

## ***Trial Observation Report***

### **From the proceedings held against the “Group Gdeim Izik” in Salé, Morocco.**



*Image published in Moroccan media of “Group Gdeim Izik” inside of the “glass-cage” on the 26th of December 2016*

### **Executive summary**

Our names are Tone Sørffonn Moe (Norway) and Isabel Lourenço (Portugal, Isabel Maria Gonçalves da Silva Tavares Lourenço). We are international observers attending the trial against the Group Gdeim Izik at the Appeal Court in Salé, Rabat Morocco. We are accredited by Fundación Sahara Occidental. This report is based on our previous published reports from previous rounds of the same trial, in December 2016 and January 2017.<sup>1</sup> Due to the complexity and length of this case, we view it necessary to distribute a report after each “session”. This report will highlight and evaluate the observations made in March 2017, with regards to the testimonies from the accused and the medical examinations. But, this report also refers to all the three sessions held so far, at December 26<sup>th</sup>, January 23<sup>th</sup> to 26<sup>th</sup>, and in March from 13<sup>th</sup> to the 27<sup>th</sup>. This report informs and goes deeper into the various sides of this case, and we hope that this report can be used as an instrument for observers wanting to attend the future sessions.

The overall objective of our attendance is to evaluate whether the trial against the group is a fair trial, according to Moroccan and international standards. When assessing this trial observation, we have evaluated the proceedings on the basis of a political trial; assessed when proceedings are brought up for reasons of political persecution (political trials) rather than to impart justice, and when it is a great risk that the proceedings as a whole may be unfair.

On the 17<sup>th</sup> of February 2013, the Military Court in Rabat sentenced a group of 25 Saharawi activists to harsh penalties. The *Court de Cassation* found the decision from the Military

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<sup>1</sup> For previous published reports concerning the sessions held in December 2016 and January 2017, visit: <http://porunsaharalibre.org/pt/informes-gdeim-izik/>

Court of Rabat null and void, and referred the case to Court of Appeal in Salé. The Court was on the 26<sup>th</sup> of December 2016 to address the appeal of the case of these 24 men. One of the original 25 are sentenced to life *in absentia*. The trial on the 25<sup>th</sup> of December was postponed to 23<sup>th</sup> of January 2017. After two days of proceedings, the case was on the 25<sup>th</sup> of January 2017 postponed to March 13<sup>th</sup>. On March 15<sup>th</sup>, the proceedings were adjourned until March 20<sup>th</sup>. On March 27<sup>th</sup>, the proceedings were adjourned until May 8<sup>th</sup>. None of the prisoners were granted provisional release. On the 25<sup>th</sup> of January, the court ruled that the Court of Appeal in Salé was competent and had necessary jurisdiction; that the prisoners were to be given medical examinations, both physical and mental examination by Moroccan public officials (i.e. not by independent experts as requested by the defence); that the defence could present all the witnesses, excluding the Moroccan authorities as well as an ex-minister and a former MP that had been in negotiations with the Gdeim Izik dialogue committee. Thus, the police and gendarmerie officers who drafted the “minutes” (documents relating to the arrest and custody), were convened. Furthermore, the court ruled to postpone the discussion upon partial status for civil party (the representatives of the victims).

The presiding judge have affirmatively declared that the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment, and the CAT decision (CAT/C/59/D/606/2014) regarding one of the prisoners, are sources he regards as irrelevant, and sources that have no legally binding competence in his court. The CAT decision had concluded that all declarations gathered by Moroccan authorities were taken under severe and inhuman torture. The proceedings commenced on March 13<sup>th</sup> at the Appeal Court of Rabat. The medical examinations, which were performed by Moroccan public servants, had not yet been presented at the court. The court commenced the proceedings without the reports concerning the medical examinations.

During the proceedings held March 2017, the accused gave their testimonies to the court. The accused declared that they were arrested due to their political activism and their activism for human rights in Western Sahara. The accused declared that they all have signed declarations that they did not know the content of, whereas the declarations were falsified and that they are charged with a “made up case”. Several of them alleged to have been subjected to brutal torture, and that the torture is systematically performed to break them. Sidi Abderahmane Zeyou (one of the accused) stated that the Gdeim Izik camp, and the events following, are linked to the political conflict in the occupied territories in Western Sahara. Mr. Zeyou furthermore stated that the investigations after the dismantlement of the camp, was not set forward to reach the truth, but to revenge the political activism.

The court case shows all signs of being a political trial, in a courtroom that lacks the necessary jurisdiction, and the accused are subjected to the misunderstanding or bias of persons representing a foreign mentality, traditions or doctrines. It is of vital importance that the accused are given medical examinations in accordance with the Istanbul Protocol, and that the declarations extracted under torture are discarded as evidence. Furthermore, the burden of proof will be a crucial factor during the commencement of the proceedings.

**We strongly recommend that representatives of the international community (NGOs, jurists, deputies, government officials or representatives of embassies in Rabat) should be present on the scheduled appeal on the 8<sup>th</sup> of May 2017.**

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The Gdeim Izik protest camp in October 2010.

## 1. Introduction

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 neither that 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, on the 6<sup>th</sup> of November, 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 "immediately to 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. Thus, Western Sahara has been under occupation by Morocco since 1975. Morocco and Western Sahara, led by the Saharawi liberation movement Front Polisario, were in an 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 most important aspect of the peace agreement, a referendum on self-determination for the Sahrawi people, has never been implemented.

The Gdeim Izik was a provisional protest camp in 2010 situated outside of El Aaiún, the capital of Western Sahara. The camp demanded respect for their most basic human, social and economic rights. The "Group Gdeim Izik" relates to the imprisonment of 25 Saharawi arrested prior, during and after the dismantling of the silent protest camp Gdeim Izik on November 8<sup>th</sup> of 2010.

Moroccan authorities held the areas surrounding the camp under surveillance from the beginning. Since October 12<sup>th</sup> 2010, armed trucks, helicopters and army vehicles circulated the camp areas, and authorities constructed roadblocks and checkpoints around the camp. On the 24<sup>th</sup> 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 November 8<sup>th</sup>, around 6 am, the Moroccan military broke their promise and attacked the Gdeim Izik camp. Camp residents reported the 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 8<sup>th</sup> 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.

During and after the violence on November 8<sup>th</sup> 2010, Moroccan security officials proceeded to arrest hundreds of Saharawi. Many prisoners remained in custody longer than 48 hours, and were held without being charged for months before released on provisional release.

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

## 2. The prisoners and the charges against them

The accusations are related to (1) being part of a criminal organization, (2) violence towards police officers, (3) intentional/unintentional murder. The accusations are based on article 129, 130, 267, 271, 293 and 294 of the Moroccan penal code. If sentenced after Article 267 of the Moroccan penal code, the sentence is death penalty.

The victims, that the “Group Gdeim Izik” are accused of murdering, are 11 Moroccan members of the public forces, who allegedly died during the dismantlement of the camp site and during the riots that broke out in El Aaiún.

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 Saharawi people’s right to self-determination.

The prisoners and the charges are listed below.

