



Morocco v. Omar Radi

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

ABOUT THE AUTHORS¹:

University of Southern California Gould School of Law International Human Rights Clinic (IHRC) gives students the opportunity to work on projects and cases, both local and international, which confront the most pressing human rights concerns of our day. Under the supervision of Director Professor Hannah Garry, student attorneys seek justice on behalf of victims, hold perpetrators of serious human rights abuses accountable and work towards progressive development of the law. Since the Clinic's launch in 2011, students have assisted international judges and legal officers by reviewing briefings, conducting research, and drafting extensive bench memoranda and sections of judgments in a number of international trials. These cases have involved 15 former heads-of-state and high-level military leaders alleged responsible for war crimes, crimes against humanity, genocide and terrorism perpetrated against hundreds of thousands of victims in Cambodia, Democratic Republic of the Congo, Lebanon and Rwanda. Clinic students have also achieved near 100 percent success rate in representing refugees, human rights defenders, and human trafficking victims of forced labor and commercial sex. Individual clients are from Cameroon, El Salvador, Ethiopia, Honduras, Guatemala, Mexico, Peru, the Philippines, Syria and Uganda.

Professor Hannah Garry is clinical professor of law and founding director of USC Gould School of Law's International Human Rights Clinic. Her areas of teaching and research are in international human rights law, international criminal law and international refugee law. Prior to joining USC in 2010, Prof. Garry was a visiting professor in international law at the University of Colorado School of Law for three years, where she supervised students on U.S. Alien Tort Statute litigation and representation of Guantanamo Bay detainees. During this time, she also served as an American Society of International Law Presidential Fellow. Professor Garry has been a research consultant with Oxford University, UK, and Makerere University in Uganda implementing a multi-year socio-legal field research project on protection of refugee rights in East Africa. She was also a visiting lecturer at Peking University Law School in Beijing; a visiting scholar at the European Court of Human Rights in Strasbourg, France; and a guest lecturer at the 4th Thematic Course on Refugee Law and Human Rights, at the International Institute of Humanitarian Law in San Remo, Italy. Recently, Prof. Garry has served as amicus curiae together with former United Nations Special Rapporteurs in the Afghanistan Situation before the International Criminal Court; senior legal adviser to the Extraordinary Chambers in the Courts of Cambodia; and a visiting professor in the Presidency of the International Criminal Court. Professor Garry thanks the Clooney Foundation for Justice's TrialWatch Initiative for its collaboration in the monitoring of the trial at issue in this report and for final production of this report.

IHRC Student Attorneys: Before law school **Krishna Mae Cabrera** worked at the Philippine Commission on Human Rights (CHR) and as a volunteer teacher and tutor for

¹ This report was researched and authored by faculty and students of USC's International Human Rights Clinic at USC Gould School of Law. This Report represents the views and perspectives of the authors. It does not represent an institutional position of USC or the Gould School of Law.

elementary school and high school scholars from the slums. While at the CHR, Krisha conducted research for a debate in Congress against reinstating the death penalty. She also researched extrajudicial killings, international relations, and human rights education and helped lead an event promoting inter-agency cooperation and respect for human rights among governmental agencies. As a human rights activist, she has been involved in demonstrations and movements denouncing the killings of indigenous Philippine Lumad, the war on drugs in the Philippines and Indonesia, as well as draconian U.S. immigration policies. While at USC Gould, Krisha has worked for OneJustice, an organization that seeks to increase access to legal aid for marginalized populations. She has also worked with LBH Masyarakat in Jakarta, Indonesia, a human rights organization that advocates for issues involving the right to a fair trial, death penalty abolition, drug policy, LGBTQ rights, and women and children's rights among others. Most recently, through the Clinic, she has worked with Willow International in Uganda developing training materials for immigration, law enforcement and judicial officials on human trafficking.

Before attending USC Gould, **Sophie Sylla** was a Teach For America corps member in Phoenix, Arizona, where she taught sixth grade in a dual-language program. In working with Global Citizen U.S. Policy and Advocacy as an intern, Sophie advocated for education policy reform and wrote the veteran affairs and education policy sections of Global Citizen's 2017 U.S. Policy and Advocacy playbook, notably becoming the first person ever to write its racial justice section. In 2017, as a Fulbright Scholar in Durban, South Africa, Sophie sought to gain a global understanding of the impact of systemic racism on education. While in South Africa, she taught high school visual arts and partnered with a local nonprofit to provide educational opportunities to students. At USC Gould, Sophie has been an active member of the Public Interest Law Foundation and the Black Law Students Association. The summer before her 2L year, Sophie interned with the ACLU SoCal's Education Equity and Juvenile Justice Team where she focused on arts justice.

Fluent in both English and Chinese, **David Wright** previously worked with HNA Group Ltd, an international aviation conglomerate based in Haikou, China, responding to solicitors, translating legal documents, and heading conference calls to discuss legal strategy. As part of HNA Group's International Talent Program, he also worked on an international case involving human rights, admiralty law, and criminal law issues. As an undergraduate at UCLA, David's senior thesis analyzed the effect of secondary pharmaceutical patents in developing nations and recommended solutions to the World Trade Organization. He was also External Vice President for the Association of Chinese Americans, leading a 550-member organization. Since starting his time at USC Gould, David externed for the Honorable Leslie E. Kobayashi at the United States District Court for the District of Hawaii helping to prepare the Judge for civil and criminal hearings.

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 authors and not necessarily those of the Clooney Foundation for Justice.

EXECUTIVE SUMMARY



Professor Hannah Garry, member of the TrialWatch Experts Panel, assigned this trial a grade of D:

The trial of journalist Omar Radi for ‘insulting the judiciary’ based on a single tweet about a judge’s ruling did not meet basic international human rights standards for assuring a fair trial. The court was not attentive to relevant issues raised by defense counsel with respect to Morocco’s Press Code and its statute of limitations for bringing a case against Mr. Radi, nor did it address the defense’s contention that the wording of the tweet could be taken in multiple ways, giving rise to concern about its impartiality. Further, the prosecution’s failure to prove intent beyond a reasonable doubt combined with Mr. Radi’s subsequent conviction undermined Mr. Radi’s right to be presumed innocent. Lastly, on the issue of freedom of expression, Mr. Radi’s criminal charge of intent to harm the judiciary—pursued eight months after his tweet and under Morocco’s Penal Code rather than the Press Code—and subsequent trial and conviction violated, and continue to violate, his right to freely express himself, a right guaranteed under international and Moroccan law.

Because the monitors’ notes on the proceedings and the available record reveal fair trial violations that resulted in harmful effect on the outcome of the case, this trial receives a grade of “D” under the methodology set forth in the Annex to this Report.

