



# The GDEIM IZIK Case

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***Report by International Observer***

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## 2. INTRODUCTION

The goal of this report is to bring the discussion to the table about the Gdeim Izik Trial, but also about the events that led to this trial.

The Trial of Gdeim Izik cannot be limited to the timeframe and proceedings of the new criminal trial held from 26th December 2016 to 19th of July 2017. To understand this trial it is necessary to introduce the background, the history and the legal status of Western Sahara, as well as the reasons that led the Saharawi population to leave their occupied capital/other cities and join in a peaceful protest camp during one month until the day of the unannounced dismantling by the Moroccan forces. Furthermore, it is essential to deal with the Military Trial in 2013 that led to this new trial. The detainees have been deprived of their liberty due to their exercise of their most basic human right, the right to self-determination. The detainees have been deprived of their liberty in violation of international law. On the outset, I therefore wish to highlight that the Working Group on Arbitrary detention<sup>1</sup> regards deprivation of liberty as arbitrary when:

*“When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights”*

and in instances of

*“When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender;*

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<sup>1</sup> See among others *Working Group on Arbitrary Detention, No. 26/2016 concerning Hamo Hassani (Morocco)*

*sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights”*

Throughout my report and in the summary of the proceedings one has to conclude that this trial was a political one with goals that go beyond the condemnation of 24 accused. The political agenda of the Kingdom of Morocco has been put forward in the speeches of the civil party, the Prosecutor and the judge himself on several occasions. It is also obvious that Moroccan law and International law including agreements and covenants signed by Morocco were violated. As a consequence, this trial cannot be evaluated as a fair trial. As a consequence the Group of Gdeim Izik is to be regarded as political prisoners from Western Sahara subjected to arbitrary detention.

The main findings and the evaluation of the fairness of the trial regarding international standards have been already introduced during the proceedings in several reports issued by Ms. Tone Sørfohn Moe and me <sup>2</sup>. The mentioned evaluation of the fairness of the trial is inserted in paragraph 10 of this report. This report will then try to go deeper into the background of this case.

In the case of the Gdeim Izik trial it is imperative to apply International law criteria since it is also an occupied territory and has the unique situation of being a non-autonomous territory with two administrative powers (*whilst Spain did not finish the decolonization process and Morocco occupies the territory since 1975*) <sup>3</sup>. Both, the

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<sup>2</sup> [Information Gdeim Izik Trial - 26th December 2016;](#)

[Trial Observation Report - From the proceedings against the “Group Gdeim Izik” in Salé, Morocco, 23rd to 25th of January 2017;](#)

[Trial Observation Report - From the proceedings held on March 13th until March 15th, against the “Group Gdeim Izik” in Salé, Morocco;](#)

[Trial Observation Report - Gdeim Izik March 2017-3;](#)

[Gdeim Izik - Trial Observation Report May 2017;](#)

[The Court Case of Gdeim Izik - Statement concerning the proceedings held from 5th-8th of June;](#)

[THE COURT CASE OF GDEIM IZIK - Statement Concerning the Proceedings Held From June 5th to the 15th of June 2017](#)

<sup>3</sup> The United Nations and Decolonization - [Non-Self-Governing Territories](#)

Moroccan Kingdom as well as the Polisario, the freedom movement that is the sole legitimate representative of the Saharawi People in the United Nations, have ratified the Geneva Convention.

This report will also question the responsibility of the international community and in special of the United Nations in this matter.

Finally I want to thank my husband Artur, my daughter Carolina and my family and friends for their support during the last years which allowed me to perform my work as human rights activist, the inspiration and steadfast support of José Manuel de La Fuente and Rosário García Díaz from Fundación Sahara Occidental, my translators Laila Fakhouri and Mohamed Balla, the families of the detainees who bear my endless questioning for over 4 years and my dear friends Fito Alvarez Tombo and Helena Morganho. Ms. Tone Sørffonn Moe and her commitment to justice throughout these months was inspiring. Many more made it possible to develop my work as João Saramago and Rute Henriques, but it is impossible to mention all.

### About the author:

My name is Isabel Lourenço (Isabel Maria Gonçalves da Silva Tavares Lourenço) I have Portuguese nationality, and am a member of Fundación Sahara Occidental and collaborator of [www.porunsaharalibre.org](http://www.porunsaharalibre.org).

Since February 2013 I have attended the trials of Saharawi Political Prisoners as an International Observer with accreditation from Fundación Sahara Occidental. In 2015 I was expelled from El Aaiun Airport by force by the Moroccan authorities without any explanation other than that I was "persona non grata". A few months afterwards I attended another trial in Agadir, always under huge pressure and surveillance. In 2015, 2016 and 2017 I continued to attend trials of Saharawi political prisoners in Agadir and Salé, Rabat, as well as issuing reports, and follow up with the families of the detainees the situation of several prisoners. I have followed the situation of the group of Gdeim Izik since 2010 and attended all sessions of the military and civil trial. The follow-up of this group was made through contacts with several organizations on the ground as well as close relatives.

During all my visits police and other representative of the Moroccan authorities, in uniform as well as in plain clothes, continually followed, filmed and photographed me.

### 3. WESTERN SAHARA LEGAL STATUS

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<sup>4</sup> on the territory, urging Spain, as the administrative power to organize, as soon as possible (without delay), a referendum under UN supervision on the territory's right to exercise its right to self-determination. In 1975, the International Court of Justice (ICJ) rendered an advisory opinion on the Western Sahara question, concluding by 14 votes to 2, that while there had been pre-colonial ties between the territory of Western Sahara and Morocco, these ties did not imply sovereignty.

Thus, the Court did not find any legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory.<sup>5</sup>

Shortly thereafter, on November 6<sup>th</sup> 1975, 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." Shortly thereafter, Morocco, Mauritania and the colonial power, Spain, entered into an agreement, which in convoluted terms transferred the administration of the territory to Morocco and Mauritania. The agreement did not, however, transfer sovereignty explicitly. (Mauritania later rescinded and left the whole territory to Morocco.)

The people of Western Sahara (the Saharawi) have a right to self-determination, which can be fulfilled through the creation of a fully sovereign state, if they so choose. Under that principle, they also have the right to "freely dispose of their

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<sup>4</sup> UN General Assembly, 1966, Resolution 2229 (XXI).

<sup>5</sup> ICJ Reports, 1975, p. 68, para. 162.



natural wealth and resources".<sup>6</sup> The Moroccan occupation and annexation of the territory is a serious breach of International Law. Western Sahara is not a part of Morocco and Morocco has no legal title or claim on the territory. Morocco has an obligation to respect the right of the people of Western Sahara to self-determination and to end its illegal annexation and occupation of Western Sahara.

### Legal Sources:

- **UN General Assembly 1966**

*"Invites the administering Power to determine at the earliest possible date, in conformity with the aspirations of the indigenous people of Spanish Sahara and in consultation with the Governments of Mauritania and Morocco and any other interested party, the procedures for the holding of a referendum under United Nations auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination and, to this end:*

To create a favourable climate for the referendum to be conducted on an entirely free, democratic and impartial basis, by permitting inter alia, the return of exiles to the Territory;

To take all necessary steps to ensure that only indigenous people of the Territory participate in the referendum;

To refrain from any action likely to delay the process of the decolonization of Spanish Sahara; ..."

- **UN-Security Council, 1975 (after the "Green March")**

*"Call upon Morocco immediately to withdraw from the Territory of Western Sahara all the participants in the march; ...."*

- **UN Security Council, 1991**

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<sup>6</sup> Common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

*"Expresses its full support for the efforts of the Secretary-General for the organization and the supervision, by the United Nations in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, in accordance with the objectives mentioned in this report; ..."*

- **UN-Security Council, 2013**

*"Reaffirming its commitment to assist the parties to achieve a just, lasting, and mutually acceptable political solution, which will provide for the self-determination of the people of Western Sahara in the context of arrangements consistent with the principles and purposes of the Charter of the United Nations, and noting the role and responsibilities of the parties in this respect, ..."*

- **Judgment European Court of Justice, 2016, Case C-104-16 P**

On 21 December 2016 the European Court of Justice delivered its judgment, <sup>7</sup>in the Appeal in Case C-104/16 P, under Article 56 of the Statute of the Court of Justice of the European Union, filed by the Council of the European Union on 19 February 2016, supported by some EU member states and the Commission, as well as the Confédération marocaine de l'agriculture et du développement rural (Comader), as interveners in the appeal, The Respondent in the proceedings was Front Populaire pour la Libération de la Saguia-el-Hamra et du Rio de Oro (Front Polisario), the applicant at first instance. The Appeal was against the judgment of the first instance Court that annulled, as requested by the Polisario Front, the Agreement between the European Union and the Kingdom of Morocco concerning liberalization measures on agricultural and fishery products from Morocco and Western Sahara. The European Court of Justice found that the Agreement between Morocco and the EU Commission in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalization measures on agricultural products, processed agricultural products, fish and fishery products applies only to the internationally recognized borders of Morocco and does not apply to Western Sahara. Furthermore, the Court also found that Western Sahara is a

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<sup>7</sup>[JUDGMENT OF THE COURT \(Grand Chamber\)](#)

separate territory in North-West Africa, bordered by Morocco to the north, Algeria to the northeast, Mauritania to the east and south and the Atlantic to the west.

## 4. MINURSO/UN

In 1985, the United Nations Secretary-General, in cooperation with the OAU, initiated a mission of good offices leading to "the settlement proposals", which were accepted on 30 August 1988 by Morocco and the Polisario Front. In 1990, the Security Council approved the **Secretary-General's report S/21360**<sup>8</sup> containing the full text of the settlement proposals and the outline of the Secretary-General's Plan for implementing them. On 29 April 1991, the Security Council, in its **resolution 690 (1991)**<sup>9</sup>, decided to establish the United Nations Mission for the Referendum in Western Sahara (MINURSO) in accordance with the **Secretary-General's report S/22464**<sup>10</sup> which further detailed the implementation plan.

The Special Representative of the Secretary-General was to have sole and exclusive responsibility over matters relating to the referendum and was to be assisted in his tasks by an integrated group of civilian, military and civilian police personnel, to be known as the United Nations Mission for the Referendum in Western Sahara.

MINURSO was originally mandated in accordance with the settlement plan to:

- monitor the ceasefire;
- verify the reduction of Moroccan troops in the Territory;
- monitor the confinement of Moroccan and Polisario Front's troops to designated locations;
- take steps with the parties to ensure the release of all Western Saharan political prisoners or detainees;

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<sup>8</sup> United Nations / Security Council - [The Situation Concerning Western Sahara - Report of the Secretary-General](#)

<sup>9</sup> United Nations - [The Situation Concerning Western Sahara - Resolution 690 \(1991\)](#)

<sup>10</sup> United Nations / Security Council - [The Situation Concerning Western Sahara - Report by the Secretary-General](#)

- oversee the exchange of prisoners of war, to be implemented by International Committee of the Red Cross, (ICRC);
- repatriate the refugees of Western Sahara, a task to be carried out by the United Nations High Commissioner for Refugees (UNHCR);
- identify and register qualified voters;
- organize and ensure a free and fair referendum and proclaim the results;
- reduce the threat of unexploded ordnances and mines.

While the organization of the referendum has not been possible to date, other requirements of the mandate have been pursued. MINURSO continues to perform the following tasks:

- Monitor the ceasefire;
- Reduce the threat of mines and UXOs;
- Support the confidence building measures.

In relation to the Gdeim Izik Camp the informative meeting of the Security Council on the matter, was held on 16 November 2010 and took place at the sole request of Mexico, 8 days after the dismantling.

***According to Philippe Bolopion, Deputy Director for Global Advocacy:***

If these events had occurred in the Democratic Republic of Congo, Haiti, or Sudan, UN human rights experts would have been dispatched immediately to establish an objective version of events and to inform the Security Council, thus helping to ease tensions. The presence of UN observers would also have been a deterrent to the Moroccan security forces that had repeatedly, according to our findings, beaten those persons arrested following the disturbances.<sup>11</sup>

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<sup>11</sup> [Western Sahara: France against Human Rights](#)

Several human rights activists that I interviewed and were inhabitants of the camp, stated, that approximately 10 days after the beginning of Gdeim Izik, two vehicles from MINURSO approached the entry of the camp and observed the people inside, the movements and the structure of the camp for some time. However no contact was established between the MINURSO members inside the car and the protesters. According to inhabitants that were in the entrance of the camp, the Moroccan authorities told the drivers of MINURSO that they had to leave.

The report of the Secretary General of the United Nations <sup>12</sup> confirms these testimonies and furthermore states:

*3. At the beginning of October, a group of Saharan protesters set up an encampment at Gdeim Izik, some 15 kilometres southeast of Laayoune, with the intention of making socio-economic demands on the Moroccan authorities. The camp gradually expanded to comprise 6,610 tents, according to an estimate, based on satellite imagery, of the United Nations Institute for Training and Research's Operational Satellite Applications Programme. The number of protesters, which varied significantly over time, is believed to have reached over 15,000.*

*4. MINURSO was not able to monitor the situation in the camp because the Moroccan authorities impeded its access. Attempted military patrols and visits by United Nations security and police personnel were prevented or stopped on several occasions. Moroccan authorities in Laayoune and at the Permanent Mission of Morocco to the United Nations protested against MINURSO attempts to approach the camp, advising that the Mission should not interact directly with the population on what was described as a purely internal and social matter. In response to continuing efforts by MINURSO, the Moroccan authorities eventually allowed one international security officer into the camp, on 4 November.*

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<sup>12</sup> United Nations / Security Council - [Report of Secretary-General on the situation concerning Western Sahara](#)

*5. These restrictions on movement violated paragraph 13 of the 1999 status-of-mission agreement concluded between the United Nations and Morocco, and interfered with the ability of MINURSO to fulfil its mandate. In addition, the interception of MINURSO military patrols constituted a violation of military agreement No. 1.*

Hence, MINURSO was fully aware of the construction of the Gdeim Izik Camp, the composition of inhabitants (Saharawi civilians) and the fact that the camp was under siege for several weeks as well as of the military and police deployment around and on the way to the camp.

## 5. THE FOURTH GENEVA CONVENTION

Western Sahara is a non-self-governing territory under occupation, and as such, the Geneva Convention (4GC) <sup>13</sup> has to be applied notably the Fourth one, which aims to protect civilians. The Moroccan Kingdom, adhered to the 4th Convention. Also the Polisario Front, the Saharawi Freedom Movement, adhered to the 4th convention in 2015 and was accepted by the Swiss government.

Since both Moroccan Kingdom and Polisario Front accepted and adhered to the Geneva convention there is no doubt that it should be applied in the occupied territories of Western Sahara, in accordance with article 2 common to the four Conventions which stipulates, "The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

However Morocco, in this case in particular, but also in others, does not respect the articles of the Convention it signed when it regards the Western Sahara and the Saharawi population, namely:

**Article 4.** Persons protected by the Convention are those who at a given moment and in any manner whatsoever find themselves, in case of a conflict or occupation, in the hands of persons a Party to the conflict or Occupying Power of which they are not nationals.

**Article 6.** The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

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<sup>13</sup> PDF – GENEVA CONVENTION [Relative to the protection of civilian persons in time of war of 12 August 1949](#)



In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

It is therefore clear that although a cease-fire agreement is in place, the occupation did not end. The end is pending from the put in place of the Referendum which is the basis of the cease-fire, the two parts of the conflict continue in a process of negotiation under the auspices of United Nations and the territory is part of the list of 4th Committee for decolonization of the United Nations.

The prisoners of the Gdeim Izik Group are Saharawi living under occupation, detained by the occupying country. The fact that they have Moroccan identity cards stems from the fact that after occupation in 1975 the Moroccan forces, stripped the Saharawi population from their Spanish identity cards and registered them forcefully as Moroccans, in clear violation of article 15, point 2 of the Universal Declaration of Human Rights.

**Article 47.** Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Therefore the Gdeim Izik Group must benefit from the 4th Convention, which until this moment was not the case.

**Article 49.** Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

All accused that were abducted and detained in Western Sahara, are Saharawi Nationals living under occupation, and then transferred to Rabat, capital of Moroccan Kingdom.

**Article 64 and 66.** govern the question of the applicability of the law and jurisdiction of the occupier's courts to the nationals of the occupied territories.

**Article 64.** The penal legislation of the Occupied Territory shall remain in force except to the extent that it may be repealed or suspended by the Occupying Power if such legislation constitutes a threat to the security of that Power or an obstacle to the application of this Convention. Subject to this last consideration and to the need to ensure the effective administration of justice, the courts of the Occupied Territory shall continue to function for all offenses under this legislation.

The Occupying Power may, however, subject the population of the occupied territory to such measures as are necessary to enable it to fulfil its obligations under this Convention and to ensure the proper administration of the territory and the safety of the Occupying Power, members and property of the forces or administration of occupation and the establishments and lines of communications used by it.

**Article 66.** The Occupying Power may, in the event of an 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. The appeals courts will preferably be in the occupied country.

As explained in detail in the memorandum redacted by the defence lawyers of Mr. Naama Asfari (M. Joseph Breham and M. Ingrid Metton) and M. Olfa Ouled lawyer of all the defendants (Annex VI) the defendants being Saharawi civilians should have been presented to court in the occupied territories, under Saharawi law and with Saharawi judges. If however article 66 would be applied In this case, the Sahrawi who have been implicated in order to be regularly tried by the occupying Power must be brought before a regularly constituted and non-political military tribunal that will sit in occupied territory.

The territorial jurisdiction of the Rabat Court of Appeal is therefore non-existent regarding international humanitarian law. El Aaiún has a court of appeal and should be the court used in case of judicial processes against Saharawi accused of offenses allegedly committed in the occupied territories. Moroccan law precludes respect for international law.

**Article 76.** Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

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Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Not only are the prisoners over 1100km away in the Kingdom of Morocco, they have also been subjected to medical neglect (see annex IV and Report of ACOSOP on violations and health conditions<sup>14</sup>), and part of their detention time was amongst criminal offense prisoners. The food in Moroccan prisons depends on the capability of the families to bring food since the prison food is not enough to provide the most basic nutrients. To bring food to the prison is however not foreseen in the Moroccan law and therefore the prison directors and guards act arbitrarily when and however it suits them. (see report on Political Prisoner 2016<sup>15</sup>)

The visits are hindered by the long distance, the economical effort, the harassment of the families in the Moroccan Kingdom and the transfers from prison to prison (see

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<sup>14</sup> [Report on Torture, Human Right Violation and Health Condition](#) (Denounced by the 24 saharawí prisoners of Gdeim Izik)

<sup>15</sup> [Report Saharawi Political Prisoners November 2016](#)

Annex V - Psychological, social and economical Impact on the families of the prisoners)

The only visit of an International foreign organization to the prisoners of Gdeim Izik, was from the UN Working for Arbitrary Detention in 2013<sup>16</sup>.

The Red Cross, which has again an office functioning in Morocco, should visit the Saharawi Political Prisoners in accordance with its mandate.

**Article 147.** Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

The Gdeim Izik Group was submitted to extensive and continued torture, which will be addressed in point 10 of this report and unlawful transfer; They were also judged outside the occupied territories according the law of the occupying power.

As a consequence, the Geneva Convention was not respected.

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<sup>16</sup> United Nations Human Rights - [Report of the Working Group on Arbitrary Detention - Addendum - Mission to Morocco](#)

## 6. UNIVERSAL DECLARATION OF HUMAN RIGHTS

In light of article 2 of the UDHR and since the Moroccan Kingdom is a member state of the United Nations, the Group of Gdeim Izik should be entitled to rights set forth in the Declaration, and no distinction should be made due to the fact they are Saharawi, have a different political opinion and belonging to a non-self governing territory.

However the Moroccan State deprived the Group of Gdeim Izik of the rights of following articles:

**Article 3.** Everyone has the right to life, liberty and security of person.

**Article 5.** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 7.** All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8.** Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9.** No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10.** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11.** (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty

of any penal offence on account of any act or omission that did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12.** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 15.** (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 19.** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20.** (1) Everyone has the right to freedom of peaceful assembly and association.

**Article 28.** Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

This report and summary of the proceedings put in evidence the violation of the above-mentioned 12 articles of a total of 30 of the UDHR

## 7. THE ESTABLISHMENT AND DISMANTLING OF THE GDEIM IZIK CAMP

Gdeim Izik was a protest camp erected in October 2010 situated about 15km outside of El Aaiún, the capital of Western Sahara, next to the road to Smara. It was established during a whole month and gathered tens of thousands of civilians, men, women, children and elderly.

The origin of the camp was the desperation of the Saharawi population who lives under Moroccan occupation and is forcibly impoverished. The forced change in demographics due to the introduction of Moroccan settlers (violation of paragraph 6 of article 49 of the 4th Geneva Convention)<sup>17</sup> has turned the Saharawi population into the minority and their access to housing and jobs is completely controlled by the Moroccan authorities. Jobs in Western Sahara are either available in administration and public services or state owned companies.

The lack of employment and housing for the Saharawi population is not related to economical problems of Western Sahara, since this territory and its exclusive economic zone, are extremely rich<sup>18</sup>. The fact that the Saharawi population does not benefit from their own richness is a grave violation of International Law as outlined in the decision of the European Court of Justice<sup>19</sup> and also of article 1 and 47 of the International Covenant on Civil and Political Rights:

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<sup>17</sup> The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

<sup>18</sup> [WSRW report gives complete overview of controversial clients](#)  
Archive 2016 [WSRW report gives complete overview of controversial clients](#)  
[EU funding to fish sector in occupied Western Sahara increases](#)

<sup>19</sup> [JUDGMENT OF THE COURT \(Grand Chamber\)](#) 21 December 2016

## **Article 1**

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

## **Article 47**

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

The system in place is to impoverish the Saharawi population and made them dependent of "social cards" given by the occupation authorities. These "social cards" are given and taken away arbitrarily depending on the "behaviour" of the Saharawi recipient.

Any demonstration, complaint or affirmation of Saharawi identity is punished. Any mention of Western Sahara is considered an attempt against the "territorial integrity of the Kingdom" and punishable by law. The demonstrations and other forms of non violent protests which are almost always brutally dismantled by the Moroccan authorities have been denounced in several reports of International NGO's like HRW and Amnesty International and witnessed first-hand by the UN mission of the Office for Human Rights that visited El Aaiun in 2015.

MINURSO does not have a mandate identical to East Timor, where the civilian population was protected. In Western Sahara the Moroccan authorities use violence against the Saharawi without having to fear any interference or sanctions. In 2005 the Saharawi started a non-violent Intifada and have been adopting new ways of demonstration and resistance, denouncing and advocating for their political, social and economical rights. It is important to understand that in the occupied territories of Western Sahara and in particular in El Aaiun, the military, police, gendarmerie, and auxiliary forces are a massive presence; streets are filled with their vehicles, especially in the neighbourhoods of the Saharawi population.

The camp was established to demand respect for the most basic human, social and economic rights of the Saharawi. The "Group Gdeim Izik" relates to the imprisonment of 24 Saharawi arrested prior, during and after the dismantling of the silent protest



camp Gdeim Izik on November 8th of 2010 and the 25th trialled in absentia, since he was and is still living in Spain.

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, as well as a sand berm. It was impossible to enter or exit the camp without the knowledge of the Moroccan authorities that registered everybody that passed the several checkpoints.

These actions can be classified as military actions and movements since they are far beyond normal police action and included the different military, police and auxiliary forces of the Moroccan Kingdom and manoeuvres of establishing a semi permanent perimeter (sand berm) that encircled the camp with only one entry/exit controlled by Moroccan security forces, and so de facto was a strategy to contain the inhabitants inside the camp if and when it fitted the needs of the Moroccan authorities. The food and water supplies were also under the control of the Moroccan authorities that stopped a humanitarian solidarity caravan transporting medicines and food. From the 14th of October onward the Moroccan authorities did not let pass neither tents nor cars who had significant food supplies. The inhabitants started to put up tents made with "Melfa" the traditional Saharawi clothing of the women, a 1,5mx4m cloth.

In conclusion, regarding the above mentioned factors, It remains clear that the camp was placed under a siege by the Moroccan authorities, who also had complete control of all access points.

The establishment of the camp and the movements of the Moroccan authorities did not go unnoticed to the members of MINURSO which have headquarters in El Aaiun and issue a daily press clipping, so even in the case that they did not "see" the Gdeim Izik camp it is evident that this mission knew about the camp and all the military and police deployment around it, not only from the news published as well from direct observation of the movement in El Aaiun and surroundings. MINURSO vehicles travel forth and back several times a day between their mission posts in El Aaiun and Smara on the road that passes at the side of the location of Gdeim Izik

camp and it was impossible not to witness the check points, the berm and deployment of the Moroccan forces.

On the 24th of October, the Moroccan authorities opened fire on a vehicle trying to enter the campsite with food supplies. A 14-year-old boy (Nayem Elgarhi) died<sup>20</sup>. He was buried in secret by the Moroccan authorities. His family still demands that the officers who shot Nayem shall be brought to justice.

All these facts were published in the report of the Secretary General of the UN in 2011, as mentioned previous.

The Dialogue Committee remained, despite the violent clashes, in dialogue with the Moroccan authorities until three a clock in the morning of the 6th of November. Several of the prisoners of the Gdeim Izik Group were in the Dialogue Committee. During the two trials, although the accused and their defence lawyers demanded the presence of the Moroccan representatives in the dialogue committee to testify about the facts, this was rejected in both the military and the criminal trial.

In the last meeting, 48hours before the dismantling, the Moroccan authorities vouched that on the 8th of November tents would be placed to begin the registration of the camp residents to meet the social demands (i.e. social cards, housing and jobs). Therefore, all was in place to begin to slowly end the protest and as the demands were being fulfilled, the residents would return with their belongings to their homes.

On November 8th around 5h30, the Moroccan authorities broke their promise and breached the negotiation process and attacked the Gdeim Izik camp. Camp residents reported the use of rubber bullets, real bullets, hot-water cannons, tear-gas, truncheons and stones. In the proceedings in May 2017 two of the witnesses from the prosecutor (members of the Moroccan forces), were abruptly interrupted by the civil party and the preceding judge when they started to describe what kind of weapons they were carrying.

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<sup>20</sup> [Un joven saharai muerto tras un tiroteo del Ejército marroquí en El Aaiún](#)

As panic took over, clashes between the army and the protesters ensued. Street riots broke out in several cities of Western Sahara and houses of Saharawi were raided by the Moroccan authorities, which started to arrest people.

According to the statements and declarations of the Moroccan authorities and the Prosecutor as well as the civil party during the last trial the dismantling is presented as an act of necessity, although the necessity was never made clear. The prosecutor and the civil party refer to the camp as a military camp, and claim that the accused held the inhabitant's hostage.

So, two questions come immediately to mind. Firstly, if it was a military training camp, why did the Moroccan authorities let people pass, and as such allowed the camp to grow for one month. Secondly, if hostages existed (30 000 in the hands of the dialogue committee with less than a dozen members), why wasn't any "hostage" been presented as witness and why didn't the "hostages" thank their liberators, or submit any complaints.

Mr. Naama Asfari, declared in his statement: "The decision to attack the camp was not legally based, as it was not to defend the population but rather to attack civilians, we, the detainees, blame the administration and the attorney general which gave the order to attack."

On the 14th of June 2017 the appointed defence lawyer Maitre Elalam, stated that the dismantlement constituted abuse of power, and the lawyer asked why the law enforcement forces did not fulfil their duties. The lawyer again urged that according to Moroccan law the law enforcement forces must give the people a summoning to leave the camp, and that this was not done according to the law, and that the court has an obligation to investigate and set the things right. The lawyer stated that "if members of the law enforcement do not know how to do their job, don't send them towards our citizens". The lawyer cited the law, which stipulated three warnings; which means that the law enforcements forces must give the people room and time to leave, and he asked where the buses came from; and stated: we are still trying to justify the actions of the law enforcement.

The buses from the OCP (Phosphate Company, stated owned) were at the Gdeim

Izik site on the 8th of November, according to the Prosecutor to "transport the inhabitants to the camp back to El Aaiun" during the dismantlement. In order to transport at least 10.000 persons, in a camp that had, according to the Prosecutor, over 30.000 inhabitants, 181 buses would be necessary, or at least 50 that would go back and fourth to El Aaiun. These buses are from a state owned company and had to be fuelled, ready and with the necessary bus drivers, which means that at least one day prior to the dismantlement, the logistics had to be put in place, which in conclusion means that the dismantling was planned whilst the Moroccan authorities pretended that on the 8th the tents for the registration would be put in place.

During his statement Mr. Abbahah (one of the accused) asked why the camp was attacked on the 8th of November, when only two days before the Moroccan ambassador in New York said that the camp would not be attacked, and also why the attack took place on the day that Polisario and Morocco would meet in New York. The judge interrupted with the usage of shouting - no translation was available.

However according to the inhabitants of the camp that I interviewed there were not more than a few buses and if we look at the footage of the movie (presented in court but which has never undergone a forensic expertise), only a handful of buses are seen and we cannot even say if they are the same since the different scenarios are added in one movie.

Mr. Nordin Lassere, witness of the prosecution was a member of the public forces in charge of dismantling the camp where he was supposed to transport people from the camp to the city after the dismantling. The witness had received orders on the 7th of November to organize the transport, and moved towards the camp around 6:35am, and arrived around 6:45.

It is so very clear that although the dismantlement of the camp was prepared at least one day before, the inhabitants were not warned and the Moroccan authorities acted contrary to what they announced and promised.

The accused Mr. El Bakay condemned the intervention from the military forces, where the people in the camp were given 10 minutes to evacuate.

It seems impossible to evacuate 30.000 people from a Camp with only one opening

in the sand berm, after waking them up in the dawn without prior notice in a timespan of less than one hour. The fact that the Moroccan authorities entered the camp 15 minutes after the helicopter announcement could only provoke havoc and panic and be perceived as a mass attack. For instance, a football stadium like Morumbi in Brazil, with several exits and in a situation of no panic, no belongings to be gathered and the full knowledge of the people when the game ends, takes 1 minute per 1000 people to leave the permits just to the outer ring.

In the weeks leading up to the November 8th breakdown, Morocco refused foreign politicians, NGOs and media access to the camp, creating full information blackout. Therefore, an exact figure on the number of injured does not exist, as independent observers were not allowed to access the area. According to the Moroccan authorities around 11 Moroccan police officers were killed, but even during the trial the numbers of death were contradictory, having in the final pleadings been mentioned by one of the Civil party lawyers 10 death, the information presented as "autopsies" is only about 9 bodies and without any information on where they were found, and if we add up the declarations of the civil party and the Prosecutor the number of deaths does increase. On the 6th of June, one of the civil party lawyers during his final pleading declared that Mr. Ismaili (one of the accused) had "carried a big knife and killed numerous officials and wounded countless"; So not only did the lawyer not define the number or identity the victim, but they neither presented any proof of this accusation, nor did the prosecutor. These kinds of accusations were normal throughout the procedures without ever backing them up with evidence.

Furthermore in the final written verdict (Annex VII) a list with the names of the alleged dead victims was included, but only with ten names, on the last paragraph page seven of the same verdict it is stated that there are 11 dead, one missing and 161 injured. Once again the numbers do not add up and the name of the "missing person" is not mentioned.

During and after the dismantlement on November 8th 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 was transferred to Rabat for investigation by the Military Court of Rabat. The Moroccan Military Court sentenced the 25 Saharawi’s on the 17th of February 2013. Twenty-three of the Saharawi’s were sentenced to harsh sentences (life, 30, 25 or 20 years) one of them in absentia. Mr. Machdoufi and Mr. Zeyou were released with time served. The Supreme civil Court quashed the decision taken at the Military Court of Rabat in 2013, on July 27th, 2016 considering the blatant absence of evidence against the accused. (Annex VIII - Decision of the Supreme Court). The Supreme civil Court referred the case to the Appeal Court in Salé.

## 8. THE MILITARY TRIAL

Rabat's military tribunal sentenced the 25 Saharawi known as the Gdeim Izik Group on 17 February 2013 for charges relating to violent resistance to the Moroccan authorities during the latter's destruction of the Gdeim Izik protest camp. Nine received life sentences, 14 received terms between 20 and 30 years, and 2 were sentenced to the 2 years that they had already spent in pre-trial detention, one was given parole due to his health status. The trial came after two earlier postponements (the trial had originally been scheduled for January 2012, but was pushed back to October 2012, then postponed again) for reasons that remain unclear.

I participated in the capacity of International Observer in this trial accredited by Fundación Sahara Occidental, which presented a Report that evaluated the trial as Null and Void due to:

**1st** - Concerning the Justice Administration, notwithstanding the Human Rights norms and international instruments, ratified by Morocco and, although holding a strong police and judicial contingent, it did not take into account, along the judicial process, the current law, therefore WEAKENING, in judicial seat, dependencies and institutions, the appliance legislation, this process having proved to be: NULL and VOID.

**2nd** -The Military Court, in charge of this procedure, which carried out the trial's stages and decision, in Rabat, capital of the Morocco State, is an EXTRATERRITORIAL COURT. Its competence to judge the facts and acts produced outside the Reign of Morocco territory, makes it INCOMPETENT, according the Geneva Convention since the Western Sahara is illegally occupied by Morocco (the "occupant country"). The process developed in itself being NULL and VOID.

**3rd** -The Rabat Military Court is INCOMPETENT under the constitutional and criminal law, according to article 127, of the recent - ratified Constitution of the Reign of Morocco, dated 29th July 2011, being in fact an EXCEPTIONAL

COURT, prescript and forbidden, the developed process being of RADICAL NULITY. The Rabat Military Court, presided by an ordinary judge “Zehhaf”, judged, violating the application law, 25 Saharawi civilians, not holding the necessary jurisdictional faculties. The form and tone of interrogation to many of the latter, stating they had no sufficient education competences, in order to pronounce the court’s legality, was totally inadequate and a clear sign of discrimination and racism.

**4th** - The preliminary round phase of the crime, was converted into the dominant and decisive part of the criminal process, contaminating it in a serious and irremediable manner. The accusation and justice administration system, regarding the proofs, which might have been obtained illegally, is very defective. The prisoners denounced sexual violations and tortures, as means of obtaining confessions, which took place at the Royal Gendarmerie police premises and amid the military and pro-military corps which “in fact” operate in the Western Sahara, inflicted during weeks or even months, and whose wounds were exhibited in court, during the plenary and instruction phases, with many complaints presented, which were not under investigation, as they were denied, including the oral phase of the proving of such acts, and the possibility of their validity, therefore giving place to FRAGILITY OF THE DEFENCE RIGHTS.

**5th** - The oral testimonies, were registered, years upon the taking place of the acts, along with the inappropriate /unjustified prolonging of detention, in police and penitentiary premises, amid tortures, physical and psychological coactions, postponement of the trial and keeping the accused under protective imprisonment, contrary to international conventions and the Morocco law.

**6th** - Although over 2 years passed, since the 8th November 2010, the date when the alleged acts took place, and the capacity and preparation of both the security corps and forces, as well as the Morocco courts and judges, an ILL, INCOMPLETE, SLANTING AND ILLEGAL INSTRUCTION was made. The inexistence within the process of the identity and circumstances on the dead victims, inexistence of forensic autopsies (an important tem to



determinate the cause of death, the place, moment and circumstances); inexistence of digital impression proofs and white weapons analysis, inexistence of morphologic studies and identification in films, make us consider not valid, in absolute, the dictated sentence. And once that none of the accused are identified in the presented films, the instruction and supposed accusation proofs obtained in the instruction phase and presented at the plenary, they are **TOTALLY UNKNOWN REGARDING THE ACCUSED**, together with the manner the King's Procurator presented and formulated the accusation. The existence at the time, of the violent dismantlement of the Gdeim Izik camp, under siege, surrounded by numerous state effectives and equipment (which included aerial means and at least five film cameras), make the "modus operandi" inconsistent / incongruous, reported by the accusation, with the reported facts, with plenty of void and imprecisions, which made it absolutely impossible to recognize who, how and when, provoked the death of victims and if it was violent. (The crimes appointed by those condemned were desecration of bodies, criminal and murder association).

This defective instruction, made by the King's Procurator, at the Plenary, the very same day the trial hearings begun, to present, in a suppressive manner (in non-accomplishment with the previewed legal terms) the inclusion in the process of nine ocular witnesses of the acts and whose statements could bring some light on the authors identification and the circumstances of the crime perpetration. Hawadi Radouan, the first witness, declared he was present as an auxiliary corps, on the 13th February, at 13.15, local time, not having recognized any of the accused. The court's president, in the exercise of his stated conferred powers, did forbid the plenary of hearing the remaining eight witnesses. Therefore, impeding the defence of the possibility of proving the accused had had no participation in the violent acts.

The only admitted defence witnesses and able to testify were: Mohamed Salmani, Bachir Salmani, Mohamed Balkasmi, Mohamed Abhaoui and Hassan Dalel.

**7th** - Absence of guarantees in a lawful process and a correct appliance of justice, given that the police, judicial procedures and the oral trial phase, were

deeply affected by the accused political activities and opinions, which overcame the circumstances. This mission regarded the inexistence of an impartial and independent justice during the trial, this process ought to be classified as a POLITICAL TRIAL and the prisoners as POLITICAL PRISONERS.

**8th** - The observer mission proved numerous vices amid the proceedings, which ought to have provoked null and void, from the instruction phase in concrete and regarding the law applied within the territory:

- the underlined absence( and denounced repeatedly along the whole trial) of accusation proofs presented by the King's General-Procurator and the Judge of Instruction, MAKE THE WHOLE PROCESS NON-VALID, as the latter did not exercise their lawful guarantee function, thus violating the effective judicial protection principle ( in accordance with its criminal system) and the presumption of innocence, accepting the police statements obtained, as declared by all the witnesses, under unimaginable forms of torture, IN THE ABSENCE OF ANY REAL PROOF along all the process.
- Absence of identification of the held forces by the security guards, holding incriminatory proofs in the instruction phase itself; signifying that they were arbitrarily imprisoned and by the fact of being Saharais, associations' members, Human Rights defenders, members of the Gdeim Izik negotiation commission or for opinions on the Western Sahara auto-determination, having been taken away unto detention centres, before, during and upon the Gdeim Izik camp, with no connection with the mentioned acts, having been kept for days under unaccounted whereabouts.
- Violation of the right of defence, through the systematic refusal of proof of innocence, both during the instruction phase as during the plenary, impeding in concrete, the possibility of proving innocence, having been specially grotesque the proof presentation denials, insistently demanded by the defence, throughout all the plenary progress, as doctors for proving torture and important witnesses, such as the

Minister of the Interior of Morocco and the MP (member of parliament) Gajmoula Ment Abbi.

- Absence of lawyers during detentions, at the police and judicial quarters.
- Absence of communication towards the prisoners' families.
- The use of violent police methods, tortures and physical coactions at the judicial quarters, carried out in the presence of the instruction judge Bakkall Mohammad, deceased, to obtain signatures in digital prints, at the end of the version of the guilt confessions.

**9th** - This mission proved the violation of freedom of expression, conscience, meeting and association rights within the territory, awaiting the decolonization from the United Nations and the celebration of an auto determination referendum carried out by the Saharawi people; and that the expression of political opinions which are carried out during the exercise of civil rights, recognized by the international treaties, subscribed by Morocco, are hindered.

During the oral testimonies phase, the court intended to annul, at any moment, and avoid such statements; and only were permitted / allowed, upon a strong defence from lawyers and a closed meeting among the court and the latter.

**10th** - Detention, torture and sentence, as well as the Saharawi's demonstrators detention, correspond to the decided and systematic repression policy towards the political activists within the Reign of Morocco and the Western Sahara territory, as a method to minimize the Saharawi people growing movement demanding their right to auto- determination, recognized by the United Nations, in the defence of their rights, which ultimate expression was the Gdeim Izik camp.

**11th** - The state of terror which witnesses mention, the reports on torture and repression, reported during the plenary, violate the Morocco criminal law, which is applied to the Western Sahara inhabitants, the international agreements subscribed by Morocco, as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the international

Agreements on Civil, Political, Economic, Social and Cultural rights (1966), the Agreement for the Prevention and Sanction of the Crime of genocide and Crime of Tortures, (rectified by Morocco in 1950).

**12th** - This observer mission could prove, that the necessary conditions for the on-going of a just, equitable and independent process were not met. The excessive and unjustified police presence, in the hearings room, the court's premises and in the outdoor surroundings, where hundreds of anti- order vehicles, lorries with water cannons prepared to intervene, situated in visible places, together with the stress / pressure the observers suffered, both inside the hearings room as all over the court, the threats upon translators, whose families had been "visited" in Western Sahara, having been adverted that translation activity was not to be convenient, frequency deterrent effects all round the zone, impeded phone communication, together with the media pressure on the Morocco media, that along with the police force, carried on filming and taking photos of the observers, and , specially, of the prisoners, having been published in papers and magazines with no permission, constitute an inadmissible exercise of the power of state, which played its direct influence on the justice process, deterring it.

All defendants maintained 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.

They made several hunger strikes demanding their rights under international law during the over six years of detainment (see annex IV).

## 9. ACCEPTANCE OF THE APPEAL PRESENTED IN 2013 AND NEW TRIAL

On October 18th 2016 the group of Saharawi political prisoners of Gdeim Izik, that were at that time imprisoned in el Arjat, received a resolution for each of the 21 detainees from the Civil Court in Rabat, to inform that the appeal presented in 2013 had been accepted.

**The Supreme Court's decision is dated July 27th 2016 and the prisoners were informed on 18th October. The Moroccan judicial system withheld this information for 82 days.**

The judgment of the Court of Cassation states that the military court has not proved that the legal conditions relating to the articles of accusation presented in the military court or the legal elements constituting criminal acts were met.

The conclusion of the judgment of the Court of Cassation is scathing:

*"The judgment under appeal therefore lacks any foundation. "*

Consequently, the Court of Cassation held that:

*"The court did not prove clearly the purpose of the order and the incitement mentioned above, the party or persons involved, the death that followed and the criminal intent of the accused. "*

Similarly, concerning the alleged complicity:

*"The court convicted the applicant for complicity in the said crime without there being any of the cases of complicity provided for in article 129 of the aforesaid Penal Code stipulating that the accomplice must commit the act with the agreement of the principal author; which the court did not demonstrate in its reasoning. "*

Thus, the Military Court's decision was not squashed as a result of the legislative change excluding the jurisdiction of the Military Court to try civilians, but of the decision, which stems from the lack of evidence against the accused.

The group was transferred from prison Sale1 to El Arjat after this decision. On August 31<sup>st</sup> 2016, the prisoners were brutally beaten (according to their own statements and information of the families) and most of their belongings were taken from them.

On November 25<sup>th</sup> 2016 the Moroccan Ministry of Justice, sent to all the 21 prisoners of the Gdeim Izik Group and to two ex-prisoners released in 2013 (El Machdoufi Taki and Abderrahman Zeyou) and one on parole (Mohamed Ayoubi) the communication that a new trial would take place on the 26<sup>th</sup> of December 2016, in the building of the court of first instance of Sale with the process number: 2612/2016/582.

The accusations are articles 129<sup>21</sup>, 130<sup>22</sup>, 267<sup>23</sup>, 271<sup>24</sup>, 293<sup>25</sup> and 294<sup>26</sup> of the

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<sup>21</sup> **Article 129**

Sont considérés comme complices d'une infraction qualifiée crime ou délit ceux qui, sans participation directe à cette infraction, ont:

- 1° Par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, provoqué à cette action ou donné des instructions pour la commettre;
- 2° Procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action sachant qu'ils devaient y servir;
- 3° Avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action, dans les faits qui l'ont préparée ou facilitée;
- 4° En connaissance de leur conduite criminelle, habituellement fourni logement, lieu de retraite ou de réunions à un ou plusieurs malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'État, la paix publique, les personnes ou les propriétés. La complicité n'est jamais punissable en matière de contravention.

<sup>22</sup> **Article 130**

Le complice d'un crime ou d'un délit est punissable de la peine réprimant ce crime ou ce délit. Les circonstances personnelles d'où résultent aggravation, atténuation ou exemption de peine n'ont d'effet qu'à l'égard du seul participant auquel elles se rapportent. Les circonstances objectives, inhérentes à l'infraction, qui aggravent ou diminuent la peine, même si elles ne sont pas connues de tous ceux qui ont participé à cette infraction, ont effet à leur charge ou en leur faveur.

<sup>23</sup> **Article 267**

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

Moroccan penal code.

Accusations:

The accused of belonging to a criminal group, violence, with the intention to kill, against public forces in line of duty, which resulted in death and profanation of a dead body, are:

- Sidi Abdallahi Abbahah, prisoner number 772 (serving life sentence)
- El Bachir Boutanguiza, prisoner number 763 (serving life sentence)

The accused of belonging to a criminal group, violence with the intention to kill, against public forces in line of duty, which resulted in death, are:

- Mohamed Bani, prisoner number 781 (serving life sentence)
- Sidi Abdel Jalil Laaroussi, prisoner number 779 (serving life sentence)

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Lorsque les violences entraînent effusion de sang, blessure ou maladie, ou ont lieu soit avec préméditation ou guet-apens, soit envers un magistrat ou un assesseur-juré à l'audience d'une cour ou d'un tribunal, l'emprisonnement est de deux à cinq ans.

Lorsque les violences entraînent mutilation, amputation, privation de l'usage d'un membre, cécité, perte d'œil ou autre infirmité permanente, la peine encourue est la réclusion de dix à vingt ans.

Lorsque les violences entraînent la mort, sans intention de la donner, la peine encourue est la réclusion de vingt à trente ans.

Lorsque les violences entraînent la mort, avec l'intention de la donner, la peine encourue est la mort.

Le coupable, condamné à une peine d'emprisonnement peut, en outre, être frappé de l'interdiction de séjour pour une durée de deux à cinq ans.

<sup>24</sup> **Article 271**

Quiconque souille ou mutilé un cadavre ou commet sur un cadavre un acte quelconque de brutalité ou d'obscénité, est puni de l'emprisonnement de deux à cinq ans et d'une amende de 200 à 500 dirham.

<sup>25</sup> **Article 293**

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

<sup>26</sup> **Article 294**

Est puni de la réclusion de cinq à dix ans, tout individu faisant partie de l'association ou entente définie à l'article précédent.

La réclusion est de dix à vingt ans pour les dirigeants de l'association ou de l'entente ou pour ceux qui y ont exercé un commandement quelconque.

- Abdallahi Lakhfaoui, prisoner number 776 (serving life sentence)
- Ahmed Sbaai, prisoner number 771 (serving life sentence)
- Sidahmed Lemjeyid, prisoner number 773 (serving life sentence)
- Brahim Ismaili, prisoner number 774 (serving life sentence)
- El Laraabi Bakay, prisoner number 778 (serving 30 years)
- Mohamed Lefkir, prisoner number 775 (serving 25 years)
- Mohamed Ayoubi (on parole since February 2013)
- Taki El Machdoufi (freed in February 2013 after serving two years imprisonment)

The accused of belonging to a criminal group, violence without the intention to kill, against public forces in line of duty, which resulted in death, are:

- Naama Asfari, prisoner number 767 (serving 30 years)
- Cheik Banga, prisoner number 770 (serving 30 years)
- Hassan Dah, prisoner number 768 (serving 30 years)
- Mohamed Bouryal, prisoner number 769 (serving 30 years)
- Houcein Zawi, prisoner number 776 (serving 30 years)
- Abdallahi Toubali, prisoner number 762 (serving 30 years)
- Deich Daff, prisoner number 764 (serving 30 years)
- Mohamed Lamin Haddi, prisoner number 782 (serving 25 years)
- Mohamed Khouna Babei, prisoner number 780 (serving 25 years)
- Bachir Khadda, prisoner number 777 (serving 20 years)
- Mohamed Tahlil, prisoner number 765 (serving 20 years)
- Abderrahman Zeyou (freed in February 2013 after serving two years imprisonment)

*Note: The spelling of the names of the Gdeim Izik group varies since each country makes a different transliteration.*



## 10. THE FAIRNESS OF THE TRIAL

### Introduction

Morocco has ratified the International Covenant on Civil and Political rights (ICCPR) of 1966 (ratified 1979)<sup>27</sup>. Domestic law recognizes the application of human rights covenants and principles. 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 principles or doctrines that together constitutes a fair trial. The process of law (or, the right to a fair trial) is grounded on two main elements: the right of all persons to equality before the law and the courts, and the right of all persons to a public hearing with all due guarantees before a legally-constituted, competent, independent and impartial tribunal, as well as the right to appeal.

The Group of Gdeim Izik has remained imprisoned pending almost 7 years. The 19 detainees currently imprisoned in Morocco are subjected to arbitrary detention, as the total non-observance of the international norms relating to the right to a fair trial, is of such gravity as to give the deprivation of liberty an arbitrary character<sup>28</sup>.

