

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. Sètonджи Roland Jean-Baptiste Adjovi (Benin)
Vice-Chairperson: Ms. Leigh Toomey (Australia)
Vice-Chairperson: Mr. José Guevara (Mexico)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Mohamed Al-Bambary

Citizen of Western Sahara

v.

Government of the Kingdom of Morocco

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4,
15/18, and 24/7¹

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10 March 2017

¹ Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the UN Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, ¶ 6, (15 Mar. 2006), later extended the mandate through Resolutions 6/4, 15/18, and 24/7.

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY
ARREST OR DETENTION**

I. IDENTITY

1. **Family name:** Al-Bambarly
2. **First name:** Mohamed
3. **Sex:** Male
4. **Birth date:** 1969 or 1970
5. **Nationality:** Western Sahara
6. **(a) Identity document (if any):** Unknown
(b) Issued by:
(c) On (date):
(d) No.:
7. **Profession and/or activity (if believed to be relevant to the arrest/ detention):**
Mr. Al-Bambarly is a media activist who collaborated with Equipe Media, an organization that documents and disseminates information about events and abuses occurring within Western Sahara.
8. **Address of usual residence:** Unknown.

II. ARREST

1. **Date of arrest:**
26 August 2015
2. **Place of arrest (as detailed as possible):**
Police station in Dakhla.
3. **Forces who carried out the arrest or are believed to have carried it out:**
Dakhla police.
4. **Did they show a warrant or other decision by a public authority?**
No.
5. **Authority who issued the warrant or decision:**
Not applicable

6. **Relevant legislation applied (if known):** The arrest was conducted without a warrant.

III. DETENTION

1. **Date of detention:**

26 August 2015

2. **Duration of detention (if not known, probable duration):**

Mr. Al-Bambary has been in detention from 26 August 2015 to the date of this communication.

3. **Forces holding the detainee under custody:** Government of Morocco

4. **Places of detention (indicate any transfer and present place of detention):**

On 19 January 2016, Mr. Al-Bambary was transferred from the El-Aaiun Prison to the Ait Melloul Prison, which is 1200 km away from his family. Around 22 February 2016, Mr. Al-Bambary was transferred to Tawerta Prison, approximately 12 kilometers north of Dakhla. In November 2016 Mr. Al-Bambary was transferred back to Ait Melloul Prison, where he remains.

5. **Authorities that ordered the detention:**

The El-Aaiun Appeals Court of First Instance convicted Mr. Al-Bambary on 4 November 2015 and the El-Aaiun Appeals Court of Second Instance upheld the conviction on 12 January 2016.

6. **Reasons for the detention imputed by the authorities:**

Mr. Al-Bambary was convicted and sentenced to 12 years (reduced on appeal to 6 years) for: forming a criminal gang; participating in a murder; obstructing a public road; partaking in a fatal brawl; committing violence against public servants; and sabotaging things intended for public benefit under Articles 293, 294, 392, 267, 129, 591, 271, and 595 of the Moroccan Penal Code.

However, Mr. Al-Bambary's prosecution was the direct result of his legitimate work as a media activist. See Section IV.I (Statement of Facts) below.

7. **Relevant legislation applied (if known):**

Articles 293, 294, 392, 267, 129, 591, 271, and 595 of the Moroccan Penal Code.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

I. Statement of Facts

Part A of this section describes the Moroccan government’s documented history of suppressing the fundamental rights of the Sahrawi population of Western Sahara and using arbitrary detention to limit the activism of Sahrawi journalists and defenders. Part B presents the case of Mr. Al-Bambary (the “Applicant”), a Sahrawi media activist wrongly detained on 26 August 2016 and sentenced by the government to 12 years in prison (later reduced to six years by the appeals court) on 4 November 2015.

A. Background on Western Sahara

1. Political, Legal, and Social Background of Western Sahara

Western Sahara is considered to be a “Non-Self-Governing Territory” by the United Nations.² In 1975, after Spain withdrew its colonial administration from Western Sahara, the Moroccan government sent troops and civilians into the region.³ This move was contested by The Popular Front for the Liberation of Saguia el Hamra and Rio de Oro (POLISARIO FRONT) and Moroccan and POLISARIO FRONT forces fought sporadically until a 1991 cease-fire, at which point a UN peace-keeping contingent (whose mandate does not cover human rights) was established.⁴ In 1998, Morocco agreed to let the Western Saharans settle the sovereignty issue via a referendum, however this referendum has yet to take place.⁵ Free elections are not held within Western Sahara; Morocco excludes candidates who support independence from municipal elections.⁶ Morocco continues to administer Moroccan law throughout the territory and to crack down on the pro-independence movement.⁷

Although there has been no official census, ethnic Sahrawis are estimated to constitute approximately 25 percent of the population, with the remainder being Moroccan immigrants.⁸ Sahrawis, particularly those with pro-independence sympathies, face significant discrimination in matters of education, employment, access to social services and treatment in the justice system.⁹ Sahrawis’ Moroccan identity cards are marked to confirm their Sahrawian origin.¹⁰

² United Nations, *The United Nations and Decolonization: Non-Self Governing Territories*, available at <http://www.un.org/en/decolonization/nonselvgovterritories.shtml>.

³ U.S. State Department, *Western Sahara 2015 Human Rights Report*, 1, (2015), available at <http://www.state.gov/documents/organization/253165.pdf> (hereinafter, State Department Western Sahara Report).

⁴ *Id.*

⁵ *Id.*, at 2.

⁶ Freedom House, *Freedom in the World 2015: Western Sahara*, (2015), available at <https://freedomhouse.org/report/freedom-world/2015/western-sahara> (hereinafter, Freedom in the World 2015).

⁷ State Department Western Sahara Report, *supra* note 3, at 3.

⁸ *Id.*

⁹ *Id.*, at 4, 5 and 17; UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on the Fourth Periodic Report of Morocco*, U.N. Doc. E/C.12/MAR/CO/4, ¶¶ 41, 47, (22 Oct. 2015); *Torture and*

Sahrawi-organized protests calling for equal employment and political rights are often forcibly broken up by the police, and the Working Group, on its mission to Morocco, has found that this excessive use of force is aimed at punishing and intimidating protestors.¹¹ Other reports indicate that Moroccan police regularly raid the homes of alleged supporters of Western Saharan independence and mistreat the inhabitants.¹²

Moreover, Morocco is allegedly engaged in a holistic campaign to “Moroccanize” Sahrawi culture and identity.¹³ Only Morocco’s official languages are used in the schools, administration, market shops, military bodies and in the media.¹⁴ Hassaniya, the traditional dialect of Western Sahara, is limited to Sahrawi’s social life.¹⁵ Western Saharan schools, staffed largely by Moroccan immigrants to Western Sahara, teach a Moroccan core curriculum that ignores Sahrawi history and culture.¹⁶ There are reports that poor Sahrawians who wish to maintain their social support must make shows of allegiance to the Moroccan king during national holidays.¹⁷ Morocco has also reportedly led drives to register Sahrawi people with Moroccan names and to rename geographical and cultural features in the Moroccan dialect.¹⁸

2. Morocco’s Interference with Freedoms of Expression and Association and Freedom from Arbitrary Detention in Western Sahara

Within Western Sahara, Morocco significantly restricts freedom of expression and association, particularly around issues of Western Saharan independence. In Freedom House’s 2016 global report on Freedom in the World, Western Sahara earned a “Not Free” status.¹⁹ Moroccan laws criminalize expression critical of Morocco’s claim over Western Sahara.²⁰ Numerous journalists and publishers have been prosecuted under such laws, leading to self-censorship amongst Sahrawi media outlets and bloggers.²¹ The authorities also target Sahrawi activists who report on

Discrimination in Western Sahara, The Equal Rights Review, vol. 4, 80, (2009), available at <http://www.equalrightstrust.org/ertdocumentbank/testimony%20new.pdf> (hereinafter, Torture and Discrimination in Western Sahara).

¹⁰ Torture and Discrimination in Western Sahara, *supra* note 9, at 78.

¹¹ Report of the Working Group on Arbitrary Detention, *Mission to Morocco*, U.N. Doc. A/HRC/27/48/Add.5 , ¶ 64, (4 Aug. 2014)(hereinafter, Working Group Mission to Morocco; see also Amnesty International, *Morocco/Western Sahara 2015/2016*, (2016), available at <https://www.amnesty.org/en/countries/middle-east-and-north-africa/morocco/report-morocco/> (hereinafter, Morocco/Western Sahara 2015/2016); State Department Western Sahara Report, *supra* note 3, at 4, 5 and 17.

¹² Working Group Mission to Morocco, *supra* note 11, at ¶ 65.

¹³ Torture and Discrimination in Western Sahara, *supra* note 9, at 78.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*, at 78-79.

