



SAHRAWI NGO ALLIANCE
تحالف المنظمات غير الحكومية الصحراوية

**Contribution to research by the WGEID
on the use of universal criminal
jurisdiction in cases of enforced disappearance**



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General context

The Sahrawi NGO Alliance, a network of non-governmental organizations independent of governments, works in the field of promoting and protecting human rights in the Mena region.

The Alliance interacts with the treaty bodies and the Human Rights Council's special procedures, at the level of preparing parallel reports or reports for country visits by special rapporteurs to the region, or thematic reports, as well as contributing to the development of general comments for the treaty mechanisms, preparing complaints, and organizing seminars and training courses in the field of human rights for defenders and activists in the region.

The Sahrawi NGO Alliance submits a written contribution to participate in the research conducted by the Working Group on Enforced or Involuntary Disappearances on the use of universal criminal jurisdiction in cases of enforced disappearances.

This report aims to shed light on the concept of universal criminal jurisdiction and its applications in North Africa, best practices and challenges that hinder the development of litigation strategies in The Republic of Algeria, and to study the extent to which universal criminal jurisdiction applies in the Tindouf region, which has contained camps housing Sahrawis since 1975 against the backdrop of a conflict between the Kingdom of Morocco and the Polisario Front, which is militarily and diplomatically supported by the State of Algeria.

The Alliance seeks to help in evaluating the use of universal criminal jurisdiction in cases of enforced disappearance, and to analyze the conceptual and legal framework in force in Algeria, existing challenges, lessons learned, and good practices, to support the mandate of the Working Group on Enforced Disappearances in addressing the issue of universal criminal jurisdiction and its applications, as well as the lessons learned from ensuring its implementation in legal frameworks, justice requirements, and the victim community, as well as the main challenges associated with appropriate legal frameworks to ensure the effective application of universal criminal jurisdiction in cases of enforced disappearance.

Regarding the concept of universal jurisdiction

The concept of universal jurisdiction does not have a unified definition, and it can be said that national courts can prosecute the perpetrator of certain crimes regardless of where they were committed and regardless of his nationality or the nationality of the victims. This is known as absolute or unconditional universal jurisdiction, where no connection, nationality, or even presence is required for the trial of the accused, who can be tried in absentia, and does not take into account the restrictions of immunity.

To clarify the scope of universal criminal jurisdiction, the Princeton Principles on Universal Jurisdiction¹ specify that universal jurisdiction is based solely on the nature of the crime, without regard to the place where it was committed, the nationality of the alleged offender, the nationality of the victim, or any other connection with the State exercising jurisdiction. Under those principles, a State has jurisdiction to prosecute and punish any suspect if found guilty, without regard to the place where the serious violation was committed, the nationality of the offender or the victim, or any other reasons.

The decisive recognition of universal criminal jurisdiction to prosecute crimes in a way that dissolves the traditional links of territoriality, nationality, negative personality, or the protective principle in committing the alleged crime is a major development in curbing the reins of states and entities that resort to practicing major crimes, most notably enforced disappearances, as a way to impose their control and domination, as well as to suppress voices and aspirations that expose their dictatorship, sadism and tendency to secure their own interests, in exchange for tampering with the interests of peoples and individuals.

This strong trend towards establishing the foundations of universal criminal jurisdiction collides with the accumulation achieved in establishing the rules of justice and confronting major crimes that seriously threaten the enjoyment of human rights if they are not eliminated, such as crimes against humanity, war crimes, genocide, enforced disappearances, torture and other cruel, inhuman or degrading treatment or punishment, crimes against cultural property during armed conflict, terrorism and its financing, crimes committed using nuclear materials, illegal acts against the safety of maritime navigation, seizure and attack of aircraft and other crimes related to aviation, and other crimes.

