Morocco v. Omar Radi II

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TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION FOR JUSTICE INITIATIVE
ABOUT THE AUTHORS

University of Southern California Gould School of Law International Human Rights Clinic (IHRC) was established in 2011 to teach U.S. law students how to use international law as a tool for social justice for serious human rights abuses in the U.S. and globally. The IHRC engages students in cases and projects that address: international criminal justice and accountability for atrocities (war crimes, crimes against humanity, genocide); refugee rights; fair trial rights; anti-human trafficking and racial justice. Since 2011, students have assisted international judges and legal officers on a number of international trials involving former heads of State and high-level military leaders allegedly 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. Moreover, the IHRC has focused on fair trial rights and the rule of law in Morocco and Kyrgyzistan, and leveraged international human rights sanctions regimes to hold perpetrators of serious human rights abuses accountable for serious human rights abuses in Africa. In the U.S., the Clinic has represented refugees and trafficked clients from countries including Cameroon, El Salvador, Ethiopia, Mexico, Syria, and Afghanistan with near 100 percent success rate, while addressing systemic racism in U.S. law enforcement anti-human trafficking operations and responses to anti-racism peaceful protests as well as sentencing of juveniles in the California criminal justice system.

Professor Hannah R. 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 include international human rights law, international criminal law, transitional justice and international courts and tribunals. In 2022, Professor Garry was a Fulbright research scholar at the University of Oslo Law’s Centre for the Study of the Legitimate Roles of the Judiciary in the Global Public order (PluriCourts).

As for other experience, Professor Garry has filed a brief on behalf of amici torture survivors before the United State Supreme Court in United States of America v. Husayn, et al. and served as amicus curiae with former United Nations special rapporteurs in the Afghanistan investigation appeals hearing at the International Criminal Court. She was previously a senior legal adviser to the Supreme Court Chamber in two appeals judgments before the Extraordinary Chambers in the Courts of Cambodia; a visiting professional in the Presidency of the International Criminal Court; a legal officer in the Appeals Chamber for the International Criminal Tribunals for the former Yugoslavia & Rwanda and Deputy Chef de Cabinet in the Office of the President; and an associate in the international arbitration, dispute resolution and public international law groups at Freshfields, Bruckhaus, Deringer LLP. She has been invited to give statements as an expert before the United Nations Office of the High Commissioner for Human Rights, the Canadian Parliament and various task forces. She is regularly quoted as an expert and
has published OpEds with media outlets such as: the New York Times, Newsweek, Washington Post, BBC, Reuters, the Los Angeles Times and The Hill.

Prior to joining USC in 2010, Professor 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 International Institute of Humanitarian Law in San Remo, Italy.

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. She also thanks IHRC student attorneys Pablo Aabir Das, Celine Ang and Tomi Johnson, and supervising attorney Professor Henna Pithia for their monitoring and assistance with this report, as well as Ms. Kelsey McGregor and her team at WilmerHale who reviewed the report as pro bono counsel for the IHRC.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE’S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries’ performance and use it to support advocacy for systemic change.

The legal assessment and conclusions expressed in this report are those of the authors and not necessarily those of the Clooney Foundation for Justice.
EXE C U T I V E   S U M M A R Y

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

The proceedings against journalist Omar Radi involved serious violations of international fair trial standards. From the start of the investigation, Mr. Radi’s presumption of innocence was compromised as government-affiliated media outlets launched a smear campaign against him. During the ten months he awaited trial, Mr. Radi was arbitrarily detained as the court denied his requests for provisional release, despite the fact that there was little evidence that Mr. Radi posed a danger to the public, presented a flight risk, or would interfere with evidence. While in detention, Mr. Radi suffered from serious medical issues including diarrhea, vomiting, and weight loss. Once the trial began, the court failed to consider pertinent, exculpatory evidence [that Mr. Radi sought to introduce] and denied Mr. Radi the opportunity to cross-examine key prosecution witnesses or call a witness, who the defense asserted could provide testimony to exonerate him. Additionally, these defects were not remedied on appeal, as the appeals court dismissed Mr. Radi’s fair-trial complaints and upheld the conviction.

These violations evidently affected the fairness of the case; thus, the trial has been assigned a grade of “D” under the methodology set forth in the Annex to this report.

As part of the Clooney Foundation for Justice’s TrialWatch initiative, the USC Gould School of Law International Human Rights Clinic monitored the trial of Moroccan journalist Omar Radi, which concluded on July 19, 2021, as well as the subsequent appeal, which concluded on March 3, 2022.

Omar Radi is an investigative journalist who has reported on government corruption, including the financial holdings of the Moroccan monarchy, since 2008. As a result of his work, Mr. Radi has faced harassment by the authorities. For example, he was denied a press pass for 12 years, permitting the government to argue that he was precluded from legal protection under the Moroccan Press Code. More recently, in March 2020, Mr. Radi was convicted of insulting the Moroccan judiciary and given a suspended sentence due to a tweet in which he criticized a judicial decision upholding harsh sentences for protesters involved in the 2016 Hirak Rif movement.¹

In October 2019, Amnesty International released a report stating that the Moroccan government had used the notorious “Pegasus” spyware technology to target and surveil

prominent Moroccan human rights defenders. When planted in a target’s phone, Pegasus spyware allowed the government almost total control of the phone, including access to the owner’s calls, messages, photos, and other data. In June 2020, Amnesty International released a second report specifically asserting that the authorities had used Pegasus to surveil Mr. Radi’s phone.

On June 25, 2020, just a few days after the release of Amnesty International’s second report, Moroccan authorities announced that they had opened an investigation into Mr. Radi for espionage and called him in for questioning.

During the month of July 2020, Mr. Radi was repeatedly brought in for questioning on various allegations of espionage, tax evasion, and rape. During this same time period, Mr. Radi and his colleague, Imad Stitou, were arrested for public drunkenness and later released.

Ultimately, on July 29, 2020, the government arrested Mr. Radi and charged him with four crimes: undermining the internal security of the State; undermining the external security of the State; indecent assault; and, rape.

The first set of charges alleged that Mr. Radi harmed both the internal and external security of the State due to his consulting work for two British multinational companies, his relationship with diplomats at the local Dutch Embassy, and his fellowship with an international social justice organization called the Bertha Foundation. The second set of charges alleged that Mr. Radi assaulted and raped a colleague in July 2020.

During trial, the court took a series of decisions that inhibited Mr. Radi’s ability to defend himself. The espionage charges predominantly relied on allegedly illicit communications between Mr. Radi and a staff member of the Dutch Embassy. However, when this person offered to testify in Mr. Radi’s defense, the judge refused to allow it, stating that it is within the court’s discretion to determine whether a witness should or should not testify. Similarly, with respect to the rape charge, the prosecution relied heavily on testimony from the complainant’s fiancé who was based in the United States. While the investigating judge permitted the prosecution to interview the fiancé and the trial judge considered statements from this pre-trial interview in the Judgment, Mr. Radi was denied the opportunity to cross-examine him. Additionally, a key witness the defense planned to offer—Mr. Stitou, who was partially present during the interactions between the complainant and Mr. Radi—was charged as a conspirator to the rape after he went on the record saying that the interactions were consensual.

On July 19, 2021, Mr. Radi was convicted on all counts and sentenced to six years in prison. He was also required to compensate the complainant 200,000 Moroccan Dirhams in damages.²

² Approximately 21,000 US dollars.
Shortly after the conviction, Mr. Radi appealed the decision. Although the appeal was scheduled to begin on November 4, 2021, it was postponed several times and began in January 2022. On March 3, 2022, the Court of Appeals affirmed Mr. Radi’s conviction. During the appeal hearings, the court again denied Mr. Radi the opportunity to call his own exculpatory witness or cross-examine the key prosecution witness.

From Mr. Radi’s pre-trial detention through the appeal process, the proceedings were riddled with violations of international fair trial standards.

First, what appears to have been a coordinated smear campaign raises issues regarding Mr. Radi’s right to be presumed innocent as State-affiliated news outlets launched widespread and negative coverage of Mr. Radi beginning in June 2020.

Second, Mr. Radi was arbitrarily detained for nearly a year prior to and during trial. During this time, Mr. Radi filed for provisional release numerous times, and each time his request was denied without any substantiated finding that he was a flight risk, posed danger to the public, or would interfere with evidence. Adding to the harm, Mr. Radi was subjected to poor treatment and, at times, denied proper access to medical care. Mr. Radi suffered from preexisting health conditions, and his detention took a toll on his health, as he experienced vomiting, diarrhea, and internal bleeding. Between his arrest and the end of his trial, Mr. Radi was in detention for over 19 months.

