

**TRIAL OBSERVATION REPORT  
PROCEEDINGS RELATED TO GDEIM IZIK EVENTS**

**- EXECUTIVE SUMMARY -**

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Fulfilling its human rights protection mandate, in compliance with its founding Royal Decree, dated March 1<sup>st</sup>, 2011, mainly articles 3 to 12;

Taking into account the gravity of the painful events that occurred in the Gdeim Izik Camp on November 8<sup>th</sup>, 2010, leaving 11 officers from the Royal Gendarmerie, Auxiliary Forces and Civil Defence dead, many people injured or with disabilities, as well as huge material damages;

Following the arrest and detention of a number of persons in this case, who were court-martialled and convicted before the military court. The Supreme Court (*Court of Cassation*) later appealed the ruling and referred the case back to the Criminal Division at the Court of Appeal of Rabat;

Taking into account the fundamental right to a fair trial that provides adequate guarantees to the suspects/accused, without any prejudice to the principle of non-impunity or to the victims' right to redress;

The National Human Rights Council (CNDH) decided to monitor and observe the trial, as the case was referred by the Supreme Court to the Court of Appeal in Rabat. The CNDH had observed the trial before the military court and monitored the detention conditions of the defendants in prison. It received and handled complaints and requests from the defendants themselves or their families, in accordance with its mandate and prerogatives.

A team of observers<sup>1</sup> was tasked to monitor the trial in all its aspects and draft preliminary reports on each hearing. It drafted reports on the different parties' notices, statements and pleadings. The team drafted comprehensive reports on the trial and was also tasked with facilitating coordination and communication with other observers, the families of the victims, and the defendants.

The CNDH observed the guarantees of fair trial and monitored the court's full respect to its principles, based on the standards set by the following main instruments:

- The Universal Declaration of Human Rights, mainly article 11;
- The International Covenant on Civil and Political Rights, mainly article 14;
- The Basic Principles on the Independence of the Judiciary;
- The Basic Principles on the Role of Lawyers;
- The Guidelines on the Role of Prosecutors;
- The Constitution of July 1<sup>st</sup>, 2011, mainly the preamble and articles 23, 24, and 117-128;
- Law # 22.01 on the Code of Penal Procedure, dated October 23<sup>rd</sup>, 2002, as supplemented and amended.

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<sup>1</sup> Mr. Abderrazzak El Hannouchi, Mr. Moustafa Naoui, Mr. Abderrafie Hamdi, Mr. Mohammed Sabri, Ms. Ibtisam Elyazghi, Mr. Khalid Ourahhou, and Mr. Youssef Benchebbak.

## I- General context and grounds for the Supreme Court's Decision

The case was brought before the Court of Appeal in Rabat based on the Decision of the Supreme Court, dated July 27<sup>th</sup>, 2016. The Supreme Court's Decision struck down Ruling # 313/2013, rendered by the Permanent Military Tribunal of the Royal Armed Forces, on February 17<sup>th</sup>, 2013, case file # 3063/2764/10. The Supreme Court overruled the military court's decision and referred the case to the Criminal Division at the Court of Appeal in Rabat to hear the case de novo, in compliance with the law.

The Supreme Court's decision to overrule the military court's ruling was based on several arguments and grounds that can be sum up as follows:

- The military court, in its ruling on aspects related to the crime of complicity by incitement to action and instructions to commit general acts and recourse to various means and violent acts, did not adequately clarify this incitement and instructions, neither did it determine the entities or persons targeted by those acts, and the death resulting therefrom.
- The military court did not illustrate on the second aspect related to the committed criminal acts resulted from incitement and the given instructions. It did not mention how many people died and their status as members of law enforcement. It did not mention that the victims were on duty when they were assaulted and that complicity was proven.
- The military court did not illustrate on the extent of the criminal intent, as a necessary component of the crime.
- Regarding the crime of incitement, the military court failed to illustrate on the instrument(s) that the inciting party might use to incite others to commit the crime, as stipulated in article 129 of the Penal Code.
- The Court failed to establish all legal and factual aspects of the crime with which the accused were charged, as provided for in article 267 of the Penal Code. The ruling was thus deemed to be insufficiently reasoned.

