



**CLOONEY
FOUNDATION
FOR JUSTICE**

JUSTICE THROUGH ACCOUNTABILITY



Morocco v. Hajar Raissouni et al.

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*Baroness Helena Kennedy
Director of the International Bar Association's
Human Rights Institute*

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR:

Helena Kennedy QC is the Director of the International Bar Association's Human Rights Institute. She has practiced at the Bar for over 40 years in the field of criminal law and has conducted many of the leading cases in those years, including the Balcombe Street Siege, the Brighton bombing trial, the Guildford Four Appeal, the Michael Bettany Espionage case, the bombing of the Israeli embassy, the Jihadist fertilizer bomb plot, and the transatlantic bomb plot. She has championed law reform for women, especially relating to sexual and domestic violence and developed the defense of Battered Women's syndrome in the British courts. She has chaired the British Council and the UK Human Genetics Commission. She has been a member of the House of Lords for over 20 years, where she chairs The European Union Subcommittee on Justice issues. She is chair of Justice, the British arm of the International Commission of Jurists. She is the chair of the Booker Prize Foundation. She has stepped down as Principal of Mansfield college, Oxford and also serves as the Chancellor of Sheffield Hallam University.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

The Clooney Foundation for Justice's TrialWatch initiative monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, religious minorities, LGBTQ persons and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts' compliance with international human rights standards.

The legal assessment and conclusions expressed in this report are those of the author and not necessarily those of the Clooney Foundation for Justice.



Baroness Helena Kennedy, member of the TrialWatch Experts Panel, assigned this trial a grade of D:

At Hajar Raissouni's trial on charges of non-marital intercourse and abortion, Ms. Raissouni was denied critical rights protected by the International Covenant on Civil and Political Rights, including her right to a hearing before an independent and impartial tribunal. Because the TrialWatch monitors' detailed notes on all of the proceedings and the available record reveal numerous fair trial violations that indisputably affected the outcome of the case and caused significant harm, this trial receives a grade of "D" under the methodology set forth in the Annex to this Report.

To start, Morocco's laws on abortion and non-marital intercourse pursuant to which Ms. Raissouni was prosecuted are incompatible with human rights standards.

Ms. Raissouni was also subjected to numerous additional human rights violations. Authorities arbitrarily arrested and detained Ms. Raissouni because she was allegedly 'pale[]' after leaving a medical clinic, which they had been staking out on the basis of a vague tip. Subsequently, authorities forced Ms. Raissouni to undergo a non-consensual medical examination, in violation of her right to be free from cruel, inhuman, and degrading treatment. The police also failed to inform Ms. Raissouni of her rights at the time of her arrest and denied her access to a lawyer.

During Ms. Raissouni's trial, the judge's questioning and remarks suggested a bias against the defendant, in violation of her right to be presumed innocent. The judge, for instance, treated an unsigned statement presented by the prosecutor as a confession by Ms. Raissouni, despite the fact that she denied making it and rejected its substance. The court also interfered with Ms. Raissouni's ability to put on a defense by refusing to hear certain witnesses or let her bring forward new evidence. Following this unfair trial, Ms. Raissouni and four co-defendants, including her fiancé, the doctor who treated her, and two other medical personnel, were convicted.

Given the lack of evidence against Ms. Raissouni, the numerous irregularities observed before and throughout her trial, as well as Ms. Raissouni's reputation as a journalist critical of the Moroccan government, there are grounds to believe that Ms. Raissouni's prosecution was motivated by her work as a journalist. This conclusion is supported by other reports of a broader government-sponsored campaign against the independent media.

In September 2019, the Clooney Foundation for Justice's TrialWatch initiative monitored the criminal proceedings against Hajar Raissouni, her fiancé Rifaat Al Amine, a

gynecologist Dr. Jamal Belkeziz, and two members of Dr. Belkeziz's staff, anesthesiologist Mohamed Baba and medical secretary Khadija Azelmadh. Ms. Raissouni is a journalist for *Akhbar Al Yaoum*, an independent news outlet. *Akhbar Al Yaoum* is one of Morocco's few remaining newspapers critical of the government, and the government has taken several measures against it since the newspaper's creation in 2009.¹ Ms. Raissouni had written several articles for *Akhbar Al Yaoum* reporting on the Al-Hirak al-Shaaby protest movement against the government,² and others in her family are known critics of the government. Ms. Raissouni and her four co-defendants were convicted after two days of hearings. Several elements of Ms. Raissouni's prosecution raise concerns that the case was politically motivated.

* * *

On August 31, 2019, Ms. Raissouni, Mr. Al Amine, Dr. Belkeziz, Mr. Baba, and Ms. Azelmadh were arrested by police in Rabat, Morocco and interrogated on suspicion that Dr. Belkeziz and his staff had that day performed an abortion on Ms. Raissouni. The authorities alleged that at the time Ms. Raissouni was unwed and therefore had committed both the crime of procuring an abortion and the crime of engaging in non-marital intercourse with her fiancé Mr. Al Amine. Ms. Raissouni was convicted of violating Moroccan Criminal Code Article 454, which criminalizes "intentionally obtaining an abortion" where that abortion is not necessary for the health of the woman and the husband has not consented, and Article 490, which criminalizes sexual relations between those not "united by marriage."

From the outset of the investigation into the alleged August 31, 2019 abortion, the available evidence, statements, and testimony reflect indicia of targeting, selective prosecution, and improper motive. This includes, among other things, the fact that prosecutions for such crimes are rarely initiated in Morocco and that the Rabat police, in interrogating Ms. Raissouni, asked questions about her political writings, other employees of *Akhbar Al Yaoum*, and members of her family who have been critical of the government.³ Moreover, at successive points throughout the investigation, the police

¹ See Human Rights Watch, *Morocco: Trial Over Private Life Allegations*, Sept. 9, 2019, available at <https://www.hrw.org/news/2019/09/09/morocco-trial-over-private-life-allegations#>.

² See BBC, *Morocco Protests: Four Things You Need to Know*, June 9, 2017, available at <https://www.bbc.com/news/world-africa-40219452>. These protests were prompted by the death of a fish-seller who was crushed by a compactor trying to retrieve fish that had been confiscated by the government. See BBC, *Morocco Protests: Death of Fish-Seller Triggers Rare Demonstrations*, Oct. 30, 2016, available at <https://www.bbc.com/news/world-africa-37819308>. These protests evolved from protests against the government to ones focused on issues of corruption, unemployment, detention of activists, poor living conditions, and the marginalization of the Berber ethnic population of Morocco. Hundreds of people were arrested for taking part in the protests.

³ See Alyoum24, *هاجر الريسوني في أول رسالة من زنزانتها: سألوني عن عمي أحمد وسليمان وكتاباتي أكثر من التهم الملققة لي*, *trans. Raissouni in the first message from her cell: They asked me about my uncles Ahmed and Suleiman and my writing more than the false accusations against me*, Sept. 4, 2019, available at <https://www.alyaoum24.com/1295019.html>. Ms. Raissouni's uncle Ahmed Raissouni is the president of the International Union of Muslim Scholars, and another uncle, Soulayman Raissouni, is a journalist also critical of the government; her cousin Youssef Raissouni is the secretary general of the Moroccan

deviated from standard procedure, often appearing directly to violate the Moroccan Penal Procedure Code, which includes various requirements for the initiation of investigations, searches and seizures, arrests, treatment of defendants, and interrogations. Notwithstanding these procedural irregularities, as well as the absence of evidence that Ms. Raissouni was pregnant, the public prosecutor nonetheless endorsed the police's conduct, telling the court that the police had behaved properly.⁴

Further, the purported basis for arresting Ms. Raissouni was extremely thin. Acting on a supposed tip from an unidentified person that an abortion was going to be performed at a medical clinic, the police based their initial detention of Ms. Raissouni on her ostensible paleness and tiredness after a medical procedure and then forced her to undergo an intrusive medical examination to search for evidence of the alleged abortion. Although she refused the examination, the police took her to a hospital and she was subjected to both a physical and ultrasound examination, the result of which was memorialized in a report that did not contain observations consistent with an abortion but was nonetheless titled "Medical Exam of Abortion." Taken together, the record suggests that the prosecution may have been pursued for improper motives.

