

## Report of French Mission of Observation to Casablanca 15-16 October 2010

Mandated by AJID (International Association of Democrat Lawyers), BIRDHSO (International Bureau for Human Rights in Western Sahara), the Association Droit-Solidarité (Law and Solidarity), AFASPA (French Association of Friendship and Solidarity with the Peoples of Africa), CORELSO (Committee for the respect of liberties and human rights in Western Sahara), AARASD (Association of Friends of the Saharawi Arab Democratic Republic)

To attend as observers the trial in the Court of First Instance in Casablanca in Aïn Sbaa of:

- **Brahim Dahane**, President of the Saharawi Association of Victims of serious human rights abuses - ASVDH, (3 years 7 months of forced disappearance under Hassan II and 1 year 8 months in prison under Mohamed VI)
- **Ahmed Naciri**, General Secretary of the Saharawi Committee of Human Rights, member of the coordinating council of ASVDH , President of the Smara branch of AMDH (18 months of forced disappearance under Hassan II and 2 years 4 months in prison under Mohamed VI)
- **Ali Salem Tamek**, Vice President of the Collective of Saharawi Human Rights Defenders – CODESA (1 year 5 months in prison under Hassan II and 2 years 11 months under Mohamed VI)
- **Rachid Sghaiyar**, member of ASVDH (since 1988 4 abductions, 1 arrest and torture, 8 months in prison)
- **Ettarrouzi Yahdih**, member of ASVDH, (1 year 5 months in prison)
- **Dagja Lachgar**, member of the executive of ASVDH (11 years 2 months of forced disappearance under Hassan II, 7 months' prison under Mohamed VI)
- **Saleh Lebahi**, member of an association to protect children (7 months prison)

Brahim Dahane, Ahmed Naciri and Ali Salem Tamek have been held since their arrest in Salé prison, Rabat. The four other accused appear in court free, having been progressively released on bail.

In the morning we set off to meet with the defence lawyers in a café next to the Aïn Sbaa Palace of Justice where the trial was to take place.

They explain that the detainees have not yet left prison and they have a meeting with the public prosecutor to try to find out more.

Later they explain that the Deputy Crown Prosecutor told them he sent an order to get them from Casablanca prison (whereas they were in at Salé in Rabat). It becomes clear that the trial cannot take place, but there is a possibility for the lawyers to argue for their release on bail, which can take place in the absence of the detainees.

We wait for them in the café, where bit by bit the Saharawi activists, representatives and members of ASVDH, CODESA and CODPSO, are arriving.

About 12 midday, the 20 international observers (12 Spanish, 3 Italians, 2 Swedish, 2 French and 1 Mexican) decide to go to the court to meet with the Public Prosecutor before the session, which has been announced for 14h30.

We have the greatest difficulties getting into the court, and we need to really argue our case and point to our position as international observers in order finally to be admitted. We are led and accompanied to the courtroom where the trial will take place.

But despite our request, and the assurance given that we will be seen after his meeting and before the session, we were not received by the Public Prosecutor.

After the event, the conditions in which the hearing took place doubtless explain why he had no inclination to see us.

At 13h30 a procession composed of the observers, numerous Saharawis coming to attend the hearing and to show their support and solidarity with the companions on trial, and journalists (Spanish, Mexican and American) arrives in the court.

In the courtroom some people are already installed, who are clearly not concerned with this trial. It quickly fills with the group of Saharawis and the observers and there are not enough seats.

Many lawyers are present, and we will come to understand later why.

The Bench arrive and sit down (the president, 2 assessors, on their right the Deputy Public Prosecutor, on their left the clerk of court).

Taking account of the number of people in the room, and above all the mass of lawyers between the bar and the bench, there is a certain confusion, but we hear the names of the accused called.

The four free accused who are in the room in the middle of the public begin to move forward on the right, and one of them lifts his arms to make a V, chanting Saharawi slogans of the peaceful intifada to do with their right to self-determination. He is immediately followed by the three others, then by the whole room (excluding some members of the public who seem to have been put there by the Moroccan authorities).

The reaction is unbelievably violent and totally astounding : the lawyers massed between the bar and the tribunal, in their robes, turn round as a bloc towards the room, fists in the air, raised against the courtroom, shouting pro-Moroccan, nationalist slogans in Arabic and in French, insulting both the Saharawis and the observers present.

The magistrates, the public prosecutor and the clerk get up and leave the room, while the demonstration of the lawyers carry on.

This went on for about twenty minutes, while about twenty of the lawyers continue to demonstrate showing real hatred and great violence, both verbal and physical. One of them jabs Ettarouzi violently with his the elbow in the stomach. Two Moroccan lawyers get up on the public bench and harangue them as well as the observers. One of them, spitefully, shouts so the observers can hear, "You are paid by Algeria!". And in Arabic, to the French observers "You haven't given back Alsace and Lorraine which belong to Germany".

In the middle of this tumult, some Moroccan lawyers stand out showing their disapproval; as for the defence lawyers, they keep amazingly calm with remarkable dignity.

The few police present try to stand between them. Some Saharawis having the moral authority prevent the provocation from degenerating.

Calm has scarcely returned when the postponement of the trial is announced until 5 November; the Bench does not reappear.

