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Freedom of assembly on trial

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Freedom of assembly on trial

On 21 November 2001 the Court of Appeal in Rabat acquitted 36 human rights defenders who had been sentenced earlier in the year to three months in prison for "participating in the organization of an unauthorized demonstration" on 9 December 2000. The rally had been called to demand an end to impunity for perpetrators of human rights abuses in the country. Although the decision to quash their sentences meant the activists were spared imprisonment, their trial and conviction confirmed the need for the Moroccan authorities to ensure that the right to freedom of assembly is guaranteed. At the time of writing, the appeal court's written ruling had not yet been issued.

This case has focused attention on Morocco's record on human rights under King Mohamed VI. The King has taken a number of welcome steps since acceding to the throne in July 1999. These include the establishment of an arbitration commission to decide on compensation for certain victims of "disappearance" and arbitrary detention in previous decades, and the release of several prisoners detained solely on account of the peaceful expression of their political beliefs. Such steps have built on the significant improvements which the country has seen in its human rights situation since the early 1990s.

However, the right to assemble peacefully remains sharply curtailed. It is critical that this right be protected as Morocco prepares for parliamentary elections that have been scheduled for September 2002, which King Mohamed VI has pledged will be impartial. Also at stake in this case was the right to challenge impunity for perpetrators of human rights abuses. At one level, this is the right to demand that the state identify and hold accountable alleged perpetrators of hundreds of cases of "disappearance," torture, and prolonged illegal detention in previous decades. At another level, this concerns the impunity of the police who brutally beat the demonstrators before arresting them, and the lack of investigations into excessive force used by the Moroccan police in dispersing peaceful public gatherings.

Arrest and trial

On the evening of 9 December 2000, plainclothes and uniformed police descended upon persons planning to hold a rally in front of the parliament building in downtown Rabat. The rally had been organized by the Moroccan Association of Human Rights (*Association marocaine des droits humains*, AMDH), on the eve of International Human Rights Day, to demand an end to impunity for human rights abuses. The activists planned to protest under the slogan, "We demand that the truth be revealed and that those responsible for abductions, illegal arrests and acts of torture be brought to justice."

The protest was one of many staged in the last two years by civil society organizations. Demands for a truth and justice commission, state acknowledgement of its

role in "disappearances" and other grave abuses in previous decades, and reparations for victims and their families have intensified as the margins for free expression have widened and the authorities have sought to improve the country's human rights record.

On 9 December, police arrested 46 persons, many of them before they had even reached the site of the planned rally. They also confiscated the banners, posters and photos the demonstrators had been carrying.

The police released four of those arrested the same evening, and held the other 42 overnight. On 10 December, they were taken before the state prosecutor, who released six of them without charge. The remaining 36 were brought before the Rabat Court of First Instance on 11 December. All were charged on two counts: "participating in the organization of an unauthorized demonstration" under Articles 11 and 14 of the 1958 Law on Public Assemblies and "participating in an unarmed assembly in a public thoroughfare," under Articles 17 and 21 of the same law. The first charge carried a maximum sentence of three years in prison and a fine of 7,000 dirhams (US $630); the second charge a maximum sentence of one month in prison. The court scheduled the trial for 28 February 2001.

The defendants were mostly human rights activists, including the AMDH's president at the time, Abderrahmane Benameur, its vice president, Amine Abdelhamid (later elected president to replace Benameur), the association's treasurer, Lahcen Khattar, and many AMDH members from around the country. Also arrested were Khedija Rouissi, secretary-general of the Forum for Truth and Justice, and Lahcen Moutik, a member of the Forum's executive committee, along with Brahim Sebbar and Seddik Bellahi of the Coordinating Committee of the Group of Sahrawi Victims of Forced Disappearance and Arbitrary Detention.