1. **Sidi Abdallah Abbahah (B’ah), born 1975. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death; with intent to kill and desecration of the corpses.
2. **Mohamed El Bachir Boutinguiza, born 1974. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death; with intent to kill and desecration of the corpses.
3. **Mohamed El Ayubi, born 1956. Sentenced to 20 years under provisional release due to his debilitated health condition by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with

- the cause of death, with intent to kill.
4. **Ettaki Elmachdoufi (Machdoufi Ettaki), born 1985. Sentenced to time served by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  5. **Mohamed Bani, born 1969. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  6. **Abdeljalil Laaroussi, born 1978. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  7. **Abdulahi Lakfawni, born 1974. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; and for violence against public forces with the cause of death, with intent to kill.
  8. **Ahmed Sbaai, born 1978. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  9. **Sid´Ahmed Lemjeyid, born 1959. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  10. **Brahim Ismaili, born 1970. Sentenced to life imprisonment by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  11. **Mohamed Embarek Lefkir, born 1978. Sentenced to 25 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  12. **Larabi El Bakay, born 1982. Sentenced to 25 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, with intent to kill.
  13. **Enaâma Asfari, born 1970. Sentenced to 30 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
  14. **Cheikh Banga, born 1989. Sentenced to 30 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
  15. **Mohamed Bourial, born 1976. Sentenced to 30 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
  16. **Mohamed Lamin Haddi, born 1980. Sentenced to 25 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
  17. **Sidi Abderahmane Zayou, born 1974. Sentenced to time served by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
  18. **El Houssin Ezzaoui, born 1975. Sentenced to 25 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
  19. **Abdullahi Toubali, born 1980. Sentenced to 25 years by the Military Court in**

- 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
20. **Deich Eddaf, born 1978. Sentenced to 25 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
21. **El Bachir Khadda, born 1986. Sentenced to 20 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
22. **Hassan Dah, born 1987. Sentenced to 30 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.
23. **Mohamed Tahlil, born 1981. Sentenced to 20 years by the Military Court in 2013.** Accused of participation in and aiding criminal organization; violence against public forces with the cause of death, without intent to kill.
24. **Mohamed Khouna Babait, born 1981. Sentenced to 25 years by the Military Court in 2013.** Accused of participation in and aiding a criminal organization; violence against public forces with the cause of death, without intent to kill.

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.

### **3. The proceedings against the Group Gdeim Izik at Court of Appeal in Salé.**

#### ***3.1. A short summary***

In this point, we highlight a short summary; for a more extensive summary please see the appendix.

The proceedings against the Group Gdeim Izik commenced on **December 26<sup>th</sup>, 2016.** The prisoners were held in a glass-cage; deprived of following their own appeal. The question upon partial status for the civil party was never ruled upon, and the court was adjourned until January 23<sup>rd</sup>, 2017. None of the prisoners were given provisional release.

The proceedings against the Gdeim Izik group commenced on **January 23<sup>rd</sup>, 2017,** by addressing procedural matters. Mohammed El Ayoubi was not present at the court, since he was hospitalized. The court ruled that the case of Mr. Ayoubi would be separated from the group case. 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 5:40 pm, where the court was adjourned until 10am the next morning.

On **January 24<sup>th</sup>,** the accused were deprived of their pen and papers during the proceedings, where the accused demanded that they have the right to follow their own proceedings; and this entailed that they had to be given the chance to follow it adequately. The question upon



whether the civil part was to be given a formal partial status was raised, but never ruled upon.

On **January 25<sup>th</sup>**, 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, where the presiding judge declared that the examinations were to be outlived by two Moroccan doctors employed by the state. The court adjourned until the 13<sup>th</sup> of March.

The proceedings on **March 13<sup>th</sup>** 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 document file.

On **March 13<sup>th</sup>**, the testimonies from the accused started. The first to give his declaration was Mohamed El Ayoubi. Mr. Ayoubi stated; “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 by a court that the Polisario Front and Morocco agreed upon.

On **March 14<sup>th</sup>**, Machdoufi Ettaki, Mohamed El Bachir Boutinguiza and Mohammed Thalil, gave their declarations. Mr. Ettaki declared that we, the Saharawi’s, 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, “you claim that this is a fair trial; but this is all 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 **March 15<sup>th</sup>**, 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 is 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, was not set forward to reach the truth, but to revenge the political activism.

On **March 20<sup>th</sup>**, El Houssin Ezzaoui, Sidi Abdallahi Abbahah, 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. Abbahah 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 7<sup>th</sup>, had been approached by the chief of police in El Aiun 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 **March 21<sup>th</sup>**, 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. 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 **March 22<sup>nd</sup>**, Hassan Dah, 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. Dah urged that the Fourth Geneva Convention must be applied. Mr. Lakfawni told how he was arrested by masked men, who attacked his house and threw him out the first-floor window, before they took him to an unknown location and tortured him.

On **March 23<sup>rd</sup>**, 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 **March 27<sup>th</sup>**, Cheick Banga, Deich Eddaf, Ahmed Sbaai and Abdeljalil Laroussi were questioned by the court. Mr. Laroussi gave in front of the court a description of all the torture he had suffered. Mr. Eddaf declared himself innocent on all charges, and urged that the declarations are falsified. Mr. Sbaai declared that he does not recognize the validity of this court since the court is extraterritorial.

The court adjourned until the 8<sup>th</sup> 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. The results from the medical examinations were therefore to be postponed an extra 12 days.

### 3.2. *The Main observations*

**The main observation from the trial**, is that the accused are charged with accusations solely based on the testimonies extracted under torture, and declarations that the accused claim are fabricated. The prosecution office backs up the declarations with the video which was shown on March 13<sup>th</sup>, as to prove that the camp in fact was a violent resistance camp.

**The accused are charged** with violence against public officials with intent to kill; meaning that the Gdeim Izik was a military camp founded and drifted by the accused, and that they attacked the public forces with intent to kill. They are charged with forming a criminal organization, meaning that they mobilized both people to join the camp, and mobilizing the inhabitants in the camp to attack the military forces which surrounded the camp, until death. Several is accused of ordering and guiding the inhabitants in the camp in reaching this goal. Several of them are accused of running over the public forces with cars, and some of them are accused of murdering with knives and axes, and urinating on corpses.

**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 asked questions based on the declarations; and asked how the Gdeim Izik camp was planned during a trip to Algeria in September 2010, in partnership with Polisario Front 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 committees in the camp that the other accused supervised. Thus; the camp consisted of several committees which oversaw different areas, such as; the organization, logistics, security and mobilization. The prosecution office claims that the Gdeim Izik camp had a security committee which supervised the military training inside the camp, and planned the attack on the public forces. The camp had also weapons; cars, knives and axes. The camp was financed by money from Algeria and Polisario, and money was distributed to the inhabitants to “motivate them” in the attack.

All the defendants urge that the **declarations are falsified**. Several of them claim that they signed reports with blank spots, which later has been filled in. Several of the accused claims that they were tortured in front of the judge, or forced/pressured/threatened to sign declarations which they had not read in advance. In this regard, Machdoufi Ettaki, explained:

*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; and how the guards had 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 Lefkir was asked why he had signed the declarations, Mr. 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. Mr. Lefkir declared that the judge

*“asked if I could forgive him. He said that this is beyond me; and I am only following orders - And I forgive him”.*

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 Toubali 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.”*

The accused urges that they were **tortured when arrested, in custody and in prison**. They tell about violent torture, both physical and psychological. The torture that the prisoners claim to have been inflicted upon them include: successive spanking with different objects, sleep depriving, starvation, exposure to cold, sweden drink (i.e. the Schwedentrunk), ashtray technique, grill technique, grilled chicken, removal of nails, sexual rape, sexual molestation, group torture, strappado, electric shocks, chemical burns, ingestion of chemicals, water torture, threats towards their families, restrains from visitation, racist or xenophobic acts by the authorities and compelling to assist to the torture of other prisoners. Several of the accused identified their torturers (see appendix). The torture was 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 Aaiun.