The courtroom empties and outside in the hall a demonstration "is organised" with the same lawyers, joined by a dozen people in civilian clothing, shouting slogans and abuse, raising their fists and brandishing a portrait of the king and the Moroccan flag.

Observers, defence lawyers, and Saharawis leave the court building. Saharawi activists improvise protection for the observers and the prisoners' wives pursued by the Moroccan lawyers, crying "treachery" at them right into the avenue next to the court.

Defenders, observers and Saharawis meet up in the same café to assess the situation.

## **Meeting with the lawyers**

We must first recall that the seven were arrested on 8 October 2009 in Casablanca airport, while they were returning home from a trip to the Saharawi refugee camps in southern Algeria.

They were all arrested, held in various locations by various police services and interrogated in conditions contrary to the rules of Moroccan law.

They were then, at the beginning of the process, accused of attacking the external security of the state, a crime in articles 181 and following of the Penal Code, carrying the death penalty, and relevant to a military court. This is the reason they were all incarcerated in Salé.

The four who were progressively released, were given no notification of the reasons for their release, according to one of them who has described the procedure in his own case (see interview with Rachid Sghaiyar).

The instructing magistrate on 21 September 2010 withdrew the case and sent it back as undermining internal security, an offence relating to articles 206 and 207 of the Penal Code and the penal jurisdiction of common law. This is the reason that they must now be tried in Casablanca, in the court of the place where they were arrested.

## **Nothing justifies the hearing not taking place**

The case was prepared, the lawyers were ready, the released defendants were present.

Nothing can seriously explain why the detained defendants were not brought from Salé prison to face court.

If the postponement was ordered, as it appeared, because of the incidents which occurred at the beginning of the hearing, this could not have taken place even without incident, for the simple fact of the absence of the detained defendants.

In fact, everything leads one to believe that it was all organised because of the particularly large presence of foreign observers, press, numerous Saharawis, so that the examination of this affair in a symbolic way, could not take place, and the postponement could not be imputed to the Moroccan authorities and their failings.

This explains the presence of so many lawyers with no link to this affair. This explains the demonstration and the provocations in which they indulged; one of the defence lawyers said he heard the Vice-Public Prosecutor congratulate them, saying: "You did well".

Apart from the fact that the affair has been postponed – which "oblige" the remobilisation of observers both foreign and Saharawi for the next hearing - this situation did not allow the lawyers to raise the question of bail.

## **This question poses in itself a considerable legal problem**

In effect, from now, they are no longer charged with a crime (attacking the external security of the state), the rules of detention relating to an offence should apply.

Now, as concerns an offence, provisional detention cannot exceed 30 days, renewable only once.

The whole question is to know if this deadline is timed from the date of their imprisonment, namely 8 October 2009, in which case they have been in a situation of illegal detention since 8 December 2009, or from the date of the withdrawal of the case, which would result in the time of twice 30 days

only beginning on 21 September 2010 and running until 21 November 2010. But in this hypothesis under what legal regime and on what basis have they been detained from 8 October 2009 until 21 September 2010?

According to their lawyers, their detention is, like the whole case from the start, completely irregular and illegal.

Like all the observers present, the defence lawyers were extremely shocked by the attitude of the Moroccan colleagues who, everyone thought, had sullied their reputations, had behaved in an unworthy manner, and had, by their unprofessional behaviour, undermined the rights of the accused, including preventing any debate on the conditions and maintenance of detention.

## **A climate of tension, under a media campaign**

Just a few days away from the 35<sup>th</sup> anniversary of what Morocco calls “the Green March” and the Saharawis refer to as “the black march”, we noticed that the media are exhorting the public to nationalism, advocating the autonomy of Western Sahara, are blacklisting Saharawi activists and abusing Algeria.

Our mission as observers however, did not stop there.

Since we were continually being followed during these 48 hours by the “representatives” of the Moroccan authorities, the latter were able to see that we went with an Italian lawyer, Francesca Doria, to an apartment rented for the 48 hours by some Saharawis, where they had invited to dinner anyone who had not started the long journey home to El Aaiun or Smara.

We were then witnesses to the harassment the Saharawis suffer, wherever and in whatever situations or places they find themselves.

We were quietly engaged in chatting while waiting for the meal, and while one of them prepared the tea, and others were looking at photos on their computers, when there was a knock at the door. A woman was there. A discussion took place which was translated for us and from which it turned out that this woman, the owner of the apartment, had received a visit from the police services pointing out that she had “rented to the Polisario” and “asking” her to make us leave the place. It was obvious that this woman was frightened by the pressure she had been subjected to, and was really upset by what she was forced to do. Very calmly the Saharawis finished preparing the meal, we ate quickly, then they packed up, and we left the premises: us to return to our hotel, them scattered among other Saharawi families able to take them in as they are used to doing in such cases. Outside an unmarked vehicle was waiting below outside the flat with two plain cloths police inside, three others were waiting on the other side of the porch of the building (so far as we could see).

This end to the day, beginning with the demonstration of hatred by the Moroccan lawyers losing all dignity and humanity, was thus finished with the image of the great solidarity between Saharawi men and women, packing up their things in the middle of the night and moving out, in the greatest dignity and serenity.

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