Western Sahara. A new organization, called the Instance Équité et Réconciliation, was set up and it looked like a democratic organization that defended human rights, but both in reality and within, it was just a continuation of the violation of human rights, death ... they burned down 4000 haima tents at Gdeim Izik camp. Where are the equity and reconciliation? They said abroad that they had repaired everything, but Moroccan jails are still full of Sahrawi protesters.* Salama Dailal Manou.

Perhaps more than in any other conflict that has implied armed clashes and political repression of the civilian population, certain aspects of a political solution to the conflict mark the context that characterizes and provides significance to the demands of truth, justice and reparation. The following two cases show apparently contradictory and yet both real and very common issues in the experience of Sahrawi victims. On the one hand,

the conviction that only a political solution to the conflict that they have been waiting for for over three decades, which is none other than self-determination of the Sahrawi people, can bring about reparation for their situation.

*Reconciliation and reparation are words that do not exist for me because no one can repair such things, such things are irreparable. For me and my family, all we ask is that Morocco leaves the Western Sahara, that is the only possible reparation. The rest is just wounds that are so deep that they simply cannot be repaired.* Degja Lachgar.

Moreover, although such a solution is the central element of significance for Sahrawi victims, it will not restore life to the dead nor will it repair the suffering of three generations, so truth research and recognition measures are needed. The weight of grief is still very much present, because the occupation and human rights violations make it very difficult to forget the impact that has definitely marked their lives.

*Nothing will close the wound, even if Morocco left the Western Sahara and give us back our children, nothing will close that wound, the wound through which I lost my husband, the person I could count on for everything, both my two daughters have died, and all that suffering in exile.* N.M. (female).

## **Comprehensiveness in terms of reparation**

International experience shows that reparation only makes sense when there is a complete set of measures that have already been pointed out (research, recognition, rehabilitation, compensation, non-recurrence), and not just some of them. Often the sense of reparation associated with payment in terms of individual or collective compensation is limited. This is usually described *internal integrity*, which refers to the way both the criteria and the way in which reparation is carried out are coherent with each another. Reference is also made to *external integration*<sup>9</sup>, which has to do with the relationship between these same measures and the overall policy of transitional justice, in terms of recognition, criminal justice and institutional reforms since the significance such reparation could acquire depends on the consistency and interrelationship between such measures.

*The State must recognize its mistakes, there is to be an investigation to bring those responsible for such human rights violations to justice, and to attempt to overcome these effects, and never go backwards, because human rights violations in the Western Sahara have been an everyday occurrence. This would mean that there is indeed a political will to overcome this period, because what is really important is that people do not feel persecuted, and feel free: that is compensation.*

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9 INTERNATIONAL CENTER OF TRANSITIONAL JUSTICE-APRODEH (2002), “Parámetros para el diseño de un programa de reparaciones en el Perú”, ICTJ, Lima



*Compensation is moral rather than material, and a matter of human beings being respected and not feeling that all of that really means nothing and then feel underestimated as a result of having received any old response.... that really means there is no real compensation and no real will. Such is the determination that should be applied in the Sahara. Mohamed Fadel Leili.*

The lack of integrity in design, and particularly in compliance, questions the significance of any compensative measures. For example, financial compensation is a way of accepting responsibility; but when this takes place in absence of significant steps that show the will of the state in terms of researching the facts, or punishing those responsible, this questions its significance and often conveys a negative idea for many victims in the sense that this is just “purchasing suffering”. This has happened in the case of the Western Sahara.

*If there is justice, then nobody could be thrown into prison without a trial. If I want to carry out a peaceful demonstration, I should be allowed to. Doctors may not tend to Sahrawis who are mistreated because, if they do, they are beaten up. You have to say you're pro-Moroccan. These measures are important because I have seen victims who, since 1991, have physical problems or diseases that require rehabilitation. These are rights that attribute importance to human beings, and we should therefore defend them. Dah Mustafa Ali Bachir.*

Reparation measures should be consistent with each other to be really effective. They can not be isolated, but must be part of a set of measures to restore the rights of victims and provide their beneficiaries with sufficient elements to mitigate the damage caused by human rights violations, to promote their rehabilitation and to compensate losses. A measure like compensation is no substitute for others such as recognition, punishment or justice. Psychological care is important in many cases, but this cannot replace the benefits obtained by the delivery of remains or the knowledge about the fate of those “disappeared” in terms of easing grief. For many victims, justice also gives a comprehensive sense to all reparation, which is closer to the damage caused by human rights violations, especially in contexts where there has been impunity for HR violations committed or the in which perpetrators have continued to maintain their power as in the case of the Western Sahara.

*We have often requested solutions about his disappearance and we believe that there can only be results if there is pressure from human rights organizations. A person who was kidnapped over 36 years ago, and to date there has been no justice ... we have not been given his remains. There must be a solution that would allow the family to grieve and, secondly, there must be reparation for all the family has suffered because of this loss. Embarcalina Brahim Mustafa.*

The response provided by the Moroccan authorities in the report by the former *Conseil consultatif des droits de l'Homme* (now the *Conseil national des droits de l'Homme* - National Human Rights Council) does not fulfil international human rights criteria and standards and has generated no peace whatsoever for victims of human rights violations.

*My aunt wrote to the IER, but the only response was a phone call through which they wanted to know if we wanted compensation and we rejected it until we are told the truth. She is among the eleven names of women, the Internet listing of women that the Advisory Council says have died. There is no further information, only that they have died. It says nothing else, no details whatsoever on the circumstances in which she died. Not even the date.* Khadijatu Hadia Omar Hmedda.

Guarantees of non-recurrence are part of this integral dimension of reparation. Within these measures there should be both institutional and legal changes directed towards respecting human rights in the Western Sahara. There should also be measures such as justice or administrative sanction to those responsible as well as the research on the patterns and mechanisms of power that made such human rights violations possible. An example of this integration may be seen in the following table on the right to truth. This is actually the result of several interdependent measures that can contribute to clarifying the facts and identifying those responsible, and getting that truth assumed by the State or society. It would also be a measure of recognition for victims.

Contribution of reparations to the right to truth <sup>10</sup>	
Measures	Contribution to the right to truth
Research on the facts	<ul style="list-style-type: none"> <li>• This contributes to the knowledge of the facts, the <i>modus operandi</i> and the mechanisms that made them possible.</li> <li>• Recognition of the facts and the responsibility of the perpetrators and the State.</li> </ul>
Acts of recognition	<ul style="list-style-type: none"> <li>• They recognize the dignity of victims.</li> <li>• Public Statement: social impact as a measure of collective memory.</li> </ul>
Symbolic memory measures	<ul style="list-style-type: none"> <li>• They are associated to recognition and commemoration.</li> <li>• They facilitate locations of shared memory.</li> </ul>
Research on the “disappeared”	<ul style="list-style-type: none"> <li>• This contributes to the knowledge of the fate and whereabouts of the “disappeared”.</li> <li>• Exhumation and return of remains and the right to mourn.</li> </ul>
Justice and sanction to those responsible	<ul style="list-style-type: none"> <li>• Knowledge of legal truth based on the investigation and prosecution of the responsible individuals.</li> <li>• Justice is an element of prevention that avoids further human rights violations by perpetrators.</li> </ul>

10 INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS (2009), *Diálogos sobre la Reparación, Experiencias en el sistema interamericano*, San José.

## Consistency and hierarchy of reparation measures

A policy of truth, justice and reparation must promote a transformation of the situation of the victims, as well as a transformation of the state's relations with them. A relationship that changes from being based on human rights violations, to one based on the recognition of their rights and dignity. If the measures are isolated elements that are not part of public policy, coherence is lost, and therefore such measures do not represent a change in that relationship. Testimonies by Sahrawi victims are riddled with statements according to which, although some people have received compensation, the treatment afforded by the Moroccan State has been characterized by the same distrust or marginalization, when not direct repression, of the most active victims and non-recognition of their organizations.

Moreover, the policy of truth, justice and reparation must equal the intensity of the impact of human rights violations. Clearly scarce reparation, or reparation that does not include this comprehensive perspective of different measures such as research, the improvement of their living conditions and the restoration of their rights, easily loses its significance.

Thus, not all reparation remedies are equally important for victims, but among the various victims and survivors there may be different expectations. For example, while Sahrawi victims presented a list of demands to the Moroccan State in 1999 in which the emphasis was on truth, justice, moral and material recognition or memory and in preventing further human rights violations, the State's response was to provide some compensation to victims<sup>11</sup> and postponing recognition of truth or other measures. In that postponement, such measures had little recognition, nor there has there been a transformation of the State in its policy with regard to freedom of expression or association in the Western Sahara, as will be discussed later. A repeated consideration by almost all victims is the ability of the Moroccan State to use partial policies in this field with the aim of gaining international legitimacy rather than restoring the rights of the victims or rethinking their relationship with the Sahrawi population.

*It is the way they have to conceal the reality of it all. In our case they have had no response: we have not been offered nor have we accepted any response. But they will have granted compensation to families for them to forget the whole matter and so that they do not persist in their claims. It is but a mere whitewash that we can not tolerate.* Moubarak Safia.

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11 At that time, the response of the Moroccan State was only to grant compensation for all victims, whether or not they were Sahrawis. Subsequently the State launched certain measures of collective reparation that excluded the Western Sahara despite being the area that was the most affected by human rights violations. There is no information available on the implementation of other measures for Moroccan victims who have also continued demanding clarification of cases of enforced disappearance

12 HAMBER, B., (2011), *Transformar las sociedades después de la violencia política*, Ed. Bellaterra, Barcelona. (HAMBER, B, (2009) *Transforming Societies after Political Violence*, Springer.

### **The importance of participation**

As noted in the analysis of the various measures, the participation of victims is a key approach if the intention is that such measures are satisfactory and effective. In truth, justice and reparation policies, how things are done is as important as what they consist of.

How the measures are carried out can convey respect for the victim or can sometimes just be a new form of contempt. More generally, research on such policies shows that the recovery process does not only take place by means of the “object” (i.e., compensation or monument<sup>12</sup>), but by means of the process of participation and adequacy of that object reference to the victims’ needs. Participation implies an inclusive space and can show a willingness not only to comply with such reparation, but also to listen to the victims and take into account their perspectives in defining the object.

### **Moroccan state responses to human rights violations in the Western Sahara: the denial of truth**

Before analyzing the demands of Sahrawi victims and their various needs as well as the actions carried out by the Kingdom of Morocco, this section includes a global overview on how Morocco’s response to the demands of the Sahrawi victims has evolved historically. A central element that has persisted for decades has been the denial of truth, the minimization of the number of cases or of their impact, together with the concealment of any available information. The information gradually provided by the regime displays, on one hand, some headway in terms of partial recognition but on the other hand, it is evident that the Moroccan state is only willing to provide the least information possible to the families and conceal what happened in the international level.

As noted in the analysis of the phenomenon of enforced disappearance, about 370 missing persons who were in secret detention centres were finally recognized and released by the Moroccan regime in 1991 and 1996, although at least another 120 had been released previously. However, with respect to many other cases the Moroccan State continued to deny the facts. For example, in 1999, following a series of reports by Amnesty International stating that there were numerous cases of unclarified “disappearances”, the Moroccan State, by means of its *Conseil consultatif des droits de l’Homme* (Advisory Council on Human Rights), responded by pointing out that they had carried out inquiries on 112 cases of enforced disappearances that had been previously reported, and was willing to continue with their research<sup>13</sup>. However, all such cases concerned Moroccan citizens, and none of them were Sahrawis.

In the mid-90s, the Ministry of Human Rights recognized that some of the Sahrawi cases of “disappeared” people for which they had submitted requests for information to the

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13 Amnesty International (1999), *Morocco and the Western Sahara*. Addendum to “Turning the page”: achievements and obstacles, August 1999, AI INDEX: MDE 29/05/99

GTDFI were being held as prisoners of war by the Moroccan army and were being visited by the ICRC. According to Amnesty International, that was the first official mention of “prisoners of war” in 20 years by the Moroccan government. Subsequently, the 66 prisoners of war were delivered to the Frente POLISARIO in Tindouf (Algeria) in 1996. Many of these prisoners of war arrived to refugee camps with serious psychological problems as a result of torture and the detention regime in which they were kept, in several cases for almost 20 years<sup>14</sup>.

### **The perversion of denial**

The last collective disappearances in the Western Sahara took place in 1987 coinciding with the preparation of a peaceful protest that was to take place in Laayoune, during the visit of a technical mission of the United Nations and OAU to the Western Sahara. This action, in which people as well known as Aminetu Haidar, Djimi El Ghalia and a group of 53 people were arrested, was a well-structured modus operandi by the Moroccan authorities aimed at concealing arrests and denying the facts: 1) the arrests were carried out just a few days before the visit of the mission that was eventually delayed for another couple of days, supposedly for weather-related reasons, while the delegation remained in Rabat; 2) the protesters who were planning to demonstrate in front of the UN mission in Laayoune were all arrested; 3) the “disappeared” detainees were transferred to the PCCMI (Point de commandement de la campagne mobile d’intervention - Mobile Intervention Company Headquarters) and later, when the UN mission had in fact arrived at Laayoune, they were taken to a BIR (Brigade d’Intervention Rapide – SWAT Brigade) barracks outside the town until the official visit had ended so as to prevent them from being located; 4) there was a subsequent concealment of the victims of this collective disappearance for nearly four years at the PCCMI.

Both the Ministry of Human Rights and The Moroccan *Conseil consultatif des droits de l’Homme* (Advisory Council on Human Rights) argued in 1999 that the other 400 cases of “disappeared” people reported by Sahrawi organisations and Amnesty International were not credible because they had taken place during the years of military conflict in the Western Sahara and at the refugee camps at Tindouf. That is to say, the same denial that had been made before 1991 was now being once again put forward, when they had previously denied the existence of at least 370 “disappeared” people had been released in 1991 and 1996.

The Moroccan *Conseil consultatif des droits de l’Homme* argued that there was no certainty in the reports by Amnesty International and did not carry out research on allegations of another nearly 400 “disappeared” people. Meanwhile, it was very difficult, for both Sahraui organizations and for international human rights organizations, to collect information on human rights violations in the Western Sahara.

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14 See the chapter on Prisoners of War: the Group of 66.

As Amnesty International had pointed out in its report, rather than “passing a page”, the measures taken by the Moroccan authorities reference to human rights violations committed in the past amounted to turning their backs on the victims of enforced disappearance. Today a response to the relatives of “disappeared” people is still pending and the problem is still urgent.

The Moroccan government’s response to the demands by relatives of “disappeared” Sahrawis has always been discriminatory. As Amnesty International points out (1999), in cases of “disappeared” Moroccans, the largest group *comprised 56 people, and included 30 “disappeared” who had died in custody in the secret centre at Taz mamart in the seventies and eighties and whose deaths had already been recognized by the authorities in 1994, when they issued death certificates to families of most of these people.* As Amnesty International acknowledged in that report (AI, 1999: 6) action by Sahrawi relatives to obtain information on “disappeared” detainees were subjected to direct repression<sup>15</sup>, and could lead to the person being harassed or arrested: *in some cases, people trying to get information about their detained relatives also ended up being arrested or harassed. The practice of illegal arrests and detentions, and denying both the detainees and their families any recourse to legal proceedings, are obstacles that discourage relatives from filing complaints or requesting information about their next of kin.*

## **Difficulties in researching on the Western Sahara**

Until 1999, denial of truth had been based on the policy of non-recognition of massive human rights violations against Sahrawis. Later on, in the partial recognition of cases of disappearances, albeit minimizing the magnitude thereof, there was always a certain avoidance in terms of providing full information about such disappearances, and always providing less information in comparison to the progress carried out regarding cases of human rights violations of Moroccan citizens.

The work of independent international or Sahrawi human rights organizations and journalists interested in the question of the Western Sahara has been greatly limited in

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15 Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance (1992), paragraph 3 states that “ Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal “. Also paragraph 5 of the same Declaration states that “Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.” Also, the International Convention for the Protection of All Persons from Enforced Disappearance (2007) states that “ Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given”- (Art. 12, para. 1) and that States “ shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defense counsel, or at persons participating in the investigation “ (Art. 12, para. 4).

Moroccan-controlled Sahrawi territory. These difficulties show the attitude of the state in terms of preventing a direct knowledge of the situation in the Western Sahara. In many cases, European lawyers, parliamentarians and human rights activists, who have visited Sahrawi territory to attend trials of Sahrawi human rights defenders, have been expelled or followed throughout the region and their every move has been controlled as if they were criminals.

Even in order to carry out this work, the conditions for conducting independent research work have been considerably limited. Local human rights organizations are scarce and enjoy no legal recognition, they have to work with hardly any external aid and such work is carried out in very negative conditions of control and fear. Their work is a contribution to the defence of life in every country in which there have been serious human rights violations, and is therefore a strategic contribution to democratization and to a human rights culture. However, this is viewed by the Moroccan State with suspicion and many human rights defenders have been accused of carrying out anti-patriotic activities, and have been beaten and sentenced to long prison terms<sup>16</sup>. Fear remains a central element in the experience of the Sahrawi population. Sahrawi victims' and human rights organizations have been limited and still in 2012, their work is forbidden by the authorities<sup>17</sup>.

Security forces have harassed and intimidated the most active victims and defenders of human rights, while maintaining an information blockade on the situation of the victims and the Sahrawi people. This blockade has only been overcome by the limited action of international organizations such as Amnesty International by means of short visits to the territory, and thanks to the use of Internet communications in recent years.

As a result of this limitation of the work of human rights organizations in the Western Sahara it is difficult to know or research human rights violations more clearly, while the Moroccan State has continued to maintain its political and military control of the area. Political control of the judiciary and even the prohibition of work by certain Moroccan entities that are more sensitive to Sahrawi human rights issues, all represent an absence of guarantees for independent research.

Such situations have been subsequently continued, especially when there have been acts of violence against civilians, as in the case of seven activists arrested after a trip to the Tindouf camps in 2009 or after the violent dismantling of camp Gdem Izik, in the outskirts of Laayoune in 2010. To carry out this study two visits were made to the territory

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16 However, Morocco has underwritten several obligations related with protecting human rights defenders. In this regard, see the Declaration on Human Rights Defenders, adopted by the United Nations General Assembly by means of Resolution 53/144 in 1999.

17 It is worth noting that Art. 24, para. 7 of the International Convention for the Protection of All Persons from Enforced Disappearance (2007) provides that States will guarantee "the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance".



of the Western Sahara in 2011 and 2012 and the research team was constantly followed by members of the Moroccan security services. We witnessed how the authorities continued to harass victims in different situations. We also witnessed police control of free movement and the fear of possible reprisals by the authorities, despite the persistence of the leaders of victims and Sahrawi human rights associations.

Research difficulties in the Western Sahara	
For external support teams	For Sahrawi associations
<ul style="list-style-type: none"> <li>• Lack of access to victims by restrictions on movement.</li> <li>• The climate of control over research activities.</li> <li>• Explicit personal control and monitoring on the movements of researchers.</li> <li>• Absence of official information on cases and responses of denial.</li> <li>• Climatic stress, dispersion and precarious conditions in refugee camps.</li> </ul>	<ul style="list-style-type: none"> <li>• Difficulties in obtaining financing.</li> <li>• Ban on their activities by government order and failure to comply with court rulings favourable to organizations.</li> <li>• Limiting the support of organizations: training, visits, support.</li> <li>• Difficulties in meeting victims and working with them.</li> <li>• Fear of reprisals.</li> <li>• Intimidation of human rights defenders by security forces.</li> <li>• Maintaining a climate ridden with human rights violations.</li> </ul>

In such cases, there is the paradox that those who have to prove human rights violations or that their relatives have been made to “disappear” are their own relatives and the victims themselves. Meanwhile, there are numerous complaints filed before the authorities which have not been investigated and monitored and in cases of “disappeared” people, there is evidence and witnesses that have often been arrested by Moroccan security forces or held in secret detention centres.

## The Arbitration Committee and Sahrawi demands

Human rights violations in the Western Sahara have long been a taboo subject in Morocco that has always been linked to the political question of the Western Sahara and the refusal to carry out UN resolutions on the referendum on self-determination of the Sahrawi people<sup>18</sup>. In the domestic level in Morocco, the media, the political parties or non-governmental organizations, with certain exceptions, have avoided the issue of Sahrawi victims and according to the testimony of organizations such as Amnesty International or international experts who have supported studies or programs on reparations in Morocco, it is very difficult to address the issue with the Moroccan authorities. Only the Moroccan

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18 See the chapter on Chronology in Volume I.

Human Rights Association (*Association Marocaine des Droits de l'Homme* - AMDH) has recognized and supported Sahrawi demands for recognition of their rights.

On 16 August 1999, the Kingdom of Morocco created an entity called the Independent Arbitration Committee (*Instance d'Arbitrage Independante*). Its mandate was limited to granting financial compensation for material and moral damages suffered by the victims of enforced disappearances and arbitrary detentions until 1999. The deadline for submitting claims was limited to four months. In the same year a group of Sahrawis who had been made to “disappear” for years in secret detention facilities at Kalaat M'Gouna and Laayoune until their release in 1991, began a campaign in Rabat for the Moroccan authorities and civil society to react to the suffering they had experienced and respond to their demands for truth, justice and reparation for Sahrawi cases.

*This was the first time we could do something of that magnitude, although since 1994 had been trying to do something but we were all under surveillance and had to go to the police station to sign to prove we were in Sahrawi territory. Djimi El Ghalia.*

A group of twelve people travelled to Rabat almost clandestinely and managed to establish contacts with the US embassy and Moroccan associations and political parties. From that moment onwards, the work of this group could be carried out in a more open manner. The Committee visited the Moroccan *Conseil Consultatif des Droits de l'Homme* (Advisory Council on Human Rights), where they presented a report on their cases and a document with their demands.

*The Committee went to the Moroccan Human Rights Council, and tabled a report; we spoke with the president of the Council to whom we delivered the document in which we detailed all our demands<sup>19</sup>. The Arbitration Committee only focused on the issue of compensation, while we were working on that issue together with research in terms of truth. That is, the dossier contained two chapters: one dealing with compensation as a right of victims and one dealing with truth-related matters. The Human Rights Council pointed out that the matter of truth was not contemplated at this stage. El Ghalia Djimi.*

The Arbitration Committee focused on the issue of compensation, whereas the victims indicated their demands of investigation of the facts and responsibilities, as well as recognition of human rights violations by the Moroccan State. It also pointed out that its decisions on reparation were final in an attempt to close the matter of reparations for good.

*For example, there are only 43 of us left out of the three hundred-odd who refused to sign a paper that the Committee gave us which said that we agreed with everything the Arbitration Committee had done and that there were not going to any further requests by us. We said no to that. We have another commitment and*

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19 See the document included in the Annex.

*we included a memorandum, in which we say we will continue demanding for truth and justice according to international standards. I was the last to sign this document. Aminetu Haidar.*

The Sahrawi Victims Coordination Committee submitted a memorandum detailing their demands beyond the limits imposed by the Arbitration Committee. The dossier presented by the Sahrawi victims contains two parts, one on compensation as part of the reparation for victims, and the other on truth and justice. 98 Sahrawi cases were submitted by the Committee of Relatives of the Disappeared in a collective action before the Arbitration Committee, and another 1,200 more were submitted by the Coordinating Committee of Former “Disappeared” People<sup>20</sup>.

*The Arbitration Committee received numerous records from the Western Sahara but only accepted the surviving victims from Kalaat M’gouna, Agdez or Laayoune. A memorandum to all such demands was given in, including compensations, but the most important thing was to know the whereabouts of the disappeared, to persecute those responsible and not to repeat what had happened. The Committee replied that it was their brief only included compensation. Families who were in a critical situation had no choice but to accept. Sukeina Yed Ahlu Sid.*

*We convened here in Laayoune and we went to sign for compensation. The compensation was not very correct in comparison with the compensation given to the Moroccans. There has been discrimination against Sahrawis. Initially, a widespread worldwide rejection was discussed and it was not fair for me to say that we were going to reject this, due to people’s circumstances. Nor should we request the impossible. That we have been deceived? Well, we shall appeal and we should be able to get something. Abdallahi Chwajj.*

In addition, the Arbitration Committee did not have the necessary independence since it was made up of government representatives, and they did not make explicit their criteria so as to be considered an independent arbitration between two parties. Victims who presented their cases before the Committee were obliged to take or leave what the Committee pointed out as compensation, without having any information about the criteria used to determine the amounts thereof<sup>21</sup>.

*Arbitration, under established rules of Moroccan law, and even in international law, is based on a compromise between the parties to go to arbitration, and choose both the arbitrator and the applicable law. There was no compromise here between the state and the victims. It was the state that set up this Committee, and gave the victims no alternative but to appear before it. Mohamed Fadel Leili.*

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20 Source: ASVDH, October 2012

21 Some of these problems also happened with the Moroccan victims in terms of deadlines, lack of transparency, and signing a document in which they had to commit themselves not to appeal.

The victims had neither the information nor enough time to assess the implications of their participation in the process, nor the suitability of the product. Finally, the Coordination Committee reached an agreement with the Arbitration Committee, consisting of filing a collective demand that individual victims could subsequently uphold. This agreement was reached on December 31, 1999, the deadline for filing the demands before the Arbitration Committee. That agreement *in extremis* is an example of the difficulties experienced by the Sahrawis in their efforts to have their demands taken into account.

On 16 September 2000, the Coordination Committee of Groups of Sahrawi victims of Enforced Disappearance and Arbitrary Detention issued a statement which raised its position before that Arbitration Committee<sup>22</sup>. In it the Coordination Committee pointed out that the Arbitration Committee did not have a representation of victims for it to be considered as a mechanism of arbitration and that it was not independent since it was constituted by the Ministry of Justice and the Ministry of the Interior, both directly involved in human rights violations or impunity cases. It also criticized the rejection of the request made by the delegate of the Arbitration Committee, which aimed to change its internal statutes and the absence of clear criteria for the granting of compensation, as well as the discriminatory treatment that could ensue. In addition, the Committee's resolutions could not be appealed, which implied victim coercion as its resolutions therefore necessarily had the precondition of acceptance in a context of lack of independence.

In its statement the Sahrawi Coordination Committee claimed:

- a) The requirement of a serious, transparent and well studied dialogue;
- b) The implementation of an arbitration that is fair and subject to an effective handling of victims and right holders;
- c) The need for urgent action to find a solution to the victims' social and health problems and to ensure a dignified life free of constraints; and
- d) The need to put an end to the ambiguity and obscurantism that were negatively affecting the criteria adopted for compensation.

Furthermore, the statement in question referred specifically to their claims on cases of "disappeared" people, fully consistent with international human rights law:

- a) The need to disclose the fate of the "disappeared" and release any survivors;
- b) The return of remains to the families of the deceased so that they can bury them in accordance with their religion;
- c) The revelation of the reality of the circumstances of the phenomenon of enforced disappearance and the prosecution of perpetrators of these violations.

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22 Memorandum of the Coordination Committee of Sahrawi Groups of Victims of Enforced Disappearance and Arbitrary Detention, Laayoune, September 16, 2000, p.2.

In addition to the cases referring to the past, the Sahrawi Committee pointed out that arbitrariness and arbitrary arrests continued to affect them after his release, and called on human rights organizations and international agencies to intervene to support their demands and put an end to human rights violations in the region, and to release the victims of arrests that were taking place at that time.

## The setting up of the IER

On January 7, 2004 the Equity and Reconciliation Commission (*Instance Équité et Réconciliation* - IER) was set up by the state of Morocco. It was presented as an independent national commission of truth, equity and reconciliation for (1) the establishment of the truth on human rights violations committed between 1956 and 1999 linked to political, trade union and associative activities and determining institutional responsibilities; 2) for reparations to victims or their relatives; and (3) develop recommendations on reforms to guarantee non-recurrence of serious human rights violations. The IER submitted its final report to the King of Morocco on 30 November 2005<sup>23</sup>.

Although this IER raised many hopes in Morocco, and even among the Sahrawi population, that finally their cases were to have a resolution in accordance with international standards, that instance lacked the necessary independence regarding the case of the Sahara, as there was no consultation process with Sahrawi victims and there were no Sahrawi members<sup>24</sup> in the commission nor was research carried out in a manner similar to truth commissions in other parts of the world, as will be seen later.

*In our meetings with the IER, they asked us repeatedly if we were sure that the “disappeared” had not gone to areas controlled by the POLISARIO. A totally absurd question, because we were all aware of what happened and besides our relatives had been arrested in front of us. We told them that we had been in the same prison, how on earth they could they have gone with the Frente POLISARIO!*  
Moubarak Safia.

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23 The IER was put into operation from 20 April of that year, once its statutes were approved by means of *Dahir* No. 04/01/42 dated 12 April 2004. In November 2005, the IER submitted its final report to the king, which was published on January 6, 2006. Once the mandate of the IER was completed, the *Conseil consultatif des droits de l'Homme* (Advisory Council on Human Rights) was instructed to follow up the work of the IER, even on reparations. IER, (2009), *Final report. Equity for victims and repairing the damage and prejudice*, Vol. 3 CCDH, Rabat.

24 The members were appointed by the King following the recommendation of the Advisory Council on Human Rights following to the criteria they had proposed, namely, “personalities respected for their competence and intellectual integrity and their sincere commitment to the principles of human rights”. But they did not include any Sahrawi members. See documents: IER, (2009), *Rapport final. Vérité, Équité et Réconciliation*, Vol. 1 CCDH, Rabat. De la Recommandation relative à la création CCDH de l'Instance Équité et Réconciliation”. Available at: [http://www.ier.ma/article.php3?id\\_article=24](http://www.ier.ma/article.php3?id_article=24).

In the case of the Western Sahara, when they set up the IER, organized victims positively welcomed the initiative, even if reluctantly because it was a Moroccan entity. However, they subsequently felt that their initiative and commitment bore little or no fruit. Instead of activating participation, the IER, which was chaired by a well-known person who had been a victim of the Hassan II regime, came to the Western Sahara with their own agenda and they tried to have the victims conform to it.