The Supreme Court referred the case to the Court of Appeal on the following grounds:

- The military court used to have jurisdiction to rule on the charges under Chapter III of the Code of Military Justice, dated November 10<sup>th</sup>1956. Indeed, under that code, the military court had the power to rule on offences and crimes committed against any member of the Royal Armed Forces and similar officers. The military court, though, no longer has such jurisdictions under the new Code of Military Justice # 108.13, dated December 10<sup>th</sup>, 2014<sup>2</sup>.
- Ordinary courts have jurisdiction to hear and rule on such cases instead, in accordance with the Royal Decree dated December 10<sup>th</sup> 2014.
- To better serve justice, the case had to be referred to the court of appeal;
- Paragraph 1 of article 550 of the Code of Penal Procedure confers to the Supreme Court the power, when ruling on a request to appeal (*cassation*), to refer the case to any court of the same nature and degree as the one that initially ruled on the case. Such referral shall take into account the provisions of article 219 of the code of military justice of 2014, which provides that proceedings prior to the date of entry into force of this law remain valid with full effect and enforceability.
- Article 457 of the Code of Penal Procedure on appeals of rulings rendered by the Criminal Division, provides in its last but one paragraph that the rulings of the Criminal Division at the Court of Appeal, when a case is referred to it by the Supreme Court, are final. Article 254 of the code sets the jurisdiction of the Criminal Division.

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<sup>2</sup> Published in Official Gazette # 6322, dated 01/01/2015.

The Court of Appeal of Rabat (Annex of Sale) thus ruled on this case (File # 582/2612/2016). The court scheduled 31 hearings; the first was held on December 26<sup>th</sup> 2016, and the last on July 19<sup>th</sup> 2017, where the court rendered its final verdict.

The Court decided in all scheduled hearings to dissociate the case of Mohamed El Ayoubi for absence due to health conditions. As a whole, the hearings took place under normal conditions, be it at the surroundings of the court premises or within the courtroom itself. The trial was attended by a number of tribe leaders (*Shioukh*), other national and international observers<sup>3</sup>, and domestic and world media outlets<sup>4</sup>. The competent authorities guaranteed optimal conditions for the trial observers, journalists and the public. Despite the tight security measures, access to the Court was easy and organized. Two separate areas outside the Court were assigned to protesters: one for the victims' families and their supporters and another for the defendants and their supporters.

The hearings were held in a spacious courtroom, providing an area for the defendants, booths for interpreters, lawyers' benches, seats for observers, and seats for the public. The courtroom was equipped with a large screen behind the judges, and three medium-sized screens, one of them for the defendants. The courtroom was equally equipped with loudspeakers and interpretation headsets.

The Court also assigned an additional room next to the main Courtroom with the same capacity and area, one large screen and two medium-sized screens, to enable other interested observers, journalists and relatives to follow the proceedings.

Between the two rooms, an area for journalists and media representatives was equipped with web connected computers.

Simultaneous translation was also provided from and into 4 languages: Arabic, French, Spanish and English. An Arabic - Hassani interpreter was equally present and was called upon whenever his services were needed by the parties, or as deemed necessary.

The hearings were flexible in general. Due respect was observed for all the parties during the proceedings. It was noted that the defendants got in and out of the courtroom (collectively) chanting slogans against Morocco's territorial integrity and accusing the Court of partiality. This was the case also for each one of them, whenever they were summoned individually to appear before the Court. The observers also noted that the defendants interrupted the hearings chanting slogans and shouting. However, the Court deployed every effort to calm tempers, restore order and resume the hearings.

The Court allowed the defendants and the witnesses to deliver their statements or testimonies seated whenever they needed to or requested so. It also consulted the parties to extend or suspend the sessions for rest, and very often acceded to their requests in this regard.

All along the hearings, the Court paid close attention to the defendants' health conditions. Consequently, the Court granted medical examinations to some of them during the hearings, others were taken to the hospital to receive necessary health care, and others were sent back to prison for rest. The detained defendants were also given permission to communicate, upon their request, with their lawyers during the hearings.

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<sup>3</sup> The trial was monitored by a large number of observers (126) from Morocco and abroad.

<sup>4</sup> The trial was followed by several national and international media outlets; 19 media organizations and 48 journalists.

## II. Investigation and pleadings

During the phase of investigation and pleadings, the defence attorneys pleaded the following:

### A. Lack of capacity and non-entitlement to the right to bring civil action before the court

This argument rests on the merit that the referral of the case concerned only the public action and on the general rule that appeals shall not bring any prejudice to the appellant, and that the court which the case was referred to was an extension of the court that initially ruled in the case.

In their response to this plea, the attorneys of the civil party<sup>5</sup> and the office of the public prosecutor both insisted that the argument was invalid, invoking article 118 of the constitution, which gives each person the right to claim redress before the courts and defend his/her rights and interests, which are protected by law. The civil party attorneys also argued that the records of the hearing before court-martial mentioned that a lawyer was present at the court to defend the interests of the victims' families and their plea for redress. They further argued that article 384 of the Code of Penal Procedure gives any person victim of a crime the right to be bring his/her case before a court and be as Civil Party to the case. Under article 82-4 of the Code of Penal Procedure, they argued, the investigating judge or the court must inform any person victim of a crime of their rights. The arguments of the civil party also rested on (1) case law, which enshrines this right, (2) the amended Military Justice Code, mainly article 19, which formerly prohibited anyone from bringing a civil action before the military court, (3) international human rights law, mainly article 8 of the Universal Declaration of Human Rights, and (4) article 2 of the International Covenant on Civil and Political Rights.

