



*OBSERVER REPORT: THE 2017 TRIAL
AGAINST POLITICAL PRISONERS FROM
WESTERN SAHARA*

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Preface

My name is Tone Sørffonn Moe (Norwegian). I am an international observer who attended the trial against the so-called Gdeim Izik group at the Appeal Court in Salé, Morocco. I was present during the proceedings held in December 2016, January 2017, March 2017, May 2017, June 2017 and July 2017. The verdict landed on the 19th of July 2017.

I was accredited by Fundación Sahara Occidental. My trips have been financed with the support of the Rafto Foundation for Human Rights, The Norwegian Support Committee for Western Sahara and Changemaker. This report is the final report concerning the court case of the group Gdeim Izik, and assesses the court case as a whole.

This report has been written with the help from professor Eirik Holmøyvik (University of Bergen) and professor Mads Andenæs (former President-Rapporteur, United Nations Working Group on Arbitrary Detention, University of Oslo), and I express my deepest appreciation to both for their invaluable input. I also thank Isabel Lourenço who observed the whole trial with me, and who helped me with both notes, competence and support. I also thank the Norwegian Support Committee for Western Sahara for its endless support for justice, and I thank the families of the detainees for all information given and for their multiple interviews. Lastly, I thank my sister Silje, for repeated proof readings.

Foreword

by Professor Mads Andenæs, former President-Rapporteur, United Nations Working Group on Arbitrary Detention

1. Criminal Proceedings Against “the Gdeim Izik Group”

In July 2017, I joined Tone Sørffonn Moe and several other observers or monitors for the final proceedings of the Court of Appeal in the case against “the Gdeim Izik Group”. Previously, as one of the members of the United Nations Working Group on Arbitrary Detention, I had heard four complaints against Morocco. In 2013, I took part in a UN mission to Morocco, and in 2014 reported to the UN Human Rights Council on the findings.¹ In my report to the Human Rights Council, I had noted the ongoing efforts by the Government of Morocco to establish and consolidate a culture of human rights in the country. The extensive process of structural reform in Morocco has continued after the mission. One concern at the time was that many countries were more concerned about Moroccan participation in anti-terror cooperation than in the reform process. Western Sahara raised further concerns.

In the course of the criminal proceedings against “the Gdeim Izik Group”, so many serious violations of fair trial guarantees have taken place that the convictions are rendered unsafe. The current report documents grave violations of international law rules on torture and the right to a fair trial.

The convictions were not based on sufficient evidence. The reports by the police and the gendarmerie have been relied on as evidence; the defence has not been able to challenge it. The detainees have been subjected to torture. The overt bias in the proceedings, with judges who could not control their court against a domineering prosecutor and counsel for the victims, was an undignified spectacle.

2. Morocco and UN Human Rights Supervision

In my 2014 report to the UN Human Rights Council, I brought attention to confessions obtained under torture. Article 293 of the Moroccan Code of Criminal Procedure stated that a confession, like any other evidence, is subject to the discretion of the judge and that any confession obtained under torture is inadmissible. I noted the considerable importance accorded to confessions in the context of a trial. Through interviews with detainees serving long sentences, the United Nations Working Group on Arbitrary Detention had found that confessions had often been obtained as a result of torture. Such confessions were set out in the police records and served almost exclusively as evidence for prosecution and conviction. According to representations made by the Moroccan authorities, confessions alone are not sufficient for a conviction and the provision of other corroborating material evidence is necessary. However, the United Nations

¹ A/HRC/27/48/Add.5 *Mission to Morocco*.

Working Group on Arbitrary Detention learned that the minutes of the preliminary interview, as established by the police on the basis of confessions obtained under torture, are in practice rarely rejected by the trial court. Testimonies received indicate that many cases submitted to the courts are based solely on confessions by the accused, in the absence of material evidence. The United Nations Working Group on Arbitrary Detention had also learned that courts and prosecutors did not comply with their obligation to initiate an *ex officio* investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment, or to order an immediate, independent medical examination. This was required under arts. 74 (8) and 135 (5) of the Code of Criminal Procedure if they suspect that a detainee has been subjected to ill-treatment. This is the case even if the person recants before the judge and claims to have been tortured. It appeared that judges favour an interpretation of article 291 of the Code of Criminal Procedure whereby records established by the judicial police are *prima facie* evidence. Such an interpretation is tantamount to reversing the burden of proof by requiring the accused to prove his innocence, which is contrary to the principle of the presumption of innocence, as stated in article 23 of the Constitution. It also creates conditions that encourage the torture and ill-treatment of suspects.

In its jurisprudence concerning Morocco, the United Nations Working Group on Arbitrary Detention has consistently expressed its concern with regard to convictions on the basis of confessions made in the course of a preliminary hearing. The cases of *Mohamed Dihani* (Opinion No. 19/2013), *Abdessamad Bettar* (Opinion No. 3/2013) and *Mohamed Hajib* (Opinion No. 40 /2012) show a pattern where those individuals were convicted solely on the basis of reports drawn up by the police while they were in custody, during which time they were subjected to torture. It was also on the basis of confessions obtained under torture that *Ali Aarrass* (Opinion No. 25/2013) was sentenced in November 2011 to a 15-year prison sentence, after having been extradited from Spain.²

In my 2014 report to the UN Human Rights Council, I emphasized that confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings. This applies in particular to confessions made during the time spent in police custody.

I recalled the concluding observations of the United Nations Committee against Torture following its consideration of Morocco in 2011, in which the Committee expressed its concern that “under the State party’s current system of investigation, confessions are commonly used as evidence for purposes of prosecution and conviction”. The Committee noted “with concern that convictions in numerous criminal cases, including terrorism cases, are based on confessions, thus creating conditions that may provide more scope for the torture and ill-treatment of suspects (arts. 2 and 15)”.³

The guarantees of a fair and equitable trial laid down in article 11 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights exclude self-incrimination and grant the right to legal assistance and representation and to other measures of protection in order to ensure that no evidence is obtained by confession. Under article 14, paragraph 3 (g), of the Covenant, no person may be compelled to testify against

² A/HRC/27/48/Add.5.

³ Committee against Torture, CAT/C/MAR/CO/4, para. 17.

himself or to confess guilt. 38. In its jurisprudence, the United Nations Human Rights Committee has stated that that provision “must be understood in terms of the absence of any direct or indirect physical or psychological coercion from the investigating authorities on the accused with a view to obtaining a confession of guilt”.⁴ In its views on communication No. 1769/2008, *Bondar v. Uzbekistan*,⁵ the Committee found violations of article 14, paragraph 3 (b) and (d), on the grounds that the victim was not provided with a lawyer during the interrogation and his right to have the assistance of a lawyer of his own choosing was denied.⁶ The Committee also found a violation of article 14, paragraph 3 (g), owing to a confession being obtained under torture.

I also recalled General Comment No. 32 (2007) of the United Nations Human Rights Committee, in which the Committee stated that article 14, paragraph 3 (g), guarantees the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. *A fortiori*, it is unacceptable to treat an accused person in a manner contrary to article 7 of the Covenant in order to extract a confession. Domestic law must ensure that statements or confessions obtained in violation of article 7 of the Covenant are excluded from the evidence, except if such material is used as evidence that torture or other treatment prohibited by this provision occurred, and that in such cases the burden is on the State to prove that statements made by the accused have been given of their own free will (para. 41).⁷

According to the United Nations Special Rapporteur on torture “interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law”. He added: “It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means.”⁸

One of the aims of the provisions of article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights is to provide

⁴ Human Rights Committee, communication No. 1033/2001, *Singarasa v. Sri Lanka*, para. 7.4; also, communications No. 253/1987, *Kelly v. Jamaica*, para. 5.5; No. 330/1988, *Berry v. Jamaica*, para. 11.7; No. 912/2000, *Deolall v. Guyana*, para. 5.1.

⁵ Committee on Human Rights, *Bondar vs. Uzbekistan*, Communication No. 1769/2008 (CCPR/C/101/D/1769/2008). See also the jurisprudence of the Inter-American Court of Human Rights, including the cases of I, Judgment of 7 September 2004, Series C, No. 114, para. 146; *Maritza Urrutia v. Guatemala*, Judgment of 27 November 2003, Series C, No. 103, para. 93; *Cantoral-Benavides v. Peru*, Judgment of 18 August 2000, Series C, No. 69, para. 104.

⁶ CCPR/C/101/D/1769/2008, para. 7.4. ⁸ *Ibid.*, para. 7.6. A/HRC/27/48/Add.5 10

⁷ Human Rights Committee, general comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial (CCPR/C/GC/32), para. 41.

⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment (E/CN.4/2003/68), para. 26 (e).

guarantees against all forms of direct or indirect, physical or psychological pressure by the authorities on the accused with a view to obtaining a confession. The right not to be compelled to testify against oneself or to confess guilt, and access to counsel and legal aid are not only measures intended for the protection of the interests of the individual, but are also measures, in the interest of society as a whole, of the trustworthiness and effectiveness of the judicial process, and of the reliability of evidence. Confessions made in the absence of legal counsel are not admissible as evidence in criminal process.

3. The 2013 UN Mission to Morocco

In my report to the Human Rights Council on the 2013 UN Mission to Morocco, I noted the ongoing efforts by the Government to establish and consolidate a culture of human rights in Morocco. Today it is clear that the extensive process of structural reform in Morocco has continued after the visit. One concern was that many countries were more concerned about Moroccan participation in anti-terror cooperation than in the reform process. Western Sahara raised further concerns. A further concern today is that the international pressure on Morocco to comply with international law and the UN Security Council Resolutions on Western Sahara may not be very effective and that some major European countries support the Government policies which are in breach of international law and UN Security Council Resolutions.

In 2013, the United Nations Working Group on arbitrary detention also visited Laâyoune, Western Sahara as a part of the mission to Morocco. We stated that as the visit of a group of independent mandate holders, it should not be interpreted as expressing any political view concerning the present or future status of the Non-Self-Governing Territory. The territory is subject to the right to self-determination in conformity with the principles contained in General Assembly resolutions 1514 (XV) and 1541 (XV).

In cases related to State security, such as those involving terrorism, membership in Islamist movements or supporters of independence for Western Sahara, the Working Group found that there is a pattern of torture and ill-treatment by police officers, in particular by agents of the National Surveillance Directorate (DST). I repeated this in my report to the Human Rights Council on the 2013 UN Mission to Morocco.

Several individuals have been coerced into making a confession and sentenced to prison on the sole basis of that confession. Article 23 of the Constitution explicitly states that secret or arbitrary detention and enforced disappearance are crimes of the utmost gravity, the Working Group received allegations, from sources deemed to be credible, of past and present instances of incommunicado detention which would warrant further investigation. The Working Group also received allegations that Morocco had served as a departure point, a transit country and a destination for illegal extraordinary renditions carried out in the context of the international fight against terrorism. The Working Group also received allegations of increased mass arrests of and violence against migrants and asylum seekers by the security forces, particularly in the north of the country.

Despite legal provision for access to a lawyer during the first 24 hours after arrest in ordinary criminal cases, that period seems not to be fully observed in practice. In addition, authorization

has to be obtained from the Crown Prosecutor-General. Moreover, the Anti-Terrorism Act (No. 03-03) provides for police custody for up to three consecutive periods of 96 hours, with no right to a lawyer, except for a half-hour, monitored visit at the mid-point of those 12 days. The Working Group noted that the Moroccan criminal justice system relies heavily on confessions as the main evidence to support conviction. Article 293 of the Code of Criminal Procedure prohibits the admission of any confession or statement made under duress, in accordance with international law. However, complaints indicate the use of torture by State officials to obtain evidence or confessions at the stage of initial questioning, in particular in counter-terrorism or internal security cases. The Working Group also noted the excessive use of detention on remand. In general, detention as a means of punishment still seems to be the rule rather than the exception. There was a lack of alternatives to detention. Prison overcrowding as a consequence of this situation is a serious problem, which needs to be addressed. Although article 460 of the Code of Criminal Procedure provides that the judicial police officer in charge of juveniles may detain a juvenile in a dedicated place, the Working Group found a significant number of children as young as 14 years old in ordinary prisons. Reports indicate that the Prosecutor General's Office rarely requests alternative forms of detention, as provided for in articles 501 to 504 of the Code of Criminal Procedure. In addition, juveniles often remain in custody for a long period before being admitted to a child protection centre.

Regarding Laâyoune, Western Sahara, the Working Group received numerous complaints of arbitrary detention, complaints that torture and ill-treatment were used to extract confessions and complaints indicating a pattern of excessive use of force in repressing demonstrations and arresting demonstrators calling for self-determination for the Sahrawi population.

These complaints were confirmed in interviews and prison inspections that the Working Group undertook during its mission. I highlighted this in my report to the Human Rights Council on the 2013 UN Mission to Morocco.

4. International Observers and the Criminal Proceedings Against "the Gdeim Izik Group"

The current report documents serious violations of international law on torture and fair trial. The breach of the international law on the right to a fair trial in the Universal Declaration of Human Rights and of Morocco's other international obligations renders the deprivation of liberty of the 19 detainees arbitrary. The 19 detainees were subjected to abductions or arrest involving torture or cruel, inhuman or degrading treatment or punishment. Their unlawful treatment has continued during their detention. The group has been detained for some seven years. Their conviction was not based on sufficient criminal material evidence.

The reports by the police and the gendarmerie has been relied on as evidence, and the defence has not been able to challenge it. These are grave breaches of international law. There is no doubt that the detainees of the Group of Gdeim Izik have been subjected to torture. Morocco is in breach of several articles of the UN Convention against Torture, for torture during arrest and interrogation, Article 1, failure to investigate, Article 12, violation of the right to complain, Article 13, the obligation to provide compensation and reparation, Article 14, reliance of confessions obtained through torture, Article 15, and inhuman treatment in detention, Article 16.

It has not helped that the judges declared on several occasions that the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment of 1984, and the CAT decision in *Eênama Asfari* (CAT/C/59/D/606/2014) have no legal force in their court.

The file in the court case contained illegally obtained evidence and other evidence which is inadmissible. The defence was not allowed to challenge the witnesses identifying the detainees' participation in the crimes they have been convicted of.

The overt bias in the proceedings with judges who could not control their court against a domineering prosecutor and advocates from the victims, was an undignified spectacle.

The court proceedings were in multiple regards in breach of the right to equality of arms and the rights of the defence.

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1. Introduction

The “Group Gdeim Izik” relates to the imprisonment of 25 Sahrawis arrested prior to, during and after the dismantling of the peaceful protest camp Gdeim Izik on November 8th of 2010.

The Gdeim Izik was a provisional protest camp in 2010 situated outside of El Aaiún, the capital of Western Sahara. The protest camp could have contained among 20.000 people (reports indicate that the camp could have contained up to 40.000 inhabitants). An exact number does not exist. The camp goes under the name “camp of dignity” by the people from Western Sahara as the tent symbolizes their culture and their traditions. The camp demanded basic human, social and economic rights. The inhabitants in the camp were in negotiations with the government through the establishment of a “Dialogue Committee”.

Moroccan authorities held the areas surrounding the camp under surveillance from the beginning. Since October 12th 2010, armed trucks, helicopters and army vehicles circulated the camp areas, and authorities constructed roadblocks and checkpoints around the camp. On the 24th of October, the Moroccan authorities opened fire on a vehicle trying to enter the campsite with food supplies. A 14-year-old boy (Nayem Elgarhi) died. He was buried in secret by the Moroccan authorities. His family still demands that the officers who shot Nayem shall be tried.

The Dialogue Committee remained, despite the violent clashes, in dialogue with the Moroccan authorities. On the 8th of November, around 6am, the Moroccan military attacked the Gdeim Izik camp. Camp resident’s reports use of rubber bullets, real bullets, hot-water cannons, tear-gas, truncheons and stones. As panic took over, clashes between the army and the protesters ensued, leading to casualties and injuries on both sides. Street riots broke out in several cities of Western Sahara.

In the weeks leading up to the November 8th break-down, Morocco refused foreign politicians, NGOs and media access to the camp, creating a full information black-out. Therefore, an exact figure on the number of victims does not exist, as independent observers were not allowed to access the area. It is likely that around 11 Moroccan police officers were killed.

In relation to the dismantlement of the Gdeim Izik camp on the 8th of November 2010, Moroccan security officials proceeded to arrest hundreds of Sahrawi. Many prisoners remained in custody longer than 48 hours without access to legal counsel, and were held without being charged for months before released on provisional release.

The Group of “Gdeim Izik” remained in jail, and was transferred to Rabat for investigation by the Military Court of Rabat in 2013. The Military Court of Rabat sentenced the 25 Sahrawi on the 17th of February 2013. Twenty-three of the Sahrawi were sentenced to harsh sentences (life, 20, 25, and 30 years). Mr. Machdoufi and Mr. Zeyou were released with time served. However, on September 21st 2016, the Constitutional Court quashed the decision taken at the Military Court of Rabat in 2013. The Constitutional Court referred the case to the Appeal Court in Salé.

The court case of Gdeim Izik commenced in the Appeal Court in Salé on the 26th of December 2016, and lasted until the 19th of July 2017. 19 of the detainees received sentences ranging from 20, 25 or 30 years to life imprisonment. Mr. El Bakay and Mr. Eddaf were released, and received sentences in correlation with their time spent in custody. Mr. Machdoufi and Mr. Zeyou were sentenced to two years, as in the Military Court. This report assesses the proceedings held in the Court of Appeal in Salé from the 26th of December 2016 until the 19th of July 2017.

In 1963, Western Sahara was listed as a non-self-governing territory by the United Nations. In 1966, the United Nations General Assembly adopted its first resolution (UN General Assembly, 1966, Resolution 2229 (XXI)) on the territory, urging Spain to organize, as soon as possible, a referendum on self-determination under UN supervision.

In 1975, the International Court of Justice (ICJ) rendered an advisory opinion on the Western Sahara question, concluding that both Morocco's and Mauritania's sovereignty claims were baseless, and that the people of Western Sahara must exercise their right to self-determination. Shortly thereafter, Morocco occupied and later annexed parts of Western Sahara. This constituted an act of aggression in violation of the UN Charter. The same day, the UN Security Council, in Resolution 380, called upon Morocco to "immediately withdraw all the participants in the march." When Morocco later expanded the occupation to the southern parts of Western Sahara, the UN General Assembly called Morocco "to terminate the occupation of the territory". Morocco did not withdraw, and parts of Western Sahara have been under occupation by Morocco since 1975.

Morocco and Western Sahara were in armed conflict until 1991, when a peace agreement entered into force. Today, Western Sahara is divided in half by a 2200-kilometre wall, built by the Moroccan army. The occupied areas are controlled by Moroccan authorities, whereas the other half is controlled by Polisario, the Sahrawi liberation movement. The most important aspect of the peace agreement, a referendum on self-determination for the Sahrawi people, has never been implemented. Western Sahara is today enlisted as a non-self-governing territory, and the territory is subject to the right to self-determination in conformity with the principles contained in General Assembly resolutions 1514 (XV) and 1541 (XV).

The Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, after visiting Western Sahara in 2013, commented on the current situation in Western Sahara in the following way⁹:

"The Special Rapporteur received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population. During the transport to or upon arrival at the police station arrestees are beaten, insulted and forced to reveal names of other protestors. The Special Rapporteur expresses concern about the alleged abandonment of the victims in rural areas after the assaults. Reports indicate that these practices are aimed at punishing and intimidating protestors in order to prevent further support for the call for independence. On occasion, protests become violent and the security forces are attacked by demonstrators. Even on those occasions, it is the duty of law enforcement bodies to ensure public order without resorting to excessive violence."

The working group on Arbitrary Detention highlighted similar circumstances in its report after a visit to Western Sahara in 2014¹⁰.

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco. A/HRC/22/53/Add.2, Paragraph 63

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

I have during my visits to Morocco received numerous reports upon torture, arrest, arbitrary detention, discrimination and declarations upon repression and attacks on demonstrators calling for self-determination for the Sahrawi population. I deem the declarations given as credible, and I find it clear that demonstrators calling for self-determination for the Sahrawi population are punished and threatened with excessive use of force. I also find it evident that political activists calling for self-determination, human rights activist and journalists in the occupied territories of Western Sahara, are subjected to abductions, arrest, arbitrary detention and torture, as a mean of suppressing the Sahrawi population and intimidate them from calling for their right to self-determination. In relation to the dismantlement of the Gdeim Izik camp, and as highlighted in the report of the Special Rapporteur and the Working Group, I urge that “it is the duty of law enforcement bodies to ensure public order without resorting to excessive violence”.

On the outset, I further wish to highlight that, Western Sahara is to be regarded as a non-self-governing territory under occupation, and as such, the Group of Gdeim Izik is tried in a courtroom that does not have the necessary jurisdiction. The Commentary by the International Committee of the Red Cross¹¹ highlights that the purpose of the Fourth Geneva Convention is to make sure that protected persons shall be judged by their natural judges. This means that protected persons have the right to be prosecuted and tried by their equals, without the fear of being prosecuted for political reasons or by a court that is biased.

¹¹ Convention (4) relative to the protection of Civilian Person in Time of War. Geneva, 12 August 1949. Commentary of 1959. Link (29.04.2017): <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=9DA4ED335D627BBFC12563CD0042CB83>

2. Principles for trial observation

2.1. *The trial observation manual*

The right to observe trials stems from the general right to promote and secure the protection and realization of human rights. According to the principles set out in the “International Commission of Jurists, Trial Observation Manual for Criminal Proceedings” observations should focus on matters relating to judicial guarantees, as well as the right to a fair trial.

Generally, the observers have no role in evaluating the evidence and arguments put forward by the parties, or in weighing up the guilt or innocence of the accused. The observers should, however, examine two principles related to the submission of evidence that are especially important. The first is the principle of legal evidence, which aims at ensuring that evidence has been lawfully obtained in accordance with procedural norms. The second is the principle of legitimacy of evidence which aims to preclude evidence that has been obtained using methods prohibited under international law, such as torture or death threats.

The Manual also sets forth that observers may assess the substance and merits in a specific case, although under certain circumstances. The observer may evaluate the substance and merits, if a trial is brought against;

“human rights defenders, journalists and political or social opponents for the legitimate and peaceful exercise of their rights to promote and strive for the protection and realization of human rights their political rights and/or their freedom of conscience, expression and association. Such proceedings are generally brought up for reasons of political persecution (political trials) rather than to impart justice.”

As it follows from the “International Commission of Jurists, Trial Observation Manual for Criminal Proceedings”, the principle of observing the substance and merits, can furthermore be applied in cases of;

“Proceedings in which there is such a complete and blatant absence of proof against the defendant that the proceedings as a whole may be unfair. These kinds of proceedings are usually initiated for reasons other than the proper administration of justice. In such situations, trial observers will, as part of their assessment, need to evaluate whether sufficient evidence was presented by the prosecution”

2.1.1. *The Court case of Gdeim Izik is to be regarded as a political trial.*

As highlighted in the report of the Working Group on Arbitrary Detention¹², on page 2, activist vouching for the right of self-determination for Western Sahara are often subjected to arbitrary detention and persecution;

“Regarding Laâyoune [El Aaiún], Western Sahara, the Working Group received numerous complaints of arbitrary detention, complaints that torture and ill-treatment were used to extract confessions and complaints indicating a pattern of excessive use of force in repressing demonstrations and arresting demonstrators calling for self-

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

determination for the Sahrawi population.”

The prisoners are all accused of charges related to the dismantlement of the Gdeim Izik camp. The Gdeim Izik camp was a protest camp claiming socio-economic rights for the Sahrawi people, and constituted one of the grandest gathering of the Saharawi population, with among 20.000 (some records claim the camp consisted of 40.000) participants, since 1991. Several of the prisoners served as leaders and spokespersons for the Gdeim Izik protest camp in 2010.

As highlighted further in paragraph 4 of this report, the accused are all human rights defenders. Several of the prisoners are leaders of human rights and/or political organizations calling for the self-determination for Western Sahara. Four of the accused are well-known journalists from the occupied territories in Western Sahara. This political activism is to be regarded as the reason for the proceedings; rather than to impart justice. The arrest of the Gdeim Izik group should be regarded as proceedings brought up due to political persecution.

Furthermore, the main evidence against the accused are confessions (i.e. reports from the police) which the accused claim is extracted under torture. The accused claim that the reports are written by the police, and that they are fabricated against them, and signed under torture or pressure. The investigative judge based the charges solely on these reports when laying out the charges, and the 21 detainees had until now remained in prison for almost seven years without a final verdict. To conclude, the proceedings as a whole may be unfair due to the complete and blatant absence of proof against the defendants. The observation will therefore evaluate whether sufficient evidence was presented by the prosecution, as conducted in paragraph 6.

As listed above; these proceedings may be “brought up for reasons of political persecution (political trials) rather than to impart justice”, and this report will therefore evaluate the proceedings on the grounds of assessing a political trial.

3. The legal framework when conducting a trial observation

In order to avoid possible challenges to the legal nature of the standard employed during the trial observation, observers should refer only to norms whose legal foundation is undisputed. When assessing the trial against the “Gdeim Izik group”, the following norms constitutes the legal framework:

1. *The Constitution of Morocco, the Criminal Code and Code of Criminal Procedure of Morocco*
2. *The Human Rights treaties, to which Morocco is a party*
3. *International standards on human rights and administration of justice that are declarative in nature, and*
4. *Norms of customary international law.*

3.1. The Constitution of Morocco, the Criminal Code and Code of Criminal Procedure of Morocco, and the Human rights treaties to which Morocco is a party

Morocco is a monarchy with a bicameral parliament, and according to the Constitution an independent judiciary. In practice, the power of the King is seen to have few constraints. As it follows from The Moroccan Constitution (adopted in 2011, hereinafter called the Constitution) all judgments are delivered in the name of the King, and the judges are nominated by the King. Furthermore, the King has the power to confer pardon to a person at any stage of the proceedings.

The Constitution contains 21 articles on fundamental freedom and rights. Articles 19 to 40 include all fundamental rights that are recognized universally. In this context, we can cite the following examples: The right of equality between man and woman, the right to life, the right to physical integrity, freedom from torture, the right to be treated equally by the law, freedom from arbitrary arrest, the right to fair trial and presumption of innocence, the right to privacy at home and in correspondence, freedom of movement, the right to own property, freedom of opinion and expression, the right to access of information, freedom of association and assembly, the right to work, health, education and adequate living, the right to participate in cultural life, and freedom of belief where the State guarantees the free exercise of religious practices. The Constitution thus entails and seeks to protect the basic human rights.

Morocco has furthermore ratified some of the most important international human rights conventions. Note that the Constitution does not entail any provisions confirming the supremacy of international treaties over domestic law.

Morocco has ratified the International Covenant on Civil and Political rights (ICCPR) of 1966 (ratified 1979), the International Covenant of Social, Economic and Cultural Rights of 1966 (ratified 1979), the Convention against Torture and Other Cruel, Inhuman, or Degrading treatment and Punishment of 1984 (1993), and the International Convention on the Elimination of all forms of Racial Discrimination, among others.

Ratification is rarely followed by harmonization of domestic law in accordance with the standards of the international conventions. Consequently, local judges, who lack sufficient education in international human rights law, may not consider the enforcement of international standards to be a priority. Human Rights Watch concluded in “World Report 2015: Morocco/Western Sahara” that:

“Morocco’s 2011 constitution incorporated strong human rights provisions, but these reforms have not led to improved practices, the passage of significant implementing legislation, or the revision of repressive laws.”

3.2. Human Rights treaties to which Morocco is a party, and international standards on human rights and administration of justice that are declarative in nature, and norms of customary international law.

3.2.1 The right to a fair trial

The right to a fair trial is a fundamental safeguard to assure that individuals are not unjustly punished. The principle is indispensable for the protection of other human rights. The main article concerning the right to a fair trial is enlisted in *article 14* of the ICCPR. Article 14 of the ICCPR is interpreted by the UN Human Rights Committee (OHCHR). Article 14 of the ICCPR is regarded as the fundamental provision for the right to a fair trial, due to the fact that article 14 entails all the main principles or doctrines that together constitutes a fair trial. A failure to uphold one principle will in the next instance affect the others.

The right to a fair trial is one of the universally applicable principles recognized in the Universal Declaration of Human rights (UDHR). According to *Article 8* of UDHR everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. *Article 10* of UDHR states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. *Article 11* of UDHR prescribes that everyone charged with a penal offence has the right to be presumed as innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his defense and that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

3.2.2 The Convention against Torture

The states that have ratified the Convention against Torture are, *inter alia*, obliged to exclude evidence obtained through torture as evidence in trials. *Article 1* of the Torture Convention gives the definition of torture:

“1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Article 2 relates to a member state's responsibility to prevent the use of torture, where paragraph

two and three notes that the prohibition of torture is absolute. It follows from article 2 that:

- “1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*
- 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*
- 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.”*

Furthermore, the torture convention relates to the failure to investigate (art.12); violation of the right to complain (art.13); obligation to compensate and reparation (art.14); usage of confessions obtained through torture (art. 15); and inhuman treatment in detention (art. 16).

The prohibition against usage of confessions obtained through torture is set forth in article 15 of the torture convention:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

3.2.2.1. The Committee against Torture (CAT)

The competence of the CAT is outlined in Part 2 of the Torture Convention, where it follows from article 17 that:

“there shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided.”

The committee is a monitoring party and its legal role and its decisions must be linked to the member state’s commitment to prevent and investigate torture (art. 2, art. 12 and art. 13).

The CAT may consider individual complaints alleging violations of the rights set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by State parties who have made the necessary declaration under article 22 of the Convention.

4. The prisoners and the charges against them

The accusations are related to (1) forming of a criminal organization, and (2) violence towards members of the law enforcement which lead to death.

As in relation to the articles in the Moroccan penal code presented by the prosecutor, the accusations were related to the forming of a criminal organization after art. 293, with sentences stipulated in art. 294, and after art. 267 (perpetrator), or after art. 129 in relation to art. 267 (participation), or after art. 129 in relation to art. 267, and art. 267 (participation and perpetrating)¹³.

The victims, that the “Group Gdeim Izik” are accused of murdering, are 11 Moroccan members of the public force, which allegedly¹⁴ died during the dismantlement of the camp site and during the riots that broke out in El Aaiún on the 8th of November 2010.

All defendants maintain their innocence, professing that the real reason behind their detention is their activism for human rights, anti-discrimination and/or respect for the Sahrawi people’s right to self-determination.

The 21 detainees have during the court case been imprisoned in El Arjat prison, Salé Morocco. The 19 detainees remained imprisoned in El Arjat prison after the verdict fell on the 19th of July, until the 16th of September 2017. The 19 detainees were during the early hours on the 16th of September 2017 transported from El Arjat prison, and relocated. Neither the lawyers, the families nor the prisoners were informed about their relocation, and the location of 11 of the prisoners remained unknown for over 24 hours.

The 19 detainees were on the 16th of September separated into five different prisons. Currently, the prisoners are held in Ait Melloul Prison (Mohamed Embarek Lefkir, Mohamed Bani, Sidahmed Lemheiyd, Mohammed Thalil), Okacha prison (Abdeljalil Laroussi), El Arjat prison (Eênama Asfari), Kenitra prison (Sidi Abdallahi Abbahah, Houssein Ezzaoui, Abdallahi Lakfawni, Ahmed Sbaai, Mohamed Bourial, El Bachir Boutinguiza) and Tifelt 1 and 2 prison (El Bachir Khadda, Hassan Dah, Brahim Isamili, Cheick Banga, Khouna Babeit, Abdallahi Toubali, Mohamed Lamin Haddi).

The prisoners, the accusations they faced, and sentences that fell on the 19th of July are listed below.

1. Sidi Abdallah Abbahah (B´hah), born 1975. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267. And mutilation of corpses pursuant to article 271. *Condemned pursuant to article 293 (forming of a criminal organization) and article 267, fifth paragraph (murder, with intent to kill).*

Mr. Sidi Abdallah was part of the Gdeim Izik camp since the beginning. Mr. Sidi Abdallah

¹³ See appendix 1, day 31, for a summary from the verdict.

¹⁴ The autopsy reports were not presented to the court, and not used as evidence in the written judgement by the Court of Appeal in Salé.

was arrested in the Linaach neighbourhood in El Aaiún on the 19th of November, 2010. Mr. Sidi Abdallah claims to have been kept blindfolded, handcuffed and naked throughout the interrogations in the police station, had urine poured on him and was forced to stand up against a wall without moving. He claims to have signed the declarations and confessions under torture.

2. Mohamed El Bachir Boutinguiza, born 1974. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. And mutilation of corpses pursuant to article 271. *Condemned pursuant to article 293 (forming of a criminal organization) and article 267, fifth paragraph (murder, with intent to kill).*

Mr. Boutinguiza took part of the protest camp Gdeim Izik. Mr. Boutinguiza was arrested on the 19th of November, 2010, in El Aaiún. Mr. Boutinguiza was detained on November 19th of 2010, and he has reported that at moment of his arrest “the police forced my house entrance (...) and beat me with shoes, and later on I was tortured in many different ways”. He claims to have signed the declarations and confessions under torture.

3. Ettaki Elmachdoufi (Machdoufi Ettaki), born 1985. Sentenced to two years by the Appeal Court in Salé in 2017. Released in 2013. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. *Condemned pursuant to article 267, second paragraph (violence).*

Mr. Machdoufi Ettaki was arrested on the 8th of November 2010 on the campsite. Mr. Ettaki stated at the Appeal Court to have been detained by eight authority agents while he was helping an old lady on his and hers way back to El Aaiún, from the Gdeim Izik camp. Mr. Ettaki states to have been brutally tortured and kept blindfolded, handcuffed and stripped of his clothes. Mr. Ettaki had to be transported to the hospital twice due to the brutal beatings. He claims to have signed the declarations and confessions under torture.

4. Mohamed Bani, born 1969. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. *Condemned after article 293 (forming of a criminal organization) and article 267, fifth paragraph (murder, with intent to kill).*

Mr. Bani was not a part of the protest camp Gdeim Izik, but had a lot of relatives at the camp site. He visited his family on Sunday the 7th of November, and was stopped when trying to leave. On the 8th of November, when trying to leave, the police arrested him, accusing him of running over an officer.

Mr. Bani worked at the Ministry of Infrastructure. Mr. Bani presented a document at the Military Court of Rabat in 2013 signed by his department director and fifteen fellow employees stating that he was present at his workplace on Friday the 5th of November of 2010. The document was classified by the King's General prosecutor as irrelevant. Mr. Bani claims to have

been subjected to brutal torture. The wounds haven't healed and Mohamed continues to have problems resulting from a head injury. He claims to have signed the declarations and confessions under torture.

5. Abdeljalil Laaroussi, born 1978. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. *Condemned after article 293 (forming of a criminal organization) and article 267, fifth paragraph (murder, with intent to kill).*

Mr. Laaroussi visited the camp Gdeim Izik twice, where he visited his aunt. On the 7th of November 2010 Mr. Laaroussi was in Bojador, and Mr. Laroussi have declared that he stayed in Bojador until the 12th of November, when he was arrested by public servants which broke into his cousin's house. Mr. Laaroussi was thus arrested on the 12th of November in 2010, and taken to the police station in El Aaiún where he claims to have been brutally tortured, electroshocked and threatened with rape. Mr. Laaroussi has still difficulty walking due to loss of balance. He claims to have signed the declarations and confessions under torture.

6. Abdulahi Lakfawni, born 1974. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. *Condemned after article 293 (forming of a criminal organization) and article 267, fifth paragraph (murder, with intent to kill).*

Mr. Lakfawni was at the Gdeim Izik camp. On the 5th of November 2010, the governor of El Aaiún wanted to enter the camp, but was turned back by Mr. Lakfawni. It is claimed that this incident is the reason for his arrest and conviction. Mr. Lakfawni was arrested on the 9th of December 2010, when police officers broke into his cousins' house. Mr. Lakfawni stated at the Appeal Court to have been subjected to different types of brutal torture. He was kept blindfolded and handcuffed during the torture, deprived of sleep and food. He claims to have signed the declarations and confessions under torture.

7. Ahmed Sbaai, born 1978. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. *Condemned after article 293 (forming of a criminal organization) and article 267, fifth paragraph (murder, with intent to kill).*

Mr. Sbaai is the founder of the Sahrawi League for the Protection of Political Prisoners inside Moroccan jails. Mr. Sbaai was in prison in 2002 and in 2006 for his activism. Mr. Sbaai stated at the Appeal Court to have been arrested on the 8th of November of 2010, during a family party in the Lirak neighborhood. He was beaten and intimidated during his interrogation. Mr. Sbaai claims that he was kept blindfolded and handcuffed until he was referred to the Military Court of Rabat. He claims to have signed the declarations and confessions under torture.

8. Sid'Ahmed Lemjeyid, born 1959. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293,

and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267 and article 267, fifth paragraph (participation to murder and murder, with intent to kill).*

Sid' Ahmed Lemjeyid is the president of CSPRON, the Committee for the Protection of Natural Resources in Western Sahara. Lemjeyid was arrested in 1999 for attending a protest in El Aaiún, and again in 2005. Mr. Lemjeyid was arrested on the 25th of December 2010. Lemjeyid stated at the Appeal Court that when he was detained, he was taken to a place unknown, and beaten during an interrogation which only focused on political issues, without ever mentioning the Gdeim Izik camp. Mr. Lemjeyid states that he was tortured and arrested for being a Sahrawi activist. He claims to have signed the declarations and confessions under torture.

9. Brahim Ismaili, born 1970. Sentenced to life imprisonment by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267 and article 267, fifth paragraph (participation to murder and murder, with intent to kill).*

Mr. Ismaili is the president of the Centre for Preservation of the Collective Sahrawi memory. Mr. Ismaili claims that he is imprisoned due to the fact that he is a Sahrawi activist, and to have been already abducted and arrested in 1987, having passed 8 months at a secret prison at El Aaiún. Mr. Brahim was arrested on the 9th of November 2010 in his house in El Aaiún. After 7 months in the “Black prison” in El Aaiún he was released, but arrested again once outside the prison, and driven to Salé prison. He claims to have signed the declarations and confessions under torture.

10. Mohamed Khouna Babait, born 1981. Sentenced to 25 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267 and article 267, fifth paragraph (participation to murder and murder, with intent to kill).*

Mr. Babait worked at the local administration in El Aaiún. After the violent dismantlement of the Gdeim Izik camp, Mr. Babait joined the demonstrations demanding the release of the prisoners. Mr. Babait continued to participate in the protest marches, despite numerous threats from both his work place and from the authorities. Mr. Babait was arrested on the 15th of August in 2011. He reported at the Appeal Court to have been blindfolded and taken to a deserted place near Gdeim Izik, where he was undressed and violently tortured. He also denounced the tortures he went through on his way to Agadir, and then to the Salé II prison. He claims to have signed the declarations and confessions under torture.

11. Mohamed Embareh Lefkir, born 1978. Sentenced to 25 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293,

and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267 and article 267, fifth paragraph (participation to murder and murder, with intent to kill).*

Mr. Lefkir was part of a delegation of Sahrawi human rights defenders who had been invited to Algiers by the Front Polisario. It is believed that this trip is the reason for his arrest and imprisonment. Mr. Lefkir claimed at the Appeal Court to have been kidnapped on the 11th of November 2010, by a group of civilian police officers using masks to cover their faces, at his uncle's house, and then beaten in front of his family. He was taken to the "Black prison" in El Aaiún, where he was kept until the 17th of June 2011. He was temporarily released but detained again once outside the prison walls. He claims to have signed the declarations and confessions under torture.

12. Larabi El Bakay, born 1982. Sentenced to four and a half year by the Appeal Court in Salé in 2017. Released on the 19th of July 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for violence against public forces with the cause of death after article 267, with intent to kill. *Condemned pursuant to article 267, second paragraph (violence).*

Mr. El Bakay was a part of the protest camp Gdeim Izik and a member of the Dialogue Committee who negotiated with the Moroccan authorities. Mr. El Bakay was arrested on the 9th of September of 2012, almost two years after the dismantlement of the Gdeim Izik camp. He claims to have signed the declarations and confessions without knowing its content and without a lawyer present.

13. Enaâma Asfari, born 1970. Sentenced to 30 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267, fifth paragraph (participation to murder, with intent to kill).*

Mr. Asfari is the vice-president of CORELSO (Committee for Liberties and Respect for Human Rights in Western Sahara). Mr. Asfari has already been detained at Tan-Tan, in 2009, due to his activities in defence of human rights. Mr. Asfari claimed at the Court of Appeal in 2017 that he was already in prison at the date of Gdeim Izik dismantle. This statement was supported by two witnesses and several of the accused. He was detained on the 7th of November in 2010, a day prior to the dismantlement, and maintained five days in an unknown location, where he was held blindfolded and handcuffed. He claims to have signed the declarations and confessions under torture.

14. Cheikh Banga, born 1989. Sentenced to 30 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 26, fifth paragraph (participation to murder, with intent to kill).*

Mr. Banga is a member of CODESA and President of the Sahrawi Committee for Human Rights in Assa and AMDH. Mr. Banga was arrested and imprisoned two times in 2006 for his activism. Mr. Banga was arrested the 8th of November in 2010 on the Gdeim Izik camp site. Mr. Banga has declared to have been tortured and ill-treated before being incarcerated in Salé II prison. He claims to have signed the declarations and confessions under torture.

15. Mohamed Bourial, born 1976. Sentenced to 30 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267, fifth paragraph (participation to murder, with intent to kill).*

Mr. Bourial participated in the Gdeim Izik camp and was a part of the Dialogue Committee which negotiated with the Moroccan government. Mr. Bourial was arrested by the Moroccan army on the 8th of November in 2010 at the campsite. He claimed to have spent five days blindfolded, naked and undergoing brutal beatings with a steel cable. He claims to have signed the declarations and confessions under torture.

16. Mohamed Lamin Haddi, born 1980. Sentenced to 25 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267, fifth paragraph (participation to murder, with intent to kill).*

Mr. Haddi has declared that his arrest is linked to him offering assistance to two Belgian doctors linked to “Doctors without borders”, Marie-Jeanne Wuidat and Ann Collier, who were on a humanitarian mission in the occupied territories to provide medical assistance to Sahrawi victims of Morocco’s repression in the Gdeim Izik camp. Mohamed Lamin Haddi was arrested by Moroccan secret service on the 20th of November in 2010 in El Aaiún, whilst accompanying the two doctors. The Belgian doctors were expelled from El Aaiún. Mr. Haddi declared at the Court of Appeal that he was being tortured within the court facilities when being presented to the investigative judge. Mr. Haddi reported to have been detained at El Aaiún, where he was psychically and psychologically tortured. He claims to have signed the declarations and confessions under torture.

17. Sidi Abderahmane Zeyou, born 1974. Sentenced to 2 years by the Appeal Court in Salé in 2017. Released in 2013. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 267, second paragraph (violence).*

Mr. Zeyou did not participate in the Gdeim Izik camp but visited once. Mr. Zeyou is the president of “Comité des Cadres Sahraouis”, which provided food and medicine to the camp. Mr. Zeyou was arrested on the 21st November in 2010 at the airport of El Aaiún. Mr. Zeyou declared at the Appeal Court that the camp was placed under a siege, and that he and several others tried to negotiate with the governor on the 7th of November, and had planned a demonstration on the 8th of November. Mr. Zeyou claims to have been tortured, and kept

blindfolded and handcuffed during his detention. He claims to have signed the declarations and confessions under torture.

18. El Houssin Ezzaoui, born 1975. Sentenced to 25 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267 and article 267, fifth paragraph (participation to murder and murder, with intent to kill).*

Mr. Ezzaoui was part of the protest camp Gdeim Izik where he was a member of the Dialogue Committee which negotiated with the Moroccan government. Mr. Ezzaoui was taken on the 9th of November. Mr. Ezzaoui has declared that he has suffered under torture ever since his arrest. He declared to have been under every form of torture, stating that his health condition drastically worsened since his arrest. He claims to have signed the declarations and confessions under torture.

19. Abdullahi Toubali, born 1980. Sentenced to 20 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267 and article 267, fifth paragraph (participation to murder and murder, with intent to kill).*

Mr. Toubali was a member of the Dialogue Committee, which attempted to negotiate with the Moroccan authorities. Mr. Toubali was run over on the 7th of November 2010, on the eve of the camps dismantlement, and was taken to the hospital of El Aaiún. Mr. Toubali went home at 2:00am, on the 8th of November 2010, in a critical condition. Mr. Toubali was arrested on the 2nd of December 2010, accused of murdering a policeman on the 8th of November. Mr. Toubali stated at the Court of Appeal that there are witnesses that can confirm that he was in fact at home at the time of the alleged crime. He stated to have been kidnapped, undressed, spanked, threatened to be raped with a lamp, and denied food. He claims to have signed the declarations and confessions under torture and whilst blindfolded.

20. Deich Eddaf, born 1978. Sentenced to 6 and a ½ year by the Appeal Court in Salé in 2017. Released on the 19th of July 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation and perpetrating violence against public forces with the cause of death after article 129 in relation to article 267, and article 267, with intent to kill. *Condemned pursuant to article 267, second paragraph (violence).*

Deich Eddaf was a member of the Dialogue Committee which negotiated with the Moroccan Government. Deich was arrested by the police on the 12th of November 2010, by 10 masked men which slapped him and his wife, and took him to an unknown location. Deich claims to have been brutally tortured, spending his time in detention naked, blindfolded, handcuffed and deprived of sleep, food and water. He claims to have signed the declarations and confessions under torture.

21. El Bachir Khadda, born 1986. Sentenced to 20 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267, fifth paragraph (participation to murder, with intent to kill).*

Mr. El Bachir is a member of the Sahrawi Observatory for Human Rights in Western Sahara, and was imprisoned at the age of 21. Mr. El Bachir reported at the Appeal Court to have been abducted at El Aaiún together with Mohamed Tahlil and Hassan Eddah on the 4th of December in 2010. He states to have been under torture for an unknown period of time, since he lost consciousness "due to the tortures". He was blindfolded and handcuffed throughout his detention. He claims to have signed the declarations and confessions under torture.

22. Hassan Eddah (Dah), born 1987. Sentenced to 25 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267, fifth paragraph (participation to murder, with intent to kill).*

Mr. Hassan Eddah is a human rights defender and connected to the Sahrawi Observatory for Human Rights in Western Sahara. He spent 10 months in prison in 2010 for his political views. Mr. Hassan Eddah took part in the Gdeim Izik camp, where he acted as a correspondent for the Frente Polisario's TV and radio service. Mr. Hassan Eddah was arrested on the 4th of December in 2010 with Mohamed Tahlil and Bachir El Khadda. Hassan stated at the Appeal Court to have been brutally tortured when detained in El Aaiún, at the gendarmerie as well as in the court facilities in Rabat. He also claims that all his signatures were obtained under torture.

23. Mohamed Tahlil, born 1981. Sentenced to 20 years by the Appeal Court in Salé in 2017. Accused of participation in and aiding a criminal organization after article 293, and accused for participation in violence against public forces with the cause of death after article 129 in relation to article 267, with intent to kill. *Condemned pursuant to article 129 in relation to article 267, fifth paragraph (participation to murder, with intent to kill).*

Mr. Tahlil is the president of the Bojador section of ASVDH (the Sahrawi Association of Victims of Grave Human Rights Violations Committed by the Moroccan State). He has been imprisoned for his activism in 2005 and 2007. Mr. Tahlil was detained together with Bachir El Khadda and Hassan Eddah on the 4th of December in 2010. Mr. Thalil stated to the Appeal Court that he was never at Gdeim Izik nor the initiation of the camping. He stated to have been submitted to torture, also inside the court facilities, as well as to have signed all the confessions blindfolded and under torture.

The case of **Mohamed El Ayubi, born 1956**, was separated from the case in June 2017, and his case is scheduled to the 27th of September 2017 at the Court of Appeal in Salé. **Sentenced to 20 years under provisional release due to his debilitated health condition by the Military Court in 2013.**

The last of the original “Group Gdeim Izik”, is **Hassana Alia, born 1989. Sentenced to life in *absentia* by the Military Court in 2013.** Hassana was granted political asylum in Spain. Hassana Alia was not summoned to the proceedings at the Court of Appeal in Salé.

5. The proceedings against the Group Gdeim Izik at Court of Appeal in Salé

5.1. A short summary from the proceedings

This paragraph contains a short summary of the entire proceedings (for a more extensive description, please see appendix 1).

The proceedings against the Group Gdeim Izik commenced on the **26th of December 2016**. The prisoners were held in a glass-cage. The court case entailed three active parties (i.e. the prosecutor, the defence of the accused, and the defence of the victims (hereinafter civil party)). The question upon partial status for the civil party was never ruled upon. The defence consisted of the same attorneys which defended the group in the Military Court in 2013, and three French attorneys. The court was adjourned until the 23rd of January 2017. None of the prisoners were given provisional release.

The proceedings against the Group Gdeim Izik commenced on the **23rd of January, 2017**, by addressing procedural matters. The defence asked for more time to prepare their case, since they had not been given the chance to meet with their clients. The defence was given 24 hours. The time was then 5:40pm, and the court was adjourned until 10am the next morning.

On the **24th of January**, the accused were deprived of their pen and papers during the proceedings. The accused demanded that they have the right to follow their own proceedings, which entailed that they had to be given the chance to follow it adequately. The question upon whether the civil party was to be given a formal partial status was raised, but never ruled upon. The question about whether this stage was first instance, or an appeal was also postponed to a later date.

On the **25th of January**, the defence placed forward arguments related to the Fourth Geneva Convention, claiming that Western Sahara is occupied by Morocco, and that the Appeal Court in Salé did not have the necessary jurisdiction to rule upon the matter. The French defence attorneys were stopped in their advocacy when protests arose within the courtroom.

The prisoners were granted medical examinations, and the presiding judge declared that the examinations were to be performed by three Moroccan doctors employed by the state. The court adjourned until the 13th of March.

The proceedings on the **13th of March** commenced without the reports from the medical examinations. Witnesses who had been permitted into the case file were present in the courtroom, but were not questioned. The proceedings commenced with presenting the documents in the case, where all the confiscated evidence was put forward. One of the objects in the document file was a CD, which contained a film portraying the camp as a violent resistance camp. The film was manipulated, edited and had subtitles. The court refrained from ruling upon whether the film was to be taken into the case file.

On the **13th of March**, the testimonies from the accused started. The first to give his declaration was Mohamed El Ayoubi. Mr. Ayoubi stated that “I came to find my bread, but the Moroccans only gave me beatings”. The next who was questioned was Mohammed Bani. Mr.

Bani demanded to be tried in a court that the Polisario Front and Morocco agreed upon.

On the **14th of March**, Machdoufi Ettaki, Mohamed El Bachir Boutinguiza and Mohammed Thalil, gave their declarations. Mr. Ettaki declared that we, the Sahrawis, are tried in made up cases by the Moroccan occupation. Mr. Boutinguiza urged that he had nothing to do with the reports, and that the international community must intervene. Mr. Thalil was constantly stopped by the prosecution in his declaration, and declared that “you claim that this is a fair trial. But this is merely a theatre, I don’t care about theatre. I want to tell you the truth about why I am here, in a country who has occupied my country”.

On the **15th of March**, Mohammed El Bakay, Mohammed Lamin Haddi, and Sidi Abderahmane Zeyou gave their testimonies. Mr. El Bakay declared that he was innocent of all charges, and stated that the camp had no organization, and that he was sure that Morocco already has this intel. When Mr. Haddi was questioned by the civil party, he formed a cross over his mouth with black tape, as a silent protest symbolizing that he would not answer the ones that had deprived him of the presumption of innocence. Mr. Zeyou stated that the investigations after the dismantlement of the camp were not set forward to reach the truth, but to revenge the political activism.

On the **20th of March**, El Houssin Ezzaoui, Sidi Abdallahi Abahah, Mohammed Bourial and Brahim Ismaili gave their declarations. Mr. Ezzaoui declared that when appearing in front of the investigative judge, he was carried in a blanket, not being able to walk after the torture inflicted on him. Mr. Abahah explained how he had refused to undergo the medical examinations, since his lawyer had requested an independent examination in line with the Istanbul Protocol, which was not the case of the medical examinations that this court had ordered. Mr. Bourial told about how he, on November 7th, had been approached by the chief of police in El Aaiún who told him that “I got Eênama Asfari tonight, tomorrow I will get you”. Mr. Ismaili stated that, during all the interrogations, he was only asked about his activism for self-determination and his trip to Algeria. He urged that he was never asked any questions about the Gdeim Izik.

On the **21th of March**, Abdallahi Toubali, Sidahmed Lemjeyid and El Bachir Khadda gave their testimonies in front of the court. Mr. Toubali was during the testimony asked to sign two documents without looking, to prove that he in fact was blindfolded when signing his declarations, which he urged was falsified against him. The judge kept the blank pages with Mr. Toubalis signature. Mr. Lemjeyid urged that he was captured due to his political opinions and activism, and that, when he was brutally tortured, he was only asked questions about his activism, and never about the camp. Mr. Khadda demanded that the Fourth Geneva Convention should be applied, as Western Sahara is occupied by Morocco.

On the **22nd of March**, Hassan Eddah, Abdallahi Lakfawni and Mohamed Embarch Lefkir, testified in front of the court. When talking about their sufferance, about the torture they endured and their political opinions, they were constantly interrupted. When Mr. Lefkir was asked why he signed his whole name, he answered that “they threatened to torture me in ways I couldn’t even imagine. I was terrified”. Mr. Eddah urged that the Fourth Geneva Convention must be applied. Mr. Lakfawni told how he was arrested by masked men, who attacked the house where he was and threw him out the first-floor window, before they took him to an

unknown location and tortured him.

On the **23rd of March**, Mohammed Babait, Eênama Asfari and Cheikh Banga were questioned by the court. Mr. Babait declared that he had nothing to do with the Gdeim Izik camp, other than visiting his mother. Mr. Asfari urged that he would not agree to be tried based on falsified illegal evidence, and invoked art. 15 of the Torture Convention when asked questions based on the declarations. Mr. Banga urged that he was only arrested due to his political activism, and declared that this is only a fabricated story and that his political opinions were the core of this case.

On the **27th of March**, Cheick Banga, Deich Eddaf, Ahmed Sbaai and Abdeljalil Laroussi were questioned by the court. Mr. Laroussi gave a description of all the torture he had suffered. Mr. Eddaf declared himself innocent on all charges, and urged that the declarations were falsified. Mr. Sbaai declared that he does not recognize the validity of this court since the court is extraterritorial.

The court adjourned until the 8th of May. None of the prisoners were given provisional release. The officials who wrote the reports were allowed as witnesses. The judge accepted three additional witnesses from the defence, i.e. the witnesses requested by Mr. Laaroussi, Mr. Lakfawni and Mr. Zeyou. The presiding judge declared that the reports from the medical examinations are submitted.

On the **8th of May**, the witnesses were summoned to court. The group of witnesses can be divided into three groups: (1) Witnesses for the defence (hereinafter “support witnesses), (2) witnesses who describe the events (members of the different public authorities), and (3) witnesses who describe the events and identify the accused (members of the different public authorities and inhabitants from the camp). The court case entails in addition declarations from the police officers who wrote the reports. In total, 28 witnesses were submitted. The confiscated elements in the evidence file were shown to the accused. All the accused denied any relation to the confiscated elements. The supportive witnesses Mr. Hassan Dhalil, Mr Mohammed Embark Hallab, and Mr. Brahim Hamed gave their declarations.

On the **9th of May**, the court decided to postpone the treatment of Mr. Mohammed El Ayoubi’s court case, due to his health condition, until the 5th of June. The first witness summoned to the court was Mr. Faisal El Malazi. The witness declared that the participants in the camp attacked the civil forces [i.e. Moroccan police officers], and that his colleague and himself were hit by a car. The witness identified Mr. Bani as the driver of the car. The second witness Mr. Rahil Mohammed explained how the inhabitants of the camp threw rocks towards them, and that he was hit by a car and lost consciousness.

On the **10th of May**, the first witness Mr. Nordin Lassere and the second witness Mr. Said Kahla testified about the violent clashes between the inhabitants and the civil forces. The third witness for the day, Mr. Mohammed Choujaa declared that he had taken part in the camp, and identified several of the accused as leaders in the camp, as attackers, and as spokespersons in the camp. The witness could not remember the names of other inhabitants in the camp, including his own neighbours, and declared that he was alone for 22 days in his tent. The accused urged that this testimony was false and asked where this witness had been the last 7 years. The court conducted an identification process (face to face witness-accused), where the witness identified 20 of the

24 accused.

On the **11th of May**, the first witness to testify was the supportive witness Mr. Mohamed Selmani that declared that he had witnessed the abduction of Mr. Asfari on the 7th of November. The second witness was another supportive witness, Mr. Bachir Salmani who declared that he had witnessed the abduction of Mr. Asfari on the 7th of November. The third witness, Mr. Aziz Kabir, and the fourth witness Mr. Ridam Halwi, and the fifth witness, Mr. Mustafa Zeynon, testified to the clashes and the dismantlement of the camp.

On the **15th of May**, the first witness to be summoned was Mr. Tarik Hajri who testified to have seen fire and being attacked by demonstrators/inhabitants from the camp whilst laying on the ground. The second witness, Mr. Hossini Lemtioui, declared that he had lived in the Gdeim Izik camp since the first week of its settlement. The witness identified several of the accused as leaders, and the ones giving orders on the morning of the 8th of November, and identified several of the accused as attackers, and others as spokespersons within the camp. The witness could however not name the neighbourhoods in the camp, nor remember the name of his own neighbourhood or identify any other inhabitants in the camp, and claimed that he had been alone for 22 days, and that no one could identify him. The accused urged that this testimony was false, and constituted lies matching the falsified declarations. After the identification process (face to face witness-accused), which the defence urged was in violation of the presumption of innocence, protests emerged within the courtroom as the detainees chanted that the Moroccan judicial system is only a theatre played for the international community.

The third witness, Mr. Moulay Ali Amrani, the fourth witness, Mr. Farouk Arika, the fifth witness, Mr. Zakaria Raiss, the sixth witness, Mr. Hamid Omalish, the seventh witness, Mr. Abdeljalil Laktari, and the eight witness, Mr. Morad Haddi, testified about the clashes.

On the **16th of May**, the first witness Mr. Mohamed Sahnoun testified regarding the dismantlement. The second witness was the supportive witness for Mr. Laaroussi, Mr. Brahim Hamya. Mr. Hamya explained how Mr. Laaroussi was abducted from his family house in Boujdour. The civil part asked the witness about his home address, and protests emerged at once inside the courtroom. The accused urged that the court had to protect the witnesses equally, and not only the witnesses summoned by the prosecutor. Mr. Banga thereafter informed the court that the detainees had been prohibited from speaking to their defence attorneys. The court commenced the questioning of the witness, but adjourned when protests again emerged. The defendants were given the room to consult with their attorneys. Mr. Zeyou and Mr. Ettaki were escorted out of the courtroom, and were not given the opportunity to consult with their attorneys alongside with the rest of the group.

At the commencement, the different attorneys gave a last statement to the court and withdrew from the court case. Mr. Hassan Eddah affirmed that the accused wished to withdraw from the proceedings, and asked their families to leave. The French attorneys were not allowed to give a final statement to the court, and were de facto prohibited from withdrawing from the proceedings. They were then expelled from the courtroom and forcefully escorted out by police officers.

The preceding judge appointed four new defence lawyers for the accused after the defence attorneys withdrew from the case alongside with their clients. Two of the newly appointed lawyers were present in the room since they prior to their appointment belonged to the civil party. The court commenced the proceedings by summoning a new witness, Mr.

Abdeljalil Chakouch. The newly appointed defence lawyers did not receive the case documents, and asked for time to prepare the defence. The request was denied. The presiding judge ruled to adjourn the hearings after a request from the civil party, claiming they were exhausted.

On the **17th of May**, the accused refused to appear in front of the court without their handcuffs, after being transported by force from the prison to the courthouse (i.e. the detainees demanded to appear in front of the court handcuffed as they were during transport). The presiding judge refused to let the detainees appear in front of the court handcuffed, and ruled to commence the proceedings without the detainee's present. The first witness Mr. Ashraf Mchich and the second witness, Mr. Ahmed Hamidou, testified to the events. The third witness, Mr. Yames Hrouchi, declared that he had stayed in the camp and that he knew several of the detainees, and declared that the camp had checkpoints, was divided into five sections, and had security forces. Mr. Hrouchi could not remember the name of the neighbourhood he lived in in the camp nor his neighbours, and declared that he lived alone. The witness identified the detainees by looking at pictures of the detainees from the prison. Mr. Hrouchi identified nine of the 24 accused. The fourth witness, Mr. Redoam Lawini, the third witness, Mr. Mohamed Dghigh, the fourth witness, Mr. Kamal Rouki, testified to the events happening on the 8th of November. The defence asked what the relevance of these witnesses was, since they could not identify any of the accused. The court commenced by re-summoning the witnesses that the accused had refused to expose themselves to, and ordered an identification process by using the pictures of the detainees from the prison.

On the **18th of May**, the detainees reaffirmed their position and refused to enter the courtroom without their handcuffs. The clerk informed the court that he had been prevented from informing the detainees about the court's ruling and the proceedings held on the 16th and the 17th of May, as the detainees had protested and stated that they did not wish to be a part of what they called a "theatre" played in a Moroccan courthouse. The presiding judge commenced the proceedings without the detainee's present. The first witness Mr. Hmaida Akrach testified that the camp had checkpoints, and about the events on the 8th of November.

The presiding judge commenced the proceedings by summoning the police officers who had written the police reports to testify. The police officers summoned to court are identified by the accused as the ones who tortured them.

The first police officer to testify was Mr. Mohssin Bou Khabza, who gave a testimony identical to the police reports. Mr. Khabza declared that he oversaw the questioning of the ones taken into custody, and he declared that everyone was given water and food, and that no torture took place. Mr. Zeyou and Mr. Ettaki left the courtroom in protest, stating that they could not sit there and listen to the man who had tortured them for five days telling lies.

The second police officer, Mr. Yousseff Raiss, the third police officer, Mr. Said Ben Sghir, and the fourth, Mr. Abdel Hamid Elmaghani, declared similar stories in line with the police reports, and denied any torture. The fifth police officer to be questioned was Abde Rahmon Elwazna. Mr. Elwazna has been identified as the one conducting and managing the torture both within the police head quarter and in the prison. Mr Elwazna denied all allegations upon torture, and stated that it would be impossible to torture someone inside a police head quarter.

The prosecutor requested to implement new evidence into the case file. The prosecutor placed forward two reports. First report showed the travel route for all the accused who had travelled to Algeria in 2010. The second report entailed transcripts of recordings of phone calls.

The presiding judge postponed the ruling. The court was thereafter shown a movie, proclaiming the events on the morning of the 8th of November. The movie proclaimed the clashes between the civil forces and the demonstrators, and showed pictures of wounded members of both the gendarmerie and the civil forces. The movie did not exhibit a link between any of the accused and the alleged crimes they committed.

On the **5th of June**, the court case commenced by hearing from the doctors employed by the Moroccan state which conducted the medical examination. The doctors in charge of the examination informed the court that the scars and marks found on the detainees had multiple explanations, and that it was impossible to rule out torture, but also impossible to conclude that the detainees had suffered from torture during their detention. The accused still urge that they have suffered from torture and in-humane treatment.

During the proceedings conducted from **the 6th of June until the 8th of June**, the attorneys representing the victims (i.e. the civil party) delivered their closing arguments. The civil party requested the court to re-characterize the case, and to alter the charges. The civil party invoked art. 201, 202, 203, 204, 205, 208 and 293 of the Moroccan Penal code. Thus, the civil party requested that the accused are to be sentenced for internal terrorism, for activities threatening the national security of the Kingdom of Morocco. The civil party urged that the court had an obligation to alter the charges for the court to be able to condemn the detainees for their actions, as the link between the accused and the crime itself was impossible to prove.

The prosecutor delivered his final arguments to the court on **the 12th and the 13th of June**. The prosecutor did not request to alter the charges, and based his pleading mainly on the reports conducted by the police and the gendarmerie, supported by statements from the investigative judge, the autopsy reports, and testimonies from Mr. Mohammed Choujaa and the policemen which drafted the reports. The prosecutor requested the court to condemn the accused, and punish them with the harshest sentence possible.

The defense delivered its final arguments on the **14th and the 15th of June**. The defense urged that the court did not have sufficient evidence to condemn the accused, and furthermore that the reports conducted by the police and the gendarmerie, the phone recordings, the movie, the medical examination, the confiscated elements, the pictures and several of the witnesses had to be discarded as evidence. The defense further urged the court to find all the accused innocent of all charges, and to investigate into what happened during the dismantlement of the Gdeim Izik camp, stating that the dismantlement constituted abuse of power.

During the proceedings held on the **11th of July**, the civil party and the prosecutor delivered their remarks to the final arguments given by the defense. During the proceedings held on the **18th of July**, the defense was given the right to deliver final remarks, and the lawyers delivered the last word on behalf of the accused, which were not present during the proceedings.

The verdict landed on the 19th of July at 04:45am. The court ruled that the civil party did not have competence to be a formal part in the proceedings, and rejected the civil claim. The court rejected all the requests presented by the defense, and thus implemented all evidence into the case file.

The court delivered the sentence within 10 minutes. The court ruled to re-characterize the case in compliance with the final arguments delivered by the prosecutor. As in relation to the articles presented by the prosecutor, the accused were charged for forming a criminal organization after art. 293, with sentences stipulated in art. 294, and after art. 267 (perpetrator), or after art. 129 in relation to art. 267 (participation), or after art. 129 in relation to art. 267, and art. 267 (participation and perpetrating).

Sentenced to life in prison: Ahmed Sbai, Brahim Ismaïli, Abdalahi Lakfawni, Laaroussi Abdeljalil, Mohamed El Bachir Boutinguiza, Mohamed Bani, Sidi Abdallah B'hah, Sidahmed Lemjeyid.

Sentenced to 30 years in prison: Eênama Asfari, Mohamed Bourial, Cheikh Banga.

Sentenced to 25 years in prison: Hassan Eddah, El Houssin Ezzaoui, Mohamed Lamin Haddi, Mohamed Embarek Lefkir, Mohamed Khuna Babait.

Sentenced to 20 years in prison: Mohamed Tahlil, El Bachir Khadda, Abdalahi Toubali.

Released with time served: Deich Eddaf, condemned to six and a half years, which is less than the time he has so far spent in prison. Larabi El Bakay, condemned to four and a half years, which is less than the time he has so far spent in prison. Mr. Zeyou and Mr. Ettaki were both sentenced to two years, which they have already served in prison.

The preceding judge did not deliver the judgement concerning one of the detainees, Mr. Ezzaoui, before adjourning the proceedings. After consulting the preceding judge in his chamber at the Court of Appeal in Salé, we learned that Mr. Ezzaoui was sentenced to 25 years in prison.

6. The evidence file

6.1. *Introductory and conclusive remarks*

The evidence file was presented during the proceedings held from the 8th of May to the 18th of May¹⁵. The evidence file entails the reports from the police, gendarmerie and investigative judge, confiscated elements, witnesses, a film with pictures, and two reports concerning travel routes to Algeria and phone recordings. Other pieces of evidence include reports of arrest, the criminal records of the accused, the declarations of one of the accused against another accused and autopsy report. The written judgement issued by the Court of Appeal in Salé is based upon the above-mentioned reports, testimonies, phone recordings, and confiscated elements (such as money and weapons found on the scene). This report assesses the pieces of evidence that were discussed and evaluated by the court during the proceedings conducted in May¹⁶.

It should be noted that the case file is characterized by a lack of sufficient clarification and a lack of material evidence against the accused. The defence was prohibited from presenting several witnesses and videos portraying the dismantlement, and faced difficulties in the phase of evidence evaluation, and the right to equality of arms is thus severely breached (see more in paragraphs 8.5.1 and 8.6).

The main evidence against the accused are reports conducted by the police and the gendarmerie upon arrest, before being presented to an investigating judge, and without an attorney present. These reports are supported with the report from the investigative judge, where the detainees declared that their testimony to the police and the gendarmerie were given without any use of force, and that they were never subjected to torture. These reports are further supported by the declarations of one of the accused against another accused. The prosecutor based his final argument on these three reports, and claimed that these reports gave sufficient evidence to condemn the accused.

During the final arguments from the public prosecutor¹⁷, he further based his deductions upon the testimonies given by Mr. Mohammed Choujaa (see paragraph 6.3.2.2.), and the testimonies given by the police officers which conducted the reports (Mr. Mohssin Bou Khabza, Mr. Yousef Raiss, Mr. Said Ben Sghir, Mr. Abdel Hamid Elmaghani and Mr. Abde Rahmon Elwazna), the movie which according to the prosecutor identifies five of the accused (see paragraph 6.5), the phone recordings which were presented by the prosecutor on the 18th of May (see paragraph 6.6), and the autopsy reports.

The declarations tell a story, and portrays the Gdeim Izik camp as a camp where the inhabitants received military training. The prosecution claims that the accused kidnapped civilians, stopped people from leaving the premises and used the inhabitants as “human-shields” against the public forces. The prosecution claims that the Gdeim Izik camp was planned during a trip to Algeria in September 2010, in partnership with the Polisario Front

¹⁵ The evidence file contains new pieces of evidence that were never presented nor part of the earlier stages of this court case, i.e. witnesses, movie, pictures, report on travel route, report on phone recordings and autopsy report.

¹⁶ As such, the report evaluates the witnesses, the movie w/pictures, confiscated elements, report on travel routes, and report on phone recordings

¹⁷ For a detailed summary from the final arguments given by the prosecutor, and the evidence which each of the detainees faced, see appendix 1, day 25 and 26.

and representatives from the Algerian regime. Eênama Asfari is told to be the leader of the operation, where he was the main link between the Polisario Front and the committees in the camp that the other accused supervised. Thus, the camp consisted of several committees that oversaw different areas, such as the organization, logistics, security and mobilization.

The prosecution claims that the Gdeim Izik camp had a security committee that supervised the military training inside the camp, and planned the attack on the public forces. The camp had weapons, such as cars, knives and axes. The camp was financed by money from Algeria and the Polisario, and money was distributed to the inhabitants to “motivate them” in the attack. The above-mentioned description from the prosecutor is denied by the accused.

Model based upon the final arguments from the prosecutor, showing the pieces of evidence in the case file against the Group Gdeim Izik¹⁸ can be found below ¹⁹. The figure sums up the different incriminating evidence presented in court, a total of 16 evidence files. The value and foundation of these pieces of evidence are evaluated below the model.

- (1) Police Reports/ confession to the police
- (2) Gendarmerie Reports/ confession to the gendarmerie
- (3) Report from investigative judge/ confession to not have been tortured
- (4) Declaration against another accused given to the police (police report)
- (5) Testimony of the police men which interrogated the accused and wrote the police report
- (6) Confiscated elements
- (7) Arrested in the camp
- (8) Autopsy report
- (9) Witnesses (alleged inhabitants) from the camp, identifying the accused, and to a crime scene
- (10) Witnesses identifying the accused, and to a crime scene
- (11) Witnesses that identify the accused, but not to a crime
- (12) Pictures
- (13) Movie*
- (14) Phone recordings**
- (15) Travel route
- (16) Criminal records

* The movie is used as evidence against all the accused, as evidence to the criminal intent.

** The phone recordings are used as evidence against all the accused, as evidence of the criminal intent and forming of a criminal organization.

¹⁸ Note that the case of Mr. Ayubi is separated from the group case.

¹⁹ For a detailed summary from the final arguments given by the prosecutor, and the evidence which each of the detainees faced, see appendix 1, day 25 and 26.

Color Codes: **Illegal evidence (red)**, **Inadmissible evidence (purple)**, **Pieces of evidence not relevant to the charges, not criminalizing evidence/ not portraying a crime, or criminal evidence not linked to the accused (yellow)**.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
Mr. Bani	X	X	X	X	X	X	X	X	X	X			X			
Mr. Laroussi	X	X	X	X	X	X		X	X							X
Mr. Lakfawni	X	X	X	X	X	X		X	X					X	X	X
Mr. Boutinguiza	X	X	X	X	X	X		X	X	X			X			X
Mr. Sidi Abdallahi	X	X	X	X	X	X		X	X							
Mr. Sbaai	X	X	X	X	X	X		X	X			X		X	X	X
Mr. El Bakay	X	X	X	X	X	X			X							
Mr. Asfari 20	X	X	X	X	X	X	X		X		X	X		X	X	X
Mr. Banga	X	X	X	X	X	X	X	X	X		X	X			X	
Mr. Bourial	X	X	X	X	X	X	X	X	X		X		X	X		X
Mr. Haddi	X	X	X	X	X	X		X	X							
Mr. Zeyou 21	X	X	X	X	X	X		X	X							
Mr. Khadda	X	X	X	X	X	X		X	X							X
Mr. Eddah	X	X	X	X	X	X		X						X	X	X
Mr. Thalil	X	X	X	X	X	X		X	X			X				X
Mr. Ezzaoui	X	X	X	X	X	X		X	X		X					X
Mr. Toubali 22	X	X	X	X	X	X	X		X				X			
Mr. Eddaf	X	X	X	X	X	X		X	X		X			X		
Mr. Lemjevid	X	X	X	X	X	X			X			X			X	
Mr. Lefkir	X	X	X	X	X	X			X		X				X	
Mr. Babait	X	X	X	X	X	X			X				X			X
Mr. Ettaki	X	X	X	X	X	X	X	X								X
Mr. Ismaili	X	X	X	X	X	X		X	X			X			X	

²⁰ Note that I find it proven that Mr. Asfari was arrested on the 7th of November. The sole piece of evidence proving that Mr. Asfari was arrested on the 8th of November in the camp, is the police reports.

²¹ Note that I find it proven that Mr. Zeyou was in a meeting in El Aaiún on the 7th of November, and could not have been present in the camp on the 8th of November, as the camp was placed under a siege on the 7th of November.

²² Note that I find it proven that Mr. Toubali was hospitalized on the 7th of November, and in a critical condition on the 8th of November. The sole piece of evidence proving that Mr. Toubali was arrested on the 8th of November in the camp, is the police reports.

The police report and the gendarmerie report which include declarations from the accused, alongside with the report from the investigative judge must in my opinion be regarded as illegal evidence since they were extracted under torture or under pressure/threats, see paragraph 7, and are therefore discarded as evidence and can not be used against the accused, as stipulated in art. 15 of the Torture Convention. Similarly, and as outlined in paragraph 8.2, police records taken without an attorney present, can not be used as criminal evidence against an accused, as in relation to art. 14 of the ICCPR.

The reports written by the police, the gendarmerie and the investigative judge are supported by the testimonies given by the police officers. The police officers conducted the interrogations of the accused in the police office upon arrest, and thus wrote the police reports which includes the confessions of the accused. The police officers delivered their testimonies to the Court of Appeal in Salé on the 18th of May²³. The police officers delivered declarations directly in line with the prior mentioned reports. The testimonies given from the police officers to the Court of Appel in Salé (i.e. Mr. Mohssin Bou Khabza, Mr. Yousef Raiss, Mr. Said Ben Sghir, Mr. Abdel Hamid Elmaghani and Mr. Abde Rahmon Elwazna) are in my opinion to be regarded as illegal evidence. The testimonies were given by police officers whom allegedly tortured and falsified evidence, and their testimonies were directly linked to the evidence which are illegal to use against an accused, as stipulated in art. 15 of the Torture Convention. The declarations from the police officers are therefore not evaluated in this report, since I regard the testimonies as a direct violation of Morocco's international commitments to investigate any signs or allegations upon torture, as stipulated in art. 12 of the Torture Convention.

The value of the testimonies given by the witnesses are evaluated in paragraph 6.3. The testimonies from the supportive witnesses are evaluated in paragraph 6.3.1. I regard the supportive witnesses as credible, and that the testimonies prove that Mr. Asfari was abducted on the 7th of November, further that Mr. Toubali was hospitalized on the 7th of November and in a critical condition on the 8th of November, that both Mr. Lakfawni and Mr. Laaroussi were abducted with force by the public forces, that Mr. Zeyou was in El Aaiún on the 7th of November, and that the camp was under a siege on the 7th of November.

The testimonies from the witnesses who describe the events are evaluated in paragraph 6.3.2.1. The witnesses describe the dismantlement of the camp during the early hours on the 8th of November 2010. It is evident that violent clashes occurred between the inhabitants of the camp and the civil forces, it is equally evident that the civil forces were attacked with rocks and that some of the inhabitants were carrying knives. These witnesses do not identify any of the accused and do not link the accused to the crime, and the declarations are therefore not to be regarded as proof of any crime committed by the accused and cannot be given weight in the final evidence review.

The testimonies from the witnesses who describe the camp and the events *and* identify the accused are evaluated in paragraph 6.3.2.2. The prosecution has brought forward witnesses which testify in detail about the events and the camp. The prosecution did not explain in court from where these new witnesses originated from, and I view the credibility and the trustworthiness of these witnesses as highly limited. These witnesses do not occur in any prior

²³ See appendix 1, day 20, for a summary of the testimonies given by Mr. Mohssin Bou Khabza, Mr. Yousef Raiss, Mr. Said Ben Sghir, Mr. Abdel Hamid Elmaghani and Mr. Abde Rahmon Elwazna

police reports nor in the investigative phase of the case and I therefore regard these witnesses as inadmissible. For an evaluation upon the identification process, see paragraph 8.4.1.

Pieces of evidence confiscated from the protest camp are evaluated in paragraph 6.4. The confiscated elements that were presented to the court do not entail a chain of custody. The accused deny any relation to the objects, and the evidence for a link between them are absent. The confiscated elements have, in my view, no evidence value due to the absent chain of custody, and are thus inadmissible.

The movie is evaluated in paragraph 6.5. The movie portrays the violent clashes between the civil forces and the inhabitants during the early hours on the 8th of November 2010. The movie does not link any of the accused to the crime. The movie has therefore weakened value as evidence, and cannot be given weight in the final evaluation.

The prosecutor invoked on the 18th of May to submit additional evidence, i.e. two reports. The first report concerned several of the detainees that travelled to Algeria, and the second report entailed transcriptions of phone calls between several of the accused and members of the Polisario Front. The report upon phone recordings are evaluated in paragraph 6.6. None of the records were enveloped securely, and the chain of custody was absent, whereas the prosecutor refused to place forward the original evidence (i.e. the recordings of the phone calls). It remains clear that new evidence can not be submitted at this stage. Regardless, the reports are inadmissible as the chain of custody is absent and none of the reports are relevant to the accusations placed forward by the prosecution office.

Consequently, the evidence file contains both evidence that I regard as illegal evidence and evidence which are inadmissible. During the final arguments given by the prosecutor, it was claimed that the crime was sufficiently proven, and for several of the detainees, the prosecutor claimed that the reports from the police and the gendarmerie, supported by the report made by the investigative judge, constituted sufficient evidence.

6.2. Evaluation of the evidence in relation to the charges

The prosecutor based the accusation of forming a criminal gang on art. 293 of the Moroccan penal code, with sentence stipulated in art. 294. For the accusations related to violence against the law enforcement, the charges are based on art. 267 of the Moroccan penal code, or art. 129 in relation to art. 267 of the Moroccan penal code. The prosecutor divided the accused into three groups; the perpetrators, the participants, and both perpetrators and participants²⁴.

During the final arguments of the prosecutor, the prosecutor invoked that the court could condemn the accused as a group, and that it was not necessary to prove what each of the accused

²⁴ The accused charged with the causing of death after art. 267 are Mr. Ettaki, Mr. Bani, Mr. Laroussi, Mr. Lakfawni, Mr. Boutinguiza, Mr. Sidi Abdallahi, Mr. Sbaai and Mr. El Bakay. The accused charged for participation in the murder of members of the law enforcement in accordance with art. 129 in relation to art. 267 are Mr. Asfari, Mr. Banga, Mr. Bourial, Mr. Haddi, Mr. Zeyou, Mr. El Bachir Khadda, Mr. Hassan Eddah and Mr. Thalil. The accused who are charged with both participation and perpetrating the crime after art. 129 in relation to art 267 and art. 267 is Mr. Ezzaoui, Mr. Toubali, Mr. Deich Eddaf, Mr. Leymjeyid, Mr. Lefkir, Mr. Ismaili and Mr. Babait.

had done, but sufficient to prove their mere presence in the camp²⁵. The prosecutor thus advocated that if the court could not clarify the exact deed of each of the accused, the court could condemn the accused as a group for the murder of 11 members of the law enforcement.

Regarding this line of argument, it can be clarified that Mr. Boutinguiza, Mr. Thalil, Mr. Haddi, Mr. Zeyou, Mr. Sidi Abdallahi, Mr. Ismaili, Mr. Toubali, Mr. Lemjeyid, Mr. Khadda, Mr. Eddah, Mr. Babait, Mr. Asfari and Mr. Laroussi declared that they were not present in the camp on the 8th of November^{26 27}. Further, Mr. El Bakay, Mr. Lakfawni, Mr. Lefkir, Mr. Eddaf, Mr. Ezzaoui and Mr. Sbaai declared that they were present in the camp on the 8th of November, and testified to the dismantlement and the use of force from the law enforcement²⁸. The ones arrested in the camp or on their way back to El Aaiún includes Mr. Bani, Mr. Ettaki, Mr. Bourial and Mr. Banga²⁹.

In the comments made by the State on the report of the Special Rapporteur, Juan E. Méndez, in his mission to Morocco, Morocco placed forward arguments in favour of trying civilians (i.e. the group of Gdeim Izik) in a Military tribunal³⁰. In paragraph 103, the State outlined that:

“Concerning the trial of persons within the framework of the events relating to the dismantling of the Gdeim Izik camp in November 2010, and to the statement that “the 24 Sahrawi civilians are being tried before a military court for their alleged role in the violent clashes”, the Moroccan authorities state that these people are not sued “for their alleged role in the violent clashes” but for very precise criminal charges in accordance with the provisions of the Penal Code.”

As outlined by the State, the group is not facing accusations based upon their role in the violent clashes, i.e. a group crime, but are prosecuted and followed for “precise criminal charges”, and are pursued for violation of art. 293, art. 129 and art. 267 of the Moroccan penal code³¹. These articles relate to a crime committed against public property and law enforcement personnel. The group can not be condemned after these articles without sufficient clear criminal evidence linking the accused to the alleged committed crime, and the crime committed must have been committed against public property or law enforcement personnel in their line of duty.

²⁵ It can be noted that the Gdeim Izik camp consisted of around 20.000 inhabitants. An exact number does not exist.

²⁶ The evidence proving that the accused were present in the camp is the police reports and the testimonies of the police men, and of Mr. Mohammed Choujaa, which I regard as illegal evidence.

²⁷ It can be noted that I find it proven that the camp was placed under a siege on the 7th of November. As such, civilians were prohibited from travelling from El Aaiún to the Gdeim Izik camp or vice versa on the 7th of November and on the 8th of November 2010.

²⁸ It can be noted that I find it proven that the inhabitants in the camp were attacked with the use of rubber bullets, hot-water cannons, tear-gas, truncheons and stones during the early hours of the 8th of November, when the inhabitants of the camp were still sleeping.

²⁹ Four of the accused were arrested the 8th of November in the camp, or on their way back to El Aaiún. The rest of the group were arrested after the dismantlement of the camp, or prior, as the case of Mr. Asfari, which were arrested on the 7th of November.

³⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco: comments by the State on the report of the Special Rapporteur. A/HRC/22/53/Add.5

³¹ See appendix 2 for a listing of article 293, 294, 129 and 267 of the Moroccan Penal Code.

The court has thus an obligation to lay forward material evidence against the accused, in order to condemn them, as the mere presence of the accused in the camp is not sufficient, as the accusations are not linked to their “alleged role in the violent clashes”.

The court of Appeal in Salé condemned the accused for charges related to the forming of a criminal organization as stipulated in art. 293 of the Moroccan penal code, with sentences stipulated in art. 294. It follows from art. 293 of the Moroccan penal code that,

“Toute association ou entente, quelle que soient sa durée et le nombre de ses membres, formée ou établie dans le but de préparer ou de commettre des crimes contre les personnes ou les propriétés, constitue le crime d’association de malfaiteurs qui existe par le seul fait de la résolution d’agir arrêtée en commun.”

In order to condemn the accused pursuant to art. 293 of the Moroccan penal code, the court must find it proven that a prior agreement to attack the law enforcement and public property existed between the accused. This agreement must be clear and indisputable, and proven by material criminal evidence.

