



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

The 'Gdaim Izik' Trial

Permanent Military Court
Rabat – MOROCCO

Trial Observation Report

(October 2012 – February 2013)

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Introduction

Michael Ellman went as EMHRN's official observer at the trial of 24 defendants accused of "forming a criminal gang to commit violent and murderous acts against members of the security forces in the course of their duties, participating in such violence, and defiling a corpse..."

Mr Ellman went to Rabat to attend the Military Court (or "Court Martial") hearing listed for 24 October 2012. While there, Mr Ellman had meetings with the Moroccan Organization for Human Rights (OMDH) and the Moroccan Association of Human Rights (AMDH). He attended at the Court Office the day before with a Moroccan colleague from OMDH, where he made a formal request (in Arabic) to be admitted to the court proceedings as an observer. His request was accepted by the Registrar. There was no mention of the hearing being adjourned.

Mr Ellman and his OMDH colleague arrived at the courthouse before 9 a.m. the following day (the time fixed for the hearing) only to be told that the case had been adjourned *sine die* without a hearing. While an adjournment can be ordered at any time, no-one (not the Registrar, OMDH or AMDH)

had expected this to happen without a hearing or procedural formality – but the defence lawyers, who were not present, had received advance notice.

The proceedings for which EMHRN sent out its observer arise out of the events of 8 November 2010 when a settlement established by the movement of Sahrawis from Western Sahara (annexed by Morocco) was dismantled by Moroccan security forces, met with a robust response from Sahrawi activists and resulting in the deaths of 10 members of the security forces and at least two civilians.

The events of 8 November 2010 are part of a nearly 40 years' struggle for Western Saharan independence.

Background

To put the trial in context, a few words must be said about the lead-up to it. In October 2010, a group of Sahrawi citizens established a makeshift camp at Gdaim Izik, near Laayoune, to put the region's social and economic problems in the public eye; within weeks the settlement had grown to between 8000 and 25 000 residents.

The region's Moroccan authorities entered talks with Sahrawi camp representatives (the Dialogue Committee, which included several of the defendants) from 19 October to get the settlement dismantled. An agreement was apparently reached on Friday 5 November, but some Moroccan officials wanted it cleared before Monday, 8 November 2010.

At around 6 a.m. on 8 November, the security forces arrived with buses, saying that the settlement was to be dismantled and that people should board the buses to be taken to Laayoune. These announcements were made from helicopters hovering overhead.

While many camp residents apparently left readily (despite the camp organizers' efforts to dissuade them) a significant number refused and reportedly confronted the security forces – mainly young and mostly unarmed police trainees and army cadets.

This is how the clashes occurred, first on the fringes of the camp, then on the road to Laayoune, and later in Laayoune itself, where “rioting” took place and was put down by the security forces. The Moroccan authorities say this resulted in fatalities to 10 members of the security forces and two civilians, plus many injuries. Two defendants stand accused of urinating on a policeman's corpse, and others of inflicting bodily injury on a dying officer.

Twenty-four people were arrested - one before the events of 8 November, 22 on the 8th and in the following months, and another in September 2012 (one accused is still “at large”). They were interrogated in Laayoune and Rabat by the CID, state police and investigating judge, and their statements were taken and written up. Most of the statements were not signed, but bore the accuseds' fingerprints. Most of them claimed to have been tortured or threatened with torture, such as to make their statements inadmissible in evidence.

Article 7 of the Moroccan Code of Military Justice provides that a military court has jurisdiction over:

- ▶ 1. “Whoever commits an act classified as a felony causing harm to members of the royal armed forces and persons treated as such”
- ▶ 2. “Whoever commits an act classified as a felony in which one or more members of the armed forces are joint principals or accessories”.

It was on the basis of this provision (notwithstanding Article 127 of the new Moroccan Constitution prohibiting special courts) that the accused were remitted to the Military Court in Rabat for trial. All the defendants except one have been held without bail for over two years.

The trial

Having finally learned that the proceedings had been adjourned to 1 February 2013, Mr Ellman therefore returned to Rabat.

