



---

**Human Rights Council**  
**Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary Detention at its ninety-eighth session, 13–17 November 2023****Opinion No. 67/2023, concerning Khatri Dadda (Morocco)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 7 August 2023 the Working Group transmitted to the Government of Morocco a communication concerning Khatri Dadda. The Government replied to the communication on 27 October 2023. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

---

<sup>1</sup> [A/HRC/36/38](#).



## 1. Submissions

### (a) Communication from the source

4. Khatri Dadda, born 5 February 1999, is a Saharan journalist and photographer who works for the activist media organization Salwan Media. He usually resides in Smara, Western Sahara.

5. According to the source, Mr. Dadda documents human rights violations and the excessive use of force by the police against Saharan demonstrators. He was arrested and detained by the Smara police in reprisal for his journalistic activities.

6. The source notes that Mr. Dadda has already been the subject of a communication by special procedures mandate holders.<sup>2</sup>

#### (i) Arrest and detention

7. Having never had a Moroccan identity card, Mr. Dadda travelled to Smara police station several times in order to obtain one, the first time being on 10 October 2019. During this visit, police officers informed him that a warrant had been put out for his arrest. Mr. Dadda told the officers that he simply wanted to obtain a Moroccan identity card and that he was prepared in the event that such a warrant really existed. The source specifies that the reasons for the arrest warrant and the charges against Mr. Dadda were not communicated to him. It notes that arrest warrants are regularly used against Saharan activists and serve as threats of arrest or imprisonment.

8. On 14 October 2019, Mr. Dadda returned to the police station with a member of his family and asked to speak with the deputy chief of police. The deputy chief informed Mr. Dadda that his request for an identity card could not be met and that he would have to wait until December or apply in another city.

9. On 24 December 2019, at around 9 a.m., Mr. Dadda went to Smara police station again, accompanied by an activist from the Moroccan Association for Human Rights. As soon as they arrived at the police station, Mr. Dadda was arrested by five police officers and taken to the headquarters of the Smara criminal investigation police, where he was interrogated for 48 hours in the absence of a lawyer.

10. Informed of the situation, Mr. Dadda's family and Saharan activists went to the police station to enquire about the reasons for his arrest and demand his release. The police shared no information. However, two police officers asked the family and the activists not to publish or divulge anything to the media about Mr. Dadda's arrest. The officers told them that Mr. Dadda would be released if the Saharan media did not publish anything, but that if they did, he would be given a more severe sentence.

11. Also on 24 December 2019, an activist from the Moroccan Association for Human Rights met with the Crown prosecutor to enquire about the issuance of the arrest warrant and the charges against Mr. Dadda. The Crown prosecutor stated that he was unaware of the warrant and Mr. Dadda's arrest, despite presumably being the authority who had issued the warrant used to arrest Mr. Dadda.

12. The next day, Mr. Dadda's family, accompanied by several Saharan activists, went to the police station to bring him breakfast. They were informed that Mr. Dadda had been arrested for attacking the police and setting fire to a police vehicle. Mr. Dadda's family was prevented from visiting him but refused to leave and waited outside the station all day. At around 9 p.m., a relative accompanied by a Saharan activist was allowed to see Mr. Dadda for less than five minutes. The visit took place in threatening conditions, with the visitors surrounded by several police officers and unable to communicate in confidence. According to the source, the police asked Mr. Dadda's relative to convince him to confess his guilt and informed him that they had a video inculpatory Mr. Dadda. Mr. Dadda was in an alarming

---

<sup>2</sup> See communication MAR 3/2020, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25448>.

state after having been tortured and did not understand what was going on or the reason for his arrest.

13. According to the source, Mr. Dadda was held at the headquarters of the criminal investigation police for 48 hours, until 26 December 2019, without being informed of the reasons for his arrest. Mr. Dadda was forced to sign police reports, despite being unable to understand their content. Having dropped out of school early, he could neither read nor write Arabic fluently. The source adds that no one explained the contents of the documents to Mr. Dadda and that a lawyer was not present for their signature.

14. Mr. Dadda was brought before the Laayoune investigating judge on 26 December 2019, without a lawyer. A member of Mr. Dadda's family who had travelled to Laayoune was barred from entering the courtroom and from seeing him. The source notes that Mr. Dadda was made aware of the content of the police reports and the charges against him for the first time at this initial hearing. He explained to the judge that he could not read and denied all the charges brought against him by the court, as well as the contents of the police reports. The judge ordered Mr. Dadda's detention, and his family was informed the same day of his transfer to Laayoune Prison, also known as the "black prison" owing to its unsanitary conditions and overcrowding. According to the source, at his second appearance before the investigating judge on 20 January 2020, Mr. Dadda was present and assisted by a Saharan lawyer.

15. On 19 February 2020, Mr. Dadda was brought before the Laayoune court of first instance. The courtroom was packed with police, and Saharan observers were refused entry. At the start of the hearing, Mr. Dadda shouted slogans defending the Saharan people's right to self-determination. Mr. Dadda's lawyer requested a postponement of the hearing to allow more time to study the case; this postponement was granted until 4 March 2020.

16. At the hearing on 4 March 2020, the judge began by setting out the charges against Mr. Dadda, who denied them all. The judge presented images of a masked man extracted from a video and accused Mr. Dadda of being this individual. Mr. Dadda denied the accusation and the defence requested access to the video but was denied it. According to the source, the prosecutor did not present the contents of the video at the trial. In addition to the police reports and images taken from the video, the prosecutor also presented statements from police officers and witnesses without allowing the defence to contest them, despite the latter's requests to that effect.