The prosecutor pleaded in his final arguments that several of the accused served as leaders, some as commanders and some as soldiers, proven by the phone recordings, the police reports and the witnesses which identified the accused, and that they had agreed and planned to attack the law enforcement on the 8th of November. However, it remains clear that the prosecutor has not proven that such a prior agreement was constituted between the accused. As several reports conclude, and as all the accused urge, the Gdeim Izik camp was a peaceful protest camp which consisted of children, women, men and elderly, and that the clashes that occurred were a consequence of the intervention of the law enforcement in the early hours on the 8th of November. Considering these facts, I find it proven that the camp was not a criminal organization, but a demonstration in response to the unemployment and poverty in the occupied territories of Western Sahara.

The Court of Appeal in Salé have further condemned the accused for violence towards members of the law enforcement, which lead to death, as stipulated in art. 267 of the Moroccan penal code, or for participation to murder after art. 129 in relation to art. 267 of the Moroccan penal code. Whether sufficient evidence has been placed forward is directly linked to which articles the charges are based upon, and thus which terms the article stipulates. It follows from art. 267 of the Moroccan penal code that

“Est puni de l’emprisonnement de trois mois à deux ans, quiconque commet des violences ou voies de fait envers un magistrat, un fonctionnaire public, un commandant ou agent de la force publique dans l’exercice de ses fonctions ou à l’occasion de cet exercice...”

The article thereafter divides into severity of the crime, dividing between causing damage, severe damage, death without intention to kill and death with intention to kill. Art. 267 paragraph 1 stipulates several conditions that must be fulfilled to condemn an accused after this article, and the article stipulates a condition of cause and effect by stating that someone must “commet des violences”. As for the charges upon participation, the court must similarly prove

a cause and consequence relation between the act committed, and the outcome, as it follows from art. 129 of the Moroccan Penal Code³².

As in relation to the decision from the Court of Cassation regarding this case, the Military Court of Rabat had not proven how the different detainees had committed the violence, as the reports from the police and military was not sufficient evidence to prove a cause and effect relation or the exact crime committed.

It is clear that violent clashes occurred between the inhabitants of the camp and the law enforcement in the early hours on the 8th of November 2010, after the law enforcement advanced towards the Gdeim Izik camp in order to dismantle the gathering of the Saharawi population (around 20.000 people). From the declarations given by the accused in March, I also find it proven that the inhabitants in the camp were attacked with the use of rubber bullets, hot-water cannons, tear-gas, truncheons and stones, and I find it proven that some of the inhabitants of the camp defended themselves with the usage of stones and knives. I also find it proven that, as panic took over, clashes between the army and the protesters ensued, which lead to casualties and injuries on both sides.

The prosecutor has however not placed forward any further evidence that proves how the different accused have committed the violence, and the lack of evidence against the accused in this relation is blatant. The sole piece of evidence that describe the act committed by each of the accused are the police records/reports. These police records can not be used as criminal evidence against an accused, and I regard them as illegal evidence, and the usage of them as a breach to art. 15 of the Torture Convention, and article 14 of the ICCPR.

Further, the different accused and their alleged committed crime described in the police reports are not linked to a specific victim. As such, during the oral evaluation of the evidence file, the prosecutor did not link the accused to the crime, and has not proven how, when, and who killed 11 members of the law enforcement which the accused are charged of murdering. During the final arguments laid out by the prosecutor, the prosecutor declared that the cause and effect relation was proven by the police reports and the autopsy report³³. In this regard, the defence³⁴ declared during their final arguments that they did not have access to the autopsy reports³⁵, and the autopsy reports were never presented to the court.

Sufficient evidence was not presented by the prosecution, and the prosecutor has not succeeded in proving beyond reasonable doubt that the ones accused are the culprits, as several of the accused are solely facing evidence related to the conducted reports from the police and the gendarmerie, in absence of material evidence. The court has therefore condemned the accused without sufficient evidence, as there exist no material evidence showing how the detainees allegedly committed the crimes that they were found to have committed.

³² See appendix 2 for a listing of article 293, 294, 129 and 267 of the Moroccan Penal Code.

³³ The autopsy report does not document the crime nor links the crime to any specific individual or act. The autopsy report entails to my knowledge the confirmation of a victim, and his/hers status as a member of the law enforcement.

³⁴ i.e. the by the court appointed defense attorneys. The initial defense team had access to the reports, and had to my knowledge prepared a counter expertise.

³⁵ See appendix 1, day 27, for a summary of the final arguments by the defense.

6.3 The witnesses

6.3.1 The witnesses for the defence

The first supportive witness was Mr. Hassan Dhalil³⁶ for Mr. Toubali. Mr. Dhalil declared that he visited Mr. Toubali on the 7th of November in the hospital, and that he left the hospital around midnight, and then visited Mr. Toubali again around 7 a.m. on the 8th of November. Mr. Dhalil declared that he found Mr. Toubali in a critical condition, and declared that Mr. Toubali could not move on the morning of the 8th of November. Mr. Dhalil declared that the testimony of former parliament member Mrs. Gajmoulla could verify his declarations. Mrs. Gajmoulla was not admitted as a witness to the court case. The declaration is however supported by the medical records of Mr. Toubali presented to the court. I find no reason to discredit the testimony given by Mr. Dhalil, and deem him as a credible witness. I find it substantiated that Mr. Toubali was in a critical condition on the morning of the 8th of November and that he, due to his health condition, could not have been present in the camp during the clashes.

The second supportive witness, Mr. Mohammed Embark Hallab³⁷, explained that the camp was under a siege on the 7th of November. Mr. Mohammed Embark Hallab declared that on the eve of the 7th of November, he and other civil servants, among them Mr. Zeyou, organized a meeting where they planned to hold a demonstration the following Monday, on the 8th of November. Mr. Hallab declared that it would be impossible for Mr. Zeyou to travel to the camp, and thus commit the crimes he is accused of, since the camp was under a siege.

That the camp was placed under a siege by the governmental forces is supported by several of the declarations given by the accused. Especially by the testimony given by Mr. Eddah and Mr. Zeyou³⁸. Mr. Hassan Eddah declared that he on the 7th November was documenting the siege, and that he was reporting an incident where a caravan was stopped at the checkpoint of the gendarmerie from entering the camp. Mr. Zeyou declared that the camp was placed under a siege by the governmental forces on the 7th of November, and that he had attended a meeting concerning the siege on the 7th of November in the city of El Aaiún. I find it substantiated that Mr. Zeyou could not have been in the camp in the morning of the 8th of November. I also find it proven that the camp was placed under a siege on the 7th of November.

The third support witness, Mr. Brahim Hamed³⁹, declared that Mr. Lakfawni was abducted from his family house, and that he witnessed Mr. Lakfawni being arrested out on the street by several police officers both in uniform and with civil clothes. This statement constituted a contradiction to the declaration made by Mr. Lakfawni, whereas Mr. Lakfawni himself declared that he was thrown out of the window. The witness confirmed that Mr. Lakfawni and himself were not in the same house when the police raided his home. I find no reason to believe that this testimony is not credible, and thus find it substantiated that Mr. Lakfawni was abducted by the public forces when the police raided his cousins house.

³⁶ See appendix 1, day 13, for a summary of the testimony of Mr. Hassan Dhalil.

³⁷ See appendix 1, day 13, for a summary of the testimony of Mr. Mohammed Embark Hallab.

³⁸ See appendix 1, day 10, for a summary of the declaration given by Mr. Eddah, and day 7 for a summary of the declaration given by Mr. Zeyou.

³⁹ See appendix 1, day 13, for a summary of the testimony of Mr. Brahim Hamed.

The fourth supportive witness, Mr. Mohamed Selmani⁴⁰, declared that Mr. Eênama Asfari was abducted from his family house on the 7th of November. The testimony of Mr. Mohammed Selmani was supported by the testimony of Mr. Bachir Salmani⁴¹. In addition, several of the accused have also stated that Mr. Asfari was abducted on the 7th of November, whereas Mr. Bourial told about how he, on November 7th, was approached by the chief of police in El Aaiún who told him that “I got Eênama Asfari tonight, tomorrow I will get you”⁴².

I find no reason to believe that the testimonies given by Mr. Mohamed Selmani, Mr. Bachir Salmani and Mr. Bourial is not credible, and thus find it proven that Mr. Eênama Asfari was in fact taken into custody on the evening of the 7th of November⁴³.

In accordance with the testimony given by Mr. Hassan Dhalil, I also find it proven that the camp was under a siege on the 7th of November until the dismantlement. Consequently, Mr. Asfari could not have been present on the scene of the crime.

The fifth supportive witness, Mr. Brahim Hamya⁴⁴, declared that Mr. Laaroussi was abducted from his family home in Boujdour, and that he had informed the government about the abduction, and that he was not informed of his family member in accordance with law. I regard the testimony as credible, and thus, find it proven that Mr. Laaroussi was abducted, and that his family was not informed about his arrest nor his location.

In conclusion, I regard the witnesses as credible, and find that the testimonies from Mr. Hassan Dhalil, Mr. Mohammed Embark Hallab, Mr. Brahim Hamed, Mr. Mohamed Selmani and Brahim Hamya, prove that Mr. Asfari was abducted on the 7th of November, that Mr. Toubali was in hospital on the 7th of November and in a critical condition on the 8th of November, and that both Mr. Lakfawni and Mr. Laaroussi were abducted with force by the public forces. Further that Mr. Zeyou was in El Aaiún on the 7th of November, and lastly that the camp was under a siege on the 7th of November until the dismantlement of the camp.

6.3.2 The witnesses for the prosecution office

6.3.2.1 The witnesses for the prosecution office which testify about the events that happened on the 8th of November, without identifying any of the accused.

Several witnesses⁴⁵ testified during the proceedings conducted in May about what happened on the morning of the 8th of November. The witnesses that described the events of the 8th November were Mr. Rahil Mohammed, Mr. Nordin Lassere, Mr. Aziz Kabir, Mr. Ridam Halwi, Mr. Mustafa Zeynon, Mr. Tarik Hajri, Mr. Zakaria Raiss, Mr. Abdeljalil Laktari, Mr. Morad Haddi, Mr. Mohamed Sahnoun, Mr. Abdeljalil Chakouch, Mr. Ashrad Mchich, Mr. Ahmed Hamidou, Mr. Redoam Lawini, Mr. Mohamed Dghigh and Mr. Kamal Rouki.

⁴⁰ See appendix 1, day 16, for a summary of the testimony given by Mr. Mohamed Selmani.

⁴¹ See appendix 1, day 16, for a summary of the testimony given by Mr. Bachir Salmani.

⁴² See appendix 1, day 8, for a summary of the declaration given by Mr. Bourial.

⁴³ It can be noted that the only evidence proving that Mr. Asfari was arrested in the camp on the 8th of November is the police report and the testimony given from the police officer which conducted the report. I regard this evidence as illegal evidence.

⁴⁴ See appendix 1, day 18, for a summary of the testimony of Mr. Brahim Hamya.

⁴⁵ Note that the defense was prohibited from presenting witnesses meeting the declarations made by these witnesses, and that the case file suffers from a lack of clarification upon what happened on the 8th of November 2010.

The witnesses described the dismantlement of the camp during the early hours on the 8th of November 2010. It is evident that violent clashes occurred between the inhabitants of the camp and the civil forces. It is also evident that the civil forces were attacked with rocks and that some inhabitants were carrying knives. Further, that the civil forces were ordered to dismantle the camp, and that the inhabitants resisted the dismantlement by defending themselves. One of the witnesses declared that the civil forces were given orders to dismantle the camp within one hour. It is however equally evident that it is impossible to dismantle a camp consisting of 20.000 people peacefully and in an orderly manner in one hour.

Several of the witnesses declare that they were only carrying riot-gear, and that their only mission was to help and facilitate the evacuation, and that the only casualties were the deaths of the 11 members of the civil forces. I question the interrogation line presented from the preceding judge regarding these witnesses. Two of the witnesses were abruptly interrupted by the civil part and the preceding judge when the witnesses started to describe what kind of weapons they were carrying. Consequently, our knowledge of the weaponry is still rather inadequate.

Further, these statements stand in contradiction to the testimonies of the accused which claim that the civil forces attacked the camp in the early morning with the use of rubber bullets, hot-water cannons, tear-gas, truncheons and stones, whilst it was still dark, and that chaos broke out since the camp consisted mainly of children, women and elderly, and that casualties occurred on both sides. In this regard, I find it doubtful that the civil forces did not attack back, and I find it probable that the clashes resulted in casualties and injuries on both sides.

Regardless, these witnesses did not identify any of the accused nor testified to any crimes committed by the accused, and their declarations have therefore no relevance to the accusations placed forward. Furthermore, the accused were prohibited from placing forward questions due to the lack of identification. Consequently, the accused were not given the right to question these witnesses and defend themselves, nor were the defence able to place forward their own witnesses describing the crime scene.

In conclusion, these witnesses do not identify any of the accused and do not link the accused to the crime. Thus, the declarations are therefore not to be regarded as proof to any crime and cannot be given weight in the final evidence review.

6.3.2.2 The witnesses for the prosecution office which testify about the events that happened on the 8th of November, and who identify the accused.

At the outset, I wish to highlight that, as evaluated in paragraph 8.4.1., the identification process constitutes a violation of the presumption of innocence and breaches several procedural norms⁴⁶. As such, the identification of the different accused can not be used as evidence against them. It should also be noted that the witnesses that said that they could identify the accused do not appear in an earlier stage of the investigation process prior to their testimony given at the Court of Appeal in 2017⁴⁷.

⁴⁶ In sum, all the accused were subjected to identification by the witnesses which identified the accused, except for Mr. Eddah, Mr. Ettaki and Mr. El Ayubi. Note that all the accused were subjected to identification by the police officers.

⁴⁷ Information from defense attorney M. Ingrid Metton and M. Olfa Ouled, and confirmed by Isabel

The witness Mr. Faisal El Malazi⁴⁸ identified Mr. Bani as the driver of the car. The witness had not witnessed the arrest of Mr. Bani, but claimed that he could identify the driver, and declared that the car overthrew them and that the car came in a high speed. The witness could not describe the driver beforehand, and the identification was performed by calling four of the accused to stand in front of the witness. Mr. Malazi thereafter identified Mr. Bani amongst the four detainees brought in front of him.

During the declaration given by Mr. Faisal El Malazi, the defence was prohibited from sufficiently cross-examining the witness. However, the declaration of Mr. Faisal El Malazi entails several holes, as the witness could not clarify how the car had hit him or how the car had stopped and how the car surprised them. Furthermore, I question how the witness could identify Mr. Bani, but not describe his appearances. I do not find the testimony given by Mr. Faisal El Malazi as credible, and I question in particular how Mr. Faisal El Malazi was able to identify Mr. Bani amongst four of the accused 7 years after the incident.

The witness Mr. Hamid Omalish⁴⁹ stated that he was not sure if it was Mr. Bani who run over a member of the civil force with his car after being confronted with pictures of the accused, but changed his answer after repeated questions by the judge. Ranging from “I am not sure”, to “I am almost sure”, to “with 90 % certainty”. I regard this line of questioning as guiding the witness, and I deem the testimony as not credible.

In conclusion, as I do not find the testimony given by Mr. Hamid Omalish and Mr. Faisal El Malazi credible and the identification as inadmissible, I do not find it substantiated that Mr. Bani was the driver of the car which allegedly attacked the civil forces which lead to one death, but I find it substantiated that Mr. Bani was arrested in his car on the 8th of November on his way back to El Aaiún, as in line with his declarations.

The witness Mr. Farouk Arika⁵⁰ declared that a Toyota had driven towards them, but was stopped by a Jeep. The defence was prohibited to follow up with questions in this regard. Mr. Farouk Reika identified Mr. Boutinguiza when being exposed to the pictures of the accused. Mr. Reika declared that he was about 60% sure that it was Mr. Boutinguiza that hit him with a car, but that he was uncertain of which out of three of the accused it was, and could not point out only one. Due to the lack of certainty, I deem the testimony given by Mr. Farouk Reika as not credible, and the identification as inadmissible.

Mr. Raiss Zakaria identified Mr. Ezzaoui, Mr. Bourial, Mr. Lakfawni, Mr. Deich Eddaf and Mr. Asfari as persons who had travelled through the gendarmerie checkpoint where he worked. Mr. Abdeljalil Chakhouck identified Mr. Bourial and Mr. Banga but declared that he did not witness them commit any crimes. Mr. Hmaida Akrach identified Mr. Ezzaoui as one of the inhabitants in the camp. Mr. Hamid Omalish identified further Mr. Lefkir as an inhabitant in the camp. In line with the declarations given by the accused, several of the accused lived and visited the camp of Gdeim Izik on a regular basis. I do not regard the testimonies given by Mr. Raiss Zakaria, Mr. Abdeljalil Chakhouck, Mr. Hmaida Akrach and Mr. Omalish as relevant for

Lourenço and Rosario Garcia Diaz, international observers.

⁴⁸ See appendix 1, day 14, for a summary of the testimony of Mr. Faisal El Malazi.

⁴⁹ See appendix 1, day 19, for a summary of the testimony of Mr. Hamid Omalish.

⁵⁰ See appendix 1, day 19, for a summary of the identification made by Mr. Arika.

the final evaluation of the evidence, as they do not testify to any crimes committed.

Three witnesses (Mr. Hossini Lemtioui⁵¹, Mr. Mohammed Choujaa⁵² and Mr. Yames Hrouchi⁵³) declared that they lived in the Gdeim Izik camp and made declarations describing the camp in detail (organisation and security forces), and identified several of the accused. They identified among others Mr. Eênama Asfari as the leader of the camp, and Mr. Laaroussi as the head of the security forces, and both Mr. Lefkir and Mr. Ezzaoui as spokespersons in the camp. These witnesses also identified several of the detainees as the ones attacking the civil forces, or as the ones distributing weapons and giving orders to the inhabitants.

Firstly, these declarations made by Mr. Lemtioui, Mr. Choujaa and Mr. Hrouchi are in line with the declarations submitted into the police reports, which the accused claim are falsified against them, and which are to be regarded as illegal evidence. It must be noted that the detainees urge that these testimonies are falsified. In this regard, it is the responsibility of the court to investigate whether a declaration is falsified and where the witnesses come from.

Secondly, these witnesses have not been interrogated in the investigative phase of the case, nor been heard of in the earlier stages of this court case, which began in the Military Court of Rabat in 2013. Regarding the credibility of these witnesses, the fact that the witnesses could only name and identify the accused, but not describe them or their facial expression, is questionable. I question in particular why Mr. Hossini Lemtioui, Mr. Mohammed Choujaa, Mr. Yames Hrouchi could not name any of their neighbours in the camp nor any other inhabitants that they had spent their time with, and how they were able to describe the camp in such details. They were only able to name the detainees, and they declared that they spent 22 days alone in their tent. The prosecutor has not explained where these witnesses come from, and as such I regard these testimonies as inadmissible, and question whether these witnesses have been subjected to instructions. Furthermore, during the declaration given by Mr. Hossini Lemtioui, Mr. Mohammed Choujaa, Mr. Yames Hrouchi, the defence was prohibited from sufficiently cross-examining the witnesses.

In conclusion, I regard the testimonies given by the witnesses which could identify the detainees to lack necessary credibility and as thus of being of a weak evidence value. As evaluated in paragraph 8.4.1., the identification process constitutes a violation of the presumption of innocence and breaches several procedural norms. The identification of the different detainees, is therefore not to be regarded as evidence against them⁵⁴. The identification can therefore not

⁵¹ See appendix 1, day 17, for a summary of the testimony of Mr. Hossini Lemtioui. Mr. Lemtioui identified Mr. Lefkir, Mr. Bourial, Mr. Banga, Mr. Eddaf, Mr. Asfari, Mr. Sbaai, Mr. Ezzaoui and Mr. Laaroussi with the usage of photos. For a summary of the identification process, see appendix 1, day 19.

⁵² See appendix 1, day 15, for a summary of the testimony of Mr. Mohammed Choujaa. Mr. Choujaa identified Mr. Bourial, Mr. Sbaai, Mr. Lakfawni, Mr. Haddi, Mr. Asfari, Mr. Ismaili, Mr. Leymjeiyd, Mr. Eddaf, Mr. Ezzaoui, Mr. Abbahah, Mr. Laaroussi, Mr. Lefkir, Mr. Banga, Mr. Bani, Mr. Toubali, Mr. El Bakay, Mr. Babait, Mr. El Bachir Khadda, Mr. Thalil and Mr. Zeyou.

⁵³ See appendix 1, day 19, for a summary of the testimony of Mr. Yames Hrouchi. Mr. Hrouchi identified Mr. Babait, Mr. Eddaf, Mr. Ezzaoui, Mr. Bourial, Mr. Toubali, Mr. Lemjeiyd, Mr. Sbaai, Mr. Laaroussi and Mr. Boutinguiza.

⁵⁴ In sum, all the accused were subjected to identification by the witnesses which identified the accused, except for Mr. Eddah, Mr. Ettaki and Mr. El Ayubi. Note that all the accused were subjected to identification by the police officers.

be given weight in the final evaluation of the evidence, and I urge the need for investigation upon where these witnesses originate from, and whether the witnesses have declared falsified testimonies, or been subjected to instructions.

6.4. The confiscated elements

The confiscated elements was transported into the courtroom in two see-through iron cages without numbering or proper concealing on the 8th of May. The confiscated elements entail 19 telephones/walkie-talkies, three axes, and four knives/machetes. Several of the accused were confronted with individual confiscated elements.

The detainees declared that these confiscated elements do not belong to them, and that the elements were not found on them upon arrest.

The defence claims that the confiscated elements were not presented in the same manner in the Military Court of Rabat in 2013, and that there were no means to make sure that this case-file in fact were the same case-file that was presented in the Military Court. Two international observers present at the Military Court confirm that the evidence was not presented in the same manner, and that the confiscated elements were packed differently⁵⁵. It is thus apparent that the chain of custody has not been respected, and that the risk of contamination is evident.

Furthermore, it is obvious that the different objects have been subjected to a treatment not consisting with procedural norms regarding the handling of evidence. There are several reasons behind this statement. Firstly, none of the different objects are labelled correctly with numbering. Second, there exist no crime scene photographs concerning the different pieces of elements. Third, there are no notes from the initial investigation. Fourth, none of the objects are packed securely.

In addition, none of the objects contain fingerprints or DNA evidence. It remains unknown whom the owners of the objects are, how they were confiscated, where they were confiscated and who confiscated the different elements.

As in accordance with the burden of proof, I do not find it proven that these confiscated elements belong to the accused. The confiscated elements must be discarded as evidence as they are inadmissible due to their mistreatment and lack of chain of custody.

6.5. The movie

On the 18th of May, a movie was shown in court, filmed from the air, portraying the violent clashes that occurred between the inhabitants of the camp and the civil forces on the 8th of November 2010⁵⁶. The movie portrayed several images from the clashes around the camp, and showed both the inhabitants throwing stones and wounded members of the civil forces. The movie does not prove or show any of the accused committing a crime, and the movie does not show a link between the accused and the alleged crimes that they committed⁵⁷.

The movie commenced by portraying pictures. The pictures showed Mr. Sbaai, Mr. Asfari, Mr. Lemjeyid, Mr. Thalil, Mr. Banga and Mr. Ismaili in different positions in the Sahrawi refugee

⁵⁵ Confirmed by Isabel Lourenço and Rosario Garcia Diaz, international observers.

⁵⁶ It should be noted that the defense was prohibited from presenting a movie of their own, meeting the movie from the prosecution.

⁵⁷ See appendix 1, day 20, for a detailed summary of the movie portrayed in court.

camps in Algeria, with members of the Polisario Front. I do not regard these pictures as material evidence to a criminal offence.

The movie commenced by portraying details about five accused that the prosecutor claimed could be identified in the movie.

The first accused identified was Mr. Mohammed Bani. The movie portrayed images of Mr. Bani being arrested from his car, and transported away. The movie did not portray an incident or a crime committed. As such, the movie portrays the car prior and after the alleged committed crime, but not during. Mr. Mohammed Bani declared during the proceedings held in March that he was arrested in his car on his way to El Aaiún in the early hours on the 8th of November. Mr. Bani furthermore declared that his car was hit with stones that broke his windshield, that he stopped his car and was hit with a stone to his head. The movie does not contradict the statement of Mr. Bani, and I do not find it proven that Mr. Bani was attacking the public forces, but I find it substantiated that Mr. Bani was arrested in his car on his way to El Aaiún.

The second accused identified in the movie was Mr. Mohammed Bourial. Mr. Bourial was identified in the movie as a man wearing a yellow scarf, and the movie portrayed Mr. Bourial sitting on the ground whilst being arrested and after his arrest in a car being asked his name and answering. One cannot identify any crimes committed. The movie is in line with the declaration given by Mr. Bourial, and it is thus proven that he was arrested on the 8th of November in the camp of Gdeim Izik. As the movie does not portray any links between Mr. Bourial and the accused crime, I regard the movie as evidence supporting the declaration given by Mr. Bourial.

The movie also claims to identify Mr. Toubali, Mr. Babait and Mr. Boutinguiza, by the usage of circles. It was not possible to identify the men which were encircled, and thus it is not known whether the men marked in the movie are in fact Mr. Toubali⁵⁸, Mr. Babait and Mr. Boutinguiza⁵⁹. One of the circles identifies a person as Mr. Boutanguiza standing next to Mr. Bourial. It should be noted that the real height difference between Mr. Bourial and Mr. Boutanguiza is substantial and not in accordance with the height difference between the two persons encircled in the movie. I therefore do not regard these identifications as admissible evidence against Mr. Toubali, Mr. Babait and Mr. Boutinguiza.

In conclusion, the movie proves that violent clashes did occur between the inhabitants of the camp and the law enforcement on the 8th of November 2010, but does not prove any crimes committed by any of the accused.

6.6. Phone recordings and travel routes

The prosecutor invoked on the 18th of May to submit a report into the evidence file showing the travel route for several of the accused. The prosecution presented a report concerning the movements of the different accused which had travelled to Algeria in September and October

⁵⁸ It should be noted that I find it proven that Mr. Toubali was hospitalized on the 7th of November, and in a critical condition on the 8th of November, and thus not present in the Gdeim Izik camp during the dismantlement.

⁵⁹ It should be noted that Mr. Babait and Mr. Boutinguiza declared that they were not present in the Gdeim Izik camp on the 8th of November.

2010⁶⁰. As in accordance with the testimonies given by the accused, Mr. Asfari, Mr. Banga, Mr. Ismaili, Mr. Sbaai, Mr. Lefkir, Mr. Lemjeiyd and Mr. Lakfawni, attended a human rights convention in Algeria, and thus travelled to Algeria and visited the Tindouf camps in 2010. I do not find the report upon movement relevant for the charges placed forward, nor that they constitute any form of criminal evidence.

The prosecution informed the court on the 18th of May that the prosecutor of El Aaiún had issued a warrant on the 12th of October 2010 for surveillance and tapping of the phone of Mr. Asfari, and that this was new evidence for the prosecutor in Rabat⁶¹. The warrant concerned tapping of the phones of Mr. Asfari, Mr. Sbaai, Mr. Lakfawni, Mr. Bourial, Mr. Eddah, and Mr. Deich Eddaf.

Both the civil party and the prosecutor invoked the report with transcriptions on phone calls between several of the detainees and members of the Polisario Front as evidence for the formation of a criminal gang. The prosecutor stated that the accused had criminal intent to destabilize the region, and that this was proven by the phone recordings. The prosecutor stated further that the transcripts from the phone recordings proved that a prior agreement existed between the accused, as the defendants had collaborated with parties representing foreign interests. The prosecutor stated that the phone transcripts proved that (1) establishment of the camp was planned in correlation with Polisario and Polisario's then responsible for affairs in the occupied territories, Mr. Omar Bulsan, (2) the accused made sure that no agreement was reached with the government after orders from Mr. Bulsan, and (3) that the accused did not inform the inhabitants about the ongoing negotiations, and encouraged the inhabitants to resist an intervention⁶².

The prosecutor commented on the different phone calls on the 12th of June, which concerns six of the accused⁶³. The prosecutor read parts of the phone transcripts, and did not read entire phrases nor enlightened the court upon the context of the alleged phone conversations.

The prosecutor recited a phone transcripts allegedly between Mr. Asfari and Mr. Dhalil. Mr Dhalil is to have told Mr. Asfari to pay attention to the media coverage of the UN Special Envoy to Western Sahara, Mr. Christopher Ross, and told Mr. Asfari that the camp was not separated from a report delivered to Mr. Ross. Mr. Asfari informed Mr. Dhalil that he travelled towards the camp, and informed that the rest of the group followed him in cars.

The second phone transcript relates to a conversation allegedly between Mr. Asfari and Mr. Bulsan where the prosecutor read up that Mr. Bulsan told Mr. Asfari to gather the young influential people, and that Mr. Asfari stated that the mass destruction weapons were ready.

The third transcript relates to a conversation allegedly between Mr. Sbaai and Mr. Bulsan where Mr. Sbaai stated in response to the question of Mr. Bulsan that everything went according to plan, and that they had established the security forces and made checkpoints, and that he was in control of searching the vehicles entering the camps.

⁶⁰ Concerning Mr. Asfari, Mr. Eddah, Mr. Banga, Mr. Ismaili, Mr. Sbaai, Mr. Lefkir, Mr. Lemjeiyd and Mr. Lakfawni.

⁶¹ See appendix 1, day 20, for a summary of the presentation of the phone recordings.

⁶² See appendix 1, day 25, for a summary of the final arguments from the prosecutor upon the phone recordings.

⁶³ The phone recordings concern Mr. Asfari, Mr. Sbaai, Mr. Lakfawni, Mr. Eddah, Mr. Lefkir and Mr. Bourial

The fourth transcript relates to a conversation allegedly between Mr. Sbaai and Mr. Bulsan where Mr. Bulsan told Mr. Sbaai to count the number of activists in the camp, and to mobilize them.

The fifth transcript relates to a conversation allegedly between Mr. Lakfawni and Mr. Bulsan, where Mr. Lakfawni ensured Mr. Bulsan that they had everything under control, and Mr. Bulsan told Mr. Burial to continue gaining time.

The sixth transcript relates to a conversation allegedly between Mr. Bourial and Mr. Bulsan, where Mr. Bulsan told Mr. Bourial to not negotiate with “them” and to hinder them from entering the camp, and use maximum time.

The seventh transcript relates to a conversation allegedly between Mr. Bourial and Mr. Bulsan, where Mr. Bulsan told Mr. Burial to put pressure on the negotiations.

The eighth transcript relates to a conversation allegedly between Mr. Eddah and Mr. Bulsan, where Mr. Eddah informed Mr. Bulsan that they were prohibiting the governor and the sheiks from entering the camp.

The ninth transcript relates to a conversation allegedly between Mr. Lefkir and Mr. Bulsan, where Mr. Bulsan told Mr. Lefkir to not give any final solutions in the negotiations.

Firstly, new evidence should not have been submitted at this stage, nearly seven months after the opening of the court case. Neither the defence, nor the accused have had the opportunity to review or meet this new evidence. Similarly, this evidence has not been part of the case file during the last seven years. The phone recordings or transcripts were not presented to the Military Court in 2013, nor to the investigation judge. Furthermore, the evidence has been presented seven years after the arrests of the detainees and seven years after the alleged phone conversations took place. Thus, the way the phone recordings were presented constituted a breach to the right to defence, i.e. to meet the evidence.

Second, there is no telling who have conducted the phone recordings, and which authority that had the phone recordings in their evidence file. When the phone transcripts were presented to the court, none of the records were enveloped securely, and the chain of custody was absent, whereas the prosecutor refused to place forward the original evidence (i.e. the audio recordings of the phone calls).

Third, these reports entail transcriptions of phone conversations allegedly between the accused and members of the Polisario. These conversations were conducted in Hassaniya, but presented in Moroccan Arabic by the prosecutor. The prosecutor declared that the translation of the phone conversations from Hassaniya to Moroccan Arabic was conducted by himself.

Concerning both reports, I do not find these reports relevant to the accusations placed forward by the prosecution office. The admittance of these records will thus be a violation of the right to private life since the presentation of the personal information in this regard does not entail a legitimate aim, as the reports are not relevant to the charges the accused are pursued after. Concerning, the phone recordings, I find the report inadmissible due to the lack of chain of custody, and since the accused have not been able to meet the new evidence.

7. The Torture Convention

7.1. Introductory remarks

Morocco has ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment of 1984 (1993). Article 293 of the Criminal Code of Procedure prohibits the use of “confessions” obtained through torture and other ill-treatment, stating that a “confession” obtained through “violence or coercion shall not be considered as evidence by the court”.

The United Nations Working Group on Arbitrary Detention visited 22 of the members in the Group of Gdeim Izik in 2013⁶⁴. The United Nations Working Group on Arbitrary Detention⁶⁵ concluded after visiting Morocco and Western Sahara in December 2013 that,

“The Moroccan criminal judicial system relies heavily on confessions as the main evidence to support conviction. Complaints received by the Working Group indicate the use of torture by State officials to obtain evidence or confessions during initial questioning. Courts and prosecutors do not comply with their obligation to initiate an ex officio investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment.”

The report issued from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, highlights similarly the usage of confessions extracted under torture. It is written in paragraph 66⁶⁶ of the report that,

“With regard to the events surrounding the closure of the Gdeim Izik camp in November 2010, the Special Rapporteur is concerned that 25 Sahrawi civilians are being tried before a military court for their alleged role in the violent clashes that occurred in Western Sahara. The Special Rapporteur received testimonies of torture and ill-treatment, including rape and deteriorating health conditions of some of the detainees due to the prison conditions. The trial was repeatedly postponed without reasons provided by the court. On 17 February 2013 the military court issued its verdict by rejecting all requests to investigate the allegations of torture and refusing to order medical examinations in relation to the allegations of rape raised by several of the defendants. The military court did not issue a written judgment. The Special Rapporteur expresses concern regarding the fact that the allegations of torture and ill-treatment during the almost two years of pretrial detention have not been investigated.”

With regards to the “Group Gdeim Izik”, several reports conclude that all the prisoners have

⁶⁴ Mr. Laroussi declared that he was placed with the common criminals during the visit due to his health condition during the visit from the Working Group of Arbitrary Detention. See Appendix 1, day 12.

⁶⁵ Report of the Working Group on Arbitrary Detention on its visit to Morocco (9-18 December 2013). A/HRC/27/48/Add.5.

⁶⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. A/HRC/22/53/Add.2.

been subject to comprehensive torture both during detention and during the imprisonment. The reports also conclude that the confessions used as evidence in Rabat Military Court on the 17th of February 2013⁶⁷ were obtained through torture.

A key report that can be regarded as having legal authority on the application of the Convention against Torture, which is binding to Morocco, is the recent decision dated 12 December 2016 from The Committee against Torture (CAT) regarding the case of Eênama Asfari (CAT/C/59/D/606/2014)⁶⁸.

CAT clearly states that Morocco was in violation of multiple articles listed in the Convention against torture. Including torture during arrest and interrogation (art.1); failure to investigate (art.12); violation of the right to complain (art.13); obligation to compensate and reparation (art.14); usage of confessions obtained through torture (art. 15); and inhuman treatment in detention (art. 16). As such, the decision clearly states that Eênama Asfari has suffered under violent torture, and that the government has refrained from investigating this.

The Court on the other hand refused to regard the CAT-decision as evidence, or in any way as a legal document.

7.2. Torture allegations

This paragraph summarises the alleged torture committed against the accused. The information is taken from the ACOSOP Report upon torture from the Military Court of Rabat in 2013 and from the declarations given by the accused in the Appeal Court in Salé in March 2017⁶⁹.

Several of the accused claim that they were tortured in front of the judge, and forced, pressured, and/or threatened to sign declarations which they had not read in advance. Several of them claim that they signed reports with blank spots, which later has been filled in, and the accused urge that these declarations are falsified. The accused have submitted several complaints to the Moroccan judicial system, and have undergone several hunger strikes due to the inhuman treatment.

The accused urge that they were tortured when arrested, in custody and in prison. They tell about violent torture, both physical and psychological. ACOSOP highlighted that the torture that the prisoners claim to have been inflicted upon them include:

- I. Successive spanking with a great diversity of objects such as truncheons or shoes;
- II. Sleep depriving;
- III. Restrained access to food or drink;

⁶⁷ See Appendix 4, Report on Torture, Human Right Violation and Health Condition. ACOSOP March 2013.

⁶⁸ CAT/C/59/D/606/2014. Decision concerning Eênama Asfari. Link (29.04.2017): http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f59%2fD%2f606%2f2014&Lang=en

⁶⁹ For more information upon the torture allegations, see appendix 1 with summary from the proceedings (day 5 through 12), appendix 3 (Report concerning the court case of the Group Gdeim Izik by Mrs. Metton and Mrs. Ouled) and appendix 4 (ACOSOP Report upon torture from the Military Court of Rabat in 2013).

- IV. Exposure to cold, by depriving prisoners of their clothes and blankets;
- V. The Sweden drink technique: by forced ingestion of fezzes, urine, bugs (like cockroaches) and any other kind of dirt;
- VI. Ashtray technique: by extinguish cigarettes on the prisoner's body
- VII. Grill technique: being tied, strip naked and folded, in the Vitruvian men position, subjected to physical and sexual violence;
- VIII. "Dajaja" technique (Grilled chicken): where prisoners are strip naked, tied by their hands and feet to a horizontal bar, being tortured physical and sexually by electrical shocks;
- IX. Removal of the nails on toes and fingers using pincers;
- X. Sexual rape using a diversity of objects such as truncheons, iron bars, sticks etc.;
- XI. Sexual molestation;
- XII. Group torture (According to the detainee's statements, most of these occurred tied and folded).

ACOSOP highlighted that, as to Psychological torture the detainees reported:

- I. Threats of torture (including rape) inflicted on their families;
- II. Restrain visits from relatives;
- III. Racist or xenophobic acts by the authorities;
- IV. Compelling to assist of the torture of other prisoners;

Several of the accused identified their torturers. The torture was said to have been practiced in the presence of the Director of Salé 2 prison, the Judge of Instruction at the Military Court of Rabat and the Judge of Instruction at Court of First Instance in El Aaiún. ACOSOP highlighted that, the detainees identified the following public officials as torturers:

- I. Mr. El Isaoui Hamid, nurse at Salé II prison
- II. Mr. Hafid Benchachem, Prisons delegate
- III. Mr. Hassan Hafdal (Mehfadi Hassan), prison servant
- IV. Mr. Yousi Bouziz, prison servant
- V. Mr. Hafari, police officer
- VI. Mr. El Luali, occupation unknown
- VII. Mr. Bou Astiya, occupation unknown
- VIII. Mr. Mohssin Bou Khabza, police officer
- IX. Mr. Yousef Raiss, police officer
- X. Mr. Said Ben Sghir, police officer
- XI. Mr. Abdel Hamid Elmaghani, police officer
- XII. Mr. Abde Rahmon Elwazna, police officer.

From the testimonies given by the accused to the Court of Appeal in Salé several factors can be highlighted. Machdoufi Ettaki⁷⁰ explained that when he came to the military court, he did not know that he was talking to an investigative judge. He explained how he was in a very bad shape, that he could barely talk due to the torture inflicted upon him, and that a guard had forced

⁷⁰ See appendix 1, day 6, for a summary of the declaration given by Mr. Ettaki.

his eyes open. The guards had thereafter forced his finger down on a paper, whilst the confession was covered by another paper. He claimed that he was being tortured inside of the court facilities, and was covered with blood.

When Mohamed Embarek Lefkir⁷¹ was asked why he had signed the declarations, Mr. Lefkir explained that a guard, with the judge present, stated that:

“If you don’t sign, I will send you back, and you will be tortured more and worse than what you have already endured.”

All the detainees claim that they were never interrogated about the events at Gdeim Izik, but only about their human rights and political activism, and that the torture was a mean of revenge for their activism and their political opinions. Abdullahi Toubali⁷² explained that:

“They tortured me, and I couldn’t walk for a long time. They tried to rape me with a stick, they urinated on me, and spitted on me. I was moved to the gendarmerie where I was questioned, where he asked me why I refused to take bribes from the government. They asked me about my relationship to Eênama Asfari, the Polisario Front, and the delegation to Algeria. They repeated the questions, and I told them that I didn’t know.”

Sidahmed Lemjeyid⁷³ told how he was transported to the gendarmerie, where he was tortured both psychological and physical:

“I was subject to every kind of torture. It’s impossible to explain what I went through. The torture is methodical to break us. They are racists”.

When El Houssin Ezzaoui⁷⁴ was questioned, he refused to answer any questions before he could show the marks of torture and to report of his sufferings. He took off this garment and showed his scars to the preceding judge, and told the court that:

“I was tortured for days: Raped, beaten, had my hands and feet nails torn, my arm was broken, and I had days without food or drink!”

Mr. Ezzaoui denounced that he had been carried in on a blanket when questioned by the investigative judge. Mr. Toubali declared that when he first met Mr. Ezzaoui in prison he couldn't walk, but was carried into the cell on a blanket. He told the court that when arriving to Salé 2, they were again tortured, under the surveillance of the prison director. He stated that:

“They took all of my clothes off me. They hit and they kicked us, and threw cold water on us. It was a small room. For two months, we were constantly harassed and tortured, day and night. When we complained, they tortured us together.”

⁷¹ See appendix 1, day 10, for a summary of the declaration given by Mr. Lefkir.

⁷² See appendix 1, day 9, for a summary of the declaration given by Mr. Toubali.

⁷³ See appendix 1, day 9, for a summary of the declaration given by Mr. Lemjeyid.

⁷⁴ See appendix 1, day 8, for a summary of the declaration given by Mr. Ezzaoui.

El Bachir Khadda⁷⁵ denounced the following about his stay in Salé 2:

“We had no clothes. They poured water on us, with bags over our head. Once I was tortured because I smiled at my mother when she came to visit. The torture was supervised by the prison director.”

Abdeljalil Laroussi⁷⁶ told how he suffered under brutal torture. Mr. Laroussi suffered under strappado, Sweden drink (i.e. The Schwedentrunk), electroshocks, nail removal, beatings, starvation, fried chicken, sodomy, sleep deprivation, rape, five months of light deprivation and psychological torture. Mr. Laroussi explained that once in prison, he was placed in a cell, and underwent systematic violence:

“I was told: You have to be in front of the door, when someone says ‘respect’ you have to kneel, with your head down and your hands behind your back. During the night over and over, and I was menaced. If I did not do that immediately, they would take me to the common criminals to be raped.”

Several of the prisoners declared that the signs of torture were blatant when they were presented before the investigating judge, as they were covered with blood or could not stand up. Mr. Lemjeyid⁷⁷ explained how he showed the scars to the investigating judge, and how he had turned him away:

“He saw my scars. He saw that I was being tortured. Torture must be witnessed and reported. I asked him for medical examination, but the judge did not uphold his responsibility as a judge. He did nothing. (...) Nobody helped me. The doctor himself stated that he couldn’t help me, because he was ‘under pressure’. This is unacceptable.”

Some of them were carried in blankets when meeting the judge. Some of the accused declared that they were tortured in front of the investigative judge, within the court facilities.

7.3. The usage of illegal evidence

The accused were in March 2017 interrogated by the court based on their confessions delivered to the police during arrest, and the policemen which conducted the police reports testified during the proceedings conducted in May 2017, and the testimonies of the policemen and the reports were used during the final argument in the proceedings conducted in June and July 2017. During the interrogations held at the Court of Appeal in Salé, all the accused claimed that they had signed reports that had been fabricated and retrieved under torture and/or under threats.

The prohibition against the usage of confessions obtained through torture is set forth in *article 15* of the Torture convention:

⁷⁵ See appendix 1, day 9, for a summary of the declaration given by Mr. Khadda.

⁷⁶ See appendix 1, day 12, for a summary of the declaration given by Mr. Laroussi.

⁷⁷ See appendix 1, day 9, for a summary of the declaration given by Mr. Lemjeyid.

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

As it follows, any declarations made under torture, as described in art. 1 of the Torture Convention, is illegal evidence. According to the reports from the Military Court of Rabat in 2013⁷⁸, and the CAT decision (CAT/C/59/D606/2014), the declarations are a result of torture. The comment of the International Covenant, stipulated in paragraph 3(e) in regard to article 14 of the ICCPR, concludes that any evidence obtained through torture or other illegal means should not be used as evidence. The hearing of witnesses based on declarations extracted under torture, as in the case of the policemen, is to be considered as a breach of the law, since the declarations and evidence directly related to them are illegal evidence. Evidence directly linked to torture is consequently to be regarded as illegal evidence, as such, the police reports, the reports conducted by the gendarmerie, the report from the investigative judge and the testimony from the police men are illegal evidence.

The presiding judge, the civil party and the prosecution subjected the accused to a line of questioning based solely on these pieces of illegal evidence during the proceedings conducted in March 2017. The questions placed forward from the presiding judge, the prosecutor and the civil party were thus based upon fabricated declarations signed under torture.

Instead of respecting the prohibition against illegal evidence, the preceding judge, the prosecutor, and the civil party subjected the accused to a line of questioning meant to weaken the claims of torture (i.e. as outlined in paragraph 8.5.2 *The judge performs forensic work*). In this regard, I find reason to highlight the report of Special Rapporteur Juan E. Méndez, after a mission to Morocco in 2013⁷⁹, where he stated that:

“when defendants try to prove their injuries in court, the judge reacts to these allegations by questioning the credibility of defendants who did not raise the matter at the earliest opportunity—emerging from police custody and appearing for the first time before the prosecutor or the investigating judge.”

In the case of Eênama Asfari⁸⁰, the presiding judge claimed he had found a “smoking gun”, when Mr. Asfari declared that he had not been tortured by the gendarmerie, only the police. Mr. Asfari then clarified, and said that he had been subject to psychical torture by the police, and subject to psychological torture by the military. The civil party invoked that this means that Eênama Asfari had lied to the international community when forwarding his complaint to the CAT, arguing that this also indicated that all the prisoners lied about being tortured.

The prohibition against torture is absolute, and the definition of torture is set forward in article 1 of the Torture Convention. It follows from article 1 of the Torture Convention that torture entails both physical and mental suffering, with the goal of retrieving information or to punish. All the accused claims that they were interrogated about their political activism, and that the torture they underwent was revenge for their political activism.

⁷⁸ See appendix 5, ACOSOP Report upon torture from the Military Court of Rabat in 2013).

⁷⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco. A/HRC/22/53/Add.2, paragraph 28.

⁸⁰ See appendix 1, day 11, for a summary of the declaration given by Mr. Asfari.

That the civil party and the preceding judge undermines the CAT decision regarding the case of Eênama Asfari, without any legal basis, and places forward such severe accusations without any legal evidence and undermines the psychological torture that the prisoners have suffered, is disturbing and constitutes a severe breach to the torture convention and Morocco's international commitments.

7.4. The State's responsibility to investigate allegations upon torture

The accused claim that the signs of torture was blatant when they stood in front of the investigative judge, and that they as a group have made several formal complaints to the government regarding this torture. A state's obligation to examine any signs of torture is set forward in *article 12* of the Torture Convention:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

As it follows from art. 12 of the Torture Convention, the state is obliged to initiate a “prompt and impartial” investigation. I regard the timespan, from when the signs of torture were blatant to the medical examinations were ordered by the court (approximately six years), as a breach of Morocco's obligation to investigate promptly any act of torture, as set forward in art. 12 of the Torture Convention.

The policemen who had written the reports and conducted the interrogations, served as witnesses in court during the proceedings conducted in May 2017. The policemen are identified as the torturers by the accused, and have never been investigated for any acts of violence or other forms of abuse of power. In this regard, I find reason to highlight the report of Special Rapporteur Juan E. Méndez, after his mission to Morocco in 2013⁸¹, where he stated that

“220 law enforcement officials were investigated for acts of violence, including other forms of abuse of power. Although the statistics do not allow for further assessment due to lack of information, the Special Rapporteur notes with concern that it appears that no persons have been prosecuted or convicted under article 231-1 of the Criminal Code. Officials who were prosecuted were charged with battery or assault, but not torture. Most of the 220 officials are still under investigation or have been found not guilty. Those convicted received minor sentences, such as a fine or suspension, and only a few received a sentence.”

7.4.1. The ordered medical examinations

As listed in the summary of the proceedings, the presiding judge ordered medical examinations on the 25th of January 2017. The examinations were ordered six years after the torture was committed and six years after the signs of torture were presented to the authorities. These examinations were conducted by three Moroccan doctors, employed by the Moroccan government.

⁸¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco. A/HRC/22/53/Add.2, paragraph 28.

The court ordered medical examinations for all the detainees, whereas the ones released from prison were not given the right to medical examinations (a total of 21 examinations were given). 16 of the detainees underwent the medical examinations ordered by the court. Five of the detainees (i.e. Sidahmed Lemjeyid, El Bachir Khadda, Eênama Asfari, Ahmed Sbaai, Sidi Abdallahi Abhaha) refused to undergo the medical examinations ordered by the court on the 25th of January.

Regarding the ordered medical examinations, I again find reason to highlight the report of Special Rapporteur Juan E. Méndez, after his mission to Morocco in 2013⁸², where he stated in paragraph 34-36 that

“(34) (...) There is an urgent need to establish mechanisms that can guarantee qualified, impartial and independent forensic examination of detainees that does not depend only on the request of the police or legal authority.

(35) The Special Rapporteur reviewed a sample of medical certificates, and notes with concern that the majority of medical assessments that are made for forensic purposes are performed not by forensic medical experts but by medical clinicians included in the court lists of “experts”. These individuals do not have any specific training or competence in forensic medicine. The medical reports produced after allegations of torture and ill-treatment are of very poor quality, not in accordance with the minimum international standards for clinical forensic assessment of victims and not acceptable as forensic evidence. Neither prison health-care staff nor the clinicians who act as court “experts” have specific training in assessing, interpreting and documenting torture and ill-treatment.

(36) The Special Rapporteur notes that this may be one of the reasons for the non-application of the exclusionary rule with regard to evidence obtained under torture. Even in cases where a prosecutor or a judge orders a medical examination, the poor quality of medical and forensic reports currently provide little assistance to the prosecutors and judges in their decision-making process. The confession or declaration thus remains on the record and no serious effort is made to investigate, prosecute and punish perpetrators.”

The medical examinations ordered by the court was conducted by Pr. M. El Yaacoubi Morach, Dr. Ch. Bouhelal and Pr. F. Ait Boughima. The medical examinations were conducted from 16.02.2017 to 03.03.2017.

The conducted medical examinations were treated by the court on the 5th of June 2017. All the reports conclude that the detainees did not suffer under torture. The defence requested the court to order counter-expertise. This request was denied by the court on the 5th of June 2017.

On the 6th of June 2017, the doctors which conducted the expertise was summoned to court to

⁸² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco. A/HRC/22/53/Add.2, paragraph 34-36.

be questioned⁸³. During their declaration, the lead doctor stated that one could not rule out torture, and that it was a possibility that the detainees has suffered under torture, but that the scars and the marks on the bodies of the detainees could have multiple causes. The defence requested the court to discard the medical examinations as evidence on the 14th and 15th of June 2017, since the conclusions in the reports and the declaration of the doctors did not coincide. This request was denied by the court on the 19th of July 2017.

7.5. Evaluation of the ordered medical examinations

For the state to fulfil their obligations after the Torture Convention, and thus conduct a prompt and impartial investigation, the medical examinations must be in compliance with (1) the Torture Convention, (2) the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “Principle”) ⁸⁴, and in accordance with (3) the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) ⁸⁵. Medical professionals must be impartial and independent from the authorities, as the UN Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee for the Prevention of Torture) has noted.

On the outset, and as outlined by Amnesty International in their public statement⁸⁶ related to this case, it must be urged that;

“In addition, the court must be diligent in interpreting the results of such medical examinations, particularly in a case such as this, over six years after the alleged torture. Specifically, the absence of medical evidence is no proof that torture has not occurred, as the Subcommittee for the Prevention of Torture has noted. Inadequate medical examinations may fail to detect marks of torture, marks can fade with time, and many forms of ill-treatment, including physical and psychological torture – for instance, some forms of sexual violence – leave few or no visible marks. Crucially, medical examinations are no substitute for other aspects of investigations, including questioning victims and witnesses.”

As enlisted in the Principles, set forth in art. 5(a), an investigation is to be regarded as invalid, and must be displaced with an independent commission, in cases were:

“...the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse or for other substantial reasons, States shall ensure that investigations are undertaken

⁸³ See appendix 1, day 22, for a summary of the testimony given by lead doctor Mrs. Fadila.

⁸⁴ Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 2000. Link (29.04.2017): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx>

⁸⁵ The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol). 2004. Link (29.04.2017): <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

⁸⁶ See appendix 6.3, Amnesty International, Public Statement, dated March 6th 2017.

through an independent commission of inquiry or similar procedure.”

I regard the performed medical examination as inconsistent with the states obligation to investigate claims regarding torture, because the medical examinations are performed with (1) insufficient expertise, (2) with suspected bias, and (3) there is an apparent pattern of abuse.

Firstly, the medical examinations were performed with insufficient expertise and by medical personnel not trained in either the Istanbul Protocol nor directed upon the Principles.

The families of the prisoners and the defence attorneys have clarified further the context of the medical examinations that commenced on the 16th of February 2017. The prisoners were transported into groups for the investigations, and the investigations continued for several days. The investigations consisted of medical personnel taking pictures of scars. The pictures were taken with the private mobile phone of the lead doctor. Some of the detainees underwent X-ray examinations. The families of the detainees have informed that during the medical examinations guards were present inside the examination room.

On the 19th of July, a meeting took place between observers Mrs. Isabel Lourenço, Mr. Mads Andenæs, Mrs. Tone Sørffonn Moe, and the two released detainees, Mr. Deich Eddaf and Mr. El Bakay.

Mr. Deich Eddaf informed that although he denounced that he was raped and sodomized, the lead doctor Mrs. Fadila only told him to undress and looked at his naked body. The doctor took pictures of Mr. Eddaf with her private cell phone. Mrs. Fadila used a wooden tongue depressor to make a superficial anal examination. No further examinations were made. Mrs. Fadila told Mr. Eddaf that he had not been raped. Mr. Eddaf also stated that the marks he has from the prolonged use of plastic handcuffs were not registered by the doctor who claimed that he had no circular scars. Mrs. Fadila stated to Mr. Eddaf that the existing marks are not compatible with the use of handcuffs. Mrs. Fadila made a similar declaration to the court. Mr. Eddaf and Mr. Bakay also confirmed the presence of guards outside the room in their case, but confirmed that other detainees had guards inside the doctor's office.

Mr. Eddaf further declared that Mrs. Fadila retrieved the medical files from El Arjat prison (i.e. to where the prisoners were transferred in August 2016). No prior files were retrieved (since detention in 2010). Mr. Eddaf also declared that the doctor wrote down injuries and scars he specifically told the doctor that he had before detention, but others that he had from the tortures were not recorded. Mr. Eddaf declared that when he mentioned an injury on his right eye, the doctor did not examine it.

Mr. Laarabi declared that the psychiatric examination performed by Dr. Chakib Bouhlelal lasted for 10 minutes. Mr. Laarabi declared that the questions asked was: (1) Do you sleep well? (2) What kind of relations do you have with your wife? (3) Do you miss your daughters? (4) How can you sleep? Doesn't your conscience prevent you from sleeping?

According to Mr. Daff and Mr. Laarabi the traumatology examination was performed in about four minutes and consisted of making them stand on one foot, take a few steps and the Patellar Reflex Test (hitting the knees with a hammer).

Secondly, there are reason to believe that the medical examination is subjected to bias. As noted earlier, the medical examinations were conducted by three Moroccan officials employed by the Kingdom of Morocco. Most of the prisoners accepted to undergo the medical examination, except for Sidahmed Lemjeyid, El Bachir Khadda, Eênaama Asfari, Ahmed Sbaai and Sidi

Abdallai Abhaha. The ones who rejected the medical examination demands an independent and impartial investigation conducted outside of Morocco. They claim that they do not rely on the government that conducts the medical examination.

As outlined in the testimonies given by the prisoners, the prisoners who underwent the examination also declare that they do not trust the medical examination and that they ask for an impartial investigation into their allegations upon torture (see the appendix for an extensive summary of the testimonies). Some of the prisoners (in particular Mr. Lefkir⁸⁷) claimed that they were addressed about the political issues by the doctors conducting the medical examinations. Similarly, when the examinations were conducted, guards or police agents were present inside the examination room or placed just outside the room with an open door. The meeting conducted with Mr. Deich Eddaf and Mr. El Bakay which were released on the 19th of July 2017 confirm these allegations. In this regard, Mr. Eddaf stated that he felt as he was in an interrogation room and not in a doctor's office, since the doctor Mrs. Fadila talked to him about political issues and the situation of Western Sahara. The same was said by Mr. Laarabi who said that the doctor asked about his whereabouts on the day of the dismantling of the camp. Due to the historical background of this case and the political issues there are apparent reason to believe that the medical examinations were subject to bias.

Thirdly, as shown in the history of this particular case, there seems to be an apparent pattern of abuse. Several of the accused claim that they stood in front of the investigating judge with garments covered in blood, and in a critical condition, and some of the accused claim that they were carried in blankets. Several of them claim that they told the investigating judge that they suffered under torture, but were turned away by the judge. As such, the prisoners declare that the alleged torture was performed in front of governmental officials, such as the investigating judges, which has a direct obligation to investigate any sign of torture.

Furthermore, several of the accused claim that they have made several formal complaints to the government upon torture. These complaints have never been answered, while the prisoners declare that they have sent their complaints both to the Minister of Justice in Morocco and the Moroccan Human Rights Office. The prisoners also demanded medical expertise and investigation into their allegations upon torture in the Military Court of Rabat in 2013. The prisoners denounced the torture they have suffered, exhibiting the scars and other evidence to the court room. This was witnessed by the international observers present at the Military Court of Rabat in 2013, and referred to in the reports submitted by the international observers. The panel of judges at the Military Court of Rabat in 2013 denied the expertise, and did not follow up on the accusations placed forward by the prisoners. Furthermore, the CAT-decision (CAT/C/59/D/606/2014) concerning the case of Eênama Asfari has been found irrelevant to the case, and is not viewed as a legal source in a Moroccan courthouse.

These outlined circumstances show an apparent existence of a pattern of abuse, where the state has over several years failed to honour its obligations, and further directly avoided to respond to direct complaints or signs concerning the use of torture.

In conclusion, the medical examinations ordered by the court are not in line with the State's obligation to investigate allegations upon torture as outlined in art. 12 of the Torture Convention. The medical examination was performed by Moroccan public officials, and are not performed by doctors with the necessary expertise and independence from the Moroccan

⁸⁷ See appendix 1, day 10, for a summary of the declaration given by Mr. Lefkir.

Government. Consequently, the ordered medical examinations are not in line with the Istanbul Protocol.

It is of crucial importance that the accused are given medical examinations in line with the Torture Convention, thus that the accused are given an independent and impartial investigation based on adequate medical expertise in line with the Istanbul Protocol.

8. The right to a fair trial

8.1. Introductory remarks

Morocco has ratified the International Covenant on Civil and Political Rights (ICCPR) of 1966 (ratified in 1979). The main article concerning the right to a fair trial is to be found in article 14 of the ICCPR. Article 14 of the ICCPR entails all the main principles or doctrines that together constitutes a fair trial. The process of law (or, the right to a fair trial) is grounded on two main elements: The right of all persons to equality before the law and the courts, and the right of all persons to a public hearing with all due guarantees before a legally-constituted, competent, independent and impartial tribunal, as well as the right to appeal.

The court case of the Group Gdeim Izik constitutes a breach to both article 11 of the Universal declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. Several of the detainees have been condemned by the Court of Appeal in Salé for charges relating to murder, solely based upon confessions taken without a lawyer present, which the detainees claimed were signed under torture and fabricated against them. One of the fundamental safeguards against torture is the right to access to a lawyer at all stages of the investigation process, as highlighted by the Special Rapporteur Juan E. Méndez⁸⁸. In the case of the Group Gdeim Izik, none of the accused were given this right during interrogations conducted by the police and the gendarmerie. In relation to the usage of these confessions, I find reason to highlight the report of Special Rapporteur Juan E. Méndez, after a mission to Morocco in 2013⁸⁹:

“Under article 290 of the Code of Criminal Procedure, the court is to deem a statement prepared by the judicial police as trustworthy unless the defendant can demonstrate that it is not. This presumption places an unfair burden of proof on the defendant to disprove the truthfulness of a statement that the police have written up and attributed to him with no other witnesses present, and gives the court a basis for not going beyond a perfunctory inquiry into the defendant’s claim of torture or ill-treatment, unless he has clear signs of torture on his body.”

As outlined by the prosecutor in his final pleadings, the statements made by the accused was to be considered as the first evidence against them⁹⁰. The usage of these reports constitutes one of the major breaches present in the court case of Gdeim Izik.

The court case is furthermore characterized by several breaches to the right of equality of arms. The Court of Appeal in Salé ruled on the 19th of July that the Civil party did not have competence to put forward a civil claim. Regardless, the civil party have been a very active party in the proceedings, and their comments and questions are thus recorded into the minutes

⁸⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco. A/HRC/22/53/Add.2 paragraph 32

⁸⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez. Mission to Morocco. A/HRC/22/53/Add.2, paragraph 31

⁹⁰ See appendix 1, day 25, for a summary of the final arguments from the prosecutor.

of the case. During the questioning of the detainees, several of the detainees refused to answer the questions put forward by the civil party. The refusal did not stop the civil party from asking questions, leaving the civil party to take the refusal into their advantage. The civil party resumed by asking numerous questions, formulating them negatively commencing with “do you refuse that...”. The civil party also invoked questions that were relevant for the defense, e.g. if the detainee had been read his rights upon arrest or been in contact with a lawyer. When the defense invoked the same questions, the court refused to put forward the questions, stating that the question was already asked (but not answered).

The right to equality of arms is furthermore altered by the difficulties that the defense attorneys were facing when placing forward their arguments. The defense attorneys were hindered from placing forward a proper defense strategy, as they were constantly interrupted by either the preceding judge, the prosecutor or the civil party, to such an extent that the right to defense may be regarded as breached. In relation to this, the judge did not uphold his duty to examine incriminating and exonerating evidence. Thus, the court case is characterized by a breach of equality of arms, a mistreatment of the defense, and a lack of sufficient clarification of the case file.

8.2. The right not to be compelled to confess guilty or to testify against oneself and exclusion of evidence elicited by illegal means, including torture or ill-treatment.

Morocco has ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment of 1984 (ratified in 1993). Article 293 of the Criminal Code of Procedure prohibits the use of “confessions” obtained through torture and other ill-treatment, stating that a “confession” obtained through “violence or coercion shall not be considered as evidence by the court”.

As highlighted in paragraph 7, any declarations made under torture as described in art. 1 of the Torture Convention, is illegal evidence. According to the reports from the Military Court of Rabat in 2013, and the CAT decision (CAT/C/59/D606/2014), the declarations are a result of torture. The Court on the other hand refused to regard the CAT-decision as evidence, or in any way as a legal document.

The Court Case of Gdeim Izik, when transferred from the investigative judge to the court, was solely based upon the confessions given to the police and the gendarmerie. The Court of Appeal in Salé implemented these reports which includes the confessions into the evidence file of the court case, and these confessions were used against the detainees as evidence in the absence of material evidence.

During the final arguments delivered by the prosecutor, the prosecutor stated that police reports are data after article 293 of the Moroccan procedural code, and that data is a synonym for evidence in the Arabic language. The prosecutor urged that evidence can not be denied if not hard evidence is there to prove them wrong⁹¹. For several of the detainees, the main evidence against them are the reports conducted by the police and the gendarmerie, in absence of other material evidence.

In relation to the usage of this evidence, it should be noted that the prosecutor has an obligation to refuse to use evidence which he suspects or that he believe on reasonable grounds was obtained through unlawful methods, which constitute a gross violation of the

⁹¹ See appendix 1, day 25, for a summary of the final arguments delivered by the prosecutor.

suspects human rights. The prosecutor has thus an obligation to refuse to use this evidence against anyone other than those who used such methods, or inform the judicial body accordingly, and should take all necessary steps to ensure that those responsible for using such methods are brought to justice⁹².

In the case of Gdeim Izik, none of the police officers that are accused of committing grave human rights violations, involving torture or cruel, inhuman or degrading treatment or punishment, were subjected to investigation or prosecution. In the case of Gdeim Izik, the testimonies given by the police officers that are accused of committing grave human rights violations, are used as evidence against the accused, in order to support the reports from the police and the gendarmerie.

The Working Group on Arbitrary detention⁹³ highlighted in paragraph 33 in its report, that judges often interpret article 291 of the Code of Criminal Procedure as *prima facie* evidence, and explains why this is a problem by noting that,

“Such an interpretation is tantamount to reversing the burden of proof by requiring the accused to prove his innocence, which is contrary to the principle of the presumption of innocence, as stated in article 23 of the Constitution. It also creates conditions that encourage the torture and ill-treatment of suspects.”

The Working Group highlighted in the same report in paragraph 35, that such confessions can not be used as evidence, and highlighted that:

“In that regard, the Working Group wishes to emphasize that confessions made in the absence of a lawyer are not admissible as evidence in criminal proceedings. This applies in particular to confessions made during the time spent in police custody.”

The Working Group regarded the usage of such confessions as a breach of article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. In this regard, I find reason to recite paragraph 37 and 41:

“(37) The guarantees of a fair and equitable trial laid down in article 11 of the Universal Declaration of Human Rights and in article 14 of the International Covenant on Civil and Political Rights exclude self-incrimination and grant the right to legal assistance and representation and to other measures of protection in order to ensure that no evidence is obtained by confession. Under article 14, paragraph 3 (g), of the Covenant, no person may be compelled to testify against himself or to confess guilt. (...)

(41) One of the aims of the provisions of article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights is to provide guarantees against all forms of direct or indirect, physical or psychological pressure by the authorities on the accused with a view to obtaining a confession. The right not to be compelled to testify against oneself or to confess guilt, and access to

⁹² Guideline 16 of the Guidelines on the Role of Prosecutors.

⁹³ Report of the Working Group on Arbitrary Detention. Mission to Morocco in 2013. A/HRC/27/48/A.

counsel and legal aid are not only measures intended for the protection of the interests of the individual, but are also measures, in the interest of society as a whole, of the trustworthiness and effectiveness of the judicial process, and of the reliability of evidence. Confessions made in the absence of legal counsel are not admissible as evidence in criminal proceedings. This applies especially to confessions made during the time spent in police custody.”

In conclusion, the reports conducted by the police and the gendarmerie, can not be used as evidence in a criminal case. The use of them as evidence constitutes a direct violation of article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, as well as the Torture Convention.

8.3. Independence and impartiality

The principle of independence and impartiality is a safeguard when ensuring that a trial and its ruling is based on evidence and legal provisions. By virtue of Article 14, subparagraph 1 of the ICCPR, the requirement of independence and impartiality serves to safeguard the integrity of the judiciary, and to ensure that judges base their judgments solely on the merits of the case according to law. It is important to recognize that the independence and impartiality of the judiciary has both a subjective and objective component. Justice is not only to be rendered in an independently and impartially way, it is also important that justice appears objectively to be rendered independently and impartially.

When assessing the principle of independence and impartiality, one factor to consider is the separation of powers and the relationship between the judiciary and the prosecution. The Human Rights Committee has outlined in a previous case that when a situation appears where the functions and competence of the judiciary and the executive are not clearly distinguishable, or where the prosecutor are able to control or direct the judiciary is incompatible with the principle of an independent and impartial tribunal⁹⁴.

In relation to the principle of independence and impartiality in the present case, the relationship between the judiciary and the prosecution during the proceedings must be highlighted. During the proceedings, the prosecution acted as if placed above the other parties present, including the court, as the prosecutor was constantly interrupting both the judge and the defense. Thus, the prosecution took the role of directing the nature of the proceedings. Typically, the prosecutor would generally stand up, knock his microphone, and direct the presiding judge in his management of the proceedings.

This behaviour had both a psychological effect, as well as a direct effect on the proceedings' equality. It should also be noted that the prosecution screamed towards the detainees when they gave their testimony. This behaviour towards the accused can be interpreted as threatening, and had a clear psychological effect. In regards to the behaviour of the prosecutor, it should be noted that the prosecutor has a duty to contribute to ensuring due process and the smooth functioning of the criminal justice system, and thus have an obligation

⁹⁴ Human Rights Committee, Views of 20 October 1993, Angel N. Oló Bahamonde v. Equatorial Guinea, Communication No. 468/1991, para. 9.4; See also: Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/11.116, Doc. 5 rev. 1 corr., 22 October 2002, para. 229.

to carry out their functions impartially, and protect the public interest by paying attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspects⁹⁵. It is safe to conclude that the prosecutor did not pay due respect to all relevant circumstances, and did not carry out his functions impartially.

The behaviour of the prosecutor shows in total that the presiding judge lacked control over his own courtroom, as the preceding judge himself was on several occasions interrupted by the prosecutor or guided in his management of the proceedings.

As highlighted in earlier reports, the prisoners had difficulties believing that the trial would be fair. The prisoners reaffirmed their position as political prisoners by shouting for self-determination and wearing their traditional costume, as an affirmation of their national identity, knowing that this statement most likely would give them harsher penalties than if they refrained. The accused still invokes that the only reason for their arrest is their Sahrawi nationality and their political activism.

The detainees protested several times against the use of new evidence. The detainees claimed that the witnesses presented false testimonies, and that the witnesses were brought to support the already falsified declarations. The detainees urged that these witnesses were telling lies, and that they could not be heard seven years after the events. Mr. Abahah asked with a sense of irony whether the witnesses had been in a coma, or abroad, during the last seven years since they did not appear on any prior police records. During the proceedings, the Group of Gdeim Izik withdrew themselves on the 16th of May from the proceedings as a consequence of their lack of trust to the Moroccan judicial system. Mr. Eddah affirmed the position of all the prisoners, but Mr. Eddah was prohibited from explaining the reasons behind their withdrawal from the case in detail. As the prisoners exited the courtroom, they chanted that this court case is a theatre played for the international community in front of the international observers.

It is apparent that the detainees mistrust the independence of the Appeal Court in Salé, and after several protests and requests to the court chosen to withdraw themselves from the proceedings as a final resort. The detainees have on several occasions urged the president to investigate the evidence placed forward from the prosecution office, and to grant them independent medical examinations in order to prove that they have been tortured. The detainees have also urged the court to summon participants from the camp to witness on their behalf, since the only ones summoned to witness about the camp are the witnesses placed forward by the prosecutor. The detainees have furthermore protested the identification process, which they state to be in violation to the presumption of innocence. To exemplify, on one occasion a police officer whispered into the witness ear during the identification process, which naturally provoked further protests from the accused⁹⁶. All the requests from the detainees have been denied by the court.

In compliance with the principle of an independent judiciary, I urge the need for investigation into how these witnesses have appeared, whether the witnesses have declared falsified testimonies, and/or been subjected to instructions. I also conclude that considering the court's earlier rulings and the refusal to investigate where the witnesses originate from, and the court's

⁹⁵ Guideline 12 of the Guidelines on the Role of Prosecutors.

⁹⁶ See appendix 1, day 14, during the questioning of Mr. Faisal El Malazi. During this testimony, a police officer approached the witness prior to the identification process. Afterwards, Mr. Faisal El Malazi identified Mr. Bani.

handling of the evidence file, it is reason to believe that the court is not independent, and that the court did not independently investigate the evidence placed forward, and as such did not base its ruling on evidence and legal provisions.

8.4. The presumption of innocence

The principle of presumption of innocence, as codified in article 14 of the ICCPR, is a fundamental part of the right to a fair trial. The presumption of innocence is an absolute right, which can never be derogated from.

Numerous consequences follow the guarantee of innocence, including the accused's right to remain silent and to not be compelled to make a confession, and the principle that the burden of proof should lay with the prosecution. It is clear from the testimonies that the accused have not been given the right to remain silent and to not be compelled to make confession. All of them announce that they have signed declarations without knowing its content, and that the documents are falsified. None of them have been told about their rights before being interrogated, and the declarations are signed under pressure and/or torture.

The court case is further characterized by the media's attention. The media portrays the accused as terrorists and violent killers, and the active parties in the proceedings litigates in the media. The accused have been portrayed as the culprits, and the ones accountable for what happened in the Gdeim Izik camp in national media, now pending six years. The presumption of innocence has therefore already on the outset of the trial been severely breached.

8.4.1 The identification process

The court conducted an identification process during the proceedings held in May 2017⁹⁷. The identification process was conducted by ordering all the detainees to appear in front of the court (i.e. come out of the glass-cage, and present themselves in front of the judge). The witness was thereafter instructed to point out the different detainees that he recognized, and name them according to his testimony. As such, the witness pointed for example towards Mr. Eênama Asfari, and named him as Mr. Asfari. The witness did not go into further detail. The ones identified went to the other side of the room, and the witness continued the identification until he could not identify further.

Both the detainees and their defence attorneys protested the identification process, which finally led the accused to refuse to appear in front of the court, avoiding exposure in front of new witnesses. This further implies that this identification process had an impact on the detainee's decision to withdraw themselves from the court case. After withdrawal, the court chose to conduct the identification process by showing the witnesses pictures of the detainees. The witness was as such given a pile of pictures, which only contained pictures of the accused, and was told to identify the detainees that he recognized. This process was conducted with the usage of pictures that were not part of the evidence file. The court also ruled that the pictures were to be shown to all observers present in the courtroom, for them to check whether the pictures had any marks on them (i.e. the pictures were distributed to the observers, and portrayed on the screen). The court then re-summoned the witnesses that the detainees had

⁹⁷ All the accused were subjected to identification by the witnesses which identified the accused, except for Mr. Eddah, Mr. Ettaki and Mr. El Ayubi. Note that all the accused were subjected to identification by the police officers.

refused to be exposed to, and conducted the identification process by using pictures.

The accused were directly exposed to the witness within the courtroom and no further line up or earlier investigation with an identification process had been conducted. As such, the identification process conducted inside the courtroom is the only one that exists. As mentioned earlier, pictures of the accused had circulated the national media and the internet for several years. There is therefore a great probability that the witnesses presented to the court have seen pictures of the accused before the identification process. Even at the entrance of the courthouse pictures of the accused are being portrayed and exposed by the demonstrators. This prior exposure invalidates the whole process, and makes the evidence illegal, and the identification process constitutes a direct violation to the presumption of innocence.

8.5. The right to equality before the law and courts and the principle of equality of arms

The right to equality before the court as enshrined in Article 14 of the ICCPR has two basic aspects: equal access to the courts and equal treatment by the courts. This means that all persons are equal before courts and tribunals. The principle of equality of arms stems from the right to equality before courts as established in Article 14 § 3 (b) of the ICCPR. This implies that all parties to a trial should have the same procedural rights, in order for a trial to be fair. The principle of equality of arms requires that the parties can contest the arguments and evidence presented against them.

On the outset, I wish to highlight that the conducted proceedings entailed an apparent distinction in how the different parties in the courtroom were treated, as the defence was constantly interrupted or stopped in their advocacy. The defence was thus prohibited from laying out a proper defence strategy, especially during the interrogation of the accused and during the evaluation of the evidence file.

During the interrogations of the accused and the witnesses, the civil party and the prosecution asked numerous questions based on the declarations, such as “the violent inhabitants”, the trip to Algeria and the alleged partnership. The defence was prohibited from asking questions related to the nature of the dismantlement. For instance, when interrogating Mr. Mohammed El Bakay⁹⁸, defence lawyer Mr. Mohamed Masaoudi was prohibited from asking what Mr. El Bakay meant with the term “émeute” (chaos) when talking about the dismantlement of the camp.

During the interrogations of the accused, both the accused and the defence attorneys were further prohibited from speaking of or ask questions related to the reason for the protest camp and the general living conditions of Sahrawis in the occupied territories of Western Sahara. These factors are fundamental to highlight when evaluating whether the Gdeim Izik camp was a violent camp (a criminal organization), or, as the defence claim, a peaceful protest camp which people all over Western Sahara joined, not because they were forced, but due to their living conditions.

8.5.1. The obligation to examine both incriminating and exonerating evidence.

When talking about a fair trial, the investigating judge are obliged to examine the evidence for the defence as well as the prosecution. Consequently, the presiding judge is obliged to ask

⁹⁸ See appendix 1, day 7, for a summary of the declaration given by Mr. El Bakay.

questions both in favour and in disfavour of the accused.

During the proceedings held in May, the court heard from several witnesses, both support witnesses and witnesses summoned by the prosecution.

During the questioning of Mr. Faisal El Malazi⁹⁹, the witness identifying Mr. Bani as the driver of the car, the defence was prohibited from asking about his exact location and how his section could be surprised by a car appearing from behind bushes, ranging 50 cm over the ground.

During the questioning of the witness Mr. Mohammed Choujaa¹⁰⁰, the defence was prohibited from asking why Mr. Choujaa did not remember any of his neighbours within the camp, nor could identify any other human being besides the detainees. When the detainees identified by Mr. Choujaa were summoned to meet the testimony of Mr. Choujaa, the detainees asked in total 49 questions to the witness. The presiding judge decided to ask in total 10 questions of all the questions placed forward by the detainees, discarding the questions which could weaken the testimony given by Mr. Choujaa. The defence urged that the presiding judge had to ask why the witness could not identify his neighbours, the ones he was eating dinner with or drinking tea with – but simultaneously was able to identify the detainees. The court refused the questions.

I further find reason to highlight the questioning of Mr. Mohamed Selmani¹⁰¹, the support witness of Mr. Asfari. During the testimony of Mr. Mohamed Selmani, the presiding judge asked why he was not arrested since he was hiding a criminal in his house. Protest emerged within the courtroom from the detainees, and the civil party screamed that it was within the competence of the court to ask whatever question they wanted, leaving defence attorney Mr. Masoudi to declare that the civil party lacks the competence to utter their view. After this statement, an attorney from the civil party held out money (banknotes) and waved them in the direction of Mr. Masoudi.

During the questioning of the support witnesses, Mr. Mohamed Selmani and Mr. Bachir Selmani, the defence attorneys objected to the line of questioning placed forward from the presiding judge multiple times, as the line of questioning was clearly meant to poke holes in the testimonies of Mr. Mohamed Selmani and Mr. Bachir Selmani. The presiding judge asked repeated questions about whether Mr. Bachir Selmani had seen Mr. Asfari being transported to the vehicle by the police officers, and whether the witness had seen Mr. Asfari's head (Mr. Asfari had declared that he was blindfolded). The witness declared that Mr. Asfari was surrounded by police officials on every side and that he only saw the top of his head, and that he did not see anything "unusual" on his head. This led the presiding judge to ask him why he had not seen the blindfold, and with showing of his glasses, urged the witness that he "must have" seen the blindfold if he in fact witnessed the arrest of Mr. Asfari.

As such, I witnessed an apparent distinction in how the court treated the witnesses of an exonerating nature, and the ones which were incriminating. The support witnesses were asked multiple questions in detail about the time, the place and the exact minute¹⁰². In order to create

⁹⁹ See appendix 1, day 14, for a summary of the testimony of Mr. Faisal El Malazi.

¹⁰⁰ See appendix 1, day 15, for a summary of the testimony of Mr. Mohammed Choujaa.

¹⁰¹ See appendix 1, day 16, for a summary of the testimony given by Mr. Mohamed Selmani.

¹⁰² In particular, the support witnesses, Mr. Mohamed Selmani and Mr. Bachir Salmani, of Mr. Asfari.

a contradiction to the prior given answer, and thus the court tried to weaken the evidence value of the exculpatory evidence. The witnesses from the prosecution were not asked questions in detail, and questions upon details were mainly rejected.

This line of questioning presented from the presiding judge followed the same pattern; the presiding judge asked questions against the accused in order to weaken the exonerating evidence; and the questions placed forward by the defence in favour of the accused were mainly rejected. The witnesses supporting the accused were asked numerous questions in detail, lasting for over an hour, whereas the witnesses from the prosecution office was asked no questions in detail, or questions that could harm the declarations given. This constitutes a clear breach to the right to a fair trial, where the presiding judge is obliged to ask questions both for and against the accused, and the line of questioning is a clear indication that this court case in fact is a political trial.

In the case of Abdallahii Toubali¹⁰³, the presiding judge performed forensic work during the interrogation. Mr. Toubali stated that he had signed all his declarations without knowing the content of them, whilst blindfolded. The presiding judge thereafter asked Mr. Toubali to sign a document whilst closing his eyes, in front of the court, to prove that he in fact could write his whole name and sign without looking at the document. The defence objected, claiming that being blindfolded and closing your eyes are two different things. Mr. Toubali thereafter signed two documents in front of the court whilst looking away (i.e. looking up or to the side). The two blank pages which Mr. Toubali signed were kept by the presiding judge.

In the case of Mr. Deich Eddaf¹⁰⁴, regarding the question upon why he had signed with a fingerprint on the first page, but signed with his name on the latter pages, the judge declared that he had experience with such cases, and that he therefore could help him answer the question. The presiding judge declared that “due to my experience I can help you answer. Can it be that you fingerprinted the first page but then informed that you know how to read and write and that's why you have signed with your signature?”.

In the case of Mr. Laroussi¹⁰⁵, the judge acted as a medical expert. Mr. Laroussi declared that he, due to his health condition, receives numerous medications every day. Mr. Laroussi declared that the side-effects from the medication is severe, and that he is subject to medical malpractice. Mr. Laroussi has on several occasions been transported from the courthouse to the hospital during the proceedings due to his medical condition. The presiding judge declared that he knew all the medications that Mr. Laroussi currently is taking, and that none of the prescribed medication gave any side-effects.

The supposed appearance of legality of expertise evidence, without contradiction and possibility of intervention by the parties at the proceedings makes the statements fabricated (improvised), and shows that the judge does not follow the criminal procedural law. The judge is acting as an expert which constitutes him as "judge and party". The function of a judge cannot be supplemented by the role of a practicing expert, as this is not within the competence of a judge. This behaviour thus invalidates him as a judge.

See appendix 1, day 16.

¹⁰³ See appendix 1, day 12, for a summary of the declaration given by Mr. Toubali.

¹⁰⁴ See appendix 1, day 12, for a summary of the declaration given by Mr. Eddaf.

¹⁰⁵ See appendix 1, day 12, for a summary of the declaration given by Mr. Laroussi.

8.5.2. Equality of arms and the active parties in the proceedings

On the 11th of May¹⁰⁶, myself and Mrs. Isabel Lourenço conducted an overview of the questions asked by the different parties active in the court case. Five testimonies were conducted on the 11th of May, with two support witnesses and three witnesses summoned by the prosecutor.

The total number of questions raised was 112. The prosecutor asked in total 54 questions, of which 50 questions were placed forward, and four questions were denied as already answered. The civil party asked a total of 49 questions, and could ask a total of 42 questions, of which seven were refused as already answered. The defence raised in total 15 questions, of which seven were accepted, and eight questions were denied as already answered.

The civil party has not been a formal party to the proceedings since the presiding judge has refrained from ruling on the matter. The court ruled on the 19th of July 2017 that the civil party had no competence to be party of the proceedings, but the remarks and questioning of the civil party is nevertheless a part of the case file. The civil party was given the right both to litigate in front of the court, to receive the case documents, and to examine the accused and witnesses and was therefore *de facto* an active part of the proceedings. The presence of the civil party further alters the principle of equality of arms as the defence was not allowed to speak as freely, and was constantly interrupted during its proceedings by both the civil party, the prosecutor and the judge, leaving the defence to defend itself from three parties at once.

During the testimonies given by the accused on torture, the civil party lawyers and several of the international observers sitting with the civil party behaved disrespectful and unprofessional by making remarks among themselves and laughing. During the testimony given by Mr. Ayubi, one of the lawyers for the civil party asked how Mr. Ayoubi could be raped in the tent, when he had just testified that his tent was so small that his legs were outside. Mr. Ayoubi was also asked why he had not resisted against being raped. These questions were asked while several of the Moroccan lawyers and French lawyers from the civil party laughed. The accused in the glass-cage shouted that the Moroccans and the French lawyers were laughing about the sufferance of the Sahrawi people.

During the interrogations of Mr. Zeyou, the civil party stated: "he is trying to protect murderers. He is a murderer and he urinated on the corpses". Protest raised at once in the courtroom, and the accused tried to leave the courtroom due to this statement. The judge calmed the courtroom, and stated that "we are not interested in their opinion on guilt, and that the accused are innocent until proven otherwise". The civil party claimed that they, as advocating on behalf of the victims had the right to say whatever they want. The defence urged the court to protect the defendants, and reminded the court that the accused are in the care of the court whilst being interrogated, and that the court must therefore protect the defendants from being called murderers. The defence further highlighted that Mr. Zeyou was not charged with murder, nor molesting of corpses. Later, Mr. Zeyou refused to answer any of the questions put forward from the Civil party, including the question: "Are you the one urinating on a corpse in the film that was portrayed in front of the court? Because I think you look like him".

