

Report of the judicial mission of observation to the trial of the 24 from Salé

RABAT 23 - 26 October 2012

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Association of Friends of SADR (AARASD)

Committee for the Respect of Liberties and Human Rights in Western Sahara
(CORELSO)

Platform of Solidarity with the Saharawi People

Concerning the trial announced as opening before the Military Court of Rabat on 24 October 2012

1. Enaama Asfari arrested 7/11/10 in El Aaiun
2. Ahmed Sbaaï arrested 8/12/10 in El Aaiun
3. Cheikh Banga arrested 8/11/10 at Gdeim Izik
4. Mohamed Bourial arrested 8/11/10 at Gdeim Izik
5. Etaki Elmachdoufi arrested 8/11/10 in El Aaiun
6. Mohamed El Ayoubi arrested 8/11/10 at Gdeim Izik, released provisionally on 13/12/11)
7. Mohamed Bani arrested 8/11/10 at Gdeim Izik
8. Brahim Ismaïli arrested 9/11/10 in El Aaiun
9. Mohamed Embarek Lefkir arrested 10/11/10 in El Aaiun
10. Abdallah Lekhfaoui arrested 12/11/10 on the beach of Foug El Oued
11. Laaroussi Abdeljalil arrested 13/11/10 in Boujdour
12. Sidi Abdallah B'hah arrested 19/11/10 in El Aaiun
13. Mohamed El Bachir Bouteguniza arrested 19/11/10 in El Aaiun
14. Mohamed Lamin Haddi arrested 20/11/10 in El Aaiun
15. Sidi Abderahmane Zayou arrested 21/11/10 in El Aaiun
16. Abdallah Toubali arrested 2/12/10 in El Aaiun
17. Deich Eddaf arrested /12/10 in El Aaiun
18. El Houssin Ezzaoui arrested 4/12/10 in El Aaiun
19. El Bachir Khadda arrested 5/12/10 in El Aaiun
20. Mohamed Tahlil arrested 5/12/10 in El Aaiun
21. Hassan Dah arrested 5/12/10 in El Aaiun
22. Sid Ahmed Lamjayed arrested 25/12/10 in El Aaiun
23. Babait Mohamed KHOUNA arrested 15/08/11 in El Aaiun
24. El Bakai LAARABI arrested 9/9/2012 in Dakhla
(who does not figure in the indictment of 3/11/2011)

It should be noted that Hassan Ahleiya arrested and detained for several days at the time of the dismantling of the Gdeim Izik camp was released without charge. He was not declared "escaped" and was sought only when the authorities decided to hold a trial.

Background

1 The accused were arrested in connection with the dismantling of the Gdeim Izik Camp, the first arrest taking place on 7 November 2010, the day before the dismantling and the others spread out in time (cf above)

The most recent arrest of El Bakay LAARABI, on 9 September 2012 in Dakhla, sought as a participant in the contact group who were negotiating with the authorities before the dismantling. It should be emphasized however, that he is not in the indictment of 3 November 2011.

According to the indications given by the lawyers for the defence, this “late” arrest may be the motive for the postponement of the trial fixed for 24 October 2012, the Court indicating they did not have the time to examine the dossier because of this new arrest (Press release of ASVDH 24 October 2012).

2 According to the Indictment made at the end of the court procedure of 3 November 2011, the charges against them are (free French translation):

- To have formed a criminal band aiming to exert violence against members of the public forces in the course of their duties, including murder;
- To have participated in violence against men of the public forces in the exercise of their duties, including murder;
- To have performed an act of profanation to the corpse according to articles 293, 294 et 267 (paragraph 5) and 129, 130 and 271 of the Penal Code, taking account of what is said in article 7 of Military Law,

Article 293:

“Any association or alliance, however long it has existed and whatever the number of its members, formed or established in the aim of preparing or committing crimes against persons or property, constitutes the crime of conspiracy which exists by the sole fact that the resolution to act is jointly made”

Article 294

“a punishment of five to ten years’ imprisonment for any individual who is part of an association or alliance as defined in the preceding article. The prison sentence is from ten to twenty years for the leaders of the association or alliance or for those who have carried out any orders.

Article 267

“a prison sentence ...for anyone committing acts of violence or assaulting a magistrate, a public officer, a commander or law enforcement agent in the performance of his duties, or because of exercising his duties... Para 5 when the violence brings about death intentionally, the punishment liable is death.

