

Human Rights Watch

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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Appeals Court Should Assess Torture Accusations in Case that Ensnared Moderate Political Figures, Others

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(New York) - The Moroccan court currently hearing the appeal of 35 people convicted on terrorism-related charges should address allegations that confessions were falsified or obtained through torture and other violations of their right to a fair trial, Human Rights Watch and Adala, a Moroccan organization working for judicial independence, said today.

The defendants include a television journalist and five senior members of political parties that profess their commitment to nonviolence and democracy, among them two party presidents. These men came to be known as the six "political" detainees in the case.

Interior Minister Chekib Benmoussa announced the arrests with much fanfare in a televised news conference on February 20, 2008. The case attracted immediate interest because it was the first time Morocco had accused leaders of moderate Islamist parties of links to terrorism. The 35 were accused of plotting attacks to destabilize the state. The alleged ringleader is Abdelkader Belliraj, a 52-year-old Moroccan-born resident of Belgium with dual nationality.

"King Mohamed VI gave a major speech on August 20 in favor of judicial reform, urging what he called consolidating the guarantees of judicial independence," said Sarah Leah Whitson, Middle East and North Africa director for Human Rights Watch. "The Belliraj trial is a major test of whether the courts have gotten the message."

On July 28, 2009, a Rabat court convicted all 35 defendants of forming a terrorist group, plotting attacks, and committing robberies and other crimes to finance their operations. The sentences ranged from suspended prison sentences to life in prison. The formal charges, some from the penal code and others from the 2003 anti-terrorism law (Law 03-03 of May 29, 2003), included "harming the interior security of the state," "forming an armed group to attack public property," "forming a criminal group to perpetrate terrorist attacks," possession of illegal arms and explosives, forging documents, and laundering money.

Mostapha Moutassim, president of al-Badil al-Hadhari (the Civilized Alternative) party and the best known of the accused, told the press that the implication of the six political figures, none of whom has a prior criminal record, was a ploy by those in power to destroy or undermine the political parties whose members were implicated. On February 20, 2008, two days after Moutassim's arrest, Prime Minister Abbas al-Fassi outlawed al-Badil al-Hadhari, a moderate Islamist party that had participated in the 2007 legislative elections.

The affair also aroused attention because the charge sheet attributed so few concrete acts to what the interior minister had described as a major, well-funded terrorist network with links to al Qaeda. The alleged acts were limited to one assassination attempt in 1996, a couple of armed robberies, and several vehicle thefts - all before 2001. At the trial, the defendants vigorously disputed the evidence, which largely consisted of their purported confessions to crimes allegedly committed years earlier. Many said the statements had been falsified or obtained under torture.

A collective of families of the six "political" defendants echoed Moutassim's view that the authorities had falsely implicated the men for political reasons. Sad eddine Al-Othmani, then-secretary-general of the Justice and Development Party, the most prominent of the implicated parties, said the "political" defendants were "all known for moderation, rejection of violence and extremism, and for working within the framework of institutions and established national principles." He added, "We are sure that there is some sort of an error...and we hope it will be corrected."

The other 28 co-accused included 26 relatively little known men from various cities in Morocco, and two Moroccans who resided in Belgium. The defendants have all been in detention now for nearly two years, except for two facing lighter charges to whom the court granted provisional liberty.

"There is a need to examine violations of the defendants' rights in the original trial and to ensure that justice is delivered for each of

them," Whitson said. "Evidence obtained through abusive methods should be rejected."

Background on the Trial and the Appeal

The political defendants are:

On the basis of a confession that Belliraj later said he was tortured into signing, the Rabat court sentenced him to life in prison not only for his role in the terror network he allegedly co-founded in 1992, but also for committing six politically motivated murders in Belgium in the late 1980s. Belgian authorities had never charged Belliraj with these crimes, although they had questioned him a number of times over the years.