The main findings and the evaluation of the fairness of the trial regarding international standards have been introduced during the proceedings in several reports issued by Ms. Tone Sørfohn Moe and me<sup>29</sup>. Our main findings are described

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<sup>27</sup> United Nations Human Rights - Office of the High Commissioner (29.04.2017): [International Covenant on Civil and Political Rights](#)

<sup>28</sup> See amongst other *Working Group on Arbitrary Detention, No. 26/2016 concerning Hamo Hassani (Morocco)*

<sup>29</sup> [Information Trial Gdeim Izik December 2016](#)

[Trial Observation Report From the proceedings against the "Group Gdeim Izik" in Salé, Morocco, 23rd to 25th of January](#)

[Trial Observation Report From the proceedings held on March 13th until March 15th, against the "Group Gdeim Izik" in Salé, Morocco](#)

[Trial Observation Report Gdeim Izik March 2017-3](#)

in paragraph 10.2. through paragraph 10.15 listed below.

Torture - 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.”*

The United Nations Human Rights Committee stated in the concluding observations on the sixth periodic report of Morocco, 1st December 2016 that:

*The Committee notes with particular concern that: (a) confessions obtained under duress are reportedly sometimes admitted as evidence in court even*

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[Gdeim Izik - Trial Observation Report May2017](#)

[The Court Case of Gdeim Izik - Statement concerning the proceedings held from 5th-8th of June](#)

[THE COURT CASE OF GDEIM IZIK - Statement Concerning the Proceedings Held From June 5th to the 15th of June 2017](#)

*though, by law, they are inadmissible; (b) in cases of alleged torture or of the extraction of confessions under duress, judges and prosecutors do not always order that medical examinations be performed or that investigations be undertaken; (c) persons who report cases of torture are sometimes the object of intimidation, threats and/or legal proceedings; and (d) the number of cases in which charges have been brought and the number of convictions that have been handed down seem quite low given the number of complaints filed and the extent to which torture and ill-treatment have occurred in the past (arts. 2, 7 and 14).<sup>30</sup>*

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>31</sup> were obtained through torture. Furthermore, the CAT-decision (CAT/C/59/D/606/2014)<sup>32</sup> clearly states that Mr. Naama Asfari has suffered under violent torture, and that the government has refrained from investigating, furthermore Mr. Asfari was condemned by the military court solely based on declarations made under torture. The Court on the other hand refused to regard the CAT-decision as evidence, or in any way as a legal document and led a trial for 7 months without taking in account a UN decision.

During the interrogations held at the Court in Salé, 23 of the accused claimed that they have signed reports that had been fabricated and retrieved under torture and/or under threats.

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.

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<sup>30</sup> United Nations Human Rights – Officer of the High Commissioner [CCPR/C/MAR/CO/6](#)

<sup>31</sup> [Report on Torture, Human Right Violation and Health Condition Denounced by the 24 sahwari prisoners of Gdeim Izik](#) ACOSOP March 2013. Link (29.04.2017):

<sup>32</sup> CAT/C/59/D/606/2014. Decision concerning Naama Asfari. [http://www.un.org/ga/search/view\\_doc.asp?symbol=CAT/C/59/D/606/2014&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/59/D/606/2014&Lang=E) Link (29.04.2017)

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.<sup>33</sup> The comment of the International Covenant stipulates in paragraph 3 (e) in regard 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 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. The declarations and the testimonies connected to them (i.e. the declarations from the police officers who wrote the reports) should be discarded as illegal evidence.

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 defence challenged the legality of the declarations since the beginning of the process, as was the case in the military court. However, instead of examining preliminary the legality of the declarations, the questions placed forward from the presiding judge, the prosecutor and the civil party are based only upon these declarations which are contested, and as it follows: this evidence is illegal, and the usage is a direct violation of Morocco's international commitments and national law in accordance with Article 293 of the amended Criminal Procedure Code, which ensures the inadmissibility of any confessions made under "violence or duress", and the Moroccan Constitution, which states in article 22 "No one shall inflict upon another, under any pretext whatsoever, any cruel, inhuman or degrading treatment which undermines their dignity. The practice of any form of torture, by anyone, shall be a crime punished by law."

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<sup>33</sup> [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) 1984. Link (29.04.2017)

Instead of respecting the prohibition of using illegal evidence, the presiding judge, the prosecutor, and the civil party subjected the accused to a line of questioning meant to weaken the claims upon torture. The judge performs forensic work when for example he takes upon himself to compare signatures and declare that they were the same, instead of asking a graphology expert. In the case of Naama 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 by 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 Naama 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.

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.

The civil party and the presiding judge undermine the CAT-decision regarding the case of Naama Asfari, 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.

The torture that were denounced in the Military trial were published in the report of ACOSOP<sup>34</sup>. In the report published by the two French defence lawyers M. Olfa Ouled and M. Ingrid Metton in Section 2 outline the breaches of law concerning the documents obtained under torture<sup>35</sup>

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<sup>34</sup> [Report on Torture, Human Right Violation and Health Condition Denounced by the 24 sahrawí prisoners of Gdeim Izik](#)

<sup>35</sup> [Rapport Defense Gdeim Izik 15 Juin 2017](#)

## Medical examinations

The fact 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.

The accused are further entitled to medical examination. 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<sup>36</sup> and the Istanbul Protocol<sup>37</sup>. 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.

The court has ruled that the detainees will not be given an independent medical examination i.e. following the guidelines of Istanbul Protocol, and did postpone the evaluation of the already conducted medical examinations until the 6th of June. 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 examinations were performed by Moroccan public officials, and were not performed by doctors with the necessary expertise and independence from the Moroccan Government (the doctors did never precise that they were paid by the Moroccan Kingdom even if such an information should have been mentioned in the reports according Istanbul Protocol). Consequently, the ordered medical examinations are not in line with the Torture Convention.

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

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<sup>36</sup> [Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) . 2000. Link (29.04.2017):

<sup>37</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):

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 investigate promptly any "act of torture", as set forward in art. 12 of the Torture Convention.

The medical expertise performed by three court appointed doctors to confirm the torture allegations were done between 16th February and 3rd of March 2017. Only 16 of detainees accepted the expertise. Five of the detainees refused, due to the fact that the doctors appointed by the court were public servants, and not independent experts as requested by the defence lawyers at the beginning of the trial and by the accused themselves. The detainees have made a request upon independent and impartial expertise on several occasions since their detention in 2010.

Mr. Abbahah, one of the accused who refused the medical expertise states that the doctors appointed by the court were not independent and that "the results of the report have been decided by the prosecution".

The violations of the Istanbul protocol during the medical expertise that was performed on 16 of the accused are outlined in the counter expertise reports that were published by the lawyers Olfa Ouled and Ingrid Metton<sup>38</sup>, and put in evidence the lack of seriousness and independence of those reports, with contradictory information and conclusions and also copy paste from one report to the next, like in the case of the report concerning Mr. Khouna Babeit where a complete sentence was copied from the report of Mr. Boutanguiza but the name of the patient was not changed. Several of the exams were handed out to the Moroccan authorities present before given to the doctors. The time of the psychiatric evaluation was between 15minutes to one hour, which is clearly insufficient and the traumatology expert performed superficial exams like asking the prisoners to stand on one leg.

After the release of Mr. Deich Daff and Mr. El Laraabi Bakay, and during an interview with myself, Ms. Moe and Mr. Mads Andenas, the ex-prisoners confirmed the

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<sup>38</sup> [Rapport Defense Gdeim Izik 15 Juin 2017](#)  
[Annexe Finale. Rapport d'observations de la défensesur le procès de Gdeim Izik devant laCour d'appel de Rabat](#)

information given to us by the families that the medical examination was performed in an unprofessional manner, sometimes in presence of police guards, and the questions put forward by the doctors were political motivated. The examinations were superficial and the complaints of the prisoners were not recorded correctly.

Mr. Daff also stated that he felt as he was in an interrogation room and not in a doctors visit, since the doctor (Fadila) talked to him about political issues and the situation of Western Sahara. The same was said by Mr. Laarabi who said that the doctor asked about his whereabouts on the day of the dismantling of the camp. (see annex II).

## 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 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 the defence mentions international law and obligations, the presiding 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 dominated the courtroom and the court’s facilities were characterized by grand demonstrations both inside and outside.



The prisoners had difficulties believing in a fair trial. The prisoners reaffirmed 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 would give them harsher penalties than if they refrained. The accused invoked that the only reason for their arrest is their Saharawi nationality and their political activism. During the proceedings held in May the Group of Gdeim Izik withdrew themselves from the proceedings as a consequence of their lack of trust in the Moroccan judicial system. Mr. Hassan Dah affirmed the position of all the prisoners, but Mr. Dah was prohibited from explaining the reasons behind their withdrawal from the case in detail. As the prisoners exited the courtroom, they chanted that this court case is a theatre played for the international community; in front of the international observers.

The detainees protested several times against the use of both new witnesses and new evidence. The detainees claimed that the witnesses presented false testimonies, and that the witnesses were brought to support the already falsified declarations. The detainees urged that these witnesses were telling lies, and that they could not be heard 7 years after the events, whereas Mr. Abbahah asked whether the witness had been in a coma, or abroad during the last 7 years since they did not appear on any prior police records.

It is apparent that the detainees mistrusted the independence of the Appeal Court in Salé, and after several protests and requests to the court chose to withdraw themselves from the proceedings. The detainees did on several occasions urge the president to investigate the evidence placed forward from the prosecution office, and to grant them independent medical examinations as to prove that they have been tortured. The detainees also urged the court to summon inhabitants from the camp to witness on their behalf, where the only ones summoned to witness about the camp were the witnesses placed forward by the prosecutor. The detainees furthermore protested against the identification process clearly in violation of the presumption of innocence, and on one occasion a police officer whispered into the witness ear; which provoked further protests from the accused. The court denied all the requests from the detainees.

In compliance with the principle of an independent judiciary, the need for investigation upon where these witnesses originate from, and whether the witnesses declared falsified testimonies is evident. Considering the courts earlier rulings and the refusal to investigate where the witnesses come from, it is reason to believe that the court was not independent, and that the court did not independently investigate the evidence placed forward, and as such did not base its ruling on legal provisions.

### 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 Moroccan penal procedure code states in article 1 that all accused are presumed innocent until the moment that their guilt has been legal established by the judges, in a fair and equal trial where all judicial warranties were assured.

Article 119 of the same code states: all defendant or accused shall be presumed innocent until his conviction by a court decision having acquired the force of *res judicata*.

The prisoners were not yet proven guilty, and they had the right to be presumed innocent. Firstly; the media overflow 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 litigated in the media. The accused have been portrayed as the culprits, and the ones accountable for what happened in the Gdeim Izik camp in national media pending 7 years. (see annex III).

Numerous consequences follow the guarantee of innocence, including the accused's right to remain silent and to not be compelled to make a confession, and the principle that the burden of proof should lay with the prosecution. It is clear from the testimonies that the accused have not been given the right to remain silent and to not be compelled to make confession. All of them stated that they have signed

declarations without knowing its content, and that the documents are falsified. None of them were told about their rights before being interrogated, and the declarations were signed under pressure and/or torture.

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 occasions, the civil party continued to address the defendants directly; calling them murderers and criminals, outside but above all inside the courtroom. The judge did not comment on these remarks, until shouting protests have emerged inside of the glass-cage by the prisoners. It should be noted that part of the hearings was being broadcasted on national television and where the lawyers from the civil party called them criminals, barbarians, amongst other accusations.

Furthermore, the translators in the court, both the English and the French, sometimes translated “the accused” into “the murderers”. When Laraabi El Bakay was interrogated, he was placed on a chair that had “terrorist chair” written on the back. Images of the accused placed in the chair were broadcasted on national television. Also; the movie 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 (Video: <https://youtu.be/vJjVOVADxmA>).

These mentioned observations constitute a direct violation of the presumption of innocence. It would therefore be of outmost importance that the principle of burden of proof would have been applied by the presiding judge of the Court of Appeal in Salé, but this was not the case.

## The identification process

It must be pointed out that the faces of the accused and their names are well known as they have been portrayed as criminals in Moroccan national TV stations, written and online media as well as social networks for the last seven years.

Although Ms. Moe for instance did not knew the prisoners, never talked to them nor met them, nor knew the case before the start of the proceedings in December, she was able to identify the accused in the glass cage from the pictures broadcasted in the social media.

The court conducted an identification process during the proceedings held in May 2017. The identification process was conducted by ordering all the detainees to appear in front of the court (i.e. come out of the glass-cage, and present themselves in front of the judge). The witness was thereafter instructed to point out the different detainees that he recognized, and name them according to his testimony. As such, the witness pointed for example towards Mr. Naama Asfari, and named him as Mr. Asfari. The witness did not go into further detail. The ones identified went to the other side of the room, and the witness continued the identification until he could not identify further.

Both the detainees and their defence lawyers protested the identification process, which finally led the accused to refuse to appear in front of the court, avoiding exposure in front of new witnesses. It is reason to believe that this identification process had an impact on the detainee's decision to withdraw themselves from the court case. After withdrawal, the court chose to conduct the identification process by exposing the witnesses to pictures of the detainees that were said to be taken in the prison. The witness was as such given a pile of pictures, which only contained pictures of the accused, and was told to identify the detainees that he recognized. This process was conducted with the usage of pictures that were not part of the evidence file. The court also ruled that the pictures were to be shown to all observers present in the courtroom, for them to check whether the pictures had any marks on them (i.e. the pictures were distributed to the observers, and portrayed on the screen). The observers did not touch or look at the photos, but several Moroccan attendees and members of the plaintive did touch the photos. The court then re-

summoned the witnesses that the detainees had refused to be exposed to, and conducted the identification process through the usage of pictures.

This identification process constitutes a direct violation of the presumption of innocence. The accused were directly exposed to the witness within the courtroom; and no further line up or earlier investigation with an identification process had been conducted. As such, the identification process conducted inside the courtroom is the only one that exists. As mentioned earlier, pictures of the accused had circulated the national media and the internet over several years; there is therefore a great probability that the witnesses presented to the court have seen pictures of the accused before the identification process. Even in the entry to the court house pictures of the accused are being portrayed and exposed by the demonstrators. This prior exposure invalidates the whole process as a whole, and makes the evidence illegal. The whole identification process can in our opinion be regarded as a corrupt process in order to create evidence against the accused, in an already corrupt process.

It also raises the question to why this was the first identification process, and how these witnesses gave declarations to the police without having to make any identification of the accused prior to the proceedings inside the court.

As cited, those witnesses only appear 7 years after the dismantling of Gdeim Izik ; the only witness who was a fireman present at the Military Court and who said that he did not recognize the prisoners was not summoned this time.

## 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.

The civil party and the prosecution asked numerous questions based on the declarations, such as “the violent inhabitants”, the trip to Algeria and the alleged partnership, supported by the questioning of the witnesses placed forward by the prosecutor.

On the contrary, during the interrogations of the accused, both the accused and the defence lawyers were prohibited from speaking of/or ask questions related to the reason for the protest camp and 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.

On the 16<sup>th</sup> of May, the detainees and the defence lawyers withdrew themselves from the proceedings. As a consequence, the presiding judge appointed new defence lawyers. The presiding judge named four lawyers, whereas two of the lawyers were already present, since they belonged to the civil party representing the victims. So, the two lawyers present changed from one side of the courtroom, accepted on their behalf and on the behalf of the other lawyers that were not present nor were they informed, and the judge continued the session with calling the next witness without any interruption. The newly appointed defence lawyers were not given the chance to review the case documents, and had, to our knowledge, only access to the complete case file on May 18<sup>th</sup>. No contact was established with their clients. Although in the final pleadings Salhli Saad, court appointed defence lawyer said that he had contact with the defendants and that he was speaking in their name. Due to the problems with accurate translation I approached the lawyer afterwards and asked him if he really said he had contact with the defendants, which he confirmed. In the interview with Mr. Deich Daff and Mr. Laarabi El Bakay I have asked the question again and they confirmed that none of the court appointed lawyers had contacted them.

## The obligation to examine both incriminating and exonerating evidence

When talking about a fair trial, the investigating judges are obliged to examine the evidence for the defence as well as the prosecution. Consequently, the presiding judge is obliged to ask questions both in favour and in disfavour of the accused. In this case, the judge only considered the evidence placed forward by the prosecution, and did not evaluate both the exculpatory and incriminatory elements.

During the proceedings in March the defence was prohibited from asking questions related to the character of the dismantlement. When interrogating Laarabi 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 Abderrahman Zeyou, the accused was deprived of his ability to defend himself since both the prosecution and the civil party constantly interrupted him. The presiding judge asked questions solely based on the alleged falsified declarations, and asked numerous questions about his relationship to Naama Asfari. None of the questions was in favour of the accused. Mr. Mohamed Masaoudi was, during his interrogation, prohibited from asking Mr. Zeyou about what guarantees 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 party. In the case of Mr. Zeyou, 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.

Here is a clear example that the role of the civil party during the proceedings was extremely prejudicial to the accused and to the defence lawyers. At the end of the trial they were not seen as formal part of the process, but their presence and actions during all the sessions cannot be sponged and were prejudicial to the defence of the accused.

During the proceedings held in May, the court heard from several witnesses, both support witnesses and witnesses summoned by the prosecutor. We witnessed an apparent distinction in how the court treated the witnesses that were exonerating, and the ones which were incriminating. The support witnesses were asked multiple questions in detail about the time, the place and the exact minute; trying to create a contradiction to the prior given answer. The witnesses from the prosecution were not asked questions in detail, and questions upon details were mainly rejected as either irrelevant or without given a reason.

As for the witness identifying Mr. Bani as the driver of the car, the defence was prohibited from asking about his exact location; and how a car appearing from behind bushes, ranging 50 cm over the ground, could surprise his section. During the questioning of Mr. Mohamed Choujaa the defence was prohibited from asking why Mr. Choujaa did not remember any of his neighbours within the camp, nor could identify any other human being besides the detainees. When the detainees identified by Mr. Choujaa were summoned to meet the testimony of Mr. Choujaa, the detainees asked in total 49 questions to the witness. The presiding judge decided to ask in total 10 questions of all the questions placed forward by the detainees. The defence urged that the presiding judge had to ask why the witness could not identify his neighbours, nor the ones he was eating dinner with or drinking tea with; only the detainees. The court refused to ask the question.

On the 11<sup>th</sup> of May Ms. Moe and myself conducted an overview of the questions that were allowed to ask for the different parties active in the court case. Five testimonies were conducted on the 11<sup>th</sup> of May, with two support witnesses and three witnesses summoned by the prosecutor. Total questions raised were 112. The prosecutor



asked in total 54 questions, where 50 questions were placed forward, and 4 questions were denied as already answered. The civil party asked a total of 49 questions, and could ask a total of 42 questions, whereas 6 were refused as already answered. The defence raised in total 15 questions, where 7 were accepted, and 8 questions were denied as already answered. The three witnesses placed forward from the prosecution office were witnesses describing the events, without identification, leaving the defence to not put forward questions, as the testimonies are not relevant to the accusations placed forward.

During the questioning of the support witnesses on May 11th, protest emerged, leading the defence lawyers to object, without a positive outcome. The defence lawyers objected to the line of questioning placed forward from the presiding judge, which clearly was trying to poke holes in the testimonies of Mr. Mohamed Selmani and Mr. Bachir Selmani. The presiding judge asked repeated questions about whether Mr. Bachir Selmani had seen Mr. Asfari being transported to the vehicle by the police officers, and whether the witness had seen the head of Mr. Asfari (i.e. Mr. Asfari had declared that he was blindfolded). The witness declared that police officials on every side surrounded Mr. Asfari and that he only saw the top of his head, and that he did not see anything “unusual” on his head. This led the presiding judge to ask him why he had not seen the blindfold, and with showing of his glasses, urged the witness that he “must have” seen the blindfold if he in fact witnessed the arrest of Mr. Asfari. It is thus evident that the presiding judge is only examining the incriminatory evidence, and that the court in fact tries to weaken the evidence value of the exculpatory evidence.

This line of questioning presented from the presiding judge remains the same; 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. The witnesses supporting the accused are asked numerous questions in detail, lasting for over an hour, whereas the witnesses from the prosecution office are asked none questions in detail, or questions that could harm the declarations given. This constitutes a clear breach to the right to a fair trial, where the investigating judge is obliged to ask questions both for and against the accused, and the line of questioning is a clear indication that this court case in fact is a political trial.

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.

### The role of the judge

As highlighted in the previous point the presiding judge mainly asked questions against the accused. In the case of Naama Asfari, regarding the torture he was subjected 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 presiding judge is in fact biased towards the accused.

The jurisdictional function of judges, in all courts of justice in the world, prevents 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. The presiding judge then compared the signatures and declared that they were the same, putting himself in the role of a

graphology expert. The two signed blank pages remain in the custody of the court and where, the defence protested against this fact.

In the case of Mr. Deich Daff, 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. Laaroussi, the judge acted as a medical expert. Mr. Laaroussi declared that he, due to his health condition, receives numerous medications per day, where Mr. Laaroussi declared that the side-effects from the medication is severe, and that he is subject to medical malpractice. Mr. Laaroussi 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. Laaroussi 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 that 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.

The role of the judge was undermined during the proceedings; he was disrespected several times by the prosecutor and the civil party. The shouting in the courtroom as if we were in a market place was common throughout all sessions. The prosecutor also interrupted the judge frequently by tapping with force on his microphone.

Although this could be seen as a culture based behaviour, it clearly shows the lack of respect towards the judge.

The judge tried to give the appearance of a fair trial by bending rules or by "allowing" things that were either obvious rights before the law or things that should never be allowed: like handing out the photos of the accused to the observers and other people present in the courtroom. On those occasions and throughout all session he declared: Since this is a fair trial and in the flexibility of the court, I...."

During the proceedings screaming was very common even to the presiding judge, who then tried to "alleviate" the ambiance with jokes and some remarks about women and their rights and respect they deserve. One of the English translators could not keep up with the jokes and on one occasion simply said "the presiding judge just made a joke, please laugh". The other judges of the panel fell asleep on several occasions during the trial.

## The role of the prosecution

The atmosphere in the courtroom also alters the principle of equality of arms. The prosecution was placed above the other parties present, and was constantly interrupting both the judge and the defence. The prosecutor also engaged in conversation with the civil party during proceedings. 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.

On the 12th of July the Prosecutor while discussing about international law, struck two blows against the table and damaged the microphone. At this point, 15 minutes

“technical” break was called. The violent tapping on the microphone was used throughout all session by the Prosecutor, during not only the statements of the accused and the defence lawyers, but also whenever he wanted to "interrupt" the judge.

On the 18th of July, the judge had to instruct the clerk to write only what he ordered him to and nothing else after a serious exchange of shouting with the Prosecutor. He said: "you write down what I say and only what I say."

### The role of the civil party

As mentioned in our previous reports, the civil party was 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 plaintive 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 defence was not allowed to speak as freely, and was constantly interrupted during their proceedings, where the presence of the civil party in the proceedings further alter the code of equality and breaches the right to a fair trial.

The fact that the civil party always questioned the accused and the witnesses before the defence, gave the judge the opportunity to reject questions from the defence arguing that the questions were already addressed by the civil party and answered. Defence lawyer Masaoudi tried to address this issue but was interrupted and could not conclude his reasoning.

Also all that was done, said and all reactions to the actions, statements and questions of the civil party during the proceedings stay now in the records and their questions produced evidence.

During Mr. Ayoubi's 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 Moroccans 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 rose 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 plaintive, had the right to say whatever they wanted. 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 lawyers 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.

The civil party during all sessions and during the final pleadings was more focused on the political issue of Western Sahara than in any other aspect. Several of the lawyers even "forgot" the name of the "victim" they were defending. One of the civil party lawyers made his final pleadings outlining the Moroccan version of the claim to the territory of Western Sahara and an explanation on the territory of the "Big Maghreb" that in his opinion starts in Senegal. This lawyer did not present any claim of compensation for his client.

Furthermore, the civil party demanded the requalification of the accusations to articles related to domestic terrorism and with death penalty as only sentence foreseen in the penal code (articles 201;202;203;205;208; 267 and 293), they portrayed the accused as terrorists with international connections and presented Polisario Front as a terrorist and criminal organization in the Sahel Region. See more on this topic in paragraph 11.

### 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 prohibited from presenting several witnesses (repeating the situation in front of the Military Court). Mr. Toubali urged at the end of his testimony that the presiding judge must call upon the parliament member (Mrs. Gajmulla) that went with him to the hospital, as she could serve as his witness and prove his innocence. The presiding judge did earlier in the process refuse to summon her to testify. The same happened with several of the other accused, where they claim that they have witnesses that can prove their innocence. The court has summoned the witnesses that Mr. Asfari, Mr. Laaroussi, Mr. Zeyou and Mr. Lakhfaouni requested. All the detainees have requested the court to assemble inhabitants from the camp, but the request has been denied. The only witnesses testifying about the life within the camp are therefore witnesses placed forward by the prosecution office.

These testimonies describe the Gdeim Izik camp as a violent resistant camp, where the military attacked the camp because the inhabitants, after an agreement, had refused to leave the premises. The accused urge that no such agreement was set into place, and that the agreement was that the minister of interior would visit the camp the following Monday. The minister that was in negotiations with the Dialogue Committee has not been summoned to testify (although he is no longer member of the government), whereas the accused urged that the only way to find the truth was to summon the ones that were in direct negotiations with the inhabitants of the camp.



To reach a sufficient clarification of the case file, it was of outmost importance that other witnesses were summoned to testify. The detainees urged that the court has an obligation to summon their informative witnesses which could testify about the Gdeim Izik camp, and what happened on the morning of the 8th of November. The court has only allowed witnesses requested by the prosecution office, leaving the painting one-sided with declarations that the detainees urge is falsified against them, and with declarations that lack the necessary credibility.

### Right to defence and right to be informed promptly of the charge and lawyer/client confidentiality

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

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 have never received information about who, how and when they killed the alleged victims. The accused have therefore not received adequate information about the charges, and they are in this regard prohibited from defending themselves, as they do not know what to defend themselves from.

The meetings with the defence lawyers prior to the trial did not respect the client/lawyer confidentiality. Mr. Lili (defence lawyer since the military trial and Saharawi national) at one occasion told the Prison Director (Mr. Khali El Manaâ) that the presence of prison guards inside the room was illegal during the meeting. The



Director responded that “it had to be like that”, and ordered the guard to stand outside the room but with the door open. (see annex II)

Mr. Daff and Mr. Laarabi informed that their Saharawi lawyers had to undergo a body search. They further added that during their detention time the contact with their defence lawyers was on a minimum basis due to the fact that they are detained over 1000km away from Western Sahara, and that makes the visits of the lawyers more difficult.

Concerning the French defence lawyers (Mrs. Ingrid Metton, Mrs. Olfa Ouled and Mr. Joseph Breham), only Mrs. Metton and Mrs. Ouled met with the detainees on March 24<sup>th</sup> 2017, after obtaining a special authorization from the Prosecutor of Rabat to meet with three of their clients, Mr. Asfari, Mr. Banga and Mr. Laaroussi, for two hours, whilst the door was closed and the guards were placed outside.

Prior to March 24<sup>th</sup>, the French lawyers asked the President of the Court for a meeting with their clients on several occasions. Such a meeting was granted only on one occasion, on December 26<sup>th</sup> of 2016. During this meeting, Mrs. Ingrid Metton and Mrs. Olfa Ouled informed us that confidentiality was not guaranteed and they met only with one of their clients, Mr. Asfari, in a small room behind the courtroom, surrounded by guards.

As pointed out in 9.6, during the proceedings held in May, new defence lawyers were appointed due to both the accused and the defence lawyers withdrawing themselves from the proceedings. Prior to the withdrawal, the defence lawyers and the detainees were given the courtroom to deliberate. Mr. Zeyou and Mr. Taki were escorted out of the courtroom and were prohibited from consulting with their lawyers alongside with the rest of the group. This exclusion of two of the accused from the rest of the group is to be regarded as a breach to legitimate defence.

The new appointed defence lawyers were Mr. Elaalam Noredin, Mr. Rachid Moussaoui, Mr. Abdelhafid Khemlichi and Mr. Sahli Saad. After the appointment of the new defence lawyers, the court commenced directly with the questioning of witnesses. The newly appointed defence lawyers walked over from one side of the room (the civil part side) to the other side (the defence side), and the questioning

began. The questions placed forward by the newly appointed defence lawyers were in direct line with the questions put forward from the civil party.

The newly appointed lawyers urged the court to adjourn the session, and to give them time to review the case documents and prepare their defence. The presiding judge refused to adjourn the session based on this request, and stated that he would adjourn the session “on any other basis as for example the civil party being tired”. The court thereafter adjourned the session upon a request from the civil party, which requested to adjourn due to tiredness. It remained clear that the defence attorney was not given the complete case file until the 18th of May, and it is evident that the defence lawyers were not given sufficient time to review the case documents in order to give an adequate defence.

The newly appointed lawyers started each declaration to the court with stating that they were present in the court as defence lawyers due to their obligation and the requests made by both the court and the bar association. One of the new defence lawyers pleaded to the judge, and requested to not be mentioned by name in the media. The accused still refused to be a part of the court case, and they have affirmatively declared that they do not wish to be represented by the newly appointed lawyers. It seemed evident that the newly appointed lawyers did not have a dialogue with their clients, which was confirmed in the interview with Mr. Deich Daff and Laarabi Bakay (see annex II).

## 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 previous reports, the presiding judge refrained from ruling on whether this instance was to be regarded as first instance, or the appeal, he refused to refuse to clarify regarding the decision of the Supreme Court. Indeed, the Supreme Court has cited articles of criminal code which gives the case back to the Court of appeal as First instance. If this hearing is to be regarded as first instance, it would mean that the group has remained in prison for over 6 years without being trailed. This point alone was therefore crucial to establish, since the prosecution has submit new proofs without giving the chance to the defence to challenge it and put forward arguments in favour of altering the charges, and to increase the sentences that were given at the Military Court in 2013, including death penalty. Only during the reading of the sentence on July 19th it was clear that the court was of second instance.

Finally, the prisoners have remained in prison for over 6 years, without a final judgement. The prisoners have thus been deprived of their freedom for over 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 nor the special circumstances entails that the process of investigation should take over 6 years. As it follows, this time span is at best a breach of the right to be trialled without unfair delay, but also a breach to the right to freedom.

During their detainment, in front of the Military Court and the Court of Salé the prisoners and their lawyers demanded numerous times their provisional freedom.

### The right to a public hearing and circumstances surrounding the trial

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 on going, 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.

This hearing was declared to be a public one, but the restriction of entrance to some people are a violation of the public hearing.

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. Moroccan journalists, and Spanish journalist could enter the courthouse, but all Saharawi journalists were prevented from entering, even when they were family members of the accused. It is therefore from this fact alone clear that the hearing does not rise to the standard of international law.

The case of the “Group Gdeim Izik” is a case of great political importance, Noam Chomsky was the first to state that the Gdeim Izik camp started the Arab spring in 2010, when thousands of Sahrawi 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. During the days prior to the proceedings, and during the proceedings, the media was 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 constantly filmed and taken pictures of. Observers, 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 26th to El Aaiún, which is the capital of occupied Western Sahara. They were stopped at the El Aaiún airport, and transported back to the airport in Casablanca. They were detained at the airport for three days, where they were kept isolated without food and water on the first day. It is believed that the reason for their expulsion is their attendance at the court case for the “Group Gdeim Izik”. The magistrate of the Superior Court of Justice of Asturias, Jesús María Martín Morillo, was denied entry on the 12th of March arriving at the airport of Rabat, he was to attend the trial as an international observer, accredited by the Spanish Council of Lawyers.

On March 25th, myself, when working alongside with Equipe Media (a news-agency from Western Sahara), found myself in a house surrounded by the police. The police threatened to invade the house. The police did not follow up on their threats; however, they surrounded the house until late afternoon.

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”, a full body search, and give away all technology (i.e. phones, computers, cameras) and water upon arrival.

The path from the first check-point until the entrance of the courthouse was "bordered" with men in plain clothing who took photos and videos of the observers, our passports were constantly photographed by people outside and inside the courthouse, without any identification.

Demonstrations were 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, and were constantly approached by the police, while items were thrown at them (such as bottles, dead rats, oranges and other items).

On January 23rd, Abde Sbaai (the brother of Ahmed Sbaai) was allowed to enter. Abde Sbaai 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 Sbaai therefore left the courtroom, and did not try to enter on the following days.

On January 24th, 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 Laaroussi (8 years old), the son of Abdel Jalil Laaroussi (one of the accused), was hit with a water bottle. Mr. Mohamed Ali Haddi, brother of the defendant Mohamed Lamin Haddi, and Mrs. Selma, wife of the defendant Abdel Jalil Laaroussi,

presented written complaints on January 25th to the Public Prosecutor of the Crown about the harassment and attacks they were subjected to in front of the courthouse.

On March 13th, a Saharawi journalist was arrested during the demonstrations outside the courtroom. His name is Mohamed 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 14th at 7:00 pm remained in custody. Mr. Daddi was presented in front of an investigative judge on March 17th, clearly breaching the 48 hours time frame.

Laila Fakhouri acted as our translator during our stay in Morocco. Ms. Fakhouri 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 Ms. Fakhouri is “Sahrawi”. Ms. Moe stayed at the control point with Ms. Fakhouri, whilst I 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 I 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.

On March 23rd, a grand demonstration took place in El Aaiún in support of the Gdeim Izik prisoners, and to protest the political, economic, and social marginalisation that the Saharawi live under. The protest consisted of students and young unemployed, and a bus containing demonstrators. The police shortly approached the demonstrators. 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.

On the 16th of May, the detainees and their defence lawyers requested to withdraw themselves from the court case. The French lawyers, Ms. Ingrid Metton and Ms. Olfa

Ouled, were expelled from the courtroom. The French lawyers were prohibited from giving a final statement to the court and from withdrawing themselves from the court case. The French lawyers were therefore de facto expelled from the courtroom in the capacity of being defence lawyers. Ms. Ingrid Metton and Ms. Olfa Ouled have placed forward complaints to the French national authorities. Ms. Moe and myself issued statements upon what happened to Mr. Ingrid Metton and Ms. Olfa Ouled.

## 11. NEW ELEMENTS TO SUPPORT THE ACCUSATION

The Prosecutor has given new elements to support its accusation during the last weeks of the trial which is a violation of the article 14 of the International Covenant on Civil and Political Rights since the defence did not get the opportunity to examine the newly submitted evidence.

Furthermore, since it is a second instance court no evidence should be admitted that was not already part of the evidence file of the first trial.

However, the prosecutor presented a new version of a movie that was shown in the military court, a report concerning the travel dates of the detainees to Algeria and read some phone transcripts that were never presented before and which, according to the prosecutor, were calls made between several of the accused and members of the Polisario Front. Several witnesses that appeared where never mentioned in the previous trial, and the weapons shown to the courts public were not identical to the ones shown in the military court as was confirmed by the observers that attended both trials.

The defence discovered these elements during the trial, they were not given any information prior.

At no point of the proceedings the location of the apprehension of any evidence was documented nor the people who apprehended the evidence. There is no chain of custody for any of the evidence presented.

The whole case bases itself on the minutes, declarations and confessions obtained under torture and severe ill treatment of the accused, no other valid evidence was brought forward by the prosecutor or defence. I will not address in this point the minutes and acts since this was already highlighted in point 7.1.

I will however address the 9 autopsies since they were introduced for the first time in seven years.



In his final arguments the prosecutor, stated that the crime was sufficiently proven, that in the case of several of the accused, the reports from the police and the gendarmerie, supported by the report made by the investigative judge, constituted sufficient evidence. In the case of reports of the police and since they were based on confessions and declarations extracted under torture and ill treatment as stated in point 7.1.

Since however the accusation is belonging to a criminal organization/group and murder with or without intent to kill, no other evidence brought forward did prove this and they to be regarded as illegal evidence and evidence which are not admissible.

### Weapons, Cell phones and Walky-talky

The evidence was transported into the courtroom in two see-through iron cages without numbering or proper concealing. The confiscated elements entail 19 telephones/walky talkies, 3 axes, and 4 knives/machetes. The confiscated elements did not contain any swords, although all the witnesses have testified about attackers carrying swords.

Furthermore, several of the accused were confronted with individual confiscated elements. All the accused declared that the confiscated elements do not belong to them, and that they have nothing to do with them.

The defence claims that the confiscated elements were not presented in the same manner in the Military Court of Rabat in 2013, and that there were no means to make sure that this case-file in fact was the same case-file that was presented in the Military Court. Mrs. Garcia and myself, international observers present at the Military Court confirm that the evidence was not presented in the same manner, and that the confiscated elements were packed differently and not protected at the military court.

It is apparent that the chain of custody has not been respected, and that the risk of contamination is evident. Furthermore, it is obvious that the different objects have been mistreated; none of the different objects are labelled correctly with numbering;

there exist no crime scene photographs; no notes from the initial investigation; none of the objects are packed securely; and none of the objects contain fingerprints or DNA evidence despite the request of the prisoners and the defence. Who owned these objects; how they were confiscated, where they were confiscated and who confiscated the different elements is not known. Due to this, there is no telling of the source of these confiscated objects.

The detainees declare that these confiscated elements do not belong to them, and that the elements were not found on them upon arrest. As in accordance with the burden of proof, it is not proven that these confiscated elements belong to the accused, and therefore the confiscated elements should have been discarded as evidence as they are inadmissible due to their mistreatment and lack of chain of custody.

## Vehicles

Although several of the accused were mentioned to have committed murder or intent of murder with the use of vehicles that ran over Moroccan authorities' members, no evidence was shown of cars with blood, DNA, bumps or other marks that would prove the use of that specific vehicle.

The prosecutor showed a photocopy of a picture of a 4x4 vehicle and in the movie several 4x4 were shown.

No photos or forensic evidence was shown with marks on the bodies of the alleged victims that would link any vehicle to a crime.

This would not be possible in any case since there were never any evidence of the alleged victim death or any real autopsies.

In the case of Mr. Mohamed Bani who was sentenced to life in prison this is a clear proof of the lack of evidence of any crime committed, since he was accused of having run over several and kill a person.

In May, the witness Mr. Hamid Omalish stated that he was not sure if it was Mr. Bani who run over a member of the civil force with his car, but changed his answer after repeated questions by the judge from “I am not sure”, to “I am almost sure”, to “with 90 % certainty”. It should be noted that Mr. Bani is portrayed as the driver of the car that was stopped by a Jeep in the movie submitted into the evidence file. In the movie we cannot see any crime being committed since it shows the car before and after the alleged crime.

During the proceedings held in March, Mr. Bani declared that his windshield was broken by a rock and that he had to stop his car, and was hit by another rock in the head and afterwards was arrested on the site. It is not substantiated that Mr. Bani was the driver of the car that allegedly attacked the civil forces, which lead to one death, but it is substantiated that Mr. Bani was arrested in his car, as in line with his declarations.

Since Mr. Bani was arrested exiting his car, the car must be in the custody of the police, and if so, why was no forensic analysis performed on the body of the alleged victim and the car to link both? And why cut the footage so that the car is only seen before and after the alleged crime?

The same question is valid for all other accused of using vehicles to attack public forces.

## Phone calls

The phone calls were new evidence introduced by the prosecutor and the accused where never given an opportunity to be confronted with them or explain any of them.

The Prosecutor read parts of the transcripts of the phone calls in court. In some cases, only parts of a sentence out of context. The prosecutor gave his version of the context and deductions/interpretation.

The court was informed that the original transcripts were in Hassania (Saharawi language) the Prosecutor took it upon himself to make the translation from Hassania

to Arabic instead of asking one of the court appointed Hassania translators. The prosecutor did not show any signs of having sufficient knowledge of Hassania.

In any case, the parts of the transcripts translated and read aloud by the prosecutor had no link to the alleged crimes.

None of the records were enveloped securely, and the chain of custody was absent, whereas the prosecutor refused to place forward the original evidence (i.e. the recordings of the phone calls). It remains clear that new evidence could not be submitted at that stage. Regardless, the reports are inadmissible as the chain of custody is absent and none of the reports are relevant to the accusations placed forward by the prosecution office.

## Visits to Algeria

The Prosecutor presented as new evidences the travel dates and route, entry and exit points of the accused that travelled to Algeria.

The accused never denied visiting Algeria and the Saharawi Refugee Camps near Tindouf, Algeria. On the contrary their participation in conferences abroad is widely known and public, they delivered speeches, gave interviews and were photographed and filmed with their consent. None of them ever denied having met members from Polisario. All activity was public and in the framework of their engagement as human rights defenders.

The accused stated several times that was the real reason why they were imprisoned and that during the interrogations and tortures at the hands of the Moroccan authorities, the questions asked were never about the Gdeim Izik camp, but about their activities in the human rights field.

The prosecutor intended to establish with this evidence that the Gdeim Izik camp was "architected" in Algeria and financed by Algeria and the Polisario Front.

This line of reasoning was however never proven and has nothing to do with the charges brought forward against the accused; this evidence has therefore no value.

## Movie

The Movie that was shown on May 18th is a new version of the movie shown in the military court.

The defence however was not permitted to introduce another video as evidence.

I will call this evidence of the prosecutor a movie and not a video since this is a collage of several different footages by unknown sources, taken with different kind of equipment, subtitles, photos and images with text accusing the accused and portraying them as criminal bands of the Sahel region.

Examples of text and subtitles:

*"Pour leur cruauté, le profil de leurs auteurs et leur préparation minutieuse, les actes commis contre les forces de l'ordre rappellent le mode opératoire des dangereuse bandes qui agissent dans l'espace Sahelo Saharien."*

(For their cruelty, the profile of their perpetrators and their meticulous preparation, the acts committed against the forces of order recall the operation mode of the dangerous bands that act in the Sahel Saharan space)

*"Les éléments violents adoptant un mode d'action paramilitaire"*

(Violent elements adopting a paramilitary mode of action)

Also red circles have been used to highlight and bring the attention to the viewer to certain person or events, always accompanied by subtitles and in some cases with names of the accused although the persons cannot be identified. Circles around images of men in the movie, were used by the prosecution who alleged that the men were Mr. Toubali, Mr. Babait and Mr. Boutanguiza, but it is impossible to identify the men that were encircled, no forensic identification techniques were used or

presented by an expert. No facial recognition was possible or height analysis that could have been performed by 3D Modelling of the Perpetrator or Reverse Projection Photogrammetry.

During the whole movie not a single image was shown that could show a link between the accused and the alleged crimes that they committed. In fact the accused that can be identified in the movie can be seen doing exactly what they declared in their statement before court, and so the movie only proves the truth of their declarations.

No crime of the ones listed by the persecutor can be seen in the movie.

The movie has footage taken during the dismantling of the camp that prove that havoc broke out during the unexpected entrance of the Moroccan forces into the camp. It also shows tents that were destroyed and security forces dismantling tents without checking if there are any persons inside. The throwing of stones that lay on the ground is also portrayed but no direct hit of the stones against any security force member is shown. No direct act of violence is portrayed nor can we speak about any evidence showing a paramilitary movement or organization. The fact that some men use garments with military pattern is normal amongst the Saharawi in the desert, as well as the use of turbans and by itself not an indicator of any intention to commit a crime.

The people that are shown as wounded in the movie are not identified, the same method of circling, subtitling and identification by name could have been used to identify the alleged victims, but this was not the case.

In the movie are also shown pictures of the accused Mr. Sbaai, Mr. Asfari, Mr. Lemjeyid, Mr. Thalil, Mr. Banga and Mr. Ismaili in the Saharawi refugee camps with members of Polisario Front. This confirms the statements and declarations given by the accused regarding their visits to the camps and their participations in conferences and other events, they are not evidence of any criminal offence.

The case of Mr. Bani and his appearance in the movie do not prove any crime committed as can be seen in the previous point.

The accused Mr. Bouryal was identified in the movie as a man wearing a yellow scarf on one occasion and sitting on the ground whilst being arrested and after his arrest in a car being asked his name and answering. Once again no crimes being committed are shown and the footage confirm Mr. Bouryal's statement that he was arrested on the 8th of November in the camp of Gdeim Izik.

In another footage with circles two men standing side by side are identified as Mr. Bouryal and Mr. Boutanguiza, this is clearly a false identification since the height difference between the accused is far bigger than the one between the two encircled men in the movie, but even these two men inside the circles are not committing any crime.

## Autopsies

For the first time in seven years the alleged autopsy reports surfaced, but without chain of custody.

The autopsies there were shown to the defence lawyers and forwarded to the forensic experts in Spain, are only nine being the Group of Gdeim Izik accused of ten or eleven deaths, the list was never made public nor the accused informed about the names of the victims, prior to the written verdict after 19th of July.

I would like to highlight some remarks on these nine autopsies by the counter experts, which can be consulted in the annex of the report published by M. Olfa Ouled and M. Ingrid Metton<sup>39</sup>.

Firstly the said autopsies are mere information sheets for nine cadavers. The information sheet do not identify the cadavers with fingerprints, or other form of confirmation of the identity other than a name and a military number.

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<sup>39</sup> [Annexe Finale. Rapport d'observations de la défense sur le procès de Gdeim Izik devant la Cour d'appel de Rabat](#)

Neither the height, weight, age, race, hair colour, eye colour nor the characteristics of the body are mentioned. The wounds or injuries were observed externally without any measurement or weighing of the organs. The place the victims were found is not mentioned, nor the type of injury suffered is linked to any particular instrument. No blood analyses were performed.

8 of the autopsies were performed by the same doctor (Captain Mohamed Lahkim - General Surgery Dr.) in the Military Hospital in El Aaiun in a timespan of 48 hours (9 and 10 of November 2010).

The 9<sup>th</sup> autopsy was performed in Guelmin by the Military and states that the death occurred on the 10th of November 2010 in the reanimation service.



## 12. INTENT TO LINK THE CASE TO TERRORISM

### CHARGES

The prosecutor and the civil party lawyers tried to link the accused to charges of terrorism. This intent shows clearly that this trial was political.

The civil party went so far as to admit that it was not possible to prove or show a direct cause effect between the accused and the charges, but argued that it was not necessary if the articles of the penal code concerning the domestic terrorism and attack against the state would be used.

During the final pleadings on the 6th of June, one civil party lawyer stated that the leaders of the camp had planned the attack, and that the leaders in the camp had committed terrorism; and that this group invented terrorist attacks with cars; which later have been seen and reproduced in Nice, London and Manchester. He further said that the fact that they were in the Refugee Camps and in Algeria was proof of the fact that they received order from abroad.

On the 8th of June another civil party Lawyer stated that the court would never be able to prove the link between the different accused and the killings; and therefore, the court had only one option, and that was to look at this case as a crime of terrorism.

The prosecutor accused the Group of using weapons of Mass Destruction, referring to the use of stones.

The Civil Party and the Prosecutor divided the Group in three but with different logic, dividing the group in Leader's, executers and soldiers, trying to characterize them as.

## 13. FINAL VERDICT

On the 19th of July, after 20 hours of the start of the session, the court delivered the sentence within 10 minutes, and it was therefore not clear which articles the different accused were condemned after. However, the court ruled to re-characterize the case in compliance with the final arguments delivered by the prosecutor. The written verdict was published in the first week of September (annex IX).

As in relation to the articles presented by the prosecutor, the accused were condemned for forming a criminal organization after art. 293, with sentences stipulated in art. 294, and after art. 267 (perpetrator) or after art. 129 and art. 267 (participation).

19 of the 21 detainees received the same sentence as were given by the Military Court of Rabat in 2013. Two detainees were released with time served.

Sentenced to life in prison: Ahmed Sbaai, Brahim Ismaili, Abdallahi Lakhfaoui, Laaroussi Abdel Jalil, Mohamed El Bachir Boutanguiza, Mohamed Bani, Sidi Abdallahi Abbahah, Sidahmed Lemjeyid

Sentenced to 30 years in prison: Naama Asfari, Mohamed Bouryal, Cheik Banga

Sentenced to 25 years in prison: Hassan Dah, Housein Zawi, Mohamed Lamin Haddi, Mohamed Mbarek Lefkir, Mohamed Khouna Babeit

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

Released with time served: Deich Daff condemned to six and a half years, which is less than the time he has so far spent in prison. El Laraabi Bakay has been condemned to four and a half years, which is less than the time he has so far spent in prison.

Mr. Zeyou and Mr. Taki were both sentenced to two years, which they have already served in prison.

In the court the presiding judge did not deliver the judgement concerning one of the detainees, Zawi, before adjourning the proceedings. After consulting the presiding judge in his office at the Court of Appeal in Salé, we learned that Zawi was sentenced to 25 years in prison.

The sentences do not reflect the reasoning of the Prosecution and the way the group was presented by the prosecutor in three groups.

The fact that Mr. Zawi was "forgotten" is one example more of the manner in which this trial was handled since the beginning.

On the 31st of July, Mr. Bouryal received in the prison a document from the prison administration where it was stated that he was sentenced to life in prison, one day later he received a "correct" version with 30 years.

The written verdict has several errors; on page 110 for example the names of two of the accused were changed. Mohamed Bani is called Mohamed Yanik and Mr. Housein Zawi is called El Hassan Safraoui.

An examination of the sentence will be made by the lawyers of the prisoners but it has to be noted that the fact that even in this important document the number of deaths are contradictory (it varies between 9 and 11), which demonstrates the lack of effort to prove anything and that this was a political trial.