These two highlighted examples are two of many incidents which constitute a direct violation of the presumption of innocence. I further regard the behaviour of the attorneys belonging to the civil part as breaching both procedural and ethical norms.

¹⁰⁶ See appendix 1, day 16, for a summary of the proceedings conducted on the 16th of May.

With regards to the civil party, most of the accused refused to answer questions they had been asked, claiming that the civil party has deprived them of the right to be presumed as innocent, and that the civil party did not have the competence to ask them questions. The civil party had during the whole court case addressed the accused as violent murderers *and* terrorists, portraying the accused as criminals both within the courtroom and in the media.

In the case of Mr. Mohamed Lamin Haddi¹⁰⁷, the civil party asked in total 57 questions, whereas Mr. Haddi invoked his right to remain silent. The defence's questions were mainly rejected, based on the reason that the questions were already asked (but not answered), as the civil party had covered every aspect of the subject. Consequently, leaving the defence without the opportunity to ask questions.

In the case of Abderraman Zeyou¹⁰⁸, the accused was deprived of his ability to defend himself since he was constantly interrupted by both the prosecution and the civil party¹⁰⁹. The presiding judge asked questions solely based on the alleged falsified declarations, and asked numerous questions about his relationship to Eênama Asfari, and none in favour of the accused. The prosecution asked the defendant 14 questions, whilst, in comparison, the defence were only allowed to ask 4 questions. The civil party asked 20 questions which Mr. Zeyou refused to answer. Defence attorney Mr. Mohamed Masaoudi was, during his interrogation, prohibited from asking Abderraman Zeyou about what guarantees he was deprived of upon arrest, as the question was already asked by the civil party (but not answered).

I regard the civil party's competence to ask questions or to utter its views as highly limited, and I regard the role of the civil party as a serious breach to the right to equality of arms and the right to a fair trial.

8.6. Right to call and examine witnesses

The defence of the accused was prohibited from presenting several witnesses. Mr. Toubali urged at the end of his testimony that the presiding judge must call upon the parliament member Mrs. Gajmulla, who went with him to the hospital and could serve as his witness and prove his innocence. The presiding judge had earlier in the process refused to summon her to testify. The same goes for several of the other accused, which all claim that they had witnesses that can prove their innocence. The court summoned the witnesses that Mr. Asfari, Mr. Laaroussi, Mr. Zeyou and Mr. Lakfawni requested. All the detainees requested the court to assemble inhabitants from the camp, but their request was denied.

The only witnesses testifying about the life within the camp are witnesses placed forward by the prosecution office. These witnesses describe the Gdeim Izik camp as a violent resistance camp, and ultimately that the military attacked the camp because the inhabitants, after an agreement, had refused to leave the premises. The accused urge that no such agreement was set into place, and that the agreement was that the minister of interior would visit the camp the following Monday. The minister that was in negotiations with the Dialogue Committee has not been summoned to testify, whereas the accused urge that the only way to find the truth is to summon the ones that were in direct negotiations with the inhabitants of the camp.

It is of utmost importance that other witnesses are summoned to testify, in order to reach a

¹⁰⁷ See appendix 1, day 7, for a summary of the declaration given by Mr. Haddi.

¹⁰⁸ See appendix 1, day 7, for a summary of the declaration given by Mr. Zeyou.

¹⁰⁹ Constant interruptions during testimonies happened on several occasions for all accused.

sufficient clarification of the case file. The detainees urge that the court has an obligation to summon their informative witnesses which could testify about the Gdeim Izik camp, and to what happened on the morning of the 8th of November. The court has only allowed witnesses requested by the prosecution office, leaving the painting one-sided with declarations that the detainees urge is falsified against them, and with witnesses that lack the necessary credibility. It is therefore of importance that informative witnesses from both sides are summoned to testify about the events, as to reach a sufficient clarification, and for the detainees to be able to defend themselves against the story told by the prosecution office.

8.7. Right to defence and right to be informed promptly of the charge

Under international standards, anyone arrested or detained has the right to be assisted by a lawyer without delay, and to communicate and consult with his/her lawyer without interception or censorship and in full confidentiality. This right may be delayed only in exceptional circumstances, and must comply with strict criteria determined by law. The Human Rights Committee have highlighted that in relation to article 14 of the ICCPR, a person deprived of liberty should have access to a lawyer within 48 hours of their arrest or detention.

This principle also entails a guarantee of being informed of the charges against you promptly. When the accused are interrogated, they are accused of killing “some persons”. The names of the victims are now submitted into the case file in accordance with the submitted autopsy reports, but the accused do not have information of which victim they allegedly caused the death of, among the 11 victims. Thus, the accused have not received information about who they allegedly killed during the dismantlement of the Gdeim Izik camp in 2010, as the accused have never received information about who, how and when they killed the alleged victims. The accused have therefore not received adequate information about the charges, and they are in this regard prohibited from defending themselves, as they do not know what to defend themselves from. The lack of clarity of the case and the charges goes hand in hand with the lack of material evidence against the accused.

8.7.1. The breach of confidentiality concerning the relationship between the detainees and their lawyer

During the proceedings held in the Court of Appeal in Salé, the detainees were on numerous occasions prohibited from speaking to their defence attorneys. The detainees were situated in a glass-cage within the courtroom and thus separated from their attorneys, and the detainees made the courtroom aware of their lack of ability to confer with their attorneys on several occasions, in particular when new witnesses were enlisted into the proceedings. During the proceedings conducted in January, it was made clear that the defence lawyers had not been given the right to meet with their client, despite numerous requests, and that the defence were not given access to the complete case file¹¹⁰.

On the 19th of July, a meeting took place between observers Mrs. Isabel Lourenço, Mr. Mads Andenæs, Mrs. Tone Sørffonn Moe and the released detainees Mr. Daff and Mr. Laarabi. Mr. Daff and Mr. Laarabi informed us about their meetings with their lawyers.

Mr. Daff and Mr. Laarabi added that during their detention time, the contact with their defence lawyers was on a minimum basis, mainly due to a long travel distance. The lawyers are

¹¹⁰ See appendix 1, day 2, for a summary of the proceedings conducted on January 25th.

situated over 1000km away in Western Sahara, and the prisoners are being held in El Arjat Prison, in Salé, Morocco. This travel distance makes the visitation even more difficult.

Mr. Daff and Mr. Laarabi informed us that the meetings with their lawyers were always in the presence of prison guards inside the room, except on one occasion when Mr. Massoudi (defence lawyer since the military trial, Moroccan national and member of AMDH – the Moroccan Association of Human Rights) met with the accused in El Arjat Prison. On this occasion, the communication took place through a closed door with guards placed outside the room.

Mr. Daff and Mr. Laarabi, also stated that Mr. Lili (defence lawyer since the military trial and Sahrawi national) at one occasion told the Prison Director (Mr. Khali El Manaâ) that the presence of prison guards inside the room was illegal during the meetings, and constituted a breach of lawyer confidentiality. The prison Director did not respond in favour of Mr. Lili. The prison director stated that “it had to be like that”, and ordered the guard to stand outside the room with the door open.

Mr. Daff and Mr. Laarabi also informed us that their Sahrawi lawyers had to undergo a body search upon visitation. It is reasonable to believe that the lawyers of Sahrawi origin were treated differently than their colleagues of Moroccan origin.

The group have further been represented by three French lawyers, Mrs. Ingrid Metton, Mrs. Oulfa Ouled and Mr. Joseph Braham. Mrs. Metton and Mrs. Ouled met with the detainees on the 24th of March 2017, after obtaining a special authorization from the Tribunal of Rabat to meet with three of their clients, Mr. Asfari, Mr. Banga and Mr. Laroussi. Mrs. Metton and Mrs. Ouled have informed us that on March 24th they were able to conduct a meeting with these three clients for two hours, whilst the door was closed and the guards were placed outside. The lawyers did not have any problems protecting lawyer confidentiality on the 24th of March, due to the obtained special authorization.

Prior to March 24th, the French lawyers asked the President of the Court of Appeal in Salé for a meeting with their clients on several occasions. Such a meeting was granted on one occasion, on the 26th of December 2016. During this meeting, Mrs. Ingrid Metton and Mrs. Oulfa Ouled informed us that confidentiality was not guaranteed. The lawyers were on the 26th of December able to meet with one of their clients, Mr. Asfari, in a small room behind the courtroom, surrounded by guards.

During the proceedings conducted on the 16th of May, the accused wished to withdraw themselves from the proceedings. Prior to the withdrawal, the defence attorneys and the detainees were given the courtroom to consult with their clients. Mr. Zeyou and Mr. Ettaki were escorted out of the courtroom and were prohibited from consulting with their attorneys alongside with the rest of the group. This exclusion of two of the accused from the rest of the group is to be regarded as a breach to legitimate defence.

8.7.2. New defence attorneys appointed on the 16th of May.

On the 16th of May, the detainees and the defence attorneys withdrew from the proceedings. Consequently, new defence lawyers were appointed by the presiding judge¹¹¹. The presiding

¹¹¹ See appendix 1, day 18, for more information upon the withdrawal and appointment of new defense lawyers

judge appointed four attorneys, whereas two of the attorneys were already present, since they belonged to the civil party representing the victims. The newly appointed defence lawyers, which were appointed on the 16th of May (Mr. El Allame Noredin, Mr. Rachid El Moussaoui, Mr. Abdelhafid and Mr. Salhli Saad) acted as defence lawyers until the verdict landed on the 19th of July.

After the appointment of the new defence attorneys, the court commenced directly with the questioning of witnesses. The newly appointed defence attorneys walked over from one side of the room (the civil party side) to the other side (the defence side), and the questioning began. The questions placed forward by the newly appointed defence attorneys were in direct line with the questions put forward from the civil party.

After the questioning of the witness, the newly appointed attorneys urged the court to adjourn the session, and to give them time to review the case documents and prepare their defence. The presiding judge refused to adjourn the session based on this request, and stated that he would adjourn the session “on any other basis, for example if the civil party being tired”. The court thereafter adjourned the session upon a request from the civil party, which requested to adjourn due to tiredness.

It remained clear that the defence attorney was not given the case file until the 18th of May, and it is evident that the defence attorneys were not given sufficient time to review the case documents in order to give an adequate defence. During the final arguments delivered from the defence, it became clear that the defence attorneys did not have access to the complete case file, as they did not have sufficient access to the phone recordings nor the autopsy reports¹¹². It should be noted that the Civil party, which was not a formal party to the proceedings, had access to the complete case file, and it became clear during the final arguments that the civil party aided the defence team by sharing notes from their case file.

The accused refused from the 16th of May to the verdict landed on the 19th of July to be a part of the court case, and they have affirmatively declared that they do not wish to be represented by the newly appointed lawyers. Regarding contact with the appointed Moroccan lawyers on the 16th of May, Mr. Daff and Mr. Laarabi confirmed that there was no contact of any kind between the detainees and the new lawyers, nor did they receive any phone calls and reaffirmed that all the accused rejected these lawyers and did not recognize them as their defence. Mr. Daff and Mr. Laarabi stated that it is not possible to trust lawyers who prior to their appointment were sitting and working with the civil party (i.e. the newly appointed defence lawyers were prior members of the defence team defending the victims). The only time that the detainees saw the appointed defence lawyers was in the news on the Moroccan TV in the prison.

8.8. The right to be tried without unfair delay

Pursuant to article 14, subparagraph 3(c), of the ICCPR, everyone has the right to be tried without undue delay. Undue delay must be assessed on the merits of each specific case, considering the complexity and the special circumstances of each case. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place “without undue delay”.

¹¹² See appendix 1, day 27 and 28, for a summary of the final arguments delivered by the defense.

Firstly, the prisoners have remained in prison for over six years, without a final judgement. The prisoners have thus been deprived of their freedom for over six years, without a fair trial and without a final judgement. This time span is to be regarded as undue delay, where neither the complexity or the special circumstances entails that the process of investigation should take over six years. As it follows, this time span is at best a breach of the right to be tried without unfair delay, but can also be argued to be a direct breach to the right to freedom.

8.9. The right to a public hearing

A decision not to hold a public hearing needs to be taken before the hearing and may only be granted under specific circumstances. If it is still, when the hearing is ongoing, unclear whether the hearing is public or not, and if some people are not let into the courtroom, the hearing does not raise to the standards of international law.

All Sahrawis wanting to attend the trial had difficulties entering the courtroom. Many of the family members were prohibited from entering upon arrival. It was therefore only a small number of the family members who entered the courtroom. It is therefore from this fact alone clear that the hearing does not raise to the standards of international law.

On January 23rd, Mr. Abde Sbai (the brother of Mr. Ahmed Sbai) was allowed to enter. Mr. Sbai was, within the court facilities, approached and surrounded by a dozen police officers. He was told to follow them and exit the courtroom. Once outside he was told to leave, or be placed inside of a body bag. Mr. Sbai thus left the courtroom, and did not try to enter the following days.

Mrs. Laila Fakhouri acted as our translator during our stay in Morocco. Ms. Fakhouri had difficulties entering the courtroom on March 13th, and was told that she was on a “non-enter-list”. The police in control stated that the reason for the exclusion was the fact that Ms. Fakhouri is “Sahrawi”. I stayed at the control point with Ms. Fakhouri, whilst Mrs. Isabel Lourenço accompanied by Mrs. Paloma Lopez, MEP and vice-president of the Western Sahara Intergroup of the European Parliament, discussed this matter with the security officers inside the courthouse. After one and a half hour, Ms. Fakhouri entered. She has entered the courtroom each day following this incident.

Mr Sidi Mohamed Balla also acted as our other translator. Mr. Balla was part of our group of observers, and he tried to enter the courthouse with our group, and although Mrs. Lourenço and Mrs. Lopez argued with the security officer concerning both cases, Mr. Balla was not allowed to enter. The exclusion had no justification or explanation.

8.10. Circumstances surrounding the trial

The case of the “Group Gdeim Izik” is a case of great political importance. Noam Chomsky said that the Gdeim Izik camp started the Arab spring in 2010¹¹³, when thousands of Sahrawi demanded their right to self-determination in a peaceful protest in the middle of the desert. Thus, the case draws attention from the international community¹¹⁴, the Moroccan population and the Sahrawi themselves. During the days prior and during the proceedings, the media

¹¹³ For more intel on this subject, one may review the Wikipedia page upon “Gdeim Izik”. See link (09.08.2017): https://en.wikipedia.org/wiki/Gdeim_Izik_protest_camp

¹¹⁴ See appendix 5 and 6 for a listing over several of the public statements issued concerning the court case of Gdeim Izik. The list is not complete.

overflowed with propaganda portraying the Gdeim Izik camp as a violent military camp, and the accused as murderers.

The international observers were constantly being followed by Moroccan civilian agents, and are constantly filmed and taken pictures of.

During the proceedings held in January 2017, a Norwegian delegation consisting of 43 politicians, students, activists, and of other occupations, attended the hearings. Mr. Hans Inge Alander and Mr. Diego A. Vaula Foss were members of this Norwegian delegation. Mr. Alander and Mr. Foss travelled on Wednesday January 26th to El Aaiún, the capital of occupied Western Sahara. They were stopped at the El Aaiún airport, and transported back to the airport in Casablanca. They were detained at the airport for three days, where they were kept isolated without food and water on the first day, awaiting expulsion from Morocco,

On March 25th, Isabel Lourenço, when working alongside with Equipe Media (a news-agency from Western Sahara), found herself in a house surrounded by the police. The police threatened to invade the house in which Mrs. Lourenço and the journalists were staying. The police did not follow up on their threats, they did however surround the house until late afternoon.

On the 16th of May, the detainees and their defence attorneys requested to withdraw themselves from the court case. The French attorneys, Mrs. Ingrid Metton and Mrs. Oulfa Ouled, were expelled from the courtroom. The French attorneys were prohibited from giving a final statement to the court and from withdrawing from the court case. The French attorneys were therefore *de facto* expelled from the courtroom in the capacity of being defence lawyers, and were forcefully escorted out by the security personnel. Mrs. Ingrid Metton and Mrs. Oulfa Ouled have placed forward complaints to the French Police Intelligence, the Public prosecutor of France and the Paris bar association.

The Court facilities are guarded by a large number of military forces, closed down with fences. Upon entrance one must go through three “checkpoints”, a full body search, and give away all technological equipment (i.e. phones, computers, cameras) and water upon arrival.

Demonstrations are held just outside of the courthouse. The Sahrawi were given a place (fenced in) in the middle of the parking lot, whereas the Moroccans were surrounding them on every side (also fenced in). The Moroccans had four speakers, used to play both music (the national anthem and the speech given by King Hassan II during the invasion of Western Sahara) and to hold appeals. The Sahrawi were placed in the centre, without the same means. The nature of the demonstrations could reach an aggressive level.

On January 24th, the Moroccan protesters threw several objects against the Sahrawi. I was told that the Moroccan protesters threw dead rats, water bottles, bottles with acid mixed in the water, and oranges. Several Sahrawi were injured. Kamal Larroussi (8 years old), the son of Abdejalil Laaroussi (one of the accused), was hit with a water bottle. Mr. Mohamed Ali Haddi, brother of the defendant Mohamed Lamin Haddi, and Mrs. Selma Laaroussi, wife of the defendant Abdejalil Laroussi, presented written complaints on January 25th to the Public Prosecutor of the Crown about the harassment and attacks they were subjected to in front of the courthouse.

On March 13th, a journalist was arrested during the demonstrations outside the courtroom. His name is Mohammed Daddi, 24 years old, and is a journalist for RASD TV. I was informed that he was tortured in Rabat, and that he had been transported by plane to El

Aaiún, where he, until March 14th at 7 p.m. remained in custody. Mr. Daddi was presented in front of an investigative judge on March 17th, clearly breaching the 48-hour time-frame.

On March 23rd, a grand demonstration took place in El Aaiún in support of the Gdeim Izik prisoners, and to protest the political, economic, and social marginalisation that the Sahrawi live under. The protest consisted of students and young unemployed. People present at the demonstration report the use of brutal violence from the police forces, and many young Sahrawi were attacked by the police forces in the streets and several houses were raided.

9. Conclusion and final remarks

In relation to the conducted proceedings against the group of Gdeim Izik, I regard the breach 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 State concerned, of such gravity that the deprivation of liberty of the 19 detainees is of an arbitrary character. The 19 detainees were subjected to abductions or arrest not respecting their most basic human rights, involving torture or cruel, inhuman or degrading treatment or punishment. This was the case both during their arrest and during their detention. The group has for nearly 7 years been held imprisoned without a final verdict, and was on the 19th of July 2017 condemned in the absence of criminal material evidence.

First, I find that the usage of the reports conducted by the police and the gendarmerie as the main evidence against the accused as being the gravest breach to international norms, and I regard the usage of these reports as a breach to art. 15 of the Torture Convention. I find it clear that the Group of Gdeim Izik have been subjected to torture, and that Morocco is in violation of multiple articles listed in the Convention against Torture. Including torture during arrest and interrogation (art.1); failure to investigate (art.12); violation of the right to complain (art.13); obligation to compensate and reparation (art.14); usage of confessions obtained through torture (art. 15); and inhuman treatment in detention (art. 16).

The Moroccan Judges have affirmatively declared on several occasions that the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment of 1984, and the CAT decision (CAT/C/59/D/606/2014) regarding the case of Eênama Asfari, have no legal binding at their court. However, the convention as interpreted by CAT is legally binding for Morocco under international law, and according to the convention Morocco has a legal obligation to implement the convention in domestic law. I urge that the prohibition against torture is absolute, and that it is a safeguard that should protect every human being.

In relation to the evidence against the Group Gdeim Izik, the file in the court case contains both illegal evidence and evidence which are inadmissible. I urge the need to examine where the witnesses that could identify the detainees originate from, and the veracity of the witnesses' declarations.

Second, I find that the proceedings constitute both a breach to the right of equality of arms and right to defence, and thus a violation of article 14 of the ICCPR. The court case includes serious breaches to both international law and procedural norms, and it remains clear from the court's prior rulings and the court's handling of the evidence file, in particular the questioning of the witnesses, that there is a great risk that the court did not independently investigate the evidence placed forward, and as such did not base its ruling on evidence and legal provisions.

I regard it as evident that this court case entails a political prosecution, and it is clear that the international community must intervene to ensure justice for this group of political activists from the occupied territories of Western Sahara.

21 September 2017



Tone Sørfohn Moe (Norway)

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1. Summary from the proceedings.

Please note that the content of the appendix does not entail the minutes from the proceedings, but constitutes a summary from the proceedings held against the Group Gdeim Izik at the Appeal Court in Salé, from December 26th 2016 to the 19th of July 2017. The summary is conducted and hereby signed by Tone Sørfohn Moe and Isabel Lourenco.

The proceedings held in the court case of Gdeim Izik entailed a total of 31 days.

Day 1 – On the 26th of December 2016, at the Court of Appeal, Salé.

The trial against the Group of Gdeim Izik commenced at 10am on the 26th of December at the Tribunal de Premiere Instance de Sale.

There were 24 on trial, while only 23 were present at court. Mohamed El Ayubi was not present at the trial proceedings, as he was sentenced to 20 years under provisional release due to his debilitated health condition.

The 21 prisoners present in court were situated in some sort of “glass-cage”, on the right hand side of the courtroom. The “glass-cage” was guarded by a dozen policemen. The placement of the prisoners in the “glass-cage” meant that they were not able to hear the proceedings and that they were not able to collaborate with their defence attorneys; and therefore, isolated from following their own appeal.

The trial was officially made open to the public. The families of the victims were given access to the courtroom, and were placed as observers in court, while the defendants’ families were not given access to the courtroom, and were denied access upon arrival. Similarly, Moroccan media was granted access to the courtroom with cameras and recording devices, whereas international media were declined to enter with cameras, mobile phones and such.

The first day of proceedings raised two main questions; (1) partial status and (2) provisional release pending trial.

Regarding the question of postponement, the defence did not want the trial to be postponed, and requested that the trial was to commence, still with one of the accused missing. The prosecution invoked that the trial was to be postponed until the last accused appeared before the court.

The president of the court invoked that a party missing participation from the trial’s beginning could not be a part in the appeal. Furthermore, the judge claimed that the international lawyers did not have the sufficient knowledge of the Moroccan legal system.

The court invoked that international law does not take precedence over Moroccan law, and furthermore that the Moroccan legal system was in correlation with its international obligations. In that regard, the court did not have to emphasize the international treaties.

The next question concerned provisional release pending trial. Proceedings commenced with

the French lawyers arguing for provisional release.

Mr. Joseph Breham argued solely for the release of Mr. Eênama Asfari. Mr. Breham tried repeatedly to highlight the 12 December 2016 decision of the Committee against Torture, which concluded that the confessions used as evidence at the Military court was obtained through torture. This was denied by the president.

Mr. Breham invoked that Morocco, as a party of the Convention against Torture, is obliged to exclude evidence obtained through torture. Similarly, the defence argued, as the Committee against Torture had stated on the case of Mr. Asfari, that a proven torture requires compensation, and the defendant should therefore be released.

The Court ruled that the torture convention's decision was irrelevant while discussing provisional release pending trial. Thus, the Court denied Mr. Breham to bring the convention and its decision up in the proceedings.

During the proceedings, made by Mr. Breham, the Moroccan prosecution interrupted repeatedly, and at several occasions even raised to their feet and waved. The judge did not interfere. The prosecution also claimed that foreign lawyers are not allowed to address the court in any other language than Arabic. Therefore, the French lawyers was bound to address the Court through a translator.

Mrs. Ingrid Metton argued for the release of every prisoner, and made the Court aware of circumstances within the courtroom. For instance, the prisoners' inability to adequately follow the trial, due to the fact that the prisoners were unable to hear the proceedings inside of the "glass-cage". Or their missing consent when it comes to pictures being taken of them, their lawyers and the international observers in Court. As well as the publication of these unapproved pictures by Moroccan media.

Mr. Mohamed Masaoudi further argued that the prisoners on trial were innocent. As such, one cannot speak of a fair trial when 21 innocent men have been imprisoned for 6 years. It was here argued that the accused are imprisoned based on a decision that is null and void. The prisoners are not proven guilty, and their right to be regarded as innocent until proven guilty is severely violated. The defence thus argued that a continued imprisonment violates the right to freedom.

The defence also claimed that the accused are political prisoners that were in negotiations with the Moroccan government during their time at the protest camp in Gdeim Izik. It was argued that all the accused are peaceful political activists that promote human rights and the right to life, and therefore condemn the loss of life.

The defence invoked guarantees where they proved that all of the 21 prisoners have homes, where some of the accused have, or had, secure jobs. It was argued that the defendants were willing to appear in front of the court every day in order to prove their innocence; both to the Moroccan government and the people.

The court ruled that the trial was to be postponed until the 23rd of January. The verdict was based on the missing defendant (Mohamed El Ayubi, released on provisional release) and the

complex questions invoked (partial status).

Furthermore, the court ruled that none of the accused were to be granted provisional release depending trial.

Day 2 – On the 23th of January 2017, at the Court of Appeal, Salé.

The appeal for the “Gdeim Izik 25” resumed at the Tribunal de Premiere Instance de Salé in Rabat, Morocco on the 23rd of January 2017.

At 10:45 am the presiding judge, followed by five other judges, entered the courtroom and stated: “In the name of the king we open this court”.

The defendants were brought into to the courtroom in two groups. The first group entered the courtroom shouting “labadil labadil antakrir al massir” – the only solution is self-determination.

The judge called for respect for the court, and reminded everyone present that the court respects the rule of law. The second group did not arrive, and the president called for them. The second group shouted: “torture, torture, torture!” from the basement. It was made clear that the prisoners had been woken up at 4:00 am in the morning, and kept in an ice-cold basement until the court was opened.

The families of the accused were allowed to enter the courtroom (i.e. every Saharawi were prohibited from entering at the proceedings in December 2016). Protests emerged within the court facilities when the families arrived. The Saharawi’s called for the right to self-determination, whereas the Moroccans demanded conviction of the criminals and justice for the victims.

The defence demanded chairs for all of the accused, so they could be placed within the courtroom, and follow the proceedings. The defendants were ordered back into the glass-cage.

The presiding judge informed the court that the glass-cage had newly installed speakers inside of the “cage”, but the defendants were still prohibited from collaborating with their defence attorneys. Shortly after the prisoners were placed inside the glass-cage the defendants themselves made it clear that they could not adequately follow the proceedings, as the active parts did not sufficiently use the microphones. Despite of this, the prisoners remained inside the “glass-cage” for the whole three days. Regardless of the numerous complaints made by both the accused themselves and by the defence.

The defendants were furthermore deprived of their papers and pens, which they had brought from the prison to take notes from the proceedings. The defendants claimed that they needed their pens and papers to adequately follow the proceedings and to adequately answer the accusations put forward.

Mohamed El Ayubi was not present at the proceedings. The courtroom was informed that Ayubi

was, due to his health condition, in hospital. The prosecution reported that Mohamed El Ayubi had been informed of the proceedings through a distant relative. The prosecution insisted that this was adequate, meaning that Ayubi had been sufficiently informed about the proceedings. The defence however, argued that this was not sufficient, and that Ayubi had the right to be informed of the trial in person. If the authorities were unable to get a hold of Ayubi, they had to forward the information to a close relative. However, it was pointed out by the defence that the public office clearly knew where he was.

The question that was raised was whether the group case was to be postponed due to the fact that one of the accused was missing. After a recess, the court ruled that the proceedings should commence without Ayubi, and that the case of Ayubi was to be separated from the rest of the group and held on March 13th of 2017.

After a break, the defendants refused to come back into the courtroom due to the fact that they were not given their pencils back. The court ruled that the 22 prisoners in the “glass-cage” were to be given, in total, three pens and three pieces of paper. Furthermore, the prisoners could only keep paper that were in compliance with the case put forward and that were relevant for the proceedings. The presiding judge would therefore go through all the documents. The judge pointed out that this was a “matter of security” since the prisoners could easily “kill someone” with a pen.

Since the presiding judge had ruled that the trial would commence, the defence argued that they needed more time to prepare their defence. They had not been given the chance to meet with their clients, despite numerous requests. Also, the defence had not been given access to all of the case documents. The defence therefore asked for 24 hours to prepare their defence alongside with their clients.

The defence was given “24 hours” until 10 am the next day. However, the time was then 5:40 pm, so in reality the defence was only given 16 hours and 20 minutes, including the night.

Day 3 – On the 24th of January 2017, at the Court of Appeal, Salé.

The court commenced at 10:45 am.

The defence started the proceedings. The defence claimed that they had not been given sufficient time to prepare their defence, where they had asked for and had been given 24 hours. The defence therefore argued that the proceedings should be postponed until 5:00 pm.

The president claimed that the defence should be satisfied with his ruling, as he had ruled in their favour, and had given them extra time.

Eênama Asfari then requested that he was to be given his pen and paper back, which were taken away from him the prior day. He shouted “the pen is my weapon”. The president repeated his ruling, and declared that Eênama should be given his pen, and three pieces of paper. Eênama refused to receive the pen and paper, since his request concerned all the prisoners, and not just himself. He declared that all the prisoners are entitled to pen and papers so they could follow

the proceedings adequately. Thus, none of the prisoners were given pens or papers.

The next question that was raised was whether the civil party was to be given a partial status in the proceedings. It was highlighted due to the fact that the civil party was given the case papers, without being a formal part of the proceedings.

The attorneys advocating on behalf of the victims argued for their case for approximately three hours, without interruption. They claimed that article 14 of the ICCPR also entails a fair trial for the victims, meaning that the victims are entitled to defend their rights in a criminal case. The victims were thus entitled to face the culprits. The civil party further argued that because the Kingdom of Morocco was superior and had the necessary jurisdiction, Morocco was entitled to judge their equals.

The defence argued that the victims were defended via the public office. Thus, the prosecution as a public office should protect the common interest, whereas the civil and the criminal case should be separated. The defence argued that the victims' right for compensation is first and foremost relevant after the accused are proved guilty.

The defence were interrupted numerous times, i.e. they were not able to speak as freely as both the prosecution and the civil party. It should be noted that the defence attorneys advocating on behalf of the accused consisted of several Saharawi lawyers and three French lawyers. The judge talked in a condescending manner to the Saharawi lawyers, and made jokes in the middle of the proceedings. The defence was throughout the trial prohibited from talking about the protest camp Gdeim Izik or the political background.

The court ended at 20:40.

Day 4 – On the 25th of January 2017, at the Court of Appeal, Salé.

The proceedings commenced at 10:30 am.

Defence Lawyer Lili started the proceedings by pointing out some main issues that should be dealt with by the judge: The fact that the accused still didn't have any writing material; the threats made against Abde Sbaai, the brother of the accused Ahmed Sbaai, inside the court building; the fact that Mrs. Claude Mangin, French citizen and wife of Mr. Naama Asfari was expelled from the country and had no authorization to attend her husband's trial and finally the fact that some members of ASVDH (a Saharawi organization legalized by the Moroccan government) were not allowed to enter the court building to attend the proceedings.

The defence of the accused continued the proceedings upon procedural matters. This raised question about (1) the jurisdiction of the court, (2) documentation regarding the arrest and custody, (3) medical examination to prove the use of torture, and (4) witnesses.

One question raised in particular both discussions and protest within the courtroom. The French attorneys tried to bring forward the fourth Geneva Convention, but was prohibited when grand protests arose within the courtroom.

The civil party literally screamed out that the great Kingdom of Morocco has the supremacy over Western Sahara, and that the ID cards of the Saharawi prove that they are Moroccans (all Saharawi's are forced to have a Moroccan name and a Moroccan ID card, and were at the start of the occupation deprived of their national identity). The civil party claimed that the French attorneys had no respect for the Kingdom of Morocco or this courtroom.

The presiding judge claimed that the international conventions were not legal instruments in his courtroom, and furthermore claimed that they could not be forwarded as legal sources in his courtroom. The presiding judge remained ignorant to the fact that the French attorneys were prohibited from presenting their case.

The defence argued that all the documentation (i.e. documents relating to the arrest and length of custody) could not be used as evidence in the courtroom, as they were extracted through the use of torture.

The prosecution argued that torture had never taken place, and that claims about torture had never been forwarded from the prisoners. The prosecution further argued that the court had to trust public officials.

Regarding the CAT decision on the case of Eênama Asfari the prosecution argued that Eênama had never been tortured. Asfari had, after the CAT decision, been approached by two police officers who wanted Asfari to come with them to Casablanca. Eênama refused due to the fact that he wanted his defence attorneys to be present at the examination. The prosecutor claimed that the fact that Eênama would not go with two police officers for examination, proved that he was only making false accusations.

The civil party advocating on behalf of the victims supported the defence in their request for both witnesses and medical examinations, but claimed that all the documentations had to be put forward as evidence.

The court ruled that the Tribunal de Première Instance in Salé was competent and had necessary jurisdiction.

Also, the prisoners were to be given medical examinations, both physical and mental examination.

The court ruled that the defence could present all the witnesses, excluding the Moroccan authorities and ex-ministers that had been in negotiations with the Gdeim Izik dialogue committee, and inhabitants from the camp. The defence was prohibited from laying forward a video tape from the dismantlement. Thus, the police and gendarmerie officers who drafted the "minutes" (documents relating to the arrest and custody), were convened. The documentation could furthermore be placed forward as evidence.

Furthermore, it was ruled to postpone the discussion upon partial status for the civil party, i.e. the attorneys advocating on behalf of the victims. The court refused to grant provisional release.

The Court ended at 11:20 pm.

Day 5 – On the 13th of March 2017, at the Court of Appeal, Salé.

The proceedings against the group commenced on the 13th of March at 10:20 am.

The defence started the proceedings although they claimed that the proceedings could not commence until the reports from the medical examinations were presented as they were crucial for the further assessment of evidence. The defence argued that the evidence against the group consists of confessions retrieved through torture and is therefore illegal evidence, as set forward in Article 15 of the Convention Against Torture. The presiding judge ruled to continue the procedures without the reports.

Witnesses who had been permitted into the case file were present in the courtroom, but were not questioned. There were several eyewitnesses, as well as policemen who had summarized the confessions and documents around the group's arrest.

The procedures continued with lodging the evidence in the case. The evidence case was transferred from the Military Court of Rabat to the Court of Appeal in Rabat for a new evaluation after a referral by the Court de Cassation. The following pieces of evidence were also presented: 19 telephones, 3 axes, and 4 knives/machetes and one CD. A discussion took place as to whether the CD should be submitted as evidence. The defence claimed that the CD was not part of the list of evidences submitted to the defence, and that the CD was not part of the confiscated evidence, and was made after the dismantlement of the camp and the accused crimes.

The court decided that the contents of the CD should be portrayed to the court, but did not admit the CD as part of the evidence in the case postponing this decision to a later time. The content was a video of the Gdeim Izik camp, where one could see people throwing stones and carrying knives. The video was cut, and edited with French text. The video portrays the camp as a violent resistant camp, and not as a peaceful protest camp consisting of families. The video was not admitted into the evidence file.

Mohammed Ayoubi, who at the previous rounds had been hospitalized, was present in the courtroom. Ayoubi's case was admitted to the group case. Defence attorney Mr. Mohamed Fadel Leili stood beside Mohammed Ayoubi and acted as translator since Ayoubi only speak Hassania.

Ayoubi has both kidney failure and heart problems. Ayoubi was the first defendant to be questioned. He had difficulty walking and has difficulty with speaking, and with lifting his arms after the torture he was subjected to. Ayoubi explained that. "I came to find my bread but the Moroccans only gave me beatings", where he stated that he has not killed anyone; that he is only a poor man and not a politician. He stated to be a victim of the authorities that had destroyed his trust, and hurt him and beaten him.

He testified to how he had been woken up at 6:30 am, November 8th 2010, when police overpowered him in his tent, and raped him. He was held in a vehicle and taken to an unknown location. He was later taken to hospital because he lost so much blood, after being brutally raped. Ayoubi testified to how he had been tortured at the military headquarter, kept handcuffed

and blindfolded, forced to drink urine and eat feces, while he was naked on the floor covered in his own feces. He testified to how he, blindfolded and with his hands cuffed, whilst military personnel stood on his chest and punched his kidneys, had signed confessions, where the guards took his hand and placed his fingerprint on papers which he neither saw, nor were read to him. Ayoubi urged that his signature was a zero, and not a fingerprint as was used to signed the reports.

In Ayoubi's declarations he confessed, (that according to his testimony were obtained under torture), to running over several policemen with his car. Ayoubi said that he could not have run over a policeman with his car, when all he had was a donkey and it's impossible to drive a donkey. When asked about his stay in the Gdeim Izik camp he stated to have lived in the camp for a month, and that he went because others went and he needed food. When asked who gave him this food he stated that it was Saharawi people, and that everybody shared what little they have, and that he is eternally grateful to the people who gave him food. When asked who provided the finance for the food Ayoubi answered that he doesn't know and does not care; "I ate the bread that people gave to me". He stated that Morocco "gave me nothing; only hurt me". He stated that he remained in the camp because the people in the camp helped him, the Moroccan government "only gave me suffering and pain", he stated. The prosecution urged Ayoubi to answer who gave him food, and Ayoubi answered "I am almost dead. Why did you let me out? I have nothing to live for. You should just put me back in, because I already live in the biggest prison in the world".

The defence claimed that the Civil Party was not allowed to ask questions, where they were not a formal part in the proceedings, and that they did not have the right to ask the accused any questions. The defence also argued, when the civil party asked questions related to the film, that the film was not part of the evidence file. The preceding judge refrained from ruling upon the matter.

The civil party could ask questions. Protests broke out in the courtroom from the group Gdeim Izik when one of the lawyers for the civil party asked how Ayoubi could be raped in the tent, when he had just testified that his tent was so small that his legs were outside, and why he had not resisted against being raped. These questions were asked while several of the Moroccan lawyers from the civil party laughed. The accused in the glass-cage shouted that the Moroccan lawyers was laughing about the sufferance of the Saharawi people.

The court commenced with interrogating **Mohamed Bani**. Bani started his testimony by stating that he had been tortured, where the scars are still visible. He stated that he is a Saharawi from Western Sahara, and he demanded to be tried before a court that Polisario Front and Morocco agreed upon. He stated that he does not recognize this Moroccan courthouse. He stated that he had visited the camp Gdeim Izik twice to visit his mother, his sister and his brother. Bani stated that his family had joined the camp because they were looking for jobs, and they had social and political demands.

Mohamed Bani testified to how he in the morning of November 8th, at 6:30 am, had been abducted when he was on his way to El Aaiún to drive his two sons to school. He explained that he had tried to leave the camp on November 7th, but had been stopped by the police, who directed him back to the camps. On the way home in the morning on November 8th; Bani said

that he stopped the car when his car window was smashed. He then saw out the window, and was hit by a stone in the head and fainted. He woke up later, handcuffed and surrounded by military personnel. He was taken to an unknown location, whilst constantly kicked and beaten. He was taken to the police station and tortured together with five others he did not know. He was later transported from El Aaiún to Salé by plane, where he was captured along with three others from the group Gdeim Izik. He urged that he was constantly being beaten and spanked by the military forces. He was forced to sign documents blindfolded, and his fingerprints were taken by force. He signed documents which he said that he had neither seen nor knew the content of. The prosecution asked questions about movements in the camp on the night of November 7th, where Bani stated that everything was peaceful and normal. The prosecution asked him if, according to the declarations, he could tell about the people terrorizing the inhabitants of the camp, and stopping them from leaving, on November 7th. Bani claimed that this declaration is falsified; that he had never said it, and that he never witnessed anything like that. He was asked if he knew some of the defendants before the event, and if he had received orders to attack the public officials from Bourial. Bani stated that he didn't know any of the fellow detainees before they met in prison.

At 8:40 pm, the procedures were adjourned to the following day.

Day 6 – On the 14th of March 2017, at the Court of Appeal, Salé.

The proceedings against the group commenced on the 14th of March at 10:40 am.

The court proceeded with the interrogation of the accused. The first to be questioned was **Machdoufi Ettaki**. Ettaki was by the military court sentenced to time served, and is therefore not imprisoned with the rest of the group. Ettaki started his testimony with stating that, “in the name of Allah, I greet the Polisario Front, and give my solidarity”. The judge asked Ettaki to take the politics out of the courtroom, where Ettaki answered that he considers himself as a Saharawi from Western Sahara; and that “we are tried in made up cases by the Moroccan occupation”. Ettaki stated that, “as every inhabitant in El Aaiún and every Saharawi, I had a tent in the Gdeim Izik camp”. He told how he came to the camp with his family, and that he was not influenced by anyone; as every Saharawi he had social and political demands. He explained how the basis for the camp was the people's sufferance, and their demands for basic human rights. He urged that the two are linked together; one cannot distinguish between the reason for the camp and why people went there. Ettaki stated that "it's the people of Western Sahara that has suffered for more than 40 years, and that we have never killed anyone; and that it is Morocco, who has occupied the territory for over 40 years, who must be punished for our sufferance". He explained how the people lived peacefully in the camp alongside one another like neighbours, and that they protested inhumane living conditions in the territory. He explained how, when the Moroccan military forces attacked the camp, which consisted of children, elderly, women, handicapped and men, the forces did not give the people time to evacuate before they attacked. It was early in the morning when a helicopter came, and by one notification told us to evacuate the camp, where Ettaki claimed that the camp was attacked within 5 minutes.

He explained how the guards had forced his finger down on a paper, whilst the confession was covered by another paper. The judge stated that it's hard to make a fingerprint, whilst having

your hands handcuffed behind your back; Ettaki said: "I was abducted, and tortured for five days, without my family knowing where I was". He stated that when he came to the military court; he did not know that he was talking to an investigative judge. He explained how he was in a very bad shape; that he could barely talk due to the torture inflicted upon him, and that a guard had forced his eyes open. He claimed that he was being tortured inside of the court facilities, and was covered with blood.

He explained how, when evacuating from Gdeim Izik camp on November 8th, when military forces attacked the camp, he helped a woman along the road. Whilst helping the woman, he was attacked by 10 military personnel, who arrested him. He testified to how he was beaten inside the car and that they transported him to the military headquarters in El Aaiún, where he was held in a cell for five days, blindfolded and handcuffed, and repeatedly punched and kicked. He explained that he had no access to toilet and urine and feces were thrown on them. The confessions were taken while he was blindfolded and his hands cuffed; and guards forced his fingerprints down to papers; which he did not know the content of.

Mohamed El Bachir Boutinguiza was the next to be questioned. When he was asked how he reacted to the accusations, he replied that "I was arrested and imprisoned for my political opinions about what Morocco does in Western Sahara". When the judge asked him to stick to the matter, El Bachir said that he does not trust the Moroccan justice system, and claimed that "I have been bitten by a snake earlier". El Bachir told that this is a war against the Saharawi, dated back to 1975. He stated that he is here because of the Saharawi case, that he was abducted, and that 15 of his friends are still missing. He told that at an age of 16, he was imprisoned in the prison of Meguna. El Bachir indicated that the Fourth Geneva Convention had to be implemented; and that the occupation forces have abducted him from his country, and that the Kingdom of Morocco have no right to judge him.

Boutinguiza explained how he, on November 19th, was kidnapped by masked men who were heavily armed. "They tortured me, clothed me naked and urinated on me, they raped me from behind" and they put his hands in handcuffs and blindfolded him. He told how he was transported from the police station, to the prison where the torture commenced. He was transported to the military court, where he told the judge that he needed to go to the hospital. When the judge asked him questions relating to the confessions, where he testified to run over military forces and urinated on the corpses; he said that the confessions are made up stories; they invent a story and take you into custody. "I am used to this – I am here because of my political beliefs", he said. He urged that he had nothing to do with the reports, and that the international community must intervene. He stated that a lot of people died this day; and those who committed the crimes are walking freely in the streets of El Aaiún; "I am innocent; I am captured because of my political opinions".

He claimed that he was not in the camp when it was destroyed; where he could not have committed the crime because he was in El Aaiún in a friend's wedding. When asked if anyone told him to go to the camp, Boutanguiza answered that "this is our culture; our culture is to live in tents in a calm atmosphere. The tent is the symbol." When asked if he knew about the dialogue committee he stated that everybody know this committee, and that he wished that he was a part of it.

Boutanguiza refused to answer questions from the civil party, and stated that “the civil part is not a formal part of the proceedings, and that they have already declared me guilty, depriving me of the principle of innocence”. He stated that he respects the attorneys, but not when they are trying to cover up crimes committed by the Moroccan forces in the occupied territories in Western Sahara towards Saharawi’s. When asked questions about the movie, Boutanguiza declared that he did not recognize anything in the movie, and that the movie is manipulated as a part of the fabricated story.

Mohammed Thalil was the third to be questioned. Thalil commenced his testimony by declaring his respect to the president of Polisario Front Brahim Ghali, and by asking for a minute of silence for the late President of the Polisario Front, Mohamed Abdelaziz. Thalil explained how he, for his political opinions, and as a member of the Polisario Front, had been abducted, tortured and imprisoned for 6 years. Thalil asked for a translator, because he speaks Hassaniya, as he does not speak Moroccan Arabic, as he is a Saharawi. He claimed that he did not recognize Morocco, which occupies his country, and that he only recognizes Polisario. He urged that “I’m not a murderer, I’m here because of my political opinions”. When asked where he lived, Thalil stated that he lives in Western Sahara, but when my country becomes independent I can live wherever I want, and urged the fact that he is a Saharawi and not Moroccan.

Thalil explained how he never went to the camp and was in El Aaiún during the events, but that he wishes for self-determination for the people in Western Sahara. He claimed to have been arrested in El Aaiún for being a member of the Polisario Front. Thalil repeatedly tried to explain the reason for his arrest, but was constantly stopped by the prosecutor who raised to his feet and knocked on the microphone. Thalil stated; “you claim that this is a fair trial, but this is all a theatre, I don’t care about theatre. I want to tell the truth about why I am here, in a courtroom inside of a country who has occupied my country. You can arrest all Saharawi’s; it will never change my beliefs. Morocco has occupied Western Sahara for over 40 years, and I will always refer to you as an occupier”.

The presiding judge asked him to take politics out of the room. Thalil answered that "you’re only president in this room; in this room I will respect you, but the only leader I know is Brahim Ghali in Polisario Front". Thalil explained how he was detained together with Bachir El Khadda and Hassan Eddah on December 5th in 2010. Dozens of policemen’s surrounded the café, and one asked in Hassaniya “where is Thalil”, and when he answered he got a bag over his head and was placed in handcuffs. They hit us in the car, and they pulled out my nails. He told, that when interrogated, they asked him if he was arrested in “Guerguerat”, where Thalil pointed towards the preceding judge and said; “you know where that is! Its where the Moroccans fled from the Polisario Front”. Thalil complained on the translator numerous times, and claimed that he did not trust the translator, as he is Moroccan.

He claimed that he was never asked about Gdeim Izik when he was questioned and was only questioned about Polisario Front and his trip to Algeria in August 2010, and that he has never read the content of the declarations, which he stated were signed under torture, where the guards had forced his fingers down on a piece of paper. He explained how he came from El Aaiún to Rabat by plane, with a bag over his head whilst handcuffed. He told how the personnel wore masks, and when placed in front of the investigative judge he had denied all the charges.

When the prosecution asked him if he had been arrested before, Thalil stated “this is the third time. They claim that I have done this or that, while my only crime is my fight for self-determination for Western Sahara.” Thalil stated that he has never hurt anyone, and that he has no problem with people, only with the Moroccan regime and the dictator. Thalil furthermore explained that he had travelled with a delegation in August 2010 to Algeria, which had nothing to do with the Gdeim Izik camp. Thalil repeated numerous times that he had never been to the camp, and had nothing to do with it.

When the Civil party commenced their questioning Thalil mimicked that he would not answer, and remained silent.

The court adjourned at 7:40 p.m.

Day 7 – On the 15th of March 2017, at the Court of Appeal, Salé.

The court commenced on March 15th at 10:15 am, with interrogating Mr. El Bakay.

Mohammed El Bakay started with sending his regard towards the defence, the civil party, the presiding judge and the international observers present at the trial. He thereafter plead not-guilty in every charge brought against him. He told about how he had built his tent in the Gdeim Izik camp, where he had social demands, where the natural resources are stolen from Western Sahara, which he has never benefited from. He urged that the camp was a symbol of peaceful demonstrations.

He claimed that there was no official organization inside the camp, whereas the camp had no hierarchy, and that he is sure that the Moroccan authorities already had the intel. He stated that “I am a Saharawi, I and I will not let my Sahrawian identity be questioned; where the people in the camp of Gdeim Izik had social demands.” The prosecution asked if El Bakay had received financial aid, or orders from someone, whilst staying at the camp; El Bakay answered that the nature of the Saharawis is to help others in need; and that he never received orders from anyone.

El Bakay explained how he was part of the dialogue committee which was in negotiations with the Moroccan government. He explained how they had reached an agreement upon social demands, but never on evacuation. The agreement was never set into place due to the fact that not all parties agreed to the content. El Bakay explained how the camp grew in size, and that the governmental officials had told them to count the people in the camp. When asked about the delegation that travelled to Algeria, El Bakay answered that the camp Gdeim Izik was not a plan from the outside, but was a force from inside where people had social demands. When asked about whether Eênaama Asfari wanted to politicise the camp, El Bakay told that the governmental officials had told that Asfari wanted to politicise the camp, whilst “they only had social demands”.

El Bakay explained how the military surrounded the camp ever since the first tent was set into place, where the military forces made a wall around the camp, and made one gate. He condemned the intervention from the military forces, where the people in the camp were given 10 minutes to evacuate. When the defence asked El Bakay what he meant with “chaos” during

the dismantlement; if this meant that the public attacked the forces or if the military attacked the people; the court refused to ask the question.

He told that he had been woken up by a helicopter telling people to evacuate the premises. He walked towards his car, and brought with him several women, and carried an old woman to his car which had fainted due to the teargas that the Moroccan authorities had thrown at the camp. He told that the majority of the inhabitants, mostly women and children, fainted from the teargas.

The prosecution asked El Bakay about the declarations where he stated that on the evening of November 7th, he had conferred with the leaders in the camp (i.e. as Eênaama Asfari, Abdeljalil Laaroussi, and Cheikh Banga), and decided to attack the military forces the following day, and were given orders by Asfari to attack until death. El Bakay claimed that he had not taken orders from anyone.

El Bakay told about, on the day of his arrest in Dakhla on September 9th in 2012, that he was interrogated and solely asked three questions; about his relationship with Eênaama Asfari, and questions about some images. El Bakay stated that he was treated nicely by the military forces, and during the interrogations. He claimed that he has never seen the declarations, and that the content remained unknown until this day. He signed them without reading them. The prosecution general told El Bakay to sign, and then he would be released; “So I signed” he stated. He stated that it was impossible for him to imagine at that time that the government would frame him, and sentence him based upon a “made up case”.

The defence protested after the interrogation since El Bakay had been placed on a chair with a name tag that stated “terrorist” on the back, whilst the interrogation was broadcasted on national television.

Mohammed Lamin Haddi was the next to be questioned. He commenced by stating that this Moroccan court house does “not have the legitimacy to judge us”. Haddi had prepared a declaration of his own, and wanted to read it up. He declared that he had been present in the Gdeim Izik camp, due to his political activism and his human rights activism. The day of the dismantlement of the camp Haddi was in his house in El Aaiún, together with a journalist and some other human rights activists. He explained how he witnessed the protests in El Aaiún, where civilians were killed by the Moroccan forces, women were raped, houses were destroyed and hundreds of Saharawi were arrested. People were shot in the street; and two of my friends died that day, he said.

Haddi explained how he was arrested while accompanying two doctors from the “Doctors without borders” in El Aaiún on November 20th, 2010. Haddi explained that he was transported by the police to the military headquarters where he was tortured; and stated “I still suffer under torture”. He explained that they interrogated him under torture, and never asked any questions about the camp Gdeim Izik, only about his trip to Algeria and about international observers coming to the occupied territories of Western Sahara. He claimed that he was forced to sign declarations without knowing what was written. He explained how, at the Military Court, he asked the judge to witness his scars, and document that he was covered in blood; whereas the judge answered that he was not a doctor. He claimed that the clerk that wrote the minutes was

the same person which had tortured him inside of the court facilities, recognizing him by his perfume.

He was by the prosecution asked about his trip to Algeria in August 2010, where a delegation of 72 people had travelled to an international forum to discuss human rights. He denied that the trip to Algeria and the following Gdeim Izik camp was linked in any way. He was asked questions about Eênaama Asfari based upon the declarations, which Haddi refused to answer due to the fact that the declarations are retrieved under torture, and falsified. He claimed that Asfari was arrested on November 7th, and it was therefore impossible that Asfari had committed the crimes he is accused of on November 8th.

Mohammed refused to answer questions both relating to the declarations retrieved under torture, and questions based on the film portrayed in the courtroom on March 13th, due to the fact that the film is not a part of the evidence in the case, and that the film was not legitimate.

When the Civil Party commenced with the questioning Mohammed Lamin Haddi refused to answer. He proclaimed that the civil party did not have the legitimacy to ask him questions. He used tape to form a cross over his mouth, as a symbol of a peaceful protest against the questions raised by the civil party. The civil party commenced with asking 57 questions, where Haddi evoked his right to remain silent. When the defence wanted to ask questions, the presiding judge refused to ask the questions, due to the fact that the question had already been asked. The civil party had thus covered every aspect that was possible to cover, prohibiting the defence from questioning the accused.

Sidi Abderahmane Zeyou, released with time served by the Military Court in 2013, was thereafter questioned by the court. Zeyou approached the witness stand after putting on the *Daraá*, the traditional Saharawi costume, whilst chanting that the only solution is self-determination. Zeyou started his declaration by expressing his condolences to the families of the victims, and everyone who was arrested. He stated his condolences to all the Saharawis who died during the dismantlement of the camp, and urged that there should not be discrimination between the victims. He demanded investigation into the killing of a 14 year-old boy, who was killed by the Moroccan forces surrounding the Gdeim Izik camp on the 24th of October.

He declared himself innocent on all charges, and asked for the possibility to explain himself. Zeyou was repeatedly interrupted by both the Civil Party, the prosecution and the presiding judge. Zeyou stated that the Gdeim Izik camps, and the events following, are linked to the political conflict in the occupied territories in Western Sahara. He urged that the idea of the provisional camp was not a product of the trip to Algeria, but was a result of the repression that the Saharawi's live under. He was again interrupted by the prosecution and the civil party. Zeyou demanded the right to both defend himself and explain himself towards and in front of the ones who want to incriminate him. He stated that "our political opinions deprive us of our social rights". The civil party interrupted again, declaring that Zeyou cannot talk about the Saharawis in general, but must address the charges brought against him.

The Civil Party stated; "he tries to protect murderers. He is a murderer and he urinated on the corpses". Protest raised at once in the courtroom, and the accused tried to leave the courtroom, due to this statement. The judge calmed the courtroom, and stated that we are not interested in

their opinion on guilt, and that the accused are innocent until proven otherwise. The civil party claimed that they, as advocating on behalf of the victims, had the right to say whatever they want. The defence urged the court to protect the defendants, and to remind the court that the accused are in the care of the court whilst being interrogated; and that the court must protect the defendants from being called a murderer. The defence furthermore highlighted that Zeyou was not charged with murder, nor molesting of corpses.

The prosecution answered that the case is still in an investigation period, and that both the charges and the sentence can be altered by the court. The defence urged that the right to an appeal is universal, and that no one can be harmed by their appeal, and the court could not alter the charges against the accused, and that the accused, who has been released, must remain in freedom.

The examination advanced, and Zeyou stated that the investigations after the dismantlement of the camp, was not set forward to reach the truth, but to revenge the political activism. He stated that those who killed the victims are responsible, and that the Moroccan authorities who portray the victims in their propaganda towards the defendants, are the ones responsible.

He urged that he was not at the camp site, and that he was not involved with the crime, and that he was, at the time of the event, at home in his house in El Aaiún. He stated that all the declarations were retrieved under torture, and that he had been forced to sign them with his fingerprint. He claimed that he was never interrogated about the Gdeim Izik, and that he has evidence that support the fact that the accusations brought against him are not based on a desire to find the truth, but vengeance. He explained how there had been casualties on both sides; both from the official authorities and from the civil population; and that they are all victims; but the people are told lies.

Zeyou told about how the Saharawi people fought a peaceful fight since 1991, and that the Saharawi's do not believe in violence. What happened in the Gdeim Izik is a catastrophe he claimed; they are trying to help the security forces by putting the blame on other parties.

He explained that the camp was surrounded, and on October 22th the camp was placed under a siege, like it was Gaza, and the authorities attacked the camp. "I tried to stop the intervention by contacting the prosecutor general in El Aaiún, because the camp consisted of women, children and old people, and the result would be disastrous. My activism is the reason for my arrest; I have never murdered anyone and I have never harmed anyone; that goes against everything I believe in."

When the civil party started to ask questions, Zeyou invoked his right to remain silent, and explained that he respected the attorneys but refused to answer their questions since the attorneys had already judged him as a criminal. The civil party asked 20 questions which Zeyou refused to answer. When the defence asked questions related to guaranties upon arrest the court refused to ask the question.

The court adjourned until Monday, March 20th, at 00:40 am.

Day 8 - on the 20th of March 2017, at the Court of Appeal, Salé.

The court commenced on the 20th March with the testimony of **El Houssin Ezzaoui**. Ezzaoui reaffirmed his innocence and his status as a political prisoner. He refused to answer any questions before he could show the marks of torture and to report his suffering. "I was tortured for days, raped, beaten, had my hands and feet nails torn, my arm was broken, and I had days without food or drink! They carried me on a blanket to the place where they forced me to sign with a fingerprint. ... I do not know the content of any statement or confession, no one read me anything or informed me of my rights!". Ezzaoui denounced the names of all the torturers he could identify.

He urged that "the wealth of Morocco comes from the looting of the natural resources of Western Sahara!". Ezzaoui explained how he on the morning of the 8th of November had passed out due to the teargas released by the public forces. He explained how he woke up the next day at the hospital, not able to remember anything from the dismantlement of the camp. He explained how he was captured in El Aaiun on November 9th, in the occupied city of Western Sahara, and tortured for days, before being presented in front on an investigative judge. He explained how had never read the content of the declarations, and how he under pressure and in extremely bad shape had been forced to sign the declarations. He stated: "They ask me questions about the negotiations before the dismantling of Gdeim Izik! Why aren't the authorities here to testify, the ones who were talking to us? Why aren't you bringing them to court?". He explained how the unexpected attack on the camp, and their imprisonment, and the occupation are all linked together, where he stated that on the day of the unexpected attack and dismantling of Gdeim Izik's camp, Morocco was negotiating with the Polisario Front at the United Nations in New York.

He told how he had to cross the Atlantic in a barge because the Saharawi population under occupation has been systematically impoverishment and has suffered for more than 40 years.

Sidi Abdallahi Abahah was the second accused to be questioned on day 8 of the hearings against the Group Gdeim Izik. Abdallahi began by saying that the only representative of the Saharawi people is the Polisario Front and that he wants the self-determination of the Western Sahara.

Abahah stated that this is all a theatre, and uttered his mistrust against the courtroom, where he states that; "they told us at the military court that it would be fair and in the end, they condemned us without evidence; this trial will be the same."

Abbah explained how he had refused to undergo the medical examinations, since his lawyer had requested an independent doctor under the Istanbul Protocol, which was not the case of the medical examinations that this court had ordered. The trial can't continue without the forensic expertise being finalized, Abdallahi said. When he was interrupted, he replied to the judge that they are all innocent and have been imprisoned for more than 6 years; now it was his turn to speak, and said that he spoke in his name and on behalf of all the political prisoners and the Saharawi people.

He called on the international community and all organizations to press for MINURSO to

include in its mandate the protection of the Saharawi population. The judge reaffirmed once again that the court was not the United Nations and did not want to know; whereas Abdallahi replied: “but I want to know, I live in occupied territory!”.

He denounced that after his detention, he was tortured for three days without interruption. During the torture, he was constantly asked if it was in fact the accused Bachir Boutanguiza that had urinated on a corpse. As he wouldn't confess to a lie, the tortured continued. He was beaten in prison, watered with cold water, threatened, and forced to run naked in the courtyard. He underwent 23 days of systematic torture.

When asked about the video, Abdallahi answered that everyone that goes to Youtube can see that the camp of Gdeim Izik was quiet, and that everyone was sleeping before the attack. Abdallahi urged that the question that must be asked, if you want the truth, is why the Moroccan authorities attacked the camp.

Abdallahi called this trial the second part of a play that began in the military court. He further stated that the appeal court of salé has no jurisdiction to judge him, that it would have to be in a court in El Aaiun, and if so happened, it would be like a referendum for the Saharawis in the occupied territories. I am not afraid of this court, this is just the other side of the same coin, he stated.

Mohammed Bourial was the third to testify in front of the court. Bourial commenced his testimony by explaining what the Gdeim Izik camp was. Gdeim Izik was a movement consisting of thousands of Saharawi's which built their tent in the desert, and had social demands. Bourial acted as the head of the dialogue committee, and explained how the dialogue committee and the government had reached an agreement two days in advance. The minister of infrastructure was expected to appear at the camp site with 9 tents to organize a counting of the population in the camp, so the government could be able to meet the social demands placed forward by the inhabitant. The government didn't keep their promise, and the inhabitant in the camp was surprised by their attack; which took place 6 o'clock in the early hours on the 8th of November. He stated:

“The Gdeim Izik camp revealed the politics of the Morocco occupier, and how they marginalize the people of Western Sahara, and steal our resources. The Gdeim Izik camp is a product of the marginalisation of all Saharawis and of Morocco's occupation of Western Sahara. The camp lasted 28 days. There was no crime. No violence. Morocco attacked on the 8th of November women, children, elderly and men.”

Bourial denied all the charges, and stated that “the one who should be tried, is the one who ordered the attack on the Gdeim Izik camp, not us”.

Bourial told about how he, on November 7th, was approached by the chief of police in El Aiun who told him that “I got Eênama Asfari tonight, tomorrow I will get you”. When asked whether he received orders from Eênama Asfari to attack the public forces, Bourial answered that Asfari was already captured at that time, so giving orders was hardly possible. He told about how he, during the dismantlement of the camp, was at home in his house, about 4 kilometres away from the campsite. He told about how he, on the 8th of November, was arrested by the police and

transported to the police station, where he was held for five days whilst being tortured. He told about how he, in front of the investigative judge, was tortured. The judge just sent us away, claimed that he couldn't do anything for us, Burial said.

Burial invoked his right to remain silent when the Civil party placed forward questions, as of which the civil party has deprived him of the presumption of innocence. The defence was constantly interrupted during questioning by both the civil party and the prosecution, whereas the prosecution raised to his feet and knocked on the microphones. Bourial stated that all the documents are falsified, and that he did not know the content of them until he was tried in the Military Court of Rabat in 2013. He urged that all the confessions are signed under pressure.

Brahim Ismaili was the last to testify on the 8th day of the hearings against the group Gdeim Izik. Ismaili commenced with stating that this courthouse could not uphold the basic principles of a fair trial, as the courthouse did not have the necessary competence. We must be tried in a courthouse in the occupied city of El Aiun, Brahim urged. Brahim commenced with declaring that he, as a human rights activist, condemns all criminal and violent acts, and by sending his condolences to the family of the victims. I am innocent, he stated, and it's the Morocco occupier who is responsible. Ismaili continued by sending his condolences to all the Saharawi's families who lost a loved one during the attack on the Gdeim Izik camp, which died by the hands of the military forces.

Isamili urged that the real reason he was here, is because Western Sahara is occupied, and that he was innocent of all charges. He explained how he was abducted on November 9th from his home in the occupied city of El Aiun. He told that his house was broken into by masked men; and that he was attacked in front of his wife and his kids. He was taken into a car, and tortured for four days. He told that we had never read the minutes or the declarations, that he was never read his rights, and that his family was never informed, and that he didn't have a lawyer present. He told how he, when presented in front of the investigative judge, was tortured. I told him that I was being tortured, but he sent me back to prison. "The torture commenced, and lasted for 6 months", he stated. He explained how they dressed him naked, and tortured him. He told how they were, in total of 90 prisoners, was placed inside one room, and afterwards placed in isolate. He couldn't speak to his family; and was deprived of his rights; and psychologically tortured. He told that his mother died whilst he was in prison, from the shock, and how he was not allowed to go to the funeral. He urged that "I am here because of my political activism. I belong to Western Sahara. I haven't done anything, I protected the right to self-determination".

During all the interrogations, he was asked about his activism for self-determination and his trip to Algeria, and he urged that he was never asked any questions about the Gdeim Izik. He explained how he went to Algeria, in August 2010, with a delegation to attend an international conference about the right to self-determination, where Western Sahara served as model. He told how they were around 500 people, and that they met with delegations from the EU, USA and the UK. He denounced that his only crime was his opinions about Western Sahara, and that he has never killed anyone. He urged that he wasn't in the camp during the attack, and that he had only visited the camp in his capacity as a human rights activist. When he was asked about the alleged security committee inside the camp, Brahimi stated that "I have never seen any committees. The Gdeim Izik camp was surrounded by the military. It had only one entrance. We had to go through seven checkpoint to reach the camps, and show our identity. I have no

information”.

Day 9 – On the 21st of March 2017, at the Court of Appeal, Salé.

The hearings against the Group Gdeim Izik commenced with the declarations from **Abdallahi Toubali**. Toubali declared himself innocent of all charges and denounced that he, as vouching for a peaceful solution to the conflict, is a peaceful man. He sent his condolences to everyone that died in Gdeim Izik, and urged that he had nothing to do with their death, due to the simple reason that he wasn't at the scene of the events. He also sent his support to all the Saharawi families that lost their loved ones during the attack on the Gdeim Izik camp, where he claimed that the Saharawi live under repression and discrimination; they see the Moroccan victims on the television where their only hope is that the UN will expand the competence of Minurso to protect human rights in the occupied territories of Western Sahara.

Toubali told about how he was a member in the dialogue committee. He explained that the camp was born due to the marginalisation and the repression of the Saharawi people, where the people had social demands related to work and studies. He explained that the committee was elected by the people to serve as spokespersons on behalf of the citizens in the camp. He explained how the committee had productive meetings and that an agreement was shortly set into place. People came from every part of Western Sahara to join the camp. He stated that “We waited for the implementation of the agreement, but it never came”. Toubali asked: “Why did you break the agreement? We were waiting for a solution.”

On the 4th of November, the minister of interior came on behalf of the king. Toubali explained that “the minister agreed to our terms, and was supposed to come and implement the agreement by giving every citizen in the camp a social card, the following Monday, the 8th of November”. He explained how the agreement was oral, where the demands were to be met the following Monday, where the people in the camp were to be given a social benefit card in person, and thereafter leave and go home.

The minister contacted us in the committee and tried to “buy us” with money, and he started to threaten us, Toubali told, and explained that on the 4th of November, the minister told Toubali in the street of Smara “to take the money and leave” – I told him that “this is a commitment to the thousands of people in the camp. I will not let them down. Their demands are legitimate. They only want better living conditions. This is not a political demand. The political discussion is between Morocco and the Sahrawi Arab Democratic Republic”.

He told that on the 7th of November, the day before the events, the road was blocked. He told how he was in a traffic accident with two cars; that he was hit by one police car, and that he suspected the other to be an undercover police car. He told that “I was carried to the hospital where they refused to receive me, and they didn't help me until a woman from the parliament came and demanded my admission. I went home, and my family took care of me where I was in a critical condition.”

Toubali told how he was attacked at the market by masked men, and taken to the police headquarters. He told that “they tortured me, and I couldn't walk for a long time. They tried to rape me with a stick, they urinated on me, and spitted on me. I was moved to the gendarmerie

where I was questioned, where he asked me why I refused to take be bribes and compromises. They asked me about my relationship to Eename Asfari, the Polisario Front, and the delegation to Algeria. They repeated the questions, and I told them that I didn't know."

He explained that Mr. Ezzaoui joined him on the following day, and he stated; "he was in a terrible shape. He couldn't stand on his feet. I took of my own clothes and changed his clothes". He told that; when arriving to Sale 2 prison, they were again tortured, under the surveillance of the prison director. He told that; "They took of me all my clothes. They hit and they kicked, and threw cold water on us. It was a small room. For two months; we were constantly harassed and tortured, day and night. When we complained, they tortured us together."

Toubali urged at the end of his testimony that the presiding judge must call upon the parliament member that went with him to the hospital, as she could serve as his witness, and prove his innocence. When asked about how the camp was organized and how it was financed Toubali declared that: "You have to understand the Saharawi culture to understand the camp. We believe in equality and in helping each other. I cannot eat something if my friends don't eat. When I buy bread, I buy 4 bread for my family, and 4 bread for the neighbours. This is our culture".

Toubali stated that he had signed all his declarations without knowing the content of them, whilst blindfolded. The presiding judge asked Toubali to sign a document, in front of the court, to prove that he in fact could write his whole name and sign without looking at the document (i.e. looking up or to the side). The defence objected, claiming that being blindfolded and looking away are two different things. Toubali thereafter signed two documents in front of the court whilst not looking. The civil party thereafter shouted: "This is the same signature!", where the defence declared that they agreed.

The next who was questioned was **Sidahmed Lemjeyid**. Sidahmed commenced his testimony by declaring that, if this was to be a fair trial, the trial had to be held in the occupied city of El Aiun. Sidahmed thereafter identified himself by: "I was born in Western Sahara which is occupied by Morocco. I am president of an organization that works to reveal the human rights violation in the occupied territories. I am here due to my political background".

He denied all the charges, and commenced by declaring what had happened to him; both the abduction and the torture. He told how he was transported to the gendarmerie, where he was tortured both psychological and physical; "I was subject to every kind of torture. It's impossible to explain what I went through. The torture is methodical to break us. They are racists".

He told how he was only questioned about his political activism and his activism for human rights. He told that the torture was so brutal, that they broke a bone in his back. When he asked if he could see a doctor, the one who tortured replied; "you deserve to die for your reports that insults the great Kingdom of Morocco".

He told that he was deprived of all his rights. He told how he showed his scars to the investigative judge who turned him away, and sent him back to the prison for more torture. He told that they took of him all his clothes, and poured cold water on him and beat him. He stated that "They brought me to a cell, removed my handcuffs and my blindfold, and continued the

torture. I don't know where I was, or even the city. They denied me sleep and water.”

Lemjeyid explained how he showed the scars to the judge, and how he turned him away; “He saw my scars. He saw that I was being tortured. Torture must be witnessed and reported. I asked him for medical examination, but the judge did not uphold his responsibility as a judge; he did nothing.”

Lemjeyid told how he delivered a complaint to the investigative judge; the same person that he complained about. And that he complained to the prosecution office, and to the national council of human rights. I never received an answer; “Nobody helped me. The doctor himself stated that he couldn't help me, because he was “under pressure”. This is unacceptable.”

He explained why he refused to undergo the medical examinations ordered by the presiding judge, where he demanded an impartial and independent examination; “the doctor you have asked to do the medical examination is employed by the Kingdom of Morocco, and can never be impartial”. He thanked the judge for his patience, and said; “I have now told you about my sufferance. But not only mine, also of the sufferance of all the Saharawi, who have lived under repression since 1975.”

He urged that he had nothing to do with the camp, and that he had only visited the Gdeim Izik as a human rights activist, where he had interviewed people about their demands and their sufferance. He declared that all the statements were falsified, and the he had nothing to do with them; he was only accused because of his human rights activism.

The next who was questioned was **El Bachir Khadda**. El Bachir stated that he is a human rights activist, and that he was one of the founders of Equipe Media in the occupied territories, and how he wished to talk about his abduction and the reason for it. He told how he was abducted on December 4th, with Hassan Eddah and Mohamed Thalil, by masked men;

“They took us to a place unknown, and tortured us. We were blindfolded, and we did not know if It was day or night. We were beaten whilst interrogated about out political activism”

He told how they were transported by plane to the military judge where he was placed in front of the judge. He has asked for water, where the judge stated that he did not run a café. When asked why he didn't ask for medical examination, El Bachir answered that he feared for his life, he could hardly walk; and did not dear to ask for anything after being denied even water. He told how he was sent to Salé 2; “We had no clothes. They poured water on us, with bags over our head. Once I was tortured because I smiled at my mother when she came to visit. The torture was supervised by the prison director.”

When asked why he didn't undergo the medical examinations El Bachir declared that he demanded an impartial and independent examination in line with the Istanbul Protocol; where the once executing the examination could not be Moroccan or employed by a Moroccan institution.

El Bachir commenced his testimony by declaring that the Fourth Geneva Convention must be implemented, but was constantly stopped by both the prosecution and the civil party. He

explained how the Geneva convention is admitted both in peace time and during armed conflict, according to art. 66 in the Fourth Geneva Convention.

He urged that he is a Saharawi; fighting for their right for self-determination. He urged that these accusations were only put forward to revenge our activism and our fight for human rights. He stated that “the rule of law is absent in the country of the occupier”. When asked questions concerning the movie El Bachir answered that he condemns all the acts showed in the movie; “I am first a human being. I am against war and for peace”.

The court adjourned at 8pm and will commence on March 22nd at 10am.

Day 10 – On the 22th of March 2017 at the Court of Appeal, Salé.

The court commenced with questioning **Hassan Eddah**. Hassan Eddah declared that as a Saharawi, which culture is based upon ethical values and norms, and as a human rights activist, he condemned all the acts committed. They violate the right to life he declared. He sent his condolences, both to the Moroccan families, but also to the Saharawi families who lost their loved ones when they were killed by the Moroccan military forces during the attack on the camp.

Hassan declared that he was abducted, tortured and imprisoned due to his political activism and his political opinions concerning the right for self-determination to the Sahrawi people, and the right to benefit from the natural resources. Hassan declared that this court was not legitimate, but was abruptly interrupted. Hassan tried to commence his declaration, but was again stopped by both the prosecution and the preceding judge. The prosecutor raised to his feet’s, knocked the microphone and screamed at the accused. The judge declared that Hassan, by not sticking to the subject and after many warnings, had refused to answer the question. The defence tried to advocate that the accused has the right to defend himself in the manner that he considers best, but was constantly stopped. The civil party answered that the accused has based his arguments on international humanitarian law, which had nothing to do with a Moroccan courthouse.

When Hassan was giving back the word he declared that; “The civil party has now mentioned the international humanitarian law. The fourth Geneva Convention is meant to be applied. It is applicable in two instances, and one of them Is when a region is under military occupation. Western Sahara is occupied by Morocco military forces”.

The prosecution jumped to his feet and screamed, leaving the defence to ask for five minutes to talk to their client. After the break, Hassan commenced his testimony by explaining that Gdeim Izik was a peaceful protest camp, which started the Arab spring, and that the camp itself proved that the Saharawi’s does not want to live under Morocco occupation. Hassan declared that; “unfortunately, and as the media has showed, the Moroccan government decided to attack the population of the camp while they were sleeping. This attack revealed the true face of the Moroccan regime”.

Again, the prosecution raised to his feet and screamed towards the accused. When asked where Hassan was arrested, he stated that he wasn’t arrested, he was abducted by masked men in a café. He told how he, Thalil and El Bachir, was transported to an unknown place, and tortured

“in every possible way”, and that they were, five days later, given over to the gendarmeries. He stated: “We are used to this from the occupation. We have endured torture since 1975.”

He told how the interrogation, and during the torture, he was only asked questions relating to a trip to Algeria in September 2010 where he attended an international conference about the right to self-determination, his activism and his relationship to Polisario Front. He told how they forced him to sign, already written reports, and declared that they were falsified. He told that after meeting the investigating judge “in a terrible shape, may god forgive him”, he sent us back to prison.

In the prison we were dressed naked, and thrown cold water on, during the winter. We were beaten and kicked, and filmed and taken photos of; all under the supervision of the prison director.

Hassan urged that he was not present during the attack on the camp. The military forces surrounding the camp, which Hassan declared was a “siege”, had stopped a caravan from entering the camps with medicines. Hassan declared that he had been with the caravan to observe the violation of the human rights, and was stopped by the police on his way back. Hassan declared that the falsified minutes cannot be used against him, that the evidence was illegal, and he urged that the reports from the medical examinations must be revealed. Hassan refused to answer the questions raised by the civil party, since the civil party is not yet given a partial status, and has therefore no capacity to ask questions.

The next to be questioned was **Abdallahi Lakfawni**. Lakfawni condemned what had happened during the attack on Gdeim Izik, and sent his condolences to all who lost a loved one that day. Lakfawni stated: “everybody knows that the Gdeim Izik camp had social demands. After 28 days, when revealing the unity of the Saharawi people, the camp was attacked during the early hours on November 8th”.

Lakfawni explained that he was kidnapped and sent to the occupying country. He declared that he is arrested because the Moroccan state is trying to get rid of us, and the problems we cause because of our political activism. Lakfawni stated that he was arrested on December 9th 2011 where the police attacked his cousin's house, and threw him from the window, and took him to an unknown place. “They run on our blood”, he stated. When asked about the movie Lakfawni stated that “everything is fabricated or calculated by the Moroccan occupier”.

He explained how the Gdeim Izik camp was controlled with an “iron hand”. The camp was surrounded by military personnel, surrounded by a wall, with only one entrance. The military had made 7 checkpoint, for us to enter the camp. He told how he was asleep when the military forces attacked the camp, and that it was like an earthquake – it was chaos – people were running, and they screamed. He told how women and children passed out due to the teargas. Everyone walked back to the city. He stated: “If Morocco had wanted us to know the truth, we would have had the truth; but they have buried it”.

He stated that he had nothing to do with the reports, and that they were all falsified. When asked questions from the civil party he refused to answer.

The next that was questioned was **Mohamed Embarch Lefkir**. He declared that the Gdeim Izik was a protest camp, where we protested the marginalisation of the Saharawi people. He told that he had joined the camp the first week with his family. Lefkir declared, met with screams from the prosecution office, that; “I condemn the policy of hunger that the Morocco occupier is leading, and the policy of foreign companies which supports the Moroccan occupier forces.”

He declared that on the early hours of the attack, Lefkir had passed out due to the teargas, and that he was carried by his family for 4 kilometres, and later walked the remaining 8 kilometres to his home in El Aiun. When asked about the reports Lefkir declared that he denies everything in them. He told that they abducted him, when he was assaulted by masked men in his uncle house. He told that he was beaten up in front of his family and neighbours; and that they took him to an unknown place. He told how they hanged him in the ceiling by his foot and hand (i.e. known at the chicken method), and kicked him and beaten him. He told that they put a cloth in his mouth and poured toilet water in his mouth; they burned him with cigarettes; poured urine on him; took of his nails with a clipper; electrifying him and threatened him with rape. He told that during the torture he was only questioned about his political position and his relationship to Polisario Front. The torture lasted for three days, where he was sent to the investigative judge, and tortured in front of the judge. They sent him to the prison, where the torture commenced, and he was again hanged in the chicken position. Lefkir stated; “We condemn the silence from the UN, and demand our immediate release”.

The judge interrupted Lefkir on numerous occasions, and asked why he had signed the declarations. Lefkir stated that the guards, with the judge present, stated that: “If you don’t sign, I will send you back, and you will be tortured more and worse than what you have already endured.” He explained how he had denied all the charges to the judge, and explained him that he was arrested because of his activism. Lefkir declared that the judge “asked if I could forgive him. He said that this is beyond me; I am only following orders. He said that this case was nothing”. And I forgive him, Lefkir stated. Lefkir refused to answer any questions placed forward by the civil party.

Lefkir ended his declarations by commenting on the medical examinations ordered by the court. He told that he didn’t trust the medical examinations. He told that during his examination the alleged doctor started to argue with him about the right to self-determination for the people in Western Sahara, where the doctor stated that it would be “safer” for him to agree with the Morocco state. Lefkir therefore stated that he was not sure if this woman was a doctor or a police officer.

The court was adjourned at 10:15pm until tomorrow 11am.

Day 11- On the 23rd of March, at the Court of Appeal, Salé.

The hearings commenced by questioning **Mohammed Babait**. Babait explained that he wasn’t at the camp during the events, and that he didn’t have any relationship to the camp, other than his mother which had a tent in the camp. Babait explained how he used to visit his mother during lunch with his mother and his daughter, and that he lived in El Auin and worked for the governor. Babait explained that he was arrested 9 months after the dismantlement of the camp,

and that the ones who arrested him knew him and knew that he had nothing to do with the camp. He told that they had taken him to the police headquarters, and he asked the police chief why he was there, where the police chief answered that the others had to “take care of him”, because he knew him. He told that they pulled a bag over my head and beat me. The next day he was taken back to an office, where we broke the fast; it was during Ramadan. Some men entered the room and pulled a hood over his head again, and pushed him down the stairs; and transported him to a warehouse.

“They took off all of my clothes and tortured me. They asked me no questions about Gdeim Izik, and told me that I was a “problem” since I worked for the governor. They hit me with a bat. I couldn’t walk. They carried me in to the judge, and took me back to the police station where they continued beating me. The next day they took me to the attorney general. They didn’t ask me anything. They asked me to sign, and I did. There are things in these reports that are only lies.”

He told that he was surprised when the Military Court sentenced him to 25 years. Babait urged that: “I am innocent. I have been suppressed ever since. My daughter was one year old when I was arrested, and now she is 7 years. I am innocent – all the people here knows it; they know what happened at the Gdeim izik, and the Gdeim Izik represent all the Saharawi population”. Babait stated “If you really want to give justice to the victims, it is by revealing the truth. (...) I feel sorry for all the victims, and for my family, and all the Saharawi families.”

When Babait was asked questions about the minutes and the declarations from the police and the investigation report, Babait answered that: “I haven’t said this, not in any of the questioning. I was never asked these questions. They left a blank space in the reports, and told me to sign them”. Babait demanded to meet the ones who had been telling lies about him.

The next who was questioned was **Eênama Asfari**. Eênama Asfari started by thanking the court for their patience; and commenced with;

“I protest against this trial which uses false reports and minutes and confirm that the court has deprived us all of our rights when they rejected the proforma arguments that my defence presented. This is rights that in my opinion must be respected. (...) What’s the use with a constitution of conventions if they are not respected? This means that the court is not ready to evaluate the evidence of this case. There is arguments that our defence has placed forward, where the court is treating a political question, by trying to cover it with a judicial blanket. This is a political issue”.

Eênama thereafter commenced by declaring that he demanded that the CAT decision, regarding his case, was admitted into the document file, and he demanded medical examinations in line with the Istanbul Protocol, and that the court submitted the memorandum on the court’s competence and the fourth Geneva Convention. Eênama declared that he wouldn’t agree to be tried based upon falsified reports. The court did not admit the memorandum nor the CAT decision, and declared that this was subjects that had to be discussed later.

Eênama thereafter declared that the decision to attack the Gdeim Izik camp was abuse of power, and what happened in the camp was a consequence of the attack from the government. The

decision to attack the camp was not legally based, as it was not to defend the population but rather to attack civilians, and that they, the detainees blame the administration and the attorney general which gave the order to attack, Eênama declared.

Eênama explained how he was abducted on November 7th, and that he therefore couldn't have done the actions that he is accused of; and furthermore, that all the declarations is falsified and based on signatures extracted under torture. Eênama declared that the usage of the declarations constituted a breach to art. 15 of the Torture Convention, and invoked this article as response to questions based on the declarations.

When asked if he had a lawyer with him in front of the court, and why he didn't declare that he was being tortured, during the detailed interrogation he declared; "When you asked me, what happened at the military court; I answered you with art. 15 of the torture convention. Now, I answer you with art. 12 of the Torture Convention, which stipulates that the states have a duty to investigate all signs of torture".

He declared that the torture is the basis of this case, concerning all the detainees, all the inhabitants in Morocco and Western Sahara, and that it is a decisive matter that concerns us all. I don't want to go back, Eênama declared; I want this historical platform to ensure a fair trial – this is a test for us all, and stated that;

"We were systematically tortured, and this is my complaint. My name is mentioned in all the files, and mentioned in all the facts connected to the dismantlement. We are now 7 years after. We were systematically tortured and arrested. We were not tortured in front on the judge, but we were beaten and kicked and laid naked in front of the judge. After five days without food, water or sleep; we were pulled like animals by the gendarmerie to the judge, and they pulled our hoods of. This is 7 years ago. I look to the future. I am not a victim. I am not an accused. I am a militant."

Eênama declared that he is a political prisoner, and was only subjected to imprisonment due to his fight for self-determination for the Saharawi people. Eênama refused to answer the questions from the Civil party.

