

## ***Trial Observation Report***

### **From the proceedings held on March 13th until March 15th, 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 Lourenco (Portugal, Isabel Maria Goncalves da Silva Tavares Lourenco). We are international observers attending the trial against the Group Gdeim Izik at the Appeal Court of Salé. We are accredited by Fundación Sahara Occidental. 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.

We had originally planned to write separate reports, but as the official translation of the trial in English, Spanish and French did not coincide, and one of our own translators was forbidden to enter the court house, we viewed it better to produce one report. This report is based on our attached reports from previous rounds of the same trial, in December 2016 and January 2017.

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 17th 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 Court

of Rabat null and void, and referred the case to Court of Appeal in Salé. The Court was on the 26th 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 25th of December was postponed to 23th of January 2017. After two days of proceedings, the case was on the 25th of January 2017 postponed to March 13th. On March 15<sup>th</sup> the proceedings were adjourned until March 20<sup>th</sup>.

On the 25th 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; that the defence could present all of 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). None of the prisoners were granted provisional release.

During the proceedings held in January, the presiding judge *de facto* undermined both the Torture Convention and the CAT decision (CAT/C/59/D/606/2014) on the case of Eênaama Asfari. There seems to be a lack of willingness within the Moroccan legal institutions to respect its international commitments.

The proceedings commenced on March 13<sup>th</sup> at the Appeal Court of Rabat. The medical examinations that were performed, by Moroccan doctors that are public servants, have not yet been presented at the court, and although the defence protested, the proceedings commenced without the reports on the medical examinations.

During the proceedings held from March 13<sup>th</sup> to the 15<sup>th</sup>, several of the accused gave their testimonies to the court. The accused declared that they were arrested due to their activism for political and human rights in Western Sahara. They furthermore declared that they all had signed declarations that they did not know the content of, whereas the declarations were falsified and that they were charged with a “made up case”. 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. 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. 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. Several of them claimed to have been tortured while being interrogated, and all of them declared themselves innocent on all charges, and that they had no knowledge of the content of the declarations which they were forced to sign.

The burden of proof will be a crucial factor during the commencement of the proceedings on March 20th. The presiding judge is obliged to uphold this principle, as the burden of proof lays with the prosecution. As such, an accused can only be found guilty, and thus sentenced, if the question of guilt is proven beyond any reasonable doubt.

**We strongly recommend that representatives of the international community (NGOs, jurists, deputies or government officials) should be present on the scheduled appeal on the 20th of March 2017.**

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## 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 by 14 to 2 votes that while there had been certain pre-colonial ties between the territory of Western Sahara and Morocco, these ties did not imply sovereignty. Shortly thereafter, on the 6th of November, Morocco occupied and later annexed Western Sahara, through the famous “Green march”. 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.”

Morocco did not withdraw the participants. Thus, Western Sahara has been under occupation by Morocco since 1975. Morocco and Western Sahara, lead by the Saharawi liberation movement Front Polisario, were in an armed conflict until 1991, when a peace agreement was set into place. 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, where 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 Saharawis arrested prior, during and after the dismantling of the silent protest camp Gdeim Izik on November 8th of 2010.

Moroccan authorities held the areas surrounding the camp under surveillance from the beginning. Since October 12th 2010, armed trucks, helicopters and army vehicles circulated the camp areas, and authorities constructed roadblocks and checkpoints around the camp. On the 24th of October, the Moroccan authorities opened fire on a vehicle trying to enter the camp site 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 8th, around 6:30am, 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 8th break-down, Morocco refused foreign politicians, NGOs and media access to the camp, creating a full information black-out. Therefore, an exact

figure on the number of victims does not exist, as independent observers were not allowed to access the area. It is likely that around 11 Moroccan police officers were killed.

During and after the violence on November 8th 2010 Moroccan security officials proceeded to arrest hundreds of Saharawi's. Many prisoners remained in custody longer than 48 hours, and were held without being charged over 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.

## 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 policemen who 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 accusations and charges are listed below.

1. **Sidi Abdallah Abbahah (B'hah), 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 Embareh 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; and for 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 1978. 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.

## **4. The proceedings against the Group Gdeim Izik at Court of Appeal in Salé held on the 13th of March until the 15th.**

### ***4.1. The proceedings on the 13<sup>th</sup> of March at the Court of Appeal, Salé.***

The proceedings against the “Gdeim Izik” 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 in front on 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, where Ayoubi only speak Hassania.

