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Morocco: Free or retry 21 Sahrawis jailed 5 years ago

Joint call by rights groups on anniversary of clashes

(Rabat, November 5, 2015) – Moroccan authorities should free all 21 prisoners serving long terms stemming from the 2010 Western Sahara protests that turned deadly, or grant them a fair trial before a civilian court, and investigate all torture allegations, four human rights organizations said today.

On November 8, 2010, Moroccan security forces dismantled the protest camp that Sahrawis had erected a month earlier in Gdeim Izik, in Western Sahara, which is under Moroccan control. Eleven members of the security forces and two civilians died during the disturbances at the camp and in nearby El-Ayoun, the main city of Western Sahara. On February 17, 2013, a military court convicted 25 men, including human rights activists, for their alleged roles in the lethal violence, in seriously flawed trials.

“The bereaved families of those who lost their lives in November 2010 have a right to see justice done,” said Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch. “However, justice is surely not done by locking up a group of Sahrawis following a guilty verdict by a military court based on confessions allegedly obtained under coercion or torture without any other evidence linking them to these killings.”

The organizations signing this communique are Human Rights Watch, Amnesty International, the Action by Christians for the Abolition of Torture, and the Sahrawi Association of Victims of Grave Human Rights Violations.

Two of the 25 men were sentenced to time served and released, a third was sentenced in absentia, and a fourth was provisionally released for health reasons. The other 21 are serving prison terms of between 20 years and life. The court relied almost solely on statements by the men to reach their verdict, failing to investigate the defendants’ allegations that the police had tortured them to force their signatures on false statements.

If the authorities retry the defendants, they should respect the rule under international human rights law that there is a presumption for release pending trial, unless a judge determines that there are valid grounds to detain them, the organizations said. If it is determined that they have been victims of a miscarriage of justice, the state should compensate them, based on Article 14, paragraph 6 of the International Covenant on Civil and Political Rights, which Morocco ratified in 1979. Morocco’s constitution, in Article 122, gives a right to reparation from the state to a victim of a “judicial error.”

The 21 imprisoned defendants are in Salé Prison, 1,200 kilometers from their families in Western Sahara. They include Naâma Asfari, Ahmed Sbaï and Mohamed Tahlil, all members of Western Sahara human rights organizations critical of Moroccan rule over the disputed territory.

In October 2010, several thousand Sahrawis erected a tent encampment in Gdeim Izik to press a range of social and economic demands. Moroccan authorities entered into talks with protest leaders, but at a certain point decided to compel the protesters to leave. Early on November 8, security forces moved in to dismantle the settlement, setting off violent confrontations that spilled into the nearby city of El-Ayoun.

Authorities arrested hundreds of Sahrawis but eventually released all but 22, sending their cases to

military court and charging most with forming a “criminal gang” and participating, or complicity, in violence against security forces “leading to death with intent.” Two were also charged with defiling a corpse. In the months preceding the trial, authorities arrested two others in the same case and provisionally released one of the defendants for health reasons; another was tried in absentia.

Court records show that most of the defendants alleged early in the judicial process that the police had tortured or otherwise coerced them to sign false statements. Several told the investigative judge that the police had not even allowed them read their statements before signing them, and that they only discovered their contents later.

When the trial finally began, 27 months after the events, the defendants all denied the charges. Many again said that they had been tortured and compelled to sign their statements in which they falsely incriminated themselves. While the judge kept the trial open to the public – including to observers mandated by several of the organizations issuing this statement -- and generally allowed the defendants to speak, he ordered no investigation into the defendants’ allegations of mistreatment and falsified statements, and eventually accepted those statements as evidence sufficient for guilty verdicts.

The prosecution presented no witnesses or material evidence that compellingly linked the defendants to the deaths. The prosecution showed the court weapons that the police purportedly seized at the camp, but no evidence that linked them to the defendants other than the “confessions.” The court declined defense requests to order DNA tests on the weapons to see if this linked them to the defendants.

The court also rejected defense motions to summon police officers who recorded the defendants’ statements. No autopsy report was introduced at the trial to elucidate how and when each of the security force agents had died.

Trying civilians in military courts violates international human rights norms, the groups said. Moreover, Moroccan law denies defendants in military trials a full appeals trial, as civilian court trials would have. Military trial defendants can appeal only to the Cassation Court, which reviews errors of procedure, jurisdiction, abuse of power, or application of the law. The Cassation Court has had the petition from the Gdeim Izik defendants since March 2013 but has not ruled on it.

A law that took effect in July revised Morocco’s military justice law to remove civilian defendants from the jurisdiction of military courts. The new law does not mention the judicial status of civilians imprisoned by military courts before it entered into effect.