Sidahmed Lemjeyid 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 Ezzaoui was questioned, he refused to answer any questions before he could show the marks of torture and to report his suffering. He took off this garment and showed his scars to the preceding judge, and told;

*“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 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 that; when arriving to Salé 2,

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.”*

El Bachir Khadda declared that:

*“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 Laroussi 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, 5 month of light deprivation and psychological torture. Mr. Laroussi explained that once in prison, he was placed in a cell, and underwent systematical 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 in front of** the investigating judge, as they were covered with blood or could not stand up. 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. Mr. Lemjeyid 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.”*

Several of the accused (i.e. Sidi Abdallahi Abbahah, Sidahmed Lemjeyid, El Bachir Khadda, Eênama Asfari and Ahmed Sbaai,) refused to undergo the **medical examinations** ordered by the court on January 25<sup>th</sup>. Mr. Abbahah explained why he had refused to undergo the medical examinations, and argued that; since his lawyer had requested an independent examination under the Istanbul Protocol, he refused because the examination which the court had ordered was not in compliance with the Istanbul Protocol. Mr. Abbahah declared that he could not trust Moroccan doctors since the ones conducting the torture consisted of public officials and medical staff. El Bachir Khadda 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.



Mohamed Embarek Lefkir underwent the medical examinations, but declared in front of the court that he does not trust the medical examinations ordered by the court, where he explained 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 Moroccan state. Mr. Lefkir therefore expressed that he was not sure if this woman was a doctor or a police officer.

Furthermore, they urge that **Gdeim Izik was a symbol of peaceful demonstration**, which consisted of displaced – women, elderly, children and men – where the displaced found peace in the camp away from the repression. Sidi Abderahman Zeyou stated that Gdeim Izik camp, and the events following, are linked to the political conflict in the occupied territories in Western Sahara. Mr. Zeyou 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 all Saharawi suffer under.

They all claim that **the camp had social demands**, and consisted of families, which wanted employment for their children and housing. The ones present at the camp (i.e. several of the accused had no relation to the Gdeim Izik camp) declare that the Dialogue Committee and the government had reached an agreement upon their social demands. The agreement was to be implemented on November 8<sup>th</sup> 2010. The Minister of Infrastructure was expected to appear at the camp site on November 8<sup>th</sup> with 9 tents. The government was supposed to organize a counting of the population in the camp, so the government could be able to personally meet the social demands placed forward by the inhabitants.

**The government did not keep the promise**, but instead the authorities **attacked the camp** in the early hours on November 8<sup>th</sup> while everyone was sleeping. Machdoufi Ettaki explained how, when the Moroccan military forces attacked the camp; which consisted of children, elderly, women, handicapped and men that the forces did not give the people time to evacuate before they attacked. Mr. Ettaki claimed that the camp was attacked within 5 minutes.

Abdallahi Lakfawni explained how the Gdeim Izik camp was controlled with an “iron hand”. Lakfawni explained that the camp was surrounded by military personnel, surrounded by a wall, with only one entrance. The military had made 7 checkpoints, 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. “

Mohammed Lamin Haddi explained that at the day of the dismantlement, he 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.

Eênama Asfari 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. Mr. Eênama declared that:

*“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.”*

Several of the accused invoked their **right to remain silent** when the Civil party placed forward their questions, where the accused claimed that they, whilst not being a formal part in the proceedings, had no competence to ask them questions. Furthermore, the civil party had deprived them of the most basic human right; the presumption of innocence, when litigating in the media and referring to them directly within the courtroom as criminals and murderers.

All the accused urged that the only reason for their arrest and imprisonment are their political opinion, and that they are **political prisoners**. Abdallahi Lakfawni stated that;

*“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”.*

El Houssin Ezzaoui explained that;

*“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 the Gdeim Izik camp, Morocco was negotiating with the Polisario Front at the United Nations in New York. “*

Eênama Asfari stated in this regard that;

*“There are 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”.*

Several of the accused demanded to be tried in a court in Western Sahara, and denounced that a Moroccan courthouse had no competence or legitimacy to judge them. Hassan Dah placed forward the **Fourth Geneva Convention**, and declared that;

*“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”.*

As such, the prisoners claim that the court is extraterritorial, and that the morocco occupier has fabricated a story to revenge them for their political activism for self-determination.

## **4. Principles for trial observation**

### ***4.1. 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 Jurist's *Trial Observation Manual*, 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 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.”*

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 ”*

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 the right to self-determination and socio-economic rights for the Saharawi people. Several of the prisoners served as leaders and spokespersons for the Gdeim Izik protest camp in 2010. 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 for reasons of political persecution.

Furthermore; the main evidence is confessions extracted under torture. From the above mentioned; the proceedings as a whole may be unfair due to the complete and blatant absence of proof against the defendant.

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

## **5. The legal framework**

### ***5.1. 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 international customary law.

## 6. The Fourth Geneva Convention

### *6.1. The Fourth Geneva Convention<sup>2</sup> and its applicability.*

Morocco ratified the Geneva Conventions on July 26<sup>th</sup> 1956 and Additional Protocols I and II on June 3<sup>rd</sup> 2011, to the occupied territories of Western Sahara. There is no doubt that Western Sahara at the beginning of the occupation by the Kingdom of Morocco was part of the Spanish territory and hence part of a country party to the Fourth Geneva Convention.

The presence of Morocco in Western Sahara territory is considered by the United Nations (UN) and the African Union as occupation (See UN General Assembly Resolution 34/37 of 1979 and various relevant OAU/AU decisions). Western Sahara remains on the UN list of Non-Self-Governing Territories after the abandonment of administrative responsibilities by Spain on February 26<sup>th</sup> 1976. As a non-self-governing territory, Western Sahara retains its separate and distinct status until such time that the people of that territory will have exercised their right to self-determination.

The reasoning of the Fourth Geneva Convention that was applied in the Israel-Palestine matter, is likewise applicable when it comes to the occupation of Western Sahara. The International Court of Justice, in the famous judgment on the Israel-Palestine wall<sup>3</sup>, showed that:

*"101. In the light of the foregoing, the Court considers that the Fourth Geneva Convention is applicable in any territory occupied in the event of an armed conflict arising between two or more Contracting Parties. Israel and Jordan were parties to the convention when the armed conflict of 1967 broke out. The Convention was therefore applicable in the Palestinian territories prior to the conflict east of the Green Line and Israel, without there being any need to investigate the exact status of those territories."*

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<sup>2</sup> Geneva Convention Relative to the Protection of Civilian Persons in time of war of 12 August 1949. Link (29.04.2017):

[http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33\\_GC-IV-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf)

<sup>3</sup> “Legal Consequences of the Construction of a wall in the occupied Palestinian territory”, Advisory opinion of 9 July 2004. Link (29.04.2017): <http://www.icj-cij.org/docket/files/131/1671.pdf>

Consequently, despite the adoption of the ceasefire and the official end of military operations since 1991, the articles cited still applies to the occupied territories of Western Sahara.