The next to be questioned by the court was **Cheikh Banga**. Banga commenced with thanking the court, and his attorneys; who he declared was a point to follow, where the Saharawi lawyers are old political prisoners; and now stand in a position as defence lawyers. He declared that he condemned the participation of the civil party, which was depriving them of their civil rights. He condemned the media campaign that portrays the group as criminals.

Banga explained how he was assaulted in the tent of his aunt on November 8th by masked men. He explained that his first visit to the camp was on November 7th, when he brought provisions to his aunt, and that he was stopped from leaving on November 7th, because the road was blocked. He explained that the camp was the displacement of the Saharawi people, and declared that displacement are when people leave from repression, to a place where they can find peace.

He explained that the masked men took him to the gendarmerie where he was tortured for four days, before presenting him to a judge. Banga said that the torture was systematic, and that he

lost consciousness on several occasions. He declared that he was never asked about Gdeim Izik, and that the reason for his abduction was his political opinions.

Banga was constantly interrupted by the prosecution who raised to his feet, and screamed and knocked his microphone. Banga explained that his convictions about forming a state for the Saharawi people, and the right for self-determination, is the reason behind his arrest and was the sole object he was ever interrogated about; therefore, his political opinions was the core of the case.

He explained how he, already at an age of 16, was arrested for his beliefs, and criminalised by the occupier. He declared that he felt sorrow for the victims, and that he wanted us to find the truth; but that he also felt sorrow for his family, his mother and his sister who suffers, because I am thrown in jail. Banga was again interrupted and stated; “We are human beings. We have feelings. I may forget the torture, but I will never forget the tears on my mother’s cheek when she was stopped from visiting me.”

Banga declared that the reports were only a product of the imagination, and when asked about why he didn’t declare to the judge that we were being tortured, as stated in the report, Banga answered that; “What is written here is not the truth. When he asked me about the torture; I was bleeding and in a miserable condition; and I asked him who was responsible for the torture; and the judge answered me that it was none of my business.”

Bangas declarations were stopped, and the court adjourned at 2am, until Monday March 27th at 9:30am.

Day 12 – On the 27th of March at the Court of Appeal, Salé.

On day 12, Cheikh Banga, Deich Eddaf, Abdeljalil Laaroussi and Ahmed Sbaai was questioned. The court was informed that the mother of the accused El Machdoufi Ettaki (not imprisoned) passed away in Western Sahara, and due to this he was not present at the court.

The judge called **Cheikh Banga** to continue the questioning. The General Attorney asked Banga about his presence in Gdeim Izik Camp, and the reason for being there. Mr. Banga informed him that he went to Gdeim Izik on Sunday, 7th Nov. 2010, because he was to take his aunt to El Aaiún. The questioning continued based on the declarations and minutes which Mr. Banga already declared never to have seen, and which he signed under torture and distress. The questions asked were if he saw the events as described previous (i.e. violence, fires, etc), and if he was aware of the existence of other committees besides the dialogue committee, and if he saw anything that was shown on the video in court, in Gdeim Izik or recognized anyone in the video. Mr. Banga answered: no, to all of them.

Regarding the questions of the General attorney concerning financing and international meetings to prepare Gdeim Izik he denied the knowledge of any of those things. To a question put forward from the Judge, he answered that he received no military training whatsoever abroad, he participated in Human Rights Conferences and visited the Tindouf refugee camps to observe the humanitarian problem. During the questioning of the civil party, there was several

times no translation; but one of the lawyers accused Banga to have left wing ideas inspired by a Moroccan party. Mr. Banga refused to answer the questions put forward by the civil party since they are not part of the proceedings. During the questioning by the defence lawyers Banga answered that he did not know that he was presented to the military judge, he only knew that he was in a Military court and that he informed that he was tortured. He was interrogated in a room and there was no identification on the table or door.

Mr. Banga said that he was arrested due to his position on the Western Sahara conflict. He was never asked during the different interrogations of his arrest/detainment about Gdeim Izik, only about his visit to the refugee camps, Algeria and his participation in conferences.

The next who was questioned was **Deich Eddaf**. Mr. Daff, denied all accusations, and explained that he was a sports coach in El Aaiun where he lives. He went to Gdeim Izik, since he was unemployed and wanted to demand his social and economic rights. He was member of the dialogue committee. On the 8th of November, he was asleep and woken by his wife who told him that the camp was being dismantled and that they had to leave. They left on foot in the morning. He declared that his tent was one of the last tents in the camp, and that he saw nothing.

He was arrested in his house around 00h00 on the 12th of November. About 10 masked men entered his house in El Aaiun, slapped his wife around and asked his name. He was in his pyjama and thrown into a van, blindfolded. He was then taken to a room in a place unknown. Deich declared that no one asked him anything, but the men stripped him naked and started to beat him. Mr. Daff continues; "they whipped and beaten me, liquid started to pour out of my ear, but the beating didn't stop. They left the room and after some time I told them I had to go to the bathroom, I was told I should urinate where I was and I had to sleep on top of my urine". He was beaten again and told he should not shout, Mr. Daff explained that he was on his knees and sodomized with a stick. He lost consciousness and when he woke up asked for a doctor.

He was then transferred to another place but he does not know where, he recognized the voice of "Abderahman" (high official). He asked Mr. Daff who had done that to him and he answered the police. Someone took him to a bathroom and throw water on him and gave him clothes. In the evening, he was brought into an office and shown some photos and given tea. He was asked if he knew Banga who was in the pictures, Mr. Daff answered that he didn't know him.

Then he was put in a small room with Ezzauai and Toubali, Mr. Daff said that Mr. Ezzauai was in a very critical condition. All the time he was handcuffed and blindfolded. They were transported in an airplane to Rabat and he was taken to the investigative judge in the military court.

He was blindfolded and handcuffed, which were removed, and he was told that he was in front of a judge. In front of the judge he denounced that he was tortured but the judge ignored him, stating that the torture was not his business, and asked if he had read the documents he had signed and what he had to say about the charges, Mr. Daff answered it was the first time he heard about it and denied the charges. He was then sent to prison. He was stripped naked again, and the guards and officers took pictures of him. He was with Ezzaoui and Toubali. Then he was given prison clothes. He was in an individual cell and then after some days he was told to collect his things and go the infirmary, his trousers had no buttons and they dropped, they yelled

at him and he had to hurry. In the new cell he saw Bani, Eddah and Ayoubi, all in a terrible state and suffering. The guards told him the place he should lie down and also that there was a camera in the room if he so much as moved he would be tortured again.

During the questioning of the judge he informed that the agreement that was reached between the dialogue committee and the government was that the Minister of interior would present a solution on Monday the 8th of November. There was no information whatsoever regarding the possibility of evacuation of the camp. When he left the camp he smelled the tear gas. He walked towards El Aaiun with his wife, Eventually, a car picked them up but none of the accused were in this car. In El Aaiun he saw some smoke. He saw nothing of what is shown in the video and did not recognize anyone. He was blindfolded when he was forced to put his fingerprint and sign the declarations and confessions. He had no knowledge about any other committees except the dialogue committee. He denied again during the questioning of the Attorney general all that was stated in the declarations. He refused to answer any question from the Civil Party due to the fact that they are not part of the process.

To the question why on the first page of one of the declarations there is a fingerprint but after that the signature of Mr. Daff, the judge said he would help him with this question: "Due to my experience I can help you answer, can it be that you fingerprinted the first page but then informed that you know how to read and write and that's why afterwards you have your signature on paper?". Mr. Daff reiterated that he had no knowledge of the content of the declarations and all fingerprints and signatures were made under torture and harassment.

The next to be questioned was **Abdeljalil Laaroussi**. Laaroussi denied all accusations and reaffirmed his innocence, declaring he had nothing to do with the charges. Laroussi declared that "self-determination is the right of all people, the referendum must be held!"

He informed the judge that his health condition is very poor. Mr. Laroussi commenced his statement to the court by showing bloody tissues to the judge, and showed his diaper that he has to wear due to this rectorragia and diaharrea. Mr. Laroussi had also a notebook with him where he had written down all his medical history, which he showed to the judge. and that even the government of Bremen in Germany offered the Moroccan Government to treat him. He has extremely high blood pressure reaching 15/26.

Abdeljalil is married and he has two boys. When he was arrested the youngest was an 8-month old baby, and the other 5 years old. He worked with a water cistern distributing water and had a special/professional driver's license. Mr. Laroussi was in Spain when he heard about the Gdeim Izik events and came back to El Aaiun, to see what was happening.

Twice he was in Gdeim Izik in his aunt's tent, his aunt is called Sukeina, and she explained to him that they were demanding their social and economic rights, since the Saharawi population did not benefit from the richness of their territory as stated in the EU agreements.

On the 7th of November 2010 Mr. Laaroussi was in Boujador. His mother had a diabetes crisis and he had to go there, but he took a "grand taxi" since his car had worn out tires.

He spent Sunday, Monday, Tuesday, Wednesday, Thursday and Friday in Bojador. On Friday,

the 12th of November 2010, he was drinking tea in the house of a friend who is a public servant, when the house was invaded by Moroccan authorities, knocking the door down. His friend identified himself but he was beaten and handcuffed. They asked Laroussi what his name was and put a shotgun to his head, he was told not to move or they would blow his head off, he was handcuffed and put into a 4x4 car and they drove in the direction of El Aaiun. In the car, he was handcuffed and his jacket was put over his head so that he could not move and with his head facing his, which provoked horrible pain in his shoulders and back. All the way he had a gun pointed at his back. "Polisario if you move I kill you" said one of the Moroccan agents.

Laroussi suffered under torture during his arrest, his time in custody and during his time in prison. Laroussi suffered under strappado, sweden drink (i.e. The Schwedentrunk), electroshocks, nail removal, beatings, starvation, fried chicken, sodomy, sleep deprivation and light deprivation for 5 months, chemical burns, ingestion of chemicals, eat shards of glass, and rape.

Laroussi declared that he was forced to give his declarations to a camera. He told that a high officer of the police told him "if you collaborate with me I will collaborate with you and I will not allow them to hurt you again". Laroussi explained that they brought a piece of paper with names of people and he was told to say in front of a video camera that all the declarations were given without being under pressure and voluntarily: "I had to pretend not to have a piece of paper in front of me that I had to read. There were 3 men with ski masks and guns and two more I couldn't see. The "movie script" was that I should appear to be declaring voluntarily. The men who were writing the declarations said that I was in charge of the security in Gdeim Izik and had connections with human rights activists and that Omar Bulsan (the delegate at that time of Frente Polisario on the Canary Islands) had given me money and instructions that I should be the responsible for security and enlist criminal and give them drugs and use them in the camp". Laroussi urged that he did not say any of this, that these are all lies, and that the people who wrote this invented it. Laroussi declared that nobody asked him questions about Gdeim Izik, and that they forced him to sign papers, and raped him.

Laroussi explained that he was transported in a plane to the military court: "On the second day they put me in an airplane where I woke up, I was lying on the ground facing down and one of the guards had his boot on top of my face he said: "if you move I will throw you out of the airplane". When the plane landed we were transported in a car with people in military uniforms. They had poured chemicals on me, and I couldn't walk. I was brought to a room in the military court, it was very cold. I knew I was in a military court when they took of my blindfold in a small room, someone in a military uniform was there, I could not stand or sit, I was bleeding from my head and feet. This was the first time I heard the accusations, I denounced that I was tortured and how. The judge answered: I don't have time for that, you have to sign and put your fingerprint." Laroussi was thereafter transported to prison. Laroussi declared that once in prison, he was tortured by the prison director Aazria, the vice-director Hassan Mihfadi , the chief Youness El Bouazizi and the male nurse Hamid.

When the judge asked Laroussi if he was being tortured now, Laroussi declared that "there is a distance of over 1200 km between El Aaiun and El Arjat (prison where he is currently detained) , sometimes our visits arrive and they are not allowed to visit because their family name is not the same. My father died and I was not allowed to see him. My mother was detained, and she

is 72 years old and they dislocated her shoulder! My sisters, my brothers! My 8-year-old son was attacked in front of this courthouse during this trial; he was holding a paper asking for my release, they hit him with a 1 1/5-litre water bottle! I sent the complaints about my torture many times, to the general attorney of the King in Rabat, to the General attorney in El Aaiun, to CNDH [National Human Rights Council], to the ministry. I can show you a copy!”

Laroussi has several health problems due to the torture he suffered, and he declared that “We made several hunger strikes, and in the last one in 2016 my friends did not let me participate due to my health. I didn't know I had high blood pressure until the Military Trial in 2013; I was taken to the military hospital and there they made some tests, the doctor said that the blood pressure was very high and gave me a pill to put under my tongue. They took some scans and X-rays of my knee, and they said that it was a lesion that was 2 years old, but in the Military trial they said it was 5 years old and due to sport activities. They prescribed some medications but the prison director did not want to give them to me. The doctor in the hospital wanted to make a surgery to my knee but could not do so due to the high blood pressure. When the Working Group for Arbitrary Detention of the UN visited the Gdeim Izik Group they put me with the common criminals so that the members of the working group could not see me.”

The questioning of the judge and civil party turned around the declarations given under torture, especially if Laaroussi was in charge of the security in Gdeim Izik and his connections to the other accused. He refused to answer the civil party since he does not recognize them as part of the process, they are not part of the proceedings.

Laroussi denied everything in the declarations. He denied to recognize anyone in the video and does not recognize the validity of the video. At some point of the questioning Laaroussi named all the medicaments that were given to him and that someone said they had severe side effects. The judge decided to give his medical opinion declaring that the medicaments mentioned did not have side effects; “he knew them well”.

During Laaroussi questioning, two of the judges were sleeping. He demanded that his friend from Bojadour should be called as a witness.

Ahmed Sbaai exited the glass cage chanting “Labadil Labadil Antkrir El Massir”. Ahmed Sbaai denied all charges and said that the declarations are false, he did not had access to the contents of the minutes or the declarations. He declared that he is a human rights activist and prosecuted due to his political believes and his work denouncing the violations permitted by the Moroccan State in Western Sahara.

Sbaai explained that he refused the medical examination because it is not in accordance with the international standards and is neither independent nor are the doctors trained in the necessary protocol. The court did not accept the memorandum of his lawyers about the medical expertise and the Istanbul Protocol, and he does not trust Moroccan doctors, he has no reason to do so.

Sbaai declared that he does not recognize the validity of this court since it is extraterritorial.

Sbaai continued telling that he is an ex-political prisoner, and that he was imprisoned due to his political activism, and he continued denouncing the abduction of his father by the Moroccan authorities. Sbaai stated that “the Moroccan prisons are a cemetery for the living”. He was detained in 2002 and 2006, always due to his political opinions. He is one of the founders of a Human Rights Association, has worked voluntarily, demanding the right to self-determination and being an observer in the trials of political prisoners. He stated that no prison, nor torture or ill-treatment will change his mind.

He suffered psychological and physical torture, in the gendarmerie he was blindfolded and they asked him about his contacts with Amnesty International. He spent 5 days in sleep deprivation and constant insults. He has a heart condition so the physical torture stopped when they saw that his life was in danger.

He was never asked questions about Gdeim Izik. All the questions were about his political views, his contacts and his voyages abroad. He had to put his fingerprint on the declarations whilst he was blindfolded and handcuffed.

In the military court, he denied again all accusations. In Rabat he was tortured again, he was naked and someone made a video and took pictures; he felt the flashlight. He was showered with ice water and put in an isolation cell. This torture were made by the prison director and three more of the prison administration.

Sbaai declared that he was in the camp with his mother, and had walked most of the way to El Aaiun. Sbaai declared that he had “signed because they took my hand and forced me!”.

The presiding judge adjourned the hearing until the 8th of May. None of the prisoners were given provisional release. The officials who wrote the reports were allowed as witnesses. The judge accepted three additional witnesses from the defence, i.e. the witnesses requested by mr. Laroussi, mr. Lakfawni and mr. Zeyou.

The presiding judge declared that the reports from the medical examinations are submitted. The reports were however submitted in French, and needed to be translated into Arabic, meaning that the results from the medical examinations were to be postponed an extra 12 days.

Day 13 – On the 8th of May at the Court of Appeal, Salé.

The proceedings against the group Gdeim Izik commenced on the 8th of May with evaluating the evidence file.

The court commenced by presenting the witnesses in front of the court. Some of the witnesses presented by the defence were absent. The defence argued that since the witnesses had only received the notification on Saturday, and since they lived in El Aaiun, their presence in the court should be considered legal if they were present at the courtroom within Wednesday. The presiding judge ruled in the defences favour. The witnesses were thereafter summoned from the witness room to the courtroom. The group of witnesses can be divided into three groups: (1) support witnesses for the defence, (2) witnesses of the events, and (3) the police officers which wrote the reports. In total 28 witnesses.

When the police officers which wrote the reports entered the courtroom, protest emerged within the court facilities. The detainees shouted “torturers”, “occupation is the reason” and “self-determination Is the only solution”. The civil party and the prosecution office urged the court to protect the witnesses ordered by the court. The witnesses were thereafter sent back into the witness room.

The court thereafter presented the confiscated elements. The defence urged that the confiscated evidence must be discarded as evidence, as the confiscated walkie talkies, mobile phones, knives and axes, were not presented in the same manner in the Military Court, and there were no means to make sure that this case-file in fact were the same case file as presented in the Military Court, the chain of custody of the evidences was apparently not respected and contamination would be evident. The defence further argued that the different objects were not packed correctly, and that the different objects were not labelled with the correct marks. It was therefore not possible to tell the source of these objects, since the steps that have to be taken to document where the evidence was found was not done like crime scene photographs and notes taken during the initial investigation; and labelling of the items of evidence on site with a number and secure packaging.

The court decided to show the different objects to all the accused. Mr. Asfari pointed out that according to the reports, all the objects were confiscated at the 8th of November, whereas he was abducted at the 7th of November, and declared that the fantasy of those who wrote these reports are wide, he also stated that the judge could not impose him what to answer. Mr. Banga declared that the only thing that was confiscated from him were his dreams. Mr. Bourial denied that any of the confiscated objects was his. Mr. Ettaki declared that he had nothing do to with the confiscated objects and that he only had seen a peaceful protest camp with people protesting the occupation power. Mr. Bani declared that everything that was found with him was his personal documents, ID cards and papers for the car. Mr. Laroussi demanded that his witnesses should be summoned to testify, and declared that he had nothing to do with the confiscated objects. Mr. Lakfawni declared that when they abducted him, they took everything he was carrying, but none of these objects. Mr. Boutinguiza declared that he was not carrying any objects upon his arrest. Mr. Abbahah declared that the police stole his phone, but that he had nothing to do with the confiscated objects in the case file. Mr. Ezzaoui demanded that his witnesses would be summoned to testify, and declared that they did not find any knives, phones, money or documents on him. Mr. Haddi declared that he was arrested with two doctors from the organization "doctors without borders", and that he could not tell if that was his phone. Mr. Zeyou declared that he was arrested at the airport in El Aaiun on his way to Spain, and that he has never seen these objects. Mr. Toubali declared that he had nothing to do with this evidence file, but that his phone was taken. Mr. Eddaf declared that none of the objects in the evidence cage belonged to him. Mr. Khadda declared that his passport was confiscated but nothing else. Mr. Sbaai declared that he is a political prisoner and that the only thing confiscated are his believes and opinions. Mr. Eddah declared that he was arrested for his opinions and ideas, and that this was the only thing found with him, but that his opinions can never be confiscated. Mr. Thalil declared he was not carrying any objects upon arrest. Mr. Lemjeiyd declared that he was abducted on the 25th of December and that he was carrying one cell phone and 65 dirhams. Mr. Lefkir declared that he was abducted with his cellphone which was tortured with him, and that he wanted it back. Mr. Ismaili declared that he was abducted in El Aaiun and that he had nothing

with him upon arrest, but that his house had been raided afterwards and that several document files were missing. Mr. Babait declared that he was arrested with 350 dirhams and his phone. Mr. El Bakay declared that he had nothing to do with these confiscated elements.

The first information witness from the defence, **Mr. Hassan Dhalil**, was thereafter summoned to testify. The witness identified himself and was sworn in. Mr. Dhalil told about how he in the evening of the 7th of November had visited Mr. Toubali in the hospital after his car accident. Mr. Dhalil told that he had left the hospital around 1 am at the same time as Mr. Toubali. Mr. Dhalil had thereafter went home and visited Mr. Toubali again the following morning on the 8th of November around 7 am. Mr. Dhalil had found Mr. Toubali in a critical condition where Mr. Toubali could not move.

The second information witness from the defense, **Mr. Mohammed Embark Hallab**, was thereafter summoned to testify. He identified himself and was sworn in. Mr. Hallab described how families were stopped from entering the Gdeim Izik camp on the 7th of November and that families were stopped from leaving the camp facilities by the Moroccan authorities. People were stopped from bringing food to their families. We were a group of civil servants which wanted to protest the siege of the camp. Mr. Hallab explained how they organized a meeting at his family house in the evening of the 7th of November. Mr. Hallab explained that the meeting started at 8 pm and lasted until 1 am. Mr. Hallab explained that they studied the events and that they feared that an intervention would take place, and that they therefore planned a demonstration for the following Monday, on the 8th of November 2010. Mr. Hallab explained that Mr. Zeyou was with him at the meeting. Mr. Hallab explained that their goal was to bring food and survival equipment to the people in the camp, and therefore organize a demonstration. Mr. Hallab declared that it would be impossible for Mr. Zeyou to be present at the camp since the camp was under a siege, and it was impossible for anyone to travel in or out of the camp.

The third information witness from the defense, **Mr. Brahim Hamed** was thereafter summoned to testify. The witness identified himself and was sworn in. Mr. Brahim Hamed described how Mr. Lakfawni had stayed with him on the 12th and the 13th of November, and that the police had come and surrounded his home and raided his house and broke the doors. The preceding judge continued to ask numerous questions about why the witness did not have the phone number of Mr. Lakfawni. The witness answered that he did not need his number, since Mr. Lakfawni was already in his house. The witness also confirmed that he had been in the Gdeim Izik camp, but not on the 7th of November. The witness told that the camp was closed, and that the police had stopped him for entering the camp by throwing rocks towards him, and that his family was without food that evening.

The witness told that Mr. Lakfawni was in the other house when the police arrived, and that he saw the police arrest Lakfawni outside. The fact that Mr. Lakfawni was arrested outside the house was in contradiction to Mr. Lakfawnis testimony where he declared that he was thrown out of the first-floor window by the police forces. Mr. Lakfawni explained that there were two houses, where he was thrown out of the window of the second house, whilst the witness had been in the opposite house. The preceding judge refused to ask the witness a follow up question about whether there was a second house.

Day 14 – On the 9th of May at the Court of Appeal, Salé.

Mr. Mohammed El Ayoubi, which is released on provisional release due to his health condition, did not appear in front of the court since he was hospitalized. The court case of Ayoubi was separated from the group case and adjourned until the 5th of June 2017.

The police officers which wrote the police reports were presented in front of the court. The accused shouted “torturers”, “occupation is the reason”, and “self-determination is the only solution”. The preceding judge warned the accused according to art. 327 of the Moroccan penal code that if the accused insulted the witnesses, they would be transported out of the courtroom.

The civil party reminded the court that It was in fact the defence who had requested the police officers to testify in front of the court. The defence argued that the men who wrote the police reports could not be regarded as formal witnesses, but that the defence wanted to ask the police officers how the interrogation was conducted. The defence further pointed out that the detainees had accused these police officers of torturing them, and that the police officers which are accused of such a crime could not be sworn in as witnesses. The court decided that the police officers which wrote the reports were to be heard from as formal witnesses, but postponed the questioning of the witnesses.

The first witness to appear in front of the court was **Mr. Faisal El Malazi**. Mr. El Malazi told how he and his regiment were situated by the gate to the Gdeim Izik camp, and that their regiment had orders to establish checkpoints and surround the camp. Mr. El Malazi told how the camp was surrounded by military vehicles, and how they built a sand wall around the camp leaving one gate/entrance open, this was in place for over 20 days. Mr. El Malazi told that the camp had their own security forces with personnel wearing vests which patrolled the outset of the camp. Mr. Malazi told how his group was ordered to the outset of the camp in the early hours of the 8th of November. His group consisted of 2 sections, whilst each section contained 3 lines with 13 people. His group was instructed to remove the tents and evacuate the camp. Mr. Malazi told that women and children were throwing rocks at the gendarmerie forces and that the gendarmeries had anti-riot gear. Mr. Malazi told that when they approached the citizens, the citizens of the camp divided into two groups. The witness then declared that two 4 by 4 cars (Landrovers) attacked the front line, and that a man was hit and flew over the car. The car thereafter hit the witness and that the tire was "rolling over him hurting his back" but the car was in place. The witness explained that his comrades pulled him from underneath the car. He declared that he could see people attacking the military forces, and that he tried to run away from the scene. He explained that he ran for 20 minutes before he fell, and that a colleague had to help him walk, and told him that a 4 by 4 car was following them. The witness declared that he reached the military forces, and was taken into an ambulance. He declared that whilst in the ambulance, they had to turn of the lights as to not be seen by the civilians attacking the public forces (according to the witness this happened during the dismantling, indicating that it was still dark). The witness explained that he reached the hospital and was hospitalized. Mr. El Malazi declared that the attack was planned, consisting of three steps; to attract the gendarmeries towards the camp, attack the public forces with 4 by 4 cars, and then attack with knives and axes. The witness declared that they were surprised by the attack, and that they based on their previous intel had not expected an attack.

Regarding the attack by the 4 by 4 car, the witness declared that the car had not killed him, because the car got stuck in the sand, so the driver could not move the car. The witness could not tell what had happened to the driver of the car. The witness declared that the car had attacked the military forces from outside of the camp, and had surprised them by emerging behind some bushes. Mr. Massoudi pointed out that these bushes which are common in the Sahara desert are around 50 cm. tall. Mr. El Malazi declared that he could identify the driver of the 4 by 4 car which had hit him, and killed his colleague. He explained that the driver had a mustache and wore a brown jacket, and was around 30 years old.

The presiding judge declared that he would call upon four detainees at the same time, and that the witness should identify the culprit if he recognized him. The presiding judge commenced by calling up Mr. Banga, Mr. Asfari, Mr. Bani and Mr. Bourial. Protest arose both from the detainees and the defense when a police man whispered into the ear of the witness. The presiding judge declared that he knew the police man in question very well, since he had served at the courthouse for over 15 years. The witness identified Mr. Bani as the driver of the car. Mr. Bani declared that he did not have a mustache in 2010. The witness declared that Mr. Bani is “very similar” and that the facial expressions are the same, even though Mr. Bani has changed over the last 7 years.

The second witness to appear in front of the court was **Mr. Rahil Mohammed**. The witness declared that he belonged to the gendarmerie, where they had orders to surround the camp, and not let anyone enter or exit the camp besides through the gate. The witness declared that they remained in the same position for 22-23 days until the 8th of November. His regiment was called upon around 6:30am on the 8th of November to march towards the camp. The witness explained that they wore riot gears (i.e. a uniform for protection, tear gas, shield and a stick), and were in total 54 people in his section. He explained how the inhabitants of the camp threw rocks towards them "some around 1,5kg heavy", and that his regiment divided into two groups. The witness explained that he was hit by a car and lost consciousness. Mr. Mohammed testified that he was thereafter piled up with other victims, and that he had heard a woman say “do not burn them, they are Muslims to, we are not jews”. He told that he was hit with a rock, and that he woke up in the military hospital. The witness said he heard that other were dead but did not see them. The witness could not identify any of the defendants.

Day 15 – On the 10th of May at the Court of Appeal, Salé.

The first witness to appear in front of the court was **Mr. Nordin Lassere**. The witness was a part of the public forces in control of dismantling the camp where he was supposed to transport people from the camp to the city. The witness had received orders on the 7th of November to organize the transport, and moved towards the camp around 6:35am, and arrived around 6:45. The witness declared that after the first transportation, when coming back to the camp, the bus was targeted with rocks thrown by the inhabitants in the camp. He told that he saw people being beaten to death in the street, and that he and his colleagues had been hit by rocks. He told that he spent 12 days in hospital. The witness told that he could not identify anyone, since the attackers had been wearing scarfs.

The second witness was **Said Kahla**. Mr. Kahla was part of the public police forces, and part of the mission that was in control of securing the transport from the camp to the city. His section was supposed to secure order in the city, and not in the camp. He told how the demonstrators were throwing rocks at them, and that the public forces used shields to protect themselves.

The third witness **Mohammed Choujaa** witnessed about his stay in the camp, and claimed that he knew the people in charge of the camp. Mr. Choujaa claimed that the camp had social demands, and that “everyone” had heard about the camp. The witness described that since he was unemployed, he went to the camp. Mr. Choujaa described that he first went past the governmental checkpoints, before he reached the camp where people in green vests stopped him and checked his identity card, before another group stopped him and checked his belongings. Mr. Choujaa told that an old woman told him to register with Mr. Deich Eddaf, which registered him in a book. Mr. Choujaa explained that he after some days brought his own tent, and set it up behind the administration. The witness described that the camp was organized, where supply and aid was set in place, and that the camp was run by several security groups. The witness explained that he attended two public speeches, one held by Mr. Lefkir known as Franco and the other by Mr. Ezzaoui. Mr. Choujaa told that Mr. Laaroussi was in charge of the security forces. Mr. Choujaa explained that Eênama Asfari was the leader of the camp, and that Mr. Asfari lived as a king. The witness explained that the camp was divided into 5-6 sections. Mr. Choujaa described that during the night of the 7th of November, he had taken a walk after dinner and had seen Mr. Asfari, Mr. Lefkir, Mr. Lakfawni and Mr. Banga sitting in the administration. He explained that on the morning of 8th of November, chaos had broken out. Mr. Choujaa told that Mr. Asfari was giving instructions, whilst Mr. Lefkir, Mr. Lakfawni, Mr. Banga and Mr. Ismaili were handing out weapons to the citizens of the camp, and that Mr. Laaroussi had been driving a car. Mr. Choujaa told that he saw Mr. Toubali, Mr. Lemjeiyd and Mr. Sbaai throwing rocks, and that he saw Mr. Bani in a green Mitsubishi. The witness told that he ran from the scene of the crime towards the river and walked along the river to the city and arrived in the city around 12am.

The civil party asked the witness about whether he was sure that the checkpoints inside the camp was controlled by the people in the camp, and not the government, where the witness claimed that only people from El Aaiun could enter the camp. The defence was prohibited from asking whether witness had a job, and how the witness had learned all these names during 10 days, which the detainees protested against. Mr. Massoudi repeated his question and stated that his question is related to a witness which described the camps organization in a very detailed manner, and that he gave 9 names, while he was only in the camp for 10 days, stating that this are names that Mr. Massoudi himself can forget from times to times; how can the witness have learned these names in just 10 days, and remember them 7 years later. The court refused to ask the question. Mr. Massoudi then asked the witness how he only could name these 9 persons, among the 35.000 inhabitants in the camp. The witness could not tell. The witness answered that he could not remember when he was asked about how he exited the camp on the morning of the 8th of November, and could neither explain where the entrance of the camp was located. The witness claimed that he saw Mr. Bani run over one police officer inside the camp with his car. The witness claimed that he could not describe the features or physical characteristics, of the identified detainees, but that he could identify them if he saw them. The witness stated that Mr. Bani is around 50 years old, that Mr. Asfari is neither white or black, and that Mr. Banga wore glasses and had a beard. The court refused to ask the witness whether he could elaborate,

where the witness stated that he saw them in his memory but could not describe them, but could identify them. Mr. Lilly also asked the witness whether he had noticed something with Mr. Lefkirs way of speaking, where the witness claimed that Mr. Lefkir speaks Hassania. The presiding judge refused to ask further questions upon the subject. Mr. Massoudi asked the witness how he was summoned to court, since he, during the last 7 years, did not appear on any police records. The court refused to ask the question. The court ruled that the accused were to be exposed to the witness, as to implement an identification process. The detainees entered the courtroom from the glass-cage, and Mr. Ettaki and Mr. Zeyou also stepped forward. The witness was instructed to point out the different detainees that he had named in his testimony. The witness identified Mr. Bourial, Mr. Sbaai, Mr. Lakfawni, Mr. Haddi, Mr. Asfari, Mr. Ismaili, Mr. Leymjeyid, Mr. Eddaf, Mr. Ezzaoui, Mr. Abbahah, Mr. Laaroussi, Mr. Lefkir, Mr. Banga, Mr. Bani, Mr. Toubali, Mr. El Bakay, Mr. Babait, Mr. El Bachir Khadda, Mr. Thalil and Mr. Zeyou. The witness declared that he had only seen Mr. El Bachir Khadda Mr. Thalil and Mr. Zeyou in the camp, but not committing any crimes.

The ones identified were thereafter summoned to meet the testimony from the witness Mr. Mohammed Choujaa. Mr. Asfari declared that this testimony was part of the imagination/fantasy which was used to write the police reports. Mr. Asfari asked whether the witness had been alone when he saw him in the morning of the 8th of November, and whether the witness knew what happened on the 24th of October. Mr. Banga declared that the witness was telling lies. Mr. Banga asked the witness how he knew that the one distributing weapons was named Chej Banga; and Mr. Banga declared that he neither wore glasses or beard in 2010. Mr. Banga further declared that this was a false testimony, which led the prosecutor to scream, and the judge to urge Mr. Banga to withdraw his words. Mr. Banga declared that it was the courts responsibility to investigate whether the declaration was false, and the ones responsible for killing the principle of independence are the ones that brought the witness to testify. Mr. Banga left the booth after being interrupted numerous times. Mr. Bourial declared that this is all lies, and that this is all a theatre, and was thereafter transported back into the glass-cage. Mr. Laaroussi asked whether the witness was together with someone when he saw him; and why the witness could not give a description of him. Mr. Lakfawni declared that such a testimony could be bought, and declared that the witness was avoiding answering his questions; and thereafter asked the witness if he could describe him; how he knew his name; and how he entered the camp, when he is not a Saharawi. Mr. Lakfawni declared that he suspected the witness to be aided by some technical device, and asked the court to check his ears. Mr. Abbahah declared that the testimony was false, and the declarations was not based on any truth. Mr. Abbahah further explained that he grew up in the region, and that it is impossible to walk along the river from the camp to the city because of the height of the river and the rocks (Mr. Choujaa claimed that he walked back to the city following the river on the morning of the 8th of November). Mr. Abbahah declared that no one knows his family name (which the witness had identified him by), and that the witness should have been able to describe his features, since his picture was “everywhere”. Mr. Eddaff declared that he did not accept the declaration, and asked whether the witness could identify the woman which directed the witness towards him for registration. Mr. Lefkir stated that the court already had their sentence, and demanded to be given the verdict since it was ready. The judge urged Mr. Lefkir to withdraw his words, or he had to return to the cage without asking questions. Mr. Lefkir declared that he from the beginning had stated that this court lacked the necessary competence to judge him, and declared that the Moroccan state is a colonizer and that the witness was a settler. Mr. Lefkir was sent

back into the cage. Mr. Ezzaoui asked who followed him to the river, and who was with him when he saw Mr. Ezzaoui in his tent, and declared that it is the Spanish registration which identify the real Saharawi's. Mr. El Bakay denied the testimony, and asked what the condition of the witness had been all these years; and asked whether the witness had been in a coma all these years; why he had not appeared in front of the Military Court and told the story which was identical to the police reports. Mr. El Bakay asked the witness how he could identify people amongst 40 000 people, in the middle of the chaos; and pointed out that the Saharawi's wear scarfs to cover their faces due to the conditions of the desert. Mr. El Bakay pointed out that it is a shame to refer to a tent with a female owner (in the Saharawi culture), and also declared that it is impossible to walk along the riverside to the city. Mr. Babait declared that this testimony was all lies, and declared that it was the courts responsibility to verify the testimonies given, and that he does not know where this man comes from, but that he was only telling a story in line with the police reports. Mr. Sbaai declared that Morocco told a lie in the Military Court and that the lie was proven by the Constitutional Court, and that the Moroccan judicial system again tries to cover up the truth. Mr. Sbaai asked how the witness knew him, and when he precisely had seen him distributing weapons, and whether anyone was with him. Mr. Toubali declared that the testimony was only a lie; and that he was not present in the camp on the 8th of November due to his car accident; and stated that his medical records proves that he was in a critical condition and was not able to move. Mr. Toubali declared that the court was discriminating between the witnesses; whereas his witness had been standing for over an hour, where this witness had been given a chair and water. Mr. Haddi declared that his was in the city of El Auin on the 8th of November, and declared that if the witness knows me; let him state my real name. Mr. Bani stated that the witness had seen him walking and driving, and asked whether the witness had seen two of him; and stated that the witness had seen him first on the east side of the camp, and then the south side; and stated that you would need a plane to get from one side to the other side. Mr. Bani stated that he was arrested in his car with all his documents, and that he has been under arrest for 7 years; and that the state can tell whichever story they want; since the state has all the necessary intel. Mr. Lemjeiyd stated he did not know the witness and that he had never seen him, and that he was home on the day of the attack. Mr. Lemjeiyd asked the witness to tell where he lived in El Aaiun, and what he wore on the day of the attack, and claimed that a person that can give such details, should remember what he was wearing. Mr. Lemjeiyd further stated that the direction given by the witness, would not lead him to the river; and asked the witness how he crossed the river. Mr. Lemjeiyd stated that the story given by the witness was in line with the false police reports. Mr. Ismaili declared that he regarded the testimony given by the witness as lies, and that it was all part of a play to convict him as a human rights activist. Mr. Ismaili declared that he was not present in the camp on the 8th of November, and he asked the witness to tell the exact day he went to the camp; whether the witness knew him before coming to the camp; if he recognized him the day of the attack; and whether the witness had talked to him alongside the international observers in the camp. Mr. Ismaili declared that forgetting is forgivable, but not selective memory, and stated that he wanted an answer into why the witness could identify him, but not describe him. Mr. Ismaili further demanded that the witness had to mention 5 of his neighbours' in the camp. Mr. Thalil was brought forward to answer the witness on behalf of those identified, but not identified committing a crime; where Mr. Thalil stated that this witness was brought forward by the state, and that the state is trying to condemn them in a Shakespeare play.

The presiding judge decided to ask in total 10 questions of all the questions put forward by the

detainees. The witness confirmed that he used to see Mr. Asfari in the camp and that he on the 8th of November saw Mr. Asfari distributing weapons whilst giving orders and stating that “there is only one death”. The witness could not identify the woman which lead him in the direction of Mr. Deich Edddaf; the witness could not identify the person which drove the car with Mr. Ezzaoui in the passenger seat; the witness declared that Mr. Banga had a “light beard” and used glasses; that he did not know the detainees before the settlement of the camp; that he used to see Mr. Ismaili in the camp; and that he did not remember any of his neighbours, since there were so many people.

The prosecutor thereafter submitted two pictures of Mr. Banga from 2010 into the evidence file. Mr. Banga was wearing sun glasses in one of the pictures (i.e. a picture from a trip to Algeria), and had a beard on the second picture (I.e. a picture taken in prison). The defence wanted the pictures discarded as evidence, since the chain of custody was absent. The witness confirmed that he had seen Mr. Banga with transparent glasses, and not sun glasses. The defence wanted to know why the witness could not identify his neighbours, or the ones he was eating dinner with or drinking tea with; only the detainees. The court refused to ask the question. The witness was sent out, and the prosecutor was told to give the witness necessary protection. The court was adjourned until the 11th of May.

Day 16 – On the 11th of May at the Court of Appeal, Salé.

The court commenced by hearing from Mr. Ahmed Sbaai which told that the niece of Mr. Chej Banga had passed away, and that Mr. Banga was not able to attend the hearings due to his mental state. The Court decided to let Mr. Banga face the evidence against him at a later time.

The first witness to testify was **Mr. Mohamed Selmani**, which was there to testify on behalf of Mr. Eênama Asfari. Mr. Selmani told that he was together with Mr. Asfari on the 7th of November and witnessed his abduction. Mr. Selmani explained that they had eaten lunch together, and that Mr. Asfari had went with Mr. Selmani to his house to take a shower and drink tea. Mr. Selmani told that police officers invaded his home, and trashed his house and shouted insults, and escorted Mr. Asfari down the stairs and out of the house. The presiding judge asked the witness why Mr. Selmani did not go to the police headquarters afterwards, and asked the witness if he knew what had happened to Mr. Asfari afterwards. The presiding judge asked several detailed questions, wanting the witness to give the exact time of their meeting, their lunch, their arrival, their departure, and which time they had tea. The witness explained that the police came after the sunset prayers. Mr. Selmani declared that the house has two entrances; one to the east and one to the south. The witness explained that the police came from the east, and that he had walked down the stairs from the second floor of the house, and was shocked by the police inside his house. The witness declared that Mr. Asfari was arrested at the second floor, and that he had been shoved downstairs by three police men. The witness explained that Mr. Asfari was handcuffed and that his eyes were covered with a blind fold.

The presiding judge asked why he was not arrested since he was hiding a criminal in his house. Protest emerged within the courtroom from the detainees, and the civil party screamed that it was within the competence of the court to ask whatever question they wanted, where Mr.

Masoudi declared that the civil party lacks the competence to utter their views, leading the attorney from the civil party to fan with money (banknotes) in the direction of Mr. Masoudi. The presiding judge commenced by asking the witness if he could give details upon the arrest; the witness described that Mr. Asfari was handcuffed with his hands on his back, with a white blind fold, and that Mr. Asfari was guided down the stairs, out the backdoor and into a blue police car, and that the house was surrounded by the police, and he was kicked and slapped by the police. The witness declared that his house was full of policemen, and they broke in from the east side, and that there were three cars (one white and two blue cars). The presiding judge continued to ask detailed questions, i.e. the exact time for his phone call with Asfari and what he was doing, and what the police men were wearing and the exact number. The witness declared that it has been 7 years, and that he could not remember every little detail.

The prosecutor stated Mr. Asfari had declared that he was arrested in the house of Mr. Toubali, whereas this witness states that Mr. Asfari was arrested in his family house. Mr. Asfari was thereafter summoned to answer this contradiction; where Mr. Asfari declared that there exists a lack of understanding of the Saharawi family structure and the Sahrawi society, and that the structure is hard to explain, and that it therefore occurs misunderstandings, and declared that he had not been in the house of Mr. Toubali, and that this was a misunderstanding.

The next witness to be questioned was **Mr. Bachir Salmani**. Mr. Salmani testified to the detention of Mr. Asfari on the 7th of November in his family house. Mr. Salmani declared that he had reached his family house where he found his brother and Mr. Asfari drinking tea; that he had left shortly after; and was surprised by police forces on his door steps when leaving. Mr. Salmani told that one police man had told him to move his car, that the police men had entered the house, and brought out Mr. Asfari into a police car. The witness told that he saw two blue cars and one white car without marks, and that he was in shock. The witness explained that he saw the top of Mr. Asfari's head, but that Mr. Asfari was surrounded by police men which transported him into a police car. The witness declared that the police came between the sunset prayer and the last prayer. The presiding judge summoned Mr. Asfari and stated the witness declaration was in contradiction to the testimony of Mr. Asfari, since Mr. Asfari declared that he was blind folded and that the witness had not seen a blindfold. The presiding judge used his own glasses to describe how the witness should have seen the blindfold. Mr. Asfari declared that the court had to imagine an abduction; and that he was not taken by 2-3 police men, but taken by dozens of police men, both uniformed and with civil clothes. The court asked Mr. Asfari how he could know that he was surrounded by police men; and at the same time blind folded. Mr. Asfari answered that he calls it "sight and mind"; the last thing I saw were dozens of police men surrounding me; and while they hindered me from seeing, they did not hinder me from understanding what was happening; that you can feel what is happening around you whilst blind folded and new senses emerge.

The next who was questioned by the court was **Mr. Aziz Kabir**. Mr. Kabir worked for the gendarmerie in Smara. Mr. Kabir told how the gendarmerie forces was missioned to secure order in the Gdeim Izik camp on the morning of the 8th of November. Their mission was to facilitate the traffic from the camp to the city. His section heard the helicopter and was told to move closer to the camp, where they saw smoke and fire inside the camp. Mr. Kabir declared that he saw thousands of people coming from the camp carrying knives and rocks, and that it "rained stones". The witness described that they withdrew from the scene, and went back to

their vehicles, and that the demonstrators followed them in a car. The witness declared that he saw one of the victims being run over by a car, and another victim being hit and kicked by several demonstrators which surrounded him. The witness told that his colleague was laying on the ground, and that the demonstrators continued to hit him with swords and rocks. Mr. Kabir explained that they had no weapons to defend themselves with, since they only had their riot gear. The witness declared that he was helped inside a car, and that the car was attacked and that the demonstrators used rocks to block the road; and that the ambulance reached the city around 10-11am.

The fourth witness summoned by the court this day was **Mr. Ridam Halwi**. Mr. Halwi was a part of the civil protection, and served as first sergeant. Mr. Halwi explained that he was part of the ambulance team which was placed in front of the camp, and that their role was to bring people back and forth from the hospital and give medical care whenever needed. Mr. Halwi explained that they could not enter the camp during the last 22 days, and that they witnessed changes and placement of Moroccan security personnel. Mr. Halwi explained that they went into the camp one time to pick up a sick lady and drive her to the hospital, and that they had been stopped at a checkpoint by 6-7 people. The witness stated that he was working a normal shift on the 8th of November, and that a helicopter had told the people to evacuate the premises, and that everything had been normal until the forces had been attacked by cars, and stones. He explained that they had picked up the wounded, and driven them to the hospital. He explained that the ambulance was surrounded on the way back, and that demonstrators had tried to take his car. He told that the demonstrators hit him and dragged him into the forest and told him that they would slaughter him; that one of them held a knife to his neck; and that he managed to escape and run towards the checkpoint of the gendarmerie. He had run towards an ambulance, which contained two corpses that had been urinated on; and that they were transported to the hospital.

The fifth witness summoned by the court was **Mr. Mustafa Zeynon**. The witness declared that he was in the civil protection of El Aaiun, and that he spent 3 days by the campsite. Mr. Zeynon explained that his section was positioned around 30 meters from the camp, and that the inhabitants used to get water from their fire trucks. The witness declared that inhabitants used to walk around the camp wearing vests. On the 8th of November around 7:30am when travelling towards the camp, they saw people coming towards them and understood that the camp was being dismantled. The witness explained that he found wounded people, and transported 6 women with him in the ambulance, and that young people came and threw stones at them, and that the car stopped. He was attacked with an axe on his head and with knives, and the witness explained that he lost consciousness and woke up later at the hospital. The witness could not identify any of the detainees.

Day 17 – On the 15th of May at the Court of Appeal, Salé.

The first witness that was summoned was **Mr. Tarik Hajri**. Mr. Hajri declared that he is in the gendarmerie and was part of a section responsible for facilitating the traffic back and forth from the camp. Mr. Hajri explained that his section was given orders to move forward. Mr. Hajri explained that people were throwing rocks towards them, and that they saw fires. The witness explained that they were surrounded on every side, and that a car drove over his feet, and that he was attacked whilst lying on the ground. He said someone else was already dead, his

colleague Atartor. He stated that they were beaten with gas cylinders, swords, stones, and that he had seen military boots. He almost had to lose his fingers. He said he saw something shining against the sun and that must have been swords and that they only had anti riot gear. The witness could not identify anyone.

The second witness that was summoned was **Mr. Hossini Lemtioui**. The witness declared that he lived in the Gdeim Izik camp from the first week of the settlement. The witness declared that he had social demands like everyone else that went to the camp. The witness declared that there were two checkpoints before entering the camp, and then two checkpoints inside the camp. The witness declared that he was registered by Deich Eddaf. The witness declared that he on the eve of the 7th of November had seen Mr. Bourial, Mr. Asfari and Mr. Lefkir discussing in the administration. On the morning of the 8th of November the witness declared that he had heard a helicopter which told the inhabitants to leave the camp. The witness declared that he saw Mr. Banga, Mr. Lefkir, Mr. Sbaai, Mr. Asfari amongst some other people that the witness could not identify handing out weapons and gas cylinders. The witness declared that he saw a grey Nissan driving around in the court yard. The witness declared that he ran away from the scene. The witness declared that he ran until he came to the city, and found protests in every street.

Mr. Lemtioui declared that the camp was organized into 7-6 sections, and every section was named after neighborhoods in El Aaiun. Protests emerged within the courtroom, and Mr. Bourial shouted that “this is only a theater. We have 500 Saharawi willing to testify about the truth. But you only allow the witnesses which are telling lies. You are performing a play in front of the international observers”. The presiding judge warned Mr. Bourial.

The testimony of Mr. Lemtioui recommenced. The witness declared that the camp had checkpoints, where the first checkpoint was controlled by Mr. Lakfawni and Mr. Sbaai. The witness declared that identification was controlled at the first checkpoint, and that the guards outlived body searches on the second checkpoint. The witness declared that guards with orange vests controlled the outskirts of the camp. The witness declared that Mr. Deich Eddaff had the formal responsibility for the administration. The witness declared that Mr. Lefkir, Mr. Asfari and Mr. Ezzaoui gave speeches stating that if the Saharawi people wanted something from the government, this was the time. The witness declared that Mr. Laaroussi was in control of the security forces. The witness declared that Mr. Laroussi was the owner of the grey Nissan.

The witness could not clarify the location of the administration, other than it was beside the court yard. The witness could not identify any of his neighbors in the camp, nor give the name of his neighborhood within the camp. The defense was prohibited from asking further questions about the witnesses relations in the camp. The witness confirmed that he saw Mr. Asfari on the eve of 7th of November and the morning of the 8th of November, after a confrontation by the defense about Mr. Asfari's arrest on the 7th of November at 6pm. The defense was prohibited from asking about whether the witness had seen Mr. Toubali, as the defense argued that Mr. Toubali was in the hospital. The witness declared that he witnessed all of this alone, and that he always was alone in his tent. The witness declared that he ran 15 kilometers with his flip flops. The witness described Mr. Asfari as a bald man, wearing glasses and was “higher than himself”, but the witness could not describe the baldness in Hassania. The witness described Mr. Banga with glasses, a beard and sunglasses in the evening. The witness declared that he has never told his declarations to anyone before, but was abruptly interrupted by the

prosecution. The witness declared that the people were told not to leave the camp, since their demands would soon be met by the government. The court refused to ask the witness about his address in El Aaiun, to protect him.

The court ordered that the accused was to be exposed to the witness. Defense attorney Mr. Lili argued that such an identification process was not in compliance with the presumption of innocence, since pictures of his clients had circulated the national media and internet over several years, and that the witness has seen pictures of the accused before the identification process. As such; the identification process was illegal. The court invoked their earlier ruling. The accused protested, and were identified by their names when approaching the witness. The accused protested and left the courtroom, and went back into the cage, shouting that Moroccan justice is a theater. The witness has thus prohibited from identifying the accused. The accused continued to protest for 30 minutes, as the presiding judge continued to record which of the detainees the witness identified.

The next witness to be questioned by the court was **Mr. Moulay Ali Amrani**. The witness identified himself as a soldier in the auxiliary forces. The witness declared that his section had been attacked by rocks, and that he had been hurt by a stone that hit him in the leg. He did not identify anyone.

The next witness to be questioned by the court was **Mr. Farouk Arika**. The witness declared that he belonged to the auxiliary forces, and that he had travelled from Smara to the camp. The witness declared that rocks were thrown, and that he saw half of his section fall to the ground. The witness declared that a Toyota drove towards them, and that they ran. A Jeep blocked the Toyota and the driver of the Toyota was arrested. The witness declared that he could identify the driver of the car. The defense was not allowed to bring forward the contradiction from a former witness, that claimed that the Toyota was stopped by the sand. The accused refused to come out of the glass-cage to be exposed to the witness.

The next to be questioned was **Mr. Zakaria Raiss**. The witness declared that he was ordered to maintain order, and to secure the transport without hinders. The witness declared that he saw people leaving the camp normally, but then the atmosphere changed. The witness declared that protesters outnumbered them, and that the demonstrators were throwing rocks, and approached them with swords and gas bombs. The witness declared that he ran to a bus, but the bus was hit by a car. The witness declared that the bus was ran into by a car, and that an ambulance transported him to the hospital. The witness declared that the protesters attacked the civil forces with intention to kill. The accused wanted to ask the witness questions, but were not allowed to pose questions since the witness had not identified any of the accused.

The next witness to be questioned was **Mr. Hamid Omalish**. The witness declared that he was second degree gendarmerie officer. The witness explained that he was positioned with his team near El Aaiun. The witness explained that when they arrived, they saw Land rovers driving in different directions, and that the cars were driving aggressively. The witness explained that they advanced towards the camp, and saw that the camp was organized. The witness declared that his section started the intervention from the east side of the camp. The witness declared that he saw a Land rover, heard a scream, was hit by a car, and saw the car being stopped by the gendarmerie, and that the driver was arrested. The witness declared that he could identify the

driver. The witness declared that he was transported in an ambulance, and saw other civil officers which were wounded.

Protest emerged within the court since several of the observers from the victim sides had sent threats towards the accused, and told that they were criminals and should be killed. Mr. Laaroussi demanded that the ones issuing the threats were transported out of the courtroom. The preceding judge demanded silence and continued the questioning. The accused refused to be exposed to the witness.

The next to be questioned was **Mr. Abdeljalil Laktari**. Mr. Laktari declared that he was part of a security group consisting of 80-90 persons, which oversaw the facilitation of the traffic. The witness declared that the protesters advanced towards them, and that they pulled back. The witness declared that the demonstrators threw rocks and were carrying knives, and were covering their faces. The witness declared that he was attacked and fell to the ground, and saw two other officers falling, and saw that they were being attacked by the masses. The witness declared that he was helped into an ambulance, and transported to the hospital.

The next to be questioned by the court was **Mr. Morad Haddi**. Mr. Haddi declared that he was part of the civil forces facilitating the traffic and transporting inhabitants from the camp to the city. The witness declared that they were surrounded by people, and that rocks were thrown at them. The witness declared that he ran, and got into an ambulance. The witness declared that the demonstrators attacked with intent to kill.

Day 18 – On the 16th of May at the Court of Appeal, Salé.

The first to be questioned by the court was **Mr. Mohamed Sahnoun**. Mr. Sahnoun declared that he was a driver of a lorry for the civil protection. The witness declared that his colleague was beaten, and that the lorry was set on fire by the demonstrators, and that they ran away, and saw a bus in full fire. The witness declared that the demonstrators said that they would kill them, that he was hit with a rock and fainted, and woke up in the hospital. The witness declared that the attackers were covering their faces, and that he could not identify them.

The second witness summoned to the court this day was **Mr. Brahim Hamya**, a support witness for Abdeljalil Laaroussi. Mr. Hamya explained that Mr. Laaroussi had called him on Friday on the 13th of November, and wished to visit him in his family house in Boujador and drink tea with him. Mr. Hamya declared that several police men entered his house forcefully and pushed him up against the wall and asked him where Mr. Laaroussi was. The witness declared that the police officers hit him and checked his ID card. Mr. Hamya was standing back to back with Mr. Laaroussi and was being hit by the police men. The witness explained that he was in shock and that he did not see clearly, but that they took Mr. Laaroussi and guided him out of the house, and into a black van. The witness explained that all the neighbors were in the street, and that he had went to the administration to find out what had happened to Mr. Laaroussi. The witness explained that he was in contact with the commander in chief of police on Boujador, and met with the governor of internal affairs. Mr. Hamya declared that he had expressed his concerns and told what happened, and asked the governor to investigate what had happened to Mr. Laaroussi since he was abducted by unknown people.

Protests emerged within the courtroom from the accused when the Civil party asked the witness what his address was in Boujador, claiming that the court had an obligation to protect all witnesses, and that the court was discriminating between the support witnesses and the witnesses for the prosecution office. The presiding judge asked the detainees to remain quiet and respect the attorneys from the civil party. The detainees protested again and stated that the civil party has no competence to ask questions, or to be an active part in the proceedings, and commenced by chanting the national anthem of Western Sahara. The court adjourned for a break.

The court resumed by hearing from Mr. Chej Banga. Mr. Banga declared that the accused had been prohibited from talking to their defense attorneys in the break by the police officers. The court commenced with questioning the witness, and when the testimony ended, resumed by summoning another witness. The detainees protested and tried to exit the courtroom shouting that the Moroccan judicial system is a theater, and the Moroccan judicial system is based upon racism. The court adjourned for a break so the detainees could discuss with their lawyers. The defendants were given the room to consult with their attorneys. Mr. Zeyou and Mr. Ettaki were escorted out of the courtroom, and were not given the opportunity to consult with their attorneys alongside with the rest of the group.

At the commencement of the proceedings, the defense attorneys declared that the detainees wished to withdraw themselves from the proceedings. The defense attorneys thereafter withdrew themselves as part of the defense, and explained that not only did they defend the detainees, they also defended their political beliefs, and that they therefore were obliged to follow the decision made by the accused. The French defense attorneys were not given the chance to explain their withdrawal from the defense team as did their colleagues. They urged the need to explain the withdrawal, but were expelled from the courtroom by the preceding judge without being given a chance to explain their reasons for withdrawal. The judge demanded a yes or no answer that was not given by the French attorneys who, then was forcefully pushed out of the courtroom by the security guards as ordered by the judge.

Again, protests emerged within the courtroom, and the detainees tried to leave the courtroom. The preceding judge declared that he would invoke art. 423 of the Moroccan penal code, which constitutes the competence of the court to appoint an attorney on one's behalf, if the defendants left the courtroom. The detainees left the courtroom and were transported to two cells in the court building. Mr. Zeyou and Mr. Ettaki which are released with time served declared that they, in solidarity with the other detainees, wished to remain as silent observers within the courtroom, but that they did not wish legal counsel.

The court declared that the detainees were to be given legal counsel according to the law, as to uphold the principle of a fair trial. The preceding judge appointed four new lawyers for the detainees. Two of the four lawyers were present in the court, as they had belonged to the civil part of the court case. The ones present accepted the responsibility on the others behalf without talking to them.

The court thereafter commenced with questioning the next witness.

The first witness to be heard was **Mr. Abdeljalil Chakouch**. Mr. Chakouch declared that he was a member of the civil defense. The witness explained that they started the dismantlement on the 8th of November, and that he saw Landrovers driving around, and that he saw demonstrators firing up gas cylinders and throwing them. The witness declared that he could identify one attacker, but could not identify him amongst the accused. The witness declared that he had seen many wounded and corpses.

The newly appointed defense attorneys commenced without conferring with their clients or receiving the document file of the case, by questioning the witness. The questions asked by the new defense lawyers were in line with the questions raised by the civil party. The witness was escorted out.

The newly appointed attorneys then asked for time to prepare their defense (i.e. consult with their clients and evaluate the case documents) before next witness was brought forward. They also stated that they didn't have access to the case file. The court refused to adjourn the session. The General Attorney thereafter stated that the court should respond positively to the request of the defense. The civil party also urged that the right to prepare one's defense is absolute. The presiding judge stated that he disagreed with the request of the defense, but the presiding judge said that if the civil party requested an adjournment due to tiredness he would grant the request, but not for any other reason. The civil part thereafter claimed that the preceding judge should adjourn the sessions since the attorneys were exhausted. The preceding judge thereafter declared that he had decided to adjourn the sessions since the attorneys were exhausted, but explicitly pointed out that this was the only reason and that the clerk should write that.

Day 19 – On the 17th of May at the Court of Appeal, Salé.

The court commenced by summoning the detainees to the courtroom. The court ordered the accused to appear in front of the court as stipulated in art. 423 of the Moroccan penal code. Mr. Ettaki and Mr. Zeyou which are released with time served showed two postersigns where it said that they were in silent protest. The court waited for the detainees for 20 minutes. The detainees asked for five minutes to deliberate. The court adjourned based on this request.

The court commenced and a security guard informed the court that the detainees refused to appear in front of the court without their handcuffs, i.e. they wanted to wear their handcuffs as to show that they were transported handcuffed and under protest from the prison to the court. The court decided that the detainees entering with handcuffs was against the law, and the guard was to go back and give the detainees a warning in accordance with art. 432 second paragraph. The detainees insisted on their position. The court ruled that the proceedings would commence without the detainees present, and that the clerk of the court was responsible for informing the detainees about the court's ruling.

The first witness to be summoned to court was **Mr. Ashraf Mchich**. Mr. Mchich declared that he was an officer in the civil forces, and that he was present in the city of El Aaiun at the 8th of November, and was ordered to facilitate the traffic. The witness explained that people were coming towards them, walking and in cars. The witness declared that the people had knives and were throwing rocks. The witness declared that he was hit by a rock, and fell to the ground, and

was hit with knives in the back. The witness claimed that he passed out, and woke up from a coma on the following Saturday.

The next witness to be questioned was **Mr. Ahmed Hamidou**. Mr. Hamidou declared that he was part of the gendarmerie forces, and that he was a driver of a car. The witness explained that he met the citizens by the checkpoint of the gendarmerie, and that he continued towards the camp and was surprised on his right side by demonstrators that ran towards them. The witness explained that he continued to drive and exited the car when he reached the camp, fell and passed out, and was taken to the hospital with a broken leg. The witness declared that he could not identify the attackers.

The next witness to be questioned was **Mr. Yames Hrouchi**. Mr. Hrouchi declared that he is unemployed and that he knew some of the defendants in the camp. The witness declared that all the inhabitants in El Aaiun knew the camp, and that they had social demands. The witness explained that to go to the camp, you had to go through the checkpoint of the police, and then the checkpoint of the gendarmerie, and then there was a checkpoint inside the camp where people were wearing green vests. The witness explained that, after five days, he brought his own tent to benefit from the social demands. The witness declared that the camp was divided into five sections, and that Mr. Laaroussi was in control of the security forces. The witness explained that the security forces kept order in the camp, and that food was distributed, and that there was a pharmacy and a place for speeches. The witness declared that he heard a speech by Mr. Ezzaoui where Mr. Ezzaoui urged the people to protest until death. The witness explained that he heard voices and cars the night before, and that he on the morning on the 8th of November woke up to chaos. The witness declared that he saw civil forces inside the camp, and people hitting them and driving Landrovers towards them. The witness declared that he saw Mr. Babait, Mr. Toubali, Mr. Laaroussi, Mr. Sbaai, Mr. Lemjeiyd and Mr. Boutinguiza, but ran away, and ran all the way to the city. The witness declared that he could identify them if he saw them, but that he could not describe them. Mr. Hrouchi could not remember the name of the neighborhood he lived in in the camp. The witness declared that he lived alone.

The prosecutor requested that the witness was to identify the detainees through exposing the witness to pictures of the accused, and requested that the other witnesses which declared that they could identify was to be shown the same pictures. The defense argued that one could not identify a person through a picture, but that the identification process had to be in person, as the pictures were not part of the evidence file. The defense further argued that the witness had never seen anyone of the accused commit any crimes, and that an identification process therefore was unnecessary. The civil part requested that the witnesses was brought to the accused for the identification process, i.e. to the basement where the accused were being held. The court ruled in accordance with art. 422 which gives the court the right to manage the proceedings, that the pictures were to be given to the defense for review, and thereafter to be given to the witness for identification.

Mr. Zeyou and Mr. Ettaki were exposed to the witness within the courtroom, but were not identified. The court delivered the pictures of all the detainees under arrest to the witness, where the witness identified Mr. Babait, Mr. Eddaf, Mr. Ezzaoui, Mr. Bourial, Mr. Toubali, Mr. Lemjeiyd, Mr. Sbaai, Mr. Laaroussi and Mr. Boutinguiza. The witness took out one after one picture, handed it to the judge, which handed the picture to the prosecution, and thereafter to

the civil part and the defense, before portraying the picture in front of the camera. The court thereafter ruled that the pictures should be shown to all the observers, for them to check whether the pictures had any marks on them. After protest from the Civil part, the court ruled that all the pictures were to be portrayed on the screen, both front and back. The defense protested and demanded that the accused were informed about the courts latest decision, where the presiding judge reminded the court that it was the clerks responsibility to inform the detainees at the end of the day.

The defense asked the court to ask the witness what criminal offense each of the identified accused had committed, and reminded the court that the witness had not seen anyone of them kill or be violent. The judge stated that the witness said that he saw them attacking, where the defense stated that the judge was guiding the witness. The witness thereafter declared that Deich Eddaff registered him; Mr. Toubali hit with stones; Mr. Lemjeiyd was hitting; Mr. Laroussi was chief of the security forces; Mr. Bourial was hitting; Mr. Ezzaoui held a war speech; Mr. Babait was hitting; Mr. Sbaai was hitting; Mr. Boutinquiza was hitting.

The next witness to be questioned was **Mr. Redoam Lawini**. Mr. Lawini declared that he belonged to the gendarmerie forces, and that his section had been given orders to maintain order. The witness declared as when they advanced towards the camp, he saw demonstrators driving cars, carrying knives and gas cylinder, and that stones were falling like rain. The witness declared that he was hit with a rock in his back and his leg, and that he ran from the scene. The witness declared that when he reached his vehicle, he saw three persons take a car, and another car hitting his colleague. The witness explained that he was transported to the hospital by helicopter, and that he was in a coma. The witness declared that he could not identify any of the attackers.

The next witness to be questioned was **Mr. Mohamed Dghigh**. The witness declared that he became part of the surveillance team two days before the event, and that his team was placed approximately 800 meters from the camp. The witness described that the dismantlement started normally on the 8th of November, until they saw fire and a bus that returned broken. The witness declared that his team was ordered to form two lines to help the bus. The witness declared that they moved forward and received rocks, and protected themselves with their shields and helmets, and that they eventually pulled back because they were outnumbered by the demonstrators. The witness explained that they ran back to their vehicles, and that one had already left when he arrived; and that he carried one of his colleagues that could not run, inside a car; and he placed his right foot on the vehicle; and that a demonstrator was hitting him and trying to make him fall. The witness declared that a car was following them, and that the car crashed into their vehicle; he fell; was attacked with swords; and his colleagues carried him into the car. The witness declared that he was taken to the hospital where he saw many wounded and corpses. The witness declared that he could identify the one hitting him whilst he was holding on the car. The witness was not able to identify any of the accused.

The next witness to appear was **Mr. Kamal Rouki**. Mr. Rouki declared that he was part of the civil defense, and that he witnessed two members of the civil defense being hit with stones and knives; and that they pulled them into their car; but that their car was stuck since a bus was blocking the road. The witness declared that more demonstrators came from the right hand side, and broke their windows; and that a demonstrator climbed on top of their car and hit him

through the ceiling-window. The witness explained that they broke his right arm and hit him with a sword on his left arm. The witness explained that the demonstrators went to the left side of the car; that he opened the door and carried his colleague to another vehicle; whilst being hit by stones. The witness declared that they were evacuated in a helicopter since the road was closed. The defense asked what the relevance for this witness was, when he could not identify any of the accused or testify to a crime that any of the accused had committed.

The court commenced by re-summoning the witnesses that the accused had refused to expose themselves to. The first to be summoned was **Mr. Farouk Arika**. Mr. Arika identified Mr. Boutinguiza when being exposed to the pictures of the accused. Mr. Arika declared that he was about 60% sure that it was Mr. Boutinguiza that hit him with a car, but that he was confused between 3 of the accused and could not be sure. The second to be summoned was **Mr. Raiss Zakaria**. The prosecutor insisted to give the witness sufficient time to review the pictures of the accused. Mr. Zakaria identified Mr. Ezzaoui, Mr. Bourial, Mr. Lakfawni, Mr. Deich Eddaf and Mr. Asfari as people that travelled through the checkpoint on their way to the camp.

The next witness summoned was **Mr. Hamid Omalish**, he has declared that he could identify people, and identified Mohamed Embarec Lefkir and Mohamed Bani, but stating that they looked like the people he saw but he was not sure. After the judge repeated the question he said he was almost sure, 90% maybe and at the third time he was questioned stated that he was sure now. The witness said the he saw Mr. Mohamed Bani in the car running over someone and that he saw Mr. Mohamed Lefkir in the Gdeim Izik camp, he stated that there were others but he could not say who. The defense asked how he could change from i'm not sure, to i'm almost sure, and then 90% to certainty.

Mr. Abdeljalil Chakouch was the next witness to be called. He was told to say if he recognized Zeyou and Ettaki, but he could not identify them. Then he was shown the fotos of the detainees. He identified Mr. Mohamed Bourial and said that he did not see him do anything, he just saw him being arrested. He also identified Chej Banga and again said he did not see him do anything, just being arrested in a place where he saw people with weapons.

The next witness was **Mr. Hossini Lemtioui**, he was given the pile of photographs from the accused and he identified: Mohamed Lefkir; Mohamed Bourial, Chej Banga; Deich Eddaf; Naama Asfari, Ahmed Sbaai; Houcein Azaoui, Abdeljalil Laaroussi. The defense asked if he saw any of these men commit a crime or something suspicious but the judge said this was already answered, the defense should read the transcripts later. The witness said he saw some of them distributing weapons.

Day 20 – On the 18th of May at the Court of Appeal, Salé.

The court commenced by summoning the detainees to the courtroom. The court ordered the accused to appear in front of the court as stipulated in art. 423 of the Moroccan penal code. Mr. Ettaki and Mr. Zeyou that are released with time served, showed signs where it said that they were in silent protest. A security guard informed the court that the detainees refused to appear in front of the court without their handcuffs, i.e. they wanted to wear their handcuffs as to show that they were forced to be in the court house. The court decided that the detainees entering with handcuffs was against the law, and the guard was to go back and give the detainees a

warning in accordance with art. 432 second paragraph. The detainees insisted on their position. The court ruled that the proceedings would commence without the detainees present, and that the clerk of the court was responsible for informing the detainees about the courts ruling.

The clerk informed the court that he had visited the detainees the night before to inform them about the conducted proceedings and the courts rulings. The detainees had declared that they did not wish to be a part of the court case. The accused had protested when he was trying to inform the detainees about that happened during the proceedings on the 17th of May, and that the clerk had been prohibited from informing the detainees about the courts decisions on the 17th of May. The court commenced without any further comments upon the subject.

The first witness that was summoned was **Mr. Hmaida Akrach**. Mr. Akrach declared that he was part of the civil defense, and that he on the 22nd of October had travelled to the camp to assist with medical care and transport to the hospital if necessary. The witness declared that they used to travel into the camp to pick up patients; and that they went to the checkpoint and found the patient in a tent close to the entrance. The witness declared that he witnessed irregular traffic the night prior to the dismantlement; several cars travelled in and out of the camp. The witness declared that a helicopter told the inhabitants to leave the camp right after sunrise the morning of the 8th of November; and that people started to leave the premises; and that he saw Landrovers running into the gendarmerie forces. The witness explained that they had taken the gendarmerie officers to the hospital, but was attacked on their way back with stones; and that they turned and commenced towards the city and picked up two wounded members of the civil defense. The witness identified Mr. Ezzaoui as one of the inhabitants in the camp, but declared that he had not seen Mr. Ezzaoui on the 8th of November.

The court commenced by summoning the police officers which has written the police reports and the declarations of the accused. The police officers summoned to court are identified by the accused as the ones who tortured them. All the police officers were sworn in to testify in front of the court.

The first police officer to testify was **Mr. Mohssin Bou Khabza**. Mr. Khabza declared that the idea of creating a camp came from Mr. Ezzaoui and Mr. Bourial, joined later by Mr. Eddaf and Mr. Lefkir, and then planed in Algeria under the surveillance of Mr. Asfari. The witness declared that the camp started with social demands, but that the inhabitants went under the control of the leaders, and was deceived by the ones in control. The witness declared that the placement of the camp was not sporadic, but carefully planned, and that it was constructed by Mr. Lakfawni, Mr. Asfari, Mr. Laroussi, Mr. Bourial, Mr. Babait, Mr. Lefkir and Mr. Eddaf. The witness declared that Mr. Laroussi was in charge of the security forces, and that the security forces turned people with social demands into hostages. Mr. Lakfawni was in charge of a checkpoint. Mr. Asfari gave the orders. The witness stated that the camp was under the control of people with criminal records, in particular Mr. Babait. The witness declared that the dialogue committee deceived the inhabitants, and did not inform the inhabitants of the negotiations; that Mr. Toubali, Mr. Eddaf, Mr. Bourial, Mr. Ezzaoui gave the people an illusion that their demands would be met. The forces were therefore instructed to evacuate the people. The witness explained that they divided into four groups; on to the south, one to the north, on to the east and one to the west. The mission was to help the inhabitants. At 6:30 am a helicopter informed the people to evacuate, and informed the people of the negotiations with the Dialogue

committee and the government; that their demands were understood and would be met, and that there was no need to stay in the camp. The witness declared that the evacuation was normal; but then the process shifted; and that the forces saw irregular movements, and that they understood that people were stopped from leaving the camp; and that they understood that the public forces were to be attacked. The witness explained that they commenced towards the camp, and arrested people throwing rocks and carrying swords; and delivered them to the public authorities. The witness declared that they saw Eênama Asfari giving orders; and that they arrested him around 9:30 am, 300 meters away from the tent of the dialogue committee. The witness declared that they arrested 67 persons, and among them Mr. Asfari, Mr. Banga, Mr. Bourial, Mr. Ettaki, Mr. Ayoubi, Mr. Ezzaoui and Mr. Bani. The witness explained that they searched three tents that Mr. Asfari used to be in; the tent for the dialogue committee, the tent with the international observers, and the tent of Mr. Asfari himself. The witness declared that they found a hole in the ground, where they discovered a plastic bag containing weapons (i.e. four firearms, two machetes, two swords, and one knife) and money (i.e. 500 euro, 30 000 dollars, 3000 Algerian Dinars and 600 Dirham). The witness declared that Mr. Asfari said that the belongings in the plastic bag belonged to him, and that he had told the inhabitants to attack the civil forces. The witness explained that they transported the detainees to a secure location outside of the city to commence the questioning and write the police reports, and gave them food and water. The witness declared that this was an unusual mission with only casualties from the public forces, and none from the public. The witness insisted that none of the people under arrest had underwent inhumane treatment.

Mr. Ettaki and Mr. Zeyou stood up and tried to leave the courtroom. Mr. Zeyou declared that he could not sit her and listen to a man that had tortured him for five days. Mr. Zeyou and Mr. Ettaki left the courtroom.

The witness declared that the investigation had been conducted under normal circumstances, and that all the rights of the detainees had been preserved. The witness declared that the detainees signed the police reports after reading with fingerprint or signature. The witness declared that the investigation process was conducted with four investigation groups, and that he was present during the questioning of all the 67 detainees. The witness declared that the detainees were proud of their declarations, that they had no regret, and told willingly. The witness declared that the detention was prolonged on the 10th of November, and that six of the detainees were transported by plane. The witness declared that he could not talk about the treatment of all the 67 detainees, but that all were treated well and could sleep. The court refused to ask the witness whether the questioning was filmed. The witness claimed that the detainees had scratches and wounds upon arrest. The witness was exposed to the pictures of the detainees. The witness identified all the detainees, but did not identify Mr. Zeyou and Mr. Ettaki which had left the courtroom and could not be exposed to the witness.

The civil part representing the victims requested the court to summon the detainees to the court to face the testimony. The court denied the request.

The second police officer to testify was **Mr. Yousef Raiss**. Mr. Raiss declared that he belonged to the group advancing towards the camp from the north. The witness declared that the evacuation was normal the first hour, but then cars attacked them, and that they arrested Mr. Ayoubi as one of the drivers. The witness declared that they arrested in total 24. The witness

explained that they arrested Mr. Banga which had attacked with a sword but had thrown the sword away; the same went for Mr. Ettaki and Mr. Eddaf. The witness stated that there was no blood, but that they saw them carrying knives. The witness declared that they later learned that Mr. Laaroussi was the driver of the car, which they failed to arrest at the scene of the crime. The witness declared that the operation lasted until 12am, and that they gathered the detainees (in total 67), and travelled towards El Aaiun and to the regional headquarter; and started the identification process at 2:30 am until 8pm. The witness declared that they organized themselves into four groups, and that his group questioned in total 28 detainees. The witness declared that none of the people under arrest was tortured, and that all read their police reports before signing, and that the detainees had chosen whether to sign with fingerprint or signature.

The third police officer that was questioned was **Mr. Said Ben Sghir**. Mr. Sghir said that at 6.30 am they were instructed to dismantle the camp and people had one hour to leave the camp. He declared that he was placed on the east side of the camp, and that his group arrested Mr. Bani as a driver of a car attacking the public forces. The witness declared that the people were stopped from leaving the camp, and that their mission was to free the hostages. The witness declared that some attacked with cars, whilst some attacked with knives and stones. The witness declared that he could identify Mr. Eddaf, Mr. Ezzaoui and Mr. El Bakay among the attackers, and Mr. El Bakay, Mr. Larrousi and Mr. Ezzaoui as leaders within the camp. The witness declared that the interrogations were conducted in El Aaiun, and by splitting up in groups and tasks; and that the detainees were questioned in the regional headquarter.

The fourth police officer that was questioned was **Mr. Abdel Hamid Elmaghani**. The witness declared that he was positioned on the east side; that he saw Mr. Toubali and Mr. Bourial giving orders; and that the inhabitants were forming a line to hinder people from leaving the camp. The witness stated that Mr. Bourial was wearing a yellow vest, and that Mr. Bourial was attacking with stones. The witness declared that Mr. Babait was throwing rocks. The witness declared that the interrogation was performed under “the best conditions”. The witness could not describe what he meant by “the best conditions”.

The fifth police officer to be questioned was **Mr. Abde Rahmon Elwazna**. **Mr. Elwazna has been identified as the one conducting and managing the torture both within the police head quarter and the prison.** Mr. Elwazna declared that his section commenced the dismantlement of the camp around 6:30am. The witness declared that landrovers were preventing the inhabitants from leaving the camp; and explained that his section was forced to pull back because they were being attacked with stones. The witness declared that they arrested Mr. Ettaki after he attacked a member of the gendarmerie. The witness declared that Mr. Laaroussi and Mr. Lakfawni were driving a car, and that Mr. Laaroussi did not cover his face and was wearing a military vest and fled towards El Aaiun. He said that he knew Laaroussi well. When asked about the alleged torture, the witness declared that the questioning was conducted by dividing into groups; that he had a superior; and that he wanted to face everyone of them that claimed that he tortured them. The witness claimed that he investigated Mr. Laaroussi in the police head quarter, but that it is impossible to torture someone inside a police head quarter. The witness declared that he is commander of a group, and does not travel to prisons to torture people. The witness declared that he saw no signs of torture, and that all rights were preserved. The witness declared that he did not interrogate Mr. Asfari, but that he saw Mr. Asfari entering the camp around midnight on the 7th of November.

The court ruled that they had heard enough from the police officers conducting the police reports, and ended the hearing of the witnesses.

The prosecution requested to present new evidence into the case file, i.e. two new reports. The prosecution presented a report concerning the movements of the different detainees which had travelled to Algeria in September and November 2010 (I.e. concerning Mr. Asfari, Mr. Eddah, Mr. Banga, Mr. Brahim, Mr. Sbaai, Mr. Lefkir, Mr. Lemjeyid and Mr. Lakfawni). The prosecution presented a second report concerning transcription of phone calls. The prosecution informed the court that the prosecutor of El Aaiun had issued a warrant on the 12th of October 2010 for surveillance and tapping of the phone of Mr. Asfari, and that this was new evidence for the prosecutor in Rabat. The warrant concerned tapping of the phones of Mr. Asfari, Mr. Sbaai, Mr. Lakfawni, Mr. Bourial, Mr. Hassan Eddah, and Mr. Deich Eddaf. The prosecutor declared that phone calls were surveilled, and that the transcriptions of the phone calls prove that the Gdeim Izik camp was planned in Algeria during meetings with the Polisario Front. The prosecutor stated that Mr. Asfari and Mr. Sbaai served as leaders, and that tasks were divided between the participants, and that the mission was to destabilize the southern province of the Kingdom of Morocco. The prosecutor read from the phone records, and mentioned several phone calls between Eênama Asfari and members of the Polisario Front (Omar Bulsan and Mohammed Dhalil) and conversations mentioned with the special envoy of the General Secretary of United Nations, Christopher Ross.

The defense demanded that the new evidence had to be implemented into the case file in consistence with the criminal procedural regulations; and stated that the reports were not concealed, and that the chain of custody was absent. The defense declared that the court did not know who wrote the transcriptions and that the court did not have access to the tapes. The defense declared that the original source (the tapes) of the report upon the phone calls had to be presented. The defense urged that the court could not make a decision upon admitting new evidence into the case file without the detainees present in the courtroom. The defense also argued that the evidence was seven years old, and thus impossible for the accused to meet and to defend themselves against; and the defense asked why the evidence had not been presented on a earlier stage to the accused; and urged that the judgement could not be regarded as correct if such evidence was admitted into the case file. The defense pointed out that this case was transmitted to the civil court by the constitutional court, and that this new evidence had neither been presented during the investigation phase, at the military court nor to the constitutional court; and that this transmission prohibited the court from admitting new evidence into the case file. The defense further argued that the new evidence (the transcripts of the phone calls) could not be admitted to the case file as they were not relevant to the accusations placed forward by the prosecution office. The civil part argued for the admittance of both the new reports into the case file. **The court ruled to postpone the decision to a later time**, and to expose the reports to the detainees. The defense urged that the accused should be present in the courtroom. The court refused to bring them by force.

The prosecution requested to admit photos of Mr. Banga wearing glasses and with a beard. The photos were admitted into the case file.

The prosecution requested to show a **movie** to the court as part of the evidence in the case. The

court ruled to screen the film to the courtroom. The film showed; a helicopter flying over the camp; people with scarfs running on the ground; cars driving; people putting on yellow vests; people leaving the camp; families entering buses; ambulances; cars carrying people; people throwing rocks; the gendarmerie destroying tents without checking if there was somebody inside; water cannons targeting the inhabitants; people attacking a car and lighting it on fire; a red car with a circle around; a person hanging on a car; inhabitants running towards the civil forces; two circles portraying an attacker and a victim; three circles and naming of Mr. Toubali, Mr. Khouna and Mr. Bourial without possible facial recognition and no identity of a crime; circle and naming of Mr. Boutinguiza without possible facial recognition and no identity of a crime; portraying a pile of something that cannot be recognized and circle and naming of mr. Babait and mr. Khadda without possible facial recognition but with identity of a crime throwing stones; portraying of gas bombs and people throwing rocks; images of wounded gendarmerie officials; wounded gendarmerie officials carried into the back of a truck; a man with a wound in his head; a man lying on the ground; video of Mr. Bani arrested; Mr. Bani is dragged out of a car with broken windows and a head injury; the video portrays a jeep; victims are carried to an ambulance; people running on the ground; broken tents; knives; portraying Mr. Bourial on the ground with handcuffs, he looks dizzy and unwell; a bus in the middle of the road; an ambulance driving of the road; people running; people attacking the ambulance with sticks; people attacking a fire truck with stones; a red car that is tipped over in the middle of the road; a bus on fire; gendarmerie personnel; people walking alongside the road; a body lying in the middle of the road; two cars driving and people running; to corpses and a man standing over them (the man was wearing a pink jacket, a black scarf and blue pants); portraying the protests in the city; cars on fire in front of a building; people running in the streets; a body on the ground and a man standing over him with a knife; a man beaten laying on the ground; speak from the camp held by Mr. Ezzaoui; portaying Mr. Thalil standing next to a truck.

The prosecutor declared that the movie is proof that the inhabitants in the camp received military training. The movie commenced by portraying pictures. The court ordered the prosecutor to read the text on the screen. The first picture showed the Mr. Sbaai and Mr. Asfari with the military minister of Polisario in the Tindouf camp. The second picture portrayed Mr. Asfari and Mr. Lemjeyid with members of the Polisario. The third picture portrayed Mr. Thalil and Mr. Banga carrying firearms with members of the Polisario Front in the Tindouf camps. The fourth picture portrayed Mr. Banga and Mr. Ismaili with the military minister where Mr. Banga had a light beard. The fifth picture portrayed Mr. Sbaai with members from the Polisario.

The movie commenced by portraying details about five accused identified in the movie. The first accused identified was Mr. Mohammed Bani; portraying wheel marks on the ground, and marks on the car, a man on the ground, and pieces of the glass shield, but not portraying the incident or a crime committed; Mr. Bani being dragged out of a car by multiple gendarmerie officials; and escorted away. The second accused identified in the movie was Mohammed Bourial; portraying an image of a man in a yellow scarf with a circle around him, not able to identify any crimes committed; Mr. Bourial sitting on the ground next to a fountain looking dizzy and unwell; Mr. Bourial in a car and being asked his name, he answers. The third to be identified was Mr. Babait Mohammed Khouna; circle around a man which is throwing rocks; not possible to identify the man. The fourth to be identified was Mr. Boutinguiza; a circle around a man carrying weapons, and portrayed standing with Mr. Bourial allegedly giving instructions; wearing white t-shirt, jeans, grey jacket and black scarf; not possible to identify

any crime committed, nor identify the face. The fifth to be identified was Mr. Toubali; circle around a man wearing beige jeans, white t-shirt and black jacket; not possible to identify any crimes committed nor identify Mr. Toubali as the man encircled.