This time, the case was called for trial and the EMHRN observer attended with an OMDH lawyer, Mr Lahlou. Mr Ellman was seated on the public benches in company with 52 other international observers and a dozen observers from Moroccan NGOs.

A discussion ensued concerning the witnesses, the oral hearing being held in open court, the translation of the proceedings and an adjournment to a later date to have all defendants (two being held elsewhere, that day) and their lawyers present.

The defence lawyers asked for a 15 day adjournment for time to consult with their clients and summons witnesses, but the court granted only an 8 day adjournment to 8 February 2013. As far as Mr Ellman is aware, at no point either during this session or before the investigating judges did the defence lawyers seek to challenge the jurisdiction of a military court to try civilians accused of ordinary law offences - notwithstanding Article 127 of the Moroccan Constitution (2011) which prohibits special courts -, the lack of independence of such

a court, or non-compliance with the International Covenant on Civil and Political Rights (to which Morocco is a signatory).

The hearing therefore resumed on 8 February and it was only on that day that the Court's jurisdiction was questioned for the first time. The Court dismissed the defence's arguments.

The prosecutor insisted that Article 127 of the Constitution was not yet in force (although the Constitution is) because Parliament had not passed legislation to that effect. The court concurred.

It was impossible to discover why the defence lawyers failed to use the remedies available to challenge their clients' continued detention and the investigating judges' refusal to investigate the defendants' allegations of torture.

The case was finally called before the Court on 1 February 2013 to be held by four military judges and a civilian President, Mr Zehaf, with a large public attendance including over 50 international observers and up to a dozen observers from Moroccan NGOs. Most observers were supporters of either the accused or the victims.

The President emphasized that these were open court proceedings, but that he could not control the police if some of the defendants' families or others were not allowed into the courtroom. The large contingent of observers was matched by an equally large police and security force presence, with at least 40 police officers in court and dozens more outside, many of them armed. Although this trial was the subject of intense media attention, no diplomatic presence was to be seen despite the large number of diplomatic missions in Morocco.

A defence lawyer and witnesses on both sides did not enter appearances that day, so the Court adjourned the hearing after some discussion to Friday, 8 February (the defence would have preferred the 15th to give more time to ready their case, but the court decided on the 8th), and the President ordered interpretation in French, Spanish, English and Hassani (the Sahrawi language). When the case resumed, the prosecution and defence witnesses would be examined (the Court would fix the list of prosecution witnesses at that time). However, the Court accepted only some of the witnesses on the defence list, refusing to examine the Walis (regional officers), the former Minister of the Interior, the statement takers, the MP and members of the Dialogue Committee.

At each hearing, whenever the accused entered or were preparing to leave the court (after the court itself had risen), political slogans were chanted with no involvement by any of the parties present. Significantly, the military judges stayed silent during the entire proceedings, leaving the President to speak on behalf of the Court.

The hearing resumed on 8 February, at which point the defence for the first time challenged the military court's jurisdiction on the grounds mentioned above, and for violating the rule of law in a democratic state and international law to which the Moroccan Constitution gives overriding force; however, the objection was overruled, with the Court holding that no state authorities legislation as yet existed to implement the Constitution!

The Court sat all day Friday, Saturday and Sunday, sometimes until 10 p.m. The prosecutor gave a lengthy statement of the case and the charges against each defendant, but offered little witness evidence. All prosecution witnesses bar one were disallowed (after protracted argument) by the Court, one of the grounds being the prosecution's breach of the Article 182 Code of Criminal Procedure requirement to disclose the names

of witnesses to the defence at least 5 days before the hearing (to enable the defence to verify them, amongst other things).

The prosecution's address relied heavily on a video that did indeed show people in the GI camp carrying bladed weapons. It also showed other people striking a prone man, incendiary devices described as gas bombs etc. None of the witnesses, however, were able to confirm the source of the film, but more importantly, it was not possible to identify the people depicted in it.

The names of the deceased individuals were not disclosed to the Court, and the causes of death, fingerprints, or even traces of DNA etc., were not produced in the proceedings.