¹⁷ *Id.*, at 79.

¹⁸ *Id.*

¹⁹ Freedom House, *Freedom in the World 2016: Western Sahara*, (2016), available at <https://freedomhouse.org/report/freedom-world/2016/western-sahara> (hereinafter, Freedom in the World 2016).

²⁰ Human Rights Watch, *Morocco and Western Sahara Events of 2015*, (2015), available at <https://www.hrw.org/world-report/2016/country-chapters/morocco/western-sahara> (hereinafter, Morocco and Western Sahara Events of 2015); State Department Western Sahara Report, *supra* note 3, at 9.

²¹ State Department Western Sahara Report, *supra* note 3, at 9.

human rights abuses.²² Those few pro-Sahrawi media outlets that do operate, such as Equipe Media, face significant harassment from the Moroccan authorities.²³ Even those dissenting voices who are not prosecuted may find themselves expelled, detained or threatened by the authorities.²⁴ Morocco has also restricted access to Western Sahara for foreign journalists, activists and human rights defenders and has enforced strict procedures governing meetings between journalists and local activists.²⁵

Similarly, Morocco limits freedom of association for pro-independence organizations. Generally, the government resists official recognition of nongovernmental organizations (NGOs) that challenge Moroccan administration over Western Sahara or document human rights cases.²⁶ Those Sahrawis who do form NGOs supporting independence are subject to harassment.²⁷ Pro-independence associations find it difficult to establish offices, recruit members, collect donations, or visit detained Saharan pro-independence activists.²⁸

In such a repressive climate, arbitrary detention of pro-independence activists and journalists has become common and human rights groups consider a number of Sahrawis to be political prisoners.²⁹ Although Moroccan law prohibits arbitrary arrest and detention, Moroccan police often ignore this prohibition during or after pro-independence protests.³⁰ Common arbitrary detention problems include the police arresting persons without warrants, holding detainees beyond the statutory deadline to charge them, and failing to identify themselves when making arrests.³¹ Extended pre-trial detention is also common.³² Those who are imprisoned for their political activities are usually held under the cover of a fabricated criminal charge.³³ There has never been any prosecution of security officers in Western Sahara for conducting such arbitrary arrests.³⁴

Even where an arrest is made in accordance with domestic law, Moroccan law restricts access to counsel during the initial 96 hours of detention under terrorism-related laws or during the initial 24 hours of detention, with the option of a 12 hour extension, for other criminal charges.³⁵ It is within this initial period that allegations of abuse or torture are most likely to occur.³⁶

²² Morocco/Western Sahara 2015/2016, *supra* note 11.

²³ Freedom in the World 2016, *supra* note 19.

²⁴ State Department Western Sahara Report, *supra* note 3, at 9.

²⁵ Morocco/Western Sahara 2015/2016, *supra* note 11; State Department Western Sahara Report, *supra* note 3, at 10.

²⁶ State Department Western Sahara Report, *supra* note 3, at 12, 14.

²⁷ Freedom in the World 2015, *supra* note 6.

²⁸ State Department Western Sahara Report, *supra* note 3, at 2.

²⁹ *Id.*, at 8.

³⁰ *Id.*

³¹ US State Department, *Morocco 2015 Human Rights Report*, 7, (2015), available at <http://www.state.gov/documents/organization/253151.pdf> (hereinafter, State Department Morocco Report).

³² State Department Western Sahara Report, *supra* note 3, at 7.

³³ *Id.*, at 5.

³⁴ *Id.*, at 6.

³⁵ State Department Morocco Report, *supra* note 31, at 8.

³⁶ *Id.*

3. Lack of Judicial Independence and Due Process Protections in Western Sahara

Although the Moroccan Constitution guarantees an independent judiciary, in practice extrajudicial influence significantly weakens judicial independence.³⁷ Trials related to defendants who have challenged the status of Western Sahara appear to be predetermined.³⁸ Particularly in such political cases, the due process protections guaranteed by Moroccan law may not be respected. Lawyers are often denied access to their clients within the required legal timeframe, generally meeting them only once in front of the judge.³⁹ The Working Group found that some police officers were reluctant to even inform criminal detainees of their right to a lawyer.⁴⁰ Defendants may not have access to the evidence against them and judges have reportedly prevented defendants from questioning witnesses or presenting mitigating evidence.⁴¹ The presumption of innocence is not regularly respected, with judges focusing more on sentencing than on finding culpability.⁴² The Working Group also found that judges interpreted the law to allow police records to be entered as prima facie evidence, which effectively reverses the burden of proof by requiring the accused to prove his innocence.⁴³

Although the law also prohibits the admission of confessions obtained through use of torture, the judicial system reportedly relies heavily on such evidence and investigators are pressured to obtain a confession for the prosecution.⁴⁴ The Working Group has found that the “considerable importance accorded to confessions,” which can serve “almost exclusively as evidence for prosecution and conviction” has led to widespread abuse and torture by interrogators.⁴⁵ Abuse reported has included beating with electric cables, near suffocation with wet cloths soaked in urine or chemicals, cigarette burns, and hanging by the arms or as a “trussed chicken” for prolonged periods.⁴⁶ The practice of using torture to obtain a confession is allegedly predominant in cases against Sahrawis or individuals accused of terrorism.⁴⁷ The Working Group has also concluded that “that courts and prosecutors do not comply with their obligation to initiate an ex officio investigation whenever there are reasonable grounds to believe that a confession has been obtained through the use of torture and ill-treatment,”⁴⁸ a finding which bolsters a report from Amnesty International that such abuse persists due to a climate of “impunity” which allows such practices to continue.⁴⁹ The majority of officials accused of torture remain in positions of authority.⁵⁰

³⁷ *Id.*, at 7.

³⁸ *Id.*

³⁹ Working Group Mission to Morocco, *supra* note 11, at ¶ 45; State Department Morocco Report, *supra* note 31, at 8, 11.

⁴⁰ Working Group Mission to Morocco, *supra* note 11, at ¶ 45.

⁴¹ State Department Morocco Report, *supra* note 31, at 11.

⁴² *Id.*, at 10-11.

⁴³ Working Group Mission to Morocco, *supra* note 11, at ¶ 33.

⁴⁴ State Department Morocco Report, *supra* note 31, at 11.

⁴⁵ Working Group Mission to Morocco, *supra* note 11, at ¶ 30.

⁴⁶ State Department Western Sahara Report, *supra* note 3, at 4.

⁴⁷ State Department Morocco Report, *supra* note 31, at 11.

⁴⁸ Working Group Mission to Morocco, *supra* note 11, at ¶ 32.

⁴⁹ State Department Western Sahara Report, *supra* note 3, at 4.

⁵⁰ *Id.*, at 2.

4. Prison Conditions in Western Sahara

Prison conditions in Western Sahara are harsh due to overcrowding, a problem acknowledged even by the Moroccan authorities; the Working Group has calculated the overcrowding to be at least greater than 30 percent of the stated capacity.⁵¹ This overcrowding is exacerbated by courts ordering detention for suspects awaiting trial.⁵² Prisoners may also suffer from physical abuse and a lack of health care.⁵³ It is also common for family visitation rights to be severely restricted.⁵⁴ The overcrowded, poorly-ventilated and unhygienic cells (with minimal mosquito control) allegedly lead to rapid spread of disease and it can be extremely difficult for prisoners to obtain the necessary medication or treatment.⁵⁵ Food is reportedly scarce and of poor quality.⁵⁶

B. The Arbitrary Detention of the Applicant

1. Background Information on the Applicant

The Applicant is a 46 year old Sahrawi media activist and human rights defender. He is divorced, and the father of two children.⁵⁷

In 2011, the Applicant started working as a correspondent for Equipe Media, a group of media activists who document and disseminate information about events and abuses occurring within Western Sahara.⁵⁸ Equipe Media is the most prominent of the independent news organizations in Western Sahara and has faced significant harassment from the Moroccan authorities since its founding in 2009.⁵⁹ In January 2015, for example, Moroccan police surrounded a house where a group of journalists had gathered and assaulted two of the journalists when they attempted to leave; the remainder of the staff was trapped inside for hours until the police departed.⁶⁰ In March 2015, the president of Equipe Media and one of its journalists were stopped at the airport, assaulted and interrogated about their work by security, before finally being permitted to leave the country.⁶¹ A number of Equipe Media staff members and journalists have been beaten and

⁵¹ Working Group Mission to Morocco, *supra* note 11, at ¶ 47.

⁵² Morocco and Western Sahara Events of 2015, *supra* note 20.

⁵³ State Department Western Sahara Report, *supra* note 3, at 5.