*I collaborated with them to help because I had some confidence in that man named Driss Benzekry, but then it was a failure for the victims. He was himself a victim and we had placed some trust on him, but he did nothing on this issue, with the Sahrawis there is always discrimination and double sidedness. I, El Ghalia and Larbi spent some time helping the IER in their work on the Sahara, in Laayoune. We worked as volunteers with them every day to collect testimonies, we went with them to Smara, but then in Smara we said enough was enough, and they did not let us go to Yderia to see the burial pits. For us the priority is to clarify the truth, the whereabouts of the Sahrawi “disappeared”, and prosecute those responsible for these crimes. This is always our commitment. It is and will be a priority demand. Aminetou Haidar.*

According to another of the leaders of that process, El Ghalia Djimi, Sahrawi victims thought that the IER would be responsible for putting the initial agreement between this group of victims and the State on the agenda in terms of the search for truth and the broader demands for justice and reparation, which they did not do. Several thousands of Sahrawis presented their demands to the IER, including some who had already raised their cases to the Arbitration Committee, because it seemed that the IER could provide better compensation and make headway on the claims for social integration, health care or the search for the “disappeared”. The IER did not resume compensation cases that had already been decided on by the Arbitration Committee, arguing that was not in their brief, although the compensation awarded by the Arbitration Committee to the Sahrawi victims who had undergone temporary enforced “disappearance” and were released was apparently much less than the Moroccan victims who had suffered similar circumstances (see below).

*The IER was supposed to collect the cases rejected by the Arbitration Committee and they had said they would work to discover the whereabouts of the “disappeared”. They took data from those affected, and from relatives of “disappeared” persons. But they refused to reopen the cases resolved by the Arbitration Committee alleging that they were not a court of appeal. They also pledged to work for the social integration of victims and relatives. Sukeina Yed Ahlu Sidi.*

The IER included in its decisions on individual cases a proposal for directly-granted compensation, except in cases that had already been evaluated by the aforementioned Arbitration Committee. Many victims participated providing information to the IER and were disappointed by their work and by the fact that they did not fulfil their promises, nor the expectations of the victims, and did not abide by international standards of research and reparation in cases of human rights violations.

*The IER had promised us that within a year they would convey the reality of what had happened, that they would bring a psychiatrist for the family. But we know nothing. We have seen that in the latest report by the IER, on pages 66 and 67 they speak of armed confrontation, while we were speaking about civilians. We provided living witnesses, written testimonies legalized before the IER to say that these people have nothing to do with military matters. We presented cases, witnesses have come to declare, they came to our homes, we invited them to lunch, and we did all the work. Sidi El Bachir uld Gala uld El Hussein.*

*In 2004, a new Moroccan institution, the Instance Equité et Réconciliation, started its work. It was all just playacting, they had no intention of solving the problems of families who had been hurt, they only wanted to clean the face of the Moroccan state. When we came back from that institution we were very happy, especially when they began to make loads of promises to us, like its chair did, and none of its members can deny the efforts and work we offered them in all sincerity as affected Sahrawi families. In Smara all the houses were open for them, and they were received believing they would be serious. So all the houses became their administrations. Mahmud Sidahmed Babih Bheya.*

*The president came to Smara to meet with the committee of relatives. He came and told them. Here's the file, the indemnities are ready. Either you accept the file or this case will be closed forever. This was the statement by the Chairperson of the Conseil consultatif des droits de l'Homme. Sukeina Yed Ahlu Sidi.*

The IER issued an opinion on each of the cases raised, in which a specific compensation was granted, although the criteria taken into account for this purpose were never published. In addition to compensation, the opinion of the State included recommendations on other measures such as social integration or health care, regularization of legal status, education or vocational training and regularization of their employment status.

Even though, according to the *Conseil consultatif des droits de l'Homme*, decisions on individual reparations were taken bearing in mind different criteria, a detailed review of numerous claims does not show which were the criteria used in each case and the suitability of compensation can therefore not be analysed. The criteria according to the CCDH were basically two: a) the type of human rights violation, including the time of detention, conditions of detention and torture; and b) the loss of job opportunities, education, loss of income, etc. Neither of these extremes can actually be verified due to the lack of transparency in this regard, which has fuelled unrest both among Sahrawi and numerous Moroccan victims of human rights violations.

On the one hand, there is talk about the assessment of missed opportunities, but without taking rural women into account. Also, Sahrawi women in particular had no studies nor a medium or high economic capacity. Moreover, it is not at all clear that specific situations such as those affecting women and impacts like the inability to procreate



or to later to marry and their access to studies or employment were into account. The IER did not make public the calculations carried out with the different units of analysis when calculating compensations and the fact that arbitral awards did not include any feedback on the granting of such compensations by victims in general and by Sahrawis in particular because of the conditions indicated above, leaving the victims in a position of defencelessness in terms of asserting their rights.

Also, since the indemnities awarded by the Arbitration Committee were not reviewed by the IER, there were important differences between victims who received compensation from the Arbitration Committee and from the IER, especially in the case of women<sup>25</sup>, which has created differences between the two groups of victims. IER compensations should have led to the approval of the rights of victims that should not have been influenced by the different responses or state institutions.

## **Exclusion of the Western Sahara in public hearings and collective reparations**

In addition to collecting individual testimonies, the IER carried out some public hearings in places in which there had been a concentration of human rights violations in different regions of Morocco, so as to open a space for public expression for victims and to promote a social knowledge of violations they suffered. The public hearing scheduled in Laayoune was the only one of the eight planned hearings which was cancelled. The reason given for the cancellation was that there were no safety conditions due to the political tension that existed in the area after the violent events of May 2005, when the Sahrawis had held peaceful demonstrations to defend their rights (see the 2005 Intifada case, in volume I). Only one Sahrawi turned up for one of the IER hearings in another affected area. According to statistics provided by the IER in its website, events related to the conflict of the Western Sahara accounted for only 2% of the events described by witnesses during the hearings in September. This information is a clear minimization of the events suffered by the Sahrawi people. Those “disappeared” in the Western Sahara constituted at least 60% of the “disappeared” under Moroccan<sup>26</sup> state responsibility.

The following story shows how the official version published by the IER refers to the case of the only Sahrawi who participated in those hearings. There is no reference to enforced “disappearance” but to “arrest”; there is talk of “recovery of the Sahara from Morocco”. No reference is made to the cause of death of seven people; it is said that the arrests were the result of clashes and riots, which is not true at all; torture included not only a poor

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25 According to information published by the IER, women who survived being direct victims were awarded 10 to 20% more in all the sections that determine the amounts of compensation.

26 The GDTFI stressed that most of the communications received over the years regarding cases of forced “disappearance” refer to the Western Sahara (WGEID, *Informe sobre la visita a Marruecos*, A / HRC / 13/31 / Add.1, February 9, 2010, para. 45).

diet but also being placed in contorted hanging positions, choking manoeuvres, forced nakedness, beatings, and other forms of extreme brutality; no reference is made of the perpetrators of such acts nor of the intentionality thereof, not even to justice; no reference to the effect that he was released by a royal pardon when his enforced disappearance constituted a serious violation of human rights, or to the fact that he was never subjected to any judicial process and the regime was committed in his case together with all the “disappeared people”, analysing a crime against humanity.

*Mr. Ghali Bara, who spent over 15 years in forced detention, dedicated his testimony to explain the circumstances of his arrest in January 1976 within the framework of the “ Sahara events”.*

*During this testimony, the former detainee reported ill-treatment during the years of incarceration he experienced in various secret detention centres as well as the Calvary he experienced just after his release in 1991. Ghali Bara was arrested on 12 January 1976 in the region of Bouajouj in Tan Tan, together with 22 relatives, among whom were his parents, brothers and their wives. Seven of them died.*

*The so-called “Sahara events” took place during the period of recovery of Morocco’s southern provinces in 1975, the year during which there were clashes between the authorities and political activists. These clashes led to arrests in Laayoune, Tan Tan and Guelmim.*

*Ghali Bara was held in Ouinat Terkez before being imprisoned in Tan Tan and Agadir; he was then transferred on February 27 1976 to the Agdez secret detention centre, where he remained until October 1981, before being taken to the “citadel of death”, which, he explained, is at Kalaat Megouna.*

*Mr. Ghali Bara said he was part of a group of 364 people. He was transferred together with some relatives to Tan Tan with his hands tied and blindfolded; in the meantime, their properties were destroyed and their livestock killed.*

*His relatives were released after being two and a half years in detention, he added. Ghali Bara, born in 1942, said he was transported by helicopter to Tan Tan in “inhuman” conditions; he was there for over two months before being transferred to Agdez (February 1976 to October 1981). During this period, 28 people in the group died, he said.*

*Going back the conditions of his detention, Ghali Bara claimed to have suffered ill-treatment and serious physical and psychological torture (lack of food and disease) during this period. “We were allowed out in the sun only for 15 minutes a day,” said Ghali, who was released on June 30, 1991 due to a royal pardon.*

*However, the suffering endured by Ghali Bara and his relatives continued after his release. They were forced to cope with the worst reality marked by poverty,*

*after having lost everything (papers and title deeds), and suffered serious health problems because of diseases contracted in places of incarceration.*

*Such conditions lasted for 10 years, he added, until the decision of the arbitration commission to award indemnities. Ghali Bara, who concluded his testimony in the hope that “such excesses” are never repeated again appealed to the reparation of the victims of such human rights violations and their integration in society<sup>27</sup>.*

However, Ghali Bara, told a completely different version when he was interviewed for this research:

*Let me explain why this happens. We were a large and respected, independent and wealthy family, we led a dignified life, we never went to the state asking for anything, and then, suddenly, the whole family was destroyed. When I saw all of this, that everything was lost, that there was to be no future after having lost parents, siblings and family, there is nothing in this life that can make me feel happy, and on the other hand, there is nothing in this life that can make me sad either. This is what I have left. Now I have a family, even my children do not make me happy when they are with me and start playing and laughing, because I remember those brothers and that family. I try to smile but this does not leave me... Losing sixteen years of the best part of your life, your youth ... What I want to add is that we are part of this people, and I mean that all the talking abroad is different from the real situation that exists here. 95% of the citizens, who live here, live thanks to their own efforts, far from the state. There is talk abroad that Morocco is building in the Sahara, and that everybody is fine. I would also point out that the Sahrawis can see quite clearly how their educational conditions are systematically being hampered; that most kids do not reach the first year of high school, and until they get to finish the college degree, they can not find a job. Only here in Laayoune is where 29 percent of the unemployed graduates live. This is according to parliamentary sources they have said, all of this despite the wealth of the Western Sahara. Ghali Bara<sup>28</sup>.*

Moreover, the IER established a collective reparations program for those regions that had been most affected by human rights violations. Their report states that collective reparation measures were part of a participatory process of discussion with the victims, but they did not meet representatives of Sahrawi organizations<sup>29</sup>. The concept of community reparation was defined as reparation to remedy collective impacts where massive and systematic human rights violations have taken place or where there are clandestine

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27 Testimony available in: [www.ier.ma/article.php3?id\\_article=1352&var\\_recherche=sahara](http://www.ier.ma/article.php3?id_article=1352&var_recherche=sahara)

28 Ghali Bara was interviewed for this study.

29 The IER organized a national symposium on collective reparations on 30 September, 1 and 2 October 2005.

detention centres<sup>30</sup> (such as at Agdez, Kalaat M'gouna or the PCCMI), but in practice they did not include the most affected area, which was the Western Sahara and the Sahrawis as the people who were the most in such centres, nor was the PCCMI recognized as one of those clandestine centres. According to the recommendations by the IER, eleven regions of the country should benefit from these projects: Figuig, Nador, Al Hoceima, Errachidia, Khenifra, Ouarzazate, Zagora, Hay Mohammadi (Casablanca), Tantan, Azilal and Khémisset. None of these regions are part of the Western Sahara which is where there is the largest number of “disappeared”, thousands of victims of bombings, persecution and plunder in the exodus to the desert first, and then to the Hamada in Algeria.

### **Lack of guarantees for victims and persecution during the IER's work**

The limits of the work of the IER have also been recognized by the Working Group on Enforced or Involuntary Disappearances (WGEID), which held a visit to Morocco in June 2009<sup>31</sup>. In particular, the WGEID has referred to the many criticisms against the IER due to their inability to force people who might have information on the crimes of the past to provide their testimonies, and, in general, regarding the flaws in terms of impunity of those responsible for the serious human rights violations committed. Many of those responsible continue to occupy positions of responsibility in the Moroccan administration, in the army or in the government of the Western Sahara. In this regard, specifically it mentions the frustration generated in victims who testified before the IER in public hearings as they were censured when not allowed to publicly mention the names of those responsible for serious human rights violations<sup>32</sup>. Concerning the alleged investigation of cases of forced disappearance of persons by the IER<sup>33</sup>, the WGEID noted that the information provided by the IER could not be considered sufficient to clarify the fate and whereabouts of the victims in accordance with international standards<sup>34</sup>. With regard specifically to human rights violations committed in the Western Sahara and the work

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30 There were two criteria for identifying collective reparation program beneficiaries under the IER: regions and communities that suffered massive or systematic human rights violations, and / or if they had a clandestine detention centre within the community. This is another example of discrimination against the Western Sahara with the PCCMI that is not recognized.

31 WGEID, *Report on the visit to Morocco*, A / HRC / 13/31 / Add.1, February 9, 2010.

32 *Idem*, Para. 36.

33 The final IER report mentioned that “742 cases of enforced disappearance have been solved”: namely 89 people died in secret detention sites; 173 died during their arbitrary detention without it having been determined where their remains are buried; 11 died during clashes between 1961 and 1964; 325 as a result of excessive use of force during public demonstrations; and 144 died during armed clashes in the Western Sahara. The IER said there were still 66 “pending” cases and handed them over for clarification to the CCDH. However, what is considered “solved” is a brief official statement, without any information on the research that reveals what treatment they were subjected to, those responsible, the circumstances of the facts, the whereabouts or fate of the disappeared nor any provisions whatsoever for the return of the remains, if any.

34 WGEID (2010) *report...., op cit.*, Para. 39.

carried out in this regard by the IER, the WGEID has noted that the latter has failed to clarify several cases pertaining to this region, and regretted the cancellation of the only public hearing scheduled in Laayoune. It also collected numerous complaints regarding instances of discrimination in access to reparation measures<sup>35</sup>.

Sahrawi organizations were marginalized in the process, to the point that they were outlawed by the very same State at the very same time as they set up the IER, which does not only imply an gross inconsistency, but questions the forms of compensation granted as part of the victims' rights<sup>36</sup>.

Such limitations on getting organised go against their rights of association and against any activity of reconstruction that are carried out in countries throughout the world by victims' associations. It is not just a problem of gross inconsistency; this has more to do with blocking the heart of any policy of reparation, which consists of helping victims to regain control of their lives so they may be active in the exercise of their rights and work towards their demands for truth, justice and reparation.

*What really affects me is that the Moroccans will not let us establish the association. They speak of reparations and for us having a headquarters for the association is part of that. Djimi El Ghalia.*

Continued repression, tensions and state policies in the Western Sahara made the IER's work impracticable as it did not abide by the minimum standards of a truth commission in the area. According to *Human Rights Watch* (2008), state authorities restricted the activities of human rights activists in the region, which is incompatible with any work of a truth commission. Shortly before the setting up of the IER, in June 2003, a court ordered the closure of local Moroccan Forum for Truth and Justice, alleging that it supported illegal "separatist" activities. The Forum was a Moroccan human rights organization that had an associated section in the Western Sahara.

In the same year, 2003, as the IER was being set up, the Moroccan parliament unanimously adopted an anti-terrorism law increasing detention in police stations from 8 to 12 days and that broadened the definition of terrorism to include those whose main objective "is disturbing public order by intimidation, force, violence, fear or terror"<sup>37</sup>. That law was adopted after the suicide bombings in Casablanca in May 2003, but has been applied on numerous occasions over the years against human rights defenders and people demonstrating peacefully proclaiming Sahrawi claims such as self-determination.

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35 *Idem*, Para. 45 and 53. See also para. 106 recommendations.

36 See the Introduction to this report.

37 N°03-03 2003 law to combat terrorism.

The 2003 revised Penal Code condemns attacks against the “Islamic religion, the monarchy and territorial integrity”<sup>38</sup>. The crime of “attack on territorial integrity” has been systematically applied against Sahrawis who claim the right of self-determination adopted by UN resolutions. Foreign publications which are found to have committed such offenses may be prohibited by the government, and the country’s journalists risk being tried and condemned, or have their publications suspended. For example, *Human Rights Watch* collected in its 2008 report that in 2005, after being pardoned for other crimes that limited freedom of expression, well-known Moroccan journalist Lemrabet was convicted of defamation and banned from exercising his profession as a journalist for 10 years. He had declared that the Sahrawi in the camps are refugees and have not been kidnapped as claimed by the Moroccan thesis, a statement that a Moroccan court considered slanderous.

According to *Human Rights Watch*<sup>39</sup> This decision illustrates the lack of independence of the courts when it comes to judging political issues, and notes that in the territory of the Western Sahara the presence of security forces is greater, freedoms are more restricted and tolerance of opposition is much lower. Furthermore, in 2005, national and international human rights organizations reported numerous cases of arbitrary detention and torture of Sahrawi detainees after conducting peaceful demonstrations. Twenty-one people were sentenced to up to four years accused of forming criminal gangs, use of weapons, blocking public places and violence against state agents. All this happened while the IER was working on human rights violations committed in the past.

## The struggle for truth

The search for truth is a basic ingredient in the process of rebuilding social fabric after armed conflicts. International experience shows the importance of research and public statement of truth for a country to be able to look forwards. At the same time, for victims of serious human rights violations, truth is the foundation that allows for a social space of recognition.

However, in the case of the Western Sahara, the truth on what happened to victims of serious human rights violations has not been recognized by the Moroccan regime in

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38 This type of crime is in section I “On attacks and plots against the Law, the Royal Family and the form of government”, specifically in Article 179 which refers to the following Law: *Dahir n° 1-02-207 du 25 rejeb 1423 (3 octobre 2002) portant promulgation de la loi n° 77-00 modifiant et complétant le dahir n° 1-58-378 du 3 jomada I 1378 (15 novembre 1958) formant code de la presse et de l’édition, Bulletin Officiel n° 5080 du jeudi 6 février 2003 stipule dans l’article 41 ce qui suit:« Est puni d’un emprisonnement de 3 à 5 ans et d’une amende de 10.000 à 100.000 dirhams toute offense, par l’un des moyens prévus à l’article 38, envers Sa Majesté le Roi, les princes et princesses royaux. La même peine est applicable lorsque la publication d’un journal ou écrit porte atteinte à la religion islamique, au régime monarchique ou à l’intégrité territoriale. Idem.*

39 HUMAN RIGHTS WATCH, (2008), op. cit., p. 112; see also Human Rights Watch (2005) *Morocco’s Truth Commission. Honouring past victims during an uncertain present*, vol.17, no. 11 (E) 16.

accordance with minimum international standards, all of which constitute a basis for the restoration of rights and coexistence. Those who have lost their families need to know what happened to them and where their corpses are<sup>40</sup>. Otherwise they are forced to go through an extremely hard grieving process and be excluded from new personal and collective projects. This demand is widespread among relatives of the “disappeared” both in the Western Sahara and in the refugee camps in Algeria.

*I need to know if he is alive or dead. If he is alive, I want to see him, know him, know what he is doing, what his life is like. And if he's dead, I want to pray for him, see his grave, and make his remains rest in peace. Both my mother and I have a right to know what happened to him. That is the any person's right.* Fatimetou Mustafa Daf.

The justified perplexity of the relatives is based on the fact that there is ample evidence of the forced disappearances their loved ones have suffered, often from the very moment of arrest and, in most cases, with testimonies from other victims who managed to survive and who saw those who would then be made to disappear during certain phases of their imprisonment and torture. Also, many of the perpetrators are alive and the security services files have exhaustive records from clandestine detention centres<sup>41</sup>, and therefore the Moroccan State has information that has not been provided to relatives<sup>42</sup>.

Denial of access to available information on cases is a form of torture for the families of the “disappeared”. According to the American system of human rights, not providing information on the reasons for the arrest or the fate of the detainees constitutes cruel, inhuman and degrading treatment<sup>43</sup>. In another case concerning a rebellion of prisoners that was quelled with loss of life, the Inter-American Court of Human Rights considered

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40 Art. 24, para. 2 of the International Convention for the Protection of All Persons from forced disappearances states that every victim of disappearance (meaning both the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance) “has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person”. On the issue of the right to truth in cases of forced disappearance of people, see also the general comment issued by the WGEID in 2010, detailing the obligations of the State in this regard (English version [http://www.ohchr.org/Documents/Issues/Disappearances/GC-right\\_to\\_the\\_truth.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf)).

41 See the chapter on *Modus operandi*, in Volume I

42 On the obligations that exist for States on files containing information on human rights violations, see principles 14 to 18 of the Updated Set of principles for the protection and promotion of human rights through action to combat impunity (2005). These notions have been further developed in the jurisprudence of the inter-American system for the protection of human rights, in particular Inter-American Court of Human Rights (IACHR), *Gomes Lund et al (“Araguaia Guerrilla”) v. Brazil Case*, Sentence dated 24 November 2010, para. 211 and 229-230.

43 IACHR, *Riebe Star case (Mexico)* paras. 89-90 and 91 (1999). See also, among others, Commission, *González Medina et al case v. Dominican Republic*, February 27, 2012, para. 263 and 270-275.



that undue delay in informing relatives about the fate of the prisoners had violated the right to humane treatment of all those who had suffered the uncertainty brought about by the lack of information<sup>44</sup>. The criteria stated here are also supported by the case law of the European Court of Human Rights, which considers silence and official indifference by the authorities to the demands of relatives of disappeared persons is a form of inhuman and degrading treatment against them<sup>45</sup>. Finally, it is worth pointing out that “refusal to acknowledge deprivation of freedom and concealment of the fate or whereabouts of the disappeared person” are one of the constituent elements of the crime of forced disappearance<sup>46</sup>.

The denial of information about the final destination of these people was systematic during the first twenty years of occupation of the Western Sahara. A considerable part of the cases of enforced disappearances have still not been clarified. There is only partial information from other cases. Such cases have not been adequately investigated nor has reliable information been provided to relatives; responsibilities have not been investigated, nor have the corpses been exhumed and identified and remains have not delivered to their families. A mourning process has not been allowed by means of information, delivery of the remains, or burials following the cultural and religious traditions of Sahrawi families.

*In the family, all we know and can say is that our relatives have been kidnapped in broad daylight and in front of everyone, and from that moment onwards we have not heard anything from them, we know who took them and what entity they belong to ... they are still alive, we know them and they work for a state and a government that still exists, there has not been a coup or change in the regime. Everything remains the same, so what happened to our family is the responsibility of the State. We do not possess the truth, they are the ones who have it but they are not willing to reveal it. Elhartani Mohamed Salem Hamdi.*

Recognition of the truth also helps victims and survivors have a greater social space and recognition. This is very important in the case of the Western Sahara because many victims have also been criminalized or pointed out as being guilty of what had happened.

Relatives of Sahrawi “disappeared” people demand to know the details of the facts, what happened, who was responsible, where the corpses are and what the fate of their relatives was. This demand is still very much alive and fills the experience of relatives of those “disappeared”, an experience in which time has not brought about any improvement in their

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44 IACHR, *Cairandirú case (Brazil)* paras. 76, 89 (2000).

45 See, inter alia, EUROPEAN COURT OF HUMAN RIGHTS, *Kadirova case and others v. Russia*, Sentence dated 27 March 2012, para. 120.

46 The International Convention for the Protection of All Persons from Enforced Disappearance (2007) defines enforced disappearance as “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person”. (Art. 2).

situation. Also, from a criminal law point of view, until they establish with certainty the fate and whereabouts of the missing person, the crime is still being committed and has a permanent nature, with the consequent impossibility of limitation for criminal action, among other matters<sup>47</sup>. Therefore, States have an international obligation to continue with the investigation of a forced disappearance until the fate of the “disappeared” person is clarified<sup>48</sup>.

*Our concern was to know what the Moroccan regime had done to our father. We want to know why they took our father. He was only supporting the cause, we want an investigation and to know why. If he was killed, the Moroccans need to recognize why they killed him, we have our rights over our father, we ask the international organizations to work for our right and we also have a brother we know nothing about. Mekfula and Tfeiluha Bundar.*

To know the causes and circumstances of what happened can help relatives and survivors come out of the confusion. In the absence of official explanations, the relatives are both affected and confused. The search for significance is part of the coping strategies that can help victims cope in a more constructive manner with the impact of violence. While the details of horror can generate a psychological impact against which family members should be prepared, the impact of the confusion and uncertainty are much more traumatic for most of the relatives. Truth relates to the facts and explanations about what happened, and many families seek to understand the reasons for what happened.

*One of the things is more information about what happened to my brother in prison, what they did until he died and another is what is what it is he did to be caught and made to disappear like this. S.M.E.B. Male.*

The recognition of truth should help, not only to know what happened, but to provide significance to the facts. Many victims try to explain the disappearance of their family members based on their behavior or on certain logic of proportionality with their conduct that does not work when people become an internal enemy.

*I want the Moroccans give me an answer on why they took him away. He was a shepherd who was with his cattle and they left his children to fend for themselves. I do not know yet but should have an reason. I would like them to explain why they took him, if they made a mistake or not, they should say so. Mariem Ahmed Suelim.*

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47 On the permanent nature of the crime of forced disappearance of persons, see among others: General commentary WGEID 2010 (in English: <http://www.ohchr.org/Documents/Issues/Disappearances/GC-EDCC.pdf>); Article 17 of the Declaration on the Protection of All Persons from Enforced Disappearances (1992).; and Art. 8 of the international Convention for the Protection of All Persons from Enforced Disappearance (2007).

48 In this regard, see Art. 24, para. 6 of the International Convention for the Protection of All Persons from Enforced Disappearance (2007).

Attempts to obtain recognition of the truth as from the experience of the IER were finally frustrated. The lack of response on the events or on the fate of their relatives has been part of the behavior of the Moroccan State from the moment the relatives began to raise their demands for a search. The Moroccan government has not given any acceptable response for relatives over the years, either through the *Conseil consultatif des droits de l'Homme* or through the IER, even though they have such information.

*At one time they said they did not have the “disappeared”, that they had gone over to the POLISARIO, or that they had died on the way. We were sure they had them, because they were arrested by the gendarmerie and they held them in their barracks. Now they tell us they are already dead or executed, then why did they not tell us this from the beginning? It is clear that they have no will to solve this case. They want to cover it up and that's it. We do not trust them at all. For example, of suspected cases of execution, they never told us. We have sent a letter to the Human Rights Council, asking for explanations on the cases of those executed as well as of the dead, saying they should give us information on how the facts took place, but there has been no answer. Aminetu Omar.*

*Officially, we have not received a response from the Moroccan authorities. In 2010 they published in the Internet that thirteen of the “disappeared” people had been tried before a military court and executed and that others had died in prison. When they released this information, we asked them in writing to provide clarification about the circumstances of the death of people who they said had died in prisons and to be told how and where they had executed thirteen people. We also asked for copies of the sentences imposed by the military court, but they did not reply. Zainabu Bukrim.*

In some cases it was the relatives or friends who had been arrested who informed about the death of their relatives in clandestine detention centres, but the Moroccan authorities have not provided any specific information about these facts<sup>49</sup>.

*We demand that Morocco recognise that we spent sixteen years of our lives as “disappeared” persons, we saw the corpses of our mother and father, we want them to recognize that they destroyed our lives. We want to know where the corpses of my mother and father are. Mamia and Fatma Salek.*

Having carried out its visit to Morocco in 2009, the WGEID expressly stated that it is not enough to refer to the existence of mass graves or burial pits, but the state has an

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49 With regard to international standards and obligations on exhumation, identification and return of remains, see, among others, a March 2010 report on the progress of work by the Advisory Committee of the Human Rights Council on best practices in regarding the issue of disappeared persons (a / HRC / 14/42 dated 22 March 2010); the Advisory Council of the Human Rights Committee published its report on best practices related to the issue of disappeared persons (doc A / HRC / AC / 6/2 dated 22 December 2010.); and Art. 24, para. 3 of the International Convention for the Protection of All Persons from Enforced Disappearance, which states that each state “take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains”.

obligation to exhume bodies and identify them according to international standards, even by means of DNA sampling<sup>50</sup>. The WGEID recommended that Morocco use independent coroners for this purpose.

Also, in its general comment on the right to truth in relation to forced disappearances, the GDTFI has clarified that “the right to know the truth about the fate and whereabouts of the disappeared includes, in the case that the disappeared person is deceased, the right of the family to have the remains of their loved ones returned to them, and to have those remains buried in accordance with their tradition, religion or culture. The remains of people must have been identified clearly and indisputably, even by means of DNA samplings. The State, or any other authority, should not undertake the process of identifying the remains, and should not dispose of these remains, without the full participation of the family and without comprehensively informing the general public regarding such measures. States must take the necessary steps to use forensic expertise and scientific methods of identification making the best possible use of available resources, including international assistance and cooperation”<sup>51</sup>.

International standards show that States have, as part of the duty of providing guarantees, the obligation to investigate all violations of human rights in a serious, professional manner and with all the means at its disposal. This obligation extends not only to the State of Morocco, which has the primary obligation, but also to the Spanish State of which many of the “disappeared” Sahrawis were legally citizens<sup>52</sup>.

*Our relatives were kidnapped in broad daylight with witnesses. We asked the Moroccan State for a death certificate and to tell us where their corpses were, the Moroccan government is solely responsible. We want to know the whole truth. If they were executed, we want the sentences. Our family had the Spanish nationality and Spain that has done nothing for its citizens, it is also responsible. Sidi El Bachir uld Gala uld ElHussein.*

In other cases, the investigation on the truth of what happened and on those responsible refers to facts that have never been recognized by the regime, as in the case of the bombing of civilians in the exodus in the desert in 1976. The Um Dreiga bombing case is emblematic in this respect, because of the many witnesses of the facts, and because of the data provided in this study although it is a reality that has never been recognized by the Moroccan state,

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50 WGEID, (2010), *Report ...op., cit.*, Paras. 41-44 and 106.