USC’s International Human Rights Clinic monitored the trial of Moroccan journalist and activist Omar Radi, which concluded on March 17, 2020, as part of the Clooney Foundation for Justice’s TrialWatch initiative. Mr. Radi was charged with insulting the judiciary after a tweet criticizing a decision by Judge Lahcen Talfi upholding a verdict sentencing leaders of a protest movement in the impoverished northern Rif Region to the maximum sentence of 20 years in prison. Mr. Radi received a suspended sentence upon his conviction. However, the proceedings against him entailed violations of his fair trial rights as well as his right to freedom of expression.

First, Mr. Radi’s trial violated his right to be tried by a competent, independent and impartial tribunal established by law.² In particular, the judge disregarded key arguments made by the defense, including regarding the interplay of the Press Code and the Criminal Code and how Mr. Radi’s tweet should be understood.

Second, Mr. Radi’s conviction violated his right to the presumption of innocence. Under Article 263 of the Moroccan Penal Code, the prosecution was required to prove that Mr. Radi had acted with the intent of “harming the[] honor [or feelings of the judge] or the

² 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”].

respect for [judicial] authority.”³ At trial, Mr. Radi explained that his tweet was merely a comment on recent protests and that he had not intended any harm. Despite a lack of evidence proving intent, the trial judge convicted Mr. Radi, relying on the argument that insults can be punished based on the damage they cause—in this case, the possibility the tweet could “damage his [the judge’s] reputation and violate his honor, in addition to great damage to his career where he holds a high position [and the possibility the insult] could induce the public to look down on the judge, especially the readers of this tweet.”⁴

Finally, Mr. Radi’s conviction violated his right to freedom of expression since his tweet constituted protected speech. In this regard, the trial is consistent with a broader pattern of prosecution of journalists. Indeed, fellow journalists and activists have faced similar attacks and judicial harassment from the government.⁵ Further, despite a new Press Code enacted in 2016 meant to protect the rights of Morocco’s journalists, Mr. Radi was prosecuted under the Criminal Code and under a particular provision that is not consistent with international standards on the right to freedom of expression and that has been criticized by international human rights organizations.

³ MOROCCAN PENAL CODE art. 263, July 5, 2018,

<http://adala.justice.gov.ma/production/legislation/fr/Nouveautes/code%20penal.pdf>.

⁴ Judgment, Case No. 2103/14047/2019, March 17, 2020 (on file with the authors).

⁵ *Morocco: Crackdown on Social Media Critics*, Human Rights Watch (Feb. 5, 2020), <https://www.hrw.org/news/2020/02/05/morocco-crackdown-social-media-critics>.

BACKGROUND INFORMATION

A. POLITICAL AND LEGAL CONTEXT

Mr. Radi's trial is consistent with a trend reported by Human Rights Watch of the Moroccan "[a]uthorities continu[ing] to crack down on street protests, harass journalists and obstruct human rights groups."⁶ Furthermore, the trial took place against the backdrop of serious violations of human rights (including fair trial violations) that were reported during the Moroccan authorities' response to the Hirak Rif protests in 2017⁷—protests that were the subject of the verdict on which Mr. Radi commented.

The Hirak Rif protests have their roots in the 2010-2011 Arab Spring protests.⁸ At that time, demonstrations took place throughout Morocco, lasting from February 20, 2011, to the spring of 2012, with the movement coming to be known as the 20 February Movement.⁹ These protests were motivated by discontent with the power distribution in society and lack of opportunity,¹⁰ and included the towns in the mountainous Rif region, where economic inequality was notably severe.¹¹

In March of 2011, King Mohammed VI announced constitutional reforms in response to the protests.¹² These constitutional reforms were approved by referendum in July 2011.¹³ The reforms granted additional executive powers to the prime minister, although the King retained his powers over the judiciary, military, and religious institutions.¹⁴ While the referendum passed with an overwhelming majority of 98.5% in favor, many believed the

⁶ *Morocco/Western Sahara*, HUMAN RIGHTS WATCH, <https://www.hrw.org/middle-east/n-africa/morocco/western-sahara>; see also *Morocco: Human rights organizations warn against increased restrictions on freedom of expression, assembly and demonstration*, ARTICLE 19 (May 8, 2019), <https://www.article19.org/resources/morocco-human-rights-organizations-warn-against-increased-restrictions-on-freedom-of-expression-assembly-and-demonstration/>.

⁷ *Morocco/Western Sahara – Events of 2018*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2019/country-chapters/morocco/western-sahara>.

⁸ Those protests began in Tunisia, where a young man named Mohummad Bouazizi, the breadwinner for his seven-member family, set himself on fire to protest the police's confiscation of his fruit stand. His act resonated with the population of Tunisia, where economic inequality was rampant and human rights were severely restricted. Ultimately, those protests forced the President of Tunisia to step down. *The Arab Spring: A Year of Revolution*, NATIONAL PUBLIC RADIO (Dec. 1237, 2011), <https://www.npr.org/2011/12/17/143897126/the-arab-spring-a-year-of-revolution>.

⁹ Ilhem Rachidi, *Inside the Movement: What is Left of Morocco's February 20?*, MIDDLE EAST EYE (Feb. 26, 2015), <https://www.middleeasteye.net/features/inside-movement-what-left-moroccos-february-20>.

¹⁰ *Id.*

¹¹ *Morocco: Thousands March for Reform*, HUMAN RIGHTS WATCH (Feb. 20, 2011), <https://www.hrw.org/news/2011/02/20/morocco-thousands-march-reform#>.

¹² Rachidi, *supra* note 9.

¹³ *Id.*

¹⁴ *Id.*

reforms were inadequate because the monarchy retained too much control over the nation.¹⁵ Many were also dubious of the King's promises of change.¹⁶

From October 2016 to June 2017, protests again took place in the Rif region. These protests, which evolved from the 20 February Movement, were known as the Hirak Rif Movement. The Hirak Rif Movement began in response to the death of Mouhcine Fikri, a local fishmonger, who was crushed to death by a garbage truck when he attempted to retrieve fish confiscated and discarded by local authorities.¹⁷ The Hirak Rif Movement called for numerous social justice reforms that would have decreased economic inequality between the Rif region and other more prosperous regions in Morocco.¹⁸ These reforms included "a better healthcare system, improved infrastructure, an end to corruption, and employment opportunities in the region."¹⁹ Some protests became violent and hundreds of protesters were arrested.²⁰ From among those arrested, 43 individuals were convicted on June 25 and 28, 2018 for security-related offenses and for conducting unauthorized protests.²¹ On April 4, 2019, these sentences were upheld in the Casablanca court of appeals by Judge Lahcen Talfi.²² Omar Radi's tweet on April 6, 2019, commented on this ruling.²³

More broadly, Moroccan journalists and others who speak out are currently subject to increased surveillance and harassment.²⁴ According to Human Rights Watch, "[i]f you express your dissatisfaction of the government on YouTube, Facebook or Twitter, you risk jail in Morocco."²⁵ Since September 2019, at least ten individuals have faced charges, including a popular rap artist, a YouTuber, and other activists.²⁶ International human rights

¹⁵ *Morocco Approves King Mohammed's Constitutional Reforms*, BBC (Jul. 2, 2011), <https://www.bbc.com/news/world-africa-13976480>.