### B. Lack of jurisdiction

The defence<sup>6</sup> attorneys argued in this regard that under article 550 of the Code of Penal Procedure a case overruled by a Supreme Court decision must be referred back to a court of the

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<sup>5</sup> Attorneys of the civil party : 1-The relatives of late Walid Ait Alla : his father Mohammed Ait Alla, his mother Naima Khardi, his brothers Mehdi, Amine and Ayoub, all represented by attorney Mohammed Chahbi from the Casablanca Bar Association, and attorneys Hawa Kalouka and Emmanuel Tawil from the Paris Bar Association, France, and attorney Penas Roldan Lorenzo, from the Bar Association of Murcia, Spain; 2- Rthe relatives of late Anas Ben Lhouari: his father Miloud Ben Lhouari, his mother Aicha Hayran, and his brothers Ilias and Yassine, all represented by Abdelkabar Tabih from the Casablanca Bar Association and Yves Repiquet from the Paris Bar Association, France. 3- the relatives of Noureddine Adrh: his father M'barek Ben Abdallah and his mother Aicha Ait M'barek Ben Ali, represented by Abdellatif Ouammou from the Agadir Bar Association; 4- the relatives of late Mohammed Ali Boualam: his father Mohammed Fal Boualam, his mother Batoul Bent Sidi Abderrahim, and his siblings Ibrahim, Sidi Omar and Aicha, all represented by Abdelwahed El Ansari and Abdessamad El Idrissi from the Meknes Bar Association; 5- Relatives of the late Mohammed Najih: his father H'mad Ben Mouh Najih, his mother Fatima Bent Hssayn, his wife Jaban Hadda, his sons Mohammed, Moustafa and his daughter Naima, all represented by Abdellatif Ouahbi from the Rabat Bar Association; 6- Relatives of late Abdelmajid Atertour: his father Driss Atertour and his mother Bellich naima, represented by Ibrahim Rouchdi from the Casablanca Bar Association; 7- Relatives of late Abdelmounim Ennachoui: his mother Souad Coucou Bent Bouchta, and his siblings Adil, Zakarya, Imad, Ayoub, and Fatima Zahra, all represented by Tayeb Mouhammed Omar from the Casablanca Bar Association; 8- Relatives of late Yassine Boukettaya: his mother Chahri Khaddouj Bent Saleh, and his siblings Ayoub, Youssef and Intissar, all represented by attorney Aicha Kalaâ from the Casablanca Bar Association; 9- Relatives of late Badreddine Torrahi: his father Ibrahim Torrahi, his mother Khadija Nouiri, and his siblings Soufiane and Amine, all represented by Naoufal Elbaâmi from the Tetouan Bar Association; 10- Relatives of late Ali Zaâri: his father Omar Ali, his mother M'barka Bent Abdelkader, and his widow Mina Bent Tajouat, also on behalf of her minor daughters Meryem, Maroua and Safae, all represented by attorney Omar El Askrami Lamrabet from the Rabat Bar Association; 11- Relatives of late Ben Taleb Lakhtil, represented by attorney Abdessamad El Idrissi from the Meknes Bar Association.

<sup>6</sup> In the beginning, the accused were represented by attorneys Mohammed Lahbib Rguibi, Mohammed Fadel Ellayli, Boukhaled, and Bazid from the Agadir Bar Association, commissioned by the Moroccan Human Rights Association; Attorneys Mohammed Elmassoudi and Nouredine Dalil from the Casablanca Bar Association; Attorneys Sadqou, Ibrahim Missouri and Naima Elkellaf from the Rabat Bar Association; Attorney Moustafa Errachidi from the Marrakech Bar Ass. Ennaâma El Asfary was represented by Joseph Breham from the Paris Bar Ass.; Ingrid Metton and Olfa Ouled from Paris B/A represented all the accused. All attorneys withdrew from the trial upon request of their clients at the 18th hearing session, on 16 May 2017, when the Court was hearing the witnesses during the examination of the evidence file. Within the framework of the judicial assistance procedure, the court then appointed attorneys Noureddine El Allam, Elkhamlihi, Rachid El Moussaoui, and Saâd Essahli, all from the Rabat Bar Association, to represent the accused.

same category and degree as the court that initially rendered the overruled decision, and provides for the right to a double degree of jurisdiction. The French defence attorneys placed forward arguments claiming that the court did not have the necessary jurisdiction to rule upon the matter, but from different perspectives and reasons. They brought forward the Fourth Geneva Convention, as being applicable in conflict zones, stating that the case should be judged by the Court of Laayoune instead. A member of the defence attorneys was thus obliged to withdraw his support because a French lawyer supporting one of the defendants referred in his brief to the term “occupied territories”.

