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MOROCCO: ENSURE FAIR APPEAL TRIAL TO JOURNALIST OMAR RADI

Omar Radi, an investigative journalist, was sentenced on 19 July to six years in jail for charges of rape and espionage, in a trial marred by violations of his fair trial rights. The court did not allow his defence to cross examine a key prosecution witness and discarded key defence witnesses and evidence. The verdict, which Amnesty International reviewed, shows a lack of impartiality in the judge's reasoning, who relied on speculative and biased arguments to convict him. For his ongoing appeal trial, authorities should grant Radi a fair trial in accordance with international law.

Omar Radi is a founder of and former journalist at [Le Desk](#), an independent Moroccan news website that published content critical of the authorities. He has worked with several national and international media outlets, including radio station Atlantic Radio, magazines *Le Journal Hebdomadaire* and *TelQuel* and news website *Lakome*. His investigations have focused on political affairs, including the relations between political powers and business elites in Morocco and investigating corruption by the authorities. In 2013, he won the first investigative journalism award of International Media Support (IMS) and the Association of Moroccan Investigative Journalists (AMJI) for an investigation into the exploitation of sand quarries published on *Lakome*. In 2016, he was the author of an investigative report widely known as “Servants of the State” in which he listed the names of around 100 senior officials alleged to have illegally acquired state land.

In June 2020, Amnesty International revealed in a report that Omar Radi's phone was subjected to multiple attacks using a sophisticated new technique that silently installed NSO Group's notorious Pegasus spyware. The attacks occurred over a period when Radi was being repeatedly harassed by the Moroccan authorities, with one attack taking place just days after NSO pledged to stop its products being used in human rights abuses and continued until at least January 2020.

Shortly thereafter, in July 2020, the authorities summoned Omar Radi more than 10 times for an investigation into the espionage allegation. On 29 July, the authorities arrested him and charged him with “harming the internal and external security of Morocco” based on an accusation that he had received funds from sources “linked to foreign intelligence agencies”. Amnesty International considers these to be trumped up charges as they are related to research grants in the context of a journalism fellowship and freelance consultancies, both protected by his right to freedom of expression.

Omar Radi was also charged with “rape” and “indecent assault against a female” after a former colleague at Le Desk alleged that he assaulted her on the night between 12 and 13 July 2020 in the living room of the house of the director of Le Desk, where journalists and staff stayed for the night because of COVID 19 lockdown. Radi has denied the accusation. It is vital for all sexual assault allegations to be properly investigated and for perpetrators of such assaults to be brought to justice. Yet regardless of how serious the charges against him are, the authorities must ensure Radi is treated fairly and is granted a fair trial.

The appeals trial started on 4 November 2021 at the Appeals court in Casablanca. His final appeals trial session is scheduled for 3 March 2022. According to one of his lawyers, who spoke with Amnesty International, many of the flaws that marred the first instance trial, as described below, remained at the appeals level.

Throughout Radi's first instance and appeals trials, Amnesty International has observed several breaches to the principle of fair trial guarantees.

EXCLUDING DEFENCE WITNESSES AND EXCULPATORY EVIDENCE

Imad Stitou, a journalist and Omar Radi's colleague at Le Desk, testified before the judicial police and the investigative judge that, on the night of the sexual encounter, he also stayed at the house of the director of Le Desk and slept on a sofa which, according to the gendarmerie's sketch of the alleged crime scene, which AI reviewed, was around 10 meters away from the sofa on which the sexual encounter occurred. He confirmed Radi's version of the facts, declaring that he overheard the sexual interaction of Rad and the complainant, which he said was consensual as there were no “calls for

rescue, sounds of violence or anything similar”.¹ According to the case file, the complainant initially declared to the judicial police and the investigative judge that Stitou had been sleeping during the “rape”, but when he testified that he was awake and confirmed Omar Radi’s versions of the facts, the prosecutor opened an investigation against Stitou in October 2020. The investigative judge charged him with “complicity in rape” on 18 March 2021, although the alleged victim did not accuse Stitou of taking part in the assault. He was sentenced to one year in prison for “failure to provide assistance to someone in danger” and “failure to inform the authorities of the commission of a crime.”

In the verdict, the judge excluded Stitou’s testimony by resorting to a circular argument, stating that Stitou is an accused in this trial and his testimony would be tainted, as “denying the charge is in his interest”. Instead of examining his testimony objectively and impartially, the court nullified the evidentiary value of his testimony as a defence witness. Furthermore, it is an abuse of process to bring charges against a defence witness in this way, as it appears to have been designed to undermine his evidence.