Article 66 of the Fourth Geneva Convention provides:

*"The Occupying Power may, in case of infringement of the penal provisions promulgated by it under the second paragraph of Article 64, refer the accused to its military, non-political and regularly constituted courts, provided that they sit in the occupied country. Appeals tribunals shall preferably sit in the occupied country."*

Article 64 and article 66 enlists the principle of the application of the law in occupied territory, and by the jurisdictions situated in occupied territories. Thus, in ordinary the legislative competence rests with the authorities of the occupied territory.

In this case, the Sahrawi law, as legislation of the occupied territory, must be applied. Moreover, in accordance with the article, the courts located in Western Sahara will be competent to judge the present case. Sahrawi judges must be appointed to make up the court, to guarantee their impartiality. This is in line with article 64 and 66 and the understanding enlisted by the International Committee of the Red Cross, which states that the occupier cannot interfere in the administration of criminal justice in the occupied territory. In this regard, the European Court of Justice found in its judgment on December 21<sup>th</sup> 2016, in the Appeal in Case C-104/16 P, that Western Sahara is a separate territory in North-West Africa, bordered by Morocco to the north, Algeria to the north-east, Mauritania to the east and south and the Atlantic to the west.

The Court of Appeal of Salé can only declare itself incompetent in favour of the jurisdictions sitting in El Aaiún, a court in the occupied territory, which applies the Saharawi law.

## ***6.2. The consequences of not applying international humanitarian law where it is meant to be applied.***

It follows from the Commentary by the International Committee of the Red Cross<sup>4</sup> that the reasoning behind the principle is;

*"Through the maintenance of national courts, protected persons will be judged by their natural judges, without being subjected to the misunderstanding or bias of persons representing a foreign mentality, traditions or doctrines. The maintenance of courts also means that judges must be able to rule independently. The occupier, therefore, cannot, subject to the following, interfere in the administration of criminal justice or in any way act against judges who conscientiously apply the law of their country "*

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<sup>4</sup> 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>



The accused has thus the right to be judged by their natural judges, meaning that their natural judges will understand their culture and not subject them to misunderstandings or a bias mind-set.

Firstly, it must be pointed out that Western Sahara is a non-self-governing territory, where the mere existence of this fact is disputed between the parties. Morocco denies that Western Sahara is a non-self-governing territory, and refers to the country as the southern region of Morocco. When the French defence attorneys invoked the Fourth Geneva Convention, the Civil party answered that all who wears Moroccan ID cards are Moroccans, and accused the French attorneys of not respecting the court nor the sovereignty of the Kingdom of Morocco.

When Morocco occupied the territory with the usage of military forces, all Saharawi's were stripped of their nationality, meaning that they were forced to wear Moroccan IDs. In that sense; the Saharawi's are for a second time deprived of their nationality when they are tried before a Moroccan courtroom.

The Saharawi's are a peaceful people that have their own way of living, their own doctrines, and their own set of values and norms. When Mr. Boutinguiza was asked whether anyone had told him to go to the camps, Mr. Boutinguiza answered that;

*“this is our culture; our culture is to live in tents in a calm atmosphere. The tent is the symbol.”*

The Saharawi's are nomads; the tent is therefore a symbol of their culture, and their way of living cannot be understood without understanding the culture. As such; the Gdeim Izik camp cannot be understood without understanding the Saharawi culture. The accused were during the interrogations asked questions about the camps organization, such as food distribution, financial issues and the structure of the camp, and how they could survive for a month without security forces. Mr. Toubali answered that when living amongst Saharawi's, there is no violence or disruptions, and that they had no need for security forces inside the camp.

When asked about how the camp was organized and how it was financed, Mr. Toubali declared that:

*“You have to understand the Saharawi culture to understand the camp. We believe in equality and in helping each other. The nature of the Saharawis is to help others in need. 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”.*

When Eênama Asfari was asked if he had a tent in the camp, he answered that *“all of the tents in Gdeim Izik are mine”*. This made the civil party and the prosecution think that he in fact owned all the tents leading them to ask how he financed buying thousands of tents.

This line of questioning is a clear indication that a Moroccan courtroom represent a foreign mentality, and that the questions are based upon misunderstandings and a bias mind-set. Saharawis share everything; “what's mine is yours”. What Eênama Asfari meant is therefore that he did not need a tent of his own, because he could sleep in whichever tent he preferred

for the night. In Saharawi culture a tent will always be open to everyone; those who enter a tent will be given shelter, food, drink and a place to rest for as long as necessary.

Furthermore, the Saharawi's speak Hassania, and expresses themselves with body language, and by hand gestures. Especially Mr. Thalil's way of speaking (i.e. with his hands) was perceived as aggressive, and interpreted as harassment.

In conclusion, the Saharawi's and the Moroccans do not belong to the same nationality, and they do not share the same cultural values and norms. As it follows from the above paragraphs; the accused are subjected to *the misunderstanding or bias of persons representing a foreign mentality, traditions or doctrines*.

## 7. The fairness of the trial

Morocco has ratified the International Covenant on Civil and Political rights (ICCPR) of 1966 (ratified 1979) <sup>5</sup>. The main article concerning the right to a fair trial is enlisted in article 14 of the ICCPR. 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 principle or doctrines that together constitutes a fair trial. Due 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.

### 7.1. Independence and impartiality

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 before it according to law. 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.

As mentioned in earlier reports; Morocco does not in general respect the rule of law. The Moroccan legal system relies heavily on confessions obtained through torture, and political prisoners are often released after being pardoned by the King. In whole, it may seem as if justice is taken out of the courtroom, and into to the hands of the King. When international law and obligations are mentioned by the defence, the preceding judge answers that this is a Moroccan court, and not the United Nations.

The principle of independence and impartiality is a safeguard when ensuring that a trial and its ruling is based on evidence and legal provisions. At the case of the "Group Gdeim Izik" politics dominates the courtroom, and the court facilities are characterized by grand demonstrations both inside and outside.

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<sup>5</sup> International Covenant on Civil and Political Rights. Link (29.04.2017): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

When communicating with the families of the prisoners, it becomes clear that the prisoners have difficulties believing they will be given a fair trial. The prisoner reaffirms their quality 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 will give them harsher penalties than if they refrained. The accused invoke that the only reason for their arrest are their Saharawi nationality and their political activism.

## ***7.2. 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.

The prisoners are not yet proven guilty, and they have the right to be presumed innocent. Firstly; the media is overflowing of propaganda in the weeks following up to the trial; portraying the accused as terrorists and violent killers, where the active parties in the proceedings litigates in the media.

Secondly; the civil part has the right to ask for conviction, but has under no circumstances the right to discard the presumption of innocence. Although the presiding judge has corrected the civil party on numerous occasion, the civil party continues to address the defendants directly; calling them murderers and criminals. The judge does not comment on these remarks, only after shouting protests have emerged inside of the glass-cage by the prisoners. It should be noted that part of the hearings is being broadcasted on national television.