The same defence attorneys attempted to submit a written statement in French in favour of this argument but the court dismissed it after reading it, founding its decision on the provisions of article 4 of the Judicial Agreement between Morocco and France, which requires pleadings and submissions to be served in Arabic. Some defence attorneys claimed that locus actus supposed that it is the Court of First Instance in Laayoune that should have the subject-matter jurisdiction over the case.

In their response to this argument, the attorneys of the victims stated that challenging the lack of jurisdiction was in fact challenging the Supreme Court’s decision to refer the case to this court, which was not legally appropriate. The new military justice code revoked the former law, but the procedure measures taken before the abrogation of the code remained effective and valid with full legal effect. The attorneys of the civil party also argued that referring to international humanitarian law to challenge the jurisdiction of the court in this matter was not appropriate either. They argued that the accused were Moroccan citizens, saying they even contradicted themselves in this respect when they invoked earlier the case of non-notification of the Judicial Commissioner of the Kingdom, normally entitled to Moroccan civil servants working for the Moroccan administration.

#### **C. Provisional release**

The defence attorneys requested provisional release based on the lack of the constituent elements of the crime, presumption of innocence, lack of cases in flagrante delicto, in addition, as they argued, to the fact that the accused had all securities to be granted provisional release and were willing to comply with the court’s decisions.

#### **D. The witnesses**

The defence attorneys urged the court to summon different witnesses:

- Officials who had negotiated with the members of the Dialogue Committee prior to the events of November 8<sup>th</sup>, 2010;
- Eye witnesses, who witnessed the arrest of some of the accused before and after the events;
- Witnesses who confirmed that some of the accused were not present in the events;
- All officers who drafted the records of the Judicial Police.

The court summoned, to the next hearing, the witnesses who appeared on the list that was submitted by the defence attorneys and the 17 judicial police officers who drafted the records of the Judicial Police. The court dismissed the attorneys’ request to summon the officials who were members of the dialogue committee to testify.

After hearing the accused, the defence attorneys requested to summon three witnesses, who were mentioned by some of the accused during their testimonies before the court, to testify about the conditions of arrest; the court accepted the attorneys’ request.

#### **E. Forensic medical examination**

The defence attorneys requested forensic medical examination to verify if the accused were subjected to torture or ill-treatment in custody and during investigation, for some of them.

The office of the public prosecutor left this matter to the court and requested to exclude the accused who were on release.

The Court accepted the request and allowed the accused in detention to undergo forensic medical examination to prove or refute the allegations of torture. It appointed three forensic experts for this purpose:

- Dr. Fadila Aït Boughima, certified lecturer in forensic medicine in the Avicenna University Hospital in Rabat;
- Dr. Mourad El Yakoubi, Professor of orthopedic surgery in Rabat;
- Dr. Chakib Bouhlal, psychiatrist and medical expert accredited with the Court of Appeal of Rabat.

Thereafter, the following arguments pertaining to the form were entered before the Court:

- Violation of article 3 of the Code of Penal Procedure regarding non-notification of the judicial commissioner of the kingdom for the accused who were serving as civil servants immediately after their arrest;
- No case of flagrante delicto, the elements of which are enumerated in article 56 of the Code of Penal Procedure
- Violation of article 24 of the Constitution that guarantees the inviolable character of the place of residence and article 62 of the code of criminal proceedings on searching and its procedure, timing and requirements.
- Violation of custody measures and relevant safeguards.



### **III. Statements of the accused**

The Court scheduled eight sessions<sup>7</sup> to hear the accused, thus hearing on average 3 accused persons per day, 3 hours for each on average. The accused denied all the charges. They denied the existence of any organization within the camp and claimed that the camp was established to demand social and economic rights related to employment, housing, and social benefits under a national promotion program.

When the Court confronted them with their statements as recorded in the judicial police records, they stated that were obtained under abuse and ill treatment. They claimed they didn't read their statements nor were they read out to them before they signed them. When they were confronted with their statements before the investigating judge at the court-martial, they claimed to have signed them without reading them despite the presence of an attorney with them.

Except five of them, the accused equally declined to reply to any questions addressed to them by the attorneys of the victims. They stated that they did not recognize the civil party's competence to put forward a civil claim and be a formal part in the proceedings.

In general, the statements made by the accused before the court revolved around the following points:

- Considering the trial as a political trial;
- Conditions of arrest, custody and detention;
- Denying their statements in the judicial police records and claiming they did not read them before signing them;
- Torture and ill-treatment.

The accused who travelled to Algeria 20 days before the establishment of the camp confirmed that they did indeed participate in a conference there on the right of peoples to resistance, during the last week of September 2010.