51 WGEID, (2010), *General Comment on the right to the truth in relation to enforced disappearances*, para. 6. Available at the following URL: [http://www.ohchr.org/Documents/Issues/Disappearances/GC-right\\_to\\_the\\_truth.pdf](http://www.ohchr.org/Documents/Issues/Disappearances/GC-right_to_the_truth.pdf). Unofficial translation and highlighted text.

52 Art. 15 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that States “shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains”.

even though this was not the only bombing carried out by the Moroccan aviation, and although there are other places that were bombed, like Guelta or Tifariti. The investigation of the facts, the delimitation and research of burial pits where the corpses were buried and human remains are still today a demand that requires recognition and compensation by the Moroccan state. None of these serious violations of international humanitarian law has been investigated by the IER or other Moroccan instances nor has an independent international commission that can shed more light on these facts, exhume the corpses, identify the remains and the causes of death and return them to their families, been established yet.

*No, these things are known but nothing has been written. We are the victims of an injustice and we are claiming what is rightfully ours. Bubeker Banani Abdellah.*

For most of the victims who testified for this study, the research and recognition of the truth has the foundational character of a new situation in the Moroccan State with regards to victims and its own people. Such research and recognition are the central elements on which one can later build up an agenda of reparation or conflict transformation. And this recognition is considered part of a package of measures that entail a change in the situation of the Sahrawis in their own land. Without recognition, as indicated by this witness, there is no equity or reconciliation.

*I want an answer Why were we there? Why were we treated like this? What was our crime? I do not care for any compensation or rehabilitation, nothing can rehabilitate or compensate even one day of freedom. I was almost blind, I lost one eye and my other eye is very weak, but my belief is very strong. So, I will never admit anything from those responsible if I do not receive an official apology, not to mention a serious and honest investigation on the whereabouts of the victims of my people and until we receive the bodies of the deceased. A right to integrity, to freedom of movement, to a dignified life and I am telling you that there is no equity, no reconciliation. Said Sid Emmu Brahim Said.*

After years of maintaining their claims against the Moroccan state and negative or totally unacceptable responses provided by official bodies, many victims demand the involvement of independent institutions in order to accede to the right to truth in the Western Sahara. This demand is coherent with international experiences of truth or research commissions that need to have the necessary independence to generate credibility. They must also submit to international standards on such research<sup>53</sup>.

*I would request researching about the fate of the “disappeared” and I hope they help non-governmental organizations and human rights organizations, if they are dead, I want to know how they died and if they are alive or jailed I want to know where they are and if the rumour that had died is true, they should say*

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53 In this respect see principles 6-13 of the aforementioned Updated Set of Principles for the protection of human rights through action to combat impunity, detailing international standards and criteria to be met by truth commissions.

*so. But I trust the human rights organizations will find out about the fate of the “disappeared”.* Moumen Mohamed Embarec Zaidan.

*What we want is that the institutions that monitor human rights and especially from Spain, which has a lot of responsibility, to bring us clear answers and evidence from Morocco. If they have died, they should show us photos, burial sites and tell us where it all happened, and then we will be able to have faith in the word of Morocco.* Ihidih Hassena.

## **The IER report and the list posted on the Internet**

The IER report was published in 2006. A detailed reading of the report shows that a summary of the cases researched cannot be found in its pages as with other truth commissions (Chile, Argentina, Ecuador), or a list of cases with the basic circumstances of the facts and the responsible institutions (Guatemala, Peru) or an in-depth research of emblematic cases that show the pattern of repression against the civilian population (El Salvador, Guatemala, Paraguay). In other words, this report does not fulfil the basic standards in terms of knowledge of the truth of the facts and of the situation of the victims. This analysis is also true for most of the Moroccan victims.

### **Truth Commissions**

Over the last three decades such commissions have been set up in over 25 countries, albeit with different names and mandates. These commissions are temporary entities that research patterns of human rights and international humanitarian law abuse and violations committed over a period of time, such as the duration of a war, a dictatorship, or a period of violence. They are officially empowered by the state to work and when they have existed in a post-armed conflict context, they are the result of a peace agreement. Their effectiveness depends on their independence and on the recognition of their members and their ability to investigate or the quality of their work. Generally they have several commissioners, people who generate social consensus among the different parties, and enjoy moral recognition. Some commissions have had commissioners only from the country they were set up in, but in places where there has been an armed conflict, there has been a participation of UN members to facilitate and support its independence. Truth commissions are not judicial bodies, nor should they be considered as substitutes for criminal justice.

In addition to its report, subsequently, the IER provided an individual resolution of the case to family members who presented their cases before it, which contained no evidence of any relevant information about the circumstances of the disappearance and the fate and whereabouts of the victim, at least in the Sahrawi cases reviewed for this research. These resolutions only admitted the IER's competence (or not) in the case and the compensation due, while recommending other measures of reparation. Victims and relatives had no

access to the truth, official records or reports and dossiers of the cases researched by the commission.

Meanwhile, the answer given by the Moroccan authorities in many other cases continued being the same it had been until then: no information or that probably the person had fled to the Tindouf camps, or any other explanation that denied the facts. For example, Mariam Lahmadi was arrested when she was about to cross the wall built by Morocco to go to the refugee camps in Tindouf, in 1992, in a desperate move to escape from Moroccan control with a group of young people. She was a minor at the time and was with her sister Fatma who was part of the group. Her sister has “disappeared” since then. After presenting her case to the IER, official authorities did not give any response regarding the disappearance of her sister. The information from official sources had always noted that she must have fled to the Tindouf camps. However, four years after the IER had finished their work, the *Conseil consultatif des droits de l’Homme* (CCDH – Consultative Council on Human Rights) published a list of people in the Internet who they claimed were dead, including Fatma Lahmadi. During all the time between 1992 and 2006 first, and then from 2006 when the IER completed its work until 2010, the Moroccan version of what happened to her sister denied the facts. This denial has been an attack on the psychological integrity and dignity of Mariam and her family, especially her mother.

*Nobody from the Council got in touch. Only people like Hartani who is also a relative and some members of our committee of relatives. When they read the report online they made copies and went to see their relatives to tell them the outcome. But the Council so far has not contacted us. This answer has not changed anything. The only thing is the recognition of the state, because before that they had completely denied their responsibilities reference to this disappearance. Now, after this answer, after this report, we do not know if this is true or not true. We are convinced that there has been no real research. We are still suffering. Mariam Lahmadi.*

In another of the recent cases of enforced disappearances after arrest by Moroccan security forces in November 1992, that of young El Koteb El Hafel, his family only received in response denials of the facts for eight years. In 2010 his name appeared on the list and was marked as deceased. The Moroccan regime had not had any official contact with the family for about ten years to explain what had happened when this research was carried out.



### **Without recognizing the disappeared**

According to the report by the CCDH published in 2011, three detainees died after going to the hospital. In these cases the time elapsed between arrest and death was just a few days. However, nothing is said in the report on the circumstances of their deaths. One of them, El Kairawani Said Mohamed Ahmed, arrested by police in Laayoune on 18 October 1992 was held incommunicado at the headquarters of the rapid intervention forces (PCCMI) in Laayoune. In that case, the report stated that “*after degradation of his state of health, he was transferred to a hospital, on November 2, 1992, where he died*”. That is, two weeks after his arrest. He was 27 years old. Five days after this death, El Koteb El Hafed uld Yadih Ahmed Salek was arrested and held incommunicado also in the same PCCMI barracks. According to the response contained in the list published “*after degradation of his state of health, he was transferred to a hospital, where he died*”. He was 19. In these cases clearly the CCDH report was omitting relevant information about the circumstances of death and the conditions under which this occurred: two young men and after short periods of detention without clarifying the circumstances of violent arrests. Both cases are clearly cases of torture witnessed by other detainees. The corpses have not been exhumed, identified and returned to their families.

This report by the *Conseil consultatif des droits de l'Homme*, which provided official information on cases of enforced disappearance, was published on the Internet without any contact with the relatives who had been demanding the search for the disappeared for decades. The publication of the list at the end of 2010<sup>54</sup> was not known a year later in 2011 by many of the victims interviewed, who were people with little knowledge or without technological access and the elderly. No official communication was sent to the families, even though the Moroccan regime had all the data previously provided by many of them to the IER or in other cases could have provided the information to refugees through MINURSO.

*No, I'm not aware of this. I know nothing. I do not have anyone who will look for all of that to tell me. No, absolutely. They always despise women and especially an old woman who they know she knows nothing. They will never look for her to give her her rights.* Salka Ayach.

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54 The CCDH held a press conference on January 14, 2010 to publicly present “The monitoring report of the implementation of the IER recommendations”. The report itself was published but the 4 annexes (1- on cases of disappearance / 2- on individual reparations / 3- on collective reparations / 4- on reforms) were not. Almost one year later – on December 2010 - 3 of the 4 annexes were published, this time without a press conference and just a statement on the Internet.

The information provided by this list is terse and limited, partial and fragmented. Deaths, in many cases, are listed without dates. In others, they point out that the victims died in the midst of suffering, but without pointing out the tortures they had been subjected to, intentional malnutrition and lack of treatment, or those responsible for such deaths.

*You do not know, there is just some loose news. He appeared on the list as having died after torture and suffering, but they provided no explanation on how he had died and where, just some very opaque information. We are not going to let this stay this way, so we want to know the reality, how he died, where the tomb is. If he is alive where he is, we want to see him, and if he is dead, we want to know where the remains are. Alia Jedahlu Badah Sid.*

In other cases the versions given by the official report avoided any details of the facts, which questions its credibility and the intent thereof.

*The IER sent us a resolution which includes his death at the military base. But they have not informed us, they just said he had died and that they would inform us of the place where he was buried and so far we have had no information. We have not been given a death certificate nor have we been informed of his place of burial, or about his remains, nothing, just nothing. We have only got in touch with the IER and in the end it was all in vain and without results. Ahmed Baddad.*

### **Disappeared children**

As acknowledged by the Moroccan State in the report by the *Conseil consultatif des droits de l'Homme*, 14 children died in barracks converted into clandestine detention centres, while held as disappeared detainees. 13 of them were under custody between late 1975 and early 1977, which clearly shows a pattern of forced disappearance of minors at the time and the terrible conditions of detention and torture suffered by these children (see the chapter on persecuted childhoods).

*Aziza Brahim Sid: She was arrested with her mother in February 1976 and was kidnapped with her at the Inzegun headquarters of the rapid intervention forces, over 650 km away from the Sahara. After about a month since her arrest, she died when she was three or four months old.*

In other cases it is pointed out that this lack of research or recognition was manifest from the very moment the application to the IER was made. According to what one of the testimonies of former members of the auxiliary forces who was also arbitrarily arrested for three years and four months for opposing practices of looting, the response by the

institutions responsible for researching his case was to have his case rejected by the IER on the grounds that this was a problem of military discipline<sup>55</sup>.

*Why did they do this to unarmed people? They didn't even have documentation; they burned their tents, everything the people had, killing their cattle and taking them to an unknown destination. I told them that they should not do this and they replied they were executing the king's orders. I told the people of the IER that either the king had full responsibility for what had happened, because he had given orders to his officers to do that, or those officers had done something against the people which placed them against the king. There was a snag there. And hence they draw the conclusion that I'm playing with "what is sacred."*  
Mohamed Lehwaïmad.

The next case is that of a woman raised by her grandmother who had "disappeared" in 1984 and whose case was presented to the WGEID in 1990. Morocco's response to the WGEID was that that person had gone in April 1985 to Mauritania, without providing any information about their sources or her destination. Years later, in 2010, Morocco published the list in the Internet according to which Fatimetu Ahmed-Salem Baad had been detained and disappeared on April 4 1984 and had died in the PCCMI at Laayoune without providing a date of death. Such is the contradictory information without documentation that the Moroccan state endorsed has led to a lack of credibility with respect to their research due to their disrespectful attitude towards Sahrawi victims.

*In the case of my mother (grandmother), the Working Group on Enforced Disappearances in Geneva sent a demand for response to Morocco and the authorities responded that this woman had travelled in 1985 to Mauritania to live with her family. However, the latest 2010 report states that she died in 1984 at the centre I was detained at, in Laayoune at the PCCMI. She was my father's mother, but I consider her as my mother because she was the one who brought me up. With this we have to say that they have done no research whatsoever. The material we sent to the IER has simply not been looked into.* El Ghalia Djimi.

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55 KINGDOM OF MOROCCO. CCDH. COMMISSION FOR THE ACTIVATION OF THE I.E.R. RECOMMENDATIONS ARBITRATION DECISION. Record number: 9527 Case: Mr. Mohamed Lehweïmed. Writ No: 12756 Date: 31/12/2008. So the application filed by Mr. Mohamed Lehweïmed consists of being granted compensation for damages resulting from arbitrary arrest he was the victim of from 11/11/1976 to 03/25/1980 and which was committed by the Royal Gendarmerie and the Auxiliary Forces. As can be seen from the documents in the file and the research conducted by the IER, confirming that Mr Mohamed Lahweïmed was a member of the auxiliary forces when he was imprisoned in their centres until 25.03.1980, date on which he was excluded from work, so it is concluded that the facts lie within the framework of the foundation of military discipline; for these reasons your claim is not covered by the powers designated to this instance which only has the power to repair the consequential damages of arbitrary arrests, involuntary disappearances for political and trade union activities. (Unofficial translation from Arabic into Spanish and from Spanish to English).

In one case the Sahrawi organizations denounced the existence of a human corpse, probably a victim of Moroccan repression and the state institutions, including the IER, were gave no response to the Sahrawi complaint.

*And again I say that these institutions created by Morocco, the Council, the IER and so on, it is all just whitewash. Meanwhile in the field and in reality they have done nothing at all, nor have they carried out any research to ascertain the whereabouts of the disappeared. The proof of this is that we have today the remains of a corpse that has been found on the outskirts of Laayoune, we have written to them to come to investigate and they have not even replied. Elhartani Mohamed Salem Hamdi.*

### **Explanations about the cause and circumstances of death by the CCDH in Sahrawi cases**

In that response, the State provided the same stereotypical answer as for many of the detained-disappeared, according to which “*there is strong evidence that he/she died during captivity*”. No explanation about the circumstances of the victims’ deaths, about their final destination, about what happened, about who was responsible, or the cause of death. In some cases the dates of arrest and death identified by the State show that this was likely the product of torture, but there is no mention of the causes or circumstances of death. For example, in the case of Haboub uld Mailed uld Sidi born in 1941 in Saguia El Hamra, the CCDH report recognizes that he was arrested near Zak, on January 4, 1976. He was moved to a military barracks in Foug Lahsen where he died on January 8, 1976.

That is, Jaboub was 35 and his death took place 4 days after his detention in military barracks. In other cases, like that of Mohamed Lamin Ouissi, who was arrested with his father in October 1976, the report notes that he was at the headquarters of the rapid intervention forces in Tan Tan where “He was kidnapped and held in difficult conditions, dying as a result”. In other cases the response detailed that “there is strong and consistent evidence that he died during captivity” like in the case of Mohamed Abdellah uld Ramdan uld Mohamed Lamin uld Saiba, arrested on February 22, 1976, in Amgala by the army, who died in the military barracks in Smara. That is, the CCDH states that they have evidence of who and how they died, but did not provide such evidence to their families.

In other cases there were deaths in Laayoune prison, known as the “Black Jail”, which is still a detention centre even today. All of these deaths occurred between 1976 and early 1977. The Moroccan state recognizes that 23 people died in extreme conditions. For example, in one case, Ali uld Nayem uld Fekou, 22, the CCDH recognizes that he was arrested in Smara, on July 10, 1976, and “brought to the gendarmerie centre in Smara and then to Laayoune Prison where he was held in harsh conditions, which brought about his death in 1977”<sup>56</sup>.

The largest number of respondents who were unaware of this list was in the refugee camps. No refugee victim could make demands before the IER because they had to be in Moroccan territory. And none of the victims in the refugee camps has had any official information about what happened. The IER was perceived by many victims as an instance without credibility and there was no official demand from the Frente POLISARIO to Morocco for reparations to Sahrawi victims, as they preferred to leave the matter at the initiative of the victims themselves.

*I have never seen that list. I've never heard of it. I ask Morocco to give me back my son or any information about him. I have no family in the Occupied Territories. They captured him wounded and I am sure the Moroccans have him and all I ask is that they give me information about him, because they are responsible, because he was captured alive and with no serious injury and all I ask and keep asking is that they return my son to me. Maiziza Najem Mohamed.*

*No, we know nothing of that report, or of any list. Anzatta and Luali-Ha- madi Luali.*

*I've heard about it, but nothing has reached me. I do not know anything about that. Elghali Ahmed Lehsen.*

Conditions in the refugee camps, isolation from their families, the lack of contacts or the death of relatives in other cases also prevented the knowledge provided by relatives or organizations from reaching people at the refugee camps. Both in the Western Sahara and in the Tindouf camps, the sources of information on such a list were the Sahrawi human rights organizations.

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56 That is, these are cases of torture leading to death. In accordance with international standards, states have an obligation to investigate and fully document torture cases, in order to clarify the facts and establish and recognize the responsibility of individuals before victims and their families. However, as clarified *inter alia* in the Principles on the Effective Investigation and Documentation of Torture and other cruel, inhuman or degrading punishment (adopted by the UN General Assembly in its resolution 55/89 dated 4 December 2000), given the existence of signs of torture, the states have an obligation to investigate and fully document the facts in accordance with international standards, in order to clarify such facts and establish and recognize the responsibility of individuals before victims and their families. In addition, research and complete documentation of cases of torture by the authorities should facilitate the prosecution and punishment of persons whose responsibility has been determined during the investigation, and should demonstrate the need for the State to provide full reparation, including fair and adequate financial compensation, and the means for medical care and rehabilitation.

*We learned through AFAPREDESA the content of that report. My husband appears on that list. It is true that we believe that he died as confirmed by the report, but they should provide the evidence that proves that he actually died and not just make a statement. Fatma Bachir.*

*We have demanded clarification of the whereabouts of the disappeared, and in case they are dead they should give us back their remains. Neither the Moroccan authorities nor any other organ has provided any notification about the disappearance of my parents except the list published in the Internet by the IER. My father appeared as deceased, but do not know the truth about it, we have no evidence that he is dead. Elgalia Baba Sidi.*

The appearance of the list of “disappeared people” that the Moroccan state referred to as dead had a huge impact on relatives. First, because of the way in which the information was published without any prior contact with families, which not only means a lack of care but also a lack of respect for their dignity. After years of systematic denial, the first response they receive from the State responsible for the disappearances is a list with a minimum reference like the year or place of death, incompletely and without any details on the facts or circumstances of such a death. In many cases the references are generic and similar to each other in both a stereotyped and bureaucratic manner.

*We received no reply. In 2010 a commission from the IER published on the Internet that all the disappeared had died in prisons except the 13 who had been tried by a military tribunal and executed. We ask them to provide us with a copy of the sentences passed by the military tribunal which allegedly tried and sentenced them. As for the others we asked for death certificates and where they are buried, if they are in Sahrawi territory to show us where so we could visit them and if they are in Moroccan territory to bring us the remains for burial here. We have not received any official notification and I believe we do not deserve such inhuman treatment. Hab-bla Lehbib.*

The lack of consideration for the families of the victims of enforced disappearance has made many people lose any semblance of confidence, and that state agencies do not have the necessary credibility to investigate the facts or to review the replies to the families.

*It was a very sad moment, but there is no absolute certainty of what is alleged, and therefore there is doubt. They never contacted us and I hope they continue that way because just cannot stand them. Fatma Bachir.*

This lack of consistency shown by the Moroccan authorities, and not an initial distrust or rejection response, is the cause for the lack of credibility of the Moroccan state as it stood before the victims from the Western Sahara.

*In 1999 Morocco provided a list through the United Nations. There Morocco claimed that my father was in Mauritania but this is totally false, my uncle was*

*indeed there but not my father. There are three different versions of how my father disappeared. There are so many lies that it is difficult to believe what they say and we must have evidence and there must be pressure from human rights organizations to engage more consistently and give the exact answers.* Ihidih Hassena.

The appearance of the list of Sahrawi victims in the Internet also had a totally negative psychological impact on many families interviewed because of the way this was done, with little or no information provided, and the contrast between a strong statement but the absence of details on the facts or authors.

*We consider him disappeared because we have no other information to prove otherwise. The so-called Instance Équité et Réconciliation is just a name, because so far it has not provided us with anything else except just another way to torture us and make us suffer. Sometimes they call us on the phone to bribe us so we stop researching the case, their true face was discovered when they presented this report that shocked us very much, and we reject because it lacks credibility and only contains our statements without them being ratified with the delivery of the remains of the supposedly dead, my brother and Said El Kairawani.* Hamma Koteb.

Also, the list posted on the Internet had a negative psychological impact because of the absence of explanations about the reasons and the fate and whereabouts of relatives or their remains, and relatives had had no direct personal contact with the authorities. All these elements have brought greater grief to the relatives of the “disappeared”.

*This report has done us great harm, because we only saw it on the Internet, and they have not respected our feelings as families. After all this time the name appears on a list of executed or deceased, and all they have done is publish it on the Internet and that's it. They do not care how this affects us. Where is the court in which the trial was held to condemn him to death? Where are these judges who did that? Why did they not inform us about the sentence? Apparently they have been tried, convicted and executed at the same time. Besides, we do not trust them.* Aminetu Omar.

*The December 2010 IER report states that my father died during the war in Moroccan military barracks three months after his arrest. The report also says that at that time my mother came to take food to him at the barracks, but that's a lie<sup>57</sup>.* Jandud Hafed.

*In relation to the Moroccan report published by the CCDH, a name similar to my brother's name is mentioned: Cheikh Cheikh Ali, but with a different age and for me*

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57 Jandud Hafed's father is called El Hafed ould Hamma ould Embarek, he was “arrested on July 10, 1976 at home at 10 am, in the presence of his wife and son. After a week, her family was allowed to take food and blankets to the barracks where he was kidnapped. And since that day, the family had no more information on his whereabouts. There is strong evidence that he died during the kidnapping”. Information according to the CCDH.



*this is just a manoeuvre to put an end to this matter.* Mohamed Cheikh Ali Aabeidi.

*It was a very strong shock. What surprised us the most and intensified our grief was the way they did it and especially the degree of irreverence with which they had tried the cases, and even more coming from a body that should have had a different style from that they had adopted. Normally, they would have informed us and have behaved differently with us. The fact that we found out through the Internet made us feel that we were being despised.* Elhartani Mohamed Salem Hamdi.

Although objectively the publication of those lists is an implicit recognition of the State's responsibility in the facts, that publication did not comply with international standards of the international human rights law<sup>58</sup>.

*I am against this report. I demand from Morocco more detailed information with everything that happened to them in prison, how they died, why they took them away, dates, those responsible ... And what force they belonged to we know, because we know who kidnapped them and surely there will still be one or two alive who can tell us what they did, if they threw them from a plane they should say so, if they tortured them they should say so ... and why they did it.* Jaiduma Salma Daf.

*I do not think there is an institution in Morocco that is independent of the state, they are all part of it, this is only for the world to see Morocco separating from its past, but I think all the leaders of the institutions like the IER or the CCDH are linked to power. None of the leaders can see the Sahrawi cause in a democratic way and cannot do anything that the Moroccan State does not accept.* Saadi Mohamed B.

In some particularly emblematic cases, like the case of the 13 “disappeared”, the State of Morocco points out that they were summarily tried and executed, and the information compared to other similar cases of Moroccan victims has a huge difference<sup>59</sup>, as pointed out in the following testimony from one of the victims' children.

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58 WGEID (2010) *Report ... op cit.*, Para. 39.

59 In this regard, we can mention the case of the opposition group of former members of the resistance and liberation army in the region of Oulad Bousbaa (The Moulay Ach-chafi'i case). This is a group that took up arms and took refuge in the nearby mountains during the campaign of arrests carried out against some of the leaders of the Resistance and Liberation Army in the area in 1960, following clashes and tensions experienced throughout the country in late 1959 and 1960. Seven people were executed on March 24, 1960, after passing through a military court and they were buried in the cemetery of Zaouiya en Oulad in the village of Zir Saidat. The IER after its research could “confirm, after checking the registration of deaths in the municipality of Chichaoua in March 1960, that the data concerning the identity and date of death of these seven people have been entered in the register together with other deaths of citizens of the region in chronological order. Based on this, and thanks to the information gathered from different sources on the subject, the IER could locate the graves and see that the aforementioned seven graves are single tombs. Within the framework of its objectives in terms of establishing truth, equity and reconciliation, the IER participated in the funeral ceremonies in memory of the group members in the Saidat Zaouiya cemetery on October 30, 2005”. IER, (2009), *Final report. Truth and responsibility concerning human rights violations*, Vol. 2 CCDH, Rabat, p. 45.

*Obviously, after reading the report, which gives us information which does not satisfy us at all, because it was just a list of names saying they were executed but with no mention on how or when they were executed and without providing any evidence, and even fewer explanations or details. In reality it provides no information, especially in the case of those who have been executed, not even where they are buried, nor the sentence, nor the court that tried them, or dates, or sentence file number. It is also quite strange that my father was arrested in mid-July, tried on 13 October and executed on 19 October 1976. It is a very short time. Especially, our doubts increase when compared in the same report and the same category, with cases of Moroccans who were soldiers involved in attempted coups, and there they do provide information on the court, the sentence reference number, when they were executed ... all these data are there and then it does look reasonable. In the case of the Sahrawis it is simply nothing more than a list.* Elhartani Mohamed Salem Hamdi.

As in all other countries that have experienced the phenomenon of enforced disappearance, relatives here also claim for truth, exhumation and return of the remains of their loved ones or determining the fate they suffered.

*Our main demand is to know what happened to the abducted people. If they are alive we want to see them again, and if they are dead we want to see their remains.* Neitu Sidahmed.

This demand is the most heartfelt and is part of the collective aspirations of the relatives of disappeared people.

*I do not agree with anything that the Moroccan authorities have done, because they have not acted responsibly in this regard. We, the relatives of the disappeared are very confident of our demands and we are not going to change our minds and accept other alternatives, we just want to clarify the whereabouts of the disappeared, as well as compensation and recognition of the victims and that the perpetrators are held accountable to justice for what they have done.* Zainabu Bukrim.

*The request comes from all the families, because this is not an isolated case and one cannot separate the individual and family request from the collective demand. In this process we have never asked for compensation, we have always asked for the truth of the facts, that they are given back to us alive and if they are dead, they should hand over their corpses and the death certificates along with a Moroccan recognition of the facts.* Mohamed Mukhtar Embarec.

This struggle for truth has been active from the moment of the disappearances, and then after the release of the detainees who disappeared in 1991. Since then, our demands to the State of Morocco, and even to the UN WGEID have been continuous. The memory of the disappeared is still a shared memory that is being transmitted to new generations for the State to provide an appropriate response to the needs of the victims in accordance with international human rights standards.

*It is a case that we will pass from generation to generation, telling our children to continue the search.* S.M.E.B. Male.

## **An example of an inconsistent response to victims' rights**

One of the CCDH's responses to demands by victims, similar to many others that were reviewed, is the one received by Taki Sidi Ahmed Badad's family, who had filed complaints with the IER dated February 19, 2003, and February 6 and February 12, 2004. Taki Sidi Ahmed is still "disappeared" after his arrest in 1976 outside his home by members of the Royal Gendarmerie and the military. He was detained together with his three sons, Ahmed, Abdalahiy Mohamed. The four were taken to the Haguniya military headquarters where they were held for seven days and then taken to the BIR in Laayoune, and that was the last that was heard from Taki Sidi Ahmed<sup>60</sup>.

Since the release of the temporarily "disappeared" in 1991, the response by the Moroccan authorities was that if someone was not released it was because he or she was dead. For 12 years families were given no explanation of what had happened. The complaint the family submitted to the IER requested: A) review of the compensation awarded by the Arbitration Committee for the alleged death of Badad Taki, on the considering that it was too low; B) that they be given the body, told the place of death, provided with a death certificate, that the remains be turned over, that the truth be revealed and that the perpetrators be prosecuted; C) that the family be compensated for the loss of its real estate property; D) that health care, and rehabilitation and reinsertion services be provided to family members.

Nearly six years later, on November 31 (sic), 2008, the Consultative Council responded as follows:

1. That the investigation carried out found strong indications that, in fact, the late Badad Taki Sidi Mohamed had died while being held in custody at the Haguniya military barracks in Laayoune province.
2. It considers that the IER is not authorized to review compensation amounts based on Article 9, paragraph 4.2 of its internal statute, but is empowered to review remaining cases that did not fall under the jurisdiction of the Arbitration and Compensation Committee. Health care must be provided to the widow and children, along with rehabilitation and social reinsertion measures for the children who were minors when he was arrested and then "disappeared" and to provide a death certificate and take possible measures to determine the deceased's place of burial and notify his family thereof.

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<sup>60</sup> According to the report published by the *Conseil Consultatif des Droits de l'Homme* (CCDH – Consultative Council on Human Rights), Badad Taki Ben Sidi Ahmed was arrested by the gendarmerie on March 26, 1976 at Haguniya and taken to the Haguniya military base, where he was imprisoned until his death.

3. It also states that it has no power to grant any compensation for real estate losses, finding them inadmissible.
4. Regarding the request for rehabilitation, clarification of the truth, and an official apology, it states that these issues were already determined and resolved by the IER final report.
5. It recommends the government take necessary measures to provide for health and rehabilitation for the widow and social insertion for the three children, provide a death certificate, and take measures to determine the place of burial and inform the family thereof.

Signed: Sidi El Mousau. November 4, 2010

In the response by Morocco's CCDH, there is no recommendation that an investigation be conducted to find out the truth regarding what had happened or, as appropriate, the individuals responsible for his death. The investigations that provided the basis for the Consultative Council *finding strong indications pointing to* the death of Badad Taki Ben Sidi Ahmed and that led it to state so conclusively that it considered that he had died while in detention and "disappeared," were not shared with the family.

