



The case of Saharawi human rights defender Mbarek Daoudi

Recent decision rendered by the United Nations Working Group on Arbitrary Detention concerning Mbarek Daoudi, against the Kingdom of Morocco

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The Case of Saharawi Human Rights Defender Mbarek Daoudi

In November 2018, the UN Working Group on Arbitrary Detention published a decision regarding the detention of Mr. Mbarek Daoudi (Opinion No. 60/2018)². The decision strongly criticizes the Government of the Kingdom of Morocco, and asks for the immediate release of Mr. Daoudi. This report, by Adala UK and the Norwegian Support Committee for Western Sahara, comments on, and gives the context to, this decision.

Mr. Mbarek Daoudi, a well-known Saharawi human rights defender, was arrested, tortured and imprisoned in September 2013, and subjected to political prosecution as a response to his political opinions regarding the right to self-determination for the Saharawi people.

The decision of the UN Working Group on Arbitrary Detention regarding the detention of Mr. Daoudi serves as yet another testament of the arbitrary detention of Saharawi human rights defenders and activists in response to their support of the right to self-determination for the people of Western Sahara.

The Working Group found that Mr. Daoudi had been arrested, tortured and imprisoned as a response to his publicly expressed political opinions, whereas the judicial system had been used in order to silence dissidents of the Moroccan regime. The Working Group concluded that the arrest and detention of Mr. Mbarek Daoudi was arbitrary, breaching Articles 9, 14, 19 and 26 of the ICCPR, and Articles 9,10 and 19 of the UDHR, falling under category I, II, III and V of the Methods of Work of the Working Group.³

Western Sahara and International Law

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

As Morocco invaded a territory, in 1975, in which it does not hold sovereignty (ICJ Advisory Opinion, Western Sahara, 1975), falling under the administration of a “High Contracting Party” (Spain), rendering the conflict and international armed conflict (GCIV article 2 (2)), Morocco’s presence in Western Sahara, without the consent of the people of Western Sahara, is the one of an “occupying power” falling under Article 42 of 1907 Hague Regulations and Article 2 of the Fourth Geneva Convention of 1949.

Saharawi political prisoners are imprisoned within the Kingdom of Morocco, entailing deportation of protected persons from the occupied territory to the occupying country (art. 49 of the Fourth Geneva Convention), constituting a grave breach of international humanitarian law pursuant to Article 147 of the Fourth Geneva Convention.

This report is prepared by the Norwegian Support Committee for Western Sahara and Adala UK. On behalf of The Norwegian Support Committee for Western Sahara, the report is signed by Erik Hagen, Director of the Norwegian Support Committee for Western Sahara, info@vest-sahara.no, and Tone Sørfohn Moe, Legal scholar, tone@vest-sahara.no. On behalf of Adala UK, the report is signed by Sidi Fadel, President of Adala UK, info@adala.uk.org. Please contact the undersigned if you are in need of additional information, or have any questions relating to this report.

² Opinion adopted by the UN Working Group on Arbitrary Detention at its 82nd session (20-24 August 2018, Geneva), Opinion No. 60/2018, concerning Mbarek Daoudi (Morocco), A/HRC/WGAD/2018/60. The decision rendered by the Working Group on Arbitrary detention is published and made available on the homepage of the Working Group here: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_60.pdf

³ Methods of work of the Working Group on Arbitrary Detention. A/HRC/36/38. Available here: <https://daccess-ods.un.org/TMP/7851140.49911499.html>

Decision of the Working Group on Arbitrary detention regarding the arrest and imprisonment of Saharawi human rights defender Mbarek Daoudi⁴

Mr. Mbarek Daoudi is a Saharawi human rights defender and a father of five.⁵ Shortly before his arrest, Mr. Daoudi had testified as a witness to the execution of a Saharawi family in February 1976, and revealed the mass grave of Amgala, where the bodies of the Saharawi family were found in June



2013, to foreign human rights activists.⁶ The Daoudi family has been harassed ever since his arrest, and four of his sons have additionally been subjected to political prosecution.

