

HUMAN RIGHTS VIOLATIONS IN MOROCCO **- Richard Winfield**

Good morning. Thank you for inviting me to join you today to discuss "human rights violations in Morocco." Let's not only discuss it but - - let's act.

First, please let me single out a Moroccan lawyer in your midst whose moral courage stands as a beacon to all of us. Abdessadek Bouchattaoui was a leader among the fine Moroccan lawyers who defended the Rif protesters. The government prosecuted him essentially for conscientiously representing his clients. After he was unjustly convicted and sentenced, he and his family were forced to flee Morocco to seek asylum abroad. A year ago, France granted him political asylum. Congratulations, Abdessadek!

I will briefly set the stage for this talk. You have my apologies if I cover some ground that is already familiar to you.

The people in the Rif region in 2016 and 2017 engaged in enormous protests against the government. They had a list of serious, chronic social and political grievances which the government had ignored for years. The government overreacted with crackdowns which can only be described as brutal. Hundreds of protesters were arrested, detained, tried, convicted and sentenced. Journalists who covered the protests as news events were similarly prosecuted. The government really brought its criminal justice system to bear on about 43 key defendants. This group included Nasser Zefzafi, who the government identified as the alleged ringleader. Also among the 43 was the well-known journalist and critic of the government, Hamid El Mahdaoui.

All 43 were tried and convicted in 2018 on a wide variety of overlapping criminal charges: sedition, unauthorized gatherings, separatism, armed insurgency, and inciting violent assaults against the security services. The trial judges imposed sentences of up to 20 years in prison.

The Court of Appeal in Casablanca conducted hearings in February, March and April 2019. Our non-profit association of pro bono lawyers, International Senior Lawyers Project, sent 4 lawyers to observe 3 hearings in March and April. One of those volunteers is here today: Houda Haouami of the Tunisian bar. She will speak to you later today. My colleague, a judge fluent in Arabic and English, sat next to me at the hearing on March 15. After the hearings, we published a 10-page Final Report of Trial Observers. The six judges on the Court of Appeal unanimously upheld all the convictions and sentences.

There were published reports that are both widespread and credible that the police routinely tortured defendants. Amnesty International reported that police or prison guards beat, suffocated, stripped, and threatened to rape numerous defendants. In July 2017, the Minister of Justice announced that he would investigate at least 66 cases of suspected torture by the police. In the Court of Appeal, the public prosecutor attempted to rebut or at least challenge these multiple, serious charges. He said that due process had been observed and that the government had respected the rights of the defendants. He referred specifically to Nasser Zefzafi, the prosecution's chief target. With a straight face, the prosecutor said that the prosecution had asked Zefzafi whether the police had used any violence against him. According to the prosecutor, Zefzafi said no. Let me ask you: Do you believe this?

Not only were these defendants tortured, but the courts admitted into evidence and considered the statements and so-called confessions they made under torture. Amnesty International also reported that at the trial, the judges refused to receive, read or hear the testimony of more than 50 witnesses for the defense. To justify excluding these testimonies, the judges gave no adequate reasons. (This sounds like the Senate of the United States.)

I observed the presiding judge of this appeals court summon and confront individually about six of the defendants, each for about 20 minutes. A defense lawyer stood silently behind each defendant during the hostile interrogation by the presiding judge. In his loud and angry voice, accompanied by vigorous gestures, the judge shouted his questions and accusations. Only one female defense lawyer had the temerity to speak up for her client. The Presiding Judge cut her off and directed her to remain silent while he continued his withering tirades. Two of the defendants facing these attacks were bold enough to say, "I am a defendant, not a witness." I have worked in courts in Europe, Asia, Africa and the US for the last 58 years. Never before in those 58 years have I witnessed such behavior by a judge.

For about two hours I witnessed the journalist Hamid El-Mahdaoui speak to the panel of judges. Let me tell you what I saw and heard. He was unkempt. While speaking he walked around the well of the court below the judges. He spoke in a loud voice. He read extensively from his legal papers and cited court cases. He disobeyed the judge's instructions to stop reading aloud from his court papers. He repeated himself. He repeatedly interrupted the presiding judge. He repeated that he was innocent. He said he knew none of the other defendants. (I learned that he lived near Rabat and only traveled North to the Rif region to cover the protests). It was an unforgeable and disturbing display by a defendant.

My fellow ISLP lawyer and I were sitting on the same bench as Hamid's sister and his wife, Bouchra Khouchaki. Speaking in Arabic, my colleague asked the two women to explain Hamid's behavior. His wife said, "He is a calm person, in general, but the fear and psychological pressure and his stay in jail made a change in his behavior to a different and agitated person." That was an understatement. I inquired and learned that the authorities had imprisoned Hamid in solitary confinement for 470 days even before trial. Imagine this: a nationally-known journalist, facing no charges involving violence, held for 470 days in solitary confinement. That bombshell explained everything. In that courtroom for two hours I saw and heard a broken man.