Although the court, sitting in Rabat, permitted each of the defense counsel to address the court, the judge often interrupted and prevented counsel from making their full arguments (although it should be noted that there were a significant number of defense counsel who sought to make presentations and the court appeared to be seeking to avoid duplication). The judge's lines of questioning suggested that he had already adjudged the defendants guilty in his own mind—even before the court's examinations of the five defendants. The judge also refused to entertain any other witnesses despite the existence of several disputed issues of fact. This raises concerns regarding the right to be tried by an impartial tribunal.

On September 30, 2019, all five defendants were found guilty, and Ms. Raissouni and her fiancé were each sentenced to one year in prison and fined, Dr. Belkeziz was sentenced to two years in prison and fined, and Mr. Baba and Ms. Azelmadh were given suspended sentences of eight months and fined. Ultimately, on October 16, 2019, the King of Morocco pardoned all five defendants. While it is encouraging that the highest levels of Morocco's government corrected the injustice against Ms. Raissouni and her co-defendants, it is important to understand what went wrong at trial, because Morocco's laws on abortion and premarital sex remain unchanged and may be used against others for political purposes. Moreover, a pardon is not an acquittal on the merits, such that, in the eyes of Morocco's legal system, Ms. Raissouni and her co-defendants were still found

Association of Human Rights, Morocco's largest independent human rights organization, which has a long history of being targeted by the government. See Human Rights Watch, *Morocco: Trial Over Private Life Allegations*, Sept. 9, 2019, available at <https://www.hrw.org/news/2019/09/09/morocco-trial-over-private-life-allegations#>.

⁴ See Judgment at 15 ("The Royal Prosecution explained that . . . the reports of the Judicial Police are correct.").

guilty of crimes that this report finds were not proven beyond a reasonable doubt following a fundamentally deficient investigation and trial.



A. POLITICAL AND LEGAL CONTEXT

The case against Ms. Raissouni appears to be representative of a larger pattern of Moroccan authorities targeting journalists critical of the government—particularly journalists employed by *Akhbar Al Yaoum* and journalists reporting on the Al-Hirak protests—by means of selective prosecutions, often for crimes entirely unrelated to their journalistic work. For example, Taoufix Bouachrine, a former director at *Akhbar Al Yaoum*, was charged with sexual assault and sentenced to 12 years’ imprisonment in a case that the UN Working Group on Arbitrary Detention found had been marred by violations.⁵

Another example is the prosecution of four journalists, including Abdelhak Belachger, a reporter at *Akhbar Al Yaoum*, for allegedly disclosing unpublished information concerning a parliamentary commission’s investigation.⁶ Although such “violations” should, according to the defense, have been charged as civil infractions under Morocco’s civil code relating to the press,⁷ the journalists, who were reporting on alleged corruption within a 2016 parliamentary commission’s investigation into the bankruptcy of the nation’s pension fund, were charged criminally. The journalists were given suspended sentences of six months.⁸

Human Rights Watch has identified additional examples of the apparent targeting of other independent journalists and individuals associated with opposition movements, including by police in Rabat.⁹ According to Human Rights Watch, these prosecutions follow a similar pattern to that of Ms. Raissouni, including reliance on dubious “tips” and police misconduct with respect to the gathering of evidence.¹⁰

⁵ See Working Group on Arbitrary Detention, *Bouachrine v. Morocco*, No. 85/2018, available at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_85.pdf; see also Human Rights Watch, *Morocco: Jailed Journalist Stuck in Abusive Solitary*, Apr. 12, 2019, available at <https://www.hrw.org/news/2019/04/12/morocco-jailed-journalist-stuck-abusive-solitary#>.

⁶ See Committee to Protect Journalists, *Morocco Hands Local Journalists Suspended Prison Sentences, Expels Dutch Journalist*, Apr. 8, 2019, available at <https://cpj.org/2019/04/morocco-hands-local-journalists-suspended-prison-s.php>.

⁷ Cf. Committee to Protect Journalists, *Mission Journal: Morocco’s New Press Law Undermined by Draft Penal Code*, July 29, 2016, available at <https://cpj.org/blog/2016/07/mission-journal-moroccos-new-press-law-undermined-.php>.

⁸ See Reporters Without Borders, *Suspended Prison Sentences for Four Moroccan Journalists*, Mar. 27, 2019, available at <https://rsf.org/en/news/suspended-prison-sentences-four-moroccan-journalists>.

⁹ See Human Rights Watch, *Morocco: Prison Terms for Adultery*, June 2, 2015, available at <https://www.refworld.org/docid/5575792e4.html>.

¹⁰ See *id.* (describing the police’s alleged undressing of two acquaintances—a male and female, the staging of a room, and photographs taken by Rabat police to form the basis of allegations that the friends committed adultery).

In 2019, Reporters Without Borders placed Morocco in slot 135 of its World Press Freedom Index, which annually evaluates the level of press freedom in 180 countries¹¹ and reported on the judicial harassment of journalists in Morocco, including the obstruction of domestic and foreign media seeking to cover protests; the prosecution of both professional and citizen journalists, several of whom were sentenced to imprisonment; and the expulsion of several foreign journalists.¹²

Regarding Morocco's legal system more generally, concerns have been expressed relating to the independence of the Moroccan judiciary and the fairness of legal process, including in respect of due process rights.¹³ The courts are reported to have been used to punish perceived opponents of the government, including critics.¹⁴ Even the judges in Morocco have protested in favor of their independence from the executive.¹⁵ Freedom House has reported that the courts do not consistently uphold due process and will accept evidence tainted by law enforcement violations, including coerced confessions.¹⁶

B. CASE HISTORY

At approximately 10:00 a.m. on August 31, 2019, Ms. Raissouni and her fiancé Mr. Al-Amine,¹⁷ a Sudanese human rights activist, were arrested in Rabat as they left a medical clinic. According to Ms. Raissouni, she had gone to the clinic at approximately 9:00 a.m., seeking medical assistance for severe stomach pain, which turned out to be a blood clot and which required surgical intervention.¹⁸ Dr. Belkeziz testified at trial that her condition

¹¹ See Reporters Without Borders, *Morocco/Western Sahara: Growing Judicial Harassment*, available at <https://rsf.org/en/morocco-western-sahara>.

¹² See *id.*

¹³ See, e.g., Human Rights Watch, *World Report 2018 - Morocco/Western Sahara*, Jan. 18, 2018, available at <https://www.refworld.org/docid/5a61ee4ba.html>; Amnesty International, *Amnesty International Submission for the UN Universal Periodic Review 27th Session of the UPR Working Group*, April/May 2017 - Morocco, May 2017, available at <https://www.refworld.org/docid/590c86804.html>; Amnesty International, *Amnesty International Report 2016/17 - Morocco/Western Sahara*, Feb. 22 2017, available at <https://www.refworld.org/docid/58b033d2a.html>.

¹⁴ See Freedom House, *Freedom in the World 2019: Morocco*, available at <https://freedomhouse.org/report/freedom-world/2019/morocco>.

¹⁵ See The New York Times, *Judges in Morocco Lead Sit-In Calling for Autonomous Judiciary*, Oct. 6, 2012, available at <https://www.nytimes.com/2012/10/07/world/africa/judges-in-morocco-lead-protests-of-weak-corruptible-judiciary.html>. Cf. International Commission of Jurists, *Reforming the Judiciary in Morocco* (2013), available at <https://www.refworld.org/pdfid/530f06dc4.pdf>.