## 14. CONCLUSION AND FINAL REMARKS

- This trial was a political trial, political opinions, accusations and theories about the "territorial integrity" of the Moroccan Kingdom were issued by prosecution, civil party and judge. Outside the court the media overflowed with propaganda and staging of "demonstrations" with the speech of King Hassan the II when invading Western Sahara that had the logistical support of the courthouse;
- This trial did not in any way correct or answer the shortcomings pointed out by the Supreme court in the decision of the 27th of July 2016 when transferring the case to the appeal court;
- The evidence presented did not prove any commitment of crimes by any of the accused;
- The evidences presented by the prosecution have no scientific value and are either to be considered invalid or illegal;
- The witnesses brought forward by the prosecution did contradict themselves, lacked credibility and the witnesses presented as "inhabitants" of the camp appeared without any information from where they came after seven years and how they were found;
- The whole case is based on the declarations, statements and documents signed under torture and ill treatment which is a clear violation of the Moroccan Constitution, Moroccan Law, the Torture Convention and the Universal Declaration of Human Rights (both ratified by the Kingdom of Morocco);
- The court disrespected the Moroccan constitution where it states in its preamble that: To comply with the international conventions duly ratified by it, within the framework of the provisions of the Constitution and of the laws of the Kingdom, within respect for its immutable national identity, and on the publication of these conventions, their primacy over internal law of the country, and to harmonize in consequence the pertinent provisions of national legislation;
- The number and identity of the alleged victims continues to be unclear;

- The medical expertise to evaluate the torture allegations was biased and not according with the Istanbul Protocol performed by employees of the same state that constructed the case;
- The forensic counter expertise backs up the claim of torture of the prisoners;
- The presence and participation in fact of the civil party did not defend the interests of the plaintive. It was used for a political agenda with the request to re-qualify the charges to terrorism charges and also to produce a media event outside the courtroom;
- The right of a fair trial as established in the Universal Declaration of Human Rights and all covenant's, agreements and other relevant international instruments ratified by the Kingdom of Morocco were not respected nor applied during these proceedings;
- The convention against Torture ratified by Morocco is legally binding and the Kingdom must apply and implement it in Moroccan law;
- The above mentioned points, the rulings, the role of the Prosecutor, the judge and civil party, the violations of domestic and international law, are proof that this was not a fair trial;
- During the 7 months of the proceedings the questions of the court, the civil party and the prosecutor revealed that their goal was to demonstrate that the Group of Gdeim Izik operated under the orders of a foreign authority;
- In my opinion there is no legal basis for the sentences issued and the supreme court of Morocco should set in place the necessary measure to free this group of political activist that are in detention for over seven years without ever being proven any crime committed. I have no doubt about the arbitrary character of their detention;
- The 19 detainees have been for nearly 7 years, and are, subjected to arbitrary detention. The deprivation of liberty results from the exercise of their rights or freedoms, and constitute a violation of international law, and the breaches to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character.

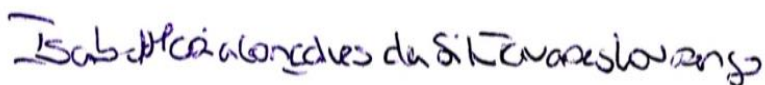
Gdeim Izik camp was the example of peaceful resistance and protest; the Saharawi population is an example of non-violent resistance and action. The Saharawi

population and their leaders respect the rulings, resolutions and covenants they have ratified, but are continuously punished for it. Their plight seems not to have an end and this case brought into the light the complicity of the international community by not acting to introduce into the mandate of MINURSO the **protection** the Saharawi population in the occupied territories.

MINURSO was fully aware of the protest camp since the beginning, it was also fully aware of the manoeuvres of the Moroccan forces and the fact that the Camp was under a siege, therefore it is clear that also the Security Council had knowledge about the camp and the situation. The UN Secretary General report is also clear regarding the knowledge about the Gdeim Izik camp and the death of 14-year-old Nayem. Moreover, the foreign embassies in the Moroccan Kingdom cannot deny knowledge about the camp before it's dismantlement.

The status quo of the situation in Western Sahara will have a disastrous outcome for all parties, if the International community continues to ignore the problem.

The impunity of the Moroccan Kingdom whilst ratifying international instruments, which it does neither respect, nor implement cannot go on if there is a true desire for justice and peace.



**Isabel Lourenço**

**Lisbon, 20th of September 2017**

## 15. ANNEX

### Annex I - Summary from the proceedings

*Please note that the content of the appendix does not entail the minutes from the proceedings, but constitutes a summary from the proceedings held against the Group Gdeim Izik at the Appeal Court in Salé, from December 26th 2016 to the 19th of July 2017.*

*The proceedings held in the court case of Gdeim Izik entailed a total of 31 days. The summary is conducted, and hereby signed by, Tone Sørfohn Moe and Isabel Lourenco.*

#### ***DAY 1 – On the 26th of December 2016, at the Court of Appeal, Salé***

The trial against the Group of Gdeim Izik commenced at 10am on the 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 Ayoubi 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 Naama Asfari. Mr. Breham tried repeatedly to highlight the 12 December 2016 decision of the Committee against Torture, which concluded that the confessions used as evidence at the Military court was obtained through torture. This was denied by the president.

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



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

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

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

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

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

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

The court ruled that the trial was to be postponed until the 23rd of January. The verdict was based on the missing defendant (Mohamed El Ayoubi, 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 23rd 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 Ayoubi was not present at the proceedings. The courtroom was informed that Ayoubi was, due to his health condition, in hospital. The prosecution reported that Mohamed El Ayoubi had been informed of the proceedings through a distant relative. The prosecution insisted that this was adequate, meaning that Ayoubi had been sufficiently informed about the proceedings. The defence however, argued that this was not sufficient, and that Ayoubi had the right to be informed of the trial in person. If the authorities were unable to get a hold of Ayoubi, 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 recession, the court ruled that the proceedings should commence without Ayoubi, and that the case of Ayoubi was to be separated from the rest of the group and held on March 13th of 2017.

After a break, the defendants refused to come back into the courtroom due to the fact that they were not given their pencils back. The court ruled that the 22 prisoners in the “glass-cage” were to be given, in total, three pens and three pieces of paper. Furthermore, the prisoners could only keep paper that were in compliance with the case put forward and that were relevant for the proceedings. The presiding judge

would therefore go through all the documents. The judge pointed out that this was a “matter of security” since the prisoners could easily “kill someone” with a pen.

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

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

### ***DAY 3 – On the 24th of January 2017, at the Court of Appeal, Salé***

The court commenced at 10:45 am.

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

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

Naama 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 Naama should be given his pen, and three pieces of paper. Naama refused to receive the pen and paper, since his request concerned all the prisoners, and not just himself. He declared that all the prisoners are entitled to pen and papers so they could follow the proceedings adequately. Thus, none of the prisoners were given pens or papers.

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

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

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

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

The court ended at 20:40.

#### ***DAY 4 – On the 25th of January 2017, at the Court of Appeal, Salé***

The proceedings commenced at 10:30 am.

Defence Lawyer Lili started the proceedings by pointing out some main issues that should be dealt with by the judge: The fact that the accused still didn't have any writing material; the threats made against Abde Sbaai, the brother of the accused

Ahmed Sbaai, inside the court building; the fact that Mrs. Claude Mangin, French citizen and wife of Mr. Naama Asfari was expelled from the country and had no authorization to attend her husband's trial and finally the fact that some members of ASVDH (a Saharawi organization legalized by the Moroccan government) were not allowed to enter the court building to attend the proceedings.

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

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

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

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

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

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

Regarding the CAT decision on the case of Naama Asfari the prosecution argued that Naama 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. Naama refused due to the fact that he wanted his defence attorneys to be present at the examination. The prosecutor claimed that the fact that Naama would not go with two police officers for examination, proved that he was only making false accusations.

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

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

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

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

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

The Court ended at 11:20 pm.

### ***DAY 5 – On the 13th of March 2017, at the Court of Appeal, Salé***

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

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

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

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

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

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

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

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

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

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

Mohamed Bani testified to how he in the morning of November 8th, at 6:30 am, had been abducted when he was on his way to El Aaiún to drive his two sons to school. He explained that he had tried to leave the camp on November 7th, but had been stopped by the police, who directed him back to the camps. On the way home in the morning on November 8th; Bani said that he stopped the car when his car window was smashed. He then saw out the window, and was hit by a stone in the head and fainted. He woke up later, handcuffed and surrounded by military personnel. He was taken to an unknown location, whilst constantly kicked and beaten. He was taken to the police station and tortured together with five others he did not know. He was later transported from El Aaiún to Salé by plane, where he was captured along with three others from the group Gdeim Izik. He urged that he was constantly being beaten and spanked by the military forces. He was forced to sign documents blindfolded, and his

fingerprints were taken by force. He signed documents that 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 Bouryal. Bani stated that he didn't know any of the fellow detainees before they met in prison.

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

### ***DAY 6 – On the 14th of March 2017, at the Court of Appeal, Salé***

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

The court proceeded with the interrogation of the accused. The first to be questioned was **Machdoufi Taki**. Taki was by the military court sentenced to time served, and is therefore not imprisoned with the rest of the group. Taki started his testimony with stating that, "in the name of Allah, I greet the Polisario Front, and give my solidarity". The judge asked Taki to take the politics out of the courtroom, where Taki answered that he considers himself as a Saharawi from Western Sahara; and that "we are tried in made up cases by the Moroccan occupation". Taki 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. Taki 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 Taki 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; Taki 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 faeces 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 Boutanguiza** was the next to be questioned. When he was asked how he reacted to the accusations, he replied, "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 "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.

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

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

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

**Mohamed 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 Hassania, 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 Hassania "where is Thalil", and when he answered he got a bag over his head and was placed in handcuffs. They hit us in the car, and they pulled out my nails. He told, that when interrogated, they asked him if he was arrested in "Guerguerat", where Thalil pointed towards the preceding judge and said; "you know where that is! Its where the Moroccans fled

from the Polisario Front”. Thalil complained on the translator numerous times, and claimed that he did not trust the translator, as he is Moroccan.

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

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

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

The court adjourned at 7:40 p.m.

### ***DAY 7 – On the 15th of March 2017, at the Court of Appeal, Salé***

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

**Mohamed 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 that 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 Naama Asfari wanted to politicise the camp, El Bakay told that the governmental officials had told that Asfari wanted to politicise the camp, whilst “they only had social demands”.

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

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



The prosecution asked El Bakay about the declarations where he stated that on the evening of November 7th, he had conferred with the leaders in the camp (i.e. as Naama Asfari, Abdel Jalil Laaroussi, and Cheik 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 Dahkla on September 9th in 2012, that he was interrogated and solely asked three questions; about his relationship with Naama 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.

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

Haddi explained how he was arrested while accompanying two doctors from the “Doctors without borders” in El Aaiún on November 20th, 2010. Haddi explained that he was transported by the police to the military headquarters where he was tortured; and stated “I still suffer under torture”. He explained that they interrogated him under

torture, and never asked any questions about the camp Gdeim Izik, only about his trip to Algeria and about international observers coming to the occupied territories of Western Sahara. He claimed that he was forced to sign declarations without knowing what was written. He explained how, at the Military Court, he asked the judge to witness his scars, and document that he was covered in blood; whereas the judge answered that he was not a doctor. He claimed that the clerk that wrote the minutes was the same person which had tortured him inside of the court facilities, recognizing him by his perfume.

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

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

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

**Sidi Abderahmane Zeyou**, released with time served by the Military Court in 2013, was thereafter questioned by the court. Zeyou approached the witness stand after

putting on the Daraá, the traditional Saharawi costume, whilst chanting that the only solution is self-determination. Zeyou started his declaration by expressing his condolences to the families of the victims, and everyone who was arrested. He stated his condolences to all the Saharawis who died during the dismantlement of the camp, and urged that there should not be discrimination between the victims. He demanded investigation into the killing of a 14 year-old boy, who was killed by the Moroccan forces surrounding the Gdeim Izik camp on the 24th of October.

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

The Civil Party stated; "he tries to protect murderers. He is a 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 20th, at 00:40 am.

### ***DAY 8 - on the 20th of March 2017, at the Court of Appeal, Salé***

The court commenced on the 20th March with the testimony of **El Houcein Zawi**.

Zawi 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!". Zawi 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!". Zawi 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 impoverished and has suffered for more than 40 years.

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

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 torture continued. He was beaten in prison, watered with cold water, threatened, and forced to run naked in the courtyard. He underwent 23 days of systematic torture.

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

Abdallahi called this trial the second part of a play that began in the military court.

He further stated that the appeal court of Salé has no jurisdiction to judge him, that it would have to be in a court in El Aaiun, and if so happened, it would be like a referendum for the Saharawi in the occupied territories. I am not afraid of this court, this is just the other side of the same coin, he stated.

During his statement Mr. Abbahah asked why the camp was attacked on the 8th of November, when only two days before the Moroccan ambassador in New York said that the camp would not be attacked, and also why the attack took place on the day that Polisario and Morocco would meet in New York. The judge interrupted in shouting with Mr. Abbahah - no translation was available.

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

*"The Gdeim Izik camp revealed the politics of the Morocco occupier, and how they marginalize the people of Western Sahara, and steal our resources. The Gdeim Izik camp is a product of the marginalisation of all Saharawi 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.”*

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

Bouryal told about how he, on November 7th, was approached by the chief of police in El Aaiun who told him “I got Naama Asfari tonight, tomorrow I will get you”. When asked whether he received orders from Naama Asfari to attack the public forces, Bouryal 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, Bouryal said.

Bouryal invoked his right to remain silent when the Civil party placed forward questions, as of which the civil party has deprived him of the presumption of innocence. The defence was constantly interrupted during questioning by both the civil party and the prosecution, whereas the prosecution raised to his feet and knocked on the microphones. Bouryal 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 Aaiun, Brahim urged. Brahim commenced with declaring that he, as a human rights activist, condemns all criminal and violent acts, and by sending his condolences to the family of the victims. I am innocent, he stated, and it’s the Morocco occupier who is responsible. Ismaili continued by sending his condolences to all the Saharawi’s families who lost a loved one during the attack on the Gdeim Izik camp, which died by the hands of the military forces.



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

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

***DAY 9 – On the 21st of March 2017, at the Court of Appeal, Salé***

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

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

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

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

not a political demand. The political discussion is between Morocco and the Sahrawi Arab Democratic Republic”.

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

Toubali told how he was attacked at the market by masked men, and taken to the police headquarters. He told that “they tortured me, and I couldn’t walk for a long time. They tried to rape me with a stick, they urinated on me, and spitted on me. I was moved to the gendarmerie where I was questioned, where he asked me why I refused to take be bribes and compromises. They asked me about my relationship to Naama Asfari, the Polisario Front, and the delegation to Algeria. They repeated the questions, and I told them that I didn’t know.”

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

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

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

The next who was questioned was **Sidahmed Lemjeyid**. Sidahmed commenced his testimony by declaring that, if this was to be a fair trial, the trial had to be held in the occupied city of El Aaiun. 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 “They brought me to a cell, removed my handcuffs and my blindfold, and continued the torture. I don’t know where I was, or even the city. They denied me sleep and water.”

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

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

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

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

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

He told how they were transported by plane to the military judge where he was placed in front of the judge. He has asked for water, where the judge stated that he

did not run a café. When asked why he didn't ask for medical examination, El Bachir answered that he feared for his life, he could hardly walk; and did not 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 22nd 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 Saharawi's does not want to live under Morocco occupation. Hassan declared that; "unfortunately, and as the media has shown, the Moroccan government decided to attack the population of the camp while they were sleeping. This attack revealed the true face of the Moroccan regime".

Again, the prosecution raised to his feet and screamed towards the accused. When asked where Hassan was arrested, he stated that he wasn't arrested; masked men abducted him from a café. He told how he, Thalil and El Bachir, were transported to an unknown place, and tortured "in every possible way", and that they were, five days later, given over to the gendarmeries. He stated: "We are used to this from the occupation. We have endured torture since 1975."



He told how the interrogation, and during the torture, he was only asked questions relating to a trip to Algeria in September 2010 where he attended an international conference about the right to self-determination, his activism and his relationship to Polisario Front. He told how they forced him to sign, already written reports, and declared that they were falsified. He told that after meeting the investigating judge “in a terrible shape, may god forgive him”, he sent us back to prison.

In the prison we were dressed naked, and thrown cold water on, during the winter. We were beaten and kicked, and filmed and taken photos of; all under the supervision of the prison director.

Hassan urged that he was not present during the attack on the camp. The military forces surrounding the camp, which Hassan declared was a “siege”, had stopped a caravan from entering the camps with medicines. Hassan declared that he had been with the caravan to observe the violation of the human rights, and was stopped by the police on his way back. Hassan declared that the falsified minutes cannot be used against him, that the evidence was illegal, and he urged that the reports from the medical examinations must be revealed. Hassan refused to answer the questions raised by the civil party, since the civil party is not yet given a partial status, and has therefore no capacity to ask questions.

The next to be questioned was **Abdallahi Lakfawni**. Lakfawni condemned what had happened during the attack on Gdeim Izik, and sent his condolences to all who lost a loved one that day. Lakfawni stated: “everybody knows that the Gdeim Izik camp had social demands. After 28 days, when revealing the unity of the Saharawi people, the camp was attacked during the early hours on November 8th”.

Lakfawni explained that he was kidnapped and sent to the occupying country. He declared that he is arrested because the Moroccan state is trying to get rid of us, and the problems we cause because of our political activism. Lakfawni stated that he was arrested on December 9th 2011 where the police attacked his cousin's house, and threw him from the window, and took him to an unknown place. “They run on our blood”, he stated. When asked about the movie Lakfawni stated that “everything is fabricated or calculated by the Moroccan occupier”.



He explained how the Gdeim Izik camp was controlled with an “iron hand”. The camp was surrounded by military personnel, surrounded by a wall, with only one entrance. The military had made 7 checkpoint, for us to enter the camp. He told how he was asleep when the military forces attacked the camp, and that it was like an earthquake – it was chaos – people were running, and they screamed. He told how women and children passed out due to the teargas. Everyone walked back to the city. He stated: “If Morocco had wanted us to know the truth, we would have had the truth; but they have buried it”.

He stated that he had nothing to do with the reports, and that they were all falsified. When asked questions from the civil party he refused to answer.

The next that was questioned was **Mohamed Mbarek Lefkir**. He declared that the Gdeim Izik was a protest camp, where we protested the marginalisation of the Saharawi people. He told that he had joined the camp the first week with his family. Lefkir declared, met with screams from the prosecution office, that; “I condemn the policy of hunger that the Morocco occupier is leading, and the policy of foreign companies which supports the Moroccan occupier forces.”

He declared that on the early hours of the attack, Lefkir had passed out due to the teargas, and that he was carried by his family for 4 kilometres, and later walked the remaining 8 kilometres to his home in El Aaiun. When asked about the reports Lefkir declared that he denies everything in them. He told that they abducted him, when he was assaulted by masked men in his uncle house. He told that he was beaten up in front of his family and neighbours; and that they took him to an unknown place. He told how they hanged him in the ceiling by his foot and hand (i.e. known at the chicken method), and kicked him and beaten him. He told that they put a cloth in his mouth and poured toilet water in his mouth; they burned him with cigarettes; poured urine on him; took of his nails with a clipper; electrifying him and threatened him with rape. He told that during the torture he was only questioned about his political position and his relationship to Polisario Front. The torture lasted for three days, where he was sent to the investigative judge, and tortured in front of the judge. They sent him to the prison, where the torture commenced, and he was again hanged in the chicken position. Lefkir stated; “We condemn the silence from the UN, and demand our immediate release”.

The judge interrupted Lefkir on numerous occasions, and asked why he had signed the declarations. Lefkir stated that the guards, with the judge present, stated that: “If you don’t sign, I will send you back, and you will be tortured more and worse than what you have already endured.” He explained how he had denied all the charges to the judge, and explained him that he was arrested because of his activism. Lefkir declared that the judge “asked if I could forgive him. He said that this is beyond me; I am only following orders. He said that this case was nothing”. And I forgive him, Lefkir stated. Lefkir refused to answer any questions placed forward by the civil party.

Lefkir ended his declarations by commenting on the medical examinations ordered by the court. He told that he didn’t trust the medical examinations. He told that during his examination the alleged doctor started to argue with him about the right to self-determination for the people in Western Sahara, where the doctor stated that it would be “safer” for him to agree with the Morocco state. Lefkir therefore stated that he was not sure if this woman was a doctor or a police officer.

The court was adjourned at 10:15pm until tomorrow 11am.

### ***DAY 11- On the 23rd of March, at the Court of Appeal, Salé***

The hearings commenced by questioning **Mohamed Khouna Babait**. Babait explained that he wasn’t at the camp during the events, and that he didn’t have any relationship to the camp, other than his mother which had a tent in the camp. Babait explained how he used to visit his mother during lunch with his mother and his daughter, and that he lived in El Aaiun and worked for the governor. Babait explained that he was arrested 9 months after the dismantlement of the camp, and that the ones who arrested him knew him and knew that he had nothing to do with the camp. He told that they had taken him to the police headquarters, and he asked the police chief why he was there, where the police chief answered that the others had to “take care of him”, because he knew him. He told that they pulled a bag over my head and beat me. The next day he was taken back to an office, where we broke the fast; it was during Ramadan. Some men entered the room and pulled a hood

over his head again, and pushed him down the stairs; and transported him to a warehouse.

“They took off all of my clothes and tortured me. They asked me no questions about Gdeim Izik, and told me that I was a “problem” since I worked for the governor. They hit me with a bat. I couldn’t walk. They carried me in to the judge, and took me back to the police station where they continued beating me. The next day they took me to the attorney general. They didn’t ask me anything. They asked me to sign, and I did. There are things in these reports that are only lies.”

He told that he was surprised when the Military Court sentenced him to 25 years. Babait urged that: “I am innocent. I have been suppressed ever since. My daughter was one year old when I was arrested, and now she is 7 years. I am innocent – all the people here knows it; they know what happened at the Gdeim izik, and the Gdeim Izik represent all the Saharawi population”. Babait stated “If you really want to give justice to the victims, it is by revealing the truth. (...) I feel sorry for all the victims, and for my family, and all the Saharawi families.”

When Babait was asked questions about the minutes and the declarations from the police and the investigation report, Babait answered that: “I haven’t said this, not in any of the questioning. I was never asked these questions. They left a blank space in the reports, and told me to sign them”. Babait demanded to meet the ones who had been telling lies about him.

The next who was questioned was **Naama Asfari**. Naama Asfari started by thanking the court for their patience; and commenced with;

“I protest against this trial which uses false reports and minutes and confirm that the court has deprived us all of our rights when they rejected the proforma arguments that my defence presented. This is rights that in my opinion must be respected. (...) What’s the use with a constitution of conventions if they are not respected? This means that the court is not ready to evaluate the evidence of this case. There is arguments that our defence has placed forward, where the court is treating a political question, by trying to cover it with a judicial blanket. This is a political issue”.

Naama Asfari 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. Naama 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.

Naama Asfari 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, Naama declared.

Naama 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. Naama 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, Naama declared; I want this historical platform to ensure a fair trial – this is a test for us all, and stated that;

“We were systematically tortured, and this is my complaint. My name is mentioned in all the files, and mentioned in all the facts connected to the dismantlement. We are now 7 years after. We were systematically tortured and arrested. We were not tortured in front on the judge, but we were beaten and kicked and laid naked in front of the judge. After five days without food, water or sleep; we were pulled like animals by the gendarmerie to the judge, and they pulled our hoods of. This is 7 years ago. I look to the future. I am not a victim. I am not an accused. I am a militant.”

Naama declared that he is a political prisoner, and was only subjected to imprisonment due to his fight for self-determination for the Saharawi people. Naama refused to answer the questions from the Civil party.

The next to be questioned by the court was **Cheikh Banga**. Banga commenced with thanking the court, and his attorneys; who he declared was a point to follow, where the Saharawi lawyers are old political prisoners; and now stand in a position as defence lawyers. He declared that he condemned the participation of the civil party, which was depriving them of their civil rights. He condemned the media campaign that portrays the group as criminals.

Banga explained how he was assaulted in the tent of his aunt on November 8th by masked men. He explained that his first visit to the camp was on November 7th, when he brought provisions to his aunt, and that he was stopped from leaving on November 7th, because the road was blocked. He explained that the camp was the displacement of the Saharawi people, and declared that displacement are when people leave from repression, to a place where they can find peace.

He explained that the masked men took him to the gendarmerie where he was tortured for four days, before presenting him to a judge. Banga said that the torture was systematic, and that he lost consciousness on several occasions. He declared that he was never asked about Gdeim Izik, and that the reason for his abduction was his political opinions.

Banga was constantly interrupted by the prosecution who raised to his feet, and screamed and knocked his microphone. Banga explained that his convictions about forming a state for the Saharawi people, and the right for self-determination, is the

reason behind his arrest and was the sole object he was ever interrogated about; therefore, his political opinions was the core of the case.

He explained how he, already at an age of 16, was arrested for his beliefs, and criminalised by the occupier. He declared that he felt sorrow for the victims, and that he wanted us to find the truth; but that he also felt sorrow for his family, his mother and his sister who suffers, because I am thrown in jail. Banga was again interrupted and stated; "We are human beings. We have feelings. I may forget the torture, but I will never forget the tears on my mother's cheek when she was stopped from visiting me."

Banga declared that the reports were only a product of the imagination, and when asked about why he didn't declare to the judge that we were being tortured, as stated in the report, Banga answered that; "What is written here is not the truth. When he asked me about the torture; I was bleeding and in a miserable condition; and I asked him who was responsible for the torture; and the judge answered me that it was none of my business."

Bangas declarations were stopped, and the court adjourned at 2am, until Monday March 27th at 9:30am.

## ***DAY 12 – On the 27th of March at the Court of Appeal, Salé***

On day 12, Cheik Banga, Deich Daff, Abdeljalil Laaroussi and Ahmed Sbaai was questioned. The court was informed that the mother of the accused El Machdoufi Ettaki (not imprisoned) passed away in Western Sahara, and due to this he was not present at the court.

The judge called **Cheik Banga** to continue the questioning. The General Attorney asked Banga about his presence in Gdeim Izik Camp, and the reason for being there. Mr. Banga informed him that he went to Gdeim Izik on Sunday, 7th Nov. 2010, because he was to take his aunt to El Aaiún. The questioning continued based on the declarations and minutes which Mr. Banga already declared never to have seen,

and which he signed under torture and distress. The questions asked were if he saw the events as described previous (i.e. violence, fires, etc), and if he was aware of the existence of other committees besides the dialogue committee, and if he saw anything that was shown on the video in court, in Gdeim Izik or recognized anyone in the video. Mr. Banga answered: no, to all of them.

Regarding the questions of the General attorney concerning financing and international meetings to prepare Gdeim Izik he denied the knowledge of any of those things. To a question put forward from the Judge, he answered that he received no military training whatsoever abroad, he participated in Human Rights Conferences and visited the Tindouf refugee camps to observe the humanitarian problem. During the questioning of the civil party, there was several times no translation; but one of the lawyers accused Banga to have left wing ideas inspired by a Moroccan party. Mr. Banga refused to answer the questions put forward by the civil party since they are not part of the proceedings. During the questioning by the defence lawyers Banga answered that he did not know that he was presented to the military judge, he only knew that he was in a Military court and that he informed that he was tortured. He was interrogated in a room and there was no identification on the table or door.

Mr. Banga said that he was arrested due to his position on the Western Sahara conflict. He was never asked during the different interrogations of his arrest/detainment about Gdeim Izik, only about his visit to the refugee camps, Algeria and his participation in conferences.

The next who was questioned was **Deich Daff**. Mr. Daff, denied all accusations, and explained that he was a sports coach in El Aaiun where he lives. He went to Gdeim Izik, since he was unemployed and wanted to demand his social and economic rights. He was member of the dialogue committee. On the 8th of November, he was asleep and woken by his wife who told him that the camp was being dismantled and that they had to leave. They left on foot in the morning. He declared that his tent was one of the last tents in the camp, and that he saw nothing.

He was arrested in his house around 00h00 on the 12th of November. About 10 masked men entered his house in El Aaiun, slapped his wife around and asked his



name. He was in his pyjama and thrown into a van, blindfolded. He was then taken to a room in a place unknown. Deich declared that no one asked him anything, but the men stripped him naked and started to beat him. Mr. Daff continues; "they whipped and beaten me, liquid started to pour out of my ear, but the beating didn't stop. They left the room and after some time I told them I had to go to the bathroom, I was told I should urinate where I was and I had to sleep on top of my urine". He was beaten again and told he should not shout, Mr. Daff explained that he was on his knees and sodomized with a stick. He lost consciousness and when he woke up asked for a doctor.

He was then transferred to another place but he does not know where, he recognized the voice of "Abderahman" (high official). He asked Mr. Daff who had done that to him and he answered the police. Someone took him to a bathroom and throw water on him and gave him clothes. In the evening, he was brought into an office and shown some photos and given tea. He was asked if he knew Banga who was in the pictures, Mr. Daff answered that he didn't know him.

Then he was put in a small room with Zawi and Toubali, Mr. Daff said that Mr. Zawi was in a very critical condition. All the time he was handcuffed and blindfolded. They were transported in an airplane to Rabat and he was taken to the investigative judge in the military court.

He was blindfolded and handcuffed, which were removed, and he was told that he was in front of a judge. In front of the judge he denounced that he was tortured but the judge ignored him, stating that the torture was not his business, and asked if he had read the documents he had signed and what he had to say about the charges, Mr. Daff answered it was the first time he heard about it and denied the charges. He was then sent to prison. He was stripped naked again, and the guards and officers took pictures of him. He was with Zawi and Toubali. Then he was given prison clothes. He was in an individual cell and then after some days he was told to collect his things and go the infirmary, his trousers had no buttons and they dropped, they yelled at him and he had to hurry. In the new cell he saw Bani, 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 **Abdel Jalil 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.

Abdel Jalil 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. Laaroussi 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 Boujador. 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.

Laaroussi suffered under torture during his arrest, his time in custody and during his time in prison. Laaroussi 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.

Laaroussi 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". Laaroussi 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". Laaroussi urged that he did not say any of this, that these are all lies, and that the people who wrote this invented it. Laaroussi declared that nobody asked him questions about Gdeim Izik, and that they forced him to sign papers, and raped him.

Laaroussi 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." Laaroussi was thereafter transported to prison. Laaroussi 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 Laaroussi if he was being tortured now, Laaroussi declared that "there is a distance of over 1200 km between El Aaiun and El Arjat (prison where he is currently detained) , sometimes our visits arrive and they are not allowed to visit because their family name is not the same. My father died and I was not allowed to see him. My mother was detained, and she is 72 years old and they dislocated her shoulder! My sisters, my brothers! My 8-year-old son was attacked in front of this courthouse during this trial; he was holding a paper asking for my release, they hit him with a 1 1/5-litre water bottle! I sent the complaints about my torture many times, to the general attorney of the King in Rabat, to the General

attorney in El Aaiun, to CNDH [National Human Rights Council], to the ministry. I can show you a copy!”

Laaroussi 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.

Laaroussi 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's questioning, two of the judges were sleeping. He demanded that his friend from Boujador 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 beliefs and his work denouncing the violations permitted by the Moroccan State in Western Sahara.

Sbaai explained that he refused the medical examination because it is not in accordance with the international standards and is neither independent nor are the doctors trained in the necessary protocol. The court did not accept the memorandum of his lawyers about the medical expertise and the Istanbul Protocol, and he does not trust Moroccan doctors, he has no reason to do so.

Sbaai declared that he does not recognize the validity of this court since it is extraterritorial.

Sbaai continued telling that he is an ex-political prisoner, and that he was imprisoned due to his political activism, and he continued denouncing the abduction of his father by the Moroccan authorities. Sbaai stated that “the Moroccan prisons are a cemetery for the living”. He was detained in 2002 and 2006, always due to his political opinions. He is one of the founders of a Human Rights Association, has worked voluntarily, demanding the right to self-determination and being an observer in the trials of political prisoners. He stated that no prison, nor torture or ill-treatment will change his mind.

He suffered psychological and physical torture, in the gendarmerie he was blindfolded and they asked him about his contacts with Amnesty International. He spent 5 days in sleep deprivation and constant insults. He has a heart condition so the physical torture stopped when they saw that his life was in danger.

He was never asked questions about Gdeim Izik. All the questions were about his political views, his contacts and his voyages abroad. He had to put his fingerprint on the declarations whilst he was blindfolded and handcuffed.

In the military court, he denied again all accusations. In Rabat he was tortured again, he was naked and someone made a video and took pictures; he felt the flashlight. He was showered with ice water and put in an isolation cell. This torture were made by the prison director and three more of the prison administration.

Sbaai declared that he was in the camp with his mother, and had walked most of the way to El Aaiun. Sbaai declared that he had “signed because they took my hand and forced me!”.

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

The presiding judge declared that the reports from the medical examinations are submitted. The reports were however submitted in French, and needed to be translated into Arabic, meaning that the results from the medical examinations were to be postponed an extra 12 days.

### ***DAY 13 – On the 8th of May at the Court of Appeal, Salé***

The proceedings against the group Gdeim Izik commenced on the 8th of May with evaluating the evidence file.

The court commenced by presenting the witnesses in front of the court. Some of the witnesses presented by the defence were absent. The defence argued that since the witnesses had only received the notification on Saturday, and since they lived in El Aaiun, their presence in the court should be considered legal if they were present at the courtroom within Wednesday. The presiding judge ruled in the defences favour. The witnesses were thereafter summoned from the witness room to the courtroom. The group of witnesses can be divided into three groups: (1) support witnesses for the defence, (2) witnesses of the events, and (3) the police officers which wrote the reports. In total 28 witnesses.

When the police officers which wrote the reports entered the courtroom, protest emerged within the court facilities. The detainees shouted “torturers”, “occupation is the reason” and “self-determination Is the only solution”. The civil party and the prosecution office urged the court to protect the witnesses ordered by the court. The witnesses were thereafter sent back into the witness room.

The court thereafter presented the confiscated elements. The defence urged that the confiscated evidence must be discarded as evidence, as the confiscated walkie talkies, mobile phones, knives and axes, were not presented in the same manner in the Military Court, and there were no means to make sure that this case-file in fact were the same case file as presented in the Military Court, the chain of custody of the evidences was apparently not respected and contamination would be evident. The defence further argued that the different objects were not packed correctly, and that the different objects were not labelled with the correct marks. It was therefore not possible to tell the source of these objects, since the steps that have to be taken to document where the evidence was found was not done like crime scene photographs and notes taken during the initial investigation; and labelling of the items of evidence on site with a number and secure packaging.

The court decided to show the different objects to all the accused. Mr. Asfari pointed out that according to the reports, all the objects were confiscated at the 8th of November, whereas he was abducted at the 7th of November, and declared that the fantasy of those who wrote these reports are wide, he also stated that the judge could not impose him what to answer. Mr. Banga declared that the only thing that was confiscated from him were his dreams. Mr. Bouryal denied that any of the confiscated objects was his. Mr. Taki declared that he had nothing do to with the confiscated objects and that he only had seen a peaceful protest camp with people protesting the occupation power. Mr. Bani declared that everything that was found with him was his personal documents, ID cards and papers for the car. Mr. Laaroussi demanded that his witnesses should be summoned to testify, and declared that he had nothing to do with the confiscated objects. Mr. Lakfawni declared that when they abducted him, they took everything he was carrying, but none of these objects. Mr. Boutinguiza declared that he was not carrying any objects upon his arrest. Mr. Abbahah declared that the police stole his phone, but that he had nothing to do with the confiscated objects in the case file. Mr. Zawi demanded that his witnesses would be summoned to testify, and declared that they did not find any knives, phones, money or documents on him. Mr. Haddi declared that he was arrested with two doctors from the organization "doctors without borders", and that he could not tell if that was his phone. Mr. Zeyou declared that he was arrested at the airport in El Aaiun on his way to Spain, and that he has never seen these objects. Mr. Toubali



declared that he had nothing to do with this evidence file, but that his phone was taken. Mr. Daff declared that none of the objects in the evidence cage belonged to him. Mr. Khadda declared that his passport was confiscated but nothing else. Mr. Sbaai declared that he is a political prisoner and that the only thing confiscated are his beliefs and opinions. Mr. Dah declared that he was arrested for his opinions and ideas, and that this was the only thing found with him, but that his opinions can never be confiscated. Mr. Thalil declared he was not carrying any objects upon arrest. Mr. Lemjeiyd declared that he was abducted on the 25th of December and that he was carrying one cell phone and 65 dirhams. Mr. Lefkir declared that he was abducted with his cellphone which was tortured with him, and that he wanted it back. Mr. Ismaili declared that he was abducted in El Aaiun and that he had nothing with him upon arrest, but that his house had been raided afterwards and that several document files were missing. Mr. Babait declared that he was arrested with 350 dirhams and his phone. Mr. El Bakay declared that he had nothing to do with these confiscated elements.

The first information witness from the defence, **Mr. Hassan Dhalil**, was thereafter summoned to testify. The witness identified himself and was sworn in. Mr. Dhalil told about how he in the evening of the 7th of November had visited Mr. Toubali in the hospital after his car accident. Mr. Dhalil told that he had left the hospital around 1 am at the same time as Mr. Toubali. Mr. Dhalil had thereafter went home and visited Mr. Toubali again the following morning on the 8th of November around 7 am. Mr. Dhalil had found Mr. Toubali in a critical condition where Mr. Toubali could not move.

The second information witness from the defense, **Mr. Mohamed Embark Hallab**, was thereafter summoned to testify. He identified himself and was sworn in. Mr. Hallab described how families were stopped from entering the Gdeim Izik camp on the 7th of November and that families were stopped from leaving the camp facilities by the Moroccan authorities. People were stopped from bringing food to their families. We were a group of civil servants which wanted to protest the siege of the camp. Mr. Hallab explained how they organized a meeting at his family house in the evening of the 7th of November. Mr. Hallab explained that the meeting started at 8 pm and lasted until 1 am. Mr. Hallab explained that they studied the events and that they feared that an intervention would take place, and that they therefore planned a



demonstration for the following Monday, on the 8th of November 2010. Mr. Hallab explained that Mr. Zeyou was with him at the meeting. Mr. Hallab explained that their goal was to bring food and survival equipment to the people in the camp, and therefore organize a demonstration. Mr. Hallab declared that it would be impossible for Mr. Zeyou to be present at the camp since the camp was under a siege, and it was impossible for anyone to travel in or out of the camp.

The third information witness from the defense, **Mr. Brahim Hamed** was thereafter summoned to testify. The witness identified himself and was sworn in. Mr. Brahim Hamed described how Mr. Lakfawni had stayed with him on the 12th and the 13th of November, and that the police had come and surrounded his home and raided his house and broke the doors. The preceding judge continued to ask numerous questions about why the witness did not have the phone number of Mr. Lakfawni. The witness answered that he did not need his number, since Mr. Lakfawni was already in his house. The witness also confirmed that he had been in the Gdeim Izik camp, but not on the 7th of November. The witness told that the camp was closed, and that the police had stopped him for entering the camp by throwing rocks towards him, and that his family was without food that evening.

The witness told that Mr. Lakfawni was in the other house when the police arrived, and that he saw the police arrest Lakfawni outside. The fact that Mr. Lakfawni was arrested outside the house was in contradiction to Mr. Lakfawni's testimony where he declared that he was thrown out of the first-floor window by the police forces. Mr. Lakfawni explained that there were two houses, where he was thrown out of the window of the second house, whilst the witness had been in the opposite house. The preceding judge refused to ask the witness a follow up question about whether there was a second house.

### ***DAY 14 – On the 9th of May at the Court of Appeal, Salé***

Mr. Mohamed El Ayoubi, which is released on provisional release due to his health condition, did not appear in front of the court since he was hospitalized. The court

case of Ayoubi was separated from the group case and adjourned until the 5th of June 2017.

The police officers that wrote the police reports were presented in front of the court. The accused shouted “torturers”, “occupation is the reason”, and “self-determination is the only solution”. The preceding judge warned the accused according to art. 327 of the Moroccan penal code that if the accused insulted the witnesses, they would be transported out of the courtroom.

The civil party reminded the court that It was in fact the defence who had requested the police officers to testify in front of the court. The defence argued that the men who wrote the police reports could not be regarded as formal witnesses, but that the defence wanted to ask the police officers how the interrogation was conducted. The defence further pointed out that the detainees had accused these police officers of torturing them, and that the police officers which are accused of such a crime could not be sworn in as witnesses. The court decided that the police officers that wrote the reports were to be heard from as formal witnesses, but postponed the questioning of the witnesses.

The first witness to appear in front of the court was **Mr. Faisal El Malazi**. Mr. El Malazi told how he and his regiment were situated by the gate to the Gdeim Izik camp, and that their regiment had orders to establish checkpoints and surround the camp. Mr. El Malazi told how the camp was surrounded by military vehicles, and how they built a sand wall around the camp leaving one gate/entrance open, this was in place for over 20 days. Mr. El Malazi told that the camp had their own security forces with personnel wearing vests which patrolled the outset of the camp. Mr. Malazi told how his group was ordered to the outset of the camp in the early hours of the 8th of November. His group consisted of 2 sections, whilst each section contained 3 lines with 13 people. His group was instructed to remove the tents and evacuate the camp. Mr. Malazi told that women and children were throwing rocks at the gendarmerie forces and that the gendarmeries had anti-riot gear. Mr. Malazi told that when they approached the citizens, the citizens of the camp divided into two groups. The witness then declared that two 4 by 4 cars (Landrovers) attacked the front line, and that a man was hit and flew over the car. The car thereafter hit the witness and that the tire was "rolling over him hurting his back" but the car was in place. The

witness explained that his comrades pulled him from underneath the car. He declared that he could see people attacking the military forces, and that he tried to run away from the scene. He explained that he ran for 20 minutes before he fell, and that a colleague had to help him walk, and told him that a 4 by 4 car was following them. The witness declared that he reached the military forces, and was taken into an ambulance. He declared that whilst in the ambulance, they had to turn off the lights as to not be seen by the civilians attacking the public forces (according to the witness this happened during the dismantling, indicating that it was still dark). The witness explained that he reached the hospital and was hospitalized. Mr. El Malazi declared that the attack was planned, consisting of three steps; to attract the gendarmeries towards the camp, attack the public forces with 4 by 4 cars, and then attack with knives and axes. The witness declared that they were surprised by the attack, and that they based on their previous intel had not expected an attack.

Regarding the attack by the 4 by 4 car, the witness declared that the car had not killed him, because the car got stuck in the sand, so the driver could not move the car. The witness could not tell what had happened to the driver of the car. The witness declared that the car had attacked the military forces from outside of the camp, and had surprised them by emerging behind some bushes. Mr. Massoudi pointed out that these bushes that are common in the Sahara desert are around 50 cm. tall. Mr. El Malazi declared that he could identify the driver of the 4 by 4 car which had hit him, and killed his colleague. He explained that the driver had a moustache and wore a brown jacket, and was around 30 years old.

The presiding judge declared that he would call upon four detainees at the same time, and that the witness should identify the culprit if he recognized him. The presiding judge commenced by calling up Mr. Banga, Mr. Asfari, Mr. Bani and Mr. Bourial. Protest arose both from the detainees and the defense when a police man whispered into the ear of the witness. The presiding judge declared that he knew the police man in question very well, since he had served at the courthouse for over 15 years. The witness identified Mr. Bani as the driver of the car. Mr. Bani declared that he did not have a moustache in 2010. The witness declared that Mr. Bani is “very similar” and that the facial expressions are the same, even though Mr. Bani has changed over the last 7 years.

The second witness to appear in front of the court was **Mr. Rahil Mohamed**. The witness declared that he belonged to the gendarmerie, where they had orders to surround the camp, and not let anyone enter or exit the camp besides through the gate. The witness declared that they remained in the same position for 22-23 days until the 8th of November. His regiment was called upon around 6:30am on the 8th of November to march towards the camp. The witness explained that they wore riot gears (i.e. a uniform for protection, tear gas, shield and a stick), and were in total 54 people in his section. He explained how the inhabitants of the camp threw rocks towards them "some around 1,5kg heavy", and that his regiment divided into two groups. The witness explained that he was hit by a car and lost consciousness. Mr. Mohamed testified that he was thereafter piled up with other victims, and that he had heard a woman say "do not burn them, they are Muslims to, we are not jews". He told that he was hit with a rock, and that he woke up in the military hospital. The witness said he heard that other were dead but did not see them. The witness could not identify any of the defendants.

### ***DAY 15 – On the 10th of May at the Court of Appeal, Salé***

The first witness to appear in front of the court was **Mr. Nordin Lassere**. The witness was a part of the public forces in control of dismantling the camp where he was supposed to transport people from the camp to the city. The witness had received orders on the 7th of November to organize the transport, and moved towards the camp around 6:35am, and arrived around 6:45. The witness declared that after the first transportation, when coming back to the camp, the bus was targeted with rocks thrown by the inhabitants in the camp. He told that he saw people being beaten to death in the street, and that he and his colleagues had been hit by rocks. He told that he spent 12 days in hospital. The witness told that he could not identify anyone, since the attackers had been wearing scarfs.

The second witness was **Said Kahla**. Mr. Kahla was part of the public police forces, and part of the mission that was in control of securing the transport from the camp to the city. His section was supposed to secure order in the city, and not in the camp.

He told how the demonstrators were throwing rocks at them, and that the public forces used shields to protect themselves.

The third witness **Mohamed Choujaa** witnessed about his stay in the camp, and claimed that he knew the people in charge of the camp. Mr. Choujaa claimed that the camp had social demands, and that “everyone” had heard about the camp. The witness described that since he was unemployed, he went to the camp. Mr. Choujaa described that he first went past the governmental checkpoints, before he reached the camp where people in green vests stopped him and checked his identity card, before another group stopped him and checked his belongings. Mr. Choujaa told that an old woman told him to register with Mr. Deich Daff, which registered him in a book. Mr. Choujaa explained that he after some days brought his own tent, and set it up behind the administration. The witness described that the camp was organized, where supply and aid was set in place, and that the camp was run by several security groups. The witness explained that he attended two public speeches, one held by Mr. Lefkir known as Franco and the other by Mr. Zawi. Mr. Choujaa told that Mr. Laaroussi was in charge of the security forces. Mr. Choujaa explained that Naama Asfari was the leader of the camp, and that Mr. Asfari lived as a king. The witness explained that the camp was divided into 5-6 sections. Mr. Choujaa described that during the night of the 7th of November, he had taken a walk after dinner and had seen Mr. Asfari, Mr. Lefkir, Mr. Lakfawni and Mr. Banga sitting in the administration. He explained that on the morning of 8th of November, chaos had broken out. Mr. Choujaa told that Mr. Asfari was giving instructions, whilst Mr. Lefkir, Mr. Lakfawni, Mr. Banga and Mr. Ismaili were handing out weapons to the citizens of the camp, and that Mr. Laaroussi had been driving a car. Mr. Choujaa told that he saw Mr. Toubali, Mr. Lemjeiyd and Mr. Sbaai throwing rocks, and that he saw Mr. Bani in a green Mitsubishi. The witness told that he ran from the scene of the crime towards the river and walked along the river to the city and arrived in the city around 12am.

The civil party asked the witness about whether he was sure that the checkpoints inside the camp was controlled by the people in the camp, and not the government, where the witness claimed that only people from El Aaiun could enter the camp. The defence was prohibited from asking whether witness had a job, and how the witness

had learned all these names during 10 days, which the detainees protested against. Mr. Massoudi repeated his question and stated that his question is related to a witness which described the camps organization in a very detailed manner, and that he gave 9 names, while he was only in the camp for 10 days, stating that this are names that Mr. Massoudi himself can forget from times to times; how can the witness have learned these names in just 10 days, and remember them 7 years later. The court refused to ask the question. Mr. Massoudi then asked the witness how he only could name these 9 persons, among the 35.000 inhabitants in the camp. The witness could not tell. The witness answered that he could not remember when he was asked about how he exited the camp on the morning of the 8th of November, and could neither explain where the entrance of the camp was located. The witness claimed that he saw Mr. Bani run over one police officer inside the camp with his car. The witness claimed that he could not describe the features or physical characteristics, of the identified detainees, but that he could identify them if he saw them. The witness stated that Mr. Bani is around 50 years old, that Mr. Asfari is neither white or black, and that Mr. Banga wore glasses and had a beard. The court refused to ask the witness whether he could elaborate, where the witness stated that he saw them in his memory but could not describe them, but could identify them. Mr. Lilly also asked the witness whether he had noticed something with Mr. Lefkir's way of speaking, where the witness claimed that Mr. Lefkir speaks Hassania. The presiding judge refused to ask further questions upon the subject. Mr. Massoudi asked the witness how he was summoned to court, since he, during the last 7 years, did not appear on any police records. The court refused to ask the question. The court ruled that the accused were to be exposed to the witness, as to implement an identification process. The detainees entered the courtroom from the glass-cage, and Mr. Taki and Mr. Zeyou also stepped forward. The witness was instructed to point out the different detainees that he had named in his testimony. The witness identified Mr. Bouryal, Mr. Sbaai, Mr. Lakfawni, Mr. Haddi, Mr. Asfari, Mr. Ismaili, Mr. Leymjeyid, Mr. Daff, Mr. Zawi, Mr. Abbahah, Mr. Laaroussi, Mr. Lefkir, Mr. Banga, Mr. Bani, Mr. Toubali, Mr. El Bakay, Mr. Babait, Mr. El Bachir Khadda, Mr. Thalil and Mr. Zeyou. The witness declared that he had only seen Mr. El Bachir Khadda Mr. Thalil and Mr. Zeyou in the camp, but not committing any crimes.