There is a word for that – torture. Torture can break a man, and it did.

Our organization, International Senior Lawyers Project, wrote an amicus curiae brief which we submitted to the Court of Cassation in Rabat. As a friend of that court, we cited cases from the European Court of Human Rights which condemned extended terms of solitary confinement. We cited a key case where the Grand Chamber of the European Court said this about prolonged solitary confinement: "Complete sensory isolation, coupled with social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason." Another European court case involved a defendant held in solitary for about 390 days. The Court held that these conditions could cause the defendant "both mental and physical suffering and feelings of profound violation of his human dignity." In these and other cases, the European Court found in favor of the confined defendants, and against the governments which tortured them. The Court awarded modest damages to the victims of

official torture. To bring you up to date, the Court of Cassation in Rabat has not yet acted upon the appeals of the protesters.

We found two international human rights treaties that Morocco ratified. One is the International Covenant on Civil and Political Rights (ICCPR). The other is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Both treaties apply to these cases. In Article 14, the ICCPR requires governments to insure "a fair hearing by a competent, independent and impartial tribunal." The government must insure that a defendant has the right to obtain the "attendance and examination of witnesses on his behalf. The ICCPR prohibits governments from coercing confessions. A defendant may not be "compelled to testify against himself or to confess guilt." Article 7 of the ICCPR bars governments from subjecting defendants "to torture or to cruel, inhuman or degrading treatment or punishment."

Morocco ratified its commitment to comply with these obligations. Do you have any doubt that Morocco violated its obligations under both the fair trial and torture Articles of the ICCPR?

Similarly, Morocco ratified the Convention against Torture. Morocco ratified an absolute prohibition against torture and is barred from invoking any "exceptional circumstances to justify torture." Article 15 of the Convention bars Morocco and its courts from considering any statement "which is established to have been made as a result of torture." Again, do you have any doubts that Morocco violated its obligations in the Convention against Torture?

It is fair to say that neither the ICCPR nor the Convention against Torture can boast of enforcement machinery that is robust and effective. Just the opposite. There exists in Africa, however, a more robust and effective human rights treaty and enforcement machinery. This is very significant. The treaty is the African Charter of Human and Peoples Rights; the enforcement machinery consists of the African Commission on Human and Peoples Rights and the African Court on Human and Peoples Rights based in Arusha, Tanzania.

There are 55 countries on the African continent. Fifty-four of those 55 have ratified the African Charter of Human and Peoples Rights. Those 54 countries have subjected themselves and their domestic courts to the jurisdiction of the African Court on Human and Peoples Rights.

Only Morocco is the outlier. Only Morocco failed to ratify the Charter. Only Morocco avoids the oversight and jurisdiction of African judges on the African Court on Human and Peoples Rights. If Morocco ratifies this continental human rights charter it would subject Morocco to the jurisdiction of the African Court on Human and Peoples Rights. For the first time, Morocco's monarch, judges, police, prison guards, and politicians would have to answer to their fellow African leaders when they abuse human rights. African judges would adjudicate whether Morocco violated its human rights obligations. Since the judges could impose sanctions to punish violations, let's hope it would modify the government's behavior toward their citizens.

One of the recurring themes at the hearing was the government's claim that this was a purely criminal trial, and that politics had nothing to do with it. For instance, one of the defendants testified that he joined the protests as a result of the deteriorating social situation in the Rif region. The presiding judge cut him off. He warned the defendant not to make such statements since they had "political dimension and this trial is not political." The prosecutor for his part stated this was

a criminal, not a political case. Repeating himself, he said the case file is not political, that the defendants are not political people and are not members of a political party. These official denials are absurd on their face.

The hearings we observed presented a textbook case of the high-visibility show trial featuring the familiar ingredients: confessions extracted by torture; extended pre-trial detentions with solitary confinement; overreaching public prosecutors; overcharging indictments; vaguely worded laws; reliance on illegally obtained evidence; defense counsel in fear of arrest; a Presiding Judge's language and demeanor devoid of any semblance of impartiality; and the foreordained outcome, all accomplished while maintaining a facade of conventional, institutional normality. These are my concluding words in our Final Report.

Now, in terms of acting upon these abuses, I would offer the following ideas:

- Attempt to file an expertly written friend-of-the-court (*amicus curiae*) brief supporting the defendants in the Court of Cassation in Rabat.
- Urge the government of Morocco to sign and ratify the African Charter of Human and Peoples Rights.
- Permit the African Court on Human and Peoples Rights to consider the appeals of the 43 defendants who would claim that Morocco committed multiple violations of the African human rights charter.
- Submit a petition to the UN Special Rapporteur on Torture, Nils Melzer, that he investigate the torture of the 43 defendants, and other protesters.

Finally, let us all recognize and applaud the courageous work of the Moroccan lawyers defending the protesters and the journalists.

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