Addressing the allegations of torture, the prosecution argued that had the defence lawyers requested independent medical examinations after the investigating judge's interrogations they would have been ordered. There had been no identification parade of the accused.

The defence lawyers did, however, contend that they had filed criminal complaints about their clients' allegations of

torture, and reiterated that the prosecution had a duty to act on those complaints, but had refrained from doing so despite personal allegations having been made of such acts.

Finally, the prosecution requested that the Court apply the law against the 24 defendants (referring to the Asfari and Zagou cases), and that the absconding defendant be tried in absentia, but did not specify the penalties sought.

After the prosecution case, a lawyer instructed by the victims rose to file a joined civil claim for damages. He was heard in silence, but immediately the President began to respond, pointing out that there was no civil claim procedure in military law, strenuous protests were made by all the other lawyers.

After 5 minutes of uproar, the President adjourned to the afternoon for calm to be restored - which it was.

The accused were examined in turn, with questions put by the President and their own lawyers; the prosecution made little cross-examination. All were allowed to state their political and legal cases. While in the early days, the President intervened to insist that only legal arguments be put and to ask the accused

to confine their answers to the events of 8 November rather than their political positions, often highly political statements continued to be made with little hindrance. Sittings ran very late, starting about an hour and a half after the announced time of 9 a.m. On some occasions 10 minute recesses were announced, but the hearing would often not resume for at least half an hour. The EMHRN observer was advised, however, that such delays are not usual in the Moroccan courts.

The Court's decision on interpretation resulted in a (fairly poor and barely audible) consecutive translation into French, English and Spanish (not Hassani) of only a few of the Court's procedural decisions; the observers had to make do with translations by volunteers in the courtroom for anything else. Clearly, this report relies heavily on what could be gleaned from the interpretation kindly provided by our Moroccan colleagues during the oral proceedings which were conducted in Arabic. However, the presiding judge did thank the observers on several occasions for having attended "to ensure greater justice."

Some defendants denied having been in the camp on the day of 8 November and insisted that the police and investigating judge had questioned them not on their activities that day but

on their political activities more generally. None of the accused had been allowed to have a lawyer present during questioning in violation of universally accepted principles. Some had been forced to undress and had their genitals manhandled by soldiers, fingernails pulled out, or been burned with cigarettes, raped, beaten about the head or suffered other forms of abuse. All claimed to they have been insulted, handcuffed and blindfolded at one time or another during their interrogation and/or detention.

Others said that while they had not been tortured, they had been ill-treated. They had not seen daylight for the first four months of their detention, and had been denied family visits (particularly difficult for families living in Laayoune, hundreds of kilometres from Rabat, where they were held) during the early months. The visits that were allowed were held in two rooms divided by a screen. Most of the detainees were frightened and some had agreed to sign statements unread to avoid further torture. Several detainees showed evidence of torture on their bodies. Independent medical examinations were requested, but all were refused, one reason given being that too long had elapsed since the events complained of by the detainees concerned.

The main defendant, Enaama Asfari – accused of receiving large sums of money from abroad for the purchase of weapons and/or vehicles - insisted that he had received nothing from anyone; all he possessed was 500 dirhams. The EMHRN observer can also confirm that no such sums of money were produced in the exhibits. The police regarded Mr Asfari as the leader and tried to extract confessions from other co-defendants that they had acted on his orders – which they all denied. Some of the other detainees were accused of driving straight at the security forces to run them over and kill them. No evidence was produced of anyone dying from being run down by a vehicle. The lawyers had no notice of any death certificate, and the causes of death are not shown in the case file.

In their various addresses, the defence lawyers insisted that the Moroccan authorities plotted a deliberate plan of revenge against the Sahrawi activists, and queried whether such a court could give human rights due consideration. One of the lawyers argued that Morocco wanted the Sahara without the Sahrawis. The lawyers protested that the statements extracted through duress, torture and ill-treatment were inadmissible in the absence of a confession of guilt to the Court, real evidence or witnesses. They also objected that the court's composition

of military personnel when the victims were also military personnel was at odds with independent and impartial justice.

