

# AMNESTY INTERNATIONAL

## PUBLIC STATEMENT

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### **Morocco/Western Sahara: Grant Sahrawi defendants a fair trial**

The trial of 24 Sahrawis in a civilian court that began on 26 December is an opportunity to redress the [numerous violations](#) that tainted their fundamentally flawed military trial in 2013. The trial at the Rabat Court of Appeals continued on 23, 24 and 25 January, and was adjourned until 13 March. A fair trial is essential in order to bring to light the truth of the events in 2010 which led to the death of eleven members of the Moroccan security forces and two Sahrawis, Amnesty International said.

The group of 24 defendants includes members of Sahrawi human rights groups and political activists who were among many Sahrawis arrested by Moroccan security forces in connection with violent clashes following the forcible dispersal on 8 November 2010 of a protest camp in Gdim Izik near Laayoune, in Moroccan-administered Western Sahara. Shortly afterwards, Amnesty International had sent a delegation to the area, and its resulting [report](#) described the excessive use of force by Moroccan security forces in dispersing the protest camp and conducting arrests, as well as violent resistance to the dispersal by some individuals in the camp and in neighbouring Laayoune. Amnesty International has on several occasions called on the Moroccan authorities to investigate human rights violations which took place during and following the camp dispersal on 8 November 2010 and to ensure that those detained in the context of these incidents are not tortured or otherwise ill-treated.

#### **Changes in national legislation and a decision by the UN Committee against Torture**

A new Military Justice Law adopted in 2015 excluded the trial of civilians before military courts, but Article 219 of the law confirmed past judgments by military courts in relation to civilians. As a result, civilians imprisoned following convictions by military courts remained behind bars. Amnesty International opposes the trial of civilians before military courts. International tribunals and other bodies have expressed strong reservations about the trial of civilians before military courts owing to the nature of these courts and because of concerns about their independence and impartiality. Some of them, including the African Commission on Human and Peoples' Rights, have repeatedly found that trials of civilians in military courts violated fair trial rights. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa prohibit the use of military courts to try civilians.

Amnesty International calls on the Moroccan authorities to ensure the defendants' right to a fair trial during these proceedings. This includes respect for the presumption of innocence, effective investigations into allegations of torture or other ill-treatment in custody, and exclusion of any evidence obtained under duress. The UN Committee against Torture has also made similar recommendations in its concluding observations with regard to Morocco's compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). The Committee has recurrently called for Moroccan authorities to promptly, effectively and impartially investigate torture allegations and hold perpetrators accountable, and to exclude statements made under duress from judicial proceedings except as evidence to prosecute perpetrators of torture or other ill-treatment.

On 14 November, the Committee against Torture also issued a decision finding Morocco to have breached the rights of one of the defendants, Enaama Asfari, under the Convention against Torture. Breaches include torture and other ill-treatment following his arrest (Article 1); failing to investigate his allegations of torture and other ill-treatment (Article 12); failing to protect him and his lawyer from reprisals for complaining about torture and other ill-treatment (Article 13); failing to provide the defendant with reparations for torture and other ill-treatment including medical rehabilitation and compensation (Article 14); using a statement signed under torture or other ill-treatment in proceedings (Article 15); and failing to

prevent his ill-treatment in prison when guards beat him and the prison administration held him in very harsh conditions (Article 16).

The organization calls on the Moroccan authorities to implement the Committee's recommendations regarding Ennaama Asfari. The Committee called on the Moroccan authorities to award him fair and adequate reparations. It also called them to investigate his torture allegations in conformity with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) with the aim to hold perpetrators accountable where sufficient evidence is found. In addition, it asked the authorities to refrain from any act of intimidation or reprisals against him for filing a complaint to the Committee. Finally, it requested the authorities to inform the Committee of steps taken in this regard within 180 days.

### **Civilian proceedings underway**

The civilian proceedings follow the 27 July 2016 [decision](#) by the Court of Cassation, Morocco's highest court, annulling the February 2013 conviction by the Permanent Military Tribunal of the Royal Armed Forces in Rabat. The Court of Cassation highlighted the Military Tribunal's failure to establish key elements concerning the offences, namely establishing the identity of the perpetrator and the victim for each death, and establishing how the defendants allegedly were accomplices in the violence. Gaps in the incriminating evidence included the lack of autopsies of the deceased even though the military trial took place over two years after the events.

The 24 defendants currently face the same charges as during their previous military trial, as the case relies on the investigations by the investigative judge at the Rabat Permanent Military Tribunal which had led to the military proceedings. It is important that the Rabat Court of Appeals makes its own assessment of the evidence obtained from those investigations. Most of the defendants are accused of forming a "criminal gang" and participating in violence against security forces leading to death, with or without intent. Two were also charged with defiling a corpse. Families of the 11 deceased among the Moroccan security forces are also seeking to file a civil action for damages, currently under consideration by the court.