The ones identified were thereafter summoned to meet the testimony from the witness Mr. Mohamed Choujaa. Mr. Asfari declared that this testimony was part of the imagination/fantasy which was used to write the police reports. Mr. Asfari asked whether the witness had been alone when he saw him in the morning of the 8th of November, and whether the witness knew what happened on the 24th of October. Mr. Banga declared that the witness was telling lies. Mr. Banga asked the witness how he knew that the one distributing weapons was named Cheik Banga; and Mr. Banga declared that he neither wore glasses or beard in 2010. Mr. Banga further declared that this was a false testimony, which led the prosecutor to scream, and the judge to urge Mr. Banga to withdraw his words. Mr. Banga declared that it was the courts responsibility to investigate whether the declaration was false, and the ones responsible for killing the principle of independence are the ones that brought the witness to testify. Mr. Banga left the booth after being interrupted numerous times. Mr. Bouryal declared that this is all lies, and that this is all a theatre, and was thereafter transported back into the glass-cage. Mr. Laaroussi asked whether the witness was together with someone when he saw him; and why the witness could not give a description of him. Mr. Lakfawni declared that such a testimony could be bought, and declared that the witness was avoiding answering his questions; and thereafter asked the witness if he could describe him; how he knew his name; and how he entered the camp, when he is not a Saharawi. Mr. Lakfawni declared that he suspected the witness to be aided by some technical device, and asked the court to check his ears. Mr. Abbahah declared that the testimony was false, and the declarations was not based on any truth. Mr. Abbahah further explained that he grew up in the region, and that it is impossible to walk along the river from the camp to the city because of the height of the river and the rocks (Mr. Choujaa claimed that he walked back to the city following the river on the morning of the 8th of November). Mr. Abbahah declared that no one knows his family name (which the witness had identified him by), and that the witness should have been able to describe his features, since his picture was “everywhere”. Mr. Dafff declared that he did not accept the declaration, and asked whether the witness could identify the woman which directed the witness towards him for registration. Mr. Lefkir stated that the court already had their sentence, and demanded to be given the verdict since it was ready. The judge urged Mr. Lefkir to withdraw his words, or he had to return to the



cage without asking questions. Mr. Lefkir declared that he from the beginning had stated that this court lacked the necessary competence to judge him, and declared that the Moroccan state is a colonizer and that the witness was a settler. Mr. Lefkir was sent back into the cage. Mr. Zawi asked who followed him to the river, and who was with him when he saw Mr. Zawi in his tent, and declared that it is the Spanish registration which identify the real Saharawi's. Mr. El Bakay denied the testimony, and asked what the condition of the witness had been all these years; and asked whether the witness had been in a coma all these years; why he had not appeared in front of the Military Court and told the story which was identical to the police reports. Mr. El Bakay asked the witness how he could identify people amongst 40 000 people, in the middle of the chaos; and pointed out that the Saharawi's wear scarfs to cover their faces due to the conditions of the desert. Mr. El Bakay pointed out that it is a shame to refer to a tent with a female owner (in the Saharawi culture), and also declared that it is impossible to walk along the riverside to the city. Mr. Babait declared that this testimony was all lies, and declared that it was the courts responsibility to verify the testimonies given, and that he does not know where this man comes from, but that he was only telling a story in line with the police reports. Mr. Sbaai declared that Morocco told a lie in the Military Court and that the lie was proven by the Constitutional Court, and that the Moroccan judicial system again tries to cover up the truth. Mr. Sbaai asked how the witness knew him, and when he precisely had seen him distributing weapons, and whether anyone was with him. Mr. Toubali declared that the testimony was only a lie; and that he was not present in the camp on the 8th of November due to his car accident; and stated that his medical records proves that he was in a critical condition and was not able to move. Mr. Toubali declared that the court was discriminating between the witnesses; whereas his witness had been standing for over an hour, where this witness had been given a chair and water. Mr. Haddi declared that his was in the city of El Aaiun on the 8th of November, and declared that if the witness knows me; let him state my real name. Mr. Bani stated that the witness had seen him walking and driving, and asked whether the witness had seen two of him; and stated that the witness had seen him first on the east side of the camp, and then the south side; and stated that you would need a plane to get from one side to the other side. Mr. Bani stated that he was arrested in his car with all his documents, and that he has been under arrest for 7



years; and that the state can tell whichever story they want; since the state has all the necessary intel. Mr. Lemjeyid stated he did not know the witness and that he had never seen him, and that he was home on the day of the attack. Mr. Lemjeiyd asked the witness to tell where he lived in El Aaiun, and what he wore on the day of the attack, and claimed that a person that can give such details, should remember what he was wearing. Mr. Lemjeyid further stated that the direction given by the witness, would not lead him to the river; and asked the witness how he crossed the river. Mr. Lemjeiyd stated that the story given by the witness was in line with the false police reports. Mr. Ismaili declared that he regarded the testimony given by the witness as lies, and that it was all part of a play to convict him as a human rights activist. Mr. Ismaili declared that he was not present in the camp on the 8th of November, and he asked the witness to tell the exact day he went to the camp; whether the witness knew him before coming to the camp; if he recognized him the day of the attack; and whether the witness had talked to him alongside the international observers in the camp. Mr. Ismaili declared that forgetting is forgivable, but not selective memory, and stated that he wanted an answer into why the witness could identify him, but not describe him. Mr. Ismaili further demanded that the witness had to mention 5 of his neighbours' in the camp. Mr. Thalil was brought forward to answer the witness on behalf of those identified, but not identified committing a crime; where Mr. Thalil stated that this witness was brought forward by the state, and that the state is trying to condemn them in a Shakespeare play.

The presiding judge decided to ask in total 10 questions of all the questions put forward by the detainees. The witness confirmed that he used to see Mr. Asfari in the camp and that he on the 8th of November saw Mr. Asfari distributing weapons whilst giving orders and stating that "there is only one death". The witness could not identify the woman which lead him in the direction of Mr. Deich Edddaf; the witness could not identify the person which drove the car with Mr. Zawi in the passenger seat; the witness declared that Mr. Banga had a "light beard" and used glasses; that he did not know the detainees before the settlement of the camp; that he used to see Mr. Ismaili in the camp; and that he did not remember any of his neighbours, since there were so many people.

The prosecutor thereafter submitted two pictures of Mr. Banga from 2010 into the evidence file. Mr. Banga was wearing sun glasses in one of the pictures (i.e. a picture from a trip to Algeria), and had a beard on the second picture (i.e. a picture taken in prison). The defence wanted the pictures discarded as evidence, since the chain of custody was absent. The witness confirmed that he had seen Mr. Banga with transparent glasses, and not sun glasses. The defence wanted to know why the witness could not identify his neighbours, or the ones he was eating dinner with or drinking tea with; only the detainees. The court refused to ask the question. The witness was sent out, and the prosecutor was told to give the witness necessary protection. The court was adjourned until the 11th of May.

### ***DAY 16 – On the 11th of May at the Court of Appeal, Salé***

The court commenced by hearing from Mr. Ahmed Sbaai which told that the niece of Mr. Cheik Banga had passed away, and that Mr. Banga was not able to attend the hearings due to his mental state. The Court decided to let Mr. Banga face the evidence against him at a later time.

The first witness to testify was **Mr. Mohamed Selmani**, which was there to testify on behalf of Mr. Naama Asfari. Mr. Selmani told that he was together with Mr. Asfari on the 7<sup>th</sup> of November and witnessed his abduction. Mr. Selmani explained that they had eaten lunch together, and that Mr. Asfari had went with Mr. Selmani to his house to take a shower and drink tea. Mr. Selmani told that police officers invaded his home, and trashed his house and shouted insults, and escorted Mr. Asfari down the stairs and out of the house. The presiding judge asked the witness why Mr. Selmani did not go to the police headquarters afterwards, and asked the witness if he knew what had happened to Mr. Asfari afterwards. The presiding judge asked several detailed questions, wanting the witness to give the exact time of their meeting, their lunch, their arrival, their departure, and which time they had tea. The witness explained that the police came after the sunset prayers. Mr. Selmani declared that the house has two entrances; one to the east and one to the south. The witness explained that the police came from the east, and that he had walked down the stairs from the second floor of the house, and was shocked by the police inside his house.

The witness declared that Mr. Asfari was arrested at the second floor, and that he had been shoved downstairs by three police men. The witness explained that Mr. Asfari was handcuffed and that his eyes were covered with a blind fold.

The presiding judge asked why he was not arrested since he was hiding a criminal in his house. Protest emerged within the courtroom from the detainees, and the civil party screamed that it was within the competence of the court to ask whatever question they wanted, where Mr. Masoudi declared that the civil party lacks the competence to utter their views, leading the attorney from the civil party to fan with money (banknotes) in the direction of Mr. Masoudi. The presiding judge commenced by asking the witness if he could give details upon the arrest; the witness described that Mr. Asfari was handcuffed with his hands on his back, with a white blind fold, and that Mr. Asfari was guided down the stairs, out the backdoor and into a blue police car, and that the house was surrounded by the police, and he was kicked and slapped by the police. The witness declared that his house was full of policemen, and they broke in from the east side, and that there were three cars (one white and two blue cars). The presiding judge continued to ask detailed questions, i.e. the exact time for his phone call with Asfari and what he was doing, and what the police men were wearing and the exact number. The witness declared that it has been 7 years, and that he could not remember every little detail.

The prosecutor stated Mr. Asfari had declared that he was arrested in the house of Mr. Toubali, whereas this witness states that Mr. Asfari was arrested in his family house. Mr. Asfari was thereafter summoned to answer this contradiction; where Mr. Asfari declared that there exists a lack of understanding of the Saharawi family structure and the Sahrawi society, and that the structure is hard to explain, and that it therefore occurs misunderstandings, and declared that he had not been in the house of Mr. Toubali, and that this was a misunderstanding.

The next witness to be questioned was **Mr. Bachir Salmani**. Mr. Salmani testified to the detention of Mr. Asfari on the 7<sup>th</sup> of November in his family house. Mr. Salmani declared that he had reached his family house where he found his brother and Mr. Asfari drinking tea; that he had left shortly after; and was surprised by police forces on his door steps when leaving. Mr. Salmani told that one police man had told him to move his car, that the police men had entered the house, and brought out Mr.

Asfari into a police car. The witness told that he saw two blue cars and one white car without marks, and that he was in shock. The witness explained that he saw the top of Mr. Asfaris head, but that Mr. Asfari was surrounded by police men which transported him into a police car. The witness declared that the police came between the sunset prayer and the last prayer. The presiding judge summoned Mr. Asfari and stated the witness declaration was in contradiction to the testimony of Mr. Asfari, since Mr. Asfari declared that he was blind folded and that the witness had not seen a blindfold. The presiding judge used his own glasses to describe how the witness should have seen the blindfold. Mr. Asfari declared that the court had to imagine an abduction; and that he was not taken by 2-3 police men, but taken by dozens of police men, both uniformed and with civil clothes. The court asked Mr. Asfari how he could know that he was surrounded by police men; and at the same time blind folded. Mr. Asfari answered that he calls it “sight and mind”; the last thing I saw were dozens of police men surrounding me; and while they hindered me from seeing, they did not hinder me from understanding what was happening; that you can feel what is happening around you whilst blind folded and new senses emerge.

The next who was questioned by the court was **Mr. Aziz Kabir**. Mr. Kabir worked for the gendarmerie in Smara. Mr. Kabir told how the gendarmerie forces was missioned to secure order in the Gdeim Izik camp on the morning of the 8<sup>th</sup> of November. Their mission was to facilitate the traffic from the camp to the city. His section heard the helicopter and was told to move closer to the camp, where they saw smoke and fire inside the camp. Mr. Kabir declared that he saw thousands of people coming from the camp carrying knives and rocks, and that it “rained stones”. The witness described that they withdrew from the scene, and went back to their vehicles, and that the demonstrators followed them in a car. The witness declared that he saw one of the victims being run over by a car, and another victim being hit and kicked by several demonstrators which surrounded him. The witness told that his colleague was laying on the ground, and that the demonstrators continued to hit him with swords and rocks. Mr. Kabir explained that they had no weapons to defend themselves with, since they only had their riot gear. The witness declared that he was helped inside a car, and that the car was attacked and that the demonstrators used rocks to block the road; and that the ambulance reached the city around 10-11am.

The fourth witness summoned by the court this day was **Mr. Ridam Halwi**. Mr. Halwi was a part of the civil protection, and served as first sergeant. Mr. Halwi explained that he was part of the ambulance team which was placed in front of the camp, and that their role was to bring people back and forth from the hospital and give medical care whenever needed. Mr. Halwi explained that they could not enter the camp during the last 22 days, and that they witnessed changes and placement of Moroccan security personnel. Mr. Halwi explained that they went into the camp one time too pick up a sick lady and drive her to the hospital, and that they had been stopped at a checkpoint by 6-7 people. The witness stated that he was working a normal shift on the 8<sup>th</sup> of November, and that a helicopter had told the people to evacuate the premises, and that everything had been normal until the forces had been attacked by cars, and stones. He explained that they had picked up the wounded, and driven them to the hospital. He explained that the ambulance was surrounded on the way back, and that demonstrators had tried to take his car. He told that the demonstrators hit him and dragged him into the forest and told him that they would slaughter him; that one of them held a knife to his neck; and that he managed to escape and run towards the checkpoint of the gendarmerie. He had run towards an ambulance, which contained two corpses that had been urinated on; and that they were transported to the hospital.

The fifth witness summoned by the court was **Mr. Mustafa Zeynon**. The witness declared that he was in the civil protection of El Aaiun, and that he spent 3 days by the campsite. Mr. Zeynon explained that his section was positioned around 30 meters from the camp, and that the inhabitants used to get water from their fire trucks. The witness declared that inhabitants used to walk around the camp wearing vests. On the 8<sup>th</sup> of November around 7:30am when travelling towards the camp, they saw people coming towards them and understood that the camp was being dismantled. The witness explained that he found wounded people, and transported 6 women with him in the ambulance, and that young people came and threw stones at them, and that the car stopped. He was attacked with an axe on his head and with knives, and the witness explained that he lost consciousness and woke up later at the hospital. The witness could not identify any of the detainees.

***DAY 17 – On the 15th of May at the Court of Appeal, Salé***

The first witness that was summoned was **Mr. Tarik Hajri**. Mr. Hajri declared that he is in the gendarmerie and was part of a section responsible for facilitating the traffic back and forth from the camp. Mr. Hajri explained that his section was given orders to move forward. Mr. Hajri explained that people were throwing rocks towards them, and that they saw fires. The witness explained that they were surrounded on every side, and that a car drove over his feet, and that he was attacked whilst lying on the ground. He said someone else was already dead, his colleague Atartor. He stated that they were beaten with gas cylinders, swords, stones, and that he had seen military boots. He almost had to lose his fingers. He said he saw something shining against the sun and that must have been swords and that they only had anti riot gear. The witness could not identify anyone.

The second witness that was summoned was **Mr. Hossini Lemtioui**. The witness declared that he lived in the Gdeim Izik camp from the first week of the settlement. The witness declared that he had social demands like everyone else that went to the camp. The witness declared that there were two checkpoints before entering the camp, and then two checkpoints inside the camp. The witness declared that he was registered by Deich Daff. The witness declared that he on the eve of the 7<sup>th</sup> of November had seen Mr. Bourial, Mr. Asfari and Mr. Lefkir discussing in the administration. On the morning of the 8<sup>th</sup> of November the witness declared that he had heard a helicopter which told the inhabitants to leave the camp. The witness declared that he saw Mr. Banga, Mr. Lefkir, Mr. Sbaai, Mr. Asfari amongst some other people that the witness could not identify handing out weapons and gas cylinders. The witness declared that he saw a grey Nissan driving around in the court yard. The witness declared that he ran away from the scene. The witness declared that he ran until he came to the city, and found protests in every street.

Mr. Lemtioui declared that the camp was organized into 7-6 sections, and every section was named after neighborhoods in El Aaiun. Protests emerged within the courtroom, and Mr. Bourial shouted that “this is only a theater. We have 500 Saharawi willing to testify about the truth. But you only allow the witnesses which are

telling lies. You are performing a play in front of the international observers”. The presiding judge warned Mr. Bourial.

The testimony of Mr. Lemtioui recommenced. The witness declared that the camp had checkpoints, where the first checkpoint was controlled by Mr. Lakfawni and Mr. Sbaai. The witness declared that identification was controlled at the first checkpoint, and that the guards outlived body searches on the second checkpoint. The witness declared that guards with orange vests controlled the outskirts of the camp. The witness declared that Mr. Deich Daff had the formal responsibility for the administration. The witness declared that Mr. Lefkir, Mr. Asfari and Mr. Zawi gave speeches stating that if the Saharawi people wanted something from the government, this was the time. The witness declared that Mr. Laaroussi was in control of the security forces. The witness declared that Mr. Laaroussi was the owner of the grey Nissan.

The witness could not clarify the location of the administration, other than it was beside the court yard. The witness could not identify any of his neighbors in the camp, nor give the name of his neighborhood within the camp. The defense was prohibited from asking further questions about the witnesses relations in the camp. The witness confirmed that he saw Mr. Asfari on the eve of 7<sup>th</sup> of November and the morning of the 8<sup>th</sup> of November, after a confrontation by the defense about Mr. Asfari's arrest on the 7<sup>th</sup> of November at 6pm. The defense was prohibited from asking about whether the witness had seen Mr. Toubali, as the defense argued that Mr. Toubali was in the hospital. The witness declared that he witnessed all of this alone, and that he always was alone in his tent. The witness declared that he ran 15 kilometers with his flip flops. The witness described Mr. Asfari as a bald man, wearing glasses and was “higher than himself”, but the witness could not describe the baldness in Hassania. The witness described Mr. Banga with glasses, a beard and sunglasses in the evening. The witness declared that he have never told his declarations to anyone before, but was abruptly interrupted by the prosecution. The witness declared that the people were told not to leave the camp, since their demands would soon be met by the government. The court refused to ask the witness about his address in El Aaiun, to protect him.



The court ordered that the accused was to be exposed to the witness. Defense attorney Mr. Lili argued that such an identification process was not in compliance with the presumption of innocence, since pictures of his clients had circulated the national media and internet over several years, and that the witness has seen pictures of the accused before the identification process. As such; the identification process was illegal. The court invoked their earlier ruling. The accused protested, and were identified by their names. The accused left the courtroom and went back into the cage, shouting that Moroccan justice is a theater. The accused continued to protest for 30 minutes, as the presiding judge continued to record which of the detainees the witness identified.

The next witness to be questioned by the court **was Mr. Moulay Ali Amrani**. The witness identified himself as a soldier in the auxiliary forces. The witness declared that his section had been attacked by rocks, and that he had been hurt by a stone that hit him in the leg. He did not identify anyone.

The next witness to be questioned by the court was **Mr. Farouk Arika**. The witness declared that he belonged to the auxiliary forces, and that he had travelled from Smara to the camp. The witness declared that rocks were thrown, and that he saw half of his section fall to the ground. The witness declared that a Toyota drove towards them, and that they ran. A Jeep blocked the Toyota and the driver of the Toyota was arrested. The witness declared that he could identify the driver of the car. The defense was not allowed to bring forward the contradiction from a former witness, that claimed that the Toyota was stopped by the sand. The accused refused to come out of the glass-cage to be exposed to the witness.

The next to be questioned was **Mr. Zakaria Raiss**. The witness declared that he was ordered to maintain order, and to secure the transport without hinders. The witness declared that he saw people leaving the camp normally, but then the atmosphere changed. The witness declared that protesters outnumbered them, and that the demonstrators were throwing rocks, and approached them with swords and gas bombs. The witness declared that he ran to a bus, but the bus was hit by a car. The witness declared that the bus was ran into by a car, and that an ambulance transported him to the hospital. The witness declared that the protesters attacked the civil forces with intention to kill. The accused wanted to ask the witness questions,



but were not allowed to pose questions since the witness had not identified any of the accused.

The next witness to be questioned was **Mr. Hamid Omalish**. The witness declared that he was second degree gendarmerie officer. The witness explained that he was positioned with his team near El Aaiun. The witness explained that when they arrived, they saw Land rovers driving in different directions, and that the cars were driving aggressively. The witness explained that they advanced towards the camp, and saw that the camp was organized. The witness declared that his section started the intervention from the east side of the camp. The witness declared that he saw a Land rover, heard a scream, was hit by a car, and saw the car being stopped by the gendarmerie, and that the driver was arrested. The witness declared that he could identify the driver. The witness declared that he was transported in an ambulance, and saw other civil officers which were wounded.

Protest emerged within the court since several of the observers from the victim sides had sent threats towards the accused, and told that they were criminals and should be killed. Mr. Laaroussi demanded that the ones issuing the threats were transported out of the courtroom. The preceding judge demanded silence and continued the questioning. The accused refused to be exposed to the witness.

The next to be questioned was **Mr. Abdeljalil Laktari**. Mr. Laktari declared that he was part of a security group consisting of 80-90 persons, which oversaw the facilitation of the traffic. The witness declared that the protesters advanced towards them, and that they pulled back. The witness declared that the demonstrators threw rocks and were carrying knives, and were covering their faces. The witness declared that he was attacked and fell to the ground, and saw two other officers falling, and saw that they were being attacked by the masses. The witness declared that he was helped into an ambulance, and transported to the hospital.

The next to be questioned by the court was **Mr. Morad Haddi**. Mr. Haddi declared that he was part of the civil forces facilitating the traffic and transporting inhabitants from the camp to the city. The witness declared that they were surrounded by people, and that rocks were thrown at them. The witness declared that he ran, and

got into an ambulance. The witness declared that the demonstrators attacked with intent to kill.

### ***Day 18 – On the 16th of May at the Court of Appeal, Salé***

The first to be questioned by the court was **Mr. Mohamed Sahnoun**. Mr. Sahnoun declared that he was a driver of a lorry for the civil protection. The witness declared that his colleague was beaten, and that the lorry was set on fire by the demonstrators, and that they ran away, and saw a bus in full fire. The witness declared that the demonstrators said that they would kill them, that he was hit with a rock and fainted, and woke up in the hospital. The witness declared that the attackers were covering their faces, and that he could not identify them.

The second witness summoned to the court this day was **Mr. Brahim Hamya**, a support witness for Abdejalil Laaroussi. Mr. Hamya explained that Mr. Laaroussi had called him on Friday on the 13<sup>th</sup> of November, and wished to visit him in his family house in Boujador and drink tea with him. Mr. Hamya declared that several police men entered his house forcefully and pushed him up against the wall and asked him where Mr. Laaroussi was. The witness declared that the police officers hit him and checked his ID card. Mr. Hamya was standing back to back with Mr Laaroussi and was being hit by the police men. The witness explained that he was in shock and that he did not see clearly, but that they took Mr. Laaroussi and guided him out of the house, and into a black van. The witness explained that all the neighbors were in the street, and that he had went to the administration to find out what had happened to Mr. Laaroussi. The witness explained that he was in contact with the commander in chief of police on Boujador, and met with the governor of internal affairs. Mr. Hamya declared that he had expressed his concerns and told what happened, and asked the governor to investigate what had happened to Mr. Laaroussi since he was abducted by unknown people.

Protests emerged within the courtroom from the accused when the Civil party asked the witness what his address was in Boujador, claiming that the court had an obligation to protect all witnesses, and that the court was discriminating between the support witnesses and the witnesses for the prosecution office. The presiding judge

asked the detainees to remain quiet and respect the attorneys from the civil party. The detainees protested again and stated that the civil party has no competence to ask questions, or to be an active part in the proceedings, and commenced by chanting the national anthem of Western Sahara. The court adjourned for a break.

The court resumed by hearing from Mr. Cheik Banga. Mr. Banga declared that the accused had been prohibited from talking to their defense attorneys in the break by the police officers. The court commenced with questioning the witness, and when the testimony ended, resumed by summoning another witness. The detainees protested and tried to exit the courtroom shouting that the Moroccan judicial system is a theater, and the Moroccan judicial system is based upon racism. The court adjourned for a break so the detainees could discuss with their lawyers. The defendants were given the room to consult with their attorneys. Mr. Zeyou and Mr. Ettaki were escorted out of the courtroom, and were not given the opportunity to consult with their attorneys alongside with the rest of the group.

At the commencement of the proceedings, the defense attorneys declared that the detainees wished to withdraw themselves from the proceedings. The defense attorneys thereafter withdrew themselves as part of the defense, and explained that not only did they defend the detainees, they also defended their political beliefs, and that they therefore were obliged to follow the decision made by the accused. The French defense attorneys were not given the chance to explain their withdrawal from the defense team as did their colleagues. They urged the need to explain the withdrawal, but were expelled from the courtroom by the preceding judge without being given a chance to explain their reasons for withdrawal. The judge demanded a yes or no answer that was not given by the French attorneys who, then was forcefully pushed out of the courtroom by the security guards as ordered by the judge.

Again, protests emerged within the courtroom, and the detainees tried to leave the courtroom. The preceding judge declared that he would invoke art. 423 of the Moroccan penal code, which constitutes the competence of the court to appoint an attorney on one's behalf, if the defendants left the courtroom. The detainees left the courtroom and were transported to two cells in the court building. Mr. Zeyou and Mr. Ettaki which are released with time served declared that they, in solidarity with the

other detainees, wished to remain as silent observers within the courtroom, but that they did not wish legal counsel.

The court declared that the detainees were to be given legal counsel according to the law, as to uphold the principle of a fair trial. The preceding judge appointed four new lawyers for the detainees. Two of the four lawyers were present in the court, as they had belonged to the civil part of the court case. The ones present accepted the responsibility on the others behalf without talking to them.

The court thereafter commenced with questioning the next witness.

The first witness to be heard was **Mr. Abdeljalil Chakouch**. Mr. Chakouch declared that he was a member of the civil defense. The witness explained that they started the dismantlement on the 8<sup>th</sup> of November, and that he saw Landrovers driving around, and that he saw demonstrators firing up gas cylinders and throwing them. The witness declared that he could identify one attacker, but could not identify him amongst the accused. The witness declared that he had seen many wounded and corpses.

The newly appointed defense attorneys commenced without conferring with their clients or receiving the document file of the case, by questioning the witness. The questions asked by the new defense lawyers were in line with the questions raised by the civil party. The witness was escorted out.

The newly appointed attorneys then asked for time to prepare their defense (i.e. consult with their clients and evaluate the case documents) before next witness was brought forward. They also stated that they didn't have access to the case file. The court refused to adjourn the session. The General Attorney thereafter stated that the court should respond positively to the request of the defense. The civil party also urged that the right to prepare one's defense is absolute. The presiding judge stated that he disagreed with the request of the defense, but the presiding judge said that if the civil party requested an adjournment due to tiredness he would grant the request, but not for any other reason. The civil part thereafter claimed that the preceding judge should adjourn the sessions since the attorneys were exhausted. The preceding judge thereafter declared that he had decided to adjourn the sessions

since the attorneys were exhausted, but explicitly pointed out that this was the only reason and that the clerk should write that.

### ***DAY 19 – On the 17th of May at the Court of Appeal, Salé***

The court commenced by summoning the detainees to the courtroom. The court ordered the accused to appear in front of the court as stipulated in art. 423 of the Moroccan penal code. Mr. Ettaki and Mr. Zeyou which are released with time served showed two postersigns where it said that they were in silent protest. The court waited for the detainees for 20 minutes. The detainees asked for five minutes to deliberate. The court adjourned based on this request.

The court commenced and a security guard informed the court that the detainees refused to appear in front of the court without their handcuffs, i.e. they wanted to wear their handcuffs as to show that they were transported handcuffed and under protest from the prison to the court. The court decided that the detainees entering with handcuffs was against the law, and the guard was to go back and give the detainees a warning in accordance with art. 432 second paragraph. The detainees insisted on their position. The court ruled that the proceedings would commence without the detainees present, and that the clerk of the court was responsible for informing the detainees about the courts ruling.

The first witness to be summoned to court was **Mr. Ashraf Mchich**. Mr. Mchich declared that he was an officer in the civil forces, and that he was present in the city of El Aaiun at the 8<sup>th</sup> of November, and was ordered to facilitate the traffic. The witness explained that people were coming towards them, walking and in cars. The witness declared that the people had knives and were throwing rocks. The witness declared that he was hit by a rock, and fell to the ground, and was hit with knives in the back. The witness claimed that he passed out, and woke up from a coma on the following Saturday.

The next witness to be questioned was **Mr. Ahmed Hamidou**. Mr. Hamidou declared that he was part of the gendarmerie forces, and that he was a driver of a car. The witness explained that he met the citizens by the checkpoint of the

gendarmerie, and that he continued towards the camp and was surprised on his right side by demonstrators that ran towards them. The witness explained that he continued to drive and exited the car when he reached the camp, fell and passed out, and was taken to the hospital with a broken leg. The witness declared that he could not identify the attackers.

The next witness to be questioned was **Mr. Yames Hrouchi**. Mr. Hrouchi declared that he is unemployed and that he knew some of the defendants in the camp. The witness declared that all the inhabitants in El Aaiun knew the camp, and that they had social demands. The witness explained that to go to the camp, you had to go through the checkpoint of the police, and then the checkpoint of the gendarmerie, and then there was a checkpoint inside the camp where people were wearing green vests. The witness explained that, after five days, he brought his own tent to benefit from the social demands. The witness declared that the camp was divided into five sections, and that Mr. Laaroussi was in control of the security forces. The witness explained that the security forces kept order in the camp, and that food was distributed, and that there was a pharmacy and a place for speeches. The witness declared that he heard a speech by Mr. Zawi where Mr. Zawi urged the people to protest until death. The witness explained that he heard voices and cars the night before, and that he on the morning on the 8<sup>th</sup> of November woke up to chaos. The witness declared that he saw civil forces inside the camp, and people hitting them and driving Landrovers towards them. The witness declared that he saw Mr. Babait, Mr. Toubali, Mr. Laaroussi, Mr. Sbaai, Mr. Lemjeiyd and Mr. Boutinguiza, but ran away, and ran all the way to the city. The witness declared that he could identify them if he saw them, but that he could not describe them. Mr. Hrouchi could not remember the name of the neighborhood he lived in in the camp. The witness declared that he lived alone.

The prosecutor requested that the witness was to identify the detainees through exposing the witness to pictures of the accused, and requested that the other witnesses which declared that they could identify was to be shown the same pictures. The defense argued that one could not identify a person through a picture, but that the identification process had to be in person, as the pictures were not part of the evidence file. The defense further argued that the witness had never seen

anyone of the accused commit any crimes, and that an identification process therefore was unnecessary. The civil part requested that the witnesses was brought to the accused for the identification process, i.e. to the basement where the accused were being held. The court ruled in accordance with art. 422 which gives the court the right to manage the proceedings, that the pictures were to be given to the defense for review, and thereafter to be given to the witness for identification.

Mr. Zeyou and Mr. Ettaki were exposed to the witness within the courtroom, but were not identified. The court delivered the pictures of all the detainees under arrest to the witness, where the witness identified Mr. Babait, Mr. Daff, Mr. Zawi, Mr. Bourial, Mr. Toubali, Mr. Lemjeiyd, Mr. Sbaai, Mr. Laaroussi and Mr. Boutinguiza. The witness took out one after one picture, handed it to the judge, which handed the picture to the prosecution, and thereafter to the civil part and the defense, before portraying the picture in front of the camera. The court thereafter ruled that the pictures should be shown to all the observers, for them to check whether the pictures had any marks on them. After protest from the Civil part, the court ruled that all the pictures were to be portrayed on the screen, both front and back. The defense protested and demanded that the accused were informed about the courts latest decision, where the presiding judge reminded the court that it was the clerks responsibility to inform the detainees at the end of the day.

The defense asked the court to ask the witness what criminal offense each of the identified accused had committed, and reminded the court that the witness had not seen anyone of them kill or be violent. The judge stated that the witness said that he saw them attacking, where the defense stated that the judge was guiding the witness. The witness thereafter declared that Deich Daff registered him; Mr. Toubali hit with stones; Mr. Lemjeiyd was hitting; Mr. Laaroussi was chief of the security forces; Mr. Bourial was hitting; Mr. Zawi held a war speech; Mr. Babait was hitting; Mr. Sbaai was hitting; Mr. Boutinguiza was hitting.

The next witness to be questioned was **Mr. Redoam Lawini**. Mr. Lawini declared that he belonged to the gendarmerie forces, and that his section had been given orders to maintain order. The witness declared as when they advanced towards the camp, he saw demonstrators driving cars, carrying knives and gas cylinder, and that stones were falling like rain. The witness declared that he was hit with a rock in his



back and his leg, and that he ran from the scene. The witness declared that when he reached his vehicle, he saw three persons take a car, and another car hitting his colleague. The witness explained that he was transported to the hospital by helicopter, and that he was in a coma. The witness declared that he could not identify any of the attackers.

The next witness to be questioned was **Mr. Mohamed Dghigh**. The witness declared that he became part of the surveillance team two days before the event, and that his team was placed approximately 800 meters from the camp. The witness described that the dismantlement started normally on the 8<sup>th</sup> of November, until they saw fire and a bus that returned broken. The witness declared that his team was ordered to form two lines to help the bus. The witness declared that they moved forward and received rocks, and protected themselves with their shields and helmets, and that they eventually pulled back because they were outnumbered by the demonstrators. The witness explained that they ran back to their vehicles, and that one had already left when he arrived; and that he carried one of his colleagues that could not run, inside a car; and he placed his right foot on the vehicle; and that a demonstrator was hitting him and trying to make him fall. The witness declared that a car was following them, and that the car crashed into their vehicle; he fell; was attacked with swords; and his colleagues carried him into the car. The witness declared that he was taken to the hospital where he saw many wounded and corpses. The witness declared that he could identify the one hitting him whilst he was holding on the car. The witness was not able to identify any of the accused.

The next witness to appear was **Mr. Kamal Rouki**. Mr. Rouki declared that he was part of the civil defense, and that he witnessed two members of the civil defense being hit with stones and knives; and that they pulled them into their car; but that their car was stuck since a bus was blocking the road. The witness declared that more demonstrators came from the right hand side, and broke their windows; and that a demonstrator climbed on top of their car and hit him through the ceiling-window. The witness explained that they broke his right arm and hit him with a sword on his left arm. The witness explained that the demonstrators went to the left side of the car; that he opened the door and carried his colleague to another vehicle; whilst being hit by stones. The witness declared that they were evacuated in a helicopter



since the road was closed. The defense asked what the relevance for this witness was, when he could not identify any of the accused or testify to a crime that any of the accused had committed.

The court commenced by re-summoning the witnesses that the accused had refused to expose themselves to. The first to be summoned was **Mr. Fahrouka Reika**. Mr. Reika identified Mr. Boutinguiza when being exposed to the pictures of the accused. Mr. Reika declared that he was about 60% sure that it was Mr. Boutinguiza that hit him with a car, but that he was confused between 3 of the accused and could not be sure. The second to be summoned was **Mr. Raiss Zakaria**. The prosecutor insisted to give the witness sufficient time to review the pictures of the accused. Mr. Zakaria identified Mr. Zawi, Mr. Bourial, Mr. Lakfawni, Mr. Deich Daff and Mr. Asfari as people that travelled through the checkpoint on their way to the camp.

The next witness summoned was **Mr. Hamid Omalish**, he has declared that he could identify people, and identified Mohamed Embarec Lefkir and Mohamed Bani, but stating that they looked like the people he saw but he was not sure. After the judge repeated the question he said he was almost sure, 90% maybe and at the third time he was questioned stated that he was sure now. The witness said the he saw Mr. Mohamed Bani in the car running over someone and that he saw Mr. Mohamed Lefkir in the Gdeim Izik camp, he stated that there were others but he could not say who. The defense asked how he could change from i'm not sure, to i'm almost sure, and then 90% to certainty.

**Mr. Abdeljalil Chakouch** was the next witness to be called. He was told to say if he recognized Zeyou and Ettaki, but he could not identify them. Then he was shown the fotos of the detainees. He identified Mr. Mohamed Bourial and said that he did not see him do anything, he just saw him being arrested. He also identified Cheik Banga and again said he did not see him do anything, just being arrested in a place where he saw people with weapons.

The next witness was **Mr. Hossini Lemtioui**, he was given the pile of photographs from the accused and he identified: Mohamed Lefkir; Mohamed Bourial, Cheik Banga; Deich Daff; Naama Asfari, Ahmed Sbaai; Housein Azaoui, Abdeljalil Laaroussi. The defense asked if he saw any of these men commit a crime or

something suspicious but the judge said this was already answered, the defense should read the transcripts later. The witness said he saw some of them distributing weapons.

### ***DAY 20 – On the 18th of May at the Court of Appeal, Salé***

The court commenced by summoning the detainees to the courtroom. The court ordered the accused to appear in front of the court as stipulated in art. 423 of the Moroccan penal code. Mr. Ettaki and Mr. Zeyou that are released with time served, showed signs where it said that they were in silent protest. A security guard informed the court that the detainees refused to appear in front of the court without their handcuffs, i.e. they wanted to wear their handcuffs as to show that they were forced to be in the court house. The court decided that the detainees entering with handcuffs was against the law, and the guard was to go back and give the detainees a warning in accordance with art. 432 second paragraph. The detainees insisted on their position. The court ruled that the proceedings would commence without the detainees present, and that the clerk of the court was responsible for informing the detainees about the courts ruling.

The clerk informed the court that he had visited the detainees the night before to inform them about the conducted proceedings and the courts rulings. The detainees had declared that they did not wish to be a part of the court case. The accused had protested when he was trying to inform the detainees about that happened during the proceedings on the 17<sup>th</sup> of May, and that the clerk had been prohibited from informing the detainees about the courts decisions on the 17<sup>th</sup> of May. The court commenced without any further comments upon the subject.

The first witness that was summoned was **Mr. Hmaida Akrach**. Mr. Akrach declared that he was part of the civil defense, and that he on the 22<sup>nd</sup> of October had travelled to the camp to assist with medical care and transport to the hospital if necessary. The witness declared that they used to travel into the camp to pick up patients; and that they went to the checkpoint and found the patient in a tent close to the entrance. The witness declared that he witnessed irregular traffic the night prior to the

dismantlement; several cars travelled in and out of the camp. The witness declared that a helicopter told the inhabitants to leave the camp right after sunrise the morning of the 8<sup>th</sup> of November; and that people started to leave the premises; and that he saw Landrovers running into the gendarmerie forces. The witness explained that they had taken the gendarmerie officers to the hospital, but was attacked on their way back with stones; and that they turned and commenced towards the city and picked up two wounded members of the civil defense. The witness identified Mr. Zawi as one of the inhabitants in the camp, but declared that he had not seen Mr. Zawi on the 8<sup>th</sup> of November.

The court commenced by summoning the police officers which has written the police reports and the declarations of the accused. The police officers summoned to court are identified by the accused as the ones who tortured them. All the police officers were sworn in to testify in front of the court.

The first police officer to testify was **Mr. Mohssin Bou Khabza**. Mr. Khabza declared that the idea of creating a camp came from Mr. Zawi and Mr. Bourial, joined later by Mr. Daff and Mr. Lefkir, and then planed in Algeria under the surveillance of Mr. Asfari. The witness declared that the camp started with social demands, but that the inhabitants went under the control of the leaders, and was deceived by the ones in control. The witness declared that the placement of the camp was not sporadic, but carefully planned, and that it was constructed by Mr. Lakfawni, Mr. Asfari, Mr. Laaroussi, Mr. Bourial, Mr. Babait, Mr. Lefkir and Mr. Daff. The witness declared that Mr. Laaroussi was in charge of the security forces, and that the security forces turned people with social demands into hostages. Mr. Lakfawni was in charge of a checkpoint. Mr. Asfari gave the orders. The witness stated that the camp was under the control of people with criminal records, in particular Mr. Babait. The witness declared that the dialogue committee deceived the inhabitants, and did not inform the inhabitants of the negotiations; that Mr. Toubali, Mr, Daff, Mr. Bourial, Mr. Zawi gave the people an illusion that their demands would be met. The forces were therefore instructed to evacuate the people. The witness explained that they divided into four groups; on to the south, one to the north, on to the east and one to the west. The mission was to help the inhabitants. At 6:30 am a helicopter informed the people to evacuate, and informed the people of the negotiations with the Dialogue

committee and the government; that their demands were understood and would be met, and that there was no need to stay in the camp. The witness declared that the evacuation was normal; but then the process shifted; and that the forces saw irregular movements, and that they understood that people were stopped from leaving the camp; and that they understood that the public forces were to be attacked. The witness explained that they commenced towards the camp, and arrested people throwing rocks and carrying swords; and delivered them to the public authorities. The witness declared that they saw Naama Asfari giving orders; and that they arrested him around 9:30 am, 300 meters away from the tent of the dialogue committee. The witness declared that they arrested 67 persons, and among them Mr. Asfari, Mr. Banga, Mr. Bourial, Mr. Ettaki, Mr. Ayoubi, Mr. Zawi and Mr. Bani. The witness explained that they searched three tents that Mr. Asfari used to be in; the tent for the dialogue committee, the tent with the international observers, and the tent of Mr. Asfari himself. The witness declared that they found a hole in the ground, where they discovered a plastic bag containing weapons (i.e. four firearms, two machetes, two swords, and one knife) and money (i.e. 500 euro, 30 000 dollars, 3000 Algerian Dinars and 600 Dirham). The witness declared that Mr. Asfari said that the belongings in the plastic bag belonged to him, and that he had told the inhabitants to attack the civil forces. The witness explained that they transported the detainees to a secure location outside of the city to commence the questioning and write the police reports, and gave them food and water. The witness declared that this was an unusual mission with only casualties from the public forces, and none from the public. The witness insisted that none of the people under arrest had underwent inhumane treatment.

Mr. Ettaki and Mr. Zeyou stood up and tried to leave the courtroom. Mr. Zeyou declared that he could not sit her and listen to a man that had tortured him for five days. Mr. Zeyou and Mr. Ettaki left the courtroom.

The witness declared that the investigation had been conducted under normal circumstances, and that all the rights of the detainees had been preserved. The witness declared that the detainees signed the police reports after reading with fingerprint or signature. The witness declared that the investigation process was conducted with four investigation groups, and that he was present during the

questioning of all the 67 detainees. The witness declared that the detainees were proud of their declarations, that they had no regret, and told willingly. The witness declared that the detention was prolonged on the 10<sup>th</sup> of November, and that six of the detainees were transported by plane. The witness declared that he could not talk about the treatment of all the 67 detainees, but that all were treated well and could sleep. The court refused to ask the witness whether the questioning was filmed. The witness claimed that the detainees had scratches and wounds upon arrest. The witness was exposed to the pictures of the detainees. The witness identified all the detainees, but did not identify Mr. Zeyou and Mr. Ettaki which had left the courtroom and could not be exposed to the witness.

The civil part representing the victims requested the court to summon the detainees to the court to face the testimony. The court denied the request.

The second police officer to testify was **Mr. Yousef Raiss**. Mr. Raiss declared that he belonged to the group advancing towards the camp from the north. The witness declared that the evacuation was normal the first hour, but then cars attacked them, and that they arrested Mr. Ayoubi as one of the drivers. The witness declared that they arrested in total 24. The witness explained that they arrested Mr. Banga which had attacked with a sword but had thrown the sword away; the same went for Mr. Ettaki and Mr. Daff. The witness stated that there was no blood, but that they saw them carrying knives. The witness declared that they later learned that Mr. Laaroussi was the driver of the car, which they failed to arrest at the scene of the crime. The witness declared that the operation lasted until 12am, and that they gathered the detainees (in total 67), and travelled towards El Aaiun and to the regional headquarter; and started the identification process at 2:30 am until 8pm. The witness declared that they organized themselves into four groups, and that his group questioned in total 28 detainees. The witness declared that none of the people under arrest was tortured, and that all read their police reports before signing, and that the detainees had chosen whether to sign with fingerprint or signature.

The third police officer that was questioned was **Mr. Said Ben Sghir**. Mr. Sghir said that at 6.30 am they were instructed to dismantle the camp and people had one hour to leave the camp. He declared that he was placed on the east side of the camp, and that his group arrested Mr. Bani as a driver of a car attacking the public forces. The

witness declared that the people were stopped from leaving the camp, and that their mission was to free the hostages. The witness declared that some attacked with cars, whilst some attacked with knives and stones. The witness declared that he could identify Mr. Daff, Mr. Zawi and Mr. El Bakay among the attackers, and Mr. El Bakay, Mr. Larrousi and Mr. Zawi as leaders within the camp. The witness declared that the interrogations were conducted in El Aaiun, and by splitting up in groups and tasks; and that the detainees were questioned in the regional headquarter.

The fourth police officer that was questioned was **Mr. Abdel Hamid Elmaghani**. The witness declared that he was positioned on the east side; that he saw Mr. Toubali and Mr. Bourial giving orders; and that the inhabitants were forming a line to hinder people from leaving the camp. The witness stated that Mr. Bourial was wearing a yellow vest, and that Mr. Bourial was attacking with stones. The witness declared that Mr. Babait was throwing rocks. The witness declared that the interrogation was performed under “the best conditions”. The witness could not describe what he meant by “the best conditions”.

The fifth police officer to be questioned was **Mr. Abde Rahmon Elwazna**. **Mr. Elwazna has been identified as the one conducting and managing the torture both within the police head quarter and the prison.** Mr. Elwazna declared that his section commenced the dismantlement of the camp around 6:30am. The witness declared that landrovers were preventing the inhabitants from leaving the camp; and explained that his section was forced to pull back because they were being attacked with stones. The witness declared that they arrested Mr. Ettaki after he attacked a member of the gendarmerie. The witness declared that Mr. Laaroussi and Mr. Lakfawni were driving a car, and that Mr. Laaroussi did not cover his face and was wearing a military vest and fled towards El Aaiun. He said that he knew Laaroussi well. When asked about the alleged torture, the witness declared that the questioning was conducted by dividing into groups; that he had a superior; and that he wanted to face everyone of them that claimed that he tortured them. The witness claimed that he investigated Mr. Laaroussi in the police head quarter, but that it is impossible to torture someone inside a police head quarter. The witness declared that he is commander of a group, and does not travel to prisons to torture people. The witness declared that he saw no signs of torture, and that all rights were

preserved. The witness declared that he did not interrogate Mr. Asfari, but that he saw Mr. Asfari entering the camp around midnight on the 7<sup>th</sup> of November.

The court ruled that they had heard enough from the police officers conducting the police reports, and ended the hearing of the witnesses.

The prosecution requested to present new evidence into the case file, i.e. two new reports. The prosecution presented a report concerning the movements of the different detainees which had travelled to Algeria in October and November 2010 (i.e. concerning Mr. Asfari, Mr. Dah, Mr. Banga, Mr. Brahim, Mr. Sbaai, Mr. Lefkir, Mr. Lemjeyid and Mr. Lakfawni). The prosecution presented a second report concerning transcription of phone calls. The prosecution informed the court that the prosecutor of El Aaiun had issued a warrant on the 12<sup>th</sup> of October 2010 for surveillance and tapping of the phone of Mr. Asfari, and that this was new evidence for the prosecutor in Rabat. The warrant concerned tapping of the phones of Mr. Asfari, Mr. Sbaai, Mr. Lakfawni, Mr. Bourial, Mr. Hassan Dah, and Mr. Deich Daff. The prosecutor declared that phone calls were surveilled, and that the transcriptions of the phone calls prove that the Gdeim Izik camp was planned in Algeria during meetings with the Polisario Front. The prosecutor stated that Mr. Asfari and Mr. Sbaai served as leaders, and that tasks were divided between the participants, and that the mission was to destabilize the southern province of the Kingdom of Morocco. The prosecutor read from the phone records, and mentioned several phone calls between Naama Asfari and members of the Polisario Front (Omar Bulsan and Mohamed Dhalil) and conversations mentioned with the special envoy of the General Secretary of United Nations, Christopher Ross.

The defense demanded that the new evidence had to be implemented into the case file in consistence with the criminal procedural regulations; and stated that the reports were not concealed, and that the chain of custody was absent. The defense declared that the court did not know who wrote the transcriptions and that the court did not have access to the tapes. The defense declared that the original source (the tapes) of the report upon the phone calls had to be presented. The defense urged that the court could not make a decision upon admitting new evidence into the case file without the detainees present in the courtroom. The defense also argued that the evidence was seven years old, and thus impossible for the accused to meet and to



defend themselves against; and the defense asked why the evidence had not been presented on an earlier stage to the accused; and urged that the judgement could not be regarded as correct if such evidence was admitted into the case file. The defense pointed out that this case was transmitted to the civil court by the constitutional court, and that this new evidence had neither been presented during the investigation phase, at the military court nor to the constitutional court; and that this transmission prohibited the court from admitting new evidence into the case file. The defense further argued that the new evidence (the transcripts of the phone calls) could not be admitted to the case file as they were not relevant to the accusations placed forward by the prosecution office. The civil part argued for the admittance of both the new reports into the case file. **The court ruled to postpone the decision to a later time**, and to expose the reports to the detainees. The defense urged that the accused should be present in the courtroom. The court refused to bring them by force.