Meanwhile, detailed information was provided to the IER by the family on what it had experienced. The three sons were taken into custody along with the father and were tortured. Other detainees who were later released told the family details about the treatment the father received.

*I recall being present at the time of the arrest. Taki was at home. It was about 10 o'clock in the morning. A gendarmerie unit and the Royal Army came and arrested him outside his house and took him away. One hour later they came back with him to arrest us and his three sons, Ahmed, Abdalahi y Mohamed. We spent seven days with him at the Haguniya military base and then they transferred us to the BIR base on the beach. We never found out whether they had transferred him there or not, because we were blindfolded. The last people to see him told us that they were cruelly tortured, that they were hung, dragged along the floor, drowned in a tank of water... subjected to all types of torture, blindfolded, that most of the time they could hear but not see anything. I'm only saying what I saw myself regarding how we were treated. The torture reached got to the point where they would urinate on our bodies and force us to relieve ourselves in the same place in which we slept and ate. It was like a pig sty. The smell was unbearable. So, we went through the unimaginable. Ahmed Badda.*

Furthermore, since this information could have been easily relayed to the family, it can be surmised that if this was not done in this or in any of the other Sahrawi cases reviewed, it was for a specific reason. It could be either that there was no such specific investigation in reality, or because it contained details that the CCDH could not or did not want to

reveal to the family. As in other cases studied, this communication with the family, after decades in which the State had provided no response to their demands, had an enormous psychological impact, as stated in the son's testimony.

*They didn't inform us. They just said that he had died and that they would tell us where he was buried and to date we've received no information. They have not given us a death certificate, or told us where his remains are, nothing, nothing.*  
Ahmed Badda.

The facts surrounding Badad Taki Ben Sidi Mohamed's death and all other deaths from torture or illness were hidden from families and denied for decades. Burial was probably carried out in secret, since no judge certified death or ordered interment, etc., keeping in mind that these were people who were under the custody and in the hands of the Moroccan State<sup>61</sup>.

## **Exhumations and the right to grieve**

Faced with demands for investigation, identification of remains, location and return of remains to the families, in 2005-2006 the Moroccan authorities promoted the idea through the IER that the "disappeared" had died and that the families needed to accept that fact without the State providing any proof, facts, investigation results, place of interment, or identification or return of remains. These actions had renewed traumatic impact on families, who were now to symbolically "kill" their kinsman and accept the facts without having been provided with any information, explanation or proof by the State that had been responsible for the enforced disappearances. In the context of this investigation, many family members told of their experiences of being pressured by the authorities to accept the death in exchange for receiving compensation for the loss of their loved ones.

*And they spared no efforts, and used all means available to achieve their goal. It is true that they have sent letters to some of the families asking them to send documents. They have also called others by telephone. The authorities have used different people to influence families to send them more information, and have even used people within the families themselves in complicity with the authorities to influence and push families towards their goal, none other than getting families to sign a document acknowledging the person as being dead. The next question is, therefore, how can a person sign off on his or her father's inheritance without knowing whether he is alive or dead? The Consultative Council is asking for a list of heirs while you don't know whether your relative is alive or dead. This document seems to be of great importance to them and*

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61 This lack of investigation, documentation and clarification is in outright violation of the international standards set forth, among others, in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions, recommended by the Economic and Social Council in its Resolution 1989/65 of May 24, 1989.

*they insist a great deal on this document and require families to sign it. This is the main goal. What they're trying to do is get me to recognize, ratify and approve my father's death, which is what they need to do for us. They're the ones who have to acknowledge that my father died while in their hands and under their responsibility. We are not going to let them shirk their responsibility. They're the ones who have to say whether he is dead or not.* Elhartani Mohamed Salem Hamdi.

In many cases, authorities not only did not provide proof of death and the circumstances of capture, torture, or death, but they also asked families to sign documents accrediting their acceptance of the death. Such a document does not carry the legal assurances of what in many countries is called a “certificate of presumed death” and as such amounts to another form of aggression against the psychological integrity of family members, as it is the State itself that holds the information on the fate of the “disappeared”. This procedure also violates international human rights protection standards<sup>62</sup>.

*In 2004 we were visited by the Equity and Reconciliation Commission. They took information from all the families of victims and told us we would receive information shortly. The Equity and Reconciliation Commission gave us death forms to fill out, but we didn't want to fill them out, because it is an injustice.* Zainabu Bukrim.

In the case of the Western Sahara, and more broadly of Morocco, not only is an effective investigation on the fate and the location of the “disappeared” and for the remains to be turned over to the family necessary, but legal amendments also need to be enacted, such as have been introduced in countries like Argentina, Chile and Peru, that establish “absence for reason of enforced disappearance” as a legal status when the State has made all possible efforts to identify “disappeared” persons has not yet been successful in doing so. In these proceedings, the State takes responsibility for the absence and this statement triggers appropriate reparations, and families do not need to accept the loss in legal terms to be able to have access to restitution or reparation.

*Yes, we requested this from the Equity and Reconciliation Commission, but they have not responded. When they were here in Smara we gave them a document in writing and some months later they called me by telephone and told me to obtain a death certificate and that I would be able to receive compensation. I told them that I couldn't get a death certificate because I wasn't sure that he was dead and that I didn't want compensation.* Embarka Dada Alal.

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62 Forcing family members of “disappeared” persons to sign certificates of presumed death in order to receive compensation is against International Human Rights Law, as confirmed by several United Nations agencies. In particular, see the 2011 WGEID general comment on the right to recognition as a person before the law in the context of enforced disappearance (<http://www.ohchr.org/Documents/Issues/Disappearances/GCRecognition.pdf>); WGEID, 2008 Annual Report, doc. A/HRC/10/9 of February 25, 2009; paras. 113-114; Committee Against Torture, *Concluding Observations on Algeria*, doc. CAT/C/DZA/CO/3 of May 26, 2008, para. 13; and Committee on Human Rights, *Concluding Observations on Algeria*, doc. CCPR/C/DZA/CO/3 of December 12, 2007, para.13.

*Our main demand, one which we will never renounce, is above all to receive clarification of the fate of our family members, receive their bodies if they are dead, and have the perpetrators tried for these crimes in a court of law.* Moubarak Safia.

The right to grieve refers to the obligation of providing all available information on “disappeared” family members, performing necessary identification processes, and providing the remains of loved ones and facilitating the observance of culturally-appropriate funeral rites.

*What she wants is to get any type of information on him, and if he is dead they haven't given her the opportunity to pray for him. She hopes he is alive, but wants to have that information.* Mumen Mohamed Embarec Zaidan

Identification processes have been undertaken, pits have been protected, exhumations have been carried out and remains have been identified and turned over to families in accordance with international procedures in many countries, but none of this has been done in the case of the Western Sahara in regard to the victims of extra-legal executions and enforced disappearance. This has given rise to repeated demands and a very high pitched anxiety and concern on the part of victims' families, who need to have the remains of their loved ones in order to proceed with their own grieving processes.

*The case of the mother pains me more than my own. The day we found the body I saw a piece of a melhfa dress and I started to dig it out thinking it was the mother. When I saw the body with all its clothes on, being a Muslim I thought how could they put it there with the clothes on, that it was incredible that Muslims would have done that. When I saw the bones gnawed on by animals, it had nothing to do with Islam.* El Ghalia Djimi.

Generally speaking, in countries that have been through armed conflict and where mistrust of State services is a serious roadblock for independence or where there is no proper training in the fields of forensic medicine or forensic anthropology or genetic laboratories, such jobs have been performed by independent professionals from other countries or organizations with experience working in contexts of armed conflict, like for example, the Argentine Forensic Anthropology Team (EAAF) and others that have worked in recent decades in different countries that have seen massive human rights violations such as Bosnia, Rwanda, Guatemala or South Africa. International experience highlights the importance of having properly trained professionals, the support of independent teams of professionals and participation by the victims in the process to generate trust and aid in the grieving process.

*Perhaps they buried him somewhere. I only want to know where he is. I hope they know where he is. I don't know what I'm going to do, but I at least want to know where he is. I would like to know where he is ... I need to know where he is.* Salka Ayach.



Why in the case of the Western Sahara have they not undertaken to date any of these processes regarding the hundreds of victims that the State is claiming are dead? Resistance to this in many counties has to do with the fact that the procedures involve not only identifying the person to whom the remains belong, but also gathering evidence regarding violent death or patterns of action. Evidence of the cause of death is exhumed along with the remains and needs to be investigated in all cases.<sup>63</sup>

*The most important thing for families is to know the fate of their relatives. For example, it has to say your son died on such-and-such a date, is buried at such-and-such a place and then take them to visit. To date, however, Morocco does not want to do that, something that is very simple to do. Why aren't they producing the bodies? What do they want them for? Mustafa Dah.*

These processes need to be performed with all due legal guarantees, since exhumation also brings to light forensic medical evidence that can be used in perpetrator investigations.

*I want to have these demands met: to know the whereabouts of our parents, if they are alive, which is what we all want, and if they are dead to be given death certificates and for their bodies to be turned over where they were born, in Smara. Our duty as human beings, as their children requires us to exercise the right to bury them. We are going to continue pressing until we know their whereabouts and their killers and those responsible are brought to justice. Aminetu Omar.*

So, judicial and anthropological measures can facilitate collective family grieving, taking into account the victims' and families' need for information and to witness any action that is taken. They also need to provide space for the rites and ceremonies, as well as for the identification processes which often take a long time, and the subsequent re-burial, throughout which there has to be information and participation by the victims to reduce their post-exhumation anxiety.

*When a person dies we perform religious rites. We have been waiting to do that up to now. It's been delayed until now. We are waiting for the Moroccan State to tell us his whereabouts, because it was the State that took him away and knows where he is, and if he is alive or dead. So, if he is dead, they need to give us the death certificate and that is when we will be able to perform our religious and cultural duties. Aminetu Omar.*

To ensure that these exhumation and return processes help in the grieving process it is necessary:

- a) For victims to have appropriate information on the actions carried out, the places that were excavated and the supposed victims;

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63 Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Executions, recommended by the Economic and Social Council in its Resolution 1989/65 of May 24, 1989.

- b) For an accessible culturally adapted channel of communication to be established so that families can take informed decisions;
- c) To include their participation in the processes, facilitating access if possible, providing information and obtaining *ante mortem* records;
- d) To listen to their expectations and provide needed collective emotional support during and after exhumation;
- e) In the event of security problems or low accessibility by families, to engage in information-gathering, recording of procedures, etc. to enable families to be able to view the exhumation process followed after the fact;
- f) To have subsequent contact with families affected by the exhumation by providing informative activities, evidence-seeking and/or necessary emotional support, as well as measures that can be used for identification purposes;

In the case of the Sahrawi victims, there are several cemeteries, most of which are in Moroccan territory, where people are buried who were detained and “disappeared.” At least two of these cemeteries are near the secret Kalaat M’gouna and Agdez facilities, where 16 and 29 people died, respectively, according to Sahrawi sources and the CCDH list. Other people died at the BIR and the PCCMI in Laayoune, near which there are probably burial places. Furthermore, there is at least one grave pit in Lemsayed, where people who were tortured to death in 1976 were buried (see chapter on the Lemsayed Pits). Some pits are cited in the report by the *Conseil Consultatif des Droits de l’Homme* (CCDH - Consultative Committee on Human Rights), and therefore need to be investigated, protected, the remains exhumed and returned to the families. Furthermore, the circumstances surrounding the burials and the pits also need to be investigated, along with the causes of death of the bodies found, and collection of other evidence that can help establish the *modus operandi* of the perpetrators. These procedures need to be carried out pursuant to international protocols on investigating graves and dealing with human remains, and with the aforementioned criteria involved in the right to reparation.

First, samples need to be urgently taken from the families of “disappeared” persons to avoid losing the possibility of identifying the remains when found, because of the death of the closest relatives. The establishment of a gene bank for identification purposes can be postponed no longer in the Western Sahara. Many mothers of “disappeared” people have died of old age and/or their sufferings, and other family members have aged prematurely and also died. Thirty-six years after the fact, twelve years after the Arbitration Committee and over six years since the IER concluded its work, no action has as yet been taken by the authorities of the Kingdom of Morocco to identify and return the remains of the Sahrawi victims to the affected families.

Also, there are burial pits containing the victims that were fleeing from the bombings that were dug up in Um Dreiga, Tifariti and Guelta. There are survivors and personnel

who gathered the bodies left by the bombings and took part in the burials. Um Dreiga and Guelta, among others, are in the part of the Western Sahara that was occupied by Morocco, while Tifariti is in the area under the POLISARIO Front. Both areas need to be examined by independent teams, under the auspices of the United Nations, and exhumations and identifications need to be performed, as has been done in many other countries. There is urgent need for a programme of investigation, identification and return with the participation of independent personnel with training in this type of investigation from other countries of the world.

### **Exhumation with guarantees. Grieving, memory and investigation**

International experience shows that the exhumation of people from mass graves and/or burial sites in cases of enforced disappearance or extra-judicial executions needs to be done in close contact with human rights organizations, with the support of independent forensic teams and State institutions to deal with the legal aspects of obtaining evidence and protection of territory.

It also needs to be done with the participation of the affected families in order to build trust in the results, and for investigations to help promote a feeling of justice being done and support the grieving process. They also play an important role in evidence gathering, demonstrating the truth regarding the victims, and in investigation monitoring.

## **Recognition of injury: responsibility and respect for dignity**

For the Sahrawi victims interviewed, the first step towards being able to talk about reparation is recognition of injury. Public acknowledgement of responsibility by the State is one of the symbolic measures involved in moral reparation. It seeks to satisfy and dignify the victims by through promotion of public acknowledgement of responsibility, either for having directly caused the violations or for not having protected the victims. To be meaningful, these measures also need to include an apology to the victims, recognition of their dignity as persons, and criticism of the violations. In the case of the Western Sahara, the Kingdom of Morocco has not recognised having caused injury to the Sahrawi people. Following the presentation of the final IER report, King Mohamed VI gave an address on January 6, 2006, in which he urged the CCDH to implement the IER recommendations but made no mention of the Western Sahara.<sup>64</sup>

For the Sahrawis who testified, acknowledgment of responsibility is the first step in recognizing their reality as a people. As stated in the introduction, not even an institution calling itself independent like the IER referred in its report to the conflict in the Western Sahara, nor did it perform any in-depth analysis of specific human rights violations

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64 The speech can be found at the following link: [http://www.ier.ma/article.php3?id\\_article=1702](http://www.ier.ma/article.php3?id_article=1702)

in that territory, nor did it refer to the dignity of the Sahrawi people or the individual and collective impact of the repression they suffered on their lives. All this, along with continuing human rights violations in their territory, has to a widespread feeling of injury among Sahrawi victims of human rights violations. At the same time, there has been no acknowledgement of the responsibility of the State in the enforced displacement to places of refuge of one-half of the original population of the Western Sahara. With no change in regime's attitude regarding recognition of the violations to which the Sahrawis have been subject, victims have no sign of willingness on the part of the Moroccan State to change anything regarding them.

*I feel Muslim and I don't feel a desire for any revenge against the Moroccans or the torturers, but I do want them to acknowledge their crimes. El Ghalia Djimi.*

Beyond individual recognition, victims highlight the importance of collective recognition. However, the Moroccan regime has interpreted this not as a legitimate demand by victims of human rights violations under its responsibility but rather as a political demand by the "enemy." If the model for response is based on this counterinsurgency logic it is senseless to speak of reparation or transitional justice in the Western Sahara, and the regime's partial compensation policy would only amount to carrying out a counterinsurgency pacification policy or consolidating the status quo achieved by the military occupation.

*But for us, the most important thing is that the wrongdoing be acknowledged, that it never happen again and to bring the responsible parties to justice, to know who gave the orders, because it is very serious to have ordered someone to take people away like that. It is very serious. Mohamed Fadel Leili.*

Public recognition of responsibility is one of the symbolic measures that are aimed at providing moral reparation in cases of human rights violations. It seeks to satisfy and dignify victims through public recognition of directly having brought about the violations and not having protected the victims. International experience shows that in the context of a political transition or the fall of a dictator, the act of acknowledging responsibility is a very meaningful measure, with strong symbolic content insofar as recognition of the injustice of the facts involved and of the dignity of the victims, and because it amounts to a public commitment to preventing future violations.

Some cases, such as in the Argentine case with the acknowledgment of responsibility in 1995 by Army chief General Balza, or by President Kirchner in 2004, show that when the political will exists to break with the past, these acts can be a pivotal moment, marking a before and after, that contribute to portraying a reality in which the victims of human rights violations feel their experience is recognised. No Moroccan army general, gendarmerie or police chief has publically acknowledged any responsibility for the human rights violations committed in the Western Sahara. On the contrary, the

fact that many have continued in their positions, the lack of censure and of assuming responsibility in the cases of enforced disappearances and the exile of a large portion of the population, demonstrate the absence of political will and the building of an official Moroccan narrative in which said violations did not even exist beyond the individual cases in which compensation was awarded.

Also, public acts of acknowledgment of responsibility could be a milestone marking a new trend in relations with institutions, the State or among members of the public or different political persuasions.

In the absence of a framework of social recognition, many victims find their own experience is questioned. For people who have been marginalized or persecuted for years, these acts take on symbolic proportions. It may be the only time they feel important to the institutions and, hopefully, well treated by them. An act of recognition can play an important psychological role helping to overcome a situation of injury and oblivion, by helping the traumatic past to become part of the present. In the absence of any demonstrative gesture or change in the treatment of victims, generic statements on human rights violations are often seen by victims as hasty attempts to close a certain chapter of history without looking in the mirror of responsibility, and as avoiding having to acknowledge that repressive conditions continue to exist to the present day.

In community or local acts, the meaning can be different for different interlocutors. For example, for the most politicized victims the act of recognition may meet a demand for a group narrative that has been denied, for others its importance may be as a personal recognition and an historic precedent.

*The only important thing for me is that the Moroccan State apologize for the period of time that disappeared from my life, from my education. I was planning on becoming an engineer. All the unbearable things I went through. The only thing that would satisfy me is for our problem and everything our people has suffered to be recognized. It's the problem of a people. Saadi Mohamed B.*

To state, as do the IER resolutions with regard to the Sahrawi victims, that the recognition of the facts and the responsibility of the State in regard to the victims of human rights violations is already a fact by having published the IER report is a way of minimizing the recognition and shows a lack of political will to carry out such actions. No commission report can be considered as tantamount, in and of itself, to official recognition by any State. As part of reparations measures, truth commission reports set forth the need for official acts of recognition of responsibility, and it cannot be argued that issuing a report that does not even refer to the cases analysed is a way of recognizing responsibility and the duty of memory owed the victims of gross human rights violations, crimes against humanity and war crimes.

## The need for justice

There is a universal quest for justice among victims of human rights violations. Justice, in the form of judicial investigation of violations and sanction of those responsible, is also a basic condition in restoring democracy and preventing future human rights violations. Countries in which perpetrators continue to be politically in control and continue to exercise their repressive functions, have suffered continued human rights violations. The Hassan II regime came to an end in Morocco with no sanctions or any break from the past in terms of justice or the sanction of those responsible for human rights violations. The consolidation of impunity, in addition to being a new blow for victims, is a liability for any democratic process, and has engendered a continuing situation of violence, control and fear in the Western Sahara.

The main perpetrators who were members of Hassan II's repressive apparatus stayed on in the Western Sahara into the second decade. Members of the police and the gendarmerie named by numerous victims as the perpetrators of the most brutal tortures and as participants in enforced disappearances during that regime, continue to be named as being responsible for arbitrary detention and torture, as denounced by numerous victims, and hold high positions of authority in the governments of a number of cities in the region of the Western Sahara and political positions in Morocco.<sup>65</sup>

During the Hassan II regime, both Sahrawi and Moroccan victims were not able to level charges against individuals responsible for violations, nor did the courts of justice carry out any investigation or hand down any convictions of the perpetrators of violations constituting crimes against humanity. Similarly, during the Mohamed VI regime there have been no investigations, trials or convictions against perpetrators of gross human rights violations, such as torture. Continued violation of human rights in the Western Sahara has probably largely been the result of these policies.

Justice plays a key role for victims and families. It helps them process pain and restore the social relations that were severed by the human rights violations.

After truth, the demand that perpetrators be investigated and sanctioned was very important, both in the so-called "years of lead" cases under the Hassan II regime in the Western Sahara and in the most recent cases taking place over the last twelve years.

*What I seek mainly is for the unjust violators who are responsible to be tried. Investigation of the whereabouts and fates of the victims. All this, in my view, can help us forget the suffering a little but I assure you we cannot easily forgive.* Sidi Ahmed Fatah El Boudnani.

Justice has a transcendental role to play in restoring social harmony through determining what is good and what is bad, by moral and social sanction of the acts and the perpetrators,

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65 See the annex that contains a sampling of these denunciations translated from Arabic.

and through the possibility of re-establishing relations between the people and the State and the victims of human rights violations so that they are not excluded from history. It must be kept in mind that the direct responsibility of the State in gross human rights violations against the civilian population is quite clear in these cases. Additionally, State responsibility extends to the absence of investigation and sanction of those responsible, and to the chain of command that is intellectually responsible for the violations. The lack of protection by the State amounts to an inversion of the role of the State vis-a-vis the population in the Western Sahara, which it considers part of its own population.

For victims, justice it is not only important for restoring rights, but also a way of impeding repeated human rights violations against them or other Sahrawis.

*- For there to be any reparation, we want the perpetrators, the people responsible for this suffering, to be tried and convicted. We want this so that what happened to us will not happen to any other family.*

*They can't give us our father back, but we don't want this to happen to other families, our suffering and pain continues.*

*We've been through a hard time and we don't want this to happen to any other family ever again.* Brahmin, Fatimetu and Salka Mohamed Ahmed.

*The Sahrawis who have been through this seek two things. They first want the State to apologise for everything that happened. And second, they want to see those responsible for this tragedy brought to justice. These two aspirations were rejected by the State that even said the second was non-negotiable, with the excuse that there is no evidence to be able to bring anyone to trial.* Elghali AhmedLehsen.

The lack of justice is not only due to the passive lack of investigation. Impunity also involves threats and pressure being brought to bear on witnesses, foot-dragging and a lack of effective judicial investigation; indeed, the dominance in power of security forces over judges; the lack of an independent, impartial judiciary.

*There is no justice. For example, in the case of the martyred Hamdi Lembarki,<sup>66</sup> a young man who was murdered by the police on October 30, 2005 on my doorstep, his blood is on my hands. When the police came looking for witnesses, I went in with my neighbour named Elgalya El Farisy, and also a young man named Mustafa Mohamed Tirani. The case dragged on for two years, only at the end to have two witnesses appear and say that it wasn't done by police but by other agents. There is no justice. One day they summoned us at 8:00 in the morning and we were there waiting until 6:00 the next morning. A lot of people came by to tell*

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66 This is one of the few cases in which a trial was held against the murderers, and according to Sahrawi sources, they were released two years later. See chapters on the 2005 Intifada and on Torture and Arbitrary Detention in Volume I of this report.



The demands for truth, justice and reparation in the case of the Western Sahara

*us that we needed to be very careful if we were going to testify against them, but we told them we intended to tell what actually happened. Najat Khnaibila.*

The role of the justice system in keeping violations from happening again was systematically referred to by a large number of victims of enforced disappearance who were held at undisclosed locations during the Hassan II regime, and victims of other, more recent, human rights violations.

*You always have to report the facts and demand that the perpetrators of the catastrophic act of extermination to which they have subjected our people be brought to justice. If you don't pursue this cause and the Moroccan authorities don't pay for what they did, it will happen again sooner or later. Therefore, I don't think any victim who knows what happened can abstain from this demand. I think this is the most important demand, more than for economic compensation. And, punishment for those responsible, whether directly or indirectly. It's the only way to put a stop to this so that it won't happen again. We don't want this to happen to the Sahrawis or the Moroccans, or people from any country in the world. Any dictatorship that puts a people through these circumstances must pay for what it has done, so that it won't happen again. Abdallahi Chwajj.*

When justice is not done, it's easy to deny the truth. Many victims are hoping their actions will lead to the cases becoming known and, once known, to at least social sanction against the regime over treatment of the victims of human rights violations. These actions were brought both by victims and by human rights defenders who themselves suffered violence.

*I want the perpetrators to be tried and the suffering documented so that the world finds out about it. Mariam Lahmadi.*

This lack of justice and the continuing violations strengthens the conviction among many Sahrawis that there is no possibility that the system will change and that the only possible alternative is self-determination.

*They knew I needed to get the check and it was the only condition for going back to work, and they didn't acknowledge anything else, they didn't recognize my property or bring the executioners to trial either. No payment can compensate for what they did to me, my mother and my whole family. I want them to be tried and for the murderers to be taken to court. They are illegal occupants and they'll have to leave sooner or later by court order because they occupied a territory by force, and because they murdered and tortured a people that rejected them and is not a people of Morocco. Ahmed Hamad*

*What I want most is to unmask the Moroccan State and reveal the brutal human rights violations perpetrated against the Sahrawi people, together with the continuing cosmetic cover-up vis-à-vis the international community. What I seek is*

*make-up removal. I'm not talking about myself; I have suffered little in comparison to other Sahrawis. We've suffered very little in comparison to the detentions and the situation at the beginning of the occupation of the Western Sahara. Those stories are very sad and very bad.* Hayat Erguibi.

The State of Morocco is not a party to the Rome Statute, so the International Criminal Court does not currently have jurisdiction to investigate the violations committed. Nonetheless, Morocco is a party, among others, to the following international human rights treaties: the *International Covenant on Civil and Political Rights*<sup>67</sup>; the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>68</sup>; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>69</sup>; and the *Convention on the Rights of the Child*.<sup>70</sup> Furthermore, on February 6, 2007, Morocco signed the *International Convention for the Protection of All Persons from Enforced Disappearance*, signifying that as of that date it commits to abstaining from any actions which would thwart the purpose and the goal of the treaty.

To date, none of the international agreements cited above have been the basis of any judicial investigation of human rights violations committed in the Western Sahara.

In its final comments in 2011 on Morocco, the UN Committee against Torture stated it was concerned by “[...] the reports it has received regarding the alleged use by Moroccan law enforcement officers and security personnel of practices in the Western Sahara such as arbitrary arrest and detention, incommunicado detention, detention in secret places, torture, ill-treatment, the extraction of confessions under torture and the excessive use of force”<sup>71</sup>. The Committee reminded Morocco, in this regard, that “[...] under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no exceptional circumstance whatsoever may be invoked as a justification of torture in territory that falls under the State party’s jurisdiction and that law enforcement measures and investigative procedures should be in full accord with international human rights law, as well as the legal procedures and basic safeguards in effect in the State party. The State party should, as a matter of urgency, take substantive steps to prevent the aforementioned acts of torture and ill-treatment. It should also announce the introduction of a policy that will produce measurable progress towards the eradication of all torture and ill-treatment by State officials. The State party should put in place stronger measures for ensuring prompt, thorough, impartial and effective investigations into all allegations of torture or ill-treatment of prisoners and persons taken into custody or in any other situation”<sup>72</sup>. Lastly, the Committee

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67 Ratified by Morocco on May 3, 1979.

68 Joined by Morocco on June 21, 1993.

69 Ratified by Morocco on June 21, 1993.

70 Ratified by Morocco on June 21, 1993.

71 COMMITTEE AGAINST TORTURE, *Concluding observations on Morocco*, CAT/C/MAR/CO/4, December 21, 2011, para.12.

72 *Ibidem*.

against Torture expressed particular concern over the violations committed at the Gdeim Izik camp in November 2010.<sup>73</sup> As already stated, the WGEID denounced the absence of effective investigations of gross human rights violations including torture and enforced disappearance, committed in the Western Sahara<sup>74</sup>.

Given the above, justice is needed as a break from the gross past human rights violations. A true, effective break from the past should be made clear through political willingness to deal with violations, investigate them and bring those directly responsible to trial, investigate the mechanisms that made the horror possible, promote changes in the ways the security forces act and promote effective judicial investigation. Although these demands have been made consistently by Sahrawi human rights organizations, as part of the systematic recommendations made by the WGEID and by the Committee against Torture and independent human rights organizations such as Amnesty International and Human Rights Watch, they also been ignored by Kingdom of Morocco authorities, and have led to a response negating the facts. Despite the existence of evidence and innumerable testimony, Morocco has continued to exert pressure and to resist international pressure, by counterbalancing issues such as migration control and the fight against Islamic extremism in its country against its lack of response to human rights violations in the case of the Western Sahara.

*No trial has been held against the perpetrators and Morocco has not even joined the Statute of the International Criminal Court. The perpetrators that tortured before are now senior officials in Morocco. That's why I said there's no will, everything is based on will. If there is political will everything is possible. At the least, for justice we need to know is who is responsible, who gave the orders, if it was one specific person or if others were involved, accomplices, that participated in the torture. After being brought to justice there could be an amnesty perhaps, but the essential thing is to know who was responsible.* Mohamed Fadel Leili.

*Finally, I believe that bringing the persons responsible for the flagrant human rights violations in the Western Sahara to justice, ratifying international agreements, banning torture and taking the case to the International Criminal Court will be the only way to apply justice and respect the memory of our people.* Fatma Ayach.

The lack of open cases and convictions makes the Western Sahara a territory of exclusion, with no guaranteed defence of life. Investigation of cases during the Hassan II regime was not done even for the Moroccan cases. In the case of the Western Sahara, the demand for justice is the essential condition put forth not only regarding violations in the past but also those perpetrated in the present. Despite the existence of formal guarantees, both

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73 *Idem.*, para. 13. In this regard, the Committee has recommended that Morocco “should put in place stronger measures for ensuring prompt, thorough, impartial and effective investigations into the violence and deaths that occurred during the dismantlement of the Gdeim Izik camp and ensure that those responsible are brought to justice. The State party should amend its laws to guarantee that all civilians will be tried only in civilian courts”.