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<sup>7</sup> On the 13, 14, 15, 20, 21, 22, 23, and 27 of March 2017.

#### **IV. The evidence file**

The file entailed the following pieces of evidence:

##### **1. The confiscated elements**

Upon an order from the presiding judge, the following confiscated elements were brought to the court: a computer, three radio transmitters, 19 mobile phones, three machetes, two hatchets, one axe, four knives, four daggers, and some tags with the word “Security” on them.

The accused denied any relation to the confiscated elements when they were shown to them. Nine of them stated that their mobile phones had been confiscated and gave their numbers; another accused said that a sum of MAD 7500 was confiscated from him.

##### **2. A CD and two videos**

The office of the public prosecutor submitted a CD and requested it to be taken into the case file as part of the evidence file, given that it was mentioned in the judicial police records. The Court decided that the contents of the CD should be portrayed to the court. It was a video documenting the events of the 8th of November 2010.

Two additional videos showed the links between the accused and the events and their role therein.

##### **3. The autopsy reports**

The autopsy reports of the victims were translated into Arabic and were then included in the case file, as part of the evidence file. They illustrated the conditions and the causes of death of the 11 members of the law enforcement.

The autopsy reports, according to the public prosecutor, showed that there were cases of slaughtering, skull fractures, thorax fractures, fractures at the upper and lower body parts, and stabs-resulted deep wounds, some of which were 20 cm deep.

##### **4. Witnesses**

The Court heard the witnesses of the office of the public prosecutor and the witnesses requested by the defence attorneys and accepted by the court.

##### Remarks about the testimonies of both parties:

- The testimonies of the public prosecutor’s witnesses were coherent with the statements of the accused as recorded in the judicial police records or the preliminary and pre-trial interrogation reports;
- These testimonies were accurate regarding facts, individuals and the acts;
- They were made by witnesses with different positions, each with a different experience with the camp, the events of the 8th of November 2010, and the persons involved;
- These testimonies shed light on what really happened on the 8th of November 2010, and the committed acts. Some witnesses were victims themselves and still bear the traces of and repercussions from the perpetrated acts;
- The accurate testimonies prompted the Court to discharge some 20 more witnesses who were present at the Court.
- Some of the rebuttal witnesses’ testimonies, on the other hand, somehow contradicted each other. Indeed, Mr. El Bachir Slimani and his brother Mr. Mohamed Slimani didn’t agree in their testimonies on how Mr. Ennaâma Asfari was arrested and on how he was taken out of his place. Another witness, Mr. Ibrahim Hmia, contradicted what Mr. Sidi Abeljalil Laâroussi said regarding the number of persons who arrested him in his place, the number of vehicles that were used for that reason, and the arms that those persons were carrying with them. Mr. Hane Ibrahim, a witness, also contradicted Mr. Abdallah Lakhfaoui’s statements regarding his house and how he was arrested. The same also

applied to Mr. Lahcen Dalil' testimony when he was talking about his visit to Mr. Abdallah Toubali at the hospital, its timing, and the context of his visit to the accused at home at 7 a.m.

The public prosecutor's witnesses (including security officials, the officers who drafted the records, and the persons who were living at the Camp) were exposed during their testimonies to humiliating and degrading remarks from the accused themselves or some of their relatives. The officers who drafted the records were targeted by a wave of demeaning slogans.

### **5. Phone recordings**

The phone recordings submitted by the Office of the Public Prosecutor showed that some of the accused were in contact with members of the POLISARIO, and received instructions and orders from them.

### **6. Travel routes to Algeria**

The reports submitted by the Office of the Public Prosecutor in this regard indicated that some of the accused travelled to Algeria several times to coordinate with entities hostile to Morocco.

### **7. Forensic medical examination**

The medical examinations were granted by the Court following a request from the defence attorneys. They had no other purposes than examining the allegations of torture put forward by the accused to justify the contents of the judicial police records (or minutes).

Only 16 persons showed their consent and went through the forensic examination. Five declined<sup>8</sup>, despite the fact that they had requested medical examination themselves through their attorneys.

The accused who refused to undergo forensic examination said they did not trust the impartiality of the examination and requested an international forensic medical examination instead.

For the public prosecutor, requesting an international forensic medical examination implied a clear breach to the Moroccan sovereignty, arguing that there was no national or international legal framework to back this request. The office of the public prosecutor invoked article 6 of the constitution: "*the law shall be the supreme expression of the will of the nation. All natural and legal persons, including public authorities, shall be equal before the law and must comply with it*".

After deliberations, the Court denied the request of a foreign medical examination.