The prosecution requested to admit photos of Mr. Banga wearing glasses and with a beard. The photos were admitted into the case file.

The prosecution requested to show a **movie** to the court as part of the evidence in the case. The court ruled to screen the film to the courtroom. The film showed; a helicopter flying over the camp; people with scarfs running on the ground; cars driving; people putting on yellow vests; people leaving the camp; families entering buses; ambulances; cars carrying people; people throwing rocks; the gendarmerie destroying tents without checking if there was somebody inside; water cannons targeting the inhabitants; people attacking a car and lighting it on fire; a red car with a circle around; a person hanging on a car; inhabitants running towards the civil forces; two circles portraying an attacker and a victim; three circles and naming of Mr. Toubali, Mr. Khouna and Mr. Bourial without possible facial recognition and no identity of a crime; circle and naming of Mr. Boutinguiza without possible facial recognition and no identity of a crime; portraying a pile of something that cannot be recognized and circle and naming of Mr. Babait and Mr. Khadda without possible facial recognition but with identity of a crime throwing stones; portraying of gas bombs and people throwing rocks; images of wounded gendarmerie officials; wounded gendarmerie officials carried into the back of a truck; a man with a wound



in his head; a man lying on the ground; video of Mr. Bani arrested; Mr. Bani is dragged out of a car with broken windows and a head injury; the video portrays a jeep; victims are carried to an ambulance; people running on the ground; broken tents; knives; portraying Mr. Bourial on the ground with handcuffs, he looks dizzy and unwell; a bus in the middle of the road; an ambulance driving on the road; people running; people attacking the ambulance with sticks; people attacking a fire truck with stones; a red car that is tipped over in the middle of the road; a bus on fire; gendarmerie personnel; people walking alongside the road; a body lying in the middle of the road; two cars driving and people running; two corpses and a man standing over them (the man was wearing a pink jacket, a black scarf and blue pants); portraying the protests in the city; cars on fire in front of a building; people running in the streets; a body on the ground and a man standing over him with a knife; a man beaten lying on the ground; speak from the camp held by Mr. Zawi; portraying Mr. Thalil standing next to a truck.

The prosecutor declared that the movie is proof that the inhabitants in the camp received military training. The movie commenced by portraying pictures. The court ordered the prosecutor to read the text on the screen. The first picture showed the Mr. Sbaai and Mr. Asfari with the military minister of Polisario in the Tindouf camp. The second picture portrayed Mr. Asfari and Mr. Lemjeyid with members of the Polisario. The third picture portrayed Mr. Thalil and Mr. Banga carrying firearms with members of the Polisario Front in the Tindouf camps. The fourth picture portrayed Mr. Banga and Mr. Ismaili with the military minister where Mr. Banga had a light beard. The fifth picture portrayed Mr. Sbaai with members from the Polisario.

The movie commenced by portraying details about five accused identified in the movie. The first accused identified was Mr. Mohamed Bani; portraying wheel marks on the ground, and marks on the car, a man on the ground, and pieces of the glass shield, but not portraying the incident or a crime committed; Mr. Bani being dragged out of a car by multiple gendarmerie officials; and escorted away. The second accused identified in the movie was Mohamed Bourial; portraying an image of a man in a yellow scarf with a circle around him, not able to identify any crimes committed; Mr. Bourial sitting on the ground next to a fountain looking dizzy and unwell; Mr. Bourial in a car and being asked his name, he answers. The third to be identified

was Mr. Babait Mohamed Khouna; circle around a man which is throwing rocks; not possible to identify the man. The fourth to be identified was Mr. Boutinguiza; a circle around a man carrying weapons, and portrayed standing with Mr. Bourial allegedly giving instructions; wearing white t-shirt, jeans, grey jacket and black scarf; not possible to identify any crime committed, nor identify the face. The fifth to be identified was Mr. Toubali; circle around a man wearing beige jeans, white t-shirt and black jacket; not possible to identify any crimes committed nor identify Mr. Toubali as the man encircled.

The court commenced by reviewing the medical expertise. The court requested a statement from the defence attorneys on the already conducted medical examinations. The defense requested more time to evaluate the reports from the medical examinations, as they had received the case documents the same morning, and had prioritized reviewing other elements of the case.

The civil part declared that the medical examinations had followed all the necessary guidelines stipulated in the national law, and international law, and that an independent evaluation or examination would be a breach of Morocco's sovereignty, and that no other country in the world would agree to it. The civil party stated that the competence lies with the national judicial system, and that an independent examination would be a violation of the treaty of Milano. The civil party furthermore requested the court to accept the defenses request for a postponement.

After an adjournment, the court reminded the parties that the accused and the defense already had read and evaluated the medical examinations, and that the accused did not need to be re-told. The court rejected the request upon an independent medical examination. The court approved the request upon postponement and adjourned the session until the 5<sup>th</sup> of June 2017.

### ***DAY 21 – On the 5th of June at the Court of Appeal, Salé***

The proceedings started with a delay of over 3 hours at 13h45. The judge informed that the delay was due to the fact that the accused in detention didn't want to leave their cells, but then he corrected himself saying that they were sleeping due to

Ramadan and therefore the court gave them time to wake up and wash themselves. The accused were transported to the courthouse but refused to appear in front of the court.

The accused Mohamed Bourial, Mohamed Bani, Housseun Zawi and El Bachir Boutanguiza was sick, and were not transported to the courthouse. Mr. Mohamed Ayoubi was absent and his file was postponed to the 4th of July.

The proceedings initiated with the defence pointing out several cases of the medical expertise where the conclusions of the reports did not correspond to the findings and observations made by the different doctors. The cases highlighted and that were presented, as examples were that of Mr. Cheik Banga and Mr. Mohamed Bourial.

Mr. Banga's head injury was not attributed to torture, but was not explained otherwise, Mr. Bourial has scars from handcuffs, where the conclusion was that the scars had nothing to do with torture. The defence declared that this constituted a contradiction. The defence also pointed out that new photos of the accused when they arrived at prison were not analysed.

The defence also stated that the medical reports were not clear about the origin of the scars and injuries, and that there is no explanation into how or why they were provoked.

The defence asked the court to call new independent experts to make an additional expertise and for the doctors that were the authors of the present expertise to come to court to clarify doubts.

The defence also stated that the expertise was not in accordance with the Istanbul protocol.

The general attorney declared that expertise was done in accordance with the Istanbul protocol and that he did not see the need for any additional expertise.

After a short break the panel of judges decided to summon the 3 doctors who wrote the reports for the 6 of June at 10am. but refused an additional expertise.

The proceedings were adjourned after one hour to the next morning at 10am.

After leaving the court house we received a communiqué from the Committee of the families of the prisoners informing that the prisoners refused to leave their cells to go to court and that the guards in the prison, and after orders of the prison director had forced the detainees to leave their cell and transported them to the courthouse. According to the statement the prisoners were beaten, slapped, kicked and insulted resulting in several injuries of Mohamed Haddi, Hassan Dah, Sidi Abdallahi Abahah, Cheik Banga, Ahmed Sbaai, Mohamed Tahlil, Abdallahi Lakfawni, Mohamed Khouna Babet, Sidahmed Lemjeyid, Mohamed Mbarek Lefkir and Abdeljalil Laaroussi.

### ***DAY 22 – On the 6th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court case commenced by **summoning the doctors which conducted the medical examinations** to be questioned by the court. The medical examinations ordered by the court was conducted by Pr. M. El Yaacoubi Moradh, Dr. Chakib Bouhelal and Pr. Fadila Ait Boughima. Pr. Fadila Ait Boughima was the one of the doctors who was questioned, as she was the coordinator for the expertise.

Fadila Ait Boughima stated that the examination was conducted for 16 of the detainees, whilst 5 detainees refused to undergo the examination on the basis that they requested an independent examination. The doctor stated that the appointed doctors are specialized in each of their field (i.e. forensics, psychiatry, bones) and that each of the doctors conducted private interviews, and the doctor stated that both the confidentiality and the dignity of the patients was respected. The doctor stated that she met the detainees again in the prison of El Arjat, and that the expertise was conducted in line with the Istanbul Protocol. The doctor stated that the Istanbul Protocol is an instrument to be used when torture allegations is presented, and when evaluating whether a person has been tortured. The doctor stated that the examination should evaluate whether the alleged torture match the scars and marks found on the body of the person alleging the torture. The doctor stated that related to

the examination of Mr. Banga, none of the scars or marks on his body matched the alleged torture, and that pain and sufferance are subjective, and that it is normal for a prisoner to feel depressed and therefore feel pain. As for the case of Mr. Banga, the doctor concluded that the scars did not match the alleged torture, and that the doctor could not conclude with certainty that torture was the reason for the marks on the body of Mr. Banga, but that it was a possibility that the marks were linked to the alleged torture. As for Mr. Daff and Mr. Bani, which alleged torture and loss of hearing after the torture inflicted on them, the doctor stated that the loss of hearing was due to an ear infection and age. The doctor said that she could therefore not link the scars and injuries to torture, as there existed other possible explanations for the injuries and scars. The defence wanted the doctor to explain what she meant with a “weak probability” since the likelihood that torture had occurred, clearly existed. The doctor could not give a percentage of the probability, and stated that the probability was deemed as weak, as there existed numerous possible causes, as the scars could be a result from accidents from the childhood. The defence was prohibited from asking further questions about the probability for torture. The doctor stated that it was impossible to find out the exact time a scar or mark occurred, i.e. how old a scar or a mark is.

The court commenced with the **closing arguments from the civil party**. The president of the bar, belonging to the civil part, commenced his pleadings by citing two verses from the Koran, as this case was nothing else but a murder case. The attorney stated that **10 members** of the law enforcement were slaughtered, when they carried no weapons. The attorney stated that the killings are proven, and that we are dealing with a group of people which planned and committed these crimes. The attorney described the case in 7 steps; first step was the planning, second step was the execution of the plan with foreigners abroad and where 11 of the detainees received financial aid; third step was mobilizing when the detainees toured the region and recruiting people to the camp by lying to them and claiming that the camp had social demands; fourth phase was to prolong the negotiations with the government and hinder the settlement of an agreement; fifth phase was organizing of armed forces; sixth phase was to turn the inhabitants into soldiers, and to give them weapons; the seventh phase was the dismantlement, where the inhabitants attacked and the soldiers stopped people from leaving.

The attorney claimed that one had to evaluate the facts of the case different than what was done at the Military Court, and that the court had to prove the role of every one of the detainees. The attorney thereafter divided the accused into three groups; leaders, commanders and executors. The attorney described Mr. Asfari, Mr. Lefkir, Mr. Bourial, Mr. Zeyou, Mr. Deich and Mr. Zawi as leaders. The attorney described Mr. Laaroussi, Mr. Isamili, Mr. Toubali, Mr. Sbaai, Mr. Abahah, Mr. Haddi, Mr. Lakfawni, Mr. Babait and Mr. Boutinguiza as commanders/field leaders which controlled their own section or squads within the camp. The attorney described Mr. Bani, Mr. Banga, Mr. Thalil, Mr. Ayoubi, Mr. Ettaki, Mr. El Bachir, Mr. Hassan Dah, Mr. Lemjeiyd and Mr. El Bakay as the executors/soldiers, i.e. the ones carrying out the direct orders from the leaders and the commanders.

The attorney declared that Mr. Asfari was the main leader in the camp; and that he had contact with enemies of the state; had weapons and received financial aid. This was supported by 18 other declarations given by the detainees, and that the declarations of the other detainees proved that the declaration of Mr. Asfari was the truth. The attorney stated that Mr. Asfari as the leader of the camp was responsible for what had happened and resulted from the prior agreement. The attorney declared that it was clear that an agreement was set into place, where the camp was organized, and supported by the declaration of Mr. Asfari in the military camp where he stated that he only let international observers and press enter the camp, and that Mr. Asfari was determined that the whole world should hear the protest from the Saharawi People. The attorney stated he was shocked when the detainees had entered the room chanting slogans, and that this statement was a means of justifying their actions; and thus, proved that the accused were guilty. The attorney claimed that the information witnesses were not credible since they were the cousins of Mr. Asfari, and that Mr. Asfari was guilty even if he had been in El Aaiun on the 7<sup>th</sup> and 8<sup>th</sup> of November; since he had planned the armed attack and the man slaughter; travelled to Algeria to conspire against his country; and thus, was the sole responsible for what happened. The attorney invoked the phone recordings as evidence, as the attorney stated that Mr. Asfari had conversation with the minister of defence of Polisario.

The attorney commenced by describing the role of each of the detainees. He stated that Mr. Lefkir was the brain behind the camp, and that he had ordered the security forces in the camp to attack; and distributed weapons; and attacked with cars and knives. The attorney supported the claims with the declarations given by Mr. Lefkir to the police, and to the investigative judge, and the witnesses which identified Mr. Lefkir; and by the declarations given by the other accused; and the phone recordings. The next detainee which were claimed to be a leader in the camp was Mr. Bourial, where the attorney stated that one could clearly see in the movie that Mr. Bourial was arrested at the scene of the crime; and that Mr. Bourial together with the other leaders had been in conspiracy to attack the integrity of the kingdom of Morocco in favour of other interests; and that Mr. Bourial had given a political speech to defend his actions against national affairs. The attorney declared that the phone recordings proved that Mr. Bourial had taken orders from foreign parties; and that the cars and the weapons came from foreign parties. The fourth accused to be proclaimed as a leader was Mr. Zeyou, where the attorney stated that he organized them after their ranks and how they had been paid. The attorney stated that Mr. Zeyou was the adviser of Mr. Asfari when collaborating with foreign parties. The attorney stated that the leaders of the camp had planned the attack, and that the leaders in the camp had committed terrorism; and that this group invented terrorist attacks with cars; which later have been seen and reproduced in Nice, London and Manchester. The fifth leader was Mr. Daff which has declared that he was part of the group which established the protest camp; and that Mr. Daff had declared state of emergency and declared war; to use all means to win over the attackers. The attorney declared that Mr. Daff had testified to running over officials with his car; and that the declarations of the different detainees confirmed the content of the other and vice versa; and that this proved that the police report was the truth; supported by the witnesses which identified Mr. Daff. The sixth leader, Mr. Zawi, had been given orders within the camp to attack the law enforcement, after supervision of Mr. Asfari.

The first commander described was Mr. Laaroussi, where the attorney stated that Mr. Laaroussi had given order to attack until death; and that he constructed a human chain to prevent the law enforcement from entering the camp; and drove a car and attacked. This was proven by the declarations given by Mr. Laaroussi, and supported by the declarations given by the other detainees; and supported by the declaration



given to the investigative judge where Mr. Laaroussi stated that the declaration given to the police was the truth and given without any pressure; and the identification by the witnesses. The attorney stated that the fact that the witnesses had identified the accused so swiftly and efficient, proved that the identification was not instructed or in any means influenced. The second captain was Mr. Babait where the attorney claimed that Mr. Babait was identified in the movie, and that Mr. Babait had convinced Mr. El Bakay to attack; and that everything was proven by the declarations given to the police and supported by the declaration given to the investigative judge where Mr. Babait denied any pressure. The third commander was Mr. Boutinguiza, where the attorney declared that Mr. Boutinguiza has dispatched his men to attack the law enforcement forces, and that Mr. Boutinguiza was together with Mr. Bourial, as proclaimed in the movie, at the crime scene giving orders and throwing stones. The attorney stated that the role of Mr. Boutinguiza was proven by the declarations, and the declarations of the other detainees; the trip to Algeria and his contact with foreign parties, in particular with Mr. Bulsan. The fourth commander proclaimed was Mr. Haddi, which was also proclaimed as one of the architects behind the camp; and which planned to defend the camp in case the authorities were to attack. The attorney claimed that Mr. Haddi had given his declarations voluntarily, as stated in front of the investigative judge, and that the declarations given by the other accused confirmed the declaration of Mr. Haddi. The fifth commander described was Mr. Abahah, which was responsible for a security squad which he had organized, armed and told to attack the law enforcement with cars. The attorney stated that the declaration given by Mr. Abahah to the police was the truth; and supported by the declaration given to the investigative judge and by the other detainees; and that the declaration of Mr. Abahah in this court confirmed that he was trying to justify his actions, and not to declare innocent. The sixth commander proclaimed, Mr. Sbaai, had according to the attorney attacked wounded public officials, and dragged them into a tent and stoned them. The actions of Mr. Sbaai were confirmed by his declarations to both the police and the investigative judge; the declarations of the other accused; and by witnesses which had witnessed the violence. The attorney declared that Mr. Sbaai is dangerous and could have been a leader, and that Mr. Sbaai was in contact with Mr. Bulsan in Polisario. The seventh commander described was Mr. Toubali where the attorney declared that Mr. Toubali



had lied about being in the hospital, and that Mr. Toubali had been in the camp with Mr. Lemjeiyd, and that Mr Toubali had been throwing rocks; and that he was arrested at the scene of the crime. The eight commander described was Mr. Ismaili which according to the attorney had carried a big knife and killed numerous officials and wounded countless; and that this was supported by the declaration given by Mr. Ismaili and the declarations of the other accused. The attorney asked the court whether it could imagine that the prison administration would give the gendarmerie a room to torture Mr. Ismaili within the prison.

The proceedings were adjourned until the 7<sup>th</sup> of June.

### ***DAY 23 – On the 7th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The proceedings recommenced with the closing arguments from the president of the bar. The attorney commenced by describing the executors, which he declared were the ones who executed the orders given by the leaders and the commanders. The attorney declared that Mr. Bani had a role as an executor, and that it was proven beyond doubt that Mr. Bani attacked the law enforcement with his car, and that he was arrested on the scene of the crime. The attorney declared that this was proven by the movie, the declaration of Mr. Bani which told that Mr. Bourial had given him orders the prior evening. The attorney declared that the movie was blatant proof to the crime, and that this proved that the declaration given to the police was the truth; and that this logic had to be applied to all the declarations given by the accused; and that the declarations given by the other accused further supported the statement of Mr. Bani. Mr. Banga was described as a dangerous soldier; and that he was given orders to attack, and arrested at the scene of the crime. The third executor described was Mr. Thalil which has declared to the police that he on the prior evening received orders, and that he together with Mr. Hassan Dah and Mr. El Bachir made bombs and prepared traps; and that he threw the bombs towards the civil forces and drove

a car together with Mr. Laaroussi; and that this declaration was confirmed by the declaration of Mr. Hassan Dah and Mr. El Bachir, and supported by this statement to the investigative judge where he didn't alleged the torture, and his trip to Algeria. The role of Mr. Ayoubi was not described since Mr. Ayoubi is absent. The attorney stated further that Mr. Ettaki had controlled people and killed a member of the civil forces with a knife. The attorney stated that the declarations made by Mr. Ettaki was the truth, and supported by the declarations given to the investigative judge. Concerning Mr. El Bachir Khadda the attorney pleaded that Mr. El Bachir was a soldier which had attacked fiercely, and that he threw bombs. The attorney stated that Mr. El Bachir had tried to justify his actions by giving a political speech, and that this action meant that he was guilty. The attorney declared that Mr. Hassan Dah was a member of the squad lead by Mr. Bourial, and coordinated with western parties outside of the country. On the 8<sup>th</sup> of November, Mr. Dah and the rest of his team made gas bombs and traps and positioned themselves ready to attack. The declarations of Mr. Thalil and Mr. Khadda prove that the declaration made by Mr. Dah is the truth. Mr. Dah further stated in front of the investigative judge that he gave his declarations voluntary, and without any form of pressure. The civil party places Mr. Hassan Dah in the category of the "executors", but he was also in coordination with members of the Polisario, in particular with Mr. Bulsan, and Mr. Hassan Dah used to visit Algeria. The attorney described the role of Mr. Lemjeiyd as a soldier which distributed weapons; that he attacked with cars; and he was happy and pleased with the attack; "I felt profound gratification when stabbing" the attorney quoted from the declaration. The actions were proven by the declaration given by Mr. Lemjeiyd, and supported by the declarations given by the other accused. The last described was the role of Mr. El Bakay, which had driven a car and attacked a line in the civil forces; which was proven by the declarations given by Mr. El Bakay and supported by the declarations given by the other accused.

In conclusion, the president of the bar made several deductions; that the camp was planned by the accused; mobilized people by telling them that the camp had social demands which was a lie; that a delegation travelled to Algeria and met with members from the Algerian regime and Polisario; planned to occupy a part of the country to destabilize the region; the camp was financed by means from abroad; the defendants had contact with separatist outside Morocco and received instructions;

the dialogue committee was under the control of the leaders, and the negotiations were not supposed to reach an agreement; tried to threaten the state security by stalling the negotiations; the accused are convinced of their right to resist and as their role as separatists; confirms that we are dealing with accused which meant to threaten the state security; the slogans are the motive for the crime; they claim that Western Sahara is occupied and that they therefore had the right to attack; the inhabitants of the camp had weapons; planned the attack with forming security squads; gave speeches to mobilize and make the people resist; the detainees fled from the court when the evidence was blatant and undisputable; the movie is clear and identifies 7 of the accused; the reports and the minutes from the police, gendarmerie and investigative judge has full credibility; and shows the truth; the declaration in front of the investigative judge proves that the accused were not tortured or subjected to pressure; and that the declarations are supported by many facts in the case; and the attorney concluded that all the evidence was incriminating.

The attorney thereafter placed forward a request to re-characterize the court case and adapt the charges; the attorney invoked that the crimes committed were an attempt to threaten the state security by mass killings, and to affect the internal security of the state; and the attorney declared that “we are talking about a well planned operation for mass killing of the law enforcement”. The attorney invoked that the court should change the charges to the articles upon domestic terrorism; art. 201, 202, 203, 204, 205, 208 of the Moroccan criminal code. Concerning whether the court had the competence to alter the charges, the attorney declared that the court has the liberty to evaluate the case on its own basis. The civil party submitted a written request upon the altering of the charges.

The second attorney for the civil party was thereafter called upon to give his final pleadings to the court. The attorney commenced by stating that this court case did not entail a political crime, or could be described as a political trial. The attorney commenced with commenting on the fourth Geneva Convention, and stated that the court could not rule upon the statement given by the accused that they come from an occupied territory and are separatists. The attorney criticized the Military court, and asked the court to characterize the crime in a way that they would be able to sentence the culprits; and give new qualities to the accusations. The attorney

invoked that the court could sentence the accused as contributors to the crime. The attorney urged that riots leading to violence against law enforcement are a crime, and that the leaders of the protest are sentenced as if they committed the crime themselves. According to art. 173 the attorney invoked, the leaders can be sentenced even though they weren't at the crime scene; where the person is asked about their actions leading to the crime. The defendants must thus be sentenced for their planning of the events; and thus as if they committed the crime themselves. The attorney thereafter commenced by commenting on the evidence file, and claimed that the phone records were legitimate evidence, and proven by the fact that the number given by Mr. Lefkir matched the number on the reports; claimed that the defendants had given contradictions when alleging the torture and that this proved that they weren't tortured.

The third attorney for the civil party invoked that this was a fair trial; and that the detainees do not want to take responsibility for what happened in the Gdeim Izik camp. The attorney claimed that the scene of the crime had been proven during the questioning made by this court, and that the witnesses for the defense had not given any useful elements to the court. The attorney thereafter claimed that the detainees had withdrew themselves from the proceedings since the evidence against them was indisputable; and that they are disappointed and ashamed because their plan did not work. The attorney also stated that the court had an obligation to re-characterize the case, because the crime beforehand was a crime against the public order and construction of a criminal gang, and threats to the internal security of the country. The attorney claimed that the case had changed; the court was handling new facts which were not laid out to the Supreme court, and that the court therefore had to re-characterize.

The fourth attorney from the civil party stated that he was disgusted by the detainees attempt to cover their actions by stating that they are political activists and alleging torture. The attorney stated that the families of the victims can not understand how their country can be proclaimed as a country that tortures, and that the CAT-decision had no basis in the reality, and with no evidence. The attorney stated that Mr. Asfari alleged the torture three years after the alleged torture happened, and that he

refused to contribute to examinations done by Morocco; and the civil party asked for this case to be a case against the defendants, and not the kingdom of Morocco.

The fifth attorney, a French attorney pleading on behalf of the victims, stated that the evidence against the accused was blatant, and that their only defense was stating that they have been tortured, and that this was a political trial, and that the defense had used every tactic, from hunger strike to withdrawal, to hide the manslaughter. The French attorney claimed that it is obvious that the Geneva Convention is not meant to be applied, whereas it is obvious that Morocco is not an occupying country and that Western Sahara has never been a state; but that it was clear that Spain was occupying; and that the politics of Polisario were merely dangerous ideas.

The sixth attorney urged that it was time for the victims to see their killers condemned; and that the detainees were collaborating with international observers; but that their country stood with the victims and would protect their legacy. The attorney stated that these were people who used violence to reach a political agenda, and that they were the first to use terrorism with cars; and that these people were brain washed. The attorney stated that fake pictures proclaiming a massacre in the camp were leaked to the Spanish press by the separatists and international observers; and that these pictures caused the riots and the killings in the cities. The attorney invoked that all the crimes and clashes that took place in the camp were not spontaneous, but were carefully planned by foreign parties. The attorney commenced by stating that a report done by 13 NGOs, with them Amnesty International, Human Rights Watch, and International Federation for Human Rights, showed that the camp was in fact planned and that the camp had social demands which was a smoke screen made by the detainees who are linked to Polisario and human trafficking. The attorney stated that the leaders prolonged and hindered the negotiations and excluded the sheiks from the negotiations which are the legitimate leaders of the Saharawi people. The attorney further claimed that the leaders in the camp had stopped a minister and the governor from entering the camp; and that this was proven by the phone recordings. The phone recordings further proved that children were living in the camps; but that the demands changed from being social to political demands in line with directives from foreign parties with an aim to threaten the integrity of Morocco. The reports from Amnesty International and Human rights

were proof that veiled people were throwing stones; and that the violent clashes resulted in deaths only on one side as the civil forces were unarmed. The attorney commenced by commenting on the evidence file; and stated that all the reports carried their names and their signatures, and that the detainees had not alleged torture to the investigative judge; and that Mr. Asfari had alleged torture to the torture committee happening on the 7<sup>th</sup> of November, and the attorney asked whether it was logical that a person was tortured for events happening on the 8<sup>th</sup> of November. The attorney, after this logic, claimed that the truth was that Mr. Asfari was in the camp on the 8<sup>th</sup> of November, and that Mr. Asfari had lied to French NGOs and to the torture committee; and that his witnesses supporting him were witnesses upon request which lied but failed. The attorney invoked that Mr. Asfari was lying since the complaint was not submitted to the investigative judge, and that he complained in 2013 for torture happening in 2010. The attorney further argued that the silence from the accused (I.e. several of the accused invoked the right to remain silent when confronted with questions from the civil party) had to be interpreted against them, whereas the attorney recited legislation and judgements both from United States and Switzerland; and the attorney stated that the right to remain silent weakened the right for the accused; because they are preventing reaching the truth; and that silence is not a right for the innocent. The court asked for a definition upon the right to remain silent in relation to the Islamic philosophy.

The court adjourned until the 8<sup>th</sup> of June.

### ***DAY 24 – On the 8th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The seventh attorney from the civil party commenced his pleading, and stated that he represented the victim hit by a car. He stated that the proof of the car-attack was

blatant. The attorney asked for compensation; 2 million dirhams to each of the victims paid in solidarity.

The eight attorney from the civil party commenced by commenting on the competence of the court, and stated in that relation that the Court of Appeal in Salé utilizes the law in the same regard as the Court Appeal of El Aaiun, and therefore that the competence was up to the court. The attorney commenced by commenting on the allegations upon torture, and stated that it was clear that the accused only used allegations upon torture as a smoke screen to cover their criminal actions of their planning of the camp and the threatening of the internal security of the country. The attorney urged that he had to do with fierce criminals and not political activists; and that the argument of Mr. Asfari that the dismantlement was abuse of power, means that he was justifying their actions; and meant that they had the right to kill the members of the law enforcement. The attorney thereafter declared that the statement of Mr. Asfari (i.e. claiming abuse of power) was a confession upon all the charges, and that Mr. Asfari had the main responsibility for what happened alongside with Mr. Bulsan. The attorney commenced by commenting on several of the accused; Mr. Banga was not a human rights activist but a soldier as shown in the picture (i.e. carrying weapon in the Tinduf camp), and that his statement about the Arabic spring was proof that the camp was a violent resistance camp with political aims; Mr. Zeyou had tried to flee from the airport in El Aaiun to the other criminals, and that Mr. Zeyou stated that the law did not protect the law enforcement, and that they therefore had the right to kill; Mr. Thalil said they had political demands; Mr. Laaroussi came from Spain to participate in the camp; Mr. El Bakay stated that Mr. Asfari wanted to politicize the camp. The attorney stated that these facts, plus the reports from the judicial police which are real even if they are denied; are sufficient evidence. The attorney stated that she regarded the support witnesses as accomplices to the crime, and that they had several contradictions, and was instructed; the attorney stated that some of the international observers are also instructed; and that this court case was affected by what happened inside this very courtroom. The court told the attorney to stick to the charges, and the attorney replied that she regarded the courts competence to alter the charges an obligation rather than a question upon competence.



The ninth attorney commenced the pleading by describing how his client had carried victims from the camp peacefully; and was attacked and killed. The attorney commenced by stating that he did not accept that a foreign attorney commented on the history of his country; and commenced by giving a lesson in history of the Kingdom of Morocco, whilst urging that this court case was not a political trial. The attorney described the legitimate claim that Morocco has over Western Sahara for over an hour without any interruptions. The attorney stated that the law enforcement did not carry any weapons, and that the inhabitants were armed, so if any party had breached the Geneva conventions, it was the separatist and those who threatened the internal security of Morocco. The attorney stated that the leaders and the planners of the camp had breached the international humanitarian law and committed war crimes by assaulting wounded people and by using civilians to commit their crimes. The attorney stated that all countries have subjects that you do not question or talk about; and that they would never go to a French courthouse and question the existence of Holocaust. The attorney stated that the accused are soldiers that are not official military personnel, which has given their loyalty to Polisario, and that they had to be held accountable for their actions.

The tenth attorney for the civil party, invoked that the families of the victims asked for the culprits to be condemned, and asked the court to sentence them to the harshest penalty that exists, but not the death penalty, because they did not want the right to life to be breached again. The attorney commented on the torture committee and claimed that they had no competence to investigate, and urged that the detainee's connections to Polisario as a organization of militia proved that the accused were guilty; the agreement and coordination between the accused and the Polisario was the decisive evidence; and sufficient evidence to be in accordance with the decision from the supreme court.

The eleventh attorney from the civil party commenced by commenting on the history of Morocco, and claimed that Morocco is a model for implementing human rights; which gave Morocco enemies; and that Morocco now must protect themselves from their foreign enemies; and he stated that Algeria and Polisario are enemies of the Kingdom of Morocco. The camp was thus planned by separatists and that they constructed a non-official army to attack the law enforcement. The attorney stated



that the slogans chanted by the accused had shocked him; and stated that the accused had attacked them with these slogans within the very courtroom; they did not have weapons but the accused had been carrying something more dangerous. The attorney stated that the accused had tried to occupy land in Morocco and give it to Algeria.

The twelfth attorney from the civil party, a Spanish lawyer, stated that those who believe that these people are peaceful are wrong, and those who think that the accused are innocent are wrong. He stated that torture allegations are a strategy and has no basis in reality. The attorney thereafter stated that the accused tried to justify mass murder with their political beliefs; and that they do not respect the victims due to this strategy of making the case about politics. The attorney urged the court to respect the rights of the victims. The attorney claimed that this court case was followed by many international observers and NGOs and that it was impossible to either question the jurisdiction, the independence nor the impartiality of the court, and that Morocco, who has ratified over 52 international conventions, was a role model.

The thirteenth attorney from the civil party invoked that the law enforcement was surprised when they approached the camp thinking that it was a peaceful protest camp; and what the detainees had done and the terror they had caused could not even be found in a camp of ISIS. The attorney also invoked that the amendment of the procedural law, that civilians should not be trailed in a military court, was not caused by this case and that no one had thought that this group would be the first group to benefit from the changes in the law. The attorney further asked how we can talk about a fair trial without the representation of the victims.

The last attorney from the civil party making his pleadings gave a pleading based on the phone recordings, and by making deductions from the phone recordings. The translation in French, Spanish and English was not compatible and it was hard to understand the basis for the deductions, as the lawyer read in Hassania dialect which is a language that the translator does not understand, as stated in previous sessions of the hearings. After the pleading, we the observers asked the defence what was stated, and the defence informed us that the phone recordings proved that several of the detainees (Mr. Asfari, Mr. Lefkir and Mr. Bourial) had been in contact

with Mr. Bulsan, but that the phone recordings did not give further information. The civil attorney further claimed that it was the obligation of the court to alter the charges to the chapter of terrorism, as the court would never be able to prove the link between the different accused and the killings; and therefore, that the court had only one option, and that was to look at this case as a crime of terrorism.

The court adjourned until the 12<sup>th</sup> of June.

### ***DAY 25 – On the 12th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

At the commencement of the proceedings the prosecutor was given the floor to deliver his final arguments to the court. The prosecutor started his pleading by stating that the court has the competence to take into use every tool to reach the truth. The prosecutor stated that he found it suspicious that the detainees refused to appear in front of the court after almost every request from the defence had been responded positively, and referred to the request upon medical examinations, the summoning of the police mens which conducted the police reports, and the request upon presentation of evidence. The prosecutor thereafter stated that the reason for the withdrawal of the accused was the hard evidence he had been able to present, and that the withdrawal was an admittance of guilt; they were surrounded by evidence and the truth was according to the prosecutor obvious to the court and everyone else. The prosecutor stated that the torture allegations were nothing more than a failing strategy trying to cover up their acts, and that the defendants has tried to justify their actions, and claimed that they have the right, and attempted to justify with using political speech. The prosecutor claimed that this court case was related to what happened on the 8<sup>th</sup> of November 2010; and that the accused had a prior agreement to attack the law in order enforcement, and attack the law in order authorities and caused by violent acts the death to a number of personnel, and that the status of these victims was clear. The prosecutor stated that the court of appeal

is a transferal court, and that the court therefore has an obligation to rule in according to the verdict from the Supreme Court. The prosecutor stated that the police reports are data, but that the police reports were supported by several pieces of evidence (i.e. the witnesses, the phone transcripts, report on the movement, and the videos). He further stated that “data” should be interpreted as evidence. The prosecutor commenced by dealing with the separated charges; the forming of a criminal gang and violence against public officials with the result of death. The prosecutor divided the accused into three categories; leaders, participants and both.

The prosecutor commenced by commenting on the accusation of forming a criminal gang which is related to art. 293 of the criminal code, with sentence stipulated in art. 294. The prosecutor clarified that the court can find an accused guilty of forming a criminal gang, even though the court does not find sufficient evidence for the murder charges. The prosecutor stated that the court has to find it proven that the accused had a prior agreement with the aim to harm people, and with a criminal intent to harm. The prosecutor stated that it is clear that the accused has hold a number of meetings, both inside and outside Morocco and that the accused received financial aid, and weapons. The criminal gang was according to the prosecutor evident given the number of victims. The prosecutor further stated that the accused had abducted the population of El Aaiun, and held them with force in the camp Gdeim Izik. The prosecutor further stated that the accused had criminal intent to destabilize the region, which was proven with the phone recordings. The prosecutor stated that the accused deceived people with claiming that the camp had social demands, where the camp in reality was a mean to create chaos and destroy property and harm people. The prosecutor linked this prior agreement to the earlier settlement of a camp in October in Boujour, and to the tour to the different cities in the southern province of morocco. The prosecutor proved the forming of a criminal gang with the reports upon movement which entails the travel route for several of the detainees to Algeria in 2010, and that they visited the Tindouf camp and planned the Gdeim Izik camp together with Polisario. The prosecutor further claimed that several of the accused (i.e. Mr. Banga, Mr. Thalil, Mr. Sbaai and Mr. Asfari) received military training in the Tindouf camp.

The prosecutor stated further that the transcripts upon the phone recordings proved that a prior agreement existed between the accused, as the defendants had collaborated with foreign parties. The prosecutor stated that the phone recordings proved that (1) establishment of the camp was planned in correlation with Polisario and Mr Bulsran, (2) the accused made sure that no agreement was reached with the government after orders from Mr. Bulsran, and (3) that the accused did not inform the inhabitants about the ongoing negotiations, and encouraged the inhabitants to resist an intervention. The prosecutor commenced by commenting on the phone recordings, which concerns 6 of the accused. The prosecutor recited a phone conversation between Mr. Asfari og Mr. Dhalil, which told Mr. Asfari to watch Christopher Ross in the international media and that the camp was not separated from a report delivered to Mr. Ross which was planned over several months, and Mr. Asfari informed that he travelled towards the camp for the Saharawi people and that the rest followed him in cars. The second phone conversation was between Mr. Asfari and Mr. Bulsran where the prosecutor read up that Mr. Bulsran told Mr. Afari to gather the young influential people, and that Mr. Asfari stated that the mass destruction weapons were ready. The third conversation was between Mr. Sbaai and Mr. Bulsran where Mr. Sbaai stated in response to the question of Mr. Bulsran that everything went according to plan, and that they had established the security forces and made checkpoints, and that he was in control of searching the vehicles' entering the camps. The fourth conversation was between Mr. Sbaai and Mr. Bulsran where Mr. Bulsran told Mr. Sbaai to count the number of activists in the camp, and to mobilize them. The fifth conversation was between Mr. Lakfawni and Mr. Bulsran, where Mr. Lakfawni ensured Mr. Bulsran that they had everything under control, and Mr. Bulsran told Mr. Burial to continue gaining time. The sixth conversation was between Mr. Bourial and Mr. Bulsran, where Mr. Bulsran told Mr. Bourial to not negotiate with "them" and to hinder them from entering the camp, and use maximum time. The seventh conversation was between Mr. Bourial and Mr. Bulsran, where Mr. Bulsran told Mr. Burial to put pressure on the negotiations. The eight conversation was between Mr. Hassan Dah and Mr. Bulsran, where Mr. Dah informed Mr. Bulsran that they were prohibiting the governor and the sjeiks from entering the camp. The ninth conversation was between Mr. Lefkir and Mr. Bulsran, where Mr. Bulsran told Mr. Lefkir to not give any final solutions in the negotiations.

The prosecutor claimed that the transcripts of the phone recordings was proof that it existed an prior agreement and an commitment to attack and use violence. The prosecutor supported the phone recordings with declarations from several of the witnesses, in particular the testimony of the police officer Mr. Faisal Rass and an alleged inhabitant in the camp Mr. Mohamed Chouja which declared that it was security forces inside the camp and several checkpoints. The prosecutor further stated that people were prohibited from leaving the camps, and that the camp was like a military camp, basing this on the statements taken from the police men which wrote the reports. The prosecutor finally backed up his deductions with the declarations of the accused, and stated that the confrontation was necessary, since the objective of the camp was not to improve the social conditions but to destabilize the region and to threaten the internal security of the state. The prosecutor thereafter gave his final argument by presenting a map over the organization, where he divided the accused into different roles. Mr. Asfari was pointed out as the leader, and Mr. Lefkir and Mr. Haddi was placed on his right hand side in charge of monitoring the movements and the weapons, whilst Mr. Sbaai was on the left hand side of Mr. Asfari and in control of the camp. Mr. Laaroussi was placed in charge of the security forces, and had 600 followers, and worked with Mr. Babait and mr. Zawi, and several was positioned as soldiers as Mr. Ayoubi, Mr. Ettaki and Mr. Hassan Dah.

The prosecutor commenced his pleading with commenting on the charges based on art. 267 concerning violence against public officials leading to death. The prosecutor claimed that the court had sufficient evidence to prove the cause and effect relation of the outcome, which is death, and the intent to harm life. The prosecutor invoked that all the participants to the crime shall be condemned, when the direct cause could not be established; then every participant in the group should be sentenced as if they committed the decisive cause which lead to the effect.

The prosecutor divided the accused into three groups; the perpetrators, the participants, and both perpetrators and participants. The prosecutor commenced by commenting on each of the accused charged with the causing of death after art. 267 (Mr. Ettaki, Mr. Bani, Mr. Laaroussi, Mr. Lakfawni, Mr. Boutinguiza, Mr. Sidi Abdallahi, Mr. Sbaai and Mr. El Bakay).

The prosecutor commenced with Mr. Ettaki, and stated that Mr. Ettaki has a record for deserting the military, and that he in this case was caught “red handed” on the scene of the crime. The prosecutor claimed that the government got information that the inhabitants of the camp was stopped from leaving, that the culprits were arrested, and that Mr. Ettaki was amongst them which attacked the civil forces. The prosecutor stated that the police reports was data and that it was proven that Mr. Ettaki attacked with big stones, caused physical damage and with a big knife. Second piece of evidence was the testimony given by the policemen which conducted the police report of Mr. Ettaki, and the declaration of Mr. Ettaki to the investigative judge. The third and essential piece of evidence was the autopsy report which proved the death of the victim, and therefore the effect. The effect was related to the different weapons used, i.e. cars, knives and stones, and therefore the cause and effect was proven. It was further proven that Mr. Ettaki had criminal intent according to the prior agreement with the criminal gang.

The second accused was Mr. Bani. The prosecutor stated that Mr. Bani has a military past and military training, and that Mr. Bani was caught red handed whilst driving his car. That Mr. Bani had committed the crime, i.e. hit one of the members in the civil force with his car, was proven by the testimony given by Mr. Faisal El Malazi. The prosecutor stated that it was obvious and proven beyond any doubt that Mr. Bani had killed a member of the law enforcement with his car by the police reports, the testimony, the video recording, the autopsy report and the red handed arrest.

The third accused commented by the prosecutor was Mr. Laaroussi, and he stated that Mr. Laaroussi also have a criminal record related to issuing a bank check without coverage. The prosecutor stated that the police report and the arrest which was red handed at the scene of the crime, proved that Mr. Laaroussi attacked the civil force with his car and that he had 600 people under his command. Statement from the other accused supported the police report of Mr. Laaroussi. The prosecutor further stated that Mr. Laaroussi was the “repression instrument” of Mr. Asfari, used to harass the inhabitants in the camp. The prosecutor stated that the accused has confessed to the crime, and are now trying to hide the truth. The role of Mr. Laaroussi was further stated by numerous witnesses, which had also identified Mr.

Laaroussi. The prosecutor stated that both the information witness for Mr. Laaroussi and Mr. Laaroussi was lying, and that the witness had no credibility. Final pieces of evidence presented by the prosecutor was the alleged prior agreement which showed the criminal effect, and the autopsy reports which proves the effect of the crime.

The fourth accused commented by the prosecutor was Mr. Lakfawni. The prosecutor commenced by laying out the criminal record of Mr. Lakfawni concerning smuggling of drugs and violence towards public officials. The prosecutor further commented on the police reports, and stated that Mr. Lakfawni was arrested red handed, and that it was proven from this that Mr. Lakfawni drove a car and hit the civil forces and killed a member of the law enforcement. The report of the police was supported by the report made by the investigative judge. The prosecutor stated that the report from the investigative judge was again supported by the testimony from the police man which conducted the police report. The prosecutor stated that as many as 5 witnesses identified Mr. Lakfawni as the driver of a grey Nissan. The prosecutor stated that the information witness for Mr. Lakfawni lacked the necessary credibility since the witness did not know the phone number of Mr. Lakfawni or whether he had a tent.

The fifth accused commented by the prosecutor was Mr. Boutinguiza. The prosecutor commenced by presenting the criminal record of Mr. Boutinguiza who has been convicted for drug dealing and participation in a riot in El Aaiun. The prosecutor stated that the police report proved that Mr. Boutinguiza was in charge of a security unit armed with white weapons, and had control over the inhabitants in the camp, and ran over a member of the law enforcement with his car. Mr. Boutinguiza was further arrested red handed which proved the crime, and supported by the report from the investigative judge. The prosecutor further stated that one could identify Mr. Boutinguiza together with Mr. Bourial in the movie.

The sixth accused commented by the prosecutor was Mr. Sidi Abdallahi. The prosecutor stated that Mr. Sidi Abdallahi has previous stated that his prior declarations were given willingly, and that this means that the information was given without torture and that the expertise proves that Mr. Sidi Abdallahi was lying. The prosecutor stated evidence against Mr. Sidi Abdallahi was the confiscated elements,



the testimony given by the witness Mr. Mohamed Choujaa, and the autopsy reports. The prosecutor stated that Mr. Sidi Abdallahi's refusal to undergo the medical expertise was playing with justice, and that his demand for an international expertise had no legal grounds.

The seventh accused commented by the prosecutor was Mr. Sbaai. The prosecutor cited the criminal record of Mr. Sbaai who has a prior conviction of arson. The prosecutor stated that Mr. Sbaai received money from Mr. Asfari which was proven by the phone recordings. Mr. Sbaai further received orders from Mr. Asfari to kill the members of the law enforcements, and stated that Mr. Sbaai dragged three people into a tent and stoned one of them to death. This was proven by the police report and supported by the report from the investigative judge. The actions of Mr. Sbaai was supported by the video, the confiscated elements and the testimony of Mr. Mohamed Choujaa, M. Hassan Tawi and the police man which conducted the police report of Mr. Sbaai, and finally the autopsy report which proves the condition of the victims. Upon the torture allegations, the prosecutor stated that Mr. Sbaai has already declared to the investigative judge that he gave his declarations willingly and was never tortured or ill-treated.

The eight accused commented by the prosecutor was Mr. El Bakay. The prosecutor stated that the evidence was blatant, especially the police report and that Mr. El Bakay was arrested red handed. The prosecutor stated that Mr. El Bakay was one of the planners of this criminal project, and that he attended the meeting on the 7<sup>th</sup> of November and drove a car on the 8<sup>th</sup> of November and attacked a line of the law enforcement members. This was proven by the police report of Mr. El Bakay and supported by the declarations given by Mr. Laaroussi and Mr. Lakfawni, and statement given to the investigative judge, and the testimony given by Mr. Mohamed Choujaa. The criminal intent was proven by the type of violence used, and cause and effect was proven by the autopsy report.

The prosecutor thereafter commenced by commenting on the accused charged for participation in the murder of members of the law enforcement in accordance with art. 129, after art. 267 of the criminal code (Mr. Asfari, Mr. Banga, Mr. Bourial, Mr. Haddi, Mr. Zeyou, Mr. El Bachir Khadda, Mr. Hassan Dah, Mr. Thalil).



The ninth accused commented on was Mr. Asfari. The prosecutor stated that Mr. Asfari was previously convicted for having assaulted a police officer. The prosecutor commenced by commenting on the police reports which he stated was conducted inside the camp whilst they were leading the attack, and that Mr. Asfari planned to establish the camp, proven by the phone conversations held with Mr. Bulsran, together with the other accused (Mr. Lefkir and Mr. Hassan Dah). The prosecutor stated that Mr. Asfari gave orders to kill and destroy public property with gas bombs, and stated that the movie proved participation to murder. The prosecutor stated that the declaration given by Mr. Asfari was supported by the declarations given by several of the other accused, and cited the declaration given by Mr. Zeyou, Mr. El Bachir and Mr. Bourial. These declarations was supported by the statements given to the investigative judge by Mr. Asfari, and the prosecutor added that Mr. Asfari was moral responsible for what happened on the 8<sup>th</sup> of November 2010. These pieces of evidence was further supported by Mr. Asfari declaration where he stated that all the tents in Gdeim Izik was his, and supported by the confiscated elements, and the testimonies from firstly Mr. Mohamed Choujaa and secondly the police men which wrote the police report concerning the case of Mr. Asfari. The prosecutor stated that the information witnesses for Mr. Asfari lacked the necessary credibility, and that the testimonies had several contradictions, and therefore had to be discarded as evidence. The prosecutor stated the court “only” had to prove participation to murder, and that the link between Mr. Asfari and the killings were blatant, and proven beyond doubt. The intent to kill was proven by the prior agreement to attack. The prosecutor thereafter commented on the CAT-decision regarding the case of Mr. Asfari and stated that the proceedings of CAT could not be equal to national procedures, and stated that this committee can not issue any opinions when the case is still being treated by the judicial system in Morocco.

The court adjourned until the 13<sup>th</sup> of June.

### ***DAY 26 – On the 13th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence

of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced by giving the floor to the prosecutor in order for him to finish his final arguments. The prosecutor commenced by commenting on the tenth accused, Mr. Banga. The prosecutor stated that from the police report and the declaration from several witnesses, i.e. Mr. Mohamed Choujaa, it was clear that Mr. Banga was in charge of a squad of 17 people which he distributed weapons to and that Mr. Banga gave orders to attack, which proved the participation in murder. The prosecutor stated that Mr. Ayoubi, Mr. Bani, and Mr. Ettaki had declared that they received orders from Mr. Banga. The role of Mr. Banga was further proven by the statements given by the officials which wrote the reports, and the report from the investigative judge. The prosecutor stated that in total 6 witnesses identified Mr. Banga, and that the role of Mr. Banga in participation of murder was proven beyond any doubt. The prosecutor also presented a picture of Mr. Banga with a beard in contradiction to the statement of Mr. Banga who claimed he did not have a beard in 2010. The prosecutor concluded that this picture of Mr. Banga with a beard proved that declarations given to the police are the truth, that the statements given to this court is lies, and that Mr. Banga committed the crimes he is accused of. The autopsy report further proved the effect of the crime.