The court commenced by reviewing the medical expertise. The court requested a statement from the defense attorneys on the already conducted medical examinations. The defense requested more time to evaluate the reports from the medical examinations, as they had received the case documents the same morning, and had prioritized reviewing other elements of the case.

The civil part declared that the medical examinations had followed all the necessary guidelines stipulated in the national law, and international law, and that an independent evaluation or examination would be a breach of Morocco's sovereignty, and that no other country in the world would agree to it. The civil party stated that the competence lies with the national judicial system, and that an independent examination would be a violation of the treaty of Milano. The civil party furthermore requested the court to accept the defenses request for a postponement.

After an adjournment, the court reminded the parties that the accused and the defense already had read and evaluated the medical examinations, and that the accused did not need to be re-told. The court rejected the request upon an independent medical examination. The court approved the request upon postponement and adjourned the session until the 5th of June 2017.

Day 21 – On the 5th of June at the Court of Appeal, Salé.

The proceedings started with a delay of over 3 hours at 13h45. The judge informed that the delay was due to the fact that the accused in detention didn't want to leave their cells, but then he corrected himself saying that they were sleeping due to Ramadan and therefore the court gave them time to wake up and wash themselves. The accused were transported to the courthouse but refused to appear in front of the court.

The accused Mohamed Bourial, Mohamed Bani, Housseun Ezzaoui and El Bachir Boutanguiza was sick, and were not transported to the courthouse. Mr. Mohamed Ayoubi was absent and his file was postponed to the 4th of July.

The proceedings initiated with the defence pointing out several cases of the medical expertise where the conclusions of the reports did not correspond to the findings and observations made by the different doctors. The cases highlighted and that were presented as examples were that of Mr. Chej Banga and Mr. Mohamed Bourial.

Mr. Banga's head injury was not attributed to torture, but was not explained otherwise, Mr. Bourial has scars from handcuffs, where the conclusion was that the scars had nothing to do with torture. The defence declared that this constituted a contradiction. The defence also pointed out that new photos of the accused when they arrived at prison were not analysed.

The defence also stated that the medical reports were not clear about the origin of the scars and injuries, and that there is no explanation into how or why they were provoked.

The defence asked the court to call new independent experts to make an additional expertise

and for the doctors that were the authors of the present expertise to come to court to clarify doubts.

The defence also stated that the expertise was not in accordance with the Istanbul protocol.

The general attorney declared that expertise was done in accordance with the Istanbul protocol and that he did not see the need for any additional expertise.

After a short break the panel of judges decided to summon the 3 doctors who wrote the reports for the 6 of June at 10am. but refused an additional expertise.

The proceedings were adjourned after one hour to the next morning at 10am.

After leaving the court house we received a communiqué from the Committee of the families of the prisoners informing that the prisoners refused to leave their cells to go to court and that the guards in the prison, and after orders of the prison director had forced the detainees to leave their cell and transported them to the courthouse. According to the statement the prisoners were beaten, slapped, kicked and insulted resulting in several injuries of Mohamed Haddi, Hassan Eddah, Sidi Abdallahi Abahah, Chej Banga, Ahmed Sbaai, Mohamed Tahlil, Abdallahi Lakfawni, Mohamed Khouna Babeit, Sidahmed Lemjeyid, Mohamed Mbarek Lefkir and Abdeljalil Laaroussi.

Day 22 – On the 6th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court case commenced by **summoning the doctors which conducted the medical examinations** to be questioned by the court. The medical examinations ordered by the court was conducted by Pr. M. El Yaacoubi Moradh, Dr. Chakib Bouhelal and Pr. Fadila Ait Boughima. Pr. Fadila Ait Boughima was the one of the doctors who was questioned, as she was the coordinator for the expertise.

Fadila Ait Boughima stated that the examination was conducted for 16 of the detainees, whilst 5 detainees refused to undergo the examination on the basis that they requested an independent examination. The doctor stated that the appointed doctors are specialized in each of their field (i.e. forensics, psychiatry, bones) and that each of the doctors conducted private interviews, and the doctor stated that both the confidentiality and the dignity of the patients was respected. The doctor stated that she met the detainees again in the prison of El Arjat, and that the expertise was conducted in line with the Istanbul Protocol. The doctor stated that the Istanbul Protocol is an instrument to be used when torture allegations is presented, and when evaluating whether a person has been tortured. The doctor stated that the examination should evaluate whether the alleged torture match the scars and marks found on the body of the person alleging the torture. The doctor stated that related to the examination of Mr. Banga, none of the scars or marks on his body matched the alleged torture, and that pain and sufferance are subjective, and that it is

normal for a prisoner to feel depressed and therefore feel pain. As for the case of Mr. Banga, the doctor concluded that the scars did not match the alleged torture, and that the doctor could not conclude with certainty that torture was the reason for the marks on the body of Mr. Banga, but that it was a possibility that the marks were linked to the alleged torture. As for Mr. Eddaf and Mr. Bani, which alleged torture and loss of hearing after the torture inflicted on them, the doctor stated that the loss of hearing was due to an ear infection and age. The doctor said that she could therefore not link the scars and injuries to torture, as there existed other possible explanations for the injuries and scars. The defence wanted the doctor to explain what she meant with a “weak probability” since the likelihood that torture had occurred, clearly existed. The doctor could not give a percentage of the probability, and stated that the probability was deemed as weak, as there existed numerous possible causes, as the scars could be a result from accidents from the childhood. The defence was prohibited from asking further questions about the probability for torture. The doctor stated that it was impossible to find out the exact time a scar or mark occurred, i.e. how old a scar or a mark is.

The court commenced with the **closing arguments from the civil party**. The president of the bar, belonging to the civil part, commenced his pleadings by citing two verses from the Koran, as this case was nothing else but a murder case. The attorney stated that **10 members** of the law enforcement were slaughtered, when they carried no weapons. The attorney stated that the killings are proven, and that we are dealing with a group of people which planned and committed these crimes. The attorney described the case in 7 steps; first step was the planning, second step was the execution of the plan with foreigners abroad and where 11 of the detainees received financial aid; third step was mobilizing when the detainees toured the region and recruiting people to the camp by lying to them and claiming that the camp had social demands; fourth phase was to prolong the negotiations with the government and hinder the settlement of an agreement; fifth phase was organizing of armed forces; sixth phase was to turn the inhabitants into soldiers, and to give them weapons; the seventh phase was the dismantlement, where the inhabitants attacked and the soldiers stopped people from leaving.

The attorney claimed that one had to evaluate the facts of the case different than what was done at the Military Court, and that the court had to prove the role of every one of the detainees. The attorney thereafter divided the accused into three groups; leaders, commanders and executers. The attorney described Mr. Asfari, Mr. Lefkir, Mr. Bourial, Mr. Zeyou, Mr. Deich and Mr. Ezzaoui as leaders. The attorney described Mr. Laroussi, Mr. Isamili, Mr. Toubali, Mr. Sbaai, Mr. Abahah, Mr. Haddi, Mr. Lakfawni, Mr. Babait and Mr. Boutinguiza as commanders/field leaders which controlled their own section or squads within the camp. The attorney described Mr. Bani, Mr. Banga, Mr. Thalil, Mr. Ayubi, Mr. Ettaki, Mr. El Bachir, Mr. Hassan Eddah, Mr. Lemjeiyd and Mr. El Bakay as the executers/soldiers, i.e. the ones carrying out the direct orders from the leaders and the commanders.

The attorney declared that Mr. Asfari was the main leader in the camp; and that he had contact with enemies of the state; had weapons and received financial aid. This was supported by 18 other declarations given by the detainees, and that the declarations of the other detainees proved that the declaration of Mr. Asfari was the truth. The attorney stated that Mr. Asfari as the leader of the camp was responsible for what had happened and resulted from the prior agreement. The attorney declared that it was clear that an agreement was set into place, where the camp was organized, and supported by the declaration of Mr. Asfari in the military camp where he stated

that he only let international observers and press enter the camp, and that Mr. Asfari was determined that the whole world should hear the protest from the Saharawi People. The attorney stated he was shocked when the detainees had entered the room chanting slogans, and that this statement was a means of justifying their actions; and thus, proved that the accused were guilty. The attorney claimed that the information witnesses were not credible since they were the cousins of Mr. Asfari, and that Mr. Asfari was guilty even if he had been in El Aaiun on the 7th and 8th of November; since he had planned the armed attack and the man slaughter; travelled to Algeria to conspire against his country; and thus, was the sole responsible for what happened. The attorney invoked the phone recordings as evidence, as the attorney stated that Mr. Asfari had conversation with the minister of defence of Polisario.

The attorney commenced by describing the role of each of the detainees. He stated that Mr. Lefkir was the brain behind the camp, and that he had ordered the security forces in the camp to attack; and distributed weapons; and attacked with cars and knives. The attorney supported the claims with the declarations given by Mr. Lefkir to the police, and to the investigative judge, and the witnesses which identified Mr. Lefkir; and by the declarations given by the other accused; and the phone recordings. The next detainee which were claimed to be a leader in the camp was Mr. Bourial, where the attorney stated that one could clearly see in the movie that Mr. Bourial was arrested at the scene of the crime; and that Mr. Bourial together with the other leaders had been in conspiracy to attack the integrity of the kingdom of Morocco in favour of other interests; and that Mr. Bourial had given a political speech to defend his actions against national affairs. The attorney declared that the phone recordings proved that Mr. Bourial had taken orders from foreign parties; and that the cars and the weapons came from foreign parties. The fourth accused to be proclaimed as a leader was Mr. Zeyou, where the attorney stated that he organized them after their ranks and how they had been paid. The attorney stated that Mr. Zeyou was the adviser of Mr. Asfari when collaborating with foreign parties. The attorney stated that the leaders of the camp had planned the attack, and that the leaders in the camp had committed terrorism; and that this group invented terrorist attacks with cars; which later have been seen and reproduced in Nice, London and Manchester. The fifth leader was Mr. Eddaf which has declared that he was part of the group which established the protest camp; and that Mr. Eddaf had declared state of emergency and declared war; to use all means to win over the attackers. The attorney declared that Mr. Eddaf had testified to running over officials with his car; and that the declarations of the different detainees confirmed the content of the other and vice versa; and that this proved that the police report was the truth; supported by the witnesses which identified Mr. Eddaf. The sixth leader, Mr. Ezzaoui, had been given orders within the camp to attack the law enforcement, after supervision of Mr. Asfari.

The first commander described was Mr. Laaroussi, where the attorney stated that Mr. Laaroussi had given order to attack until death; and that he constructed a human chain to prevent the law enforcement from entering the camp; and drove a car and attacked. This was proven by the declarations given by Mr. Laaroussi, and supported by the declarations given by the other detainees; and supported by the declaration given to the investigative judge where Mr. Laaroussi stated that the declaration given to the police was the truth and given without any pressure; and the identification by the witnesses. The attorney stated that the fact that the witnesses had identified the accused so swiftly and efficient, proved that the identification was not instructed or in any means influenced. The second captain was Mr. Babait where the attorney claimed that Mr. Babait was identified in the movie, and that Mr. Babait had convinced

Mr. El Bakay to attack; and that everything was proven by the declarations given to the police and supported by the declaration given to the investigative judge where Mr. Babait denied any pressure. The third commander was Mr. Boutinguiza, where the attorney declared that Mr. Boutinguiza has dispatched his men to attack the law enforcement forces, and that Mr. Boutinguiza was together with Mr. Bourial, as proclaimed in the movie, at the crime scene giving orders and throwing stones. The attorney stated that the role of Mr. Boutinguiza was proven by the declarations, and the declarations of the other detainees; the trip to Algeria and his contact with foreign parties, in particular with Mr. Bulsan. The fourth commander proclaimed was Mr. Haddi, which was also proclaimed as one of the architects behind the camp; and which planned to defend the camp in case the authorities were to attack. The attorney claimed that Mr. Haddi had given his declarations voluntarily, as stated in front of the investigative judge, and that the declarations given by the other accused confirmed the declaration of Mr. Haddi. The fifth commander described was Mr. Abahah, which was responsible for a security squad which he had organized, armed and told to attack the law enforcement with cars. The attorney stated that the declaration given by Mr. Abahah to the police was the truth; and supported by the declaration given to the investigative judge and by the other detainees; and that the declaration of Mr. Abahah in this court confirmed that he was trying to justify his actions, and not to declare innocent. The sixth commander proclaimed, Mr. Sbaai, had according to the attorney attacked wounded public officials, and dragged them into a tent and stoned them. The actions of Mr. Sbaai were confirmed by his declarations to both the police and the investigative judge; the declarations of the other accused; and by witnesses which had witnessed the violence. The attorney declared that Mr. Sbaai is dangerous and could have been a leader, and that Mr. Sbaai was in contact with Mr. Bulsan in Polisario. The seventh commander described was Mr. Toubali where the attorney declared that Mr. Toubali had lied about being in the hospital, and that Mr. Toubali had been in the camp with Mr. Lemjeiyd, and that Mr. Toubali had been throwing rocks; and that he was arrested at the scene of the crime. The eighth commander described was Mr. Ismaili which according to the attorney had carried a big knife and killed numerous officials and wounded countless; and that this was supported by the declaration given by Mr. Ismaili and the declarations of the other accused. The attorney asked the court whether it could imagine that the prison administration would give the gendarmerie a room to torture Mr. Ismaili within the prison.

The proceedings were adjourned until the 7th of June.

Day 23 – On the 7th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The proceedings recommenced with the closing arguments from the president of the bar. The attorney commenced by describing the executors, which he declared were the ones who executed the orders given by the leaders and the commanders. The attorney declared that Mr. Bani had a role as an executor, and that it was proven beyond doubt that Mr. Bani attacked the law enforcement with his car, and that he was arrested on the scene of the crime. The attorney declared that this was proven by the movie, the declaration of Mr. Bani which told that Mr. Bourial had given him orders the prior evening. The attorney declared that the movie was

blatant proof to the crime, and that this proved that the declaration given to the police was the truth; and that this logic had to be applied to all the declarations given by the accused; and that the declarations given by the other accused further supported the statement of Mr. Bani. Mr. Banga was described as a dangerous soldier; and that he was given orders to attack, and arrested at the scene of the crime. The third executer described was Mr. Thalil which has declared to the police that he on the prior evening received orders, and that he together with Mr. Hassan Eddah and Mr. El Bachir made bombs and prepared traps; and that he threw the bombs towards the civil forces and drove a car together with Mr. Laaroussi; and that this declaration was confirmed by the declaration of Mr. Hassan Eddah and Mr. El Bachir, and supported by this statement to the investigative judge where he didn't alleged the torture, and his trip to Algeria. The role of Mr. Ayoubi was not described since Mr. Ayoubi is absent. The attorney stated further that Mr. Ettaki had controlled people and killed a member of the civil forces with a knife. The attorney stated that the declarations made by Mr. Ettaki was the truth, and supported by the declarations given to the investigative judge. Concerning Mr. El Bachir Khadda the attorney pleaded that Mr. El Bachir was a soldier which had attacked fiercely, and that he threw bombs. The attorney stated that Mr. El Bachir had tried to justify his actions by giving a political speech, and that this action meant that he was guilty. The attorney declared that Mr. Hassan Eddah was a member of the squad lead by Mr. Bourial, and coordinated with western parties outside of the country. On the 8th of November, Mr. Eddah and the rest of his team made gas bombs and traps and positioned themselves ready to attack. The declarations of Mr. Thalil and Mr. Khadda prove that the declaration made by Mr. Eddah is the truth. Mr. Eddah further stated in front of the investigative judge that he gave his declarations voluntary, and without any form of pressure. The civil party places Mr. Hassan Eddah in the category of the "executers", but he was also in coordination with members of the Polisario, in particular with Mr. Bulsan, and Mr. Hassan Eddah used to visit Algeria. The attorney described the role of Mr. Lemjeiyd as a soldier which distributed weapons; that he attacked with cars; and he was happy and pleased with the attack; "I felt profound gratification when stabbing" the attorney quoted from the declaration. The actions were proven by the declaration given by Mr. Lemjeiyd, and supported by the declarations given by the other accused. The last described was the role of Mr. El Bakay, which had driven a car and attacked a line in the civil forces; which was proven by the declarations given by Mr. El Bakay and supported by the declarations given by the other accused.

In conclusion, the president of the bar made several deductions; that the camp was planned by the accused; mobilized people by telling them that the camp had social demands which was a lie; that a delegation travelled to Algeria and met with members from the Algerian regime and Polisario; planned to occupy a part of the country to destabilize the region; the camp was financed by means from abroad; the defendants had contact with separatist outside Morocco and received instructions; the dialogue committee was under the control of the leaders, and the negotiations were not supposed to reach an agreement; tried to threaten the state security by stalling the negotiations; the accused are convinced of their right to resist and as their role as separatists; confirms that we are dealing with accused which meant to threaten the state security; the slogans are the motive for the crime; they claim that Western Sahara is occupied and that they therefore had the right to attack; the inhabitants of the camp had weapons; planned the attack with forming security squads; gave speeches to mobilize and make the people resist; the detainees fled from the court when the evidence was blatant and undisputable; the movie is clear and identifies 7 of the accused; the reports and the minutes from the police, gendarmerie and investigative judge has full credibility; and shows the truth; the declaration in front of the

investigative judge proves that the accused were not tortured or subjected to pressure; and that the declarations are supported by many facts in the case; and the attorney concluded that all the evidence was incriminating.

The attorney thereafter placed forward a request to re-characterize the court case and adapt the charges; the attorney invoked that the crimes committed were an attempt to threaten the state security by mass killings, and to affect the internal security of the state; and the attorney declared that “we are talking about a well planned operation for mass killing of the law enforcement”. The attorney invoked that the court should change the charges to the articles upon domestic terrorism; art. 201, 202, 203, 204, 205, 208 of the Moroccan criminal code. Concerning whether the court had the competence to alter the charges, the attorney declared that the court has the liberty to evaluate the case on its own basis. The civil party submitted a written request upon the altering of the charges.

The second attorney for the civil party was thereafter called upon to give his final pleadings to the court. The attorney commenced by stating that this court case did not entail a political crime, or could be described as a political trial. The attorney commenced with commenting on the fourth Geneva Convention, and stated that the court could not rule upon the statement given by the accused that they come from an occupied territory and are separatists. The attorney criticized the Military court, and asked the court to characterize the crime in a way that they would be able to sentence the culprits; and give new qualities to the accusations. The attorney invoked that the court could sentence the accused as contributors to the crime. The attorney urged that riots leading to violence against law enforcement are a crime, and that the leaders of the protest are sentenced as if they committed the crime themselves. According to art. 173 the attorney invoked, the leaders can be sentenced even though they weren't at the crime scene; where the person is asked about their actions leading to the crime. The defendants must thus be sentenced for their planning of the events; and thus as if they committed the crime themselves. The attorney thereafter commenced by commenting on the evidence file, and claimed that the phone records were legitimate evidence, and proven by the fact that the number given by Mr. Lefkir matched the number on the reports; claimed that the defendants had given contradictions when alleging the torture and that this proved that they weren't tortured.

The third attorney for the civil party invoked that this was a fair trial; and that the detainees do not want to take responsibility for what happened in the Gdeim Izik camp. The attorney claimed that the scene of the crime had been proven during the questioning made by this court, and that the witnesses for the defense had not given any useful elements to the court. The attorney thereafter claimed that the detainees had withdrew themselves from the proceedings since the evidence against them was indisputable; and that they are disappointed and ashamed because their plan did not work. The attorney also stated that the court had an obligation to re-characterize the case, because the crime beforehand was a crime against the public order and construction of a criminal gang, and threats to the internal security of the country. The attorney claimed that the case had changed; the court was handling new facts which were not laid out to the Supreme court, and that the court therefore had to re-characterize.

The fourth attorney from the civil party stated that he was disgusted by the detainees attempt to cover their actions by stating that they are political activists and alleging torture. The attorney stated that the families of the victims can not understand how their country can be proclaimed

as a country that tortures, and that the CAT-decision had no basis in the reality, and with no evidence. The attorney stated that Mr. Asfari alleged the torture three years after the alleged torture happened, and that he refused to contribute to examinations done by Morocco; and the civil party asked for this case to be a case against the defendants, and not the kingdom of Morocco.

The fifth attorney, a French attorney pleading on behalf of the victims, stated that the evidence against the accused was blatant, and that their only defense was stating that they have been tortured, and that this was a political trial, and that the defense had used every tactic, from hunger strike to withdrawal, to hide the manslaughter. The French attorney claimed that it is obvious that the Geneva Convention is not meant to be applied, whereas it is obvious that Morocco is not an occupying country and that Western Sahara has never been a state; but that it was clear that Spain was occupying; and that the politics of Polisario were merely dangerous ideas.

The sixth attorney urged that it was time for the victims to see their killers condemned; and that the detainees were collaborating with international observers; but that their country stood with the victims and would protect their legacy. The attorney stated that these were people who used violence to reach a political agenda, and that they were the first to use terrorism with cars; and that these people were brain washed. The attorney stated that fake pictures proclaiming a massacre in the camp were leaked to the Spanish press by the separatists and international observers; and that these pictures caused the riots and the killings in the cities. The attorney invoked that all the crimes and clashes that took place in the camp were not spontaneous, but were carefully planned by foreign parties. The attorney commenced by stating that a report done by 13 NGOs, with them Amnesty International, Human Rights Watch, and International Federation for Human Rights, showed that the camp was in fact planned and that the camp had social demands which was a smoke screen made by the detainees who are linked to Polisario and human trafficking. The attorney stated that the leaders prolonged and hindered the negotiations and excluded the sheiks from the negotiations which are the legitimate leaders of the Saharawi people. The attorney further claimed that the leaders in the camp had stopped a minister and the governor from entering the camp; and that this was proven by the phone recordings. The phone recordings further proved that children were living in the camps; but that the demands changed from being social to political demands in line with directives from foreign parties with an aim to threaten the integrity of Morocco. The reports from Amnesty International and Human rights were proof that veiled people were throwing stones; and that the violent clashes resulted in deaths only on one side as the civil forces were unarmed. The attorney commenced by commenting on the evidence file; and stated that all the reports carried their names and their signatures, and that the detainees had not alleged torture to the investigative judge; and that Mr. Asfari had alleged torture to the torture committee happening on the 7th of November, and the attorney asked whether it was logical that a person was tortured for events happening on the 8th of November. The attorney, after this logic, claimed that the truth was that Mr. Asfari was in the camp on the 8th of November, and that Mr. Asfari had lied to French NGOs and to the torture committee; and that his witnesses supporting him were witnesses upon request which lied but failed. The attorney invoked that Mr. Asfari was lying since the complaint was not submitted to the investigative judge, and that he complained in 2013 for torture happening in 2010. The attorney further argued that the silence from the accused (I.e. several of the accused invoked the right to remain silent when confronted with

questions from the civil party) had to be interpreted against them, whereas the attorney recited legislation and judgements both from United States and Switzerland; and the attorney stated that the right to remain silent weakend the right for the accused; because they are preventing reaching the truth; and that silence is not a right for the innocent. The court asked for a definition upon the right to remain silent in relation to the Islamic philosophy.

The court adjourned until the 8th of June.

Day 24 – On the 8th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The seventh attorney from the civil party commenced his pleading, and stated that he represented the victim hit by a car. He stated that the proof of the car-attack was blatant. The attorney asked for compensation; 2 million dirhams to each of the victims payed in solidarity.

The eight attorney from the civil party commenced by commenting on the competence of the court, and stated in that relation that the Court of Appeal in Salé utilizes the law in the same regard as the Court Appeal of El Aaiun, and therefore that the competence was up to the court. The attorney commenced by commenting on the allegations upon torture, and stated that it was clear that the accused only used allegations upon torture as a smoke screen to cover their criminal actions of their planning of the camp and the threatening of the internal security of the country. The attorney urged that he had to do with fierce criminals and not political activists; and that the argument of Mr. Asfari that the dismantlement was abuse of power, means that he was justifying their actions; and meant that they had the right to kill the members of the law enforcement. The attorney thereafter declared that the statement of Mr. Asfari (i.e. claiming abuse of power) was a confession upon all the charges, and that Mr. Asfari had the main responsibility for what happened alongside with Mr. Bulsan. The attorney commenced by commenting on several of the accused; Mr. Banga was not a human rights activist but a soldier as shown in the picture (I.e. carrying weapon in the Tinduf camp), and that his statement about the Arabic spring was proof that the camp was a violent resistance camp with political aims; Mr. Zeyou had tried to flee from the airport in El Aaiun to the other criminals, and that Mr. Zeyou stated that the law did not protect the law enforcement, and that they therefore had the right to kill; Mr. Thalil said they had political demands; Mr. Laaroussi came from Spain to participate in the camp; Mr. El Bakay stated that Mr. Asfari wanted to politicize the camp. The attorney stated that these facts, plus the reports from the judicial police which are real even if they are denied; are sufficient evidence. The attorney stated that she regarded the support witnesses as accomplices to the crime, and that they had several contradictions, and was instructed; the attorney stated that some of the international observers are also instructed; and that this court case was affected by what happened inside this very courtroom. The court told the attorney to stick to the charges, and the attorney replied that she regarded the courts competence to alter the charges an obligation rather than a question upon competence.

The ninth attorney commenced the pleading by describing how his client had carried victims

from the camp peacefully; and was attacked and killed. The attorney commenced by stating that he did not accept that a foreign attorney commented on the history of his country; and commenced by giving a lesson in history of the Kingdom of Morocco, whilst urging that this court case was not a political trial. The attorney described the legitimate claim that Morocco has over Western Sahara for over an hour without any interruptions. The attorney stated that the law enforcement did not carry any weapons, and that the inhabitants were armed, so if any party had breached the Geneva conventions, it was the separatist and those who threatened the internal security of Morocco. The attorney stated that the leaders and the planners of the camp had breached the international humanitarian law and committed war crimes by assaulting wounded people and by using civilians to commit their crimes. The attorney stated that all countries have subjects that you do not question or talk about; and that they would never go to a French courthouse and question the existence of Holocaust. The attorney stated that the accused are soldiers that are not official military personnel, which has given their loyalty to Polisario, and that they had to be held accountable for their actions.

The tenth attorney for the civil party, invoked that the families of the victims asked for the culprits to be condemned, and asked the court to sentence them to the harshest penalty that exists, but not the death penalty, because they did not want the right to life to be breached again. The attorney commented on the torture committee and claimed that they had no competence to investigate, and urged that the detainee's connections to Polisario as a organization of militia proved that the accused were guilty; the agreement and coordination between the accused and the Polisario was the decisive evidence; and sufficient evidence to be in accordance with the decision from the supreme court.

The eleventh attorney from the civil party commenced by commenting on the history of Morocco, and claimed that Morocco is a model for implementing human rights; which gave Morocco enemies; and that Morocco now must protect themselves from their foreign enemies; and he stated that Algeria and Polisario are enemies of the Kingdom of Morocco. The camp was thus planned by separatists and that they constructed a non-official army to attack the law enforcement. The attorney stated that the slogans chanted by the accused had shocked him; and stated that the accused had attacked them with these slogans within the very courtroom; they did not have weapons but the accused had been carrying something more dangerous. The attorney stated that the accused had tried to occupy land in Morocco and give it to Algeria.

The twelfth attorney from the civil party, a Spanish lawyer, stated that those who believe that these people are peaceful are wrong, and those who think that the accused are innocent are wrong. He stated that torture allegations are a strategy and has no basis in reality. The attorney thereafter stated that the accused tried to justify mass murder with their political beliefs; and that they do not respect the victims due to this strategy of making the case about politics. The attorney urged the court to respect the rights of the victims. The attorney claimed that this court case was followed by many international observers and NGOs and that it was impossible to either question the jurisdiction, the independence nor the impartiality of the court, and that Morocco, who has ratified over 52 international conventions, was a role model.

The thirteenth attorney from the civil party invoked that the law enforcement was surprised when they approached the camp thinking that it was a peaceful protest camp; and what the detainees had done and the terror they had caused could not even be found in a camp of ISIS.

The attorney also invoked that the amendment of the procedural law, that civilians should not be tried in a military court, was not caused by this case and that no one had thought that this group would be the first group to benefit from the changes in the law. The attorney further asked how we can talk about a fair trial without the representation of the victims.

The last attorney from the civil party making his pleadings gave a pleading based on the phone recordings, and by making deductions from the phone recordings. The translation in French, Spanish and English was not compatible and it was hard to understand the basis for the deductions, as the lawyer read in Hassania dialect which is a language that the translator does not understand, as stated in previous sessions of the hearings. After the pleading, we the observers asked the defence what was stated, and the defence informed us that the phone recordings proved that several of the detainees (Mr. Asfari, Mr. Lefkir and Mr. Bourial) had been in contact with Mr. Bulsan, but that the phone recordings did not give further information. The civil attorney further claimed that it was the obligation of the court to alter the charges to the chapter of terrorism, as the court would never be able to prove the link between the different accused and the killings; and therefore, that the court had only one option, and that was to look at this case as a crime of terrorism.

The court adjourned until the 12th of June.

Day 25 – On the 12th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

At the commencement of the proceedings the prosecutor was given the floor to deliver his final arguments to the court. The prosecutor started his pleading by stating that the court has the competence to take into use every tool to reach the truth. The prosecutor stated that he found it suspicious that the detainees refused to appear in front of the court after almost every request from the defence had been responded positively, and referred to the request upon medical examinations, the summoning of the police mens which conducted the police reports, and the request upon presentation of evidence. The prosecutor thereafter stated that the reason for the withdrawal of the accused was the hard evidence he had been able to present, and that the withdrawal was an admittance of guilt; they were surrounded by evidence and the truth was according to the prosecutor obvious to the court and everyone else. The prosecutor stated that the torture allegations were nothing more than a failing strategy trying to cover up their acts, and that the defendants has tried to justify their actions, and claimed that they have the right, and attempted to justify with using political speech. The prosecutor claimed that this court case was related to what happened on the 8th of November 2010; and that the accused had a prior agreement to attack the law in order enforcement, and attack the law in order authorities and caused by violent acts the death to a number of personnel, and that the status of these victims was clear. The prosecutor stated that the court of appeal is a transferal court, and that the court therefore has an obligation to rule in according to the verdict from the Supreme Court. The prosecutor stated that the police reports are data, but that the police reports were supported by several pieces of evidence (i.e. the witnesses, the phone transcripts, report on the movement,

and the videos). He further stated that “data” should be interpreted as evidence. The prosecutor commenced by dealing with the separated charges; the forming of a criminal gang and violence against public officials with the result of death. The prosecutor divided the accused into three categories; leaders, participants and both.

The prosecutor commenced by commenting on the accusation of forming a criminal gang which is related to art. 293 of the criminal code, with sentence stipulated in art. 294. The prosecutor clarified that the court can find an accused guilty of forming a criminal gang, even though the court does not find sufficient evidence for the murder charges. The prosecutor stated that the court has to find it proven that the accused had a prior agreement with the aim to harm people, and with a criminal intent to harm. The prosecutor stated that it is clear that the accused has hold a number of meetings, both inside and outside Morocco and that the accused received financial aid, and weapons. The criminal gang was according to the prosecutor evident given the number of victims. The prosecutor further stated that the accused had abducted the population of El Auin, and held them with force in the camp Gdeim Izik. The prosecutor further stated that the accused had criminal intent to destabilize the region, which was proven with the phone recordings. The prosecutor stated that the accused deceived people with claiming that the camp had social demands, where the camp in reality was a mean to create chaos and destroy property and harm people. The prosecutor linked this prior agreement to the earlier settlement of a camp in October in Boujour, and to the tour to the different cities in the southern province of morocco. The prosecutor proved the forming of a criminal gang with the reports upon movement which entails the travel route for several of the detainees to Algeria in 2010, and that they visited the Tindouf camp and planned the Gdeim Izik camp together with Polisario. The prosecutor further claimed that several of the accused (I.e. Mr. Banga, Mr. Thalil, Mr. Sbaai and Mr. Asfari) received military training in the Tindouf camp.

The prosecutor stated further that the transcripts upon the phone recordings proved that a prior agreement existed between the accused, as the defendants had collaborated with foreign parties. The prosecutor stated that the phone recordings proved that (1) establishment of the camp was planned in correlation with Polisario and Mr Bulsran, (2) the accused made sure that no agreement was reached with the government after orders from Mr. Bulsran, and (3) that the accused did not inform the inhabitants about the ongoing negotiations, and encouraged the inhabitants to resist an intervention. The prosecutor commenced by commenting on the phone recordings, which concerns 6 of the accused. The prosecutor recited a phone conversation between Mr. Asfari og Mr. Dhalil, which told Mr. Asfari to watch Christopher Ross in the international media and that the camp was not separated from a report delivered to Mr. Ross which was planned over several months, and Mr. Asfari informed that he travelled towards the camp for the Saharawi people and that the rest followed him in cars. The second phone conversation was between Mr. Asfari and Mr. Bulsran where the prosecutor read up that Mr. Bulsran told Mr. Afari to gather the young influential people, and that Mr. Asfari stated that the mass destruction weapons were ready. The third conversation was between Mr. Sbaai and Mr. Bulsran where Mr. Sbaai stated in response to the question of Mr. Bulsran that everything went according to plan, and that they had established the security forces and made checkpoints, and that he was in control of searching the vehicles’ entering the camps. The fourth conversation was between Mr. Sbaai and Mr. Bulsran where Mr. Bulsran told Mr. Sbaai to count the number of activists in the camp, and to mobilize them. The fifth conversation was between Mr. Lakfawni and Mr. Bulsran, where Mr. Lakfawni ensured Mr. Bulsran that they had everything

under control, and Mr. Bulsran told Mr. Burial to continue gaining time. The sixth conversation was between Mr. Bourial and Mr. Bulsran, where Mr. Bulsran told Mr. Bourial to not negotiate with “them” and to hinder them from entering the camp, and use maximum time. The seventh conversation was between Mr. Bourial and Mr. Bulsran, where Mr. Bulsran told Mr. Burial to put pressure on the negotiations. The eighth conversation was between Mr. Hassan Eddah and Mr. Bulsran, where Mr. Eddah informed Mr. Bulsran that they were prohibiting the governor and the sjeiks from entering the camp. The ninth conversation was between Mr. Lefkir and Mr. Bulsran, where Mr. Bulsran told Mr. Lefkir to not give any final solutions in the negotiations.

The prosecutor claimed that the transcripts of the phone recordings was proof that it existed an prior agreement and an commitment to attack and use violence. The prosecutor supported the phone recordings with declarations from several of the witnesses, in particular the testimony of the police officer Mr. Faisal Rass and an alleged inhabitant in the camp Mr. Mohammed Chouja which declared that it was security forces inside the camp and several checkpoints. The prosecutor further stated that people were prohibited from leaving the camps, and that the camp was like a military camp, basing this on the statements taken from the police men which wrote the reports. The prosecutor finally backed up his deductions with the declarations of the accused, and stated that the confrontation was necessary, since the objective of the camp was not to improve the social conditions but to destabilize the region and to threaten the internal security of the state. The prosecutor thereafter gave his final argument by presenting a map over the organization, where he divided the accused into different roles. Mr. Asfari was pointed out as the leader, and Mr. Lefkir and Mr. Haddi was placed on his right hand side in charge of monitoring the movements and the weapons, whilst Mr. Sbaai was on the left hand side of Mr. Asfari and in control of the camp. Mr. Laroussi was placed in charge of the security forces, and had 600 followers, and worked with Mr. Babait and Mr. Ezzaoui, and several was positioned as soldiers as Mr. Ayubi, Mr. Ettaki and Mr. Hassan Eddah.

The prosecutor commenced his pleading with commenting on the charges based on art. 267 concerning violence against public officials leading to death. The prosecutor claimed that the court had sufficient evidence to prove the cause and effect relation of the outcome, which is death, and the intent to harm life. The prosecutor invoked that all the participants to the crime shall be condemned, when the direct cause could not be established; then every participant in the group should be sentenced as if they committed the decisive cause which lead to the effect.

The prosecutor divided the accused into three groups; the perpetrators, the participants, and both perpetrators and participants. The prosecutor commenced by commenting on each of the accused charged with the causing of death after art. 267 (Mr. Ettaki, Mr. Bani, Mr. Laroussi, Mr. Lakfawni, Mr. Boutinguiza, Mr. Sidi Abdallahi, Mr. Sbaai and Mr. El Bakay).

The prosecutor commenced with Mr. Ettaki, and stated that Mr. Ettaki has a record for deserting the military, and that he in this case was caught “red handed” on the scene of the crime. The prosecutor claimed that the government got information that the inhabitants of the camp was stopped from leaving, that the culprits were arrested, and that Mr. Ettaki was amongst them which attacked the civil forces. The prosecutor stated that the police reports was data and that it was proven that Mr. Ettaki attacked with big stones, caused physical damage and with a big knife. Second piece of evidence was the testimony given by the policemen which conducted the police report of Mr. Ettaki, and the declaration of Mr. Ettaki to the investigative judge. The

third and essential piece of evidence was the autopsy report which proved the death of the victim, and therefore the effect. The effect was related to the different weapons used, i.e. cars, knives and stones, and therefore the cause and effect was proven. It was further proven that Mr. Ettaki had criminal intent according to the prior agreement with the criminal gang.

The second accused was Mr. Bani. The prosecutor stated that Mr. Bani has a military past and military training, and that Mr. Bani was caught red handed whilst driving his car. That Mr. Bani had committed the crime, i.e. hit one of the members in the civil force with his car, was proven by the testimony given by Mr. Faisal El Malazi. The prosecutor stated that it was obvious and proven beyond any doubt that Mr. Bani had killed a member of the law enforcement with his car by the police reports, the testimony, the video recording, the autopsy report and the red handed arrest.

The third accused commented by the prosecutor was Mr. Laroussi, and he stated that Mr. Laroussi also have a criminal record related to issuing a bank check without coverage. The prosecutor stated that the police report and the arrest which was red handed at the scene of the crime, proved that Mr. Laroussi attacked the civil force with his car and that he had 600 people under his command. Statement from the other accused supported the police report of Mr. Laroussi. The prosecutor further stated that Mr. Laroussi was the “repression instrument” of Mr. Asfari, used to harass the inhabitants in the camp. The prosecutor stated that the accused has confessed to the crime, and are now trying to hide the truth. The role of Mr. Laroussi was further stated by numerous witnesses, which had also identified Mr. Laroussi. The prosecutor stated that both the information witness for Mr. Laroussi and Mr. Laroussi was lying, and that the witness had no credibility. Final pieces of evidence presented by the prosecutor was the alleged prior agreement which showed the criminal effect, and the autopsy reports which proves the effect of the crime.

The fourth accused commented by the prosecutor was Mr. Lakfawni. The prosecutor commenced by laying out the criminal record of Mr. Lakfawni concerning smuggling of drugs and violence towards public officials. The prosecutor further commented on the police reports, and stated that Mr. Lakfawni was arrested red handed, and that it was proven from this that Mr. Lakfawni drove a car and hit the civil forces and killed a member of the law enforcement. The report of the police was supported by the report made by the investigative judge. The prosecutor stated that the report from the investigative judge was again supported by the testimony from the police man which conducted the police report. The prosecutor stated that as many as 5 witnesses identified Mr. Lakfawni as the driver of a grey Nissan. The prosecutor stated that the information witness for Mr. Lakfawni lacked the necessary credibility since the witness did not know the phone number or Mr. Lakfawni or whether he had a tent.

The fifth accused commented by the prosecutor was Mr. Boutinguiza. The prosecutor commenced by presenting the criminal record of Mr. Boutinguiza who has been convicted for drug dealing and participation in a riot in El Auin. The prosecutor stated that the police report proved that Mr. Boutinguiza was in charge of a security unit armed with white weapons, and had control over the inhabitants in the camp, and ran over a member of the law enforcement with his car. Mr. Boutinguiza was further arrested red handed which proved the crime, and supported by the report from the investigative judge. The prosecutor further stated that one could identify Mr. Boutinguiza together with Mr. Bourial in the movie.

The sixth accused commented by the prosecutor was Mr. Sidi Abdallahi. The prosecutor stated that Mr. Sidi Abdallahi has previously stated that his prior declarations were given willingly, and that this means that the information was given without torture and that the expertise proves that Mr. Sidi Abdallahi was lying. The prosecutor stated evidence against Mr. Sidi Abdallahi was the confiscated elements, the testimony given by the witness Mr. Mohammed Choujaa, and the autopsy reports. The prosecutor stated that Mr. Sidi Abdallahi's refusal to undergo the medical expertise was playing with justice, and that his demand for an international expertise had no legal grounds.

The seventh accused commented by the prosecutor was Mr. Sbaai. The prosecutor cited the criminal record of Mr. Sbaai who has a prior conviction of arson. The prosecutor stated that Mr. Sbaai received money from Mr. Asfari which was proven by the phone recordings. Mr. Sbaai further received orders from Mr. Asfari to kill the members of the law enforcements, and stated that Mr. Sbaai dragged three people into a tent and stoned one of them to death. This was proven by the police report and supported by the report from the investigative judge. The actions of Mr. Sbaai was supported by the video, the confiscated elements and the testimony of Mr. Mohammed Choujaa, M. Hassan Tawi and the police man which conducted the police report of Mr. Sbaai, and finally the autopsy report which proves the condition of the victims. Upon the torture allegations, the prosecutor stated that Mr. Sbaai has already declared to the investigative judge that he gave his declarations willingly and was never tortured or ill-treated.

The eighth accused commented by the prosecutor was Mr. El Bakay. The prosecutor stated that the evidence was blatant, especially the police report and that Mr. El Bakay was arrested red handed. The prosecutor stated that Mr. El Bakay was one of the planners of this criminal project, and that he attended the meeting on the 7th of November and drove a car on the 8th of November and attacked a line of the law enforcement members. This was proven by the police report of Mr. El Bakay and supported by the declarations given by Mr. Laroussi and Mr. Lakfawni, and statement given to the investigative judge, and the testimony given by Mr. Mohammed Choujaa. The criminal intent was proven by the type of violence used, and cause and effect was proven by the autopsy report.

The prosecutor thereafter commenced by commenting on the accused charged for participation in the murder of members of the law enforcement in accordance with art. 129, after art. 267 of the criminal code (Mr. Asfari, Mr. Banga, Mr. Bourial, Mr. Haddi, Mr. Zeyou, Mr. El Bachir Khadda, Mr. Hassan Eddah, Mr. Thalil).

The ninth accused commented on was Mr. Asfari. The prosecutor stated that Mr. Asfari was previously convicted for having assaulted a police officer. The prosecutor commenced by commenting on the police reports which he stated was conducted inside the camp whilst they were leading the attack, and that Mr. Asfari planned to establish the camp, proven by the phone conversations held with Mr. Bulsran, together with the other accused (Mr. Lefkir and Mr. Hassan Eddah). The prosecutor stated that Mr. Asfari gave orders to kill and destroy public property with gas bombs, and stated that the movie proved participation to murder. The prosecutor stated that the declaration given by Mr. Asfari was supported by the declarations given by several of the other accused, and cited the declaration given by Mr. Zeyou, Mr. El Bachir and Mr. Bourial. These declarations were supported by the statements given to the

investigative judge by Mr. Asfari, and the prosecutor added that Mr. Asfari was moral responsible for what happened on the 8th of November 2010. These pieces of evidence was further supported by Mr. Asfari declaration where he stated that all the tents in Gdeim Izik was his, and supported by the confiscated elements, and the testimonies from firstly Mr. Mohammed Choujaa and secondly the police men which wrote the police report concerning the case of Mr. Asfari. The prosecutor stated that the information witnesses for Mr. Asfari lacked the necessary credibility, and that the testimonies had several contradictions, and therefore had to be discarded as evidence. The prosecutor stated the court “only” had to prove participation to murder, and that the link between Mr. Asfari and the killings were blatant, and proven beyond doubt. The intent to kill was proven by the prior agreement to attack. The prosecutor thereafter commented on the CAT-decision regarding the case of Mr. Asfari and stated that the proceedings of CAT could not be equal to national procedures, and stated that this committee can not issue any opinions when the case is still being treated by the judicial system in Morocco.

The court adjourned until the 13th of June.

Day 26 – On the 13th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court’s rulings.

The court commenced by giving the floor to the prosecutor in order for him to finish his final arguments. The prosecutor commenced by commenting on the tenth accused, Mr. Banga. The prosecutor stated that from the police report and the declaration from several witnesses, i.e. Mr. Mohammed Choujaa, it was clear that Mr. Banga was in charge of a squad of 17 people which he distributed weapons to and that Mr. Banga gave orders to attack, which proved the participation in murder. The prosecutor stated that Mr. Ayubi, Mr. Bani, and Mr. Ettaki had declared that they received orders from Mr. Banga. The role of Mr. Banga was further proven by the statements given by the officials which wrote the reports, and the report from the investigative judge. The prosecutor stated that in total 6 witnesses identified Mr. Banga, and that the role of Mr. Banga in participation of murder was proven beyond any doubt. The prosecutor also presented a picture of Mr. Banga with a beard in contradiction to the statement of Mr. Banga who claimed he did not have a beard in 2010. The prosecutor concluded that this picture of Mr. Banga with a beard proved that declarations given to the police are the truth, that the statements given to this court is lies, and that Mr. Banga committed the crimes he is accused of. The autopsy report further proved the effect of the crime.

The eleventh accused commented on was Mr. Bourial. The prosecutor stated that Mr. Bourial has a criminal record upon human trafficking and illegal immigration. The prosecutor stated that Mr. Bourial was caught red handed whilst attacking the members of the law enforcement, and the preliminary data showed that Mr. Bourial was an active part in the planning of the camp and in the agreement with Mr. Asfari. The prosecutor stated that the role of Mr. Bourial was to continue a dialogue with the government, and execute the orders from Mr. Asfari, and repress the inhabitants in the camp and resist the law enforcement. The prosecutor stated that the crimes

committed was a consequence of the prior agreement and the criminal gang. The prosecutor stated that both Mr. Bani and Mr. El Bachir had received orders from Mr. Bourial as stated in their declarations. The role of Mr Bourial was proven by the police report, the report from the investigative judge and the autopsy reports. The prosecutor stated that the security squad of Mr. Bourial held people as hostages inside the camp, and that an agreement to dismantle the camp on the 5th of November was reached and that Mr. Bourial had deceived the people in the camp. All the actions of Mr. Bourial was proven by the confiscated elements, the reports from the police, the movie, and witnesses (Mohammed Choujaa, and the policemen's which conducted the reports), and the autopsy reports.

The twelfth accused commented by the prosecutor was Mr. Haddi. The prosecutor stated that Mr. Haddi was arrested red handed, and received instructions from Mr. Asfari and that Mr. Haddi had visited the guards situated around the camps and distributed bombs which he had made, and driven a car and broken bones. The actions of Mr. Haddi was proven by the police reports and the report from the investigative judge. The prosecutor further stated that Mr. Haddi had held the civil forces under surveillance. The prosecutor stated that the role of Mr. Haddi was proven by the reports, the confiscated elements, the movie and the witnesses which identified him, in particular Mr. Mohammed Choujaa. These pieces of evidence was supported by the autopsy reports.

The thirteenth accused commented by the prosecutor was Mr. Zeyou. The prosecutor stated that the role of Mr. Zeyou as a participator to the murder was proven by the judicial reports from the police and the gendarmerie. The prosecutor stated that Mr. Zeyou acted as a consultant to Mr. Asfari, and coordinated with people outside of Morocco in order to destabilize the country and jeopardize the agreement reached with the authorities. The prosecutor stated that it was proven that Mr. Zeyou was in the camp at the morning of the events together with Mr. Asfari ready to attack, and that the declaration of Mr. Haddi confirmed the role of Mr. Zeyou as the advisor of Mr. Asfari. The prosecutor further cited the declaration of Mr. Zeyou to the investigative judge, where Mr. Zeyou declared that Mr. Asfari was his leader. The actions of Mr. Zeyou was further proven by the confiscated elements, the video and the testimony given by Mr. Mohammed Choujaa, plus the autopsy reports. Regarding the information witness of Mr. Zeyou which informed the court that Mr. Zeyou was not present in the camp during the events, the prosecutor stated that Mr Zeyou had gone to the camp during the night, and was present during the events.

The fourteenth accused commented on by the prosecutor was Mr. El Bachir Khadda. The prosecutor stated that Mr. El Bachir Khadda, Mr. Thalil and Mr. Hassan Eddah was convicted for the same crime; preparing bombs, setting a car on fire on driving a car together with Mr. Laroussi attacking the law enforcement. The prosecutor stated that Mr. El Bachir Khadda had prior convictions, and that the declaration of Mr. El Bachir Khadda confirmed his role, which was supported by the declarations given by Mr. Hassan Eddah and Mr. Thalil, and the declaration of Mr. El Bachir Khadda to the investigative judge. The reports from the preliminary investigation was supported by the testimony given by Mr. Mohammed Choujaa, and the policemen which conducted the reports, which stated that he saw the defendant driving a grey Nissan together with Mr. Laroussi, Mr. Thalil and Mr. Hassan Dah. The autopsy reports proved the effect of the crime.

The fifteenth accused commented on by the prosecutor was Mr. Hassan Dah. The prosecutor commenced by stating that Mr. Hassan Dah has a criminal record, and has been convicted for setting a car on fire. The prosecutor stated that Mr. Dah was a professional when it came to the making of Molotov cocktails/gas bombs, and that Mr. Dah has a record of attacking the law enforcement. The prosecutor stated that the evidence supporting the charges was the preliminary information (i.e. the reports from the police and the gendarmerie) which proved that Mr. Hassan Eddah was in charge of the preparation of Molotov cocktails. The prosecutor further stated that it was proven from the declarations given by Mr. Eddah to the police and the gendarmerie that he had driven a car with Mr. Laroussi, Mr. El Bachir Khadda and Mr. Thalil and attacked the law enforcement. The prosecutor further stated that the declaration given to the investigative judge proved that the declaration given to the police and the gendarmerie was the truth, since Mr. Eddah had declared that he had given his declarations without any pressure or ill-treatment, and that he had admitted to his trip to Algeria and placed his fingerprints on these declarations. The prosecutor stated that Mr. Eddah shared the same convictions as Mr. Thalil and Mr. El Bachir Khadda. The prosecutor stated that Mr. Eddah travelled to the Gdeim Izik camp many times, and had political demands, and that this statement was declared to the court of appeal. The prosecutor supported his statement with the witnesses which had appeared in front of the court, and cited the testimony from the policeman Mr. Yousef Raiss which wrote the police report of Mr. Hassan Eddah, who stated that he saw Mr. Laroussi wearing military clothes and that they fled towards the city, and supported this testimony with the testimony given by Mr. Mohammed Choujaa who testified to being an inhabitant in the camp. The prosecutor stated that based on the reports from the police and the gendarmerie, and the testimonies from the witnesses (Mr. Yousef Raiss and Mr. Mohammed Choujaa) it was clear, and proven beyond any doubt, that Mr. Hassan Eddah had prepared the Molotov cocktails/gas bombs and attacked the law enforcement, and motivated the inhabitants in the camps to attack the law enforcement. The prosecutor stated that the criminal intent is proven due to the dangerous weapons used in the attack. In regards to the medical examinations (i.e. the medical examinations ordered by the court on the 25th of January, which concluded that Mr. Hassan Eddah had not been tortured), the prosecutor stated that the alleged torture was only lies, and a mean to flee from the accusations, and stated that the symptoms alleged by the accused had nothing to do with the alleged torture.

The sixteenth accused commented on by the prosecutor was Mr. Thalil. The prosecutor commenced by citing the criminal record of Mr. Thalil, which entailed two prior convictions for the forming of a criminal gang and attempt of destruction of a building. The evidence against Mr. Thalil was the police report and the statements given to the investigative judge, and the testimony given by Mr. Mohammed Chouja, and the autopsy reports.

Finally, the prosecutor commented on the accused who are charged with both participation and perpetrating the crime after art. 129 and art 267 of the criminal code (Mr. Ezzaoui, Mr. Toubali, Mr. Deich Eddaf, Mr. Leymjeyid, Mr. Lefkir, Mr. Ismaili, Mr. Babait).

The seventeenth accused commented on by the prosecutor was Mr. Ezzaoui. The prosecutor commenced by stating that Mr. Ezzaoui has a criminal record related to the forming of a criminal gang, and that Mr. Ezzaoui is as such considered dangerous. The prosecutor stated that the police reports are only data after art. 293, but that data is a synonym of evidence in the Arabic language. The statements made by the accused are therefore to be considered as the first

evidence against them. The evidence against Mr. Ezzaoui was the preliminary investigation (i.e. the reports conducted by the police, gendarmerie and investigative judge), report on movements, report on phone calls and the movie and the autopsy reports. The prosecutor stated that Mr. Ezzaoui was part of the dialogue committee, and that he had jeopardized the agreement. Stated further that Mr. Ezzaoui after the emergency state was established on the 7th of November, distributed weapons as one of the leaders, and that Mr. Ezzaoui had received military training in the Polisario camps, and had meetings with Mr. Asfari on a regular basis. Mr. Ezzaoui had further lied to the inhabitants in the camp and deceived them and given a war speech in the camp, proven by both the movie and the witness Mr. Mohammed Choujaa.

The eighteenth accused commented on by the prosecutor was Mr. Toubali. The prosecutor commenced by stating that the preliminary data proved that Mr. Toubali left the hospital on the 7th of November and left to the camp, and participated in the meeting conducted by the security committee in the camp. Mr. Toubali had distributed weapons to 30 people that was under his command, and used 4 by 4 cars to attack, and beheaded one of the victims. Proven by both the police reports and the report from the investigative judge, and confirmed by the declaration given by Mr. Lemjeyid. Mr. Toubali had further stated that they reached an agreement with the authorities that they refused to sign, which was compatible with the phone tabs and the plan to stall the negotiations in order for the law enforcement to attack. The movie further proved that Mr. Toubali was present in the camp, supported by the testimonies given by Mr. Mohammed Choujaa and the policeman which conducted the police report of Mr. Toubali.

The nineteenth accused commented on by the prosecutor was Mr. Eddaf. The prosecutor stated that Mr. Eddaf was caught red handed at the scene of the crime, and that Mr. Eddaf had participated in the meeting lead by Mr. Asfari on the 7th of November, and that Mr. Eddaf suggested the use of cars as weapons. The prosecutor stated that Mr. Eddah had stabbed the members of the public authorities with a knife, and distributed white weapons to the soldiers, and received instructions from Mr. Asfari and gave orders. The role of Mr. Eddaf was proven by the police reports, the report from the investigative judge, and the witness Mr. Mohammed Choujaa supported by the testimonies from the police men which conducted the reprot, and the autopsy reports.

The prosecutor was told by the court to shorten his final pleadings, and gave him 20 minutes to finish.

The twentieth accused commented on by the prosecutor was Mr. Lemjeyid. The prosecutor stated that Mr. Lemjeyid joined the camp and had foreign currency which he delivered to Mr. Asfari. Mr. Lemjeyid had further distributed swords, and hit a member of the law enforcement in the head. The role of Mr. Lemjeyid and his actions was proven by the reports of the arrest and the statements given to the investigative judge, the confiscated elements and the witness Mr. Mohammed Choujaa and the testimony from the policemen which wrote the police reports of Mr. Leymjeiyd.

The twenty-first accused commented on by the prosecutor was Mr. Lefkir. The prosecutor stated that Mr. Lefkir was one of the first planners together with Mr. Asfari, and that Mr. Lefkir was the architect. The prosecutor stated that Mr. Lefkir declared the emergency state and gave orders to prepare bombs on the 7th of November. On the 8th of November, Mr. Lefkir was told

to order the soldiers to attack the civil forces. This was proven by the police report, the report from the investigative judge, the confiscated elements, and the witness Mr. Mohammed Choujaa and Mr. Tawni, and the testimony from the policemen which wrote the report of Mr. Leymjeyid.

The twenty-second accused commented on by the prosecutor was Mr. Ismaili. The prosecutor stated that Mr. Ismaili has a criminal record, and that the evidence against Mr. Ismaili includes the report from the judicial police. The prosecutor stated that Mr. Ismaili made security squads and gave orders to insult and to injure if necessary, and that Mr. Ismaili was one of the leaders in charge of preparing the attack. The prosecutor stated that Mr. Ismaili met with Mr. Asfari on an international level in Algeria. The role of Mr. Ismaili and his actions was proven by the testimony given by Mr. Mohammed Choujaa.

The twenty-third accused commented on by the prosecutor was Mr. Babait. The prosecutor stated that Mr. Babait has a criminal record. The prosecutor stated that the information shows that Mr. Babait was in charge of internal security, and later the bringing of the weapons, and that he made 9 human chains, and drove a 4 by 4 car and attacked the civil forces with his car. This was proven by the police reports, the statements given to the investigative judge, the fact that he was in the camp, the movie, the confiscated elements, and testimony given by the policemen which conducted the police reports, the autopsy reports, and declarations given by other accused.

The prosecutor did not comment on the accused Mr. Ayubi since his case is separated from the rest of the group.

The prosecutor commenced by commenting on the charges directed towards Mr. Boutinguiza and Mr. Sidi Abdallahi, based on art. 272, in regard to the crime of mutilating of corpses. The prosecutor commenced by stating that the charge has not been dealt with, and have not been commented on by the accused. The prosecutor stated that the reports by the gendarmerie and the police proves the crime of mutilating of corpses. The prosecutor stated that it was proven that the accused had hit members of the authorities with his car and mutilated the head and body with stones. The prosecutor stated that the movie must be regarded in evidence in support of the reports.

The prosecutor thereafter commenced by commenting on the alleged detainment of people in the camp, i.e. that the inhabitants in the camp was taken as hostages. The prosecutor stated that the civil forces tried to dismantle the camp with sticks and water, and that no deadly weapons were used. The civil forces was attacked by a crowd of people, which attacked both the law enforcement and the public buildings. The prosecutor stated that the inhabitants was kept as hostages in the camp, proven by the police report.

The prosecutor thereafter concluded that the court was under the principle of free evidence evaluation, and therefore had the competence to evaluate all the evidence presented in front of the court in accordance with art. 290. In regard to the police reports, the prosecutor stated that evidence can not be denied if not hard evidence is there to prove them wrong, and that the criminal records must be used in addition to other evidence. The prosecutor commenced by highlighting the other pieces of evidence supporting the police reports. First, the statement

given to the investigative judge, where several of the accused declared that they gave their testimony to the police willingly and without any use of force. Second, the arrest which was red handed for several of the accused. Third, the confiscated elements. Fourth, the declarations of one of the accused against another accused. Fifth, testimonies. Sixth, the testimonies from the policemen. Seventh, the movie. Eighth, the phone recordings. Ninth, report upon travel routes. The prosecutor stated that this entailed pieces of hard evidence against the accused, which made them flee from the hearings.

The prosecutor requested the court to confirm all the charges based on the evidence presented by the prosecutor, and sentence them. The prosecutor asked for the harshest sentence possible. The prosecutor submitted his closing memorandum in a written format to the court. The civil party similarly submitted their closing argument in written form to the court.

The court adjourned until the 14th of June.

Day 27 – On the 14th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced by giving the floor to the defence for them to deliver their final arguments to the court.

The first defence attorney, commenced his pleading by informing the court that this case was assigned to him, and that he therefore represented all of the accuse. The attorney commented on the previous proceedings of the court case, and stated that it started with the Military Court which condemned the accused with sentences ranging from 20 years to lifetime, and that this conviction was annulled and that the case was referred by the Supreme Court, and therefore that the Appeal Court of Salé constituted a transferal court. The attorney stated that the court was obligated in accordance with art. 444 to stick to the decision of the Supreme Court, and reminded the court of the new constitution of Morocco, and that everyone is equal in front of the law and have the right to a fair trial and a sentence within a reasonable time. The attorney further stated that the constitution has criminalized torture and any harm to the human integrity, and that the constitution punishes civil servants that has exercised torture, or any violations of human rights. The attorney concluded that we have a new development in Morocco, where every citizen is equal in front of the law.

The attorney thereafter asked who the civil party is and who the victims are, and stated that they have civil claims, but that the civil party has restrictions according to the law. The attorney clarified that this case file entail accusations upon forming a criminal gang and violence against public officials, where some are accused as main perpetrators, and others as participators to the crime, and the case file also entails foreign parties. The attorney stated that the civil party have tried to file a new public suit by invoking a re-characterization of the charges. The attorney stated that the civil party has invoked new charges and new accusations, since the articles invoked by the civil party relates to the threatening of the internal security.

The attorney thereafter stated that the discussion should revolve around the charges, and the main articles art. 267, art. 129, art. 130 of the criminal code. These articles relate to the crime of violence, and the actions has to fulfil four components that has to be present for the court to be able to convict; (1) the deed itself and criminal effect and the cause and effect, (2) free will of the perpetrator, (3) knowledge and (4) criminal intent. Furthermore, in accordance with the articles which the accusations are based upon, the victim has to be a civil servant and had to be in the line of duty or about to fulfil his duties.

The attorney commented on the decision invoked by the Civil party (many perpetrators, condemn them all as participants), and stated that we have 24 accused and the case is different; so far we do not know who the perpetrators or the participants is. There is multiple victims and many autopsy reports and many tools used in order to commit the crime. The attorney further stated that this decision from the supreme court stated that the appeal can not increase the sentences, and that the defendants are the one appealing the decision, and that the court therefore can not find more serious accusations and can not increase the sentences.

The attorney stated that he thought the civil party opened a public law suit against the accused with charges based on internal terrorism when they presented their request, and stated that the civil party has played the part of the public prosecutor.

The attorney commenced by commenting on the phone recordings, and stated that the defence had on the 18th of May protested and requested the court to discard the phone recordings as evidence. The attorney stated that the phone calls had been in Hassania, and that there were no information upon who had translated the conversation, and that the phone calls was not submitted into the case file; the attorney urged that the phone calls had to be in the voice of the accused. The attorney further stated that the phone calls had to be presented to the court during the evaluation of the evidence, and not cited in the final arguments given by the parties. The attorney further stated that the usage of phone calls had be in line with the procedural law in order to be used as evidence against an accused.

The attorney thereafter commented on the renting of 4 by 4 cars (i.e. that Mr. Asfari rented several cars in order to use them in the camp). The defence asked who rented the cars, and from which renting company, and how they were paid. The attorney stated that even in less important cases the court will have intel upon who rented the car.

The attorney thereafter asked where the inhabitants that allegedly was held hostages were, and asked where the human shields are; one can not find them in the reports and no one has made complaints about being used as human shields. The attorney stated that the human shields has to be documented. Similarly, the production and usage of Molotov cocktails had to be documented. The attorney stated further that the prosecutor claims that the defendants took pictures and held the authorities under surveillance, and that cars were rented, and that “we are dealing with a criminal case – we want the accusations documented”. The attorney further stated that the prosecutor has not explained which one of the accused was leaders and who where sympathizers to the plan. The attorney also stated that Morocco is still peaceful, and that one can not talk about an attack against the national security, and that these crimes can only be dealt with on a criminal level. The attorney commented on the different articles invoked by the civil

part and concluded that it did not make sense; this is a criminal case and not a terrorism case.

For the prosecutors, new accusation upon the abduction of the inhabitants in the camp in accordance with art. 436, the attorney stated that it is not possible to address new charges without giving the accused a chance to evaluate; one can not bring a new charge at the last minute. The defence attorney stated that they consider this point to have no effect, as the court can not decide upon something that has not been discussed.

The attorney thereafter stated that we have to know what happened in front of the investigative judge, as the judgement of the military court has been annulled. The court can therefore not use the verdict or the statements given at the military court, but can only use the charges and the case file conducted by the investigative judge. The attorney commenced by commenting on the evidence presented, and stated that the reports of the police are not evidence unless they are linked to other pieces of evidence beyond any doubt.

The attorney commenced by commenting on the forming of a criminal gang, and stated that the evidence was that the accused toured the southern provinces and mobilized people, and the prosecutor stated that the inhabitants was offered jobs and aid cards. The defence stated that this is not possible in a democratic society that some small portion of the population is given such a benefit, and not the rest. The prosecutor further stated that the accused were to raise the request based on orders from Mr. Bulsran, and that the components of the criminal gang was a former plan proven by the defendants former military training. The attorney stated that this is not evidence. Training in the tindouf camps does not mean that they were part of the Gdeim Izik, and that images can not be used as evidence. The phone recordings were furthermore not in line with the procedure, and that we did not know what was said in hassania, but only had the translation.

The defence attorney further stated that the defence has never received the autopsy reports, and that they were not a part of the case file of the defence. The attorney urged that the autopsy reports had not been presented to neither the defence nor the accused. Nor had the defence been given the letters from the gendarmerie, the auxiliary forces or the protection civil that the prosecutor had invoked as evidence.

The attorney commenced by commenting on the medical expertise, as he stated that the court needed to know where the expertise was conducted, and where the “safe place” were.

The attorney thereafter wanted to comment on the decision given from the supreme court relating to each of the accused. The attorney commenced with commenting on the decision of Mr. Asfari. The attorney noted that the supreme court had stated that the judgement was based on actions that lead to death, but that the judgement did not show the incitement or the individualist that were given the orders. The attorney stated that the court need to clarify who Mr. Asfari gave orders to, and what the effect of the orders were; did it cause the death of the second, the seventh or the tenth victim, the defense asked. The attorney thereafter commented on the decision regarding Mr. Haddi, which is accused of participation alongside with Mr. Asfari, and asked who Mr. Haddi participated with, with the effect on who, and with the ultimate effect on which victim, and where is the autopsy report for this victim. He thereafter commented on the decision regarding Mr. Zeyou and asked what Mr. Zeyou participated to,

what was the outcome of the actions of Mr. Zeyou, and stated that the actual and legal elements are not present. He thereafter commented on the decision regarding Mr. Ezzaoui, where the attorney stated that there are no cause and effect, where the question is how Mr. Ezzaoui participated in the killing, and thereafter of which victim, and where is the autopsy of this victim. The court must clarify the relation between the initiate, and the inciter and the consequence, thus the cause and effect, the attorney urged. He commenced with commenting on the decision related to the case of Mr. Eddaf, and stated that we have to know which orders and with what Mr. Eddaf delivered orders, which later lead to the death of a member of the law enforcement. This was the case also for Mr. Boutinguiza, Mr. Bani, Mr. Sidi Abdallahi, Mr. Laroussi, Mr. Sbaai, Mr. Lefkir, Mr. Ismaili, Mr. Babait and Mr. El Bakay. As for the accused charged as a main perpetrator, the attorney commented in regards to Mr. El Bachir, Mr. Thalil and Mr. Toubali that the military court did not prove the cause of death, and the functions of the victims. As for the case of Mr. Toubali, which is charged for participation and as a perpetrator, the attorney stated that the violence is established, but neither the victim or the effect of the violence is established, nor the incitement; to who or what the result of the incitement was.

The attorney thereafter commented on the evidence file, and stated that the court can not build its judgement on information that have not been discussed orally during the evaluation of the evidences, as for the case of the phone recordings. The attorney further pleaded that the testimony given by the policemen could not be regarded as evidence, and stated that the policemen can not be an opponent and a reference for information at the same time. The attorney further stated that the phone calls, the autopsy reports and the expertise must be discarded as evidence as they did not follow the necessary procedure as listed in art. 751. The attorney stated that accusations upon detainment must be rejected. The defence attorney further asked for separate judgements for each of the accused. The defence attorney invoked the decision from the supreme court and urged that this is an appeal, and that the charges can not be altered, based on the legal role that no sentence can be increased if they appeal.

The second attorney from the defence were thereafter given the floor to deliver his final arguments. The attorney commenced by clarifying the fact that this case involved events occurring on the 8th of November, and that the group was condemned by the military court which verdict is annulled by the supreme court, and therefore that the competence of this court is settled by the transfer court, and that the court had legal limitations. This constituted limitations to the competence of the court, and first and foremost that the court was limited to sticking to the request made by the formal parties in the case. The attorney stated that the civil party has no competence and are no formal party in this case, but has surprisingly interfered. The attorney thereafter urged that all the defendants are non-guilty, and urged that the innocence of the accused are obvious. The attorney stated that the court are capable to clarify, but the facts of the case remains the same, but the court can re-characterize the acts if they find them proven, but the attorney urged that the facts of the case cannot change, and one cannot submit new evidence to prove the facts. The attorney stated that they will not argue with the decision of the court, but that they will comment on the evidence submitted to the case. The attorney further urged that this court must commit to the decision from the supreme court, and to art. 554 which shows which elements that can prove and how they can be linked to the accused.

The attorney thereafter asked the presiding judge how he can allow the civil party to describe

the accused as violent murderers, criminals and terrorists, breaching the presumption of innocence, when they don't even have the competence to be here, and as separatist and members of ISIS. The attorney urged that the presumption of innocence is a guaranty for the accused and a guaranty that shall protect the accused against judicial mistakes and abuse of power. The attorney stated that this court can not treat individuals on a different way then as simply accused, and that they have to be regarded as innocent until proven otherwise. The attorney urged that the accused have to understand that their sentence are annulled, and the accused have to understand that they are to be regarded as innocent. The attorney stated that not everyone has the right to give their opinion and bury their innocence with accusations, and he urged that the accused are still innocent, and that every party in front of the court must know their limits, and that it was up to the president of the court to protect the accused, and that it is up to the prosecutor to submit evidence if evidence against the accused exists. The attorney stated that this court case has been used to send messages, and that the lawyer of the civil party has no right to use their voice to send additional messages, and that the actions of the civil party was in total disregard to the professional oath of lawyers. He stated that the court and the parties present are meant to treat the case within the evidence of the case, and those who goes outside the evidence of the case, are not doing their job correctly; and that the civil party are talking about the families; whilst they should ask who killed their children and not scream out groundless accusations against people who still are to be regarded as innocent. The attorney thereafter stated that we don't have ISIS in morocco and no terrorist movement, and urged that the defendants are to be regarded as innocent until proven otherwise beyond any doubt, and that is was the obligations of the court to protect the accused.

The attorney thereafter stated that this court case entails accused from the southern province from Morocco, and that we have to treat this case after the charges and the evidence of the file. He thereafter stated that the case file entail a case where a certain amount of people gathered in a public place in October; parents, children; old people etc. this gathering was known to the law enforcement and it was treated normally; people gathered because they were convinced that they had a right to demonstrate. The attorney urged that these people gathered in a public place; for one month; noe one could see that it was an armed gathering or a gathering that had to be authorized; these are nomads; a tent is where they feel at home. The attorney stated that these tents housed women, men, mothers, children, fathers; and this gathering needed no prior authorization, and the attorney stated that they agree with the prosecutor that these people gathered without a prior authorization. The defence thereafter stated that any party can ask for a re-characterization of the case, and stated that they urged the court to view this camp as a gathering of people, which the law enforcement suddenly, after a month, came to dismantle. The attorney stated that he had expected the prosecution that conducted the investigation of this case, to file a suit against the civil forces responsible for the dismantlement of the camp and to sue them for breaching of rules for discipline. An appropriate military orders were not given; and if It was given; it was not respected nor followed.

The attorney thereafter cited royal degree nr. 1/58 355 upon public gatherings; which stipulates the kinds of gatherings which needs authorizations. The attorney stated that in this case we are talking about a gathering of people. The attorney thereafter cited art. 19 of the royal degree which stipulates that when there is an armed gathering in a public place, the law enforcement shall go to the gathering and announce with loud speakers; if the warning is not responded to, the warning shall be repeated four times; and the warning shall a call which states that "we will

dismantle by the force of law”. The attorney thereafter stated that the witnesses from the civil forces has stated that they gave the public an invitation, and stated that this is not an invitation, this is the law; and that this law was not respected. The attorney stated that it was a helicopter with loud speakers; and that this invitation was not sufficient; and that the sounds from the helicopter will hinder people from hearing the message. The attorney claimed that no matter the size of the camp, the civil forces must follow the law; and that this was the responsibility of the judicial police which did the investigation; and stated that these people violated the law and we can not defend them and that they put the reputation of the country on stake. The attorney stated that the law says that an office with uniform or sign or a symbol that he belongs to the law enforcement must give the warning, and stated that if the camp is big, we send 20-30 officers; and urged that it was just a public place with people gathering, and that whether they are separatists or not is not the question here. The attorney stated that the people gathered in this placed due to poverty; and that they do not understand why a helicopter tells them to leave; and that it is the obligation of the law enforcement to protect them; and that the dismantlement constituted abuse of power, and the attorney asked why the law enforcement did not fulfil their duties. The attorney again urged that the law enforcement must give the people a summoning to leave the camp, and that this was not done according to the law, and that the court has an obligation to investigate and set the things right. The attorney stated that if members of the law enforcement does not know how to their job, so don't send them towards our citizens. The attorney cited the law, which stipulated three warnings; which means that the law enforcements must give the people room and time to leave, and he asked where the buses came from; and stated that we are still trying to justify the actions of the law enforcement.

The attorney thereafter reminded the court of the sanctions stipulated in the law when armed gatherings does not respond to the warnings, and stated that if the people leave without using weapons the sentence are 6 months to 1 year, and if they do not move after the warning and use their weapons, the punishment is maximum 5 years. The attorney stated that this is the rule of law enforcement; to present a warning to the people, and that the people in this case refused to leave. The attorney further stated that the attack happened at 6-7 am in the morning whilst people were sleeping, and asked how can we justify that the law enforcement that are meant to protect them, attacked them. The attorney stated that this attack was illegal; we do not know how the prosecutor of El Auin took the decision to dismantle; how can an intervention like this happen the attorney asked; where the tents were destroyed and they attacked the citizens. The attorney stated that the gendarmerie created this case by attacking, and arresting people and brought them to you. The attorney stated that the gendarmerie broke the law, and covered up their crimes by arresting people that they already knew from before due to their role in El Auin because of their activism. The attorney stated that witnesses from the civil forces appeared in front of the court as they were the only ones present, and asked where the other witnesses are. He also asked where the woman described in a red dress stating “don't burn them” where, and why she wasn't summoned to testify; and he urged the court to bring them to testify and also the people that intervened in the camp.

The court adjourned for a pause.

The attorney commenced his pleading by stating that the law enforcement members that managed this dismantlement has violated the law. The attorney stated that the law enforcement should have been inside the camp, and this mission should have been conducted by another

police officer, and stated that if the procedure was not followed, the summoning is null and void, and concluding that the summoning is null and void in this case. The attorney stated that the voidance can not be recovered; and the attorney stated that the court should have made sure that these proceedings were followed.

The attorney commenced by citing royal degree nr. 58 of 1988 on public gatherings, and stating that the gatherings can not be considered criminal unless it is armed or constitute a threat to public order. The attorney stated that there are conditions to dismantle; must represent law enforcement; must give a warning and announce themselves as law enforcement, and must read up the punishment for not leaving the premises; otherwise we can not dismantle. The attorney concluded that these proceedings were not respected; and that he did not bring forward these arguments to criticise the law enforcement.

The attorney stated that this intervention is the straw that lead to these confrontations, and the outcome of them; and that these members which violated the law worked as judicial police afterwards, and gathered evidence and drafter reports; they violated the law, and thereafter started to investigate and gathering evidence, the attorney urged. The attorney urged that evidence must be legitimate and legal, and that we can not accept abuse of power nor that the police violates a law, and then accept his work; stating that the truth is the investigation done within the law, and not the daughter of abuse of power. The attorney urged that it is not acceptable to use this evidence nor their testimonies, and that the court has an obligation to not accept any evidence that is obtained in an illegal manner. The attorney further argued that the judge in criminal cases can not accept evidence that were obtained through force, and without preserving the human dignity, and that anything that is proven to be said under force or pressure can not be taken seriously; and that all falls under the reasoning that the criminal evidence can not be weak. The attorney thereafter concluded that the dismantlement was illegal according to royal degree 58, and that this invalidated the reports and the minutes and makes them non-acceptable as evidence. He urged that no legal decision can be based on this evidence.

The attorney commenced by commenting on the red handed arrest, and asked the court “red handed with what? When he was committing the crime or when he was still being followed?”. The attorney stated that the smoking gun of the prosecutor are not based on any legal foundations. The attorney stated that all the accused dealt with by the prosecutor can be considered caught red handed only because they were there.

The attorney thereafter stated that according to art. 321 of the criminal code, the law enforcement, if they use violence against people without a legal reason, shall be punished for violence. The attorney argued that the law enforcement did not follow the regulations, and must be pursued for their actions; as the law enforcement did not give a warning and the armed gathering nor the hostility have been proven. The attorney requested the court to pursue the civil forces in charge of the dismantlement, and submitted a written memorandum.

The attorney commenced by stating that the Moroccan judicial system is a model for other Arabic countries, and that the Moroccan judicial system must continue as such, and stated that there are no proofs for any acts of violence, nor proof of the physical death, and the autopsy report does not show the cause of death; and therefore the court has no evidence for the cause and effect. The attorney therefore concluded that this court case entailed a lack of justification

and abuse of power, and that it was up to the court to investigate, and the attorney urged that the court has the right to re-characterize the facts of the case.

The attorney thereafter commented on the comments made on the withdrawal of the accused, and stated that one can not talk about the right to remain silent in this manner. The attorney stated that the right to remain silent is in front of the judicial police in order to avoid abuse of power, and stated that the right to remain silent is not a right in the courtroom. The attorney thereafter stated that the accused has not fled the courtroom, but has answered the questions of the court and the attorney urged that the detainees has denied the charges every time.

The attorney commenced by commenting on the evidence file. He commenced by commenting on the testimonies given in front of the court, and stated that there are many contradictions. The attorney further stated that the court have many narratives, but not a single testimony upon who killed the personnel. The attorney therefore concluded that none of the testimonies are useful, since none of the witnesses saw who committed the murder.

The attorney thereafter stated that the testimonies given to the court should be about who committed the main act, or what one heard for example Mr. Bourial say or Mr. Haddi say in order to prove participation. The attorney urged that the court needs hard evidence to reach the truth. The attorney thereafter stated that the witnesses only gave the court narratives/stories, and asked the court which one he will use. The attorney further urged that the testimonies of the policemen defending the arrest and their investigation could not be used as evidence, since they could not be considered impartial. The attorney thereafter requested that these testimonies were discarded as evidence.

The attorney thereafter urged that recognising people are not evidence, especially not with the usage of photos since the accused should be confronted with the evidence against them. The attorney urged that everyone in the kingdom of Morocco knows the faces of the accused, and that the witnesses only recognized, but never testified to any crimes committed. The attorney urged that the court can not decide the death of a person without sufficient ground, and urged that the witnesses told different stories. The attorney also added that three of the witnesses, i.e. the ones claiming they were inhabitants of the camp, may be brought by the prosecutor and been subject to instructions.

Upon the movie, the attorney stated that the movie is clearly a set of films edited together. He further stated that the movie did not proclaim any crimes committed, and therefore that the movie gave no new facts to the case that the court is able to base their decision on. The attorney stated that we have seen Mr. Bani, but where is the person that Mr. Bani allegedly hit with his car, and who can tell us that Mr. Bani hit this person with his car. The attorney stated that the movie may not be the original footage, and asked whether there is parts that are not being screened. The attorney urged the court that if a movie should be regarded as evidence, it has to be the original footage and can not be tempered with; and requested the court to discard the movie as evidence.

The attorney further asked whether a car can be classified as a weapon, and showed from a judgement from Egypt that cars are not weapons. The attorney further stated that the gendarmerie was supposed to dismantle the camp, and had intel that it was weapons in the

camp; and stated that how can they be hit by a car; and stated that he could not imagine such a crime. The attorney further stated that the gas bottles can not be considered as weapons since, in these tribes, they have a tradition to make tea and they are using these gas bottles to prepare tea. The attorney stated that the same goes for the knives found in the camp, and stated that these are household tools, and tools used to fix tents. The attorney requested the court to not regard the confiscated elements, which can not be linked to the accused, as evidence.

Upon the charge of participation, the attorney stated that we have seen some of the accused on the movie but not seen any crimes committed, and the attorney asked what the cause and effect between their presence in the camp, and the victim was. The attorney further stated that one can see in the movie that there are no doors, but that people are running in open air.

Upon the phone recordings, the attorney stated that they entail conversations between Moroccans and enemies of the state. The attorney thereafter stated that they can accept that the phone recordings are evidence upon conspiracy, but that these phone recordings have no value; otherwise we could have putted Mr. Asfari in prison for conspiracy, but not on these charges. The attorney thereafter stated that the phone recordings are not useful and that the court can not rely their decision upon on them.

The attorney commented on the charges related to forming a criminal gang, and stated that the prosecutor delivered the phone recordings as evidence, but asked whether they comply to the conditions. The attorney stated that a criminal agreement is something secret and a union to commit crimes, and which a person intent to join. The attorney stated that the intent to join the agreement is not sufficient, but that the court also needs the decision to act together. The attorney stated that in this case file, we have young angry people and suppressed anger due to the intervention from the law enforcement in the early hours whilst the inhabitants were sleeping; and that the throwing of stones were a response for being attacked. The attorney stated that such confrontations between civilians and the law in order can be seen all over the world.

Upon the crime of participation, the attorney urged that the court needed to prove or to show participation. To prove participation, one must prove the main crime, and the attorney urged that we have no function nor name of the victim. The attorney urged that one can not talk about participation if one can not prove the main crime; a crime is committed by a main perpetrator which is affected by a participant; and the attorney urged that there is no main offense in this case file. The attorney stated that the prosecutor has spoken about an agreement, when there is no agreement that can be proven or interpreted by the facts of the case file. The attorney urged that when there is no agreement, there is not participation; but we face multiple criminals or multiple crimes. The attorney urged that each of the accused must be sentenced for their own crimes that the court finds proven.

The attorney concluded that all the accused are innocent, and requested full liberation of all the accused and to view the Gdeim Izik camp as a normal gathering in a public space, and that the dismantlement was illegal when not following the legal procedures. The attorney further objected to the intervention from the civil party, and requested the court to rule in accordance to the law, whereas the civil party had no competence to be party to a case already rendered by a prior court.

Day 28 – On the 15th of June at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced with giving the floor to the defence in order for the third defence lawyer to deliver his final pleading to the court. The attorney commenced by commenting on the prior legal proceedings, and stated that the charges was drafted by the investigative judge, and that the charges are solely based on the declarations allegedly given by the accused. The attorney further stated that all the accused denied the content of the reports during the investigation phase, and that this denial rejects the content of the reports. Despite the denial from the accused, the investigative judge decided to pursue them, and referred the court case to the military court who sentenced them to harsh sentences. The judgement from the Military Court has been found null and void, and can legally speaking not be discussed.

The attorney commenced with giving his opinion on some preliminary observations. First, what happened in the gdeim izik camp was criminal acts and no one can tolerate the, and it makes us wonder who committed them. Second, these brutal acts lead to the death of a number of people who were doing their jobs; and the argument from the civil party are not compatible with the case file, whilst the prosecutor based his argument on the reports from the police and the gendarmerie. Thirdly, the attorney confirmed that this case is a normal criminal trial, and his clients are confirming their innocence. The attorney stated that no party can describe his client as criminals; only the judiciary has the right to describe a person as a criminal. The attorney urged that only the court can make these comments, and he demanded that the one who made these comments withdraws them.

The attorney thereafter concluded that the charges drafted against the accused were based solely on the reports drafted by the police and the gendarmerie, which the officers claim are declarations given by the accused. The attorney thereafter asked how his clients were chosen out of thousands of people during total chaos; there were difficulties for everyone to distinguish; so how did the judicial police arrest my clients, listened to them and transferred them. As for the case of Mr. Asfari, Mr. Asfari had declared that he was the leader and had no regrets and had cooperated with Mr. Lefkir; and these facts were considered by the investigative judge; facts that Mr. Asfari denied and stated that he never gave these declarations. As for the case of Mr. Banga which was accused with acts that he denied to the investigative judge, and he denied all the allegations. As for the case of Mr. Bourial, which is accused for being the leader of the diaoluge committee and giving instructions to punish the inhabitants; also denied all that was included in the report handed to the investigative judge. As for Boutinguiza, charged with similar acts, also denied them all to the investigative judge; he gave a firm denial and also stated to the investigative judge that the declarations are falsified.