Sentencing Stitou in the absence of any inculpatory evidence against him showing that he was an accomplice or that he failed to assist the complainant, who claimed that she did not scream or call for help because she felt paralysed, shows bias and the absence of an objective assessment of both defence and prosecution evidence without a prior assumption about the case.

The court has also refused to call several other witnesses to testify on spurious grounds, thus denying the accused his right to present exculpatory evidence. Radi was accused of espionage based on his contacts with diplomats from the Dutch embassy in Morocco, and his consultant work with several organisations including the [Bertha Foundation](#), [G3 \(Good Governance Group\)](#) and [K2 Integrity](#), whom the court accused of being foreign agents or organisations with malevolent intent towards Morocco.²

The investigative judge, the prosecutor and the court alleged that one of the diplomats, Arnaud Simon, was an undercover name for a Dutch intelligence agent, because they could not find this name on the Foreign Affairs Ministry’s list of registered diplomats in Morocco. The court refused all defence requests to call this person to testify, despite the fact Mr. Simons identified himself publicly, denied he was an intelligence agent, volunteered to testify, and said the espionage allegations against Radi were unfounded, and that his exchanges with Radi were consistent with his role as cultural attaché at the Dutch embassy.

The court similarly rejected all of Omar Radi’s defence team’s requests to call for witnesses from the Bertha Foundation, who they said were ready to testify. The Bertha Foundation had released several statements confirming that Radi received funds to investigate how the relationship between property, profit and politics contributes to land and housing injustice. His work focused on “how the Moroccan state is using expropriation of tribal lands for its own enrichment.”³ The court resorted to a circular argument to reject the requests, considering that “dealing with these organisations is criminal, as they have ties with intelligence, and their testimonies will not be impartial as they have a vested interest in the case.”⁴

The right to an impartial tribunal is a crucial pre-requisite of the right to a fair trial, as protected under international human rights law. Article 14 of the International Convention on Civil and Political Rights, which Morocco ratified, provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. It also provides that all those facing criminal charges shall have the right “to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”.

This requires that judges and jurors have no interest or stake in the particular case, do not have pre-formed opinions about it, and do not act in ways that promote the interests of one of the parties. Decisions about facts must be made impartially, solely on the evidence, and the facts must be applied to the applicable laws.

¹ Verdict, First instance chamber in the appeals court in Casablanca, 19 July 2021, page 28.

² [berthafoundation.org](#); [g3.co](#); [k2integrity.com](#)

³ Bertha Foundation, “Omar Radi: Morocco”, 2020, available at [berthafoundation.org/story/bertha-challenge-fellow-omar-radi](#)

⁴ Verdict, First instance chamber in the appeals court in Casablanca, 19 July 2021, p. 106.

DENYING THE DEFENCE TEAM THE RIGHT TO CROSS EXAMINE PROSECUTION WITNESSES

In August 2020, the investigative judge added as evidence to the case file an affidavit from, Hassan Ait Braim, a man who the complainant said is her fiancé. According to the affidavit, dated 10 August 2020, which Amnesty International reviewed, the man said that he was in a serious “friendship relationship” with the complainant that could develop in engagement or marriage, although the two never met in person as he stated. In the document, Ait Braim wrote that the complainant called him on the night of the reported crime and they were having a video conversation on WhatsApp at 2 am when he saw “a man dressed in boxer shorts pass behind the sofa, at which point the conversation abruptly ended.” Ait Braim said that he “does not know the truth of what happened” after the call ended. According to the verdict and case file, which Amnesty International reviewed, Ait Braim testified in person before the investigative judge on 12 August 2020, in the office of whom he confirmed his written testimony.

During the trial, Radi’s defence team asked the judge to summon Hassan Ait Braim for examination. However, the court rejected their request on dubious grounds, saying that the court has a discretionary power to decide which witnesses to call in and which ones are not needed to re-testify in court since they were already heard by the investigative judge and their testimony acquired a probative value⁵.

On August 6, 2020, a doctor from the public hospital Ibn Sina in Rabat conducted a medical examination of the complainant and provided a medical certificate. The complainant’s lawyers introduced that new piece of evidence on March 5, 2021, seven months after the certificate was issued, and Radi’s defense was not notified of its existence until April 2021, when the first instance trial started. In the appeals phase, Radi’s defense requested that the judge summons the doctor who established the certificate to question her about her findings. The court rejected the request without justification.

The right of the accused to call-in and question witnesses is a fundamental element of the right to a defence and the principle of equality of arms and is guaranteed by international law and standards. The right to examine (or have examined) prosecution witnesses ensures that the defence has an opportunity to challenge the evidence against the accused. As stated by the UN Human Rights Committee, “as an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”⁶

All evidence should be produced in the presence of the accused at a public hearing so that the reliability of the evidence itself, as well as the credibility and probity of witnesses, can be challenged.