17. The source claims that Mr. Dadda was sentenced to 20 years' imprisonment on the same day, after a one-hour hearing, for arson against a vehicle, insulting public officials in the performance of their duties and committing premeditated violence against them. Following the ruling, Mr. Dadda went on hunger strike for a week.

18. The source notes that the severity of the young activist's sentence triggered a wave of fear among Saharan journalists. According to the source, the online publication by the Saharan media of information concerning Mr. Dadda's arrest played a role in the determination of his sentence. It also claims that the mention of other Saharan activists in the judgment of the court of first instance serves as an implied threat of arrest and detention against them.

19. The defence appealed and a hearing took place on 12 May 2020, by videoconference in view of the coronavirus disease (COVID-19) pandemic. The court of appeal upheld the lower court's decision. According to the source, the same evidence used in the trial before the court of first instance was presented in the court of appeal and the defence was again not given the opportunity to challenge it.

20. The source expresses concern about the conditions of Mr. Dadda's detention in Laayoune Prison from 26 December 2019 to 3 June 2020, in an overcrowded cell where he caught scabies. According to the source, Laayoune Prison is known for its overcrowded cells, which are infested with insects and rats and are unsanitary and unhygienic. To feed themselves, inmates have to rely on food brought in by their families or purchased from the prison store. However, Mr. Dadda's family was forbidden from bringing him food and therefore forced to send him money. These measures serve to punish prisoners and their families, who do not always have the means to provide for the needs of their imprisoned

relatives. This situation was further complicated by the COVID-19 pandemic, as visits were prohibited and the costs associated with Mr. Dadda's detention increased considerably.

21. The source notes that at Laayoune Prison, Mr. Dadda was allowed to use his telephone twice a week, for five minutes each time, but was surrounded by guards who listened in to his telephone conversations.

22. On 3 June 2020, Mr. Dadda was transferred to an unknown location, without his family being informed. The Moroccan Association for Human Rights lodged a complaint with the Crown prosecutor concerning this transfer, but the complaint went unanswered. Mr. Dadda's family had no news of him for 22 days. On 25 June 2020, the family learned informally that Mr. Dadda was being held in Aït Melloul Prison.

23. Mr. Dadda was held in an overcrowded cell in Aït Melloul Prison, in a heavily guarded wing reserved for inmates sentenced to death for committing particularly violent crimes. The source notes that Mr. Dadda was forbidden from using the prison telephone and was forced to sleep on the floor for over nine months.

24. Mr. Dadda was systematically intimidated and threatened by prison guards. On 27 May 2021, he was physically assaulted by guards and his cell and belongings, including his blankets, were searched. Mr. Dadda was deprived of basic necessities.

25. According to the source, communications between Mr. Dadda and his family were closely monitored. He was prevented from receiving visits from his family and isolated from other Saharan political prisoners in the prison. The source notes that Mr. Dadda was increasingly isolated from the outside world and unable to receive any information other than that published by the Moroccan media.

26. The source explains that Aït Melloul Prison is known for holding opponents of the Government, including Saharan activists, and that there are many accounts of torture occurring there.

27. On 12 August 2022, Mr. Dadda was again transferred to an unknown location. His family had no information about his whereabouts until 30 August 2022. The family was subsequently informed that Mr. Dadda had been transferred to Safi Prison, where he was being held in solitary confinement. According to the source, his detention conditions improved slightly afterwards, as he was given his own cell. On 1 September 2022, Mr. Dadda received a visit from a relative. According to the source, Mr. Dadda was handcuffed and subject to restrictions as he was considered by the guards to be an aggressive criminal.

28. The source explains that prior to the 2005 Saharan uprising, all Saharan prisoners were held in the local prison in Laayoune, Western Sahara. After the uprising, they were systematically transferred to prisons in Morocco. According to the source, the detention of Saharan political prisoners in Moroccan jails constitutes an additional punishment for the prisoners and their families, who generally lack the financial means to visit them. The source adds that Mr. Dadda's detention in Aït Melloul Prison, far from his family in Smara, constitutes a violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

(ii) *Legal analysis*

29. As a preliminary point, the source asserts that international humanitarian law is applicable in this case, since it considers that Morocco is an occupying power in Western Sahara and that the Saharan people have the right to self-determination.<sup>3</sup> The source

---

<sup>3</sup> See International Court of Justice, *Western Sahara*, Advisory Opinion, 16 October 1975; General Assembly resolution 73/107; International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004; and Court of Justice of the European Union, *Western Sahara Campaign UK v Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, Case C-266/16, Opinion of Advocate General Wathelet, 10 January 2018.

maintains that the inhabitants of Western Sahara are protected persons in accordance with the first paragraph of article 4 of the Fourth Geneva Convention.<sup>4</sup>

a. Category I

30. The source recalls that, under article 9 (2) and (3) of the Covenant, anyone who is arrested must be informed, at the time of arrest, of the reasons for his or her arrest, must be promptly informed of any charges against him or her and must be brought before a judge or other officer authorized by law to exercise judicial power.

31. According to the source, general comment No. 35 (2014) of the Human Rights Committee requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge or other officer, when the detained person must be brought to court and legal limits on the duration of detention.<sup>5</sup> According to the source, article 23 of the Constitution states that no one may be arrested except as provided for by law. In addition, article 139 of the Code of Criminal Procedure stipulates that a police officer making an arrest must present a warrant to the person concerned, and article 140 that a detained person must be brought before a judge within 24 hours of arrest and must have access to a lawyer within 24 hours.