The eleventh accused commented on was Mr. Bourial. The prosecutor stated that Mr. Bourial has a criminal record upon human trafficking and illegal immigration. The prosecutor stated that Mr. Bourial was caught red handed whilst attacking the members of the law enforcement, and the preliminary data showed that Mr. Bourial was an active part in the planning of the camp and in the agreement with Mr. Asfari. The prosecutor stated that the role of Mr. Bourial was to continue a dialogue with the government, and execute the orders from Mr. Asfari, and repress the inhabitants in the camp and resist the law enforcement. The prosecutor stated that the crimes committed was a consequence of the prior agreement and the criminal gang. The prosecutor stated that both Mr. Bani and Mr. El Bachir had received orders from Mr. Bourial as stated in their declarations. The role of Mr Bourial was proven by the police report, the report from the investigative judge and the autopsy reports. The prosecutor stated that the security squad of Mr. Bourial held people as hostages

inside the camp, and that an agreement to dismantle the camp on the 5<sup>th</sup> of November was reached and that Mr. Bourial had deceived the people in the camp. All the actions of Mr. Bourial was proven by the confiscated elements, the reports from the police, the movie, and witnesses (Mohamed Choujaa, and the policemen's which conducted the reports), and the autopsy reports.

The twelfth accused commented by the prosecutor was Mr. Haddi. The prosecutor stated that Mr. Haddi was arrested red handed, and received instructions from Mr. Asfari and that Mr. Haddi had visited the guards situated around the camps and distributed bombs which he had made, and driven a car and broken bones. The actions of Mr. Haddi was proven by the police reports and the report from the investigative judge. The prosecutor further stated that Mr. Haddi had held the civil forces under surveillance. The prosecutor stated that the role of Mr. Haddi was proven by the reports, the confiscated elements, the movie and the witnesses which identified him, in particular Mr. Mohamed Choujaa. These pieces of evidence was supported by the autopsy reports.

The thirteenth accused commented by the prosecutor was Mr. Zeyou. The prosecutor stated that the role of Mr. Zeyou as a participator to the murder was proven by the judicial reports from the police and the gendarmerie. The prosecutor stated that Mr. Zeyou acted as a consultant to Mr. Asfari, and coordinated with people outside of Morocco in order to destabilize the country and jeopardize the agreement reached with the authorities. The prosecutor stated that it was proven that Mr. Zeyou was in the camp at the morning of the events together with Mr. Asfari ready to attack, and that the declaration of Mr. Haddi confirmed the role of Mr. Zeyou as the advisor of Mr. Asfari. The prosecutor further cited the declaration of Mr. Zeyou to the investigative judge, where Mr. Zeyou declared that Mr. Asfari was his leader. The actions of Mr. Zeyou was further proven by the confiscated elements, the video and the testimony given by Mr. Mohamed Choujaa, plus the autopsy reports. Regarding the information witness of Mr. Zeyou which informed the court that Mr. Zeyou was not present in the camp during the events, the prosecutor stated that Mr Zeyou had gone to the camp during the night, and was present during the events.

The fourteenth accused commented on by the prosecutor was Mr. El Bachir Khadda. The prosecutor stated that Mr. El Bachir Khadda, Mr. Thalil and Mr. Hassan Dah was

convicted for the same crime; preparing bombs, setting a car on fire on driving a car together with Mr. Laaroussi attacking the law enforcement. The prosecutor stated that Mr. El Bachir Khadda had prior convictions, and that the declaration of Mr. El Bachir Khadda confirmed his role, which was supported by the declarations given by Mr. Hassan Dah and Mr. Thalil, and the declaration of Mr. El Bachir Khadda to the investigative judge. The reports from the preliminary investigation was supported by the testimony given by Mr. Mohamed Choujaa, and the policemen which conducted the reports, which stated that he saw the defendant driving a grey Nissan together with Mr. Laaroussi, Mr. Thalil and Mr. Hassan Dah. The autopsy reports proved the effect of the crime.

The fifteenth accused commented on by the prosecutor was Mr. Hassan Dah. The prosecutor commenced by stating that Mr. Hassan Dah has a criminal record, and has been convicted for setting a car on fire. The prosecutor stated that Mr. Dah was a professional when it came to the making of Molotov cocktails/gas bombs, and that Mr. Dah has a record of attacking the law enforcement. The prosecutor stated that the evidence supporting the charges was the preliminary information (i.e. the reports from the police and the gendarmerie) which proved that Mr. Hassan Dah was in charge of the preparation of Molotov cocktails. The prosecutor further stated that it was proven from the declarations given by Mr. Dah to the police and the gendarmerie that he had driven a car with Mr. Laaroussi, Mr. El Bachir Khadda and Mr. Thalil and attacked the law enforcement. The prosecutor further stated that the declaration given to the investigative judge proved that the declaration given to the police and the gendarmerie was the truth, since Mr. Dah had declared that he had given his declarations without any pressure or ill-treatment, and that he had admitted to his trip to Algeria and placed his fingerprints on these declarations. The prosecutor stated that Mr. Dah shared the same convictions as Mr. Thalil and Mr. El Bachir Khadda. The prosecutor stated that Mr. Dah travelled to the Gdeim Izik camp many times, and had political demands, and that this statement was declared to the court of appeal. The prosecutor supported his statement with the witnesses which had appeared in front of the court, and cited the testimony from the policeman Mr. Yousef Raiss which wrote the police report of Mr. Hassan Dah, who stated that he saw Mr. Laaroussi wearing military clothes and that they fled towards the city, and supported this testimony with the testimony given by Mr. Mohamed Choujaa who testified to

being an inhabitant in the camp. The prosecutor stated that based on the reports from the police and the gendarmerie, and the testimonies from the witnesses (Mr. Yousef Raiss and Mr. Mohamed Choujaa) it was clear, and proven beyond any doubt, that Mr. Hassan Dah had prepared the Molotov cocktails/gas bombs and attacked the law enforcement, and motivated the inhabitants in the camps to attack the law enforcement. The prosecutor stated that the criminal intent is proven due to the dangerous weapons used in the attack. In regards to the medical examinations (i.e. the medical examinations ordered by the court on the 25th of January, which concluded that Mr. Hassan Dah had not been tortured), the prosecutor stated that the alleged torture was only lies, and a mean to flee from the accusations, and stated that the symptoms alleged by the accused had nothing to do with the alleged torture.

The sixteenth accused commented on by the prosecutor was Mr. Thalil. The prosecutor commenced by citing the criminal record of Mr. Thalil, which entailed two prior convictions for the forming of a criminal gang and attempt of destruction of a building. The evidence against Mr. Thalil was the police report and the statements given to the investigative judge, and the testimony given by Mr. Mohamed Chouja, and the autopsy reports.

Finally, the prosecutor commented on the accused who are charged with both participation and perpetrating the crime after art. 129 and art 267 of the criminal code (Mr. Zawi, Mr. Toubali, Mr. Deich Daff, Mr. Leymjeyid, Mr. Lefkir, Mr. Ismaili, Mr. Babait).

The seventeenth accused commented on by the prosecutor was Mr. Zawi. The prosecutor commenced by stating that Mr. Zawi has a criminal record related to the forming of a criminal gang, and that Mr. Zawi is as such considered dangerous. The prosecutor stated that the police reports are only data after art. 293, but that data is a synonym of evidence in the Arabic language. The statements made by the accused are therefore to be considered as the first evidence against them. The evidence against Mr. Zawi was the preliminary investigation (i.e. the reports conducted by the police, gendarmerie and investigative judge), report on movements, report on phone calls and the movie and the autopsy reports. The prosecutor stated that Mr. Zawi was part of the dialogue committee, and that he had jeopardized the agreement. Stated further that Mr. Zawi after the emergency state was established on the 7<sup>th</sup> of

November, distributed weapons as one of the leaders, and that Mr. Zawi had received military training in the Polisario camps, and had meetings with Mr. Asfari on a regular basis. Mr. Zawi had further lied to the inhabitants in the camp and deceived them and given a war speech in the camp, proven by both the movie and the witness Mr. Mohamed Choujaa.

The eighteenth accused commented on by the prosecutor was Mr. Toubali. The prosecutor commenced by stating that the preliminary data proved that Mr. Toubali left the hospital on the 7<sup>th</sup> of November and left to the camp, and participated in the meeting conducted by the security committee in the camp. Mr. Toubali had distributed weapons to 30 people that was under his command, and used 4 by 4 cars to attack, and beheaded one of the victims. Proven by both the police reports and the report from the investigative judge, and confirmed by the declaration given by Mr. Lemjeyid. Mr. Toubali had further stated that they reached an agreement with the authorities that they refused to sign, which was compatible with the phone tabs and the plan to stall the negotiations in order for the law enforcement to attack. The movie further proved that Mr. Toubali was present in the camp, supported by the testimonies given by Mr. Mohamed Choujaa and the policeman which conducted the police report of Mr. Toubali.

The nineteenth accused commented on by the prosecutor was Mr. Daff. The prosecutor stated that Mr. Daff was caught red handed at the scene of the crime, and that Mr. Daff had participated in the meeting lead by Mr. Asfari on the 7<sup>th</sup> of November, and that Mr. Daff suggested the use of cars as weapons. The prosecutor stated that Mr. Dah had stabbed the members of the public authorities with a knife, and distributed white weapons to the soldiers, and received instructions from Mr. Asfari and gave orders. The role of Mr. Daff was proven by the police reports, the report from the investigative judge, and the witness Mr. Mohamed Choujaa supported by the testimonies from the police men which conducted the reprot, and the autopsy reports.

The prosecutor was told by the court to shorten his final pleadings, and gave him 20 minutes to finish.

The twentieth accused commented on by the prosecutor was Mr. Lemjeyid. The prosecutor stated that Mr. Lemjeyid joined the camp and had foreign currency which he delivered to Mr. Asfari. Mr. Lemjeyid had further distributed swords, and hit a member of the law enforcement in the head. The role of Mr. Lemjeyid and his actions was proven by the reports of the arrest and the statements given to the investigative judge, the confiscated elements and the witness Mr. Mohamed Choujaa and the testimony from the policemen which wrote the police reports of Mr. Leymjeiyd.

The twenty-first accused commented on by the prosecutor was Mr. Lefkir. The prosecutor stated that Mr. Lefkir was one of the first planners together with Mr. Asfari, and that Mr. Lefkir was the architect. The prosecutor stated that Mr. Lefkir declared the emergency state and gave orders to prepare bombs on the 7<sup>th</sup> of November. On the 8<sup>th</sup> of November, Mr. Lefkir was told to order the soldiers to attack the civil forces. This was proven by the police report, the report from the investigative judge, the confiscated elements, and the witness Mr. Mohamed Choujaa and Mr. Tawni, and the testimony from the policemen which wrote the report of Mr. Leymjeiyd.

The twenty-second accused commented on by the prosecutor was Mr. Ismaili. The prosecutor stated that Mr. Ismaili has a criminal record, and that the evidence against Mr. Ismaili includes the report from the judicial police. The prosecutor stated that Mr. Ismaili made security squads and gave orders to insult and to injure if necessary, and that Mr. Ismaili was one of the leaders in charge of preparing the attack. The prosecutor stated that Mr. Ismaili met with Mr. Asfari on an international level in Algeria. The role of Mr. Ismaili and his actions was proven by the testimony given by Mr. Mohamed Choujaa.

The twenty-third accused commented on by the prosecutor was Mr. Babait. The prosecutor stated that Mr. Babait has a criminal record. The prosecutor stated that the information shows that Mr. Babait was in charge of internal security, and later the bringing of the weapons, and that he made 9 human chains, and drove a 4 by 4 car and attacked the civil forces with his car. This was proven by the police reports, the statements given to the investigative judge, the fact that he was in the camp, the movie, the confiscated elements, and testimony given by the policemen which



conducted the police reports, the autopsy reports, and declarations given by other accused.

The prosecutor did not comment on the accused Mr. Ayoubi since his case is separated from the rest of the group.

The prosecutor commenced by commenting on the charges directed towards Mr. Boutinguiza and Mr. Sidi Abdallahi, based on art. 272, in regard to the crime of mutilating of corpses. The prosecutor commenced by stating that the charge has not been dealt with, and have not been commented on by the accused. The prosecutor stated that the reports by the gendarmerie and the police proves the crime of mutilating of corpses. The prosecutor stated that it was proven that the accused had hit members of the authorities with his car and mutilated the head and body with stones. The prosecutor stated that the movie must be regarded in evidence in support of the reports.

The prosecutor thereafter commenced by commenting on the alleged detainment of people in the camp, i.e. that the inhabitants in the camp was taken as hostages. The prosecutor stated that the civil forces tried to dismantle the camp with sticks and water, and that no deathly weapons were used. The civil forces was attacked by a crowd of people, which attacked both the law enforcement and the public buildings. The prosecutor stated that the inhabitants was kept as hostages in the camp, proven by the police report.

The prosecutor thereafter concluded that the court was under the principle of free evidence evaluation, and therefore had the competence to evaluate all the evidence presented in front of the court in accordance with art. 290. In regard to the police reports, the prosecutor stated that evidence can not be denied if not hard evidence is there to prove them wrong, and that the criminal records must be used in addition to other evidence. The prosecutor commenced by highlighting the other pieces of evidence supporting the police reports. First, the statement given to the investigative judge, where several of the accused declared that they gave their testimony to the police willingly and without any use of force. Second, the arrest which was red handed for several of the accused. Third, the confiscated elements. Fourth, the declarations of one of the accused against another accused. Fifth, testimonies. Sixth,

the testimonies from the policemen. Seventh, the movie. Eight, the phone recordings. Ninth, report upon travel routes. The prosecutor stated that this entailed pieces of hard evidence against the accused, which made them flee from the hearings.

The prosecutor requested the court to confirm all the charges based on the evidence presented by the prosecutor, and sentence them. The prosecutor asked for the harshest sentence possible. The prosecutor submitted his closing memorandum in a written format to the court. The civil party similarly submitted their closing argument in written form to the court.

The court adjourned until the 14<sup>th</sup> of June.

### ***DAY 27 – On the 14th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced by giving the floor to the defence for them to deliver their final arguments to the court.

The first defence attorney, commenced his pleading by informing the court that this case was assigned to him, and that he therefore represented all of the accuse. The attorney commented on the previous proceedings of the court case, and stated that it started with the Military Court which condemned the accused with sentences ranging from 20 years to lifetime, and that this conviction was annulled and that the case was referred by the Supreme Court, and therefore that the Appeal Court of Salé constituted a transferal court. The attorney stated that the court was obligated in accordance with art. 444 to stick to the decision of the Supreme Court, and reminded the court of the new constitution of Morocco, and that everyone is equal in front of the law and have the right to a fair trial and a sentence within a reasonable time. The attorney further stated that the constitution has criminalized torture and any harm to

the human integrity, and that the constitution punishes civil servants that has exercised torture, or any violations of human rights. The attorney concluded that we have a new development in Morocco, where every citizen is equal in front of the law.

The attorney thereafter asked who the civil party is and who the victims are, and stated that they have civil claims, but that the civil party has restrictions according to the law. The attorney clarified that this case file entail accusations upon forming a criminal gang and violence against public officials, where some are accused as main perpetrators, and others as participators to the crime, and the case file also entails foreign parties. The attorney stated that the civil party have tried to file a new public suit by invoking a re-characterization of the charges. The attorney stated that the civil party has invoked new charges and new accusations, since the articles invoked by the civil party relates to the threatening of the internal security.

The attorney thereafter stated that the discussion should revolve around the charges, and the main articles art. 267, art. 129, art. 130 of the criminal code. These articles relate to the crime of violence, and the actions has to fulfil four components that has to be present for the court to be able to convict; (1) the deed itself and criminal effect and the cause and effect, (2) free will of the perpetrator, (3) knowledge and (4) criminal intent. Furthermore, in accordance with the articles which the accusations are based upon, the victim has to be a civil servant and had to be in the line of duty or about to fulfil his duties.

The attorney commented on the decision invoked by the Civil party (many perpetrators, condemn them all as participants), and stated that we have 24 accused and the case is different; so far we do not know who the perpetrators or the participants is. There is multiple victims and many autopsy reports and many tools used in order to commit the crime. The attorney further stated that this decision from the supreme court stated that the appeal can not increase the sentences, and that the defendants are the one appealing the decision, and that the court therefore can not find more serious accusations and can not increase the sentences.

The attorney stated that he thought the civil party opened a public law suit against the accused with charges based on internal terrorism when they presented their request, and stated that the civil party has played the part of the public prosecutor.

The attorney commenced by commenting on the phone recordings, and stated that the defence had on the 18<sup>th</sup> of May protested and requested the court to discard the phone recordings as evidence. The attorney stated that the phone calls had been in Hassania, and that there were no information upon who had translated the conversation, and that the phone calls was not submitted into the case file; the attorney urged that the phone calls had to be in the voice of the accused. The attorney further stated that the phone calls had to be presented to the court during the evaluation of the evidence, and not cited in the final arguments given by the parties. The attorney further stated that the usage of phone calls had be in line with the procedural law in order to be used as evidence against an accused.

The attorney thereafter commented on the renting of 4 by 4 cars (i.e. that Mr. Asfari rented several cars in order to use them in the camp). The defence asked who rented the cars, and from which renting company, and how they were paid. The attorney stated that even in less important cases the court will have intel upon who rented the car.

The attorney thereafter asked where the inhabitants that allegedly was held hostages were, and asked where the human shields are; one can not find them in the reports and no one has made complaints about being used as human shields. The attorney stated that the human shields has to be documented. Similarly, the production and usage of Molotov cocktails had to be documented. The attorney stated further that the prosecutor claims that the defendants took pictures and held the authorities under surveillance, and that cars were rented, and that “we are dealing with a criminal case – we want the accusations documented”. The attorney further stated that the prosecutor has not explained which one of the accused was leaders and who where sympathizers to the plan. The attorney also stated that Morocco is still peaceful, and that one can not talk about an attack against the national security, and that these crimes can only be dealt with on a criminal level. The attorney commented on the different articles invoked by the civil part and concluded that it did not make sense; this is a criminal case and not a terrorism case.

For the prosecutors, new accusation upon the abduction of the inhabitants in the camp in accordance with art. 436, the attorney stated that it is not possible to

address new charges without giving the accused a chance to evaluate; one can not bring a new charge at the last minute. The defence attorney stated that they consider this point to have no effect, as the court can not decide upon something that has not been discussed.

The attorney thereafter stated that we have to know what happened in front of the investigative judge, as the judgement of the military court has been annulled. The court can therefore not use the verdict or the statements given at the military court, but can only use the charges and the case file conducted by the investigative judge. The attorney commenced by commenting on the evidence presented, and stated that the reports of the police are not evidence unless they are linked to other pieces of evidence beyond any doubt.

The attorney commenced by commenting on the forming of a criminal gang, and stated that the evidence was that the accused toured the southern provinces and mobilized people, and the prosecutor stated that the inhabitants was offered jobs and aid cards. The defence stated that this is not possible in a democratic society that some small portion of the population is given such a benefit, and not the rest. The prosecutor further stated that the accused were to raise the request based on orders from Mr. Bulsran, and that the components of the criminal gang was a former plan proven by the defendants former military training. The attorney stated that this is not evidence. Training in the tindouf camps does not mean that they were part of the Gdeim Izik, and that images can not be used as evidence. The phone recordings were furthermore not in line with the procedure, and that we did not know what was said in hassania, but only had the translation.

The defence attorney further stated that the defence has never received the autopsy reports, and that they were not a part of the case file of the defence. The attorney urged that the autopsy reports had not been presented to neither the defence nor the accused. Nor had the defence been given the letters from the gendarmerie, the auxiliary forces or the protection civil that the prosecutor had invoked as evidence.

The attorney commenced by commenting on the medical expertise, as he stated that the court needed to know where the expertise was conducted, and where the “safe place” were.

The attorney thereafter wanted to comment on the decision given from the supreme court relating to each of the accused. The attorney commenced with commenting on the decision of Mr. Asfari. The attorney noted that the supreme court had stated that the judgement was based on actions that lead to death, but that the judgement did not show the incitement or the individualist that were given the orders. The attorney stated that the court need to clarify who Mr. Asfari gave orders to, and what the effect of the orders were; did it cause the death of the second, the seventh or the tenth victim, the defense asked. The attorney thereafter commented on the decision regarding Mr. Haddi, which is accused of participation alongside with Mr. Asfari, and asked who Mr. Haddi participated with, with the effect on who, and with the ultimate effect on which victim, and where is the autopsy report for this victim. He thereafter commented on the decision regarding Mr. Zeyou and asked what Mr. Zeyou participated to, what was the outcome of the actions of Mr. Zeyou, and stated that the actual and legal elements are not present. He thereafter commented on the decision regarding Mr. Zawi, where the attorney stated that there are no cause and effect, where the question is how Mr. Zawi participated in the killing, and thereafter of which victim, and where is the autopsy of this victim. The court must clarify the relation between the initiate, and the inciter and the consequence, thus the cause and effect, the attorney urged. He commenced with commenting on the decision related to the case of Mr. Daff, and stated that we have to know which orders and with what Mr. Edddaf delivered orders, which later lead to the death of a member of the law enforcement. This was the case also for Mr. Boutinguiza, Mr. Bani, Mr. Sidi Abdallahi, Mr. Laaroussi, Mr. Sbaai, Mr. Lefkir, Mr. Ismaili, Mr. Babait and Mr. El Bakay. As for the accused charged as a main perpetrator, the attorney commented in regards to Mr. El Bachir, Mr. Thalil and Mr. Toubali that the military court did not prove the cause of death, and the functions of the victims. As for the case of Mr. Toubali, which is charged for participation and as a perpetrator, the attorney stated that the violence is established, but neither the victim or the effect of the violence is established, nor the incitement; to who or what the result of the incitement was.

The attorney thereafter commented on the evidence file, and stated that the court can not build its judgement on information that have not been discussed orally during the evaluation of the evidences, as for the case of the phone recordings. The attorney further pleaded that the testimony given by the policemen could not be

regarded as evidence, and stated that the policemen can not be an opponent and a reference for information at the same time. The attorney further stated that the phone calls, the autopsy reports and the expertise must be discarded as evidence as they did not follow the necessary procedure as listed in art. 751. The attorney stated that accusations upon detainment must be rejected. The defence attorney further asked for separate judgements for each of the accused. The defence attorney invoked the decision from the supreme court and urged that this is an appeal, and that the charges can not be altered, based on the legal role that no sentence can be increased if they appeal.

The second attorney from the defence were thereafter given the floor to deliver his final arguments. The attorney commenced by clarifying the fact that this case involved events occurring on the 8<sup>th</sup> of November, and that the group was condemned by the military court which verdict is annulled by the supreme court, and therefore that the competence of this court is settled by the transfer court, and that the court had legal limitations. This constituted limitations to the competence of the court, and first and foremost that the court was limited to sticking to the request made by the formal parties in the case. The attorney stated that the civil party has no competence and are no formal party in this case, but has surprisingly interfered. The attorney thereafter urged that all the defendants are non-guilty, and urged that the innocence of the accused are obvious. The attorney stated that the court are capable to clarify, but the facts of the case remains the same, but the court can re-characterize the acts if they find them proven, but the attorney urged that the facts of the case cannot change, and one cannot submit new evidence to prove the facts. The attorney stated that they will not argue with the decision of the court, but that they will comment on the evidence submitted to the case. The attorney further urged that this court must commit to the decision from the supreme court, and to art. 554 which shows which elements that can prove and how they can be linked to the accused.

The attorney thereafter asked the presiding judge how he can allow the civil party to describe the accused as violent murderers, criminals and terrorists, breaching the presumption of innocence, when they don't even have the competence to be here, and as separatist and members of ISIS. The attorney urged that the presumption of



innocence is a guaranty for the accused and a guaranty that shall protect the accused against judicial mistakes and abuse of power. The attorney stated that this court can not treat individuals on a different way then as simply accused, and that they have to be regarded as innocent until proven otherwise. The attorney urged that the accused have to understand that their sentence are annulled, and the accused have to understand that they are to be regarded as innocent. The attorney stated that not everyone has the right to give their opinion and bury their innocence with accusations, and he urged that the accused are still innocent, and that every party in front of the court must know their limits, and that it was up to the president of the court to protect the accused, and that it is up to the prosecutor to submit evidence if evidence against the accused exists. The attorney stated that this court case has been used to send messages, and that the lawyer of the civil party has no right to use their voice to send additional messages, and that the actions of the civil party was in total disregard to the professional oath of lawyers. He stated that the court and the parties present are meant to treat the case within the evidence of the case, and those who goes outside the evidence of the case, are not doing their job correctly; and that the civil party are talking about the families; whilst they should ask who killed their children and not scream out groundless accusations against people who still are to be regarded as innocent. The attorney thereafter stated that we don't have ISIS in morocco and no terrorist movement, and urged that the defendants are to be regarded as innocent until proven otherwise beyond any doubt, and that is was the obligations of the court to protect the accused.

The attorney thereafter stated that this court case entails accused from the southern province from Morocco, and that we have to treat this case after the charges and the evidence of the file. He thereafter stated that the case file entail a case where a certain amount of people gathered in a public place in October; parents, children; old people etc. this gathering was known to the law enforcement and it was treated normally; people gathered because they were convinced that they had a right to demonstrate. The attorney urged that these people gathered in a public place; for one month; noe one could see that it was an armed gathering or a gathering that had to be authorized; these are nomads; a tent is where they feel at home. The attorney stated that these tents housed women, men, mothers, children, fathers; and this gathering needed no prior authorization, and the attorney stated that they agree with

the prosecutor that these people gathered without a prior authorization. The defence thereafter stated that any party can ask for a re-characterization of the case, and stated that they urged the court to view this camp as a gathering of people, which the law enforcement suddenly, after a month, came to dismantle. The attorney stated that he had expected the prosecution that conducted the investigation of this case, to file a suit against the civil forces responsible for the dismantlement of the camp and to sue them for breaching of rules for discipline. An appropriate military orders were not given; and if It was given; it was not respected nor followed.

The attorney thereafter cited royal degree nr. 1/58 355 upon public gatherings; which stipulates the kinds of gatherings which needs authorizations. The attorney stated that in this case we are talking about a gathering of people. The attorney thereafter cited art. 19 of the royal degree which stipulates that when there is an armed gathering in a public place, the law enforcement shall go to the gathering and announce with loud speakers; if the warning is not responded to, the warning shall be repeated four times; and the warning shall a call which states that “we will dismantle by the force of law”. The attorney thereafter stated that the witnesses from the civil forces has stated that they gave the public an invitation, and stated that this is not an invitation, this is the law; and that this law was not respected. The attorney stated that it was a helicopter with loud speakers; and that this invitation was not sufficient; and that the sounds from the helicopter will hinder people from hearing the message. The attorney claimed that no matter the size of the camp, the civil forces must follow the law; and that this was the responsibility of the judicial police which did the investigation; and stated that these people violated the law and we can not defend them and that they put the reputation of the country on stake. The attorney stated that the law says that an office with uniform or sign or a symbol that he belongs to the law enforcement must give the warning, and stated that if the camp is big, we send 20-30 officers; and urged that it was just a public place with people gathering, and that whether they are separatists or not is not the question here. The attorney stated that the people gathered in this placed due to poverty; and that they do not understand why a helicopter tells them to leave; and that it is the obligation of the law enforcement to protect them; and that the dismantlement constituted abuse of power, and the attorney asked why the law enforcement did not fulfil their duties. The attorney again urged that the law enforcement must give the people a

summoning to leave the camp, and that this was not done according to the law, and that the court has an obligation to investigate and set the things right. The attorney stated that if members of the law enforcement does not know how to their job, so don't send them towards our citizens. The attorney cited the law, which stipulated three warnings; which means that the law enforcements must give the people room and time to leave, and he asked where the buses came from; and stated that we are still trying to justify the actions of the law enforcement.

The attorney thereafter reminded the court of the sanctions stipulated in the law when armed gatherings does not respond to the warnings, and stated that if the people leave without using weapons the sentence are 6 months to 1 year, and if they do not move after the warning and use their weapons, the punishment is maximum 5 years. The attorney stated that this is the rule of law enforcement; to present a warning to the people, and that the people in this case refused to leave. The attorney further stated that the attack happened at 6-7 am in the morning whilst people were sleeping, and asked how can we justify that the law enforcement that are meant to protect them, attacked them. The attorney stated that this attack was illegal; we do not know how the prosecutor of El Aaiun took the decision to dismantle; how can an intervention like this happen the attorney asked; where the tents were destroyed and they attacked the citizens. The attorney stated that the gendarmerie created this case by attacking, and arresting people and brought them to you. The attorney stated that the gendarmerie broke the law, and covered up their crimes by arresting people that they already knew from before due to their role in El Aaiun because of their activism. The attorney stated that witnesses from the civil forces appeared in front of the court as they were the only ones present, and asked where the other witnesses are. He also asked where the woman described in a red dress stating "don't burn them" where, and why she wasn't summoned to testify; and he urged the court to bring them to testify and also the people that intervened in the camp.

The court adjourned for a pause.

The attorney commenced his pleading by stating that the law enforcement members that managed this dismantlement has violated the law. The attorney stated that the law enforcement should have been inside the camp, and this mission should have been conducted by another police officer, and stated that if the procedure was not

followed, the summoning is null and void, and concluding that the summoning is null and void in this case. The attorney stated that the voidance can not be recovered; and the attorney stated that the court should have made sure that these proceedings where followed.

The attorney commenced by citing royal degree nr. 58 of 1988 on public gatherings, and stating that the gatherings can not be considered criminal unless it is armed or constitute a threat to public order. The attorney stated that there are conditions to dismantle; must represent law enforcement; must give a warning and announce themselves as law enforcement, and must read up the punishment for not leaving the premises; otherwise we can not dismantle. The attorney concluded that these proceedings were not respected; and that he did not bring forward these arguments to criticise the law enforcement.

The attorney stated that this intervention is the straw that lead to these confrontations, and the outcome of them; and that these members which violated the law worked as judicial police afterwards, and gathered evidence and drafter reports; they violated the law, and thereafter started to investigate and gathering evidence, the attorney urged. The attorney urged that evidence must be legitimate and legal, and that we can not accept abuse of power nor that the police violates a law, and then accept his work; stating that the truth is the investigation done within the law, and not the daughter of abuse of power. The attorney urged that it is not acceptable to use this evidence nor their testimonies, and that the court has an obligation to not accept any evidence that is obtained in an illegal manner. The attorney further argued that the judge in criminal cases can not accept evidence that were obtained through force, and without preserving the human dignity, and that anything that is proven to be said under force or pressure can not be taken seriously; and that all falls under the reasoning that the criminal evidence can not be weak. The attorney thereafter concluded that the dismantlement was illegal according to royal degree 58, and that this invalidated the reports and the minutes and makes them non-acceptable as evidence. He urged that no legal decision can be based on this evidence.

The attorney commenced by commenting on the red handed arrest, and asked the court “red handed with what? When he was committing the crime or when he was

still being followed?”. The attorney stated that the smoking gun of the prosecutor are not based on any legal foundations. The attorney stated that all the accused dealt with by the prosecutor can be considered caught red handed only because they were there.

The attorney thereafter stated that according to art. 321 of the criminal code, the law enforcement, if they use violence against people without a legal reason, shall be punished for violence. The attorney argued that the law enforcement did not follow the regulations, and must be pursued for their actions; as the law enforcement did not give a warning and the armed gathering nor the hostility have been proven. The attorney requested the court to pursue the civil forces in charge of the dismantlement, and submitted a written memorandum.

The attorney commenced by stating that the Moroccan judicial system is a model for other Arabic countries, and that the Moroccan judicial system must continue as such, and stated that there are no proofs for any acts of violence, nor proof of the physical death, and the autopsy report does not show the cause of death; and therefore the court has no evidence for the cause and effect. The attorney therefore concluded that this court case entailed a lack of justification and abuse of power, and that it was up to the court to investigate, and the attorney urged that the court has the right to re-characterize the facts of the case.

The attorney thereafter commented on the comments made on the withdrawal of the accused, and stated that one can not talk about the right to remain silent in this manner. The attorney stated that the right to remain silent is in front of the judicial police in order to avoid abuse of power, and stated that the right to remain silent is not a right in the courtroom. The attorney thereafter stated that the accused has not fled the courtroom, but has answered the questions of the court and the attorney urged that the detainees has denied the charges every time.

The attorney commenced by commenting on the evidence file. He commenced by commenting on the testimonies given in front of the court, and stated that there are many contradictions. The attorney further stated that the court have many narratives, but not a single testimony upon who killed the personnel. The attorney therefore

concluded that none of the testimonies are useful, since none of the witnesses saw who committed the murder.

The attorney thereafter stated that the testimonies given to the court should be about who committed the main act, or what one heard for example Mr. Bourial say or Mr. Haddi say in order to prove participation. The attorney urged that the court needs hard evidence to reach the truth. The attorney thereafter stated that the witnesses only gave the court narratives/stories, and asked the court which one he will use. The attorney further urged that the testimonies of the policemen defending the arrest and their investigation could not be used as evidence, since they could not be considered impartial. The attorney thereafter requested that these testimonies were discarded as evidence.

The attorney thereafter urged that recognising people are not evidence, especially not with the usage of photos since the accused should be confronted with the evidence against them. The attorney urged that everyone in the kingdom of Morocco knows the faces of the accused, and that the witnesses only recognized, but never testified to any crimes committed. The attorney urged that the court can not decide the death of a person without sufficient ground, and urged that the witnesses told different stories. The attorney also added that three of the witnesses, i.e. the ones claiming they were inhabitants of the camp, may be brought by the prosecutor and been subject to instructions.

Upon the movie, the attorney stated that the movie is clearly a set of films edited together. He further stated that the movie did not proclaim any crimes committed, and therefore that the movie gave no new facts to the case that the court is able to base their decision on. The attorney stated that we have seen Mr. Bani, but where is the person that Mr. Bani allegedly hit with his car, and who can tell us that Mr. Bani hit this person with his car. The attorney stated that the movie may not be the original footage, and asked whether there is parts that are not being screened. The attorney urged the court that if a movie should be regarded as evidence, it has to be the original footage and can not be tempered with; and requested the court to discard the movie as evidence.

The attorney further asked whether a car can be classified as a weapon, and showed from a judgement from Egypt that cars are not weapons. The attorney further stated that the gendarmerie was supposed to dismantle the camp, and had intel that it was weapons in the camp; and stated that how can they be hit by a car; and stated that he could not imagine such a crime. The attorney further stated that the gas bottles can not be considered as weapons since, in these tribes, they have a tradition to make tea and they are using these gas bottles to prepare tea. The attorney stated that the same goes for the knives found in the camp, and stated that these are household tools, and tools used to fix tents. The attorney requested the court to not regard the confiscated elements, which can not be linked to the accused, as evidence.

Upon the charge of participation, the attorney stated that we have seen some of the accused on the movie but not seen any crimes committed, and the attorney asked what the cause and effect between their presence in the camp, and the victim was. The attorney further stated that one can see in the movie that there are no doors, but that people are running in open air.

Upon the phone recordings, the attorney stated that they entail conversations between Moroccans and enemies of the state. The attorney thereafter stated that they can accept that the phone recordings are evidence upon conspiracy, but that these phone recordings have no value; otherwise we could have putted Mr. Asfari in prison for conspiracy, but not on these charges. The attorney thereafter stated that the phone recordings are not useful and that the court can not rely their decision upon on them.

The attorney commented on the charges related to forming a criminal gang, and stated that the prosecutor delivered the phone recordings as evidence, but asked whether they comply to the conditions. The attorney stated that a criminal agreement is something secret and a union to commit crimes, and which a person intent to join. The attorney stated that the intent to join the agreement is not sufficient, but that the court also needs the decision to act together. The attorney stated that in this case file, we have young angry people and supressed anger due to the intervention from the law enforcement in the early hours whilst the inhabitants were sleeping; and that the throwing of stones were a response for being attacked. The attorney stated that



such confrontations between civilians and the law in order can be seen all over the world.

Upon the crime of participation, the attorney urged that the court needed to prove or to show participation. To prove participation, one must prove the main crime, and the attorney urged that we have no function nor name of the victim. The attorney urged that one can not talk about participation if one can not prove the main crime; a crime is committed by a main perpetrator which is affected by a participant; and the attorney urged that there is no main offense in this case file. The attorney stated that the prosecutor has spoken about an agreement, when there is no agreement that can be proven or interpreted by the facts of the case file. The attorney urged that when there is no agreement, there is not participation; but we face multiple criminals or multiple crimes. The attorney urged that each of the accused must be sentenced for their own crimes that the court finds proven.

The attorney concluded that all the accused are innocent, and requested full liberation of all the accused and to view the Gdeim Izik camp as a normal gathering in a public space, and that the dismantlement was illegal when not following the legal procedures. The attorney further objected to the intervention from the civil party, and requested the court to rule in accordance to the law, whereas the civil party had no competence to be party to a case already rendered by a prior court.

### ***DAY 28 – On the 15th of June at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced with giving the floor to the defence in order for the third defence lawyer to deliver his final pleading to the court. The attorney commenced by commenting on the prior legal proceedings, and stated that the charges was drafted by the investigative judge, and that the charges are solely based on the declarations allegedly given by the accused. The attorney further stated that all the accused

denied the content of the reports during the investigation phase, and that this denial rejects the content of the reports. Despite the denial from the accused, the investigative judge decided to pursue them, and referred the court case to the military court who sentenced them to harsh sentences. The judgement from the Military Court has been found null and void, and can legally speaking not be discussed.

The attorney commenced with giving his opinion on some preliminary observations. First, what happened in the gdeim izik camp was criminal acts and no one can tolerate the, and it makes us wonder who committed them. Second, these brutal acts lead to the death of a number of people who were doing their jobs; and the argument from the civil party are not compatible with the case file, whilst the prosecutor based his argument on the reports from the police and the gendarmerie. Thirdly, the attorney confirmed that this case is a normal criminal trial, and his clients are confirming their innocence. The attorney stated that no party can describe his client as criminals; only the judiciary has the right to describe a person as a criminal. The attorney urged that only the court can make these comments, and he demanded that the one who made these comments withdraws them.

The attorney thereafter concluded that the charges drafted against the accused were based solely on the reports drafted by the police and the gendarmerie, which the officers claim are declarations given by the accused. The attorney thereafter asked how his clients were chosen out of thousands of people during total chaos; there were difficulties for everyone to distinguish; so how did the judicial police arrest my clients, listened to them and transferred them. As for the case of Mr. Asfari, Mr. Asfari had declared that he was the leader and had no regrets and had cooperated with Mr. Lefkir; and these facts were considered by the investigative judge; facts that Mr. Asfari denied and stated that he never gave these declarations. As for the case of Mr. Banga which was accused with acts that he denied to the investigative judge, and he denied all the allegations. As for the case of Mr. Bourial, which is accused for being the leader of the diaoluge committee and giving instructions to punish the inhabitants; also denied all that was included in the report handed to the investigative judge. As for Boutinguiza, charged with similar acts, also denied them all to the

investigative judge; he gave a firm denial and also stated to the investigative judge that the declarations are falsified.

The attorney thereafter urged that no confession that is proven to be taken by force, can be taken into consideration, and stated that torture means any act that leads to pain; physical or mental that can attain someone in order to get information or to punish them or scare them, or any act that lead to discrimination. Such acts can not under any circumstances be justified, the attorney stated. The attorney thereafter stated that his clients have confirmed that they were subjected to torture and asked for medical examination, and they have confirmed that they have been subjected to torture, and are therefore not only allegations.

The attorney commenced by commenting on the medical expertise. The reports regarding everyone of the accused; claims that the legal procedures have been followed. The attorney thereafter commented on every medical expertise submitted to the court, and concluded that every expertise is formulated in order to reach a result with a legal basis and fair result. The attorney thereafter stated that despite the difference in the complaints and the allegations, the doctors reached the same conclusion in all the reports; the conclusions does not give any answers to the court, as they are not specific, and the medical team has confirmed that there are symptoms, but that they could not conclude that these symptoms were linked to the alleged torture. The attorney therefore concluded that the doctors were not sure about the conclusions that they have shared with the court, and the doctors could not give a certain opinion, in comparison to the fact that the accused have confirmed that they were tortured and that they are suffering. The attorney stated “I confirm to you that my clients have suffered from torture and that the police reports were obtained under torture, and statements obtained under torture can not be dealt with and have to be confirmed by the accused; or else they should be regarded as if they were drafted by the police.” The attorney requested the court to not validate the medical examinations, and requested that the statements attributed to the police and the gendarmerie have no grounds. The accused have confirmed torture and pressure, which invalidates the reports, and the investigative judge considered this where the accused have confirmed that they signed under torture.

The attorney commenced by stating that the reports are legally speaking pieces of information, and stated that it is a big difference between information and data; and that the legislator have decided to regard police reports as mere information; and as such; can not be considered as evidence, and can not be considered sufficient evidence to prove a crime. The attorney urged once more that the reports were signed under torture, and that it was nothing in the case file that proved the opposite, and requested the court to discard the police reports. The attorney stated that anyone who hears the accused and reads the reports will understand that these reports are falsified. The attorney requested the court to discard the expertise, as they could not conclude.

The attorney stated that all the accused denied the accusations and confirmed that they signed falsified reports under torture to the investigative judge, and this was not considered by the judge, and the judge considered the denial as an attempt to hide from the truth. The attorney thereafter stated that when my client appeared in front of this court, all of them confirmed that they have nothing to do with the deeds mentioned in the police reports, and nothing to do with the events of Gdeim Izik. The attorney thereafter stated that the prosecutor has placed forward new evidence 7 years after the events, and the attorney urged that evidence submitted into the case file must be legal. The attorney thereafter urged that the prosecutor has placed forward transcripts of phone recordings 7 years later in the last minute, without giving the defence nor the accused the ability to meet the new evidence. The attorney stated that we do not know the source of these phone tapplings; we know nothing; and the unknown can not be evidence in a criminal case. The attorney thereafter asked whether there was anything in the file that confirms that the institution that have tapped the conversations have followed the legal procedures. The attorney thereafter stated that they are surprised to be met with phone recordings seven years after, which has nothing to do with the charges placed forward. The attorney further stated that the defence was not informed about the phone recordings. The attorney requested the court to not submit the phone recordings as evidence. The attorney furthermore requested the court to investigative what happened during the events, and the dismantlement of the camp, and urged that the legal procedures were not followed by the law enforcement. The attorney stated that “we need an answer to this; how could the parties select 24 persons from the gdeim izik camp

where there was chaos and events that made it impossible to distinguish the different people present. It is impossible to specify any crime done by any of the accused; no one can specify that a deed was done by any of the accused; it is impossible. The events happened out of the blue. Things were normal the night before and no one could imagine what would happen, and it was not planned. These conversations were between people dealing with other things, and has nothing to do with the events". The attorney requested the court to not consider the phone recordings as evidence.

The attorney commenced commenting on the different pieces of evidence. He stated first that pictures are not evidence, in any legal system in the world. The attorney requested the court to both discard the photos and the movie as evidence.

Regarding the witnesses the attorney stated that a witness must be certain; if the witness is not certain, he can not be regarded as a witness to any events. The attorney thereafter stated that a witness must have no benefits, no party to the case and have not connection to the case; and that the court must know where the witness comes from. The attorney thereafter asked how can someone who arrested someone testify, and stated that "only god knows what they did; they wrote the reports; the person under arrest claims they were tortured and claims that they have nothing to do with the content; and claim that they were forced to sign; and claim that they were kept blindfolded. Do you think that the police officer that made the report, and that have made someone sign them; can come here and state the opposite? This is impossible. They can not be considered as witnesses. Only god knows what they did". The attorney urged that his clients never committed the actions they are accused of, and asked again how the court can let the police men come to testify; the legislator deems police reports as information; we can not let the police men come to testify and turn the information into evidence; this is fraud, the attorney stated.

The attorney thereafter stated that most of the witnesses claimed and witnessed about violence, and asked who these people are; how can the court condemn the accused based on such testimonies; they are just statements about events, and are not evidence. The attorney concluded that all the testimonies were unable to specify the persons who committed violence, except the drafters of the reports who can not

be regarded as witnesses. The attorney concluded further that the witnesses were not eye witnesses to any events and that the testimonies contained several contradictions; as all the witnesses are insecure about what they saw, except the police men.

The attorney commenced by commenting on the confiscated elements, and asked whether it can be accepted that, in relation to the place the elements were confiscated, that they are evidence against my clients in relation to the charges of murder and forming of a criminal gang. The attorney stated that the objects have been seized in the camp which included thousands of people; people living in the middle of the desert has these kinds of tools and they are normal. The attorney furthermore claimed that the confiscated objects were not linked to his clients; they are normal objects in the desert and are not weapons, and can not prove any crimes committed. The attorney concluded that legally and out of common sense that the confiscated elements can not be regarded as evidence.

The attorney concluded after commenting on the evidence file, that the court did not have evidence against his clients.

The attorney commenced by commenting on the charges related to the forming of a criminal gang, and stated that the investigative judge based the charges solely on the reports from the police and the gendarmerie. The attorney stated that the night prior to the events everything was normal, and people were sleeping; which the people in the camp could testify to. The attorney urged that all the components or art. 293 must be fulfilled in order to condemn someone for the forming of a criminal gang. The attorney commenced with commenting on the first condition; firm agreement. The attorney stated that there is nothing in the case file that proves that the accused planned the events that happened on the 8<sup>th</sup> of November, only evidence that proves the settlement of the camp and the dialogue committee. As such, since a firm agreement can not be proven, one of the conditions are missing. The attorney thereafter stated that the investigative judge was not successful when characterizing the crime, and that the supreme court did not comment on it.

The attorney commenced by commenting on the charges related to violence, which lead to death, as stipulated in art. 267. The article distinguishes between violence

against law enforcement which are punishable with 3 months up to 2 years in prison, and violence which lead to death with intent which is capital punishment. The attorney stated that the investigative judge based the charge on the reports which he regarded as sufficient evidence. The attorney stated that it occurred chaos on the 8<sup>th</sup> of November, and that his client were arrested and charged for the crime, but it was very difficult to specify a person or to say that a person has committed a specific offense; there were crimes and victims, but the question that remains and that the court must answer is who was the cause of their death of violence against them. The attorney urged that his clients are innocent until proven guilty, and stated that it is easy to write a report and refer someone, and urged the court that they needed hard evidence; and sufficient evidence to prove that the accused committed the alleged offence. The attorney urged that if doubt exist, the court can not condemn. The attorney concluded that the charges are not valid, and that the court did not have sufficient evidence to the crime.

The attorney commenced by commenting on the charges relating to participation, and asked where is the main perpetrator, stating that in the absence of a main perpetrator, we can not charge anyone as a participant to a crime. The attorney claimed that there is nothing in the file to prove that any of the accused have done anything that is participation; the accused have not helped or assisted and are not caught giving anything. The attorney thereafter asked; the camp contained thousands of people; why have we only heard from 24; and stated that even with a simple car accident, the police looks for witnesses. The attorney stated that this is a serious case, and despite of this, the police brought the accused but never brought any witnesses to the crime; or to what happened in the camp. The attorney stated that 7 years later, the prosecutor brings forward new evidence; but 7 years ago, the police only did the arrest and submitted the police reports into the evidence with no investigation.

The attorney confirmed in the name of his clients that they have not committed the crimes, and that the reports were obtained under torture and that some have signed the reports whilst blindfolded. The attorney requested the court to take into consideration the denial, and not the expertise, and to discard the expertise from the case file. The attorney requested the court to find all the accused innocent and



liberate them, and requested the court to interpret the doubt in favour of the accused. The attorney requested to reject the request from the civil party.

The fourth and last defence attorney was thereafter given the floor to deliver his final pleadings to the court. The attorney commenced by stating that the case file that he had, is different from the case file that the prosecutor has, and stated that several documents are missing. He further stated that the pleadings given from the civil party and several of their arguments have constituted an attack against the presumption of innocence, when giving descriptions on traitorship and declarations against the accused proclaiming them as criminals. The attorney thereafter reminded the court that the Moroccan judicial system is different from the judicial system of other Arabic state in the sense that a Moroccan courthouse does not create justice; the judge applies the law and must justify its rulings. The attorney thereafter urged that the establishment of the camp was to demonstrate social demands, and that the accused has the right to have political opinions. The attorney urged that the camp was not a criminal gang, but that the accused had political opinions that are not a part of the camp, or not part of any criminal gang on the basis of an agreement. The attorney claimed that the events of the 8<sup>th</sup> of November 2010 was brutal reactions to the actions of the law enforcement; a reaction to how the dismantlement was implemented. The attorney thereafter asked who gave the order to dismantle the camp, and urged that a dismantlement must respect human rights.