Third, the proceedings violated Mr. Radi’s rights to an impartial tribunal, to call and examine witnesses, and to adequate time and facilities to prepare a defense. Mr. Radi offered key witnesses in support of his defense; however, the court either refused to call these witnesses or to consider their testimony. For example, as to the rape allegation, the investigating judge authorized charges against an exonerating eyewitness, turning the witness into a co-defendant; the trial court then deemed the witness’s statements unreliable because it believed that he had an interest in having the charges against him dropped. Also relating to the rape allegation, the court refused to allow Mr. Radi the opportunity to cross-examine a key prosecution witness, impeding Mr. Radi’s ability to refute the charges. Additionally, the court rejected Mr. Radi’s request to call another potentially exonerating witness on one of the espionage charges. Mr. Radi’s right to adequate time and facilities to prepare a defense was also violated when the prosecution failed to disclose its intention to introduce a pertinent medical certificate until after trial began. Taken together, these repeated discretionary decisions—all to the disadvantage of Mr. Radi—give rise to objective concerns regarding the impartiality of the court.

Finally, the totality of the circumstances, including the constellation of disparate charges brought against Mr. Radi on the heels of another trial against him that violated fair trial standards but failed to silence him, and the widely-publicized reporting on surveillance of his phone, suggests an abuse of process.
A. POLITICAL & LEGAL CONTEXT

The Moroccan legal system is based on French and Islamic law and French legal procedure; it is a civil law system relying on codified law rather than common law or "judge-made" law. The Moroccan Penal Code details substantive law, and the Code of Criminal Procedure codifies procedure.

While Morocco’s Constitution includes relatively robust protections for the right to a fair trial and the right to freedom of expression, the Brookings Institute has reported that "repression seems to have increased following the 2011 uprisings, including heightened judicial harassment of dissidents." Further, Freedom House rated Morocco as "Partly Free" in its most recent Freedom in the World report, citing the surveillance and detention of several journalists, including Mr. Radi, as key issues in the country.

Further, significant concerns have been raised regarding the independence of the judiciary, including the role of the King. Morocco is a constitutional monarchy ruled by

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5 MOROCCO CODE DE PROCEDURE PENALE, ART. 1 (Feb. 10, 1959), https://www.refworld.org/publisher,NATLEGBO,Mar,3ae6b5104,0.html [CRIMINAL PROCEDURE CODE].

6 MOROCCO’S CONSTITUTION OF 2011, arts. 23, 120 (Jefri J. Ruchti trans., William S. Hein & Co., Inc., 2012), https://www.constituteproject.org/constitution/Morocco_2011.pdf [hereinafter CONSTITUTION (MOROCCO)]. Article 23 of the Moroccan Constitution prohibits arbitrary detention and provides for the right to be informed of the charges against you, the right to remain silent, the right against self-incrimination, and the right to receive judicial assistance and counsel. Id. at art. 23. Article 23 also guarantees the presumption of innocence at trial. Id. The Moroccan Constitution’s explicit guarantees of the right to freedom of expression include Article 25, which states that “[t]he freedoms of thought, of opinion and of expression under all their forms[,] are guaranteed.” Id. at art. 25. Furthermore, Article 28 states that “[t]he freedom of the press is guaranteed and may not be limited by any form of prior censure,” and “[a]ll have the right to express and to disseminate freely and within the sole limits expressly provided by the law, information, ideas and opinions.” Id. at art. 28.


9 See, e.g., SABINE DONNER, ET AL., BERTELSMANN STIFTUNG, BTI 2020 COUNTRY REPORT: MOROCCO 11 (2020), https://bti-project.org/content/en/downloads/reports/country_report_2020_MAR.pdf (describing how “[t]he lack of an institutionally based democratic context makes the judiciary largely dependent on the monarchy”). As mandated by Article 113 of the Moroccan Constitution, the Conseil Supérieur du Pouvoir Judiciaire (CSPJ) is a judicial council that governs the application of guarantees relating to independence, appointment, promotion, retirement, and discipline of judges, and under Article 116 of the Moroccan Constitution, the CSPJ maintains administrative and financial autonomy. See CONSTITUTION (MOROCCO), supra note 6, at arts. 113, 116. However, under Article 115 of the Moroccan Constitution, the King presides over the CSPJ and appoints its members. See id. at art. 115. As described by Abdellah Benabdessalam of the Moroccan Association of Human Rights, there is no "real independence of the judiciary when the king appoints the [i] official[s] of . . . the Supreme Council of the Judiciary." Smail
King Mohammed VI with a Parliament led by a Prime Minister. There are three separate branches of government: the executive branch (the Prime Minister, Ministers, and Secretaries of State), the legislative branch (Parliament), and the judicial branch. However, under the current Constitution, adopted in 2011, the King occupies a supreme position, and Parliament operates under his oversight.

Though the Moroccan Constitution establishes the judiciary as independent from the legislative and executive powers, and forbids intervention in and pressure on judicial matters, the Constitution also provides, “[t]he King is the guarantor of the independence of the judicial power.” In Morocco, the judiciary is “known to deliver rulings that are desired by the regime.” In fact, the U.S. Department of State reports that “outcomes of trials in which the government had a strong interest . . . sometimes appeared predetermined” and that “extrajudicial influence” contributed to weakening judicial impartiality.

**International and Regional Framework**

The Moroccan Constitution expresses its commitment to “international conventions and pacts duly ratified by Morocco . . . with respect for the provisions of the Constitution . . . [and] of the laws of the kingdom.”

In particular, Morocco is party to the International Covenant on Civil and Political Rights (ICCPR). Article 14 of which provides for the right to a fair trial, allows all persons accused of a crime to call and examine relevant witnesses “under the same conditions as witnesses against [them],” and requires that individuals be presumed innocent until ________________

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10 **CONSTITUTION** (MOROCCO), supra note 6, at art. 1.
11 See id. at tit. V.
12 See id. at tit. IV.
13 See id. at tit. VII.
15 **CONSTITUTION** (MOROCCO), supra note 6, at arts. 107, 109.
16 SABINE DONNER, ET AL., supra note 9.
18 **CONSTITUTION** (MOROCCO), supra note 6, at art. 19; Madani, et. al., supra note 14.
proven guilty.\textsuperscript{20}

Morocco is also a member of the League of Arab States, which has adopted the Arab Charter on Human Rights.\textsuperscript{21} Article 3 of the Charter requires States to ensure that the individuals within their territories enjoy all the rights and freedoms recognized in the Charter “without distinction on grounds of,” among other things, “opinion.”\textsuperscript{22} While Article 4 allows for limitations of these rights and freedoms where prescribed by law or considered necessary to protect the nation, such limitations should not preclude “judicial guarantees.”\textsuperscript{23} Further, Article 16 requires that the accused be presumed innocent “until proved guilty by a final judgment rendered according to law,”\textsuperscript{24} and Article 14 states that anyone “arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”\textsuperscript{25} Article 16 also details the accused’s minimum guarantees during an investigation and trial, including the “right to examine or have his lawyer examine the prosecution witnesses and to summon defence according to the conditions applied to the prosecution witnesses.”\textsuperscript{26}

**Current State of Affairs in Morocco**

According to Sarah Leah Whitson, then Middle East and North Africa director at Human Rights Watch, “If you express your dissatisfaction of the government on YouTube, Facebook or Twitter, you risk jail in Morocco. Not great for a country that still postures as a ‘liberal exception’ in the Arab world.”\textsuperscript{27} Some of this repression manifests through legal provisions restricting freedom of expression in a manner contrary to international standards; in other cases, the authorities use facially-neutral laws, including “morality” laws, to target those who speak out. Further, the government’s alleged use of the Pegasus spyware to monitor and track activists, including Mr. Radi, raises significant privacy and surveillance concerns.

**Legal Restrictions on Freedom of Expression**

In its Concluding Observations on Morocco’s sixth periodic report in 2016, the UN Human


\textsuperscript{22} Arab Charter on Human Rights, supra note 21, at art. 3.

\textsuperscript{23} Id. at art. 4.

\textsuperscript{24} Id. at art. 16.

\textsuperscript{25} Id. at art. 14.

\textsuperscript{26} Id. at art. 16.

Rights Committee said it was “concerned by reports that the activities of human rights defenders are subject to disproportionate, unjustified restrictions and that human rights defenders’ freedom of movement is limited.”

Further, regarding the right to freedom of opinion and expression, the Committee expressed concern about provisions in the Criminal Code that allow for imprisonment for “acts perceived as being offensive to . . . the monarchy or . . . to the country’s territorial integrity.”