The attorney thereafter urged that no confession that is proven to be taken by force, can be taken into consideration, and stated that torture means any act that leads to pain; physical or mental that can attain someone in order to get information or to punish them or scare them, or any act that lead to discrimination. Such acts can not under any circumstances be justified, the attorney stated. The attorney thereafter stated that his clients have confirmed that they were subjected to

torture and asked for medical examination, and they have confirmed that they have been subjected to torture, and are therefore not only allegations.

The attorney commenced by commenting on the medical expertise. The reports regarding everyone of the accused; claims that the legal procedures have been followed. The attorney thereafter commented on every medical expertise submitted to the court, and concluded that every expertise is formulated in order to reach a result with a legal basis and fair result. The attorney thereafter stated that despite the difference in the complaints and the allegations, the doctors reached the same conclusion in all the reports; the conclusions does not give any answers to the court, as they are not specific, and the medical team has confirmed that there are symptoms, but that they could not conclude that these symptoms were linked to the alleged torture. The attorney therefore concluded that the doctors were not sure about the conclusions that they have shared with the court, and the doctors could not give a certain opinion, in comparison to the fact that the accused have confirmed that they were tortured and that they are suffering. The attorney stated “I confirm to you that my clients have suffered from torture and that the police reports were obtained under torture, and statements obtained under torture can not be dealt with and have to be confirmed by the accused; or else they should be regarded as if they were drafted by the police.” The attorney requested the court to not validate the medical examinations, and requested that the statements attributed to the police and the gendarmerie have no grounds. The accused have confirmed torture and pressure, which invalidates the reports, and the investigative judge considered this where the accused have confirmed that they signed under torture.

The attorney commenced by stating that the reports are legally speaking pieces of information, and stated that it is a big difference between information and data; and that the legislator have decided to regard police reports as mere information; and as such; can not be considered as evidence, and can not be considered sufficient evidence to prove a crime. The attorney urged once more that the reports were signed under torture, and that it was nothing in the case file that proved the opposite, and requested the court to discard the police reports. The attorney stated that anyone who hears the accused and reads the reports will understand that these reports are falsified. The attorney requested the court to discard the expertise, as they could not conclude.

The attorney stated that all the accused denied the accusations and confirmed that they signed falsified reports under torture to the investigative judge, and this was not considered by the judge, and the judge considered the denial as an attempt to hide from the truth. The attorney thereafter stated that when my client appeared in front of this court, all of them confirmed that they have nothing to do with the deeds mentioned in the police reports, and nothing to do with the events of Gdeim Izik. The attorney thereafter stated that the prosecutor has placed forward new evidence 7 years after the events, and the attorney urged that evidence submitted into the case file must be legal. The attorney thereafter urged that the prosecutor has placed forward transcripts of phone recordings 7 years later in the last minute, without giving the defence nor the accused the ability to meet the new evidence. The attorney stated that we do not know the source of these phone tapplings; we know nothing; and the unknown can not be evidence in a criminal case. The attorney thereafter asked whether there was anything in the file that confirms that the institution that have tapped the conversations have followed the legal procedures. The attorney thereafter stated that they are surprised to be met with phone recordings seven years after, which has nothing to do with the charges placed forward. The attorney further stated that

the defence was not informed about the phone recordings. The attorney requested the court to not submit the phone recordings as evidence. The attorney furthermore requested the court to investigate what happened during the events, and the dismantlement of the camp, and urged that the legal procedures were not followed by the law enforcement. The attorney stated that “we need an answer to this; how could the parties select 24 persons from the gdeim izik camp where there was chaos and events that made it impossible to distinguish the different people present. It is impossible to specify any crime done by any of the accused; no one can specify that a deed was done by any of the accused; it is impossible. The events happened out of the blue. Things were normal the night before and no one could imagine what would happen, and it was not planned. These conversations were between people dealing with other things, and has nothing to do with the events”. The attorney requested the court to not consider the phone recordings as evidence.

The attorney commenced commenting on the different pieces of evidence. He stated first that pictures are not evidence, in any legal system in the world. The attorney requested the court to both discard the photos and the movie as evidence.

Regarding the witnesses the attorney stated that a witness must be certain; if the witness is not certain, he can not be regarded as a witness to any events. The attorney thereafter stated that a witness must have no benefits, no party to the case and have not connection to the case; and that the court must know where the witness comes from. The attorney thereafter asked how can someone who arrested someone testify, and stated that “only god knows what they did; they wrote the reports; the person under arrest claims they were tortured and claims that they have nothing to do with the content; and claim that they were forced to sign; and claim that they were kept blindfolded. Do you think that the police officer that made the report, and that have made someone sign them; can come here and state the opposite? This is impossible. They can not be considered as witnesses. Only god knows what they did”. The attorney urged that his clients never committed the actions they are accused of, and asked again how the court can let the police men come to testify; the legislator deems police reports as information; we can not let the police men come to testify and turn the information into evidence; this is fraud, the attorney stated.

The attorney thereafter stated that most of the witnesses claimed and witnessed about violence, and asked who these people are; how can the court condemn the accused based on such testimonies; they are just statements about events, and are not evidence. The attorney concluded that all the testimonies were unable to specify the persons who committed violence, except the drafters of the reports who can not be regarded as witnesses. The attorney concluded further that the witnesses were not eye witnesses to any events and that the testimonies contained several contradictions; as all the witnesses are insecure about what they saw, except the police men.

The attorney commenced by commenting on the confiscated elements, and asked whether it can be accepted that, in relation to the place the elements were confiscated, that they are evidence against my clients in relation to the charges of murder and forming of a criminal gang. The attorney stated that the objects have been seized in the camp which included thousands of people; people living in the middle of the desert has these kinds of tools and they are normal. The attorney furthermore claimed that the confiscated objects were not linked to his clients;

they are normal objects in the desert and are not weapons, and can not prove any crimes committed. The attorney concluded that legally and out of common sense that the confiscated elements can not be regarded as evidence.

The attorney concluded after commenting on the evidence file, that the court did not have evidence against his clients.

The attorney commenced by commenting on the charges related to the forming of a criminal gang, and stated that the investigative judge based the charges solely on the reports from the police and the gendarmerie. The attorney stated that the night prior to the events everything was normal, and people were sleeping; which the people in the camp could testify to. The attorney urged that all the components or art. 293 must be fulfilled in order to condemn someone for the forming of a criminal gang. The attorney commenced with commenting on the first condition; firm agreement. The attorney stated that there is nothing in the case file that proves that the accused planned the events that happened on the 8th of November, only evidence that proves the settlement of the camp and the dialogue committee. As such, since a firm agreement can not be proven, one of the conditions are missing. The attorney thereafter stated that the investigative judge was not successful when characterizing the crime, and that the supreme court did not comment on it.

The attorney commenced by commenting on the charges related to violence, which lead to death, as stipulated in art. 267. The article distinguishes between violence against law enforcement which are punishable with 3 months up to 2 years in prison, and violence which lead to death with intent which is capital punishment. The attorney stated that the investigative judge based the charge on the reports which he regarded as sufficient evidence. The attorney stated that it occurred chaos on the 8th of November, and that his client were arrested and charged for the crime, but it was very difficult to specify a person or to say that a person has committed a specific offense; there were crimes and victims, but the question that remains and that the court must answer is who was the cause of their death of violence against them. The attorney urged that his clients are innocent until proven guilty, and stated that it is easy to write a report and refer someone, and urged the court that they needed hard evidence; and sufficient evidence to prove that the accused committed the alleged offence. The attorney urged that if doubt exist, the court can not condemn. The attorney concluded that the charges are not valid, and that the court did not have sufficient evidence to the crime.

The attorney commenced by commenting on the charges relating to participation, and asked where is the main perpetrator, stating that in the absence of a main perpetrator, we can not charge anyone as a participant to a crime. The attorney claimed that there is nothing in the file to prove that any of the accused have done anything that is participation; the accused have not helped or assisted and are not caught giving anything. The attorney thereafter asked; the camp contained thousands of people; why have we only heard from 24; and stated that even with a simple car accident, the police looks for witnesses. The attorney stated that this is a serious case, and despite of this, the police brought the accused but never brought any witnesses to the crime; or to what happened in the camp. The attorney stated that 7 years later, the prosecutor brings forward new evidence; but 7 years ago, the police only did the arrest and submitted the police reports into the evidence with no investigation.

The attorney confirmed in the name of his clients that they have not committed the crimes, and that the reports were obtained under torture and that some have signed the reports whilst blindfolded. The attorney requested the court to take into consideration the denial, and not the expertise, and to discard the expertise from the case file. The attorney requested the court to find all the accused innocent and liberate them, and requested the court to interpret the doubt in favour of the accused. The attorney requested to reject the request from the civil party.

The fourth and last defence attorney was thereafter given the floor to deliver his final pleadings to the court. The attorney commenced by stating that the case file that he had, is different from the case file that the prosecutor has, and stated that several documents are missing. He further stated that the pleadings given from the civil party and several of their arguments have constituted an attack against the presumption of innocence, when giving descriptions on treason and declarations against the accused proclaiming them as criminals. The attorney thereafter reminded the court that the Moroccan judicial system is different from the judicial system of other Arabic state in the sense that a Moroccan courthouse does not create justice; the judge applies the law and must justify its rulings. The attorney thereafter urged that the establishment of the camp was to demonstrate social demands, and that the accused has the right to have political opinions. The attorney urged that the camp was not a criminal gang, but that the accused had political opinions that are not a part of the camp, or not part of any criminal gang on the basis of an agreement. The attorney claimed that the events of the 8th of November 2010 was brutal reactions to the actions of the law enforcement; a reaction to how the dismantlement was implemented. The attorney thereafter asked who gave the order to dismantle the camp, and urged that a dismantlement must respect human rights.

The attorney thereafter stated that an order to dismantle a public gathering must come from the regional chief or the governor; and that they decided to dismantle the camp; the camp had two doors; and the law enforcement attacked innocent people. The attorney urged that there is an error in how the dismantlement happened, which cause a reaction; and this reaction does not justify the arrest of innocent people. The attorney gave an example; a football match with fans on both sides; if the police warned them with the use of helicopters; and the 24 are the players on the football team; they did not know about the actions and did not plan the riot or the actions; the criminal intent does not exist; you will have 20 000 fans mixed with trouble makers; how can we ask the football players to stop the trouble makers, if even the law enforcement could not stop them.

The attorney urged that the law enforcement came early in the morning while it was still dark; and that the court needed to speak with the inhabitants of the camp; and that they do not accept the comparison to what happened in Nice or London; and urged that the camp was a peaceful resistant camp. The attorney thereafter urged that the phone recordings does not follow the legal proceedings and must be discarded, and urged that the one responsible for laying forward the evidence, have an obligation to present all the evidence of the case; and stated that the prosecutor has only placed forward evidence against the accused; and only placed forward bits of the transcripts, and not the context of them; and the attorney asked how the accused could plan events that they did not know about. The attorney stated that these people are charged for forming a criminal gang whilst they were asleep, and urged that they did not know about the events. The attorney urged that the phone recordings must be discarded as evidence as they had nothing to do with the charges. The attorney further stated that it is obvious to everyone that

the man peeing on a corpse is not any of the accused, and that it was rumours in El Auin about who urinated on the corpse.

The attorney further stated that the movie is only evidence that Mr. Bani was telling the truth; and that Mr. Faisal Raiss had stated that the car was stopped by sand, and that it was hard ground in the video; only proving that Mr. Raiss is lying. The attorney asked why this camera did not work one minute before, and actually filming the crime. Upon the witness Mr. Mohammed Choujaa, the attorney stated that the witness used terms that surprised everyone; he even knew the family name of Mr. Sidi Abdallahi which no one knows. The attorney stated that the law enforcement tried to hide their mistake (the dismantlement) by arresting people that they knew in advance; the accused were members of the committee and had dinner with the police, and others were known figure in the El Auin. The attorney stated that the court needed to affirm that the camp was closed on Sunday, so that people could not enter; and stated that over 30 witnesses have confirmed that Mr. Toubali was in the hospital. The attorney further stated that Mr. Zakaria Raiss and Mr. Mohammed Choujaa has learned the file by heart before testifying; stating that these witnesses knows the file better than himself. The attorney further stated that they suddenly appeared seven years after the events, and rememberd close to all the accused, but not their neighbours. The attorney stated that there is evidence pro and against the accused and the evidence for conviction is illegal and no-existent.

Upon the testimonies given by the policemen which conducted the reports, the attorney stated that when they arrived; they were here to testify about torture, and the attorney stated that the identification process should be the other way around; the picture should have been brought to the accused for them to say if this was the one who tortured them or not. The attorney stated that their testimonies are worthless.

The attorney requested the court to find all the accused innocent on all charges and liberated as the case file entailed major doubts.

The attorney thereafter asked what the civil party are appealing against, and urged that their competence to be present in this case and to file a civil claim is non-existent, and urged that they have no competence to stand here 7 years after the events, and that the civil party must be referred to file a civil claim at first instance.

The floor was thereafter given to the prosecutor in order for him to give his remarks upon the final arguments from the defence. The prosecutor stated first upon the phone recordings that he had the competence to submit any evidence, and that the phone tappings were done according to the law; where the order was given on the 11th of October 2010 from the prosecutor of El Auin, and an order from the president of the court of appeal in El Auin dated the 12th of October 2010. Regarding the witnesses the prosecutor stated that it was up to the court to decide, and after they were sworn in, the testimony was to be regarded as evidence.

The court thereafter asked the prosecutor how long he needed to give his remarks, and the prosecutor answered at least two hours, which led the court to adjourn the session.

The court case of the group Gdeim Izik was adjourned until the 11th of July 2017.

Day 29 - On the 11th of July at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced by giving the floor to the prosecutor in order for him to deliver his remarks upon the final arguments from the defence. The prosecutor declared that the phone recordings had been submitted according to the law. The prosecutor further stated that according to art. 325, a witness did not have to be proven not bias. The prosecutor invoked that the proceedings at the Military Court were not finished, and that these proceedings constituted the commencement of first instance. The prosecutor stated that if one can not clarify the act that lead to death, the court must condemn the accused as a group. The court was thus not obligated to prove the specific acts committed by each of the accused.

The prosecutor claimed that he himself had conducted the translation of the phone conversations from Hassania to Arabic to facilitate the treatment of them. The prosecutor thereafter showed a picture of a car that he stated was part of the confiscated elements, and invoked that a car was a weapon. The prosecutor stated that the cars were rented by Mr. Asfari and used by the defendants when they arrived from Algeria, and made tours to convince people to come to the Gdeim Izik camp. The prosecutor stated that the court must not forget that this case already has been ruled upon. The prosecutor stated that the reports are considered as information and thus as evidence. The prosecutor invoked the principle of freedom of evidence, and claimed that any type of documents could be criminal evidence. The prosecutor stated that part of the evidence file was the prior convictions of the detainees, which entailed convictions relating to murder and drug trafficking, and stated that some of the detainees are picked out due to their criminal record. The prosecutor claimed that the defence had received the autopsy reports on the 3th of March 2017. Concerning the presence of the civil party the prosecutor invoked the UN agreement upon organized crimes, which stipulates a right for the victims, and the Universal declaration on human rights art. 8. Upon the defences request to re-characterize the act to a gathering in a public place, and that the law enforcement did not respect the procedures when dismantling, the prosecutor stated that the victims were part of the law enforcement and that the state can not prosecute any person if they have not followed the proceedings. The prosecutor claimed that the inhabitants in the camp attacked, and that the law enforcement was placed to secure the people, and that they asked the people to dismantle with loud speakers. The prosecutor stated that the inhabitants were asked to leave in buses, since the camp was located 15 km away from El Aauin. The prosecutor stated that the inhabitants in the camp were children which were forced to stay in the camp by their kidnappers, with the use of violence. Regarding the declaration made by the defence, regarding that the interference from the law enforcement was illegal, the prosecutor stated that the question is who used violence against who. The prosecutor stated that there were only victims of the law enforcement, which entailed 69 injured and 11 deaths, and none civilans were transported to the hospital. The prosecutor stated that all were injured whilst the inhabitants attacked with bombs and cars with no mercy, and that the civil forces had only shields and helmets. The prosecutor invoked that the witnesses identified the accused, and this constituted clear evidence. The prosecutor stated that the witnesses affirmed the attack which their colleagues where subjected to. The prosecutor stated that the arrest of the accused was based on the investigation conducted by the police,

which shows the involvement of the accused. The prosecutor stated that not all the accused were arrested on the 8th of November, and that only 6 of the 69 suspects arrested on the 8th of November was transferred to the military court. The prosecutor stated that the victims was members of the law enforcements, and that the attackers must therefore be tried in a military court. The prosecutor declared that the experts which had conducted the medical expertise had followed the Istanbul protocol, and international standards; and that the doctors are looking for evidence which can prove the allegations upon torture. The prosecutor declared that the doctors delivered a clear result with no contradictions; and that the declaration given by Mr. El Bakay, which stated that he did not suffer from torture during his detention but still asked for a medical examination, proved that none of them suffered under torture. The prosecutor stated that the pictures used for the identification process were taken in Salé prison by the administration, and that the pictures included in the file upon the civil status of the accused. Upon the witness, Mohammed Choujaa, the prosecutor stated that Mr. Choujaa was an inhabitant in the camp, and that he had testified about the participation for several of the accused. The prosecutor declared that the court was obliged to follow the decision issued from the supreme court.

The civil party was thereafter given the floor to deliver their remarks to the court. The civil party commenced by stating that the kingdom of morocco respects its obligations, and does not need guidance from the outside. The civil party stated that the defence strategy, upon referring to the decision from the supreme court and the military ruling, was very clever, and stated that the court had at least three pieces of evidence; (1) the reports, (2) the phone conversations, and (3) the speeches of the accused. The civil party stated that if the court can not prove the cause and effect relation, the court must acquit the detainees, based on the principle of innocence. The civil party declared that the supreme court did not look at the facts of the case, and thus did not find the verdict from the military court null and void because the accused were innocent, but because the legal provisions were not present, in particular the term of cause and effect. The civil party declared that the court must re-characterize the facts and apply the articles which are appropriate. The civil party declared that the court had an obligation to show the cause and consequence relation, and requested the court to re-characterize in order to prove the cause and consequence relation. The civil party declared that the accused did not know their victims, and that the character of the crime is linked to article 201, 202, 203, 204, 205 and 405 of the Moroccan penal code. The civil party stated that according to article 204, the persons arrested on the crime scene can be accused of participation, and the civil party thereafter urged the court to condemn the accused after art. 204. The civil party ended their remarks by stating that the court had a national duty to condemn the accused, and that this court will go into history and that the verdict will affect all Moroccans; and that this case was not only about being just to the victims and make an end to the plots that are being tailored against the kingdom of morocco.

The court thereafter ruled that the defence would be given the right to deliver final remarks, and adjourned the session until the 18th of July 2017.

Day 30 – On the 18th of July at the Court of Appeal, Salé.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The defence commenced by stating that art. 242, which were invoked by the civil party, were

not relevant to the case. The defence declared that according to art. 554, the transferal court is obliged to follow the decision from the higher court. The defence thereafter started to comment on the phone recordings, but were interrupted by both the prosecutor and the civil party. The preceding judge declared that the prosecutor did not have the right to comment, which lead the prosecutor to scream. The defence commenced and declared that all the accused are innocent on all charges, and declared that there is no evidence against the 24 accused; and stated that hundreds of demonstrators threw rocks; why is only 24 accused. The defence stated that the phone recordings are not translated correctly from Hassania to Arabic, which lead the prosecutor to stand up and scream. The defence stated that the court must apply the presumption of innocence, and that the court can not condemn them as a group, and that the court must prove the elements of the crime, which is not proven. The defence declared that the request from the civil party was not legal. A second defence attorney commenced by giving final remarks by stating that he thanked the court for delivering a fair trial. The attorney declared that the accused can be condemned as a group of participants, as in relation to the logic of the prosecutor, if charged after article 201-204 of the Moroccan penal code. The attorney declared that the court did not know the perpetrator, and that not knowing the perpetrator is destructive to all the other criminal evidence. The defence was interrupted by the prosecutor which stood up and screamed. The defence commenced and stated that the prosecutor did not appeal the decision from the military court, and have not asked for an alteration of the charges to art. 201-204. The defence attorney declared that the gdeim izik camp was nothing more than a gathering of people. The defence attorney declared that the court was in lack of material evidence, and stated that the court could not use evidence based upon a translation conducted by the prosecutor (referring to the phone recordings), and stated that its only a translator that can conduct a translation. The defence invoked that the court needed material criminal evidence to convict, and that the court can not accept such a translation, and that the translation must be conducted by a neutral source. The defence thereafter asked, in relation to the medical expertise, if a psychiatrist can rule out a mental disorder after a session lasting between 30-45 min. This lead the civil party to stand up, and screamd that they wanted follow up remarks, and the prosecutor to stand up and slashing his book down in the table whilst screaming. The judge tried to calm the court, and asked the defence to not bring up new arguments in their finals remarks. The defence stated that they only commented on reports already in the file, which again lead the civil party to stand up and scream.

After a pause, the defence resumed with giving the last word on behalf of the accused, which were not present in court. The defence stated that evidence have been gathered without following the procedural law, and stated that criminal records are not proof in any criminal case, and the defence urged that the court must find the accused non-guilty when in doubt. The civil party again interfered and stated that the final pleadings are finished, and that we are in the stage of the last word of the accused. The defence thereafter asked the court what the meaning of the last word was, and stated that this is a legal vacuum, as the accused are not present. The defence urged that no party has the right to intervene when the last word is given to the court, and that the defence have the right to deliver the last word of the accused, also arguments. The court stated that the defence misinterpret the law and the right of the last word.

The defence resumed by stating that the evidence is the most important part of a criminal case, and that the court lacked evidence for proving the cause and consequence. The defence stated that none of the evidence presented by the prosecutor could be used in a criminal case as

criminal evidence. This led the prosecutor to stand up and scream. The defence attorney concluded that all the accused plead not guilty.

A new defence attorney commenced by asking the court what the last word meant, stating that the accused are prohibited from speaking and are interrupted by the civil party and the prosecutor, urging that the accused has the right to comment on the whole case file, as they have not had the chance earlier in the proceedings. The defence attorney commenced by commenting on the case of Mr. Banga, and declared that Mr. Banga did not have a beard at the age of 20, and that a falsified witness had lied about him having a beard. At this point, the prosecutor interrupted again. The attorney commenced with stating that Mr. Bani urges that he did not kill anyone, and that the last word of Mr. Bani is that the testimonies against him is contradictive. The attorney stated that the last word of Mr. Bourial is whether carrying a helmet is proof that he killed someone, as shown in the video. As for Mr. Toubali, the attorney stated that Mr. Toubali was in El Aauin in a bad condition after a car accident, proven by medical certificates, and witnesses. As for Mr. Boutinguiza the attorney stated that it can not be proven that it was him portrayed in the video, since Mr. Boutinguiza is shorter than the man encircled in the video. The attorney declared that the evidence entailed contradictions and that the presumption of innocence had to be decisive. The floor was then given to a new defence attorney, which stated that the right of the last word was breached due to the interference from the civil party and the prosecutor, which led the preceding judge to scream towards the defence and asking him to withdraw his words. The defence urged that it is only the preceding judge which has the right to interfere, and that the interference from the civil party and the prosecutor constituted a breach to the right of the last word. This led the civil party to scream that the defence can not take away the rights of the victims. The defence attorney resumed by stating that all the accused confirm that they did not participate in the actions, nor have they stated the declarations written by the police. The defence declared that the minutes of the police are only information, and not criminal evidence. The attorney thereafter stated that the pictures used in the identification process are not valid, as they are taken in 2016, and not in 2010 as stated by the prosecutor. The attorney stated that the medical expertise did not entail a clear conclusion, and that the medical expertise can not be used as evidence. The defence declared that the phone recordings can not be used as they did not follow the procedural law, and the attorney stated that the accused confirm their innocence.

After hearing all the parties and the last word, the court withdrew to deliberate and to pronounce the ruling at the end of the hearing. The court adjourned at 14:45pm.

Day 31 – On the 19th of July at the Court of Appeal, Salé.

The court resumed after deliberations at 04:45am.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings. Mr. Ettaki was present in court, whilst Mr. Zeyou was not present. The court ordered the clerk to inform the accused of the rulings, and to inform the accused of their right to appeal.

The case file of Mr. Ayoubi is separated from the case file, and scheduled to the 22nd of September 2017.

The court ruled that the civil party did not have competence to be a formal part in the proceedings, and rejected the civil claim. The court rejected all the requests presented by the defense (i.e. to discard the reports, the medical examinations, the testimonies from the police men and the phone recordings as evidence), and thus implemented all evidence into the case file.

The court delivered the sentence within 10 minutes, and it is therefore not clear which articles the different accused are condemned after. However, the court ruled to re-characterize the case in compliance with the final arguments delivered by the prosecutor. As in relation to the articles presented by the prosecutor, the accused were condemned for forming a criminal organization after art. 293, with sentences stipulated in art. 294, and after art. 267 (perpetrator), or after art. 129 in relation to art. 267 (participation), or after art. 129 in relation to art. 267 and art. 267 (participation and perpetrating). Until the official written judgement is published, it remains unclear which articles the different accused were condemned after.

Sentenced to life in prison: Ahmed Sbai, Brahim Ismaïli, Abdalahi Lakfawni, Laaroussi Abdeljalil, Mohamed El Bachir Boutinguiza, Mohamed Bani, Sidi Abdallah B'hah, Sidahmed Lemjeyid

Sentenced to 30 years in prison: Eênama Asfari, Mohamed Bourial, Cheikh Banga

Sentenced to 25 years in prison: Hassan Eddah, El Houssin Ezzaoui, Mohamed Lamin Haddi, Mohamed Embarek Lefkir, Babait Mohamed Khuna Babait

Sentenced to 20 years in prison: Mohamed Tahlil, El Bachir Khadda, Abdallahi Toubali

Released with time served: Deich Eddaf condemned to six and a half years, which is less than the time he has so far spent in prison. Larabi El Bakay has been condemned to four and a half years, which is less than the time he has so far spent in prison. Mr. Zeyou and Mr. Ettaki were both sentenced to two years, which they have already served in prison.

The preceding judge did not deliver the judgement concerning one of the detainees, Mr. Ezzaoui, before adjourning the proceedings. After consulting the preceding judge in his office at the Court of Appeal in Salé, we learned that Mr. Ezzaoui was sentenced to 25 years in prison.

2. Article 293, 294, 129 and 267 of the Moroccan Penal Code

Article 293

Toute association ou entente, quels que soient sa durée et le nombre de ses membres, formée ou établie dans le but de préparer ou de commettre des crimes contre les personnes ou les propriétés, constitue le crime d'association de malfaiteurs qui existe par le seul fait de la résolution d'agir arrêtée en commun.

Article 294

Est puni de la réclusion de cinq à dix ans, tout individu faisant partie de l'association ou entente définie à l'article précédent.

La réclusion est de dix à vingt ans pour les dirigeants de l'association ou de l'entente ou pour ceux qui y ont exercé un commandement quelconque.

Article 129

Sont considérés comme complices d'une infraction qualifiée crime ou délit ceux qui, sans participation directe à cette infraction, ont :

1° Par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, provoqué à cette action ou donné des instructions pour la commettre;

2° Procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action sachant qu'ils devaient y servir;

3° Avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action, dans les faits qui l'ont préparée ou facilitée;

4° En connaissance de leur conduite criminelle, habituellement fourni logement, lieu de retraite ou de réunions à un ou plusieurs malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'État, la paix publique, les personnes ou les propriétés.

La complicité n'est jamais punissable en matière de contravention.

Article 267

Est puni de l'emprisonnement de trois mois à deux ans, quiconque commet des violences ou voies de fait envers un magistrat, un fonctionnaire public, un commandant ou agent de la force publique dans l'exercice de ses fonctions ou à l'occasion de cet exercice.

Lorsque les violences entraînent effusion de sang, blessure ou maladie, ou ont lieu soit avec préméditation ou guet-apens, soit envers un magistrat ou un assesseur-juré à l'audience d'une

cour ou d'un tribunal, l'emprisonnement est de deux à cinq ans.

Lorsque les violences entraînent mutilation, amputation, privation de l'usage d'un membre, cécité, perte d'œil ou autre infirmité permanente, la peine encourue est la réclusion de dix à vingt ans.

Lorsque les violences entraînent la mort, sans intention de la donner, la peine encourue est la réclusion de vingt à trente ans.

Lorsque les violences entraînent la mort, avec l'intention de la donner, la peine encourue est la mort.

Le coupable, condamné à une peine d'emprisonnement peut, en outre, être frappé de l'interdiction de séjour pour une durée de deux à cinq ans.

3. Report concerning the court case of the Group Gdeim Izik by Mrs. Metton and Mrs. Ouled.

Rapport d'observations de la défense sur le procès de Gdeim Izik devant la Cour d'appel de Rabat

Paris le 15 juin 2017

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PROPOS INTRODUCTIFS

Le Sahara occidental est considéré par les Nations unies comme un territoire non autonome tel que défini à l'article 73 de la Charte des Nations unies. L'Assemblée Générale des Nations Unies a reconnu dans sa décision 34/37 du 21 novembre 1979 que la présence du Maroc sur ce territoire était constitutive d'une occupation. Cette occupation est illégale, le Maroc n'étant pas reconnu par les Nations unies comme la puissance administrante.

Jusqu'à présent et malgré les résolutions de l'Assemblée Générale et du Conseil de sécurité des Nations Unies, le Royaume du Maroc refuse de reconnaître au Sahara occidental le statut de territoire non autonome. Au contraire, il a illégalement annexé le territoire, le considérant comme une province marocaine.

C'est dans ce contexte que, à partir du 9 octobre 2010, des milliers de Sahraouis de Laayoune, capitale administrative du Sahara Occidental, de Boujdour, Dakhla et Smara, villes situées dans la partie du Sahara occidental sous administration marocaine, ont quitté leur résidence pour s'installer dans un campement temporaire à la périphérie de Laayoune. Il s'agissait là d'une mobilisation collective spectaculaire destinée à protester contre les discriminations économiques et sociales dont les Sahraouis s'estiment victimes de la part du gouvernement marocain.

Le 8 novembre 2010 au matin, les militaires marocains, armés de canons à eau et de bombes lacrymogènes, ont attaqué le camp de Gdeim Izik occupé par près de 20 000 Sahraouis. Au cours de l'évacuation forcée du camp, des affrontements ont éclaté entre l'armée et des manifestants sahraouis, au cours desquels des soldats marocains auraient trouvé la mort. S'en est suivie une violente vague de répression menée par les forces de sécurité marocaines, avec l'appui de civils marocains résidant en territoire sahraoui. Elles ont ainsi ouvert le feu sur des civils dans la ville de Laayoune, saccagé des maisons et passé à tabac leurs habitants. Les autorités marocaines sont parvenues à bloquer presque totalement l'accès à l'information sur place. Des centaines de militants sahraouis ont été arrêtés, dont plusieurs ont déclaré avoir été torturés.

Parmi eux, 24 militants, considérés comme les meneurs du camp de protestation, ont été

transférés à Rabat pour être jugés par un tribunal militaire. Leur procès ne s'est ouvert que 27 mois après le démantèlement du camp et 15 mois après la clôture de l'instruction, sans que ce retard n'ait jamais été justifié par le tribunal militaire.

D'après les témoignages des détenus recueillis par leurs avocats, au moins six de ces détenus ont été violés avec une matraque et se sont fait uriner dessus au cours de leur garde à vue. La plupart ont été maintenus pendant plusieurs jours menottés, les yeux bandés, privés de sommeil et de nourriture. Certains ont notamment été maintenus dans la position du poulet rôti (suspendus à une barre de fer) et d'autres ont été brûlés avec des cigarettes ou électrocutés. Tous ont été insultés et humiliés.

Ces tortures avaient pour objectif de contraindre ces militants à avouer leurs prétendus crimes.

Le 16 février 2013, ils ont été condamnés à de lourdes peines d'emprisonnement par le tribunal militaire de Rabat. Ils ont été jugés coupables d'association de malfaiteurs, outrage et violences à fonctionnaires publics et homicides volontaires. Ils sont notamment accusés d'être responsables de la mort de onze agents de sécurité marocains tués au cours du démantèlement du camp.

Neuf des accusés ont été condamnés à la perpétuité, quatre à 30 ans d'emprisonnement, sept autres à 25 ans, trois à 20 ans et les deux derniers, condamnés à 2 ans d'emprisonnement, ont été libérés car ils avaient déjà effectué leur peine en détention préventive.

Ce verdict a été prononcé à l'issue de 9 jours de procès inéquitable marqué notamment par la prise en compte des aveux arrachés sous la torture. Plusieurs observateurs internationaux présents aux audiences ont dénoncé de nombreuses irrégularités parmi lesquelles, tout d'abord, le fait que les accusés ont été poursuivis devant le tribunal militaire malgré leur qualité de civils. De plus, il n'y a eu aucune autopsie des victimes appartenant aux forces de sécurité, et leur nom n'a même pas été mentionné. Les juges se sont refusés à tenir compte des allégations de torture formulées par les accusés et à satisfaire leur demande d'expertise médicale, en violation du droit marocain et du droit international.

Aucune preuve n'a été présentée prouvant l'implication des accusés dans le meurtre des agents de sécurité. En revanche, il est clairement ressorti des débats que les poursuites à l'encontre des 24 accusés étaient motivées par leur engagement en faveur de l'indépendance du Sahara occidental, ce qui fait d'eux des prisonniers d'opinion.

Le 27 juillet 2016, la Cour de cassation marocaine a cassé le jugement du tribunal militaire rendu en 2013, qui les condamnait à de lourdes peines notamment pour homicide, sans autre preuve que leurs aveux signés sous la torture. La Cour de cassation a renvoyé l'affaire devant la Cour d'appel de Rabat. Le procès a repris le 26 décembre 2016.

Un collectif d'avocats français a bénéficié, en vertu de la Convention judiciaire entre la France et le Maroc, du droit d'assister les accusés devant la Cour d'appel.

Outre les irrégularités relevées par les rapports des observateurs internationaux, et qui per-

mettent de conclure que les standards du procès équitable ne sont toujours pas remplis, les avocats français ont été entravés systématiquement dans la défense de leur Clients :

- Ils ont subi un traitement différencié et humiliant de la Cour :

Plusieurs comportements offensifs notables ont mis au ban les avocats de la défense. Au-delà des nombreuses tentatives d'intimidation et de limitation des déplacements au sein du Royaume du Maroc, les avocats de la défense français ont dû faire face à des discriminations dans la procédure de contrôle de sécurité.

Dès le début du procès, lors des audiences du mois de décembre et du mois de janvier, leurs téléphones portables ont été confisqués à l'entrée de la Cour. Or les avocats marocains ont pu conserver leurs appareils avec eux les premiers jours du procès.

Ce mode opératoire procède d'une volonté de placer les avocats dans une situation désagréable en présumant leur volonté d'enregistrer les débats, donc en présumant leur volonté d'entraver le bon déroulement du procès.

En outre, les fouilles des effets personnels et les multiples palpations corporelles sont une violation de l'intimité des avocats. Cela isole une nouvelle fois les avocats de la défense français qui sont les seuls à avoir subi ces traitements et intrusions.

Enfin, la prise en photo des passeports par toutes les personnes en charge de la sécurité sans présenter leur titre de fonction est une technique d'intimidation.

L'ensemble de ces mesures participent à l'iniquité du procès par la discrimination des avocats et sont également une atteinte à la confidentialité des données de ceux-ci.

- Sur la violation de la procédure :

Le devoir de défense de l'avocat se fonde essentiellement sur les écrits qu'il peut déposer à la Cour dans lesquels il développe un argumentaire en soutien des intérêts du client. Or la Cour a systématiquement rejeté l'ensemble des conclusions et pièces remises par la défense.

À titre d'exemple, la décision du Comité contre la torture en date du 15 novembre 2016 n'a pas été admise **au prétexte qu'elle était rédigée en français et aurait dû l'être en arabe**. Cela procède d'une volonté d'entraver la défense. En effet, ces obligations ne figurent pas dans le Code de procédure pénale marocain.

Ceci est d'autant plus vrai que la diffusion de certaines pièces présentées par le Parquet était en langue française, notamment le montage d'une vidéo sous-titrée en français. Il ne s'agissait donc pas d'une impossibilité de la Cour de travailler en langue française mais uniquement de faire obstacle à la défense des prisonniers sahraouis en rendant difficile l'expression des avocats.

En outre, la Cour a, lors de l'audience du 25 janvier 2017, rejeté les conclusions sur le droit international humanitaire déposées par la défense en prétextant qu'elles n'avaient pas été données par un avocat marocain, rendant l'acte nul. Ce rejet a été acté immédiatement par le

Président qui a ensuite refusé toute tentative de régularisation.

Outre une violation des règles du procès équitable évidente par l'impossibilité pour les avocates de mener correctement la défense, il s'agit d'une nouvelle discrimination en ce que les parties civiles ont pu invoquer ce même droit pour justifier leur présence au procès.

À titre de rappel, la Constitution du Maroc reconnaît l'applicabilité du droit international humanitaire et des droits de l'homme :

Le préambule de la Constitution marocaine affirme solennellement l'attachement du Maroc aux droits de l'Homme : « *Le Royaume du Maroc souscrit aux principes, droits et obligations* » découlant des Chartes des organismes internationaux dont il est un membre et « *réaffirme son attachement aux droits de l'Homme tels qu'ils sont universellement reconnus.* »

Le traitement de la défense est donc purement arbitraire puisque fondé sur aucune règle de droit.

En outre, le Président ne respectait pas l'ordre de parole qui est l'une des garanties du procès équitable et qui veut que la défense s'exprime en dernier et puisse répondre à l'ensemble des accusations portées. Lors du procès, les parties civiles et témoins faisaient l'objet de questions du Président et clôturaient ainsi les débats sans laisser à la défense la possibilité de s'exprimer.

Enfin, les avocats n'ont pu parler aux prisonniers qu'au mois de mars, soit 3 mois après le début du procès. Cette interdiction posée par la Cour n'a fait que défavoriser les accusés qui n'ont pu être préparés, ainsi que leurs avocats qui ont dû construire une stratégie sans l'aide des concernés. C'est une nouvelle tentative d'entraver la défense des prisonniers sahraouis et de les priver de leur droit de faire porter leurs voix dans le cadre du procès.

Il ressort de l'ensemble de ces éléments une atteinte caractérisée aux droits de la défense. L'égalité des armes ainsi que toutes les règles garantissant un procès équitable ont été méprisées ouvertement.

- Sur la violence croissante jusqu'à l'exclusion de la salle d'audience :

Au cours de l'audience du 25 janvier 2017, lorsque Me METTON a lu sa plaidoirie en arabe, respectant les règles posées par le Président de la Cour, elle a immédiatement été coupée et interdite de poursuivre.

Me OULED a alors pris la parole en arabe. Le Président a affirmé ne pas comprendre Me OULED, alors que des traducteurs étaient présents et relayaient les propos de celle-ci de façon parfaitement compréhensible.

Cela témoigne encore une fois de la volonté de la Cour d'obstruer la défense et d'empêcher tout acte qui serait en soutien des accusés. Lors de l'audience du 25 janvier, Me OULED et Me METTON ont tout simplement été empêchées de plaider le droit international humanitaire et les droits de l'homme. Le Président de la Cour est allé jusqu'à menacer de faire usage de ses pouvoirs de police si elles ne renonçaient pas à invoquer le droit international humanitaire.

Enfin, lors de l'audience du 16 mai 2017, les avocats de la défense marocains se sont retirés de la défense sur demande des accusés. Le Président de la Cour a refusé à Me METTON et Me OULED d'adresser leurs dernières observations à la Cour avant d'annoncer leur décision sur un éventuel retrait de la défense.

Le Président a fait acter le retrait d'office des avocats français malgré leur opposition manifeste.

Le Président a alors requis l'intervention des forces de police pour les expulser, avec violence, de la salle d'audience. Me OULED a été blessée au bras, et Me METTON au dos. Les séquelles psychologiques restent encore à évaluer.

C'est dans ce contexte que les avocates de la défense ont décidé de présenter le présent rapport d'observations.

PARTIE 1 – PRÉSENTATION DU CONTEXTE ET DE LA PROCÉDURE

SECTION 1 - CONTEXTE GÉNÉRAL ET PARTICULIER DU CAMP DE GDEIM IZIK

L'ensemble des informations données ci-dessous sont issues de plusieurs rapports d'organisations non gouvernementales et de l'ONU établis depuis 2010, incluant :

- d. - *Fédération internationale des ligues des droits de l'Homme (FIDH) – Organisation Marocaine des Droits Humains, Sahara occidental, Les affrontements du 8 novembre 2010 à Laâyoune : Escalade dans un conflit qui s'éternise, N°557f, Mars 2011 ; <https://www.fidh.org/IMG/pdf/MarocLaayoune557f.pdf>*
- e. - *Nations Unies, Conseil de sécurité, Rapport du Secrétaire général sur la situation concernant le Sahara occidental, S/2011/249, 01/04/2011 ; http://www.un.org/fr/documents/view_doc.asp?symbol=S/2011/249*
- f. - *Le rapport de l'ASVDH sur le campement de GDEIM IZIK et les événements qui ont suivi son démantèlement ;*
1. *<https://saharadoc.files.wordpress.com/2011/01/rapport-asvdh1.pdf>*
- g. - *Le rapport du collectif de défense sahraouis des droits de l'homme (CODESA). Il s'agit ainsi d'un résumé qui pourra être utilement complété par la lecture de ces sources pour de plus amples informations. Le 9 octobre 2010, un groupe de jeunes et de familles sahraouis a installé un campement, à 12 km de la ville de Laâyoune, dans le Sahara occidental. Au fur et à mesure des jours, le nombre de tentes et de leurs occupants a augmenté « pour se situer entre 20 et 25 000 personnes en fin de semaine¹, selon les chiffres fournis par les Sahraouis ». Les rapports, et notamment celui de la Commission d'enquête parlementaire marocaine, recensent plusieurs raisons qui ont conduit à l'établissement du camp.*

- h. ¹Le nombre de personnes résidant dans le camp était en effet instable : il variait entre 8000 et 25 000 personnes. La plupart des familles résidant dans le camp ont continué à vivre normalement en ville durant la semaine et ne laissaient qu'une personne ou deux dans le camp qu'elles rejoignaient en fin de semaine.

I. Les origines du Camp de Gdeim Izik

1. Des conditions sociales et économiques difficiles et inégalitaires

Selon les rapports officiels, les Sahraouis ont décidé de se réunir du fait de leur marginalisation notamment dans les domaines du logement et de l'emploi.

1.1. L'emploi

Les revendications portaient sur l'accès au travail des Sahraouis (droit au travail) et sur la distribution inéquitable des ressources sur le territoire. Le taux de chômage des Sahraouis était particulièrement élevé. En cause, les pratiques discriminatoires à l'embauche alors que des emplois existaient, en particulier dans les industries des phosphates et de la pêche.

L'Association Sahraouie des Victimes des Violations graves des Droits de l'Homme (AVSDH) souligne dans son rapport sur les événements de Gdeim Izik :

Il ressort clairement de toutes les données socio-économiques du Sahara Occidental que la population ne bénéficie pas du revenu des richesses qui abondent dans la région et « *ceci est contradictoire aux principes fondamentaux applicables aux territoires non autonomes énoncés dans l'article 73 de la Charte de Nations Unies.* » À titre d'exemple, le rapport de l'ASDVH mentionne les mines de phosphate de Boukraa gérées par l'OCP, entreprise de l'État marocain, dont le personnel ne comporte qu'un petit nombre de Sahraouis.

1.2. Le logement

Pareillement, les rapports mettent en exergue les nombreux problèmes de logement et déséquilibres structurels depuis 1975, date de l'entrée des troupes marocaines sur le territoire du Sahara occidental. L'absence de stratégie urbaine et les privilèges accordés par les walis et les gouverneurs aux Marocains vivant dans les territoires occupés, notamment en termes de propriété foncière, ont été également soulignés.

2. Protestations contre la corruption financière et administrative

Selon les rapports disponibles, les sources de financement de l'État (aides pour les plus démunis et attribution des terrains en vue de la construction de logements sociaux) étaient contrôlées par une élite opaque, qui ne faisait pas relais auprès des autorités officielles.

3. Des revendications politiques, conséquences des discriminations subies par les Sahraouis

Le caractère politique de la protestation pacifique sahraouie incarnée par le Camp de Gdeim

Izik est indéniable, comme l'indique le rapport de la FIDH : « *De nombreux observateurs n'excluent pas des motifs politiques derrière cette contestation. Ils s'appuient sur un principe de base selon lequel la situation sociale est indissociable de la situation politique, plus particulièrement dans la mesure où le Sahara occidental est une zone de conflit, dont la question de la souveraineté n'a pas encore été résolue. Ainsi, on ne peut pas parler des revendications sociales des citoyens en ignorant leurs revendications politiques. D'ailleurs, la ques-*

tion sociale est, au fond, politique, car elle est la conséquence de la discrimination et du pillage des richesses qui sévissent dans la région ».

Le camp a ainsi été érigé :

- pour lutter pacifiquement contre la répression de la liberté d'expression et du droit de manifester.
- pour lutter pacifiquement contre la répression que subit la région depuis 2005, répression qui s'est abattue sur les mouvements sociaux agitant le Sahara occidental, visant tous les citoyens mais plus particulièrement les défenseurs des droits de l'Homme.
- pour lutter pacifiquement contre la non reconnaissance, par le gouvernement marocain, de certaines associations telles que l'Organisation sahraouie de défense des droits de l'Homme (CODESA) et l'ASVDH.
- pour faire entendre les revendications des catégories défavorisées.

II. Organisation et évolution du Camp 1. Le renforcement de mesures de sécurité par les autorités marocaines

Il ressort des sources publiques disponibles que les autorités marocaines, devant l'agrandissement du Camp, ont mis en place un contrôle effectif par des points de contrôle, en érigeant un mur de sable et en ne laissant qu'un seul point d'accès au Camp.

1.1. Mise en place des points de contrôle

Toute personne qui souhaitait se rendre au Camp devait au moins passer par trois points d'inspection et de contrôle de la gendarmerie royale. Il y avait alors un contrôle d'identité et une fouille des personnes et des voitures.

1.2. Un mur de sable érigé

Après l'arrivée de l'armée sur la zone, cette dernière a construit un mur de sable autour du campement, « *à l'exception de son accès nord proche de la route principale menant à Laayoune. Divers services de sécurité se sont installés le long du mur : armée, gendarmerie, forces auxiliaires et police. Plus de quatre murs ont été construits entre Laayoune et Gdeim Izik renforcés par le positionnement des véhicules et des éléments de sécurité tout au long,*

pour éliminer tout accès au campement autre que celui se trouvant sur la route principale. Cela renforçait le contrôle du campement par l'armée et le reste des forces publiques et gardait tous les accès et les sorties de et vers le campement sous le contrôle des autorités militaires et de sécurité ».

2. Le basculement vers la négociation

Plusieurs sources publiques disponibles s'accordent à dire que le décès de l'enfant ELGARHI, 14 ans, abattu par les forces marocaines le 24 octobre 2010 à l'entrée du camp dans des circonstances imprécises, a conduit les autorités marocaines à entamer des négociations avec les Sahraouis.

L'ASVHD note dans son rapport qu'elle a condamné ce meurtre. *« L'association demandait alors également à l'Organisation des Nations Unies d'assumer ses responsabilités pour (...) leur fournir les conditions de vie quotidienne minimales et afin d'éviter une grave catastrophe humanitaire. Les habitants de ce campement souffraient de l'absence d'eau potable, d'aide médicale, d'assainissement... du fait de l'état de siège imposé par l'armée, la gendarmerie et les forces auxiliaires sur le campement. Mais aussi du fait du mur de sable qui encerclait la place, et l'interdiction par la police marocaine de toute initiative des Sahraouis d'El Aïoun pour fournir un soutien matériel aux personnes déplacées. »*

3. Les négociations

Il ressort des sources disponibles que les négociations se seraient tenues :

- a. - Dans un premier temps, avec les élus et les chefs de tribus à Laâyoune.
- b. - Dans un second temps, les autorités centrales sont entrées directement en négociation avec un comité représentant les habitants du Camp composé de neuf hommes et femmes, tandis que le gouvernement était représenté par le Wali de Laâyoune, Mohamed Jelmous, et par trois représentants du ministère de l'intérieur. Le Ministre de l'intérieur a supervisé ces négociations. *« Les deux parties au dialogue ont tenu au moins deux réunions en présence du Ministre en question, la dernière a eu lieu le 4 novembre, où un accord de principe a été conclu selon lequel l'État marocain s'engageait à répondre progressivement et par étapes aux demandes relatives aux logements et au travail, à condition que la mise en œuvre des mesures concrètes de cet accord débutent le lundi 8 novembre 2010. Les autorités n'ont pas fourni de copie du procès-verbal de l'accord au comité de dialogue au nom des déplacés, et l'accord fut conclu par un dîner sur la plage de Foum El Oued »* (extrait du rapport de l'ASDVH).

À noter que le comité de dialogue était notamment composé de certains des détenus actuels du Camp de Gdeim Izik, tel qu'en atteste les interrogatoires des accusés² :

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El Bakay explained how he was part of the dialogue committee which was in negotiations with the Moroccan government (...). When asked about the delegation that travelled to Algeria, El Bakay answered that the camp Gdeim Izik was not a plan from the outside, but was a force from inside where people had social demands.”.

Mohammed Bourial commenced his testimony by explaining what the Gdeim Izik camp was. Gdeim Izik was a movement consisting of thousands of Saharawis which built their tent in the desert, and had social demands.

- that the camp was born due to the marginalisation and the repression of the Saharawi people, where the people had social demands related to work and university. He explained that the committee was elected by the people to serve as spokespersons on behalf of the citizens in the camp.

D’après le CODESA, le 8 novembre 2010, ce sont justement les membres de ce Comité de dialogue qui ont été pénalement accusés de séquestration des Sahraouis civils (dont on rappellera que ces civils se comptaient en milliers) qui se trouvaient dans le camp.

Rapidement, une thèse “officielle” des autorités marocaines a émergé :

Comme le rappelle ainsi la Commission d’enquête parlementaire chargée de faire la lumière sur l’installation et le démantèlement du camp³, cette thèse consistait à défendre l’idée selon laquelle les « *revendications purement sociales* » des manifestants avaient été « *instrumentalisées par des terroristes et d’anciens criminels dans le cadre d’un plan soutenu par l’Algérie et visant l’unité et la stabilité du Maroc* ».

La thèse des autorités marocaines selon laquelle des criminels et des repris de justice auraient contrôlé le Camp et que l’intervention pour démanteler celui-ci aurait été rendue nécessaire parce qu’il y avait des prises d’otages n’apparaît pour autant pas crédible.

³ En effet, Le 27 novembre 2010, la Chambre basse du Parlement marocain a mis sur pied une commission d’enquête parlementaire chargée de faire la lumière sur l’installation et le démantèlement du Camp, les événements de Laayoune et leurs incidences. Elle a conclu dans son rapport que, dans un contexte où les inégalités économiques et sociales étaient très importantes dans le territoire, le Camp a d’abord été établi pour faire valoir des revendications sociales, mais que celles-ci ont été récupérées « *par un groupuscule de criminels et de terroristes* ».

Toubali told about how he was a member in the dialogue committee. He explained

Cf. *Trial Observation Report*, From the proceedings held against the “Group Gdeim Izik” in Salé, Morocco, with special regard to the proceedings held in May 2017, Isabel Lourenço and Tone Sørffonn Moe

<https://fr.scribd.com/document/350492718/Gdeim-Izik-Trial-Observation-Report-May2017>

Dans son rapport, la FIDH pose trois questions importantes, tendant à réfuter la thèse du pouvoir :

1ère question : Si les responsables du camp étaient des criminels et des trafiquants ou des repris de justice, pourquoi le ministre de l'Intérieur en personne et quatre walis du ministère ont-ils négocié avec eux et ont même dîné avec eux le dernier jour des négociations ? N'était-il pas plus approprié, conformément à la loi et selon toute logique, de les arrêter au lieu de négocier avec eux puisqu'ils représentaient un danger pour la sécurité publique ?

2ème question : Pourquoi les autorités n'ont-elles pas parlé de la présence, comme elles le prétendent, de criminels et de délinquants avant le démantèlement du camp ? Et si c'était le cas depuis le début, pourquoi le gouvernement a-t-il permis l'établissement d'un tel Camp par des criminels et des délinquants ?

3ème question : Concernant les accusations du pouvoir selon lesquelles les habitants du Camp étaient des otages, comment serait-il possible qu'un petit groupe tienne en otage des milliers de citoyens pendant un mois ?

Aucune réponse ne sera jamais apportée à ces questions.

On peut ajouter d'autres questions :

- Si des personnes ont été effectivement prises en otage par les membres du comité de dialogue, pourquoi leur identité n'a-t-elle jamais été dévoilée ?

- a. - Pourquoi ces personnes n'ont-elles jamais été appelées à témoigner ?
- b. - Comment se fait-il que ces personnes aient pu solliciter de l'aide alors que les téléphones étaient brouillés à l'intérieur du Camp ?
- c. - Mais surtout, comment les autorités marocaines qui contrôlaient la totalité de l'accès au Camp ont-elles pu laisser passer des « armes » ?

À noter à ce stade que les accusés avaient sollicité – par le biais d'un mémoire déposé le 1er février 2013 dans le cadre de leur procès devant le Tribunal militaire – que soient entendus les témoins ayant participé aux négociations avec la comité de dialogue délégué par les résidents du campement de Gdeim Izik :

1. Monsieur l'ex-Ministre de l'intérieur, Moulay Taib Cherkaoui. 2. Madame la députée, Gajmoula Abbi, rue al-Karam, n° 6 quartier Ryad Rabat.

3. Le wali attaché au Ministère de l'Intérieur, monsieur Brahim Boufous – siège du ministère de l'Intérieur à Rabat.

4. Le wali attaché au Ministère de l'Intérieur, monsieur Mohamed Tricha – siège du mi-

nistère de l'Intérieur à Rabat.

5. Le Wali attaché au Ministère de l'Intérieur, monsieur Nourredine Benbrahim – siège du ministère de l'Intérieur à Rabat.

Cette requête avait été rejetée.

Les mêmes demandes ont été formulées lors de leur procès devant la Cour d'appel de Rabat (cf. infra) :

“These testimonies describe the Gdeim Izik camp as a violent resistant camp, where the military attacked the camp because the inhabitants, after an agreement, had refused to leave the premises. The accused urge that no such agreement was set into place, and that the agreement was that the minister of interior would visit the camp the following Monday. The minister that was in negotiations with the Dialogue Committee has not been summoned to testify (although he is no longer member of the government), whereas the accused urge that the only way to find the truth is to summon the ones that were in direct negotiations with the inhabitants of the camp.

The court ruled that the defence could present all of the witnesses, excluding the Moroccan authorities and ex-ministers that had been in negotiations with the Gdeim Izik dialogue committee.⁴”

Cette requête a hélas également été rejetée. La justice marocaine a donc toujours refusé de faire la lumière sur l'existence et le fonctionnement de ce comité de dialogue.

Le camp sera démantelé le 8 novembre au matin, sans que les habitants en soient préalablement informés.

III. Le démantèlement du Camp

Les causes de la rupture des négociations demeurent controversées :

Les autorités marocaines indiquent qu'elles ont été empêchées d'entrer dans le camp.

Le Ministre de l'intérieur indiquera qu'il « a constaté alors que le comité de négociation n'avait aucun pouvoir sur le camp qui était sous le contrôle de criminels et de trafiquants soutenus par un groupe mobilisé par le Polisario pour politiser le camp et l'éloigner des revendications sociales. » Par conséquent, la décision a été prise de démanteler le camp, considérant qu'il était « devenu, aux yeux des autorités, un terrain contrôlé par le crime organisé et où un groupe tenait les habitants en otage pour réaliser des objectifs politiques. »

Selon le CODESA, c'était avant que les négociations n'aboutissent aux conclusions finales et c'est pour cette raison que l'accès au camp au Wali a été refusé.

⁴ En effet, Le 27 novembre 2010, la Chambre basse du Parlement marocain a mis sur pied une commission d'enquête parlementaire chargée de faire la lumière sur l'installation et le démantèlement du Camp, les événements de Laayoune et leurs incidences. Elle a conclu dans

son rapport que, dans un contexte où les inégalités économiques et sociales étaient très importantes dans le territoire, le Camp a d'abord été établi pour faire valoir des revendications sociales, mais que celles-ci ont été récupérées « *par un groupuscule de criminels et de terroristes* ».

Les accusés membres du comité de dialogue précisent durant leur interrogatoire devant la Cour d'appel :

- *Bourial acted as the head of the dialogue committee, and explained how the dialogue committee and the government had reached an agreement two days in advance. The minister of infrastructure was expected to appear at the camp site with 9 tents to organize a counting of the population in the camp, so the government could be able to meet the social demands placed forward by the inhabitants. The government didn't keep their promise, and the inhabitant in the camp was surprised by their attack; which took place 6 o'clock in the early hours on the 9th of November. He stated:*

“The Gdeim Izik camp revealed the politics of the Morocco occupier, and how they marginalize the people of Western Sahara, and steal our resources. The Gdeim Izik camp is a product of the marginalisation of all Saharawis and of Morocco's occupation of Western Sahara. The camp lasted 28 days. There was no crime. No violence. Morocco attacked on the 8th of November women, children, elderly and men.”

- *El Bakay explained how they had reached an agreement upon social demands, but never on evacuation. The agreement was never set into place due to the fact that not all parties agreed to the content. El Bakay explained how the camp grew in size, and that the governmental officials had told them to count the people in the camp.*

- *Toubali explained how the committee had productive meetings and that an agreement was shortly set into place. People came from every part of Western Sahara to join the camp. He stated that “We waited for the implementation of the agreement, but it never came”. Toubali asked: “Why did you break the agreement? We were waiting for a solution.”*

On the 4th of November, the minister of interior came on behalf of the king. Toubali explained that “the minister agreed to our terms, and was supposed to come and implement the agreement by giving every citizen in the camp a social card, the following Monday, the 8th of November”. He explained how the agreement was oral, where the demands were to be met the following Monday, where the people in the camp were to be given a social benefit card in person, and thereafter leave and go home.

The minister contacted us in the committee and tried to “buy us” with money, and he started to threaten us, Toubali told. On the 4th of November, he told me in the street of Smara “to take the money and leave” – I told him that “this is a commitment to the thousands of people in the camp. I will not let them down. Their demands are legitimate. They only want better living conditions. This is not a political demand. The political discussion is between Morocco and the Sahrawi Arab Democratic Republic”.

He told that on the 7th of November, the day before the events, the road was blocked. He told

how he was in a traffic accident with two cars; that he was hit by one police car, and that he suspected the other to be an undercover police car. He told that "I was carried to the hospital where they refused to receive me, and they didn't help me until a woman from the parliament came and demanded my admission. I went home at 10pm, and my family took care of me where I was in a critical condition."

La veille du démantèlement du Camp, le dimanche 7 novembre 2010, plusieurs voitures « estafettes » appartenant aux forces de l'ordre marocaines ainsi que des camions avec des canons à eau ont été aperçues sur la route conduisant de Smara à Laayoune.

Vers 14 heures, les autorités marocaines auraient fermé la route permettant l'accès au Camp de Gdeim Izik.

Les rumeurs sur le démantèlement ont créé une tension à Smara, d'autant que les téléphones étaient brouillés. M. ZAYOU, un des accusés de Gdeim Izik, Président de la ligue des cadres sahraouis, a proposé une médiation qui a été refusée.

Suite au heurt d'un policier de la route par la voiture d'un des protestataires, la police a usé de la violence contre les protestataires.

M. TOUBALI, membre du comité de dialogue et détenu de Gdeim Izik a été renversé à son tour par une voiture de police, puis conduit à l'hôpital.

Le 8 novembre 2010, entre 5 et 6 heures du matin, après un appel depuis un hélicoptère enjoignant aux habitants d'évacuer le Camp immédiatement, l'armée, la gendarmerie, les forces auxiliaires, les camions avec canon à eau, des 4x4, ont envahi le Camp et procédé à son démantèlement forcé.

Les autorités marocaines ont indiqué qu'elles avaient agi légalement et que toutes les procédures en vigueur avaient été respectées.

Il convient néanmoins de s'interroger :

- a. - Les autorités marocaines avaient prévu le 8 novembre 2010 de recenser les habitants et de leur donner une carte ; cette information avait été confirmée par la députée sahraouie au parlement marocain, Gajmoula Abbi ;
- b. - Pourquoi l'évacuation a-t-elle eu lieu si tôt le matin et sans information préalable alors que des personnes vulnérables se trouvaient dans le camp? Les normes de sécurité empêchent de croire que les principes basiques liés à l'évacuation d'un endroit contenant autant de personnes aient été respectés ; - Ceci est d'autant plus vrai qu'aucune sommation n'a été faite avant l'intervention sur le champ des forces de l'ordre alors qu'il n'existait qu'un seul point de sortie du camp. La FIDH souligne :

« La contradiction pour ne pas dire l'incompréhension n'en est que plus grande. Comment peut-on à la fois prétendre que le camp était occupé par des brigands et des terroristes, et intervenir pour le démanteler sans prendre la précaution de disposer d'armes de protection ? Cette interrogation à laquelle aucune réponse satisfaisante

n'a été donnée rejoint d'autres questions, et en particulier celle de l'absence de réaction immédiate pour s'opposer à l'ins-tallation même du camp, qui permettent de se demander s'il n'y pas tentative de récupération aux fins de discréditer le Front Polisario.

On soulignera également qu'à la question posée au ministre de l'Intérieur sur la simultanéité de la sommation et de l'intervention contre le Camp ne laissant pas aux gens un délai suffisant pour l'évacuer, la réponse a été que les autorités appelaient les gens à abandonner le camp depuis un mois, c'est-à-dire, depuis le premier jour des négociations. Mais ceux qu'il désigne comme étant des miliciens les en empêchaient. »

Les policiers entendus ne donneront pas plus d'explications satisfaisantes :

The first police officer to testify was Mr. Mohssin Bou Khabza. He said that « The forces were therefore instructed to evacuate the people. The witness explained that they divided into four groups; on to the south, one to the north, on to the east and one to the west. The mission was to help the inhabitants. At 6:30 am a helicopter informed the people to evacuate, and informed the people of the negotiations with the Dialogue committee and the government; that their demands were understood and would be met, and that there was no need to stay in the camp. The witness declared that the evacuation was normal; but then the process shifted; and that the forces saw irregular movements, and that they understood that people were stopped from leaving the camp; and that they understood that the public forces were to be attacked. The witness explained that they commenced towards the camp, and arrested people throwing rocks and carrying swords; and delivered them to the public authorities. »⁵.

Finalement, on retiendra de l'ensemble de ces constats un élément déterminant : le démantèlement s'est fait dans le chaos et la confusion parce que les autorités marocaines avaient tout simplement décidé d'évacuer le camp de manière violente et sans respect des normes de sécurité.

La question des policiers ayant trouvé la mort

Les autorités marocaines ont annoncé des chiffres contradictoires sur le nombre de morts parmi les forces de l'ordre marocaine, suite au démantèlement du camp. Dans un premier temps, ils ont annoncé deux morts, puis onze, dont sept qui auraient été égorgés. Cependant, ce chiffre ne semble pas réaliste étant donné l'importante présence des forces de l'ordre sur les lieux au moment des affrontements. Le nombre de sept personnes égorgées a d'ailleurs été par la suite démenti par le Ministre de la justice, qui a reconnu qu'un seul cas d'égorgement avait été effectivement recensé.

Dans son rapport, la FIDH relève que « *le symbole de l'égorgement, acte criminel évidemment atroce, a été ensuite si largement utilisé par le pouvoir marocain que l'on ne peut s'empêcher de penser qu'il y a là une tentative de récupération destinée à assimiler le Front Polisario à un mouvement terroriste. À cet égard, plusieurs responsables marocains ont fait état d'une similitude de la méthode utilisée avec celle employée par Al Qaida au Maghreb Islamique (AQMI).* » .

⁵ Cf. *Trial Observation Report*, From the proceedings held against the “Group Gdeim Izik” in Salé, Morocco, with special regard to the proceedings held in May 2017, by Isabel Lourenço and Tone Sør- fonn Moe

<https://fr.scribd.com/document/350492718/Gdeim-Izik-Trial-Observation-Report-May2017>

Par ailleurs, on peut également s’interroger sur le fait que les forces de l’ordre ne portaient pas d’arme durant le démantèlement. Cela paraît vraiment étonnant d’autant plus que les autorités prétendent qu’elles avaient connaissance de la présence d’armes dans le camp, avant son démantèlement..

En outre, les autorités marocaines n’ont jamais fait état de victimes sahraouies. En effet, aucun bilan n’a été rendu public des victimes des forces de l’ordre à Gdeim Izik et à Laayoune. Pourtant, plusieurs victimes sahraouies ont trouvé la mort à la suite de l’intervention, ou dans les jours qui l’ont précédée :

- Najem ELGARHI, 14 ans, a été abattu par les forces de l’ordre marocaines alors qu’il était en voiture, le 24 octobre 2010, avec son frère et d’autres jeunes Sahraouis. Ceux- ci ont été grièvement blessés.
- Babi ELGARGAR s’est fait écraser délibérément par une voiture des forces de l’ordre à Laayoune.
- Brahim DAOUDI, 34 ans, est décédé à la suite de blessures (asphyxié au gaz lacrymo- gène) lors de l’intervention des forces de l’ordre.
- Mahmoud KRAA, est mort après avoir été percuté par un véhicule appartenant aux forces de l’ordre dans la rue de Smara en direction du camp. Les différents rapports des associations de défense des droits de l’Homme ont relevé que les victimes sahraouies s’étaient vues refuser l’accès à l’hôpital de Laayoune alors qu’elles né- cessaient des soins médicaux. **IV. Arrestations et tortures** C’est dans ce contexte que les autorités marocaines ont arrêté des centaines de Sahraouis, mais elles les ont finalement relâchés à l’exception de 22 d’entre eux qui ont été déférés devant un tribunal militaire et inculpés pour la plupart d’« association de malfaiteurs » et de par- ticipation à des violences commises contre les forces de l’ordre ayant entraîné la mort, « avec l’intention de la donner », ou de complicité. Deux de ces hommes ont aussi été accusés d’avoir souillé un cadavre. Au cours des mois précédant le procès de ces militants, les autori- tés ont arrêté deux autres personnes dans cette même affaire et libéré à titre provisoire un des accusés pour raisons de santé ; un autre accusé a été jugé par contumace. clar

Depuis leur arrestation, les 21 personnes qui continuent à être détenues n’ont cessé de clamer leur innocence.

En effet, les comptes rendus judiciaires montrent que la plupart des accusés ont dé é tôt

dans la procédure judiciaire que la police les avait soumis à la torture ou à d'autres formes de contrainte pour qu'ils signent de fausses déclarations. Plusieurs accusés ont dit au juge d'instruction que la police ne leur avait même pas permis de lire ces déclarations avant de les signer.

SECTION 2 – UNE PROCÉDURE JUDICIAIRE ENTACHÉE PAR UN DÉFAUT DE PREUVE

Le Maroc considère les partisans de l'indépendance sahraouie comme des « *indépendantistes* » dont les manifestations violent les lois marocaines, qui interdisent de « *porter atteinte à l'intégrité territoriale*. ».

Dans les affaires des militants de l'autodétermination, ou de toute autre personne considérée comme opposant au pouvoir en place, la méthode hélas tristement connue est toujours la même : les tribunaux prononcent systématiquement des condamnations basées en grande partie sur les aveux des accusés obtenus par la police mais contestés par les mêmes accusés au tribunal.

Le procès des détenus de Gdeim Izik n'a pas fait exception à la règle.

Ce procès s'est tenu initialement devant un tribunal militaire le 1^{er} février, puis du 8 au 16 février 2013, à Rabat. Le tribunal a d'abord procédé à l'examen de la motion de non compétence du tribunal militaire, le 8 février. Puis du 9 au 12 février, les accusés ont été très longuement interrogés. Le 13 février a eu lieu l'audition des témoins de la défense et de l'accusation, ainsi que la projection d'une vidéo présentée comme étant un film des événements de Gdeim Izik. Le 14 février, le procureur a présenté son réquisitoire, et les avocats de la défense leurs plaidoiries.

Le verdict du tribunal a été rendu dans la nuit du 16 au 17 février.

Les accusés ont tous été lourdement condamnés, sur la base d'aveux qu'ils ont pourtant tous contestés en indiquant avoir été torturés, sauf pour l'un deux.

Aucune enquête à ce sujet ne sera diligentée. Le Tribunal estimera par ailleurs que ces allégations auraient été faites tardivement.

Seulement, la circonstance selon laquelle les accusés auraient fait tardivement part de ce qu'ils ont été torturés n'était pas suffisante à elle seule pour écarter ces accusations.

Par ailleurs, le Tribunal n'aura pas donné à la défense suffisamment d'occasions de récuser les autres éléments de preuve à charge, et a privé les accusés de leur droit à appeler à la barre des témoins dont les déclarations auraient pu éclairer les faits discutés.

Au-delà du caractère inéquitable de ce procès qui a déjà fait l'objet de multiples analyses, c'est ainsi surtout le défaut de preuves qui a conduit la Cour de cassation, la Cour suprême au Maroc, à annuler ce jugement trois années plus tard.

I. La décision de la Cour de cassation : le tribunal militaire a condamné sans preuve

La Cour de cassation marocaine a cassé le jugement rendu par le Tribunal militaire le 27 juillet 2016. Pour ce faire, elle s'est fondée sur deux des quatre moyens présentés dans le pourvoi en cassation : la violation de la loi de fond et le défaut de motif⁶.

Pour mémoire, les chefs d'accusation reposaient sur différents articles du Code pénal marocain :

- **Article 267** alinéas 1 et 5 : *Est puni d'emprisonnement de trois mois à deux ans, quiconque commet des violences ou voies de fait envers un magistrat, un fonctionnaire public, un commandant ou agent de la force publique dans l'exercice de ses fonctions ou à l'occasion de cet exercice. (...)*

Lorsque les violences entraînent la mort, avec l'intention de la donner, la peine encourue est la mort.

- **Article 293** : *Toute association ou entente, quels que soient sa durée et le nombre de ses membres, formée ou établie dans le but de préparer ou de commettre des crimes contre les personnes ou les propriétés, constitue le crime d'association de malfaiteurs qui existe par le seul fait de la résolution d'agir arrêtée en commun.*

- **Article 129** : *Sont considérés comme complices d'une infraction qualifiée de crime ou délit ceux qui, sans participation directe à cette infraction, ont :*

1° Par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, provoqué à cette action ou donné des instructions pour la commettre;

2° Procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action sachant qu'ils devaient y servir;

3° Avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action, dans les faits qui l'ont préparée ou facilitée;

4° En connaissance de leur conduite criminelle, habituellement fourni logement, lieu de retraite ou de réunions à un ou plusieurs malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'État, la paix publique, les personnes ou les propriétés.

La complicité n'est jamais punissable en matière de contravention.

- **Article 271** : *Quiconque souille ou mutilé un cadavre ou commet sur un cadavre un acte quelconque de brutalité ou d'obscénité, est puni de l'emprisonnement de deux à cinq ans et d'une amende de 200 à 500 dirhams.*

Or, l'arrêt de la Cour de cassation relève que le tribunal militaire n'a pas prouvé que sont réunis les conditions juridiques afférentes à ces articles ou les éléments légaux constitutifs des actes criminels.

⁶ Cf. Code de procédure pénale, article 534

La conclusion de l'arrêt de la Cour de cassation est cinglante :

« Le jugement attaqué reste donc dénué de tout fondement. »

Par voie de conséquence, la Cour de cassation a ainsi estimé que: *« le tribunal n'a pas prouvé de manière claire l'objet de l'ordre et de l'incitation précités, la partie ou les personnes ciblées, la mort qui s'en est suivie ainsi que l'intention criminelle du demandeur. »*

De même, concernant la complicité alléguée : *« le tribunal a condamné le demandeur pour complicité dans ledit crime, sans que dans cette affaire ne soit réuni l'un des cas de complicité prévus dans l'article 129 du Code pénal précité, stipulant que le complice devra commettre l'acte avec l'entente de l'auteur principal ; ce que le tribunal n'a pas démontré dans sa motivation. »*

Ainsi, contrairement à la campagne publique qui a été menée dans les médias, le jugement du Tribunal militaire n'a donc pas été cassé suite au changement législatif excluant la compétence du Tribunal militaire à juger des civils, mais bien en raison du défaut de motivation de la décision, qui découle de l'inexistence des preuves à l'encontre des accusés.

II. L'absence d'éléments matériels tenant à la prétendue implication des accusés

L'arrêt de la Cour de cassation mentionne à plusieurs reprises le fait que le tribunal *« n'a pas démontré dans son jugement les actes criminels perpétrés par le demandeur à l'égard des victimes ayant entraîné leur mort. »*

1. L'absence de flagrant délit

Il convient de rappeler tout d'abord qu'aucun des accusés n'a été pris en flagrant délit. L'article 56 du Code de procédure pénale marocain dispose qu'*« il y a crime ou délit flagrant :*

1. Lorsque l'auteur est arrêté au moment où l'infraction se commet ou vient de se commettre.

3. Lorsque l'auteur, dans un temps très voisin de l'action, est trouvé porteur d'armes ou objets faisant présumer sa participation au fait délictueux, ou que l'on relève sur lui des traces ou indices établissant cette participation. »

Or, aucun des détenus n'a été arrêté en possession d'une arme. Leur présence sur les lieux n'a elle-même pas été établie. En effet, certains n'étaient pas au campement de Gdeim Izik lorsque les événements se sont déroulés. C'est notamment le cas de Naâma Asfari, qui a été arrêté le 7 novembre 2010, c'est-à-dire la veille du démantèlement du camp.

Dans le dossier pénal, Maître BOUKHALED, avocat des accusés devant le tribunal militaire, relève *« l'absence de l'état de flagrance et la violation de l'article 56 du Code de procédure pénale :*

Si le législateur a précisé dans l'article 56 du Code de procédure pénale trois cas d'état de

flagrance du crime à titre limitatif, en revenant aux procès-verbaux de l'enquête préliminaire nous nous apercevons que la plupart des accusés n'ont pas été appréhendés sur le théâtre des opérations et les conditions de l'état de flagrance ne peuvent être justifiées.

1. Naâma Asfari a été arrêté le 07/11/2010, c'est-à-dire avant les incidents, dans une maison à Laâyoune.

2. Abdeljalil Laâroussi a été arrêté à Boujdour le 13/11/2010. 3. Abdellah Lakhfaoui a été arrêté le 14/11/2010 à Foug El Oued. 4. Abderrahmane Zayou a été arrêté à l'aéroport Hassan II à Laâyoune le 21/11/2010. 5. Mohamed Lamine Haddi a été arrêté 20/11/2010 à Laâyoune. 6. Abdellah Toubali a été arrêté 02/12/2010 à Laâyoune. 7. El Hassan Zaoui a été arrêté 03/12/2010 à Laâyoune. 8. Daïch Dafi a été arrêté 04/12/2010 à Laâyoune.

9. El Hassan Dah, Bachir Khadda et Mohamed Tahlil ont été arrêtés avenue Mekka à Laâyoune le 05/12/2010.

10. Ahmed Sbaï a été arrêté 09/12/2010 à Laâyoune.

11. Sidi Ahmed Lamjayed a été arrêté 25/12/2010 à Laâyoune.

12. Ibrahim Ismaïli et Mohamed Mbarek El Fakir ont été déplacés de la prison civile de Laâyoune le 18/11/2010.

13. Mohamed Khouna Boubit a été arrêté le 15/08/2010 à Laâyoune.

2. L'absence d'analyse des « pièces à conviction »

Lors de l'audience ont été présentées les supposées « pièces à conviction ». Cependant, plusieurs rapports d'observateurs notent que ces pièces n'ont pas été discutées à l'audience. Les armes ne contenaient aucune trace de sang. Aucune analyse n'a été produite pour rechercher d'éventuelles empreintes digitales sur les autres pièces. Les pièces n'étaient même pas protégées dans des sacs en plastique pour éviter toute contamination extérieure :

“During the first nine days of oral hearings, the evidence allegedly seized by the police at the time the camp was dismantled (12 cell phones, 3 walkie-talkies, 6 kitchen knives, 2 hatchets, 1 machete, 2 flares, 1 identity card, and 1 computer) were shown to the public without them being discussed at all before the Tribunal. None of them had marks of any kind (blood, fingerprints, etc.) nor were they isolated in plastic bags to keep them from becoming contaminated. Only once during the hearing did the President make reference to them to ask one of the accused whether he recognized his cell phone. There was no separate evidence file, nor were any of these items identified with any accused in particular. They were “just there.””⁷⁻

3. L'absence de valeur probante des vidéos projetées à l'audience

Le 13 février ont été projetées 2 vidéos à l'audience. On pouvait y voir des affrontements filmés depuis un hélicoptère dans la première, et une personne urinant sur un corps apparemment sans vie dans la seconde.

Cependant, aucune expertise n'a été diligentée sur cette vidéo.

En outre, sur aucune des vidéos il n'était possible d'identifier les personnes filmées. Il était donc impossible de reconnaître aucun des accusés présents.

“The prosecutor also showed a very poor quality video, entitled “Diary of an extremist in the camp,” which merged images from two different videos. In the images from the first such video, taken from an altitude from approximately 150 meters from a helicopter, one could see, in the camp of Gdeim Izik, a group of demonstrators who were throwing stones, some of whom were displaying knives (one of them was wearing white pants). In the images from the second video, disseminated via Internet long ago, and which had been recorded using a cell phone, one could see how a person, also wearing white pants, beheaded another person. In these latter images, the place where they had been filmed is not identified, nor could one see the faces of the persons who appeared in the video, who were only filmed from the waist down. In the prosecutor’s view the irrefutable evidence that it was the same person was the color of his pants. These events are said by the prosecutor to have taken place in the city of El Aaiún, on November 9 (although they could have taken place anywhere else in the world, and on any other date, for the video does not even include the information on the date it was made). As indicated above, the President did not even rule on the suitability of an item of evidence that did not make reference to what happened in Gdeim Izik, but to the events that supposedly occurred the day after the camp was dismantled.

In a second video one sees a person urinating on an apparently lifeless corpse. Although in the indictment two of the defendants are accused of participating in these events, the video shows just one person, who, moreover, cannot be identified as being any of the accused. There is not even any evidence that those events occurred on that date and in that place. Even so, the Tribunal convicted two of them as the perpetrators of such profaning acts, which constitutes a violation of one of the fundamental principles for a fair and equitable trial, which is the principle of the personality of offenses and of penalties, in addition to considering the accused guilty of an unacceptable notion of “collective liability.”⁸

7 Report on the trial held before the permanent military tribunal (Rabat, February 1-17, 2013) related to the events at the Gdeim Izik camp (Western Sahara) March 18, 2013

AIODH asociación internacional para la observación de los derechos humanos ⁸ Idem, Report AIODH

4. Les témoins de l'accusation

L'accusation avait demandé l'audition de 9 témoins, dont elle n'avait pas communiqué l'identité avant le procès. Cependant, un seul témoin a été entendu. Il s'agissait de M. Omar Haloui, agent de protection civile. Durant le démantèlement du camp de Gdeim Izik, il a aidé à évacuer des membres des forces de l'ordre blessés, et de les véhiculer jusqu'à l'hôpital militaire de Laayoune.

Cependant, il n'a reconnu aucun des accusés. Il a ainsi confirmé au tribunal qu'il n'avait été

témoin d'aucun acte violent envers les forces de l'ordre de la part des accusés. Il n'a vu aucune arme mis à part des pierres. Et parmi les forces de l'ordre, il dit avoir vu des blessés mais aucun mort.

Suite à ce témoignage, le président du tribunal a décidé de mettre fin à l'audition des témoins à charge et a renvoyé tous les autres sans qu'ils soient entendus.

*“The only eyewitness produced by the prosecution who was involved during the dismantling of the camp as a member of a team of persons that took persons injured in an ambulance said that he did not witness any violent act as between accused and victims, that he did not recognize any of the accused, and that at no time did he see any weapons other than stones”.*⁹

Le compte rendu du procès devant le Tribunal militaire établi par Joëlle TOUTAIN, observatrice pour l'Association des Amis de la RASD, relate l'intervention de ce seul témoin à charge :

« Omar HALLOUI - né en 1983 – Agent de la Protection Civile – caserne d'El Aioun

Comme pour les témoins de la défense, Le Président rappelle les conditions pour témoigner sous serment.

Le témoin commence son récit. Il est interrompu par le Président qui fait appel aux traducteurs officiels afin, dit-il, que tout soit bien entendu de tous.

Le témoin : J'effectuais ma mission de transport des blessés le 8 novembre.

Le Président : Est-ce que vous connaissez les gens qui vous ont interceptés ?

Le témoin : Ils étaient « voilés », je ne peux pas les reconnaître, je ne me rappelle pas de leur visage.

Le Président : Combien de blessés avez-vous transportés ? Le témoin : 7 – il n'y avait pas de mort – je ne peux pas le savoir – mais des blessés graves. J'ai été capturé par des gens sur la route. Le Président : Capturé comment ? Le témoin : Capturé. Le Président: Blessé ?

⁹ Idem, Report AIODH

Le témoin : Par une pierre qui m'a fracturé l'épaule – je n'ai pas vu la force publique user de la violence, on emmenait les blessés. Je n'ai pas vécu les événements.

Le Président : Avez-vous entendu parler de mort d'agents de la force publique ? - Non

Un avocat de la défense : As-tu entendu une alarme qui appelait à quitter GI ?

Le témoin : On n'était pas sur les lieux lors de l'intervention – Je n'ai pas entendu d'appel.

Un avocat de la défense : Avez-vous emmené des victimes civiles ?

Le témoin : Non – seulement des agents de la force publique. En revenant de l'hôpital je ne suis pas revenu à Gdeim Izik.

Le Procureur : As-tu entendu un hélicoptère ? Qu'est-ce qu'il faisait ? Était-ce une mission sécuritaire ?

Le témoin : Oui j'ai entendu un hélico mais je ne sais pas ce qu'il faisait. L'interrogatoire du témoin à charge est étonnant et surprend.

Au fil de l'audition, je m'interroge sur son témoignage du fait qu'il affirme avoir été en dehors de faits.

Un avocat de la défense intervient sur la méthodologie de l'interrogation des témoins. Il rappelle que 5 témoins de la défense ont été entendus mais aucun habitant de Gdeim Izik. Quant aux 9 témoins de l'accusation, ils réaffirment ne connaître personne

Le Président mal à l'aise décide subitement de renvoyer les 8 autres témoins de l'accusation. Ils ne seront pas entendus. »¹⁰

Un peu plus loin, Joëlle TOUTAIN rapporte ceci, relativement à l'audition des témoins :

« *Les témoins :*

Lors de l'audience du 1^{er} février, la discussion avait porté sur les personnes qui pourraient être admises comme témoins.

5 témoins sahraouis retenus uniquement pour justifier de la date d'arrestation.

Les autres témoins figurant sur la liste présentée par la défense étant rejetés, comme les auteurs des PV ou la parlementaire participant aux discussions avec le comité de dialogue ... Et pourtant, le 8 février à l'ouverture de l'audience, le procureur a présenté une liste de 9 témoins non communiquée auparavant à la défense !

La défense a protesté vigoureusement mais la cour les a retenus en réserve pour décider en fonction de l'évolution des débats, si elle les entendrait ou non.

Qu'avaient-ils à dévoiler ces témoins du procureur non cités depuis 27 mois de détention provisoire ? Le mercredi 13, la cour a auditionné le premier d'entre eux, agent de la protection civile : à la surprise générale, il déclare n'avoir été témoin d'aucune violence envers lui, ne reconnaître aucun des 24 accusés, n'avoir vu aucun Sahraoui attaquer les forces de

¹⁰ Mission d'observation de Joëlle Toutain, observatrice.

l'ordre... Après cela, le Juge Président a décidé de ne pas entendre les 8 autres témoins de l'accusation . Il aurait sans doute été trop éclatant que tous déclarent la même chose ».

5. L'absence de preuve quant au fait que les accusés se connaissaient avant leur garde à vue

À aucun moment il n'a été établi, autrement que par les procès-verbaux obtenus sous la torture, dont la défense avait demandé la nullité, que les accusés se connaissaient avant leur garde à vue. Sans la preuve de cette circonstance, il semble difficile de maintenir le chef d'accusation d'association de malfaiteurs, ainsi que la complicité, notamment concernant Naâma Asfari.

