



SUBMISSION TO THE 13th UNIVERSAL PERIODIC
REVIEW OF THE KINGDOM OF MOROCCO AT THE
HUMAN RIGHTS COUNCIL.

BREACHES OF THE RIGHT TO A FAIR TRIAL

SWEDISH SECTION OF THE INTERNATIONAL
COMMISSION OF JURISTS

Swedish Section of the International Commission of Jurists
Järntorget 78, 2tr, S-111 29 Stockholm, Sweden
Phone: +46 8 645 62 80
E-mail: secretariat@icj-sweden.org
www.icj-sweden.org

SUMMARY

During 2010 and 2011 the Swedish Section of the International Commission of Jurists (ICJ-S) observed a number of trials in Western Sahara and Morocco. The trials concerned human rights defenders of Sahrawi ethnicity who had been charged with a variety of criminal offenses after having called for the right to self-determination for Western Sahara and for having participated in peaceful demonstrations related to the same matter. The conclusions from the trial observations raise serious concerns regarding not only the Sahrawis' right to a fair trial, but also regarding the question of independence and impartiality of the Moroccan judiciary.

The observations showed that the following provisions of the right to a fair trial had been violated:

- The impartiality of the tribunal*
- The preparation of defence*
- The right to be tried without undue delay*
- The principle of equality of arms*
- The principle of a public hearing*

Therefore, ICJ-S calls for Morocco to enhance the effective implementation of the right to a fair trial, further to take the necessary steps to enhance the Sahrawis' human rights, in particular their right to self-determination, freedom of expression and, when charged with criminal offenses, the right to a fair trial.

The ICJ-S recommends that Morocco ratify the first optional protocol to the International Covenant on Civil and Political Rights. There is also a need for an assessment of the Moroccan judiciary to improve the administration of justice, in light of the excessive influence of the Moroccan King.

INTRODUCTION

In the year of 2010 and 2011, the Swedish Section of the International Commission of Jurists¹ conducted a series of trial observations on the occupied territories of Western Sahara and in Morocco. The observations were conducted due to growing concerns about not only increasing violence against Sahrawi human rights defenders, but also taking into consideration reports confirming the lack of respect for their right to a fair trial when charged in courts.

Moroccan law is applied throughout the occupied territories of Western Sahara and reports from several international organisations such as Amnesty International and Human Rights Watch have voiced concerns about the lack of impartiality and independence with regards to the Moroccan judiciary. In a report published in May 2010 Amnesty International confirms the seriousness of the increased Moroccan intolerance against activities aimed to challenge Moroccan sovereignty.² The report also underlines that Moroccan authorities have arrested numerous Sahrawi activists in the context of demonstrations calling for self-determination and for independence and expresses thereby in addition a concern that the Moroccan authorities at these occasions also use excessive force to scatter the demonstrations.³ The report notes that "[i]n recent years, dozens have been brought to justice in trials that do not meet international standards for fair trial. In particular, serious

¹ The Swedish Section of the International Commission of Jurists (ICJ-Sweden) was created shortly after the establishment of the Geneva-based International Commission of Jurists (ICJ) in 1951. ICJ-Sweden functions as an independent support section to the secretariat in Geneva and works to promote human rights and the rule of law principles in Sweden and internationally.

² Amnesty International: "Broken Promises: The Equity and Reconciliation Commission and its Follow-Ups", 2010, Amnesty International Publications, London

³ Ibid, p. 70

concerns remain that evidence allegedly extracted under torture or duress is invoked in trial proceedings and torture allegations are rarely fully, independently and impartially investigated".⁴

Morocco has ratified some of the most important international human rights conventions,⁵ however, it has been held that ratification is rarely followed by the harmonisation of domestic Moroccan law in accordance with the standards of the international conventions.⁶ As a result, local judges, who lack sufficient education in international human rights law, might not consider the enforcement of international standards to be a priority. In this regard it must also be noted that the Constitution does not entail any provisions confirming the supremacy of international treaties over domestic law. Also the government's refusal to allow treaty bodies to hear individual complaints has obstructed the impact of the international conventions.