¹⁶ *Id.*

¹⁷ *Morocco: Prison Sentences Upheld Against Hirak El-Rif Protesters in Flawed Appeal Trial in Casablanca*, AMNESTY INTERNATIONAL, (Apr. 26, 2019), <https://www.amnesty.org/download/Documents/MDE2902672019ENGLISH.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ See Judgment *supra* note 4 (stating that according to Mr. Radi, "he just expressed his position of solidarity with the imprisoned during the events of ElHoceima and also for announcing to his followers on his social media accounts that the judge Lahcen Talfi was the one who issued the appellate ruling on the issue of the imprisoned Rifian activists."); Samia Errazzouki, *A Crackdown on the Press is Demolishing What's Left of Morocco's Liberal Reputation*, THE WASHINGTON POST (Dec. 30, 2019), <https://www.washingtonpost.com/opinions/2019/12/30/crackdown-press-is-demolishing-whats-left-moroccos-liberal-reputation/>.

²⁴ Danya Hajjaji, *Moroccan Independent Journalists Describe Climate of Pervasive Surveillance, harassment*, COMMITTEE TO PROTECT JOURNALISTS (July 1, 2019), <https://cpj.org/blog/2019/07/moroccan-independent-journalists-describe-climate-.php>.

²⁵ Sharif Paget, *Moroccan Journalist Faces A Year In Prison Over Tweet About Judge*, CNN (Dec. 29, 2019), <https://www.cnn.com/2019/12/29/africa/morocco-journalist-detention-intl/index.html>.

²⁶ *Morocco: Crackdown on Social Media Critics*, HUMAN RIGHTS WATCH (Feb. 5, 2020), <https://www.hrw.org/news/2020/02/05/morocco-crackdown-social-media-critics>.

organizations such as Frontline Defenders and the Committee to Protect Journalists have voiced their concern about these recent events.²⁷

In particular, those who have spoken out about the Hirak Rif Movement and the government's response appear to have been targeted. For example, Abdessadeq El Bouchtaoui was convicted and sentenced to nearly two years in prison on charges related to his Facebook posts addressing the recent apprehension of activists, disproportionate sentencing of protesters, and violations of freedom of expression by the Moroccan government.²⁸

With respect to the judiciary, in 2011, Morocco adopted a new Constitution, which established institutions aimed at bolstering the independence of the judiciary and enhancing protection of human rights and the rule of law,²⁹ including creating a Superior Council of the Judicial Power to manage the courts in lieu of the Ministry of Justice. Despite these reforms, concerns remain regarding the extent of the executive's potential sway over the judiciary.³⁰ For instance, five members of the Council are appointed by the King³¹ (indeed, the International Commission of Jurists has indicated that 10 of the 20 members are "persons appointed by the King, either directly to the CSPJ or to posts that lead to CSPJ membership ex officio"³²) and civil society organizations have reported that "outcomes of trials in which the government had a strong interest, such as those touching on Islam as it related to political life and national security, the legitimacy of the monarchy, and Western Sahara, sometimes appeared predetermined."³³ Indeed, during Morocco's most recent review, the UN Human Rights Committee expressed concern at "cases in which irregularities appear to have occurred in court proceedings" and urged Morocco to "guarantee and uphold the full independence and impartiality of the judiciary and ensure that judges are free of pressure and interference in the performance of their work."³⁴

²⁷ Omar Radi Issued Suspended Sentence & Fined, FRONT LINE DEFENDERS (Mar. 24, 2020), <https://www.frontlinedefenders.org/en/case/judicial-harassment-journalist-and-human-rights-defender-omar-radi>; Hajjaji, *supra* note 24.

²⁸ Morocco: HIRAK Lawyer Abdessadeq El Bouchtaoui Sentenced to 20 Months of Imprisonment, DEFEND LAWYERS (Feb. 8, 2018), <https://defendlawyers.wordpress.com/2018/02/09/morocco-hirak-lawyer-abdessadeq-el-bouchtaoui-sentenced-to-20-months-of-imprisonment/>.

²⁹ Morocco: Submission to the United Nations Human Rights Committee, AMNESTY INTERNATIONAL (2016), <https://www.amnesty.org/download/Documents/MDE2948582016ENGLISH.PDF>.

³⁰ *Reforming the Judiciary in Morocco*, INTERNATIONAL COMMISSION OF JURISTS at 9 (2013) <https://www.refworld.org/pdfid/530f06dc4.pdf>.

³¹ *2018 Country Reports on Human Rights Practices: Morocco*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/morocco/>.

³² *The Moroccan Draft Organic Law on the High Council of the Judiciary in light of International Law and Standards*, INTERNATIONAL COMMISSION OF JURISTS (June 2015), <https://www.icj.org/wp-content/uploads/2015/06/Morocco-Memo-on-the-CSPJ-Advocacy-Briefing-paper-2015-ENG.pdf>.

³³ *2018 Country Reports on Human Rights Practices: Morocco*, U.S. DEPARTMENT OF STATE, <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/morocco/>.

³⁴ HUMAN RIGHTS COMMITTEE, Concluding Observations on the Sixth Periodic Report of Morocco para. 33 (Dec. 1, 2016), CCPR/C/MAR/CO/6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR/C/MAR/CO/6&Lang=En.

Moreover, while authority over prosecutors was transferred from the executive in 2017,³⁵ concerns remain, with Human Rights Watch reporting that “authorities continued to selectively target, prosecute, jail, and harass critics.”³⁶

B. CASE HISTORY

Omar Radi is an award-winning Moroccan investigative journalist and activist.³⁷ He is one of the only journalists to have closely monitored the financial holdings of the King of Morocco.³⁸ Mr. Radi has carried out his work as a journalist in Morocco in spite of repeated denials by the Moroccan government of his applications for a press pass, often on the pretext that they could not find the necessary documents in his applications to issue one.³⁹ (Mr. Radi was ultimately issued a press pass several months after the trial.)