Mr. Mbarek Daoudi was arrested 28 September 2013 in his home in Guelmim in the South of Morocco. The arrest of Mr. Mbarek Daoudi took place without a demonstration of a warrant,

“Mr. Daoudi was incarcerated in secrecy, and at this time he was submitted to sessions of interrogation and abuses, detained together with two of his children, detained at the same time, knowing that each one of them could see the violence applied against the other two.”

Opinion No 60/2018
(author’s translation)

and the relevant legislation applicable to the arrest remains unknown. Daoudi’s two sons were arrested alongside with him, similarly without a warrant. After being detained by the police, Mr. Mbarek Daoudi was tortured in front of his sons – and the sons in front of him – the decision of the Working Group describes.

The source reported to the Working Group that the three of them had been placed in separate rooms, where their clothes had been removed. The source described to the Working Group that, after a while, the police brought the youngest son into the room where the older son was detained and started to torture the latter in front of his younger brother. They beat him brutally with hands, feet, batons and other objects, and the police urinated and spat on him. After a while they brought Mr. Mbarek Daoudi into the room and started to torture him in the same way in front of his sons.

⁴ Opinion NO. 60/2018, concerning Mbarek Daoudi (Morocco), A/HRC/WGAD/2018/60. The decision rendered by the Working Group on Arbitrary detention is published and made available on the homepage of the Working Group here: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session82/A_HRC_WGAD_2018_60.pdf

⁵ For more information, see reports prepared by: Front Line Defenders, Case History: Mbarek Daoudi, < <https://www.frontlinedefenders.org/en/case/case-history-mbarek-daoudi> >, Human Rights Watch, Saharawi activist facing military tribunal, < <https://www.hrw.org/news/2014/12/22/morocco-saharawi-activist-facing-military-tribunal> >, Amnesty International, Shadow of impunity, Torture in Morocco and Western Sahara, < <https://www.amnesty.org/download/Documents/MDE290012015ENGLISH.PDF>>

⁶ Beristain, Carlos M., Gabilondo, Francisco E., “To Know the truth at long last - Burial pits, forced disappearance and the right to truth in the Western Sahara”, by Hegoa (2015) :http://publicaciones.hegoa.ehu.es/uploads/pdfs/328/Resumen_saber_al_fin_ing.pdf?1498816309.

After the police had held them for three days of interrogations, Mr. Mbarek Daoudi was forced to sign a statement in which he confessed to the possession of a hunting rifle, an antique cannon and a metal tube, and that he intended to manufacture a weapon by using the metal tube, despite knowing that it was illegal.

The Government had not refuted the allegations made by the source, and the Working Group concluded that Mr. Daoudi had been subjected to illegal arrest and held for three days, whilst being tortured, outside the protection of the law, in violation of article 9 of the ICCPR (category I). The Working Group referred the case of Mr. Mbarek Daoudi to the UN Special Rapporteur on Torture, and expressed their concerns about Daoudi's two sons, arrested, tortured, and detained together with him.

The Working Group further found that the detention of Mr. Mbarek Daoudi was a result of his political activism in support of the right to self-determination for the Saharawi people in breach of article 19 of the ICCPR.

The Working Group noted that it is not difficult to detect that the political opinions of Mr. Daoudi do not please the Government. Following this observation, the Working Group concluded that Mr. Daoudi had been subjected to political prosecution, where the judicial system had been used in order to silence dissidents of the regime, noting that the political opinions publicly expressed by Mr. Mbarek Daoudi is in fact the cause of the legal proceedings against him (category II).

“The Working Group notices that the practice of torture in the judicial system of Morocco has been documented particularly in cases involving individuals linked to the Saharawi cause”

Opinions No 60/2018
(author's translation)

“The Working Group wonders about the soundness of the procedure against Mr. Daoudi and of the accusations lodged against him. For the accusations of wearing a uniform (when Mr. Daoudi is a former military) and of possession of a hunting weapon, associated with other pieces, he faces up to a multitude of legal procedures and has remained in detention since September 28, 2013. In view of these circumstances, the Working Group considers that the political opinion publicly expressed by Mr. Daoudi is in fact the cause of the legal procedures against him, taking into account that such instrumentality of the justice system in order to silence dissidents of the regime has been reported several times to the Working Group”.