32. Mr. Dadda was reportedly arrested on the basis of an arrest warrant of unknown content, without being informed of the charges against him. The police allegedly refused to inform Mr. Dadda's family of the reason for his arrest, and the Crown prosecutor, who allegedly issued the arrest warrant, had "no idea" about Mr. Dadda's arrest or the existence of a warrant against him. The source notes other cases in which Saharan journalists have been falsely accused and arrest warrants fabricated in retaliation for their activism.

33. The source says that when Mr. Dadda's family visited him on 25 December 2019, he was in an alarming state and did not understand why he had been arrested. The source considers Mr. Dadda's situation all the more serious as he was forced to sign police reports that he did not understand. It recalls that Mr. Dadda was informed of the reason for his arrest only when he appeared before the investigating judge on 26 December 2019.

34. The source concludes that the arrest and detention of Mr. Dadda had no legal basis, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant, and are thus arbitrary under category I.

b. Category II

35. According to the source, the way in which people are taken into custody, the offences of which they are accused and the conduct of their trials may serve as evidence of reprisals because of their political views. Many journalists and others engaged in activities that constitute the expression of an opinion are targeted by policies and practices that result in multiple human rights violations.

36. The source recalls that various United Nations human rights monitoring mechanisms have documented the systematic and systemic use of force by the Moroccan authorities to silence the Saharan people's call for the right to self-determination and the widespread police violence and arbitrary abductions, torture, arrests and detention to which Saharan activists are subjected.<sup>6</sup> It notes that, during the Working Group's visit to Laayoune in 2013, it found that torture and ill-treatment were used to extract confessions and that protestors were subjected to excessive use of force by the authorities.<sup>7</sup> The source highlights the use of

<sup>4</sup> See International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Duško Tadić alias "Dule"*, Case No. IT-94-1-T, Sentencing Judgment, 14 July 1997, and International Court of Justice, *Legal Consequences* (see previous note).

<sup>5</sup> Human Rights Committee, general comment No. 35 (2014), para. 23.

<sup>6</sup> See [CAT/C/MAR/CO/4](#); [A/HRC/22/53/Add.2](#); and [A/HRC/27/48/Add.5](#), paras. 62–71.

<sup>7</sup> [A/HRC/27/48/Add.5](#), para. 63.

excessive force to repress demonstrations and arrest protestors or persons participating in demonstrations calling for self-determination.<sup>8</sup>

37. In addition, the source points out that several special procedures mandate holders have noted that the Criminal Code criminalizes speech considered to undermine the territorial integrity of Morocco, in violation of article 19 of the Covenant.<sup>9</sup> The source recalls that the Secretary-General of the United Nations regularly expresses concern about the treatment to which human rights defenders and activists are subjected in Western Sahara, including arbitrary arrests, unfair trials and imprisonment on fabricated charges.<sup>10</sup>

38. According to the source, because of the criminalization of independent reporting on Western Sahara, Saharan journalists operate in conflict with national law and face threats of imprisonment. As international media and observers are frequently denied access to Western Sahara, Saharan journalists are often the only source of information on human rights violations and are therefore systematically targeted by the authorities.<sup>11</sup>

39. The source states that Saharan journalists, most of whom are self-taught and work with few resources, are in a position of extreme vulnerability and are persecuted, subjected to arbitrary arrest and detention, prosecuted on falsified charges such as forming a criminal gang or violence against police officers and convicted on the basis of confessions extracted by torture or coercion.

40. According to the source, Mr. Dadda is a well-known Saharan journalist and photographer who belongs to the Salwan Media organization of Saharan journalists. The source believes that his arrest is directly linked to his work as a Saharan photographer and human rights activist, campaigning for the right to self-determination of the Saharan people. The source considers that the political nature of the proceedings is proven, since the police instructed Mr. Dadda's family and Saharan activists not to share information with the media about Mr. Dadda's arrest in exchange for his release. The source notes that, as soon as the family contacted the Saharan and international media, Mr. Dadda was detained and then sentenced to 20 years' imprisonment.

41. The source considers that Mr. Dadda's continued detention is directly linked to his work as a Saharan journalist and photographer and results from the exercise of his rights to freedom of expression and freedom of association, protected under articles 19 and 22 of the Covenant. It concludes that Mr. Dadda's detention is arbitrary under category II.

c. Category III

42. The source maintains that the violation of Mr. Dadda's right to a fair trial is of such gravity as to render his detention arbitrary under category III. According to the source, the deprivation of the right to a fair trial of Mr. Dadda, whom the source considers to be a "protected" person, and the acts of torture allegedly suffered also constitute a violation of international humanitarian law, in particular articles 5, 66–75 and 147 of the Fourth Geneva Convention and article 8 of the Rome Statute of the International Criminal Court.

43. The source recalls that the right to a hearing by an independent and impartial tribunal established by law derives from article 14 (1) of the Covenant and is an absolute right with no exception.<sup>12</sup> It also recalls that the Human Rights Committee has expressed concern about the independence and impartiality of the Moroccan judiciary.<sup>13</sup>

44. The source expresses concern about a systematic tendency of the Moroccan authorities to use torture during initial interrogation and confessions signed in the absence of

<sup>8</sup> Ibid., para. 64, and opinions No. 4/1996, No. 39/1996, No. 11/2017, No. 31/2018, No. 58/2018, No. 60/2018, No. 23/2019, No. 67/2019, No. 52/2020 and No. 68/2020. See also opinions No. 21/1993, No. 3/1994 and No. 54/2013.

<sup>9</sup> See communication MAR 1/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24506>. S/2018/277, paras. 72 and 73.

<sup>10</sup> See opinions No. 23/2019 and No. 68/2020.