L'arrêt de la Cour de cassation énonce en effet que « *le tribunal a condamné le demandeur pour complicité dans ledit crime, sans que dans cette affaire ne soit réuni l'un des deux cas de complicité prévus dans l'article 129 du Code pénal précité, stipulant que le complice devra commettre l'acte avec l'entente de l'auteur principal ; ce que le tribunal n'a pas démontré dans sa motivation ».*

Le pourvoi en cassation produit par Maître Boukhaled, fait état de ce que « *le jugement attaqué a violé les dispositions des articles 293 et 294 du Code pénal du fait que l'on n'a pas cherché la première condition du crime de constitution d'une bande de criminels qui réside dans une entente préalable à but criminel, puisque cette condition exige que toutes les personnes faisant partie de la bande connaissent les victimes et les membres de la bande et que chacun d'eux sache le rôle qui lui est attribué ».*

De même, concernant la complicité :

« L'on relève, par ailleurs, qu'en condamnant le demandeur pour participation au crime objet du jugement attaqué, le tribunal a contrevenu à l'article 129 du Code pénal du fait de l'inexistence des cas soulignés dans cet article et en plus la participation exige qu'il y ait une relation certaine entre l'auteur principal et le complice.

Attendu que ce qui est certain, c'est que le demandeur a affirmé, dans toutes les étapes du procès et devant monsieur le juge d'instruction, qu'il ne connaît pas l'auteur principal et n'a aucun rapport avec lui. En outre, le législateur a exigé expressément, dans l'article 129, que le complice ait commis l'un des actes en accord avec l'auteur principal ».

6. L'absence de preuve scientifique

Aucune analyse scientifique n'a été réalisée sur les armes qui auraient servi à commettre les homicides allégués, ni sur les 4x4 qui auraient servi à écraser des agents de police.

Il aurait cependant été nécessaire, à titre d'exemple, de rechercher des empreintes digitales, ou de pratiquer des analyses afin de déterminer si du sang se trouvaient sur les armes présentées comme preuve et si ce sang correspondait à celui des victimes.

Ainsi, les autorités judiciaires n'ont jamais réalisé d'expertise scientifique sur des pièces présentées pourtant comme étant des pièces à conviction.

III.L'absence de preuves matérielles relatives aux membres des forces de l'ordre

Durant tout le procès militaire, la question du nombre de victimes et de leur identité n'a jamais été éclaircie, ce qui a été relevé dans l'arrêt de la Cour de cassation :

« L'arrêt n'a pas donné les noms des victimes, contre lesquelles la violence a été commise. »

Cela paraît très étonnant étant donné la gravité des chefs d'accusation. Durant les semaines qui ont suivi les événements de Gdeim Izik, les sources officielles marocaines ont même communiqué des informations contradictoires.

Le rapport établi par la FIDH note ainsi :

« L'AMDH établit une liste nominative de 11 victimes composées de 5 membres de la gendarmerie, 5 membres des forces auxiliaires ainsi qu'une personne des forces d'intervention rapide. Les autorités quant à elles parlaient de deux morts et de quatre blessés graves avant d'annoncer, deux semaines plus tard, le chiffre de onze morts durant les affrontements »¹¹.

De même, durant le procès, la confusion est restée totale, comme le montre le rapport de l'AIODH :

“According to the indictment, they numbered nine; the prosecutor referred to 11 on several occasions; in the video that was shown one could read that 10 police officers were killed. If one counts the number of persons who, according to the bill of indictment, each of the accused assassinated, we would be talking about more than 20.

The failure to determine this figure is especially serious, for convicting a person for the generic assassination “of persons” is contrary to the most basic principles of justice. Moreover, one should bear in mind the right of the victims’ families to learn how they died, and to know the specific identify of the perpetrators of these crimes”.

1. Absence d'enquête sur les circonstances et les causes de leur mort

Au-delà de leur nombre et de leur identité, la cause et les circonstances mêmes de leur mort n'ont pas été établies devant le tribunal militaire. En effet, des rumeurs ont circulé après les événements de Gdeim Izik, relayées largement par les autorités marocaines.

« Les autorités marocaines avaient annoncé dans un premier temps qu'un policier avait été égorgé par un rebelle, dans le camp. Le ministère de l'Intérieur a entrepris de distribuer, à grande échelle, des CD-ROM contenant des images montrant le policier égorgé et l'auteur du crime. Mais la version officielle a changé plus tard, et a fait état de sept policiers égorgés.

(...)

¹¹ Sahara Occidental, Les affrontements du 8 novembre 2010 à Laayoune : Escalade dans un conflit qui s'éternise, Fédération internationale des ligues des droits de l'Homme

Eu égard à l'importante présence de forces de l'ordre, il paraît difficile que puisse être opéré l'égorgeement de sept policiers.

Les images diffusées sur l'égorgeement du policier laissent perplexe sur le déroulement de la scène puisqu'elles laissent suspecter une certaine passivité des forces de l'ordre pourtant activement engagées dans le démantèlement du camp.

Enfin, le symbole de l'égorgeement, acte criminel évidemment atroce, a été ensuite si largement utilisé par le pouvoir marocain que l'on ne peut s'empêcher de penser qu'il y a là une tentative de récupération destinée à assimiler le Front Polisario à un mouvement terroriste. A cet égard, plusieurs responsables marocains ont fait état d'une similitude de la méthode utilisée avec celle employée par Al Qaida au Maghreb Islamique (AQMI).

Il faut enfin souligner que, sur l'insistance des représentants de la FIDH, le ministre de la Justice, M.Mohamed Taieb Naliri, a dû concéder qu'un seul cas d'égorgeement de policier était vraiment avéré. »

2. Absence d'autopsie

Des autopsies correctement effectuées auraient permis de déterminer les causes précises et les circonstances de la mort des membres des forces de l'ordre lors du démantèlement. D'ailleurs, la Cour de cassation le précise dans son arrêt :

« Il n'a été procédé à aucune autopsie médicale, laquelle reste le seul moyen scientifique susceptible de diagnostiquer les causes du décès. »

IV. L'inexistence d'un quelconque lien de causalité entre les faits allégués et la mort des agents

L'arrêt de la Cour de cassation le précise : *« le tribunal n'a pas établi dans son jugement le lien de causalité entre les actes matériels imputés au demandeur et la mort des agents des forces publiques ».*

En effet, les actes matériels imputés aux accusés sont les suivants :

- Faits de violence commis sur des agents des forces publiques, entraînant la mort avec intention de la donner.
- Association de malfaiteurs dans le but de commettre un crime.
- Profanation de cadavres.

Comme il l'a été démontré plus haut, la preuve de ces éléments matériels n'a jamais été apportée devant le tribunal militaire.

En outre, le manque d'éléments concernant les agents des forces de l'ordre décédés a empêché d'élucider les circonstances et la cause de la mort de ces agents. Cette absence d'analyse ne peut être imputée qu'au tribunal militaire lui-même, ce qui démontre le manque de diligence qui a marqué tout le procès.

V. Les procès-verbaux obtenus sous la torture comme seul élément de preuve

Finalement, le seul mode de preuve retenu par le tribunal militaire a été les procès-verbaux obtenus sous la torture. Ces documents ont été contestés par les accusés et leurs avocats tout au long de la procédure, dès l'instruction. Cependant, le tribunal militaire a refusé d'ordonner des expertises médicales qui auraient permis d'établir la véracité des accusations de torture.

Ainsi, le pourvoi produit par Maître Boukhaled fait état de ces allégations constantes et concordantes, et de l'attitude de déni du juge d'instruction puis du Tribunal militaire :

« L'extorsion des aveux sous la torture et la violation de l'article 22 de la Constitution et de l'article 293 du Code de procédure pénale et des dispositions de la Convention contre la torture :

Après son arrestation, le demandeur a subi différentes sortes de torture, de violence et de traitements dégradants en violation flagrante de l'article 22 de la Constitution, des engagements internationaux du Maroc, de la Convention contre la torture ratifiée par le Maroc et notamment de l'article 12 de la Déclaration contre la torture, l'article 14 du Pacte international, l'article 15 de la Convention contre la torture et des dispositions de l'article 293 du Code de procédure pénale.

Attendu que le demandeur a déclaré devant monsieur le juge d'instruction et devant le tribunal qu'il a été soumis à la torture et contraint de signer ou d'apposer son empreinte sur des procès-verbaux dont il ignore le contenu et partant ils sont nonavenus.

Attendu de ce qui précède, et d'après les dispositions de l'article 751 du Code de procédure pénale qui stipule que : « toute formalité édictée par le présent code dont l'accomplissement n'a pas été régulièrement constaté est présumée n'avoir pas été accomplie. » Compte tenu des violations ayant entaché le procès et les mesures de procédure, il est nécessaire de déclarer la nullité du jugement attaqué en pourvoi ».

PARTIE 2 - LA PROCÉDURE DEVANT LA COUR D'APPEL DE RABAT : UNE PROCÉDURE MARQUÉE PAR LE DÉFAUT D'ÉLÉMENTS PROBANTS

Le 26 décembre 2016 s'est ouvert devant la Cour d'appel de Rabat le procès en appel des prisonniers de Gdeim Izik, suite à l'annulation du jugement du Tribunal militaire par la Cour de cassation compte-tenu de l'absence de preuves contre les accusés.

Le contexte extrêmement difficile dans lequel se sont exercés les droits de la défense ne doit pas masquer une problématique tout aussi grave : il n'existe toujours pas d'éléments probants de nature à justifier la privation de liberté dont les détenus font l'objet depuis près de 7 ans.

SECTION 1 : L'ABSENCE D'ÉLÉMENTS PROBANTS POUR LES FAITS OBJETS DES POURSUITES

Pour rappel, la Cour d'appel de Rabat était saisie, sur renvoi de la Cour de cassation, de la même prévention que celle retenue devant le Tribunal militaire :

- Violences commises sur des agents des forces publiques, entraînant la mort avec intention de la donner.

- Association de malfaiteurs dans le but de commettre un crime.

- Profanation de cadavres. La Ministère public a donc, durant les cinq mois d'audience, présenté une série d'éléments de preuve tendant à prouver la commission des infractions susmentionnées. Cependant, aucun des éléments de preuve présentés n'est réellement probant et n'a permis d'établir la culpabilité des accusés. **I. Des autopsies non probantes** Des autopsies correctement effectuées auraient permis de déterminer les causes précises et les circonstances de la mort des membres des forces de l'ordre lors du démantèlement. D'ailleurs, la Cour de cassation avait pris soin de préciser dans son arrêt :

« Il n'a été procédé à aucune autopsie médicale, laquelle reste le seul moyen scientifique susceptible de diagnostiquer les causes du décès ».

Des examens de cadavres ont été produits devant la Cour d'appel de renvoi. Une page par cadavre, avec un examen très sommaire et tout-à-fait insuffisant pour déterminer les circonstances et les causes de la mort. En outre, plusieurs éléments permettent de douter de leur authenticité et de leur sérieux.

- Sur la forme :

Ils n'ont jamais été produits devant le tribunal militaire, ce qui permet de douter sur le fait qu'ils aient été réellement effectués dès novembre 2010. En effet, il est légitime de se demander pourquoi ils n'ont pas été présentés devant le juge militaire, étant donné la gravité des accusations. Ces pièces auraient en outre pu servir de base pour ordonner de réelles autopsies.

Ils ne concernent que neuf agents des forces de l'ordre, alors que le nombre de victimes allégué s'élevait à onze. En effet, lorsqu'on regarde les noms des membres des forces de l'ordre marocaines, aucun rapport ne fait état de la mort d'Ali ZAARI et de Bentalib LAKHTIL. Les accusés comme les parties civiles peuvent dès lors légitimement s'interroger sur les raisons de cette omission, au regard de la gravité des faits allégués.

- Sur le fond :

Ces examens ne sont pas à proprement parler des autopsies. En effet, ces rapports ont été analysés par deux médecins légistes espagnols : Ana FLORES DOMINGUEZ et

Félix SANCHEZ UGENA, exerçant à Badajoz (Espagne)¹².

Il convient de relever que ces examens ne répondent à aucun des critères contenus dans les recommandations internationales en matière d'autopsie¹³ auxquelles ces médecins ont été formés.

Dans leur analyse, ils notent qu'un examen *post mortem* rigoureux devrait contenir entre autres :

- la qualification des experts, le lieu, la date et l'heure de l'examen, les photos de tout le corps, vêtu et nu, et du détail des lésions, l'identification du cadavre (âge, sexe, taille, poids, race, etc.), les indices pouvant alimenter l'instruction criminelle s'il s'agit d'un homicide, la relève d'échantillons pour des examens (sang et urine), l'examen des vêtements, les caractéristiques des lésions (origine, dimension, localisation, etc.), la présence de sang externe, l'état des phénomènes cadavériques (rigidité, etc.).

¹² Ils sont enregistrés au Collège officiel des médecins de la province de Badajoz avec les numéros 06/05429 et 06/03482

¹³ Cf. Protocole de Minnesota du Haut-Commissariat aux droits de l'Homme de l'ONU (révisé en 2016) : <http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotential-lyUnlawfulDeath2016.pdf>

Recommandation (99)3 relative à l'harmonisation des règles en matière d'autopsie, du Conseil de l'Europe (1999)

Les conclusions doivent se fonder sur des considérations médico-légales et doivent contenir au minimum les éléments suivants :

- type de mort (naturelle ou violente), cause médico-légale (suicide, homicide, accident), cause immédiate (mécanisme de la mort), cause fondamentale (blessure par arme blanche, contusion...), moment estimé de la mort.

Il ressort de l'ensemble de ces éléments que les autopsies sont objectivement insuffisantes, en particulier dans le cadre d'une procédure judiciaire comme dans le cas présent qui vise à établir la culpabilité de vingt-quatre accusés pour des meurtres qu'ils ont toujours contesté avoir commis.

Les experts espagnols concluent donc leur analyse de la façon suivante :

« 1. *El examen necrópsico efectuado no se aproxima en lo más mínimo las recomendaciones*

internacionales para las autopsias médico legales en casos de muertes violentas.

2 . El contenido de los documentos de reconocimiento de los cadáveres es francamente pobre en cuanto a contenido objetivo.

3 . En ninguno de los informes se establece la data ni la naturaleza médico legal de la muerte. Y en cuanto a la causa, las conclusiones obtenidas en ellos a partir de las descripciones efectuadas carecen del suficiente fundamento científico.”

Les examens des cadavres ne sont pas assez documentés en termes de constatations médico-légales. Ils ne correspondent pas aux normes internationales en matière d'examen *post mortem*. Enfin, aucun n'établit la date, la nature médico-légale ou la cause de la mort de manière scientifique. Cela leur enlève toute crédibilité, et donc toute valeur probante dans le cadre du procès des accusés.

Ainsi, malgré l'arrêt de la Cour de cassation qui relève que les autopsies sont « **le seul moyen scientifique susceptible de diagnostiquer les causes du décès** », il n'a toujours pas été procédé à de véritables autopsies médicales et scientifiquement crédibles, à ce jour.

II. Apparition de nouveaux éléments en guise de preuves

Dans son arrêt du 27 juillet 2016, la Cour de cassation avait annulé le jugement militaire en déclarant : « *le tribunal n'a pas prouvé de manière claire l'objet de l'ordre et de l'incitation précités, la partie ou les personnes ciblées, la mort qui s'en est suivie ainsi que l'intention criminelle du demandeur.* »

Devant la Cour d'appel de renvoi, de nouveaux éléments ont donc été présentés par le Procureur et les parties civiles, pour tenter de remédier au défaut de preuve constaté par la Cour de cassation.

Cependant, ces nouveaux éléments sont contestables à double titre. En effet, il convient de souligner, d'une part, l'absence d'une quelconque valeur probante de ces éléments. D'autre part, l'apparition de ces nouveaux éléments est contestable du point de vue des critères d'un procès équitable.

1. Les témoins

Lors des audiences devant la Cour d'appel, 28 témoins ont été auditionnés. On peut dans un premier temps s'étonner du nombre de nouveaux témoins apparus soudainement presque sept ans après les faits reprochés aux accusés.

Dans le rapport¹⁴ de deux observateurs présents lors des audiences devant la Cour d'appel, Isabel Lourenço et Tone Sørffonn Moe, 3 catégories de témoins ont été identifiées:

- les témoins à décharge, - les témoins des violences du démantèlement du Camp de Gdeim Izik,

- et enfin les témoins décrivant les violences du 8 novembre 2010 et ayant identifié des

accusés.

➤ **Témoins à décharge**

Cinq témoins de la défense ont été présentés devant la Cour d'appel. Il ressort de leur audition que plusieurs des accusés ont été arrêtés à leur domicile, et non en situation de flagrance. Il ressort également que le Camp de Gdeim Izik se trouvait entouré par les forces de l'ordre marocaines, en état de siège, dès la veille de son démantèlement, ce qui remet en cause le fait que les accusés aient pu rejoindre le Camp la veille ou le jour même du démantèlement.

Il apparaît opportun de noter que Mme Gajmoula, ancienne députée sahraouie, n'a pas été admise à témoigner devant la Cour. Son témoignage aurait pu appuyer utilement celui de M. Dhalil qui déclare avoir trouvé M. Toubali, l'un des accusés, dans une situation médicale critique le 7 novembre, et qu'il n'était pas en mesure de rejoindre le camp de Gdeim Izik le 8 novembre. Des rapports médicaux produits par M. Toubali ont également confirmé ce fait.

Le rapport précité énonce ainsi :

« The testimonies prove that Mr. Asfari was abducted on the 7th of November, further that Mr. Toubali was in hospital on the 7th of November and in a critical condition on the 8th of November, that both Mr. Lakfawni and Mr. Laaroussi were abducted with force by the public forces, that Mr. Zeyou was in El Aaiun on the 7th of November, and that the camp was under a siege on the 7th of November until the dismantlement of the camp ».

¹⁴ *Trial Observation Report*, From the proceedings held against the "Group Gdeim Izik" in Salé, Morocco, with special regard to the proceedings held in May 2017.

<https://fr.scribd.com/document/350492718/Gdeim-Izik-Trial-Observation-Report-May2017>

➤ **Témoins de l'accusation**

Témoins des violences du 8 novembre 2010

Nombre de témoins présentés par le Procureur se sont contentés de décrire les violences qui ont eu lieu le 8 novembre 2010. Or, la réalité d'un contexte de violence généralisée lors du démantèlement du Camp n'a jamais été contestée par la défense.

“The witnesses describe the dismantlement of the camp during the early hours on the 8th of November 2010. It is evident that violent clashes occurred between the inhabitants of the camp and the civil forces; it is also evident that the civil forces were attacked with rocks and that the inhabitants were carrying knives.

These witnesses do not identify any of the accused; and do not link the accused to the crime; and the declarations are therefore not to be regarded as proof to any crime committed by the accused and cannot be given weight in the final evidence review”.

➤ **Témoins ayant reconnu des accusés** Neuf des témoins de l'accusation ont non seulement décrit les faits de violence du 8 no-

vembre, mais ont également identifié des accusés durant l'audience.

Cependant, ces témoignages ne semblent pas crédibles ni fiables pour plusieurs raisons.

Tout d'abord, les témoins n'ont jamais été cités ou interrogés ni pendant l'instruction ni devant le tribunal militaire en 2013, ce qui apparaît étonnant : comment l'accusation a-t-elle pu trouver, juste après l'arrêt de la Cour de cassation, une dizaine de témoins capables, 7 ans après les faits, d'identifier formellement les accusés ?

Ensuite, les témoins ont pu donner les noms des accusés et les identifier, mais aucun n'a pu décrire leur apparence physique, ce qui remet en cause la crédibilité de ces témoignages.

Enfin, les témoignages corroborent étrangement les procès-verbaux, signés sous la contrainte par les accusés. Or, les accusés ont depuis l'origine contesté la validité de ces aveux obtenus sous la torture. De la même manière, ils ont contesté la véracité de ces témoignages construits de toute pièce à partir de faux aveux. Peu de crédit doit donc être accordé à ces témoignages.

Le rapport précité note ainsi :

“These declarations made by Mr. Lemtioui, Mr. Choujaa and Mr. Hrouchi are in line with the declarations submitted into the police reports, which the accused claim are falsified against them, and which are to be regarded as illegal evidence. It must be noted that the detainees urge that these testimonies are falsified. In this regard, it is the responsibility of the court to investigate whether a declaration is falsified and where the witnesses come from”.

Rappelons en tout état de cause que l'article 14 du Pacte international relatif aux droits civils et politiques¹⁵ :

“garantit le droit de l'accusé d'interroger ou de faire interroger les témoins à charge et d'obtenir la comparution et l'interrogatoire des témoins à décharge dans les mêmes conditions que les témoins à charge. En tant qu'application du principe de l'égalité des armes, cette disposition est importante car elle permet à l'accusé et à son conseil de conduire effectivement la défense, et garantit donc à l'accusé les mêmes moyens juridiques qu'à l'accusation pour obliger les témoins à être présents et pour interroger tous les témoins à charge ou les soumettre à un contre-interrogatoire ».

Or, il ressort du rapport de Trial Observation report que les questions posées par la défense ont pratiquement toutes été rejetées¹⁶.

Dès lors, le principe de l'égalité des armes n'a pas manifestement été respecté.

2. Pièces à conviction

Des pièces à conviction ont été également présentées devant la Cour d'appel. Il s'agissait de 19 téléphones portables et *talkies walkies*, 3 haches, et 4 couteaux et machettes.

Cependant, là encore, la valeur probante de ces éléments est remise en question à plusieurs égards.

Tout d'abord, ce ne sont pas les mêmes éléments qui ont été présentés devant le Tribunal militaire et devant la Cour d'appel. Devant le Tribunal militaire, il s'agissait selon le rapport de l'AIODH de :

« 12 cell phones, 3 walkie-talkies, 6 kitchen knives, 2 hatchets, 1 machete, 2 flares, 1 identity card, and 1 computer ».

Ensuite, la procédure de conservation des preuves ne respecte pas les prescriptions du Code de procédure pénale marocain qui prévoit les conditions de conservation des éléments saisis dans le cadre de l'instruction.

Ainsi, l'article 59 prévoit que l'officier de police judiciaire « *veille à la conservation des indices susceptibles de disparaître et de tout ce qui peut servir à la manifestation de la vérité. Il saisit les armes et instruments qui ont servi à commettre le crime ou qui ont été destinés à le commettre, ainsi que tout ce qui pourrait avoir été le produit de ce crime* ».

Or, en l'espèce, aucune précaution n'a été prise pour préserver ces éléments de toute contamination extérieure :

« It is apparent that the chain of custody has not been respected, and that the risk of contamination is evident »¹⁷.

¹⁵ Observation générale 32 sur l'article 14 du Pacte international relatif aux droits civils et politiques ratifié par le Maroc.

¹⁶ Cf en annexe, tableau de la journée du 29 mars ¹⁷ Rapport précité.

Enfin, pas plus que devant le Tribunal militaire, aucune analyse n'a été faite pour retrouver d'éventuelles traces ou empreintes qui auraient permis de clarifier la situation des accusés :

« It is obvious that the different objects have been mistreated; none of the different objects are labelled correctly with numbering; there exist no crime scene photographs; no notes from the initial investigation; none of the objects are packed securely; and none of the objects contain fingerprints or DNA evidence. Who owned these objects; how they were confiscated, where they were confiscated and who confiscated the different elements is not known. Due to this, there is no telling of the source of these confiscated objects »¹⁸.

3. Le film

De même que devant le Tribunal militaire, une vidéo a été projetée à l'audience du 18 mai 2017. Cependant ce film ne permet en aucune façon d'identifier aucun des accusés. Il n'a donc aucune valeur probante.

“It must firstly be highlighted that the movie does not prove or show any of the accused committing a crime, as the movie does not show a link between the accused and the alleged crimes that they committed.

(...)

It is however evident that the film portrays the violent clashes that occurred between the inhabitants of the camp and the civil forces on the 8th of November 2010. The movie portrayed several images from the clashes around the camp, and showed both the inhabitants throwing stones and wounded members of the civil forces. The movie commenced by portraying pictures. The pictures showed several of the accused in the Saharawi refugee camps (Tindouf camp) with members of the Polisario Front.

(...) *The movie did not portray an incident or a crime committed. (...)*

*In conclusion, the movie proves that violent clashes occurred between the inhabitants of the camp on the 8th of November 2010, but does not prove any crimes committed by any of the accused”.*¹⁹

III.Éléments supplémentaires : écoutes téléphoniques

Le 18 mai 2017, le Procureur a demandé à la Cour de pouvoir lui soumettre des preuves supplémentaires. Ces éléments comprenaient deux rapports, l'un concernait les voyages que plusieurs des détenus avaient effectués en Algérie, et l'autre contenait la transcription d'écoutes téléphoniques entre Naâma Asfari et des membres du Front Polisario.

18 Idem 19 Rapport précité

Cependant, le rapport précité relève que :

“None of the records were enveloped securely, and the chain of custody was absent, whereas the prosecutor refused to place forward the original evidence (i.e. the recordings of the phone calls). In conclusion, new evidence cannot be submitted at this stage; the reports are inadmissible as the chain of custody is absent; and none of the reports are relevant to the accusations placed forward by the prosecution office. The admittance of these records will thus be a violation of the right to private life”.

En tout état de cause, il convient de rappeler que l'article 14 du Pacte international relatif aux droits civils et politiques stipule :

«q

ue l'accusé doit disposer du temps et des facilités nécessaires à la préparation de sa dé-

fense, et communiquer avec le conseil de son choix. Cette disposition est un élément important de la garantie d'un procès équitable et une application du principe de l'égalité des armes. Les «facilités nécessaires» doivent comprendre l'accès aux documents et autres éléments de preuve, à tous les éléments à charge que l'accusation compte produire à l'audience, ou à décharge. On entend par éléments à décharge non seulement ceux qui établissent l'innocence, mais aussi d'autres éléments de preuve pouvant renforcer la thèse de la défense (par exemple, des indices donnant à penser que des aveux n'étaient pas spontanés). »

Or, il est manifeste que l'irruption de ces éléments à la dernière semaine de l'audience ne peuvent sérieusement laisser à penser que la défense a eu le temps de se préparer. Par ailleurs, il semblerait que ces éléments n'ont aucun rapport avec les chefs d'accusation pour lesquels les accusés sont poursuivis.

SECTION 2 – LES PROCÈS VERBAUX OBTENUS SOUS LA TORTURE COMME MODE DE PREUVE UTILISÉ PAR LA COUR D'APPEL DE RABAT

L'ensemble des accusés ont, durant la phase d'enquête puis d'instruction militaire, signé au moins deux procès-verbaux : un procès-verbal de garde-à-vue et un procès-verbal d'audition devant le juge d'instruction militaire.

Ces procès-verbaux, notamment ceux signés à l'issue des gardes-à-vue, contenaient des aveux accablants pour l'ensemble des accusés, aveux arrachés sous la torture.

Les accusés n'ont eu de cesse de dénoncer, depuis le jour de leur arrestation, les tortures subies, sans que le Maroc ne diligente jamais d'enquête ; c'est d'ailleurs notamment sur ce fondement que le Comité contre la torture a condamné le Maroc par une décision du 15 novembre 2016 (I).

Durant les audiences devant la Cour d'appel de Rabat, tous les accusés ont contesté les procès-verbaux signés à l'issue de la garde-à-vue, affirmant qu'ils avaient apposé leurs signatures sous la pression, avaient subi des tortures, et sans pouvoir prendre connaissance du contenu (en tout ou en partie). Plusieurs d'entre eux ont également contesté les procès-verbaux du juge d'instruction.

Cependant, la Cour d'appel de Rabat a tout même inclus dans ses débats les procès-verbaux contestés et interrogé tous les accusés sur leur teneur, malgré les multiples demandes de nullité de la défense (II).

I. Des aveux obtenus sous des tortures systématiques et le refus des autorités marocaines d'enquêter sur ces sévices

1. Les refus par tous les échelons de la justice marocaine de diligenter des enquêtes sur les allégations de torture

La plupart des accusés ont dénoncé la torture auprès des différentes autorités judiciaires marocaines auxquelles ils ont été présentés après leur arrestation, sans que ces dernières ne dili-

gentent d'enquêtes. Tant le juge d'instruction durant la phase d'enquête, que le procureur durant le procès ont refusé d'ordonner des expertises médicales. Certains accusés ont même adressé des plaintes écrites aux autorités, par l'intermédiaire de leurs avocats, sans qu'il n'y soit jamais donné suite.

Dans son mémoire adressé au tribunal militaire le 31 janvier 2013, Me BOUKHALED, avocat des mis en cause, a dénoncé le fait que les aveux avaient été signés par les accusés sous la torture en violation de l'article 22 de la Constitution marocaine et de l'article 293 du Code de procédure pénale. Le tribunal n'a pas donné suite

Lors de la première audience du procès devant le Tribunal militaire, le 1er février 2013, Maître OUBAÏD ED-DINE ABDERRAHMANE, avocat de la défense, a requis la convocation des rédacteurs des procès-verbaux afin de les interroger sur les circonstances des interrogatoires. Le tribunal n'a pas répondu à cette demande.

Lors de l'audience du 8 février 2013, Me BOUKHALED a dénoncé le fait que le juge d'instruction militaire n'a ordonné aucune expertise médicale pour aucun des accusés, alors même que certains présentaient des traces de violence.

Les autres avocats des accusés ont formulé les mêmes griefs à l'encontre du juge d'instruction militaire.

Dans son ordonnance provisoire rendue le 8 février 2013, le Tribunal militaire a consigné les allégations de torture formulées par les accusés mais n'a jamais donné aucune suite.

« La défense a-t-elle plaidé que les accusés ont été torturés et que malgré cela le juge d'instruction n'a pas ordonné d'examen médical ? Oui

Monsieur le Représentant du ministère public, a-t-il répondu à cette plaidoirie que certains accusés ont déclaré à monsieur le juge d'instruction lors de l'enquête préliminaire qu'ils n'ont subi ni pression ni contrainte ? Oui

Lorsque l'un des accusés lui a annoncé qu'il a été torturé, n'a-t-il pas réalisé une consultation et il s'est avéré difficile d'affirmer qu'il s'agit de traces de la torture ? Oui » (pièce n°6, p.4)

Ni le Tribunal militaire, ni le procureur n'ont pris en considération ces allégations de torture en diligentant une enquête.

Lors des audiences, il n'a été question de l'auscultation que d'un seul détenu, Abdeljalil Laâroussi, arrêté le 12 novembre 2010 et qui a déclaré avoir été torturé par les gendarmes de Laayoune. Mais les rapports d'audience démontrent que cette auscultation ne constituait en rien une expertise médicale telle que les allégations de torture de l'accusé et les traces encore présentes sur son corps l'auraient requise :

« Lorsque le tribunal a observé le pied droit de l'accusé, il a remarqué qu'il y a des traces de blessures et des déformations au niveau des ongles, plutôt des traces de blessures au niveau de son pied droit et la même chose sur son pied gauche et en plus des traces d'une blessure

sur le coté droit de sa tête.

Lorsqu'il a été ausculté par le médecin le 11/02/2013, il a noté que son genou présente une contorsion qui date de cinq ans et qui ne demande pas d'opération urgente. »

Un autre accusé, Mohamed Bani, a allégué avoir été torturé et notamment violé lorsqu'il était aux mains de la gendarmerie, après son arrestation. Il a dénoncé ce crime au juge d'instruction militaire, demandant à ce qu'il ordonne une expertise médicale, ce que le juge a refusé. En 2013, lors du procès :

« La cour a constaté les traces de blessures résultant d'un coup à la partie droite de sa colonne vertébrale et des traces de blessures dans sa main au niveau du majeur et des déformations du gros orteil (hallux) de son pied droit et de son pied gauche. Maître Mustapha Jiaf a présenté une requête pour soumettre son mandant à une expertise médicale. Le ministère public a répliqué que la durée est longue et qu'elle sera inutile pour un viol d'il y a deux ans ».

Dans une autre ordonnance provisoire rendue le 15 février 2013, le Tribunal militaire a explicitement rejeté la demande d'ouverture d'enquête pour torture formulée par des avocats concernant les accusés Zaoui El Hassan, Dafi Daïch, Mohamed El Ayoubi et Mohamed Bachir Boutinguiza. Le motif avancé est qu'une telle enquête serait trop longue à mener et que les traces de torture ont disparu. Le tribunal a ajouté que les accusés auraient dû faire une telle requête lors de l'enquête préliminaire.

Il ressort ainsi de l'analyse du dossier pénal des accusés que tous ont, à plusieurs reprises et par plusieurs moyens (par voie de plainte écrite ou de dénonciation), dénoncé les tortures et les mauvais traitements subis après leur arrestation – y compris en prison – et que, malgré cela, la justice marocaine a toujours refusé de diligenter une enquête pour établir la vérité sur ces allégations, en violation notamment des articles 39 et 49 du Code de procédure pénale marocain qui prévoient que :

« Toute autorité constituée, tout officier public ou fonctionnaire qui, dans l'exercice de ses fonctions, acquiert la connaissance d'un crime ou d'un délit est tenu d'en donner avis sans délai au procureur du Roi et de transmettre à ce magistrat tous les renseignements, procès-verbaux et actes qui y sont relatifs. » (article 39)

« Le chef du parquet général reçoit les dénonciations et les plaintes qui lui sont adressées, soit par un fonctionnaire public, soit par un particulier ; il les transmet, avec ses instructions, au procureur du Roi. » (article 49)

L'absence d'enquête constitue en outre une violation flagrante de la Convention contre la torture dont l'article 12 précise :

*« Tout État partie veille à ce que les autorités **compétentes procèdent immédiatement à une enquête impartiale** chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire sous sa juridiction. ».*

Ainsi, il est indéniable que les accusés ont tout mis en œuvre pour qu'une enquête sur les

faits de torture soit diligentée ; l'absence d'une telle enquête et, partant, l'absence d'examen médicaux avant l'année 2017 sont de la seule responsabilité des autorités marocaines.

Ainsi, l'absence de certitude quant à la véracité de ces allégations et quant à la validité des procès-verbaux de gendarmerie n'est imputable qu'aux autorités marocaines.

Il en va du respect de la Convention contre la torture mais aussi de l'exigence d'équité du procès telle que garantie par l'article 14 du Pacte international relatif aux droits civils et politiques ratifié par le Maroc. L'alinéa g du paragraphe 3 de l'article 14 garantit le droit de ne pas être forcé de témoigner contre soi-même ou de s'avouer coupable. Comme l'explique le Comité des droits de l'homme dans son Observation générale 32 :

« Il faut comprendre cette garantie comme l'obligation pour les autorités chargées de l'enquête de s'abstenir de toute pression physique ou psychologique directe ou indirecte sur l'accusé, en vue d'obtenir une reconnaissance de culpabilité. Aussi est-il d'autant plus inacceptable de traiter l'accusé d'une manière contraire à l'article 7 du Pacte pour le faire passer aux aveux. La législation interne doit veiller à ce que les déclarations ou aveux obtenus en violation de l'article 7 du Pacte ne constituent pas des éléments de preuve, si ce n'est lorsque ces informations servent à établir qu'il a été fait usage de la torture ou d'autres traitements interdits par cette disposition et à ce qu'en pareil cas il incombe à l'État de prouver que l'accusé a fait ses déclarations de son plein gré. ».

2. La condamnation du Maroc par le Comité contre la torture des Nations Unies

Le 4 mars 2014, M. Ennâma ASFARI, condamné à trente ans de réclusion criminelle par le tribunal militaire, a saisi le Comité contre la torture des Nations Unies (CAT) dénonçant avoir subi des traitements inhumains et dégradants et des actes de torture par les autorités marocaines, et avoir été condamné sur la base d'aveux obtenus sous la torture.

Pour précision, le CAT avait déclaré la requête de M. ASFARI recevable, **malgré l'absence d'épuisement des voies de recours interne**, en considérant que M. ASFARI n'avait pas eu accès à des recours effectifs pour dénoncer les actes de torture qu'il affirme avoir subi.

À l'issue d'une procédure contradictoire de plus de deux ans et demi, années durant lesquelles le Maroc a eu l'occasion de produire tous les éléments de preuve à sa disposition pour contredire les allégations et les preuves apportées par M. ASFARI, le Comité a reconnu que le Maroc avait violé les articles 1, 12, 13, 14, 15 et 16 de la Convention contre la torture.

- Article 1 : Prohibition de la torture

« Aux fins de la présente Convention, le terme "torture" désigne tout acte par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne aux fins notamment d'obtenir d'elle ou d'une tierce personne des renseignements ou des aveux, de la punir d'un acte qu'elle ou une tierce personne a commis ou est soupçonnée d'avoir commis, de l'intimider ou de faire pression sur elle ou d'intimider

ou de faire pression sur une tierce personne, ou pour tout autre motif fondé sur une forme de discrimination quelle qu'elle soit, lorsqu'une telle douleur ou de telles souffrances sont infligées par un agent de la fonction publique ou toute autre personne agissant à titre officiel ou à son instigation ou avec son consentement exprès ou tacite. Ce terme ne s'étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles.

2. *Cet article est sans préjudice de tout instrument international ou de toute loi nationale qui contient ou peut contenir des dispositions de portée plus large. »*

- Article 12 : **Obligation de diligenter des enquêtes impartiales**

« Tout État partie veille à ce que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire sous sa juridiction. »

Le Comité a relevé que M. ASFARI avait dénoncé les actes de torture dont il avait été victime à plusieurs reprises devant les différentes instances judiciaires du pays : le juge d'instruction militaire notamment, alors qu'il présentait des traces manifestes de violence physique. Aucun examen médical n'a été ordonné, et aucune enquête n'a jamais été diligentée.

Le Comité relève également que le Tribunal militaire n'a pas pris en compte les allégations de torture.

Le Comité a aussi constaté que le Maroc avait dépassé les délais raisonnables en attendant plus de six années pour diligenter une enquête sur les faits de torture allégués.

Enfin, le Comité a relevé que l'arrêt de la Cour de cassation n'avait rien changé puisque M. ASFARI était toujours détenu sur la base d'aveux obtenus sous la torture.

- Article 13 : **Droit des victimes de porter plainte et protection du plaignant** : *« Tout État partie assure à toute personne qui prétend avoir été soumise à la torture sur tout territoire sous sa juridiction le droit de porter plainte devant les autorités compétentes dudit État qui procéderont immédiatement et impartialement à l'examen de sa cause. Des mesures seront prises pour assurer la protection du plaignant et des témoins contre tout mauvais traitement ou toute intimidation en raison de la plainte déposée ou de toute déposition faite. »*

Le Comité relève que le plaignant a tenté, à de nombreuses reprises, de dénoncer les faits de torture mais n'a jamais été mis en mesure de déposer plaintes.

En outre, il subit des pressions multiples, et son avocate, Me METTON a été expulsée du Maroc en avril 2016 alors qu'elle était venue le représenter dans le cadre de démarches en lien avec les dénonciations des actes de torture.

- Article 15 : **Obligation de s'assurer que les déclarations des accusés n'ont pas été obtenues sous la torture**

« Tout État partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans une procédure, si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite. »

Le Comité souligne que le Tribunal militaire n'a jamais vérifié les allégations de torture de M. ASFARI et a pourtant fondé sa décision de condamnation sur la base des aveux contestés.

- Article 16 : **Prohibition des traitements inhumains ou dégradants**

« 1. Tout État partie s'engage à interdire dans tout territoire sous sa juridiction d'autres actes constitutifs de peines ou traitements cruels, inhumains ou dégradants qui ne sont pas des actes de torture telle qu'elle est définie à l'article premier lorsque de tels actes sont commis par un agent de la fonction publique ou toute autre personne agissant à titre officiel, ou à son instigation ou avec son consentement exprès ou tacite. En particulier, les obligations énoncées aux articles 10, 11, 12 et 13 sont applicables moyennant le remplacement de la mention de la torture par la mention d'autres formes de peines ou traitements cruels, inhumains ou dégradants.

2. Les dispositions de la présente Convention sont sans préjudice des dispositions de tout autre instrument international ou de la loi nationale qui interdisent les peines ou traitements cruels, inhumains ou dégradants, ou qui ont trait à l'extradition ou à l'expulsion. »

Le Comité relève que les traitements subis par M. ASFARI lors de sa détention à la prison de Salé sont constitutifs de traitements inhumains et dégradants.

Malgré cette décision intervenue le 15 novembre 2016, soit seulement un mois avant le début du procès devant la Cour d'appel de Rabat qui a débuté le 26 décembre 2016, la Cour d'appel n'a pas souhaité appliquer les recommandations de la condamnation onusienne et a continué à prendre en compte les aveux obtenus sous la torture.

II. La prise en compte par la Cour d'Appel de Rabat des procès-verbaux obtenus sous la torture

Il doit être, à titre liminaire, rappelé que la prise en compte d'aveux obtenus sous la torture est prohibée tant par le droit international que par le droit marocain.

En droit international des droits de l'homme, les preuves obtenues par la torture sont interdites et considérées comme portant atteinte au droit au procès équitable.

L'article 15 de la Convention contre la torture interdit absolument la prise en compte d'aveux et autres informations obtenus sous la torture dans le cadre d'une procédure judiciaire *« si ce n'est contre la personne accusée de torture pour établir qu'une déclaration a été faite »*. Cette interdiction, qui est confirmée par une jurisprudence constante du Comité des droits de l'homme et de la Commission africaine des droits de l'homme et des peuples, ne souffre aucune dérogation.

L'ensemble de ces dispositions s'imposent aux juridictions marocaines en vertu du préambule de la Constitution qui dispose :

« Accorder aux conventions internationales dûment ratifiées par lui, dans le cadre des dispositions de la Constitution et des lois du Royaume, dans le respect de son identité nationale immuable, et dès la publication de ces conventions, la primauté sur le droit interne du pays, et harmoniser en conséquence les dispositions pertinentes de sa législation nationale. »

En outre, l'article 22 de la Constitution marocaine pose également la prohibition de la torture :

« Il ne peut être porté atteinte à l'intégrité physique ou morale de quiconque, en quelque circonstance que ce soit et par quelque personne que ce soit, privée ou publique. Nul ne doit infliger à autrui, sous quelque prétexte que ce soit, des traitements cruels, inhumains, dégradants ou portant atteinte à la dignité. La pratique de la torture, sous toutes ses formes et par quiconque, est un crime puni par la loi. » En tout état de cause, le CAT avait déjà énoncé, dans sa décision du 15 novembre 2016 :

« L'État partie était dans l'obligation de vérifier le contenu des allégations de l'auteur. En ne procédant à aucune vérification et en utilisant de telles déclarations dans la procédure judiciaire contre le requérant, l'État partie a manifestement violé ses obligations au regard de l'article 15 de la Convention. À ce propos, le Comité rappelle que, dans ses Observations finales concernant le Quatrième Rapport Périodique du Maroc, il a exprimé sa préoccupation quant au fait que dans le système d'investissement en vigueur dans l'État partie, l'aveu constitue souvent une preuve sur la base de laquelle une personne peut être poursuivie et condamnée, créant ainsi des conditions susceptibles de favoriser l'emploi de la torture et des mauvais traitements à l'encontre de la personne suspectée. »

De ce fait, la Cour d'appel de Rabat avait obligation d'écarter les procès-verbaux obtenus sous la torture.

Tous les accusés ont demandé à la Cour d'appel, à plusieurs reprises tout au long du procès, d'annuler les procès-verbaux obtenus et signés sous la torture et de les retirer du dossier de procédure.

La Cour a pourtant décidé de joindre la question de la nullité des procès-verbaux, pourtant essentielle, au fond. Ainsi, les procès-verbaux ont pu être discutés durant les six mois du procès, la décision sur leur nullité n'étant rendue qu'à la fin, en même temps que le verdict.

Il est à préciser que la Cour pouvait, au regard de la procédure pénale, trancher cette question de nullité avant d'étudier le fond du dossier. C'est donc en toute conscience qu'elle a joint ces demandes au fond et versé les procès-verbaux contestés aux débats.

Il doit être précisé que la Cour a certes ordonné que des expertises médicales soient réalisées afin de faire la lumière sur les allégations de torture.

Mais, les conclusions de ces expertises sont intervenues à la fin du procès, après que les accusés ont tous été interrogés sur les procès-verbaux qu'ils affirment avoir signé sous la torture.

En conséquence, le Maroc a de nouveau utilisé des déclarations sans vérifier si elles avaient été obtenues sous la torture.

En tout état de cause, les expertises qui ont été remises à la Cour sont hautement critiquables et leur fiabilité et caractère probant doivent être remis en cause.

SECTION 3 – CONTESTATION DES EXPERTISES MÉDICALES PRO- DUITES DEVANT LA COUR D'APPEL

Comme il a été indiqué précédemment, la plupart des prisonniers ont allégué devant différentes instances du système judiciaire marocain – juge d'instruction, procureur, président de tribunal – avoir été victimes d'actes de torture et de traitements inhumains et dégradants dès leur arrestation, les premières ayant eu lieu en 2010.

Le 15 novembre 2016, soit un mois avant le début du procès devant la Cour d'appel de Rabat, le Comité contre la torture condamnait le Maroc pour diverses violations de la Convention contre la torture. Le Comité pointait notamment qu'aucune autorité n'avait ordonné d'examen médical ou ordonné d'enquête, comme l'impose la Convention contre la torture.

Ainsi, l'absence d'enquête sur les allégations de torture de la victime et notamment l'absence d'expertise médico-légale constituait une violation de l'article 12 de la Convention contre la torture :

« 13.4 Le Comité relève par ailleurs qu'aucun examen médical n'a été requis par le juge d'instruction militaire alors que le requérant présentait manifestement des traces de violence physique, et qu'aucune enquête n'a été menée à ce sujet. En outre, le tribunal militaire n'a pas tenu compte des allégations du requérant concernant les faits de torture au moment de décider de sa condamnation, et l'État partie nie que de telles allégations aient été présentées au cours de la procédure. Le Comité relève aussi que l'État partie a très largement dépassé les délais raisonnables pour rendre justice dans le cas du requérant : près de 6 ans se sont écoulés depuis les faits et la présentation des premières allégations de torture, et aucune enquête n'a été ouverte. La cassation n'a rien changé à cette situation et le requérant est toujours détenu sur le seul fondement de ses aveux signés sous la contrainte. Au vu de ce qui précède, le Comité considère que l'absence de toute enquête des allégations de torture dans le cas de l'auteur est incompatible avec l'obligation qui incombe à l'État partie, au titre de l'article 12 de la Convention, de veiller à ce que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis. »

« L'ensemble de ces éléments devront être transmis à l'expert afin que les conclusions de son expertise puissent éclairer utilement votre Cour. »

Malgré cette décision récente, les procès-verbaux ont été conservés dans cette procédure devant la Cour d'appel de Rabat et discutés durant les six mois de procès.

C'est dans ce contexte que, de longues années après les faits allégués (de cinq à sept ans selon les accusés), le Président de la Cour d'appel de Rabat a ordonné, faisant ainsi droit aux requêtes des avocats de la défense, qu'il soit procédé à des expertises médicales sur l'ensemble des prisonniers détenus.

Il est dès à présent important de souligner que la Cour a refusé que des expertises soient réali-

sées sur les prisonniers en liberté. Or, ces derniers ont allégué avoir subi des sévices d'une extrême gravité. M. AYOUBI affirme notamment avoir été violé par des agents des forces de l'ordre. La Cour d'appel de Rabat a requis des experts médicaux de :

1. *Réaliser une expertise médicale en procédant à tout examen complémentaire jugé nécessaire par chaque expert,*
2. *Vérifier si l'intéressé porte effectivement des traces physiques ou psychologiques en rapport avec les tortures qu'il dit avoir subies depuis son arrestation et notamment durant la période où il était placé en garde-à-vue,*
3. *Dresser de ce qui précède un rapport détaillé en se conformant au contenu du Protocole d'Istanbul, manuel d'enquête efficace sur la torture et autres peines et traitements cruels, inhumains et dégradants des Nations Unies, 1999.*

Ont été commis les Dr Morad EL YAACOUBI, professeur de traumatologie-orthopédie, Chakib BOUHELAL, psychiatre expert judiciaire près la Cour d'appel de Rabat, et le Pr Fadila AIT BOUGHIMA, professeure agrégée de Médecine légale au CHU Ibn Sina de Rabat, coordinatrice du collège expertal.

L'ensemble des examens médicaux a eu lieu entre le 16/02/2017 et le 03/03/2017 au service de médecine pénitentiaire du CHU Ibn Sina de Rabat et au centre pénitentiaire Arjate 1.

Seize prisonniers ont accepté de se soumettre aux examens médicaux ordonnés par la Cour. Les cinq autres ont refusé d'être examinés par des médecins non formés au Protocole d'Istanbul. Ces refus démontrent déjà le manque criant de confiance des prisonniers dans les médecins experts nommés.

Il convient également de préciser que les prisonniers avaient, lors des audiences du mois de janvier et de mars 2017, décrit avec précision à la Cour les sévices qu'ils avaient subis. Sur les seize prisonniers qui ont accepté les expertises, quinze ont allégué avoir subi des actes de torture ; un allègue des traitements violents. Les quinze ont donc, de nouveau, raconté leur calvaire au médecin. Il est globalement reconnu qu'à chaque fois qu'une victime raconte les traitements subis, elle revit le traumatisme passé. Pourtant, aucun soutien psychologique n'a été proposé aux prisonniers suite aux expertises médicales.

Les quinze rapports d'expertises relatifs aux prisonniers alléguant avoir été torturés remis à la Cour d'appel de Rabat au mois de mars 2017 font l'objet, ci-après, d'une analyse critique (I). Ils ont également été présentés à quatre médecins français et espagnols qui ont produit des contre-expertises fondées sur le respect, ou non, des prescriptions du Protocole d'Istanbul (II). Enfin, il sera démontré pourquoi, malgré des conclusions d'expertises *a priori* négatives, la crédibilité des allégations de torture des prisonniers reste forte (III).

I. Analyse critique des expertises médicales 1. Les conditions d'examen

La réalisation d'examens dans des conditions garantissant la sécurité de la victime, la confidentialité des échanges, et permettant l'établissement d'un lien de confiance avec le praticien

sont indispensables.

A ce titre, le point 83 du Protocole d'Istanbul précise :

« 83. Les experts médicaux intervenant dans des enquêtes sur la torture ou les mauvais traitements doivent satisfaire en tout temps aux normes éthiques les plus exigeantes et, en particulier, doivent, avant de procéder à tout examen, obtenir que les intéressés consentent en connaissance de cause. Cet examen doit être conforme aux règles établies de la pratique médicale. En particulier, il doit se faire en privé sous le contrôle de l'expert médical et en dehors de la présence d'agents de la sécurité et autres fonctionnaires. »

1.1. Nous avons recueilli des informations détaillées sur les conditions dans lesquelles se sont réellement déroulées les expertises de nos clients. Il ressort de ces informations que de nombreux examens et entretiens ont été menés en **présence ou à proximité d'agents de sécurité marocains en violation de l'exigence de sécurité et de confidentialité**. De telles circonstances engendrent un risque pour la sécurité des victimes, compromettent totalement l'établissement d'un lien de confiance avec les médecins et sont propices à faire revivre le traumatisme passé.

Les examens et entretiens de Monsieur Abdeljalil LAAROUSSI, de Monsieur Brahim ISMAÏLI, de Monsieur Mohamed Embarek LEFKIR, de Monsieur Cheikh BANGA, de Monsieur Abdallah LEKHFAOUINI, de Monsieur Hassan DAH et de Monsieur Khouna BABEIT se sont déroulés en présence de gendarmes et la porte ouverte.

1.2. En outre, plusieurs détenus ont allégué que **les agents de sécurité avaient reçu copie des résultats de leurs examens médicaux avant les médecins**, alors que ces informations sont censées être confidentielles et uniquement confiées à la victime et, le cas échéant, au tribunal qui a ordonné les expertises. Cela entame sérieusement la fiabilité des examens menés sur les victimes.

Les résultats des examens de M. Brahim ISMAÏLI, de M. Mohammed Amine HADI et de M. Mohamed Elbachir BOUTINGUIZA ont chaque fois été donnés aux agents de sécurité **avant d'être transmis au médecin**. M. ISMAÏLI a entendu les gendarmes interdire au Dr. Ikram BOUMENDIL d'informer la victime sur les résultats de l'examen concernant son oreille gauche.

1.3. La Pr Fadila AIT BOUGHIMA a, à plusieurs reprises, fait preuve d'un manque de respect pour les victimes. Lors de son entretien avec M. Abdeljalil LAAROUSSI, la Pr AIT BOUGHIMA a répondu à trois reprises à son mari qui l'appelait sur son téléphone et lui a parlé environ 30 minutes, ce qui ne témoigne pas d'un grand respect pour la victime, sans parler de l'empathie et la patience dont les médecins sont censés faire preuve.

Pendant l'entretien de M. Hassan DAH avec la Pr AIT BOUGHIMA, cette dernière a interrompu l'entretien pour répondre à un appel téléphonique.

Durant l'entretien avec M. Brahim ISMAÏLI, la Pr AIT BOUGHIMA n'a eu de cesse de par-

ler de politique, du conflit au Sahara, des camps de réfugiés en Algérie, de Gdeim Izik et du Maroc.

Les Dr NOUINI et SOUIDINE ont demandé des examens complémentaires pour M. LAAROUSSI, notamment une fibroscopie, mais la Pr AIT BOUGHIMA a refusé au motif que le budget total pour les examens de chaque détenu ne devait excéder 600 DHM.

1.4. Enfin, plusieurs détenus expertisés estiment que les rapports contiennent des erreurs factuelles qui, une fois encore, jettent un sérieux doute sur la validité de ces rapports.

M. LAAROUSSI estime que le récit des tortures fait dans le rapport d'expertise ne correspond pas exactement au récit qu'il a fait.

M. ISMAÏLI estime que son rapport contient des propos qu'il n'a pas tenus.

Il en va de même de MM. BANGA et LEKHFAOUINI. Le rapport concernant ce dernier mentionne qu'il a eu un accident de voiture ce que M. LEKHFAOUINI nie. Il mentionne aussi qu'il n'est pas fumeur alors qu'il l'est.

M. Mohamed BANI a relevé de nombreuses fausses informations dans le rapport d'expertise le concernant. Exemples parmi d'autres, il n'a jamais déclaré que son père était dans le Camp de Gdeim Izik et il n'a jamais affirmé avoir vu des personnes jeter des pierres.

M. Abdallah TOUBALI a lui aussi relevé des erreurs dans son rapport. Il a notamment raconté aux médecins être allé chez sa grand-mère le 9 novembre 2010 et non le 8 comme cela est mentionné dans le rapport. Pendant son interrogatoire, il a été giflé à de nombreuses reprises – et non une seule fois comme cela est suggéré par l'absence de mention de la répétition – et forcé à signer un document alors qu'il avait les yeux bandés. Le rapport ne fait pas non plus mention du fait qu'il allègue avoir été torturé par Hassan MIHFADI à plusieurs reprises la nuit, et non une seule fois comme mentionné dans le rapport.

M. Mohamed Elbachir BOUTINGUIZA a de même relevé de nombreuses erreurs dans le rapport le concernant. Parmi elles, le fait qu'il a dit avoir eu des saignements anaux mais cela n'a pas été mentionné dans le rapport. Il a déclaré que des agents lui avaient uriné dessus pendant sa garde à vue, mais cela n'a pas été repris dans le rapport. Il a expliqué avoir identifié parmi ses tortionnaires Abd Errahman LOUAZNA, mais cela n'a pas été mentionné dans le rapport.

De ce qui vient d'être décrit, on ne peut que conclure que les médecins n'ont pas respecté les règles du Protocole d'Istanbul relatives au déroulement des entretiens et examens médicaux. Ces irrégularités majeures suffiraient à invalider les expertises. Elles ne constituent cependant qu'un facteur de nullité parmi d'autres tout aussi sérieux.

2. Défauts d'informations relatives aux médecins ayant réalisé les examens complémentaires

Plusieurs médecins ont réalisé des examens complémentaires. Pour autant, si leurs noms sont

précisés dans les rapports d'expertises, aucune information permettant de les identifier n'est donnée.

Ainsi, sept médecins ont réalisé des examens ORL, sans que soit précisés leur qualité, leur spécialité, leur lieu d'exercice :

- le Dr MAHLOU a examiné M. BOURIAL ;
- le Dr LASSIKRI a examiné MM. DAH, BANGA, LEFKIR ;
- le Dr EL YADIR a examiné M. TAHLIL ;
- le Dr IDRIS a examiné M. HADI ;
- le Dr LACHBAB a examiné M. TOUBALI ;
- le Dr AZAM a examiné M. BANI ;
- le Dr BOUMENDIL a examiné M. ISMAILI. **3. La durée des entretiens** L'examen de victimes de torture requiert d'accorder le temps nécessaire pour établir un lien de confiance, mais aussi pour évaluer avec précision l'ensemble des éléments de preuves physiques et psychologiques. Plusieurs entretiens sont parfois nécessaires. Ainsi, le Protocole d'Istanbul précise que pour l'examen des preuves physiques de la torture, « *un entretien de deux à quatre heures peut s'avérer insuffisant pour évaluer les éléments de preuve physiques ou psychologiques de la torture. [...] Un deuxième voire un troisième entretien peut alors s'avérer nécessaire pour achever l'évaluation.* » (point 162). Le Protocole ajoute que « *Si l'on veut obtenir un récit exact d'actes de torture, la confiance est essentielle. Écoute active, rigueur dans la communication, courtoisie, empathie sincère et honnêteté sont indispensables pour gagner la confiance d'une personne qui a subi la torture ou autres mauvais traitements. Les médecins doivent être capables de créer un climat de confiance propice à la divulgation d'informations cruciales, mais souvent très douloureuses.* » (point 163). Or, en l'espèce, les entretiens duraient entre 25 et 45 minutes, ce qui est absolument insuffisant pour réaliser une analyse complète sur des faits aussi graves. En outre, la Pr Fadila AIT BOUGHIMA a réalisé le même jour, le 03/03/2017, quinze entretiens au centre pénitentiaire d'Arjate 1. On peut fortement douter qu'une telle cadence permette d'accorder le temps nécessaire aux victimes et donc, de réaliser un examen médical complet.

4. Absence d'énonciation des limites de la validité de l'expertise et évaluation des facteurs potentiels confondant les résultats obtenus

Toute analyse scientifique suppose, à titre liminaire, d'exposer les limites à la validité des résultats obtenus. Dans les cas d'expertises médicales, l'omission de telles mentions fait naître un doute quant au professionnalisme et à l'indépendance du médecin expert.

En l'espèce, de très nombreuses limites auraient dues être énoncées : le délai écoulé entre les sévices et les expertises, les conditions d'expertises, la dualité des experts ...

L'absence de ces mentions par les praticiens porte un discrédit sur les conclusions auxquelles ils parviennent.

5. L'analyse contestable des séquelles constatées

Les quinze expertises médicales produites décrivent isolément et de façon atomisée les séquelles physiques constatées, notamment en listant une à une chaque cicatrice, tout en omettant de fournir une analyse globale des séquelles et traces physiques constatées.

Cette présentation parcellaire empêche de révéler la réalité et l'intensité des mauvais traitements infligés par les autorités marocaines.

En outre, les médecins constatent, sans en tirer aucune conclusion médicale, les colorations des cicatrices (hyperchromie, hypochromie, etc.). Cette coloration permet de déterminer l'ancienneté des cicatrices ; et la similarité de la coloration de plusieurs cicatrices peut démontrer que les blessures originaires ont été subies au même moment.

Ainsi, une analyse de la coloration des cicatrices aurait constitué un élément fondamental pour déterminer la crédibilité des allégations de prisonniers. Mais les médecins légistes ont omis d'aller jusqu'au bout de leur analyse.

Enfin, il convient de préciser que très peu d'examens complémentaires ont été réalisés, alors qu'ils sont indispensables dans les cas d'allégations aussi graves.

Par exemple, plusieurs prisonniers affirment avoir subi le supplice de la *falaqa*. Or, il a été documenté par de très nombreuses ONG de protection des droits de l'homme que la *falaqa*, qui consiste à asséner des coups violents et répétés sur la plante des pieds, était très pratiquée au Maroc.

Le point 205 du Protocole d'Istanbul précise qu'afin de déterminer si un sujet a été soumis à la *falaqa* « *les procédés radiologiques comme l'IRM, le scanner et les ultrasons permettent souvent de confirmer des traumatismes consécutifs à la falaqa* ».

Or, ces examens, pourtant simples, n'ont pas été pratiqués.

6. Les incohérences et concordances

La mission donnée par la Cour d'appel de Rabat aux experts était de réaliser une expertise médicale sur chaque prévenu en procédant à tout examen complémentaire jugé nécessaire. Ces expertises devaient permettre de se prononcer sur le caractère plausible des tortures alléguées. Cependant, de nombreuses incohérences, carences et approximations sont

déTECTABLES à la lecture des expertises. Cela remet largement en cause leur valeur probante.

6.1. Des concordances systématiques entre les déclarations des prisonniers et les séquelles physiques constatées

Tout d'abord, de très nombreuses concordances entre les cicatrices cutanées constatées par les prisonniers et leurs allégations de torture ressortent des récits retranscrits dans les expertises. Comme le démontrent les tableaux produits en pièce jointe, les quinze accusés ont dénoncé des tortures qui correspondaient aux traces et cicatrices constatées sur leur corps.

À titre d'exemple, nous présenterons six cas montrant une concordance troublante entre les déclarations et les cicatrices cutanées constatées.

• M. BANGA > Ses déclarations M. Cheikh BANGA est né le 12/01/1989 à Assa.

Dans l'expertise le concernant, il est noté qu'il déclare avoir été arrêté le 08/11/2010 au campement de Gdeim Izik par des hommes cagoulés vêtus en noir qui lui ont mis un bandeau sur les yeux et des menottes en plastique aux poignets fermées derrière le dos. Il allègue avoir fait l'objet d'actes de torture à plusieurs reprises.

>La concordance entre les déclarations et les séquelles constatées M. BANGA déclare avoir notamment subi :

- un traumatisme crânien,
- un attachement des mains dans le dos par des menottes en plastique,
- des coups sur le dos et les membres inférieurs.

Or, les experts ont constaté des séquelles physiques qui semblent correspondre à ces déclarations :

- une cicatrice circulaire pariétale postérieure de 20 mm de grand diamètre hypochromique centrée par des cheveux,
- une cicatrice au niveau du poignet gauche, - de nombreuses cicatrices aux deux jambes, aux genoux et aux chevilles.

Or, l'expertise conclut que les symptômes que présente M. BANGA ne sont pas spécifiques aux différentes méthodes de tortures alléguées et qu'il y a un degré faible pour que les douleurs dont se plaint M. BANGA soient compatibles avec les faits de torture explicités.

Cependant, les conclusions d'expertise ne donnent aucune explication plausible et satisfaisante aux différentes observations faites lors de l'expertise médicale.

• M. LAAROUSSI

➤ **Ses déclarations**

M. LAAROUSSI est né le 01/01/1978 à Lâayoune.

Il a été arrêté à Boudjdour le 12/11/2010 dans la maison d'un cousin par de nombreux hommes cagoulés.

○ **La concordance entre les déclarations et les séquelles constatées** M. LAAROUSSI déclare avoir notamment subi :

- des coups au niveau de la fosse lombaire,
- des coups sur les membres inférieurs,
- le supplice de la falaqa et des suspensions avec chute sur les pieds,
- un arrachage des ongles des gros orteils,
- une pénétration anale avec de nombreux attouchements.

Or, les experts ont constaté des séquelles physiques qui semblent correspondre à ces déclarations :

- une cicatrice de grand diamètre lombaire médiane,
- de nombreuses cicatrices sur les genoux et les jambes (lésions confirmées lors de l'examen de l'appareil locomoteur),
- de nombreuses cicatrices sur les deux pieds, - un **ptérygion** sur l'ongle droit et un aspect strié de l'ongle gauche des orteils - des hémorroïdes internes et une incontinence anale.

Or, l'expertise conclut que les symptômes que présente M. LAAROUSSI ne sont pas spécifiques aux différentes méthodes de tortures alléguées et qu'il est peu probable que les douleurs ressenties soient dues aux tortures, sans pour autant donner d'explication plausible et satisfaisante aux différentes constatations faites lors de l'expertise médicale.

• **M. ZAOUI** ➤ **Ses déclarations** M. Hassan ZAOUI est né le 01/01/1975 à Lâayoune. Il a été arrêté le soir du 02/12/2010.

➤ **La concordance entre les déclarations et les séquelles constatées** M. ZAOUI déclare avoir notamment subi :

- des coups de pieds sur les jambes, - un attachements des mains avec des menottes,
- de violents coups par un objet contondant sur le dos à droite, avec une perte de connaissance et des sutures,

- un arrachage des ongles par une tenaille.

Or, les experts ont constaté des séquelles physiques qui semblent correspondre à ces déclarations :

- plusieurs cicatrices sur les jambes, genoux, cuisses, malléoles, - des cicatrices au niveau des poignets, - une cicatrice de 40 mm de longueur de la région basithoracique postérieure droite, - de nombreuses cicatrices au niveau des mains et des traces blanchâtres.

Or, l'expertise conclut que les symptômes que présente M. ZAOUI ne sont pas spécifiques aux différentes méthodes de tortures alléguée sans pour autant donner d'explication plausible aux différentes observations faites lors de l'expertise médicale.

• **M. Hassan DAH** > **Ses déclarations** M. Hassan DAH allègue avoir été arrêté le 04/12/2010 à Laâyoune.

> **La concordance entre les déclarations et les séquelles constatées** M. DAH déclare avoir notamment subi :

- un menottage des poignets,
- plusieurs coups dont certains avec objet contondant au niveau des fesses en particulier,
- un coup par objet contondant sur sa tête au niveau rétro auriculaire.

Or, les experts ont constaté des séquelles physiques qui semblent correspondre à ces déclarations :

- quatre cicatrices circulaires au niveau des deux poignets,
- deux cicatrices, l'une sur la partie supérieure du quadrant supérieur de la fesse, et l'autre sur le tiers supérieur de la face postérieure de la cuisse gauche,
- une tuméfaction rétro auriculaire droite d'allure kystique, - des douleurs lombaires, - une perte d'audition.

Pourtant, l'expertise conclut que « les symptômes qu'il présente actuellement et les données objectives de notre examen ne sont pas spécifiques aux différentes méthodes de torture alléguées » sans fournir d'explication plausible quant à l'origine des cicatrices non chirurgicales constatées.

• **M. BOURRIAL** > **La concordance entre les déclarations et les séquelles constatées**

M. BOURRIAL déclare avoir notamment subi :

- un ligotage par menottes en plastique et suspension par les mains,

- un ligotage des chevilles,
- un traumatisme crânien et des coups répétés sur la tête.

Or, les experts ont constaté des séquelles physiques qui semblent correspondre à ces déclarations :

- une cicatrice au niveau du poignet gauche, - deux cicatrices circulaires au niveau de la cheville (la malléole interne), - une cicatrice au niveau du front.

Pourtant, l'expertise conclut que « les symptômes qu'il présente actuellement et les données objectives de notre examen ne sont pas spécifiques aux différentes méthodes de torture alléguées » sans fournir d'explication plausible quant à l'origine des cicatrices non chirurgicales constatées.

Ces six exemples, choisis de façon aléatoire parmi les quinze accusés ayant allégué avoir subi des actes de torture, démontrent que les dénonciations sont corroborées par des cicatrices qui constituent un indice objectif des tortures dénoncées.

Or, les quinze expertises ont conclu que : « *Les symptômes et les données objectives de notre examen ne sont pas spécifiques aux dif-*

***férentes méthodes de tortures alléguées »*, sans noter les similitudes.**

En conséquence, la crédibilité des expertises rejetant systématiquement la compatibilité entre les allégations de torture ou de mauvais traitements et les constats médicaux ne peut être que fortement remise en cause.

6.2. Des explications médicales incohérentes

Au-delà des cicatrices, les détenus ont déclaré à plusieurs reprises avoir subi des tortures compatibles avec des constatations physiques. Pourtant, les médecins légistes décident de ne pas retenir les explications présentées dans les récits de détenus et préfèrent élaborer des explications alternatives à la crédibilité douteuse.

Ainsi, plusieurs prisonniers ont affirmé que leurs ongles ont été arrachés. Des traces blanches et des striures sont relevées par les experts sur les ongles des accusés. Ces marques corroborent les sévices dénoncés en ce que les techniques de torture consistaient à arracher les ongles des prisonniers. C'est le cas de M. ZAOUÏ et M. LAAROUSSI.

Cependant, les experts affirment que cet « *aspect est évocateur d'un traumatisme avec une plaie de la matrice plutôt que d'un arrachage de l'ongle* » et concluent alors à un faible degré de compatibilité. Cela démontre l'absence d'objectivité des experts en ce que « *l'évocation* » d'un traumatisme leur permet tout de même d'écarter catégoriquement la torture dénoncée.

En outre, l'expertise de M. KHEFAOUNI pointe des anomalies au niveau de l'épaule, douleur qui correspond aux sévices allégués par le prévenu qui affirme avoir subi plusieurs séances de

suspension par les poignets durant lesquelles il était frappé jusqu'à perdre connaissance. L'expert affirme que cette douleur est dégénérative. Cette explication est peu plausible en ce que M. KHEFAOUNI, qui a 43 ans, travaillait dans le domaine associatif avant de reprendre ses études, n'exerçant aucun travail pouvant affecter la motricité de ses épaules avant l'incarcération. Cet élément suffit pourtant à l'expert pour écarter la compatibilité de cette trace avec les actes de torture.

Par ailleurs, M. KHOUNA BOUBIT affirme avoir subi le supplice de la falaqa et le registre de la garde à vue précise qu'il a été pris en charge par l'hôpital pour le pied gauche. Fort de ces éléments prouvant la gravité du trauma, mais se fondant exclusivement sur l'absence de traces six ans après les actes, l'expert écarte catégoriquement les tortures.

Enfin, et encore une fois à titre d'exemple, M. LAAROUSSI affirme avoir subi de nombreux attouchements et pénétrations anales et déclare avoir une incontinence fécale depuis, ce qui correspond aux séquelles d'un viol. L'examen conduit par l'expert pointe la présence d'hémorroïdes. Dans un premier temps, l'expert affirme que l'examen anal ne présente aucune particularité (p6) avant de préciser que le toucher ano-rectal note un tonus normal (p8). La discussion médico-légale est pourtant parfaitement en contradiction avec les affirmations précédentes puisque l'expert affirme : « *quant à l'incontinence anale et urinaire rapportée par l'intéressé, l'examen urologique et proctologique n'ont pas relevé de lésion post traumatique pouvant l'expliquer* ». Il faut d'ores et déjà noter que l'expert parle « *d'expliquer* » l'incontinence, alors qu'il en niait tout simplement l'existence quelques paragraphes avant. L'expert poursuit « *Le bilan prescrit a pour but de chercher une pathologie organique sous-jacente pouvant expliquer l'incontinence et l'hématurie rapportée* ». En prescrivant un examen complémentaire, l'expert exprime clairement la possible véracité des faits allégués puisque des traces sont recherchées pour expliquer l'incontinence. Malgré ce doute fondamental, l'expert conclut à l'absence de spécificité des symptômes aux méthodes de torture alléguées.

Cela démontre l'immense part de doute et l'absence d'examen complet qui ne peuvent légitimement mener à une réfutation de la torture telle qu'elle apparaît dans toutes les expertises.

Les incohérences présentes dans le discours médical, la concordance des allégations et des traces sur le corps des accusés et la faiblesse des conclusions des experts doivent conduire à rejeter toute valeur probante de ces documents et à ordonner la conduite d'autres expertises plus objectives et impartiales.

7. Schéma de répétition

Les récits des quinze prisonniers exposent des faits de torture dont ils ont été victimes et mettent en lumière des pratiques récurrentes de torture, des modes opératoires répétés, voire des schémas de répétition, qui rendent d'autant plus plausibles les violences alléguées.

Tout d'abord la **pratique du viol et des menaces de viol** a été dénoncée par M. LAAROUSSI, M. ZAOUI, M. BOUTINGUIZA, M. DICHE, M. EDDAH, M. KHOUNA, M. TOUBALI, M. BANGA. Dans la majorité des cas, les viols étaient réalisés à l'aide d'un objet.

Ensuite, le **supplice de la falaqa** a été décrit à maintes reprises dans les expertises de M. LAAROUSI, M. ZAOUÏ, M. BOUTINGUIZA, M. DICHE, M. KHOUNA BOUBIT, M. HADI, M. BANGA, M. ISMAILI, M. LFAKIR.

Enfin, trois détenus font état d'une pratique visant à **arracher les ongles** : Messieurs ISMAILI, ZAOUÏ et LAAROUSSI.

Il ressort de ces déclarations que les forces de l'ordre marocaine utiliseraient des méthodes systématiques de torture basées sur certains modes opératoires et techniques de torture.

Les dénonciations concordantes des mêmes modes opératoires par plusieurs détenus est d'ailleurs un indice fort de la véracité des déclarations.

Par ailleurs, le Protocole d'Istanbul met en place une obligation d'enquête lorsque la pratique de la torture semble systématique :

« 75. Lorsqu'une procédure d'enquête se révèle inadéquate en raison d'un manque de moyens ou de savoir-faire, pour cause de partialité, parce que la pratique de la torture semble systématique, ou pour d'autres raisons sérieuses, l'État poursuivra l'enquête par le biais d'une commission indépendante ou autre procédure similaire. Les membres de ladite commission seront choisis parmi des personnes reconnues pour leur impartialité, leur compétence et leur indépendance. En particulier, elles devront être indépendantes de toute institution, entité ou personne pouvant être mêlée à l'enquête. »

Or, le fait d'omettre de recommander la conduite d'une telle enquête impartiale est un manquement grave aux obligations qui s'imposent à tout praticien de la médecine, découlant notamment du serment d'Hippocrate :

« Mon premier souci sera de rétablir, de préserver ou de promouvoir la santé dans tous ses éléments, physiques et mentaux, individuels et sociaux.

Je respecterai toutes les personnes, leur autonomie et leur volonté, sans aucune discrimination selon leur état ou leurs convictions.

J'interviendrai pour les protéger si elles sont affaiblies, vulnérables ou menacées dans leur intégrité ou leur dignité.

Même sous la contrainte, je ne ferai pas usage de mes connaissances contre les lois de l'humanité. »

8. L'absence d'information sur le suivi médical en détention

8.1. L'absence de description de l'état de santé dans les rapports des premières consultations

Les quelques rapports établis lors des premières consultations des accusés ne décrivent pas leur état de santé (MMS. TOUBALI, ISMAILI, HADI, DICHE, LFAKIR, KHEFAOUNI,

BOUBIT, LAAROUSSI, BOUTENGUIZA, ZAOUI, BOURIAL, EDDAH et TAHLIL). Chacune des expertises reprend la même formulation lacunaire : « *Il ne figure pas une description de son état de santé.* »

Il est parfois précisé que, malgré l'absence de description de l'état général, une demande de consultation spécialisée a été faite, ou encore une prescription médicamenteuse accordée, sans en préciser les causes ou la nature.

Une seule expertise est différente, celle de M. BANGA, qui précise que « *son examen à l'admission est sans particularité* ». Cette formulation est tout aussi lacunaire et ne donne aucun élément précis sur la santé du prévenu.

Ainsi, aucune information n'est extraite de ces consultations et ne permet de vérifier l'état dans lequel le prévenu est arrivé ou la façon dont il a été traité en détention (pour certains, les premières consultations ont eu lieu quelques années après l'arrivée en prison).

8.2. L'absence de rapports concernant les interventions médicales lors de la détention des accusés

Au-delà de l'absence totale de rapports des premières consultations, les autres interventions qui ont eu lieu en prison ne sont pas répertoriées et détaillées non plus. En effet, plusieurs détenus affirment avoir été soignés à plusieurs reprises au cours de leur incarcération. A titre d'exemple, la majorité des détenus de la prison de Salé 2 rapportent avoir été soignés par le même infirmier, M. HAMID, sans qu'aucun rapport n'ait jamais été établi. M. HADI précise qu'après trois mois d'incarcération à la prison de Salé 2, l'infirmier nommé HAMID lui a prodigué des soins. Aucun rapport n'a été fait lors de cette intervention.

M. DICHE a été soigné dans cette même prison, l'infirmier HAMID lui a soigné la jambe droite. Aucun rapport n'en atteste et ne permet donc de vérifier l'état de santé de M. DICHE qui a nécessité une intervention médicale lors de son incarcération.

M. KHEFAOUNI a reçu la visite de l'infirmier HAMID lors de son second jour à la prison de Salé 2, qui lui a fait des soins locaux et procuré des médicaments. Il a ensuite été soigné par ce même infirmier pendant une quinzaine de jours. Aucune trace de ces nombreuses interventions ne sont versées à la procédure.

M. LAAROUSSI affirme également avoir reçu des soins de l'infirmier HAMID (une injection). Encore une fois, aucun rapport n'est produit.

M. BANGA a été soigné par l'infirmier HAMID lors de ses premiers jours d'incarcération à la prison de Salé 2 sans qu'aucune trace ne soit conservée.

M. ZAOUI affirme aussi avoir reçu la visite de l'infirmier HAMID lors de son arrivée à la prison de Salé 2 deux fois par jour pendant une quarantaine de jours, puis un jour sur deux, pour lui faire des soins locaux. Aucune trace de ces traitements de longue durée n'est procurée.

M. EDDAH a également été soigné par l'infirmier HAMID durant une semaine sur des lé-

sions fessières. Encore une fois, aucun rapport de ces interventions n'a été établi.

Près de la moitié des détenus affirment avoir été soignés à plusieurs reprises par un même infirmier lors de leur incarcération à la prison de Salé 2. La multiplicité des témoignages rapportant des informations similaires en renforce la crédibilité. Dans la plupart des cas, les soins ont été prodigués aux détenus dès leur incarcération ou peu de temps après. Cela signifie qu'ils ont eu besoin de soins et traitements en raison de ce qu'ils ont subi pendant leur garde à vue, étant donné que les registres de garde à vue mentionnent tous que les détenus étaient en bonne santé lors de leur arrestation.

Le fait qu'aucun rapport n'a jamais été établi sur les très nombreuses interventions de cet infirmier laisse suspecter une volonté de l'administration pénitentiaire de dissimuler l'état de santé des accusés lors de leur incarcération et pendant leur maintien à la prison de Salé 2 afin de protéger les agents de l'État.

II. Présentation des résultats des contre-expertises

Le manuel pour enquêter de manière efficace sur la torture et autres peines ou traitements cruels, inhumains ou dégradants dit « Protocole d'Istanbul » contient les normes générales standards pour rechercher et documenter les situations de torture ou autres violations des droits humains.

Le manuel et les principes sont le fruit de trois ans de travail d'analyse, de recherche et de rédaction accompli par plus de 75 spécialistes du droit, de la santé et des droits de l'homme représentant 40 organisations ou institutions de 15 pays. Le manuel a été conçu et élaboré en collaboration par des juristes, des médecins, des psychologues et des observateurs des droits de l'homme.

Il a pour but d'aider les États à répondre à l'une des exigences les plus essentielles pour la protection des individus contre la torture, à savoir, la mise en place de méthodes d'enquêtes efficaces.

Il pose notamment dans quel cadre doivent s'effectuer les expertises médico-légales des victimes de torture, édictant une série de règles de bonnes pratiques afin de réaliser des examens physiques et psychologiques aux conclusions fiables et crédibles.

1. Les conclusions des contre-expertises : les conclusions des quinze expertises médicales sont peu crédibles et ne respectent pas les prescriptions du Protocole d'Istanbul

La Cour d'appel de Rabat a mandaté plusieurs experts afin qu'ils réalisent des expertises médicales, physiques et psychologiques, sur les prisonniers. Le mandat donne ordre à ces médecins de « *dresser un rapport détaillé en se conformant au contenu du Protocole d'Istanbul, manuel d'enquête efficace sur la torture et autres peines et traitements inhumains et dégradants de 1999* ».

En conséquence, les quinze rapports d'expertises ont été présentés à quatre experts français et espagnols afin qu'ils en analysent la fiabilité et la crédibilité, notamment au regard des recommandations du Protocole d'Istanbul : les docteurs FLORES DOMINGUEZ, SANCHEZ

UGENA et SEPULVEDA RAMOS, ainsi qu'au professeur PATSALIDES HOFMANN.

1.1. Profils des experts et missions

Les docteurs FLORES DOMINGUEZ et SANCHEZ UGENA sont des médecins experts à Badajoz (Espagne), membres du *Colegio Oficial de Medicos* de la province de Badajoz.

La professeur PATSALIDES HOFMANN, expert auprès de la Cour Pénale Internationale, docteur en psychologie clinique, est co-auteure du Protocole d'Istanbul. Elle a réalisé des centaines d'expertises psychologiques sur des personnes victimes de la torture.

Le docteur SEPULVEDA RAMOS est médecin psychiatre à l'Institut Pere Mata, Centre de santé mentale de l'adulte à Reus (Espagne).

1.2. Le non-respect du Protocole d'Istanbul

Les trois contre-expertises concluent, sans appel, à un non-respect caractérisé des préconisations du Protocole d'Istanbul et à la mise en cause patente de la crédibilité des conclusions des expertises.

Seront présentés ci-après les huit manquements les plus graves aux recommandations du Protocole d'Istanbul, entachant fortement la fiabilité et la crédibilité des conclusions d'expertises remises à la Cour d'appel.

1.2.1. Le non-respect des principes d'indépendance et d'impartialité des experts

L'indépendance et l'impartialité sont les critères premiers garantissant la crédibilité des expertises médicales. Le Protocole d'Istanbul dispose : « *Les enquêteurs doivent être compétents, impartiaux et indépendants vis-à-vis des suspects et de l'organe qui les emploie.* »

Ainsi, des experts nommés par une Cour ne sauraient être considérés comme indépendants.

Les quatre médecins experts dénoncent donc l'absence d'indépendance vis-à-vis de la Cour qui a pour rôle de juger les prisonniers et ils mettent en doute la protection des garanties posées par le Protocole d'Istanbul.

1.2.2. La non prise en compte du temps écoulé entre les dates d'exécution des tortures alléguées et les dates d'expertises médicales

Les quatre médecins experts dénoncent le délai extrêmement long qui s'est écoulé entre les faits allégués de torture et les expertises médicales (près de sept années).

Les traces des sévices peuvent s'altérer dans le temps, ce qui constitue une limite aux conclusions d'expertises ; or les rapports ne pointent pas cette limite pourtant fondamentale.

1.2.3. Le non-respect des principes relatifs aux conditions d'expertise

Afin de protéger la confidentialité des données médicales, mais aussi afin que le sujet de l'ex-

pertise soit placé dans une situation de confiance vis-à-vis du praticien, il est recommandé que les examens médicaux soient réalisés dans des lieux neutres en la seule présence du médecin expert.

Or, les expertises ont été réalisées au Centre de détention pénitentiaire et, au regard des déclarations recueillies, porte ouverte en présence des agents de sécurité marocain.

Pour les docteurs FLORES DOMINGUEZ et SANCHEZ UGENA, mais aussi pour la Professeur PATSALIDES HOFMAN, ces circonstances invalident les conclusions d'expertises.

1.2.4. La durée trop courte des entretiens

Recueillir des récits en matière de torture requiert plusieurs heures d'entretien et plusieurs entretiens avec les mêmes sujets, sans quoi les rapports d'expertises n'atteindront pas le niveau de fiabilité requis par un tribunal.

Le Protocole indique qu'un entretien de deux à quatre heures peut « *s'avérer insuffisant pour évaluer les éléments de preuve physiques ou psychologiques de la torture* » et qu'un « *deuxième voire un troisième entretien peut alors s'avérer nécessaire pour achever l'évaluation.* » (Point 162).

Les quatre médecins auteurs des contre-expertises dénoncent la durée extrêmement courte – 25 à 45 minutes – des entretiens des quinze prisonniers et, partant, contestent la fiabilité des conclusions d'expertises rendues.

