

Military trial and the search for truth

Introduction

Ali Omar Yara

Since Morocco's independence in 1956, political sentences have come one after the other, but they are not like one another. Various, against the left in the 1960s, against plotters and military putschists in the 1970s. Afterwards, during the 1980s and 1990s, even more recently, sentences on the insurgents in the Atlas and Rif regions. All these "troubles" lead to disproportionate exactions by the Makhzen and the King who orders imprisonment, often for long periods, of any opponent guilty of taking him on.

This is a political issue in modern Morocco.

But, since the disappearance of the colonial Francoists of Western Sahara in 1976, another adversary suddenly appeared on the chessboard of the Maghreb, one who stands up to the occupier and Moroccan judicial authority: the Saharawi minority in the occupied territories. Now, the Saharawis are not opponents, to the king or to the Moroccans, for the simple reason that they do not consider themselves to be Moroccan, either through their history, or in their collective bodies.

In this article, Naama Asfari Ould Abdi gives an account of the manner in which the Saharawis claim the right to self-determination, arising from international humanitarian law, even if the Secretary General of the United Nations does not implement the Charter, which stipulates the obligation to liquidate colonialism. If not, why would the Security Council remain seized of the affair of the Spanish Sahara?

This is a critical reflection of a jurist and a pacifist, a philosophical meditation on the question of human rights. Since the Saharawi uprising in 2005 in the occupied territories, Naama Asfari has developed this approach.

It is in prison that he wrote this document in Arabic, as he had written several others, confiscated and probably destroyed by the prison warders, before his trial with his comrades, on 1 February 2013 before the "permanent!" military court of Rabat. This is also a reflection on the relationship between "justice and sentences inflicted" on free beings. Through his competence in the law and his various "stays" in Moroccan prisons, he knew that the sentence would be very heavy for the "24", as it was for his father, Abdi Ould Moussa, Daddach, El Khadir, Ballagh, Oubella, Ould Tamek, Haïdar, Abdedaïm, and thousands of other Saharawis.

To judge Moroccan justice as applied to Saharawis, Naama relies on two points : the fact that it does not recognise the guilt of the Moroccan torturers and the existence of an assymetry between the charges held against the imprisoned accused and the sentence handed down to them.

The heavy sentence the “24” of Gdeim Izik is only a prelude to the political negotiations between the representatives of the Moroccan Makhzen and the claim of complete independence of the Saharawi people. Through this trial, Morocco tries to make the Saharawis accept the status of enlarged autonomy, even a regionalisation of Western Sahara, at least in the occupied territories.

Ali Omar Yara

Military Trial and the search for truth
Le Jugement militaire et la recherche de la vérité

by Naama Asfari Abdi, military prison of Rabat¹

From our cell, we offer testimony of the singularity of a memory which, hiding its contradictions, deforms truth by inventing another truth. In fact, after over two years of incarceration in prison, the Moroccan regime has finally decided to make us appear in court, us, the 24 prisoners in the Gdeim Izik group, we appear before the military tribunal of Rabat on 1 February 2013.

There is therefore, no obstacle for someone who follows this case to notice that our collective incarceration does not correspond to what Morocco claims and that this trial does not respect either Moroccan procedures or penal law.

It was actually a captivity, from the first moment of our abduction (7 November 2010) which does not take into consideration the elementary principles of the respect for law and offers no guarantee of a fair trial.

It was at the very moment of our arrest that the Moroccan regime passed its verdict of a collective condemnation. It thus found a motive to take us as hostages. A political order, which goes far beyond the jurisdiction of an instructing judge or public prosecutor.

This decision taken against us, deprived us of freedom for two years and four months, in order to make us undergo, in addition, an unknown fate for an indeterminate period. For, this imprisonment with an unacknowledged political character is a moral, psychological and physical torture.

Besides, Moroccan and international observers and NGOs are impressed with this peculiar logic that they cannot grasp. They do not realise yet, or only a little, that the imprisonment, which is inflicted on Saharawis, particularly on political activists, both men and women, is also a form of recovery of a political nature. Of the same order as the practice of intimidation and physical violence in the street and at various police stations.