<sup>12</sup> Human Rights Committee, *González del Río v. Peru*, communication No. 263/1987, para. 5.2.

<sup>13</sup> CCPR/CO/82/MAR, para. 19.

a lawyer as evidence in criminal proceedings.<sup>14</sup> It also notes that the Working Group has previously observed a culture of impunity within the Moroccan justice system, the failure to investigate allegations of torture, the lack of prosecution of the perpetrators, the failure of the judge and the Crown prosecutor to fulfil their obligations and the lack of independence and impartiality of the judicial system with regard to Saharan activists.<sup>15</sup> According to the source, the judges' refusal to take due account of the allegations of torture and to order an investigation also points to the lack of independence of the judiciary and the violation of article 14 (1) of the Covenant.<sup>16</sup>

45. The source recalls that Mr. Dadda remained in the dark as to the reasons for his arrest and the content of the documents he was forced to sign until his first hearing before the investigating judge. He reportedly denied the charges against him and explained to the judge that he could not read or write and had no knowledge of the contents of the documents. Nevertheless, the court used these documents as evidence against Mr. Dadda.

46. In addition, the court used images from a video showing a masked man and claimed that this individual was Mr. Dadda. As the video was never shown at the hearing or shared with the defence, despite the latter's requests, the defence was unable to contest its value as evidence. In addition, Mr. Dadda was not allowed to contest witness statements obtained before the trial.

47. The source concludes that the rights of the defence were violated and that the court lacked independence and impartiality, in breach of article 14 (1) of the Covenant. It maintains that the Moroccan judicial system is used to silence dissidents, in violation of the right to a hearing by an independent and impartial tribunal.<sup>17</sup>

**(b) Response from the Government**

48. On 7 August 2023, the Working Group transmitted a communication concerning Mr. Dadda to the Government, requesting it to provide detailed information about him by 6 October 2023 and to ensure his physical and mental integrity.

49. The Government requested an extension in accordance with paragraph 16 of the Working Group's methods of work, which was granted until 27 October 2023.

50. In its reply of 27 October 2023, the Government rejects the source's allegations, which it deems to be politically motivated, misleading, inaccurate and lacking in any legal or factual basis.

51. The Government explains that, on 19 April 2017, a police car was attacked by around 15 men throwing glass bottles, Molotov cocktails and stones. Following an investigation, Mr. Dadda was identified as a suspect and a warrant was issued for his arrest on the instructions of the public prosecutor at Laayoune Court of Appeal.

52. Mr. Dadda was arrested by the authorities on 24 December 2019, after travelling to Smara police station to obtain a nationality card. He was informed of the reasons for his arrest and of his rights and placed in detention from 24 until 26 December 2019, the day of his appearance before the public prosecutor at Laayoune Court of Appeal. The latter requested that an investigation be opened against Mr. Dadda, on the basis of articles 263, 267 and 580 of the Criminal Code, for deliberately setting fire to an occupied vehicle, insulting law enforcement officers and committing premeditated violence against them. Following Mr. Dadda's hearing on 26 December 2019 and in view of the seriousness of the alleged acts and the lack of any guarantee that Mr. Dadda would report for the trial, the investigating judge ordered Mr. Dadda's detention for the duration of the investigation.

53. Mr. Dadda was questioned on 20 January 2020 and, on 18 February, the investigating judge referred the case to the criminal division of the Laayoune Court of Appeal. On 4 March

<sup>14</sup> See opinions No. 40/2012, No. 3/2013, No. 19/2013, No. 25/2013, No. 54/2013, No. 27/2016, No. 11/2017, No. 31/2018, No. 58/2018, No. 60/2018, No. 23/2019, No. 67/2019, No. 52/2020 and No. 68/2020.

<sup>15</sup> [A/HRC/27/48/Add.5](#), para. 64, and opinion No. 68/2020.

<sup>16</sup> See opinions No. 17/2016 and No. 29/2017.

<sup>17</sup> See opinion No. 60/2018.

2020, the criminal division found Mr. Dadda guilty and sentenced him to 20 years' imprisonment. On 12 May 2020, the appeals chamber upheld the first-instance decision and, on 25 November 2020, the criminal division of the Court of Cassation rejected Mr. Dadda's appeal.

54. The Government notes that the source itself notes that Mr. Dadda was warned that an arrest warrant had been issued against him when he went to the police station on 10 October 2019. Mr. Dadda was the subject of a wanted notice issued on 2 October 2017 for events alleged to have occurred on 19 April 2017. The search for Mr. Dadda continued until his arrest, contrary to the source's claim that Mr. Dadda was not aware of the content of the warrant against him. The Government asserts that Mr. Dadda was informed of the charges against him when he was arrested at the police station and then again at his hearing.

55. According to the Government, Mr. Dadda was also informed of his rights at the time of his arrest or at his hearing, including his right to remain silent, to have access to a lawyer and to contact his family, in accordance with articles 66 and 67 of the Code of Criminal Procedure. A member of Mr. Dadda's family was informed of his detention. The Government also notes that articles 139 and 140 of the Code of Criminal Procedure cited by the source do not provide for the rules that the source claims they do.

56. The Government adds that the charges fall within the jurisdiction of the public prosecutor and not the Crown prosecutor, who, according to the source, was not aware of the warrant against Mr. Dadda. The report of the preliminary investigation was referred to the public prosecutor at Laayoune Court of Appeal,<sup>18</sup> who issued the warrant for Mr. Dadda's arrest and ordered his detention.