¹⁶ See Freedom House, *Freedom in the World 2019: Morocco*, available at <https://freedomhouse.org/report/freedom-world/2019/morocco>.

¹⁷ Though fiancés under Moroccan law, Mr. Al Amine testified that he and Ms. Raissouni were married under Islamic law. Specifically, Mr. Al Amine testified that, because he and Ms. Raissouni could not register their marriage contract until they received necessary papers from Sudan, his native country, they were still engaged under Moroccan law. Notwithstanding the absence of the registration, Mr. Al Amine stated that he and Ms. Raissouni were married in the eyes of the Quran, which outlines the Al Fatiha ritual, which Mr. Al Amine stated occurred in the presence of two Muslim witnesses, as is required.

¹⁸ There is some inconsistency in the theories presented by the defense, including certain lines of argument that reference a blood clot being the cause of Ms. Raissouni's visit, while other arguments reference a possible miscarriage.

endangered her life. Her fiancé had not accompanied her to the clinic that morning, but later came to the clinic to provide the balance of the payment she owed the clinic.

The police officers who arrested the couple claimed that they were acting on a “tip” that someone was scheduled to have an abortion at the clinic that morning,¹⁹ and on seeing Ms. Raissouni exit the clinic, they observed her to be pale and tired and surmised that she had just undergone an abortion.²⁰ Claiming that her paleness and tiredness, coupled with her departure from the clinic, was sufficient evidence to find that Ms. Raissouni was caught “red-handed” at the scene of the crime, that is, the alleged abortion, the police exercised their purported authority under Sections 56 and 57 of the Moroccan Penal Procedure Code to take certain investigative steps, including, among other things, a search of the clinic, seizure of documents and other material, and the detention and interrogation of Ms. Raissouni and the other defendants. According to the police, during this initial interrogation, both Ms. Raissouni and Dr. Belkeziz admitted that Ms. Raissouni had undergone an abortion,²¹ although Ms. Raissouni and Dr. Belkeziz subsequently denied having said this.²²

According to her defense counsel, Ms. Raissouni’s interrogation in particular was marred by violations of due process. Ms. Raissouni was not informed of her right to remain silent before questioning, and she was denied her request for a lawyer, both of which are guaranteed under international and Moroccan law.²³ Ms. Raissouni refused to sign two reports of her interrogation, including two that contained supposed confessions. Additionally, while Dr. Belkeziz had prescribed an antibiotic for Ms. Raissouni after performing surgery on her, she was prevented from taking the antibiotic while she was in detention.²⁴ Ms. Raissouni also testified that she was provided very little food or water during the interrogation.²⁵ Moreover, during Ms. Raissouni’s interrogation, she stated that she was asked more about her work at *Akhbar Al Yaoum* than about the purported allegations.²⁶

Furthermore, after several hours of interrogation and purportedly relying on the provisions of Moroccan law on “red-handedness,” which permit the police to immediately investigate

¹⁹ The “tip” is described as follows: “The information provided to the police stated that the doctor in question is about to perform an abortion procedure to one of his clients.” Judgment at 2. See also Monitor’s Notes, September 16, 2019 (One of the defense counsel asked (without receiving any answer), “How did this happen? Did they use a wire tap? Spy? How did they come to know that this doctor does abortions?”).

²⁰ See Monitor’s Notes, September 16, 2019 (“[I]t [the police report] states that they noticed ‘paleness’ and ‘tiredness’ on Hajar’s face, which made them think it was an abortion”).

²¹ See Judgment pp 2–3.

²² See Judgment at 12 (“The First Defendant said that he did not tell the police officer that Defendant Hajar Raissouni was pregnant and that he performed abortion on her.”); *id.* at 12 (“Ms. Raissouni insisted that she was not pregnant”).

²³ See Monitor’s Notes, September 16, 2019 (“He also noted that any person arrested and put into custody should be informed of their rights—their right to counsel and silence—but those items were not done in this case.”).

²⁴ See Judgment at 14.

²⁵ See *id.*

²⁶ See *supra* n.3.

a crime and preserve evidence, the police took Ms. Raissouni to a different hospital, where they ordered one or more other doctors to perform an invasive vaginal examination without Ms. Raissouni's consent.²⁷ Ms. Raissouni testified that the examination was very painful.²⁸

The treatment of her co-defendants was also marred by procedural irregularities. For example, although all defendants were interrogated, several of the defendants testified that they were not shown the reports detailing the questions put to them nor their supposed answers.²⁹ Mr. Al Amine asserted that "he did not know anything in the report despite the fact that he had a quick look before he signed it," noting that he had barely eaten during the day in question.³⁰ None of the statements of the other defendants were signed by them. Further, the defense raised concerns regarding the fact that Mr. Al Amine did not speak Moroccan Arabic well, but there was no provision for language assistance.

Following their detention and interrogation, Ms. Raissouni and her co-defendants were charged on September 2, 2019. They were kept in pre-trial detention, despite attempts to procure bail, through to their convictions on September 30, 2019.

At trial, the prosecutor introduced the unsigned statements of the defendants, which included alleged confessions that the defendants denied making. The prosecutor also introduced the medical report of Ms. Raissouni's non-consensual medical examination, which was entitled "Medical Exam of Abortion."

Defense counsel presented evidence, without rebuttal, that the level of a particular hormone in Ms. Raissouni's blood was about 15% of what it would have been if she had been eight weeks pregnant as alleged.³¹ Specifically, the report memorializing Ms. Raissouni's involuntary medical examination noted that the level of BHCG was 13585.90 mul/ml, even though this hormone should have been at 90000 mul/ml if Ms. Raissouni had in fact been eight weeks pregnant. Defense counsel also offered to submit documentary evidence to support the claimed reasons the marriage had not yet been registered,³² and sought to have the witnesses to Ms. Raissouni's religious marriage and the doctor who performed the medical examination called to testify,³³ but the judge refused.³⁴

²⁷ See Judgment at 7.

²⁸ See Monitor's Notes, September 23, 2019; Judgment at 14.

²⁹ See Judgment at 14 (Dr. Belkeziz asserting that "he was not given the opportunity to review the police report nor was [it] read to him"); see also Judgment at 14.

³⁰ See Judgment at 14.

³¹ See Judgment at 17.

³² See Judgment at 33 ("He added that he possesses documentation showing that he submitted a marriage application to [his] embassy.").

³³ See, e.g., Monitor's Notes, September 16, 2019.

³⁴ See Monitor's Notes, September 16, 2019.

The judge's treatment of the defense's contentions was cursory. For instance, in finding that "red-handedness" existed, he appeared to rely only on the "tip."³⁵ The judge also often used phrasing in his questioning that suggested a predetermination of guilt; for example, the judge often asked questions that appeared to rely on the confessions purportedly made to the police, even after the defendants stated they did not make those statements or denied the substance of them in their testimony.³⁶ For instance, in questioning the clinic secretary, the judge asserted that she had said that "the Doctor did an abortion and that . . . [Raissouni] was pregnant and she came in and underwent anesthesia."³⁷ After the secretary denied this, the judge reiterated "I am reporting what you told the police," accepting uncritically the police accounts of confessions that had been denied repeatedly by the defendants.

The judge's final decision then adopted the prosecutor's arguments (for instance, by dismissing Ms. Raissouni's and Mr. Al Amine's arguments that they were married under Islamic law without meaningfully engaging it). Notwithstanding his refusal to permit the testimony of witnesses to the religious marriage,³⁸ the judge concluded that the defendants had provided no evidence that they were married.

On October 16, 2019, the King of Morocco pardoned Ms. Raissouni and her co-defendants.³⁹

³⁵ See Monitor's Notes, September 23, 2019; *see also* Judgment at 19.