What the Moroccan military trial wants to prove

One can legitimately ask oneself about the meaning of the preventive incarceration of our group before the sentencing in court. We raise the question of the legitimacy of a preventive imprisonment supposed to be written in the laws recognised by the (Moroccan) National Council of Human Rights as well as by other legal organisations close to the Makhzen, in virtue of the provisions of the Moroccan constitution by way of a guarantee of legal protection of the accused arising from international norms.

It is odd, that this affair of the “24” of Gdeim Izik should be given so little media attention, only under the heading of propaganda and not in the context of an enormous scandal. What does that say about the duty of journalists and the Moroccan press? It is strange that they claim to be professionals instilled with courage and in search of truth and that they don't dare report what really happened in the Gdeim Izik camp² and why all these people are imprisoned for over two years without any proof of guilt.

From that angle, “this affair” is an example of the paradox and the confusion that still reigns in Morocco at the levels of security, law and media. Our “penal affair” hides immense contradictions of the Makhzen, which it will be difficult to keep hidden long term, whatever legal means or media methods are used.

The origin of the conflict between Morocco and the Saharawis demands a deeper reflection, fed by the event of Gdeim Izik, which puts into a causal relationship the trial of our group, with its military character, and the collective act of Gdeim Izik.

But, we think that this trial will not be up to the task of showing what Morocco wants to show and what it hopes for in the context of the law, but will be seen just a political show trial.

Let us underline further, that neither justice nor the rights guaranteed to the victims can tolerate the appearance of civilians before a military court. For Morocco the aim of this court appearance is to give an advantage to its own truth and to impose its political domination. But, this cannot affect us, us prisoners and activists of civil resistance who led the non-violent challenge conscientiously and responsibly.

The victims between laws and punishments

After our incomprehensible abduction, this appearance before a military tribunal, despite the vast international pressure in the evident absence of proof, leads us to question the logic used by the Moroccan regime to justify a political affair of this scale. Everyone, in Morocco, knows how those in power use the judicial apparatus and military justice in particular, to settle their political accounts.

A judge of the Supreme Council of Justice, the Crown Prosecutor at the court of first instance in Rabat, declared to a Moroccan newspaper: “Morocco sees justice in general as an organ of the State, affiliated to the Ministry of Justice and, consequently, all the elements established in the conclusion of the “Equity and Reconciliation Body” prove, without any doubt, the passive role that Justice as such plays at the present time³. It has become a simple instrument in the hands of the State and has no handle on the Crown Prosecutor. Furthermore, the IER (Equity and Reconciliation Body) is complicit in the majority of judicial abuses that Morocco has committed while paradoxically, it calls for the total independence of the judicial authority. If this is the reality of ordinary justice in Morocco, what then is a military trial today? Not only in regard to the new Moroccan constitution of 2011⁴, but to the obligations of the country concerning human rights and guarantees of an equitable justice.

Let us consult thinkers on the subject. The Moroccan historian and thinker, Abdellah Laroui explains, in a round table discussion, the link between the Historian and the Judge. To set out his approach, he went back to the 18th century, the contemporary origin of the scientific revolution in the writing of history, and the advent of a large scale mutation in the judicial domain : “the proof established by material things is more credible than testimony given by individuals”.

In support of his arguments, Laroui turns to two thinkers, one Italian and the other Russian, Fiodor Dostoievsky⁵. But, relying only on material proofs does not signify that the way is traced for the judge and the historian and that they can thus arrive at the truth. This writer admits the importance of physical evidence, which he calls “silent witness” to the detriment of human testimony.

For us, the irrefutable material proof of our innocence is the atrocious image of thousands of Saharawi tents burned at Gdeim Izik, and of children, women and old people hurriedly fleeing the camp for all to see.

Thanks to the courage of the youth in the Gdeim Izik protest movement the ultimate success of this peaceful demonstration made the (Moroccan) regime react, by wanting to avenge itself by making us appear before a military court.

In the presence of physical evidence, Laroui continues, the accused will be sentenced and in the absence of proof, he will be acquitted. Indeed, we can understand easily such an event or such an act, but we can not always grasp it emotionally, nor accept it and even less admit it and we remain fixed on a fictitious testimony since the material proof, provided by individuals, could be interpreted a thousand ways.

There is no justice, says the philosopher Averroes⁶ unless the individual provides for his adversary, proofs which he would believe himself.

