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# Information Gdeim Izik trial 26th December 2016

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## 1 - Introduction

On December 26th 2016 I have attended the trial of the Saharawi political prisoners known as the Gdeim Izik Group in the capacity of International Observer accredited by Fundación Sahara Occidental.

The trial was postponed to January 23rd 2017 after 9 hours of hearings in the Court of First Instance of Sale, Morocco, with the justification that one of the accused (Mohamed Ayuobi), currently on parole, was not present.

Since the trial was postponed this is only a summary information of the proceedings/session of the 26th of December 2016 as well as information regarding the new judicial process and background of the whole process.

The right to observe trials stems from the general right of all persons to promote and secure the protection and realisation of human rights and fundamental freedoms.

The UN Declaration on Human Rights Defenders provides that everyone has the right, individually and in association with others, to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments (article 9(3)(b)).

## 2 - Background

Rabat's military tribunal sentenced the 25 Saharawi known as the Gdeim Izik Group on 17 February 2013 for charges relating to violent resistance to the Moroccan authorities during the latter's destruction of the Gdeim Izik protest camp. Nine received life sentences, 14 received terms between 20 and 30 years, and 2 were sentenced to the 2 years that they had already spent in pre-trial detention, one was given parole due to his health status. The trial came after two earlier postponements (the trial had originally been scheduled for January 2012, but was pushed back to October 2012, then postponed again) for reasons that remain unclear.

I participated in the capacity of International Observer in this trial accredited by Fundación Sahara Occidental which presented a Report that evaluated the trial as Null and Void due to:

*1st- Concerning the Justice Administration, notwithstanding the Human Rights norms and international instruments, rectified by*

Morocco and, although holding a strong police and judicial contingent, it did not take into account, along the judicial process, the current law, therefore WEAKENING, in judicial seat, dependencies and institutions, the appliance legislation, this process having proved to be: a NULL and VOID.

2nd -The Military Court, in charge of this procedure, which carried out the trial's stages and decision, in Rabat, capital of the Morocco State, is an EXTRATERRITORIAL COURT. Its competence to judge the facts and acts produced outside the Reign of Morocco territory, makes it INCOMPETENT, according with the United Nations Security Council's resolutions, once these facts, are circumscribed within the Western Sahara, a non-autonomous territory, military and illegally occupied by Morocco (the " occupant country"), contrary to international law and therefore, outside the sovereignty, competence and jurisdiction of this same Rabat's Military Court, the process developed in itself being NULL and VOID.

3rd -The Rabat Military Court is INCOMPETENT under the constitutional and criminal law, according to article 127, of the recent - ratified Constitution of the Reign of Morocco, dated 29th July 2011, being in fact an EXCEPTIONAL COURT, prescript and forbidden, the developed process being of RADICAL NULITY. The Rabat Military Court, presided by an ordinary judge "Zehhaf", judged, violating the application law, 25 Saharawi civilians, not holding the necessary jurisdictional faculties. The form and tone of interrogation to many of the latter, stating they had no sufficient education competences, in order to pronounce the court's legality, was totally inadequate and a clear sign of discrimination and racism.

4th- The preliminary round phase of the crime, was converted into the dominant and decisive part of the criminal process, contaminating it in a serious and irremediable manner. The accusation and justice administration system, regarding the proofs, which might have been obtained illegally, is very defective. The prisoners denounced sexual violations and tortures, as means of obtaining confessions, which took place at the Royal Gendarmerie police premises and amid the military and pro-military corps which "in fact" operate in the Western Sahara, inflicted during weeks or even months, and whose wounds were exhibited in court, during the plenary and instruction phases, with many denounces, which were not under investigation, as it was denied, including the oral phase of the proving of such acts, and the possibility of their validity, therefore giving place to FRAGILITY OF THE DEFENCE RIGHTS.

5th- The oral testimonies, were registered, years upon the taking

place of the acts, along with the inappropriate /unjustified prolonging of detention, in police and penitentiary premises, amid tortures, physical and psychological coactions, postponement of the trial and keeping the accused under protective imprisonment, contrary to international conventions and the Morocco law.