⁵⁴ *Id.*

⁵⁵ Adala UK, *Informe sobre el estado de salud de los presos políticos saharuis en las cárceles del regimen Marroquí*, (24 Mar 2014), available at <https://adalaes.wordpress.com/2014/05/24/informe-sobre-el-estado-de-salud-de-los-presos-politicos-saharuis-en-las-carceles-del-regimen-marroqui/>.

⁵⁶ *Id.*

⁵⁷ Mohamed Bambari, *Nueva condena para el corresponsal de Équipe Média en Dajla, Sahara Occidental territorios ocupados*, Poemario por un Sahara Libre, (14 Jan. 2016), available at <http://poemariosaharalibre.blogspot.com/2016/01/mohamed-bambari-nueva-condena-para-el.html>.

⁵⁸ Communication with AB, on file with author. Some of the information contained in this petition is based on private communications with individual sources. Their identities have been withheld due to concerns for their security or at their own request. Each source has been assigned a pseudonym consisting of two randomly assigned letters.

⁵⁹ Communication with BC, on file with author.

⁶⁰ Freedom in the World 2016, *supra* note 19.

⁶¹ *Id.*

arbitrarily detained.⁶² The sentences handed out to Equipe Media correspondents can be hefty—at least one journalist was sentenced to over 20 years.⁶³ The Moroccan authorities have harassed Equipe Media staff in other ways as well, including by pressuring private employers to fire Equipe Media-connected employees.⁶⁴

While working with Equipe Media, the Applicant would document violence by Moroccan security forces and Moroccan settlers against the Sahrawi population by filming or photographing protests.⁶⁵ He also wrote comments critical of the Moroccan authorities on his Facebook page.⁶⁶ The Applicant documented a number of sensitive cases, such as that of Hassan El-Wali, a prominent Sahrawi political prisoner and human rights activist.

Due to this work, the Applicant has faced harassment from the Moroccan authorities.⁶⁷ For example, on 20 August 2011, Moroccan police entered the Applicant's father's house looking to arrest the Applicant, who had fled into the desert.⁶⁸ Upon not finding the Applicant in the house, the police destroyed some of the furniture.⁶⁹

2. Arbitrary Arrest and Detention of the Applicant

On 25-27 September 2011, seven people, including two policemen, were killed in a riot following a football match in the Oum Tounsi and Wekala neighborhoods in the city of Dakhla.⁷⁰ Vehicles and local businesses were also burned.⁷¹ It is unclear how the riot was started; province officials claimed that rival fans began throwing stones at each other and then “criminals” took advantage of the situation to attack people with knives and clubs.⁷² Other reports claim that peaceful protests were being held by Sahrawis when Moroccan settlers attacked the protesters.⁷³

⁶² Communication with BC, *supra* note 59; Communication with CD, on file with author. *See also*, Haissan Mahmoud, *New Victim of Press Freedom*, Equipe Media, (4 July 2016), available at <http://www.emsahara.com/article190.html>.

⁶³ Communication with BC, *supra* note 59; *Bachir El Khadda*, Western Sahara Resource Watch, (15 Feb. 2014), available at <http://wsrw.org/a131x2811>.

⁶⁴ Communication with BC, *supra* note 59; Communication with CD, *supra* note 62.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Communication with AB, *supra* note 58.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See Football Clash Turns Deadly in Western Sahara*, FRANCE24, (27 Sept. 2011) available at <http://www.france24.com/en/20110927-football-clash-deadly-western-sahara-morocco-violence-police-riots>.

⁷¹ *Id.* *See also The Dakhla Events and Polisario's Attempts to Regain its Lost Legitimacy*, MOROCCO WORLD NEWS, (30 Sept. 2011), available at <https://www.morocoworldnews.com/2011/09/10763/the-dakhla-events-and-polisario-attempts-to-regain-its-lost-legitimacy/>.

⁷² *Id.*

⁷³ *Morocco says 7 Killed in Western Sahara Soccer Violence*, REUTERS, (27 Sept. 2011), available at <http://in.reuters.com/article/idINIndia-59580420110927>; *see also "Seven killed" in Western Saharan Football Riot*, BBC, (27 Sept. 2011), available at <http://www.bbc.com/news/world-africa-15083113>.

The Applicant was covering these events and managed to film the burning of Sahrawi homes and shops in the Wekala neighborhood.⁷⁴ He documented some of the violence during these riots, such as the cutting off of the ear of Ibrahim Belah, and the burning of Hemna al-Samlaly.⁷⁵ The Applicant himself did not participate in any violence.⁷⁶

Over two dozen men were initially arrested for their role during the riots; the Applicant was not one of them.⁷⁷ Ultimately, five men were convicted and sentenced to three years imprisonment.⁷⁸ By the time of the Applicant's arrest, all of the convicted men had been released, except for one man who had died in prison.⁷⁹

On 26 August 2015, the Applicant was arrested at the Dakhla Police Station while attempting to renew his identification card.⁸⁰ When he was arrested, the police allegedly informed his mother that there had been a search and arrest warrant issued for the Applicant at a prior time.⁸¹ Upon his arrest, the police accused the Applicant of taking part in protests that occurred in 2015 calling for the independence of Western Sahara.⁸² However, the Applicant was neither shown any arrest warrant nor informed of the exact charges he faced.⁸³ The Applicant was initially held *incommunicado* and not permitted to speak with an attorney until his appeal trial in January 2016.⁸⁴

While in detention, the Applicant was beaten in order to induce a false confession.⁸⁵ The interrogators sought information regarding both the 2011 and 2015 protests in Dakhla, information about who funded the Applicant's media activism, and the "foreign entities" who published his work.⁸⁶ The Applicant was not allowed to read or review the documents that he was reportedly forced to sign.⁸⁷

3. Arbitrary Prosecution of the Applicant

Five days after his arrest, on 31 August 2015, the Applicant was first brought before a judge for his arraignment.⁸⁸ Although the Applicant requested temporary release on bail, the investigative

⁷⁴ Communication with AB, *supra* note 58.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Morocco Announces the Arrest of 25 for Involvement in Dakhla Clashes*, MOROCCO WORLD NEWS, (30 Sept. 2011), available at <http://www.morocoworldnews.com/2011/09/10791/morocco-arrests-25-for-role-in-soccer-riot/>; Communication with AB, *supra* note 58.

⁷⁸ Communication with AB, *supra* note 58.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Communication with DE, on file with author.

⁸² Communication with AB, *supra* note 58.

⁸³ *Id.*; *Occupation Authorities Arrest Equipe Media from Dakhla Territories* [translated from Arabic], EQUIPE MEDIA, (27 Aug. 2015), available at <http://www.emsahara.com/article1250.html>.

⁸⁴ Communication with AB, *supra* note 58.

⁸⁵ *A report on the trial of Sahrawi blogger and political detainee, "Mohamed Al-Bambary"* [translated from Arabic], EQUIPE MEDIA, (12 Jan. 2016), available at <http://futurosahara.net/?p=15964>.

⁸⁶ Communication with AB, *supra* note 58.

⁸⁷ *Id.*

⁸⁸ *Id.*

judge, Boshraya Ma al-Aainein, refused without giving any justification for the decision.⁸⁹ The Applicant was remanded to one month in prison.⁹⁰

On or about 20 October 2015,⁹¹ the El-Aaiun Appeals Court of First Instance reviewed the Applicant's case, acting as a trial court. Although the Applicant had initially understood his arrest to be connected to his alleged participation in protests in 2015, he learned at trial that he was actually facing charges in relation to his alleged participation in the 2011 riots.⁹² Specifically, the Applicant was charged with forming a criminal gang, participating in a murder, obstructing a public road, partaking in a fatal brawl, committing violence against public servants, and sabotaging things intended for public benefit under Articles 293, 294, 392, 267, 129, 591, 271, and 595 of the Moroccan Penal Code.⁹³ On 4 November 2015, the Court of First Instance convicted the Applicant on all charges and sentenced him to 12 years in prison.⁹⁴

These hearings were closed to the public with the courtroom cordoned off by the intelligence services and uniformed police.⁹⁵ The Applicant was not assisted by an attorney at either hearing.⁹⁶ The prosecution allegedly did not present any evidence against the Applicant and the Court of First Instance based its conviction entirely on a police report.⁹⁷ The Applicant was not permitted to present his case.⁹⁸ The judge reportedly treated the Applicant with obvious contempt; he refused to let the Applicant speak and ordered the police to remove him from the courtroom when the Applicant tried to speak anyway.⁹⁹ Immediately after the judge recited the charges, he announced his conviction and sentenced the Applicant to 12 years imprisonment.¹⁰⁰

On 5 November 2015, the Applicant started a hunger strike under the slogan, "Freedom for resistance or martyrdom for country."¹⁰¹ He was transferred to the hospital on 28 December 2015, after fainting and vomiting.¹⁰² He ended the hunger strike on 13 January 2016, just after his appeal sentencing.¹⁰³

⁸⁹ *Id.*

⁹⁰ *Occupier Issues Sentence of One Month in Prison for Mohamed Al-Bambary* [translated from Arabic], EQUIPE MEDIA, (1 Aug. 2015), available at <http://www.emsahara.com/article1251.html>.