Article 129

“anyone is considered an accomplice to an infraction described as a crime or misdemeanor who, while not participating directly in the offense have:

1° provoked that action by gifts, promises, threats, or abuse of authority or power, culpable plots or by devious means or have given instructions for it to be committed;

2° procured arms, instruments or any other means which could have served the action knowing that they were to be so used;

3° with knowledge aided or abetted the author or authors of the action in the acts which prepared or facilitated it;

4° knowing their criminal conduct, habitually provided accommodation, a hiding place for meetings of one or several criminals engaged in robberies or violence against state security, public peace, persons or property; complicity is never punished for contravention.”

Article 130

“The accomplice of a crime or a misdemeanor is punishable with the penalty due for this crime or misdemeanor. The personal circumstances which caused aggravation, mitigation or exemption from punishment only take effect in respect of the one participant to which they relate. Objective circumstances inherent in the offense which aggravate or reduce the sentence, even if they are not known to all those who participated in this offense take effect to their detriment or in their favour.”

Article 271

“Whoever mutilates or defiles a corpse or commits any act of brutality or obscenity on a corpse is punished with imprisonment of two to five years and a fine of 200 to 500 dirhams.”

Article 7 of the Code of Military Justice (Dahir 1-56-270 du 10.11.1956) forming the code of military justice

“ When a defendant in the military court is being investigated at the same time for a crime or offense within the jurisdiction of the military court, and for another crime or offense in the ordinary courts, he is taken first before the court under which he faces the more serious punishment and later, if applicable, before the other court. In case of double jeopardy, the heavier penalty is the only one undergone. If both crimes or offenses carry the same penalty, or if one of them is desertion, the accused is first tried for the offense within the jurisdiction of the military court.

3 The trial was announced in the first instance for 13 January 2012, but the day before the lawyers for the defense were advised simply by a telephone call from the trial court that the trial was postponed “indefinitely”. This postponement was made outside of a public hearing and thus without the presence of the accused or their lawyers.

4 The announcement of the new hearing date of 24 October 2012 was made in August 2012, in the days prior to the visit (14-21 September 2012) of Mr Juan Mendez, the U N Special Rapporteur on Torture to Morocco and Western Sahara. As we would be reminded by Mrs Khadija RYADI the President of AMDH who received us on the afternoon of 24 October 2012 (see below) since April 2012 and again in August 2012, the Public Prosecutor of the Military Court, Mr Ben Youssef KHILFI, said to Mrs Claude MANGIN-ASFARI, that the trial would never take place.

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It is under these conditions that we are mandated to attend the trial. Upon landing at the airport in Rabat, we are informed by a phone call that the trial has again been postponed indefinitely.

23 October 2012 afternoon

We meet up on 23 October 2012 in the afternoon to start work and to meet the families and the Committee of families of the Saharawi political prisoners (CFPPS).

Initially the international observers are:

Francesca DORIA Lawyer in Naples
 Luciano ARDESI, National Secretary of the Italian League for the Rights of Peoples and President of the National Association of Solidarity with the Saharawi People (ANSPS – Italy)
 Olivia VENET, Lawyer in Brussels and President of the Justice Commission of the Belgian League of Human Rights
 Michèle DECASTER SG of AFASPA, member of BIRDHSO
 France WEYL, lawyer in Paris, the association AIJD and Law Solidarity mandated by the International Association of Democratic Lawyers, Law Solidarity, the French Association of Friendship and Solidarity with the Peoples of Africa and the Friends of SADR (AARASD), the Committee for the Respect of Liberties and Human Rights in Western Sahara (CORELSO), the Platform of Solidarity with the Saharawi People, the International Bureau for the Respect of Human Rights in Western Sahara (BIRDHSO).

The next day we are joined by:

The Spanish observers

Inès MIRANDA, lawyer in Las Palmas, the International Association of Jurists for Western Sahara (IAJUWS)
 Francisco SERRANO, lawyer in Seville, mayor
 Lola TRAVIERSA, lawyer in Las Palmas
 Pepe REVERT, lawyer

Other Italian observers

Nicola QUATRANO, judge in Naples, President the International Observatory
 Roberta BUSSOLARI, lawyer in Modena
 Fathi Najam a Tunisian interpreter

An English observer

Michael ELLMAN, representing the Euro-Mediterranean Network for Human Rights, lawyer and legal and special adviser to the International Bureau of FIDH

As well as

Issam LAHLOU, barrister from Rabat, Secretary General of the Rabat branch of OMDH (Organisation Marocaine des Droits de l'Homme – Moroccan Organisation for Human Rights)
 Mohamed MESSAOUDI barrister from Casablanca, representing AMDH (Association Marocaine des Droits de l'Homme – Moroccan Association for Human Rights)

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23 October 2012

We join in Salé the families of the prisoners who are installed there to be close to the prison so as to exercise their rights to visit.