In their evaluation of the medical examination, the defence attorneys argued that forensic medical examination was not binding to the Court and did not reflect the truth. They said that the accused declared they were subjected to torture and that they carried torture traces. The examination didn't confirm that the accused were subjected to torture, but failed to determine the causes of the traces they had either, they said. The forensic experts did not confirm the issue; consequently, the cause and effect relation was not established. The attorneys also said the experts were not asked to make the conclusions they made and thus requested the court to summon them.

The public prosecutor explained that the medical examination respected the provisions of the Code of Penal Procedure and the international standards, namely the Istanbul Protocol. Moreover, the office of the Public Prosecutor stated that the experts who made the examinations were multi-disciplinary. It requested the court to deny the defence attorneys' request to summon them.

After deliberations, the Court decided to summon the experts.

The three experts appeared before the court. Dr. Fadila Ait Boughima shed light on the conditions under which the medical examinations were carried out, the measures that were taken

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<sup>8</sup> Ennaâma Asfari, Abdellah Obhah, Khadda El Bachir, Ahmed Sbaï, and Sidi Ahmed Lamjayed.

and the conclusions the experts reached, in accordance with the Istanbul Protocol. She presented extended details on each separate examination. Answering questions addressed to her by the Court and the parties' attorneys, she provided accurate information on the Istanbul Protocol and to what extent the forensic medical examination complied with the guidelines annexed thereto and met the requirements set forth in the Protocol.

The expert confirmed that the conclusions of the report that were based on statements and the allegations, the symptoms and the traces, and the physical and psychological examination had the primary objective, in compliance with the Istanbul Protocol, of determining the degree of causality between the symptoms and the severe and chronic physical health conditions diagnosed by physical and psychological examination on one hand, and the forms of torture alleged in statements and interviews.

## **V. Pleadings**

### **1. The civil party**

The attorneys of the civil party highlighted in their pleadings the nature of crimes committed against the victims. They shed light on the instruments used in the crime, as well as the serious impacts of the acts on the victims' relatives and the institutions they worked for.

A group of the civil party attorneys asked the court to re-characterize the case and sentence the accused for threatening the internal security of the State, invoking articles 201, 203, and 205 of the Penal Code.

Other attorneys disagreed with the re-characterization of the case. They argued instead that the articles applied to the charges were sufficient to incriminate the accused and accomplices, since the committed crimes were indivisible.

Some of the victims' attorneys put emphasis in their pleadings on the victims' right to redress, the right to know the truth, and on the real reasons why the accused avoided confrontation and to provide answers to their questions. They argued that the accused presenting themselves as activists and political victims was nothing but a mere maneuver. One of the victims' relatives insisted on conveying a message via their attorney that they were not seeking revenge and that they did not want the court to sentence anyone to death.

### **2. The office of the public prosecutor**

The public prosecutor based his statement on the discussions of the hearing sessions. He asked why the accused withdrew when the evidence was presented. The hard evidence that was presented, he stated, was the reason behind their decision to withdraw.

The public prosecutor also provided an account of the events of the 8th of November 2010, and the phases that preceded the events. He shed light on the role played by each one of the accused. He showed a drawing with their respective positions and the roles conferred to each one of them within the organization that instigated, planned, and executed the crimes, as well as their role within the committees.

He also elaborated on the elements of evidence, mainly the witnesses' testimonies and the phone recordings. He demonstrated the cause and effect relation of the outcome and supported his pleadings with Moroccan and comparative case law.

The prosecutor requested the court to confirm all the charges and sentence the accused to firm prison sentences. He asked for the transfer of the objects and funds seized to the benefit of the State and pleaded for the harshest sentence possible. He submitted a written memorandum to the court.

### **3. Defence attorneys**

The defence attorneys invoked article 554 which provides that the court is obliged to follow the decision of the Supreme Court and the justice-related provisions of the Constitution. They discussed the request to re-characterize the case submitted by the civil party and argued that the crimes referred to in article 267 of the Penal Code are harm crimes, requiring both the physical elements of the crime and the criminal intent, as well as the cause and consequence relation between the committed act and the outcome.

The defence attorneys also discussed the social status of the accused. They indicated that their criminal records were no proof against them. They requested the accused not to be condemned as a group and to apply extenuating circumstances in their case.

Another lawyer argued that the court was not bound by the characterization referred to it, and that it must apply the presumption of innocence. The Court had a duty to protect the accused from the stigma and defamation they were subjected to. The attorney invoked the Royal Decree governing public gatherings and argued that it applied to the camp. He cited article 19, which

provides for mandatory procedures to be followed by law enforcement before dismantling a gathering. The attorney argued that law enforcement attacked the camp and created a case of flagrante delicto. Nothing in the case file proved, the attorney argued, that the law enforcement respected the law in this regard.

The attorney also argued that criminal evidence should be legal and gathered in a legal way; that there were many contradictions in the witnesses' testimonies, and that the video was edited and was not the original footage. The attorney further argued that the court had no adequate and sufficient evidence against their clients and that the elements of the crime were not established.