⁹¹ Because the hearing was closed, sources are not positive of the exact date of the first hearing, but believe it to be about 15 days prior to the sentencing on 4 November 2016.

⁹² Communication with AB, *supra* note 58.

⁹³ *Id.*

⁹⁴ *Mohamed Al-Bambary Begins Hunger Strike* [translated from Arabic], EQUIPE MEDIA, (5 Nov. 2015), available at <http://www.emsahara.com/article1412.html>.

⁹⁵ Communication with AB, *supra* note 58.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Mohamed Bambari, Nueva condena para el corresponsal de Équipe Média en Dajla, Sahara Occidental territorios ocupados*, Poemario por un Sahara Libre, (14 Jan. 2016), available at <http://poemariosaharalibre.blogspot.com/2016/01/mohamed-bambari-nueva-condena-para-el.html>.

¹⁰² *Id.*

¹⁰³ Parliamentary Questions; Answer given by High Representative/Vice-President Mogherini, (8 Apr. 2016), available at <http://sawteljamahir.com/archives/6872>.

On 12 January 2016, the Applicant appeared before the El-Aaiun Appeals Court of Second Instance.¹⁰⁴ The trial was open, and numerous supporters of the Applicant came to the proceedings; when the Applicant entered the courtroom he chanted pro-independence slogans, which were echoed by his supporters in the courtroom.¹⁰⁵ The Applicant was permitted assistance of counsel for this trial, although he was not allowed to meet with his attorney before the hearing in order to prepare a defense.¹⁰⁶

The prosecutor accused the Applicant of involvement in the 2011 riots, allegedly claiming that the men who had been convicted in the prior case had confessed that the Applicant was involved in the violence.¹⁰⁷ The Applicant confirmed his participation covering the protests but unequivocally denied involvement in any violence. The Applicant's lawyers suspected that these alleged confessions from the prior prisoners had been obtained under torture or other duress and reiterated the political motivations behind the case.¹⁰⁸ The defense made two motions: the first, a request to postpone the trial so that it could properly prepare a defense, and the second, to call as witnesses those individuals whose accusatory statements the prosecutor intended to offer as evidence against the Applicant.¹⁰⁹ The judge denied both motions.¹¹⁰

The defense set forth evidence that the Applicant was a human rights activist and a journalist with Equipe Media; they presented photographs of him with visiting human rights activists.¹¹¹ One man, Atiq Bray, a prominent human rights defender, was called to testify in court and he rejected any connection between the Applicant and the crimes he was accused of.¹¹² The defense argued violations to Article 73 of the Criminal Procedure Code (regarding the Applicant's request for a medical exam), and violations to Articles 365, 366, and 370 of the Criminal Procedure Code, based on inaccuracies in the verdict issued by the primary reviewing court (e.g., amongst other errors, the verdict had incorrectly identified someone named Adel Bousfa. The prosecution responded that the verdict had merely been mislabeled and the Applicant was the intended subject).¹¹³ The defense also argued a violation of Article 22 of the Moroccan constitution (prohibiting torture).¹¹⁴ The Applicant himself was not permitted to speak, except to give his biographical information.¹¹⁵

¹⁰⁴ A report on the trial of Sahrawi blogger and political detainee, "Mohamed Al-Bambara", *supra* note 85.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*; Communication with AB, *supra* note 58.

¹⁰⁷ *Mohamed Bambara inicia una huelga de hambre*, EQUIPE MEDIA (5 November 2015), available at <http://www.emsahara.com/article1416.html>.

¹⁰⁸ Communication with DE, *supra* note 81.

¹⁰⁹ Communication with AB, *supra* note 58.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* See also, Mohamed Bambara, Nueva condena para el corresponsal de Équipe Média en Dajla, Sahara Occidental territorios ocupados, *supra* note 101.

¹¹³ A report on the trial of Sahrawi blogger and political detainee, "Mohamed Al-Bambara", *supra* note 85; Communication with AB, *supra* note 58.

¹¹⁴ *Id.*

¹¹⁵ Communication with AB, *supra* note 58.

The prosecution's only evidence consisted of claims that previously-convicted men had confessed that the Applicant was involved.¹¹⁶ All other testimonies proffered to the Court of Second Instance were made at an earlier time by persons who were not present at the hearings; other than Atiq Bray, no witnesses gave testimony in court.¹¹⁷

The Court of Second Instance upheld the Applicant's conviction but reduced his sentence to six years in prison.¹¹⁸ This sentence is three years longer than any other sentence handed out for participation in the riots.¹¹⁹ The sentence was returned within six hours.¹²⁰

4. Current Status

On 19 January 2016, the Applicant was transferred from the El-Aaiun Prison to the Ait Melloul Prison, which is 1200 km away from his family. Around 22 February 2016, the Applicant was transferred to the Tawerta Prison in Dakhla, which is closer to his family, however he was returned to Ait Melloul Prison in November 2016.¹²¹ In addition to being prohibitively far from the Applicant's family, Ait Melloul has been plagued by reports of prisoner sex abuse,¹²² suicide,¹²³ and torture.¹²⁴

While in prison, the Applicant's health has declined. On 28 December 2015 he was hospitalized due to complications from his first hunger strike.¹²⁵ He continues to suffer from asthma and a stomach ulcer.¹²⁶ The Applicant has also been denied reading materials and is only permitted one three minute phone call with his family per week.¹²⁷

On or around 11 March 2016, just prior to his final appeal, the Applicant participated in a second hunger strike.¹²⁸ On 17 March 2016, the Applicant presented a final appeal before the Moroccan

¹¹⁶ *Id.* See also, Mohamed Bambari, Nueva condena para el corresponsal de Équipe Média en Dajla, Sahara Occidental territorios ocupados, *supra* note 101.

¹¹⁷ *Id.*

¹¹⁸ Communication with AB, *supra* note 58.

¹¹⁹ *Id.*

¹²⁰ A report on the trial of Sahrawi blogger and political detainee, "Mohamed Al-Bambara", *supra* note 85.

¹²¹ Communication with AB, *supra* note 58; *Dajla Ocupada*, Facebook post (22 Feb. 2016), available at <https://www.facebook.com/DajlaOcupada/posts/1151053754918908:0>.

¹²² *Scandale sexuel à la prison d'Aït Melloul*, bladi.net, (1 June 2014), available at <http://www.bladi.net/scandale-sexuel-prison-ait-melloul.html>.

¹²³ *Maroc-Prison: Un détenu de la prison d'Aït Melloul se suicide par pendaison*, (17 June 2006), available at <http://peinedemortamaroc.over-blog.com/article-3048297.html>.

¹²⁴ *Morocco: Abdel Karim Azzou Tortured in Ait Melloul Prison*, Alkarama (29 Sept. 2009), available at <https://www.alkarama.org/en/articles/morocco-abdelkarim-azzou-tortured-ait-melloul-prison>.

¹²⁵ Mohamed Bambari, Nueva condena para el corresponsal de Équipe Média en Dajla, Sahara Occidental territorios ocupados, *supra* note 101.

¹²⁶ Communication with AB, *supra* note 58.

¹²⁷ *Id.*

¹²⁸ *Desert Journalist Mohamed Al-Bambara Continues a Hunger Strike against an Unjust Occupation* [translated from Arabic], EQUIPE MEDIA, (18 March 2016), available at http://emsahara.com/article1781.html?fb_ref=c109892e2f8c427193e09e23294bbad6-Facebook.

Cassation Court in order to overturn the appellate ruling.¹²⁹ In December 2016, the Cassation Court rejected the Applicant's appeal.¹³⁰

The Applicant's detention has provoked outrage from human rights activists both domestically and abroad. Local NGOs AFRAPADESA, and Equipe Media have conducted advocacy on his behalf.¹³¹ There is a European Parliament question on behalf of the Applicant.¹³²

II. Legal Analysis

The arrest and detention of the Applicant is arbitrary¹³³ under Categories II, III and V as established by the Working Group. The detention is arbitrary under Category II because it resulted from the Applicant's peaceful exercise of his rights to freedom of expression and freedom of association. The detention is arbitrary under Category III because the government's detention and prosecution of the Applicant failed to meet minimum international standards of due process. The detention is arbitrary under Category V because the Applicant was targeted by the government in part because of his Sahrawi origin.

A. Category II

The detention of the Applicant on various violent charges in response to his work as a journalist for Equipe Media documenting abuses against the Western Saharan people is arbitrary under Category II. A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of association.¹³⁴

¹²⁹ Communication with AB.