6th- Although over 2 years passed, since the 8th November 2010, the date when the alleged acts took place, and the capacity and preparation of both the security corps and forces, as well as the Morocco courts and judges, an ILL, INCOMPLETE, SLANTING AND ILLEGAL INSTRUCTION was made. The inexistence within the process of the identity and circumstances on the dead victims, inexistence of forensic autopsies ( an important item to determinate the cause of death, the place, moment and circumstances); inexistence of digital impression proofs and white weapons analysis, inexistence of morphologic studies and identification in films, make us consider not valid , in absolute, the dictated sentence. And once that none of the accused are identified in the presented films, the instruction and supposed accusation proofs obtained in the instruction phase and presented at the plenary, they are TOTALLY UNKNOWN REGARDING THE ACCUSED, together with the manner the King's Procurator presented and formulated the accusation. The existence at the time, of the violent dismantlement of the Gdeim Izik camp, under siege, surrounded by numerous state effectives and equipment (which included aerial means and at least five film cameras), make the "modus operandi" inconsistent / incongruous, reported by the accusation, with the reported facts, with plenty of void and imprecisions, which made it absolutely impossible to recognize who, how and when, provoked the death of victims and if it was violent. (The crimes appointed by those condemned were desecration of bodies, criminal and murder association).

This defective instruction, made by the King's Procurator, at the Plenary, the very same day the trial hearings begun, to present, in a suppressive manner (in non-accomplishment with the previewed legal terms) the inclusion in the process of nine ocular witnesses of the acts and whose statements could bring some light on the authors identification and the circumstances of the crime perpetration. Hawadi Radouan, the first witness, declared he was present as an auxiliary corps, on the 13th February, at 13.15, local time, not having recognized any of the accused. The court's president, in the exercise of his stated conferred powers, forbid the plenary of hearing the remaining eight witnesses. Therefore, impeding the defence of the possibility of proving the accused had had no participation in the violent acts.

The only admitted defence witnesses and able to testify were:

*Mohamed Salmani, Bachir Salmani, Mohamed Balkasmi, Mohamed Abhaoui and Hassan Dalel.*

*7th- Absence of guarantees in a lawful process and a correct appliance of justice, given that the police, judicial procedures and the oral trial phase, were deeply affected by the accused political activities and opinions, which overcame the circumstances. This mission regarded the inexistence of an impartial and independent justice during the trial, this process ought to be classified as a POLITICAL TRIAL and the prisoners as POLITICAL PRISONERS.*

*8th- The observer mission proved numerous vices amid the proceedings, which ought to have provoked null and void, from the instruction phase in concrete and regarding the law applied within the territory:*

*-the underlined absence( and denounced repeatedly along the whole trial) of accusation proofs presented by the King's General-Procurator and the Judge of Instruction, MAKE THE WHOLE PROCESS NON-VALID, as the latter did not exercise their lawful guarantee function, thus violating the effective judicial protection principle ( in accordance with its criminal system) and the presumption of innocence, accepting the police statements obtained, as declared by all the witnesses, under unimaginable forms of torture, IN THE ABSENCE OF ANY REAL PROOF along all the process.*

*- Absence of identification of the held forces by the security guards, holding incriminatory proofs in the instruction phase itself; signifying that they were arbitrarily imprisoned and by the fact of being Saharais, associations' members, Human Rights defenders, members of the Gdeim Izik negotiation commission or for opinions on the Western Sahara auto-determination, having been taken away unto detention centres before, during and upon the Gdeim Izik camp, with no connection with the mentioned acts, having been kept for days under unaccounted whereabouts.*

*- Violation of the right of defence, through the systematic refusal of proof of innocence, both during the instruction phase as during the plenary, impeding in concrete, the possibility of proving innocence, having been specially grotesque the proof presentation denials, insistently demanded by the defence, throughout all the plenary progress, as doctors for proving torture and important witnesses, such as the Minister of the Interior of Morocco and the MP (member of parliament) Gajmoula Ment Abbi.*

*- Absence of lawyers during detentions, at the police and judicial quarters.*

- Absence of communication towards the prisoners' families.
- The use of violent police methods, tortures and physical coactions and all orders at the judicial quarters, carried out in the presence of the instruction judge Bakkall Mohammad, deceased, to obtain signatures in digital prints, at the end of the version of the guilt confessions.

