



Secretary
Working Group on Arbitrary Detention
21 July 2022

Re: Response to the observations of the Moroccan authorities in the matter of Mr. Zayn Al Abidin Muhammad Husan (Abu Zubaydah)

Thank you for your letter dated 1 July 2022, transmitting the observations from the Kingdom of Morocco in relation to the Petition and Urgent Appeal concerning Abu Zubaydah, filed on 28 April 2022.

It is a matter of deep regret that the government of Morocco reiterates its blanket denial of any role in the arbitrary detention of our client, and fails to engage with the overwhelming body of evidence to the contrary. Moreover, there is nothing in its response to suggest it has taken any of the necessary steps, in accordance with its international obligations, to investigate, reveal the truth, hold those responsible to account or offer any reparation.

The government observations refer vaguely to ‘investigations and judicial enquiries’ that led to the government’s strident denial of the allegations (“...*les investigations et enquêtes judiciaires nécessaires, lesquelles ont permis de conclure que M. Zayn Al Abidin Muhammad Husan et contrairement à ce qu’il allègue, n’a enregistré aucun séjour antérieur au Maroc.*”).

- first, the fact that the presence of Abu Zubaydah on Moroccan territory during the material time may not have been registered is of course hardly reassuring, as this is an inherent aspect of the arbitrariness enshrined in secret detention.
- second, the government provides no information to support the existence of any such investigations or judicial enquiries, still less of there having been prompt, effective, independent, transparent investigations that meet international standards. It is noted in this respect that the Concluding Observations by the Committee Against Torture more than ten years ago¹ expressed concern and regret as to the ‘lack of information’ on the organization and methodology of a visit that the state claimed to have made to the Temera detention centre before concluding that it was not a secret detention site (§15). In the current instance, it is grossly insufficient for the government to respond by making broad-sweeping statements without providing any concrete information as to the nature of any such processes, thorough investigative steps taken and evidence obtained.

The Working Group has noted the heightened duty of investigation and accountability in the context of extraordinary rendition (*Al Baluchi* Opinion §67). Morocco has plainly not discharged this duty.

With the passage of years and growing body of evidence of its role, from a range of authorities sources, Moroccan policy of denial is ever less credible. The government response has not addressed or refuted the evidence that Abu Zubaydah was indeed detained in a facility in Morocco between March 2004 and February 2005, including the following:

- The European Court of Human Rights has twice found it established ‘beyond reasonable doubt’ that Abu Zubaydah was detained in Morocco from 27 March 2004

¹ 21 December 2011, UN Doc. CAT/C/MAR/CO/4

till 17 or 18 February 2005, when he was then transferred to Lithuania (*Abu Zubaydah v. Lithuania* (Application No 46454/11), Judgment of 31 May 2018, §497). The Court reconstructed on the basis of the 2014 US Senate Committee Report and other documents and as corroborated by experts heard to conclude that the evidence as a whole indicates ‘there is only one place he could have been in the early part of 2005 and that that place was indeed Morocco’ (§137).

- Expert testimony by independent investigator Mr. J.G.S., provided at the ECHR’s request, explained that Mr. Abu Zubaydah was transferred from Guantánamo to Rabat on rendition plane N85VM on 27 March 2004 (§106): *“(w)e know that when he departed Poland on 22 September 2003 upon the closure of the site, ... he was held in both Guantánamo Bay, at the CIA facility there, and in Rabat – Morocco, for a period of over one year when Zubaydah left Guantánamo he was taken back to the same site in Morocco at which he had previously been detained, Rabat – Morocco, the site which had been the subject of some acrimonious relations between the CIA and its Moroccan counterparts. It was in this site that Mr Zubaydah found himself in early 2005, specifically February 2005, when the aforementioned clear-out of Morocco took place and, as I stated, and connected with specific flight paths, the destination of his transfer out of Morocco was Lithuania.”* (§105)
- The Court refers also the analysis of contractual information and data from EuroControl indicating that two renditions flights ‘(N787WH and N724CL), one from Morocco and Amman, one from Morocco and Bucharest, arriving in Lithuania on 17 and 18 February 2005 respectively’ (§123). The Court, therefore, concluded that Abu Zubaydah was detained in a facility in Rabat for 11 months (§494 - 497).
- The US Senate Intelligence Committee, in its ‘Report of the Senate Select Committee on Intelligence Committee Study of the Central Intelligence Agency’s Detention and Interrogation Programme’ (“SCCI”), while not referring specifically to country names, alludes to the role of a state which ‘detained individuals on the CIA’s behalf’ (p. 139 – 142), which subsequent independent investigative reports, such as ‘identify as Morocco.’²
- Other independent enquiries, press and NGO reports, reach similar conclusions. These include investigations and reports by Adam Goldman, ‘Secret Jails: a Terror Suspects Odyssey through CIA “Black Sites”’ (Associated Press, 2010), and the detailed Open Society Justice Initiative 2013 report ‘Globalizing torture, CIA Secret Detention and Extraordinary Rendition’, which concluded that 11 detainees were secretly detained in the site in Morocco, including Abu Zubaydah (p. 97).

These authorities, referred to in the Applicant’s submission, cannot in good faith be simply ignored or dismissed by the government.

Finally, Morocco’s reference to the prohibition on arbitrary detention in its constitutional framework only underscores the fact that the detention of Abu Zubaydah in Morocco was unlawful both under national and international law. The state’s obligation goes beyond enshrining the rights in law, to ensuring their protection in practice. There is ample evidence of Morocco’s blatant disregard for these rights.

Morocco should be urged to recognise its role, to make credible its commitment to addressing arbitrary detention and torture, including in the counter-terrorism context, for the future. It should be urged to fulfil their positive obligations to complete thorough, independent and

² Eg ‘CIA Torture Unredacted: An investigation into the CIA Rendition Programme’, by investigative journalists Crofton Black, Sam Raphael, and Ruth Blakeley (July 2019) has consistently identified this state as Morocco (p. 123).

effective investigations, sanction those responsible, provide appropriate reparation to the applicant and other victims. It should step up and take all possible measures to ensure that the ongoing violations of rights of Guantanamo detainees are brought to an end, and our client relocated to a destination of his choice and supported to re-establish his life after 20 years, as set out in the petition.

Helen Duffy