The court of first instance sentenced five of the "political" defendants to prison terms of between 20 and 25 years and the sixth, Nejibi, to a two-year term.

The appeals hearing began on October 26 before the appeals division of the Rabat Court of Appeals. Under Moroccan law, the appeals court is empowered to review issues of both procedure and fact in the case before it and can overturn verdicts or modify the sentences imposed by lower courts.

Human Rights Watch and Adala observed several sessions of the trial in first instance, which began in October 2008. To the knowledge of both these groups, domestic and international observers encountered no obstacles to attending the proceedings.

On September 19, 2009, Human Rights Watch and Adala jointly [wrote to Justice Minister Abdelouahab Radi](#) expressing concern about procedural irregularities that appeared to compromise the right of the defendants to a fair trial. Moroccan authorities did not respond.

Human Rights Watch and Adala have examined the court's 603-page judgment, made public in late September, and concluded that it does not allay the concerns expressed in the letter.

Concerns About the Court Proceedings

In a case that rests mainly on statements the defendants supposedly made to the police (les procs verbaux devant la police judiciaire), the court made no effort to determine whether those statements had been illegally coerced, despite many defendants' contentions that their statements either were falsified or were made under torture.

Defense lawyers told Human Rights Watch that the defense had raised the allegations of torture at various stages of the proceedings, both orally and in written memorandums they submitted to the court. The court in its written judgment acknowledged that some of the defendants had told the investigating judge of being tortured but said they had not formally asked the investigating judge to initiate inquiries or medical examinations to determine whether the defendants had indeed been tortured.

All of the defendants repudiated their police statements during the trial, most alleging that they had been tortured or their statements falsified. According to the written judgment, approximately two-thirds of them had already done so when they appeared before Investigating Judge Abdelkader Chentouf, many explaining to the judge that they had made or signed the statements under torture or duress.

Several defendants petitioned the investigating judge or the trial court, or both, to order an investigation into their claims of torture, including medical examinations, to verify those claims. When the investigating judge refused to act on their requests to investigate, the defense appealed, only to have an appeals chamber uphold the investigating judge's refusal. The trial court, with Judge Abdelaziz Bencheikroun presiding, declined requests to revisit this decision.

One key piece of evidence at the trial was the detailed statement of Belliraj himself to the police, which directly implicated the six "political" defendants, among others. Belliraj initially confirmed his police statement to the investigating judge, Chentouf, but later repudiated it, saying that his interrogators had tortured him into signing a "confession" containing false declarations that he had not made.

At trial - as the written judgment notes - Belliraj proclaimed his innocence and explained that he had initially confirmed his statement before Chentouf because one of his torturers was present in the judge's chambers. The defense asked Judge Bencheikroun to summon the investigating judge to answer questions about that hearing, but Bencheikroun declined to do so. The court ordered no inquiry into Belliraj's allegation that the police had abducted him, held him incommunicado for one month, and tortured him, or into the allegations of torture raised by other defendants, both before the investigating and trial judges.

The court convicted Belliraj on charges related to both the terror network and the killings in Belgium based on his statement to the police. The court also used Belliraj's statement to the police as evidence against the other defendants, including the six "political" defendants.

The court has a duty to diligently examine allegations of torture whenever the defense raises them in the course of the trial, both to determine the admissibility of the central evidence in the case and to respond to allegations that officials had committed acts of torture, a crime punishable under Moroccan law.

Morocco's duty under international law is very clear - any evidence obtained by torture cannot be used. Moroccan law also affirms this duty, in article 293 of the Code of Penal Procedure (CPP), which states that "no statement obtained through violence or coercion shall be admitted into evidence." The CPP also states that if a defendant or his lawyer requests a medical examination, the investigating judge cannot refuse without providing a reason (article 88(4)). Torture, moreover, is a crime under Moroccan law; a complaint of torture constitutes evidence of a possible crime that neither the investigating judge nor the trial judge can presume to be unfounded. The court must investigate.