³⁶ *See, e.g.*, Monitor's Notes, September 23, 2019 (asking Dr. Belkeziz "So she was pregnant and she lost the baby?").

³⁷ See Monitor's Notes, September 23, 2019.

³⁸ See Judgment at 12.

³⁹ See France24, *Moroccan King Pardons Journalist Jailed for Having an Abortion*, Oct. 16, 2019, available at <https://www.france24.com/en/20191016-moroccan-king-pardons-journalist-jailed-for-having-an-abortion>.

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, the Clooney Foundation for Justice deployed monitors, who were assisted by Arabic translators, to attend Ms. Raissouni's trial in Morocco.

Though one monitor experienced temporary impediments to entering the courtroom, ultimately monitors were able to attend the two substantive hearings as well as the delivery of the judgment. However, given the quality of the sound system, the number of people in the courtroom, and other conditions, there were many instances where the monitor and translator were unable to hear the examinations of the defendants and thus were unable to completely capture the content of their statements. In many cases, the testimony was, however, summarized in the Judgment.

The monitors used the TrialWatch App to record and track what transpired in court and the degree to which the defendant's fair trial rights were respected. The monitor's TrialWatch App responses and notes were shared with Helena Kennedy QC, Director of the International Bar Association's Human Rights Institute and the member of the TrialWatch Experts Panel responsible for evaluating the fairness of the trial.

B. THE ASSESSMENT PHASE

To evaluate the proceedings' fairness and arrive at a grade, Baroness Kennedy reviewed responses to the standardized TrialWatch questionnaire as well as notes taken during the proceedings.

The monitors' notes point to the lack of impartiality of the court and a number of serious irregularities that evidence the court's disregard for the defendants' most fundamental rights. The police first arbitrarily arrested and detained Ms. Raissouni with scant evidence of her committing a crime, thanks to an unreasonably loose interpretation of the notion of *flagrante delicto* (being caught "red-handed"). The very presence of the police outside the clinic as Ms. Raissouni was leaving, following an alleged "tip," even though the clinic sees multiple patients every hour for a multitude of possible reasons, could raise questions relating to a selective targeting by the police of Ms. Raissouni specifically. Indeed, the police seem to have determined Ms. Raissouni's guilt of the crime of abortion on the basis of the tip they received and the fact that she looked "pale" and "tired" coming out of the clinic, which is an arbitrary assessment at best.

This assessment and the credibility of the tip were not tested by the judge, who thus accepted the applicability of the provision on "red-handedness." The police then

conducted a warrantless search of the hospital, the questioning and detention of the medical personnel, and a forced vaginal medical examination of Ms. Raissouni. It is evident that she was subjected to inhuman and degrading treatment, given that she had to undergo a painful and humiliating medical examination, to which she had not consented and which was unnecessary, since other means of obtaining evidence of an alleged abortion were notably available from the evidence seized from the clinic.

It should also be noted that the police intervention resulted in Ms. Raissouni being unable to take the antibiotic that her doctor (and co-defendant) had prescribed for her. Ms. Raissouni and her fiancé were not advised of their rights to silence and counsel, as the police started questioning them immediately upon arrest and failed to allow them to contact a lawyer in due time. The judge conspicuously failed to effectively review these violations of the defendants' rights by the police.

Further, Morocco's abortion law, which criminalizes abortion except where it is necessary for the health of the woman, violates a range of human rights.

Criminalizing abortion poses risks to women's lives and their health. This includes women who experience pregnancy complications and fear seeking appropriate health care out of concern that they or their health-care provider will be prosecuted. As the World Health Organization has explained, "restricting legal access to abortion does not decrease the need for abortion. Rather, it likely increases the number of women seeking illegal and unsafe abortions, leading to higher rates of morbidity and mortality."⁴⁰ The UN Committee on the Elimination of Discrimination Against Women has echoed this in the specific context of Morocco, expressing concern at the "the incidence of clandestine abortions, which puts the women's health at great risk."⁴¹ The UN Human Rights Committee has made similar findings.⁴²

The UN Human Rights Committee has recently clarified that due to the risk that criminalization of abortion poses to women "States parties may not regulate pregnancy or abortion . . . in a manner that runs contrary to their duty to ensure that women and girls do not have to undertake unsafe abortions For example, they should not . . . apply criminal sanctions against women and girls undergoing abortion."⁴³ The Committee

⁴⁰ World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems*, p. 90 (2012), available at https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf;jsessionid=295747331E23A710FA52EC2FFEC64BBF?sequence=1.

⁴¹ Human Rights Committee, Concluding Comments of the Committee on the Elimination of Discrimination Against Women, UN Doc. CEDAW/C/MAR/CO/4, Apr. 8, 2008, ¶ 30.

⁴² Concluding Observations on the Sixth Periodic Report of Morocco, UN Doc. CCPR/C/MAR/CO/6, Dec. 1, 2016, ¶ 21 ("The Committee notes that a disturbingly high number of clandestine abortions are performed in the State party which endanger the lives and health of the women concerned. It remains concerned about the extremely restrictive nature of the conditions under which a woman may legally have her pregnancy terminated in the State party and about the heavy penalties that are imposed in cases of clandestine abortions.").

⁴³ Human Rights Committee, *General Comment No. 36*, U.N. Doc CCPR/C/GC/36, Oct. 30, 2018, ¶ 8.

on the Elimination of Discrimination Against Women has made similar findings, concluding that the criminalization of abortion amounts to gender-based violence.⁴⁴

Further, laws that prohibit abortion under nearly all circumstances and impose criminal penalties (as is the case in Morocco) violate a range of other rights, including the right to health, the right to be free from torture or other cruel, inhuman, or degrading treatment,⁴⁵ the right to equality and non-discrimination,⁴⁶ and the right to privacy.⁴⁷

The criminalization of private, consensual sexual relations between adults also violates the right to privacy. The UN Human Rights Committee, for instance, has called on states not to penalize such conduct and has clarified that adultery for instance is an act the “very criminalization [of which] violates the Covenant.”⁴⁸ Further, the UN Working Group on Discrimination Against Women in Law and Practice has recently affirmed that “the criminalization of sexual relations between consenting adults is a violation of their right to privacy, infringing the International Covenant on Civil and Political Rights, as established almost two decades ago by international human rights jurisprudence.”

For these reasons, the laws pursuant to which Ms. Raissouni was prosecuted were inconsistent with international human rights standards.

Then, during the trial, the behavior of the judge suggested he had already determined the defendants were guilty, which constitutes a violation of the defendants’ right to be presumed innocent. Indeed, the judge’s very phrasing throughout the trial, along with his refusal to hear certain witnesses presented by defense counsel, and his unquestioning reliance on the police reports and the unsigned and contested confessions all seem to show a clear bias against the defendants.

The judge did not find that the unjustified and non-consensual invasive medical examination inflicted on Ms. Raissouni violated her right to freedom from cruel, inhuman and degrading treatment, despite arguments by defense counsel to this effect; nor did he find that the evidence extracted from this abusive examination was inadmissible, even

⁴⁴ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 35 on Gender-Based Violence Against Women*, UN Doc. CEDAW/C/GC/35, July 14, 2017, ¶ 18.

⁴⁵ *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/HRC/31/57, ¶ 43 (2016) (“Highly restrictive abortion laws that prohibit abortions even in cases of incest, rape or fetal impairment . . . violate women’s right to be free from torture and ill-treatment.”).

⁴⁶ Committee on the Elimination of Discrimination Against Women, *L.C. v. Peru*, U.N. Doc. CEDAW/C/50/D/22/2009, 2011 ¶¶ 8.15 (“The Committee also considers that the facts reveal a violation of article 5 of the Convention, as the decision to postpone the surgery due to the pregnancy was influenced by the stereotype that protection of the foetus should prevail over the health of the mother.”)

