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Morocco/Western Sahara: New revelations on Sahrawi disappearance cases highlight truth and justice deficit

Revelations published this week by a Spanish team of forensic experts confirming the deaths of eight Sahrawis, including two children, who disappeared in 1976 and providing unprecedented evidence that they were extrajudicially executed by Moroccan armed forces underscore the continuing need to uncover the full truth about hundreds of cases of enforced disappearance from previous decades and to ensure justice for victims and their families.

The team of forensic experts from the University of the Basque Country and the Aranzadi Society of Sciences exhumed the bodies of the eight Sahrawis and conducted a forensic examination of the remains, including through DNA tests, as well as investigating the circumstances of the deaths and interviewing relatives of the eight and witnesses to the events of 1976. The experts had been approached by Sahrawi families of victims of enforced disappearance in April 2013 after a shepherd discovered human remains in the Fadret Leguiaa area, near Amgala, of Western Sahara, located in the part of the disputed territory controlled by the Polisario Front, which runs a self-declared government in exile some 400km away in the Tindouf camps in Algeria.

The team released its findings on 10 September 2013, concluding that the eight persons, six adults – Salma Daf Sidi Salec, Sidahmed Segri Yumani, Salama Mohamed-Ali Sidahmed Elkarcha, Salma Mohamed Sidahmed, Mohamed Abdalahe Ramdan and Mohamed Mulud Mohamed Lamin – and two children – Bachir Salma Daf and Sidi Salec Salma – were arrested in February 1976 by a Moroccan military patrol and executed by firearms on the spot, before being buried in two shallow graves in the sand and rocks.

No information on any of the eight cases was revealed by the Equity and Reconciliation Commission (Instance Équité et Réconciliation, IER), a body set up in 2004 by the Moroccan authorities to investigate enforced disappearances, among other violations. However, four of the cases were researched by the Advisory Council on Human Rights (Conseil Consultatif des Droits de l'Homme, CCDH), the national human rights institution at the time, in its work to follow up on the findings of the IER. It concluded that they were arrested by the Moroccan armed forces near Amgala in 1976 (with dates of arrest varying between February, June and July 1976) and taken to military barracks in Smara, also in Western Sahara, where they later died. The four others were not included in either the IER's or CCDH's lists of victims of enforced disappearances.

The differing conclusions reached by the CCDH, on the one hand, and the Spanish team, on the other, about the circumstances of deaths of four of the eight disappeared Sahrawis raise the question of the accuracy of conclusions published by the CCDH regarding other cases of enforced disappearances, particularly in cases such as these where neither the IER nor the CCDH obtained testimonies from family members of the disappeared living in the Tindouf camps.

Amnesty International calls for the preservation of evidence which was left by the team of experts, for an independent, impartial and thorough investigation into the deaths of the eight Sahrawis and for those found responsible to be brought to justice. Given the location of the remains and the mistrust between the Moroccan and Polisario authorities, Amnesty International calls upon the United Nations to ensure that this happens.

It is likely that other remains are awaiting discovery in this and other areas of Western Sahara. These should be sought, exhumed, identified and returned to their families. In enforced disappearances cases where new information emerges, either through the exhumation of remains or through testimonies from victims' families who were not interviewed by the IER or the CCDH, such as those living in the Tindouf camps, the Moroccan authorities should ensure investigations are reopened.

Perpetrators should be brought to account to put a tangible end to impunity for abuses committed in the context of the armed conflict between Morocco and the Polisario Front. The United Nations Mission for the Referendum in Western Sahara (MINURSO), the UN peacekeeping force in the region, could play a role in providing international assistance and expertise and in facilitating this process, as could the Office of the UN High Commissioner for Human Rights and the UN Working Group on Enforced or Involuntary Disappearances.

Unfinished transitional justice

The new information revealed by the team of forensic experts highlights the limits of the IER's and CCDH's efforts to uncover the truth about hundreds of enforced disappearance cases in Morocco and Western Sahara during the reign of former King Hassan II and the need for further independent, impartial and thorough investigations to be conducted.