While Morocco adopted its first ever Press Code in 2016, wariness remains about the Moroccan government’s continued use of the Penal Code, instead of the Press Code, to prosecute journalists. The Committee noted that while the aforementioned Press Code no longer subjects press-related offenses to custodial penalties, “the concurrent introduction of new provisions in the Criminal Code that establish terms of imprisonment as penalties” vitiates some of this protection. The Committee called on Morocco to “revise all provisions in its Criminal Code . . . to align them with [A]rticle 19 of the [ICCPR] 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 [A]rticle 19.”

**Targeting**

According to *The New York Times*, Moroccan authorities have “accused [journalists] of sex crimes and other acts deemed illegal in Morocco,” with rights groups claiming that it is an effort to “silence the country’s small cadre of independent journalists with false and politically motivated accusations.” In addition, authorities appear to be using other facially-neutral laws, such as espionage or tax evasion, against journalists and human rights activists investigating the government.

For instance, Soulaiman Raissouni—editor-in-chief of the independent news outlet *Akhbar al-Youm*—who criticized the authorities’ response to the COVID-19 pandemic, was arrested in May 2020 on suspicion of sexual assault, held in detention for the

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29 Id. at ¶ 43.


32 Concluding Observations, supra note 28, at ¶ 43.

33 Id. at ¶ 44.


35 Id.
remainder of the year, and convicted and sentenced to five years in prison.\(^{36}\) Journalist Taoufik Bouachrine, editor-in-chief of *Akhabar al-Youm*, was arrested in 2018, only days after publishing an op-ed criticizing the Moroccan Prime Minister, and initially sentenced to twelve years in prison and a fine of 200,000 Moroccan Dirhams\(^{37}\) on charges of sexual assault, rape, and human trafficking.\(^{38}\) Mohammed Sekkaki, a popular YouTuber known as Moul Kaskita, was charged with insulting the public, obscene behavior, and drug possession, as well as illegally taking money from foreign sources to attack the State, after posting a video criticizing the government; he was ultimately convicted and sentenced to four years in prison.\(^{39}\) Finally, Maati Monjib, an academic, contributor to *Al-Quds al-Arabi*, and critic of the government, was convicted of fraud and undermining internal State security and sentenced to one year in prison plus a fine of 15,000 Moroccan Dirhams\(^{40}\) in a case based on receipt of foreign funds; he now also faces additional money laundering charges in a case that is also being monitored by the USC Gould International Human Rights Clinic as part of TrialWatch.\(^{41}\)

Observers note that these kinds of charges are generally accompanied by smear campaigns in media outlets close to the government.\(^{42}\) The Brookings Institute, for example, explains that “the regime has refined its tactics of controlling the media and its image,” using “business figures close to the palace” who “control various media outlets” to “spread pro-regime propaganda.”\(^{43}\)

In particular, as described by journalist Hajar Raissouni, sex crime charges act as “symbolic murder because they involve a loss of reputation.”\(^{44}\) Ms. Raissouni, who was herself prosecuted for alleged abortion and sex outside of marriage, stated that “[t]he [S]tate wants to give the world the impression that the journalists are being punished for breaking the law and that it has nothing to do with their work.”\(^{45}\) (TrialWatch also

\(^{36}\) [FREEDOM HOUSE, supra note 8; Denied Due Process, Moroccan Editor Sentenced to Five Years in Prison, REPS. WITHOUT BORDERS (July 12, 2021), https://rsf.org/en/news/denied-due-process-moroccan-editor-sentenced-five-years-prison.]

\(^{37}\) Approximately 21,000 US dollars.


\(^{40}\) Approximately 1,500 US dollars.


\(^{43}\) [Abouzzouhour, supra note 7.]

\(^{44}\) [Heba Saleh, Moroccan Sex Crime Trials Fuel Fears of Crackdown on Dissent, FINANCIAL TIMES (Oct. 16, 2020), https://www.ft.com/content/fae850a4-9fe2-4473-8931-bae05f33c2f3.]

\(^{45}\) [Id.]
monitored Ms. Raissouni’s case and found that the proceedings violated her rights.\footnote{See generally HELENA KENNEDY, MOROCCO V. HAJAR RAISSOUNI, ET AL., THE CLOONEY FOUNDATION FOR JUSTICE (Aug. 2020), https://cfj.org/wp-content/uploads/2020/08/Fairness-Report-on-the-Trail-of-Morocco-v.-Hajar-Raissouni.pdf.} Given the seriousness of sex crimes allegations, Reporters Without Borders sent an urgent appeal to the UN Special Rapporteur on Violence Against Women, asking for a public condemnation of the misuse of sex charges against Moroccan journalists who criticize the authorities.\footnote{Morocco: RSF Appeals Urgently to UN to Condemn Use of Trumped-Up Sex Charges Against Journalists, supra note 42.} Feminist collective and nongovernmental organization Khmissa described this trend as “the Moroccan state’s ongoing instrumentalization of women in legal cases against independent journalists.”\footnote{@Khmissa, TWITTER (Sept. 2, 2020, 12:52 PM), https://twitter.com/khmissa5/status/1301246528498135043.}

**Detention**


In detention, some journalists have resorted to hunger strikes. For instance, Soulaiman Raissouni launched a nearly four-month long hunger strike in April 2021 in protest of his continued pre-trial detention.\footnote{Jailed Moroccan Editor Requests Hospitalisation After Ending Hunger Strike, REPS. WITHOUT BORDERS (Aug. 5, 2021), https://rsf.org/en/news/jailed-moroccan-editor-requests-hospitalisation-after-ending-hunger-strike; Casey & Alami, supra note 34.} Maati Monjib undertook a hunger strike of more than 18 days in protest of the government’s failure to notify him of a trial date in the separate, older case of allegedly undermining internal security; the hearing was held in his absence, and he was ultimately convicted \textit{in absentia}.\footnote{Open Judicial Season on Moroccan Journalists, REPS. WITHOUT BORDERS (Apr. 5, 2021), https://rsf.org/en/news/open-judicial-season-moroccan-journalists; Morocco Court Delays Appeal Hearing of Dissident Historian, BARRON'S (Sept. 30, 2021), https://www.barrons.com/news/morocco-court-delays-appeal-hearing-of-dissident-historian-01633015807.} According to Souhaieb Khayati, then head of Reporters Without Borders’s North Africa desk, “[i]t is unacceptable that journalists end up putting their lives in danger to make their demands for justice heard and to recover the
freedom they should never have lost.”

## B. CASE HISTORY

### Pre-Trial Timeline

Omar Radi is an award-winning Moroccan investigative journalist. In 2015, Mr. Radi co-founded *Le Desk*, an independent online news publication known for its reporting on the Moroccan government. Through his work at *Le Desk* and other outlets, Mr. Radi published investigative articles on alleged financial corruption in Morocco, particularly as it related to the Moroccan monarchy’s financial activities.

Over the past two years, Mr. Radi has been in frequent conflict with the authorities. On March 17, 2020, Mr. Radi was convicted of insulting the Moroccan judiciary after he wrote a tweet criticizing a Moroccan court’s decision to uphold severe sentences for the leaders of the Hirak Rif protests. The court handed Mr. Radi a four-month suspended sentence and a 500 Moroccan Dirham fine. His suspended sentence meant that he did not have to serve any jail time upon conviction, but was effectively on a five-year probationary period.

The USC Gould International Human Rights Clinic monitored Mr. Radi’s March 2020 trial as part of TrialWatch. The Fairness Report on the case concluded that the trial “did not meet basic international human rights standards for assuring a fair trial,” violating Mr. Radi’s right to be tried by an independent and impartial tribunal, his right to the presumption of innocence, and his right to freedom of expression.

Other human rights organizations also criticized the trial.

On June 22, 2020, Amnesty International published a report finding that the Moroccan

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57 The Hirak Rif movement was a series of protests between October 2016 and June 2017 that occurred in the Rif region of Morocco. The protests demanded social and economic reforms in the Rif region. As a result of the protests, a number of activists were arrested and imprisoned. *See Morocco: Prison Sentences Upheld Against Hirak El-Rif Protesters in Flawed Appeal Trial in Casablanca*, AMNESTY INT’L (Apr. 26, 2019), https://www.amnesty.org/en/documents/mde29/0267/2019/en.

58 Approximately 50 US dollars.

59 *Morocco/Western Sahara: Court Hands Journalist Four Month Suspended Sentence and Fine for a Tweet*, supra note 57.

60 HANNAH GARRY, ET AL., supra note 1.

61 Id.; *Morocco/Western Sahara: Court Hands Journalist Four Month Suspended Sentence and Fine for a Tweet*, supra note 57.
government used spyware to monitor the activities of Mr. Radi and other Moroccan journalists.\textsuperscript{62} Three days later, on June 25, 2020, the Prosecutor General of the Casablanca Court of First Instance opened an investigation into Mr. Radi, this time based on allegations that Mr. Radi obtained illicit funds from foreign intelligence organizations in return for espionage services.\textsuperscript{63} That day, Mr. Radi was summoned to the National Brigade of Judicial Police (BNPJ) headquarters in Casablanca and questioned for almost six hours.\textsuperscript{64} Over the course of the next month, he was brought in for questioning six more times.\textsuperscript{65} Mr. Radi has said that he believed that the interrogations were related to the publication of the Amnesty International report.\textsuperscript{66}

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\textsuperscript{64} Priest, supra note 63.