9th- This mission proved the violation of freedom of expression, conscience, meeting and association rights within the territory, awaiting the decolonization from the United Nations and the celebration of an auto determination referendum carried out by the Saharawi people; and that the expression of political opinions which are carried out during the exercise of civil rights, recognized by the international treaties, subscribed by Morocco, are hindered.

During the oral testimonies phase, the court intended to annul, at any moment, and avoid such statements; and only were permitted / allowed, upon a strong defence from lawyers and a closed meeting among the court and the latter.

10th- Detention, torture and sentence, as well as the Saharawi's demonstrators detention, correspond to the decided and systematic repression policy towards the political activists within the Reign of Morocco and the Western Sahara territory, as a method to minimize the Saharawi people growing movement demanding their right to auto- determination, recognized by the United Nations, in the defence of their rights, which ultimate expression was the Gdeim Izik camp.

11th- The state of terror which witnesses mention, the reports on torture and repression, reported during the plenary, violate the Morocco criminal law, which is applied to the Western Sahara inhabitants, the international agreements subscribed by Morocco, as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the international Agreements on Civil, Political, Economic, Social and Cultural rights (1966), the Agreement for the Prevention and Sanction of the Crime of genocide and Crime of Tortures, (rectified by Morocco in 1950).

12th- This observer mission could prove, that the necessary conditions for the on-going of a just, equitable and independent process were not met. The excessive and unjustified police presence, in the hearings room, the court's premises and in the outdoor surroundings, where hundreds of anti- order vehicles, lorries with water canyons prepared to intervene, situated in visible places, together with the stress / pressure the observers suffered, both inside

*the hearings room as all over the court, the threats upon translators, whose families had been "visited" in Western Sahara, having been adverted that translation activity was not to be convenient, frequency deterrent effects all round the zone, impeded phone communication, together with the media pressure on the Morocco media, that along with the police force, carried on filming and taking photos of the observers, and , specially, of the prisoners, having been published in papers and magazines with no permission, constitute an inadmissible exercise of the power of state, which played its direct influence on the justice process, deterring it.*

All defendants maintained their innocence, professing that the real reason behind their detention is their activism for human rights, anti-discrimination and/or respect for the Saharawi people's right to self-determination.

They made several hunger strikes demanding their rights under international law during the over six years of detainment.

### **3 - Acceptance of the appeal presented in 2013 and new trial**

On October 18th 2016 the group of Saharawi political prisoners of Gdeim Izik, currently imprisoned in El Arjat, received an individual resolution for each of the 21 detainees from the Civil Court in Rabat, to inform that their appeals presented in 2013 had been accepted.

The Civil Court's decision is dated July 27th 2016 and the prisoners were informed on 18th October. The Moroccan judicial system, withheld this information for 82 days.

The group was transferred from prison Sale1 to El Arjat after this decision, on August 31rd, the prisoners were brutally beaten and most of their belongings were taken from them.

On November 25th 2016 the Moroccan Ministry of Justice, 2nd appeal court sent to all the 21 prisoners of the Gdeim Izik Group and to two ex-prisoners released in 2013 and one on parole the communication that a new trial would take place on the 26th of December 2016, in the court of first instance of Sale with the process number: 2612/2016/582.

The new accusations are articles 129<sup>1</sup>, 130<sup>2</sup>, 267<sup>3</sup>, 271<sup>4</sup>, 293<sup>5</sup> and 294<sup>6</sup> of the Moroccan penal code.