Opinion No 60/2018
(author's translation)

The Working Group further found that the criminal proceedings conducted against Mr. Mbarek Daoudi was in violation of the right to a fair trial as stipulated in article 14 of the ICCPR (Category III).

Firstly, the Working Group noted that Mr. Daoudi had not been given the right to adequate defence, as he had been presented in front of the court on numerous occasions without a lawyer present. Secondly, the Working Group held that the use of confessions signed under torture was in

violation of the right to a fair trial, and held that the practice of torture in the judicial system of Morocco has been comprehensively documented, in particular in relation to the arrest of Saharawi's deemed sympathetic with the Western Sahara issue.

Lastly, the Working Group found that the condemnation of Mr. Mbarek Daoudi, a civilian, in front of a Military Court served as a separate violation of the right to a fair trial.

Lastly, the Working Group found that the imprisonment of Mr. Daoudi constituted racial discrimination in violation of the equality of human rights.

The Working Group held that the arrest of Mr. Daoudi is a result of him being a Saharawi and a result of his political opinions in favour of the right to self-determination for the Saharawi people.

The Working Group concluded that, if Mr. Daoudi had not been a Saharawi, and if he had not expressed his opinion regarding the political crisis in Western Sahara, the proceedings in question would probably not have taken place, symbolizing the very essence of category V (racial discrimination).

The Working Group instructed the Moroccan government to immediately release Mr. Mbarek Daoudi, and requested the Government of Morocco to report back to the Working Group within six months.

The Moroccan government has to this date not taken any actions in order to release Mr. Mbarek Daoudi or to remedy his situation. Mr. Mbarek Daoudi remains until this day imprisoned in Bouzarkarn prison. Mr. Daoudi is expected to be released in April 2019.

“If Mr. Daoudi had not been a Saharawi, and if he had not expressed his opinion regarding the political crisis in Western Sahara, the proceedings in question would probably not have taken place”.

Opinion No 60/2018
(author's translation)

Practice from the UN Working Group on Arbitrary Detention - the case of Saharawi political prisoners

The Opinions rendered by the UN Working Group on Arbitrary Detention serve as a testament to the arbitrary arrest and detention of Saharawi activists and human rights defenders, as a mean of reprisal for their activism, their cooperation with International Institutions, and, in order to silence the call for self-determination for the Saharawi people. According to our records, 54 Saharawi political prisoners are currently imprisoned in Morocco,⁷ with sentences ranging from one year to life in prison.

The UN Committee Against Torture, The Special Rapporteur on Torture and the Working Group on Arbitrary Detention have all reported a systematic use of force against the Saharawi population in the occupied territories of Western Sahara, and highlights that Saharawi's advocating for the right to self-determination are subjected to comprehensive police violence, abductions, torture and subjected to arbitrary arrest and arbitrary detention.⁸⁹

“People arrested are beaten, insulted and forced to reveal names of other protestors”, with the aim of “punishing and intimidating protestors in order to prevent further support for the call for independence”.

(A/HRC/27/48/Add.5)



El Aaiún, Western Sahara. 28 June 2018. Photo by Equipe Media

After its Mission to Morocco in 2013, and its visit to El Aaiún/Western Sahara, the Working Group had “received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-

⁷ I.e. Mohammed Bani, Abhah Sidi Abdallahi, Mohammed El Bachir Boutinguiza, Ibrahim Ismaili, Abdallahi Lakfawni, Sidahmed Lemjeyid, Abdeljalil Laroussi, Ahmed Sbaai, Eenama Asfari, Cheick Banga, Mohammed Bourial, Khouna Babait, Hassan Eddah, Zaoui Elhoussin, Haddi Med Lamine, Lafkir Med Mbarek, Khadda Elbachir, Thalil Mohammed, Toubali Abdallahi, Laassiri Salik, Elbasraoui Mohammed, Chakrad Yahdih, El Bambari Mohammed, Chouiar Hassan, Elmostaghfir Ayoub, Mayar Mojahid, Kais Elhaiba, Boukabout Abdallah, Iaazza Yaha Med Lhafed, Chakrad Larabas, Chakrad Khalid, Daoudi Mbarek, Elmarkhi Abd elkhalik, Elargoubi Nour Eddine, Elfak Khalihanna, Dadda Mohammed, Elhafidi Abdilmoula, Elkantaoui, Elwahidi Aziz, Amankour Nasser, Abaali Ahmed, Babair Salik, Bourгаа Mustapha, Bajini Omar, Charki Ali, Elmsaih Brahim, Elouakkari Elouafi, Laajina Omar, Hamza Errami, Erguibi Mohamed, Saadouni Ali, Salah Bassir, Bouchalha Brahim. The status of the aforementioned prisoners as “political prisoners” have been evaluated in conformity with the definition of political prisoners set out by the Council of Europe, in Resolution 1900 (2012) of the Parliamentary Assembly of the Council of Europe. The information was submitted by the Sahrawi League for the Protection of Political Prisoners inside Moroccan jails, and the Committee of the families of the political prisoners of Gdeim Izik.