Through a narrative novel, *Ayer no más* » (Just yesterday)⁷ Andrés Trapiello, also raises the question of history in relation to memory. The relevance of this literary work, (if one puts it in relation to the military trial of the accused Saharawi civilians), comes from the fact that the author raises the question of the “law of historical memory”, approved by the Spanish Parliament at the time of the mandate of the PSOE against the terror inflicted on innocent victims.⁸

This story gives an account of social and political reality of Spain during the 1930s. It outlines, inherent contradictions in the event and the paradoxes of dramatic events. To do this, he bases it on a new style of writing a historical novel. “Just Yesterday” offers few heroes. Each one plays his role and disappears from the stage, to leave the reader or the viewer to appreciate and feel the realities of the event, as if he were living through it.

For his part, the hero of the novel of Cesare Bonesana Beccaria⁹, takes to heart the research and the investigations in the domain of crimes committed by General Franco during and after the Spanish Civil War. When he wants to shed light on these crimes and gather evidence of the identity of the perpetrators, he is met by the

past of his Fascist father and finds himself accused, through the implication of his father in these crimes.

The author discovers afterwards, the particularity of this memory, which holds inside itself contradictions, which deform the essential truths so as to only make minor truths appear. The author, through his hero, discovers also, with intelligence and courage a bitter truth allowing him to attain something sensitive and beautiful, self-awareness.

As concerns what happened at Gdeim Izik, is it possible to search for the truth and to shed light on this major event? For, in fact, one doesn't know if a person who claims to seek truth to establish justice is not also hiding part of it. And if he has become aware of that truth, would he have enough courage and audacity to point the finger?

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Starting from that reflection, one can ask oneself on what truths the decision-maker has chosen to make the "24" appear before the military tribunal. The work of the judge, like that of the historian, will never be evident during the phase of the investigation and instruction. Once over that phase, the judge should be able to master things, with a great strength of character, lucidity and a real power of decision-making. He who knows and hears cases is exactly the one who has the capacity to decide.

In our case, is justice capable of delivering justice to us, us political prisoners? We should rather write: will it deliver justice to us? Because this affair is not so complicated. One thinks of the response of Thomas Mann, asked about the novels of Franz Kafka¹¹: "My brain is not so complicated that it can't understand the matter", he replied.

The naked truth on the Gdeim Izik trial before the military court is not what is written in the minutes and the reports entrusted to the justice system and the instruments of civil and military information. So how using false grounds can it reach a fair sentence?

In one of his works Ibn Qoudama writes about certainty¹²: "one must not suspect someone except when one has discovered something which allows him to be accused. When he informs you of his truth you have a tendency to believe and you are excusable. But, he underlined another condition "you must look, he writes, to discover existence, or not, of jealousy or hostility between two adversaries". If the judge does not base his judgement on truth and the value of certainty, he will base it on intentions and emotions.

For his part, the jurist the Imam Al Shaafii said¹³ that judgement given between people is based on what the two adversaries tell us "even if they think differently in their hearts". Another principle is to not take into consideration evidence so long as the accused continues to deny and to confess.

If someone is accused of a crime or an offense and has denied it and has an alibi, there is no point in pursuing him. In the same vein, a story tells that a person called Khatib Ibn Abi Baltaa, divulged a secret to the prophet Mohamed. Caliph Omar ibn

El Khatib¹⁴ asks for his head to be cut off, but the prophet continues to listen to El Khatib until the end and says : “He has told the truth, do only good to him”.

After these testimonies and stories on the relation between truth and evidence, in relation to the matter which concerns us, how can we extract the truth from the ferocious statements and reports of the intelligence services relating to the case of our cause before the military court ?

If reading the novel “Just yesterday” leads us to a better understanding, it reflects also the social and political reality which Spanish society lived through, thanks to the literary gift of Andrés Trapiello, who, through his characters explores the contradictions of a dramatic event.

The parody of the Moroccan military tribunal leads us, this time, towards another world. An even more realist world, the reality of a former and current war that sets the occupier against a people which protests and resists for freedom, dignity and justice.

As in any war, whatever its causes, its victims and its torturers, like these criminals of former wars who have committed atrocities (even if some disappear with time, living hidden from sight), there exists, in current war people who have committed and are committing crimes no less atrocious, just to satisfy their desire for revenge.

The Military Court of Rabat is here the proof of a failure, proved at Gdeim Izik. This failure should not stop us from searching in historical memory in a general and complete way to find the truth. This act demands great courage, political skill and high moral values.