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

He testified to how he had been awoken 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 to how he, blindfolded and with his hands cuffed, whilst military personnel stood on his chest and punched his kidneys, had signed confessions, where the guards took his hand and placed his fingerprint on papers which he neither saw, or 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 Moroccans

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 trailed in front of 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 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.

#### ***4.2. The proceedings on the 14<sup>th</sup> of March at the Court of Appeal, Salé.***

The proceedings against the Group Gdeim Izik 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 against 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 force 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; Ettki 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 believes", 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 part, 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.

#### ***4.3. The proceedings on the 15<sup>th</sup> of March 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 the military forces the following day, and were given orders by Asfari to attack until death. El Bakay claimed that he had not taken orders from anyone.

El Bakay told about, on the day of his arrest in Dakhla on September 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 taped 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.

## 5. Principles for trial observation

### 5.1. *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 observers should, however, examine two principles related to the submission of evidence that are especially important. The first is the principle of legal evidence, which aims at ensuring that evidence has been lawfully obtained in accordance with procedural norms. The second is the principle of legitimacy of evidence which aims to preclude evidence that has been obtained using methods prohibited under international law, such as torture or death threats.

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

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

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 Gdeim Izik camp was a protest camp claiming the right to self-determination and socio-economic rights for the Saharawi people. The prisoners are all accused of charges related to the dismantlement of the Gdeim Izik camp. The arrest of the “Group Gdeim Izik” should be regarded as proceedings brought up for reasons of political persecution.

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. This political activism is to be regarded as the reason for the proceedings; rather than to impart justice.

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.

## **8. The fairness of the trial**

Morocco has ratified the International Covenant on Civil and Political rights (ICCPR) of 1966 (ratified 1979). 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.

### ***8.1 The right to equality before the law and courts***

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.

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. The questions rely on whether this instance is to be regarded as first instance, or the appeal. In case of an appeal; new official parties cannot be presented, and, the appeal cannot be in disadvantage of the accused. This point alone is therefore crucial to establish, since the prosecution put forward arguments in favour of altering the charges, and to increase the sentences that were given at the Military Court in 2013.

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 there de facto an active part of the proceedings.

Since the accused are not yet proven guilty, 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. Furthermore, the civil part addresses the accused as violent murderers *and* terrorist, 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 breached the right to a fair trial.

The defence were directly prohibited from mentioning the political issues, the Gdeim Izik camp, or the question upon jurisdiction. In comparison; the civil party were not prohibited, in any way, from speaking their mind. The judge remained ignorant to this direct discrimination. During the interrogations of the accused, both the accused and the defence attorneys, were prohibited from speaking of or ask questions relating to the reason for the protest camp, or the general living conditions of all Saharawi's in the occupied territories of Western Sahara.

During the testimonies of the accused, the defence only asked a few questions compared to the questions made by the prosecution. In the case of Mohamed Lamin Haddi it was clear that the, 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 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.

When interrogating Mohammed El Bakay, defence lawyer Mr. Mohamed Masaoudi was prohibited from asking what El Bakay meant with the term "émeute" (chaos) when talking about the dismantlement of the camp.

In the case om 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, and none in favour of the accused. The prosecution asked the defendant 14 questions, whilst, in comparison, the defence were only allowed to ask 4 questions. Mr. Mohamed Masaoudi was, during his interrogation, prohibited from asking Abderraman Zayou about what guaranties he was deprived of upon arrest.

When talking about a fair trial the investigating judge are obliged to examine the evidence for the defence as well as the prosecution. In this case, the judge only considerate the evidence placed forward by the prosecution, and does not evaluate both the exculpatory and incriminatory elements.

Thus, based on our observations, the questions that are asked from the investigating judge is questions against the accused, where 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 are obliged to asks questions both for and against the accused.

The investigations during the trials should also examine both incriminating and exonerating evidence. However, as highlighted in the above paragraphs, only incriminating facts are examined. 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. The foreign defence attorneys are treated with direct inequality, whereas

every statement delivered from the French attorneys to the preceding judge, written in Arabic, is rejected by the court without giving a legal basis.

The principle entails that national legislation should prohibit any type of discrimination and guarantee everyone equal and effective protection against discrimination on any ground such as race, colour, ethnic origin, language, sex, gender, sexual orientation, gender identity, political or other opinion, religion, creed, disability, national or social origin, birth, economic or other status. The opposing counsel openly harassed the defence attorneys. It was clear that the discrimination was based on race and national origin. In the mean time, the defence attorneys are constantly prohibited from laying out a proper defence strategy, where they are constantly being interrupted.