The attorney therefore concluded that the accused were innocent and asked the court to view the case as misdemeanor, as an unlawful gathering in a public space, and to dismiss the civil party's requests because they paid no judicial fees and had no competence to be party to a case already rendered by a prior court.

Since the accused did not appear at the hearing to enjoy the right of the last word, the defence was given the right to deliver final remarks on behalf of the accused.

Indeed, when the court was hearing the witnesses, the accused decided, after 18 hearing sessions, to withdraw from the court case and requested their attorneys to withdraw from the court as well. New defence lawyers were then appointed to represent them, in implementation of the judicial assistance procedure. From that point onward, the Court ordered the security officer in charge to inform the accused and urge them to appear before the court, before each hearing. As the accused persisted and refused to appear before the court, the court then ordered the clerk to go to their quarters at the end of each session to update them and inform them of the debates and proceedings.

The two accused persons who were on provisional release attended all the hearing sessions. They declared that they boycotted the trial. The Court always checked if they attended the hearings and recorded that in the hearing records.

## VI. Final verdict

After the last word and 14 hours deliberation, the Court delivered the following verdict<sup>9</sup>:

I-With regard to the form: Dismissed

II- With regard to the public action, the court found that:

- Asfari Ennaâma, Cheikh Banka, Mohmed Bouryal, Mohamed Lamine Haddi, El Hassan Zaoui, Abdalah Toubali, Khadda El bachir, Lahcen Dah, Mohammed Ettahlil, Lamjayed Sidi Ahmed, Elfakir Mohammed M'barek, Ibrahim Ismaili, and Mohamed Khouna Boubit did not participate in forming a criminal organization. It ruled that they were innocent from this charge but found them guilty in the remaining charges;
- Mohamed Bani, Sidi Abdeljalil Laâroussi, Abdallah Lakhalfaoui, Mohamed Bachir Boutenguiza, Sidi Abdellah Obhahet, and Ahmed Sbaï were guilty for the charges against them;
- Eddiche Dafi did not participate in forming a criminal organization and was therefore innocent from this charge, but he was guilty for assaulting law enforcement officers as they were performing their duties, leading to injuries, in accordance with article 267, paragraph 2 of the Penal Code, as the court re-characterized the felonies of committing violence against law enforcement officers as they were performing their duties, leading to death with the intent of murder and participation therein. The accused was found guilty for the remaining charges;
- Larabi El Bekkay was guilty for assaulting law enforcement officers as they were performing their duties leading to injuries, in accordance with article 267, paragraph 2 of the Penal Code, as the court re-characterized the felonies of committing violence against law enforcement officers as they were performing their duties, leading to death with the intent of murder and participation therein. He was found guilty for the remaining charges;
- Taki El Machdoufi and Sidi Abderrahmane Zayou were guilty for assaulting law enforcement officers as they were performing their duties leading to injuries, in accordance with article 267, paragraph 2 of the Penal Code, as the court re-characterized the acts which they were charged with.

The Court sentenced

- Ahmed Sbaï, Sidi Abdeljalil Laâroussi, Abdallah Lakhafaoui, Mohamed Bachir Boutenguiza, Sidi Abdellah Obhah, Ibrahim Ismaili, Lamjayed Ahmed, and Mohamed Bani to life imprisonment;
- Asfari Ennaâma, Cheikh Banka and Mohammed Bouryal to 30 years in prison;
- El Hassan Dah, El Fakir Mohamed M'barek, El Hassan Zaoui, Mohamed Khouna Boubit and Mohammed Lamine Haddi to 25 years;
- Abdalah Toubali, Mohammed Ettahlil and Khadda El Bachir to 20 years;
- Larabi El Bekkay to four years and six months;
- Eddiche Dafi to six years and six months;
- Taki El Machdoufi and Sidi Abderrahmane Zayou to two years.

The Court also ordered

- The accused to pay the legal costs jointly, setting the obligation to the minimum, except for those sentenced to life imprisonment ; and
- That the seized sums be transferred to the public treasury and the other confiscated elements to be destroyed.

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<sup>9</sup> The verdict was delivered on July 19th 2017. The Court was composed of Justice Youssef El Alkaoui as Presiding Judge, Mr. Mustapha Rmili, assessor, Mr. Mohamed Alik, assessor, Mr. Zouhir Hakimi, assessor, and Mr. Ali Mouak, assessor. Mr. Khalid Kerdoudi, represented the Office of the Public Prosecutor. Mr. Youssef Lakhdar, Court clerk; the ruling was drafted in 223 pages.

### **III- With regard to the related civil claims**

- With regard to the form, the court dismissed the civil claims and ordered the civil party to pay the legal costs.