Timeline of Events Leading up to Trial

JULY 2, 2020
Moroccan government officials, including the government spokesperson and Minister of State, held a press conference during which they announced, without naming Mr. Radi, that a journalist was “subject to a judicial investigation for an alleged attack on state security, because of [his] links with a liaison officer from a foreign country.” Authorities open an investigation into Mr. Radi for tax evasion due to suspicions that he received around $15,000 worth of payments that he did not declare in his taxes between the years of 2012 and 2020.74 (This was ultimately dropped.)

JULY 23, 2020
The Prosecutor General of the Casablanca Court of First Instance opens another investigation into Mr. Radi, this time on suspicion of indecent assault and rape.75 The Prosecutor General’s Investigation was spurred by a statement from one of Mr. Radi’s colleagues, who said that Mr. Radi had assaulted and raped her in the early hours of July 13, 2020.76

JULY 26, 2020
Morocco vehemently denies the Amnesty International report, saying that Amnesty had not contacted them and asking for hard evidence.77

JUNE 22, 2020
Amnesty International reports that Mr. Radi’s “phone was targeted and put under surveillance” between January 2019 and January 2020.78

JULY 29, 2020
Moroccan authorities detain Mr. Radi and charge him with four crimes: undermining the internal security of the State, undermining the external security of the State,79 indecent assault,80 indecent assault and rape.81 The Prosecutor General at the Casablanca Court of Appeal announces that the investigative judge has ordered Mr. Radi’s pre-trial detention pending further investigation.82

JULY 9-10, 2020
Mr. Radi is arrested for “public intoxication and violence.”83 Mr. Radi’s colleague and friend, Ismael Stitou, is also arrested.84 The police allege that Mr. Radi and Mr. Stitou got into an altercation with a cameraman from ‘Chez IV’, a Moroccan news outlet affiliated with the Moroccan government.85 A trial date is set, and they are released on July 6, 2020. These allegations were handled separately from the trial that is the subject of this report.86

JUNE 25, 2020
The Prosecutor General of the Casablanca Court of First Instance opens another investigation into Mr. Radi, this time on suspicion of espionage.87 Mr. Radi is questioned for almost six hours.88

AUGUST 6, 2020
A medical certificate is issued for the complainant by Dr. Sabah Oumami at the Ibn Sina University Hospital Center.89

JUNE 27, 2020
The first hearing in Mr. Radi’s trial takes place via videoconference but is rescheduled to permit Mr. Radi to attend in person.90

JUNE 25, 2020
Mr. Radi is questioned for almost six hours.91

JUNE 25, 2020
Mr. Radi is arrested for “public intoxication and violence.”92 Mr. Radi’s colleague and friend, Ismael Stitou, is also arrested.93 The police allege that Mr. Radi and Mr. Stitou got into an altercation with a cameraman from ‘Chez IV’, a Moroccan news outlet affiliated with the Moroccan government.94 A trial date is set, and they are released on July 6, 2020. These allegations were handled separately from the trial that is the subject of this report.95

SEPTEMBER 22, 2020
Mr. Radi’s trial is scheduled to begin. However, the investigative judge’s probe into the charges continues until March 2021.96

MARCH 8, 2021
The prosecution introduces the complainant’s medical certificate issued in August 2020 as evidence.97 The defense later asserts that it was not notified of this until trial began April 2021.98

JUNE 3, 2021
Mr. Radi is granted access to his own case file for the first time.99

MARCH 23, 2021
The investigative judge concludes that Mr. Radi should face a consolidated trial on both the espionage and rape charges.99

APRIL 1, 2021
Due to a serious decline in his health, Mr. Radi asks for a 48-hour hunger strike to protest his detention, which he ends on January 23.100

APRIL 6, 2021
Mr. Radi’s trial is set to start but is postponed to April 27.101

APRIL 27, 2021
The first hearing in Mr. Radi’s trial takes place via videoconference but is rescheduled to permit Mr. Radi to attend in person.102

APRIL 30, 2021
Mr. Radi ends his hunger strike due to a serious decline in his health.103

APRIL 9, 2021
Mr. Radi’s begins a 24-day hunger strike.104

SEPTEMBER 3, 2020
Despite the defense’s argument that pre-trial detention is the exception rather than the rule, Mr. Radi is denied provisional release because the investigative judge reasoned that releasing him could imperil the investigation and that the acts for which he was being prosecuted were dangerous.105 The defense appeals this decision, citing a lack of substantive justification for Mr. Radi’s pretrial detention.106

67 Morocco Journalist Targeted With Network Injection Attacks Using NSO Group’s Tools, supra note 62.
68 Priest, supra note 63.
69 Id.
75 Id.; Morocco: Espionage Case Against Outspoken Journalist, supra note 72
76 Journalists Omar Radi and Imad Stitou Detained Overnight in Morocco, supra note 74.
77 Timeline of the Omar Radi Case, supra note 63.
78 Case file, “Rape Charges.”
79 PENAL CODE, supra note 4, at art. 206.
Multiple requests were made throughout the pre-trial process and during trial for Mr. Radi’s release, all of which were denied.\textsuperscript{97}

**Espionage Charge**

As to the espionage allegations, Mr. Radi was charged with violating Articles 191 and 206 of the Moroccan Penal Code. Article 191 criminalizes “endangering the external security of the State” by maintaining ties “with agents of a foreign authority for the purpose of or having had the effect of adversely affecting the military situation or diplomatic of Morocco.”\textsuperscript{98} Article 206 criminalizes “endangering the internal security of the State” by “directly or indirectly receiv[ing] from a foreign person or of a organization and in any form

\begin{itemize}
  \item \textsuperscript{80} Id. at art. 191.
  \item \textsuperscript{81} Id. at art. 485.
  \item \textsuperscript{84} Judgment, “After Deliberations.”
  \item \textsuperscript{85} Morocco: Espionage Case Against Outspoken Journalist, supra note 72.
  \item \textsuperscript{86} Id.
  \item \textsuperscript{88} Letter from United Nations Special Rapporteurs to Kingdom of Morocco (July 26, 2021), https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26551.
  \item \textsuperscript{89} Case file, “Witnesses.”
  \item \textsuperscript{90} Judgement, “After Deliberations” (“[T]he CCP does not obligate [the investigating judge] to communicate all documents provided to him.”). At a June 1, 2021, hearing, the defense complained that the prosecution introduced the document, which had not been in the case file “since the beginning of the case,” “without [its] knowledge.” Trial Monitor Notes (June 1, 2021) (on file with authors).
  \item \textsuperscript{91} Morocco: Release Omar Radi and Guarantee Fair Trial Proceedings, supra note 87.
  \item \textsuperscript{92} Timeline of the Omar Radi Case, supra note 63.
  \item \textsuperscript{94} Timeline of the Omar Radi Case, supra note 63; see infra note 164
  \item \textsuperscript{95} Timeline of the Omar Radi Case, supra note 63.
  \item \textsuperscript{97}On September 3, 2020, Mr. Radi was denied provisional release because the judge reasoned that releasing Rada could imperil the investigative period. See Morocco: Espionage Case Against Outspoken Journalist, supra note 72. Again, on April 8, 2021 and May 5, 2021, the judge denied Mr. Radi provisional release because Radi was stated to be a threat and danger to the public. Aziz El Yaakoubi (@Elyaaakoubi), TWITTER (Apr. 8, 2021, 2:08 AM), https://twitter.com/Elyaaakoubi/status/1380085187879575334674281?_rdr=1&_rdr; Aziz El Yaakoubi (@Elyaaakoubi), TWITTER (May 5, 2021, 7:38 AM), https://twitter.com/Elyaaakoubi/status/13899525424546457; Timeline of the Omar Radi Case, supra note 63; Raddi Driss, FACEBOOK (Apr. 30, 2021), https://www.facebook.com/radidriss.7/posts/3820422554674281?_rdr=1&_rdr.
  \item \textsuperscript{98} PENAL CODE, supra note 4, at art. 191.
\end{itemize}
whatsoever, gifts, presents, loans or other benefits intended or used in all or in part to carry out or remunerate in Morocco an activity or a propaganda likely to affect integrity, sovereignty, or to the independence of the Kingdom, or to shake the loyalty that citizens owe to the State and to the institutions of the Moroccan people.”