⁸ CAT/C/MAR/CO/4, Committee against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, concluding observations of the Committee against torture (2011); A/HRC/22/53/Add 2, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E Méndez, Mission to Morocco (2013). A/HRC/27/28/Add5, Report of the Working Group on Arbitrary Detention. Mission to Morocco (2013).

⁸⁹ Report of the Working Group on Arbitrary Detention, Mission to Morocco. A/HRC/27/48/Add.5, para 62-71

determination of the Saharawi population”.¹⁰¹¹

Moreover, the Working Group concluded that “people arrested are beaten, insulted and forced to reveal names of other protestors”, and that these practices are “aimed at punishing and intimidating protestors in order to prevent further support for the call for independence”.¹²

The Working Group on arbitrary detention found similarly that protestors in Western Sahara are being prosecuted as a response for their support to the right of self-determination in **Opinion No. 39/1996**, **Opinion No. 4/1996**, in **Opinion No. 11/2017** concerning Salah Eddine Bassir, in **Opinion No. 31/2018** concerning Mohamed Al-Bambary, and lastly, in **Opinion No. 60/2018** concerning Mbarek Daoudi, presented above.¹³



In Opinion No. 4/1996, the persons alleging arbitrary detention had been prosecuted for “jeopardizing the external security of the State and the territorial unity of Morocco”, after having demonstrated, distributed leaflets and shouted slogans in favour of an independent Saharawi State. The facts of the case were similar in Opinion No. 39/1996, where a group of demonstrators had been arrested and violently tortured, after having distributed leaflets of the “Saharawi Arab Democratic Republic”.

Opinion No. 11/2017 and No. 31/2018 relates to the imprisonment of Saharawi journalists, working to expose human rights violations committed against the Saharawi population in the occupied territories of Western Sahara. In Opinion No. 11/2017, the Working Group highlighted that Mr. Bassir was associated with the political movement, and considered that “Mr. Bassir had been victimized for expressing his political opinion on the situation of Western Sahara, which constitutes a violation of the protection afforded under articles 18, 19 and 26 of the Covenant against discrimination based on a person’s political opinion”.¹⁴

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Opinion No. 11/2017

In opinion No. 31/2018, the Working Group highlighted that Mr. Al-Bambary was to be considered a journalist and a human rights activists, and noted that it was not necessary to have a press card or to be a member of an association for journalists in order to carry out such activities, in

¹⁰ Report of the Working Group on Arbitrary Detention, Mission to Morocco. A/HRC/27/48/Add.5, para 64.

¹¹ Similarly highlighted in: Report from the Human Rights Committee, Concluding observations on the sixth periodic report of Morocco. CCPR/C/MAR/CO/6. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. A/HRC/22/53/Add.2. See paragraph 61- 67.

¹² Report of the Working Group on Arbitrary Detention, Mission to Morocco. A/HRC/27/48/Add.5. See para 64.

¹³ See opinions adopted by the UN Working Group on Arbitrary Detention available on the homepage of the Working Group < <https://www.ohchr.org/en/issues/detention/pages/opinionsadoptedbythewgad.aspx> >

¹⁴ Opinion No. 11/2017, at para 47-48.

contrast to the argument imposed by the Moroccan government. The Working Group found that the detention of Saharawi journalists serves as a violation of category I, II, III and V of the Methods of Work of the Working Group, constituting political prosecution and racial discrimination in breach of the equality of human rights.

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