On 25 January, some defence lawyers contested the competence of the Rabat Court of Appeals to judge the case. They argued that the court is located outside the territory where the alleged offences occurred, the non-self-governing territory of Western Sahara which was annexed by Morocco in 1975, and that International humanitarian law and the Fourth Geneva Convention, to which Morocco is a party, require the trial to be held within that territory "occupied by Morocco". They demanded that the case be judged by the Laayoune Court of First Instance in Western Sahara instead.

The defence counsel faced several obstacles in delivering their plea, observers and lawyers said. The judge first stated that he couldn't understand the pleading lawyer's Arabic although others present in the court reportedly said they understood well. When she proposed instead to submit her defence to the court in a memorandum in Arabic, he alleged a procedural irregularity to refuse to take the document. Finally, when the lawyer resumed her defence speech stated that Western Sahara was "occupied by Morocco", the General Crown Prosecutor interrupted her stating that she was "threatening" Morocco's "territorial integrity", an offence punished with imprisonment under Moroccan law, in violation of the right to freedom of expression. The judge then told the lawyer that he would apply Moroccan law and not international law. When she responded that Moroccan law should be interpreted in light of international law, he stated if she continued her speech he would make use of his power under Article 298 of the Code of Criminal Procedure that allows him to refuse attempts by the defence to unnecessarily lengthen the debate.

The court agreed to summon some of the witnesses requested by the defence. It also agreed to the defence's request for forensic medical examinations for detained defendants but not for the three defendants who are currently at liberty, and appointed three Moroccan doctors to perform the examinations. The court's decision is a notable improvement over the Rabat Permanent Military Tribunal's persistence in ignoring allegations of torture in custody and requests for medical examinations during the 2013 military trial.

Medical examinations in the context of investigations into allegations of torture must be performed in line

with the Istanbul Protocol. Medical professionals must be impartial and independent from the authorities, as the UN Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee for the Prevention of Torture) has noted. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has also emphasized the importance of not restricting the pool of forensic doctors to officially accredited experts, by allowing non-governmental health experts to review state examinations and conduct independent assessments.

In addition, the court must be diligent in interpreting the results of such medical examinations, particularly in a case such as this, over six years after the alleged torture. Specifically, the absence of medical evidence is no proof that torture has not occurred, as the Subcommittee for the Prevention of Torture has noted. Inadequate medical examinations may fail to detect marks of torture, marks can fade with time, and many forms of ill-treatment, including physical and psychological torture – for instance, some forms of sexual violence – leave few or no visible marks. Crucially, medical examinations are no substitute for other aspects of investigations, including questioning victims and witnesses.

So far, the Rabat Court of Appeals refused the defence's request to release the 21 currently detained defendants on bail. Several among them suffer from ailments that prevent them from standing for prolonged periods, but they were only given the option to stand in the courtroom or to sit in an adjacent glass room from where they could not hear the proceedings. Defence lawyers reported that during the first hearing they were not given adequate access to speak to the defendants in privacy to prepare their defence. The defendants struggled to access pens to take notes of the proceedings, and were only allowed one pen for all of them during one of the hearings. Both restrictions breach the duty to provide adequate facilities to prepare defence, a core principle of equality of arms and the right to a fair trial.

The court did not allow relatives of the defendants to observe the first hearing, and only one relative per defendant was allowed subsequently, although no such restriction was imposed on relatives of the deceased Moroccan security forces. Relatives of the defendants have also reported sustained intimidation and harassment outside the court and during their stay in Salé. Several have filed complaints to the court stating they were hit with water bottles, and sometimes rocks, rotten fruit and bottles filled with urine, and faced death threats, as those not allowed into the courtroom held peaceful sit-ins outside the court, and in the evening on their way back to their accommodation. Witnesses added that such incidents often happened in plain sight of Moroccan security officers, several of whom failed to intervene. Videos of Moroccan protesters supporting the deceased security forces outside the court and media coverage in Morocco show numerous calls for the court to harshly punish the defendants, and even to impose the death penalty. Finally, Moroccan authorities denied entry to Morocco to French national Claude Mangin, the wife of defendant Enaama Asfari, when she travelled to the country to visit him on 5 February. They detained her at Mohammed V International Airport in Casablanca for 24 hours before compelling her to board a flight to Geneva.

Twenty-one of the 24 defendants were sentenced in 2013 by the military tribunal to heavy prison terms including life sentences, and they remain in detention pending the outcome of the trial before the Rabat Court of Appeals. Of the three who are not currently in detention, one who is elderly and sick was released on bail on medical grounds, and the Rabat Court of Appeals cited his absence on 26 December as a reason to adjourn the hearing after nine hours of proceedings. The court then decided on 23 January to separate his case from the rest of the defendants. Two others convicted in the same case had been released in 2012 after serving two-year prison terms, and appeared before the court. Sahrawi activist Hassanna Alia has found asylum in Spain since having been convicted in his absence in the 2013 military court trial. He will not benefit from the current civilian trial before the Rabat Court of Appeals as his conviction in absentia did not allow for lawyers to lodge an appeal at the Court of Cassation on his behalf, the defence team told Amnesty International.

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