Each charge carries up to five years in prison and up to 10,000 Moroccan Dirhams in penalties.

Both charges were predicated upon different relationships Mr. Radi allegedly had with foreign entities or persons. In accusing Mr. Radi of undermining the external security of the State, the government alleged that Mr. Radi maintained improper contacts with Dutch diplomats in Rabat and fed them information about the political situation in Morocco in order to destabilize the Dutch-Moroccan relationship. The Judgment concluded that Mr. Radi’s time in the Rif region between 2016 and 2018, which coincided with and continued after the Hirak movement, was “not linked to any journalism work, but rather to the action of gathering intelligence about the events for the Dutch Embassy.”

In alleging that Mr. Radi had undermined the internal security of the State, the government stated that Mr. Radi received funds from two British organizations, as well as an international social justice organization called the Bertha Foundation, in return for espionage activities conducted between 2012 and 2020. The Judgment pointed to unspecified “internet leaks” of documents and “open sources” identifying these organizations as intelligence services, as well as to what it deemed a fact—that the Bertha Foundation was “known for its hostility towards the territorial integrity of the country.”

**Relations with the Dutch Embassy**

As to the allegation that Mr. Radi provided information to Dutch diplomats with the intention of undermining the Dutch diplomatic relationship with Morocco, at trial, the prosecution scrutinized Mr. Radi’s relationship with four individuals: Frank Huisingh, Arnaud Simons, Matthijs Schroeder, and an unnamed communications staffer at the Dutch Embassy. The prosecution ultimately honed in on Mr. Radi’s relationships with Mr. Huisingh and Mr. Simons, who were political liaisons in the Embassy from 2016 until 2018, and from 2012 until 2015, respectively. According to the prosecution, there was

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99 Id. at art. 206.
100 Approximately 1,030 US dollars.
101 PENAL CODE, supra note 4, at arts. 191, 206.
103 Judgment, “After Deliberations.”
105 Judgment, “After Deliberations.”
106 Case file, “Espionage Charges.”
evidence that Mr. Radi had meetings with both men and also exchanged emails and texts with them in 2018, despite the fact that Mr. Simons had left Morocco by that point. The prosecution suggested that these interactions served to provide non-journalistic services and information, and that the messages indicated "intelligence work [was conducted] between them . . . [on] the activities in the Rif region" during the Hirak Rif protests.

In its Judgment, the court concluded that the messages between Mr. Radi and Mr. Huisingh “prove[d] that the two men had already met in person several times . . . [and] that Omar Radi granted suspicious intelligence services on behalf of the Dutch official, especially since their communications coincided with the visits paid by the accused Omar Radi to Rif region after the events of Al Hoceima," which spanned 2016 and 2017. Additionally, per the Judgment, Mr. Huisingh asking Mr. Radi if he would like to meet the new secretary of the Dutch Embassy was, by itself, indicative of “an agent . . . passing on his informant to another agent as he is near of completing his duties.” Further, the Judgment frames Mr. Radi’s use of text messages as a method of communication as evidence that Mr. Radi “was aware of the danger that accompanied[d] his role as well as the nature of the suspicious tasks assigned to him.” Mr. Radi admitted that meetings indeed took place but were nothing more than customary conversations about political developments in Morocco and involved no illegal conduct.

In relation to Arnaud Simons, Mr. Radi provided the authorities with the correct spelling of Mr. Simons’ name so that they could run his name through the government database and confirm any connection to the Dutch Embassy. The authorities nevertheless misspelled Mr. Simons’ name when searching the database and concluded that nobody by the name of “Arnauld Simon” existed. In the case file, the investigation by the BNPJ concluded “there was no one of this identity” and that “[t]his demonstrates that there was an individual in the Dutch embassy using an alias.” As stated in the Judgment, the Moroccan Ministry of Foreign Affairs “affirmed that no information about the designated


Simons, supra note 107.


Judgment, “After Deliberations.”


Judgment, “After Deliberations.”

Id.

Judgment, “Preparatory Investigation.”

Trial Monitor Notes (July 6, 2021) (on file with authors).

Case file, “Espionage Charges”; Judgment, “Preparatory Investigation.”

Trial Monitor Notes (July 6, 2021) (on file with authors).

Case file, “Espionage Charges.”
person was available.”\(^{121}\) Despite the prosecution’s assertion that Mr. Simons did not exist, Mr. Simons published an open letter denying the allegations of espionage and even offered to serve as a witness at trial.\(^{122}\) The Dutch Ministry of Foreign Affairs also went on the record denying the charges.\(^{123}\) As discussed in greater detail below, despite these statements and Mr. Simons’ offer to testify, the court described Mr. Simons as “inaccessible” and refused to allow him to testify, claiming it would have delayed the proceedings.\(^{124}\)

**Consulting Work**

The prosecution also alleged that Mr. Radi committed espionage on behalf of two British multinational companies: Good Governance Group (G3) in 2018 and K2 Intelligence Limited (K2) in 2019.\(^{125}\) Specifically, the government accessed Mr. Radi’s bank accounts and determined that G3 and K2 sent Mr. Radi more than a dozen payments for his services exceeding 300,000 Moroccan Dirhams in total.\(^{126}\) The authorities also entered contracts Mr. Radi signed with both groups into the case file.\(^{127}\)

During a December 24, 2020, interrogation, Mr. Radi conceded that he had worked with both G3 and K2, but asserted that he was solely providing consultancy services to each.\(^{128}\) Mr. Radi explained that he functioned as an advisor for G3, providing guidance on whether a Moroccan company, Cash Plus, was financially and economically qualified for outside investment.\(^{129}\) Mr. Radi explained that his work for K2 focused primarily on providing advice on the Moroccan agriculture sector.\(^{130}\) While the government produced bank records showing the transfer of money from both G3 and K2 to Mr. Radi, the case file does not include any other evidence supporting the espionage charge. Moreover, at all times, Mr. Radi stated that these contracts had nothing to do with intelligence gathering or spying.\(^{131}\)

The prosecution also asserted that Mr. Radi’s fellowship with the Bertha Foundation, an international non-governmental organization, constituted “undermining the internal security of the [S]tate through receiving funds from foreign groups in order to fund activities” that “affect the integrity of the Kingdom of Morocco and its sovereignty.”\(^{132}\) In June 2019, the Bertha Foundation awarded Mr. Radi and the Alternative Forum of Morocco, a domestic human rights organization, a grant to research State-sponsored land...
expropriation in Morocco. Mr. Radi admitted that he did not complete the research for the Bertha Foundation, but denied using the funds from the Bertha Foundation for espionage.

Beyond bank transfers and contractual information regarding the Bertha Foundation grant, the government also relied on interviews with individuals knowledgeable about Mr. Radi’s fellowship to substantiate the allegation. The individuals interviewed explained that when Mr. Radi received a grant from the Bertha Foundation, he had “to find a statutorily recognized association, because [the] Bertha Foundation [did not] work with individual persons,” hence the grant being administered through the Alternative Forum of Morocco. The interviewees furthermore stated that Mr. Radi received payments “for the purpose of an investigation about land expropriation and tribal land,” that Mr. Radi’s contract was for work “research[ing] databases and information about land expropriation and analysis of agriculture in Morocco,” and that Mr. Radi’s “project was supposed to be a documentary about expropriation and tribal land on the outskirts of Kenitra, as well as tin-roof huts in Oulad Bessita, Rabat, and Ain Sebaa.” Again, the case file contained no evidence showing that Mr. Radi did anything other than conduct journalistic work as part of the fellowship.

Rape Charge

Mr. Radi was also charged with “indecent assault” under Article 485 of the Moroccan Penal Code and “rape” under Article 486. Article 485 criminalizes violent, indecent assault against any person, while Article 486 criminalizes rape, defined as “the act by which a man has sex with a woman against her will.” Each crime carries a sentence of five to ten years in prison.

The government alleged that Mr. Radi raped one of his Le Desk colleagues on July 13, 2020. The complainant told investigators that she, Mr. Radi, and his colleague Imad Stitou, had stayed overnight at another colleague’s home after an event on July 12, 2020, and that around 2 AM the following morning, Mr. Radi came to the sofa where

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134 Judgment, “After Deliberations.”

135 Id.

136 Id.

137 Id.

138 Id.

139 PENAL CODE, supra note 4, at arts. 485-86.

140 Id. at arts. 485-86.

141 Id. at arts. 485-86.

142 Case file, “Rape Charges.”

143 Id.
she was sleeping and raped her.  

The complainant said that, prior to the rape, she was on a video call with her fiancé, Hassan Ait Braim, who was based in San Francisco, California, at the time. In August 2020, while Morocco was under a strict, government-imposed lockdown due to COVID-19, Mr. Ait Braim was able to fly from San Francisco to Casablanca and meet with the prosecutor to provide testimony. Mr. Ait Braim told the prosecutor that, during the video call with the complainant, prior to the rape, he saw a man behind the complainant wearing only underwear. He also stated that, after the incident, she told him over the phone that she had been raped. As discussed below, the judge refused to call Mr. Ait Braim to testify during the trial, and thus, the defense was not able to cross-examine him.