Furthermore, the translators in the court, both the English and the French, sometimes translates “the accused” into “the murderers”. When Larabi El Bakay was interrogated, he was placed on a chair that had the sentence “terrorist chair” written on the back. Images of the accused placed in the chair was broadcasted on national television. Also; the film that was presented to the court, was manipulated both with text portraying the accused as criminals, and with “circles” and “arrows” and comments (i.e. “these violent elements” and “violence towards public officials”), making it impossible to evaluate the film objectively. This film circulates on YouTube (see point 8.4.3).

Numerous consequences flow from the guarantee of innocence, including the accused’s right to remain silent and not to 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 has 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 their 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.

These mentioned observations constitute a direct violation of the presumption of innocence. It is therefore of outmost importance that the principle of burden of proof is applied by the presiding judge of the Court of Appeal in Salé.

### ***7.3. The right to equality before the law and courts and the principle of equality of arms***

The right to equality before the courts 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.

Firstly; it was made clear that the defence of the accused had not been given access to see the full contents of the case file. To not be able to see the content of the case file is a clear breach of the principle of equality of arms, where the defence are not able to meet the arguments put forward.

Secondly; the defence are not able to talk as freely as the other parties, and are therefore not treated with equality by the court. The civil party and the prosecution, asks numerous questions based on the declarations, such as “the violent inhabitants”, the trip to Algeria and the alleged partnership. The defence are, on the other hand, constantly being stopped and interrupted; both by the presiding judge, the prosecution and the civil party; making it impossible for the defence attorneys to lay out a proper defence strategy. During the interrogations of the accused, both the accused and the defence attorneys, were prohibited from speaking of or ask questions related to the reason for the protest camp, or the general living conditions of all Saharawi’s in the occupied territories of Western Sahara. These factors are fundamental to highlight when evaluating whether the Gdeim Izik camp was a violent resistant 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.

#### ***7.3.1. 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 are obliged to ask questions both in favour and in disfavour of the accused. In this case, the judge only considers the evidence placed forward by the prosecution, and does not evaluate both the exculpatory and incriminatory elements.

The defence was prohibited from asking questions related to the character of the dismantlement. When interrogating Mohammed El Bakay, defence lawyer Mr. Masaoudi was prohibited from asking what Mr. El Bakay meant with the term “émeute” (chaos) when talking about the dismantlement of the camp.

In the case of Abderraman Zayou, the accused was deprived of his ability to defend himself since he was constantly interrupted by both the prosecution and the civil party. The presiding judge asked questions solely based on the alleged falsified declarations, and asked numerous questions about his relationship to Eênama Asfari. None of the questions was in favour of the accused. Mr. Mohamed Masaoudi was, during his interrogation, prohibited from asking Mr.

Zayou about what guaranties he was deprived of upon arrest.

Furthermore, during the interrogations of the accused, the defence was only allowed to ask a few questions compared to the questions placed forward by the prosecution and the civil part. In the case of Mr. Zayou, the prosecution asked the defendant 14 questions, whilst, in comparison, the defence were only allowed to ask four questions. In the case of Mohamed Lamin Haddi, the presiding judge only asked questions against the accused, which was based on the alleged falsified declarations. The civil party asked in total 57 questions to Mr. Haddi, where Mr. Haddi invoked his right to remain silent. The defences questions were mainly rejected, based on the reasoning that the questions were already asked, where the civil party had covered every aspect of the subject; leaving the defence without the opportunity to ask questions.

In these paragraphs, we have highlighted some examples, but the line of questioning presented from the presiding judge remains the same for all the accused; where the investigating judge asks questions against the accused, and the questions placed forward by the Saharawi lawyers in favour of the accused are mainly rejected. This constitutes a clear breach to the right to a fair trial, where the investigating judge is obliged to asks questions both for and against the accused.

Furthermore, the investigation to gather exonerating facts, as forensic expertise and DNA evidence, is absent. Also, when admitting evidence to the court, the prosecution and the defence lawyers are not treated with equality. The prosecution could admit a memorandum on witnesses, whereas the defences report on the medical examinations based on the Istanbul Protocol was rejected.

### ***7.3.2. The role of the judge***

As highlighted in point 8.3.1., the presiding judge mainly asks questions against the accused. In the case of Eênama Asfari, regarding the torture he was subject to from the police and the gendarmerie, the judge asked Mr. Asfari if he in fact was tortured by the gendarmerie; where Mr. Asfari replied “No”, and clarified that he underwent psychological torture at the gendarmerie office, but was only subject to physical torture at the police headquarter. The judge then stated that “this is what we call a smoking gun, Mr. Asfari”, where he claimed that this statement proved that Mr. Asfari had not been honest when he sent his claim to the Torture Committee. Therefore, the judge claimed that the CAT-decision was based on a lie. This line of questioning is disturbing, and is cause for concern, and highlights the fact that the preceding judge is in fact biased towards the accused.

The jurisdictional function of judges, in all courts of justice in the world, prevent forensic work. The presiding judge performed forensic work on several occasions.

In the case of Abdallahii Toubali, 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 Eddaf, 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. Laroussi, the judge acted as a medical expert. Mr. Laroussi declared that he, due to his health condition, receives numerous medications per day, where 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 medication that Mr. Laroussi currently is taking, and that none of the prescribed medication gave any side-effects.

We evaluate these acts committed by the judge as a mean of fabricating evidence for conviction, as the trial is a political trial, and the act itself can be regarded as corruption in an already corrupt process. The supposed appearance of legality of expert evidence, without contradiction; without possibility of intervention by the parties to the proceedings; and therefore fabricated (improvised), 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". This behaviour invalidates him as a judge. The function of a judge cannot be supplemented by the role of a practicing expert, which is not within the competence of a judge.

### ***7.3.3. The role of the prosecution***

The atmosphere in the courtroom also alters the principle of equality of arms. The prosecution is placed above the other parties present, and is constantly interrupting both the judge and the defence. The prosecution has thus taken a directing role in the proceedings; the prosecution general stands up, and knocks his microphone, and directs the presiding judge in his management of the proceedings.

This behaviour has both a psychological effect, and a direct effect on the proceedings equality. It should also be noted that the prosecution screamed towards the prisoners when they gave their testimony; where the behaviour from the prosecution towards the accused can be interpreted as threatening, and has a clear psychological effect.

### ***7.3.4. The role of the civil party***

As mentioned in our previous reports, the civil party is not a formal party of the proceedings since the presiding judge has refrained from ruling on the matter. Nevertheless, the civil party were given the right both to litigate in front of the court, to receive the case documents, and to examine the accused; and is therefore de facto an active part of the proceedings.

The civil and the criminal case should be separated, and the victims should seek compensation only after the criminal case is closed. This is supported by several facts: First, the case does not entail a civil claim. Secondly, the accused are not yet proven guilty, but the civil part continues to address the accused as violent murderers *and* terrorists, portraying the accused as criminals; in total disregard of the presumption of innocence. Finally, the defence are not allowed to speak as freely, and are constantly interrupted during their proceedings, where the presence of the civil party in the proceedings further alter the principle of equality and breaches the right to a fair trial.

During Mr. Ayoubis interrogation, protests broke out in the courtroom from the group Gdeim Izik. 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 from the civil party laughed. The accused in the glass-cage shouted that the Moroccan lawyers were laughing about the sufferance of the Saharawi people.