The case against Mr. Radi stemmed from a tweet he posted on Twitter on April 6, 2019.⁴⁰ The tweet addressed Judge Lahcen Talfi, who had upheld the verdict sentencing leaders of the Rif protests to the maximum sentence of 20 years in prison.⁴¹ The tweet stated, “Lahcen Talfi, juge de la cour d'appel, bourreau de nos frères, souvenons-nous bien de lui. Dans beaucoup de régimes, les petits bras comme lui sont revenus supplier après en prétendant ‘avoir exécuté des ordres.’ Ni oubli ni pardon avec ces fonctionnaires sans dignité!”⁴² It is undisputed that this tweet identified the judge, called for him to be remembered, and stated that some “henchmen” like him ultimately claim to be following orders, but urged that officials like him should not be forgotten or forgiven.

There is, however, some ambiguity regarding the meaning of critical phrase “bourreau de nos frères.” According to the prosecution, this means “oppressor.” However, Mr. Radi explained that he used this word to describe the unfairness of the convictions.⁴³ He also pointed out at trial that the word has multiple interpretations, including positive ones. For example, “bourreau” can be used to describe a “heartbreaker” or a workaholic.⁴⁴ The defense counsel even offered the trial judge a book that supports the word’s positive interpretation.⁴⁵

³⁵ Abdellatif Chentouf, *Morocco’s Transfer of the Public Prosecutor out of the Ministry of Justice Signals a Broader Shift Toward the Judiciary’s Independence from the Executive*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Nov. 28, 2017), <https://carnegieendowment.org/sada/74848>.

³⁶ *Morocco/Western Sahara – Events of 2019*, HUMAN RIGHTS WATCH, <https://www.hrw.org/world-report/2020/country-chapters/morocco/western-sahara>.

³⁷ Paget, *supra* note 25.

³⁸ Errazzouki, *supra* note 23.

³⁹ *Trial Monitor Notes* (on file with authors) (Mar. 5, 2020).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See <https://twitter.com/OmarRADI/status/1114321329078116352>.

⁴³ *Trial Monitor Notes* (on file with authors) (Mar. 5, 2020).

⁴⁴ See Larousse Dictionary.

⁴⁵ *Trial Monitor Notes* (Mar. 5, 2020).

On April 16, 2019, Mr. Radi received a police summons, and on April 18, 2019 he visited the police station in response to the summons.⁴⁶ Mr. Radi was interrogated by the police for five hours on that day about his tweet and then left the station. Eight months passed before Mr. Radi heard anything about this matter again.

On December 22, 2019, Mr. Radi returned from Algeria, where he participated in a talk show and openly discussed the Moroccan King's land distribution policy, which Mr. Radi alleged unfairly benefitted the King's friends. On December 25, 2019, Mr. Radi received another police summons, and on December 26, 2019, Mr. Radi visited the police station. After arriving at the police station, Mr. Radi was driven to the Ain Sebaa Court of First Instance at 9 a.m. At the courthouse at around 10 a.m., Mr. Radi was interrogated by the Crown Prosecutor and asked the same questions as those asked during his April 18, 2019 visit to the police station. Mr. Radi was then transferred from the Crown Prosecutor to the presiding judge around 1 p.m. A hearing was then held at 6 p.m. in front of the presiding judge,⁴⁷ following which Mr. Radi was charged with insulting the judiciary under Article 263 of Morocco's Penal Code⁴⁸ and sent to pre-trial detention. Mr. Radi's attorneys requested bail, but the presiding judge denied the request. The next day, Mr. Radi's attorneys appealed the bail decision and an appeal hearing was held on the same day. On December 31, 2019, the appeal court granted Mr. Radi bail.

Article 263 criminalizes "contempt" towards a "magistrate or public official" with the "*intention* of harming their honor (emphasis added)."⁴⁹ While proof of intent can be adduced from circumstantial evidence, it must nevertheless be shown.⁵⁰

Mr. Radi's trial was originally scheduled for January 2, 2020, but Mr. Radi's attorneys applied for an extension to prepare their defense, and it was granted. The judge scheduled the trial for March 5, 2020. On that day, Mr. Radi's defense counsel gave their arguments and the judge stated that he would announce his verdict on March 12. However, on March 12, the judge postponed the delivery of the verdict to March 17, 2020. On March 17, Mr. Radi was found guilty and sentenced to a four-month suspended sentence and 500 Dirham fine.⁵¹ Mr. Radi's lawyers filed a notice of appeal of the judgment on the same day.⁵²

Due to the COVID-19 pandemic, the court's written judgment was only made available several months later.

March 5, 2020 Hearing

⁴⁶ Case File (on file with authors).

⁴⁷ *Id.*

⁴⁸ MOROCCAN PENAL CODE, *supra* note 3, art. 263.

⁴⁹ *Id.*

⁵⁰ Telephone Interview with Safya Akorri, French lawyer unaffiliated with the case (Apr. 21, 2020).

⁵¹ See Judgment, *supra* note 4.

⁵² See Decl. of Appeal, Case No. 2103/14047/2019 (on file with authors).

Due to the global coronavirus epidemic, trial monitors from the USC International Human Rights Clinic were unable to attend Mr. Radi's trial on March 5, 2020 in person. Instead, two local monitors attended the trial on behalf of USC. Three lawyers represented Omar Radi and his case was presided over by one trial judge.

On the morning of March 5, the two monitors entered the courtroom unhindered.⁵³ The courtroom was gender-segregated with women seated on the right and men seated on the left. At 12:55 p.m., Omar Radi arrived in the courtroom with his lawyers. At 1:35 p.m. his trial began.

The judge began by stating that Mr. Radi's tweet had insulted the appeals judge in the Rif case and asking why Mr. Radi had sent the tweet. In his reply, Mr. Radi clarified that the tweet only commented on the convictions and was not addressed towards the appeals judge. In other words, he had no intention to insult or harm the judiciary. Furthermore, Mr. Radi elaborated on why he believed the appeals judge's decision was controversial. He stated that the convicted Moroccans were merely advocating for their human rights and that the appeals judge's decision was even more dangerous than his tweet. Mr. Radi also mentioned that his tweet was merely his opinion and therefore was protected under the right to freedom of expression. The trial judge asked Mr. Radi if the tweet was an outburst of emotion. Mr. Radi said it was. Lastly, the trial judge stated that a comment on the appeals judge's ruling must have also targeted the judge himself. Mr. Radi rebutted the judge's statement and repeated that his tweet was merely directed towards the appeals judgment.

Mr. Radi's three lawyers then began their oral arguments. The first lawyer argued that Mr. Radi was not arrested for his tweet, but instead for his investigation of public servants, which disclosed inconsistencies in the Moroccan government's budget. He was also the first one to investigate issues surrounding the state's distribution of free lands to state agents. The lawyer then emphasized that the Moroccan Constitution guaranteed Mr. Radi's right to freedom of expression. He further argued that by using the word "bourreau" Mr. Radi meant "the shockingly unexpected sentences against innocent activists."⁵⁴

The second lawyer stressed that the government hindered Mr. Radi's journalism by repeatedly denying him a press pass and losing Mr. Radi's documents when he requested one. He also highlighted that it was unreasonable to prosecute a journalist under the Penal Code when the Press Code exists. Lastly, he stressed that Mr. Radi had tweeted eight months before his arrest.