¹³⁰ *Id.*

¹³¹ See e.g., *Peligra vida del activista y detenido político saharauí Mohamed Bambari*, AFAPREDESA, (7 Jan. 2016), available at <http://afapredesa.blogspot.com/2016/01/peligra-vida-del-activista-y-detenido.html>; *The Political Prisoner Bambari Remains on Hunger Strike*, EQUIPE MEDIA, (12 Nov. 2015), available at <http://www.emsahara.com/article1457.html>.

¹³² Parliamentary Questions; Answer given by High Representative/Vice-President Mogherini, *supra* note 103.

¹³³ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 UNT.S. 171, entered into force 23 March 1976, at art. 9(1) (*hereinafter* ICCPR). Such a deprivation of liberty is specifically prohibited by international law. *Id.* "No one shall be subjected to arbitrary arrest, detention or exile." *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN Doc. A/810, at art. 9, (1948) (*hereinafter* UDHR). "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law..." *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (1988), at principle 2, (*hereinafter* Body of Principles).

¹³⁴ A detention is arbitrary under Category II "When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II)." *Report of the Working Group on Arbitrary Detention, Annex*, U.N. Doc. A/HRC/30/69, ¶ 8(b), (4 Aug. 2015) (*hereinafter* Revised Methods of Work).

1. Morocco Detained and Prosecuted the Applicant Because He Exercised His Rights to Freedom of Expression and Association

The right to freedom of expression and association are expressly protected under international and Moroccan law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Morocco became a State party in 1979, provides that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹³⁵ The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (UDHR).¹³⁶ Further, Article 25 of the Moroccan Constitution likewise guarantees “[t]he freedoms of thought, of opinion and of expression under all their forms” and Article 28 specifically guarantees freedom of the press and prohibits censorship.¹³⁷

Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others....”¹³⁸ This right is also protected by Article 20(1) of the UDHR and Article 29 of the Moroccan Constitution.¹³⁹ The Human Rights Council has called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views or beliefs and human rights defenders.¹⁴⁰

Along with these express protections set forth in international and domestic law, the imprisonment of human rights defenders for speech- or association-related reasons is subject to heightened scrutiny. The concept of a human rights defender is codified under the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, unanimously adopted by the UN General Assembly on 9 December 1998 (Declaration on Human Rights Defenders).¹⁴¹ The Declaration on Human Rights Defenders affirms their role at the local, regional, national, and international levels. (Journalists working on reporting of human rights abuses are explicitly recognized as falling under the definition of human rights defenders.)¹⁴² The UN General Assembly and Human Rights Council (formerly the Commission on Human Rights) have since regularly reaffirmed the rights of human rights defenders to conduct their work.¹⁴³

¹³⁵ ICCPR, *supra* note 133, at art. 19(2).

¹³⁶ UDHR, *supra* note 133, at art. 19.

¹³⁷ Constitution of the Kingdom of Morocco (2011), at arts. 25 and 28.

¹³⁸ ICCPR, *supra* note 133, at art 22(1).

¹³⁹ UDHR, *supra* note 133, at art 20; Constitution of Morocco, *supra* note 137, at art. 29.

¹⁴⁰ UN Human Rights Council Resolution 15/21, UN Doc A/HRC/RES/15/21, ¶ 1, (6 Oct. 2010).

¹⁴¹ Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are defined primarily by what they do rather than their profession. *See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, G.A. Resolution 53/144, UN Doc. A/RES/53/144, (8 Mar. 1998).

¹⁴² *See, e.g., “Who is a Defender”*, Website of the UN Special Rapporteur on the situation of human rights defenders, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

¹⁴³ Most recently, these bodies unanimously passed resolutions in support of the rights related to the work of human rights defenders and on the protection of human rights defenders in general and women human rights defenders in

Moreover, the Working Group has recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”¹⁴⁴ This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals.¹⁴⁵

In addition, Article 19 of the ICCPR is of special importance for human rights defenders. The Working Group has recognized the right of human rights defenders “to investigate, gather information regarding and report on human rights violations.”¹⁴⁶ The UN Human Rights Committee, the body tasked with interpreting the ICCPR, has also specifically recognized that Article 19(2) protects the work of journalists¹⁴⁷ and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”¹⁴⁸

Despite international and Moroccan law’s clear guarantees for individuals’ rights to free speech and association, the Moroccan government arbitrarily detained and prosecuted the Applicant as a direct result of his speech and association in his capacity as a journalist. As set forth in section IV.I.B.1. above, the Moroccan government has a well-documented pattern of attacking and attempting to silence Equipe Media journalists through harassment and arbitrary detention. Media activists from Equipe Media have been repeatedly arrested and handed multi-year prison sentences as government reprisal for their critical reporting. In allegedly pressuring private employers to fire Equipe Media-connected employees, the government has also punished journalists for the mere fact of their association with that media outlet.

Considering this history, it is clear that the Moroccan government targeted the Applicant for detention as a means of preventing him from continuing his work as an Equipe Media journalist documenting Moroccan abuses against the citizenry of Western Sahara. The fact that the Applicant was arrested nearly four years after his alleged crime and that no effort was made to apprehend him closer to the time of the 2011 soccer riots demonstrates that the link between his arrest and his alleged crime is tenuous. The tenuous nature of this link is further supported by the fact that the Applicant was not shown a warrant for his arrest—although the police told his

particular. See UN Human Rights Council, *Protecting Human Rights Defenders*, Resolution No. 22/6, UN Doc. A/HRC/22/L.13, (15 Mar. 2013); *Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders*, G.A. Resolution 68/181, UN Doc. A/RES/68/181, (18 Dec. 2013).

¹⁴⁴ *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, UN Doc. A/HRC/WGAD/2012/62, ¶ 39, (21 Nov. 2012); see also, *Sotoudeh v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, UN Doc. A/HRC/WGAD/2011/21, ¶ 29, (27 Jan. 2011).

¹⁴⁵ *Bialiatski v. Belarus*, UN Working Group on Arbitrary Detention, Opinion No. 39/2012, ¶ 43, (23 Nov. 2012).

¹⁴⁶ *Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Opinion No. 8/2009, UN Doc. A/HRC/13/30/Add.1, ¶ 18, (2010). Although the Working Group came to this conclusion by referencing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, it noted that “in the Working Group’s view” the rights and principles of the Declaration “are based on human rights standards enshrined in the Universal Declaration of Human Rights and in the Charter of the United Nations.” *Id.*

¹⁴⁷ *Movlonov et. al. v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004, (19 Mar. 2009).

¹⁴⁸ *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, ¶ 6.7, (29 Mar. 2005).

mother that there was one outstanding—nor initially informed of the charges he faced. Moreover, considering that the police initially accused the Applicant of involvement in 2015 protests, it is clear that his arrest did not stem from legitimate suspicion of criminal actions arising from the 2011 riots.

Further, the nature of questions leveled at the Applicant during his interrogation and torture reveal the Moroccan government’s real interest in the Applicant. He was specifically asked about the funders of his media work and the “foreign entities” who published his work. Such a line of questioning should have been totally irrelevant to any legitimate investigation into violence carried out four years prior.

This attempt to prevent the Applicant from continuing his media activism through detention is in line with the Moroccan government’s broader history of attempting to suppress the free expression and association of Western Saharan media outlets and constitutes a violation of articles 19(2) and 22(1) of the ICCPR, articles 19 and 20(1) of the UDHR, and articles 25, 28 and 29 of the Moroccan Constitution. Moreover, because of the Applicant’s work as a journalist and human rights defender, he enjoys special protection under international law with respect to any detention related to his advocacy. Any government interference, such as detention, which serves to restrict his speech or association is entitled to heightened scrutiny from the Working Group. It is precisely his work—seeking to raise awareness of the human rights abuses suffered by Sahrawis—which ultimately motivated his detention. As such, the detention in this case cannot meet the “particularly intense review” mandated by the jurisprudence of the Working Group.

B. Category III

The arrest and detention of the Applicant is arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “the total or partial non-observance of the international norms relating to the right to a fair trial... is of such gravity as to give the deprivation of liberty an arbitrary character.”¹⁴⁹ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).¹⁵⁰

1. Morocco Violated the Applicant’s Right not to be Subjected to Arbitrary Arrest

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”¹⁵¹ This right is reiterated by article 9

¹⁴⁹ Revised Methods of Work, *supra* note 134, at ¶ 8(c).

¹⁵⁰ In making a Category III determination, the Working Group will look to the norms “established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned.” *Id.*, at ¶ 8(c). However, the Revised Methods of Work also explain that where appropriate, the Working Group will refer to standards established under the Body of Principles. *Id.*, at ¶ 7(a).