The fairness of the trial was fundamentally compromised by the court's failure to investigate the torture allegations before it admitted into evidence the contested police statements that formed the backbone of the prosecution's case, Human Rights Watch and Adala said.

In an effort to call into question the voluntariness of the statements obtained by the police, defense lawyer Abderrahim Jama pointed at trial to what he said was a suspicious consistency in the style and substance of those statements, given the widely diverse backgrounds of the defendants. The court was also reminded that two of the defendants residing abroad and a third whose native tongue is Amazigh (Berber) had signed their police statements even though they cannot read standard Arabic and needed interpreters in court in order to follow the proceedings.

Concerns About Arrest Dates and Pre-Charge Detention

Several defendants alleged to the court that the security services had arrested them well before the dates in the police log and held them as long as a month, well beyond the 12-day time limit that Moroccan law places on garde-à-vue, or pre-charge, detention in terrorism cases. During that time, relatives of the defendants said, authorities refused to disclose to the families the whereabouts of the defendants, in violation of Moroccan law.

The defendants said it was during this period of prolonged incommunicado detention that police obtained from them the statements used to convict them. Among these defendants are Belliraj, who says he was held for a month in secret detention after being abducted on a street in Marrakesh; Ahmed Khouchi of Kenitra, who said he was held incommunicado for three weeks, and Mokhtar Lokman of Sal, who said he was held incommunicado for two-and-a-half weeks. The court sentenced Khouchi to eight years in prison and Lokman to 15.

Concerns about Refusal to Allow Defense Lawyers to Photocopy Case Files

Chentouf refused to allow the lawyers to photocopy the case files before he questioned the defendants. He justified this by referring to the code of penal procedure's article 139, which provides that the court shall make the case files available to the defense but does not specify a right to photocopy them. However, the nearly universal practice in Morocco is for investigating judges to permit lawyers to copy the files promptly. In this complex trial, it was particularly important to the preparation of the defense for the lawyers to bring the jailed defendants the case files so they could review the statements attributed by the police to themselves and to their many co-defendants. Moreover, it would have been burdensome for the lawyers to have to travel repeatedly to the office of the investigative judge in order to be able to see the contents of an enormous file, especially with a large number of lawyers working on the file who could not all peruse it at the same time.

Article 14(3)(b) of the International Covenant on Civil and Political Rights guarantees that in the determination of any criminal charge, any accused shall be entitled "to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."

In protest, some defendants refused to submit to questioning by the investigating judge until they could view the case files. The judge responded by conveying to the trial court those defendants' police statements "as is," as if the defendants had not contested them.

Chentouf's prohibition on photocopying the case files became even more contentious when the six "political" defendants finally saw their police statements once the investigative phase ended and declared that their statements had been falsified. Each said that while in police custody, after each had read and signed multi-page statement, the police presented him with a stack of what the police said were photocopies of his statement. Each of the six said he then signed all of the "photocopies" without reading each one - only to discover later that the version that ended up in the case file differed in content from the original in ways that made it more incriminating than the original and more consistent with the statements of co-defendants.

In its written judgment, the court said it saw no reason to doubt the authenticity of the statements by the six that were in the case files. Moreover, the court said, there was already sufficient and consistent incriminating evidence against them in the police statements made by the other defendants, notably those who had subsequently confirmed their statements before the investigating judge.

Concerns about Display of Seized Weapons

The principal evidence against the defendants, beyond their police statements, were two caches of arms allegedly found by police in the Nador and Casablanca regions, which the police statements of some of the defendants linked to them. Belliraj in his police statement spoke of the weapons but before the investigating judge said that they had been intended for sale or delivery to Islamist militants in Algeria and not for use in Morocco. Then at trial, like all of the defendants, he denied having any links to these weapons.