While Mr. Radi conceded that a sexual encounter took place, he maintained that it was consensual. Mr. Radi produced text messages between himself and the complainant from the early hours of July 13, 2020, showing laughing and heart-shaped emoticons—all of which Mr. Radi’s defense counsel said showed that the encounter was pre-planned. Additionally, after the complainant came forward, Mr. Stitou stated that he was present during the sexual encounter and that he observed that it was entirely consensual. Shortly thereafter, in October 2020, the prosecutor opened an investigation into Mr. Stitou, accusing him of being complicit in the crime despite not initially being involved in the complainant’s allegations. During a preliminary interrogation on November 25, 2020, Mr. Stitou stated that “he didn’t hear any screaming or call for help” and that he was “certain that both parties agreed on having sexual intercourse.” In the Judgment, the court specifically did not take this testimony into consideration. Instead, the court addressed the issue by noting that “the statement of the accused Imad Stitou” on “the fact that the sexual intercourse was consensual” is “unreliable because he is co-accused and he has [an] interest” in “having the charges against him dropped.”

The prosecution and the court relied predominantly on the testimony of the complainant.

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144 Id.
145 Id.
146 Id.
147 Id.
148 Id. at “Witnesses.”
149 Judgment, “After Deliberations.”
150 Case file, “Rape Charges.”
151 Id. at “Rape Charges”; Judgment, “After Deliberations.”
152 Open Judicial Season on Moroccan Journalists, supra note 53; Case file, “Rape Charges.” Mr. Stitou made a statement about the incident as part of the Judicial Police report, which Mr. Radi “entirely confirmed.” Judgment, “Preparatory Investigation.”
154 Judgment, “Preparatory Investigations.”
155 Judgment, “After Deliberations.”
156 Id.
and Mr. Ait Braim in assessing the merits of these charges, and there was little other evidence implicating Mr. Radi.\textsuperscript{157} Neither the owner of the villa where the alleged rape took place, nor his wife, testified to any awareness of the alleged rape.\textsuperscript{158}

**Trial**

Although the rape and espionage charges were distinct charges stemming from separate fact patterns, the judge combined the two charges into one single trial.\textsuperscript{159} Mr. Radi’s trial was scheduled to begin on April 6, 2021, at the Casablanca Court of First Instance, but was then postponed to April 27, 2021.\textsuperscript{160} The tax evasion charge was ultimately dropped.

On April 9, 2021, Mr. Radi began a second hunger strike in protest of his detention.\textsuperscript{161} Mr. Radi’s hunger strike lasted for over three weeks and took a serious toll on his health.\textsuperscript{162} During this period, his father described chronic diseases that Mr. Radi suffered from, including Crohn’s disease and asthma, as necessitating continuous treatment to prevent progression to “a point [at which] they cannot be treated.”\textsuperscript{163}

The first hearing, on April 27, 2021, lasted only several minutes because the government sought to bring Mr. Radi in via videoconference rather than in person.\textsuperscript{164} The prosecution pointed to COVID-19 precautions as its justification, but Mr. Radi refused to attend the trial virtually, so the judge rescheduled the hearing to May 18, 2021, when Mr. Radi could physically attend.\textsuperscript{165}

Between April 27 and May 18, Mr. Radi’s health deteriorated even further. Mr. Radi’s preexisting conditions caused vomiting, diarrhea, and internal bleeding in prison.\textsuperscript{166} Although Mr. Radi visited the hospital a few times in May 2021, the defense claimed that he did not receive rapid medical care when requested and that, when he did see a doctor, security guards were present in the room.\textsuperscript{167} On May 18, 2021, and June 1, 2021, Mr.

\textsuperscript{157} Case file, “Rape Charges”; Judgment, “After Deliberations.”
\textsuperscript{158} Case file, “Rape Charges.”
\textsuperscript{162} *Moroccan Journalist Omar Radi Breaks Hunger Strike Due to Ill Health*, supra note 93.
\textsuperscript{164} *Trial Monitor Notes* (Apr. 27, 2021) (on file with authors).
\textsuperscript{165} Id.
\textsuperscript{166} See *Trial Monitor Notes*, May 18, 2021 (on file with author); *Hunger Strike Is Last Resort for Some Imprisoned Moroccan Journalists*, supra note 54 (describing Mr. Radi’s symptoms, including diarrhea and vomiting).
\textsuperscript{167} *Morocco: Concern Over the Health of Detained Journalists on Hunger Strike*, supra note 163; *Trial Monitor Notes* (May 18, 2021) (on file with authors); *Trial Monitor Notes* (June 1, 2021) (on file with authors).
Radi’s attorney raised the issue of inadequate medical care with the trial judge, noting that Mr. Radi had been transferred to the hospital three times for internal bleeding but did not feel comfortable being examined in the presence of security guards. Ultimately, however, because his health was so dire, he agreed to be treated by medical staff while prison guards stood with him in the room. Mr. Radi attended the hearing on May 18, 2021, but the hearing was, once again, cut short due to concerns over his health.

On June 1, 2021, the first substantive hearing took place, and the defense had the opportunity to raise a number of procedural and fair trial concerns, including Mr. Radi’s medical treatment and the defense’s lack of opportunity to call witnesses. Specifically, the defense questioned the court’s calling of the complainant’s fiancé as a witness during a time when all flights were suspended due to the pandemic. The defense raised its suspicion that this witness, in fact, did not exist. Further, the defense argued that “[a]ll people involved in [the case] . . . should be brought to the court” to testify, including Arnaud Simons who was willing to attend.

Subsequent public hearings took place on June 8, June 15, June 22, June 29, July 6, and July 19, 2021. Two closed hearings also took place on July 9 and July 13, 2021, during which the court heard the testimony of the complainant on the rape charge.

During these hearings, witness issues were repeatedly discussed. At the hearing on June 8, the defense again questioned the investigating judge’s willingness and ability to fly in a witness from the United States “in the same day and during [the] Coronavirus” pandemic, particularly given the trial judge’s unwillingness to call him back to be cross-

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168 Trial Monitor Notes (May 18, 2021) (on file with authors); Trial Monitor Notes (June 1, 2021) (on file with authors).
169 Trial Monitor Notes (June 1, 2021) (on file with authors).
170 Trial Monitor Notes (May 18, 2021) (on file with authors).
171 Trial Monitor Notes (June 1, 2021) (on file with authors). The defense also raised concerns about the prosecution’s introduction, “without [the defense’s] knowledge,” of medical certificates that had not been in the case file “since the beginning of the case.” Id.
172 Id.
173 Id.
174 Id.
175 Trial Monitor Notes (June 8, 2021) (on file with authors); Trial Monitor Notes (June 15, 2021) (on file with authors); Trial Monitor Notes (June 22, 2021) (on file with authors); Trial Monitor Notes (June 29, 2021) (on file with authors); Trial Monitor Notes (July 6, 2021) (on file with authors); Trial Monitor Notes (July 19, 2021) (on file with authors).
176 Judgment, “Closed Hearings”; Morocco Tries Journalist Omar Radi in Closed Session, MIDDLE EAST MONITOR (July 14, 2021, 12:13 PM), https://www.middleeastmonitor.com/20210714-morocco-tries-journalist-omar-radi-in-closed-session; Omar Radi’s Support Committee Castigates the Holding of the Trial Behind Closed Doors, MOROCCO LATEST NEWS (July 13, 2021), https://moroccotestnews.com/omar-radis-support-committee-castigates-the-holding-of-the-trial-behind-closed-doors; Omar Radi’s Trial Postponed After Long Pleadings by his Lawyers, MOROCCO LATEST NEWS (July 17, 2021), https://moroccotestnews.com/omar-radis-trial-postponed-after-long-pleadings-by-his-lawyers. The ICCPR allows for closed hearings in limited circumstances, including when there are reasons of “morals,” “public order,” or “national security,” or “when the interest of the private lives of the parties so requires.” ICCPR, supra note 20, at art. 14(1). Although it appears that the court is relying on this exception, international standards require the court to explain itself, which it has not done so far. See International Criminal Court Regulations of the Court, Reg. 20(2).
examined. At the hearing on June 15, the prosecution argued that the court had no need to bring witnesses to appear before the court as “we already have documents that prove the crime,” and that “bringing a witness to the court would not benefit us of anything,” since “listening to the witness by the inspector is a real testimony itself.” This was an important issue because the investigating judge heard Mr. Ait Braim’s statements without the presence of the accused. At the hearing on June 29, Mr. Radi stated that he “had offered… to bring [Mr. Simons] to give testimony,” citing Mr. Simons’ letter expressing his willingness to appear in court.