74 WGEID (2010), *Report on ...*, op. cit. para.45.

actions by the security forces and a lack of effective judicial investigation have continued keeping the condition of impunity alive.

*What we are demanding and asking for is for a case to be opened and the guilty parties tried fairly and independently as guaranteed under rule of law. Ihidih Hassena.*

The roadblocks thwarting denunciation and investigation are not, however, formal ones. Many victims interviewed have submitted their complaints to the Royal Prosecutor but several years later in most cases there is no investigation underway to their knowledge, no authority has contacted them, nor has any trial been held.<sup>75</sup> The lack of response and the fear caused and territorial control exerted by Moroccan authorities is what mostly prevents an effective judicial investigation from being carried out.

*I have no evidence of any proceedings against any alleged perpetrators in the Western Sahara, and it is very difficult. If anyone dares to undertake an investigation against any member of the military or a perpetrator, there are consequences to pay. It's not that the member of the military or the perpetrator is going to beat you up or take direct revenge ... no, it will be by other means, they can kill them somewhere, or harm them ... Mohamed Fadel Leili*

Despite the risks involved, victims continue to demand justice be done in the Western Sahara, even in regard to stigmatizing human rights violations, such as sexual violence. Fear and threats have a negative impact, along with victims often being labelled as liars and a lack of consideration given their accusations, while opening their privacy to public view, the use of which becomes a form of coercion. The next case involves a young member of the security team at the Gem Izik camp, who was detained arbitrarily, accused of some 12 different offences, tortured and raped with a bottle during his detention by members of the security forces responsible for his custody, and then released on parole. The following testimony is by a female colleague of a victim of sexual violence perpetrated by members of the police. There is no knowledge of her accusation<sup>76</sup> ever having been investigated.

*The only thing I want, although probably unlikely, is to bring the guilty parties before a court of law to be fairly tried. Omar N'Dour.*

*What I hope is for the torturers, those who tortured and raped, to be put on trial. What I see here is that every torturer, even if he was only a normal police officer, when he tortures or murders a Sahrawi, gets rewarded by moving up in rank. N'guia Elhawassi.*

Under International Law impunity means “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or

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75 See the annexes to this report.

76 This is the case of Hayat Erguibi, who filed a complaint with the Attorney-General in Laayoune, regarding her kidnapping on February 22, 2009, during which she was a victim of sexual aggression at the hands of police officers, including Abdelaziz Anouch. The registration number of this report is 14/24/09, dated February 27, 2009.

disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims”<sup>77</sup>.

There are, however, several types of impunity that need to be prevented in processes: one is legal, the other moral, one is historical and the other is social<sup>78</sup>. These types of impunity are interrelated, and usually present when there is no recognition of truth, or access to effective, independent justice.

Types of impunity	
Legal	Lack of inquiry and sanction against those responsible for gross human rights violations.
Political	Known violators can be elected or promoted in public positions.
Moral	Rationalization of the acts of victimizers or minimization of the violations suffered by victims.
Historical	Silence, lack of recognition or falsehood is part of the official version of the years of terror. The continuation of violence is made invisible.

In the case of the Western Sahara, for at least a decade now the fight against impunity has become the job of human rights and Sahrawi victim organizations, and supported and demanded in reports and inquiries undertaken by international human rights organizations. In many countries, as well as in the Western Sahara, these have become the driving force combating impunity. However, in the case of the Western Sahara, they have not received the support of the other sectors that were decisive in countries that have overcome impunity in human rights violations, such as Chile and Argentina in Latin America, and even countries in which there were armed conflicts where the military continues to exert a great deal of political control, such as Guatemala. In the Western Sahara, judges and prosecutors have not played an active, courageous investigative role, nor has support come from intellectual or cultural sectors, that are mostly in exile in the case of the Western Sahara.

Furthermore, the Western Sahara has no communications media of its own, except for the ones that pertain to the associations or media that sympathize with the POLISARIO Front via the Internet. Neither is there in the Western Sahara, as exist in other international

77 As per the UN Updated Set of Principles for the protection and promotion of Human Rights through action to combat impunity.

78 Reference to a lectura by Roberto Garretón, *Verdad, justicia y reparación. Desafíos para la democracia y la convivencia* (Truth, Justice and Reparation. Challenges for Democracy and Living Together), IIDH-IDEA, San José, 2005. [http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD\\_395509089/IDEA-IIDH.pdf](http://www.iidh.ed.cr/BibliotecaWeb/Varios/Documentos/BD_395509089/IDEA-IIDH.pdf).

conflicts, any international press presence helping to get the news reported more objectively or at least easing governmental control over information and the pro-government bias under which information on the Saharawi conflict is reported. We must remember that Morocco has even detained progressive Moroccan journalists for highlighting the right of the Saharawi people to hold a referendum on self-determination, or defining the legal status of the territory as a decolonization process, as is the case of Ali Lambert<sup>79</sup>.

## Genocide case and universal jurisdiction

The lack of response by the judicial and political authorities in Morocco regarding the Western Sahara is what has led many Sahrawi victims and human rights organizations to bring their cases before the National Court of Spain, in application of the principles of universal justice, as many victims of forced disappearance were also Spanish citizens. These victims are hoping to find in Spain and elsewhere the response they are being denied in the Western Sahara in regard to investigation and sanction of crimes against humanity and war crimes that are not subject to a statute of limitations.

*“Your Honour,<sup>80</sup> neither my family nor I are driven by a desire for revenge, but we cannot accept impunity for the crimes committed against members of our family. I would also like to express, Your Honour, our satisfaction at having this type of procedure that enables humans to feel protected by Justice, and allows there to be hope that all criminal acts of genocide, torture and systematic violations of human rights will be condemned and prosecuted anywhere in the world. Thank you very much.”* Omar Hiba Meyara.

*We ask Spanish Justice to help us find all those who have disappeared. We ask it to investigate by all means possible, and to apprehend the perpetrators of the genocide against the Sahrawi people, and for Sahrawis themselves in the Occupied Territories to be able to express themselves freely and demand freedom for their country. It is Justice, Peace and Freedom that we demand, Your Honour.”* Fatimetu Mustafa Daf.

The principle of universal jurisdiction makes it legitimate for a State to prosecute, investigate, judge and sanction a person who allegedly has committed an internationally-recognized crime, regardless of where it was committed and even, in some cases, not taking into account the citizenship of the defendant. In this way, the traditional principles of Criminal Law, such as territoriality and nationality, are set aside in order to combat impunity. Ultimately, any national court is admissible in lieu of the exclusive jurisdiction of the State under whose jurisdiction the facts of the case took place. In the case of the

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79 They also suspend distribution of international newspapers on the days they carry articles that do not follow the official line or are too critical (has happened to Le Monde, El País).

80 Statement before the National Court of Spain on November 20, 2010.

Spanish State, it is important to keep in mind that a large majority of the victims of enforced disappearance had Spanish citizenship stemming from as part of the colony.

However, for national authorities to be able to exercise universal jurisdiction, the laws of a number of countries require the defendant be present in the territory of the state concerned at the time the investigation is opened. For the investigation of torture, genocide and crimes against humanity perpetrated in Chile, Argentina and the Congo, this has led to involvement by judges from other countries, such as Spain, France, Switzerland and Belgium. These prior experiences gave rise to the genocide case that is now before the National Court of Spain against individuals indicated as perpetrators by high-ranking Moroccan police and military officials.

International human rights tribunals are courts arising out of different international agreements for prosecuting human rights violations outside the borders of the countries where they were committed, but Morocco has not signed the Rome Statute of the International Criminal Court, or the 1979 African Charter on Human and Peoples' Rights that entered into force on October 21, 1986, one year after Morocco withdrew from the OAU.

## **Disqualification of individuals responsible for human rights violations**

One of the ways in which impunity has become imbedded in the Western Sahara is through the continuance and promotion the security agents, officers and political authorities who were involved directly in serious human rights violations cases in the past and present. Their names are well-known by their Sahrawi victims and have been repeatedly and systematically put forth along with the specific details of their participation in disappearances, torture, and sexual violence since the Hassan II era, as well as in the violations that have continued up to the present through cycles of repression in the territory and the accustomed control of mobility and intelligence work. To promote a break with the past, measures are available that are complementary to forms of criminal justice and civil liability, including lustration, or disqualification from holding public positions, administrative sanctions, and separation from responsibilities.

*The response of the Moroccan State to the demand for truth, justice and reparation has been only to award compensation. There has been no truth investigation, nor has justice been handed out to those responsible, on the contrary, acknowledged torturers have been promoted to higher positions within the State or the police.*  
Gaudi Mohamed Fadel.

Measures need to be accompanied by a real will to change and sanction. However, no measures of this type have been adopted in the Western Sahara and, in contrast, known repressors have continued in their positions and even been promoted. Military and police authorities have held control over the Western Sahara for some 20-30 years now, and for



example, El Arbi Hariz, a member of the Laayoune Judicial Police in 1976, was Security Governor (Wali) of Dajla in November 2011, and then transferred to another city in Morocco.

*What we want is to for there to be a serious investigation of the location and fate of the victims, and for those responsible to be brought to trial. But what we see in reality is the complete opposite, a lack of serious intent and a denial of reality. We just see the individuals responsible being promoted, for example Driss Sbiae, who planned and carried out the actions in Smara in 1976, is now a gendarmerie colonel in Agadir.* Mahmud Sidahmed Babih Bheya.

Individuals who were singled out as being responsible for atrocities have been promoted to new positions with greater power and responsibilities, such as Brahim Bansami, who was a judicial police officer in the 1980s and is currently Judicial Police Chief in Casablanca. This is a clear example of a complete lack of political will to put an end to human rights violations or acknowledge the state's responsibility therein.

*One of the demands for prosecution of perpetrators of these acts is for Ichi Abou Hassan, who was responsible for breaking my feet and raping some women friends of mine, and Aziz Anouchto, to be brought to trial so that this will never happen again.* Sahel Brahim Salem.

Not only has the Moroccan State rejected the right of victims to recognition, but it has also shown a total lack of consideration of the victims and society through its practice of giving public promotions and economic rewards to specific human rights violators in the Western Sahara.

*We want a legal trial to be held. They have published a list of the names of people who were executed or died while imprisoned on the Internet, but there is no evidence. I want to see my father dead or alive. It makes no sense that the official who tortured and executed my father was promoted, he was promoted to the rank of captain or colonel and his children are studying in the United States, while I languish in the same situation.* Moulay Ahmed Omar Bouzeid.

Such disciplinary measures need to do strip away the power of the perpetrators, prevent them from running for election, holding positions of political responsibility, or serving in the armed forces, the police or the public administration. Also, such measures need to include loss of benefits, such as pensions. These administrative, disciplinary measures are complementary to criminal justice.

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81 SVEASS, N 1995. *The psychological effects of impunity*. In *An Encounter at the crossroads of human rights violations and mental health*. Centre for Refugees. Oslo: University of Oslo.

## **A system of justice that deals with the problems of the present**

In societies in transition after a dictatorship or armed conflict, reconstruction of the system of justice does not just deal with violations that occurred in the past. Justice is also important as a key instrument in resolving the problems of the present. Democracy cannot be rebuilt without justice, since impunity has very negative consequences for victims and for society. The following table summarizes some of the most important impacts, all of which are currently present in the case of the Western Sahara. Impunity brings into question the very nature of Moroccan democracy in the Sahrawi territory; it is an ethical obstacle to rebuilding a cohesive society; it fuels hopelessness and the risk of violent response, as seen in the acts subsequent to the dismantling of the Gdem Izik camp in November 2010; it amounts to a new psychological blow for victims, who see a continuity between past impunity and present violence; it means that the Moroccan State is not assuming its responsibility and is excluding the victims from its own history by denying their existence.

### **Impact of impunity<sup>81</sup>**

- Threatens belief in democracy and is a continuation of oppression and lack of freedom.
- Evidences a lack of respect for ethics and justice. Hampers rebuilding an ethical relationship among people.
- Causes people to take the law into their own hands. Incites private reprisal.
- Invalidates and denies what has been experienced: trauma, barriers between groups and difficulties of reconciliation.

The risk of militarization-based security policies is that they do not pursue integrated security and development policy, but merely repression of social protest. From this perspective, it amounts to arming more soldiers and putting more police into the Sahrawi territory where there already exists a very high level of militarization and police and gendarmerie presence, and even, as seen in recent years, inserting population groups, only encouraging violent confrontation.

*The Moroccan State is involving civilians, taking Moroccan criminals out of Moroccan society and putting them in the Western Sahara to pit them against the Sahrawis, but Moroccans who have lived for a long time in the Western Sahara do not want to be involved or take part in this. The State has taken many criminals to a district called Barrio Cementerio (Cemetery District) and another called Masira, because whenever something happens, for example Gdem Izikor, or after a game between Morocco and Algeria, they bring in a lot of people with banners with the police behind them, insulting Sahrawis and destroying their cars and*

*their homes. This is well-planned incitement of systemic hate. It is not a conviction of the Moroccan people and bears the stamp of the State.* Aminetu Haidar.

The State of Morocco needs to change its view on the Western Sahara, since it is not security policy but rather social policy that is needed to breach the barriers of exclusion and recover the idea of peaceful coexistence requiring protection of human rights, and compliance with United Nations resolutions on the Western Sahara conflict.

## **Restitution of loss**

The right to restitution involves return of losses and to the situation prior to the violation,<sup>82</sup> or provision of adequate compensation, return to the living conditions, the housing, the property or animals that were expropriated or destroyed particularly during the early years of Moroccan occupation. The plunder and pillage of camels and goats from the people who lived in the desert, and, on many occasions, the burning or destruction of their tents, are still part of demands for restitution by both refugees and those who stayed in the Western Sahara.

*People who worked as shepherds during that time were victims of abuse, their camels and goats were taken by the Moroccan army.* Ebchirna Learousi.

*All this sacrifice is to liberate the Western Sahara, the best result would be freedom for the Sahara and, secondly, I demand restitution for my father, his property was devastated by Morocco.* Mohamed-al Mohamed Lamin.

Many people who were abducted to secret detention centres saw their homes occupied and their property trespassed on. In other cases, family members had to hastily sell off property to get economic resources to be able to keep their families alive or ensure greater economic security instead of holding onto their property and ran the risk of it being forcibly occupied or confiscated.

*I went to a house that was from the Spanish era. The family feared it would be taken from them and sold it... for some 200 €... Yes, but the one who sold it is a relative of ours, it was so that the Moroccans would not take it away from them. Back then, when the Moroccans found an empty house they would occupy it. And then we would not be able to get it back. So our relative sold it off for the money...* Salka Ayach.

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82 The international definition of restitution is “restoration of the victim to the original situation before the violations. It includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property (Principle 19, Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted as Resolution 60/147 by the UN General Assembly on December 16, 2005).

## **Restitution of territory and right of return**

For refugees, restitution means the right of return and to reparation for loss of their property, camels, goats, the jobs they had to leave and the tents or homes that were destroyed in the exodus following the Moroccan occupation. Thirty-seven years later, no assessment has been made of such losses in the case of the Western Sahara, nor were any of these aspects taken into consideration in the compensation awarded by the Arbitration Committee or the IER (Equity and Reconciliation Commission).

The possibility of return is part of the political solution of the conflict, along with the holding of the planned referendum. On at least two occasions in the early 1990s, refugees were preparing for return and they were thwarted both times by opposition from Morocco and lack of agreement over the conditions for holding the referendum. For the refugees, property restitution should not be linked to returning to their places of origin, but rather be part of a reparations policy dealing with the consequences of having become refugees. Such policies have been adopted in many other countries as part of general reparations programmes after dictatorships or armed conflicts. The Moroccan State is obligated to reconstitute losses and recognize the human rights violations committed during the occupation of the territory and the exodus of the Sahrawi people. The conditions for future return must include not only holding the referendum on the status of the territory of the Western Sahara, but also conditions to make it effective in terms of security, restitution of land and property, physical conditions for reinstatement, and demilitarization of the areas of return while the process is ongoing.

*The right to being able to return to our homes must be complied with. Neitu Sidahmed.*

*Unless it's a matter of returning to our homes, here I am in a desolate desert. We are not in a city; here we have nothing more than our prayers to God. We are at the mercy of the climate. We have our homes, our lives, but it's not the same as being in our environment. We would rather get together with everyone, see each other again, we will find food and our own lives. Independence is the only thing we yearn for, it's what unites us. So many years already...we were left here with hardly any resources, sitting out in the cold. Mamia Nan Bueh.*

For most of the refugee victims interviewed, the right to return is associated with freedom and the right to decide one's own life. The contrast between their place of origin and their place of exile, between the riches of the Western Sahara and the sparseness of the Algerian desert, their situation of permanent emergency and the need to once again take charge of and rebuild their lives on their own land has also had an impact on the younger generations, that cannot continue to live in exile in the desert, dispossessed of their own lives while trying to build a future.

*We yearn for the right to our independence, Moroccans and Sahrawis cannot live together. As a people we have the right to have a country just like other peoples.*

*We cannot continue to live as refugees in exile while our land is rich in resources. Our children are asking us why people in Europe live in houses and we have to live in these tents, under these conditions.* Fatma Bachir.

The feeling of loss that pervades nearly all refugee situations is collective here and return has become the only possible reparation for the suffering they have endured throughout disappearances, the pillaging of their resources and the loss of their life plans. Throughout, their lives were being held hostage to the political game, the Moroccan blockade and the lack of international commitment to ensure compliance with United Nations resolutions. Refugee rights are considered as a bargaining chip in the negotiation between two totally asymmetric forces, and not one of the oldest remaining human rights problems, despite there being a simple solution as compared to other world conflicts.

*We beseech the whole of society to be sensitive to our pain and suffering. What we want is to return to our homeland and achieve independence. We have lost many, and we seek to spend whatever life we have left in our own land. Those who are with us need to support us in this regard because, in any case, those who are no longer with us will never return.* Faudi Mohamed.

*Only if the Sahrawis themselves return to their land and live on their land. The only thing that will give me peace is for us all to return to our land.* Mekfula Bundar.

*We have been living here for thirty-seven years, waiting to go back to our land. Back there is our land, our dignity, our children were born here and we want to have dignity once again.* Fatma Jadem Mohamed Mohamed.

*We came to this land with no food, with nothing. We don't want anything material, just our land. We do not want compensation.* Nanha Sid Mohamed Chek.

The fatigue and pain of refugees who are still waiting to return to their land after decades is not only caused by Moroccan intransigence, but also by the lack of international commitment. While other countries in the Arab world have experienced political transitions from authoritarian regimes and the conditions for the democratization of the Maghreb are part of the agenda of the United Nations, and of concern to Europe and the United States, the Sahrawi problem is being minimized, even denied, except to consider the refugee camps as a focus of conflict warranting greater control of the Western Sahara by Morocco. These new ways of presenting reality run the risk of creating conditions that will give rise to new violence as a result of the fatigue, the attacks on dignity and the desperation that can gain a foothold among people who have up to now put their stake on patience, persistence and negotiation, but who find their way forward thwarted.

*I believe there is no reparation, only getting our land back. Independence is our wealth. For me the only reparation is for us to be allowed to express what we want, sovereignty is the fairest reparation of this injury, there is nothing that will slake*

*our thirst for justice. What hurts me is that the Sahrawi people should not be split between those who live in the Occupied Territories and those who live in the camps while the whole world watches. We call on politicians, human rights defenders, to open the door so that the people can decide and stop suffering.* Naama Eluali.

Internationally, the so-called Pinheiro principles on Housing and Property Restitution for Refugees and Displaced Persons, approved by the Sub-Commission on the Promotion and Protection of Human Rights<sup>83</sup> in 2005, establish a series of legal, political, procedural and institutional guidelines and mechanisms in this area, along with the right of refugees and displaced persons to voluntary return under conditions of security and dignity. These Principles have not been taken into account by the State of Morocco in the case of the Sahrawi population that was displaced and turned into refugees. According to Principle 2.1 “All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated.” The right to restitution is the preferred remedy and does not depend on the actual return of refugees and displaced persons (Principle 2.2).

## **Economic reparation and compensation**

Financial compensation is part of the right to reparation. Even though the pain of torture, the years lost from one’s life, and the death or enforced disappearance of family members cannot be remedied by money, compensation for material and moral injury are measures that can help victims recover control over their lives and deal with the deteriorated conditions of their lives brought about by human rights violations<sup>84</sup>.

*No one can compensate us for even one instance of our elders being urinated upon.* Limam Sidi Baba Mbarek Dadda.

Compensation then refers to economic compensation for injuries suffered by victims and the consequences of losing their loved ones, the deterioration of their living conditions and the loss their life plan<sup>85</sup>.

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83 [http://www.ohchr.org/Documents/Publications/pinheiro\\_principles\\_sp.pdf](http://www.ohchr.org/Documents/Publications/pinheiro_principles_sp.pdf)

84 On compensation, see also, among others, Art. 14 of the Convention against Torture; Art. 19 of the UN Declaration on the Protection of all Persons from Enforced Disappearance; y Art. 24, paras. 4 and 5 of the International Convention for the Protection of All Persons from Enforced Disappearance.

85 “Compensation should be provided as appropriate and commensurate to the gravity of the violation and the circumstances of each case, for all the assessable economic injury that resulted from gross violations of international humanitarian law, such as: a) physical or mental harm; b) lost opportunities, including employment, education and social benefits; c) property damage and loss of earnings, including loss of earning potential; d) moral damages; and e) cost of legal or expert assistance, medication and medical services, and psychological and social services”(Principle 20 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, adopted by UN General Assembly Resolution 60/147of December 16, 2005).

In the case of the Western Sahara, compensation has been the only reparation offered by the State to the Sahrawi victims. IER recommendations in the Sahrawi cases call on the State to provide healthcare and social reintegration. However, healthcare was only provided as a basic social insurance involving payment for care like everyone else after much pressure by the victims, and none of the victims interviewed years later indicated they had benefited from any social integration as reparation.

*I myself have a degree in Arab Literature and applied for the right to work. Despite the fact that in my case the IER had decided I should be reinstated to my job, despite that recommendation, I have not been able to enter any trade. When I was arrested the second time they sent me a letter to show to get work. I have been blackmailed many times, being told that if I want to work “you should forget about what you are doing and we’ll get you a job right away.” Larbi Mohamed.*

In this section we discuss the significance of these measures for victims, the way they are being implemented and the discriminatory criteria used in determining the compensation amounts for many of the Sahrawi victims. As already stated, compensation was first established in 1999 through the Arbitration Committee, and later by the IER, based on its work in 2006. As such, it has been disbursed, denied or postponed, as the case may be, up to the present.

The IER awarded compensation in several of the cases of victims interviewed, in others it was denied on the basis that the Commission only had the power to compensate for arbitrary detention or enforced disappearance and execution. It did not compensate for economic loss or loss of livestock, which was the livelihood of many desert families, who were also victims of pillage<sup>86</sup>.

No compensation was granted by Moroccan authorities to victims who in 1976 or later took refuge in the Tindouf camps in Algeria or other countries. No contact was made with these victims and in other cases conditions were imposed that made it impossible for refugees or anyone who had fled persecution to collect, since the compensation was required to be disbursed on Moroccan territory, and many victims were unable to return in the absence of a political solution to the conflict.

*I received a letter signed by members of the Arbitration Committee led by a Mr. Dahhak saying that that my request for compensation was rejected because I refused to travel to Morocco. We sent the request back to the Equity and Reconciliation Commission and they told us: “Yes, but you have to come to Morocco.” They even showed us the internal statute of the Commission that said that one had to be physically present. If you don’t go, nothing can be done. Lately, about two months ago,*

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86 Compensation was provided for cases of detention/disappearance/exile that were not compensated by the Independent Arbitrage Committee, as mandated. No case of exile to the Tindouf camps was considered, nor were victims of pillage, which were mainly Sahrawi violations.



*they told us that we could process the request through the Moroccan Embassy or Consulate here in Paris, but our lawyer reached the conclusion that it was useless: it was just another manoeuvre and a waste of time. We made an appeal, and some time ago they sent us a letter telling us that we have been compensated with an amount that is one-half what they gave as compensation to my brother, who is back there. Why? I don't know. They don't have any compensation criteria; they're just arbitrary compensation amounts and follow no law or international criteria.* Daoud Elkadhir.

*We can't defend ourselves against the Moroccans because I'm here in Spain as a refugee. We got a French lawyer to make the claim to the IER. He went to Rabat. My brother also put in a claim. We also put one in for our father and mother, but we haven't heard anything: we are the first to be excluded for leaving; they're telling us that the Sahara is Moroccan territory.* Mamia Salek.

Economic reparation is one of the ways that the responsibility of the State becomes visible and it has a strong symbolic and practical content for victims and families. The value of this compensation, however, relies on several factors, including its consistency with other measures, its proportionality and the dignified treatment given when putting it into effect.

*They haven't given us any compensation but we would accept it. We want the Moroccans to give us back everything we have lost, livestock, camels, goats, our lives; we have lost a great deal.* Enzatta and Luali-Hamadi Luali.

*I live in bad conditions and I know that there is nothing that can replace him and that I will never see him again, but it wouldn't be bad to receive that aid, because I need it. But that would never repair what they've done to me.* Fatma Mustafa.

Compensation helps some victims rebuild their lives, especially when they lost all their resources or have slid into poverty as a result of the violations.

*Compensation is not a favour from the State; it's something that has been attained through struggle. They didn't compensate us until they were pressured from outside. The compensation helped me get my house, and I have a large family and I also have my siblings who fled to the refugee camps, so I split the compensation between all of us. I feel responsible for the rest of my family.* Elghali Ahmed Lehsen.

In most cases, the significance of the economic compensation is relative to other measures. Compensation without moral reconciliation, or a truth investigation, or finding out what happened to the people who disappeared is often interpreted as a way to buy silence or as a show of contempt for the memory of what happened.

*What is called the Arbitration Committee informed us that we were due to receive 240,000 dirhams as compensation for our father's death. We responded that it could not be considered as compensation, that we were not interested in money,*

*that what we wanted was to find out the truth about what happened to our father. We turned down the compensation.* Ahmed Baddad.

The next example is of a women who “disappeared” for nearly four years and who witnessed her son being tortured and agonizing for a week before dying at the same secret PCCMI facility. Even though she was living in conditions of poverty and was unemployed, she rejected compensation for her son without an explanation of the truth.<sup>87</sup>

*I want them to tell me where my son's body is and why they murdered him, why it wasn't like with the others who, despite being tortured and imprisoned, survived? Why did they kill him? Why? If they give me compensation I feel it's as if they consider me ...as if they had killed a goat of mine.* Salka Ayach.

Many families accepted the compensation as a first step in their broader struggle for full reparation, justice and the search for those who “disappeared.” Others, however, rejected it outright as an attack on their dignity in the absence of a truth investigation or being told where the people who disappeared were.

*It's their way of hiding the reality of it all. In our case it hasn't even been offered, and we haven't accepted. But it has been given to families so that they will forget about it and desist. It's an outright whitewash that we cannot tolerate.* Safia Moubarak.

*I'm against it and won't accept until they given me all the information in detail: when they took him, what jail they took him to, what they did to him, how he died, whether he died; if I had all that information I would accept the money.* Jaiduma Salma Daf.

Differing attitudes on compensation are found even within families, with some members accepting compensation and others rejecting it. Nonetheless, in addition to the personal differences that can always arise irrespective of the policy followed by the State, these attitudes are totally affected by the Moroccan regime's lack of provision up to now of any other type of recognition or investigation, or the return of the remains of loved ones.

*Each person has an idea, an opinion. They say we have to take the money because the Moroccans need to hand out the money and then we'll go for justice. I'm saying that I'm not going to take money and they're trying to persuade me, but I don't want money without justice, because Moroccan justice does not exist. I don't trust the Moroccans.* Omar Hiba Meyara.

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87 COMMISSION ON IMPLEMENTING THE IER RECOMMENDATIONS. ARBITRATION DECISION. Case no. 10377: Mohamed Ayach. Doc. No.:16598. Date:12/31/2008. She states that her son was arbitrarily arrested on 11/30/1987 and died at the Chati Laayun prison (Laayoune coast), whereby the independent committee on compensation issued a favourable arbitration decision, reference no. 1/35-4527, dated 01/30/2003, granting MAD290,000.00 as compensation. This amount is 5 to 8 times lower than Moroccan cases and a third to a half of the compensation awarded in other Sahrawi cases (see annex, volume II).

While there is nothing that can compensate for the pain suffered, the clearly small reparations in comparison to the huge impact of the violations, amount to a form of contempt and a belittlement of the dignity of the victims and the injuries caused.

For the State's reparations policy to be consistent among victims, equitable, non-discriminatory criteria must be followed that prevent any comparative grievance from becoming evident. In many instances, the reparation amount is an indicator of the seriousness of the facts involved and the level of condemnation of the State; but in general the amount is only meaningful as a part of a full range of measures.

The Arbitration Committee (1999) did not reveal its criteria for granting compensation. Later, the IER (2006) published a lengthy work on the evaluation criteria used both by the Committee and the IER itself in granting compensation. However, specific details of the cases are not revealed, nor were the rationale behind different outcomes in similar cases. One volume of the IER report deals specifically with compensation criteria, but only discusses theories and potential injuries, and approaches to reparations used in other countries, and concludes without specifying the criteria that was actually used by the Moroccan Commission.<sup>88</sup> Compensation and compensation criteria information needs to be made publicly available. While the amounts awarded to specific individuals need to be protected owing to data confidentiality and the danger it may pose to victims in many countries, that does not mean that the criteria on which the 2009 IER decisions were made cannot be made public and follow the principle of equity that should prevail in any compensation awarded in compliance with the right to reparation. Morocco is obligated to provide information on such criteria and if amounts are discriminatory parties must be entitled to judicial appeal and clear criteria that do not give rise to comparative grievances among victims as is the case here.