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 microphones, and direct the presiding judge in his management of the proceedings. Thus, it is clear to us, as observers, that the prosecution directs the hearings, especially when the arguments put forward are in the benefit of the accused. This behaviour has both a psychological effect, and a direct effect on the proceedings equality.

### ***8.2 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 take into account is the separation of powers and the relationship between the judiciary and the prosecution.

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.

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 UN.

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 reaffirm 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 that until now have testified in front of the court, invoke that the only reason for their arrest are their Saharawi nationality and their political activism.

### ***8.3 Right to defense 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. The defence were prohibited, after numerous requests, from visiting their clients and to plan their defence strategy. The defence was furthermore prohibited from consulting their clients when new witnesses was enlisted into the proceedings. Secondly, the accused were deprived of their pens and papers in the proceedings in January.

This principle also entails a guarantee upon being informed of the charges against you promptly. The list of the victims was never given. When the accused are interrogated, they are accused of killing “some persons”. As it follows; 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. None of the accused had knowledge into how and when they allegedly killed someone prior to the hearings held at the Military Court of Rabat in 2013, and the accused has never received information about who, how and when they killed the alleged victims.

It must be noted that the accused have only received the declarations that were made in the Military Court in the presence of a lawyer, where the accused have not been given the documentation and declarations made during their first interrogations, without a lawyer present. 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.

### ***8.4 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 has to be assessed on the merits of each specific case, considering the complexity and the special circumstances of each case.

The prisoners have remained in prison for 6 years without being found guilty. As it follows; the prisoners have been deprived of their freedom for 6 years, without a fair trial and without being found guilty. 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.

Furthermore, 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.

### ***8.5 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's 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 actually entered the courtroom. It is therefore from this fact alone clear that the hearing does not raise to the standard of international law.

Laila Fakhouri acted as our translator during our stay in Morocco. Laila had difficulties with entering the courtroom on March, 13th, and was told that she was on a "non-enter-list". The police in control stated that the reason for the exclusion was the fact that Laila is "Sahrawi". Mrs. Moe stayed at the control point with Mrs. 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 court house. After one and a half hour Mrs. Fakhouri entered. She entered the courtroom each day, ever since.

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 about both cases he was not allowed to enter, with no justification or explanation.

### ***8.6 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 Sahrawi's speak Hassaniya, an Arabic dialect. The proceedings should therefore be translated into Hassaniya, 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, but, the accused have been given a translator upon demand during testimonies in front of the court. However, this does not alter that many of the accused, which only speak Hassaniya were not given interpretation during the rest of the proceedings. Thus, the right to interpretation is severely violated.

### ***8.7 The principle of equality of arms***

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.

The fact that the civil part is an active part in the proceedings also affects the principle of equality of arms. The defence had to defend themselves from two sides; (1) the prosecution, and (2) the civil party. We therefore have a case of "two against one", where the defence have difficulties with laying out a proper defence strategy due to the fact that they are constantly

being stopped. The defence are therefore not able to contest the arguments and evidence presented against them.

Furthermore, 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.

### ***8.8 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.

The defence of the accused were given the right to present several witnesses. The court refused “the political witnesses”, thus the leaders that were in negotiations with the Gdeim Izik camp cannot be presented as witnesses.

On the other hand, the defence, were given permission to assemble the police officers that conducted the arrest. In that regard, they have been given the chance to question the documentation upon the arrest and custody.

### ***8.9 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. This right is breached at the outmost expense due to the fact that the prosecution actually litigates in the media. The media is overflowing of propaganda in the weeks following up to the trial; portraying the accused as terrorists and violent killers.

The civil part portrays the accused as murderers and terrorists during their arguments, and addresses some of the accused as killers. This is a severe violation of the right to be regarded as innocent until proven guilty. The civil part has the right to ask for conviction, but has under no circumstances the right to breach the presumption of innocence, before the verdict has landed. 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. This is a severe violation of the prisoners right to be presumed innocent until proven guilty, whereas the proceedings are 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. These mentioned observations constitutes a direct violation of the presumption of innocence. The video was made up of several

other videos that were cut and put together, and the timeline is not respected nor is there any indication of date of time other than the one given by the “subtitles”.