The attorney thereafter stated that an order to dismantle a public gathering must come from the regional chief or the governor; and that they decided to dismantle the camp; the camp had two doors; and the law enforcement attacked innocent people. The attorney urged that there is an error in how the dismantlement happened, which cause a reaction; and this reaction does not justify the arrest of innocent people. The attorney gave an example; a football match with fans on both sides; if the police warned them with the use of helicopters; and the 24 are the players on the football team; they did not know about the actions and did not plan the riot or the actions; the criminal intent does not exist; you will have 20 000 fans mixed with trouble makers; how can we ask the football players to stop the trouble makers, if even the law enforcement could not stop them.

The attorney urged that the law enforcement came early in the morning while it was still dark; and that the court needed to speak with the inhabitants of the camp; and that they do not accept the comparison to what happened in Nice or London; and urged that the camp was a peaceful resistant camp. The attorney thereafter urged that the phone recordings does not follow the legal proceedings and must be discarded, and urged that the one responsible for laying forward the evidence, have an obligation to present all the evidence of the case; and stated that the prosecutor has only placed forward evidence against the accused; and only placed forward bits of the transcripts, and not the context of them; and the attorney asked how the accused could plan events that they did not know about. The attorney stated that these people are charged for forming a criminal gang whilst they were asleep, and urged that they did not know about the events. The attorney urged that the phone recordings must be discarded as evidence as they had nothing to do with the charges. The attorney further stated that it is obvious to everyone that the man peeing on a corpse is not any of the accused, and that it was rumours in El Aaiun about who urinated on the corpse.

The attorney further stated that the movie is only evidence that Mr. Bani was telling the truth; and that Mr. Faisal Rass had stated that the car was stopped by sand, and that it was hard ground in the video; only proving that Mr. Raiss is lying. The attorney asked why this camera did not work one minute before, and actually filming the crime. Upon the witness Mr. Mohamed Choujaa, the attorney stated that the witness used terms that surprised everyone; he even knew the family name of Mr. Sidi Abdallahi which no one knows. The attorney stated that the law enforcement tried to hide their mistake (the dismantlement) by arresting people that they knew in advance; the accused were members of the committee and had dinner with the police, and others were known figure in the El Aaiun. The attorney stated that the court needed to affirm that the camp was closed on Sunday, so that people could not enter; and stated that over 30 witnesses have confirmed that Mr. Toubali was in the hospital. The attorney further stated that Mr. Zakaria Raiss and Mr. Mohamed Choujaa has learned the file by heart before testifying; stating that these witnesses knows the file better than himself. The attorney further stated that they suddenly appeared seven years after the events, and remembered close to all the accused, but

not their neighbours. The attorney stated that there is evidence pro and against the accused and the evidence for conviction is illegal and no-existent.

Upon the testimonies given by the policemen which conducted the reports, the attorney stated that when they arrived; they were here to testify about torture, and the attorney stated that the identification process should be the other way around; the picture should have been brought to the accused for them to say if this was the one who tortured them or not. The attorney stated that their testimonies are worthless.

The attorney requested the court to find all the accused innocent on all charges and liberated as the case file entailed major doubts.

The attorney thereafter asked what the civil party are appealing against, and urged that their competence to be present in this case and to file a civil claim is non-existent, and urged that they have no competence to stand here 7 years after the events, and that the civil party must be referred to file a civil claim at first instance.

The floor was thereafter given to the prosecutor in order for him to give his remarks upon the final arguments from the defence. The prosecutor stated first upon the phone recordings that he had the competence to submit any evidence, and that the phone tapings were done according to the law; where the order was given on the 11<sup>th</sup> of October 2010 from the prosecutor of El Aaiun, and an order from the president of the court of appeal in El Aaiun dated the 12<sup>th</sup> of October 2010. Regarding the witnesses the prosecutor stated that it was up to the court to decide, and after they were sworn in, the testimony was to be regarded as evidence.

The court thereafter asked the prosecutor how long he needed to give his remarks, and the prosecutor answered at least two hours, which led the court to adjourn the session.

The court case of the group Gdeim Izik was adjourned until the 11<sup>th</sup> of July 2017.

### ***DAY 29 - On the 11th of July at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The court commenced by giving the floor to the prosecutor in order for him to deliver his remarks upon the final arguments from the defence. The prosecutor declared that the phone recordings had been submitted according to the law. The prosecutor further stated that according to art. 325, a witness did not have to be proven not bias. The prosecutor invoked that the proceedings at the Military Court were not finished, and that these proceedings constituted the commencement of first instance. The prosecutor stated that if one can not clarify the act that lead to death, the court must condemn the accused as a group. The court was thus not obligated to prove the specific acts committed by each of the accused.

The prosecutor claimed that he himself had conducted the translation of the phone conversations from Hassania to Arabic to facilitate the treatment of them. The prosecutor thereafter showed a picture of a car that he stated was part of the confiscated elements, and invoked that a car was a weapon. The prosecutor stated that the cars were rented by Mr. Asfari and used by the defendants when they arrived from Algeria, and made tours to convince people to come to the Gdeim Izik camp. The prosecutor stated that the court must not forget that this case already has been ruled upon. The prosecutor stated that the reports are considered as information and thus as evidence. The prosecutor invoked the principle of freedom of evidence, and claimed that any type of documents could be criminal evidence. The prosecutor stated that part of the evidence file was the prior convictions of the detainees, which entailed convictions relating to murder and drug trafficking, and stated that some of the detainees are picked out due to their criminal record. The prosecutor claimed that the defence had received the autopsy reports on the 3th of March 2017. Concerning the presence of the civil party the prosecutor invoked the UN agreement upon organized crimes, which stipulates a right for the victims, and the Universal declaration on human rights art. 8. Upon the defences request to re-characterize the act to a gathering in a public place, and that the law enforcement did not respect the procedures when dismantling, the prosecutor stated that the

victims were part of the law enforcement and that the state can not prosecute any person if they have not followed the proceedings. The prosecutor claimed that the inhabitants in the camp attacked, and that the law enforcement was placed to secure the people, and that they asked the people to dismantle with loud speakers. The prosecutor stated that the inhabitants were asked to leave in buses, since the camp was located 15 km away from El AAaiun. The prosecutor stated that the inhabitants in the camp were children which were forced to stay in the camp by their kidnappers, with the use of violence. Regarding the declaration made by the defence, regarding that the interference from the law enforcement was illegal, the prosecutor stated that the question is who used violence against who. The prosecutor stated that there were only victims of the law enforcement, which entailed 69 injured and 11 deaths, and none civilians were transported to the hospital. The prosecutor stated that all were injured whilst the inhabitants attacked with bombs and cars with no mercy, and that the civil forces had only shields and helmets. The prosecutor invoked that the witnesses identified the accused, and this constituted clear evidence. The prosecutor stated that the witnesses affirmed the attack which their colleagues where subjected to. The prosecutor stated that the arrest of the accused was based on the investigation conducted by the police, which shows the involvement of the accused. The prosecutor stated that not all the accused were arrested on the 8<sup>th</sup> of November, and that only 6 of the 69 suspects arrested on the 8<sup>th</sup> of November was transferred to the military court. The prosecutor stated that the victims was members of the law enforcements, and that the attackers must therefore be tried in a military court. The prosecutor declared that the experts which had conducted the medical expertise had followed the Istanbul protocol, and international standards; and that the doctors are looking for evidence which can prove the allegations upon torture. The prosecutor declared that the doctors delivered a clear result with no contradictions; and that the declaration given by Mr. El Bakay, which stated that he did not suffer from torture during his detention but still asked for a medical examination, proved that none of them suffered under torture. The prosecutor stated that the pictures used for the identification process were taken in Salé prison by the administration, and that the pictures included in the file upon the civil status of the accused. Upon the witness, Mohamed Choujaa, the prosecutor stated that Mr. Choujaa was an inhabitant in the camp, and that he had testified about the participation for several of the accused.

The prosecutor declared that the court was obliged to follow the decision issued from the supreme court.

The civil party was thereafter given the floor to deliver their remarks to the court. The civil party commenced by stating that the kingdom of morocco respects its obligations, and does not need guidance from the outside. The civil party stated that the defence strategy, upon referring to the decision from the supreme court and the military ruling, was very clever, and stated that the court had at least three pieces of evidence; (1) the reports, (2) the phone conversations, and (3) the speeches of the accused. The civil party stated that if the court can not prove the cause and effect relation, the court must acquit the detainees, based on the principle of innocence. The civil party declared that the supreme court did not look at the facts of the case, and thus did not find the verdict from the military court null and void because the accused were innocent, but because the legal provisions were not present, in particular the term of cause and effect. The civil party declared that the court must re-characterize the facts and apply the articles which are appropriate. The civil party declared that the court had an obligation to show the cause and consequence relation, and requested the court to re-characterize in order to prove the cause and consequence relation. The civil party declared that the accused did not know their victims, and that the character of the crime is linked to article 201, 202, 203, 204, 205 and 405 of the Moroccan penal code. The civil party stated that according to article 204, the persons arrested on the crime scene can be accused of participation, and the civil party thereafter urged the court to condemn the accused after art. 204. The civil party ended their remarks by stating that the court had a national duty to condemn the accused, and that this court will go into history and that the verdict will affect all Moroccans; and that this case was not only about being just to the victims and make an end to the plots that are being tailored against the kingdom of morocco.

The court thereafter ruled that the defence would be given the right to deliver final remarks, and adjourned the session until the 18<sup>th</sup> of July 2017.

### ***DAY 30 – On the 18th of July at the Court of Appeal, Salé***

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings.

The defence commenced by stating that art. 242, which were invoked by the civil party, were not relevant to the case. The defence declared that according to art. 554, the transferal court is obliged to follow the decision from the higher court. The defence thereafter started to comment on the phone recordings, but were interrupted by both the prosecutor and the civil party. The preceding judge declared that the prosecutor did not have the right to comment, which lead the prosecutor to scream. The defence commenced and declared that all the accused are innocent on all charges, and declared that there is no evidence against the 24 accused; and stated that hundreds of demonstrators threw rocks; why is only 24 accused. The defence stated that the phone recordings are not translated correctly from Hassania to Arabic, which lead the prosecutor to stand up and scream. The defence stated that the court must apply the presumption of innocence, and that the court can not condemn them as a group, and that the court must prove the elements of the crime, which is not proven. The defence declared that the request from the civil party was not legal. A second defence attorney commenced by giving final remarks by stating that he thanked the court for delivering a fair trial. The attorney declared that the accused can be condemned as a group of participants, as in relation to the logic of the prosecutor, if charged after article 201-204 of the Moroccan penal code. The attorney declared that the court did not know the perpetrator, and that not knowing the perpetrator is destructive to all the other criminal evidence. The defence was interrupted by the prosecutor which stood up and screamed. The defence commenced and stated that the prosecutor did not appeal the decision from the military court, and have not asked for an alteration of the charges to art. 201-204. The defence attorney declared that the gdeim izik camp was nothing more than a gathering of people. The defence attorney declared that the court was in lack of material evidence, and stated that the court could not use evidence based upon a translation conducted by the prosecutor (referring to the phone recordings), and stated that its only a translator that can conduct a translation. The defence invoked that the court needed material criminal evidence to convict, and that the court can



not accept such a translation, and that the translation must be conducted by a neutral source. The defence thereafter asked, in relation to the medical expertise, if a psychiatrist can rule out a mental disorder after a session lasting between 30-45 min. This lead the civil party to stand up, and screamd that they wanted follow up remarks, and the prosecutor to stand up and slashing his book down in the table whilst screaming. The judge tried to calm the court, and asked the defence to not bring up new arguments in their finals remarks. The defence stated that they only commented on reports already in the file, which again lead the civil party to stand up and scream.

After a pause, the defence resumed with giving the last word on behalf of the accused, which were not present in court. The defence stated that evidence have been gathered without following the procedural law, and stated that criminal records are not proof in any criminal case, and the defence urged that the court must find the accused non-guilty when in doubt. The civil party again interfered and stated that the final pleadings are finished, and that we are in the stage of the last word of the accused. The defence thereafter asked the court what the meaning of the last word was, and stated that this is a legal vacuum, as the accused are not present. The defence urged that no party has the right to intervene when the last word is given to the court, and that the defence have the right to deliver the last word of the accused, also arguments. The court stated that the defence misinterpret the law and the right of the last word.

The defence resumed by stating that the evidence is the most important part of a criminal case, and that the court lacked evidence for proving the cause and consequence. The defence stated that none of the evidence presented by the prosecutor could be used in a criminal case as criminal evidence. This lead the prosecutor to stand up and scream. The defence attorney concluded that all the accused plead not guilty.

A new defence attorney commenced by asking the court what the last word meant, stating that the accused are prohibited from speaking and are interrupted by the civil party and the prosecutor, urging that the accused has the right to comment on the whole case file, as they have not had the chance earlier in the proceedings. The defence attorney commenced by commenting on the case of Mr. Banga, and

declared that Mr. Banga did not have a beard at the age of 20, and that a falsified witness had lied about him having a beard. At this point, the prosecutor interrupted again. The attorney commenced with stating that Mr. Bani urges that he did not kill anyone, and that the last word of Mr. Bani is that the testimonies against him is contradictory. The attorney stated that the last word of Mr. Bourial is whether carrying a helmet is proof that he killed someone, as shown in the video. As for Mr. Toubali, the attorney stated that Mr. Toubali was in El AAaiun in a bad condition after a car accident, proven by medical certificates, and witnesses. As for Mr Boutinguiza the attorney stated that it can not be proven that it was him portrayed in the video, since Mr. Boutinguiza is shorter than the man encircled in the video. The attorney declared that the evidence entailed contradictions and that the presumption of innocence had to be decisive. The floor was then given to a new defence attorney, which stated that the right of the last word was breached due to the interference from the civil party and the prosecutor, which lead the preceding judge to scream towards the defence and asking him to withdraw his words. The defence urged that it is only the preceding judge which has the right to interfere, and that the interference from the civil party and the prosecutor constituted a breach to the right of the last word. This lead the civil party to scream that the defence can not take away the rights of the victims. The defence attorney resumed by stating that all the accused confirm that they did not participate in the actions, nor have they stated the declarations written by the police. The defence declared that the minutes of the police are only information, and not criminal evidence. The attorney thereafter stated that the pictures used in the identification process are not valid, as they are taken in 2016, and not in 2010 as stated by the prosecutor. The attorney stated that the medical expertise did not entail a clear conclusion, and that the medical expertise can not be used as evidence. The defence declared that the phone recordings can not be used as they did not follow the procedural law, and the attorney stated that the accused confirm their innocence.

After hearing all the parties and the last word, the court withdrew to deliberate and to pronounce the ruling at the end of the hearing. The court adjourned at 14:45pm.

***DAY 31 – On the 19th of July at the Court of Appeal, Salé***

The court resumed after deliberations at 04:45am.

The proceedings commenced by summoning the detainees to appear in front of the court. After warning, the court ruled to conduct the proceedings without the presence of the accused, and ordered the clerk to inform the detainees upon the court's rulings. Mr. Ettaki was present in court, whilst Mr. Zeyou was not present. The court ordered the clerk to inform the accused of the rulings, and to inform the accused of their right to appeal.

The case file of Mr. Ayoubi is separated from the case file, and scheduled to the 22<sup>nd</sup> of September 2017.

The court ruled that the civil party did not have competence to be a formal part in the proceedings, and rejected the civil claim. The court rejected all the requests presented by the defense (i.e. to discard the reports, the medical examinations, the testimonies from the police men and the phone recordings as evidence), and thus implemented all evidence into the case file.

**The court delivered the sentence within 10 minutes, and it is therefore not clear which articles the different accused are condemned after.** However, the court ruled to re-characterize the case in compliance with the final arguments delivered by the prosecutor. As in relation to the articles presented by the prosecutor, the accused were condemned for forming a criminal organization after art. 293, with sentences stipulated in art. 294, and after art. 267 (perpetrator) or after art. 129 and art. 267 (participation).

19 of the 21 detainees received the same sentence as was given by the Military Court of Rabat in 2013. Two detainees were released with time served.

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

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

Sentenced to 25 years in prison: Hassan Dah, El Houssin Zawi, Mohamed Lamin Haddi, Mohamed Embarek Lefkir, Babait Mohamed Khuna Babait

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

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

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

## Annex II - Interview with Mr. Deich Daff and Mr. El Laarabi Bakay, on the 19th of July 2017, in Salé, Rabat after their release

On the 19th of July, after the release of the Mr. Deich Daff and Mr. Laarabi Bakay, a meeting was conducted between Mr. Deich Daff, Mr. Laarabi Bakay and Mrs. Isabel Lourenco, Mrs. Tone Sorfone Moe and Mr. Mads Andenas, in Salé, Rabat.

The meeting was conducted in order to clarify several points with the released detainees, concerning the preserving of confidentiality during their meetings with their lawyers and the medical expertise performed by the court appointed experts in relation to the proceedings conducted in the Appeal Court of Salé. Further, we wanted to know whether the Moroccan lawyers appointed by the court on 16th of May had any contact whatsoever with the accused. In relation to the last point, one of the defence lawyers stated in his final pleadings that he had been in contact with the detainees, and that he was talking on their behalf when delivering the final words to the court.

### ***Confidentiality during the meetings and contact with court appointed lawyers***

According to Mr. Daff and Mr. Laarabi, the meetings with the lawyers were conducted with the the presence of prison guards inside the room, except on one occasion when Mr. Massoudi (defence lawyer since the military trial, Moroccan national and member of AMDH - Moroccan Human Rights Association) met with the accused in El Arjat Prison. On this occasion the door was closed with guards placed outside the room.

Mr. Daff and Mr. Laarabi, also stated that Mr. Lili (defence lawyer since the military trial and Saharawi national) at one occasion told the Prison Director (Mr. Khali El Manaâ) that the presence of prison guards inside the room was illegal during the meeting. The Director responded that “it had to be like that”, and ordered the guard to stand outside the room but with the door open.

Mr. Daff and Mr. Laarabi also informed us that their Saharawi lawyers had to undergo a body search.

Regarding contact with the court appointed Moroccan lawyers on the 16th of May, Mr. Daff and Mr. Laarabi confirmed that there was no contact of any kind between the detainees and these lawyers, nor did they receive any phone calls and reaffirmed that all the accused rejected these lawyers and did not recognize them as their defence. They stated that it is not possible to trust lawyers who were sitting and working with the civil party. Mr. Daff and Laarabi reaffirmed that the detainees had no trust in the court. The only time that they saw the appointed defence lawyers was in the news on the Moroccan TV in the prison.

Mr. Daff and Mr. Laarabi further added that during their detention time the contact with their defence lawyers was on a minimum basis due to the fact that they are detained over 1000km away from Western Sahara, and that makes the visits of the lawyers more difficult.

### ***Medical expertise***

The medical expertise performed by three court appointed doctors to confirm the torture allegations were done between 16th February and 3rd of March 2017. Only 16th of detainees accepted the expertise. Five of the detainees refused, due to the fact that the doctors appointed by the court were public servants, and not independent experts as requested by the defence lawyers at the beginning of the trial and by the accused themselves. The detainees have made a request upon independent and impartial expertise on several occasions since their detention in 2010.

Prior to this meeting, the families of the detainees had informed about irregularities during the medical examinations, namely presence of police and guards inside the room, and the usage of a private cell phone by the lead doctor.

Mr. Deich Daff informed that although he denounced that he was raped and sodomized, the lead doctor Mrs. Fadila, only told him to undress and looked at his naked body. Mrs. Fadila used a wooden tongue depressor to make a superficial anal

examination. No further examinations were made. She told him that he was not raped.

Mr. Daff further stated that the marks he has from the prolonged use of plastic handcuffs were not registered by the doctor who claimed that he had not circular scars and that it is in her opinion reason to say that the existing marks are not compatible with the use of handcuffs. This was also said by Dr. Fadila during her testimony in court, therefore I asked Mr. Daff to show me both wrists to confirm the type of mark take a picture and send it to Dr. Ana Flores (forensic doctor in Spain) to ask for a second opinion.<sup>40</sup>

Mr. Daff also stated that he felt as he was in an interrogation room and not in a doctors visit, since the doctor (Fadila) talked to him about political issues and the situation of Western Sahara. The same was said by Mr. Laarabi who said that the doctor asked about his whereabouts on the day of the dismantling of the camp.

Mr. Daff and Mr. Bakay informed us that the only medical files that the Doctor consulted were the ones from El Arjat prison, where the prisoner were transferred to on August 2016. No prior files were consulted (since detention in 2010).

Mr. Daff and Mr. Bakai also confirmed the presence of guards outside the room in their case, but confirmed that others prisoners had guards inside the doctors office.

Mr. Daff also pointed out that in front of the judge in the military court in Rabat, in 2010 he asked the judge to loosen a bit the plastic handcuff that were cutting into his skin and he was bleeding, but the judge answered: "This is not my business, I just want you to answer questions".

Mr. Laarabi said that the psychiatric examination performed by Dr. Chakib Bouhlelal did not take longer than 10 minutes, and the questions asked where:

- Do you sleep well?

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<sup>40</sup> Plastic handcuffs leave a mark from the joint point, the square box where the plastic is fastened



- What kind of relations do you have with your wife?
- Do you miss your daughters?
- How can you sleep? Doesn't your conscience prevent you from sleeping?

According to Mr. Daff and Mr. Laarabi the traumatology examination was performed in about 4 minutes and consisted of making them stand on one foot, take a few steps and the Patellar Reflex Test (hitting the knees with a hammer).

Mr. Daff also said that the doctor wrote down injuries and scars he specifically told the doctor that he had before detention, but others that he had from the torture were not recorded. Mr. Daff further stated that, when he mentioned the problem of his eye, the doctor did not examine it.

### Annex III - The Gdeim Izik case in the Moroccan Media

During the seven years of detention the Moroccan media has continuously portrayed the prisoners as criminals, and developed inflammatory campaigns. Before the current trial and the final sentencing on July 19th, of 23 of the 24 accused, the media overflowed with propaganda; portraying the accused as terrorists and violent killers.

In relation to the medias attention given to this court case, the active parties in the proceedings did litigate in the media. The accused have been portrayed as the culprits, and the ones accountable for what happened in the Gdeim Izik camp in national media during 7 years. The presumption of innocence has therefore already on the outset of the trial been severely breached.

The photos of the accused have been widely published both in the national media, international media and through the Internet. These publications have made the accused known to the public, and the publication makes it easy for anyone to identify the accused by name.

Articles and interviews given by the attorneys of the civil party and the general attorney were published on a daily basis to the national media.

The general attorney of the King declared on several occasions after the 16th of May that the families of the accused were attending the trial inside the courtroom, which was not the case. The families of the detainees left the courtroom on the 16<sup>th</sup> of May after a request made by the detainees themselves, and have not entered the courtroom ever since.

International observers that were interviewed, which issued any kind of criticism towards the proceedings, or denounced that the trial did not respect the basis for a fair trial, or pointed out some procedural errors, were not published in the national media.

Since before the military court in 2013, parts of a video that was presented as evidence in the military trial in 2013 has been circulated on YouTube. This video is clearly edited and manipulated, and has written comments in French, and identifies several of the accused and similarly condemns several of the accused.

During the proceedings conducted in the Appeal Court of Salé, the prosecutor presented a new video. 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: [vidéo des événements sanglants survenus lors du démantèlement du camp Gdeim Izik en 2010](#). Parts of the video were produced by a smartphone, but the author was not identified nor called as witness.

### ***Press clipping of news in French from the Moroccan official and private media***

- **Medi1TV** (video): [Affaire des évènements tragiques de Gdim Izik: le procès reporté au 13 mars](#)
- **Médias24** - L'information économique marocaine en continu (video): [Gdim Izik: la parole aux familles des victimes](#)
- **Le360.ma** (video): [Procès Gdeim Izik :ce que pensent les observateurs internationaux](#)
- **Medi1TV** (video): [Procès de Gdeim Izik : enfin le verdict](#)
- **Le360.ma** (video): [Des observateurs étrangers jugent équitable le procès de Gdim Izik](#)
- **Al Wihda**: [Maroc: Reprise du procès civil des évènements de Gdeim Izik à Salé](#)
- **Le360.ma**: [Procès Gdeim Izik. Me Ouammou: "le décès de 11 personnes est un crime réel"](#)
- **Menara.ma**: [Reprise du procès de Gdim Izik](#)
- **Le360.ma**: [Procès Gdeim Izik: clôture de l'examen du dossier](#)
- **Le Desk**: [Procès Gdim Izik : les accusés de collusion avec le Polisario, selon le Parquet](#)
- **Telquel.ma**: [Affaire Gdim Izik: les accusés et les avocats se retirent du procès](#)
- **Telquel.ma**: [Reprise du procès Gdim Izik à la cour d'appel de Salé](#)

- **Telquel.ma:** [Une cinquième audience mouvementée lors du procès civil de Gdim Izik](#)
- **Le360.ma:** [Video. Le procès de Gdeim Izik touche à sa fin ce mardi](#)
- **Atlas Info.fr:** [Procès de Gdim Izik, "un enseignement magistral" et "une justice véritablement équitable" \(avocat du barreau de Paris\)](#)
- **L'Economiste.com:** [Affaire Gdim Izik: Les condamnations... et après](#)
- **Le mag:** [Chronologie de l'affaire des événements du camp de Gdim Izik](#)
- **Al Wihda:** [Massacre de Gdeïm Izik : la justice marocaine a rendu son verdict dans le procès des activistes polisariens mis en cause](#)
- **MAP Express:** [Affaire Gdim Izik: les accusés ont bénéficié de l'ensemble des garanties du procès équitable \(association basée en France\)](#)
- **MAP Express:** [La Coordination des familles et amis des victimes des événements de Gdim Izik dit respecter les peines "prononcées à l'issue d'un procès équitable"](#)
- **L'Economiste.com:** [Me Seillan: Gdim Izik est un procès pédagogique](#)
- **Le360.ma:** [Gdim Izik: pourquoi les accusés ont décidé de saboter le procès](#)
- **Maroc Leaks:** [Photos des prisonniers de Gdeim Izik dans la prison](#)

## Annex IV - Medical Attention and Hunger strikes

### ***Medical Attention***

The prisoners of the Gdeim Izik Group have presented numerous protests since their detention in 2010, not only about the tortures but also about the medical neglect they suffer and in some cases over medication.

According to the information I have gathered in the past 3 years, through the families, there are serious evidence of medical neglect. In this regard, the case of Mr. Houcein Zawi, can be highlighted. Mr. Houcein Zawi suffers from Asthma. Mr. Houcein Zawi has on several occasions been obliged to wait for over 5 hours (until the doors of the cells open in the morning), in order to be transferred to the Prison infirmary and receive the necessary medication.

In this annex, I highlight the case of Mr. Sidi Abdel Jalil Laaroussi due to his testimony in court and the fact that I have witnessed first-hand his health condition in the military court and during the proceedings held in the Court of Appeal in Salé.

Mr. Sidi Abdel Jalil Laaroussi, suffers from extremely high blood pressure, rectorragia, nose bleeding, intense diarrhoea and faecal incontinence, since the military trial where I could witness his blood soaked daraá<sup>41</sup> whilst he was in the courtroom. During his testimony on March 27th 2017, he showed the judge and to everyone in the courtroom, the bloody tissues he had used minutes before due to nose bleeding and the diaper he has to wear due to the rectorragia and faecal incontinence. Mr. Laaroussi also stated:

*"Mr. President (judge) my health condition is very poor and even the government of Bremen in Germany offered the Moroccan Government to treat me ... I have extremely high blood pressure reaching 15/26" and he showed a notebook where he had recorded his complete medical history.*

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<sup>41</sup> Daraá - traditional saharawi male clothing

During his statement Mr. Laaroussi also denounced the intervention of the prison director who refused to give him the medicine prescribed by the doctor:

*“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.”*

Furthermore Mr. Laaroussi denounced that during the visit of the WGAD (Working Group for Arbitrary Detention of the UN) **he was separated by the prison administration from the group** and did not meet the members of the Working Group, in order to prevent his testimony and so that they could not see his physical condition:

*“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.”*

I also attach the medical information, dated October 2014, of Mr. Laaroussi, elaborated by Dr. Raabub Mohamed Lamin. Dr. Raabub Mohamed Lamin is a doctor currently employed in Spain.

According to the prisoners, all members of the Gdeim Izik group have some kind of chronically disease or health issues resolving from the tortures they suffered and the unhealthy conditions of detainment, especially during winter time. During winter time, in the prison of Sale1, the walls of the cells dropped water. They also state that they suffer under medical neglect and in some cases of overmedication, with the prescription of for example three antibiotics at the same time in addition to over 15 different pills.

On the 30th September 2016, Housein Zawi detained in El Arjat, asked to see a doctor due to intense pain in his knee resolving from the torture he suffered. The prison ward told him that he would have all the medical attention he needed after his death, and he was brutally beaten.

## ***Hunger strikes***

Since their detention in 2010, the prisoners of the Gdeim Izik group made several hunger strikes, after exhausting other forms of protest available.

The demands of the hunger strikes evolve around their freedom, the annulment of the military trial and a fair trial, medical attention, ill treatment, torture, and fundamental rights.

This annex highlights only the open hunger strikes of the prisoners. The details are provided by Mr. El Machdoufi Mustapha, member of the Committee of the Families of the political prisoners of Gdeim Izik and General Secretary of the League for Protection of the Saharawi Prisoners in Moroccan Prisons.

## **Group Hunger strikes**

- From 19th March 2011 to 9th April 2011, in Salé 2, prison. The strike lasted for 20 days. The group demanded improved prison conditions.
- From 31st October 2011 to 7th December 2011, in Salé 2, prison. The strike lasted for 38 days. The group demanded a fair trial (the first trial was in February 2013)
- From 1st of March 2016 to 5th April 2016, in Salé 2, prison. The strike lasted for 36 days. The group demanded a reopening of their case, and respect of their fundamental rights.

## **Individual Hunger strikes**

- **Cheik Banga**
  - From 15th September 2011 to 13th October 2011, in Salé 2, prison. The strike lasted for 29 days. Cheik Banga protested against the ill treatment he suffered at the orders of the prison direction.



- **Houssein Zawi**
  - From 18th October 2012 to 13th November 2012, in Salé 2, prison - against the torture he suffered and for his release.
- **Mohamed Tahlil**
  - From 8th November 2012 to 8th December 2012, in Salé 2, prison. The strike lasted for 31 days. Mohamed Tahlil demanded the respect of his fundamental rights.
- **Cheik Banga**
  - From 17th January 2014 to 8th February 2014, in Salé 1, prison. The strike lasted for 23 days. Cheik Banga demanded a prison cell respecting the basic norms for health and security of the prisoners.
- **Ahmed Sbaai**
  - From 23rd March 2015 to 3rd April 2016, in Salé 1, prison. The strike lasted for 12 days. Ahmed Sbaai demanded the respect of his fundamental rights.
- **Mohamed Bouryal**
  - From 28th September 2015 to 22 of October 2015, in Salé 1, prison. The strike lasted for 25 days. Mohamed Bourial protested against the ill treatment he suffered due to his demands of the respect of his fundamental rights.

***Medical Information about Mr. Abdel Jalil Laaroussi by Mrs. Raabub Mohamed Lamin Mehdi, Medical Specialist in Internal Medicine***

**My name is Raabub Mohamed Lamin Mehdi, I am Medical Specialist in Internal Medicine, I perform the function of deputy in Osakidetza (Servicio Vasco de Salud), Collegiate number: 011 304 807, of Spanish nationality, ID number 06287946E**

Through this letter I want to express my concern with the health of the patient Sidi Abdel Jalil Laaroussi, prisoner number 78608, Saharawi political prisoner, detained in prison Salé<sup>1</sup>, Rabat in Morocco, that has conveyed to me his situation.

Personal history of the patient:

Apparently healthy, sporty and non-smoking, married with 2 children, had no complaints prior to his arrest.

After his arrest he was tortured on several occasions, these torture includes violent blows throughout the body, legs and knees causing rupture of ligaments, inhalation of chemicals causing problems to his eyes, blows in the lumbar area, was for more than 4 days naked blindfolded and handcuffed, forced to sleep on his own excrement, suspended from a wooden beam, received electric shocks, his hair was pulled out, repeatedly sexually molested, constantly threatened with the rape of his wife amongst other threats.

Since then presents a clinical picture characterized by anal pain, rectorrhagia (bleeding from the rectum), abdominal pain and incontinence to defecate.

On the other hand describes constant headache, irritability, tachycardia, abdominal and thoracic pain and initially sporadic and lately blood pressure with alarming map values, in recent days considered a hypertensive emergency and must be treated immediately in hospital.

He states that Moroccan authorities made several analyses, and one of the results was sent to a laboratory in France, and several imaging without ever transmitting the

diagnosis to Mr. Laaroussi or deliver medical reports or tests results to himself, his family or lawyer.

States that when he did a colonoscopy, the medical staff asked if he had been raped with an object and told him that he had to be operated to treat the incontinence.

Mr. Laaroussi states that on one occasion he was led to make imaging exam, at the clinic along with the radiologist was the prison doctor.

They made a imaging and from the description I believe that it was a CT scan or an abdominal MRI, they told him he had nothing. He threatened that he would present a complaint, and then was told: well, in this exam it is visible that the left adrenal gland is increased in size.

With all the data that the patient transmits I can get to the likely conclusion, and I say likely conclusion, because I can't count on exams or reports, nor objective examinations of the patient for several reasons (being the main reason the impediment of local authorities):

- All kinds of exams were made to this patient to reach diagnostic conclusions that were never transmitted to the patient, his family or lawyer
- This patient probably presented rectorragia and currently presents anal sphincter incontinence as a result of torture suffered in the form of rape, confirmed by colonoscopy, since according to the patient the endoscopist asked him if he was violated with an object, that means that this patient needs to be examined and treated urgently (we are talking about a patient who is 36 years old)
- From the symptoms that the patient told me and the possible results of imaging studies (which the patient described to me verbally) it is urgent to discard a secondary hypertension, in a patient so young my first suspicion is that the case of one or at least rule out a pheochromocytoma which I will now describe

Pheochromocytoma is a tumour of the adrenal medulla; the clinic manifestations are the result e excessive secretion of catecholamine in particular hypertension.

**Blood pressure values of Mr. Laaroussi 01/10/2014 to 10/07/2014**

(measurements of blood pressure that I requested and sent by the patient)

<b>Date</b>	<b>1<sup>st</sup> measurement</b>	<b>2<sup>nd</sup> measurement</b>	<b>3<sup>rd</sup> measurement</b>	<b>4<sup>rd</sup> measurement</b>
	<b>7h30</b>	<b>13H30</b>	<b>16H30</b>	<b>21H00</b>
<b>01-10-2014</b>	200/110 mmHg	210/100 mmHg	220/120 mmHg	240/090 mmHg
<b>02-10-2014</b>	190/100 mmHg	200/090 mmHg	220/110 mmHg	220/100 mmHg
<b>03-10-2014</b>	200/100 mmHg	220/100 mmHg	180/130 mmHg	250/090 mmHg
<b>04-10-2014</b>	180/100 mmHg	200/090 mmHg	220/120 mmHg	190/110 mmHg
<b>05-10-2014</b>	200/090 mmHg	220/100 mmHg	200/110 mmHg	230/100 mmHg
<b>06-10-2014</b>	190/100 mmHg	210/110 mmHg	180/120 mmHg	230/090 mmHg
<b>07-10-2014</b>	180/130 mmHg	250/090 mmHg	220/110 mmHg	240/100 mmHg

**SYMPTOMS:**

Headache, sweating, tachycardia, nervousness and irritability, weight loss, abdominal and chest pain, epistaxis (bleeding from the nose)

**DIAGNOSIS:**

Measuring of the levels of catecholamine (epinephrine and norepinephrine) hormones that control heart rate, blood pressure and metabolism or (degradation products) in the blood and urine (mandelic acid, vanillylmandelic) for 24 hours, and the levels of metanephrine in the urine preferably after a hypertensive attack.

- Computed tomography of the abdomen
- MRI of the abdomen
- Gammagraphy with MIB

After confirming the existence of the tumour, the treatment consists of removing the tumour with surgery. Before the intervention, it is important to stabilize blood pressure and pulse rate with medication, and it is possible that hospitalization is required with close monitoring of vital signs.

After surgery, it is necessary to perform a continuous control of all vital signs in an intensive care unit. When the tumour cannot be removed surgically, medication to deal with it is necessary. This usually requires a combination of medications to control the effects of excess hormones. Radiation therapy and chemotherapy are not effective for the cure of this tumour type.

Taking into account all this information I ask the European authorities and the World Health Organization to act in order to save a life and to see the case of this patient, one of many Saharawi political prisoners in situation of weak and / or dangerous health; health is a fundamental right, patent in the Universal Declaration of Human Rights in its Article 25. The World Health Organization, organizations and institutions must work effectively to ensure it's exercise in its own right.

Sincerely,

*Dra. Raabub Mohamed Lamin Mehdi*

[\(raabubsaharamedical@gmail.com\)](mailto:raabubsaharamedical@gmail.com)

## Annex V - Imprisonment in Moroccan territory - Psychological, social and economical Impact

Saharawi political prisoners have been in the past years sent to prisons outside the occupied territories of Western Sahara by the Moroccan authorities.

This represents not only a violation of international law; it has also a direct and serious impact on the families of the prisoners and the prisoners themselves.

### **Article 49 of the 4th Geneva Convention states**

*Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.*

All Saharawi Political Prisoners were abducted and detained in Western Sahara, they are Saharawi Nationals living under occupation, and were transferred to then Moroccan Kingdom.

In this short paper I will focus not on the legal aspects but on the economical stress and psychological impact on the families and the prisoners.

The data I have recollected since 2013 through direct observation and interviews with family members is the basis of this paper.

The Moroccan prisons in which the Saharawi Political prisoners are detained do not respect the UN minimum standards <sup>42</sup>. Arbitrary detention and arbitrary transfer from one prison to another in a "roulette" system are the reality that the Saharawi have to face as political prisoners.

The distances that the families have to travel from the occupied territories to visit the prisoner vary from 460km to over 1500km. To travel these distances the mothers,

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<sup>42</sup> Por un Sahara Libre: [Report Saharawi Political Prisoners November 2016](#)

wives and children of the detainees need to buy bus, train or plane tickets, an economical effort that is unbearable for most of them.

The travel time varies between one to up to three days, which means that only to go and return families need up to a week. The children are limited therefore not only by the economical aspect as well as the time available since they are pupils/students.

Women in Saharawi culture have the same rights as men and can travel without male company, but the fact that they are Saharawi and political activist means that they are frequently insulted, harassed and followed by the Moroccan authorities and sometimes even beaten.

Therefore, they try not to travel on their own and prefer to have a male relative with them.

Arriving at the city where their imprisoned family member is detained, they have to look for a place to stay and pay the respective hotel or apartment. Families have problems finding apartments to rent, foremost because no one wants to rent to "families of the political prisoners" due to the pressure exercised by the Moroccan authorities, in consequence the rental prices rise above normal.

In the case of the Prisoners of the Gdeim Izik Group who were held in El Arjat Prison, and formerly were at Sale 1 and 2, prison in Sale, Rabat, the families group together and rent apartments.

On the 16th of September the authorities once again transferred the prisoners of the Gdeim Izik Group this time separating the group, which means a new additional effort for the families.

During the trial in the court of appeal of this group, that begun in December 2016 and ended in July 2017 the families rented 6 apartments, none of them had a complete bath, only adjoining "bathroom" that consist of room with a basic Turkish toilet.

I have visited all family houses, in a three room apartment slept up to 60 persons, they all had to share the "toilet".

Each house had to prepare meals for at least 30 persons.



I have personally accompanied one Saharawi activist who wanted to rent an apartment and heard the conversation where the owner clearly said he didn't want any problems with the police and that he was "advised" not to rent to Saharawi.

I had similar reports from families that have their relatives in Kenitra, Inzeganeh, Tiznit, Marrakesh and other prisons.

It is also frequent that the families arrive at the prisons and their right to visit is arbitrarily denied.

The "roulette system" which consists in the transfer of the political prisoners from one jail to another for no apparent reason and without informing previously the prisoners, nor their lawyers or families is one additional problem, since the families have to reorganize themselves continuously.

At arrival to a new prison prisoners report that they receive a "welcome package" that consists of severe ill treatment or even torture.

When the Gdeim Izik group was transferred from prison Saleh to El Arjat on August 31st 2016, the prisoners were brutally beaten (according to their own statements and information of the families) and most of their belongings were taken from them.

The most recent transfers were that of Saleh Lebsir, journalist and political prisoner who was transferred on the 30th of August 2017 from Ait Melloul prison to Tatta prison, without justification and neither his family nor his lawyer were informed. Tatta prison is even further away from El Aaiún than Ait Melloul.

The other transfer was that of the Gdeim Izik group, during the night of the 16th of September 2017, the 19 prisoners were scattered in prisons all over Morocco, in smaller Groups or alone, without any previous information to the prisoners, families or lawyers. 11 of the prisoners were unaccounted for over 30 hours.

In this case it has to be pointed out that Mr. Abdel Jalil Laaroussi who is currently alone in the prison of Okasha, Casablanca, has severe health issues (rectorrhagia, epistaxis, daily diarrhoea, extremely high blood pressure, use of diapers) and the

fact that he was separated from the group has a direct impact on his health since he relied on the help and assistance of the members of the group.

The Moroccan detainees are incentivized by the prison personnel to attack the Saharawi Political prisoners, being alone in a prison he a serious and life threatening situation.

Most of the families of the prisoners are impoverished not only due to the fact that the men are in prison but also due to the economical apartheid in the occupied territories, which push Saharawi into unemployment to favour the Moroccan settlers. The economical means are almost non-existent in most cases and families depend on "social baskets" given arbitrarily by the occupying forces.

These factors combined result in the fact that the families visit their detainees only a few times in the year.

The psychological impact on the prisoners is considerable; some of them do not see their parents for years and are never allowed to go to the funerals of their close relatives.

The children of the prisoners are specially targeted by the psychological impacts. Fatma Zawi, 8 years old was under two years old when her father was imprisoned and since then only visited him three times (she is now 9 years old). In an interview with me she told me that she has nightmares and thinks about her father constantly, when she awakes she cries in silent not to upset her siblings and mother.

Mahmoud, the twelve-year-old son of one of the Gdeim Izik prisoners has several health issues caused by the psychological stress according to his paediatrician and medical specialists.

All the children of the prisoners I have interviewed showed sign of profound sadness that they desperately try to hide in front of their mothers.

Saharawi society is based on a tight family network and interaction, where families live together and family structure is the basis of the society, the absence of a father is therefore even more impacting.

The effects of paternal incarceration in the case of the Sahrawi are stronger than those of other forms of father absence, therefore children with incarcerated fathers should have specialized support from caretakers, teachers, and social service providers. Exactly the opposite is the case, the children are ill treated in the schools, insulted by their teachers and under constant surveillance by the Moroccan authorities, that surround the houses of the political prisoners families and follow children. One of the sons of Mohamed Bani, also of the Gdeim Izik group, was saved by his mother and sister when Moroccan agents in plain clothes tried to abduct him in front of the apartment in Salé during his father's trial.

In a report<sup>43</sup> on parent absenteeism due to incarceration several experts from the USA state that the estimated effects are stronger for children who lived with their fathers prior to incarceration, but are also significant for children of non-resident fathers, suggesting that incarceration places children at risk through family hardships including and beyond parent-child separation.

In the case of the children of the Saharawi political prisoners the added factors mentioned above put them in a stress situation that goes beyond the already existing psychological pressure in "normal" incarceration situations.

I mention the Group of Gdeim Izik in particular because it is the biggest and the group were more prisoners have children.

*Isabel Lourenço, September 2017*

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<sup>43</sup> [Beyond Absenteeism: Father Incarceration and Child Development\\*](#)

Amanda Geller,# Carey E. Cooper, Irwin Garfinkel, Ofira Schwartz-Soicher, and Ronald B. Mincy

***Distances from El Aaiun, capital of occupied Western Sahara to the Prisons in Morocco where all the Saharawi political prisoners are detained 44 with focus on the Gdeim Izik Group***

**El Aaiun - Tatta Prison**

460 km

**El Aaiun - Bozakarn Prison**

481 km

**El Aaiun - Tiznit Prison**

548 km

**El Aaiun - Ait Melloul Prison**

624 km

- Mohamed Embarek Lefkir (Gdeim Izik Group)
- Mohamed Bani (Gdeim Izik Group)
- Sidahmed Lemjeyid (Gdeim Izik Group)
- Mohamed Tahlil (Gdeim Izik Group)
- 

**El Aaiun - Inzegane Prison**

631 km

**El Aaiun - Taroudant Prison**

696 km

**El Aaiun - Oudaya Prison**

866 km

**El Aaiun - Okacha, Casablanca Prison**

1 091 km

- Abdel Jalil Laaroussi (Gdeim Izik Group)

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<sup>44</sup> The distances were taken from Google Maps and Via Michelin and are for travelling by car which would be the most direct and fastest route.

**El Aaiun - El Arjat Prison**

1 197 km

- Naama Asfari (Gdeim Izik Group)

**El Aaiun - Kenitra Prison**

1 223 km

- Sidi Abdallahi Abbahah (Gdeim Izik Group)
- Houcein Zawi (Gdeim Izik Group)
- Abdallahi Lakfawni (Gdeim Izik Group)
- Ahmed Sbaai (Gdeim Izik Group)
- Mohamed Bourial (Gdeim Izik Group)
- El Bachir Boutenguiza (Gdeim Izik Group)

**El Aaiun - Tifelt Prison (1 and 2)**

1 227 km

- EL Bachir Khadda (Gdeim Izik Group)
- Hassan Dah (Gdeim Izik Group)
- Brahim Ismaili (Gdeim Izik Group)
- Cheik Banga (Gdeim Izik Group)
- Khouna Babeit (Gdeim Izik Group)
- Abdallahi Toubali (Gdeim Izik Group)
- Mohamed Lamin Haddi (Gdeim Izik Group)

Annex VI - Memorandum on 4th Geneva Convention of the French  
Defence Lawyers

*A l'attention des juges  
de la Cour d'appel de  
Rabat*

Audience du : 23 janvier 2017

<p><b>CONCLUSIONS</b> <b>IN LIMINE LITIS</b></p>
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**POUR :**

**M. Naâma ASFARI**, né le 08 janvier 1970 à Tan Tan, actuellement détenu à la prison de El Arjaat I

***Ayant pour avocats :***

**Me Joseph BREHAM**

**Me Ingrid METTON**

16 quai des Célestins – 75004 Paris - France

Tél : 01.44.54.38.90 – Fax : 01.44.54.38.99

Toque Paris C389

**Messieurs Ahmed Sbaï, Abdeljalil Laâroussi, Abdellah Lakhfaoui, Mohamed Bachir Boutanguiza, Abhah Sidi Abdellah, Ibrahim El Ismaïli, Lamjayed Sidi Ahmed, Mohamed Bani, Mohamed Bourial, Hassan Dah, Banga Cheikh, El Hassan Zaoui, Lafkir Mohamed Mbarek, Mohamed Khouna Boubit, Larbi El Bekkay, Dafi Daïch, Abdellah Toubali, Mohamed Lamine Haddi, Mohamed Tahlil et Khadda Bachir** actuellement détenus à la prison de El Arjaat I

Ayant pour Avocat :

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## **RAPPEL DES FAITS ET DE LA PROCEDURE**

### **I/ Procédures**

Le 17 février 2013, M. Ennaâma ASFARI a été condamné par le Tribunal militaire de Rabat à trente ans de réclusion criminelle pour complicité de violence à l'égard d'agents de la force publique dans l'exercice de leurs fonctions ayant entraîné la mort avec intention de la donner et association de malfaiteurs en raison de son activisme et de son combat pacifique pour l'indépendance du Sahara occidental.

Il a été arrêté par les forces de police le 7 novembre 2010 soit la veille du démantèlement du camp de Gdeim Izik. Il a été détenu du 7 novembre 2010 vers 20h au 8 novembre 2010 à environ 4/5 heures du matin. Par la suite il a été détenu à la gendarmerie de Laâyoune du 8 au 12 novembre 2010. Lors de ces deux épisodes de détention, M. ASFARI a subi divers actes de torture ainsi que l'a reconnu le Comité contre la torture des Nations Unies. Dans la nuit du 11 au 12 novembre 2010, il a été conduit à la Cour d'appel de LAÂYOUNE où il a signé des aveux falsifiés sous la contrainte.

Le 12 novembre 2010, M. ASFARI a été transféré à Rabat où il a été présenté à un juge d'instruction militaire qui n'a pas daigné consigner les évidentes marques de violences physiques qu'il avait subies. Il y a toutefois été rapporté sur le procès-verbal que M. ASFARI niait la réalité des faits dont il était accusé et qu'il avait signé un document qu'il n'avait pu identifier.

Les procès-verbaux établis par la suite par le juge d'instruction militaire reprennent également les déclarations de torture subie au sein du commissariat de Laâyoune.

Il a donc été condamné sur le fondement d'aveux falsifiés et signés sous la contrainte physique. Il a notamment été condamné pour des homicides commis le 8 novembre 2010, alors qu'il était détenu par les forces de police dès le 7 novembre au soir.