Many families are still yearning for the full truth about the fate of their disappeared relatives and justice for the crimes that were committed against them. Enforced disappearance remains a human rights offence until families have had the right to truth and mourning, as well as justice and reparation.

Existing UN mechanisms should be used to assist in resolving cases of enforced disappearance. The UN Working Group on Enforced and Involuntary Disappearances could play a valuable role in resolving issues of truth and justice in Morocco and Western Sahara. Amnesty International has welcomed Morocco's recent ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, but called on the Moroccan authorities to consolidate this achievement by promptly recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims and other states parties and to incorporating the treaty into national law.

King Mohamed VI established the IER nearly a decade ago to investigate human rights violations committed by the Moroccan security services between 1956 and 1999. When it finished its work two years later, the King tasked the CCDH, Morocco's national institution for the protection and promotion of human rights at the time, to follow up on the IER's work and recommendations, which it did up to 2010. This was the first transitional justice experience of its kind in the region, raising many hopes for truth, justice and reparations.

In its 2010 report *Broken Promises: the Equity and Reconciliation Commission and its follow-up*, Amnesty International acknowledged the achievements of what was a groundbreaking transitional justice process. The IER underlined the responsibility of the state in human rights violations and financial compensation was awarded. A smaller number of victims benefited from other forms of reparation such as health insurance and restoration of employment.

However, Amnesty International also documented its shortcomings, some of which related to its mandate. The IER was hampered by being unable to compel witness testimonies from members of the authorities or security forces who might have knowledge of the fate of those subjected to enforced disappearance and too few remains of those who had been executed or had died in detention were exhumed, identified and returned to their families, denying them the chance to genuinely grieve for their loved ones.

Furthermore, the IER increased Sahrawis' feeling of marginalization by failing to address the particular breadth of violations they suffered, and failing to organize a public hearing in Western Sahara on a par with other regions, where it held televised sessions which gave voice to victims recounting their suffering. The IER's final report provided very little detail of enforced disappearance and other human rights violations targeting Sahrawis. It failed to even acknowledge that the region suffered disproportionately as exemplified by its exclusion of Western Sahara from the collective reparation programme designed for areas particularly affected by violations during the "years of lead". Neither did the IER succeed in improving communications and rebuilding trust with victims, families and civil society organizations in Western Sahara – this lack of trust itself being a by-product of the violations suffered in the region at the hands of the Moroccan authorities.

The mandate given to the IER also excluded identification of perpetrators of grave human rights violations and their prosecution, leaving victims to pursue justice through individual prosecutions at their own initiative. To date, the overwhelming majority of Moroccan officials alleged to have committed gross human rights violations during the period covered by the IER's mandate have not been brought to justice and there are no indications that the authorities intend to address this in the future. Instead, the official discourse promotes the notion of "reconciliatory justice rather than accusatory justice", which translates into impunity for grave human rights violations.

A number of legal and institutional recommendations made by the IER have made their way into the new constitution, such as the enshrinement of human rights, and others have led to reforms to increase the independence of the judiciary being initiated. However, these have yet to translate into tangible changes of practice. Meanwhile, a meaningful reform of the security apparatus to ensure transparency and accountability, which was also recommended by the IER, has yet to be implemented.

A human rights mandate for MINURSO

The location of the remains, in an area where MINURSO maintains a ceasefire across the dividing line between the eastern part of Western Sahara, controlled by the Polisario Front, and the western part, administered by Morocco, also underscores how important having an independent and authoritative human rights monitor in the area would be.

Amnesty International has been repeatedly calling for the mandate of MINURSO to be expanded to include a human rights component, not only to promote truth and justice for unresolved cases of past violations by the Moroccan authorities, as well as by the Polisario Front, but also to address fresh violations, which remain an ongoing source of concern in the region.