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 declare 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 many claim to have confessed under torture.

As it follows, the accused are portrayed in the media and within the courtroom as violent murders and criminals, and it is therefore of outmost importance that the principle of burden of proof is applied by the preceding judge of the Court of Appeal in Salé.

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

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.”*

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 February 2013 were obtained through torture.

From the Military Court of Rabat in 2013, all of the prisoners claimed to have signed the confessions and statements under torture. Furthermore, the CAT decision (CAT/C/59/D/606/2014) 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.

As mentioned above, the main evidence used against the prisoners in the Military Court of Rabat in 2013 was confessions obtained through torture. During the testimonies, the presiding judge continued to ask questions based on the declarations given by the prisoners under force

and under torture. Morocco is part of the convention against torture and cannot use, in court, statements obtained through torture. The accused should not be interrogated before the medical expertise is presented in front of the court. The medical examinations, as ordered by the court, must 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. The medical examinations are performed by Moroccan public officials, and is therefore not performed by doctors with the necessary expertise and independence from the Moroccan Government.

As it follows; this evidence is illegal, and the usage is a direct violation of Morocco's international commitments, and is alarming news for the following proceedings. The hearings from March 13<sup>th</sup> to 15<sup>th</sup> constitutes a direct violation of Moroccan law and international law.

### ***8.11. Circumstances surrounding the trial***

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 criminals and murderers. On March 13<sup>th</sup>, the courtroom was shown a video about the events in Gdeim Izik. 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. The movie can be found here:

<https://www.youtube.com/watch?v=vJjVOVADxmA>.

The international observers, were constantly being followed by Moroccan civilian agents, and are constantly filmed and taking pictures of. During the last proceedings, the observers, including the authors of this report, had troubles with finding accommodations.

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

Demonstrations are held just outside of the courtroom. 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 etc.) and held appeals. The Saharawi were placed in the centrum, without the same means, and were constantly approached by the police, and items were thrown at them (such as bottles etc).

On March 13<sup>th</sup>, a journalist was arrested during the demonstrations outside the courtroom. His name is Mohammed Daddi, is 24 years old and is 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 as of 14 March at 7:00 pm remains in custody. As can be seen in the attached report of the case of Mohammed Daddi, he has been presented in front of an investigate judge on March 17<sup>th</sup>, clearly breaching the 48 hours time-frame.

## 9. 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 will be judged by their natural judges, without being subjected to the misunderstanding or bias of persons representing a foreign mentality, traditions or doctrines.”*

One should be prosecuted and tried by its equals, without the fear of being prosecuted for political reasons or by a court that is bias. The Group of Gdeim Izik is abducted from their homes in Western Sahara, and trailed in a courtroom that does not have the jurisdiction to trial them.

The main evidence against the accused are documents and confessions that are allegedly obtained through violent torture. The reports from the medical examinations have not been submitted to the court, and in our opinion the proceedings should not commence until the reports are presented.

It should be noted, that the preceding judge knew that the reports would take 30 days, where the examinations started on February 17th. Meanwhile the ones responsible for the reports asked for 10 additional days. The proceedings were adjourned, and will continue on Monday until Friday the 24th of March. The reports will therefore not be presented to the court until the testimonies from the prisoners are concluded. In our regard, the missing reports, constitutes a severe breach to the rule of law.

Furthermore, the detainees testify that all the documentation are falsified, and that they have been forced to sign papers with fingerprints, while they did not know the content of the declarations. The usage of the declarations and the minutes when questioning the detainees constitutes a breach to art. 15 of the Torture Convention. All the accused were asked questions based on illegal evidence, where some of them invoked their right to remain silent, claiming that these testimonies have been falsified.

When asked questions about the movie that portrays the Gdeim Izik camp, Boutanguiza declared that he did not recognize anything in the movie, and that the movie is manipulated as a part of the fabricated story. The movie was showed to the people present in the courtroom without admitting it into evidence, whereas the movie is clearly edited and fabricated after the events happened. This video was posted on YouTube by an unofficial source on March 13<sup>th</sup>. The question remains how this video ended up in the hands of a third-party; which neither the defence or the civil party had direct access too. In this regard, we consider the movie as a part of the propaganda told by the Moroccan authorities in the Moroccan media.

Furthermore, 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.

***Dated March 17<sup>th</sup> 2017***

*Tone Sørfohn Moe*



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