Despite the contribution of universal jurisdiction to promoting justice for victims of serious crimes under international law, doubts still linger among civil society and the victims' community about the difficulties of implementing this comprehensive jurisdiction, due to the great disparity in its nature and procedures, which conflict with the concept of jurisdiction by states, which often tend to limit it to the principle of territoriality, dependency and immunity restrictions.

¹ The Princeton Principles on Universal Jurisdiction are the product of the Princeton Project, a collaborative effort involving various working groups formed based on expertise and a diverse range of perspectives. This project aimed to examine the problems posed by universal jurisdiction while simultaneously developing and formulating the principles. The work of these research groups culminated in the adoption of these principles at a meeting held in Princeton on January 25 and 27, 2001.

1. The Algerian context in relation to the implementation of universal criminal jurisdiction related to enforced disappearances

Serious human rights violations have become more severe in the Republic of Algeria since the beginning of the nineties, in a major regression from democratic norms, and the encroachment of the security and military apparatuses, by carrying out a bloody coup against the outcomes of the democratic game that allowed the Islamic movements to dominate the country's local elections in 1991.

Given the horror of the crimes documented, including extrajudicial or summary executions, and the commission of countless enforced disappearances against opponents, their families, and Algerian political movements opposing the coup against legitimacy, in the absence of activating accountability and the continued impunity, and the victims' wandering for decades in the search for lost justice.

To confront the state of political and security instability that extends throughout the Algerian territory, exceptional measures were taken to calm things down and provide an opportunity to implement an incomplete reconciliation through the issuance of the Peace and National Reconciliation Law in 2006, by the will of the late President Abdelaziz Bouteflika, to stop the bleeding of unrest and ongoing armed clashes between the army, security and intelligence forces and the opposition from the political forces excluded from political life in the country, in circumvention of the rules and principles of transitional justice and the paths of national reconciliation, by eliminating any possibility of investigating the painful events related to the complex enforced disappearances against the opposition political forces and a wide spectrum of the Algerian people.

The Peace and Reconciliation Law even criminalized any talk, discussion or circulation of news about the serious violations committed or communicating about them with any national or international parties, and criminalized those actions to block the way for the victims, their families, and human rights defenders to discuss those serious crimes².

² Article 46 of Order No. 01-06 of February 27, 2006, implementing the Algerian Charter for Peace and Reconciliation, provides for the punishment of any person who, through his statements, writings or any other act, uses or relies on the wounds of the national tragedy to undermine the institutions of the People's Democratic Republic of Algeria, to weaken the State or to harm the dignity of its agents who have served it with honor, or to tarnish Algeria's reputation in international forums.

The Sahrawi NGO Alliance believes that the Charter for Peace and National Reconciliation still constitutes a major undermining of justice in Algeria, after two decades, as thousands of Algerian families who lost their loved ones continue to suffer a double suffering, due to the enforced disappearance of their loved ones on the one hand, and on the other hand, the Algerian authorities placing severe obstacles in front of them to restrict any attempt to shed light on the fate of their relatives and the continued denial of any responsibility for the painful events of the Black Decade, and the impossibility of searching for the truth and reaching justice³.

Given the inability of the victims' families and their representatives to access fair remedies in Algeria, or to obtain compensation, they resorted to the international mechanisms of the United Nations to protect human rights, which issued 44 decisions on the cases of enforced disappearances in Algeria.

These bodies were unable to convince the Algerian authorities to implement them, given the intransigence of the state concerned within the framework of the procedure for cooperation with the procedures of the Human Rights Council, especially the mandate of the Working Group on Enforced Disappearances⁴.

The Algerian authorities tend to restrict any possibility of applying international criminal jurisdiction despite their ratification of the Geneva Conventions and the First Additional Protocol of 1977⁵, which obliges the State's Parties to search for persons alleged to have committed, or issued orders to commit violations of the four Geneva Conventions and their First Protocol, which are considered grave violations, and to try them regardless of their nationality before their courts, or to hand them over to a specific State Party for trial.