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<sup>1</sup> Article 129

Sont considérés comme complices d'une infraction qualifiée crime ou délit ceux qui, sans participation directe à cette infraction, ont :

1° Par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, provoqué à cette action ou donné des instructions pour la commettre;

2° Procuré des armes, des instruments ou tout autre moyen qui aura servi à l'action sachant qu'ils devaient y servir;

3° Avec connaissance, aidé ou assisté l'auteur ou les auteurs de l'action, dans les faits qui l'ont préparée ou facilitée;

4° En connaissance de leur conduite criminelle, habituellement fourni logement, lieu de retraite ou de réunions à un ou plusieurs malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'État, la paix publique, les personnes ou les propriétés. La complicité n'est jamais punissable en matière de contravention.

<sup>2</sup> Article 130

Le complice d'un crime ou d'un délit est punissable de la peine réprimant ce crime ou ce délit.

Les circonstances personnelles d'où résultent aggravation, atténuation ou exemption de peine n'ont d'effet qu'à l'égard du seul participant auquel elles se rapportent.

Les circonstances objectives, inhérentes à l'infraction, qui aggravent ou diminuent la peine, même si elles ne sont pas connues de tous ceux qui ont participé à cette infraction, ont effet à leur charge ou en leur faveur

<sup>3</sup> Article 267

Est puni de l'emprisonnement de trois mois à deux ans, quiconque commet des violences ou voies de fait envers un magistrat, un fonctionnaire public, un commandant ou agent de la force publique dans l'exercice de ses fonctions ou à l'occasion de cet exercice.

Lorsque les violences entraînent effusion de sang, blessure ou maladie, ou ont lieu soit avec préméditation ou guet-apens, soit envers un magistrat ou un assesseur-juré à l'audience d'une cour ou d'un tribunal, l'emprisonnement est de deux à cinq ans.

Lorsque les violences entraînent mutilation, amputation, privation de l'usage d'un membre, cécité, perte d'œil ou autre infirmité permanente, la peine encourue est la réclusion de dix à vingt ans.

Lorsque les violences entraînent la mort, sans intention de la donner, la peine encourue est la réclusion de vingt à trente ans.

Lorsque les violences entraînent la mort, avec l'intention de la donner, la peine encourue est la mort.

Le coupable, condamné à une peine d'emprisonnement peut, en outre, être frappé de l'interdiction de séjour pour une durée de deux à cinq ans.

<sup>4</sup> Article 271

Quiconque souille ou mutilé un cadavre ou commet sur un cadavre un acte quelconque de brutalité ou d'obscénité, est puni de l'emprisonnement de deux à cinq ans et d'une amende de 200 à 500 dirham.

<sup>5</sup> Article 293

Toute association ou entente, quels que soient sa durée et le nombre de ses membres, formée ou établie dans le but de préparer ou de commettre des crimes contre les personnes ou les propriétés, constitue le crime d'association de malfaiteurs qui existe par le seul fait de la résolution d'agir arrêtée en commun.

<sup>6</sup> Article 294

Est puni de la réclusion de cinq à dix ans, tout individu faisant partie de l'association ou entente définie à l'article précédent.

La réclusion est de dix à vingt ans pour les dirigeants de l'association ou de l'entente ou pour ceux qui y ont exercé un commandement quelconque.

Accusations:

The accused of belonging to a criminal group, violence, with the intention to kill, against public forces in line of duty, which resulted in death and profanation of a dead body, are:

- Abdallahi Abahah, prisoner number 772 (serving life sentence)
- El Bachir Boutengiza, prisoner number 763 (serving life sentence)

The accused of belonging to a criminal group, violence with the intention to kill, against public forces in line of duty, which resulted in death, are:

- Mohamed Bani, prisoner number 781 (serving life sentence)
- Abedjalil Laroussi, prisoner number 779 (serving life sentence)
- Abdellahi Lakhfaoui, prisoner number 776 (serving life sentence)
- Ahmed Sbaai, prisoner number 771 (serving life sentence)
- Sidahmed Lemjeyd, prisoner number 773 (serving life sentence)
- Brahim Ismaili, prisoner number 774 (serving life sentence)
- El Arabi Bakai, prisoner number 778 (serving 30 years)
- Mohamed Lafkir, prisoner number 775 (serving 25 years)
- Mohamed Ayoubi (on parole since February 2013)
- Taki El Machdoufi (freed in February 2013 after serving two years imprisonment)