1.2.5. Rapports d'expertises sommaires, superficiels et parfois erronés

D'une part, les quatre médecins dénoncent vivement la caractère sommaire et superficiel des expertises. Ils pointent notamment :

- les faits présentés de façon imprécise,
- pour les expertises physiques :
 - les traces physiques sont uniquement décrites, aucune analyse médicale réelle de ces traces n'est réalisée,
 - très peu d'exploration traumatologiques sont réalisées (des radiologies auraient dû être systématiquement réalisées), - les expertises psychologiques sont en réalité de simples expertises mentales, puisqu'aucune analyse clinique n'est réalisée et que les informations collectées sont lapidaires ; les informations obtenues ne permettent pas d'en déduire une quelconque analyse psychologique sur l'existence d'un stress post-traumatique. **Sur l'ensemble des expertises, tant physiques que psychologiques, de nombreuses erreurs sont relevées.** D'autre part, **les médecins experts marocains n'ont pas analysé la fluctuation temporelle ni la variabilité des symptômes de stress post-traumatique.** Enfin, les docteurs FLORES DOMINGUEZ et SANCHEZ UGENA relèvent la présence de « copier-coller »

grossiers qui mettent fortement en doute la fiabilité des rapports d'expertises. Ainsi, dans le rapport concernant M. **BABEIT** apparaît : « il n'y a pas chez M. BOUTIN-GUIZA de symptômes de stress post-traumatique ». **1.2.6. Non-respect du critère d'investigation des modes répétés et systématiques d'abus et de torture** La Pr PATSALIDES HOFMAN rappelle que l'existence de modes répétés de torture (ongles arrachés, falaqa, viols) aurait dû conduire à l'établissement d'une commission d'enquête indépendante. **1.2.7. L'identité parfaite des conclusions d'expertises** L'ensemble des quinze expertises présentent des conclusions identiques. Or, il est impossible, en matière médicale, tant physique que psychologique, d'obtenir des résultats absolument identiques. Voici une conclusion-type : « *Monsieur a rapporté avoir subi des formes multiples et répétées de torture et autres mauvais traitements durant la période de la garde à vue.*

Ces actes de torture allégués ont été selon l'intéressé à l'origine de symptômes physiques à la phase aiguë.

Les symptômes qu'il présente actuellement et les données objectives de notre examen ne sont pas spécifiques aux différentes méthodes de tortures alléguées.»

1.2.8. Les conclusions n'écartent pas la possibilité des tortures

Enfin, les docteurs FLORES DOMINGUEZ, SANCHEZ UGENA et SEPULVEDA RAMOS rappellent que les conclusions des expertises n'écartent pas la réalité des tortures alléguées. Bien au contraire...

1.3. Contre-expertise générale

La contre-expertise des docteurs FLORES DOMINGUEZ et SANCHEZ UGENA critique tant le non-respect des règles fondamentales de conduite d'expertise en matière de torture que les conclusions présentées dans les rapports.

1.3.1. Les remarques relatives au non-respect de prescriptions fondamentales du Protocole d'Istanbul ont été énoncées précédemment : conditions de réalisation des examens ne garantissant pas la confidentialité et la confiance des sujets, non indépendance des médecins experts, formalisme excessif allant jusqu'au « copier-coller » de paragraphes des rapports, et durée trop courte des entretiens et examens médicaux.

Pour les docteurs FLORES DOMINGUEZ et SANCHEZ UGENA, ces premiers éléments invalident les conclusions d'expertises et mettent fortement en doute la fiabilité des rapports remis à la Cour d'appel de Rabat.

1.3.2. La contre-expertise expose ensuite une analyse précise du contenu des rapports d'ex-

pertise et pointe principalement l'absence criante de rigueur :

- **Présentation des faits sommaire et superficielle**

Une description méticuleuse des faits de torture allégués est obligatoire pour présenter des conclusions fiables à un tribunal. Le manque de rigueur empêche, *de facto*, de pouvoir établir une corrélation entre les faits allégués et les cicatrices ou symptômes constatés.

- **Exploration traumatique insuffisante**

Les examens physiques sont trop sommaires pour en tirer des conclusions fiables. Il aurait notamment fallu réaliser des radiographies sur l'ensemble du corps de tous les prisonniers pour constater des fractures qui auraient cicatrisé avec le temps.

- **Exploration psychologique insuffisante**

L'omission d'examen clinique et neurologique **invalide totalement** les conclusions d'absence de symptômes de stress post-traumatique.

- **Analyse du dossier médical de la prison**

Les médecins experts relèvent une incompatibilité manifeste entre les faits de torture allégués et l'absence d'aide médicale en détention. À ce titre, ils rappellent que l'absence d'assistance médicale à une personne victime de torture constitue, en soi, une forme de torture.

Dans certains cas, le dossier médical pénitentiaire fait état de consultations médicales, mais uniquement de façon générique, sans en tirer aucune analyse. Une expertise consciencieuse et professionnelle requiert la présentation précise de toutes les consultations (date, motifs, traitements, etc...). De même, la simple mention de grèves de la faim, sans en préciser la durée ou les implications médicales, constitue une omission mettant en doute la validité des expertises.

- **Les conclusions des quinze expertises parfaitement identiques**

La répétition à l'identique des mêmes conclusions pour les quinze expertises en invalide le contenu.

Or, il est rappelé que le Protocole d'Istanbul précise les modalités d'évaluation du degré de compatibilité des lésions constatées avec les sévices dénoncés : spécifique, typique, très compatible, compatible, incompatible.

En conséquence, les conclusions des rapports d'expertises ne mettent pas en exergue une incompatibilité des allégations et des constats médicaux.

II. Contre-expertises psychologiques 2.1. L'analyse de la Pr PATSALIDES HOFMAN

Les conclusions de la Pr PATSALIDES HOFMAN démontrent que les « *critères majeurs dé-*

taillés par le Protocole d'Istanbul [...] n'ont pas été respectés par les expertises » et qu'on peut mettre « en doute soit la qualification et le professionnalisme, soit l'impartialité et l'indépendance du médecin expert » sachant que, de sa part, « au moins une grave négligence des standards professionnels préconisés par le Protocole d'Istanbul doit être accusée ». Et d'ajouter que « l'impartialité, l'indépendance, et par là la crédibilité du médecin expert [sont] compromises dans la situation actuelle. »

Ainsi, « les résultats des examens présents sont loin de permettre une conclusion probante au sujet de la présence ou de l'absence de symptômes psycho-pathologiques chez les détenus examinés et de leur éventuelle corroboration avec les faits allégués. »

La Pr PATSALIDES HOFMAN a mis en exergue le non-respect d'une série de six critères majeurs du Protocole d'Istanbul.

• Non-respect des principes d'indépendance et d'impartialité des experts

Le Dr BOUHELAL est affilié au système judiciaire marocain, système qui a condamné par le passé et qui accuse aujourd'hui les détenus sujets des expertises. Cette affiliation, cette dualité, met en doute l'impartialité du médecin expert. Ce doute est fortement accru par le fait que le médecin expert aurait dû émettre une réserve sur le diagnostic qu'il a posé à cause de cette dualité. Or, il a omis d'émettre une telle réserve.

• Non prise en compte du temps écoulé entre les dates d'exécution des tortures alléguées et les dates d'expertises médicales

Aucune expertise n'adresse le problème du délai extrêmement long écoulé entre les faits allégués (2010) et les expertises (2017). Et, de surcroît, les rapports d'expertise dressés ne mettent pas en exergue les limites à la validité des résultats et des diagnostics dues au délai écoulé.

• Le critère de la fluctuation temporelle et de la variabilité des symptômes post-traumatiques

La Pr PATSALIDES HOFMAN rappelle qu'il est établi dans la littérature relative au stress post-traumatique (y compris dans le DSM2- 0) que :

- les symptômes psychologiques fluctuent de façon importante à travers le temps,
- l'absence ou la faible présence de symptômes ne peut pas être interprétée comme une preuve d'absence de traitements inhumains ou dégradants ou d'actes de torture subis des années auparavant.

En outre, elle rappelle qu'aucun lien n'a jamais été établi entre une méthode de torture spécifique et la présence – ou l'absence – de symptômes de stress post-traumatique.

Ainsi « les conclusions des expertises sur la non-spécificité des "traces" physiques et psychologiques et leur absence de concordance avec les méthodes spécifiques de torture alléguées posent problème surtout en ce qui concerne les symptômes psychologiques qui ne sont jamais spécifiques relatifs à l'une ou l'autre méthode de torture. »

La Pr PATSALIDES HOFMAN en conclut qu'il est impossible d'affirmer que « les données objectives de l'examen ne sont pas spécifiques aux différentes méthodes de tortures alléguées. » Or l'ensemble des quinze expertises arrivent à cette conclusion.

• Non-respect du critère de l'investigation des modes répétés et systématiques d'abus et de torture

Les allégations des détenus expertisés laissent apparaître des modes de torture répétés et systématiques.

Or, le Protocole d'Istanbul requiert, dans cette hypothèse de schémas de torture, que l'État crée une commission d'enquête indépendante.

L'absence d'une telle recommandation dans les expertises affaiblit la crédibilité de celles-ci.

20 « Manuel diagnostique et statistique des troubles mentaux »

Non-respect des critères concernant le cadre de l'évaluation psychologique

Durée des entretiens trop courte

La durée extrêmement courte des entretiens – entre 25 min et 45 min – ne permet pas de réaliser des évaluations respectant les plus hauts standards de la profession (qui nécessitent un premier entretien d'au moins 3 heures et souvent un second entretien), tel que requis par le Protocole d'Istanbul.

Le format très court des entretiens révèle qu'il s'agit plus d'un examen mental plutôt que d'une véritable évaluation psychologique des détenus.

o

Les évaluations du Dr BOUHELAL sont sommaires et dépourvues d'éléments cliniques observés ou rapportés.

L'absence d'évaluation psychologique approfondie (entretiens cliniques basés sur des observations cliniques, questionnaires appropriés, etc.), alors que des tests psychologiques validés en langue arabe existent, met en doute la pertinence des conclusions des expertises.

En outre, l'absence de retranscription des questions posées, l'absence de questions sur les révélations des détenus concernant l'identité de leurs tortionnaires, et la stéréotypie des diagnostics concluant à l'absence de symptômes de stress post-traumatique mettent profondément en doute la crédibilité des expertises du Dr BOUHELAL.

Enfin le Dr BOUHELAL conclut dans les quinze expertises que les traces psychologiques ne sont pas spécifiques aux tortures alléguées, alors qu'il est généralement reconnu qu'il n'existe aucun lien entre un type de torture et un symptôme psychologique.

o

L'omission de toute mention sur les limites fondamentales à la validité des expertises affecte profondément la crédibilité des expertises.

En effet, les expertises ont été réalisées dans un contexte de stress particulier – le milieu pénitentiaire avec à proximité le personnel carcéral – affectant leur validité comme potentiellement inhibant ou anxiogène. De plus, huit des vingt-quatre prisonniers ont refusé de se soumettre aux expertises, de peur qu'elles ne respectent pas les standards internationaux et notamment le Protocole d'Istanbul.

« Vu les omissions, négligences, et le caractère sommaire des expertises psychologiques présentées par le Dr BOUHELAL l'établissement d'une commission indépendante d'investigation est recommandé qui devrait permettre aux détenus de recevoir une deuxième expertise médicale et psychologique suivant les critères et conditions établis par le Protocole d'Istanbul. »

Portée et structure sommaires de l'évaluation visant à étayer des allégations de torture et de traitements cruels, inhumains et dégradants

Absence d'énonciation des limites de la validité de l'expertise et évaluation des facteurs potentiels confondant les résultats obtenus

2.2. L'analyse du Dr SEPULVEDA RAMOS

Le docteur SEPULVEDA RAMOS démontre dans son analyse des expertises psychologiques que l'expert désigné par la Cour d'appel de Rabat n'a pas respecté les prescriptions du Protocole d'Istanbul. En conséquence, leur fiabilité doit être mise en doute.

D'une part, le Dr SEPULVEDA RAMOS indique dans ses observations que les expertises ne respectent pas les prescriptions du Protocole relatives au déroulement des entretiens en matière d'expertise psychologique, notamment les points 264, 267, 268 et 269. Ni l'interprète ni

constatés. Les experts concluent à l'absence de stress post-traumatique sans spécifier les symptômes examinés. En outre, aucun examen neuropsychologique n'est réalisé, alors que plusieurs sujets parlent de traumatismes cranio-encéphaliques. Les expertises ne permettent donc pas de déterminer de possibles altérations de la mémoire ou de changements de personnalité. En conséquence, les expertises ne respectent pas les points 252, 277, 299 et 300 du Protocole d'Istanbul.

À titre d'illustration, le Dr SEPULVEDA RAMOS conclut que les symptômes décrits par Mohamed El Bachir Boutinguiza, Abdeljalil Laaroussi, Mohamed Moubarak Lfakir et Hassan Zaoui doivent être analysés comme la révélation de la présence d'un stress post-traumatique.

À titre d'illustration, il n'est pas possible de déterminer si les symptômes constituent un trait de la personnalité antérieur ou postérieur aux faits de torture chez :

- Mohamed Amine Hadi

- Dafi Deich De même, les douleurs somatiques sans cause organique ne sont jamais analysées comme étant la révélation d'un symptôme psychologique, contrairement à ce qu'indiquent les points 245 et 259 du Protocole. Il s'agit notamment des cas de :

- Mohammed Khouna Babeit

- Ibrahim Ismaili Enfin, l'expert ne fait aucune mention du fonctionnement personnel, social et familial des sujets, qui constitue pourtant une recommandation du point 285 du Protocole. En somme, les conclusions des expertises présentent des incohérences alarmantes. À titre d'illustration, le Dr SEPULVEDA RAMOS conclut concernant l'expertise psychologique de Abdeljalil Laaroussi : *« Il n'est pas cohérent de décrire des symptômes d'hyperréactivité (irritabilité, logorrhée, par exemple) touchant la mémoire, le sommeil, et d'en conclure que l'examen psychologique est normal, sans considérer que beaucoup d'autres symptômes ne sont même pas décrits, tels les symptômes dépressifs ou somatiques, ou d'autres encore pour lesquels on ne donne pas de précision, tels ceux qui affectent le sommeil... »* Le Dr SEPULVEDA RAMOS conclut que les rapports d'expertises, de par leurs insuffisances caractérisées, ne permettent pas d'affirmer que les troubles sont minimes et ne sont pas attribuables à la torture. Au contraire, il conclut sans détour pour l'ensemble des quinze expertises, contrairement au Dr BOUHELAL, *« qu'on ne peut pas déduire de ce qui est décrit qu'il s'agisse d'un examen normal ou qu'il ne puisse pas y avoir de lien entre les symptômes et les tortures alléguées »*.

En conséquence, les expertises psychologiques, réalisées sans respecter les prescriptions du Protocole d'Istanbul, ne permettent pas d'éclairer la Cour sur l'état psychologique réel des prisonniers.

III. Les faits dénoncés et les expertises tendent à confirmer la réalité des tortures alléguées

Le principe relatif à l'interdiction de la torture est une norme impérative ou *jus cogens*, c'est-à-dire une norme qui se situe dans la hiérarchie internationale à un rang plus élevé que le droit conventionnel et que les règles du droit coutumier "ordinaire". Elle est désormais l'une des normes les plus fondamentales de la communauté internationale.

Dans la décision « *Egyptian Initiative for Personal Rights and Interights v./Arabe Republic of Egypt* » du 1 mars 2011, la Commission africaine indique que la charge incombe à l'État défendeur de prouver que les allégations de torture ne sont pas fondées :

« Dans le cas d'espèce, l'État défendeur n'a ni tenté de donner une explication satisfaisante sur la cause des blessures, ni de prendre des mesures pour enquêter et identifier les circonstances dans lesquelles elles avaient été causées. Le tribunal n'a rien fait pour avoir des éclaircissements sur les questions soulevées dans les rapports d'expertise médico-légale ou les témoignages des victimes. »

Or, il ressort des expertises médicales :

- que les accusés étaient en bon état au moment de leur garde à vue et qu'après ces gardes-à-vue, ils ont tous été maintenus en détention préventive ;
- que les accusés ont tous des cicatrices. Dès lors, il existe une forte présomption que les sévices ayant occasionné les blessures constatées ne peuvent avoir eu lieu que lors de cette détention. De même, les experts ne se prononcent généralement pas sur l'origine des cicatrices constatées, ils se contentent, à l'occasion, d'émettre des hypothèses hautement contestables (cf. précédemment). La question de l'origine des cicatrices présentes sur les corps des détenus n'a pas été tranchée durant le procès. Les autorités marocaines n'ont pas tenté de donner une explication satisfaisante sur la cause des blessures, des séquelles psychologiques, ni de prendre des mesures pour enquêter et identifier les circonstances dans lesquelles elles avaient été causées. Au contraire, les prisonniers entendent démontrer que les cicatrices correspondent à leurs déclarations (cf : tableaux). **De surcroît, les conclusions de la contre-expertise des Dr FLORES DOMINGUEZ et SANCHEZ UGENA tendent au contraire à affirmer que les conclusions des expertises n'affirment pas d'incompatibilité entre les traces constatées et les sévices allégués. La Cour d'appel de Rabat ne pouvait donc pas, sans réaliser une lecture gravement erronée des conclusions d'expertises, affirmer, comme elle l'a fait, que les rapports d'expertise produits contestaient la réalité des tortures dénoncées.**

REMARQUES CONCLUSIVES

Il ressort de l'ensemble des éléments présentés dans cette note que les éléments de preuve matériels solides qui permettraient de démontrer la culpabilité des accusés du procès de Gdeim Izik dans les infractions pour lesquelles ils sont poursuivis selon l'acte d'accusation :

- faits de violence commis sur des agents des forces publiques, entraînant la mort avec intention de la donner,
- association de malfaiteurs dans le but de commettre un crime,
- profanation de cadavres, font cruellement défaut.

Tous les éléments présentés par l'accusation, sans exception, n'ont aucune crédibilité scientifique et/ou juridique. Y compris les procès-verbaux obtenus sous la torture, « preuve » centrale du procès militaire et de la procédure devant la Cour d'appel de Rabat, qui sont totalement inopérants.

D'autant plus que les rapports des expertises médicales permettent de conclure, selon les experts qui ont réalisé les contre-expertises, que les déclarations des accusés sont aujourd'hui hautement crédibles et qu'on ne saurait remettre en cause les tortures alléguées.

En outre, la liste des victimes n'a jamais été présentée aux accusés.

Ainsi, l'état du dossier devant la Cour d'appel aujourd'hui est exactement similaire à celui qui fut présenté devant le Tribunal militaire en 2013.

Or la Cour de cassation a déjà sanctionné l'absence de preuve et d'identification des victimes par sa décision du 27 juillet 2016.

Pourtant, face à cette carence manifeste qui ne devrait que conduire à la relaxe des accusés, il n'est pas exclu que la Cour d'appel de Rabat prononce une requalification des faits, afin de résoudre cette difficulté.

En effet, lors des audiences des 7 et 8 juin 2017, certains avocats des parties civiles ont demandé la requalification des faits en crimes d'« atteinte à la sûreté de l'État ».

Or, pour ce type de crimes, le niveau d'exigence des preuves matérielles est moins strict.

Il est à préciser que les personnes reconnues coupables de ces infractions encourent la peine de mort.

Cette tentative de requalifier est tout simplement grave et constituerait, si elle était prononcée, une atteinte inacceptable au procès équitable et aux droits de la défense.

En effet, l'acte d'accusation, ici rédigé par le juge d'instruction près le Tribunal militaire, joue un rôle déterminant dans les poursuites pénales : à compter de sa signification, la personne mise en cause est officiellement avisée par écrit de la base juridique et factuelle des reproches formulés contre elle. L'article 14 du Pacte international relatif aux droits civils et politiques

reconnait ainsi à l'accusé le droit d'être informé non seulement de la cause de l'accusation, c'est-à-dire des faits matériels qui sont mis à sa charge et sur lesquels se fonde l'accusation, mais aussi de la qualification juridique donnée à ces faits et ce d'une manière détaillée.

En matière pénale, une information précise et complète des charges pesant contre un accusé, et donc la qualification juridique que la juridiction pourrait retenir à son encontre, est ainsi une condition essentielle et basique de l'équité de la procédure. Elle permet aux accusés de préparer leur défense, au regard de la nature et des motifs de l'accusation.

En l'espèce, un changement de qualification sans que les détenus aient eu l'occasion de préparer et de présenter leurs moyens de défense relatifs à cette nouvelle qualification et à ses conséquences, y compris, le cas échéant, au regard de la peine susceptible d'être prononcée concrètement, serait donc inadmissible au regard du droit à un procès équitable.

En effet, si cette requalification devait être prononcée, les accusés auraient présenté durant six mois de procès une défense relative à des accusations d'homicides, et non d'atteinte à la sûreté de l'État.

Ils n'auraient donc pas pu assurer leur défense.

Il ne faut cependant pas se leurrer.

L'unique objectif de cette requalification est de présenter les 24 militants de l'autodétermination, dont 21 sont aujourd'hui emprisonnés depuis presque 7 ans, comme des terroristes ou les fomenteurs d'un État de guerre soutenus par des forces obscures et, à en croire la presse, un État étranger.

Ils ont toujours été, et seront toujours, des militants.

D'ailleurs, depuis la reprise du procès, la presse ainsi que les questions posées par le procureur du Roi et les parties civiles relayées par le juge orientent les esprits vers des actes de nature terroriste.

Faut-il rappeler que cette méthode qui consiste à emprisonner des opposants politiques pour acte terroriste est déjà connue ?

Cette utilisation absolument abusive de la notion de terroriste pour cibler délibérément des opposants politiques, des défenseurs des droits humains, des artistes et des représentants des travailleurs est révélatrice de ce que, finalement, c'est bien en raison de leur opinion politique que les accusés sont aujourd'hui emprisonnés et jugés de nouveau.

Amnesty international²¹ a d'ailleurs vivement critiqué cette dérive dangereuse.

« Cela peut avoir d'importantes conséquences, qui vont du profilage des membres de certains groupes dont on estime qu'ils ont un penchant pour la « radicalisation », l'« extrémisme » ou la « criminalité » sur la base de stéréotypes – à savoir la culpabilité par association – à l'utilisation absolument abusive par les États de lois définissant de façon large le terrorisme pour cibler délibérément des opposants politiques, des défenseurs des droits humains ou de l'environnement. »

ronnement, des journalistes, des artistes et des représentants des travailleurs. »

Ce changement d'orientation prouve une seule et unique chose : **comme l'ont admis les parties civiles lors de leur plaidoirie, il n'existe pas de preuves matérielles** que les détenus de Gdeim Izik aient commis les meurtres pour lesquels ils sont en prison depuis presque 7 ans.

La justice marocaine n'a jamais réussi, en sept années, et à l'issue de deux procès, à prouver le contraire de ce que les accusés affirment depuis le début : leur innocence.

Comme le disait l'un des accusés : « *Si aimer sa patrie est un crime, alors considérez moi comme le plus grand des criminels.* »

Paris le 15 juin 2017

²¹ Rapport d'Amnesty International
<https://www.amnesty.org/en/documents/eur01/5342/2017/en/> !73

I. Biographie des accusés

Annexes

II. Décision de la Cour de cassation en date du 27 juillet 2016

III. Décision du Comité contre la torture en date du 15 novembre 2016

IV. Contre-expertises des autopsies

V. Contre-expertises des rapports médicaux sur la torture

VI. Tableau sur la concordance entre les déclarations des accusés et les séquelles physiques constatées

VII. Statistiques sur l'admissibilité des questions posées aux accusés lors de l'audience du 27 mars 2017

4. ACOSOP Report on torture, human right violation and health condition.



Report on Torture, Human Right Violation and Health Condition

Denounced by the 24 sahwawí prisoners of Gdeim Izik at the trial in the military court of Justice of Rabat held at February the 1st and from february the 8th to the 16th, 2013 24

(Report based upon information gathered locally by the observers present at the trial)

March 2013

Has taken place last February the 1st and from 8th to the 16th same month the trial of 25 human rights sahwawi activists hold in detention since November 2012, at the military court of law of Rabat, Morocco.

ACOSOP, trough its observers, Isabel Lourenço and Rita Reis, verified that further then the legal irregularities, previously denounced by the Report issued by the spanish NGO *Fundación Sahara Occidental*, in which the ACOSOP observers where embeded, other situations against human rights:

- f. During all the trial both defence as well as the prisoners declared constant violations of human right perpetrated by the moroccan authorities;
- g. The detention process didn't follow the legal procedures, and converted itself in many cases in abductions in which prisoners where held In part unknown for several days;
- h. All the detentions took place in Western Sahara, occupied by Morocco, and were

- displaced to the Salé II prison, in Rabat, located hundreds of kilometres from their families and homeland;
- i. The health of the 24 detainees was severely affected both from the physical as well as psychological;
 - j. During the numerous trial sessions several prisoners as **Ahmed Sbai** and **Laaroussi Abdeljalil**, had to leave the hearings, and been displaced to the University Military Hospital Mohamed V. In this cases the medical reports read in court weren't consistent with the prisoners symptoms and complaints;
 - k. Nine of the detainees present physical conditions regarded as severe, due to the tortures suffered in prison;
 - l. A significant number of detainees declared to suffer of diseases, as diabetes, heart or stomach problems, without receiving the appropriate treatment or medicine at the prison;
 - m. All of the detainees declared to have suffered physical and psychological torture and sexual molestation;
 - n. **Ten** of the detainees claimed to have been tortured once inside the Rabat Military Court House facilities, as well as in the El Aiün First Instance Court House, before the judges of instruction, refereeing also to the presence other prisoners at these occasions;
 - l. Both the detainees and defence lawyers asked for the attainment of medical inspections and reports to support the claim of subjection to torture, demand that was denied by the court;
 - m. In accordance to the words of the King's persecutor and of the Chairmen of the Judges, the prisoners signed a statement declaring that they where never submitted to torture, a practice inexistent in countries where this is not used;
 - n. At several occasions the Chairmen of the Judges made diminishing remarks to the education degree of the detainees, refereeing that those had no capacity and knowledge to understand and debate the laws or the process;
 - o. According to the testimonies of the detainees, all documentation, either the statements or the the confessions presented by the King's General persecutor, are identical for all the accused, with totally identical phrases and paragraphs;
 - p. The prisoners stated that they where in state of exhaustion due to the fact that they are brought from prison at 5 am, and return there always after midnight;

q. All the detainees, backed by the defence, asked for medical examination that could be able to determine the tortures that they have been submitted.

From all testimonies, **all** declared to have been under physical and psychological torture, and **five** to have suffered sexual molestation, from these **nine** showed in court marks and scars of the inflicted tortures. **Seven** declared to have been tortured already inside the facilities of the Rabat Military Court. The **majority** of the prisoners stated that they were abducted. **All** claim to have signed the confessions and statements under torture. **Seven** reported to suffer from severe health conditions. The **majority** of the detainees declared to have already demanded the attainment of medical exams to back the claim of the practice of torture, demand that was stressed out both by the prisoners as well as the defence lawyers during the trial hearings.

As far as the tortures that the prisoners claim to have been inflicted upon them, these include:

- a. Successive spanking with a great diversity of objects such as truncheons or shoes; Sleep depriving; Restrained access to food or drink;
- i. Exposure to cold, by depriving prisoners of their clothes and blankets;
- j. Sweden Drink technique: by forced ingestion of fezzes, urine, bugs (like cockroaches) and any other kind of dirt;
- k. Ashtray technique: by extinguish cigarettes on the prisoner's body
- l. Grill technique: being tied, strip naked and folded, in the Vitruvian men position, subjected to physical and sexual violence;
- m. "Dajaja" technique (Grilled chicken): where prisoners are strip naked, tied by their hand and feet to an horizontal bar, being tortured physical and sexually by electrical shocks;
- n. Removal of the nails in toes and fingers using pincers;
- o. Sexual rape using a diversity of objects such truncheons, iron bars, sticks etc.;
- p. Sexual molestation;
- q. Group torture;

(According to the detainees statements, most of these occur tied and folded)

As to Psychological torture the detainees reported:

- c. Threats of several order (including rape) to their families;

- d. Restrain to visits from relatives;
- e. Racist or xenophobic acts by the authorities;
- f. Compelling to assist to the torture of other prisoners;

The detainees identified as torturers:

- d. **El Isaoui Hamid**, nurse at Salé II prison;
- e. **Hafid Benchacherm**, Prisons delegate;
- f. **Hassan Hafdal (Mehfadi Hassan)**, prison servant;
- g. **Yousi Bouziz**, prison servant;
- h. **Hafari**, police officer;
- i. **El Luali**;
- j. **Bou Astiya**

Identifying the practice of torture in the presence of;

- c. The Director of Salé II prison;
- d. Judges of instruction at the Rabat Military Court of Justice;
- e. Judges of instruction at the El Aiün First Instance Court of Justice;

Detainees Individual Statements

1. **Enâma ASFARI**, born. 1970 **Penalty: 30 years** Asfari is vice-president of CORELSO (Comity for Liberties and Human Rights Respect in Western Sahara). Had already been detained before at Tan-Tan, in 2009, due to his peaceful activities in defence of human rights.

For eleven hours Asfari, turned his speech to the process political issues and to detention conditions of the 24 prisoners.

He stated that he was already in prison at the date of Gdeim Izik dismantle. He was detained at November the 7th 2010, and maintained five days in location unknown, with some other men without food or water, and being spanked by the police.

Stated further that all the confessions were signed under torture and against his will, stressing that the documents presented to the court had as his signature the finger print. Asfari stated that as a college educated men he knows to sign his name.

He pointed that during the first instance trial at El Aiün, he was with other 40 people and uninformed as to what was written in the documents.

Quoted also the reports of several Moroccan human rights organizations, Amnesty International and Human Rights Watch, making reference to the tortures imposed to Sahrawi political prisoners at Moroccan prisons.

2. **Mohamed TAHLIL**, born 1981 **Penalty: 20 years** Thalil stated that we was never at Gdeim Izik neither he was part of the initiators of the camping. Was detained in a café in El Aiün with two friends at December 2010, almost one month after the dismantle of the camping.

He stated to have been submitted to tortures including inside the court facilities, as well as to have signed all the confessions blind folded and under torture.

3. **Hassan DAH**, born 1987

Penalty: 30 years

Stated to have been tortured at the moment of his detention in El Aiün, at the gendarmerie as well as in the court facilities in Rabat. He also claims that all of his signatures were obtained under torture.

As to his statements on torture he was interrupted by the King's persecutor that claims that Dah lies when he states to have been tortured.

4. **El Bachir KHADDA**, born 1986 **Penalty: 20 years** "I suffer from torture" were his first words. He reported to have been abducted at El Aiün together with **Mohamed Tahlil** and **Hassan Dah**, having been tortured for an unknown period of time, since he lost conscience "due to the tortures" he stated.

Sign the declarations and confessions under torture and threat of rape.

For the first time the persecutor states that the detainees signed declaration in which they state not to have been subjected to torture.

During Khadda's statement and for several times the defence insisted that the Judges chairman did not offend neither humiliate the defendant, accusing him to be depreciative on his remarks facing the defendant statement.

5. **Abdullahi TOUBALI (Etawbali Abdalahi)**, born 1980 **Penalty: 25 years** Member of the Gdeim Izik's negotiation comity. On the November the 7th of 2010 Toubali displaced himself to a military hospital due to a run over. He stated to have returned home as he was refused admission there. Stressing that there are witnesses of this events that confirm them.

He stated to have been kidnapped, undressed, spanked, threatened with rape with a lamp, denied food. Claims to have been tortured, including in the First instance court

house at El Aiün - where he was present without any legal representation - as well as in the plane (to Rabat). He claims to have signed the declarations under torture and blind folded.

He stood in the same torture room with **Houssin Ezzaoui**, that was covered in blood and "tied as a sheep".

He identifies one of the torturers as **El Isaoui Hamid**, that works as a nurse at Salé II prison.

Toubali, showed scars in his body from the tortures inflicted upon him.

6. **MACHDOUFI Ettaki** (Ettaki Elmachdoufi), born 1985 **Penalty: Penalty at it's term** Stated to have been detained while helping an old lady, by eight authority agents, and been subjected to torture both physically and psychologically. He was taken into a military compound where has once again tortured and spanked with truncheons for approximately one hour. When he was taken to the police station at El Aiün he was beaten for another time, including by an alleged doctor, " I was beaten in a very racist way" he stated. He was detained for five days (though the moroccan law only allows detentions for three days), was undressed.

Had **Mohamed Ayubi** has a fellow detainee. He wasn't allowed to sleep, covered with waste and could only find toilet water to drink.

Defended to have been, together with other prisoners, tortured inside the same hearing room where he was being trailed, recognising it by the koranic phrase written on the wall. With him were **Cheikh Banga, Enaâma Asfari, Mohamed Ayoubi**, among other prisoners (that confirm this statement in the presence of the Chairmen of the Judges). Stating that there are evidences of the torture at the moroccan cells, trough the blood that can be found in every single one. At the time he was transferred to the Salé II prison he was once again tortured by the "nurse" **El Isaoui Hamid and Hafid Benchacherm**, being for five months under several forms of torture, in the company of **Cheikh Banga**.

He stated that all that he had sign was obtained under torture and that he had no legal representation at the trial in the first instance court at El Aiün.

Ended his statement revealing the names of some of torturers: **Hafid Benchacherm (prisons delegate), Hassan Hafad, Yousi Bouzir e El Isaoui Hamid**, nurse at Salé II.

7. **Mohamed Lamin Haddi**, born 1980 **Penalty: 25 years** "My heath condition is unacceptable", where the first Haddi's words that stated having been tortured within the Court House, claiming to know the identity of his torturer.

Reported to have been detained at El Aiün, by the secret police, having been physically and psychologically tortured, claiming to have been beaten all over his body in a very violent manner. Reported also to have been transported by plane to

the Court, where he was blind folded being his health condition at critical state. Claimed to have been four months under torture at the hands of **Hafari, Hafid Benchacherm, El Isaoui Hamid** and four more torturers. Reported that whenever he refused to sing the moroccan anthem or to shout "long live the King [Mohamed VI]" he was tortured. Affirmed to have signed all declarations under torture.

8. **Brahim ISMAILI**, born 1970 **Penalty : Life imprisonment** Brahim Ismaili referred to be a saharawí activist, and to have been already abducted and arrested in 1987, having passed 8 months at a secret prison at El Aiün. (The scarce information on Ismaili, is due to the fact that his statement was eared for less then fifteen minutes)

9. **Cheikh BANGA**, born 1989 **Penalty: 30 years** Stated that he witnessed the Gdeim Izik dismantle by the moroccan forces, saw them burn tents and hill-treat woman. Stated that after detention physical and psychological torture were inflicted on him, claiming to have scars in his body that confirm that.

10. **Mohamed AYUBI**, d.n. 1956 **Penalty: 20 years** **Ayubi** waited trial in freedom due to his debilitated health condition. at the day of his detention he reported to have seen his tent being invaded by a great number of military, claiming to have been raped, sodomised and violently spanked. when he was taken to the gendarmerie he stated to have suffered numerous kinds of tortures, among them rape with a diversity of objects - as a response to his demand to be seen by a doctor - Also reported to have been tortured in his testicles complied to drink fezzes and urine, and forced into his mouth a dirty cloth full of bugs. All his signatures in the declarations where obtained under torture.

He suffers from diabetes and since he was detained his condition got markedly worse. He stresses out that he also suffers from stomach problems.

Presently he is on probation due to his health condition.

11. **Mohamed Khouna BABAIT**, born 1981 **Penalty: 25 years** Arrested at August 2012, reports to be blind folded and taken to a desert place near Gdeim Izik, where he was undressed and violently tortured. He also denounced the tortures he went through in his way to Agadir first, and then to the Salé II prison.

12. **Abdulahi LAKFAWNI**, born 1974 **Penalty: Life imprisonment** Was arrested for the first time in 1994 after returning from the refugee camps in Algeria. at the time of present detention at November the 12th 2010, he was five days under torture, as he stated "the torture techniques...I don't know how to explain it, outraged my dignity". He also reports that after his imprisonment besides this five days of torture he was under constant humiliation stressing to have suffered every kind of tortures.

Signed several documents and certificates under several forms of torture, both by signature as well by finger print, completely unaware of their content.

Was taken to the Military Court House of Rabat and then to the Salé II prison, where

all his clothes were taken and tortured both physically and psychologically.

During his statement for several times the defendant asked - backed by the defence - To speak in order to report what he considered important, to which the Judges Chairmen replied that the defendant spoke or stood in silence whenever the Judge intended to. it must be pointed out that after the trial **Lakfawni** was taken by the police force of Salé II to an unknown location where he was tortured by **Yousi Bouziz**, according to our information.

13. **Lbakai LAARABI**, born 1970 **Penalty: Life imprisonment** **Laarabi** was one of the responsible for maintaining the order in Gdeim Izik. Professional chauffeur was arrested in Dakhla at November the 9th of 2010, under the charge of lacking the necessary documentation to transport fish. Following this he was tied and blind folded.

He stated to have been forced to sign a great number of documents and taken to Rabat. he also reports not to have had legal representation at the first trial.

14. **Mohamed Mbarek LEFKIR**, born 1978 **Penalty: 25 years** Claimed to have been kidnaped November the 11th of 2010, by a group of civilian dressed authorities using masks to cover their faces, at his uncle house, being beaten in front of his family. He was tortured both physically and psychologically, claiming to have been completely humiliated in every place he went until arriving at Salé II, including at the First instance Court of El Aiün, without having been appointed a legal representation for him. He stresses out that the judge redacted the hearing act on the phone.

He reported to have been victim of physical tortures such as successive aggressions on his head, torn out his finger's and toe's nails, extinguished cigarettes on his back, torn out his beard, had passed naked for all the period of torture. He also pointed out that in one of those moments torturers put him a bag on his head torturing him in front of other people. Of the psychological tortures he referred that further then the humiliation he were forbidden to pray or read the Koran.

He stated to have suffered several sexual molestations such as sodomy, and stressed that he would not go any further by shame. While he was describing the tortures and the scars he had on his testicles and penis the King's general persecutor told him that he shouldn't speak of such meters in respect to the pudency of the assistance at the Court room.

He showed to the judge the scars in the head, in the hands and feet, referring that when he was under torture he wished to be dead.

Two sets of documents were shown to him, as the first set he claimed never to have sign them, as to the second he acknowledged to have sign them but under torture and without ever had read them.

15. **Sidi Ahmed LEMJIYED**, born 1959 **Penalty: Life imprisonment** He stated that at the moment of his detention at December the. 25th 2010 he was taken to

place unknown, being spanked during the interrogation that was only focused on political issues, without mentioning ever the Gdeim Izik camping. He claimed that the moroccan authorities "offend them and rape them sexually".

He reports that he was forced to say that "Morocco is good, it develops it's southern provinces", saying it under torture. **Lemjiyed** is the chairman of an human rights organisation, claiming that he was tortured for being a sahwari activist.

When he appeared before the First Instance Court in El Aiün, he was very sick due to the "numerous tortures That I suffered in El Aiün and Dakhla". He showed to the judge the scars in the hands, feet and head, claiming to have scars all over his body. He also reported that for several times he asked for medical support, including to the judge of instruction, and that these appeals were systematically denied.

16. **Sidi Adderahman ZEYOU**, born 1974 **Penalty: came to term** Activist of the Collective for the protection of Sahrawi culture, stated that on the moment of his arrest he was tortured, stressing that "no one respects any law". He claimed to have been arrested for his declarations to the international tv network Aljazeera.

He claimed to have been tortured at the first trial at the first instance court of El Aiün.

(The scarce information concerning Zeyou holds to the fact that due to the threats made by the moroccan authorities the majority of the translators abandoned the court room).

17. **Mohamed El Bachir BOUTINGUIZA**, born 1974 **Penalty: Life imprisonment** **Boutinguiza** states to have been arrested for the first time in 1992 during ten months and again in 1997 during four years. Detained on November the 19th of 2010, he reports that at moment of his arrest "the police forced my house entrance (...) and beat me with shoes, latter on I was tortured in many different ways".

He stated to have been tortured in every place that he passed through, including the court room where he was being tried, in the presence of the judge of instruction. He also stated to have been put in the position of Leonardo da Vinci (Vitruvian man) and in the "grill", having been mutilated, suffered sexual violence, been sodomised with a bottle by his torturer, **El Isaoui Hamid**. Further reported that the police extinguished cigarettes on his body, showing to the tribunal their marks.

Boutinguiza, reports that for several times the prisoners complained to the King's General persecutor about the tortures inflicted upon them as well as to the detention conditions without ever receiving an answer. Both the prisoner as well as the defence demanded medical exams to confirm the practice of physical and sexual tortures, but the demands were rejected by the Court.

18. **Sidi Abdallah B'HAH** (Sidi Abdallahi Abbahah), born 1975 **Penalty: Life imprisonment** "All that stand here today have been tortured and I'm being tortured even today" - were his first words during the trial – "I suffered from all forms of

torture. Twenty armed men entered my house and I have been tortured”.

He reported to have been arrested on November the 19th of 2010, around 11 pm, while he was drinking tea at his place and brought into a room with about twenty five policemen. He claims to have been under torture for eight hours in a row: "we were tortured every way possible, without clothes, without food, in "djadja" (roasted chicken) position". "Many hours of torture (...) they beat me, put me in four legs...", referred to have been raped with a chair, burned with cigarettes, restrained to drink water and food for several days.

He stated being without food or water for several days while they soaked him with frizzed water and extinguish cigarettes on him, he also referred to have been put cigarettes into his mouth and sexually molested.

19. **Laaroussi ABDELJALIL**, born 1978 **Penalty: Life imprisonment** During his statement **Laaroussi** denounced the fact of being unable to see his family questioning the motive of such situation. After started his report: "I'm going to enter the epoch of the torture and sexual violence against my wife (...) and myself (...). At this time I was unsure if I was alive or dead", he added due to the physical, sexual and psychological violence that he became target.

In the day prior to the dismantle of Gdeim Izik he declared to have been at the hospital under internment, being abducted on November the 13th of 2010, at the city of Bojdour. He reported that his house was invaded, around 9 pm, while he was drinking tea with his family. "They beat the woman, beat me in a different division of the house, pointed me a gun". He was taken to a van, where he was brutally spanked, specially in the head, that was successively kicked. "They undressed me and I became all black" He stated also to have been five days in location unknown. During the period in which he was victim of physical violence, he was permanently threatened that he and his wife would be raped. He reports to have been spanked until loose his senses, blind folded and placed in a very small cell, and then kicked in his head once more. Then "with a machine they torn out my finger nails". He went two days under torture without being allowed to go the toilet, was humiliated by being forced to drink waste water (with urine and fezzes). He also claimed to have been forced to wear some clothes that provoked skin rushes. "In two occasions I was about to die" he said. He stresses out that he know very well his torturer **EL Luali**. He further more stated that he was tortured in the "grill", with electric shocks, cut with sharp objects, burned with cigarettes. Couldn't go to the toilet and was compelled to relief himself where he was and to sleep on These wastes.

He reported to have been sexually molested "they played [*sic*] with my sexual organs", and claimed not to enter in further details in respect to the people present at the court room.

He declared not to have been beaten in the face and in the police station there were three cameras that filmed him clean and only from the neck up. Although he was handcuffed and with guns pointing at him. The police order him to speak calm and

confess the crime of which he was accused.

From the local where he was he was taken, blind folded, to the First Instance Court of El Aiün - in a period in which we was very weak - and from there to another place, and finally was put inside a plane destined to Rabat, being assaulted with guns and soaked with chemical products on board. In Salé II he was incarcerated naked and tortured by **Hassan Hafdal**, and the nurse **El Isaoui Hamid**, always blind folded. The tortures inflicted on him left marks in his body that he showed to the judge.

As far the signatures on the declarations and confessions are concerned **Laaroussi** stated that in the three sets of documents, the first wasn't signed by him, and the other two were signed under torture. The same happens to the finger prints same are his but not the others.

Laaroussi referred to be very bad of his knees, and showed his legs, where were evident enormous scars around the knees. He has no toe nails and the head is full of scars and "holes" due to the spanking. He noticed having denounced unsuccessfully, numerous times, the tortures and imprisonment conditions to the Kings General persecutor and other authorities.

Laaroussi situation became very worrying when he left to be able to walk without help at the second day of hearings (he wasn't able to support his weight in the left leg, drag it when he was taken), having been conducted twice to the Military University Hospital Mohamed V, during the trial hearings. Due to his poor health condition the defence required for numerous times some treatment and adequate medical assistance, as the detainee was in a very delicate situation. Receiving from the Kings commissioner the answer that an exam by an expert had already been held and issued a report revealing that one of the displacements to the Hospital was due to a high blood pressure crises. In other occasion his health condition made him leave the hearing and a doctor

was called to issue his opinion, based upon the exams that he affirmed to have made, showing the medicines prescript. The translations (french, english and spanish - given in some points of the hearings) were inconsistent among them. the english version said that is was a problem with the detainee joints, head aches, high blood pressure, having the prisoner been seen by a sports medical expert. As the translator into spanish stated that the detainee presented head aches, anxiety, a blood pressure of 13 max -8 min., being the previous prescription of FIPCOR (heart condition medicine) insufficient, and the detainee was also under other prescribed medicines. Both said that the problems with the knees were old injuries, as to five years old, since the detainee was a sportsmen at the time. These explanation appeared in a context in which the practice of torture upon the prisoners was being discussed, and apparently to demonstrate that their situation did not became from the infliction of torture, once all the translations started by: "since the prisoners stated to have been victims of torture, the medical exams..."

The last time **Laaroussi** was taken to the hospital he was diagnosed with a stomach

problem which took the defence to question the King's General persecutor and the Court on the motive of such "inconsistencies in the diagnostics".

At the end of February the 13th the judge through the official translators made an enlightenment on the health condition of the accused, referring that, due to haemorrhages, exams were done on him, but that for personal reasons he had refused an exam by rectal probe.

20. **Ahmed SBAI**, born 1978 **Penalty: Life imprisonment** **Sbai** states to have been arrested on November the 18th of 2010, during a family party. At the moment of his arrest he claims to have been tortured. According to **Sbai** and his defence he spent four days *incomunicado*. "I passed five days without food, and deprived of any right, I couldn't even sleep" reporting to have suffered two heart crises. During this time he was taken twice to the military hospital due to his frail health condition, even so he reports to have been tortured within the military hospital. during the interrogation he passed out twice due to his heart condition, being taken to the hospital were one of the doctors that assisted him asked the inspectors not to inflict more tortures on him, according to **Sbai**.

As to the signatures in the declarations and confessions he stated that "they 14 beat me in the head and forced me to sign". **Sbai**, claimed to have already been inside the Military Court of Rabat where he was tortured. His health condition revealed itself greatly shaken during all trial. On the February the 9th he left the hearing claiming to be unwell. According to the medical report, read by the judge, **Sbai**, was medicated against anxiety. On the 10th it was diagnosed an "emotional personality" and prescribed medicines to a "frail emotional state".

Prior to his detention the prisoner had already been in Spain to submit to medical exams, which he was unable to conclude due to the expire of his visa. He revealed to have heart problems demanding inclusively to abandon the courtroom in the moment that was presented a film in which the defendant allegedly appear practicing the crimes they were accused of. In reply the King's General persecutor claimed to be able to "prove that him [**Sbai**] didn't suffer of any heart trouble", which never happened.

21. **Deich EDDAF**, born 1978 **Penalty : 25 years** Member of negotiating comity of Gdeim Izik and responsible for the administrative organisation of the camping. States that at moment of his detention at November the 12th of 2010, a group of masked men broke in his house, "they beat my wife in the face". He was tied, blind folded e put on car, unknowing to where he was to be taken. After "they took off my clothes, all of them", being sexually molested. "They played with my penis" and he was sodomised with an iron bar. Was spanked, "they beat me severally, as I was naked". He also reported the impossibility to access the toilet, and tolled to urinate and defecate where he was, the same place where he was going to sleep. "Next day I said that I needed a doctor, but I was took back for torture instead". As he claimed to need medical support he was latter taken to another room where were three other prisoners, among them **Ezzaoui**, in a pretty bad health condition

and **Toubali**.

Once at Salé II the prison responsible was attending at the moment that he was presented some documents to sign, stating that he was unfolded and given clothes and shoes, ordering him to sign those documents. He mentioned to have asked to read the documents which was refused and then **Eddaf** was again spanked. he claims that he was forced to sign with finger print on some pages, but he claims that he is incapable to remember if he had sign anything else due to his bad shape. He states that at that moment he was cut with a sharp object. Showing facial scars to the judges Chairmen. **Eddaf** claims that he is still under torture, showing fresh blood and declared to have a problem in the eyes, making the defence demand for an ophthalmologic exam. "This eyes don't allow me to sleep" he stressed, to what the King's General persecutor replied that the prison doctor had already examined his eyes and concluded that was everything alright with them, leading **Eddaf** to stat "that men is not a doctor but a torturer!". **Eddaf** reported that he asked for medical support to the Judge of instruction, to what the Judge replied that that issue was not of his responsibility. The same happened with the Chairmen of the Judges at the present trial, referring that such issue was of the responsibility of the prison authorities.

At the end of the evening of February the 12th the judge made a statement for the international community present, stating that **Eddaf** had been submitted to several medical exams that showed he suffered from diabetes since the age of two and had no problems with his eyes or ears.

22. **Mohamed BANI**, born 1969 **Penalty: Life imprisonment** Born in 1969, participated in the Sahrawí People Liberation Army (SPLA) since he had 14 y.o. Returned to the Moroccan occupied territories in 1993. Being a civil servant since 1994.

He claimed not to be one of the responsible for Gdeim Izik, and he only went their to stay for the week-end with his family. Presenting a document signed by his department director and fifteen fellow employees stating that he was present at his work place on friday November the 5th of 2010. Document that the King's General persecutor classified as irrelevant.

When the police invaded Gdeim Izik he attended to the burning of the camp "they stoned me. I have still a mark on my head", after that he claims unawareness to what happened, as well as to where he was taken. He stated remembering the military aggressions with his shoes on his face.

After several displacements he arrived to the gendarmerie, reporting to have been throned out of a lorry and treated - with all that were with him - "like beasts (...) we were sixty people covered in blood", claiming to have been assaulted with shoes and stones for about two hours.

He reports to have been with Colonel **Bilal** and after "encountered **Ayubi** and **Banga**, up to that moment I didn't knew them". He reports that they were taken to

another place where the police said: "these sahrawís killed a nurse at El Aiün", and then tortured by the nurses present.

As far as the tortures are concerned, **Bani** revealed: "they didn't let us go to the toilet, gave us a bottle and then forced us to drink from it (...) I saw them forcing others but I refused to drink (...) They forced us not to sleep". Later on he was put in a cell where he claims to have been violently tortured, "they beat me in every possible manner and all over my body", at that time he was naked. After being tortured individually he was tortured in group among other prisoners. And let to spent the night in a room without speaking with any authority.

He stated that everything he sign was under torture, unaware of what was written, once as he claims he his unable to read without his glasses which were taken from him. After signing he returned to the gendarmerie with **Ayubi**.

Blind folded and with his hands tied he was taken into a car and then to a plane, stating than he "thought that they would throw me out of the plane". He passed twenty days in location unknown and "entered in this Court", stating to have been tortured in it. He mentions to have severe head ache since he was arrested and at the day trial in Rabat. He asked for medical help, which was refused. They took of his glasses , forcing him to sign a serial of documents, meanwhile he was being violently insulted. The Judges Chairmen states that there are thirty two documents signed by **Mohamed Bani**, refuting that it doesn't seem believable that all of them were signed under torture, claiming that **Bani** could have written under that he was being tortured.

Once again folded and tied he was brought to the Salé II Prison, where he was tortured. The Judges Chairmen states that he doesn't want to know about tortures once that is of no competence of his.

23. **El Houssein Ezzaoui** (El Houcein Azaoui), born 1975 **Penalty: 25 years.** He was a member of the organisation and negotiation comities of Gdeim Izik, stating that he had talked with the moroccan negotiations leader **Belali**, as well as with the Minister of the Interior.

At November the 8th of 2010, he wasn't at Gdeim Izik, but at the hospital where he was under internment, and where he was arrested, stating "since then starts the torture in its most brutal forms! with sexual violence, torture all over my body. We have no life when someone does any sexual violence against us". He declared to have been a all night under every form of torture, stating that his health condition drastically worsened since then, having been removed to the military hospital.

He reported to have encountered **Eddaf e Toubali**, when he was under detention , being testimony of the tortures he suffered. Claiming to have been tortured by several forms in his bottom. After the tortures he stated to have been a month and a half incapable of rise by himself, claiming that at that time "all my body (...) [was] black".

At the gendarmerie he reported to have been forced to sign numerous documents

which he contained he was unaware of, claiming to have signed only with the finger print, stressing that he were "very tired and tortured".

He stated to have been brought by plane to Rabat with **Eddaf e Toubali**.

He reported that when he arrived at Salé II, he went under numerous forms of tortures for several months, at the hands of the nurse **El Isaoui Hamid**, "Salé II is a black prison!". He claimed to be able to prove his statements.

Ezzaoui stated that during the time he stayed at Salé II, he went to the hospital in ten different occasions due to the ill-treatment imposed on him, at the same time the needed prescript medicines were denied on him. He asked - backed by the defence - to the Judges Chairmen the attending of medical exams to support his statement which was denied by the King's General persecutor, under the argument that has passed too much time and nothing would be able to be proved at this moment.

24. **Mohamed BOURYAL**, born 1976 **Penalty: 25 years** At the month of October 2010, he was in the hospital to go under surgery. He made part of the comity of negotiations, and at November the 7th of 2010 a Moroccan responsible said to him "we arrested Asfari". During the meetings of negotiation he confirmed the presence of **Ilias El Omari** representing the palace as well as of the Minister of the Interior.

When he was arrested, he stood four days under torture and after he was presented to Court. Four months later (between El Aiün and Rabat), he encountered **Ayubi, Banga e Asfari**. Was tortured with **Ayubi**, both stood sixteen hours in the "grill" at the hands of **Bou Astiya**, the prison director, receiving electric shocks and iced water showers. He stresses that **Banga** was present before Court naked.

He denied that the signatures at the declarations were his, and declared never had seen any document until this trial.

Resolution: Considering the above stated and witnessed by our observers during the trial, as well as the reports from the detainees families (whom the observers spoke to) during the last two years and three months, the ACOSOP states that the detainees can't remain under these conditions, under the risk to their own life. This according to the reports of the families presently some of them remain under torture, in absolutely improper installations, with no access to a reasonable nourishment, medical care, nor respect for the human dignity. Adds to this situation that, according to the Spokesmen of the Families of the prisoners of Gdeim Izik, few days after the trial the detainees were brutally spanked and tortured, being **Abdulahi Lawfawni** isolated and under violent forms of torture. The prisoners hold a hunger strike of 48 hours in order to claim the improvement of their holding conditions at the prison from February 25th to 26th of 2013.

As such ACOSOP demands the attainment of medical exams as well as medical reports to those prisoners that have been released: **Mohamed Ayubi, Sidi Adderahman Zeyou e Machdoufi Ettaki**. In order to verify their claims and health condition, once it is urgent to comply the Kingdom of Morocco to accomplish the

treaties and conventions to which it committed itself, such as *The International Convention to Eliminate all Forms of Racial Discrimination* (1996), *The International Agreements on Civil and Political Rights and Economic, Social and Cultural Rights* (1966), *The Convene on Prevention and Sanction of The Delicts of Genocide and The Delicts of Torture* (ratified by Morocco in 1959).

Lisbon, March the 7th of 2013

The ACOSOP Chairmen,



(Carlos Artur Ferreira de Moura)

The observers

(Isabel Maria Lourenço)

(Rita Marcelino dos Reis)

5. Statements conducted by international observers present at the court case of the Gdeim Izik.

5.1. Press release international observers dated 18th of March 2017

18th of March, Rabat Morocco.

Political persecution, not impartial justice

We, international observers, present at the trial against the Group Gdeim Izik, currently held at the Appeal Court of Salé, Morocco, are concerned with the lack of evidence of a fair trial. We, the observers, condemn the usage of evidence retrieved through torture, and alert that the trial brought against the group of Gdeim Izik are for reasons of political persecution, rather than to impart justice.

The Moroccan Government is now re-trailing well known Saharawi human rights activists,

after Moroccan public forces dismantled with force at dawn the peaceful protest camp, consisting of women, children, elderly and men, in 2010. The ones that endured the violence, are now being accused of violence. They are charged for forming a gang and violence towards public officials in the line of duty, after more than six years of imprisonment and torture. The preceding judge has refrained from ruling upon the formality concerning which instance the trial is held at. It is therefore not known whether this case constitutes first instance, or an appeal. This is alarming news, depriving the accused of their universal rights concerning the right to an appeal.

According to numerous international reports, confessions were extracted under torture, the declarations were not signed willingly. The accused were forced to sign -completely exhausted and afraid after torture-, even compelled to put their fingerprints on declarations. The detainees declare that all the documentation is falsified, and part of a “made up case” against them.

The medical expertise on the torture has not been presented to the court, and despite numerous objections from the defence attorneys, the proceedings commenced. The defence lawyers were meanwhile prohibited from presenting a memorandum on the medical examinations based on the Istanbul treaty. During the testimony of Mohammed El Ayoubi, currently on provisional release due to his health condition, Ayoubi stated that: “I asked for bread, they gave me beatings”. Ayoubi, a poor man looking for a better life in the camp of Gdeim Izik, was brutally raped by the police forces on the morning of November 8th, and has still difficulties walking after the torture inflicted upon him.

The evidence file presented by the prosecution in front of the court contained a film, allegedly portraying events from when the Moroccan forces dismantled the Gdeim Izik camp. The film is not admitted into the evidence file, but was played in front of the court, where both the prosecution and the civil party based questions on the film whilst interrogating the accused. This film was posted on YouTube by an unofficial source on March 13th. The question remains how this video ended up in the hands of a third-party. We consider the movie as a part of the propaganda told by the Moroccan authorities in the Moroccan media. The media is overflowing with propaganda which portrays the accused as terrorists and murderers, and the principle of presumption of innocence is completely disregarded, both inside and outside of the courtroom.

Gdeim Izik was a camp established by the Saharawi population in the occupied territories to demand their social and economic rights, which are denied them since 1975 when Morocco invaded the former Spanish province.

Occupied Western Sahara is a Non-Autonomous territory pending decolonisation. A former Spanish colony that was invaded by Morocco in 1975, the cease fire agreement between Frente POLISARIO and Morocco was signed in 1991 on the premise of the realization of a referendum for self-determination that is still pending due to the refusal of Morocco.

Signed by:

Tone Sørffonn Moe (Norway)

Isabel Lourenco (Portugal)
Christina Benites de Lugo (Spain)
Michele Decaster, L'AFASPA (France)
Jon S. Rodriguez Forrest, Coordinator of Middle East and North Africa of Izquierda Unida (Spain)
Margherita D'Andrea, Lawyer (Italy)
Ramon Boixadera Bosch (Spain)
Fabio Marcelli, international lawyer (Italy)

5.2. Declaration of the international observers attending the trial of Gdeim Izik dated June 5th 2017.

Declaration of the International Observers attending the Trial of Gdeim Izik

June 5th, 2017

Session of June 5, 2017

The Observers present at today's session in the proceedings of the Gdeim Izik trial want to highlight the following:

- It is not clear whether we are in a First or Second Instance Procedure, this matter remaining pending by the Tribunal, with the consequence that the applicable procedural rules are different, such as the admission of new evidence and witnesses, as well as the incorporation of the civil party.
- It is a proceeding before a Tribunal that has no territorial jurisdiction since the events occurred in El Aaiún (Western Sahara)
- the Court rejected the findings of the Commission against Torture of the United Nations. Defense technique: The appointed official lawyers by the President of the Court on May 16, assumed their role immediately without having had contact with the accused or having studied the file.
- Undue delay: Military Trial in February 2013. Cassation in July 2016. The new trial began on December 26th and we are now in the fifth resumption of the sessions. Arbitrary detention of 6 ½ years On the basis of a judgment annulled by the Court of Cassation.
- violation of the right to the presumption of innocence.

The security measures imposed by the Moroccan Government on Observers are again highlighted:

- photographs of identity documents by non-nationals Identified on the outside of the Court,
- continuous searches,
- prohibition of entry of any type of electronic device.

The Committee of the families of the prisoners report that the prisoners have suffered aggression and serious injuries having been transferred today by force to the Court from the prison Of El Arjat.

Today's session scheduled at 10:30 p.m. has begun at 1:45 p.m., with the entrance of all members of the Tribunal.

During the session, which lasted only an hour, defense lawyers questioned the expert report written by Moroccan doctors, alleging contradictions and lack of assurance in the implementation of the Istanbul Protocol. They have requested an additional medical expertise, and questioning of the experts which conducted the medical examinations in order to clarify certain point. The Court decided not to admit the first request; On the other hand, has admitted the appearance of the experts, ending the session announcing its resumption at 10 am the following day.

To this day, medical reports have not proven the existence of torture.

For all this we appeal to the International Community in the face of the obvious systematic violation of procedural guarantees and human rights, urging the protection of Saharawi political prisoners by the United Nations and competent international institutions.

Elena Esposito, Giuristi Democratici, Italy

Nicola Giudice, Giuristi Democratici, Italy

Amaia Arenal Vidorreta-Concejala, Udal Berri-Bilbao in Common by IU

Unai Orbezo Uribesalgo, Councilor Irabazi Zumarraga by IU

Maite Isla, Solidarity Galega co Pobo Saharai

Emilio Portela, Solidarity Galega with Pobo Saharai

Pablo Romeo, Solidarity Galega with Pobo Saharai

Ana Miranda, European Free Alliance. Nationalist Galego Block (BNG)

Isabel Lourenço, Western Sahara Foundation, Portugal

Tone Soerfonn Moe, Western Sahara Foundation, Norway

Maria Dolores Traviesso, Lawyer

Gustavo A. Garcia, Lawyer

Cristina Martinez Benito de Lugo, Lawyer

Ana Sebastián Gascón, Lawyer

6. Public Statements concerning the court case of Gdeim Izik

6.1. Public Statement by the International Collective of Lawyers in Support of the Political Prisoners of Gdeim Izik

Public Statement by the International Collective of Lawyers in Support of the Political Prisoners of Gdeim Izik

On December 26, the appeal hearing of the Saharawi political prisoners of Gdeim Izik, initiated by the Moroccan courts, will begin. 24 Sahrawi activists and human rights activists arrested, tortured and sentenced for alleged involvement in the Gdeim Izik protest camp in 2010, a spectacular collective mobilization to protest against the economic and social discriminations which Sahraouis consider are imposed on them by the Moroccan government.

On February 16, 2013, the 24 accused were sentenced by a military court to very heavy sentences following an unfair trial. The judges refused to hear witnesses called by the defence, or to order a forensic examination of the allegations of torture, and did not mention the names of Moroccan security forces supposedly killed by the accused.

Beyond the serious violations of human rights already suffered by the prisoners of Gdeim Izik, their trial today is characterized by many violations of international humanitarian law.

Western Sahara is considered by the United Nations to be a non-self-governing territory occupied by the Kingdom of Morocco since 1975. This occupation is illegal, as Morocco is not recognized by the United Nations as the administering Power.

International humanitarian law should therefore apply to Western Sahara, as in the case of

Palestine. The 24 Sahrawis convicted in the Gdeim Izik trial are protected persons within the meaning of Article 4 of the *Fourth Geneva Convention* and should as such receive the protections provided by international humanitarian law.

In flagrant contradiction with international law and numerous resolutions of the General Assembly and of the Security Council of the United Nations, the Kingdom of Morocco refuses to recognize the status of Non-Self-Governing Territory for Western Sahara.

Consequently, Morocco rejects the application of international humanitarian law in this territory, although Morocco is a Party to the *Geneva Conventions*. Any reference to the Moroccan occupation exposes the person responsible to prosecution and retaliation, which may in practice lead to torture.

The political prisoners of Gdeim Izik who will be retried by the Court of Appeal of Rabat claim the respect of the Fourth Geneva Convention. We, the lawyers for the accused, recall that international humanitarian law imposes, as a minimum:

- the divestment of the Court of Appeal of Rabat in favour of a tribunal situated in the occupied territory
- their immediate transfer to a prison in the occupied territory
- an independent and serious investigation into torture, ill-treatment, arbitrary detention

In a repressive context hostile to any challenge to the occupation, Moroccan lawyers for the accused cannot demand the application of international humanitarian law as their clients would like. That is why, at the request of the detainees, we constitute an international collective for their defence, to carry out the legitimate demands of our clients and ensure that they have a fair trial this time.

The rights of the defence and the freedom of speech of lawyers are a cornerstone of democratic regimes. We hope that these rights will be respected during the trial of Gdeim Izik.

Signatories:

Véronique van der Planke, Belgium
 Oscar Abalde Cantero, Spain
 Nicolás Alonso Moreda, Spain
 Alberto Justo Angoitia López, Spain
 Andrea Bartomeu Navarro, Spain
 María Dolores Bollo Arocena, Spain
 Juan Ramón Crespo Aguilar, Spain
 Iñigo Fernández-Rivera Becerro, Spain
 Merche Garayalde, Spain
 Eleuteria García García, Spain
 Ander Gutiérrez-Solana Journoud, Spain
 Iñigo Iruretagoiena Agirrezabalaga, Spain
 Javier Ruiz García, Spain
 Julio Sánchez González, Spain
 Imanol Sáenz Mendizabal, Spain
 Aida Garazi Arraibi Larrea, Spain
 María Elena Crespo Arce, Spain
 Xabier Etxebarria Zarrabeitia, Spain
 Katlyn Thomas, United States
 Olfa Ouled, France
 Ingrid Metton, France

Joseph Breham, France
Anis Harabi, France
Dominique Tricaud, France
Matteo Bonaglia, France
Emmanuel Daoud, France
Benjamin Pitcho, France
Richard Sedillot, France

Christophe Pettiti, France
Tewfik Bouzenoune, France
Marie Roch, France
Aline Chanu, France
Roland Weyl, France
Pascale Taelman, France
Oumayma Selmi, France
Francesca Doria, Italy
Luca Saltalamacchia, Italy
Roxane Sheybani, Switzerland
Olivier Peter, avocat, Switzerland
Stéphanie Motz, Switzerland
Carlo Sommaruga, Switzerland
Philippe Currat, Switzerland
Raphaël Jakob, Switzerland

6.2. Amnesty International Public statement dated 6 March 2017.

AMNESTY INTERNATIONAL PUBLIC STATEMENT

Index: MDE 29/5753/2017

6 March 2017

Morocco/Western Sahara: Grant Sahrawi defendants a fair trial

The trial of 24 Sahrawis in a civilian court that began on 26 December is an opportunity to redress the numerous violations that tainted their fundamentally flawed military trial in 2013. The trial at the Rabat Court of Appeals continued on 23, 24 and 25 January, and was adjourned until 13 March. A fair trial is essential in order to bring to light the truth of the events in 2010 which led to the death of eleven members of the Moroccan security forces and two Sahrawis, Amnesty International said.

The group of 24 defendants includes members of Sahrawi human rights groups and political activists who were among many Sahrawis arrested by Moroccan security forces in connection with violent clashes following the forcible dispersal on 8 November 2010 of a protest camp in Gdim Izik near Laayoune, in Moroccan-administered Western Sahara. Shortly afterwards, Amnesty International had sent a delegation to the area, and its resulting report described the excessive use of force by Moroccan security forces in dispersing the protest camp and conducting arrests, as well as violent resistance to the dispersal by some individuals in the camp and in neighbouring Laayoune. Amnesty International has on several occasions called on the Moroccan authorities to investigate human rights violations which took place during and following the camp dispersal on 8 November 2010 and to ensure that those detained in the context of these incidents are not tortured or otherwise ill-treated.

Changes in national legislation and a decision by the UN Committee against Torture

A new Military Justice Law adopted in 2015 excluded the trial of civilians before military courts, but Article 219 of the law confirmed past judgments by military courts in relation to civilians. As a result, civilians imprisoned following convictions by military courts remained behind bars. Amnesty International opposes the trial of civilians before military courts. International tribunals and other bodies have expressed strong reservations about the trial of civilians before military courts owing to the nature of these courts and because of concerns about their independence and impartiality. Some of them, including the African Commission on Human and Peoples' Rights, have repeatedly found that trials of civilians in military courts violated fair trial rights. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa prohibit the use of military courts to try civilians.

Amnesty International calls on the Moroccan authorities to ensure the defendants' right to a fair trial during these proceedings. This includes respect for the presumption of innocence, effective investigations into allegations of torture or other ill-treatment in custody, and exclusion of any evidence obtained under duress. The UN Committee against Torture has also made similar recommendations in its concluding observations with regard to Morocco's compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). The Committee has recurrently called for Moroccan authorities to promptly, effectively and impartially investigate torture allegations and hold perpetrators accountable, and to exclude statements made under duress from judicial proceedings except as evidence to prosecute perpetrators of torture or other ill-treatment.

On 14 November, the Committee against Torture also issued a decision finding Morocco to have breached the rights of one of the defendants, Enaama Asfari, under the Convention against Torture. Breaches include torture and other ill-treatment following his arrest (Article 1); failing to investigate his allegations of torture and other ill-treatment (Article 12); failing to protect him and his lawyer from reprisals for complaining about torture and other ill-treatment (Article 13); failing to provide the defendant with reparations for torture and other ill-treatment including medical rehabilitation and compensation (Article 14); using a statement signed under torture or other ill-treatment in proceedings (Article 15); and failing to prevent his ill-treatment in prison when guards beat him and the prison administration held him in very harsh conditions (Article 16).

The organization calls on the Moroccan authorities to implement the Committee's recommendations regarding Enaama Asfari. The Committee called on the Moroccan authorities to award him fair and adequate reparations. It also called them to investigate his torture allegations in conformity with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) with the aim to hold perpetrators accountable where sufficient evidence is found. In addition, it asked the authorities to refrain from any act of intimidation or reprisals against him for filing a complaint to the Committee. Finally, it requested the authorities to inform the Committee of steps taken in this regard within 180 days.

Civilian proceedings underway

The civilian proceedings follow the 27 July 2016 decision by the Court of Cassation, Morocco's highest court, annulling the February 2013 conviction by the Permanent Military Tribunal of the Royal Armed Forces in Rabat. The Court of Cassation highlighted the Military Tribunal's failure to establish key elements concerning the offences, namely establishing the identity of the perpetrator and the victim for each death, and establishing how the defendants allegedly were accomplices in the violence. Gaps in the incriminating evidence included the lack of autopsies of the deceased even though the military trial took place over two years after the events.

The 24 defendants currently face the same charges as during their previous military trial, as the case relies on the investigations by the investigative judge at the Rabat Permanent Military Tribunal which had led to the military proceedings. It is important that the Rabat Court of Appeals makes its own assessment of the evidence obtained from those investigations. Most of the defendants are accused of forming a “criminal gang” and participating in violence against security forces leading to death, with or without intent. Two were also charged with defiling a corpse. Families of the 11 deceased among the Moroccan security forces are also seeking to file a civil action for damages, currently under consideration by the court.

On 25 January, some defence lawyers contested the competence of the Rabat Court of Appeals to judge the case. They argued that the court is located outside the territory where the alleged offences occurred, the non-self-governing territory of Western Sahara which was annexed by Morocco in 1975, and that International humanitarian law and the Fourth Geneva Convention, to which Morocco is a party, require the trial to be held within that territory “occupied by Morocco”. They demanded that the case be judged by the Laayoune Court of First Instance in Western Sahara instead.

The defence counsel faced several obstacles in delivering their plea, observers and lawyers said. The judge first stated that he couldn't understand the pleading lawyer's Arabic although others present in the court reportedly said they understood well. When she proposed instead to submit her defence to the court in a memorandum in Arabic, he alleged a procedural irregularity to refuse to take the document. Finally, when the lawyer resumed her defence speech stated that Western Sahara was “occupied by Morocco”, the General Crown Prosecutor interrupted her stating that she was “threatening” Morocco's “territorial integrity”, an offence punished with imprisonment under Moroccan law, in violation of the right to freedom of expression. The judge then told the lawyer that he would apply Moroccan law and not international law. When she responded that Moroccan law should be interpreted in light of international law, he stated if she continued her speech he would make use of his power under Article 298 of the Code of Criminal Procedure that allows him to refuse attempts by the defence to unnecessarily lengthen the debate.

The court agreed to summon some of the witnesses requested by the defence. It also agreed to the defence's request for forensic medical examinations for detained defendants but not for the three defendants who are currently at liberty, and appointed three Moroccan doctors to perform the examinations. The court's decision is a notable improvement over the Rabat Permanent Military Tribunal's persistence in ignoring allegations of torture in custody and requests for medical examinations during the 2013 military trial.

Medical examinations in the context of investigations into allegations of torture must be performed in line with the Istanbul Protocol. Medical professionals must be impartial and independent from the authorities, as the UN Subcommittee for the Prevention of Torture and

other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee for the Prevention of Torture) has noted. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also emphasized the importance of not restricting the pool of forensic doctors to officially accredited experts, by allowing non-governmental health experts to review state examinations and conduct independent assessments.

In addition, the court must be diligent in interpreting the results of such medical examinations, particularly in a case such as this, over six years after the alleged torture. Specifically, the absence of medical evidence is no proof that torture has not occurred, as the Subcommittee for the Prevention of Torture has noted. Inadequate medical examinations may fail to detect marks of torture, marks can fade with time, and many forms of ill-treatment, including physical and psychological torture – for instance, some forms of sexual violence – leave few or no visible marks. Crucially, medical examinations are no substitute for other aspects of investigations, including questioning victims and witnesses.

So far, the Rabat Court of Appeals refused the defence's request to release the 21 currently detained defendants on bail. Several among them suffer from ailments that prevent them from standing for prolonged periods, but they were only given the option to stand in the courtroom or to sit in an adjacent glass room from where they could not hear the proceedings. Defence lawyers reported that during the first hearing they were not given adequate access to speak to the defendants in privacy to prepare their defence. The defendants struggled to access pens to take notes of the proceedings, and were only allowed one pen for all of them during one of the hearings. Both restrictions breach the duty to provide adequate facilities to prepare defence, a core principle of equality of arms and the right to a fair trial.

The court did not allow relatives of the defendants to observe the first hearing, and only one relative per defendant was allowed subsequently, although no such restriction was imposed on relatives of the deceased Moroccan security forces. Relatives of the defendants have also reported sustained intimidation and harassment outside the court and during their stay in Salé. Several have filed complaints to the court stating they were hit with water bottles, and sometimes rocks, rotten fruit and bottles filled with urine, and faced death threats, as those not allowed into the courtroom held peaceful sit-ins outside the court, and in the evening on their way back to their accommodation. Witnesses added that such incidents often happened in plain sight of Moroccan security officers, several of whom failed to intervene. Videos of Moroccan protesters supporting the deceased security forces outside the court and media coverage in Morocco show numerous calls for the court to harshly punish the defendants, and even to impose the death penalty. Finally, Moroccan authorities denied entry to Morocco to French national Claude Mangin, the wife of defendant Enaama Asfari, when she travelled to the country to visit him on 5 February. They detained her at Mohammed V International Airport in Casablanca for 24 hours before compelling her to board a flight to Geneva.

Twenty-one of the 24 defendants were sentenced in 2013 by the military tribunal to heavy prison terms including life sentences, and they remain in detention pending the outcome of the trial before the Rabat Court of Appeals. Of the three who are not currently in detention, one who is elderly and sick was released on bail on medical grounds, and the Rabat Court of Appeals cited his absence on 26 December as a reason to adjourn the hearing after nine hours of proceedings. The court then decided on 23 January to separate his case from the rest of the defendants. Two others convicted in the same case had been released in 2012 after serving two-year prison terms, and appeared before the court. Sahrawi activist Hassanna Alia has found asylum in Spain since having been convicted in his absence in the 2013 military court trial. He will not benefit from the current civilian trial before the Rabat Court of Appeals as his conviction in absentia did not allow for lawyers to lodge an appeal at the Court of Cassation on his behalf, the defence team told Amnesty International.

Public document

6.3. Amnesty International Public and Human Rights Watch public statement dated July 17 2017

JULY 17, 2017 12:00AM EDT

Morocco/Western Sahara: Torture Allegations Cast Shadow Over Trial

Verdict Awaits Sahrawis Charged in Fatal 2010 Clashes

(Tunis) – Morocco’s judicial authorities should ensure that upcoming verdicts in a mass trial are not based on confessions or statements implicating other defendants obtained under torture or other ill-treatment during police interrogations, Human Rights Watch and Amnesty International said today.

The Rabat Court of Appeals is expected to issue its verdict in the trial of 24 Sahrawi defendants shortly after a hearing scheduled for July 18, 2017. The defendants are charged with responsibility for the deaths of 11 security force members during clashes that erupted when the forces dismantled a large protest encampment in Gdeim Izik, in Western Sahara in 2010. The defendants had been convicted in a military trial, but the Court of Cassation, Morocco’s highest court, ordered new civilian proceedings following a new law banning military trials of civilians.

“Morocco took the positive step of ordering new proceedings before a civilian court, but it still needs to ensure no one is convicted on the basis of evidence obtained by torture,” said Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch.

In the previous trial, a military court in Rabat convicted all of the defendants almost exclusively on the

basis of their confessions allegedly obtained under torture. Most of the defendants received long sentences and have already served more than six years in prison.

In 2015, a new law ended military trials for civilians, bringing Morocco into conformity with international norms. The following year, the Court of Cassation ordered a new trial of the Gdeim Izik group before the Appeals Chamber of the Rabat Court of Appeals. During the trial, which opened on December 26, 2016, the court agreed to have doctors accredited by the court to perform medical examinations on the 21 imprisoned defendants to assess their torture allegations, refusing the request for the three defendants who are not in custody.

The doctors examined the defendants in February and March, almost seven years after the alleged torture took place. The doctors' reports, which Human Rights Watch and Amnesty International reviewed, note the types of torture and other mistreatment that each of the defendants says he underwent during his arrest and interrogation shortly after arrest in late 2010. Their allegations include severe beatings, sometimes while suspended by the wrists and knees, sexual assault including rape with an object, and pulling out fingernails and toenails. The medical reports all conclude with the same phrase or a variation: "The symptoms that he manifests at present and what we noted during our examination are not specific to the specific methods of torture alleged."

"Morocco's judiciary should not squander the opportunity for justice presented by these civilian proceedings," said Heba Morayef, North Africa research director at Amnesty International. "The court should exclude these confessions and statements unless they are able to make a persuasive case that they were made voluntarily. No defendant should be penalized because their allegations of torture went uninvestigated for years."

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Morocco ratified in 1993, requires state parties to abolish and also to prevent torture or other forms of ill-treatment from undermining the right to a fair trial. It gives victims of torture the right to complain to authorities and to receive a prompt and impartial investigation. It also imposes on authorities the duty to investigate any allegation of torture even without a formal complaint.

Countries must ensure that any statement "made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." The UN Subcommittee on Torture has also stressed that courts should not misinterpret the absence of medical evidence as meaning that torture did not occur.

Morocco's constitution also forbids torture and acts that are "cruel, inhumane, degrading, or that harm one's dignity." The country's penal code criminalizes torture. The code of penal procedure says that confessions obtained through "violence" or "coercion" are inadmissible in court. Nevertheless, Moroccan courts have a record of relying on confessions allegedly obtained under torture or coercion as the main source of evidence for their verdicts against defendants.

The defendants are being tried on charges of forming a "criminal gang" and participating, or complicity, in violence against security forces "leading to death with intent," among other charges. The charges relate to clashes that erupted during the police's dismantling of the Gdeim Izik protest camp on November 8, 2010, and in nearby El Ayoun, the main city of Western Sahara.

The UN Committee Against Torture concluded on November 15, 2016, that Morocco had breached the UN Convention against Torture with regard to one of the defendants, Naâma Asfari, on several counts. Responding to a complaint filed by Asfari, represented by the Action by Christians for the

Abolition of

Torture-France (ACAT), the committee found that the authorities had failed to investigate his allegations of torture and other ill-treatment, to protect him and his lawyer from reprisals, and denied him reparations including medical rehabilitation and compensation. It also said the military court had relied on a statement extracted through torture or other ill-treatment to convict him.

In the current trial, the relatives of the security agents killed during the disturbance are represented as civil parties to the case, although the court has yet to rule on whether they can be part of the proceedings as they were not parties to the earlier case.

“The bereaved families want to see justice done, but justice would be ill-served by relying on evidence obtained through the use of torture or coercion,” Whitson said.

6.4. Public Statement from the Western Sahara Intergroup, European Parliament. Dated July 22, 2017.

Western Sahara Intergroup statement on the Gdeim Izik trial

On the 29th of July of 2016, 24 Sahrawi political activists and human rights defenders of the “Gdeim Izik” group were informed that their case would be heard again by a civil court, following international protests against their illegal conviction by a military court in 17th February 2013, to sentences ranging from several years to life imprisonment. The brutality and illegality of their conviction and confinement after their arrest in connection with violent clashes after the forcible dispersal of a protest in support of the inalienable right of the Sahrawi people to self-determination has been condemned by international institutions (notably the UN) and independent observers alike. One of the original members of the group, Hassanna Aalia was granted international protection in Spain following his sentence to life in absentia in Morocco. Proceedings on the new civil procedure started on the 13th of March in Rabat, an extra-territorial court given the fact that the Kingdom of Morocco has no recognized jurisdiction over Western Sahara. The current trial has also undermined the United Nations Convention against Torture and the decision of the UN Committee against Torture (CAT/C59/D/606/2014) by declaring that the legal application of the international convention on torture was not a matter of concern for the Court. It should be remembered that the accusations against “Gdeim Izik” group rest fundamentally on oral declarations that the prisoners have repeatedly declared to have been falsified and obtained under torture. It has also been impossible to link the detainees to any physical evidence, as the chain of custody has not been respected. International observers have repeatedly denounced that the proceedings have failed to comply with international legal standards, since allegations of torture have not been investigated under the Istanbul Protocol and the accused have been repeatedly harassed during the trial. The obstacles to Sahrawi families and international observers, including from the Intergroup, to attend the trial, along with the irregular presence of the civil accusation, add to an atmosphere of intimidation that confirms the political character of the proceedings. The situation has been deteriorating since 16th of May, following the decision of the defendants and their lawyers to leave the trial to protest these

irregularities: two of the lawyers were injured as they were violently removed from the Court when they delivered a speech on the reasons for their departure. The judge decided to continue the proceedings with new lawyers being imposed to the defendants, with whom they were unable to exchange and coordinate their defence. Since then, the defendants have been obliged to attend the trials and accept their defence by force. "The reports from the international observers are worrying and we would like to repeat the call from Amnesty International for a fair and just trial, and once again underline the importance of investigating possible human rights violations", stated Jytte Guteland, Intergroup Chair (S&D, Sweden). "Instead of showing cruelty and injustice towards these young Sahrawi prisoners, Morocco must solve the problem of Western Sahara with a comprehensive agreement and show readiness to engage with the Polisario Front and the Saharawi people" declared MEP Ivo Vajgl, Intergroup Vice-Chair (ALDE, Slovenia). "This show trial is another example of the repression of Morocco in the Occupied Territories of Western Sahara", said Paloma López (GUE/NGL Vice-Chair, Spain). "Sahrawi political prisoners must be released and the rights of association and freedom of expression for Sahrawi activists be upheld if a lasting political solution is to be found for the self-determination of Western Sahara". According to Vice-Chair Bodil Valero (Greens/EFA, Sweden): "it is not acceptable that the defendants and their families have had to wait such a long time for the trial, nor the way these proceedings have been handled. I expect Morocco to follow the rule of law and international legal standards." "This process is clearly a farce: not only is it politically motivated, it also does not comply with the most basic principles on the right to a fair trial as enshrined in the Universal Declaration of Human Rights and in International Covenant on Civil and Political Rights." concluded Fabio Massimo Castaldo, EFDD Vice-Chair (Italy). We reaffirm the right of the Gdeim Izik defendants to a fair trial and we strongly condemn the blatant lack of respect for international law in the politically-motivated proceedings. We call for the immediate release of the defendants on bail and for the investigation of all torture allegations and for perpetrators of such acts to be held accountable. We urge the European Union and its Member States to raise the fate of the Gdeim Izik prisoners with the Moroccan authorities at the highest level, to meet with the prisoners and to monitor the court proceedings, in line with its commitments under the EU Guidelines on Human Rights Defenders and on Torture. We call on the United Nations Human Rights Council to carry out an urgent inquiry into the situation of the Gdeim Izik prisoners. Once more, we denounce the dramatic human rights situation in the Occupied Territories of Western Sahara and we recall the inalienable right of the Sahrawi people to self-determination, to be exercised through a referendum in line with international law and UN resolutions.

Signed by:

Jytte Guteland, Chair, S&D

Paloma López Bermejo, Vice-Chair, GUE/NGL

Ivo Vajgl, ALDE

Bodil Valero, Group of the Greens

Fabio Massimo Castaldo, Europe of freedom and direct democracy group.