A. The compatibility of Algerian national legislation with international law in relation to enforced disappearance.

The crime of enforced disappearance is one of the most serious crimes under international law, and it often goes unpunished. In many cases, its victims are not released, and their fate remains unknown, in order to deny the responsibility of the countries and entities that obey its orders.

³ Representatives of the Sahrawi NGO Alliance met with the wives of those who forcibly disappeared in Algeria since the 1990s. They confirmed their extreme fear of the Algerian authorities and their awe of the provisions of the Charter for Peace and Reconciliation, because in their opinion, it killed any opportunity for the families of the victims to know the truth about what happened, learn the fate of their loved ones, and obtain their remains to honor their loved ones with a proper burial. These families confirmed that the Algerian security forces will not tolerate any statement or writing about the killings and enforced disappearances committed by the army and security forces, and they fear appearing in international media outlets on the occasion of their participation in the World Congress on Enforced Disappearances. Out of respect for their wishes, the Sahrawi NGO Alliance kept the conversation and the names of the people it met confidential in order to preserve their safety.

⁴ See the communications page of the Working Group on Enforced Disappearances.

⁵ See Article 75 of the Additional Protocol to the Geneva Conventions.

This violation constitutes a severe shock to the families of the disappeared victims and their relatives, as their suffering increases with the loss of the truth and the exposure of families to harassment, ill-treatment and intimidation. The commission of crimes of enforced disappearance is one of the most complexities facing the achievement of justice and uncovering the truth of what happened.

In this regard, the Algerian state has not yet been able to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, despite signing it in 2007. This explains why associations of victims of enforced disappearance in the country and human rights defenders have resorted to the mechanism of mandate holders, especially the Working Group on Enforced Disappearances and the mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, in the hope of achieving any progress in the search for the fate of their relatives and finding out the truth about what they were subjected to and whether they are alive or were killed in detention centers.

However, all individual communications submitted by the special procedures, individually or jointly, to successive Algerian governments are always met with absolute rejection and reluctance to provide official information that would contribute to the progress of research and investigations into the cases raised.

The Algerian authorities justify their behavior by saying that the events that framed the period of the black decade were not a civil war but rather terrorist operations by individuals outside the law, who are confronted by the military and security authorities with all the resources they have to maintain the stability of the state and institutions⁶.

Non-governmental organizations working in the field of human rights find it extremely difficult to collect information, monitor and document crimes of enforced disappearance committed in Algeria, in order to submit them to the treaty bodies, especially the Committee on Enforced Disappearances, due to the Algerian state not ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.

The special procedures of the Human Rights Council face a lack of fruitful cooperation from the authorities, and a lack of positive interaction with their communications⁷, as the Algerian authorities believe that sending these individual reports is not correct, because the issue of enforced disappearances must be considered within a comprehensive framework and within the Charter for Peace and Reconciliation.

⁶ The Algerian authorities show a behavior that is resistant to any research or investigations requested by the special procedures of the Human Rights Council, and justify their behavior by classifying the painful events as a national tragedy, the raising of which would open the nation's deep wounds, and prohibit any discussion or writings about it. In order to achieve this goal, the Charter for Peace and Reconciliation of 2006 stipulated in its forty-fifth article, guaranteeing immunity for security personnel from prosecution and accountability before national courts and other judicial bodies.

⁷ See joint communication No. AL DZA 8/2021 to the Working Group on Enforced Disappearances, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the rights to peaceful assembly and of association, and the Special Rapporteur on human rights defenders.

Based on the absence of a national Algerian commitment to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, ensuring the commitment to apply universal criminal jurisdiction over crimes of enforced disappearance in the Algerian context remains impossible, due to the non-applicability of Article 9 of the Convention to the State of Algeria, as it cannot be obligated to take measures to establish its jurisdiction over the crime of enforced disappearance, and obligated to extradite or prosecute suspects of committing the crime of enforced disappearance, under the principle of universal jurisdiction, regardless of the circumstances, and whether the crime is a crime against humanity or not, as well as Article 11, which calls on States Parties to the Convention to initiate their criminal proceedings in the event of failure to extradite persons accused of committing the crime of enforced disappearance.