The victims who gave their testimony were not aware of the criteria that were followed in regard to compensation. Many people or groups of people that had been arrested at the same time received different reparation amounts, even among Sahrawi victims. The following are cases of arbitrary detention and torture in which apparently one of the criteria used by the IER was the length of time of detention, although there are significant differences among them. The first corresponds to the so-called Group of 26 who were detained, tortured and then sentenced to four to five years in prison. The second is a case of a year-long disappearance in 1993. The third is a survivor of the action that gave rise to the Lemsayed pits, who was detained in November 1975 and freed two-and-a-half years later. The last one is a "disappearance" that became arbitrary detention of one of the first civilians to be tried by military courts in 1993.

*And regarding compensation we didn't even know what criteria was used for determining it. For example, in my case it was 230,000 dirhams. And in our group the range was from 170,000 to 230,000 dirhams.* Gaoudi Mohamed Fadel.

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88 IER, (2009) *Final Report. Equity for Victims and Reparation of Damages and Injury*, vol.III, CCDH, Rabat.

*They gave us 120,000 dirhams each for our first imprisonment. Ahmed Salem Mohamed Saleh Hamadi.*

*Yes, I was. I was compensated by the Arbitration Committee. I don't know what criteria they followed. They gave me 120,000 dirhams. Salek Uld Ghala.*

*As regards the IER, they finally, in 2009, gave me a report that included a compensation amount of 80,000 dirhams, that also recommended health coverage and social integration, which means work and housing. That was two years ago, and they haven't done anything yet. I am renting and have debts to pay. In the report they referred to a twenty-year sentence, and that the twenty-five day period I was held at the police headquarters was what was illegal because it exceeded the legal limit for detention awaiting trial, and that is what they compensated me for. Bazeid Salek.*

Regarding compensation for people who survived years of arbitrary detention, torture or “disappearance,” the criteria used are not clear, and there is no clear explanation of the legal standards used to evaluate the period considered for compensation. Particularly for people who were detained and tortured, and later tried by special, clearly arbitrary, courts or held under harsh detention conditions, the standards of the period to be compensated cannot be the time before a sentence of those characteristics, without careful evaluation of the type of violations suffered during each period. Such an evaluation would need to follow the criteria of whether they are considered IHL or IHRL. The following example is of Mohamed Daddach, the longest-held prisoner of war in the Western Sahara, who was sentenced to death and held for twenty-three years, many of which were spent in extremely harsh conditions that amounted to a violation of his physical and psychological integrity. He was tortured while seriously injured, treatment was delayed for over one month for a double compound fracture of his leg, and later he was forcibly recruited into the Moroccan military and then denied medical attention for a serious shoulder injury incurred while fleeing, and he spent fourteen years of his imprisonment under a death sentence.

*They considered the two-and-a-half years I was in jail as arbitrary detention. They don't want to acknowledge the next twenty-three years I spent in prison because I was in the military and had been tried. But there were also members of the military who attempted a coup and were detainees—“disappeared” for 18-20 years and they were compensated in the millions... and I was later recruited into the Moroccan military... The IER compensation was for two-and-a-half years of arbitrary detention out of the twenty-three years, and amounted to 195,000 dirhams. My case is not unique. It's the general situation of the Sahrawis, the refugees. After twenty-three years in prison I had been deprived of the most basic rights. Sidi Mohamed Daddach.*

Other criteria that have not been explained to victims are the differences between those who were held in secret facilities and survived, and those who died while being held or are still “disappeared.” In these cases of enforced disappearance where the fate and the

whereabouts are still currently unknown or the individuals died as a result of torture and the conditions of detention, compensation amounts have been generally lower.

*Another difference is that the amounts awarded for deceased persons are less than those for living persons. People who got out of prison alive were given one amount and those who died in detention were given less. Mohamed Fadel Leili.*

According to the sources consulted, and the secrecy surrounding the criteria actually used, the comparison between Sahrawi cases and Moroccan cases is particularly negative, especially in the cases of persons who “disappeared” and were tortured for years, and later set free between Kalaat M’gouna (Sahrawis) and Tazmamart (Moroccan military officers).

*¿Why, for example, did they give the Sahrawis half the compensation they gave to the Moroccans? They always treat us as if we’re different citizens. The ones from Tazmamart are Moroccans and the ones from Agdez are nearly all Sahrawis. They gave the Sahrawis half the compensation they gave the Moroccans, having spent the same amount of time in prison. Elghali Ahmed Lehsen.*

*I noted that there were four types of compensation from the Arbitration Committee: in response to pressure by France, the King of Morocco compensated the three Burikat brothers, French citizens of Moroccan origin held in the secret Tazmamart prison, with 10 million French francs each, over 1 million euros. The members of the military at KalaatM’gouna were given between 330,000 euros and 800,000 euros as compensation. The 6 Moroccans who were with us were given two to three times more than the Sahrawis: they got from 280,000 to 300,000 euros. All their family members were compensated: mother, father and brothers. Daoud Elkadhir*

Furthermore, the Moroccan military personnel at Tazmamart that had staged a coup against Hassan II and were held in secret facilities, and later in captivity for 10 to 19 years, not only received the highest compensation amounts but were also entitled to a pension and housing. None of these reparations measures was granted to any Sahrawi.

*And, there too you can see the real discrimination against the Sahrawis. Compensation amounts, for example, for individuals killed at Tazmamart are up to 3,000,000 dirhams. The compensation for our group, for example, following no clear criteria, ranged from 350,000 dirhams to 500,000 dirhams. I know the cases. Someone who had suffered pain would be compensated for that, but if you kill another person and you give out 200,000 in compensation, it’s two-and-a-half times less than what the people who came out alive got. So, I really don’t know what the criteria are. Brahim Dahane.*

*For example, for compensation, there is a difference in compensation. The military at Tazmamart were given more in compensation than the Sahrawis, and they were also given a monthly salary. The Sahrawis didn’t get that. And they also*

*compensated the victim and the victim's whole family, brothers, sisters, wife, children, etc., but for the Sahrawis only the victim was given compensation.* Mohamed Fadel Leili.

The following is the case of a young woman who was detained and “disappeared” for seven-and-a-half months at the PCCMI facility in Laayoune after attempting to climb over the wall to get to the refugee camps in Tindouf. She was given MAD80,000 in compensation for her “disappearance” and torture. Her sister, who tried making it over the wall with her, is still missing. The Moroccan State denied having any information on Fatma Lahmadi for seventeen years. Her name finally appeared in the 2010 Consultative Council on Human Rights report, indicating that “she died while detained.” However, the IER had not responded to her sister’s claim in five years, nor had the Council done so even after she was interviewed for this study in September 2011.

*In 2003, under the Arbitration Committee, they gave me 80,000 dirhams as compensation. As for criteria, no one said anything about that. We submitted a claim and they called us in to give us the check, but did not talk about any criteria or anything. The claim for my sister, Fatma, was submitted to the IER, but so far there is no response, only the report that people copied. That's the answer. There's been no contact by the Council to date.* Mariam Lahmadi.

The experience of being discriminated against in the compensation amounts is very present among Sahrawi victims. While no official data has been published on the compensation amounts that have been awarded to all the victims, the information we were able to gather for this investigation, some partially published reports and official information on the Moroccan victims from Tazmamart reveal discriminatory treatment against Sahrawi victims. The following are some examples of this trend. For the Sahrawi victims it is just one more evidence of the discrimination and lack of equity that demonstrates that they are considered second-class citizens, or non-Moroccans, as set forth in the following testimony.

*We have seen that, through compensation, Morocco recognizes that we are not Moroccans, because they give us different amounts than they give Moroccans. This means that the compensation is not awarded as a human right but discriminatorily, because they got a different amount of money, and we were not military officers nor did we oppose the Moroccan regime.* Ahmed Salem Abdel Hay Allal.

In the case of the Arbitration Committee, the compensation amounts given to the group of nearly 90 former Sahrawi “disappeared” detainees who submitted their cases to said committee, were on occasion re-evaluated depending on the degree of disability that was determined to be a result of their secret detention and torture. In several cases, the first evaluation of disability was on the low side and victims had their health situations reviewed and the degree of disability was raised, which led to an increase in the compensation amount.

*After the investigations, we were given certificates of the medical evaluation, and mine gave me 70 percent (disability). Then they gave us from twenty to twenty-five euros for every day in prison, while the people from Tazmamart got much more. Said Sid Emmu Brahim Said.*

The IER had no mandate to re-evaluate the economic reparations claims for those who had already submitted their claims to the Arbitration Committee. Nonetheless, the absence of any possible recourse and the lack of clarity regarding the criteria used for the compensation have led to a situation of defencelessness not only for Sahrawi victims but also Moroccan victims.

*I sent in a file on my son and the torture he suffered, but they are lying because they say that I was in for two-and-a-half months and that the gendarmerie took me in, but I had never even seen the gendarmerie at the time and I was in for a month-and-a-half. The answer is they gave me 29,700 dirhams in compensation for torture, but they say that the issue of my son and my livestock goes beyond their mandate. They gave me an indication that it has to do with the military. I told them he was taken by the military. Lehbib Uld Hamdi Uld Faraji.*

*Furthermore, according to victims, the IER, as part of its procedure made people receiving compensation sign a document renouncing any other demand or any other right, such as for justice or for the perpetrators of the crime to be brought to trial.*

*This system is responsible for gross human rights violations, and should be brought before justice, that has the last word. Everything about the IER, in my judgment, is pure play-acting, through which Morocco is seeking to polish its international image; in fact, when you look at the matter in depth see that throughout the whole process they haven't done anything, absolutely nothing. This is nothing like the major processes that have been held in South Africa and Chile; to date, Morocco does not want to own up to its history or its responsibility. Brahim Ballagh.*

## **Relationship between truth and economic compensation**

Learning the truth is not only a pivotal demand in and of itself, but necessary in order to be able to search for the “disappeared” and, as appropriate, in the event of death, turn over the remains. It is also related to the legitimacy of the use of compensation by the Moroccan State as part of a reparations policy. Many victims are opposed to compensation if not accompanied hand-in-hand with finding out the truth about the facts and recognition of the responsibility of the perpetrators. Denial of the truth together with awarding money as compensation is seen as an attack on the dignity of the individuals and their families. Furthermore, such denial is a violation of the obligation of the State to provide information on “disappeared” persons.



*I demand that Morocco provide more information on the person who “disappeared,” all the information, who killed him, what he suffered, where... I demand it all, the officer, the guard, who took him or her to prison...everything. We are in favour of compensation if it is accompanied by all the information. S.M.E.B. Male.*

These attitudes regarding the need to know the truth are also found among the victims of the bombings that were carried out during the exodus of the Sahrawi people.

*I haven't lost my hope of getting an answer. Every time I think that although he may be dead, I want to know where he is. If they know he is dead, then they have to return his mortal remains for a decent burial. Juala Mustafa Yumani.*

The obligation of the State to provide compensation for the violations suffered does subside just because victims refuse to receive it without learning the truth, the facts and the fate and location of their family members. The following case is of a victim whose father, named Mohamed Mohamed Embarek (Mohamed uld Mohamed Embarec uld Brahim El Almi) “disappeared” on June 10, 1976. At the time of the interview, he was not aware of the existence of the list published on the Internet by the Consultative Council on Human Rights in 2010.

*We were invited by the Compensation Committee created by the King in 1999 and then by the Equity and Reconciliation Commission. They both told us they could give us compensation, but we told them that before compensation we wanted to know where my father was. The 1999 Compensation Committee sent us a notification that we would be compensated without telling us the amount or anything else, but we sent our rejection back in writing. Even the Equity and Reconciliation Commission notified us in order to compensate us and we asked for information on the fate of my father before receiving the compensation, but they never informed us. We never received any compensation. Safia Mrabih Mohamed Benno*

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89 See in the annex to volume II: Analysis of individual responses to demands for truth, and reparation of Sahrawi victims and families.

**Responses to the compensation claims of Sahrawi victims (Problema de formato: todo el texto hasta el párrafo 5 debe estar en un marco)**

Based on detailed analysis<sup>89</sup> of the available information provided in the IER report and in the individual claims documents submitted by Sahrawi victims for this study, we are able to identify the following differences in response.

1. *Existence of cases of compensation with very different amounts awarded for the same violations.* Differences range from MAD205,000 to MAD300,000 or MAD420,000 in cases of “disappeared” persons.
2. *Different compensation criteria used by different official bodies.* The IER criteria were higher in determining compensation than the CAI criteria, both in regard to compensation amounts and evaluating gender criteria, given that the CAI followed Sharia premises more, which grant fewer rights to women.
3. *Arbitrary detention or disappearance of girls and boys* does not include specific consideration that the rights of a child were violated, in setting the compensation.
4. *Comments included in responses that evidenced under-valuing of the person, the impact of the facts or the consequences suffered by the victims.* For example, generic comments on the age of the victim and their alleged active life or life expectancy are highlighted as criteria to minimize or characterize the value of the compensation.
5. *Discrimination between Moroccan and Sahrawi victims regarding similar violations.* Comparison of the compensation amounts given Tazmamart (Moroccan) detainees and Agdez or Kalaat M’gouna (Sahrawi) detainees shows there is no proportionality criteria used in relation to time held in custody. The compensation amounts are 80-100% higher, therefore, double in some cases, for the Moroccans than for the Sahrawis, based on the criteria of number of years held in detention. The same differences are found regarding persons who “disappeared” and were reported by Moroccan authorities as having died in undisclosed holding centres, as Moroccan cases were awarded amounts that were double or even triple those awarded in Sahrawi cases.

## Health Care: Rehabilitation Programmes

Rehabilitation measures<sup>90</sup> include health care and psychological care for victims of gross human rights violations since such violations have a huge impact on the lives of people and their health that lasts years. Furthermore, many victims spent their 10 or fifteen years of their young adulthood or even childhood years imprisoned in secret detention centres.

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90 Rehabilitation includes medical and psychological care, as well as legal and social services” (Principio 21, 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, adopted by General Assembly Resolution 60/147, of December 16, 2005).

Other adults grew old in these facilities. Also, the malnutrition, cold, very poor living conditions in which they were held cause major physical and psychological suffering, disabilities and chronic health problems.

In its report, the IER includes a study on the health status of a sampling of victims, although it does not specify if these include Sahrawi victims or their health problems. This study does not include any analysis relating the treatment suffered to the health problems diagnosed or relating them to violations such as torture or enforced disappearance of loved ones.

The health problems are acknowledged as serious, but there is no relationship established to the violations suffered.

These problems are particularly relevant in cases analysed in this study in which the consequences of wounds or fractures with scars and bone lesions from poor bone mending and infections are evident; muscle and bone problems exist as a result of being hung in extreme positions; and problems with walking and recurring residual pain result from the practice of falanga on feet and beating; digestive problems such as ulcers or haemorrhoids from food and immobility, vision problems as a result of captivity, lack of light or blindfolding; or premature aging as a result of horrific conditions and mistreatment of numerous victims who were “disappeared” at these facilities, along with psychological sequelae such as depression, anxiety and post-traumatic stress after experiencing secret imprisonment, torture or rape.

Health programmes are a part of rehabilitation measures and are very important for victims and their families. These programmes need to aim at dealing with physical health problems, such as helping victims recover from the emotional impact of violence and stimulate their own personal and community resources. Psycho-social programmes involve different strategies to help victims recover. They help rebuild the often damaged social and cultural environment through artistic, craft, educational and occupational activities. Also, health programmes need to provide psychological support, through group, individual and family therapy, counselling and community support, dispensed by professional with experience working with victims of human rights violations and the support of community agents. A psycho-social approach needs to help develop local support capabilities, by training individuals and health professionals who can then provide sustained support to victims and affected communities.

In the case of the Western Sahara, no health care programme has been implemented to date, six years after the conclusion of the work of the IER, despite the fact that the final recommendations stated that such care needed to be a priority. Some of the victims interviewed for the study did receive a health system card, but this measure was not activated from the beginning and there is no specific programme of benefits for the victims that can be considered as a reparation. Furthermore, people with mental problems have no psychiatric support at hospitals. Many have had to deal with serious sequelae using their own resources or seeking support from family or friends to pay for costly treatments. Others have had to spend a large part of their compensation award for their own health care, which is in opposition to the meaning of reparation and the responsibility of the State as part of a rehabilitation policy.

### **Chile's Integrated Health Reparation Programme (PRAIS)**

The PRAIS was instituted by the Ministry of Health to provide free health and mental health care. The programme has over 200,000 beneficiaries who were victims of human rights violations and families of persons who “disappeared” or were executed and survivors of torture, among others. Demands for care increased at certain times, such as when mass graves were found, or when Pinochet was arrested. After years of operation, the programme was extended to include cases of family violence and abuse.

Despite its limitations, the PRAIS has been a positive programme because: 1) Victims have preferential access, differentiated from the general population's, to general healthcare measures, making it specific reparation measure; 2) Employees are highly qualified professionally and technically, with prior experience with victims organizations and human rights work, despite the lack of a more community-oriented perspective in some cases; 3) Beneficiaries have given the programme high ratings and it has a legal and budgetary framework in which operate.

Working with groups of affected persons can help create areas of emotional security and support, but also stimulate them to use their own resources. Many of these groups, in addition to providing psychological support, help people advocate for their rights or seek solutions in areas including health, housing and employment services. However, support for these groups as part of victims organizations has been nil in the case of the Sahrawis. For victims inside the Western Sahara, criminalization and lack of recognition of their organizations has led not only to a lack of support for their activities, but also has placed roadblocks in the way of possibilities for mutual support or self-organization of projects that could help victims get on with their lives and deal with the effects of the violations suffered. The Moroccan State needs to promote conditions that help people to be able to undertake these processes, and fund professional or victims'-own support networks.

*We have plans, for example, a women's literacy project, psychological support, small projects to help victims, and above all, help safeguard the memory, but they are not legalising them in order to make it possible for us to freely engage in our own activities.* El Ghalia Djimi.

Psychological care is a significant need in many cases that have thus far remained in secrecy due to of the lack of IER investigation impacted by poor resourcing and the survival of victims in living in Western Sahara or as refugees. Performing this research revealed several psychological conditions suffered by victims and their family members that require special attention and group work to provide psychosocial support both for those living in Western Sahara and as refugees in Tindouf. Without neglecting individual care, there is a need for psychosocial programs that, while paying full respect to victims' rights, focus on the consequences of the violations and help victims rebuild their lives including social relations and affective ties.

*There needs to be psychological and personal care for these people.* Alia Jedahlub Badahsid.

The demand for health care among human rights violations victims is very frequent during various stages of a conflict. For released enforced disappearance victims and family members of the disappeared, health care to face the consequences of violations stands as a basic rehabilitation measure and as acknowledgment of the harm caused by the state.

*Nothing could compensate for my children, my youth... But I hope that after all of these years of ill treatment, I can live a peaceful life, have a pension and health care and respect, which are my rights.* Demaha Hmaidat.

*We have sent a whole lot of letters to organizations concerned which have given us compensation that did not and will not cover the damage. Nor do they intend to compensate us for our livestock or physical and psychological damage.* Sidahmed Abdel Fatah El Boudnani.

For the victims of the last decade, in addition to care for the aftereffects of injuries suffered during protests or of torture during arbitrary detention, the most important issue in addition to the lack of recognition of damage and harm, is the lack of care and victims' fear of going to hospitals and speaking openly about their injuries. This fear is not only their psychological reaction to protect themselves, but is also triggered by police authorities who guard many of the places such as hospitals where care is provided to victims after violently broken up protests. On many occasions, Sahrawi victims indicate that they have to lie about how they were injured to avoid the risk of not having care provided. Many victims refer not having received certificates of their injuries they requested in order to document their claims<sup>91</sup>.

The victims of collective violations, such as those occurring after the dismantling of the Gdem Izik camp, received treatment in their homes, at times from Sahrawi nursing staff outside their normal working hours, or were treated using folk medicine with no access to basic medical explorations such as X-rays or to normal treatment with antibiotics and medical supervision. In a good number of cases, victims suffered excessive use of force during demonstrations or consequences from torture after detention and had no health care at all from the normal services available to any citizen. Furthermore, in certain cases, police authorities guarded hospital facilities blocking victims' access in a flagrant violation of the right to medical care.

The lack of safeguards for medical care is particularly of concern in the Western Sahara for human rights victims. It is part of the state's responsibility, regardless of whether or not there are judicial or criminal procedures pending. Medical neutrality is a universal obligation, and dignified, proper care is part and parcel of medical ethics anywhere in the world. Medical associations and human rights organizations are also obliged to ensure victims' right to health.

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91 See the chapter on Torture in Arbitrary Detention, Volume I.

It should be borne in mind that those with serious injuries and the greatest disabilities should have priority in health care, which should be free of charge. Care for the consequences of human rights violations should not be borne by the victims given that these violations are the responsibility of the state.

*I don't expect anything, because I'm not going to recover my kidney, nor will I forget the humiliations or the torture or harassment inflicted on me. Dahba El Joumani.*

These health measures are also important for those who were prisoners of war and who are in the Tindouf refugee camps where, in 1996, prisoners of war who had been disappeared were rendered. A major psychological impact was and continues to be suffered by these former prisoners who have been marginalized even in their own communities. This shows how stereotypes about mental health and psychological impact have a continual bearing on social relationships and they way these victim are welcomed back into the community. Despite the scarcity of resources there, in order to offer care for their own former prisoners of war, these stigmas should also be addressed openly by the Sahrawi authorities in the Tindouf camps.

*First I call for our authority to provide a check-up and economic, health and job support for all of the former prisoners of war, because we are still suffering the physical and psychological consequences of prison and three have died due to lack of psychological and health care. Everything that we have suffered has been for the cause and we have withstood and resisted until the end for the cause and we deserve respect and consideration first of all from our own people and our own government. People...it reached such an extent that they called us the group of 66 crazy men instead of the 66 prisoners of war... That hurts, a lot. Mohamed Ali Mohamed Lamin Hamma.*

## **State and international responsibility to build trust**

Though when one speaks of reparation measures it is crucial to indicate the state's responsibility for the violations committed and its obligation of reparation, in the Western Sahara, the dispute regarding who the territory belongs to and self-determination in addition to widespread human rights violations among a great number of people because they are Sahrawis and the state's ineffectual response have all generated a climate of distrust that must be repaired.

The IER had the opportunity to repair the situation with an attitude that initially supported the work of Sahrawi organization leaders in the Western Sahara. However, these organizations have ended up feeling their confidence has been undermined and that the IER failed to respond not only to people's expectations, but to its obligations in line with its mandate to investigate the human rights violations committed.

In the minds of many victims, it is the very Sahrawi organizations that conveyed information and attempted to defend their rights in a hostile environment where the state failed to respond.

*I have something to add and that is that I would like there to be cooperation from human rights organizations in Spain and from the AFAPREDESA to make a great effort and for the whereabouts of hundreds of disappeared Sahrawis be ascertained. And they should also involve Moroccan human rights organizations to get a definite answer on this issue.* Ihidih Hassena.

Involvement by international organizations is perceived by the victims to be basic in any future process. Despite the distrust regarding the United Nation's role in the MINURSO process as well, Sahrawi victims do consider that can they be confident in the process, but only if there is greater international support and supervision.

*We hope that human rights organizations, the International Red Cross, will give us the answers. We want our right to live and be like other sovereign nations. Many of the disappeared have no families to ask about them. We hope that the United Nations will give us our rights back and claim our dead, disappeared... If they are dead we want to see their bodies...It's our right and that's it. And if they killed them they must be tried to see why. You don't kill prisoners.* Fatimetu Mohamed Abderrahman.

## **Holding a referendum as reparation**

Virtually all of the victims interviewed for this study indicated that holding a referendum and having the opportunity to decide on their lives and the status of their territory was a key aspect of the meaning of reparation for them. Holding a referendum not only provides an opportunity for a political solution to the conflict, but from the right to reparation standpoint it also stands as a guarantee for non-repetition, a restitution for their loss as a people, and a basis by which to exercise their right to free and safe return. More generally speaking, many of those interviewed even indicated that a referendum would be the best possible individual and collective compensation.

*For me the only compensation is for the Moroccans to leave the territory, if there is any compensation and they remain here I would not accept that. For us it's not the material that we're concerned with but rather recovering our land.* Muly Ali Adjil Ali.

From the human and not only political vindication standpoint, it must be understood that for the Sahrawi victims of the Moroccan regime, the cause of the violations they have suffered has been part and parcel of their own convictions. Therefore, reparation as a means of non-repetition also has to do with the legitimacy of their political and cultural demands and of their identity as Sahrawis that in many cases became the cause for their detention, torture or accusation of belonging to or sympathizing with the Frente POLISARIO.



The demands for truth, justice and reparation in the case of the Western Sahara

*The first demand made by the families of the victims is for human rights to be respected. The second is their people's right to self-determination. These violations have been committed due to their legitimate demands for self-determination.* Larbi Mohamed.

From the non-repetition standpoint, holding a referendum and applying United Nations resolutions are part and parcel of founding and legislative measures sought for decades. Also, for those who live in Moroccan occupied Sahara, the actual situation has been military and police control, fear of expressing oneself, restrictions on the right to association, criminalization of the right to expression, and frequent arbitrary detentions and torture when there have been peaceful demonstrations. Against this backdrop, for Sahrawi victims, holding a referendum so that people can decide upon their own status is the only way to prevent control and violence from continuing to be suffered given that there are no strategic political changes in Morocco leading one to envisage any other behavior from the country itself.

*I believe the solution for this not to happen again is the self-determination of the Sahrawi people.* Zainabu Bukrim.

A referendum would also afford the opportunity for a new relationship with mutual respect to be built with the Moroccan population that ended up occupying or living in the Western Sahara without having to accept occupation as a pre-condition for talks.

*What is necessary for the events not to be repeated, we are not interested in any compensation. We only want the remains of our deceased. We have no trust in them whatsoever. There is nothing that can compensate us. No palace on wheels could compensate us. We are a proud people. We are not seeking aid or anything. We want our colonizers to be reasonable and to leave us in peace. We are not interested in any type of rehabilitation. We just want our land. We are very rich and we have enough with our fishing and phosphates to ensure a dignified life for ourselves.* Monina Abdalahi Mansur.

For the victims in Tindouf and the refugee population overall, holding a referendum for self-determination marks the chance to return home, to one's village, town, desert, sea.

*In general terms I have my rights, and this is part of my respect for my own self-determination. I don't want to be here. I want to go back to my land, I want Morocco to accept the self-determination of the Sahrawi people, to ask for forgiveness, compensate and leave.* Farayi Sidi.

*All we want is to return to our land. The first thing is for them to leave our territory and then everything else will fall into place from there.* Brahim and Salka Mohamed Ahmed.

*For me, the only thing to ensure that this won't happen to us again is our freedom.* Limam Sidi Baba Mbarek Dadda.

The victims cannot feel at peace in a country where the grave human rights violations against them have never been acknowledged, where their organizations are not free to do their work, and where the freedom of expression and physical and psychological integrity of many Sahrawis is under attack. The lack of any real change in the situation of many of the victims of violations of the past and the on-going generation of new victims of grave violations continues. In the eyes of a large portion of the Sahrawi population, this proves there is no other solution for their people. For the victims, the State of Morocco lost the chance many years ago in the Western Sahara to demonstrate that its system has the capacity to change and respect the Sahrawi people and consider or accommodate for their vindications in any way.

*We're only asking for one thing, the independence of the Sahrawi people and that way we can live in peace. I have a brother in the camps and it's been years and years since I've seen him. There are many families that have been unfairly divided. Morocco is not going to change its attitude towards the Sahrawi people. They are going to continue to violate the fundamental rights and the human rights of the Sahrawi people.* Salha Boutenguiza.

*I only want Morocco to leave, to leave us in peace and get off our land. The only reparation for us is respect for us, even not only life, but also death. For instance in the case of Said Dambar whom they still don't recognize they've killed. We don't even have the right to die. In Gdeim Izik, there were atrocities, and this still worries us. What's going on in the occupied territories worries us. We haven't done anything to anyone and we had to flee and those who stayed behind are in an even worse predicament there. They aren't safe or at peace. They break into their homes and abduct their mothers and leave the children there, crying. No organization can go in under safe conditions.* Mamia Mohamed Fadel.

While there have been political changes in Morocco, they are much more evident in Morocco itself than in the Western Sahara. The victims do not want a future that is tantamount to the past. They demand exercising their human rights in full liberty, including their right as a people to decide on the destiny of their political status.

*All we want is our rights. Especially in the future. It shouldn't be like the past. And especially we shouldn't have any problem with anybody.* Salek Uld Ghala.

*I... well, an overall solution to this conflict because there are a lot of us who are suffering. A lot of people and a lot of injustice. So solving my sister's case is not going to solve all of this. All of us are in danger. Morocco so far does not want to acknowledge the facts or reveal the truth and less yet take on responsibility for the atrocities it committed.* Mohamed Ahmed Laabeid.

Falling within the scope of demands for non-repetition are demands to be able to use their own natural resources in the Western Sahara for the development of their communities and shared project.

*It is putting an end to this situation and having the occupier leave our land and for the Western Sahara to recover its independence, its resources, and be sovereign over its land.* Luella Abderrahman Aomar.

In some cases, all of the suffering is considered to be a sort of payment for the chance to obtain independence, like a re-evaluation of all of the immense suffering regarding their aspirations for freedom.

*The only thing that could repair all of this suffering is for us to be able to have independence and freedom. This is the price that we are willing to pay.* Fatimetu Mohamed Lahsen.

The chance of obtaining independence, then, is seen as a way for the Sahrawis to be put on the same standing as other peoples around the world, as status for their collective rights.

*In order for this not to happen again we have to do it for the people as a whole and not for any single person. And the way to do it is for the Sahrawi people to be able to decide their fate and experience, just as other peoples, what is called freedom, which other peoples know but we do not.* Sultana Sidibrahim Mohamed Jaya.