57. The Government also notes that articles 73, 74 and 134 of the Code of Criminal Procedure provide that a medical examination must be performed on the detained person if he or she requests one or shows signs of torture. In the present case, no medical examination was requested and no allegations of torture were raised by the defence or by Mr. Dadda during the proceedings, including during his appearance before the investigating judge on 26 December 2019, at his extensive hearing on 20 January 2020 or at his trial or appeal proceedings.

58. The Government also notes that Mr. Dadda read and signed the police reports recording his statements, which, according to the Government, contradicts the allegations that Mr. Dadda was forced to sign them. Mr. Dadda did not raise these allegations at any stage of the proceedings, even though he was assisted by a lawyer. According to the Government, Mr. Dadda simply denied the statements and declared that he had not made them. The Government is also surprised by the inconsistency of the claim that Mr. Dadda is illiterate with the nature of his work as a journalist. It adds that Mr. Dadda signed the police reports of his hearings on 24 December 2019 and 20 January 2020 and never requested the assistance of an interpreter.

59. Lastly, the Government affirms that the public prosecutor at the Laayoune court of first instance has not received any complaints concerning Mr. Dadda's transfer to an unknown destination.

60. With regard to the allegations under category II, the Government states that Mr. Dadda does not engage in any journalistic activity and has never applied for or received a press card. He has never applied for membership of the Moroccan National Press Syndicate or submitted any complaints to this organization. The Government claims that Mr. Dadda does not meet the legal requirements for journalist status.

61. According to the Government, Mr. Dadda was arrested and prosecuted for criminal activities punishable by law, of which he confessed his guilt at his preliminary hearing. He provided detailed information about the acts with which he had been charged and how he had carried out these acts with other people involved. The Government asserts that no one may claim to be a journalist or exercise their freedom of expression or association in order to escape punishment for illegal acts. It recalls that national law and the Constitution guarantee these rights for all and that the international instruments to which Morocco is a party provide

---

<sup>18</sup> Procedure No. 371, J.J.S.C., of 3 October 2017.



that freedom of opinion and expression may be subject to certain restrictions in order to safeguard national security, public order, public health or morals or the rights or reputation of others.

62. The Government also explains that the Constitution and the Criminal Code prohibit and punish the use of torture. It adds that the Code of Criminal Procedure, which prohibits the use of evidence obtained through torture, takes due account of the basic principles of human rights and international treaties, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government reports on various measures taken to protect the physical integrity of detained persons and to ensure humane detention conditions.

63. With regard to the allegations under category III, the Government states that Mr. Dadda was found guilty after the court was fully convinced of his involvement in acts punishable by law. This judgment was arrived at on the basis of the statements made by Mr. Dadda and persons present in the police car attacked, as well as on Mr. Dadda's confession during the preliminary investigation. The Government affirms that no confession was obtained by coercion or violence and that Mr. Dadda benefited from all the guarantees of a fair trial. It maintains that Mr. Dadda was assisted by a lawyer, that the charges against him were explained to him by the court and that his lawyer had the opportunity to raise all the arguments he deemed relevant in a public trial before an independent and impartial tribunal.

64. Furthermore, the Government asserts that Mr. Dadda's case file contains no videos and that only photographs documenting the events and objects seized during the alleged attack were presented at the trial. It also claims that the defence never asked to see the alleged video or raised any complaint about the alleged denial of Mr. Dadda's rights to a defence, either at trial or on appeal. It notes that it is up to the judge to decide whether or not to hear a witness and that the judgment against Mr. Dadda is based on statements made to the investigating judge under oath.

65. The Government denies the source's allegations that Mr. Dadda was not provided with a lawyer during his pretrial detention and first appearance before the investigating judge. It claims that Mr. Dadda was informed of his rights at the moment of his arrest or at his first hearing, including his right to remain silent, to be assisted by a lawyer of his choosing or appointed by the court if he could not afford one and to notify his family of his detention. A member of Mr. Dadda's family was informed of his detention. Furthermore, during his hearing before the investigating judge on 26 December 2019, Mr. Dadda was reportedly informed of his right to be assisted by a lawyer but chose to defend himself.

66. Furthermore, the Government explains that trials are public as a matter of principle, except when the court decides otherwise or when the law so provides, in accordance with articles 300 and 302 of the Code of Criminal Procedure. In the present case, the trials of each of the defendants were public and open to all citizens.

67. With regard to the allegations under category V, the Government notes that the Constitution affirms the commitment of Morocco to prohibiting and combating all forms of discrimination. The Constitution also asserts the diversity of the national identity through the fusion of all its components: Arab-Islamic, Amazigh and Saharan-Hassan. The Government adds that discrimination is prohibited and punishable by law and categorically rejects the link alleged by the source between Mr. Dadda's Saharan origins and his arrest. Mr. Dadda was arrested and tried for acts criminalized by the law, just like any other citizen would be.

68. The Government concludes that the source's allegations have no legal or factual basis and are intended to undermine the law enforcement agencies and cast doubt on the legitimacy of Mr. Dadda's arrest and trial. It adds that the judgment against Mr. Dadda has the force of *res judicata* since, having found no breach of the guarantees of a fair trial, the Court of Cassation dismissed Mr. Dadda's appeal.

69. With regard to the conditions of Mr. Dadda's detention, the Government recalls that article 23 of the Constitution provides that all detained persons enjoy fundamental rights and humane conditions of detention and may participate in training and rehabilitation programmes. In the present case, Mr. Dadda enjoyed all his rights under the applicable laws

and regulations, without discrimination. He was held in Laayoune in a cell that met the required standards, in particular in terms of hygiene, lighting and ventilation.