The accused of belonging to a criminal group, violence without the intention to kill, against public forces in line of duty, which resulted in death, are:

- Naama Asfari, prisoner number 767 (serving 30 years)
- Cheik Banga, prisoner number 770 (serving 30 years)
- Hassan Dah, prisoner number 768 (serving 30 years)
- Mohamed Bourial, prisoner number 769 (serving 30 years)
- Houcein Zawi, prisoner number 776 (serving 30 years)
- Abdallahi Toubali, prisoner number 762 (serving 30 years)
- Deich Daff, prisoner number 764 (serving 30 years)
- Mohamed Lamin Haddi, prisoner number 782 (serving 25 years)
- Mohamed Khouna Babeit, prisoner number 780 (serving 25 years)
- Bachir Khadda, prisoner number 777 (serving 20 years)
- Mohamed Tahlil, prisoner number 765 (serving 20 years)
- Abderraman Zeyou (freed in February 2013 after serving two years imprisonment)

#### **4 - Atmosphere surrounding the trial and the courthouse**

Two weeks before the trial the Moroccan media started a "campaign" in which the main goal was to identify the Gdeim Izik Group as common criminals and not political prisoners and activists.

On at least two talk shows it was even mentioned that if the prisoners would not "misbehave" in court and not entering chanting political slogans and wearing their traditional clothing their sentences could be reduced.

Outside the courthouse the Families and friends of the prisoners who were not permitted to enter gathered in a demonstration that was surrounded by police, on the other side was a very large group of Moroccans, which supported the families of the victims.

Entering the courthouse all observers had to give their cell phones, computers and ipads to police agent which "guarded" them until the end of the trial.

The observers had to undergo body search and pass under a scanning device identical to the ones used in airports.

#### **5 - Court proceedings/trial**

On the 26th December 2016 at 10h00, in the court of first instance of Sale, Morocco began the new trial of the Gdeim Izik Group.

Since this Group was detained during and in the aftermath of the Gdeim Izik Camp in 2010 in Western Sahara, a non-autonomous territory, this was once again an extraterritorial trial.

The group of 21 political prisoners entered the courtroom chanting freedom and self-determination expressions like "Labadil Labadil Antakrir El Masir" (there is no other solution than self determination) and dressed with the traditional Saharawi costume - the Daraa.

Immediately they were placed in a "glass cage room" where they were kept isolated and without being able to hear what was said in the courtroom.

Only several hours later and after strong complaint from the defence lawyers the prisoners were allowed to stay in a line between their

lawyers and so be able to follow the proceedings. Most of the prisoners weren't able to stand up in a line due to health conditions – and they were not given a chair, which meant that they had to remain inside the "glass cage".

The courtroom was full of Moroccan police, plain cloth agents, some Moroccan civilians and over 20 international observers (from Spain, France, Italy, Germany, Norway and Portugal). The families of the prisoners were not allowed to enter the court as well as the Saharawi translators who although they had accreditation were prohibited to enter.

The Judge allowed however the presence of dozens of Moroccan journalists with photo and video cameras who filmed everybody without the authorization of the accused. These footages were shown in all Moroccan media during and after the trial.

The defence lawyers present that I could identify were Mohamed Fadel Leili, Mohamed Lahbib Rguibi, Bazed Lahmad, Mohamed Masaoudi, Mohamed Sadqo and Mohamed Elhassan.

Two French lawyers (Mr. Joseph Braham and Mrs. Ingrid Metton) had an authorization from the Ministry of justice, in accordance with the agreement between France and Morocco, to participate as defence lawyers of Mr. Naama Asfari.

There were also lawyers who intended to represent the alleged Moroccan victims, but it was impossible to identify them, except two Spanish lawyers Manuel Lorenzo and Peñas Roldán, names that were understandable through translation.