Several defendants were accused of having visited foreign countries (in particular Spain) to plan their political campaigns; some admitted this but insisted that the campaigns were non-violent. Others had visited Spain to find work. Some had visited Tindouf, in that part of Saharan territory ceded by Algeria to the Polisario Front (the Saharawi independence movement), which had established the Saharawi Arab Democratic Republic, while some acknowledged membership of the Polisario Front and the Sahrawi People's Liberation Army, while others distanced themselves from the Polisario Front.

However, they insisted that it was not a crime to talk to or join the Polisario Front. Many proclaimed themselves pacifists, or at least non-violent. At most they had used iron bars to protect themselves or the camp on 8 November.

It is worth noting that in his report on Morocco (including Western Sahara, which he visited in September 2012), the United Nations Special Rapporteur on Torture, Juan Méndez states that:

“In cases involving State security, such as terrorism, membership in Islamist movements, or supporters of independence for Western Sahara, there is a pattern of torture and ill-treatment by police officers during the arrest process and while in detention, in particular, by agents of the National Surveillance Directorate (DST). Many individuals have been coerced to confess and sentenced to prison on the basis of such a confession. The violations often continue while these individuals are serving their sentences”.

He concludes by recommending among other things that the Government of Morocco should:

“Reconsider the jurisdiction of the military court over civilians in the case of the 23 Sahrawi men detained at Salé Prison 1 and assure that, as a principle, civilians are not sentenced by military courts; initiate impartial, effective investigations to ascertain exactly what occurred and determine what responsibility should be borne by members of the police or security forces; and investigate all allegations of torture and ill-treatment”.

The fact remains, however, that 12 fatalities occurred (10 security force personnel and two civilians), and the Moroccan state has a duty to investigate and bring the perpetrators to justice.

Questions arise as to how these 24 people were identified, and as to the failings of the prosecution case. The defence likewise fell short in failing to take account of the military proceedings it faced. Why were the defence lawyers not present at the committal proceedings? Why were the investigating judges' decisions not appealed?



Conclusions

The EMHRN observer concludes that this trial was unfair on the following grounds:

- ▶ A military court has no jurisdiction under international rules – or even under the Moroccan Constitution - to try civilians. Article 7 of the Code of Military Justice makes a presumption of guilt (“whoever ... commits an act...”), but this Code predated the new Constitution and should have been repealed as a result of it;
- ▶ The Military Court cannot be regarded as independent and impartial because of its composition and the military judges’ subordination to their superior officers;
- ▶ The allegations of torture and ill-treatment should have been investigated as a matter of course without waiting for a complaint to be made, although the defence lawyers seem not to have exhausted all the remedies that they could have done;
- ▶ Accordingly, the records of the interrogation of the accused held in police custody, during which time they were denied access to a lawyer, can have no evidential value against them.

It is clear that, with the burden of proof lying on the prosecution, the prosecutor's office:

- ▶ Was unable to produce witnesses; the only witness who was examined made no charge against the accused;
- ▶ Produced in evidence a video of unproven origin in which the accused are not identifiable in the images;
- ▶ Did not produce the death certificates, such that the causes of the victims' deaths could not be established, and did not even see fit to name them;
- ▶ Produced no real evidence of any kind that could establish a connection between the accused and the alleged acts;
- ▶ Dwelt at length on the political opinions and activities of the accused, thus justifying their presence in the dock not for the alleged acts but for their political views.

While the President of the Court was the epitome of courtesy to the defence and observers, the fact nevertheless remains that no reasons whatever have so far been given for the judgment made which is at odds with all the evidence before the Court.

For these reasons, EMHRN believes that the trial was not fair by international standards (in accordance with Article 14 of the International Covenant on Civil and Political Rights).

The defendants have exercised the only remedy open to them, namely an appeal to the Supreme Court.

Michael Ellman

Solicitor, London. February 2013



EURO – MEDITERRANEAN HUMAN RIGHTS NETWORK

Vestergade 16 – 1456 Copenhagen K – Denmark

Tel. + 45 32 64 17 00

Fax. + 45 32 64 17 02

info@euromedrights.net

www.euromedrights.org