We meet there Mustafa El MACHDOUFI, known as Mansour, President of CFPPS (Committee of the families of Saharawi political prisoners), who is the lynchpin and is living more or less permanently in Rabat; he tells us in an aside, that he stayed during Ramadan so that the prisoners would not be alone during this period.

We share time with the families to talk, then we leave with a few activists to go to another house where a meeting is taking place to organize the demonstration which will take place the next morning outside the Military Court at the time the trial was scheduled to begin. If we do not understand everything that is said, we are all impressed by the high quality of the meeting where everyone speaks in turn, listens to what others are saying and where jobs are distributed, slogan topics discussed.

Brahim DAHAN, President of ASDVH (Association Sahraouie des Victimes des Violations Graves des Droits Humains Commises par l'Etat Marocain – Saharawi Association of Victims of Serious Violations of Human Rights Committee by the Moroccan State), confirms later what we have understood by listening and watching : groups were formed on communication with the media, another on dialogue with the authorities, a third to circulate information on the location and time of the event among the Saharawis who have come to Rabat for the trial and on the smooth running of the demonstration, a fourth will finish the slogans.

24 October 2012 morning

We go to the Military Court where we find the Italian and Spanish observers outside. We see the arrival of the demonstrators among whom, those we met the day before including Sidi Mohamed DADDACH, and Sultana KHAYA at the start of the demonstration.

We note the presence of large numbers of the various police and security services. The protesters have banners and photos of the accused and are chanting slogans for the respect of human rights and the release of all the prisoners (on banners in Arabic and English, in particular we can read: "No to military justice" and "Yes to the respect of human rights").

We note that the demonstration is taking place calmly and we decide to go inside the Military Court where we ask to attend proceedings and to meet the President and the Prosecutor handling the case. The soldiers in charge of security at the entrance tell us initially that we should provide written requests to ask for an interview. After we are told that the hearing had not begun and that we should wait, we are told that the hearing will not take place.

We meet in the hall of the court Mr Issam LAHLOU, lawyer in Rabat, Secretary of the Rabat branch of OMDH, with Mr Michael ELLMAN representing the Euro-Mediterranean Network of Human Rights, who tell us they have lodged their accreditations the day before and learn only now that the hearing has been postponed.

The observers install themselves at a table in the entrance hall to draw up the written and individual requests for meetings with the President and the Prosecutor. These letters are handed in with the accreditations or mandates

from their organisations to the colonel (who introduced himself to us as Wali), and who tells us they will be submitted to the President and the Prosecutor. Seeing that we were not leaving the building, we are then told that they will not be able to receive us because they have not come here today. We make it clear that we are available the next day and that we do not have very much time in Rabat (departure on 26 October 2012). We are told we must wait to be called. On the date of our departure we had not been contacted.

While we were in the hall, we met Mr MESSAOUDI lawyer of AMDH, also coming to the trial and with whom we exchanged some words. Through him we arranged a meeting with Khadija RYADI, President of AMDH for the afternoon. We leave having only met officials and security personnel.

We then meet with the whole group of observers as well as with Brahim DAHAN and Hassana DUIHI from ASVDH to discuss the follow-up before the latter two return themselves to El Aaiun that night, as the Feast of Eid Al Adha is approaching and the observers will be dispersing.

24 October 2012 afternoon

Meeting with Madame Khadija RYADI, President of AMDH

The open and very interesting meeting covers both the general situation of human rights in Morocco - of which she tells us that she has suffered a serious aggravation on AMDH – and its methods of functioning and its actions, as well as AMDH's campaigns and of course on the Gdeim Izik trial.

On this question Mrs RYADI points out that she came this morning to the place where she learnt about the postponement of the hearing and attended the Saharawis' demonstration; she declares to us that in her opinion there will be no movement in the situation without a real mobilization and pressure on the authorities.

She explains also the reasons for which AMDH considered it could not join the CNDH - Comité National des Droits de l'Homme (National Committee of Human Rights)– created in March 2011 and chaired by Mr Driss EL YAZAMI and hands us its proceedings on this point: this decision is based on the absence of independence of this body, both in the method of appointing its members and in its functioning and competences and powers to intervene. It is also based on the fact that “the Council adopts at the same time the national and international standards concerning human rights instead of referring exclusively to the international standards by giving them precedence over national standards in case of contradiction.