“You should know how you wake up. Vigilance is the real awakening of pure imagination” as the Palestinian poet, Mahmoud Darwich, says.¹⁵

Gdeim Izik, a court for popular resistance

Gdeim Izik becomes a tribunal of popular peaceful resistance which sets itself to confront the biggest permanent crime. The crime of occupation. This popular tribunal in the universe of Gdeim Izik allowed the Saharawi people to decide and provide verdicts which no other body could. It legislated on the punishment inflicted by the occupier, who has been unjust towards this people for 40 years. Furthermore, the people in the universe of Gdeim Izik foiled the negotiations and decided not to bend to the will of the occupier¹⁶. Even better, they decided to broaden their resistance. Thus, shortly after the events a tour Gdeim Izik camp, the town of Dakhla, and all Saharawi communities, continue the peaceful struggle until the liquidation of the occupation.

Besides, it is unlikely that this resistance will give up judging and sentencing one day those guilty of different types of crime committed against human rights, known as well in international law. This popular resistance will continue while the crime persists.

In the face of this obvious reality the occupier attempts, as they are used to doing, to play their game before the military court to annul or weaken popular peaceful resistance in the hope of diminishing its action until it disappears.

This tactic also has as an object to push resistance to give in in exchange for vague promises through “the new development program”¹⁷, a dream which claims to weaken the uprising of a people against occupation. This game could go on a long time.

The occupier has failed in its attempts of recuperation and nobody can now believe it regarding social development and respect of human rights.

The tangible result of events is that they produced a historic transformation in the struggle against the occupier and the formation, with the Saharawis, of a wider objective consciousness. In fact, this illusion with the occupier of wanting to dominate the Saharawi land and people came to its paroxysm. This occupier understood, thanks to popular peaceful resistance in Gdeim Izik, that they couldn't stop this refusal of the occupation.

This structural and historic difference between two cultures and two identities (occupier-occupied) became concrete in Gdeim Izik in the resistance of a people capable of seizing power, and of taking the initiative and of mastering their destiny.

For over thirty years of fighting, Gdeim Izik is the greatest popular political uprising to have generated economic, social and political dimensions. Faced with this, Moroccan power did not understand that it had only been feeding its own contradictions and its own structural crisis for decades. The demands of the Gdeim Izik camp activists bear witness to this :

- 1° We are the uncontested masters of this territory, the land belongs to its owners,
- 2° Access to the Gdeim Izik camp is forbidden to any person having any relationship with the occupier,
- 3° We refuse the situation of doubt and uncertainty of MINURSO,
- 4° We have lost confidence in the international community,
- 5° The situation of no war no peace means occupation and pillage,
- 6° We say no to any action likely to weaken the referendum of self-determination,
- 7° We call for the intervention of the High Commission for Refugees and the protection of civilians in the occupied towns under international humanitarian law.

The violent response of the power of the Makhzen increased anger, resistance and revolution against it. Thus the movement of Gdeim Izik lasted for over a month, and was made more difficult by the adversary calling in the army, using savage violence - a principle completely opposed to ours. Morocco is here guilty of a flagrant violation of the cease-fire of September 1991. But the popular resistance broke the chain of fear which was paralysing the Saharawis. This time, they came out without fear and refused passivity and despair given the reality imposed on them. This uprising is analogous to that of the first waves of Saharawis obliged in 1976 and

1979 to leave their homes. This installation in Gdeim Izik perpetuates the symbols and significance of the organisation of the refugee camps. The Saharawis came from all the Saharawi towns to create a new order, namely, the categorical refusal of all forms of occupation.

At the start, we had not thought that our demands could be satisfied. We had the certainty that these claims would be hard to obtain and that no peaceful collective movement, however strong, could stop the destructive power of the occupation. But, the movement of Gdeim Izik raised the stakes and made our cause of Western Sahara more credible, despite the impediments constituted by the forms of society that the occupier has planned and imposed as a reality for decades. The spirit of solidarity and the creation of innovative mechanisms of coordination between members of Saharawi society are reinforced, while, for its part, the occupier seeks to support isolated ethnic groups, focused and centred on themselves. Once again, the national cohesion of Saharawi society has come out of it more powerful.