Well before the planned rally, the AMDH had sparked controversy by publicly naming officials allegedly implicated in grave human rights abuses in previous decades and demanding they be held accountable. On 23 October 2000, the association sent an open letter to Minister of Justice Omar Azzimane, urging him to initiate proceedings against 14 officials, including Hosni Benslimane, the chief of the gendarmerie, and Hamid Laanigri, director of the National Security Bureau, an internal police agency, and parliament deputy Mahmoud Archane. Most of the remaining persons named as perpetrators were retired. Neither Benslimane nor Laanigri responded formally to the accusations; Archane, in statements published in the press, said he had always served his country and observed the laws.

On 4 December 2000 the AMDH addressed an open letter to parliament, asking it to form a commission of inquiry, in accordance with Article 42 of the Constitution, to investigate 16 men named in the letter as responsible for "disappearances" and torture. The

letter added two names to the 14 cited in the October letter addressed to the Justice Minister. The AMDH declared that there were victims willing to testify against the accused before a parliamentary commission. Neither the government nor the parliament responded officially to the AMDH letters.[1]

The AMDH informed the *wali* (governor) of Rabat-Salé, in a letter dated 6 December 2000, of its intention to hold a peaceful sit-in from 8:00 to 8:30pm on 9 December in front of the parliament building. The *wali* replied to the AMDH in a letter dated 8 December that he was forbidding the sit-in for unspecified security reasons.

The AMDH went ahead with its plan to hold the sit-in. As the defendants were to argue later before the court, they believed that, under Moroccan law, a peaceful sit-in that does not obstruct traffic requires no prior authorization. They had informed the *wali* of their plans, they said, not to seek his permission but simply as a matter of courtesy.

The Court of First Instance rejected this interpretation of the law. On 16 May it rendered its verdict, convicting all 36 of "participating in the organization of an unauthorized demonstration," and sentencing each defendant to three months in prison and a fine of 3,000 dirhams. All were acquitted of the second charge. An appeal was planned and the 36 remained at liberty pending a definitive ruling on their case.

On 11 June, the first date before the Court of Appeal, the trial was postponed until 17 September. After sessions on that date and on 16 October, the court issued its verdict on 21 November.

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[1] The U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), adopted by the U.N. General Assembly on 8 March 1999, affirms the right of individuals to call attention to human rights abuses and the obligation of the state to investigate them. The Declaration states, in Article 9:

"*3. ... everyone has the right, individually and in association with others,* inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay; ...

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction."

Amnesty International and Human Rights Watch sent observers to both the trial in first instance and the appeal trial. Hachemi Jegham, a human rights lawyer and chair of Amnesty International's Tunisian Section, monitored the session on 28 February 2001 on behalf of Amnesty International, as did Mokhtar Trifi, president of the Tunisian League for the Defence of Human Rights, who was sent jointly by Human Rights Watch and the International Federation for Human Rights. During the appeal trial, Egyptian human rights lawyer Mahmoud Kandil attended the session of 17 September 2001 on behalf of both Amnesty International and Human Rights Watch.

Police brutality during arrest

"Sit-ins" in the Moroccan context differ from sit-ins as they are commonly understood in some other countries. Participants generally gather and stand or sit at a location and hold up signs and chant slogans. Most sit-ins in Morocco are not acts whose purpose is to obstruct or intimidate those who pass by. The sit-in called by the AMDH is a case in point. It was planned for the wide strip of grass that lies in the middle of the boulevard running past the grounds of the parliament building.

According to the prosecution, the local police had been informed that an unauthorized demonstration was taking place and, after arriving at the scene, ordered the crowd to disperse using a loudspeaker. When the order to disperse was ignored and as protesters chanted slogans against impunity, members of the security forces were ordered to make arrests, the prosecution maintained.

The defendants challenged this account of events, and when presented with police statements that reflected the official account of events, the defendants refused to sign them. Instead, they claimed in court on 11 December that security force personnel were waiting for them as they approached the location of the gathering at 8pm and began to disperse them violently without giving an audible order beforehand. Other activists were chased and arrested as they approached the site from different directions. In addition, when a small number of them re-grouped on the sidewalk three blocks away, near the AMDH's headquarters, police charged and beat some of them, and made further arrests. When defence lawyers sought during the trial to summon witnesses to corroborate the defendants' account, the judge denied their request, pointing out that the prosecution's account came from police reports prepared on the basis of the testimony of a police officer who had witnessed the events in question. By law, he added, such reports can only be challenged by making the contention that they are forged. Article 294 of the Code of Criminal Procedure states:

"No one is permitted to use witnesses to present evidence which is superfluous to or contradicts the contents of reports prepared by functionaries or agents, whose inquiries are considered reliable, according to the terms of the law, and cannot be challenged except

with the contention that they are forged. If this is breached, it follows that the evidence is invalid."