During the interrogations of Mr. Zeyou, The Civil Party stated: "he tries to protect murderers. He is a murder 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 murderers. The defence furthermore 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, where one of the attorneys from the Civil Party asked: "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 both the presumption of innocence and to procedural norms; where we regard the civil party's competence to ask question as absent, and a serious breach to the right to equality of arms and the right to a fair trial.

#### ***7.4. 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, Inhumane, 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". In a report from the ICJ, the ICJ states that this "article remains largely disregarded by Moroccan courts, in particular in cases related to 'terrorism'".

The United Nations Working Group on Arbitrary Detention (WGAD) 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.”*

#### **7.4.1. Declarations under torture**

With regards to the “Group Gdeim Izik”, several reports conclude that all the prisoners have 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 2013<sup>6</sup> were obtained through torture. Furthermore, the CAT-decision (CAT/C/59/D/606/2014)<sup>7</sup> clearly states that Eênama Asfari has suffered under violent torture, and that the government has refrained from investigating. The Court on the other hand refused to regard the CAT-decision as evidence, or in any way as a legal document.

During the interrogations held at the Court of Appeal in Salé, all the accused claimed that they have 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<sup>8</sup>:

*“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 2013, and the CAT decision (CAT/C/59/D606/2014), the declarations are a result of torture.

The presiding judge, the civil party and the prosecution are subjecting the accused to a line of questioning based solely on the declarations allegedly extracted under torture. The questions

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<sup>6</sup> Report on Torture, Human Right Violation and Health Condition. ACOSOP March 2013. Link (29.04.2017): <https://es.scribd.com/document/334623581/Report-on-Torture-Human-Right-Violation-and-Health-Condition-Denounced-by-the-24-sahrawi-prisoners-of-Gdeim-Izik>

<sup>7</sup> 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](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f59%2fD%2f606%2f2014&Lang=en)

<sup>8</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 1984. Link (29.04.2017): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

placed forward from the presiding judge, the prosecutor and the civil party are based upon fabricated declarations signed under torture, and as it follows: this evidence is illegal, and the usage is a direct violation of Morocco's international commitments.

Instead of respecting the prohibition against illegal evidence, the preceding judge, the prosecutor, and the civil party are subjecting the accused to a line of questioning meant to weaken the claims upon torture (i.e. as outlined in point 8.3.2, the judge performs forensic work). In the case of Eênama Asfari, the presiding judge claimed he had found a “smoking gun”, when Mr. Asfari declared that he had not been tortured by the gendarmerie, but 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 Torture committee, saying that this meant 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:

*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.”*

As it follows from art. 1 of the Torture Convention, torture entails both physical and mental suffering, with the goal of retrieving information or to punish. All the accused claim that they were interrogated about their political activism, and that the torture they underwent was revenge for their political activism.

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

#### **7.4.2. Medical examinations**

Firstly, that the accused have been interrogated based on declarations that they claim have been extracted under torture, constitutes a direct violation of art. 15 of the Torture Convention. The accused should not be interrogated before the medical expertise has been presented in front of the court. Further, it should be presented in such time that the state has fulfilled its obligation to examine allegations upon torture in accordance with international law. The medical examination should therefore be in compliance with (1) the Torture Convention, the (2) Principles on the Effective Investigation and Documentation of Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “Principle”) <sup>9</sup>, 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) <sup>10</sup>.

The accused claim that the signs of torture was blatant, and that they as a group have made formal complaints to the government upon torture. A country’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. The obligation to perform impartial *and as such an* independent medical examination is supplemented by two instruments; the Principles, and the Istanbul Protocol. The two listed instruments are guidelines into how the state can fulfil their obligation after the Torture Convention, and adequately follow up allegations on torture.

As listed in the summary of the proceedings, the presiding judge ordered medical examinations on January 25<sup>th</sup>, 2017. The examinations were ordered 6 years after the torture was committed and 6 years after the signs of torture were presented to the authorities. These examinations were to be conducted by three Moroccan doctors, employed by the Moroccan government.

For the state to fulfil their obligations after the Torture Convention in conducting a prompt and impartial investigation, the medical examinations should be in compliance 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.

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 instances of:

*“In cases in which 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*

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<sup>9</sup> 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>

<sup>10</sup> 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>



*investigations are undertaken through an independent commission of inquiry or similar procedure.”*

We regard the performed medical examination as inconsistent with the states obligation to investigate claims into torture, due to the fact that the medical examinations are performed with (1) insufficient expertise, (2) suspected bias, and (3) it exists and apparent existence of a pattern of abuse.

Firstly, the medical examinations have been performed with insufficient expertise and by medical personnel not trained in either the Istanbul Protocol nor directed upon the Principles. We have been informed by both the families of the prisoners and the defence attorneys that the examinations commenced on the 16<sup>th</sup> of February 2017. We were informed that the investigations consisted of medical personnel taking pictures of scars, etc. with a mobile phone, and X-ray examinations were conducted. The prisoners were transported into groups for the investigations, and the investigations continued for several days. As outlined by Amnesty International in their public statement 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.”*

The examinations that has been performed to investigative claims upon torture are in our regard not in compliance with the sufficient expertise needed to perform an adequate medical examination, and we urge that the prisoners must be given medical expertise in line with the Istanbul Protocol, where the ones conducting the investigation must perform medical examinations supplemented with other investigations.

Secondly, there are reason to believe that the medical examination is subjected to bias. As noted earlier, the medical examinations are conducted by three Moroccan officials employed by the Kingdom of Morocco. Most of the prisoners accepted to undergo the medical examination, except for Sidi Abdallahi Abbahah, Sidahmed Lemjeyid, El Bachir Khadda, Eênaama Asfari and Ahmed Sbaai. The ones who rejected the medical examination demand an independent and impartial investigation conducted outside of Morocco. They claim that they do not rely on the regime 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 on the testimonies). Some of the prisoners (in particular Mr. Lefkir) 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. Due to the historical background of this case and the political issues there are apparent reason to believe that the medical examinations are subjected to bias.

Thirdly, as outlined in the previous legal proceedings and the history of this particular case, it exists and apparent existence of a 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, where 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 outlived in front of governmental officials such as 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, where 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 did also demand 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 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 outlive their obligations, and furthermore 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 states obligation to investigate allegations upon torture as outlined in art. 12 of the Torture Convention. The medical examination is performed by Moroccan public officials, and are not performed by doctors with the necessary expertise and independence from the Moroccan 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. Finally, we regard the timespan from the signs of torture was blatant, to the medical examinations were ordered by the court as a breach of Morocco's obligation to investigative promptly any "act of torture", as set forward in art. 12 of the Torture Convention.

### ***7.4.3 The legality of the film***

On March 13<sup>th</sup>, the courtroom was shown a video about the events in Gdeim Izik. The content

was a film portraying the dismantlement 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. On the other hand, one cannot identify any act of violence on the video, and no act of violence is clearly documented. Furthermore, the images are taken far away from a helicopter, where the images portrayed in the video is unclear.

The video is clearly edited and manipulated, and has written comments in French, that condemn the accused. The sources for the video remain unknown. Parts of the video that has been shown has circulated on YouTube for several years, and on the 13<sup>th</sup> of March 2017 the formal video presented in the court as part of the evidence file, was posted on YouTube <sup>11</sup>. The movie can be found here: <https://www.youtube.com/watch?v=vJjVOVADxmA>.