REFUSAL TO ADMIT EVIDENCE SHOWING INCONSISTENCIES IN VICTIM’S STATEMENT

In an interview published on YouTube on 21 October 2020, the complainant stated three times that “her fiancé” “was watching” her sexual encounter with Radi live on video link.” However, both in his written statement and during his in-person hearing by the investigative judge three months earlier, Ait Braim stated that the video call stopped before he could see any sexual activity.

According to the official record of her statement before the gendarmerie, the complainant did not mention what she had said in the YouTube interview she gave three months later, that Ait Braim was watching the sexual encounter. Nor did she say it at any time during the trial.

On 16 July 2021, one of Radi’s lawyers requested that the court admit as evidence a CD-ROM on which the complainant’s YouTube interview was recorded, in order to show apparent inconsistencies in her accounts of the incident. The judge refused, arguing that it was too late in the trial to accept new evidence. The apparent contradiction between her statements in that interview and what she told the gendarmerie and judicial authorities was never examined or debated in court. She was never cross-examined about it, neither in the first instance nor in the appeals court.

⁵ Verdict, First instance chamber in the appeals court in Casablanca, 19 July 2021, page 208.

⁶ Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007)

This is inconsistent with the right to a fair trial and in particular the right to adequately examine the evidence against the accused. Furthermore, there is a violation of the principle of equality of arms in that the prosecution were allowed to adduce evidence on unequal terms to the defence.

LIMITED ACCESS TO HIS LAWYERS

On 1 June 2021, during Radi's trial session at the Casablanca Court of Appeal, he complained to the judge about the lack of privacy in the room where he consults with his defence team in prison. This lack of privacy is ongoing since the start of the trial, as confirmed by one of Radi's lawyers who said that his in-prison-meetings with his client happen in the presence of four security agents. The authorities must respect the confidentiality of communications and consultations within the professional relationship between lawyers and their clients, in accordance with international law and standards.⁷

On 29 June 2021, Radi's International lawyer, Christophe Marchand, representing him within UN procedures, travelled to Casablanca to attend the trial only to be prevented from entering the country and was forcibly returned to Belgium. He did not receive an explanation for his return until he arrived in Belgium. The deportation order justifies the banning on vague grounds, referring to a Moroccan law relating to the entry and stay of foreigners in the Kingdom of Morocco which allows refusal of entry for foreign nationals who may constitute "a threat to public order."

BIASED CONCLUSIONS IN THE ESPIONAGE CHARGE

The court relied on biased arguments to sentence Omar Radi for espionage, displaying a glaring lack of impartiality. They used his taped phone calls and exchanges of conversation on the human rights situation in the country with foreign diplomats based in Morocco, to reach the conclusion that he was an agent of foreign countries, despite lack of evidence produced in court that he had passed classified information or served foreign interests.⁸

For example, the court considered that one such conversation between Radi and Frank Huising, a diplomat at the Dutch embassy in Rabat, in which the latter asked Radi to come to the embassy to introduce him to the new first secretary, was evidence that "informants were passed from one spy to the other when their mission was nearing its end" (page 230 of the verdict).⁹

The judgment also says on page 231: "Between March 2016 and March 2020, [Radi] was not a staff employee of any media organization; therefore, it can be concluded from that fact that [Radi's] travels to the field during [the Rif protests] were not connected to any journalistic work but were rather conducted to gather information about those events on behalf of the Dutch Embassy."¹⁰

The court's "conclusion" is speculative. It also ignores the fact that Radi explained, both to his police interrogators, to the prosecutor, to the investigative judge and multiple times in court that he was a freelance journalist during the specified period.

In court, Radi claimed that a British consulting firm contracted him to provide a succinct note on the agriculture sector in Morocco, understanding that such research would be partly internet-based. In page 234, the judgment comments on that claim as follows: "Browsing the internet and looking into specialized websites does not require the services of the accused, therefore, [he] must have rendered some other suspicious service to the British company." Nothing prevents any company from hiring any contractor, including Radi, to do internet-based research. That conclusion is speculative and cannot constitute evidence of guilt.

⁷ UN Basic Principles on the Role of Lawyers, Principle 22; Section N(I)(c) of the Principles on Fair Trial in Africa (e) All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate with a lawyer, without delay, interception or censorship and in full confidentiality.

⁸ Verdict, First instance chamber in the appeals court in Casablanca, 19 July 2021.

⁹ Verdict, First instance chamber in the appeals court in Casablanca, 19 July 2021, page 230.

¹⁰ Verdict, First instance chamber in the appeals court in Casablanca, 19 July 2021, page 231.