A. Removing obstacles to the exercise of universal criminal jurisdiction in the Algerian context

The huge legal vacuum in relation to the provision for the exercise of universal criminal jurisdiction in the Algerian legal system intensifies concerns related to legal instability and reinforces the policy of impunity and immunity for perpetrators of crimes of enforced disappearance when they are affiliated with state agencies or entities affiliated with it or under its command.

It is worth noting that Algerian national legislation does not include any legal provisions or data related to universal criminal jurisdiction regarding the investigation of serious international crimes committed outside its borders. It has never submitted data to the Sixth Committee of the United Nations regarding the scope and application of the principle of universal jurisdiction and has not ratified the Rome Statute establishing the International Criminal Court, despite signing it in February 2007.

Algerian national legislation does not include provisions or legal texts relating to the responsibility of leadership for serious international crimes such as enforced disappearance. The penal code does not contain provisions that allow for the investigation of leaders or presidents on charges of committing crimes of enforced disappearance.

National laws do not contain any data on procedural considerations for opening investigations into international crimes such as enforced disappearance that are committed outside the borders of the state, especially with regard to lifting immunity from perpetrators of crimes of enforced disappearance, or providing other conditions for filing such lawsuits. There is no specialized unit within the country to support the investigation of crimes of enforced disappearance as international crimes and the prosecution of their perpetrators.

Therefore, the Algerian authorities must remove any obstacles that prevent the state from exercising its international criminal jurisdiction over crimes of enforced disappearance, whether or not they amount to crimes against humanity.

The International Convention for the Protection of All Persons from Enforced Disappearance must take precedence over national legislation, which requires the State of Algeria to expedite the ratification of the relevant convention and declare its acceptance of the competence of the Committee on Enforced Disappearances to consider individual communications, and work to repeal or amend any national law that conflicts with any obligations of the Algerian State arising from its accession to the International Convention for the Protection of All Persons from Enforced Disappearance.

The Sahrawi NGO Alliance encourages the Algerian authorities to abolish or extend the amnesty laws, the statute of limitations, the non-retroactivity of national criminal laws, the authority of *res judicata* (final judgment), or the principle of *ne bis in idem*, when it comes to crimes of enforced disappearance, because resorting to the amnesty procedure is an escape from fulfilling the obligations to investigate and punish those responsible.

It is clear from the experiences of litigation in international crimes and the application of universal criminal jurisdiction that the State of Algeria must stipulate in its national legislation, after ratifying the International Convention for the Protection of All Persons from Disappearance, that only ordinary courts have jurisdiction over the crime of enforced disappearance, and that there is no military court or any other special judicial court that has jurisdiction over this crime, to ensure the exhaustion of the conditions of independence and fair trial, in addition to stipulating that the criminal law is free of any immunity with regard to arrests and prosecutions regarding the crime of enforced disappearance.

B. The situation of the Sahrawi camps in Tindouf

The enforced disappearances committed by the Algerian army forces and the Polisario security forces inside the camps, their surroundings, and inside Algerian cities against the Sahrawis living in the Tindouf camps, southwest of Algeria, are unimaginable in their horror, given the multiplicity of heinous violations that cannot go unpunished.

The Sahrawi NGO Alliance regrets the failure to mention the enforced disappearances of the Sahrawis, the most prominent of which is the case of Khalil Ahmed Braih⁸, who was kidnapped from the street in the Algerian capital in broad daylight by members of the Algerian security apparatus in 2009. The family and civil society organizations have not found any information confirming his survival or indicating his place of disappearance or fate⁹.