¹⁵¹ ICCPR, *supra* note 133, at art 9(1).

of the UDHR and principles 2 and 36(2) of the Body of Principles.¹⁵² The Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.”¹⁵³ Article 9(1) requires compliance with domestic rules that define such procedures for arrest such as specifying when a warrant is required and permitting access to counsel.¹⁵⁴ The Human Rights Committee has previously found that an arrest that was not authorized by the prosecutor and was done in the absence of a detainee’s counsel, in violation of the relevant domestic provisions, violated article 9(1) of the ICCPR.¹⁵⁵ Article 23 of the Constitution of Morocco also guarantees that no one may be arrested outside of the forms provided by law.¹⁵⁶

Under Moroccan law, a police officer making an arrest must present the detainee with an arrest warrant in accordance with article 139 of the Moroccan Criminal Procedure Code.¹⁵⁷ Moreover, under Article 140 of the Moroccan Criminal Procedure Code, a detainee must be brought before a judge within 24 hours of his arrest.¹⁵⁸ Finally, for ordinary criminal cases, the law provides that a detainee be granted access to his attorney within 24 hours of his arrest.¹⁵⁹

Here, the arrest of the Applicant was not performed in compliance with law. The police officers did not show the Applicant a warrant for his arrest. Moreover, he was not brought before a judge to challenge his detention within 24 hours; rather the Applicant had to wait five days before his arraignment. Finally, Applicant was not provided with counsel within 24 hours of his arrest. To the contrary, the Applicant was unable to speak with an attorney for several months until his January appeal trial.

It is therefore clear that in arresting the Applicant without an arrest warrant and by denying him prompt access to an attorney and a chance to challenge his detention before a judge, the police did not adhere to Morocco’s domestic procedures for lawful arrests. Such unlawful actions also violated the Applicant’s right to freedom from arbitrary arrest under Article 9(1) of the ICCPR, article 9 of the UDHR and principles 2 and 36(2) of the Body of Principles.

¹⁵² UDHR, *supra* note 133, at art 9; Body of Principles, *supra* note 133, at principles 2 and 36(2).

¹⁵³ UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, ¶ 23, (16 Dec. 2014).

¹⁵⁴ *Id.*

¹⁵⁵ *Maksudov et al. v. Kyrgyzstan*, UN Doc CCPR/C/93/D/1461, 1462, 1476 & 1477/2006, ¶ 12.2, (31 July 2008).

¹⁵⁶ Constitution of Morocco, *supra* note 137, at art 23.

¹⁵⁷ *Maroc: Code de procédure pénale*, Dahir n° 1-58-261 du ler chaabane 1378, art. 139 (10 Feb 1959), *available at*, <http://www.refworld.org/docid/3ae6b5104.html>.

¹⁵⁸ *Id.*, at art. 140.

¹⁵⁹ State Department Morocco Report, *supra* note 31, at 8; Working Group Mission to Morocco, *supra* note 11, at ¶ 44. Unfortunately, Moroccan law does constrict this initial contact with an attorney, as the law guarantees that such meeting can last only 30 minutes and be in the presence of an investigator. upon the authorization of the Prosecutor’s Office, for only 30 minutes and in the presence of an investigator. The Prosecutor’s Office can also delay contact with a lawyer for another 12 hours after the first 24 hours in custody. *Id.*

2. Morocco Violated the Applicant’s Right to be Informed of the Reasons for his Arrest and the Charges Against Him

Article 9(2) of the ICCPR requires that a detainee “be informed, at the time of arrest, of the reasons for his arrest and [] be promptly informed of any charges against him.” This right is reiterated by principle 10 of the Body of Principles.¹⁶⁰ The purpose for the first requirement contained in article 9(2) of the ICCPR—that the detainee be given the reasons for his arrest during the arrest itself—is to enable a detainee to request a prompt decision on the lawfulness of his detention if these reasons given are invalid or unfounded.¹⁶¹ The Human Rights Committee has confirmed that these reasons must contain “not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.”¹⁶²

Regarding the second requirement of article 9(2) of the ICCPR—that the detainee be “promptly informed” of any charges against him—the Human Rights Committee has not confirmed precisely what time frame would be considered “prompt.” However, the Human Rights Committee had indicated that where a detainee is arrested on pre-existing charges, “the authorities may explain the legal basis of the detention some hours later.”¹⁶³ Considering this approved time frame of “some hours later,” and that in context of a detainee’s *habeas corpus* rights the Human Rights Committee has interpreted “prompt” to mean about 48 hours, it seems clear that the Human Rights Committee would not consider withholding information about the charges against a detainee for several weeks to be “prompt.”

Here, the Applicant was allegedly arrested on a pre-existing warrant, however the authorities did not show him this arrest warrant nor give him any oral explanation as to the reasons for his arrest. Moreover, although it appears that the Applicant was initially arrested in connection with his suspected involvement with 2015 protests, he did not learn of full slate of charges he was facing until his trial began, nearly two months after his arrest, on 20 October 2015.

Therefore, in not informing the Applicant of the reasons why he was being arrested during his arrest and in withholding information about the charges he would face until trial, Morocco has violated its obligations under article 9(2) of the ICCPR and principle 10 of the Body of Principles.

3. Morocco Violated the Applicant’s Right to Release Pending Trial and *Habeas Corpus*

Article 9(3) and (4) of the ICCPR protect an individual’s right to challenge the legality of his continued detention. This right is reiterated by principles 4, 11(1), 32 and 37 of the Body of Principles.¹⁶⁴ Article 9(3) of the ICCPR requires that a detainee “be brought promptly before a

¹⁶⁰ Body of Principles, *supra* note 133, at principle 10.

¹⁶¹ General Comment No. 35, *supra* note 153, at ¶ 25; *Campbell v. Jamaica*, Communication No. 248/1987, ¶ 6.3, (30 Mar. 1992).

¹⁶² General Comment No. 35, *supra* note 153, at ¶ 25.

¹⁶³ *Id.*, at ¶ 30.

¹⁶⁴ Body of Principles, *supra* note 133, at principles 4, 11(1), 32 and 37.

judge or other officer authorized by law to exercise judicial power” and “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”¹⁶⁵ The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances.¹⁶⁶ The Human Rights Committee has also determined that *incommunicado* detention inherently violates article 9(3) of the ICCPR.¹⁶⁷ This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture.¹⁶⁸ Article 9(4) of the ICCPR extends this principle of *habeas corpus* to non-criminal detainees as well.¹⁶⁹

As well as requiring that a detainee be allowed to promptly challenge his detention, article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial by confirming that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody...”¹⁷⁰ The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.... Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”¹⁷¹ Principles 38 and 39 of the Body of Principles further confirms that, except in special cases, a criminal detainee is entitled to release pending trial.¹⁷²

Here, Morocco violated the Applicant’s rights under articles 9(3) and 9(4) by refusing to let him challenge his detention from 25 August 2015 until 31 August 2015, a time frame that exceeds the domestic requirement that a detainee be brought “promptly” (within 48 hours) before a judge. Just as feared by the Human Rights Committee, Morocco’s violation of Article 9(3) and (4) enabled other violations, such as torture, to occur while the Applicant was being held without access to his attorney or family.

Moreover, at his 31 August 2015 arraignment, the judge refused to release the Applicant on bail pending trial without giving any reason for such refusal. Thus, in contradiction to the requirement that pre-trial detention be the exception rather than the rule and that such pre-trial detention be based on an individualized determination that it is both reasonable and necessary to deny release given a defendant’s circumstances, the judge impermissibly defaulted to continuing the detention of the Applicant.

By holding the Applicant *incommunicado*, by refusing to bring him promptly before a judge to challenge his detention, and by denying him release pending trial without an individualized

¹⁶⁵ General Comment No. 35, *supra* note 153, at ¶ 32.

¹⁶⁶ *Id.*, at ¶ 33.

¹⁶⁷ *Id.*, at ¶ 35.

¹⁶⁸ *Id.*, at ¶ 34. Other rights that may be at risk are those guaranteed by articles 6, 7, 10 and 14 of the ICCPR. *Id.*, at 35.

¹⁶⁹ *Id.*, at ¶ 39.

¹⁷⁰ ICCPR, *supra* note 133, at art 9(3).

¹⁷¹ General Comment No. 35, *supra* note 153, at ¶ 38.

¹⁷² Body of Principles, *supra* note 133, at principles 38 and 39.

explanation, Morocco violated articles 9(3) and (4) of the ICCPR and articles 11, 32, 37, 38 and 39 of the Body of Principles.