The court delivered its final verdict and informed Taki El Machdoufi , who was attending at the courtroom, that he had 10 days to appeal the ruling before the Supreme Court. The court noted that it could not inform Sidi Abderahmane Zayou of the verdict and notify him of the deadline to file an appeal before the Supreme Court, as he failed to attend despite the fact that he had been informed of the session.

The court clerk was asked to inform the others of the verdict and of the 10-day deadline to file an appeal before the Supreme Court.



## CONCLUSIONS

The main conclusions of the trial proceedings before the Criminal Division (Court of Appeal in Rabat, Annex of Sale) can be summed up as follows:

- The Court provided all legal conditions to ensure that the hearings were public and transparent and provided all necessary means to let everyone follow the proceedings;
- After each hearing, the General Public Prosecutor gave an account of the proceedings and the decisions of the court, so that the public opinion could be duly updated and follow the proceedings of the court;
- A large number of national and international observers (observing different aspects, from different perspectives), journalists (from TVs and print/electronic media) followed the trial. This was a strong indicator of the national and international interest in the case and in justice in Morocco;
- The Court provided adequate means to ensure comfort for attendees, for the parties concerned and for the observers, to enable them to follow the trial in good conditions. Translation from/into many languages was available. The court also provided adequate sound and video systems in the courtroom. Sessions were suspended from time to time for rest, meals, or to ease tension whenever necessary;
- The Court provided separate spaces for the two groups of witnesses, away from the proceedings, also providing adequate protection for all;
- The proceedings were managed, in general, in a serene and balanced way, without prejudice to the parties' rights, thus avoiding tension and highly charged emotional positions or attitudes of both parties;
- The Court gave adequate time to each party and the opportunity to express themselves, to defend their positions, and to respond to each other's pleadings and arguments. An adequate reasonable timeframe was thus devoted to the trial, giving the parties enough time to exercise their right, taking into account the time that was allocated to each party;
- The case file review procedures provided for in the Code of Penal Procedure were rigorously followed. The Court granted most of the parties' requests in this regard. This included, but were not limited to, the relevant motions for the Prosecution's or Defence's requests related to the evidence file, the requests to summon the experts who conducted the medical examinations following the torture allegations, and the requests to summon the officers who drafted the records of the judicial police;
- While the normal procedure in criminal cases consists mainly of oral pleadings, all parties have supported their pleadings with written submissions. This was highly indicative of the strong will of each party to defend and document their positions. It also made the task of the court easier.

In general, the trial observation team concluded that the proceedings before the Criminal Division at the Court of Appeal of Rabat- Annex of Sale, case file n°582/2612/2016, met all trial standards provided for in article 14 of the International Covenant on Civil and Political Rights and other relevant international instruments related to the independence of the judiciary and to the role of the office of the public prosecutor, the role of lawyers and bar associations.

Compliance of the Court with these standards can be deduced from the following:

- The nature of the Court that heard the case and its composition and the safeguards provided to ensure its independence and impartiality;
- The publicity of the hearings, the fact the parties had the possibility to put forward pleadings and counter-pleadings, the presence of the accused and the parties, and transparency of the hearings. Also press and media were not excluded and had the opportunity to report on the trial proceedings;
- Translation from and into several languages was available;

- Rigorous compliance of the court with the case file review procedures provided for in the Code of Penal Procedure; granting medical examinations, the confrontations between the accused and the witnesses, the court's decision to summon both parties' witnesses, the experts who conducted the medical examinations following torture allegations, and the officers who drafted the records of the judicial police, the evidence file (videos, confiscated elements, CD's, phone recording reports, reports on travels to foreign countries, photos, etc.) ;
- The timeframe given to and the adequate conditions provided for all parties to put forward their arguments and defend themselves and their legal stands, and to serve their documents, motions and requests;
- Allocating equal and adequate time for discussion and to the parties; the timeframe was allocated as follows: 23% to the defence attorneys, 35.25% to the accused, 10.11% to the attorneys of the civil party, 10% to the office of the public prosecutor, 17.26% to both parties' witnesses, 3.10% to show and discuss the evidence file with no witnesses attending, and 1.25% of the allocated time to hear the experts.

**Regarding the Decision of the court:**

- The ruling was delivered, drafted and made available to the parties, within a reasonable timeframe;
- The Court ensured that the ruling included an account of all proceedings, the arguments and pleadings of the parties, and their counter arguments and pleadings;
- The court re-characterized some of the acts committed by some of the accused, and rendered individual sentences:
- The court maintained the same sentences rendered by the Military Court for seventeen (17) accused persons;
- No harsher sentences were rendered by the court;
- The court reduced sentences for six (6) people, (to an extent that allowed two of them to be released).
- The Court provided the arguments of its decision and laid the legal grounds of its decision;

All parties filed for an appeal before the Supreme Court.