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25 October 2012 afternoon

Meeting with CNDH (National Committee of Human Rights)

We are received by Mr Driss EL YAZAMI Président, his deputy Mr Dahchour GHAFOUR, and Mrs Jamila SAYOUBI, a member of CNDH, Lawyer and Rapporteur on Moroccan prisons.

Discussion was sometimes difficult, Mr EL YAZAMI seeming to be on the defensive and some of our questions being misinterpreted. In general exchanges on the question of human rights and the position of the CNDH. It considers that reform should be gradual, to improve things for all actors in human rights and that things are moving in the right direction. We are told that the report on the custodial situation will be made public on 30 October 2012 and that it will be sent to us personally (at the time of writing we have Observers' Report Rabat 23/10/2012-25/10/2012

learned of the CNDH report through the press).

It is confirmed that the general report on human rights in Morocco will be published in December 2012.

With regard to the Gdeim Izik trial, on one hand Mr EL YAZAMI says that a CNDH observer was to attend but the trial having been postponed, he had obviously not gone, but learning that a demonstration had been organized outside the Military Court, he felt that in the mission of prevention which is that of CNDH, an observer should be sent who did attend the demonstration.

Mr ELYAZAMI tells us that since the establishment of the CNDH in March 2011, all trials are observed and that the Dakhla one was. Asked whether they had issued a report, he replies that the report will be finalised when the whole judicial curriculum is completed. Concerning the postponement, Mr EL YAZAMI tells us he does not know the reasons, and admits that it is not "natural" that it should have happened without a hearing and without the presence of the accused.

To our question as to the fact that this already happened in January 2012, we do not obtain a response.

With regard to the situation of the detainees, Mr EL YAZAMI tells us that the CNDH has been very concerned and allowed the release of Mr MOHAMED ELAYOUBI in December 2011, and that it has just intervened so that the detainees could have a visit the next day which is the day of Eid Al Adha (the feast of the sacrifice). It was confirmed to us in this meeting that the detainees will actually be able to receive a visit from their relatives on Friday 26 October 2012.

Finally concerning the competence of the Military Court, Mr EL YAZAMI points out, as Mrs RYAD had done the previous day, that it can be explained by the nature of the offenses of which they are accused, but that as far as he is concerned, he considers that the Military Court should be removed and that the rules of the right to a fair trial are not being respected in this case of the 24 in Salé, which is confirmed by Mrs SAYOUBI.

Finally Mr EL YAZAMI invited us to visit Western Sahara to appreciate the work already achieved by CNDH, inviting us to consult the data bases of the three regional offices of the CNDH (Tan Tan, Laayoune and Dakhla) which he tells us are fully available.

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Conclusions

If we can consider that the postponement of the trial is a sign of weakness on the part of the Moroccan authorities and confirms that the case is vacuous, then:

- keeping the accused in detention without any judicial decision is contrary both to the Moroccan norms and to international norms, namely the International Pact relating to civil and political rights and its article 9
- a postponement without a hearing and without any date being set for a trial is equivalent to a denial of justice.
- If there is no judicial act confirming or extending their detention coming out of a hearing, we should consider that this is an arbitrary detention
- At any event the length of detention without legal process and without the prospect of a hearing being announced is contrary to the Rights of Man (right to liberty in particular) and to the principle of respect for the rights of defense (right to a fair trial)
- If the jurisdiction of the Moroccan military court meets the internal Moroccan norms, as it no doubt does, it is radically contrary to the international norms and denounced as such almost unanimously by actors in Morocco (excessively broad competence, notably over civilians in time of peace, no guarantee of independence, no guarantee for the accused, no motivation for the decisions, lack of the right to appeal...)
- The charges in the indictment and prosecution text are particularly serious and the penalties particularly heavy. In this respect it seems necessary to replace the events into the context in which they took place
- In their immediate context: the Gdeim Izik Camp, the reasons, the demands made, its organization, the negotiations with the authorities, the conditions of its dismantling
- In the general context of Western Sahara and the obligations of the international community for the Saharawi, in this context, it is proposed to offer to the different actors in this trial (human rights associations in Western Sahara, follow-up committee, lawyers...) to work with them on the basis of the indictment in the preparation of the case for the defense and the hearing.

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Demonstration outside the Military Court, Rabat, 24 October 2012