The third lawyer's arguments had multiple components. First, he argued that prosecuting Mr. Radi under the Press Code instead of the Penal Code was unreasonable. Second, he argued that Mr. Radi's arrest was irrational because his tweet had been posted eight

⁵³ *Trial Monitor Notes* (Mar. 5, 2020) (on file with authors); *TrialWatch Questionnaire Answers* (on file with authors).

⁵⁴ *Trial Monitor Notes* (Mar. 5, 2020).

months before his arrest. Third, the lawyer claimed that the HIRAK Rif protests were a social crisis, and Mr. Radi should not be judged for his comments on such a consequential national event. Fourth, he pointed out that the trial judge's assumptions about Mr. Radi's intentions behind the tweet were wrong because Mr. Radi only intended to express his feelings at that moment—and "[t]he defendant alone is to explain what he meant by his content."⁵⁵ Fifth, he argued that the court did not have the right to interpret Mr. Radi's tweet any way it desired but instead should only rely on the defendant's explanations.

After the third lawyer finished his oral arguments, the prosecutor addressed the court. The prosecutor said that he disagreed with defense counsel's understanding of the Arabic word "Jallad"—the Arabic translation of the French phrase "bourreau"—which was in Radi's tweet and can be translated as "the oppressor." The prosecutor also stated that since the word had a double meaning and could be interpreted as positive or negative, it was irresponsible for Mr. Radi to not consider how others would interpret his tweet and warned Mr. Radi to be careful of what he says in the future.

Finally, Mr. Radi spoke again and stated that he only wanted to protect his homeland, and he would accept any judicial decision with his head held high.

March 17, 2020 Hearing

On March 17, 2020, the trial judge convicted Mr. Radi and gave him a four-month suspended sentence and 500 Dirham fine.⁵⁶ Mr. Radi's lawyer filed a notice of appeal of the judgment in court that day.⁵⁷

The court's written judgment emphasized that "the occurrence of the insult is considered shameful and dangerous if it's proven to have been taken as an insult by the civil claimant [the judge]."⁵⁸ It went on to say that intention could be shown by awareness of the tweet (rather than proof of the intent behind the tweet).⁵⁹ The court then relied on the fact that the defendant had admitted to issuing the tweet in convicting him.⁶⁰

In the judgment, the court did not address the defense contention that the Press Code should have been applied; nor did it speak to the ambiguity regarding the word "bourreau."

⁵⁵ *Trial Monitor Notes* (Mar. 5, 2020).

⁵⁶ See Judgment, *supra* note 4.

⁵⁷ See Decl. of Appeal, Case No. 2103/14047/2019 (on file with authors).

⁵⁸ Judgment, *supra* note 4.

⁵⁹ *Id.*

⁶⁰ *Id.*

METHODOLOGY



A. THE MONITORING PHASE

USC's International Human Rights Clinic, as part of the Clooney Foundation for Justice's TrialWatch initiative, deployed two local monitors in Morocco to observe the proceedings against Omar Radi. Prior to the trial, background research, including preparation of the monitors, was undertaken.

The monitors did not experience any impediments in entering the courtroom and were present for the trial on March 5, 2020.

The monitors hand wrote notes to record and track what transpired in court and the degree to which the defendant's fair trial rights were respected, and later recorded them in the CFJ TrialWatch App. TrialWatch App responses and notes were shared with Professor Hannah Garry.

B. THE ASSESSMENT PHASE

To assess the trial's fairness and arrive at a grade, Professor Hannah Garry, a member of the TrialWatch Expert Panel, reviewed the case file, trial monitor notes, responses from TrialWatch's standardized questionnaire (collected via the CFJ TrialWatch App), and notes from other interviews.

First, Prof. Garry found that the trial violated Mr. Radi's right to be tried by a competent, independent, and impartial tribunal. The judge did not adequately consider defense counsel arguments involving the Press Code and the relevant statute of limitations as well as the different possible meanings of "bourreau."

Second, Mr. Radi's trial and conviction violated his right to the presumption of innocence. Under Article 263 of the Moroccan Penal Code, the prosecution had to prove that Mr. Radi had the intent to harm a member of the judiciary. At trial, Mr. Radi explained that his tweet was commenting on the situation in the Rif region, and he did not intend to harm the judge. By contrast, and appearing to apply a different standard that did not require the prosecution to show intent, the trial judge convicted Mr. Radi under that article.

Finally, Prof. Garry found that the charge, trial and conviction of Mr. Radi violated his right to freedom of expression. The right to freedom of expression is guaranteed by the International Covenant on Political and Civil Rights, Morocco's 2011 Constitution, and the Moroccan Press and Publications Code. Mr. Radi exercised his right to freedom of expression by voicing his opinion on Judge Talfi's decision to affirm the heavy sentences given to Rif protestors.

ANALYSIS



A. APPLICABLE LAW

This report draws primarily upon the International Covenant on Civil and Political Rights (ICCPR), to which Morocco is a State Party; jurisprudence from the UN Human Rights Committee, tasked with monitoring implementation of the ICCPR⁶¹; and the Moroccan Constitution, Penal Code, Press and Publications Code (Press Code), and Criminal Procedure Code.⁶²

B. VIOLATIONS AT TRIAL

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

Mr. Radi's right to be tried by a competent, independent and impartial tribunal established by law was violated at trial.⁶³ According to the UN Human Rights Committee, "the requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception."⁶⁴

The UN Human Rights Committee has explained with respect to impartiality that: "[t]he requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial."⁶⁵

Like Article 14(1) of the ICCPR, Article 6(1) of the European Convention on Human Rights establishes a defendant's right to an impartial tribunal.⁶⁶ Although Morocco is not a party to the European Convention, the European Court of Human Rights provides useful analysis for distinguishing between subjective and objective impartiality: courts that are

⁶¹ OHCHR, Ratification Status by Country:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117&Lang=EN [accessed May 13, 2020].

⁶² MOROCCO'S CONSTITUTION OF 2011 arts 25, 28 (Jefri J. Ruchti trans., William S. Hein & Co., Inc., 2012), https://www.constituteproject.org/constitution/Morocco_2011.pdf?lang=en [hereinafter MOROCCO: 2011 CONSTITUTION]; MOROCCAN PENAL CODE, *supra* note 3; MOROCCAN CODE OF CRIMINAL PROCEDURE art. 35, Feb. 10, 1959, <https://www.refworld.org/publisher,NATLEGBOD,,MAR,3ae6b5104,0.html>; MOROCCAN LAW ON PRESS AND PUBLISHING art. 16, Aug. 10, 2016, <https://www.wipo.int/edocs/lexdocs/laws/fr/ma/ma069fr.pdf> [hereinafter MOROCCAN PRESS CODE].