The treacherous military attack on Monday 8 November 2010 on the Gdeim Izik camp proved that the occupier can only exist by recourse to violence, which the peaceful popular uprising of independence had proved on 20 May 2005.

To conclude, this reflection we reaffirm the duality of our way forward : to pursue peaceful popular resistance and, at every stage of the struggle, adapt the means to this resistance.

In the end, the independent Saharawi state is the only solution.

Signed, Naamaa Asfari, political prisoner and
prisoner of opinion and co-President of CORELSO
– Committee for the respect of liberties and human
rights in Western Sahara.

¹ Translation from the Arabic to French and annotations by Ali Omar Yara, Paris. Translation into English by the Australia Western Sahara Association.

² Camp and encampment are the same thing in Saharawi culture arising from the fact that they follow the inclination of nomads towards pastures. The camp is a mobile and voluntary structure.

³ IER (Instance d'Équité et Réconciliation) Equity and Reconciliation Body was created by the King Hassan II due to international pressure, to remove at the least cost the atrocities committed during the long period of the 'years of lead'. There remains the question of the impunity maintained by the Moroccan authorities which the Saharawis accuse of the following exactions : forced disappearance, arbitrary detention, torture, genocide, deportation. We have verified the references that the author refers to. All are exact, we quote several of them for any useful purpose, especially those least well known.

⁴ Adopted by the referendum of 1 July 2011 in a singular social and political context, the new Constitution renews the 'sacred pact' that unites the Moroccan people to its King.

⁵ *Crime and Punishment*, classic novel by the Russian writer, Fyodor Dostoevsky (1866).

⁶ Abu El Walid Ibn Ahmed Ibn Rusd born in 1126 in Cordova. Some of his writings are devoted to Islamic jurisprudence.

⁷ Andrés Trapiello, (born in Spain in 1953), *Ayer no más*, (éd. Destino, 2012), *Just Yesterday* : A boy is witnesses the murder of his father in the first days of the Spanish civil war, 70 years later, he recognises by chance in a street in Leon, the one who took part in this crime, a businessman who refuses to reveal where his father was buried. His essay is part of Spanish literature during the Civil War of Spain translated by the editor. Les armes et les lettres, Paris, Table Ronde, 2009.

⁸ PSOE (Parti Socialiste Ouvrier Espagnol) – Spanish Socialist Workers Party, was in power in Spain between October 1982 and March 1996 and again from March 2004 to December 2011.

⁹ The Italian marquis Cesare Bonesana Beccaria (1738-1794), *Des délits et des peines*, translated from the Italian Collin de Plancy, Paris, éd. Boucher, 2002,

¹⁰ See on this question of “consciousness-in-itself”, Martin Heidegger, *Being and Time (Sein und Zeit)*, Paris, editions Gallimard, Jean-Paul Sartre, *Being and Nothingness (L'Être et le Néant)*, Paris, éd. Gallimard.

¹¹ Thomas Mann, (1875-1955), is a German writer, winner of the Nobel Prize in Literature in 1929. He is the brother of the great German author, Heinrich Mann, the father of the writers, Klaus and Erika Mann, of the historian Golo Mann, as well as of the musician Michael Mann. Franz Kafka, the writer from Prague (1833-1924), known above all for his novel, *The Trial*. A symbol of uprooted man in modern times.

¹² Ibn Qoudama Al Maqdissi Al Hanbali, born in Jerusalem in 1160. He devoted his studies to evidence and proof.

¹³ Al Chafi Abu Abdullah Mohammad Bin Idris (767 in Gaza-820 Egypt). Muslim jurist (Fiqh).

¹⁴ The second Caliph of Islam after the death of the prophet.

¹⁵ Mahmoud Darwich, born on 13 March 1941 in Al-Birwah in Galilee (Palestine under British mandate) and died on 9 August 2008 in Houston, USA. He remains one of the leading figures of Palestinian poetry.

¹⁶ Here Naama makes an allusion to the break with the Committee of Coordination of the Camp of Gdeim Izik which refused to negotiate with the local authority and the Moroccan minister of the interior on the basis of social claims that this authority wanted to impose on them. See the unpublished document No 1 of 2 November 2010, *Cahier de l'Ouest Saharien*, No 8, 2002.

¹⁷ It concerns development projects in the Saharan territories supervised by the Moroccan agency.