70. According to the Government, food basket deliveries have been banned in all penitentiary facilities since October 2017, with food supply delegated to specialist companies. As a result, Mr. Dadda, like other detained persons, received three meals a day, in line with established standards in terms of quality and quantity. He could also acquire necessary provisions thanks to the postal transfers sent by his family.

71. The Government affirms that Mr. Dadda was transferred to Aït Melloul Prison and not to an unknown destination. Mr. Dadda refused to provide his family's contact details until 30 June 2022, in violation of the regulations in force. According to the Government, the allegations of attacks by prison guards are unsubstantiated and prison inspection measures are applied in accordance with a strict protocol in respect of all inmates, in compliance with the law. The Government asserts that Mr. Dadda was held with others in a cell that complied with international standards in terms of space, hygiene, lighting and ventilation. He received visits from the National Human Rights Council on 11 March 2020 and from the Regional Human Rights Commission on 30 September 2022 and 19 June 2023. He also received a visit from the procurator-general of Safi Appeal Court on 9 November 2022.

72. According to the Government, Mr. Dadda is currently being held at Moul El Bergui Central Prison in Safi, having been transferred there on 11 August 2022. Mr. Dadda again refused to provide his family's contact details, although he knew he could reach them to inform them of his transfer. According to the Government, he refused to inform his family of his transfer in order to lend weight to his allegations of enforced disappearance.

73. Mr. Dadda was allowed regular visits from his family and was permitted to call them twice a week for 10 minutes. He was last in contact with two members of his family on 15 September 2023. According to the Government, Mr. Dadda did not receive any visitors on 1 September 2022, contrary to the source's allegations. It adds that it is forbidden to handcuff prisoners during family visits. The Government concludes that Mr. Dadda is being held in humane conditions and is enjoying all his rights, without discrimination, in accordance with prison regulations and the relevant laws.

**(c) Additional comments from the source**

74. On 6 November 2023, the source submitted additional comments in response to the Government's reply, reiterating the initial allegations and denying the Government's assertions. It considers that it has established a prima facie case for breach of international law constituting arbitrary detention and asserts that the Government has not discharged its burden of proof.

75. The source reiterates its initial allegations concerning the status of Western Sahara and the Saharan people's right to self-determination.

76. The source reiterates that Mr. Dadda was not informed of the reasons for his arrest or the charges against him until 26 December 2019, two days after his arrest. He was subjected to psychological torture and forced to sign documents he did not understand, in the absence of his lawyer. These documents were later used in the proceedings against him. The source claims that Mr. Dadda was not advised of his right to a lawyer and did not benefit from the assistance of a lawyer after his arrest, during his police hearings or during his appearance before the investigating judge on 26 December 2019. Mr. Dadda asserted during all subsequent proceedings that he did not understand the police documents and that the statements they contained were not his own.

77. The source explains that Mr. Dadda belongs to the Saharan Union of Journalists and is a well-known photojournalist. It notes that Moroccan law prohibits independent reporting on the Western Sahara issue and that Saharan journalists who report on it are not issued with press cards.

78. The source claims that Mr. Dadda specializes in photojournalism and reports on police violence. He is the author of reports that have attracted international attention and been widely broadcast. According to the source, the Smara police wanted to take revenge on Mr. Dadda for his reporting on police violence against Saharan demonstrators. The source

notes that the Working Group has observed similar reprisals in previous cases involving Morocco.

79. In addition, the source claims that Mr. Dadda was sentenced to 20 years in prison on the basis of confessions he was forced to sign that were not his own, images allegedly taken from a video that was never shown at the trial and witness statements that Mr. Dadda was never allowed to contest.

80. The source is of the view that the Government has not adequately refuted its allegations concerning the psychological pressure put on Mr. Dadda and finds it concerning that the Government has not ordered an investigation into these allegations. According to the source, Mr. Dadda was shocked to learn the contents of the documents he had signed when he was informed of them on 26 December 2019. The source affirms that this case is similar to all the other cases of Saharan political detainees forced to sign confessions that were not their own. The source claims that Mr. Dadda signed the police documents because of the psychological pressure to which he was subjected.

81. In the light of Mr. Dadda's 20-year prison sentence, the source expresses concern about the Government's assertion that it is up to the judge to decide whether or not to call witnesses. It reiterates its allegations of violations of Mr. Dadda's right to a fair trial and his right to prepare his defence with the assistance of a lawyer. According to the source, the charges against Mr. Dadda were fabricated as punishment for his journalistic work. The source adds that Mr. Dadda's particularly harsh sentence has shocked the Saharan journalistic community and given rise to a wave of fear among activists.

82. According to the source, if Mr. Dadda had not been Saharan and had not expressed his opinions on Western Sahara, no proceedings would have been brought against him. It reaffirms that Mr. Dadda was targeted in a discriminatory manner because of his Saharan origin and his political views on the issue of the Saharan people's right to self-determination.

83. Regarding the conditions of Mr. Dadda's detention, the source rejects the Government's assertions and maintains that Mr. Dadda was subjected to enforced disappearance as a reprisal against him and his family. It adds that this enforced disappearance caused Mr. Dadda and his family great suffering, as they feared for his life and safety. The source reiterates that Saharan prisoners are subjected to discriminatory detention conditions and transferred to prisons far from their families in order to isolate them from the outside world.

## 2. Discussion

84. The Working Group thanks the source and the Government for their submissions.

85. In determining whether the deprivation of liberty of Mr. Dadda is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>19</sup> Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.<sup>20</sup>

86. As a preliminary remark, the source invites the Working Group to apply international humanitarian law. As the Working Group's mandate is limited to issues of arbitrary detention, it believes that it can reach a conclusion on the deprivation of Mr. Dadda's liberty without having recourse to international humanitarian law.<sup>21</sup> It points out that its conclusions on the allegations of violations have no legal consequences for the status of Western Sahara. Consequently, its opinions should not be interpreted as expressing any political view

<sup>19</sup> A/HRC/19/57, para. 68.