Despite Mr. Ait Braim’s critical testimony, as discussed above, the judge refused to summon Mr. Ait Braim from the United States to allow the defense to cross-examine him. Instead, the court reasoned that, since the investigating judge believed Mr. Ait Braim’s initial testimony, there was no need to allow the defense to question him. As stated in the Judgment, “the law does not stipulate a specific number of witnesses for the judge to hear, . . . the judge’s reassurance is what matters, and . . . the judge has the right not to call all declarants as long as the witness testimonies heard are believed to be honest, true, and conform to the circumstances of the incident.” Further, the defense requested that the court allow Arnaud Simons to testify as a witness on the espionage charges, but the court did not address this during the trial. In the Judgment, the court stated that it was unnecessary to call Mr. Simons because the “evidence [did] not depend on [him].” However, this statement was seemingly contradicted by the court’s consideration of Mr. Radi’s communications with Mr. Simons as a meaningful part of his alleged espionage services to the Dutch Embassy. Perhaps even more puzzling, although Mr. Simons publicly offered to testify, the court seemed to entertain the notion that Mr. Simons did not exist or was “using a code name.” Ultimately, the court excluded, or did not credit, the potentially exculpatory testimony of Mr. Simons—much as it did that of Mr. Stitou—while permitting the testimony of Mr. Ait Braim without contest.

On July 19, 2021, a final hearing was held, during which the parties made closing arguments. During this hearing, Mr. Radi’s lawyers argued that the entire trial was politically motivated, that the court had excluded key evidence, and that Mr. Radi had been held arbitrarily. Mr. Radi also provided a closing statement in which he contested

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177 Trial Monitor Notes (June 8, 2021) (on file with authors).
178 Trial Monitor Notes (June 15, 2021) (on file with authors).
179 Id.
180 Trial Monitor Notes (June 29, 2021) (on file with authors).
181 Judgment, “After Deliberations.”
183 Judgment, “After Deliberations.”
184 Trial Monitor Notes (July 19, 2021) (on file with authors).
185 Judgment, “After Deliberations.”
186 Id.
187 Id.
188 Trial Monitor Notes (July 19, 2021) (on file with authors).
189 Id.
the legitimacy of the charges, calling them “fiction.”\textsuperscript{190}

At the same hearing, the court rendered its decision, convicting Mr. Radi of the charges against him and sentencing him to six years in prison and payment of 200,000 Moroccan Dirhams\textsuperscript{191} in damages to the complainant.\textsuperscript{192}

**Judgment**

The text messages that Mr. Radi exchanged with Dutch diplomats served as the primary evidentiary basis for his conviction under Moroccan Penal Code Article 191.\textsuperscript{193} As previously noted, the Judgment alleges that text messages from Mr. Huisingh to Mr. Radi asking Mr. Radi if he wanted to meet the new secretary of the Dutch Embassy were, on their own, indication of “an agent . . . passing on his informant to another agent as he is near of completing his duties.”\textsuperscript{194} Additional statements from the Judgment frame Mr. Radi’s use of text messages to communicate as evidence of espionage.\textsuperscript{195} Overall, the Judgment fails to point to any evidence showing that Mr. Radi “shar[ed] intelligence” with the diplomats, instead assuming that he engaged in “espionage activities” by merely having these relationships.\textsuperscript{196}

As to the allegations of harming Morocco’s internal security through foreign consulting, the Judgment relies heavily on records of bank transfers and speculative reasoning to convict Mr. Radi of espionage under Moroccan Penal Code Article 206.\textsuperscript{197} For example, despite Mr. Radi’s testimony that he was an economic consultant for K2, the Judgment summarily concludes that Mr. Radi must have engaged in suspicious activities with K2 because “checking the internet and receiving an answer from a specialized website [would be] enough to do without [Mr. Radi]’s services.”\textsuperscript{198} The Judgment goes on to assess Mr. Radi’s bank statements, but provides no explanation as to why the bank statements justify espionage charges.\textsuperscript{199}

The Judgment also relies on speculative reasoning to convict Mr. Radi of espionage as it relates to his interactions with G3. The Judgment draws heavily, again, on payments made from G3 to Mr. Radi, but fails to explain how these transfers amount to espionage. The Judgment also alleges that the founder of G3, Clive Newell, has ties to MI6 in the UK. Although Mr. Radi denied knowledge of these ties and worked with Mr. Newell after

\textsuperscript{190} Id.; *Timeline of the Omar Radi Case*, supra note 63.

\textsuperscript{191} Approximately 21,000 US dollars.


\textsuperscript{193} Judgment, “After Deliberations.”

\textsuperscript{194} Id.

\textsuperscript{195} Id.

\textsuperscript{196} Judgment, “Closed Hearings”; id. at “After Deliberations.”

\textsuperscript{197} Judgment, “After Deliberations.”

\textsuperscript{198} Id.

\textsuperscript{199} Id.
his alleged time with MI6, the Judgment concludes that the limited evidence "proves [that] the goal of [G3] wasn’t a consultancy service" simply because Mr. Radi “is only a newspaper editor who sometimes writes about economic or financial topics, and who has no professional expertise in the private and public economic and financial sectors.”

As to the Bertha Foundation, the Judgment states that Mr. Radi’s conduct was aimed at “undermining the citizens’ loyalty towards Morocco . . . through inciting feelings of hate, jeopardizing the diplomatic situation in Morocco, and divulging information obtained without legal justification . . . in order to taint Morocco’s image inside the country and outside of it.” The court did not provide any justification for this other than alleging that Mr. Radi did not complete the work required by the Bertha Foundation. Although the court heard testimony from several individuals involved in the Bertha Foundation’s work in Morocco, none of this testimony connected Mr. Radi to any sort of espionage activities.

**Post-Trial**

Following his conviction, Mr. Radi’s lawyers promptly filed an appeal. Mr. Radi was denied release pending the appeal. An appeal hearing was originally scheduled for November 4, 2021, but postponed eight times until February 15, 2022. On March 3, 2022, the Appeals Court in Casablanca upheld the first instance conviction of Mr. Radi, confirming his six-year sentence for espionage and rape.

Additionally, separate from the espionage and rape case, in August 2021, Mr. Radi and Mr. Stitou were convicted and given three-month suspended sentences for public drunkenness relating to their July 2020 encounter with the Chouf TV cameraman.

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200 Id.
201 Id.
202 Morocco: Journalist in Prison After Unfair Trial, supra note 96.
203 The Criminal Procedure Code states that “[p]rovisional release may [] be requested in any case by any indicted, accused, or charged defendant and at any time during the proceedings.” CRIMINAL PROCEDURE CODE, supra note 5, at art. 157. “In the event of an appeal and until the judgment of the Supreme Court, the decision on the application for provisional release is decided by the court which last heard the case on the merits,” and “[i]f the appeal has been lodged against a judgment of the criminal court, the detention is decided by the indictment division.” Id.; see also INT’L COMM’N OF JURISTS, REFORM THE CRIMINAL JUSTICE SYSTEM IN MOROCCO 9 (2017), https://www.icj.org/wp-content/uploads/2017/04/Morocco-Reform-Crim-Justice-System-Advocacy-Analysis-Brief-2017-ENG.pdf (“Arrest or detention that is permitted under domestic law may still be arbitrary under international standards, for instance, when the law includes vague and expansive concepts such as ‘public security’ without precise definitions.”).
204 Trial Monitor Notes (Nov. 4, 2021) (on file with authors); Trial Monitor Notes (Nov. 25, 2021) (on file with authors); Trial Monitor Notes (Dec. 9, 2021) (on file with authors); Trial Monitor Notes (Jan. 6, 2022) (on file with authors).
METHODOLOGY

A. THE MONITORING PHASE

To assess the trial’s fairness and assign it a grade, Professor Hannah R. Garry, a member of the TrialWatch Expert Panel, reviewed the trial monitor notes, the Judgment, and other materials with the assistance of Clinic supervising attorney Professor Henna Pithia and student attorneys.

First, Professor Garry found that the prosecution, trial, and conviction of Mr. Radi violated his right to the presumption of innocence. Mr. Radi was the target of a virulent and widespread media campaign by media outlets affiliated with the Moroccan government. These stories undermined Mr. Radi’s presumption of innocence.

Second, Professor Garry concluded that Mr. Radi had been arbitrarily detained prior to and during trial, during which period he faced serious medical issues and experienced inhumane treatment.