The presiding judge was Youssef Alkaoui accompanied by five other judges. The prosecutor was Mr. Khalid Elkardoudi.

The proceeding was extremely hard to follow since all lawyers were standing in the front rows and the translation cabins (English, French and Spanish) were placed at the back of the room preventing the translators to see who spoke, and since there was no order nor did the persons who spoke identify themselves the translators were unable to identify the speakers turning the whole process inefficient. Also the quality of translation, especially the Spanish one, was very poor.

The discussion centred itself on these issues:

1 - If the families of the alleged Moroccan victims could be represented by lawyers of their own in addition to the fact that the Moroccan state has the accusation process.

Also there was a debate about taxes that should be paid by these lawyers.

There was no conclusion on this point, and the presiding judge informed that he would transmit his decision to both parts before the 23rd of January.

2 - If the presence of the international lawyers was allowed or not, and in which terms, and who could speak and in which language.

A group of international lawyers (around 45) sent a letter early December to the Moroccan Ministry of Justice requesting to take an active part in the proceedings, and demanded partial status.

The lawyers wanted to aid the defense by proceeding on behalf of the international community on the basis of international law. The international lawyers claimed that one of the most basic human rights is the right to adequate defense, whereas adequate defense could not be achieved without giving the international lawyers the right to take an active part in the proceedings.

The president of the court invoked that a party that didn't participate in the first instance, could not be a part in the appeal. Furthermore, the judge claimed that the international lawyers didn't have the sufficient knowledge of the Moroccan legal system.

The international lawyers claimed that an appealed decision from the military court constitutes a new process. Therefore, the trial beforehand was to be regarded as the first instance. The defense also claimed that the judgment of the military court is to be regarded as null and void, and cannot be given weight in the new proceedings. The international lawyers urged that the compliance with international law was dependent on their participation.

The court invoked that international law does not prevail Moroccan law, and furthermore that the Moroccan legal system was in correlation with its international obligations. In that regard, the court didn't have to emphasize the international treaties.

It was established by the judge that in accordance with Moroccan law the French lawyers could speak in French with the translation being transmitted with the use of the microphone by one of the local defence lawyers. But he also determined that they could not address the court directly in French using the microphone.

3 - If the international observers who are lawyers may or may not use the Toga in the courtroom, although they are not part of the defence.

The conclusion of this discussion wasn't translated, but no lawyer took off his/her toga

4 - It was discussed if the absence of Mr. Ayoubi should or not be taken in account to postpone the trial and also why he did not appear if it was a lack of communication or not. The translation at this point was incomprehensible. The judge decided that it was necessary to postpone the trial since Mr. Ayoubi was not present.

5 - The question of provisional freedom of the prisoners, awaiting trial.

The French lawyer, Joseph Braham, referred to the recent decision (12/12/2016) of the UN Committee against Torture in which Morocco was convicted of multiple violations of the Convention against Torture: torture during the arrest, interrogation and detention (art. 1) of Naama Asfari, failure to investigate repeated allegations of torture (art.12 ), Violation of the obligation to guarantee the right to complain through reprisals against the victim and one of his lawyers (art. 13), breach of the obligation to compensate and reparation (art. 14), The taking into account of confessions signed under torture (art. 15) and ill-treatment in detention (art. 16).

The UN Committee calls on Morocco to compensate the victim, to conduct an independent and impartial investigation into the allegations of torture and ill treatment and to prosecute the perpetrators and refrain from any act of pressure, intimidation or reprisal Likely to harm the physical and moral integrity of the complainant and his family.

The presiding judge interrupted him constantly and declared that this decision had no bearing on the guarantees necessary for provisional release.

Mrs. Ingrid Metton said she would speak on behalf of all accused but was reminded by the judge that she was only there to speak on behalf of Mr. Asfari. Nevertheless Mrs. Metton pointed out that the conditions for the prisoners to attend and participate at the trial were not met since there were no chairs and their health was fragile, as well as the fact that the "glass cage" hindered them to hear what was said.