This video was submitted into the case file on March 27<sup>th</sup>. Since the source for the film is unknown; the film is manipulated; and the film portrays a one-sided image of the events due to its descriptions; we regard this film as illegal evidence, obtained in an improper manner. Therefore, the film must be disregarded as evidence, and the film cannot be given weight in the final evaluations.

### ***7.5. Right to call and examine witnesses***

It is a crucial aspect of the right to defence to be able to question the evidence from the other side and to cross-examine witnesses presented from the other side. Initially, it should be noted that the list of witnesses submitted by the defendants has mainly been rejected, contrary to the list of witnesses submitted by the Prosecutor. Regarding witnesses, the defence, were given permission to assemble the police officers that conducted the arrest, and the court has summoned the witnesses that Mr. Laaroussi, Mr. Zeyou and Mr. Lakfawni requested. The defence of the accused were otherwise prohibited from presenting several witnesses:

The accused have not been given the right to challenge the witnesses presented by the Prosecutor. 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. The presiding judge has earlier in the process refused to summon her to testify. The same goes for several of the other accused, where they claim that they have witnesses that can prove their innocence.

Furthermore, the charges are based on describing 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 urges 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.

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<sup>11</sup> Link (29.04.2017), “The movie”: <https://www.youtube.com/watch?v=vJjVOVADxmA>.

Furthermore, the presiding judge summoned the men who wrote and took the declarations on the 27th of May after a request made by the prosecution. The defence argued that the men who are accused of being part of the torture should not be summoned as witnesses, but should be summoned to court to testify about their alleged crimes. The court should therefore hear from the policemen which allegedly performed the torture where the ones responsible for torture should be brought to justice. The policemen which allegedly performed the torture should under no circumstances be summoned as witnesses to the alleged crime.

The court has however the competence, in accordance with art. 424 of the Moroccan law of procedure, to accept the presentation of witnesses at any time of the proceedings. In comparison, the comment of the International Covenant stipulates in paragraph 3 (e) in regards to article 14 of the ICCPR that any evidence obtained through torture or illegal means should not be used as evidence against the accused. The right to forward witnesses are therefore not unlimited. The hearing of witnesses on the basis of the declarations extracted under torture, as in the case of the policemen, is to be considered as a breach of the law, due to the fact that the declarations and evidence directly related to them are illegal evidence. Similarly, as enlisted in the Guidelines on the Rule of Prosecutors<sup>12</sup>, subparagraph 16, the prosecutor is obliged to refuse to use illegal evidence, and has a responsibility to “take all necessary steps to ensure that those responsible for using such methods are brought to justice”. The prosecutor, when requisitioning the police officers as witnesses, are in fact doing the exact opposite, and are acting in direct violation of international law, that he due to the competence of his office are obliged to outlive.

### ***7.6. 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 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. In any event, the person deprived of liberty should have access to a lawyer within 48 hours of their arrest or detention.

Several factors can be put under the loophole when it comes to the right to defence. Firstly, the prisoners were detained from communicating with their defence attorneys. Similarly, the accused were deprived of their pens and papers in the proceedings in January. Secondly, the defence were prohibited, after numerous requests, from visiting their clients and to plan their defence strategy. Thirdly, the defence was furthermore prohibited from consulting their clients when new witnesses were enlisted into the proceedings. Finally, the defence lawyers have not been given confidential meetings with their clients; only meetings in the presence of prison guards. The Saharawi and Moroccan lawyers were given a meeting with the group before the proceedings held in January, under the supervision of the prison guards. Two of the French lawyers were given a private meeting with three of the accused (i.e. Eênama Asfari, Abdeljalil Laroussi and Cheick Banga) on the 24<sup>th</sup> of March.

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<sup>12</sup> Guidelines on the Role of Prosecutors, 7 September 1990. Link (29.04.2017): <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>

This principle also entails a guarantee upon being informed of the charges against you promptly. When the accused are interrogated, they are accused of killing “some persons”. A person accused of murder must know the name of the alleged victim(s). The accused have not received information about who they allegedly killed during the dismantlement of the Gdeim Izik camp 2010, where the accused has 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.

### ***7.7. 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”.

Firstly, as mentioned in our previous reports, the presiding judge has refrained from ruling on whether this instance is to be regarded as first instance, or the appeal. If this hearing is to be regarded as first instance, it means that the group has remained in prison for 6 years without being tried. In case of an appeal: the appeal cannot be in disadvantage of the accused. This point alone is therefore crucial to establish, since the prosecution has put forward arguments in favour of altering the charges, and to increase the sentences that were given at the Military Court in 2013.

Secondly, all the accused remained in custody for longer than 48 hours without being presented in front of a judge. Several of the accused were abducted, tortured, and held in locations unknown for a long period of time, clearly violating the time limit of 48 hours.

Finally, the prisoners have remained in prison for 6 years, without a final judgement. The prisoners have been deprived of their freedom for 6 years, without a fair trial and without a final judgement. This time span is to be regarded as undue delay, whereas neither the complexity or the special circumstances entails that the process of investigation should take 6 years. As it follows, this time span is at the best a breach of the right to be tried without unfair delay, but also a breach to the right to freedom.

### ***7.8. Right to interpretation***

The right to interpretation as contained in international treaties, concerns the right of the accused to have the trial translated into his or her mother-tongue or another language that the defendant may understand.

The Saharawis speak Hassania, an Arabic dialect. The proceedings should therefore be translated into Hassania, which is the defendant's mother-tongue. The presiding judge claimed

on December 26<sup>th</sup> that the official language in Morocco is Arabic, and that every Moroccan speaks their own language. The proceedings were therefore never translated. Despite of this reasoning, the accused have been given a translator upon demand during their testimonies in front of the court. However, Mr. Thalil were on several occasions forced to correct the translator, since the translator did not translate everything he said. Finally, this does not alter the fact that many of the accused, which only speak Hassania, were not given interpretation during the rest of the proceedings.

### ***7.9. 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 Saharawi 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 standard of international law.

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

Laila Fakhouri acted as our translator during our stay in Morocco. Ms. Fakhouri had difficulties with entering the courtroom on March, 13<sup>th</sup>, 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”. Ms. Moe stayed at the control point with Ms. Fakhouri, whilst Mrs. 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 officer inside the courthouse. After one and a half hour, Ms. Fakhouri entered. She has entered the courtroom each day following this incident.

Sidi Mohamed Balla, acted as our other translator. 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.

### ***7.10. Circumstances surrounding the trial***

The case of the “Group Gdeim Izik” is a case of great political importance. It is said that the Gdeim Izik camp started the Arab spring in 2010, when thousands of Sahrawi’s demanded their right to self-determination in a peaceful protest in the middle of the desert. Thus, the case draws a lot of attention, including the international community, the Moroccan population and from the Sahrawi’s. During the days prior to the proceedings, and during the proceedings,



the media is overflowing 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 last proceedings, the observers, including the authors of this report, had troubles with finding accommodations.