THE RIGHT TO A FAIR TRIAL

The right to a fair trial is a basic human right and is one of the universally applicable principles recognised in the Universal Declaration of Human Rights.⁷ The principles has been codified and reaffirmed in the International Covenant on Civil and Political Rights (ICCPR).⁸ ICCPR is a legally binding treaty which Morocco has ratified.⁹ The right to a fair trial is a fundamental safeguard to assure that individuals are not unjustly punished. The principle is indispensable for the protection of other human rights as well.¹⁰

The principles that constitute the right to a fair trial are set out in article 14 of the ICCPR. The first sentence of article 14 of the ICCPR guarantees the *right to equality* before courts and tribunals. From the right to equality stems the principle of *equality of arms*. The principle entails the right to be tried in the presence of the accused, the right to be legally represented by council of own choosing, the right to adequate time and facilities to prepare your defense, and the right to call and cross/examine witnesses.¹¹

THE LACK OF IMPARTIALITY OF THE MOROCCAN JUDICIARY

One constituent of the right to a fair trial is the characteristics of the courts and tribunals. From the ICCPR it is deduced that the court or tribunal should be independent and impartial. The Human Rights Committee has pointed out that a tribunal must be, and must be seen to be, independent and impartial.¹²

Morocco is a constitutional monarchy with a bicameral parliament and has, according to the Constitution (Article 82), an independent judiciary. In practice, however, the power of the king has no constraints.¹³ Article 83 of the Moroccan Constitution states that judgments are delivered in the name of the King. Judges are nominated on the proposal of the High Judicial Council (Article 84), which according to Article 86 is presided over by the King. The Council is competent in matters

⁴ Ibid, p. 70

⁵ Among others, the International Covenant on Civil and Political Rights of 1966 (ratified 1979), the International Covenant on Social, Economic and Cultural Rights of 1966 (ratified 1979) and the Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment and Punishment of 1984 (ratified 1993).

⁶ Abdelaziz Nouaydi, Morocco – The Imperative of Democratic Transition in Av Abd Allāh Amad Naīm (ed.), Human rights under African constitutions: realizing the promise for ourselves.

⁷ Adopted by the United Nations General Assembly 10 December 1948, see articles 10 and 11

⁸ Adopted by the United Nations General Assembly 10 December 1966 and entered into force 23 March 1976.

⁹ 3 May 1979 (signed 19 January 1977).

¹⁰ Amnesty International, Fair Trials Manual (London: Amnesty International publications, 1998), preface, p. 8.

¹¹ International Human Rights Lexicon, S. Marks and A. Clapham, Oxford University Press, 2005, p. 155.

¹² Human Rights Committee, Communication no. 577/1994, Polay Campos v. Peru, para. 8.8.

¹³ Freedom House, Countries at the Crossroads 2006 - Morocco, 3 August 2006.

Swedish Section of the International Commission of Jurists

Järntorget 78, 2tr, S-111 29 Stockholm, Sweden

Phone: +46 8 645 62 80

E-mail: secretariat@icj-sweden.org

www.icj-sweden.org

concerning promotion and discipline of the judges, but their proposals do in no way bind the King when appointing judges. These provisions and the practice of them not only seriously impact the nature and the functioning of the judiciary to a great extent, but also brings the impartiality of the Moroccan judiciary into question.

TRIAL OBSERVATIONS AND THEIR ASSESSMENT¹⁴

In total, six trials were observed by the ICJ-S between 2010 and 2011. During several of these observations the atmosphere in the court rooms became so hostile that violence broke loose. In many cases the Moroccan lawyers as well began shouting pro-Moroccan slogans in Arabic and French, eventually evoking into insulting the civilian Sahrawis present as well as the international trial observers. At one occasion the audience cheered when the prosecution spoke and there was laughter when the defendants' lawyers argued. The audience was agitated but the attitude and support for the prosecution were allowed by the Court to continue as they did not act on it. Further, when fighting broke out in the court room the security guards did not act to stop the violent clashes, nor did the judge order the guards to do so. In the majority of the trials observed, the malignant situation precluded the trials from being held, or was used as an excuse to postpone them.

In the court building, the observers were photographed by what appeared to be plain-clothes security agents, despite the Moroccan ban against taking photos in official buildings, including courts. The observers perceived this, in addition to the hostile environment during the proceedings, as a clear gesture of intimidation to prevent further international observation of the trials.