<sup>20</sup> Ibid.

<sup>21</sup> Opinions No. 52/2020, para. 75; No. 68/2020, para. 59; and No. 23/2023, para. 97. See also A/HRC/27/48/Add.5, para. 62.

concerning the present or future status of the Non-Self-Governing Territory of Western Sahara.<sup>22</sup>

**(a) Category I**

87. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without a legal basis.

88. The source claims that Mr. Dadda was arrested on the basis of a warrant of unknown content and was not informed of the charges against him until two days after his arrest. The police reportedly refused to inform his family of the reasons for his arrest until the following day. According to the Government, the source contradicts itself insofar as it admits that Mr. Dadda was notified by the Smara police of a wanted notice against him on 10 October 2019, i.e. before his arrest. The Government details the contents of the wanted notice issued on 2 October 2017, namely the charges against Mr. Dadda of arson on an occupied vehicle. According to the Government, Mr. Dadda was again informed of the reasons for his arrest at the police station on 24 October 2019 or at his first hearing. In its additional comments, the source does not specifically respond to this assertion.

89. Under article 9 (1) of the Covenant, no one may be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case. This is typically done through an arrest warrant, an arrest order or equivalent document.<sup>23</sup> Furthermore, article 9 (2) of the Covenant states that anyone who is arrested must be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him. Respect for these rights is essential for the other rights set out in article 9 of the Covenant, since all individuals must know the reasons for their arrest in order to challenge it effectively and must be brought before a court or magistrate in order to lodge an appeal.

90. On the basis of the information provided to it, the Working Group considers that Mr. Dadda was arrested on the basis of a warrant of which he was aware, and that he was informed of the reasons for his arrest at the time of his arrest and when he appeared before the judge two days later.

91. In response to the source's claim that the Crown prosecutor was unaware of Mr. Dadda's arrest, the Government argues that the offences for which Mr. Dadda was wanted fall within the jurisdiction of the public prosecutor, not the Crown prosecutor. The Government asserts that the case was subsequently referred to the public prosecutor at Laayoune Court of Appeal, who reportedly ordered that a search warrant be issued for those allegedly involved in the events of 19 April 2017, including Mr. Dadda. The public prosecutor was subsequently notified of Mr. Dadda's arrest and ordered his detention. In its additional comments, the source provides no specific response to these assertions. In the light of the information submitted to it, the Working Group considers that the Government has provided a detailed and substantiated reply to the source's allegation concerning the lack of notification of the reasons for Mr. Dadda's arrest. Consequently, the Working Group does not consider that a violation has been demonstrated in this respect.

92. According to the source, Mr. Dadda was subjected to psychological torture, through which he was forced to sign police reports he did not understand. The Government rejects these allegations and states that Mr. Dadda and his lawyer never raised any such allegations or requested a medical examination during his appearance before the public prosecutor, his preliminary hearing before the investigating judge on 26 December 2019 or his extensive hearing on 20 January 2020. The Government also notes that Mr. Dadda's family was able to visit him the day after his arrest. In response, the source reiterates its allegations and asserts that Mr. Dadda did not have access to a lawyer and was not informed of his right to a lawyer

---

<sup>22</sup> Opinions No. 60/2018, paras. 62–64; and No. 68/2020, para. 61.

<sup>23</sup> See, among others, opinion No. 4/2023, para. 64.

during his detention at Smara police station, when signing police reports or when appearing before the investigating judge on 26 December 2019.

93. The Working Group notes the lack of details provided by the source concerning the psychological torture to which Mr. Dadda was allegedly subjected. The Working Group considers that it does not have sufficient information to enable it to draw conclusions in this respect. Consequently, and considering the Government's assertion that no complaint concerning acts of torture was raised during the proceedings against Mr. Dadda, the Working Group considers that the source's allegation that no investigation in this regard was carried out also fails to demonstrate a violation. With regard to the source's allegations concerning Mr. Dadda's right to a lawyer and the use of his statements as evidence, the Working Group addresses these points below, in the discussion of the allegations under category III.

94. In view of the foregoing, the Working Group is of the view that the source has not demonstrated that Mr. Dadda's arrest lacks a legal basis or is arbitrary under category I.

**(b) Category II**

95. According to the source, Mr. Dadda's arrest is directly linked to his work as a Saharan photographer and human rights defender and his activism in favour of the Saharan people's right to self-determination. The source is of the view that Mr. Dadda was deprived of his liberty for having exercised his rights to freedom of expression and freedom of association, which are protected under articles 19 and 22 of the Covenant. In its reply, the Government argues that Mr. Dadda was arrested and prosecuted for committing illegal acts that are criminalized and punishable by law.

96. The Working Group notes that the reason given by the Government for Mr. Dadda's arrest was his alleged involvement in the burning of a Moroccan police vehicle and in throwing stones at public officials. It also notes that, in the additional comments, the source does not specifically respond to these allegations. The allegations concern serious acts of violence that go well beyond the scope of freedom of expression and freedom of association. The Working Group recalls that the freedoms of expression and association are not absolute rights and that they can be subject to restrictions for reasons relating, in particular, to national security and public order. The Working Group considers that the acts alleged by the Government fall within the scope of the exceptions provided for in relation to security and public order provided for in articles 19 (3) and 22 of the Covenant.