⁶³ ICCPR art. 14(1), *supra* note 2.

⁶⁴ HUMAN RIGHTS COMMITTEE, General Comment No. 32 para. 19 (Aug. 23, 2007), U.N. Doc. CCPR/C/GC/32, [hereinafter General Comment No. 32].

⁶⁵ *Id.*

⁶⁶ EUROPEAN COURT OF HUMAN RIGHTS, European Convention on Human Rights, Guide on Article 6 at 6 (Aug. 31, 2019), https://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf.

in fact biased versus courts that appear to be biased.⁶⁷ According to the Court, objective impartiality is violated when:

[T]here are ascertainable facts which [T] may raise doubts as to his impartiality. When applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to the impartiality of the body itself. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge (*Morel v. France*, §§ 45-50; *Pescador Valero v. Spain*, § 23) or a body sitting as a bench (*Luka v. Romania*, § 40) lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (*Wettstein v. Switzerland*, § 44; *Pabla Ky v. Finland*, § 30; *Micallef v. Malta [GC]*, § 96).⁶⁸

In the present case, a reasonable observer would have “legitimate reason to fear” that the trial judge lacked impartiality—a violation of “objective” impartiality.

First, according to the UN Human Rights Committee, violations of Article 14(1)’s guarantee of impartiality have occurred where judgments have disregarded key defense contentions, such as claims regarding statutes of limitations and coerced confessions.⁶⁹ For instance, in *Khostikoev v. Tajikistan*, the Committee considered a case where “the courts [n]ever addressed the issue of the non-respect of the statutory limitation (time bar) . . . and they simply ignored the author’s lawyer’s objections in this regard.”⁷⁰ Likewise, in *Iskandarov v. Tajikistan*, the Committee held that where “lawyers’ requests were not given due consideration” a court may be deemed to lack impartiality.⁷¹

In Mr. Radi’s case, the judge failed to weigh defense arguments involving the expiration of the relevant statute of limitations to bring a charge against Mr. Radi under Morocco’s Press Code rather than Morocco’s Penal Code. In particular, the defense argued that the eight-month delay from the time of Mr. Radi’s tweet to his arrest exceeded the statute of limitations under the Press Code,⁷² which provides for a six-month limitations period.⁷³ As Human Rights Watch has previously noted, “the new press code states that it shall be the law that applies over other legislation whenever it contains a clear provision pertaining to

⁶⁷ *Id.*

⁶⁸ *Id.* at 49.

⁶⁹ See HUMAN RIGHTS COMMITTEE, *Iskandarov v. Tajikistan* para. 6.6 (Apr. 28, 2011), U.N. Doc. CCPR/C/101/D/1499/2006; HUMAN RIGHTS COMMITTEE, *Khostikoev v. Tajikistan* paras. 7.2-7.3 (Dec. 3, 2009), U.N. Doc. No. CCPR/C/97/D/1519/2006.

⁷⁰ HUMAN RIGHTS COMMITTEE, *Khostikoev v. Tajikistan*, para. 7.2 (Dec. 3, 2009), U.N. Doc. No. CCPR/C/97/D/1519/2006.

⁷¹ HUMAN RIGHTS COMMITTEE, *Iskandarov v. Tajikistan*, para 6.6 (Apr. 28, 2011), U.N. Doc. CCPR/C/101/D/1499/2006.

⁷² *Trial Monitor Notes* (Mar. 5, 2020) (stating that “they couldn’t judge him in journalism laws because journalism law does not permit the possibility of punishing someone for something written 8 months prior”).

⁷³ MOROCCAN PRESS CODE, *supra* note 62, art. 101.

the offense in question”⁷⁴ and thus, to the extent the Press Code applied to this case, the case against Mr. Radi should have been brought within its statute of limitations as the *lex specialis*.

While only those with a press pass can benefit from the Press Code,⁷⁵ defense counsel noted that by repeatedly denying Mr. Radi a press pass, the government had effectively prevented Mr. Radi from being protected by the Press Code. Further, although the specific offense at issue in this case is not covered by the Press Code, defense counsel argued that “[t]weeting is a responsibility of the ‘Law of Journalism’ per se [and therefore] Radi should [have] be[en] pursued with the latter.”⁷⁶

Importantly, although Morocco removed prison penalties from its Press Code, provisions punishing the peaceful exercise of the right to freedom of expression with imprisonment remain in force in the Penal Code.⁷⁷

Whatever the merit of these arguments, the judgment makes no mention whatsoever of them. The judge’s failure to give any attention to these defense arguments in support of Mr. Radi’s case raises concerns about violation of Mr. Radi’s right to judicial impartiality.

Further, the court did not engage the question of the meaning of the word “bourreau” (translated into Arabic as “jallad”). This was a central focus of the lawyers at trial, but was entirely ignored in the trial court’s judgment.

Finally, as discussed in greater detail below with respect to the presumption of innocence, the court in its judgment convicting Mr. Radi did not appear to find facts sufficient to support the intent requirement of the law pursuant to which Mr. Radi was prosecuted. While this is also relevant to the question of whether Mr. Radi had “access to [a] duly reasoned, written judgment[]” encompassed within the right to a fair trial,⁷⁸ taken together with the court’s failure to address defense arguments, it further supports a finding that the court lacked impartiality.

Presumption of Innocence

Mr. Radi’s conviction also raises concern regarding respect for his right to be presumed innocent because the court convicted him despite a dearth of evidence that he had intended to harm the honor of a member of the judiciary through his tweet.

⁷⁴ *The Red Lines Stay Red: Morocco’s Reform of Its Speech Laws*, HUMAN RIGHTS WATCH, May 4, 2017, <https://www.hrw.org/report/2017/05/04/red-lines-stay-red/moroccos-reforms-its-speech-laws#>.

⁷⁵ MOROCCAN PRESS CODE, *supra* note 62, art. 16.

⁷⁶ *Trial Monitor Notes* (Mar. 5, 2020).

⁷⁷ *Morocco: Submission to the United Nations Human Rights Committee*, AMNESTY INTERNATIONAL, *supra* note 29, at 6.

⁷⁸ HUMAN RIGHTS COMMITTEE, *Van Hulst v. Netherlands* para 6.4 (Nov. 1, 2004), U.N. Doc. CCPR/C/82/D/903/1999.