4. Morocco Violated the Applicant's Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

The right to freedom from cruel, inhuman and degrading treatment and torture is well protected by international and Moroccan law. Article 7 of the ICCPR guarantees that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁷³ Article 10(1) of the ICCPR further provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁷⁴ This right is reiterated by the articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Morocco is party, article 5 of the UDHR and principle 6 of the Body of Principles.¹⁷⁵ Article 22 of the Moroccan Constitution also prohibits torture and cruel, inhuman or degrading treatment.¹⁷⁶ Any imposition of suffering that is not severe enough to qualify as torture still constitutes cruel, inhuman or degrading treatment,¹⁷⁷ which term “should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental...”¹⁷⁸

Article 14(3)(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession.¹⁷⁹ International law's particular concern with torture as an interrogatory tool is further reflected in the definition of torture in CAT, which partially defines the term as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...”,¹⁸⁰ as well as in principle 21(2) the Body of Principles which guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”¹⁸¹

Morocco's treatment of the Applicant during his pre-trial detention violates international and Moroccan law on the prohibition of torture and cruel, inhuman or degrading treatment. As detailed in section IV.B.2. above, during the pre-trial detention period, the Applicant was beaten by interrogators in order to procure a confession and to provide the interrogators with information about who funded and published his work. The Applicant was not allowed to read or review the documents that he was forced to sign as a result of this torture.

¹⁷³ ICCPR, *supra* note 133, at art. 7

¹⁷⁴ *Id.*, at art. 10(1).

¹⁷⁵ UDHR, *supra* note 133, at art. 5; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/RES/39/46, (10 Dec. 1984)(*hereinafter*, CAT); Body of Principles, *supra* note 133, at principle 6.

¹⁷⁶ Constitution of Morocco, *supra* note 137, at art. 22.

¹⁷⁷ M. Nowak, *UN Covenants on Civil and Political Rights: CCPR Commentary* 445, 2nd ed., Kehl am Rhein: Engel, 163 (2005).

¹⁷⁸ Body of Principles, *supra* note 133, at principle 6(1).

¹⁷⁹ ICCPR, *supra* note 133, at art. 14(3)(g).

¹⁸⁰ CAT, *supra* note 175, at art. 1(1).

¹⁸¹ Body of Principles, *supra* note 133, at principle 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess...” *Id.*, at principle 21(1).

In its attempt to obtain a forced confession through beatings, Morocco has violated the Applicant's right to be free from cruel, inhuman and degrading treatment and torture under article 7, 10(1) and 14(3)(g) of the ICCPR, article 5 of the UDHR, articles 1 and 4 of the CAT, principles 6 and 21(2) of the Body of Principles, and article 22 of its own constitution.

5. Morocco Violated the Applicant's Rights to Equality of Arms and to a Fair and Public Hearing by a Competent, Independent and Impartial Tribunal Established by Law

Article 14(1) of the ICCPR guarantees that “[a]ll persons shall be equal before the courts and tribunals” and that criminal defendants enjoy the right “to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹⁸² Articles 7 and 10 of the UDHR reiterate these requirements, as do articles 23, 107, 120 and 123 of the Moroccan Constitution.¹⁸³

The Human Rights Committee has emphasized the importance of a public hearing as it “ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.”¹⁸⁴ Moreover, a public hearing requires not just that some individuals unconnected with the proceedings are permitted into the courtroom, rather the hearing must be open to the general public, including media, without limiting entrance to a select group of people.¹⁸⁵ Here, however, the 20 October 2015 trial of first instance was fully closed to the public—a decision enforced by the intelligence service and police who surrounded the courtroom. Not even the Applicant's attorney or family, much less the media, were permitted to attend.

The requirement of judicial independence under Article 14(1) of the ICCPR establishes an objective standard, which is treated as an “absolute requirement[] not capable of limitation.”¹⁸⁶ As noted by the Human Rights Committee, “The requirement of independence refers, in particular, to...the actual independence of the judiciary from political interference by the executive branch and the legislature.”¹⁸⁷ Moreover, the fairness standard must be measured by an objective “reasonableness standard” – that is, the court must appear to a reasonable observer to be impartial.¹⁸⁸ If, for example, a court fails to prevent or remedy serious procedural mistakes or to provide a duly-reasoned judgment, this would indicate to a reasonable observer that the proceedings are not “fair.”

The equality of arms guarantee of Article 14(1) of the ICCPR effectively requires that both parties have the same procedural rights and, specifically, that “each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”¹⁸⁹ The Human Rights

¹⁸² ICCPR, *supra* note 133, at art 14(1).

¹⁸³ UDHR, *supra* note 133, at arts. 7 and 10; Constitution of Morocco, *supra* note 137, at arts. 23, 207, 120 and 123.

¹⁸⁴ UN Human Rights Committee, *General Comment No. 32*, UN Doc. CCPR/C/GC/32, ¶ 28, (23 Aug. 2007).

¹⁸⁵ *Id.*, at ¶ 29.

¹⁸⁶ Alex Conte & Richard Burchill, *Defining Civil and Political Rights*, 165, (Ashgate 2009 2nd ed.).

¹⁸⁷ *General Comment No. 32*, *supra* note 184, at ¶ 19.

¹⁸⁸ *Id.*, at ¶ 21.

¹⁸⁹ *Id.*, at ¶ 13.

Committee has confirmed that a defendant's opportunity to cross-examine the witnesses against him is an important application of the principle of equality of arms.¹⁹⁰

Here, both the 20 October 2015 trial of first instance and the 12 January 2016 appeals trial were conducted with acute bias in favor of the prosecution. The Applicant was never given a full opportunity to argue his defense. During the closed 20 October 2015 trial, the Applicant was not permitted an attorney and was completely barred from presenting his case. Rather, when the Applicant attempted to speak and defend himself, the judge had him removed from the courtroom. Moreover, the judge's one-sided deliberations were allegedly based entirely on a police report and a confession induced through torture. At the 12 January 2016 trial, the Court of Second Instance refused two defense motions that would have allowed the defense to engage in the trial on footing equal to that of the prosecution: that the trial be postponed so that attorneys could properly prepare a defense and that the men whose testimony the prosecution intended to use as evidence against the Applicant be called as witnesses so that the defense could cross-examine them. The Applicant was again forbidden from speaking at this trial, except to give his biographical information.

Thus, by its courts' refusal to hold a fully public trial and by their demonstration of significant partiality to the prosecution throughout the trial of first instance and the appeal trial, Morocco has violated article 14(1) of the ICCPR, and articles 7 and 10 of the UDHR.

6. Morocco Violated the Applicant's Right to a Presumption of Innocence

Article 14(2) of the ICCPR provides that "[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."¹⁹¹ Article 11(1) of the UDHR, and principle 36(1) of the Body of Principles also guarantee this right, as do articles 23 and 119 of the Moroccan Constitution.¹⁹² The Human Rights Committee has further confirmed that the presumption of innocence is "fundamental to the protection of human rights" and requires that "the accused has the benefit of doubt, and [] that persons accused of a criminal act must be treated in accordance with this principle."¹⁹³

Here, the Court of First Instance violated the Applicant's right to the presumption of innocence by treating him as if his guilt was a foregone conclusion. During his trial around 20 October 2015, the Applicant was entirely prevented from speaking and deprived of an attorney. Moreover, the Court of First Instance based its conviction not on any evidence offered by the prosecution, but solely on the police report, which likely contained a confession adduced through torture. The additional fact that the Court of First Instance took no time to deliberate on the charges but rather announced the Applicant's conviction immediately after listing the charges against him shows he was never given the benefit of the doubt as would have been warranted had

¹⁹⁰ *Id.*, at ¶ 39.

¹⁹¹ ICCPR, *supra* note 133, at art. 14(2).

¹⁹² UDHR, *supra* note 133, at art. 11(1); Body of Principles, *supra* note 133, at principle 36(1); Constitution of Morocco, *supra* note 137, at arts. 23 ("The presumption of innocence and the right to an equitable process are guaranteed") and 119 ("Any defendant or accused is presumed innocent until his condemnation by decision of justice having acquired the force of *res judicata*").

¹⁹³ General Comment No. 32, *supra* note 184, at ¶ 30.

he enjoyed presumption of innocence. The Court of First Instance behaved as if the Applicant's guilt was predetermined and, as such, violated his right to the presumption of innocence under article 14(2) of the ICCPR, article 11(1) of the UDHR, principle 36(1) of the Body of Principles, and articles 23 and 119 of the Moroccan Constitution.