⁴⁷ Human Rights Committee, *Mellet v. Ireland*, U.N. Doc. CCPR/C/116/D/2324/2013, June 9, 2016, ¶¶ 7.7-7.8 (“The Committee notes that the author’s much-wanted pregnancy was not viable, that the options open to her were inevitably a source of intense suffering and that her travel abroad to terminate her pregnancy had significant negative consequences for her, as described above, that could have been avoided if she had been allowed to terminate her pregnancy in Ireland.”).

⁴⁸ Human Rights Committee, *General Comment No. 36*, U.N. Doc CCPR/C/GC/36, Oct. 30, 2018, ¶ 36.

when the lab results contained in this report did not actually support the allegation that Ms. Raissouni was pregnant.

Indeed, the judge appears to have been especially motivated against the defendants in this trial. He dismissed most of the defense counsels' key arguments and consistently violated rules of international human rights law as well as Morocco's own laws.

ANALYSIS



A. APPLICABLE LAW

This report draws on the International Covenant on Civil and Political Rights (ICCPR);⁴⁹ the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);⁵⁰ jurisprudence from the UN Human Rights Committee (HRC), tasked with monitoring implementation of the ICCPR; and widely accepted guidelines that establish best practices in the field of prosecutorial ethics. Morocco ratified the ICCPR in 1979 and ratified the CAT in 1993.

B. INVESTIGATION AND PRE-TRIAL VIOLATIONS

Right to Be Free from Arbitrary Detention

Article 9(3) of the ICCPR provides that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge.” The UN Human Rights Committee has explained that “promptly” generally means within 48 hours.⁵¹ Morocco’s Penal Procedure Code imposes the same requirement: that detentions cannot exceed 48 hours before the individual is brought before court.⁵²

In this case, it appears from the police report that the defendants were taken into custody at approximately 10 a.m. on August 31, 2019, and they were not brought before court until the afternoon of September 2, 2019. Moreover, it was not until September 4, 2019 that the police received the report from the medical doctor regarding the involuntary medical examination, such that the indictment was on the basis of no medical evidence.⁵³

Further, pretrial detention must also be lawful.⁵⁴ In this case, the defendants’ detention was (at least initially) justified on the basis that they had been caught “red-handed.” Under Moroccan law, the “red-handedness” provisions provide the police broad discretion to investigate and detain suspects that are caught in “*flagrante delicto*” while committing a crime.⁵⁵ Per the Code, a defendant is caught red-handed if the perpetrator is caught while committing the crime or immediately thereafter or if the perpetrator is caught shortly after the commission of the crime while carrying a weapon or other items that indicate

⁴⁹ International Covenant on Civil and Political Rights, Art. 14(1), Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171 [hereinafter “ICCPR”].

⁵⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) [hereinafter “CAT”].

⁵¹ Human Rights Committee, *General Comment* 35, U.N. Doc. CCPR/C/GC/35, Oct. 2014, ¶ 33.

⁵² See Moroccan Penal Procedure Code, Art. 66.

⁵³ See Judgment at 7–8.

⁵⁴ Human Rights Committee, *Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, Aug. 10, 1994, ¶ 9.8.

⁵⁵ Moroccan Penal Procedure Code, Arts. 56, 57, 73, 74.

participation in the crime, or signs of such participation in the crime are found on the defendants.⁵⁶ When a suspect is caught red-handed, the King's agent, here the police, is empowered to interrogate the suspect and determine whether to place the suspect in prison if the crime is punishable by imprisonment.⁵⁷

In this case, on seeing Ms. Raissouni and Mr. Al-Amine leave the clinic, with Ms. Raissouni allegedly appearing pale and tired, the police determined that they could effect a warrantless search, seizure, detention, and forced medical examination. The defense, on the other hand, questioned the "tip" that had allegedly prompted the police to go to the clinic, raising concern that if the police thought the clinic was a place where abortions were routinely performed, "[w]hy did they wait for Hajar to leave? Why didn't the police go into the clinic and catch them red-handed? Why Hajar? If the clinic sees 10-12 patients every hour, why Hajar?" Defense counsel also noted that, "[t]he judicial police should have interviewed every single person that left the clinic."⁵⁸ Likewise, another lawyer for the defense also questioned the grounds for the warrantless search, seizure, and detention, stating, "[d]o 'paleness' and 'tiredness' go exclusively with abortion? Of course not."⁵⁹

Based on the evidence in the record, the police's determination that Ms. Raissouni had been caught red-handed appears to have been arbitrary.

Finally, the UN Human Rights Committee has made clear that pre-trial detention should be the exception, rather than the rule.⁶⁰ Further, prosecutors are expected to provide an evidence-based rationale as to why pretrial detention is required⁶¹ and the ICCPR limits the bases for pretrial detention to a limited set of purposes: to prevent flight, interference with evidence, and the recurrence of serious crime.⁶²

In this case, the defendants were detained from their arrest through to the date of their conviction despite numerous requests that the defendants be released on bail.⁶³ The judge found that because the standards for red-handedness were met, there was reason to continue their pre-trial detention.⁶⁴ This is inconsistent with the individualized review and limitations on pretrial detention that the ICCPR prescribes.

⁵⁶ Moroccan Penal Procedure Code, Art. 56.

⁵⁷ Moroccan Penal Procedure Code, Art. 47.

⁵⁸ Monitor's Notes, September 16, 2019.

⁵⁹ See Monitor's Notes, September 16, 2019.

⁶⁰ See Human Rights Committee, *General Comment 35*, U.N. Doc. CCPR/C/GC/35, Oct. 2014, ¶ 8.

⁶¹ Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, Dec. 4, 2012, ¶ 7.10

⁶² Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, July 16, 2010, ¶ 10.4.

⁶³ See Monitor's Notes, September 16, 2019 ("Here we have a doctor and a journalist. Do you think if you release them, they won't attend their next hearing? Of course not.")

⁶⁴ See Monitor's Notes, September 23, 2019.

Right to Be Free from Torture and Ill-Treatment

Article 7 of the ICCPR guarantees that “[n]o one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment.” The UN Human Rights Committee has recalled “that this article seeks to protect both the dignity and the physical and mental integrity of the individual.”⁶⁵ Further, the ICCPR provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁶⁶ This article “imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant.”⁶⁷

In this case, Ms. Raissouni was subjected to inhuman and degrading treatment by virtue of the non-consensual medical examination to which she was forced to submit. The UN Committee Against Torture has previously urged states to “prohibit intrusive medical examinations that have no medical justification and cannot be performed with the free and informed consent of the persons subjected to them, who consequently will then be prosecuted.”⁶⁸ Further, in the context of women and LGBTQ persons in detention, the UN Special Rapporteur on Torture has likewise recommended that states should “[p]rohibit forced and coerced pregnancy tests and obtain full, free and informed consent for such tests.”⁶⁹ Moreover, the UN Committee Against Torture has expressed concern that in some circumstances required gynecological examinations may be degrading⁷⁰ and the Office of the High Commissioner for Human Rights has concluded that “[v]irginity testing [another form of forced gynecological exam] violates the right to be free from torture or cruel, inhuman or degrading treatment or punishment, as the examination is often humiliating, degrading and conducted in a manner to intimidate and punish.”⁷¹

In this case, Ms. Raissouni testified that she protested against the examination.⁷² She also testified that the examination was very painful.⁷³ There appear to have been other

⁶⁵ Human Rights Committee, *MG v. Germany*, UN Doc. CCPR/C/93/D/1482/2006, July 23, 2008, ¶ 9.2.

⁶⁶ ICCPR, Art. 10(1).

⁶⁷ Human Rights Committee, *General Comment 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, UN Doc. HRI/GEN/1/Rev.1, Apr. 10, 1992, ¶ 3.