*They are fighting to make us disappear... and you can tell by everything they do... and that is fruit of this dispute. The solution is a definitive solution to the conflict. Nowadays there are international organizations and the solution must be international for exercising free determination. That idea of autonomy doesn't solve anything. They have been trying for forty years to get the Sahrawis to resign themselves to that idea of Morocco's. Here we confirm that the existence of all of the Sahrawis is affected by the conflict, in all spheres of their lives, education, work, documents, building a house, trade, getting involved in politics, being able to travel, in all branches of your life the Moroccans are going to see someone as the POLISARIO and this thwarts all aspects of your life. If the conflict isn't solved we're going to be suffering from this forever. We are calling on people to work to curb the stealing our natural resources that benefits Morocco. Humanitarian associations have to provide political support and a solution so that a referendum is held. If we don't solve that problem, the suffering won't end.* Mohamed Daddach.

## **Protection of Sahrawi civilians**

Protection of civilians is a basic condition for any reparation policy. Victims' first right is the right to live free of fear, and authorities' first obligation is to prevent victims from being re-victimized. However, the Moroccan authorities' behaviour has continued to be harassment, control of mobilization and, in many instances, triggering re-victimization. Protecting civilians is a very basic demand for international organizations given that the safeguards that the State of Morocco would need to offer victims of human rights violations have yet to be provided.

*I would like to ask the United Nations and also humanitarian and human rights organizations to put an end to human rights violations in our land and to help us achieve our independence, the release of our political prisoners, and our natural resources from being exploited. We particularly want protection from that occupier that violates the rights of our elders, our youth, our minors, day in and day out. We are going to defend all of our land even if there is only one of us left on it. This is what I call for and I call for self-determination. Soukaina Mint El Hassan.*

The fact that there is a United Nations mission and there are international organizations that can collect testimonies and serve as a buffer against abuses that victims continue to suffer from is perceived as the only opportunity to generate a better understanding of the situation. Knowledge of violations remains part of the hope that awareness will be raised and the consequences of the violence the victims suffer will no longer be able to be concealed.

*In order for this not to happen again, the first thing I ask is for international organizations to open an office here to take care of any Sahrawi suffering detention or disappearance and for us not to wait until the press comes or for an investigative delegation to examine the facts. There should be an office here in the occupied territories. Nguia Elhawasi.*

*The most important thing right now is for there to be a body to oversee and ensure respect for human rights in the Western Sahara. This is necessary because the same violations have been repeated since 1975 with no intervention from the United Nations or the international community or Spain, which is an administering power in the territory. Sometimes you don't have answers to many things. Why this silence? Why is there no legality in the Sahrawi territory? Why is there no international legislation emanating from United Nations resolutions and International Law? Daha El Haussini.*

The work of the media, freedom of information, and the presence of accredited media from other countries is part of the guarantee of non-repetition.

*What I lament the most is thinking about where the world has been all this time, justice, the media...Nowadays animals' rights are spoken of, but no one knows absolutely anything about the Sahara! Said Elhufud Hama Embarek.*

A key to prevention is freedom of expression. While freedom of expression is consecrated by the Moroccan constitution and all international treaties to which the State of Morocco is party, the country's legislation prohibits showing symbols that might act against the country's territorial integrity. In fact, most Sahrawi detainees who participated in peaceful demonstrations were detained for having flags, for painting graffiti on walls, or for carrying banners considered to be subversive and attack the State. The systematic denial of Sahrawi expression, vindications and symbols is a violation of freedom of expression and opinion. These rights are protected among others by Article 19 of the Universal

Declaration of Human rights and also by Article 19 of the International Covenant on Civil and Political Rights.

*The first request is for human rights to be respected. This is fundamental. So that each person can have the right to freedom, freedom of expression, and freedom of being respected. Pressure on the Kingdom of Morocco to ratify the treaties. Embarcalina Brahim Mustafa.*

Over the last few years, in addition to the difficulties in reaching an agreement within the United Nations on the Western Sahara, there have been two indications of a dangerous path in the discussion of alternatives for preventing and resolving the conflict.

One is the use of social polarization and the increasing risk of civil confrontation, particularly since Gdem Izik in 2010. After the camp was dismantled, there were confrontations between the Moroccan and Sahrawi population.

*Morocco as a state and an invading population, the problem is that in these 20 years that we've been released I've discovered that we've always made a separation between the Moroccan people and the State of Morocco. But lately many of us see that the problem is not only the invading State, but also that the settlers have the same ideas as the government. This is the big problem. Another problem is that we and the Moroccan population cannot live together this way. We will never have a favorable solution for either side and the Moroccan population doesn't understand that the Moroccan government is an invader that invaded the Western Sahara and that this is a non-decolonized territory. They don't think this way. I see all of the problems converging, flowing together into the same river which is the Sahara conflict. If it isn't solved there will be problems and there won't be stability in the Maghreb. Baschir Azman Hussein.*

While some contend that, geo-strategically speaking, it is crucial to bolster Morocco's military position, and others defend a balance of power between Morocco and Algeria, a solution to the Western Sahara conflict must take account of International Human Rights Law and International Law more generally. This should not be wielded politically in the region's fragile geopolitics. The way the issue is addressed will be a determining factor in the region's future. The solution must include human rights, which is crucial for governability from the standpoint of preventing violence in the future.

*Sometimes I am asked whether the reign of Hassan II was worse, but I say that Hassan II committed crimes against humanity, but with no witnesses. But this (King) is committing international crimes with an international witness which is the MINURSO and that is unacceptable. How can we as activists believe in human rights principles and in international law? This disappoints us. We are worried that our peaceful resistance will fail because this new generation no longer believes in peaceful resistance. They are exerting pressure on us, saying that without violence we'll get nowhere. Aminetu Haidar.*

## The need to break with the past

Various types of recognition of victims, expressing rupture and morally sanctioning the perpetrators are all symbolic measures and stand as traces leading the way to taking on the truth, providing support for the victims and contributing to a change in the social climate<sup>92</sup>.

In the Western Sahara, the Moroccan regime has not made any gesture to recognize the Sahrawi people in all of these years. The only general statement by the King was made on 6 January 2006 and was general, regarding Morocco, without any impact on the Sahrawi people. The statement had no consequences regarding recognition of responsibility of the perpetrators or high officials in the Police, the Army Gendarmerie or the auxiliary forces, all of which are compromised and responsible for grave human rights violations against the Sahrawis. Insofar as the criticism of violations or current non-tolerance of abuse in the Western Sahara, the Moroccan authorities sent no internal signal towards the state security corps. Nor have public officials been separated or perpetrators been sanctioned. None of this was included in the IER mandate or in its recommendations to the police in Morocco, reflecting the very scant regard this commission has for the victims' needs for comprehensive justice and reparations, which should be on any reparation agenda. Nor were any recommendations made for a truth commission. Furthermore, several violations such as arbitrary detention and torture have continued over these last few years.

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92 Principles 22 and 23 of the 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, adopted by the General Assembly through Resolution 60/147 of 16 December 2005).“ *Satisfaction* should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims; (h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

*Guarantees of non-repetition* should include, where applicable, any or all of the following measures, which will also contribute to prevention: (a) Ensuring effective civilian control of military and security forces; (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; (c) Strengthening the independence of the judiciary; (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Public events such as visits to secret detention centres, symbolic gestures such as putting an end to emblems of the reign of Hassan II, responsible for grave human rights violations, and acts of collective expression and recognition of the unjust suffering of the Sahrawi people have never taken place in the Western Sahara. Quite to the contrary, the IER's report never was formally presented in the Western Sahara nor was any specific mechanism established for the Sahrawi victims to follow through on their demands to search for the disappeared. Furthermore, certain secret centres such as the PCCMI were destroyed. All of this is demonstrative of a panorama in which symbolic measures of victim recognition and breaking with the past have been lacking.

### **Symbols of breaking with the past**

In Argentina, on 24 March 2004, to mark the anniversary of the military coup d'état, the President of the Nation together with his cabinet attended a *Colegio Militar* ceremony in which the President ordered the Commander of the Army to remove portraits of J.R. Videla and R.B. Bignone, heads of the Military Junta. Both dictators had been heads of the *Colegio Militar*. Removing the pictures of those who headed illegal repression and led the nation's destiny for seven long years had been constantly requested by top-ranking officials in Ministry of Defense for years prior to that by the Centro de *Estudios Legales y Sociales* – CELS. The point was to translate into gestures and visible attitudes the difference between that behavior in military institutions and the conduct established for them under the new rules of the democratic regime.

Prior to that, on 3 March 2004, coinciding with a Presidential measure to establish a museum in the former secret detention center, the Escuela de Mecánica de la Armada (ESMA), Admiral Jorge Godoy, Chief of State of the Navy, recognized that those facilities had been used "... to perform action qualified as aberrant and injurious to human dignity, ethics and the law" and he concluded "... becoming a symbol of barbarism and irrationality".

Genuine, public asking of forgiveness is important and can have positive repercussions on victims and survivors. However, if these actions are not related to truth and justice, they may be seen as a government strategy to prematurely close the chapter of the past and manipulate survivors. Furthermore, in order to have a positive impact, any request for forgiveness must meet a series of conditions. Specifically, a) it must be sincere and come with demonstrative gestures of change vis-à-vis the victims; b) it must accept responsibility and avoid justifying actions (saying, for instance, they were "overdone" and other similar statements); c) it must express a will to change in concrete terms (i.e. exactly what will be done so to ensure non-repetition).

No reparation policy can do without these measures of recognition.



## Collective memory as a preventive tool

Types of collective memory such as commemorations and expressions of collective memory like monuments, names of streets, and symbols to maintain the lessons of the past in society constitute another reparation measure. However, the mere fact that there are parks, commemorations and monuments does not ensure that they will fulfil their social function or serve as types of effective memory. The participation of the victims is required and a change in the state's attitude towards human rights in the present.

In the Western Sahara, symbols of past repression ostentatiously remain. Streets and other types of formal remembrances continue to bear the name of the Chief of State, King Hassan II. For the victims of his regime, the exaltation of names of perpetrators directly responsible for the violations remains an offense. In Western Sahara schools, no history with which the Sahrawi people identify is taught.

*In schools the Sahrawi students don't study any subjects that have to do with the history of the Sahara. They only study the history of Morocco. El Ghalia Djimi.<sup>93</sup>*

There are no places provided for memory or monuments or events of recognition in which Sahrawi victims can feel reflected. Rather to the contrary, all of the official actions and symbols are geared towards obviating or disregarding Sahrawi symbols or memories, associated with a threat by the "enemy".

### The preventive role of memory<sup>93</sup>

To foster collective memory's positive role for victims and contribute to preventing further violations in the future:

1. Events must be remembered on a shared basis and expressed in rituals and monuments that bear in mind and respond to the feelings of the victims.
2. The reactivating of hate and aggression must be avoided, as must victimization reinforcing vengeance.
3. What occurred must be explained and clarified to the extent possible. An agreement must be reached about the basic facts, although there may be different meanings attached to them.
4. Lessons and conclusions must be drawn for the present.
5. A meaning must be conferred to what occurred which must be rebuilt placing the accent put on aspects positively impacting collective identity (lessons learnt, the value of the victims...).

93 PÁEZ, D., VV.AA. (Eds) (1997), Memoria Colectiva de Procesos Culturales y Politicos. Lejona: Editorial de la Universidad del País Vasco/Euskal Herriko Unibertsitatea.

6. Dwelling on the past and stigmatizing survivors and victims must be avoided.
7. Memory consists of a moral judgment that ethically disqualifies the perpetrators. This disqualification must be individualized to prevent collective blame from being laid on an entire nation or ethnic group, for instance.

## Memory in archives

The Moroccan authorities have not opened any of the archives from Hassan II's period for the victims. The IER indicated in its report that certain official sources had been open for consultation but it is unclear of their nature and no documents regarding secret centres, operational plans for military campaigns, or case files which must be in the hands of the army, the Gendarmerie, the Rapid Intervention Military Police or other forces with responsibilities for grave human rights violations have been made public<sup>94</sup>.

The victims' demands that the archives be opened have met with no echo other than a general statement by IER members and that of a governor.

*We met with a former Chair of the IER and later of the Human Rights Advisory Board, Driss Benzekry, who told us the files did exist. Someone else, the current Chair of the Human Rights Advisory Board, told us that they did not. Sidi El Bachir uld Gala uld El Hussein.*

Archives and documentation on human rights violations constitute both a collective testimony of the violence and a source of information on repressive practices. For victims' family members, they are a way of finding relevant indications or proof for further investigation to be carried out.

Many countries that have suffered dictatorships or internal armed conflict have subsequently opened up their archives as a response to victims' and human rights organizations' demands. Information about the archives should be public and accessible to the victims, although most often governments allege security problems to keep the information classified. For instance, the so-called Archives of Terror (*Archivos del Terror*) in Paraguay were a first-hand documentary source for obtaining direct proof in the Condor Operation trial regarding South American dictatorships. On certain occasions, such as in Guatemala, these archives were accidentally discovered while the states had denied them for several years. On other occasions, such as in Argentina, they were discovered thanks to a human rights policy or lobbying by organizations.

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94 A sample of these case files can be found in the Modus Operandi section in Volume I

Archives of truth commission should be accessible for victims, such as in Peru where the Ombudsman's office (*Defensoría del Pueblo*) kept the testimonies and CVR's work for the victims, scholars and future generations, although in certain countries a clause was reserved for consultation of the perpetrators' names. In the Western Sahara and more broadly in the IER's work in Morocco, documents, files and information gathered by the IER is not public and the victims have not had any access to their own files. This is a clear violation of the right to information and prevents their work from becoming part of collective memory or from having any impact on future generations.

## **Human rights and a transformation agenda in the Sahara conflict**

The results of this study, including the degree of impact that individual and collective violations have had on the Sahrawi people, the mechanisms that have enabled these violations, and the tremendous consequences that they continue to have on the victims all indicate how important it is for victims and human rights defenders to be spotlighted in their search both for political solutions and the democratization of the region.

A solution for the Western Sahara conflict based on international legality and the rights of the Sahrawi people cannot be divorced from the development of a policy for truth, justice and reparation in that region. While these issues have not been linked over the course of the years, international negotiation experience in armed conflict and the falling of dictatorships shows that respect for human rights must be at the heart of political solutions to conflicts.

The history of attempts to apply United Nations resolutions or successive United Nations envoy plans, such as the Plan Baker, shows that the absolutely asymmetrical relations between what are known as “the two parties” do not enable normal political negotiations and that without pressure factors on the negotiation table, due to differences in political clout, an agreement cannot be reached to resolve the conflict. International experience also demonstrates that civil society actors should be involved in setting agendas for discussions and political negotiation, and that they should also be consulted for discussions regarding conditions and policies to foster the return of refugees. All of this has been gridlocked for the last two decades in the Western Sahara conflict.

While Morocco counts on the occupation, on the army and police forces controlling the territory, on a demographic inversion and on the consolidation of an international state in economic and geostrategic relations in the Maghreb, the Sahrawis can count on nothing other than International Law, the moral backing of those that have been expelled from their land, their legitimacy as a people with their official Frente POLISARIO representative and recognition in several countries around the world as a government of stateless people, and their increasingly organizational capability despite decades of repression. The Sahrawi people have many professionals and social agents, particularly where they are refugees, who cannot impact the development of their people due to a lack of enabling social, economic and political conditions. The diaspora is also awaiting an opportunity to drive the development of the Western Sahara.

Nevertheless, the position of third countries has been a determining factor in how the conflict has evolved and in the gridlock. The United States and France have been allies of Morocco and in practice have either blocked or failed to exert pressure on the State of Morocco to accept United Nations resolutions. Meanwhile, the State of Spain has reneged on its responsibilities in the territory for which, according to the United Nations, it is still an administering power, and has maintained its position of neglect and oblivion towards the Sahrawi people. The only significant ally that the Sahrawi people and the Frente POLISARIO have had in the region is Algeria. Furthermore, disputes between Morocco and Algeria run the risk of instrumentalizing

the Western Sahara conflict when the solution to the conflict has been solved as many times as Morocco has subsequently blocked the accord.

## **1. The role of the international community**

International involvement in post-conflict reconstruction has also given rise to a source of information and exchange of experiences and learning, for instance through truth commissions, reparation programmes and institutional reforms.

While since 1991 there has been a United Nations Mission for a Referendum in the Western Sahara (MINURSO), its sole function is to supervise ceasefire in an armed confrontation that no longer exists. Its mandate should therefore be broadened to include verification of the human rights situation in the region. In a clear display of fear of international supervision, the Moroccan government and its allies in the region have thwarted that possibility from coming to fruition on every potential occasion. The Sahrawi conflict is not only a territorial dispute between two confronted parties, it is a human rights issue and cannot now be merely considered to be a marginal problem on the global scene. International and United Nations agencies, in addition to providing humanitarian aid, should fulfil a role in supervising the human rights situation there. Many peace processes have been accompanied by so-called “friendly nations” viewed by the parties to have management capabilities and credibility, or have had United Nations intermediation at various stages of the process. An international role must be played here, including new elements such as a crucial human rights perspective to break out of the current gridlock.

*There is international justice that we are seeking, but my son says that no one listens to us. He is the son of two disappeared parents. In 2005, when he was 9 years old, he was expecting a gift of mine for the end of the school year, but he spent the day crying because they detained me. This case is representative of the cases of all the children. This is a concern of ours as activists. We are calling for the MINURSO to broaden its remit to protect, oversee and control the human rights of our children who are our future and to prevent violent resistance. Aminetu Haidar.*

The “international community” as it is known, has different types of involvement in the Western Sahara issue. One is letting time elapse while the Moroccan status quo consolidates. Some international players are also committed to their own political and economic interests in the country. There is also a concern about the “governability” issue in a region seeking lasting solutions. In certain cases, the government of a single country, such as Spain, has acted contradictorily on different occasions according to its interests and territorial disputes with Morocco, interests in controlling migration, or interests together with the European Union in agricultural and fishing policy.

The international community should provide support and facilitate not only political solutions to the conflict but also respect for human rights in the Western Sahara.

## **2. Verification of civil and political rights**

As has occurred in other armed conflicts around the world, the independent verification of human rights, particularly civil and political rights, in regions in conflict is a basic condition in order for the population to have safeguards regarding independent protection and supervision measures that generate trust. Safeguards can be bolstered to be able to denounce or investigate violations, and an objective, non-biased vision of what is happening in the region can be facilitated, which is crucial in order to achieve progress and take further decisions regarding the process. Moreover, a knock-on effect would contribute to generating a human rights culture and to democratizing the area. The MINURSO must update its mandate in accordance with what the Sahrawi conflict requires, including a human rights perspective making concealing what is happening in the territory unacceptable.

*Since 1991, the MINURSO has failed to exist for us. We need a human rights mandate that protects the Sahrawis. That is the United Nations mission.* Saadi Mohamed B.

## **3. Independent observation of the Sahrawis' political, social and cultural rights**

In addition to civil and political rights focused on safeguarding the Western Saharan people's safety and protection, social and economic rights in the region are basic aspects tied to the conflict and the marginalization denounced by Sahrawi victims and organizations. There are no development indicators or studies such as those done on other countries in the world by the United Nations Program for Development (UNDP) that include information on the Western Sahara specifically. Conditionality in trade agreements with Morocco is increasingly linked to verifying that extracting resources in a territory under dispute impacts the autochthonous Sahrawi population. The verification measures should also take into account the Sahrawi population living in refuge that continues to suffer from exile and is jeopardized by not being able to use its own resources due to violence and the impossibility of being able to return.

## **4. Fostering measures contributing to better coexistence in the Western Sahara**

The Moroccan population's presence in the Western Sahara has endured since the Green March in 1975 and its aftermath when the Moroccan authorities promoted the colonization of the area. While coexistence between the Sahrawis, many of whom suffered human rights violations, and the Moroccans has not been easy since, over the last few years, Sahrawi organizations have denounced the Moroccan population's increasing involvement in aggressions against Sahrawis in different locations within the territory. Although these attitudes do not prevail among the Moroccans in the area, there is a risk

of increasing civil confrontation if the State of Morocco resorts to using the Moroccan population to secure its aims for control. Furthermore, escalating frustration among the Sahrawis, particularly youth, can lead to confrontations or types of sporadic violence that aggravate the already complicated situation.

The international community should foster opportunities for dialogue and evaluation and as well as projects that benefit social integration. At the same time, it should avoid discriminatory policies against the Sahrawis that stoke feelings of grievance, and in any event, the use of civilians in policing should meet international standards on the proportional use of force.

*Now we are no longer afraid that the police can take you to prison and detain you for twenty years. Now the problem is the civilian population because a civil war could break out. The Moroccans don't understand this, although there is a minority who does understand. We know the civilian population under this regime, which is catastrophic, a dictatorship. But that does not give Moroccans the right to be against us.* Baschir Azman Hussein.

## **5. Developing exchange and building bridges between Sahrawis in the Western Sahara and in the Tindouf refugee camps**

The fact that there is a divided country should be taken into account in all action. The situation of the refugees in Tindouf should no longer be seen as an issue of providing humanitarian aid to refugees, but rather an issue of human rights, that is, the refugees' human right to restitution, reparation, compensation and return to their places of origin. Progress must be made in designing these policies to foster future decision-making. There are several possible future scenarios for return and re-integration, but the international community could facilitate different approaches, criteria and design processes drawn from lessons learned in analogous cases over recent decades.

## **6. Establishing special transnational justice mechanisms for the Western Sahara**

As this study has well analysed, and as organizations such as Amnesty International have suggested, the IER has missed the opportunity to set a new groundwork for democracy and investigating the truth and reparation policies in the Western Sahara.

Meanwhile, over the last thirty years, broad-based experience has been accumulated in designing transnational justice systems where extrajudicial mechanisms have been put in place. Truth commissions, searches for the disappeared, exhumation of mass graves and the return of the remains of loved ones, a gene bank, and independent investigation and identification mechanisms stand as examples together with judicial investigations into the facts and events.



Further measures that remain pending in the Western Sahara including the development of initiatives on collective memory, symbolic gestures of breaking with the past and commitment to preventing human rights violations, determined support for human rights organizations and victims in the Western Sahara, development of health care and psychosocial support programmes, commemoration of the memory of violations including physical places, the opening of military archives for the victims and their family members and human rights researchers, and the fostering of political and institutional change to enable effective civilian control of the military.

*There is no truth commission as there have been in Latin America. There is no transition. What happened must not be repeated, but there is no guarantee. There should be a truth and memory commission, an institution to address in order to demand the truth about what happened.* Dahha Dahmouni.

One of these urgent mechanisms would be an international support commission working to search for the disappeared, protect mass graves, identify the remains of the disappeared who are dead, analyse the cause of death, and return the remains to the family members in order to cover the minimum requisites for the family members' right to truth and mourning according to international standards. It should be borne in mind that the impact of enforced disappearance has particularly negative consequences on the lives of women and the second generation.

*For me it would be very, very important to know where my parents are buried. No one has ever explained any of that to me. And I don't know anything about them. It's been a long time since I've spoken about that and it hurts. I wish so much that could be done. Knowing where they are would be so important to me.* Zuenana.

## **7. Developing independent organization programmes for victims' care**

The results of this study show the tremendous impact that human rights violations have had on the Western Sahara and the refugees living in Tindouf. None of the processes has progressed without a subject in the different countries around the world, and that has generally been victims' or human rights organizations. Neither the conditions in the Sahrawi's place of refuge nor in the Western Sahara have enabled these organizations to function normally. By determinately supporting these players, social processes can be brought about to prepare the population to defend its rights and enhance the culture of democracy in the region.

Any conflict transformation agenda will include these organizations' agency in reconstruction measures such as health and psychosocial care programmes, restitution and return. Information networks and international non-governmental organizations support countries in rebuilding their social fabric through regional workshops and expert advice. Forensic experts support investigation committees and family organizations. And it is these family and human rights organizations that, in many countries, have also pushed

towards judicial investigation into crimes against humanity as a contribution to universal justice and a culture of peace. Witness protection and assistance programmes are part of this international baggage and can be important in the Western Sahara. Coordination is needed between donor countries and human rights organizations in order for an effective contribution to be made towards re-building the social fabric in the Western Sahara.

## **8. Facilitating the work of international actors: the media, cooperation agencies, and humanitarian aid and human rights organizations**

One of the factors making it difficult to attain a true picture of what is happening in the Western Sahara is the lack of any independent information mechanisms or human rights or cooperation organizations there to enable media to function in a more open social context. While in the eyes of the State of Morocco, the Sahrawis exaggerate their denouncements of the situation they experience, the Sahrawis themselves attempt to use the media within their reach to disseminate their denouncements. The State of Morocco should foster international presence and enable a more frank and open flow of information. The Western Sahara should no longer be a sealed, militarily controlled territory as if a war were ensuing.

*Well, I ask the international community to lobby the Moroccan government so that the fundamental rights of Sahrawi citizens are respected. I ask them to send a standing committee to ensure respect for human rights in the Western Sahara. I ask the Moroccan government to lift the information blockade in Western Sahara.*  
Mahmud Lewaidi Ehwidi.

## **9. De-militarizing every day life**

Everyday life in the Western Sahara should no longer be characterized by military and police control. The presence of the police and the military in the streets and their control over mobilization cannot mark everyday life, leading generations of Sahrawis to grow accustomed to their lives being controlled from the day they are born, even in school and in health care, until the day they die, and to being considered a domestic enemy in their own land. Showing Sahrawi symbols, including Frente POLISARIO symbols, cannot be cause for detention or justify torture as it has.

A change in the living conditions there would lead to a thaw and would be a hallmark of good faith to establish a new groundwork for people of different identities currently living in the territory to coexistence and in mutual respect. The Western Sahara has the highest density of security forces in the entire region, and military expenditure accounts for a large portion of the budget when further spending should be invested in education, promoting equality, and social integration.

International non-governmental organizations and official instances can participate in outlining guidelines, for instance the United Nations guidelines to combat impunity, that

would bolster and legitimate the initiatives of local political leaders, human rights groups, and civil society organizations.

## 10. Applying international law

As the Secretary of the United Nations and all of the countries involved have indicated in recent years, any political solution to the conflict in the Western Sahara must be circumscribed to the application of international law and United Nations resolutions. However, history has demonstrated that the way this is done will depend not only on the resolutions' content, but also on the strength of the different parties. Thus far, this has meant that the most powerful countries have supported Morocco, which in turn has once and again blocked plans to apply international law.

Despite its complexities, the conflict in the Western Sahara is relatively straightforward. Its transformation depends on political will and the development of a culture of human rights that has thus far been lacking in policies in the Western Sahara. Hypocrisy on the part of the so-called international community continues to generate tremendous frustration and also heightens disaffection with what the United Nations stands for.

The Sahrawi population, and particularly human rights organizations, have proven themselves tremendously committed to the defending life and generating a culture of peace. It is time for the experience accumulated over the decades to impact a change in the conditions of the conflict, a shift from perceiving resolving the conflict as a negation of the other to perceiving it as a win-win scenario. From our standpoint, human rights should be part and parcel of this scenario and this study aims to make a contribution.

*International law, United Nations resolutions with all of their mechanisms, the General Assembly, the Security Council, the Fourth Committee and the Hague must be applied. It's very simple. I'm a bit bitter because when I was in prison I listened to a speech by Mr Zapatero (former Spanish Prime Minister) who said that the problem in the Western Sahara was difficult. That isn't true. It's unacceptable given the Western Sahara's legal basis and it's hard for a cultured person to say that. What hurts the most is that the Western Sahara problem is clear. Secondly, it's about applying those international laws so that the Sahrawi people can determine their future. We are trying to diminish that suffering from abductions, killings, we are trying to instil a culture of human rights and mechanisms to diminish the pressure among people in the hope that, one day, all of this will end. I hope that my son can live in peace and realize his dreams. Brahim Dahane.*



# MEHERIS

## A possibility of hope

Mass graves and the first Sahrawi disappeared who have been identified

Carlos Martín Beristain  
Francisco Etxeberria Gabilondo

### Summary





## Appendix. Meheris. A possibility of hope

*One of the things that have hurt me a lot, and that has left an open wound that has not yet healed, is my father's complete and utter innocence. He was not a member of the military, nor did he belong to any political cells, he was just a civilian who was leading his daily life like everybody else.* Mahyub Mohamed-Mulud Mohamed Lamin Maimun.

*After so many years waiting, today is a historic day, because with your help we have been able to exhume the bodies. The remains that have been found there are likely to be those of our father, his own ID was found placed on the corpse. This, together with the verification that he had had a violent death, is proof of the lies told by Morocco that have done so much harm to the families.* Mohamed Fadel Abdalaha Ramdan.

## Presentation

The following document contains the findings of a forensic and research team, working together with a genetic laboratory at the University of the Basque Country, on a case of Sahrawi missing persons in Fadret Leguiaa in the region of Samra, near Amgala and Meheris, in February 1976. It is the result of extensive research that began with the completion of a study on the general problem of human rights violations in Western Sahara, published in 2012 by the Hegoa Institute of the University of the Basque Country, titled "*The Oasis of Memory: Historical Memory and Human Rights violations in the Western Sahara*"<sup>1</sup>, which has had its continuity in the research on certain cases of people who were arrested and then made to disappear during that period.

The issue of the disappeared during the armed conflict and violence against Sahrawi civilians is still present in the lives of their families, given the uncertainty about their fate and the permanently open psychological wounds they have had to bear. The refusal to provide relevant and accurate information about their fate is part of the abuses and violations of their psychological integrity, all of which is considered by international

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<sup>1</sup> Martin Beristain C, and E. González *The Oasis of Memory: Historical Memory and Human Rights Violations in the Western Sahara*. Vol. I and II. Pp. 1200. Hegoa and Euskal Fundazioa. Bilbao, 2012. <http://publicaciones.hegoa.ehu.es/publications/281>



courts as a form of torture<sup>2</sup>. It is necessary to take into account that the widespread and systematic practice of enforced disappearance qualifies as a crime against humanity<sup>3</sup>. From the legal point of view, enforced disappearance is considered a continuing offence until the facts are researched and, if applicable, exhumations and effective investigation procedures are carried out, and the remains are returned to their families to meet their demands, and fulfil their rights, especially the rights to truth and mourning, as well as their rights to justice and reparation. Moreover, forced disappearances are a multiple violation of several human rights<sup>4</sup>, and “the prohibition of enforced disappearances together with the correlative duty to investigate and punish those responsible have become *jus cogens*”<sup>5</sup>.