All of those arrested claim they were physically assaulted by members of the security forces in the streets. Some allege that they were punched, kicked, and insulted, others that they were beaten with clubs or sticks. One of the defendants, Abdelilah Benabdessalam, underwent an independent medical examination on his release. The medical report, dated 11 December 2000, described bruises on his head, back and ankle and declared him incapable of working for a period of 25 days.

When questioned on 9 and 10 December, those arrested showed the police and state prosecutor the injuries they had sustained. However, their requests for a medical examination were not granted. When they repeated these requests in court the following day, they were again refused. The defence argued that this succession of refusals violated the Code of Criminal Procedure, which stipulates in Article 127, "... the examining magistrate must submit the accused to an examination by a medical expert when this is requested of him or on his own initiative if he himself notices marks which justify this."

The trial court's written ruling, issued after the verdict was announced on 16 May, stated that the state prosecutor had observed cuts and bruises on some of the defendants. But no medical examination was required since the injuries were inflicted prior to the period of detention. The court was apparently drawing a distinction between force used during custody, which could have tainted statements made by the defendants that were introduced as evidence, and force used prior to taking the defendants into custody. The injuries, wrote the court, "are attributable to the situation and circumstances of events which required the intervention of the security forces to arrest them and to prevent them from holding what they called a sit-in protest. This does not warrant in any way their being presented for a medical examination."

The U.N. Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment urges a prompt medical examination under all circumstances. Adopted by the General Assembly on 9 December 1988, the Body of Principles states in Principle 24:

"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary."

Even when presented with evidence of the excessive force used by the police in the streets against the defendants, neither the state prosecutor nor the investigating judge

handling the case saw fit to order an investigation. To this day, the brutality of the police against the participants has not been investigated.

"Sit-in" or "demonstration": the legal debate

During the trial, the prosecution contended that what had been organized in front of the parliament building on the evening of 9 December 2001 was a "demonstration". The defence argued that this had not been a "demonstration" but a "peaceful sit-in" scheduled to last for half an hour.

The defence argued that the *wali's* order forbidding a "sit-in" was illegal. Since the Law on Public Assemblies does not mention the word "sit-in," either to criminalize or explicitly permit it, a "peaceful sit-in" can be organized and held without advance permission or notification. The defence argued that a "sit-in" involved a rally in a fixed place, while a "demonstration" involved movement along a public thoroughfare. They cited a 1999 ruling of Morocco's Supreme Court[2] that classified the gathering of people in one place as merely an "assembly," in contrast to a "demonstration," which involved the collective movement of people through streets. In that case, the Supreme Court overturned the 1995 conviction by the Court of Appeal of el-Jadida of a group of people who had apparently assembled in front of a local administration building chanting slogans. The defendants had been convicted of participating in an unauthorized demonstration and gathering in a public thoroughfare.

The judge trying the 36 human rights activists declined to accept the distinction drawn by the Supreme Court, and ruled instead that a "peaceful sit-in" should be classified, within the context of the law, as a "demonstration." The court's written ruling explained that it was not legally bound to apply to the facts at hand a holding of the Supreme Court when it was not persuaded by the higher court's reasoning.

However the term "demonstration" is interpreted within the context of Morocco's domestic legislation, the Moroccan authorities violated the right to freedom of assembly guaranteed by Article 21 of the International Covenant on Civil and Political Rights (ICCPR), which Morocco has ratified. Article 21 of the ICCPR states:

*"The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."*

[2] Case no. 96/4446-96

The authorities invoked "security reasons" to ban the AMDH sit-in, but did not specify them in any way. Given the AMDH's history of non-violence and the proposed nature of the AMDH action, it is difficult to see how its interdiction could be deemed "necessary in a democratic society" to protect national security, public safety, or any of the other interests laid out in the ICCPR.