During the proceedings held in January 2017, a Norwegian delegation consisting of 43 politicians, students, activists etc. attended the hearings. Hans Inge Alander and Diego A. Vaula Foss were members of this Norwegian delegation. Mr. Alander and Mr. Foss travelled on Wednesday January 26<sup>th</sup> to El Aaiún, which is the capital of 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. It is believed that the reason for their expulsion is their attendance at the trial for the “Group Gdeim Izik”.

On March 25<sup>th</sup>, Isabel Lourenco, 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 Mrs. Lourenco and the journalists were staying at. The police did not follow up on their threats, however they surrounded the house until late afternoon.

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

Demonstrations are held just outside of the courthouse. The Saharawi 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, where they played both music (the national anthem and the speech given by King Hassan 2 during the invasion of Western Sahara) and held appeals. The Saharawi were placed in the centre, without the same means, and were constantly approached by the police, while items were thrown at them (such as bottles etc).

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

On March 13<sup>th</sup>, a journalist was arrested during the demonstrations outside the courtroom. His name is Mohammed Daddi, 24 years old, and a journalist in RASD TV. We were told that he was tortured in Rabat, and that he had been transported by plane to El Aaiún, where he, until March 14<sup>th</sup> at 7:00 pm remained in custody. Mr. Daddi was presented in front of an investigative judge on March 17<sup>th</sup>, clearly breaching the 48 hours time-frame.

On March 23<sup>rd</sup>, 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 Saharawis live under. The protest consisted of students and young unemployed, and a bus containing demonstrators. The demonstrators were shortly approached by the police. The bus was attacked by the police with water-cannons. People present at the demonstration report the use of brutal violence from the police forces, and many young Saharawi's were attacked by the police forces in the streets and several houses were raided.

## 8. Conclusion and last remarks

Western Sahara is to be regarded as a non-self-governing territory under occupation. The Commentary by the International Committee of the Red Cross highlights that the purpose of the Fourth Geneva Convention is to make sure that protected persons shall be judged by their natural judges; meaning that protected persons has the right to be prosecuted and tried by its equals, without the fear of being prosecuted for political reasons or by a court that is biased. The Group of Gdeim Izik is abducted from their homes in Western Sahara, and tried in a courtroom that does not have the jurisdiction.

Secondly, the right to equality before the court and the right to a fair trial, is severely breached by the investigating judge. All questions placed forward in favour of the accused are disregarded as either irrelevant or already answered, whilst at the same time, the investigating judge refrains from asking questions that could benefit the accused, and solely put forward questions that could harm the accused.

The Moroccan Judges have affirmatively declared on several occasions that the Convention against Torture and Other Cruel, Inhumane, 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 in his court case. The main evidence against the accused are illegal evidence (declarations extracted under torture), used against the accused in direct violation of art. 15 of the torture convention.

Furthermore, the Moroccan state has failed to investigate torture, as stipulated in art. 12 of the Torture Convention, which entails a state's obligation to investigate any signs of torture. These medical examinations must be performed in accordance with the Istanbul Protocol. The reports from the medical examinations as ordered by the court have not been submitted to the court, and in our opinion the proceedings should not commence until medical examinations performed in line with the Istanbul Protocol are presented.

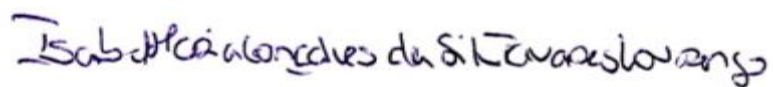
All declarations gathered by Moroccan Authorities were taken under severe inhuman torture. The prohibition against torture is absolute, and it is a safeguard that should protect every human being; and a safeguard that the international community must protect. We urge that all declarations signed under pressure, inhumane treatment, or torture must be discarded as evidence, and that all the prisoners must be given medical examinations in accordance with the Istanbul Protocol.

***Dated May 1<sup>st</sup> 2017***

*Tone Sørfohn Moe (Norway)*



*Isabel Lourenco (Portugal)*



## 9. Appendix – 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 26<sup>th</sup> 2016 to March 27<sup>th</sup> 2017.**

### **Day 1 – On the 26<sup>th</sup> of December 2016, at the Court of Appeal, Salé.**

The trial against the Group of Gdeim Izik commenced at 10am on the 26<sup>th</sup> 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 Enaama 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 Asfari case, 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 24<sup>th</sup> 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 25<sup>th</sup> 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 of 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 of the witnesses, excluding the Moroccan authorities and ex-ministers that had been in negotiations with the Gdeim Izik dialogue committee. 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 13<sup>th</sup> 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 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 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 is not yet admitted into evidence.

**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 speaks 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 8<sup>th</sup> 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 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, on not a fingerprint as was used to signed the documentations.

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, where 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 7<sup>th</sup>, 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 7<sup>th</sup>. 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 14<sup>th</sup> 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; 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. 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 Dah 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 15<sup>th</sup> of March 2017, at the Court of Appeal, Salé.**

The court commenced on March 15<sup>th</sup> at 10:15 am, with interrogating Larabi 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 7<sup>th</sup>, he had conferred with the leaders in the camp (i.e. as Eênaama Asfari, Abdeljalil Laaroussi, and Cheikh Banga), and decided 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 9<sup>th</sup> 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 20<sup>th</sup>, 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 7<sup>th</sup>, and it was therefore impossible that Asfari had committed the crimes he is accused of on November 8<sup>th</sup>.

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 13<sup>th</sup>, 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 24<sup>th</sup> 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 murder 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 20<sup>th</sup>, at 00:40 am.

**Day 8 - on the 20<sup>th</sup> of March 2017, at the Court of Appeal, Salé.**

The court commenced on the 20th March with the testimony of **El Houssin Ezzaoui**.



Eszaoui 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!". Eszaoui 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!". Eszaoui 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. El Houssin Eszaoui summed up in his testimony the true reason for this trial with a political declaration and denouncing all the irregularities in the construction of this case.

**Sidi Abdallahi Abbahah** was the second accused to be questioned on the 8 day 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.

Abbahah 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."

Abbahah 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, naked, forced to run 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 saharawis 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 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.”*

Bourial denied all the charges, and states 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, Burial 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, Bourial said. Bourial 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 when advocating 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 saharawis families who lost a loved one during the attack on the Gdeim Izik camp, which died by the hands of the military forces.

Ismaili 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 we were 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 tortured 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 we meet with delegation 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 at 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, Brahim 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 21<sup>th</sup> 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 university. 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. 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.”

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 Hussain 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, 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 that 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 Dah 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 our 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 dare 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 one 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 22<sup>th</sup> of March 2017 at the Court of Appeal, Salé.**

The court commenced with questioning **Hassan Dah**. Hassan Dah 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 saharawis does not want to live under Morocco occupation. Hassan declared that; “unfortunately, and as the media has showed, that 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 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 know that 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, of 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, meet 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 attacked, 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 as 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 23<sup>rd</sup> 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 that had her tent at 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 me and knew that I 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 - next day I 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 know 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 argument 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 fact connected to the dismantlement. We are now 7 year 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 was a political prisoner, and was only subjected to imprisonment due to his fight for self-determinations 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 the position they are at. He declared that he condemned the civil party participation in 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 Taki (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 only 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 of 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 Ezzoui and Toubali, Mr. Daff said that Mr. Ezzoui 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 that 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 to 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, Dah 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. Laaroussi 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 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 Laaroussi 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 there are not being 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 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 tortures 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, 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. These tortures 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.