⁶⁸ Committee Against Torture, *Concluding Observations on the Third Periodic Report of Tunisia*, UN Doc. CAT/C/TUN/CO/3, June 10, 2016, ¶ 42.

⁶⁹ *Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/HRC/31/57, Jan. 5, 2016, ¶ 70(m).

⁷⁰ Committee Against Torture, *Concluding Observations of the Committee Against Torture (Austria)*, UN Doc. CAT/C/AUT/CO/4-5, May 20, 2010, ¶ 22.

⁷¹ *Eliminating Virginity Testing: An Interagency Statement*, WHO/RHR/18.15, available at <https://apps.who.int/iris/bitstream/handle/10665/275451/WHO-RHR-18.15-eng.pdf?ua=1>.

⁷² Cf. *UN Special Working Group on Women’s Autonomy, Equality and Reproductive Health in International Human Rights*, Oct. 2017, available at

<https://www.ohchr.org/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf> (“The right of a woman or girl to make autonomous decisions about her own body and reproductive functions is at the very core of her fundamental right to equality and privacy, concerning intimate matters of physical and physiological integrity.”).

⁷³ See Monitor’s Notes, September 23, 2019; Judgment at 14.

means of obtaining evidence of an alleged abortion, including the evidence seized from the clinic. This includes blood evidence, as well as the blood tests that were taken from Ms. Raissouni and suggested that Ms. Raissouni was *not* pregnant. In addition to this violation of her rights, Ms. Raissouni was also prevented from taking the antibiotic that Dr. Belkeziz had prescribed for her and provided with little food or water.

Rights to Silence and Counsel

On approaching Ms. Raissouni and Mr. Al Amine, the police immediately began questioning the couple about the alleged crime without advising them of their rights to silence or counsel. They—along with the rest of the defendants—were detained and subsequently taken to the police station for further interrogation. Under both international law and Moroccan law, any person who is arrested or detained must immediately be informed, in a manner that is understandable to them, of their right to remain silent and their right to the assistance of counsel.⁷⁴ There is no evidence that any of the defendants were informed of such rights, as they were immediately questioned by the police at the scene.

Additionally, Moroccan law also gives every detainee the right to the assistance of counsel and requires the police to contact counsel no later than halfway through the allowed preliminary detention period.⁷⁵ Because the applicable preliminary detention period in this case was 48 hours,⁷⁶ the police should have contacted counsel within the first 24 hours of detention. There is no evidence that the police did so. In fact, Ms. Raissouni testified in court that, during her detention, she requested an attorney, but her request was ignored,⁷⁷ a clear violation of her rights.⁷⁸

C. VIOLATIONS AT TRIAL

Rights to Be Presumed Innocent and to Be Tried by a Competent, Independent, and Impartial Tribunal

The ICCPR states that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”⁷⁹ As described by the UN Human Rights Committee, “[t]he presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond

⁷⁴ See Working Group on Arbitrary Detention, *Lenard Odillo et al. v Malawi*, No. 15/2012, ¶ 52 (2012); Working Group on Arbitrary Detention, *Zeinab Jalalian v. Islamic Republic of Iran*, No. 1/2006, ¶ 33 (2016); Moroccan Penal Procedure Code, Art. 66; Moroccan Constitution, Art. 23.

⁷⁵ See Moroccan Penal Procedure Code, Art. 66; Moroccan Constitution, Art. 23.

⁷⁶ See Moroccan Penal Procedure Code, Art. 66.

⁷⁷ See Monitor’s Notes, September 23, 2019; Judgment at 14.

⁷⁸ Human Rights Committee, *General Comment No. 32*, CCPR/C/GC/32, Aug. 23 2007, ¶ 32.

⁷⁹ ICCPR, Art. 14(2).

reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle.”⁸⁰ Additionally, the ICCPR requires that “all persons shall be equal before the courts and tribunals” and that “in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁸¹

The UN Human Rights Committee has explained that “[t]he requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, or have preconceived ideas about the matter under study, or act in a manner that improperly promotes the interests of one of the parties to the detriment of the other. Second, the Tribunal must also appear impartial to a reasonable observer.”⁸²

Behavior of the court that suggests it has predetermined the guilt of the defendant may thus constitute a violation both of the right to be presumed innocent and the right to be tried by an impartial tribunal.

For instance, in *Ashurov v. Tajikistan*, the UN Human Rights Committee found a violation of the right to be tried by an impartial tribunal where the court asked leading questions and “effectively replaced the passive and unprepared prosecutor.”⁸³ Likewise, the UN Human Rights Committee has found violations of the right to be tried by an impartial tribunal where the court’s judgment did not address key defense arguments.⁸⁴

In this case, the phrasing the judge used in examining the defendants at trial, his acceptance of police reports that purported to contain confessions but bore no signatures and thus were not credible or dependable as a matter of law, and his refusal to entertain additional witnesses, despite disputes on key issues of fact, strongly suggest that he prejudged the defendants’ guilt even before they appeared in his courtroom.

This conclusion is bolstered by the decision the judge published explaining his ruling. After setting out the defense’s arguments and the prosecution’s arguments, he adopted the prosecution’s arguments wholesale, often verbatim, and without any meaningful engagement with the defense’s arguments. One example is the way in which the judge dismissed Ms. Raissouni’s and Mr. Al Amine’s arguments that they were married under Islamic law. As Mr. Amine testified, he and Ms. Raissouni were engaged but could not

⁸⁰ Human Rights Committee, *General Comment No. 32*, CCPR/C/GC/32, Aug. 23 2007, ¶ 30.

⁸¹ ICCPR, Art. 14(1).

⁸² Human Rights Committee, *General Comment No. 32*, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, ¶ 21; see also Human Rights Committee, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989, Nov. 5, 1992, ¶ 7.2.

⁸³ Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, Mar. 20, 2007, ¶ 6.6.

⁸⁴ See Human Rights Committee, *Iskandarov v. Tajikistan*, U.N. Doc. CCPR/C/101/D/1499/2006, Apr. 28, 2011, ¶ 6.6; Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. No. CCPR/C/97/D/1519/2006, Dec. 3, 2009, ¶ 7.2–7.3.

register the marriage contract because he was waiting for papers from Sudan, his native country. Notwithstanding the absence of the registration, Mr. Al Amine stated that he and Ms. Raissouni had had a religious marriage (Al Fatiha). Although not accepted as proof of marriage under Moroccan law,⁸⁵ the fact of their religious marriage would seem to have been relevant, given Morocco's practice of subsequent registration of religious marriages.⁸⁶ Mr. Al Amine testified that this ritual occurred, and the defense offered to call witnesses and to provide further proof corroborating Mr. Al Amine's statements regarding why the marriage contract was not yet registered. The judge rejected the need to hear further testimony or receive further paperwork, and in his written decision, he stated that this argument "was intended to distort and deceive the Court. The two Defendants did not provide evidence that they were engaged."⁸⁷

The UN Human Rights Committee has held that proceedings that are "manifestly arbitrary"⁸⁸ based on the evidence presented may violate the presumption of innocence. In *Ashurov*, for instance, the defendant presented evidence that he could not have been involved in the armed robbery at issue (as he was imprisoned in another country at the time). The UN Human Rights Committee found that the failure of the domestic court to take this into account gave rise to "reasonable doubts about the propriety of the [defendant]'s conviction."⁸⁹ Similarly in this case, based on the records offered by the prosecutor and the testimony adduced at trial, it is clear that the evidence was not sufficient to find any of the defendants guilty.