Some of the local defence lawyers (Mr. Masaoudi, Mr. Leili and Mr. Rguibi) argued that the right of an accused person to provisional release pending trial is a corollary of the presumption of innocence, and is widely recognised in international human rights instruments.

It was argued that the prisoners on trial are innocent, and that one cannot speak about a fair trial when 21 innocent men have been imprisoned for 6 years. Furthermore, the defense argued that the accused are imprisoned based on a decision that is null and void. The prisoners are not proven guilty, and their right to be regarded as innocent until proven guilty is severely violated. Furthermore, the defense argued, a continued imprisonment violates the right to freedom.

They stated that the accused have all the guarantees necessary and demanded under Moroccan law. They also referred to the arbitrary detention and the circumstances of arrest of the accused that were a clear violation of the law.

The defense also claimed that the accused are political prisoners that were in negotiations with the Moroccan government during the protest camp Gdeim Izik. It was argued that all of the accused are peaceful political activist that promotes human rights and the right to life, and therefore condemn the loss of life.

The defense invoked guaranties whereas the currently imprisoned accused have homes, jobs and no desire to flee, but to end this ordeal and that the accused were ready to come to the court every day, so that they could prove their innocence; both to the Moroccan government and the people.

The judged ruled against the provisional release of all accused currently in detention saying that the court ruled that the torture convention and the decision was irrelevant to the question on provisional release depending trial.

The trial ended at 19h00. The prisoners existed the courtroom as they entered chanting political slogans for self-determination of Western Sahara.

There was no break for lunch and the whole proceeding lasted over nine hours with only a few breaks of minutes that where justified with "technical problems" and preceded always a decision to be taken by the judge.

## **6 - Main findings of the trial session on the 26th December**

The session was not conducted in a orderly manner, the lawyers where constantly interrupted by each other or by the judge. The prosecutor

interrupted everybody at any occasion without apparent reason or justification. The fact that the session lasted for nine hours almost continuously did not help in anyway to make the work more efficient.

Furthermore

- the court chosen is extraterritorial - The *Tribunal de Premiere Instance* is formally independent. However, the accused were detained before and during the aftermath of the Gdeim Izik Camp in 2010 in Western Sahara. A territory under illegal occupation by Morocco. Since Western Sahara is a non-self-governing territory, the *Tribunal de Premiere Instance de Rabat* is an extraterritorial court. Morocco's lack of recognized authority over the territory is clearly outlined and summarized in the 21 December 2016 judgment of the Court of Justice of the European Union;
- the accused were not able, most of the time, to hear what was said during this session, due to the fact that the "glass cage" where they were placed, did not have any headphones or earpieces. In conclusion: lack of ability to observe your own trial as a defendant constitutes a breach of the right to defence, and therefore a breach in the right to a fair trial;
- the right to provisional freedom was not granted although the guarantees demanded by Moroccan law were met and several international bodies and mechanisms of the UN, the most recent being the decision of CAT, refer to the arbitrary detention and lack of evidence other than confessions obtained under torture, therefore this constitutes a breach in the right to freedom (detention without judgement, and the previous judgement is null and void, that is a violation of the right to freedom);
- although the accused did not give their permission, journalists and photographers, as well as video cameras were present during the entire trial and images were taken and published. This is a violation of the right to privacy;
- There were discussions and "recommendations" regarding the trial, the accused and even the possible sentences in Moroccan media before, during and after the trial;
- The quality of translation and the conditions in which the translation was made did not guarantee that the international trial observers could duly accompany the proceeding.

The observed proceedings have shown a breach of the right to a fair trial as put forward in article 14 of the ICCPR and by International law

due to two decisive factors:

-the prisoners have not yet been proven guilty. Their right to be regarded as innocent parties until proven otherwise has thus been severely violated.

- the prisoners were not able to hear, or contribute in any way, in favor of their own defense. For this reason, the right to adequate defense is to be regarded as violated.

*Lisbon, 4th of January 2017*