Morocco’s 2011 Constitution guarantees the right to a fair trial in articles 23 and 120. According to article 109, “A judge who fails in any way to fulfill the obligation to be independent and impartial is guilty of a serious professional failing and shall be subject to judicial consequences.” The constitution also forbids under all circumstances acts of torture or acts that are “cruel, inhumane, degrading, or that harm one’s dignity.” (Article 22)

The U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Morocco in 1993, requires states parties such as Morocco to abolish and also prevent torture or other forms of ill-treatment from undermining the right to a fair trial. It gives victims of torture the right to complain to authorities and to receive a prompt and impartial investigation of the complaint (article 13). It also requires countries to ensure that any statement “made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made” (article 15). Under the Convention, the authorities also have the duty to investigate any allegation of torture even without a formal complaint.

Morocco amended its penal code to define and criminalize torture (articles 224 to 232) and its code of penal procedure to exclude as evidence confessions obtained through “violence” or “coercion” (article 293). In practice, courts almost never investigate allegations that interrogators used torture or coercion to obtain confessions before admitting such confessions into evidence, where they become the main

basis for a conviction.

In 2012, the U.N. special rapporteur on torture urged Morocco “to further develop the forensic capacity of the prosecution and judiciary” and “implement the right to complain and to ensure that defendants who first appear before them have a fair opportunity to raise allegations of torture or ill-treatment they may have experienced” by the police or intelligence services.

“Morocco took the positive step this year of ending military trials for civilians,” said Said Boumedouha, deputy director for the Middle East and North Africa at Amnesty International. “Now it needs to bring justice to these long-term prisoners unfairly convicted in military court shortly before the new law took effect.”

Public document

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Below is a list of the defendants, the charges for which they were convicted and the sentences:

Name	Charges on which convicted	Sentence
Ahmed Sbaï	Membership in a criminal gang, violence against security force member leading to death with intent	Life in prison
Mohamed Bachir Boutanguiza	Membership in a criminal gang, violence against security force member leading to death with intent, defiling a corpse	Life in prison
Sidi Abdallah Abhah	Membership in a criminal gang, violence against security force member leading to death with intent, defiling a corpse	Life in prison
Mohamed Bani	Membership in a criminal gang, violence against security force member leading to death with intent	Life in prison
Brahim Ismaïli	Membership in a criminal gang, complicity in violence against security force member leading to death with intent	Life in prison
Sidahmed Lemjayed	Membership in a criminal gang, violence against security force member leading to death with intent, complicity in violence against security force member leading to death with intent	Life in prison
Abdallah Lekhfawni	Membership in a criminal gang, violence against security force member leading to death with intent	Life in prison
Abdeljalil Laâroussi	Membership in a criminal gang, violence against security force member leading to death with intent	Life in prison
Hassanna Alia (tried in absentia)	The court’s written verdict does not appear to list the charges	Life in prison
Naâma Asfari	Membership in a criminal gang, complicity in violence against security force member leading to death with intent	30 years

Hassan Dah	Membership in a criminal gang and complicity in violence against security force member leading to death with intent	30 years
Cheikh Banga	Membership in a criminal gang and complicity in violence against security force member leading to death with intent	30 years
Mohamed Bourial	Forming a criminal gang, violence against a security force member on duty leading to death	30 years
Mohamed Tahlil	Membership in a criminal gang, complicity in violence against security force member leading to death with intent	20 years
Mohamed Lamine Haddi	Membership in a criminal gang and complicity in violence against security force member	25 years
Abdallah Toubali	Forming a criminal gang, violence against security force member leading to death with intent, contribution to and complicity in violence (charges were revised during the trial)	25 years
Hocine Zaoui	Forming a criminal gang, complicity in violence against security force member leading to death with intent, complicity in violence, defiling a corpse (charges were revised during the trial)	25 years
Daich Daf	Forming a criminal gang, complicity in violence against security force member leading to death with intent	25 years
Mohamed Embarek Lefkir	Membership in a criminal gang, complicity in violence against security force member leading to death with intent (charges were revised during the trial)	25 years
Mohamed Khouna Babeit	Membership in a criminal gang, violence against security force member leading to death with intent	25 years
Larbi Elbakai	Membership in a criminal gang, violence against a security force member leading to death with intent	25 years
Mohamed el-Ayoubi (tried while provisionally free, for health reasons)	Membership in a criminal gang, violence against a security force member leading to death with intent	20 years (provisionally free for health reasons)
Bachir Khadda	Entering into a criminal agreement, complicity in violence against security force member leading to death with intent	20 years
Taki el-Machdoufi	Inflicting harm with premeditation on members of the security forces on duty (charges were revised during trial)	Sentenced to time served (2 years) and released
Sidi Abderrahmane Zayou	Participation in inflicting harm with premeditation on members of the security forces on duty (charges were revised during trial)	Sentenced to time served (2 years) and released