⁸ See the Views adopted by the Human Rights Committee under article 5(4) of the Optional Protocol on individual complaints to the International Covenant on Civil and Political Rights, in communication No. 2924/2016. [CCPR/C/128/D/2924/2016](#)

⁹ The family of Khalil Ahmed contacted the Working Group, informing it of the case of their son, advisor to the former Secretary-General of the Polisario Front, Mohamed Abdelaziz, who reportedly disappeared under mysterious circumstances in 2009 from the military prison in Blida, Algeria, after being arrested by Algerian security services in Algiers, where he had gone to give a conference on human rights at a university. The Working Group on Enforced or Involuntary Disappearances initially referred the case to the Algerian government in 2014, without receiving any response to date. [A/HRC/WGEID/121/1](#)

This blackout of enforced disappearances in the Sahrawi camps in Tindouf¹⁰ is due to the Algerian authorities' attempt to impose a blockade on the violations taking place in the camps, most notably the crimes of enforced disappearance¹¹. The Working Group has not received all the cases registered with civil society organizations due to the camps being closed to the Human Rights Council's special procedures for two decades¹².

The Algerian state continues to cover up for leaders responsible for committing violations related to enforced disappearances¹³, and resorts to intensifying communication through diplomatic channels to prevent the use of universal criminal jurisdiction, which causes great harm to the right of victims and their families to fair redress for the violations to which the forcibly disappeared were subjected.

The Sahrawi NGO Alliance recommends that the State of Algeria adopt legislative and other measures necessary to establish and exercise universal jurisdiction over individuals in crimes of enforced disappearance.

¹⁰ See the Views of the Human Rights Committee adopted under article 5 (4) of the Optional Protocol, in communication No. 2721/2016, concerning the case of the Sahrawi victim Mrabih Ahmed Mahmoud Adda. [CCPR/C/134/D/2721/2016](https://www.unhcr.org/refugees/article/2016/11/14912016.html)

¹¹ The components of the Sahrawi NGO Alliance had previously contacted the Rapporteur of the Human Rights Committee to urge him to ask the Algerian government delegation about the case of the kidnapping of Khalil Ahmed Braih, which the expert rapporteur did, only to be confronted by the head of the delegation with a complete denial of knowledge of the case of Khalil Ahmed's disappearance, despite the fact that his eldest son had actually visited him in the Blida military prison, two years after his disappearance. See the questions addressed to the State party delegation regarding the forcibly disappeared Khalil Ahmed, and the responses of the head of the delegation denying knowledge of the case, despite the fact that his eldest son had visited him in the Blida military prison two years after his forcible disappearance. Starting at minute 42:18. <https://webtv.un.org/en/asset/k1q/k1qd6cpqlu>

¹² The Working Group on Enforced or Involuntary Disappearances submitted a request for a country visit to the Republic of Algeria in 2014, and the State has been stalling on accepting the visit definitively, citing its agenda and the unsuitability of the proposed dates.

¹³ The Sahrawi Association for the Defense of Human Rights (ASADEDH) accused Brahim Ghali, the leader of the Polisario Front who entered Spanish territory with a forged passport under the name Mohamed Ben Battouch, of committing crimes of genocide and torture against a number of detainees in Polisario prisons, but the Spanish Supreme Court dismissed the appeal on the grounds that it was subject to the statute of limitations. See the ruling of the Spanish Supreme Court on the cancellation of the appeal of the Sahrawi Association for the Defense of Human Rights and the request to issue a search warrant and arrest the accused Brahim Ghali, Secretary-General of the Polisario organization.

The Spanish Supreme Court rejected the lawsuit related to the crimes attributed to Brahim Ghali because they were subject to the statute of limitations. In fact, because the facts being prosecuted date back to the period from 1975 to 1990, and resorting to the issue of the statute of limitations is one of the fraudulent means that states resort to in order to bury the truth of crimes of enforced disappearance and not hold accountable the leaders responsible for those crimes. <https://www.poderjudicial.es/search/openDocument/3b1b1f6da012ba9aa0a8778d75e36f0d>