Amnesty International and Human Rights Watch believe, furthermore, that the police used excessive force in preventing the sit-in from taking place, and should be held accountable for their actions.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the U.N. in 1990, contain the following provisions:

"12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary." [3]

The right to demonstrate in Morocco

Morocco's restrictions on public gatherings go well beyond the narrowly defined grounds provided in the ICCPR. Under Article 13 of the 1958 Law on Public Assemblies, organizers of a demonstration must obtain advance authorization from the authorities, who may forbid them from holding it if they "determine that the planned demonstration is liable to disturb the public order." Armed or unarmed gatherings on public thoroughfares "capable of disturbing the public order" can be prohibited and dispersed, according to Articles 17 and 19 of the same law. Nowhere does Moroccan law define what constitutes a disturbance to the public order, leaving its interpretation in the hands of authorities. That wide discretion is frequently used to forbid or disperse political demonstrations, although rallies, including large ones, are sometimes permitted to take place.

Peaceful gatherings such as that of the human rights activists of 9 December 2000

[3] Principle 14, which restricts the resort to firearms, is not applicable here because there are no allegations that the police used them in this instance.

are often broken up by the police, particularly when the demands being made relate to sensitive issues. In many instances participants are beaten and arrested by the security forces, and then prosecuted on charges related to participating in "unauthorized" gatherings.

On 14 November, police forcibly broke up a sit-in by teachers staged outside the Ministry of Finance in Rabat to demand that the authorities fulfil agreements reached with their unions. On 18 October 2001 the Interior Ministry banned a demonstration called for 21 October in Rabat to protest U.S. air strikes in Afghanistan. In June and July, the Ministry prevented Berber rights groups from holding a meeting and a conference. On 12 January the Ministry banned a demonstration called by human rights organizations in front of Dar al-Mokri, a former secret detention centre in Rabat. Throughout the year, police sometimes tolerated, sometimes broke up the frequent sit-ins and rallies staged by groups representing unemployed workers in search of jobs.

On 10 December 2000, the day following the rally against impunity in front of the parliament building, members and sympathizers of the Islamist organization *al-'Adl wa'l-Ihsan* (Justice and Charity) demonstrated in cities across the country to protest against police harassment and restrictions on the organization's newspapers, *al-'Adl wa'l-Ihsan* and *Risalat al-Futouwa* (The Youth Message). According to the demonstrations' organizers, they had sought advance authorization, in compliance with Article 12 of the Law on Public Assemblies, but did not receive it. *Al-'Adl wa'l-Ihsan* is an organization that the government has declined to legally authorize but generally tolerates.

Police broke up the demonstrations and arrested participants in at least seven cities. Although the fact that hundreds of protesters were out on the streets meant that there was considerable disruption in many of the cities, the demonstrations were non-violent before they were dispersed.

In Rabat, where the police were filmed beating the participants, some 200 were detained and around 100 injured, according to *al-'Adl wa'l-Ihsan*. In some parts of the footage taken, small groups of policemen could be seen repeatedly beating demonstrators who had already been apprehended with batons on the head and other parts of the body. In Casablanca, some 400 were detained and over 300 allegedly injured. In Fez, el-Jadida, Marrakesh, Oujda, and Agadir, it was reported that a total of about 500 protesters were detained and over 300 injured.

Some 130 participants in these demonstrations were charged and brought to trial. Most of them were convicted of staging unauthorized demonstrations. In some cases, defendants were charged with resisting and assaulting members of the security forces, and in a few were also charged with carrying a weapon. Those concerned were sentenced to up to one year in prison, but all are presently free, either because they have appealed their

conviction or because an appeal court has reduced the sentence to a suspended prison term.