Le 27 juillet 2016, après plus de trois ans d'attente, la Cour de cassation marocaine a cassé le jugement du tribunal militaire rendu en 2013. La Cour de cassation a renvoyé l'affaire devant la Cour de céans.

Les actes de tortures subis par M. ASFARI ont été reconnu par le Comité contre la torture des Nations Unies dans une communication (n°606/2014) qui a constaté les violations par le Maroc des articles 1, 12; 13; 14; 15 et 16 de la Convention contre la torture et autre peines ou traitements cruels, inhumains ou dégradants.

En d'autres termes, le Comité contre la torture a reconnu que :

- M. ASFARI avait été torturé en violation de l'article 1 et subi des traitements inhumains et dégradants en violation de l'article 16 de la Convention contre la torture
- Le Royaume du Maroc n'avait pas procédé à une enquête impartiale sur les faits de torture subis par M. ASFARI en violation de l'article 12 de la Convention
- Le Royaume du Maroc adopté des représailles à l'encontre de M. ASFARI en violation de l'article 13
- Le Royaume du Maroc n'avait pas permis à M. ASFARI de voir son préjudice réparé en violation de l'article 14

- Le Royaume du Maroc avait utilisé des aveux obtenus sous la torture pour condamner M. ASFARI en violation de l'article 15

Ainsi, le Comité contre la torture reconnaît entre autre que la première condamnation de M. ASFARI, cassée par la Cour de Cassation, était entachée de nombreuses erreurs, en particulier car la condamnation de M. ASFARI avait été fondée exclusivement sur des prétendus aveux obtenus par le recours à la torture.

Cette décision qui ne s'applique *de jure* qu'à M. ASFARI, implique nécessairement qu'elle bénéficie à ses 23 coaccusés qui ont été eux aussi torturés et condamnés sur la base d'aveux forcés.

Dans ces conditions, au-delà des conséquences procédurales développées dans les présentes conclusions, le respect des engagements internationaux du Maroc, et en particulier de la Convention contre la torture, du Pacte international relatif aux droits civils et politiques et des conventions de Genève, impose une relâche immédiate de l'intégralité des accusés de Gdeim Izik et une indemnisation de leurs préjudices.

D'autant plus que ce procès s'inscrit dans un contexte particulier, à savoir les revendications d'autodétermination du peuple sahraoui, auquel le Maroc refuse toujours à ce jour l'organisation d'un référendum sur le choix de son statut, pourtant prévu par l'ONU depuis 1991.

## **II/ Historique des relations entre le Maroc et le Sahara occidental**

- *Sur l'indépendance du Maroc :*

Après la signature du traité de Fès le 30 mars 1912, le Maroc devient un protectorat français. Dès la fin de la Seconde Guerre mondiale, les revendications indépendantistes marocaines s'intensifient. Le Front national marocain est créé et entre 1952 et 1953 plusieurs manifestations anti-françaises sont réprimées.

En 1952, les Etats arabes font inscrire la question de l'indépendance marocaine à l'ordre du jour de l'organisation des Nations unies (ONU). L'assemblée générale de l'ONU reconnaît au Maroc le droit à l'autodétermination.

La déclaration de la Celle-Saint-Cloud du 6 novembre 1955 ouvre la voie à l'indépendance du Maroc. Par une déclaration commune du 2 mars 1956, le gouvernement français reconnaît la caducité du traité de Fès en affirmant « *qu'ils constatent qu'à la suite de l'évolution réalisée par le Maroc sur la voie du progrès, le traité de Fès du 30 mars 1912 ne correspond plus désormais aux nécessités de la vie moderne* ».

L'Espagne reconnaît l'indépendance du Maroc par une déclaration commune du 7 avril 1956. Des accords sont signés en vertu desquels l'Espagne cède le Maroc du Nord en 1956, puis Ifni en 1969.

Ainsi, en 1956, lorsque le Maroc accède à l'indépendance, le Sahara occidental ne fait pas

partie de son territoire.

Le 26 juillet 1956, le Maroc ratifie les Conventions de Genève. Le 3 juin 2011, le Maroc ratifie les protocoles additionnels I et II.

- *Sur le Sahara occidental :*

En 1969, le Maroc est donc composé des territoires qu'il a récupérés suite aux accords avec l'Espagne. Le Sahara n'en fait pas partie, il reste sous la puissance administrante espagnole.

Dès 1963, l'Assemblée générale des Nations unies place le Sahara occidental sur la liste des territoires non autonomes visés par la résolution 1514 sur l'octroi de l'indépendance aux peuples soumis à domination coloniale qui dispose :

*« La sujétion des peuples à une subjugation, à une domination et à une exploitation étrangères constitue un déni des droits fondamentaux de l'homme, est contraire à la Charte des Nations Unies et compromet la cause de la paix et de la coopération mondiales.*

*Tous les peuples ont le droit de libre détermination; en vertu de ce droit, ils déterminent librement leur statut politique et poursuivent librement leur développement économique, social et culturel. »*

En 1966, l'Assemblée générale demande à l'Espagne d'organiser un référendum d'autodétermination des populations sahraouies autochtones. En 1974, l'Espagne annonce son intention d'organiser ledit référendum et procède au recensement des votants. Seulement, l'Assemblée générale, suite à une demande du Maroc, sollicite un avis consultatif de la Cour internationale de justice sur le statut du Sahara occidental et demande à l'Espagne de suspendre le processus référendaire jusqu'à la publication de l'avis.

Deux questions sont posées à la Cour internationale de justice : tout d'abord, si le Sahara occidental était *terra nullius* au moment de la colonisation espagnole, ensuite, si le territoire n'était pas *terra nullius*, quels étaient les liens avec le Maroc et la Mauritanie.

Le 16 octobre 1975, la Cour internationale de justice affirme que le Sahara n'était pas une *terra nullius* lors de la colonisation par l'Espagne. Le Maroc affirme qu'il a avec le Sahara des liens de souveraineté qui découleraient de sa possession immémoriale du territoire. En réponse, la Cour souligne le caractère *« lointain, irrégulier et souvent éphémère de nombre de ces faits »* justificatifs de la possession (§91 avis consultatif de la CIJ).

La Cour réfute finalement toute souveraineté du Maroc et de la Mauritanie sur le territoire du Sahara occidental :

***« La Cour conclut que les éléments et renseignements portés à sa connaissance n'établissent l'existence d'aucun lien de souveraineté territoriale entre le territoire du Sahara occidental d'une part, le Royaume du Maroc ou l'ensemble mauritanien d'autre part »***

Le même jour, un discours totalement en opposition avec la décision de la Cour est prononcé par Hassan II, affirmant que :

*« les portes du Sahara nous sont juridiquement ouvertes, tout le monde a reconnu*

*que le Sahara nous appartient depuis la nuit des temps. Il nous reste donc à occuper notre territoire. »*

Le 6 novembre 1975, Hassan II appela le peuple marocain à effectuer une « Marche verte » au cours de laquelle 350 000 civils escortés par 20 000 militaires violent la frontière entre le Maroc et le Sahara occidental, violation condamnée par le Conseil de sécurité de l'ONU qui « *demande au Maroc de retirer immédiatement du territoire du Sahara occidental tous les participants à la marche* » (S/RES/380, 6 novembre 1975).

Le 14 novembre 1975, l'Espagne, le Maroc et la Mauritanie signent les accords de Madrid établissant une organisation tripartite intérimaire en vue de la décolonisation du territoire du Sahara occidental.

L'accord ne transfère pas la puissance administrante au Maroc mais constitue une association :

*« Spain confirms its resolve, repeatedly stated in the UN, to decolonize the Territory of Western Sahara »*

*“L'Espagne confirme sa volonté de décoloniser le territoire du Sahara occidental, conformément aux exigences des Nations Unies”*

L'Assemblée générale de l'ONU de son côté :

*« Prie le gouvernement espagnol, en tant que puissance administrante, (...), de prendre immédiatement toutes les mesures nécessaires pour faire en sorte que tous les Sahraouis originaires du territoire exercent pleinement et librement, sous la supervision de l'ONU, leur droit inaliénable à l'autodétermination »*

Le 10 décembre 1975, l'ONU souligne le caractère temporaire de l'accord tripartite dit de Madrid et :

*« prie l'administration intérimaire de prendre toutes les mesures nécessaires pour faire en sorte que toutes les populations sahraouies originaires du territoire puissent exercer leur droit inaliénable à l'autodétermination »*

Malgré les nombreux rappels de l'ONU, aucune consultation du peuple n'est effectuée, et l'administration intérimaire prend fin.

Le 26 février 1976, l'Espagne se retire du Sahara occidental et de l'administration tripartite.

Le 9 février 1977, le Royaume du Maroc et la Mauritanie signent une convention relative au tracé de la frontière. La convention se fonde notamment sur la présupposée reconnaissance par la Cour internationale de Justice de « *l'existence de liens juridiques d'allégeance entre le Roi du Maroc et certaines des tribus vivant sur le territoire du Sahara* ».

Le Maroc fait ainsi fi des conclusions de la Cour affirmant l'absence de souveraineté du Royaume chérifien sur le Sahara occidental.

Suite à la Convention relative au tracé de la frontière, les affrontements s'intensifient entre le Front Polisario et le Maroc d'une part et la Mauritanie d'autre part. En 1979, avec l'accord d'Alger, la Mauritanie renonce finalement à ses prétentions sur le Sahara occidental. La guerre se poursuit entre le Maroc et le Front Polisario jusqu'en 1988, lorsque les deux parties s'accordent sur un plan de paix prévoyant un cessez-le-feu et l'organisation d'un référendum permettant aux Sahraouis recensés comme autochtones par l'Espagne en 1974 de choisir entre l'indépendance et le rattachement du territoire au Maroc.

Le 29 avril 1991, le Conseil de sécurité de l'ONU fait sien le plan de paix et crée la MINURSO, une force de maintien de la paix chargée de veiller au respect du cessez-le-feu et d'organiser un référendum d'autodétermination.

En 2000, la liste des électeurs établie par la MINURSO est publiée, excluant des dizaines de milliers de Marocains qui ne sont pas considérés comme Sahraouis. Le Maroc se retire du processus référendaire en 2003.

Le référendum est depuis lors reporté sine die, malgré les résolutions publiées chaque année par différents organes des Nations unies pour rappeler la nécessité absolue de son organisation.

Depuis 1973, le Sahara Occidental est inscrit sur la liste des territoires non autonomes élaborée par les Nations Unies et mise à jour régulièrement. De ce fait, le Sahara occidental est concerné par le droit à l'autodétermination, c'est d'ailleurs à ce titre que le référendum était demandé.

Depuis lors, la situation reste inchangée et la position des Nations Unies est la même concernant l'absence de lien juridique entre le Maroc et le Sahara Occidental. Le Conseil de sécurité a notamment rappelé et réaffirmé « toutes ses résolutions antérieures sur le Sahara Occidental » dans sa résolution en date du 29 avril 2016 ( n°2285).

Au surplus, et particulièrement récemment, le 21 décembre 2016, la Cour de justice de l'Union européenne a rendu un arrêt et s'est prononcée sur l'inclusion contestée du territoire du Sahara Occidental dans le territoire du Royaume du Maroc :

***« Compte tenu du statut séparé et distinct reconnu au territoire du Sahara occidental, en vertu du principe d'autodétermination, par rapport à celui de tout Etat, en ce compris le Royaume du Maroc, les termes « territoire du Royaume du Maroc » figurant à l'article 94 de l'accord d'association ne peuvent [...] être interprétés de sorte que le Sahara occidental soit inclus dans le champ d'application territorial de cet accord » (§92)***

Il est rappelé que le Comité sur la décolonisation des Nations Unies est toujours et de longue date saisi de la question de l'indépendance du Sahara Occidental.

Il ressort de ces éléments factuels plusieurs conséquences juridiques.

### **DISCUSSION JURIDIQUE**

L'histoire inachevée de la décolonisation du Sahara occidental impose que celui-ci soit considéré comme un territoire occupé (I) ce qui entraîne l'application du droit international humanitaire (II). L'application du droit international humanitaire entraîne à son tour des conséquences procédurales dont l'incompétence de la juridiction de céans (III).

#### **I/ Sur la qualité de territoire occupé du Sahara occidental :**

L'article 42 du Règlement concernant les lois et coutumes de la guerre sur terre précise qu'un territoire :

*« est considéré comme occupé lorsqu'il se trouve **placé de fait sous l'autorité de l'armée ennemie**. L'occupation ne s'étend qu'aux territoires où cette autorité est établie et en mesure de s'exercer »*

Selon le CICR dans son commentaire de l'article 43 du Règlement concernant les lois et coutumes de la guerre sur terre :

*« L'occupation de guerre, [...], est un état de fait essentiellement provisoire, **qui n'enlève à la Puissance occupée ni sa qualité d'Etat, ni sa souveraineté** ; elle entrave seulement l'exercice de ses droits. »*

*« Consciente de l'extrême danger de ces procédés, qui ouvrent la voie à l'arbitraire, la Conférence diplomatique a jugé nécessaire de prévoir que de telles dispositions seraient sans effet sur le droit de personnes protégées, qui resteraient aptes, néanmoins, à bénéficier de la Convention. »*

Dans sa résolution A/RES/3437 du 21 novembre 1979, l'assemblée générale de l'ONU reconnaît que le Sahara occidental est un territoire occupé et déplore l'aggravation de la situation découlant de la persistance de l'occupation par le Maroc. L'assemblée générale demande au Maroc de mettre fin immédiatement à l'occupation du territoire du Sahara occidental.

Dans la résolution A/RES/35/19 du 11 novembre 1980, l'assemblée générale de l'ONU réitère son inquiétude concernant la situation d'occupation du Sahara occidental par le Maroc.

Le 9 décembre 2015, l'Assemblée générale « rappelle toutes ses résolutions et toutes celles du Conseil de sécurité concernant la question du Sahara Occidental » (résolution 70/98).

Le Parlement européen, dans sa résolution du 27 mai 1993, rappelait également les obligations du Maroc concernant la nécessité d'autoriser l'accès aux territoires occupés du Sahara Occidental pour les observateurs internationaux, et des missions d'organisations humanitaires et de défense des droits de l'homme.

Dans sa résolution du 25 novembre 2010, au sujet du démantèlement du camp de Gdeim Izik, le Parlement européen alerte à nouveau la communauté internationale sur le caractère inachevé du processus de décolonisation du Sahara occidental après plus de trente ans.

La Commission des droits de l'homme, dans sa résolution 12 (XXXVII) datée du 6 mars 1981, rappelle :

***“le refus au peuple sahraoui de son droit à l'auto-détermination et d'autres droits fondamentaux est le résultat de l'occupation de son territoire par le Maroc, la commission déplore la poursuite de cette occupation ».***

De son côté, le Secrétaire Général des Nations Unies écrit, en 2006, dans un rapport sur le Sahara occidental (S/2006/249, § 37) :

*« Mon Envoyé personnel a précisé que, dans son compte rendu, il avait parlé de négociations sans conditions préalables, en vue de parvenir à une solution politique juste, durable et mutuellement acceptable qui assurerait l'autodétermination du peuple du Sahara occidental. Le Conseil de sécurité ne serait pas à même d'inviter les parties à mener des négociations concernant l'autonomie du Sahara occidental sous*

*souveraineté marocaine, car ce libellé impliquerait la reconnaissance de la souveraineté marocaine sur le Sahara occidental, ce qui était hors de question tant qu'aucun Membre de l'Organisation des Nations Unies n'aurait reconnu cette souveraineté. »*

Enfin, le Sahara occidental est inscrit sur la liste des territoires non autonomes des Nations unies. Par conséquent, il ne peut être considéré comme une partie du territoire marocain.

En d'autres termes, en incorporant le territoire du Sahara occidental comme partie de son territoire, alors qu'il l'a annexé illégalement et contre l'avis des Nations Unies (résolution CS360), sans organiser de référendum sur l'autodétermination tel que prévu dans le plan de règlement de 1991 (résolution 658). Le Maroc occupe illégalement le territoire du Sahara occidental.

Ainsi, le Sahara Occidental en droit international de la catégorie des territoires occupés.

## **II/ Sur l'application du droit international humanitaire**

A titre liminaire, il sera rappelé que le Maroc a ratifié les Conventions de Genève le 26 juillet 1956, et les protocoles additionnels I et II le 3 juin 2011 aux territoires occupés du Sahara Occidental.

### **A/ La 4eme Convention de Genève est applicable, per se, aux territoires occupés du Sahara Occidental:**

D'après l'article 2 de la 4eme Convention de Genève, cette dernière s'applique

« dans tous les cas d'occupation de tout ou partie du territoire d'une Haute Partie contractante, même si cette occupation ne rencontre aucune résistance militaire. Si l'une des Puissances en conflit n'est pas partie à la présente Convention, les Puissances parties à celle-ci resteront néanmoins liées par elle dans leurs rapports réciproques. Elles seront liées en outre par la Convention envers ladite Puissance, si celle-ci en accepte et en applique les dispositions. »

Or, il ne fait aucun doute (cf II) que le Sahara Occidental était, lors du début de l'occupation par le Royaume du Maroc une partie du territoire espagnol, donc d'un pays partie à la 4eme Convention de Genève.

C'est ce raisonnement qu'a suivi la Cour Internationale de Justice dans l'arrêt célèbre sur le mur Israël-Palestine:

« 101. Au vu de ce qui précède, la Cour estime que la quatrième convention de Genève est applicable dans tout territoire occupé en cas de conflit armé surgissant entre deux ou plusieurs parties contractantes. Israël et la Jordanie étaient parties à cette convention lorsque éclata le conflit armé de 1967. Des lors ladite convention est applicable dans les territoires palestiniens qui étaient avant le conflit à l'est de la Ligne verte, et qui ont à l'occasion de ce conflit été occupés par Israël, sans qu'il y ait lieu de rechercher quel était auparavant le statut exact de ces territoires. »



De ce seul fait, il est incontestable que le droit international humanitaire en g  n  ral et la 4eme Convention de Gen  ve en particulier, ont vocation    s'appliquer.

**B) L'applicabilit   de la 4eme Convention de Gen  ve comme   l  ment de la coutume internationale:**

L'internationalisation des guerres de lib  ration nationale est une r  gle coutumi  re qui s'est cristallis  e dans les r  solutions de l'AGNU et    la CDDH, donc si l'Etat auquel on veut opposer le caract  re coutumier de ces r  gles y a donn   son consentement alors, il est li   par la r  gle.

Par exemple, le Maroc a vot  , d'abord    la 6e Commission de l'Assembl  e g  n  rale en faveur du projet de r  solution qui devait devenir la r  s. 3103 (XXVIII) en Assembl  e pl  ni  re, puis    la CDDH en faveur de l'art. 1,    4 du 1er PA.

Il est donc absolument incontestable que la r  gle est opposable au Maroc, en tant que coutume, dans le cas du conflit du Sahara occidental.

En outre, le Front Polisario a adh  r   aux CG de 1949 en tant que «Puissance» qui «en accepte et en applique les dispositions» aux termes de l'art. 2 al. 3 commun.

Dans ces conditions, il ne fait aucun doute que les deux parties aux conflits se sont toujours senti tenu par le respect des r  gles du DIH : en d'autres termes ni le Royaume du Maroc ni le Front Polisario ne sont des objecteurs persistants.

Le droit international humanitaire est applicable en vertu de la ratification d  claration unilat  rale faite du protocole additionnel I par le Front Polisario, repr  sentant du peuple sahraoui au titre de l'art  cle 96-3 du protocole additionnel I (A) et en tout   tat de cause, le droit international humanitaire trouve application au regard de la situation d'occupation du Sahara par le Royaume du Maroc (B).

- **L'application du droit international humanitaire en vertu de la d  claration du Front Polisario au titre de l'art  cle 96-3 du Protocole additionnel I par le Front Polisario**

L'art  cle 96-3 du Premier protocole additionnel pr  cise :



**« L'autorité représentant un peuple engagé contre une Haute Partie contractante dans un conflit armé du caractère mentionné à l'article premier, paragraphe 4, peut s'engager à appliquer les Conventions et le présent Protocole relativement à ce conflit en adressant une déclaration unilatérale au dépositaire. Après réception par le dépositaire, cette déclaration aura, en relation avec ce conflit, les effets suivants :**

**a) les Conventions et le présent Protocole prennent immédiatement effet pour ladite autorité en sa qualité de Partie au conflit ;**

**b) ladite autorité exerce les mêmes droits et s'acquitte des mêmes obligations qu'une Haute Partie contractante aux Conventions et au présent Protocole ; et**

**c) les Conventions et le présent Protocole lient d'une manière égale toutes les Parties au conflit. »**

Or, le 21 juin 2015, le Front Polisario a fait une déclaration unilatérale au nom du peuple du Sahara Occidental qu'il s'engageait à appliquer les Conventions de Genève et le premier protocole additionnel au conflit qui l'oppose au Royaume du Maroc :

**« Conformément à l'article 96.3 du Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux du 8 juin 1977, le Front POLISARIO, en tant qu'autorité représentant le peuple du Sahara Occidental luttant pour son droit à disposer de lui-même, déclare s'engager à appliquer les Conventions de Genève de 1949 et le Protocole I dans le conflit l'opposant au Royaume du Maroc »**

Cette déclaration a été acceptée par le Conseil fédéral de Suisse et notifiée aux gouvernements des Etats parties.

Ainsi, le droit international humanitaire est applicable sur l'ensemble du territoire du Sahara Occidental du seul fait de la ratification du premier protocole additionnel par le Front Polisario. En toute occurrence, il trouve également à s'appliquer du seul fait de l'occupation du Sahara Occidental par le Maroc.

· **L'application du droit international humanitaire au regard de la situation d'occupation du Sahara Occidental**

L'article 2 commun aux quatre conventions de Genève précise l'application de la Convention :

**« La Convention s'appliquera également dans tous les cas d'occupation de tout ou partie du territoire d'une Haute Partie contractante, même si cette occupation ne rencontre aucune résistance militaire ».**

En outre, l'article 6 de la quatrième Convention de Genève précise que :

**« En territoire occupé, l'application de la présente Convention cessera un an après la fin générale des opérations militaires; néanmoins, la Puissance occupante sera liée pour la**

***durée de l'occupation - pour autant que cette Puissance exerce les fonctions de gouvernement dans le territoire en question - par les dispositions des articles suivants de la présente Convention : 1 à 12, 27, 29 à 34, 47, 49, 51, 52, 53, 59, 61 à 77 et 143. »***

En conséquence, malgré l'adoption du cessez-le-feu et la fin officielle des opérations militaires depuis 1991, les articles cités ci-après trouvent toujours application.

Ceci est d'autant plus vrai que l'article 47 de la quatrième convention de Genève relative à la protection des personnes civiles en temps de guerre dispose :

***« Les personnes protégées qui se trouvent dans un territoire occupé ne seront privées, en aucun cas ni d'aucune manière, du bénéfice de la présente Convention, soit en vertu d'un changement quelconque intervenu du fait de l'occupation dans les institutions ou le gouvernement du territoire en question, soit par un accord passé entre les autorités du territoire occupé et la Puissance occupante, soit encore en raison de l'annexion par cette dernière de tout ou partie du territoire occupé. »***

Le Comité international de la Croix rouge a explicité le sens de cette disposition en affirmant la nécessité de préserver le bénéfice de la Convention, donc du droit international humanitaire, pour les peuples des territoires occupés :

***« Au cours de la seconde guerre mondiale, des populations [p.294] entières avaient été soustraites à l'application du droit de l'occupation, privées, par conséquent, des garanties que ce droit comporte et livrées au pouvoir discrétionnaire de la Puissance occupante. Pour éviter le retour de tels agissements, les auteurs de la Convention ont tenu à poser des règles absolues. »***

***« Il s'ensuit que la Convention doit pouvoir leur être appliquée intégralement, même si la Puissance occupante a procédé à des changements dans les institutions ou le Gouvernement du territoire occupé. »***

Dans son commentaire de l'article 43 du règlement concernant les lois et coutumes de la guerre sur terre, le CICR a rappelé le principe fondamental selon lequel :

***« une Puissance occupante demeure tenue d'appliquer intégralement la Convention, même dans le cas où, passant outre aux règles du droit des gens, elle prétendrait procéder, durant le conflit, à l'annexion de tout ou partie du territoire occupé. »***

La Cour ne pourra que constater l'applicabilité de la 4ème convention de Genève, dans la présente affaire.

Par conséquent, la Cour ne pourra que constater, s'il fallait encore le démontrer, que l'ensemble du droit international humanitaire doit s'appliquer à la situation d'occupation du Sahara Occidental, ce qui entraîne des conséquences procédurales.

### **III/ Sur l'incompétence de la Cour d'appel de Rabat**

La question de l'applicabilité du droit et de la compétence des tribunaux de l'occupant aux ressortissants des territoires occupés est régi par les articles 64 et 66 de la Quatrième Convention de Genève.

L'article 64 de la Quatrième Convention de Genève dispose :

*« La législation pénale du territoire occupé demeurera en vigueur, sauf dans la mesure où elle pourra être abrogée ou suspendue par la Puissance occupante si cette législation constitue une menace pour la sécurité de cette Puissance ou un obstacle à l'application de la présente Convention. Sous réserve de cette dernière considération et de la nécessité d'assurer l'administration effective de la justice, les tribunaux du territoire occupé continueront à fonctionner pour toutes les infractions prévues par cette législation. »*

*La Puissance occupante pourra toutefois soumettre la population du territoire occupé à des dispositions qui sont indispensables pour lui permettre de remplir ses obligations découlant de la présente Convention, et d'assurer l'administration régulière du territoire ainsi que la sécurité soit de la Puissance occupante, soit des membres et des biens des forces ou de l'administration d'occupation ainsi que des établissements et des lignes de communications utilisés par elle. »*

L'article 66 de la Quatrième Convention de Genève dispose :

*« La Puissance occupante pourra, en cas d'infraction aux dispositions pénales promulguées par elle en vertu du deuxième alinéa de l'article 64, déférer les inculpés à ses tribunaux militaires, non politiques et régulièrement constitués, à condition que ceux-ci siègent dans le pays occupé. Les tribunaux de recours siègeront de préférence dans le pays occupé. »*

Il en ressort un principe : l'application du droit des territoires occupés par les juridictions situées en territoires occupés. Et par exception, l'application du droit de l'occupant mais par les juridictions siégeant en territoires occupés.

· **L'application de l'article 64 alinéa 1 de la Quatrième convention de Genève**

L'alinéa premier de l'article 64 alinéa 1 de la quatrième Convention de Genève dispose :

*« **La législation pénale du territoire occupé demeurera en vigueur**, sauf dans la mesure où elle pourra être abrogée ou suspendue par la Puissance occupante si cette législation constitue une menace pour la sécurité de cette Puissance ou un obstacle à l'application de la présente Convention. Sous réserve de cette dernière considération et de la nécessité d'assurer l'administration effective de la justice, **les tribunaux du territoire occupé continueront à fonctionner** pour toutes les infractions prévues par cette législation. »*

Ainsi, en droit commun la compétence législative revient aux autorités du territoire occupé.

Le droit marocain ne peut donc s'appliquer que dans des exceptions prévues à l'alinéa 2 de l'article.

En conséquence :

- La législation pénale du territoire occupé reste en vigueur malgré l'occupation ;
- Les tribunaux du territoire occupé sont territorialement compétents pour juger des infractions qui y sont commises.

L'objectif de cet article est de permettre à la population du territoire occupé de bénéficier de garanties dans l'administration de la justice :

*« Grâce au maintien des tribunaux nationaux, les personnes protégées seront jugées par leurs **juges naturels**, sans se trouver en butte à l'incompréhension ou au parti pris de personnes représentant une mentalité, des traditions ou des doctrines étrangères. Le maintien de tribunaux signifie aussi que **les juges doivent pouvoir se prononcer en toute indépendance**. L'occupant ne saurait donc, sous réserve de ce qui suit, **s'immiscer dans l'administration de la justice pénale** ni sévir d'aucune manière contre des juges appliquant en conscience la loi de leur pays »* (Commentaire du Comité international de la Croix Rouge)

Il s'agit donc de déterminer la législation pénale qui doit s'appliquer au Sahara occidental et de déterminer ensuite quels sont les juges qui doivent connaître des faits en raison de la situation particulière du Sahara qui est un territoire non autonome.

En l'espèce, le droit sahraoui, en qualité de législation du territoire occupé, devra être appliqué.

En outre, conformément à l'article précité, les tribunaux situés au Sahara occidental seront compétents pour juger la présente affaire. Des juges sahraouis devront être désignés pour composer la juridiction afin de garantir leur impartialité. Cette mesure est en adéquation avec l'article 64 explicité par le Comité international de la Croix rouge qui affirme que l'occupant ne peut s'immiscer dans l'administration de la justice pénale du territoire occupé.

La Cour d'appel de Rabat ne pourra que se déclarer incompétente au profit des juridictions siégeant à Laâyoune, sur le territoire occupé et appliquant le droit sahraoui.

Si par extraordinaire l'exception d'incompétence en vertu de l'article 64 alinéa 1 n'était pas retenue, l'exception mise en place par l'article 64 alinéa 2 sera applicable.

## **2) L'application exceptionnelle du droit marocain en vertu de l'article 64 alinéa 2 et 66 de la Quatrième Convention de Genève**

Le Maroc en tant que puissance occupante au Sahara Occidental a des obligations à remplir en vertu de la Convention de la Quatrième Convention de Genève et elle peut être investie d'un pouvoir législatif en vertu de l'article 64 alinéa 2 :

*« La Puissance occupante pourra toutefois soumettre la population du territoire occupé à des dispositions qui sont indispensables pour lui permettre de remplir ses obligations découlant de la présente Convention, et d'assurer l'administration régulière du territoire ainsi que la sécurité soit de la Puissance occupante, soit des membres et des biens des forces ou de l'administration d'occupation ainsi que des établissements et des lignes de communications utilisés par elle. »*

Il ressort que le Maroc en tant que puissance occupante du Sahara Occidental dispose de la possibilité de soumettre la population des territoires occupés à une législation spécifique dès lors qu'il s'agit d'assurer sa propre sécurité contre les populations occupées ou ses propres nationaux qui aideraient ses populations autochtones.

En d'autres termes, le Royaume du Maroc ne peut appliquer le droit marocain qu'à la condition qu'il considère que M. ASFARI et l'ensemble des accusés menacent la sécurité de

la puissance occupante par son militantisme en faveur de l'autodétermination.

En effet, la puissance occupante par le truchement de son pouvoir législatif « spécial » est autorisée à **promulguer des dispositions pénales pour sa propre protection** ce qui couvre l'ensemble des organisations civiles et militaires qu'un occupant entretient habituellement en territoire occupé.

Or, en l'espèce, les prévenus sont notamment accusés, depuis une durée ne dépassant pas le délai de prescription criminelle, d'avoir commis les crimes de constitution d'une bande criminelle, le délit de violence entraînant la mort avec préméditation contre des agents des forces publiques dans l'exercice de leurs fonctions.

Ces chefs d'accusations pourraient être considérés comme étant constitutifs de crimes contre la sûreté du Royaume du Maroc.

Dès lors, au regard des chefs de poursuite, et en l'absence de dispositions pénales édictées spécialement pour le Sahara Occidental, il conviendra d'appliquer les dispositions du droit marocain.

Le droit pénal marocain serait donc dans cette hypothèse le droit applicable à la présente procédure.

Il conviendra d'appliquer l'article 66 de la IV<sup>ème</sup> Convention de Genève qui prévoit que :

*« La Puissance occupante pourra, en cas d'infraction aux dispositions pénales promulguées par elle en vertu du deuxième alinéa de l'article 64, déférer les inculpés à ses tribunaux militaires, non politiques et régulièrement constitués, à condition que ceux-ci siègent dans le pays occupé. Les tribunaux de recours siègeront de préférence dans le pays occupé. »*

Les infractions visées par le présent article sont issues du droit pénal marocain, donc en vertu du pouvoir législatif de la puissance occupante qui vise à assurer sa protection.

Ainsi, les personnes mises en cause et soupçonnées d'avoir enfreint la législation en vigueur sur le territoire occupé devront obligatoirement être déférés devant des tribunaux militaires « *non politiques et régulièrement constitués* » à condition que ceux-ci siègent dans le pays occupé ».

Bien que le Maroc ait le **droit de déférer les contrevenants à ses propres tribunaux militaires**, ce pouvoir judiciaire ne doit être mis en place que pour parer aux insuffisances des tribunaux locaux.

Compte tenu de l'entrave à la mise en place des tribunaux locaux sahraouis, le Maroc en tant que puissance occupante avait l'obligation de mettre en place ses propres tribunaux militaires.

.

Cependant, en vertu du droit international humanitaire, ce tribunal doit respecter plusieurs conditions dont l'observation est impérative.

Premièrement, les inculpés ne peuvent être déférés qu'à des « tribunaux militaires », c'est-à-dire composés de juges ayant qualité de militaires et dépendant des autorités militaires.

Ces tribunaux militaires devront être « **non politiques** ». La mise en place de ces tribunaux ne doit pas servir de persécution politique.

Ensuite, ces tribunaux doivent être « régulièrement constitués ». Ce sont des **tribunaux militaires ordinaires de la Puissance occupante** qui seront compétents. Ces tribunaux auront

été organisés conformément aux principes généralement reconnus en matière d'administration de la justice et dont la procédure doit impérativement respecter les **garanties judiciaires propres à assurer le respect de la personne humaine**.

**Enfin, les tribunaux saisis doivent siéger dans le pays occupé.** Si les tribunaux militaires ordinaires de la Puissance occupante siègent hors du territoire occupé, ils doivent se déplacer exceptionnellement pour juger des infractions dont ils sont saisis. Cette obligation découle du principe de la territorialité de la juridiction pénale. Il évite aux personnes protégées inculpées d'être déferées à un for situé dans un pays autre que celui où l'infraction a été commise, et constitue pour elles une garantie précieuse et intangible.

En l'espèce, le premier tribunal militaire mis en place pour connaître des faits a siégé à Rabat de manière irrégulière, il aurait dû siéger au sein de la puissance occupée.

Bien que la Cour de Cassation Marocaine ait cassé cette décision, il n'en demeure pas moins qu'elle a indument renvoyé l'affaire devant la Cour d'appel de Rabat qui est incompétente pour deux raisons :

- Il ne s'agit pas d'un appel mais d'une instance de jugement de premier ressort audiencée devant une Cour d'appel à la requête de la Cour de cassation.
- Seul un tribunal militaire siégeant au sein de la puissance occupée peut connaître de l'affaire.

Ainsi, le Maroc a exercé un pouvoir judiciaire qui lui est conféré de manière exceptionnelle en raison de sa qualité de puissance occupante mais ce pouvoir ne peut être exercé que dans le respect du droit international humanitaire et plus particulièrement de la IV<sup>ème</sup> Convention de Genève à laquelle le Royaume du Maroc est partie.

Pour toutes ces raisons, l'incompétence territoriale de la Cour d'appel de Rabat est manifeste.

Enfin, la Cour d'Appel de LAAYOUNE est situé en territoire occupé, dans ces conditions, ni l'organisation pratique des juridictions d'occupation, ni le droit marocain ne s'oppose au respect du droit international.

**PAR CES MOTIFS**

Vu le droit international humanitaire,

Vu la Convention contre la torture,

Vu le Pacte international relatif aux Droits Civils et Politiques,

Vu l'article 2 commun des 4 Convention de Genève de 1949,

Vu les articles 64 et 66 de la quatrième Convention de Genève relative à la protection des personnes civiles en temps de guerre, 12 août 1949,

Vu l'article 1<sup>er</sup> du 1<sup>er</sup> Protocole additionnel de 1977 aux Convention de Genève de 1949,

Vu le droit pénal marocain,

Il est demandé à la Cour :

A titre principal :

- de reconnaître l'applicabilité du droit sahraoui

En conséquence :

- de se déclarer incompétente au profit des juridictions de Laâyoune appliquant le droit sahraoui

A titre subsidiaire :

- reconnaître le statut de militants en faveur de l'autodétermination du peuple sahraoui au profit de Messieurs Ahmed Sbaï, Abdeljalil Laâroussi, Abdellah Lakhfaoui, Mohamed Bachir Boutanguiza, Abhah Sidi Abdellah, Ibrahim El Ismaïli, Lamjayed Sidi Ahmed, Mohamed Bani, Asfari Naâma, Mohamed Bourial, Hassan Dah, Banga Cheikh, El Hassan Zaoui, Lafkir Mohamed Mbarek, Mohamed Khouna Boubit, Larbi El Bekkay, Dafi Daïch, Abdellah Toubali, Mohamed Lamine Haddi, Mohamed Tahlil et Khadda Bachir.

En conséquence :

- se déclarer incompétente au profit d'un tribunal militaire siégeant en territoire occupé

Joseph BREHAM

Ingrid METTON

Olfa OULED

## Annex VII - Written verdict

The written verdict was published only in arabic and comprises 233 pages, it can be consulted at:

[https://issuu.com/porunsaharalibre/docs/annex\\_vii\\_gdeim\\_izik\\_case\\_written\\_v](https://issuu.com/porunsaharalibre/docs/annex_vii_gdeim_izik_case_written_v)



## Annex VIII - Decision of the Supreme Cour



باسم جلالة الملك  
وطبقا للقانون

المملكة المغربية  
السلطة القضائية  
محكمة الاستئناف بالرباط

غرفة الجنايات الاستئنافية  
ملف محدد : 2016/2612/582  
قرار رقم : 332  
بتاريخ 2017/07/19

بتاريخ رابع وعشرين شوال 1438 / الموافق لتاسع عشر يوليوز 2017

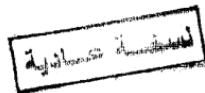
عقدت غرفة الجنايات الاستئنافية بمحكمة الاستئناف بالرباط جلسة علنية بقاعة الجلسات الاعتيادية للنظر في القضايا الجنائية المعروضة عليها وكانت الهيئة تتركب من نفس الأعضاء الذين ناقشوا القضية وهم السادة:

رئيس	كز يوسف العلة
مستشار	كز المصطفى الرميلي
مستشار	كز محمد ألي
مستشار	كز زهير حاكم
مستشار	كز علي المواق
معتلا للنياية العامة	كز بحضور السيد خالد كـردودي
كاتبا للضبط	كز بمساعدة السيد يوسف لخضر

وأصدرت القرار الآتي نصه :  
بين السيد الوكيل العام للملك لدى هذه المحكمة  
والمطالين بالحق المدني :

① ورثة آيت علا وهم :

- والده محمد آيت علا - والدته نعيمة خردوي  
- إخوته مهدي آيت علا / أمين آيت علا / يحيى آيت علا  
الساكنون بحي سيدي محمد بن الحسن عمارة 54 الشقة 9 سلا الجديدة / ينوب عنهم الأستاذ النقيب  
محمد شهيبي محامي بهيئة الدار البيضاء.  
والأستاذان هاوا كالوكا و ايمانويل طويل Tawil Emmanuel محاميان بهيئة باريس فرنسا والأستاذ  
لورينزو محامي بهيئة موريا باسانيا.



**Quant au fond :**

En ce qui concerne le deuxième moyen de cassation, deuxième partie de la sa première section et sa deuxième section, revêtant une priorité, dans le mémoire de Me Noureddine Dalil, fondées conjointement sur la violation des articles 129 et 267 du Code Pénal, au motif du défaut de constatation de l'élément matériel et de le lien de causalité dans la perpétration du crime de violence à l'égard des agents de la force publique lors de l'exercice de leurs fonctions ayant entraîné la mort avec intention de la donner :

Attendu d'une part que le tribunal a condamné le demandeur pour complicité dans ledit crime, sans que dans cette affaire ne soit réuni l'un des cas de complicité prévus dans l'article 129 du Code Pénal précité, stipulant que le complice devra commettre l'acte avec l'entente de l'auteur principal ; ce que le tribunal n'a pas démontré dans sa motivation.

Attendu d'autre part que le tribunal a condamné le demandeur pour le crime susmentionné, en se basant sur les dispositions de l'alinéa cinq dudit article, que l'existence de l'acte matériel consistant dans la commission de la violence est parmi les éléments constitutif de ce crime ; que l'acte matériel devra être la cause directe de la mort de l'agent ou des agents de la force publique. Que l'arrêt n'a pas donné les noms des victimes, contre lesquelles la violence a été commise. Que le tribunal n'a également pas démontré dans son jugement les actes criminels perpétrés par le demandeur à l'égard des victimes ayant entraîné leur mort. Qu'il n'a été procédé à aucune autopsie médicale, laquelle reste le seul moyen scientifique susceptible de diagnostiquer les causes du décès. Que le tribunal n'a pas établi dans son jugement le lien de causalité entre les actes matériels imputés au demandeur et la mort des agents des forces publiques. Que le jugement attaqué reste donc dénué de tout fondement et passible de cassation et de nullité.

Vu les articles 365 et 370 du Code de Procédure Pénale, et les articles 129 et 267 du Code Pénal.

Attendu qu'en vertu de l'article 365, alinéa 8 et 370 alinéa 3 dudit code, tout jugement ou arrêt devra comporter les causes de fait et de droit sur lesquelles il s'est basé, sous peine de nullité, et que l'insuffisance de motivation équivaut au défaut de motivation.



Attendu que l'article 129 du Code Pénal, appliqué par le Tribunal dans le cas d'espèce, stipule ce qui suit :

« Sont considérés comme complices d'une infraction qualifiée crime ou délit ceux qui, sans participation directe à cette infraction, ont :

1° Par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, provoqué à cette action ou donné des instructions pour la commettre... »

Attendu que l'article 267 appliqué par le Tribunal dispose dans ses 1<sup>er</sup> et 5<sup>ème</sup> alinéas dudit Code, que :

« Est puni ....., quiconque commet des violences ou voies de fait envers un magistrat, un fonctionnaire public, un commandant ou agent de la force publique dans l'exercice de ses fonctions ou à l'occasion de cet exercice..... Lorsque les violences entraînent la mort, avec l'intention de la donner, la peine encourue est la mort.... ».

Attendu que le Tribunal a condamné le demandeur à une peine d'emprisonnement de trente ans, pour les crimes de formation d'une association de malfaiteurs et participation à des actes de violence à l'égard des agents de la force publique lors de l'exercice de leurs fonctions, ayant entraîné leur mort avec l'intention de la donner.

Attendu qu'en ce qui a trait aux jugements du Tribunal Militaire Permanent des Forces Armées Royales, les questions posées par le Président aux membres du corps siégeant et les réponses à celles-ci par l'affirmative ou la négative, tiennent lieu de motivation.

Attendu que le tribunal a motivé sa condamnation du demandeur au pourvoi pour le deuxième crime dont la peine a été la plus lourde, en se basant sur ce qui suit :

« Est-il établi que l'accusé Asfari Naâma est le théoricien et la main apparente ayant incité les membres de sa bande à commettre les actes suivants :

1. Intimider les migrants qui ont émis leur volonté de quitter le campement et de retourner à Laâyoune ? Oui.
2. Créer une sorte d'agitation et troubler l'ordre public ? Oui.



3. Faire face à tout assaut lancé par les agents des forces publiques ? Oui.

4. Profiter de cette situation pour tuer et mutiler ces agents ? Oui.

Cette incitation a-t-elle abouti, si elle a été établie, du fait de la mort de nombreux agents des forces publiques ? Oui.

Est-ce que l'accusé Naâma Asfari a eu connaissance des actes criminels commis par ceux qu'il a incité, consistant dans la violence à l'égard des agents de la force publique ayant entraîné la mort avec intention de la donner ? Oui.

Est-ce qu'il a commis cet acte, selon les dispositions de la première section de l'article du Code Pénal? Oui

Est-ce qu'il a utilisé pour ce faire le don d'argent? Oui

Est-ce qu'il a fait usage pour ce faire d'un artifice coupable? Oui.

Est-ce qu'il a commis l'acte d'incitation tel que disposé dans le même article? Oui.

Est-ce qu'il a utilisé pour ce faire le don d'argent? Oui.

Est-ce qu'il a utilisé pour ce faire le don d'argent? Oui.

Est-ce qu'il a fait usage pour ce faire d'un artifice coupable? Oui.

Est-il considéré comme complice de la perpétration du crime de violence à l'égard des agents de la force publique ayant entraîné leur mort avec l'intention de la donner? Oui.

Est-il condamné à cet effet en conformité avec les dispositions des articles 267, alinéa 5 et 129 du Code Pénal? Oui.

Est-ce que l'accusé bénéficie des circonstances atténuantes? Oui ».

Attendu que la condamnation pour ledit crime de complicité exige que le tribunal prouve que les conditions juridiques y afférentes sont réunies (article 129/1 du Code Pénal) d'une part, ainsi que les éléments légaux constitutifs des actes criminels commis sur ordre ou incitation du complice (article 267/1 - 5 dudit Code) d'autre part.

Attendu qu'il résulte de ladite motivation du tribunal concernant le crime de complicité dans la perpétration de la violence à l'égard des agents de la force publique lors de l'exercice de leurs fonctions ayant entraîné leur mort avec l'intention de la donner; à savoir le crime pour lequel l'accusé a été condamné à la



peine la plus lourde. Que le tribunal a abordé partiellement le premier volet relatif au crime de complicité du demandeur dans le fait d'inciter et d'ordonner la commission d'actes en général, en faisant usage de divers moyens pour perpétrer des actes de violence. Que le tribunal n'a cependant pas prouvé de manière claire l'objet de l'ordre et de l'incitation précités, la partie ou les personnes ciblées, la mort qui s'en est suivie ainsi que l'intention criminelle du demandeur.

Attendu que le tribunal n'a pas démontré dans le deuxième volet relatif aux actes criminels commis à la suite de l'ordre et de l'incitation, y compris les qualités fonctionnelles des victimes, au lieu de souligner uniquement qu'il s'agit d'agents des forces publiques, sans pour autant désigner le nombre de ceux décédés. Qu'il n'a pas également démontré que ces derniers étaient dans l'exercice de leurs fonctions lors de leur agression, en conformité avec les alinéas 1 et 5 de l'article 267 du Code Pénal précité, et que les crimes ont été commis avec la complicité du demandeur.

Attendu que cet état de fait rend le jugement passible de cassation et de nullité.

Attendu que les actes criminels objet du jugement attaqué, prononcé par le Tribunal Militaire Permanent des Forces Armées Royales à Rabat, en date du 17/02/2013, ne sont plus de la compétence de la justice militaire depuis le mois de juillet 2015, conformément à l'article 3 du Code de la Justice Militaire n°108.13, entré en vigueur à cette date.

Attendu au vu de ce qui précède que la déclaration de cassation dudit jugement impose le renvoi de l'affaire à la juridiction ordinaire, dont la compétence a été attribuée pour y statuer, et en dernier ressort (article 254, avant dernier alinéa de l'article 457 du Code de la Procédure Pénale), en prenant en considération les dispositions de l'article 219 du Code de la Justice Militaire.

Attendu que le bon déroulement de la justice dans le cas d'espèce exige le renvoi du dossier à la Chambre Criminelle d'appel de la Cour d'Appel de Rabat, en application de l'alinéa 1 de l'article 550 du Code de la Procédure Pénale.

#### PAR CES MOTIFS

Sans qu'il n'y ait lieu d'examiner les autres points contenus dans les moyens de cassation soulignés dans le mémoire de Me Nouredine Dalil, ainsi que ceux invoqués par Me Mohamed Habib Rguibi.





**La Cour:**

- Casse et annule le jugement attaqué rendu le 17/02/2013 par le Tribunal Militaire Permanent des Forces Armées Royales à Rabat, dans l'affaire n°3063/2474/10 et les numéros additionnels.

- Renvoie l'affaire et le demandeur au pourvoi à la Cour d'Appel de Rabat (Chambre Criminelle d'Appel) afin qu'il y soit statué de nouveau, conformément à la loi.

- Laisse les dépens judiciaires à la charge de la trésorerie générale.

- Décide de consigner le présent arrêt dans les registres du Tribunal Militaire précité à côté ou en marge du jugement attaqué.

De ce qui précède arrêt a été rendu et lu à l'audience publique tenue à la date précitée à la salle des audiences ordinaires de la cour de cassation, sise Avenue Annakhil Hay Riad, Rabat. Le corps siégeant étant composé de : Taib Anejjar, président, Président. Les conseillers : Bouchaib Boutarbouch, Rapporteur, Mohamed Lhafia, Mostafa Hamid et Abdelhak Aboulfaraj, assesseurs. En présence de l'Avocat Général M. Abdelkafi Ouriachi, représentant du Ministère Public et avec l'assistance du secrétaire-greffier Mme Fatima Yamani.

Le président

Le Conseiller-rapporteur  
(Suivent trois signatures)

Le Secrétaire-greffier

Cour de Cassation. Copie certifiée conforme à l'original portant les signatures du président, du conseiller-rapporteur et du secrétaire greffier. Signée: Amina Moumen. Suivent une signature et le cachet du greffe de la cour de cassation.

Copie administrative de l'arrêt pénal n°994 Dossier n°6202/2015  
5 pages - à usage administratif sous n°3195 - Date : 14/09/2016.

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