The public character of a hearing is intrinsically linked to a possibility for international observers to attend the trial in question. Thus, gaining access and thereby be able to monitor the fairness of a particular trial and the justice system as a whole is crucial for the proper conduct of trial observation. The observers commissioned by the ICJ-S had at several occasions difficulties to access the Court buildings. Moreover, the observers were not given the relevant information regarding the exact time and location of the trials. In sum, this conduct of the trials is contrary to the principle of a public hearing, as the Human Rights Committee has proclaimed that “[c]ourts must make information regarding the time and venue of the oral hearings available to the public”,¹⁵ in order for a trial to be fair.

When assessing the trials it is relevant to firstly seek to evaluate the impartiality of the tribunals. The notion of impartiality entails first that judges must not be biased or act in ways that improperly promotes the interests of one party to the detriment of the other, and second, that judges must appear to be impartial to a reasonable observer. To the notion of impartiality the question of how the tribunal acts in relation to the prosecutor and the defence is intimately related. In this respect, it was noted by the observers that in some of the cases the presiding judge both presented the case and questioned the accused, and that the role of the prosecutor and the defence counsel was effectively reduced to making closing arguments. It was difficult not to get the impression that the bench was making common cause with the prosecutor, further that the principle of adversarial proceedings was abandoned. This impression was enhanced by the fact that the prosecutor was seated on the podium at the short end of the same table as the judges, whereas the defence was in all placed on the ‘floor’ in front of the spectators.

¹⁴ Excerpts from ‘*Trial Observations in Western Sahara*’, to be published in December 2011, www.icj-sweden.org

¹⁵ Human Rights Committee, General Comment No. 32, para. 28.

Swedish Section of the International Commission of Jurists

Järntorget 78, 2tr, S-111 29 Stockholm, Sweden

Phone: +46 8 645 62 80

E-mail: secretariat@icj-sweden.org

www.icj-sweden.org

In addition to this, all observers commissioned by the ICJ-S took note of the political nature of the trials observed, taken into the consideration the fact that the vast majority of the accused were of Sahrawi ethnicity and had in some way uttered or acted in support of the realisation of the right to self-determination for Western Sahara. The ICJ-S was only in one of the cases able to establish direct contact with the defendants due to consequent declinations of the requested meetings with the defendants still being in detention. It also came to the knowledge of the observers that there was an imbalance in the information received by the defendants in the cases observed: in the vast majority of the cases the defendants had received insufficient information about the trials and were thereby often put in an inferior position in relation to the prosecutor and the accusation, bearing in mind that time for preparation of one's defence is crucial for the right to a fair trial.

During one trial the defendants were refused to examine witnesses in their favour, leaving the judges with only written materials for the basis of their judgment. The defence was thus deprived of a substantive means of influencing the outcome of the trial. Hence, the ICJ-S observations also show that there have been concerns about the lack of equality of arms during several of the trials observed.

Regarding the principle of undue delay, the most serious situation was that of the trial observation of "The Group of Seven", where seven well-known human rights defenders of Sahrawi ethnicity faced charges of having "damaged the internal security of the state". Three of the defendants were detained for approximately 18 months in total, the proceedings were delayed and postponed on several occasions and the accused were eventually released without a judgement on the guilt or innocence. These factors combined raise concerns regarding the principle of undue delay.

The Human Rights Committee has declared its concern about time limits of Morocco's pre-trial detention periods. In its Concluding Observations in relation to Morocco's compliance to the provisions of the ICCPR, the Committee considers the period of custody during which a suspect may be held without being brought before a judge, 48 hours for ordinary crimes and 96 hours for crimes related to terrorism, to be excessive.¹⁶

CONCLUSIONS OF THE TRIAL OBSERVATIONS – VIOLATIONS OF THE RIGHT TO A FAIR TRIAL

The undertaken trial observations provide a basis for an assessment of the fairness of the observed proceedings. The conclusions raise concern regarding the observed trials consistency with the standards on fair trial on several grounds;

- The impartiality of the tribunal
- The preparation of defence
- The right to be tried without undue delay
- The principle of equality of arms
- The right to a public hearing

The overall impression and conclusion is that the political nature of the observed trials was affecting the standard in relation to the fairness of the trials. One way to estimate and ensure compliance with standards of fair trial would be to ratify the optional protocol to the ICCPR and thus enable the Committee to try individual complaints. There is also a need for an assessment of the Moroccan judiciary to improve the administration of justice, in light of the excessive influence of the Moroccan King.

¹⁶ Human Rights Committee, 82nd session, Concluding observations Morocco, CCPR/CO/82/MAR, 1 December 2004, p. 3, § 15