Impunity

In Morocco / Western Sahara, both civil society and state institutions are engaged in a lively debate over how to reckon with the legacy of gross human rights abuses committed during the reign of the late King Hassan II, notably during efforts to suppress leftist dissidents and advocates of self-determination for the disputed territory of Western Sahara between the 1960s and 1980s. These abuses included hundreds of cases of "disappearances" that remain unresolved today, prolonged arbitrary detention, torture and long-term imprisonment on political charges.

Although the subject of impunity is no longer taboo, as it was during most of King Hassan II's reign, it is still a sensitive matter. The Moroccan authorities' reaction to the rally organized by the AMDH for 9 December 2000, which called explicitly for those responsible for the grave human rights violations of the past to be brought to justice, is evidence of that.

In the 1990s, King Hassan II took a number of measures to improve human rights conditions. In 1998, upon instructions from the King, the official Human Rights Advisory Board (*Conseil consultatif des droits de l'homme*, CCDH) issued a list of 112 "disappeared" persons, of whom 56 were said to have died in detention. In August 1999, one month after succeeding his father on the throne, Mohamed VI recognized, in very general terms, the state's responsibility in "disappearances" and established an arbitration commission to compensate victims and their survivors in cases of "disappearance" and prolonged arbitrary detention.

Morocco's acknowledgment of state responsibility for grave abuses of human rights and its commitment to compensate some victims are welcome initial steps towards addressing the legacy of the past. Nevertheless, they have provoked debate and criticism, including from persons eligible for compensation who declared that they would boycott the process. Among the criticisms is that the arbitration commission was established without any accompanying effort to investigate and reveal the truth about grave human rights violations or to identify or hold accountable their perpetrators. To date, no official has been brought to justice for participating in the repression of the 1960s, 1970s, or 1980s.

The CCDH has given assurances that people who receive compensation have not forfeited their right to pursue remedies through other avenues, such as the courts. Those who apply for compensation do, however, have to sign a waiver recognizing that the arbitration commission's decision on their claim is definitive and subject to no appeal.

Fearful that the government would attempt to "close the book" on the abuses of the past by financially compensating a narrow category of victims, in late 1999 a group of former prisoners, victims' relatives, and human rights activists created the Forum for Truth and Justice. That group has since been at the forefront of demands that any national reckoning of the past include establishment of an independent truth commission and a coherent approach to holding accountable those implicated in the abuses.

During 2000, the AMDH vigorously campaigned for abusers to be held accountable. They went so far as to name several individuals whom they believed were responsible for torture or "disappearances," and urge that they be brought to justice.

On 9-11 November 2001, the AMDH, the Forum for Truth and Justice, and the Moroccan Human Rights Organization organized a national symposium on grave human rights violations. In the event's concluding declaration, the organizations stated, "We reaffirm that the objective and sound resolution of cases of grave violations requires ... the recognition of truths, and that the page on the past cannot be turned without satisfying the victims and uncovering the truth."

Recommendations

Amnesty International and Human Rights Watch urge the Moroccan authorities to:

-- Respect in practice the U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), adopted by the U.N. General Assembly on 8 March 1999, which affirms the right of individuals to call attention to human rights abuses and the obligation of the state to investigate them;

-- Conduct an investigation into complaints that police used excessive force and brutality in dispersing peaceful demonstrators on 9 December 2000;

-- Ensure that the right of detainees in custody to obtain a medical examination is respected in practice, and does not exclude detainees whose allegations of police mistreatment relate to the period prior to their being taken into custody;

-- Initiate a review to ensure that the practices of the security forces in policing demonstrations are consistent with international human rights standards and that their members are held fully accountable for their actions;

-- Review and revise state policy in order to limit existing restrictions on public assemblies and gatherings, and guarantee the right to peaceful assembly, in a manner consistent with Morocco's obligations under Article 21 of the ICCPR; and

-- Ensure that the right to freedom of expression and peaceful assembly are guaranteed in the context of the campaign period for forthcoming elections, notably parliamentary elections currently scheduled for September 2002.

KEYWORDS: DEMONSTRATIONS1 / FREEDOM OF ASSOCIATION1 / HUMAN RIGHTS DEFENDERS1 / IMPUNITY / TRIAL OBSERVATION / TRIALS / USE OF EXCESSIVE FORCE