Several defense lawyers said that in the session of the trial devoted to the physical evidence, the weapons were not unsealed in the presence of the defendants, as required by Morocco's code of penal procedure, but displayed on a table, already unsealed. The representative of the prosecutor's office acknowledged during the trial that the prosecution had opened the seals on enclosures holding the weapons in the absence of the defense. The lawyers protested and asked the judge to exclude these weapons as evidence.

The lawyers also asked the judge to summon a weapons expert who could answer questions about the weapons and their putative relation to the robberies and attempted assassination mentioned in the charge sheet, but the judge refused.

One of the guns was allegedly used in an attempt on the life of a Moroccan of Jewish faith, Baby Azenkout, in Casablanca in 1996. Azenkout testified at the Belliraj trial that he had not seen his assailant. The defense team pointed out that the contemporary eyewitness descriptions of the assailant did not match any of the defendants on trial. The main evidence linking some of the defendants to this crime came from the contested confessions.

Similarly, it was the defendants' "confessions" rather than material evidence that implicated them in the other grave criminal act listed in the charge sheet, the 1994 robbery of the Makro shopping center in Casablanca. The defense pointed out that authorities had already announced in 1994 the arrest of the perpetrators, suspected jihadists, and they had long since been tried and convicted. The lawyers argued in court that it was implausible, on the basis of contested confessions, to link the defendants to a 14-year-old robbery that the authorities had supposedly solved at the time.

The Court's Reasoning

The court's reasoning for its guilty verdict against all 35 defendants (charges against a 36th defendant were dropped after the investigative stage) is that their statements to the police, which some did not contest to the investigating judge though all did at the trial, provided coherent and convincing evidence of the guilt of all.

Whatever the probative value of the statements by a minority of defendants who confirmed their statements before the investigating judge, the court failed to give due weight to allegations of the serious violations that compromised the defendants' right to a fair trial: most important, that the police allegedly tortured many of the defendants to make and sign statements that falsely incriminated themselves and others; that the police held them in garde vue detention well beyond the 12 days allowed by law; and that the arms caches were handled in a way that compromised its probative value.

The appeals court can ensure that justice is done only by fully addressing all of the irregularities from the arrest of the suspects in early 2008 until the conclusion of the trial in first instance in July 2009, irregularities that compromised the defendants' right to a fair trial.

List of Defendants in "Belliraj" Case and the Sentences Handed Down by the Court of First Instance:

Abdelkader Belliraj, life in prison
Abellatif al-Bekhti, 30 years
Abdessamed Bennouh, 30 years
Jamal al-Bey, 30 years,
Lahoussine Brigache, 30 years
Redouane al-Khalidi, 30 years
Abdallah ar-Ramache, 30 years
Mohamed al-Youssoufi, 30 years
Mohamed el-Merouani, 25 years
Moustapha Moutassim, 25 years
Mohamed Amine Regala, 25 years
Al-Abadelah Maelainen, 20 years
Abdalhafidh Sriti, 20 years
Abd al-Ghali Chighanou, 15 years
Mokhtar Lokman, 15 years
Abderrahim Nadhi, 10 years
Abderrahim Abu ar-Rakha, 10 years
Hassan Kalam, 8 years
Slah Belliraj, 8 years
Ahmed Khouchi, 8 years
Samir Lihi, 8 years
Moustapha at-Touhami, 8 years
Bouchab Rachdi, 6 years
Mohamed Azzergui, 5 years
Mansour Belghiche, 5 years
Adel Benaem, 5 years
Mohamed Chabaoui, 5 years
Jamaledine Abdessamed, 3 years
Abdelazim at-Taqi al-Amrani, 3 years
Larbi Chine, 2 years
Ibrahim Maya, 2 years
Abdellatif Bouthrouaien, 2 years
Hamid Nejibi, 2 years
Mohamed Abrouq, 1 year suspended
Ali Sadi, 1 year suspended
Abdelaziz Brigache, charges dropped

Bahrain Death Sentences Follow Torture, Sham Trials

Moroccos Playbook to Crush Dissent

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