97. Accordingly, the Working Group considers that, in the light of the information provided by the Government, the information provided by the source does not lead it to the conclusion that Mr. Dadda's arrest and detention resulted from the peaceful exercise of his rights to freedom of expression and freedom of association, or that his detention is arbitrary under category II.

**(c) Category III**

98. The source claims that the authorities violated Mr. Dadda's right not to be forced to testify against himself or to confess guilt, as well as his right not to have evidence obtained illegally, including through torture or ill-treatment, used against him. In particular, the source points out that the court relied on documents signed by Mr. Dadda in the absence of a lawyer, under duress, and without his understanding their content or the charges against him. Conversely, the Government asserts that it has never been proven that Mr. Dadda's detailed confessions at his preliminary hearing were obtained by coercion or violence. It adds that during Mr. Dadda's hearing before the investigating judge, he was informed of his right to a lawyer but chose to defend himself.

99. In addition, the source claims that Mr. Dadda was denied his right to examine the evidence used to convict him, including images of a masked man allegedly extracted from a video, and to cross-examine the prosecution witnesses. However, the Government claims that the defence never asked for the video or for it to be shown at the trial. The source does not specifically respond to these assertions in its additional comments.

100. As noted above, the Working Group does not consider that it has sufficient information to conclude that Mr. Dadda's confession was extracted through psychological

torture. However, the Working Group considers that the authorities should have taken all precautions necessary to ensure that Mr. Dadda had access to a lawyer, particularly in view of the fact that Mr. Dadda was questioned and confessed his responsibility for the alleged offences.

101. Although the Government asserts that Mr. Dadda did not request a lawyer, the Working Group notes Mr. Dadda's young age, his alleged illiteracy and the seriousness of the charges brought against him. In view of these circumstances, the Working Group considers that it was essential for the authorities to ensure that Mr. Dadda had legal representation and that, by failing to do so, the Government violated Mr. Dadda's right to a fair trial, which is protected under article 14 of the Covenant and article 10 of the Universal Declaration of Human Rights.

102. Furthermore, the source claims that the defence was unable to access the video allegedly showing Mr. Dadda at the scene of the incident. Although the Government claims that the video was not used against Mr. Dadda, the Working Group notes that images from the video were used to convict him and believes that the video could nevertheless have been relevant to Mr. Dadda's defence, for example to show context or demonstrate inconsistencies with his presence at the scene. Accordingly, the Working Group considers that Mr. Dadda has been deprived of his right to have adequate time and facilities for the preparation of his defence, as protected by article 14 (3) (b) of the Covenant and article 11 of the Universal Declaration of Human Rights.

103. The source claims that Mr. Dadda was not allowed to cross-examine the prosecution witnesses. The Government does not specifically contest this allegation, but rather refers to the independence of the court in deciding whether or not to call witnesses. The Working Group notes that the independence of the judiciary is an important factor in a democratic society but does not constitute a basis for evading human rights obligations. It considers that the source provided credible information that was insufficiently refuted by the Government, which leads it to the conclusion that Mr. Dadda was unable to cross-examine or have cross-examined the witnesses for the prosecution, contrary to the principle of equality of arms and in violation of article 14 (3) (e) of the Covenant and article 11 of the Universal Declaration of Human Rights. This right was particularly important in the present case, since Mr. Dadda denies his role in the alleged attacks on the police car.

104. In view of the above, the Working Group concludes that the violations of Mr. Dadda's right to a fair trial are of such gravity as to give his detention an arbitrary character under category III.

**(d) Category V**

105. The source claims that Mr. Dadda was deprived of his liberty for discriminatory reasons, owing to his Saharan identity and political opinions. The Government rejects these allegations, notes that the Constitution and national law prohibit discrimination and asserts that Mr. Dadda was arrested and tried for acts criminalized by law.

106. The Working Group notes that the charges brought against Mr. Dadda concern serious criminal acts, namely arson on an occupied police vehicle, for which anyone would be arrested and charged, regardless of his or her identity and political opinions. Insofar as the source argues that Mr. Dadda was targeted solely because of his identity, the Working Group notes that its role is not to carry out a de novo assessment of the underlying evidence. On the basis of the evidence provided, the Working Group is unable to conclude that Mr. Dadda was detained in a manner that could be qualified as discriminatory under category V.

**(e) Concluding remarks**

107. The Working Group notes the source's allegations concerning the conditions of Mr. Dadda's detention, including the restrictions allegedly imposed on his visiting rights and his transfer to Safi Prison. It takes this opportunity to remind the Government of its obligations under article 10 of the Covenant to treat all detainees with humanity and respect for the inherent dignity of the human person, as well as rules 12 to 27 and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) relating to conditions of detention, medical care and prisoners' contact with the outside world.

### 3. Disposition

108. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Khatri Dadda, being in contravention of articles 10 and 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category III.

109. The Working Group requests the Government of Morocco to take the steps necessary to remedy the situation of Mr. Dadda without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

110. The Working Group considers that, taking all the circumstances of the case into account, the appropriate remedy would be to release Mr. Dadda immediately and to accord him an enforceable right to compensation and other reparations, in accordance with international law.

111. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Dadda and to take appropriate measures against those responsible for the violation of his rights.

112. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

### 4. Follow-up procedure

113. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Dadda has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Dadda;
- (c) Whether an investigation has been conducted into the violation of Mr. Dadda's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Morocco with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

114. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

115. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as of any failure to take action.

116. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>24</sup>

*[Adopted on 14 November 2023]*

<sup>24</sup> Human Rights Council resolution 51/8, paras. 6 and 9.