Article 14(2) of 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 The UN Human Rights Committee has noted that this right “imposes on the prosecution the burden of proving the charge”⁸⁰ and that “[a] criminal court may convict a person only when there is no reasonable doubt of his or her guilt, and it is for the prosecution to dispel any such doubt.”⁸¹ Article 23 of the Moroccan Constitution echoes article 14(2) of the ICCPR by stating that “[t]he presumption of innocence and the right to an equitable process are guaranteed.”⁸²

In particular, the European Court of Human Rights has further explained that a judgment that is insufficiently reasoned—in particular with respect to the obligation to give the defendant the benefit of the doubt—can violate the presumption of innocence.⁸³

In this case, Mr. Radi made clear to the trial judge that his tweet was not intended to harm the honor of the judiciary, but was instead a general comment about the Rif protests and treatment of the protestors.⁸⁴ He “couldn’t understand why they punished them just because they were asking for their rights. He said he didn’t mean the judge but the convictions.”⁸⁵ During the March 5 trial, the prosecutor relied almost entirely on the meaning of the word “bourreau” to suggest intent while acknowledging its double meaning, without adducing any other evidence.

According to a French lawyer unaffiliated with the case, Safya Akorri, the requirements for proving intent under Moroccan law are low.⁸⁶ Nevertheless, it does not appear that the prosecutor met this burden.

Then, the court simply ignored the requirement to prove intent—and did not even appear to rely on the prosecution’s theory that the words used were sufficient—suggesting instead that all that mattered was the effect of the tweet. This violated Mr. Radi’s right to be presumed innocent.

B. OTHER FAIRNESS CONCERNS

Right to Freedom of Expression

Morocco violated Mr. Radi’s right to freedom of expression by prosecuting him for protected speech. Article 19 of the ICCPR guarantees the “right to hold opinions without

⁷⁹ ICCPR, *supra* note 2, art. 14(2).

⁸⁰ General Comment No. 32, *supra* note 64, at para. 30.

⁸¹ HUMAN RIGHTS COMMITTEE, *Larranaga v. Philippines* para. 7.4 (July 24, 2006), U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006.

⁸² MOROCCO: 2011 CONSTITUTION, *supra* note 62, at art. 23.

⁸³ EUROPEAN COURT OF HUMAN RIGHTS, *Melich and Beck v. Czech Republic*, App. No. 35450/04, paras. 49-55 (July 24, 2008).

⁸⁴ *Trial Monitor Notes* (Mar. 5, 2020).

⁸⁵ *Id.*

⁸⁶ Telephone Interview with Safya Akorri (Apr. 21, 2020).

interference” and the “right to freedom of expression,” with the latter including the “freedom to seek, receive, and impart information and ideas ... through ... media of [one’s] choice.”⁸⁷ According to the UN Human Rights Committee’s General Comment 34 regarding Article 19, the “harassment [and] intimidation of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation” of the right to freedom of expression.⁸⁸

Further, the UN Human Rights Committee’s General Comment states that paragraph 2 of Article 19 covers “political discourse ... discussion of human rights, [and] journalism.”⁸⁹ Specifically, regarding the press and media, the Committee has noted that one implication of Article 19 is the need to have “a free press and media able to comment on public issues without censorship or restraint and to inform public opinion.”⁹⁰ Paragraph 2 of Article 19 further protects a wide range of “means of dissemination” of information, including “all forms of audio-visual as well as electronic and internet-based modes of expression,” and the Committee has stressed the need for States to “foster the independence of these new media.”⁹¹

With respect to limitations to the right to freedom of expression, the Committee has noted three instances where speech may be restricted—the right may be limited for the “respect of the rights or reputations of others” or for “the protection of national security or of public order ... or of public health or morals.”⁹² However, restrictions must “not put in jeopardy the right itself.”⁹³ Restrictions must also be “provided by law ... [and] conform to the strict tests of necessity and proportionality ... [and may be] applied only for those purposes for which they were prescribed.”⁹⁴ Even ostensibly permissible restrictions must not be invoked to justify the “muzzling of any advocacy of multi-party democracy, democratic tenets and human rights” or any “attack on a person, because ... of his or her freedom of opinion,” with “forms of attack [defined as including] arbitrary arrest.”⁹⁵ The Committee has also noted with concern that “[j]ournalists are frequently subjected to such threats, intimidation and attacks.”⁹⁶

Article 263 is Inconsistent with the Right to Freedom of Expression

⁸⁷ ICCPR, *supra* note 2, arts. 19(1) and (2)

⁸⁸ HUMAN RIGHTS COMMITTEE, General Comment No. 34 para. 9 (Sept. 12, 2011), U.N. Doc. CCPR/C/GC/34, [hereinafter General Comment No. 34].
para. 9.

⁸⁹ *Id.* para. 11.

⁹⁰ *Id.* para. 13.

⁹¹ *Id.* para. 11.

⁹² *Id.* para. 21.

⁹³ *Id.*

⁹⁴ *Id.* para. 22.

⁹⁵ *Id.* para. 23.

⁹⁶ *Id.*

Article 263 of the Moroccan Penal Code criminalizes anyone who insults a judge with the intent to harm his “honor [or] feelings” or “respect for [judicial] authority.” It imposes penalties of a month to a year in prison, along with the possibility of a fine.

First, insult laws like Article 263 do not meet the tests of necessity and proportionality. Indeed, the UN Human Rights Committee has stated that “all public figures, including those exercising the highest political authority ... are subject to criticism and political opposition.”⁹⁷ The Committee has thus been concerned “regarding laws on such matters as ... disrespect for authority ... defamation of the head of state and the protection of the honour of public officials.”⁹⁸ Article 263 runs afoul of these concerns.

Further, with respect to Morocco specifically, in its Concluding Observations to Morocco’s Sixth Periodic Report, the UN Human Rights Committee criticized Morocco’s Criminal Code as failing to fully ensure the rights guaranteed by Article 19, especially with regard to the press.⁹⁹ While the Committee welcomed the adoption of Morocco’s 2016 Press Code, it expressed continued concern at provisions in the Criminal Code establishing “terms of imprisonment as penalties for acts perceived as being offensive to Islam or the monarchy or as posing a threat to the country’s territorial integrity” as well as at the prosecution of journalists and human rights activists charged under such provisions.¹⁰⁰ The Committee recommended that Morocco “revise all provisions in its Criminal Code, as necessary, to align them with article 19 of the Covenant and ensure that any restrictions on the exercise of the right to freedom of expression and association do not exceed the strictly defined limitations set out in article 19 (3).”¹⁰¹ The same logic that gave rise to concerns about provisions criminalizing giving offense to Islam or the monarchy applies here: Article 263 imposes terms of imprisonment for insults. This is inconsistent with the Article 19 of the ICCPR.