## Relatives’ demands and exhumation

In April 2013, a forensic research team from the University of the Basque Country received a petition from AFAPREDESA, an association of relatives of the disappeared, to conduct research in an area of the Western Sahara in which there were suspected human remains of Sahrawi victims. On 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> June 2013, a professional team from the University of the Basque Country, the Aranzadi Foundation and the Hegoa University Institute, accompanied by several relatives and AFAPREDESA members visited a place in the Fadret Leguiaa area, in the Samra region, in the desert, 400 km from the refugee camps in Tindouf, in order to respond to their request for a team of the highest professional qualification and experience to help them identify and recognize a place where mass graves were said to exist and in which some people -considered up to the present as “disappeared”- were reportedly buried.

This report is a summary and reflects the conclusions of the aforementioned research<sup>6</sup> that included: 1) a compilation of testimonies from witnesses and family members, and

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<sup>2</sup> This principle is enshrined in Article 24, para. 1 of the International Convention for the Protection of All Persons from Enforced Disappearance (2007, ratified by Morocco on May 14, 2013), and which has been recognized repeatedly in the jurisprudence of the Inter-American Court of Human Rights (see, among other cases *González Medina and family v. the Dominican Republic*, Sentence dated 27<sup>th</sup> February 2012, para. 270-275), of the European Court of Human Rights (including, among others, *Er et alia v. Turkey*, Sentence dated July 31<sup>st</sup>, 2012, para. 94-97) and of the Human Rights Committee of the United Nations (among others, the *Guezout and Rakik v. Algeria* case, Observations dated July 19<sup>th</sup>, 2012, para. 8.6).

<sup>3</sup> Article 7, para. 1 f) of the Statute of Rome on the International Criminal Court, and Article 5 of the Convention for the Protection of All Persons against Enforced Disappearance. Enforced disappearance is also prohibited according to international humanitarian law (Rule 98).

<sup>4</sup> See, among others, Human Rights Committee, General Observation No. 31 dated 29<sup>th</sup> March 2004 Nature of the General Legal Obligation Imposed on State Parties to the Covenant, Para. 18. In the same vein, the Working Group on Enforced or Involuntary Disappearances (WGEID) Annual Report for 1982, Doc. E/CN.4/1983/14 dated 21 January 1983, para. 131. In addition, Special Rapporteur against torture, Interim Report for 2011, Doc. A/56/156 of July 3, 2011, para. 14 (see generally paras. 9-16).

<sup>5</sup> Inter American Court of Human Rights, *Goiburú et alia v. Paraguay* Case, Sentence dated September 22<sup>nd</sup>, 2006, Series C No. 153, para. 80

<sup>6</sup> A full version of the report exists only in Spanish for now. See: <http://publicaciones.hegoa.ehu.es/publicaciones/28>

the construction of the collective case, including the facts, their impacts on families, and their demands, 2) the process of carrying out the exhumation, the characteristics of the mass graves, the conducting of standardized procedures for the osteological analysis of the remains, and the taking of samples for genetic analysis. 3) a photographic study and a video documentary that accounts for the entire process, 4) the conducting of DNA analyses by the genetic laboratory of the BIOMICs Consolidated Group of the University of the Basque Country UPV / EHU.

In the course of the research it was possible to determine the identity of all the disappeared who were in those graves, and who had been extra-legally executed in February 1976 by members of the Moroccan army.

Because the area has been under supervision by MINURSO since the ceasefire signed by the parties in 1991, the remains were properly protected, and left duly marked in the place where they had been found, in view of a forthcoming official verification mission that could lead to the release of the remains to their families, and to the setting up of the necessary measures for the protection of other mass graves that are in the area.

Direct relatives of the persons identified in this case are in the Tindouf refugee camps, like many other families of the disappeared. Other relatives are in the Moroccan-occupied Western Sahara. The rights of these victims, in both contexts, should be protected by the relevant authorities under the supervision of the United Nations.

## **Forced disappearances in the Western Sahara**

There are currently over 400 Sahrawi victims of forced disappearances. Many other Sahrawis are also missing as a result of the bombings at Dreiga Um, Guelta or Tifariti by the Moroccan Air Force in 1976. About 80% of these disappearances occurred during the early years of the military occupation of the territory, especially between 1975 and 1977, and constituted the main *modus operandi* in the Moroccan repression.

With respect to the fate and whereabouts of 207 of these victims, Morocco has provided fragmented, limited and partial information in the report issued by the Human Rights Advisory Council (HRAC) published online in December 2010, which, in most cases, states that they had “died due to the prevailing conditions” or “under custody” without any further details or information about their final fate. The same report also recognizes another 144 cases of people who had been made to disappear without providing any data for their identification.

## **The MINURSO mandate**

The area in which the graves are located in Fadret Leguiaa, in the Smara region, near Amgala, is part of the area near Meheris which is under the supervision of MINURSO since

the 1991 ceasefire<sup>7</sup>. MINURSO's mandate, among other things, includes taking steps with the parties to ensure the release of all political prisoners or detainees in the Western Sahara, and overseeing the exchange of prisoners of war (in collaboration with the International Committee of the Red Cross). Also, Security Council resolution No. 2099, dated April 25, 2013, extended the MINURSO's mandate to 30<sup>th</sup> April 2014, and highlighted "*the importance of improving the human rights situation in the Western Sahara and in the Tindouf camps and encourages the parties to cooperate with the international community to develop and implement independent and credible measures to ensure full respect for human rights, taking into account the relevant obligations incumbent upon them under international law*". In the same resolution, the Security Council of United Nations encourages the parties "*to continue with their respective efforts to improve the promotion and protection of human rights in the Western Sahara and in the Tindouf refugee camps*".

## **Recommendations of the UN Working Group on Forced Disappearances**

The UN Working Group on Enforced or Involuntarily Disappearances undertook a visit to Morocco and issued a report in 2010<sup>8</sup>. This report analyzes the practice of enforced disappearance as used by the Moroccan authorities and includes several references to the systematic nature and the situation of impunity in terms of enforced disappearances in the Western Sahara. The WGEID expressly stated that it is not sufficient to refer to the existence of mass graves, and that the state has the obligation to exhume the bodies and identify them according to international standards, which include the taking of DNA samples<sup>9</sup>. The WGEID recommended that Morocco should make use of independent coroners<sup>10</sup>.

## **International standards on exhumations and on the identification of remains**

International standards stipulate that states have, as part of the duty to institute juridical guarantees, the obligation to seriously and professionally investigate human rights violations with all the available means, and that this obligation extends not only to the State

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<sup>7</sup> See Security Council Resolution 690 dated April 29<sup>th</sup>, 1991.

<sup>8</sup> Doc A/HRC/13/31/Add.1 dated February 9, 2010 (para. 38, 45 and 53).

<sup>9</sup> With respect to international standards and obligations on exhumation, identification and return of remains, see, among others, the March 2010 Progress report of the Human Rights Council Advisory Committee on best practices on the issue of missing persons (A/HRC/14/42 dated 22 March 2010). The of the Human Rights Council Advisory Committee has also published its report on best practices related to the issue of missing persons (doc . A/HRC/AC/6/2 dated December 22, 2010), and see also Article 24, para. 3 of the International Convention for the Protection of All Persons from Enforced Disappearance, which states that "Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains".

<sup>10</sup> The WGEID reiterated those recommendations in their recent report follow the recommendations made in the report on the visit to Morocco (doc. A/HRC/45/Add.3 dated March 1, 2013, para. 26 and 29).

of Morocco, which has the main obligation, but that this also pertains to Spain, of which many of the Sahrawi disappeared were citizens<sup>11</sup>.

In the March 2010 Progress report of the Human Rights Council Advisory Committee on best practices on the issue of missing persons<sup>12</sup>, the whole Section IX is devoted to the “*Treatment of the dead and identification of human remains*”. This document details obligations that can be summarized as follows: a) search and protection, b) relationship with relatives, c) the rights of victims and relatives, d) competency and independence of the forensic work. The conventions and other international standards on exhumation and identification of remains in the event of serious violations of human rights and related obligations are summarized in the following table.

<b>International Humanitarian Law</b>
<ul style="list-style-type: none"> <li>• First Geneva convention, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field”, 1949. Article 17 - Requirements reference to the dead. Graves servicing.</li> <li>• Second Geneva Convention for the Amelioration of running the wounded, sick, and shipwrecked members of Armed Forces at sea, 1949. Article 20 - Requirements reference to the dead. Article 121 - Prisoners killed or wounded in special circumstances.</li> <li>• First Additional Protocol to the 1949 Geneva Conventions relating to the Protection of Victims of International Armed Conflicts. Article 33 – The Missing. Article 34 - Remains of the deceased.</li> <li>• Second Additional Protocol to the 1949 Geneva Conventions relating to the Protection of Victims of International Armed Conflicts, 1977. Article 8. Search.</li> </ul>

<sup>11</sup> Article 15 of the International Convention for the Protection of All Persons from Enforced Disappearance provides that “State Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains”.

<sup>12</sup> Doc A/HRC/14/42 dated 22<sup>nd</sup> March 2010. This document has been supplemented by the report on best practices related to the issue of missing persons adopted in December 2010 by the Human Rights Council, UN Doc. A/HRC/AC/6/2 dated 22<sup>nd</sup> December, 2010 (English only).

#### International human rights law.

- International Convention for the protection of all persons against enforced disappearance
- United Nations Principles relating to reparations, like, for example, the United Nations Principles against impunity
- UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (as adopted by the Economic and Social Council in its resolution No. 1989/65 dated May 24th, 1989)
- UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (doc. E/ST/CSDHA/12 1991) and
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by means of General Assembly Resolution No. 55/89 on December 4, 2000).

### Case Summary

In the afternoon of February 12<sup>th</sup>, several Bedouins were arrested by Moroccan military forces deployed in the area of Amgala. Several family members were present at the scene to witness this collective arrest. To document the case, 15 relatives were interviewed, all of whom were related to the eight disappeared people, some of whom witnessed the arrests. Some were also arrested and were later released or managed to escape. Eyewitness Aba Ali Said Daf, who at that time was 13 years old, stated that he was arrested along with two adult Beduin males who were his neighbours and acquaintances, Mohamed Mouloud Mohamed Lamin and Abdelah Ramdan, who were executed in front of his eyes and then partially buried.

*At that time, as I said before, around 8 pm, a man came in a Jeep car. He called Mohamed Mouloud first and asked him: Where are the Polisarios? That was the first question he made, the second question he made was: "Give me your identity card". Mohamed Mouloud denied any knowledge of the Polisario. He then shot him directly in the heart. Then he called Abdelah Ramdan and asked him the same question he had asked Mouloud, and shot him in the same way. The man who shot them had a gun, but he grabbed a rifle to kill them. Aba Ali Said Daf.*

He also witnessed Bashir Salma Daf's arrest. Bashir Salma Daf was about 14 years old. Aba Ali Said Daf said he heard Bashir Salma Daf's father, Salma Daf Salec Bachir, begging not to be killed, although he did not see him being killed. These people remained missing without their fate and whereabouts having been established with certainty. According to previous research by the international team, other people were arrested on the same day and in the same place, and have been missing since then: Sidi Salec (minor), Sidahmed Segri Yumani, Salma Mohamed Sidahmed and Salama Mohamed-Ali

Sidahmed. Altogether in this place some 8-9 people had disappeared and have remained missing up to the present day.

The arrests took place near the Amgala well, where we the Bedouins had gone in search for water for their herds. Some relatives had some information, provided by the main witness, about what had happened and on their relatives' arrest shortly after it all happened, but such partial information had not been checked up to the present, and the Moroccan authorities had not provided any reliable information on the fate and whereabouts of the persons involved. The case of disappeared in Amgala in February 1976 is characterized by the same *modus operandi*, as it happened in the same place and with the same Moroccan military forces, and all the victims were Bedouin shepherds from the region, who were in the same area when it all happened. There were also direct eyewitness reports of their arrests. The Moroccan military operation had involved numerous troops and vehicles in an area in which there were only civilians at the time, all of whom were in Bedouin groups living in the region. There is no evidence to suggest any fighting had taken place on that day, nor was there any presence there of Polisario military forces until several days later.

As a result of the incident, relatives of missing persons took part in the first exodus, first to other parts of the Western Sahara and then to Tindouf (400 km away), in Algeria. The flight was made in extremely adverse conditions, and this group of families experienced the death of several children on the way.

### **Lack of information and research, and responses that do not correspond to the truth**

The chances of being able to search for the disappeared have been, for over three decades, if not nonexistent, entirely limited without any official response from the state of Morocco to contribute to put an end to the existing confusion or uncertainty. The report of the Equity and Reconciliation Commission (*Instance Équité et Réconciliation* - IER, 2006) does not provide information on this case. No members from that institution interviewed relatives of these victims who were in the Tindouf camps. Of the eight arrested people who have gone missing and who are included in this case of the Fadret Leguiaa graves, the aforementioned list from the Moroccan CCHR, published online in 2010, provides some data on four of them. About the rest no information is provided, although they were arrested on the same day and in the same place.

In the four cases the aforementioned list<sup>13</sup> detailed that they had been arrested there in Amgala, and taken to Smara headquarters where they died under custody. Reference to Salma Daf Sidi Salec, the list notes that he had been *arrested by the royal army in June*

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<sup>13</sup> Following the recommendations of the Equity and Reconciliation Commission, the annexes to the report appear in <http://www.ccdh.org.ma/spip.php?article4282&lang=es> See Annex 1: The cases of enforced disappearances (in Arabic).

*1976 in Smara, and was taken to one of their bases where he died.* The same is stated in the case of his 14-year-old son Bachir Salma Daf. About Mohamed-Ali Sidahmed, who had been *arrested in July 1976*, the list says he had *died during abduction at an uncertain date*. Finally, the list says Abdelah Ramdam was *arrested on 22/02/1976 in Amgala by the army, was taken to the military base in Smara where he died, at an uncertain date*.

This information is not only vague and incomplete and does not conform to the minimum international standards, but, in light of this research, it has also been proven false. Both the dates, and the facts have been totally refuted by the forensic research carried out. The arrests were collective and occurred on the same day. The case took place on 12<sup>th</sup> and 13<sup>th</sup> February, 1976. The detainees were not taken to any barracks. They were immediately executed on the spot, while under custody and in complete helplessness. This questions the information contained in the CCHR list. Of the other four missing prisoners, who were executed in the same circumstances, Morocco did not provide any information at all, as they do not exist as such in the official listings, in spite of the fact that the relatives of Sidi Salec (the child) filed a petition before the IER on November 25<sup>th</sup> 2003 and again on December 13<sup>th</sup>, 2004, on which there was no follow up as the relatives had to appear before the entity in Morocco or in the occupied Western Sahara, and provide documentation which they did not have, all of which made it impracticable for them.

*There is no financial compensation for the losses we have suffered, and in particular for the loss of our father, so it is imperative that there be justice. And that we know what happened and how it happened, that we know the truth and that those responsible be punished. For what reasons did they do this? Where is he now, if he is dead where are his remains. All that is in international law for such cases should be applied and even this, with such serious crimes must be submitted to an independent international court. Why not the international criminal court? In fact, the longer it takes, this crime is perpetuated and there are still major human rights violations being perpetrated.* Mustafa Jueila Yumani.

## **The discovery of the mass graves**

In late February 2013, a shepherd named Abderrahman Abaid Bay, found human remains scattered on the sand in the area. The bones had been moved by water and were degraded due to exposure to the sun and were scattered over a wide area. Near the previous location, there seemed to be another burial place.

Previous research conducted by the international team in June 2013 noted the possibility that there could be the remains of between eight and nine (8 - 9) persons in the area, whose names were provided to the researchers by their own families. According to their testimony, these people, some of them children, were shepherds in search of food and water for their herds when they were arrested. The identity of the witness called Aba Ali



Said Daf was checked and confirmed by several relatives who stated that at the time of the facts, in 1976, was 13 years old and had informed them of what had happened, but that it was in those times simply impossible to confirm such information.

For all the above reasons, an inspection of the field was conducted by the professional team, identifying two places as possible mass graves.

## Description of the work carried out in the mass graves

In one of them the remains were found at shallow depth and scattered in the area, and had then been concentrated and protected according to the culture and rites of Muslim religious practices after their discovery in the month of February 2013. The team then analysed this material, both that found inside and outside the grave but next to it (**Grave 1**). Six male individuals were found, two of which were subadults 12-15 years old, one elderly person, and the rest were adults, all of which with traumatic injuries by firearms. Various personal belongings, documentation and clothing were also found.

Also, another grave was found nearby, above which there was a half-buried white right femur, affected by exposure to the sun. The team proceeded to clean and analyse the grave following technical and scientific criteria and international procedures pertaining to such areas and could document the existence of two adult male skeletons with traumatic firearm-induced injuries. The team also found some personal items, documents and clothing in that place which were collected by the forensic team to be conveniently stored to facilitate a possible identification by relatives. Such items were preserved following the proper standards and ensuring the chain of custody. A report on such objects and on the chain of custody was given to the Sahrawi authorities for appropriate national and international reporting. The grave was left as it was, without its remains being moved (**Grave 2**).

In both graves, rifle cartridges were recovered. DNA samples were taken from the remains found so as to be able to carry out comparisons later with samples taken from possible relatives.

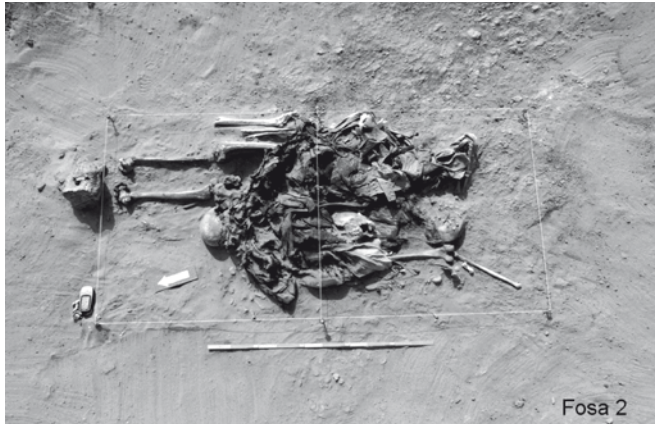
All of this was reported to the Sahrawi authorities for the necessary protection of the site noted, while indicating to them the importance of informing MINURSO, the International Committee of the Red Cross (ICRC) and UN human rights protection mechanisms and entities.

*Until that process is complete, we request vigilance to secure the site. We have no words to thank for news about my father's whereabouts. For us it is like a ray of light, because everything up to now has been shrouded in darkness. In our religion, when there is a grave of a relative to go and visit, then you can have mourning. After making sure that my father is there, we will make a grave to visit him and ask him for things - that would do us all much good. Sidi Mohamed Sidahmed Segri.*

## **Research Findings: collective case, cause of death and identification of the disappeared**

In this case, the analysis of testimonial and documentary proof and a forensic and genetic anthropological analysis completely concur in the following results. The research team concluded that:

1. The case of the graves at Meheris Amgala referred to eight people, including two minors, who were executed with by firearm and were superficially buried in the Fadret Leguiaa area, in the Samra region, near Am-gala. The victims were Bedouins who made their living by herding camels and goats. The case corresponds to extra-legal executions according to an eyewitness of the events on February 12, 1976. However, in spite of what the relatives suspected, based on descriptions received from the eyewitness a few days after the facts, such facts have not been investigated to date. The fate and whereabouts of those people remain unknown, with the eight people listed as missing.
2. The analysis of the testimonies provided consistent information on the facts and on their impact and circumstances after the facts. In addition, some relatives witnessed the collective arrest, providing the names of several of these detainees. 15 testimonies were taken from relatives who provided information on the events, and on their experiences, impacts and demands. With this information, the research was carried out. The testimonies showed that these were people who had been arrested together in that place and at that time, and that several relatives had been told by the eyewitness that their loved ones had been killed, but that this had not been proven to date.
3. Eyewitness Aba Ali Said Daf provided direct information to the forensic research team, according to which he had witnessed the extra-legal execution of Abdalahe Ramdan and Mohamed Mouloud Mohamed Lamin. This testimony was taken near Grave 2, the day before it was unearthed and analyzed. The results of the forensic, documentary and genetic research of Grave 2 completely confirmed the statement made by the eyewitness, both in terms of the identity of the murdered people and in terms of the type of firearm wounds. Similarly, collective testimony on the arrest of the other Bedouins previously provided by relatives was confirmed by the establishment of the circumstances and identities carried out with respect to the remains found in Grave 1.



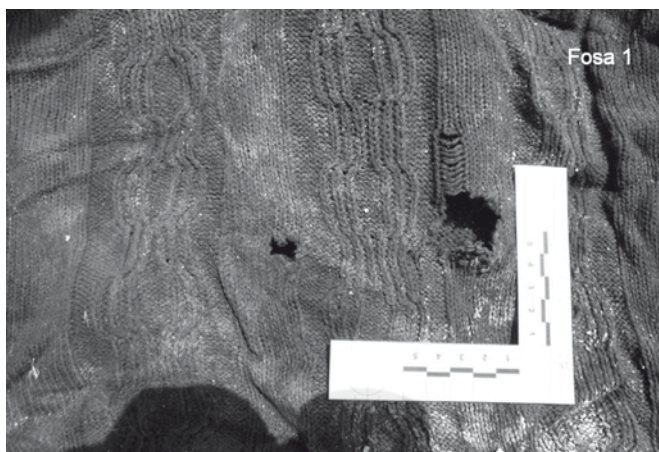
The grave with the remains of two individuals, as they were buried.

4. Testimonial analysis was based on a study of the internal and external consistency of these testimonies. The locations, names and types of alleged actions were duly checked, taking into account the age and previous references provided by some relatives. The study of the testimonies shows complete consistency in the collective case analysis, on the identities of the alleged victims, and the joint nature of these arrests near the Amgala well where the victims had gone in search of water for their animals. It also shows that the two graves found match with the same day in February 1976 and that the victims were really Bedouins from the region, who had not fled because they were in their land shepherding their animals.
5. Identity cards were also found in addition to the skeletal remains and personal items in the two graves. The analysis of the documents found in Graves 1 and 2 coincides with the testimony of the victims. Among those buried in these graves were the ID documents of three of the victims, who were later also genetically identified: 1) Mohamed Abdalaha Ramdan (Spanish ID document no. 4131099). 2) Mouloud Mohamed Lamin (Spanish ID document no. A-4520032). 3) A plastic card folder with a Spanish letterhead containing a sugar rationing card of that period made out to the name of Salama Mohamed Ali Sidahmed together with a document from the *Cubiertas y Tejados* company.



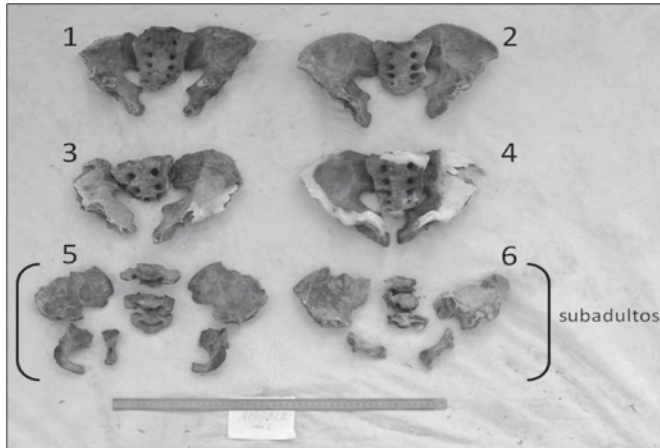
Individuo 1. Fosa 2  
ID No. A-4131099. Moha. Abdal-lahe Ramdan.

- The identification of personal belongings by at least two of the relatives coincides with the testimony in both cases, as the garments were described before they were found, and were subsequently identified as such by two relatives: Mahmud Salma Daf, identified the blue jersey belonging to his brother, who was a minor, as well as his father's rosary beads. Salka Mohamed Mulud also identified his father's rosary beads.



Characteristic perforations by firearm bullet.

- Grave 1, which had been partially lifted by water and animals, contained shoes effectively corresponding to six males: four adults and two children or youths. These data corroborate the previous testimony of the victims on the characteristics of the collective arrest and type of victims. Besides, such evidence was confirmed by the forensic and anthropologic analysis which determined that there were four adults and two subadults.



Layout of pelvic and sacral remains recovered from **Grave 1**.  
NMI corresponds to 6 people, two of which teenagers.

8. The forensic analysis concluded that the burials were superficial and that some of the objects have survived in very good conditions because of the lack of moisture that occurs in the desert and due to the characteristics of the terrain. It also concluded that 6 people (4 adults and 2 subadults or adolescents) were buried in Grave 1, and two adults in Grave 2. The cause of death was violent. Firearms were used. The injuries are selected vital areas, which corresponds to extra-legal executions.



7.62 calibre rifle cartridges with markings from 1963 and 1964.

9. There is a complete concurrence between the testimonial proof, the on-the-field analysis and the type of graves, between the analysis and the osteological tests carried out, the presence and analysis of identity documents, the objects found in the grave, all of which match the testimony and subsequent identifications, and the genetic testing carried out to confirm the identities of the eight disappeared people.

10. The conditions under which this work had to be carried out were extreme, due to the danger existing in region, the lack of local infrastructures, the militarized control of the area, and the distance from inhabited places in the desert. Despite all of this, the team was able to conduct a research and analysis of the findings in accordance with international standards.
11. The subsequent study in a forensic laboratory confirmed the causes of death, together with the analysis of the remains and the positive genetic identification. This had to be done without the benefit of having all the skeletons found in the laboratory, as is usually done in this type of research, due to the impossibility to transfer them from the grave. All of which shows the professionalism of the team and also the difficulties in conducting sophisticated studies under such limited conditions.



Skull with fracture due to the trajectory of a firearm bullet.

12. The remains found in Grave 1 were subsequently buried in a hole opened in the sand, at sufficient depth, and wrapped in a white cloth. This funeral was attended by relatives present at the site, one per family. They made an identifying headstone which they placed in memory of the dead. The remains of Grave 2 were left intact, genetic samples were taken and then the remains were conveniently reburied with the participation of the relatives. The families were able to pray before both graves following the Islamic religion and Sahrawi traditions.





Relatives prior to the closing of Grave 2 after placing a boundary made with stones.

The names of the persons identified are:

FOSA 1	FOSA 2
Salma Daf Sidi Salec	Mohamed Mulud Mohamed Lamin
Bachir Salma Daf (minor)	Mohamed Abdalahe Ramdan
Sidahmed Segri Yumani	
Salama Mohamed-Ali Sidahmed Elkarcha	
Sidi Salec Salma (minor)	
Salma Mohamed Sidahmed	

13. The relatives participated in the whole process from the beginning of the research. They were contacted by AFAPREDESA (the Association of Families of Sahrawi Prisoners and Disappeared Persons) and accompanied the research team on the trip. They took part in the decision-making process and were informed at all times of the progress thereof. Their questions and queries were answered in several meetings held for this purpose.
14. Relatives, both men and women, gave testimony on the facts, the impact of the enforced disappearance in their lives and were able to express their demands in terms of the ultimate recovery of the remains, the protection of the graves and the memory of their family as well as demands for the recognition of truth, justice and reparation. The research and forensic team wishes to recognise the bravery of these families, the justice of their demands and expresses its commitment to support them in the following steps until there is a final resolution of the case.
15. The legal implications and in terms of international human rights law in this case are obvious and very relevant. They should be evaluated by both the Sahrawi and



also by Spanish authorities, as these are Sahrawi citizens with Spanish ID cards. The competent bodies and mechanisms in the United Nations system of human rights protection should also evaluate this case, and the Moroccan authorities should assume its responsibilities in the case.

16. The graves are located in an area near the wall built by Morocco, to which access is both dangerous and difficult. The protection of the graves and the research of other potential graves in the area should be done with the presence of the United Nations. The research team conducted a preliminary report for the authorities in to inform MINURSO after the discovery of the remains in June 2013 in order to ensure protection of the graves.
17. The team considers it is essential to provide a prompt response to the relatives' demands as well as those from AFAPREDESA, and that an official mission, with the presence of MINURSO, the ICRC, international human rights NGOs and the team itself and independent experts, is commissioned to return to the area to perform the exhumation and return of the remains and to perform analyses of other possible graves in the area.
18. The case of the Western Sahara has been forgotten for decades. The relatives of over 400 Sahrawi missing people still await an investigation of their cases and have repeatedly demanded that this type of research be conducted by independent personnel and research teams with expertise in human rights violations. Many of the reported places where there are mass graves are well known and have been identified by relatives or survivors. Most of them are in the Western Sahara under Moroccan control. There are others near clandestine detention centres in Morocco. These sites should be protected and investigated in accordance with international standards.
19. The right to truth and the right to mourning are part of the demands of the relatives and of the experience gathered over recent years in many countries in conflict. Equally important are justice and reparation in cases of serious human rights violations such as these described here. The work carried out in this case shows that it is possible as well how important it is for the relatives and for the Sahrawi people as a whole. It is also a contribution to the search for political solutions to the conflict that are to be based on respect for human rights in case of the Western Sahara.

This summary was written with the difficult goal of condensing the report titled “The oasis of memory”, the complete version of which contains over 1000 pages in two volumes. The report includes an analysis of human rights violations in the Western Sahara since 1975 based on interviews and testimonies gathered from 261 victims. It also analyzes the impact on individual people, families and women, the forms of resistance of the victims, and, finally, the demands for truth, justice and reparation for victims as well as the responses from the state of Morocco.

As Nobel Peace Prize winner Adolfo Perez Esquivel points out, “In the research work that summarizes the ‘The oasis of memory’ report, Dr. Carlos M. Beristain tries to recover both the Historical Memory and the human rights situation in the Western Sahara, developing an approach that follows the methodology of the Truth Commissions in which he has participated, and combining the psychosocial approach that he contributed to the REMHI Commission in Guatemala, with the importance of gathering direct information and experiences from victims”.

The value of memory is in the transformation of life. This report is dedicated to Sahrawi victims and survivors who have made it possible with their courage and generosity.

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