Among other things, the medical examination conducted on Ms. Raissouni revealed that the levels of pregnancy hormones in her blood were far below the levels corresponding to an eight-week pregnancy, contradicting the conclusion of the doctor's report offered by the prosecution. Moreover, as discussed above and *infra*, all of the defendants denied making statements the police alleged that they had made. Despite this, the judge admitted the records of their alleged "confessions," indicating that he did not need to exclude them despite the fact that they were unsigned in contravention of Moroccan law because the particular articles in the Moroccan Penal Procedure Code—here, Articles 24, 66, and 67—do not specifically stipulate that exclusion is the remedy for an unsigned police document.⁹⁰

Further, the defense pointed out that the prosecutor offered no support regarding the credibility of the purported "tip," with the tip and Ms. Raissouni's appearance being the

⁸⁵ Safaa Kasraoui, *Hajar Raissouni's Case Brings to Light Fatiha Marriage, Abortion, Morocco World News*, Sept. 6, 2019, available at <https://www.moroccoworldnews.com/2019/09/282031/hajar-raissounis-case-fatiha-marriage-abortion/>.

⁸⁶ Landinfo, *Morocco: Marriage and Divorce – Legal and Cultural Aspects* 28-29 (2017), available at <https://landinfo.no/wp-content/uploads/2018/04/Morocco-Marriage-and-divorce-legal-and-cultural-aspects-21042017-final.pdf>.

⁸⁷ See Judgment at 33.

⁸⁸ See Human Rights Committee, *Griffin v. Spain*, U.N. Doc. CCPR/C/53/D/493/1992, Apr. 5, 1995, ¶ 9.6.

⁸⁹ See Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, Mar. 20, 2007, ¶ 6.7.

⁹⁰ See Judgment at 22.

only basis for invoking the provisions on red-handedness, which permit the police to immediately investigate a crime and preserve evidence without needing to procure warrants. On the latter point and as discussed above, the defense noted that the prosecution appeared to rely on the fact that Ms. Raissouni had looked “pale” and “tired” as indications that she had undergone an abortion—an observation of clearly limited evidentiary value.

Finally, the record of the pre-trial investigation itself indicated prejudgment of the defendant’s guilt. For instance, defense counsel argued that one report was titled “Medical Exam of Abortion,” which appeared to presume the result of the examination.

Right to Call and Examine Witnesses

Under the ICCPR, in defending against criminal charges, “everyone shall be entitled to the following minimum guarantees, in full equality . . . (e) [t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”⁹¹ As stated above, the defendants were denied the right to call and examine witnesses, including both the individuals who could have verified the religious marriage of Ms. Raissouni and Mr. Al Amine and the doctor who examined Ms. Raissouni. The defendants were thus deprived of the right to call witnesses and put on their case.

Introduction of Improperly Obtained Evidence

The UN Human Rights Committee has made clear that evidence obtained through cruel, inhuman and degrading treatment must be excluded from trial.⁹² Indeed, the Committee has explained that because “Article 7 . . . is non-derogable in its entirety, no statements or confessions or, in principle, other evidence obtained in violation of [Article 7] may be invoked as evidence in any proceedings covered by Article 14, including during a state of emergency.”⁹³

It is also instructive to refer to European Court of Human Rights jurisprudence regarding when evidence derived from a forced medical procedure should be admitted at trial. In *Jalloh v. Germany*, the Court held that a forced medical procedure “must be convincingly justified on the facts of a particular case,” especially “where the procedure is intended to retrieve from inside the individual’s body real evidence of the very crime of which he is suspected.”⁹⁴ To determine whether such a forced procedure may be proper, a court

⁹¹ ICCPR, Art. 14(3)(e).

⁹² Human Rights Committee, *General Comment No. 32*, CCPR/C/GC/32, Aug. 23, 2007, ¶ 41.

⁹³ *Id.* ¶ 6.

⁹⁴ See *Jalloh v. Germany*, App. No. 54810/00, Council of Europe: European Court of Human Rights, July 11, 2006, ¶ 71.

must apply “strict scrutiny [to] of all the surrounding circumstances,” including the seriousness of the offense, alternative methods of recovering evidence, and whether the procedure entailed any risk of lasting detriment to the defendant’s health.⁹⁵

As described above, the examination in this case does not appear to have been objectively justified by any legitimate forensic need. The basis for Ms. Raissouni’s initial arrest—her paleness and tired appearance after receiving a medical procedure—did not justify the invasive examination. The fact that the result of the examination was memorialized in a report that assumed the conclusion of the crime by its title—“Medical Exam of Abortion”—even though the laboratory results contained in the report did not support the allegation that Ms. Raissouni was eight weeks pregnant as the police alleged, further undermines the justification for the examination. Under prevailing international standards, the results of the medical examination should not have been admitted or considered.

D. OTHER FAIRNESS CONCERNS

Prosecutorial Fairness

The prosecution’s conduct in the proceedings against Ms. Raissouni falls short of international guidelines on the role of the prosecutor. Per the UN’s Guidelines on the Role of Prosecutors, prosecutors are to “perform their duties fairly.”⁹⁶ Parallel guidelines issued by the International Association of Prosecutors and the Council of Europe clarify that “fairness” in the execution of prosecutorial duties encompasses, among other things, assisting the court in arriving at the truth, using evidence “reasonably believed to be reliable,” and declining to prosecute a case “beyond what is indicated by the evidence.”⁹⁷

The prosecutor does not appear to have adhered to these principles. Rather, there were numerous violations of Moroccan procedural protections during the investigation, but notwithstanding these infirmities, the prosecutor affirmatively used the (alleged) information gathered, and the court accepted it.

First, Moroccan law requires the police to inform the prosecutor of a search on the basis of red-handedness so the prosecutor may authorize it.⁹⁸ Here, there is no proof such

⁹⁵ See *id.*

⁹⁶ United Nations Office of the High Commissioner for Human Rights, *United Nations Guidelines on the Role of Prosecutors*, 1990, ¶ 12, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>.

⁹⁷ International Association of Prosecutors, *Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors*, 1999, Principles 3.6, 4.2, available at [https://www.iap-association.org/getattachment/Resources-Documents/IAP-Standards-\(1\)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documents/IAP-Standards-(1)/IAP_Standards_Oktober-2018_FINAL_20180210.pdf.aspx). See also Council of Europe, *European Guidelines on Ethics and Conduct for Public Prosecutors*, 2005, Section III, available at <https://rm.coe.int/conference-of-prosecutors-general-of-europe-6th-session-organised-by-t/16807204b5>.

⁹⁸ See Moroccan Penal Procedure Code, Art. 57.

notice was made to the prosecutor regarding either the search of Dr. Belkeziz's clinic or the coerced medical examination of Ms. Raissouni. On the latter point, it appears that the prosecutor may not have even been aware of the medical examination until days later. The defendants argued that, in the September 4, 2019 police request to obtain the *results* of the coerced medical examination, the police recounted that they had spoken to the doctor the previous day, September 3, and that the doctor had requested written authorization from the prosecutor before he would release the report, requesting that the police seek such an authorization.⁹⁹ The following day, September 4, the police provided this written authorization and the doctor provided his report the same day. It would appear that such an authorization would have been unnecessary if the examination had been authorized in advance.

To rebut the defendants' argument, the prosecutor argued—and the court accepted—that the police were empowered to gather evidence under the Moroccan Penal Procedure Code, and that was sufficient for the police to have executed the warrantless search and to have ordered a coerced medical examination. However, a general delegation to investigate crimes cannot permit a police officer to violate rights.

Second, the Moroccan Penal Procedure Code gives persons the right to read (or be read) and affirm police reports that include statements made by them.¹⁰⁰ The Code also requires that such reports be signed by the preparer (the police) and the author of the statements, and if the author refuses to sign, the report must contain both a memorialization of the refusal and reason for the refusal.¹⁰¹ Any report that is missing a required signature or does not follow the procedures set forth by the Moroccan Penal Procedure Code should not be admitted into evidence or relied on by the court.¹⁰² The judge appeared to wholly disregard this argument made by the defense and which is based on Article 289 by categorically stating that the particular provisions relating to the reports state no remedy.