Article 263 as Applied in this Case is Inconsistent with Mr. Radi’s Right to Freedom of Expression

Mr. Radi’s detention, prosecution, and conviction under Article 263 were neither necessary nor proportionate under UN Human Rights Committee precedent. For example, in *Pranevich v. Belarus*, the Committee found that Ms. Pranevich’s right to freedom of expression under Article 19 had been violated.¹⁰² Ms. Pranevich, a journalist, had attended a public event held for journalist and civil activist Pavel Severinets in order to interview him for an article.¹⁰³ The police stopped the event and detained Ms. Pranevich

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ HUMAN RIGHTS COMMITTEE, Concluding Observations on the Sixth Periodic Report of Morocco para 43 (Dec. 1, 2016), CCPR/C/MAR/CO/6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MAR/CO/6&Lang=En.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at para 44.

¹⁰² HUMAN RIGHTS COMMITTEE, *Pranevich v. Belarus*, U.N. Doc. CCPR/C/124/D/2251/2013, Dec. 10, 2018.

¹⁰³ *Id.* para. 2.2.

and twenty-seven other people. Ms. Pranevich was interrogated and charged with an administrative offense for allegedly violating the required procedure for holding public events.¹⁰⁴ Ms. Pranevich argued that “neither the police nor the courts provided any justification demonstrating that the ... police intervention and subsequent actions against her could be considered as necessary in a democratic society.”¹⁰⁵ The Committee agreed, noting that Belarus had not shown that these restrictions on Ms. Pranevich’s rights under Article 19 “were justified pursuant to the conditions of necessity and proportionality.”¹⁰⁶ So too here, the ostensible justification of protecting the reputation of the courts is insufficient to justify Mr. Radi’s arrest, detention, prosecution, and conviction for his tweet.

Further, and in particular, Mr. Radi’s conviction and suspended sentence are inconsistent with jurisprudence making clear that such penalties are disproportionate to speech offenses like the one of which Mr. Radi was accused. Indeed, the UN Human Rights Committee has stated in its General Comment No. 34 that “the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties,” noting the importance of uninhibited expression pertaining to public political discourse.¹⁰⁷

In *Ribeiro v. Mexico*, for instance, the Committee found an Article 19 violation where the defendant, Ms. Lydia Cacho Ribeiro, a journalist, human rights defender, and the founder of an organization supporting victims of sexual violence was arrested and subjected to pre-trial detention in connection with charges of defamation and calumny for publishing a book in which she alleged the involvement of public officials and business leaders in a child exploitation ring.¹⁰⁸ In its consideration of her case, the Committee addressed Ms. Ribeiro’s allegations that her Article 19 rights were violated by her detention by recalling the “essential” nature of freedom of opinion and expression.¹⁰⁹ The Committee then noted the need for strict tests of necessity and proportionality for any restriction on this freedom.¹¹⁰ The Committee stated that “defamation should never result in ... deprivation of liberty ... [and] it is not an appropriate penalty.”¹¹¹ The Committee noted that, even assuming that Ms. Ribeiro’s detention was based on legislation that “pursued a legitimate aim, such as protecting personal honour ... detention was not a necessary or proportionate measure to achieve that aim.”¹¹² As in the *Ribeiro* case, Mr. Radi’s rights under Article 19 of the ICCPR were violated: The aim of protecting personal honor is not sufficient justification for pre-trial detention.

¹⁰⁴ *Id.* para. 2.3.

¹⁰⁵ *Id.* para. 3.3.

¹⁰⁶ *Id.* para. 6.5.

¹⁰⁷ General Comment No. 34, *supra* note 89, at para. 38.

¹⁰⁸ HUMAN RIGHTS COMMITTEE, *Ribeiro v. Mexico* (Aug. 29, 2018), U.N. Doc. CCPR/C/123/D/2767/2016.

¹⁰⁹ *Id.* para. 10.5.

¹¹⁰ *Id.*

¹¹¹ *Id.* para. 10.8.

¹¹² *Id.* para. 10.9.

The UN Human Rights Committee has also spoken specifically with concern about the frequent attacks on the Article 19 rights of journalists in Morocco and, given the background of tension between Mr. Radi's journalistic pursuits and the refusal of the government to even recognize him as a journalist through the issuance of a press pass, it is not inconceivable that the proceedings against Mr. Radi under the Penal Code based on his tweet eight months earlier is one such attack meant to muzzle his expression—including to intimidate Mr. Radi for his comments in Algeria, which were made only days before his first hearing on December 26, 2019.

It is worth noting as well that Mr. Radi's suspended sentence also restricts his right to freedom of expression. The sentence carries a five-year probationary period that begins from the moment Mr. Radi exhausts all appeal mechanisms.¹¹³ If Mr. Radi commits any criminal or civil offense during this five-year period, then his suspended sentence can be triggered and he could "incur possibly aggravated penalties for recidivism."¹¹⁴

In sum, as a journalist, Mr. Radi is part of a group at constant risk of being attacked for seeking and disseminating information and for their expression, and his trial was one such attack. While the proceedings against Mr. Radi had the ostensible aim of protecting the honor of the judiciary, the restrictions imposed on him unjustifiably abrogated his rights under Article 19. Mr. Radi's arrest, detention, and subsequent conviction were neither a necessary nor proportionate response to his imparting his opinion on Twitter, and the court did not provide sufficient reasoning that they were. Hence, Mr. Radi's right to freedom of expression under Article 19 has been violated.

¹¹³ MOROCCAN PENAL CODE, *supra* note 3, art. 56.

¹¹⁴ *Id.* arts. 56, 58.

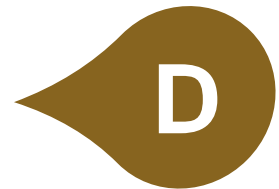
CONCLUSION AND GRADE



As the UN Human Rights Committee has previously found, Morocco's Penal Code criminalizes speech in violation of Article 19 of the ICCPR. Such was the case in the proceedings against Mr. Radi, who was prosecuted, detained and convicted for exercising his right to free expression through a tweet critical of the judiciary. Further, Mr. Radi's fair trial rights to be tried by an impartial court with a presumption of innocence were simultaneously violated. Mr. Radi's conviction may also have a broader chilling effect on the speech of other Moroccans.

As recommended by the UN Human Rights Committee, and in advance of Morocco's seventh reporting cycle to the UN Human Rights Committee beginning in November 2020 with its State Party Report, Morocco should consider revising its Penal Code to address concerns regarding the protection of freedom of expression and to ensure congruence with the new Press Code.

GRADE:





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,”¹¹⁵ 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.

¹¹⁵ ICCPR, *supra* note 2, art. 26.