7. Morocco Violated the Applicant's Right to Communicate with and Have Assistance of Counsel and to Prepare a Defense

Articles 14(3)(d) and 14(3)(b) of the ICCPR guarantee that an individual may defend himself "through legal assistance of his own choosing" and that a criminal defendant has the right "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."¹⁹⁴ These rights are reiterated by principles 11(1), 15, 17(1) and 18 of the Body of Principles, which states that such right "may not be suspended or restricted save in exceptional circumstances"¹⁹⁵ The Human Rights Committee has confirmed that the right to prepare a defense is "an important element of the guarantee of a fair trial;"¹⁹⁶ it has further clarified that such guarantees "require[] that the accused is granted prompt access to counsel"¹⁹⁷ and that "[s]tate parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention."¹⁹⁸ Moreover, Paragraph 1 of the Basic Principles on the Role of Lawyers confirms that the right to assistance of an attorney covers all stages of criminal proceedings and that access to an attorney should be granted in no case later than 48 hours after the individual's arrest.¹⁹⁹

Here, the police held the Applicant without access to his attorney until his appeal trial. There were no "exceptional circumstances" to justify preventing the Applicant from speaking with his attorney. The attorney was not present for the Applicant's interrogation, a factor that clearly enabled the police's ability to use torture as a way of obtaining information. Just as grievously, the Applicant's attorney was not permitted to represent him during his arraignment on 31 August 2015 or his trial on 20 October 2015, nor was the Applicant's attorney permitted to meet with him in advance of his January 2016 appeal trial to prepare a defense. Furthermore, the judge at the January 2016 appeals trial denied the motion of the Applicant's attorney to postpone the trial so that the Applicant could properly prepare a defense.

The Applicant was also prohibited from preparing a defense for himself at his initial trial because he had not been informed of the charges that he was facing; prior to his initial hearing the Applicant believed he was being tried in connection with his alleged participation in protests that occurred in 2015 instead of the slate of charges related to the 2011 riots which he ultimately faced. Moreover, during the initial trial the Court of First Instance prevented the Applicant from presenting a defense by prohibiting him from speaking, and removing him from the courtroom when he tried.

¹⁹⁴ ICCPR, *supra* note 133, at arts. 14(3)(b) and (d).

¹⁹⁵ Body of Principles, *supra* note 133, at principles 11(1), 15, 17(1) and 18.

¹⁹⁶ General Comment No. 32, *supra* note 184, ¶ 32.

¹⁹⁷ *Id.*, at ¶ 34.

¹⁹⁸ General Comment No. 35, *supra* note 153, at ¶ 35.

¹⁹⁹ United Nations, *Basic Principles on the Role of Lawyers*, ¶¶ 1,7 (7 Sept. 1990), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

In light of this refusal to allow communication between attorney and detained client and in preventing the Applicant from being represented by counsel at his initial hearings and in advance of his appeal trial, the government violated the Applicant's right to communicate with and to have assistance of legal counsel and to prepare a defense.

8. Morocco Violated the Applicant's Right to Examine Witnesses against Him

Article 14(3)(e) of the ICCPR guarantees to a criminal defendant the right to examine any witnesses against him. The Human Rights Committee has confirmed that this guarantee is a crucial application of the principle of equality of arms and important for ensuring an effective defense.²⁰⁰

Here, however, the Applicant was not permitted to examine witnesses against him at either his initial October 2015 trial or his January 2016 trial. At the October 2015 trial, the Applicant was not permitted to speak to challenge anything contained in the police report, which allegedly provided the basis for the court's conviction. At the January 2016 appeal trial, the judge specifically denied the defense's motion to call to the court those witnesses who had given testimony against the Applicant. Considering that this testimony may have been elicited through torture as these witnesses were in custody at the time they made such supposedly incriminating statements and that the one witness who did attend the trial denied making any statements against the Applicant, refusing to allow the Applicant to cross-examine the witnesses against him severely hampered his ability to defend himself. Thus, in refusing to allow the Applicant to examine all but one of the witnesses against him throughout two trials, Morocco violated Article 14(3)(e) of the ICCPR.

C. Category V

The arrest and detention of the Applicant is arbitrary under Category V. A deprivation of liberty is arbitrary under Category V where "the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights."²⁰¹

Article 2(1) of the ICCPR requires state parties to protect the rights guaranteed in the ICCPR without distinction of any kind. Article 26 of the ICCPR specifically guarantees that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²⁰² In recognition of the importance of this right, article 4(1) of the ICCPR

²⁰⁰ General Comment No. 32, *supra* note 184, at ¶ 39.

²⁰¹ Revised Methods of Work, *supra* note 134, at ¶ 8(e).

²⁰² ICCPR, *supra* note 133, at arts. 2(1) and 26.

confirms that states may not derogate from their obligation of non-discrimination even in times of emergency.²⁰³ The Human Rights Committee has confirmed that the right to non-discrimination is particularly crucial when it comes to criminal proceedings, as it is a matter of equal access and equality of arms to “[ensure] that the parties to the proceedings in question are treated without any discrimination.”²⁰⁴ This right is reiterated by articles 2 and 7 of the UDHR, and principle 5(1) of the Body of Principles.²⁰⁵ Morocco is also party to the International Convention on the Elimination of All Forms of Racial Discrimination which prohibits in article 5 all forms of discrimination based on ethnic origin and guarantees the right to equal treatment before tribunals of law.²⁰⁶ Moreover, the preamble to the Moroccan Constitution confirms that Morocco has committed itself “to ban and combat all discrimination whenever it encounters it, for reason of sex, or color, of beliefs, of culture, of social or regional origin, of language, of handicap or whatever personal circumstance that may be.”²⁰⁷

When determining whether a detention was motivated by a discriminatory purpose, the Working Group has previously confirmed that it will look to whether the totality of the circumstances “strongly suggest” a discriminatory basis for the arrest.²⁰⁸ Here, the arrest, detention, and treatment of the Applicant occurred in an atmosphere of pervasive discrimination against the Sahrawi people and those who defend Sahrawi rights, as detailed in section IV.I.A.1. As a Sahrawi himself who documented abuses against other Sahrawi, the Applicant was doubly marked for discrimination. The interrogators’ questions surrounding the Sahrawi protests and who funded the Applicant’s pro-Sahrawi reporting evidences their focus on his role as a Sahrawi rights defender. The Applicant, leading a hunger strike under the slogan “Freedom for resistance or martyrdom for country” and chanting pro-independence slogans in the courtroom, certainly understands his ethnic origin to be a main driver of his detention.

The government’s pattern of harassing Sahrawi and Sahrawi rights defenders, including past harassment of the Applicant himself, the illogical timing of the arrest which occurred four years after the Applicant’s alleged crime, and the consequences of the Applicant’s conviction—namely, that the Applicant was unable to continue his work documenting abuses against the Sahrawi people—clearly demonstrates that the Applicant’s identity as a Sahrawi and Sahrawi rights defenders lay at the root of his arrest, trial and conviction in violation of his right to non-discrimination before the law.

D. Conclusion

As established above, the detention of the Applicant is a result of his journalism for Equipe Media on behalf of the Sahrawi community in violation of his rights to the freedoms of expression and association. In detaining and prosecuting the Applicant, the government failed to

²⁰³ *Id.*, at art. 4(1).

²⁰⁴ General Comment No. 32, *supra* note 184, at ¶ 8.

²⁰⁵ UDHR, *supra* note 133, at arts. 2 and 7; Body of Principles, *supra* note 133, at principle 5(1).

²⁰⁶ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 20 UN GAOR Supp. (No. 14) at 47, UN Doc. A/6014 (1966), 660 UNT.S. 195; entered into force 4 January 1969, at art. 5.

²⁰⁷ Constitution of Morocco, *supra* note 137, at pmbl.

²⁰⁸ *Nasheed v. Maldives*, UN Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2015, ¶¶ 97 and 98, (17 Sept. 2015).

meet certain minimum international standards for due process. Finally, in targeting the Applicant based on his identify as a Sahrawi and Sahrawi rights defender, the government discriminated against him in violation of international law. As such, the Applicant's detention is arbitrary pursuant to Categories II, III and V.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

On 4 November 2015, the El-Aaiun Appeals Court of First Instance convicted the Applicant on charges of forming a criminal gang, participating in a murder, obstructing a public road, partaking in a fatal brawl, committing violence against public servants, and sabotaging things intended for public benefit under Articles 293, 294, 392, 267, 129, 591, 271, and 595 of the Moroccan Penal Code and sentenced him to 12 years in prison. On 12 January 2016, the El-Aaiun Appeals Court of Second Instance upheld the Applicant's conviction but reduced his sentence to six years in prison.

On 17 March 2016, the Applicant presented a final appeal before the Moroccan Cassation Court in order to overturn the appellate ruling. In December 2016, the Cassation Court rejected his appeal.

VI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

Freedom Now is a non-profit, non-governmental organization that works to free individual prisoners of conscience through focused legal, political and public relations advocacy efforts.

Robert F. Kennedy Human Rights is a non-profit, non-governmental organization founded in 1968 that works on human rights and social justice issues around the world.

Freedom Now and Robert F. Kennedy Human Rights have been retained by the Applicant as his international counsel.

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