In this case, there are three different police reports that attribute statements to Ms. Raissouni, only one of which was signed by her. The other two reports, which do not bear her signature, purport to include Ms. Raissouni's confession after she was confronted with the supposed statement of Maryam Azelmadh that Ms. Raissouni had had an abortion. Both Ms. Raissouni and Ms. Azelmadh denied making any such statement and Ms. Azelmadh's statement was likewise unsigned. Indeed, the police alleged that all of the defendants confessed to the abortion, but none of these statements were knowledgably signed by the defendants,¹⁰³ and each defendant testified at trial that

⁹⁹ See Judgment at 7–8.

¹⁰⁰ See Moroccan Penal Procedure Code, Arts. 24, 67.

¹⁰¹ See Moroccan Penal Procedure Code, Art. 69.

¹⁰² See Moroccan Penal Procedure Code, Art. 289 (stating that reports and minutes issued by the judicial police shall not be admitted, unless they follow the correct form and the author guarantees its content).

¹⁰³ Though Mr. Al Amine signed his police statement, he testified he did not know what it contained. See Judgment at 14 (testifying that he “did not know anything in the report” though he signed it).

they made no such confession. Notwithstanding these violations in respect of the form of the reports and the conflict between the alleged unaffirmed and unsigned confessions and the defendants' testimony at trial, the prosecution relied on them.

Taken together, these procedural irregularities raise significant questions about the conduct of the prosecution.

Ulterior Motive

The case against Ms. Raissouni raises serious concerns as to whether the prosecution was based on political motives. Proving an ulterior motive necessarily requires reliance on circumstantial evidence. The UN Human Rights Committee has made clear that prosecution for the legitimate exercise of rights is unlawful.¹⁰⁴ In this regard, it may be useful to refer to the guideposts established by the European Court of Human Rights in determining whether a prosecution is politically motivated. These guideposts include the political climate, the timing of the proceedings, and evidence of selective targeting of a specific individual.¹⁰⁵ All three of these guideposts are present in the prosecution of Ms. Raissouni.

Timing and Political Climate. As discussed above, in Morocco, Ms. Raissouni's prosecution is part of a pattern in which the justice system is used to target journalists critical of the government—particularly journalists employed by *Akhbar Al Yaoum* and journalists reporting on the Al-Hirak protests.

The Targeting of Ms. Raissouni. The investigation and prosecution of Ms. Raissouni appears to have specifically targeted her. As described above, a “tip” of unknown and untested origins purportedly provided the basis for the reconnaissance of Dr. Belkeziz's clinic at the moment that Ms. Raissouni was leaving the clinic. Defense counsel suggested that Ms. Raissouni may have been under surveillance given her profession and her family. This suggestion is supported by the content of Ms. Raissouni's interrogation. As described above, the police, in interrogating Ms. Raissouni, asked many questions about her political writings for *Akhbar Al Yaoum*, which covered the Al-Hirak protests; other employees of *Akhbar Al Yaoum*; and members of her family deemed critical of the government.

Furthermore, according to Chafik Chraibi, president of the Moroccan Association to Combat Clandestine Abortions, between 600 and 800 clandestine abortions take place

¹⁰⁴ See Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, 2018, ¶ 7.7.

¹⁰⁵ See *Merabishvili v. Georgia*, Eur. Ct. H.R., App. No. 72508/13, 2017, ¶¶ 312–17; *Selahattin Demirtas v. Turkey* (No. 2), Eur. Ct. H.R., App. No. 14305/17, 2018, ¶¶ 263–67; *Navalnyy v. Russia*, Eur. Ct. H.R., App. No. 29580/12, 2018, ¶¶ 168–170.

each day in Morocco, about two-thirds of them by licensed doctors.¹⁰⁶ Further, patients are almost never arrested in abortion-related cases. And though the annual estimate for clandestine abortions exceeds 200,000 annually, very few prosecutions in total occur. Last year, for example, 73 people were arrested on charges of performing or receiving illegal abortions.¹⁰⁷ Thus, the prosecution of Ms. Raissouni is itself anomalous in a country that rarely enforces these laws and even more rarely against the patient, further supporting the contention that Ms. Raissouni may have been selectively targeted.

Heightened Scrutiny: Democratic Values. The prosecution of Ms. Raissouni should trigger heightened scrutiny due to the possibility that the ulterior motive at hand was the suppression of democratic values by way of stifling the press. *Akhbar Al Yaoum* is among the last independent media sources in Morocco; it prints pieces on protest movements and other articles critical of the government. As a result, there have been a series of prosecutions that have targeted employees of *Akhbar Al Yaoum* over the last several years. By demonstrating to journalists that the price they pay for speaking critically of the government is their freedom, such prosecutions serve to silence dissent.

As discussed above, the King of Morocco pardoned all five defendants. While the fact that Ms. Raissouni and her co-defendants did not have to serve the prison sentences handed down against them is positive, no truly corrective actions were taken. In the first instance, a pardon does not restore the convicted person's innocence. Moreover, with the defendants pardoned, much of the public debate prompted by Ms. Raissouni's prosecution—those relating to the fairness of Morocco's justice system and the conduct of the police and prosecutor—has largely ceased.¹⁰⁸

¹⁰⁶ See Human Rights Watch, *Morocco: Trial Over Private Life Allegations*, Sept. 9, 2019, available at <https://www.hrw.org/news/2019/09/09/morocco-trial-over-private-life-allegations#>.

¹⁰⁷ The New York Times, *Moroccan Journalist Sentenced to Prison for Abortion and Premarital Sex*, Sept. 30, 2019, available at <https://www.nytimes.com/2019/09/30/world/africa/morocco-abortion-sex-hajar-raissouni.html>.

¹⁰⁸ France Culture, *Au Maroc, la Libération d'Hajar Raissouni et l'Ambivalent Fait du Prince*, Oct. 17, 2019, available at <https://www.franceculture.fr/emissions/revue-de-presse-internationale/la-revue-de-presse-internationale-emission-du-jeudi-17-octobre-2019>. Attempts to reform the law on abortion and premarital sex appear to continue. See Morocco World News, *Debate over Sexual Freedoms in Morocco Rages On*, Oct. 23, 2019, available at <https://www.moroccoworldnews.com/2019/10/285174/debate-over-sexual-freedoms-in-morocco-rages-on/>.

CONCLUSION AND GRADE



At a minimum, Ms. Raissouni's trial was marred by the appearance of judicial bias. For instance, the court credited evidence obtained in violation of Moroccan law and, even then, convicted the defendants without sufficient evidence to substantiate the charges. The court also interfered with Ms. Raissouni's ability to put on a defense by preventing her from calling witnesses and offering other potentially relevant evidence.

Further, the background of the case suggests that Ms. Raissouni's prosecution may have been politically motivated. Throughout her interrogation, the police specifically questioned Ms. Raissouni regarding her political writings, the newspaper she works for, her colleagues, and other persons who criticize the government, including members of her family. Additionally, although abortion is formally prohibited in Morocco, reports suggest that this law is rarely enforced, which makes the authorities' decision to prosecute Ms. Raissouni even more suspect.

Although King Mohammed VI pardoned both Ms. Raissouni and her fiancé, which led to a happy outcome for the defendants, her trial entailed numerous violations of international standards which indisputably affected the outcome. Ms. Raissouni was also exposed to physical harm, not only from the invasive medical procedures she went through during the investigation, but also because she was prevented from taking her prescribed antibiotic, and provided inadequate food and water. For these reasons, the trial is given a 'D.'

GRADE:

D



GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”¹⁰⁹ and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

¹⁰⁹ ICCPR, Article 26.