Third, Professor Garry determined that there were objective grounds for finding a lack of impartiality by the court, including the court’s treatment of a number of evidentiary issues and its failure to secure or allow the testimony of key witnesses.

Finally, Professor Garry found that the proceedings met the standards for finding an abuse of process.
A. APPLICABLE LAW

This report draws on the ICCPR\textsuperscript{207} and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),\textsuperscript{208} which Morocco ratified in 1979 and 1993, respectively.\textsuperscript{209} The report also draws on jurisprudence from the UN Human Rights Committee (HRC), tasked with monitoring implementation of the ICCPR; widely accepted guidelines that establish best practices in the fields of prosecutorial ethics and human rights;\textsuperscript{210} and the aforementioned provisions of the Moroccan Constitution governing Moroccan citizens’ fundamental freedoms and their right to a fair trial.\textsuperscript{211} Based on these international and domestic standards, the report identifies a number of violations at various stages of the proceedings against Mr. Radi.

B. PRE-TRIAL VIOLATIONS

Presumption of Innocence

Article 14 of the ICCPR provides that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”\textsuperscript{212} The right to the presumption of innocence has been described by the HRC as “fundamental to the protection of human rights.”\textsuperscript{213} The right “guarantees that no guilt can be presumed [of the accused] until the charge has been proved beyond 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.”\textsuperscript{214} Otherwise stated, “[a]t its core, the right to be presumed innocent prohibits convictions that are predetermined or based on flimsy grounds” and forbids the presentation or description of the accused as a criminal before he has been proved one.\textsuperscript{215} This right is absolute; it is not subject to exceptions

\textsuperscript{207} ICCPR, supra note 20, at art. 14(1).
\textsuperscript{211} \textit{See CONSTITUTION (MOROCCO), supra note 6, at arts. 23, 25, 28, 109, 117-128. Note, nevertheless, that, per the HRC, “Article 14 [of the ICCPR] contains guarantees that States parties must respect, regardless of their legal traditions and their domestic law.” Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, ¶ 4 [hereinafter HRC, General Comment No. 32].
\textsuperscript{212} ICCPR, supra note 20, at art. 14(2). The UDHR similarly provides, “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” \textit{Id.} at art. 11(1).
\textsuperscript{213} HRC, General Comment No. 32, supra note 211, at ¶ 30.
\textsuperscript{214} \textit{Id.}
\textsuperscript{215} \textbf{AMAL CLOONEY & PHILIPPA WEBB, THE RIGHT TO A FAIR TRIAL IN INTERNATIONAL LAW} 199 (2020).
and cannot be restricted.\textsuperscript{216} In fact, per the HRC, “[d]eviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.”\textsuperscript{217}

There are many indications that Mr. Radi’s right to be presumed innocent was impinged upon in the present case. Specifically, Mr. Radi was the victim of what has been described as a public campaign of “defamation, insults and calumny” driven by State-supported media.\textsuperscript{218}

While media coverage will not often give rise to a breach of the presumption of innocence, it may do so where it is essentially a vehicle for the authorities to suggest guilt before trial.\textsuperscript{219} International bodies have found, for instance, that, “in certain situations[,] a virulent media campaign can . . . adversely affect the fairness of a trial and involve the State’s responsibility’ to guarantee both an impartial court and the presumption of innocence at trial.”\textsuperscript{220}

Beginning in early 2020, Mr. Radi became the subject of a persistent smear campaign by media outlets known to be close to the Moroccan government. Per Human Rights Watch, “[m]edia close to the security services that specialize in maligning critics published numerous articles insulting Radi, his parents, friends, and supporters; disclosing alleged details of his private life[.]”\textsuperscript{221} By one count, between June 7 and September 15 of 2020 alone, “at least 136 articles attacking Radi, his family, and supporters” were published in Moroccan news websites, including Chouf TV, Barlamane.com, and Le360, in both Arabic and French.\textsuperscript{222} A collective of 110 Moroccan journalists decried these entities as the “Slander Media” and described their “editorial line [as consisting] in attacking voices that bother those in power.”\textsuperscript{223} Though other Moroccan journalists and activists who have

\textsuperscript{216} Id.

\textsuperscript{217} HRC, General Comment No. 32, supra note 211, at ¶ 6. See also id. ¶ 19 ("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."); Human Rights Committee, González del Río v. Peru, U.N. Doc. CCPR/C/46/D/263/1987, Oct. 28, 1992, ¶ 5.2.

\textsuperscript{218} Morocco: Espionage Case Against Outspoken Journalist, supra note 72.


\textsuperscript{220} CLOONEY & WEBB, supra note 215, at 223.

\textsuperscript{221} Morocco: Espionage Case Against Outspoken Journalist, supra note 72. For an example of the negative coverage of Mr. Radi, see Omar Radi, au cœur de la tempête, BARLAMANE.COM (Aug. 3, 2020, 3:17 PM), https://www.hrw.org/sites/default/files/media_2020/09/Morocco-article-FR.pdf (accessed via HUM. RTS. WATCH).

\textsuperscript{222} Morocco: Espionage Case Against Outspoken Journalist, supra note 72.

\textsuperscript{223} Id.
criticized the government in the past were likewise subject to similar media coverage.\(^2\)\(^{224}\) Mr. Radi’s father, Driss Radi, reported that the “fierce defamation campaign” mounted against Mr. Radi was so severe that it was “akin to ‘psychological torture’” for the journalist.\(^2\)\(^{225}\) One site in particular, *Chouf TV*, not only published Mr. Radi’s bank details and the identity of his roommate, but also published “a large number of articles” accusing Mr. Radi of rape, theft, and not paying his water and electricity bills, in addition to generally presenting him as “irresponsible” and an “alcoholic.”\(^2\)\(^{226}\) Similarly, the “French language site *Le360* speculated that [Mr.] Radi had ties to MI6, the UK’s intelligence agency.”\(^2\)\(^{227}\) At one point, while Mr. Radi reportedly did not have access to own his case file, the site *Barlamane.com* published an analysis of the case that “was clearly informed by extensive access to the case file, and strongly suggested that [Mr.] Radi was guilty as charged.”\(^2\)\(^{228}\) Given the stage of the proceedings at the time of publication, the article’s level of detail concerning the charges and alleged evidence against Mr. Radi points to collaboration with government officials in its drafting.\(^2\)\(^{229}\)

In fact, the Moroccan media’s treatment of Mr. Radi resembles media coverage found to violate the presumption of innocence in *Kulov v. Kyrgyzstan*. In that case, the HRC found the State’s use of national media to portray the accused as a criminal—including allowing a group of journalists to study the criminal case file and allegedly use information to prepare critical articles against the accused—entailed a violation of the individual’s right to be presumed innocent.\(^2\)\(^{230}\) Similarly, in *Mwamba v. Zambia*, officers investigating the accused asserted his guilt in the media before the issue had been adjudicated, which the HRC found “eroded” his presumption of innocence.\(^2\)\(^{231}\) The widespread assertions of Mr.

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224 Such articles often included “vulgar insults . . . banking and property records, screenshots of private electronic conversations, allegations about sexual relationships (or oblique threats to expose them), identities of roommates, and biographical details, sometimes as far back as their childhood, complete with information on the parents of the targeted individuals.” *Morocco: Espionage Case Against Outspoken Journalist*, supra note 72.

225 Id. The elder Mr. Radi noted that the defamation campaign so affected his son’s mental health that he required a monthlong leave of absence from work.


228 Morocco: Journalist in Prison After Unfair Trial, supra note 96. Per HRW, “authorities denied [Mr.] Radi access to his own case file for 10 months.” Though not discussed extensively in this report, the HRC has said that, where a court “acted in a biased manner” by not permitting “[an accused’s] lawyer to [access] the case file prior to the beginning of the court trial,” it has breached “the basic guarantees of a fair trial, [namely the rights to] equality before the law and a fair hearing by an impartial tribunal.” Human Rights Committee, Khostikoev v. Tajikistan, U.N. Doc. No. CCPR/C/97/D/1519/2006, Dec. 3, 2009, ¶¶ 7.2-7.3.

229 The authors refer so thoroughly to “staggering” conclusions from the preliminary investigation that the “sources” they cite could only come from within the BNPJ or the Office of the Prosecutor. Omar Radi, au cœur de la tempête, supra note 221; see Trial Monitor Notes (June 1, 2021) (on file with authors).


Radi’s guilt by pro-government media had a similar effect on his fair trial rights.

**Arbitrary Detention**

Per Article 9(3) of the ICCPR, “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge . . . and shall be entitled to trial within a reasonable time or to release.”\(^{232}\) Furthermore, the ICCPR provides that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody[.]”\(^{233}\) In this regard, the HRC has made clear that pre-trial detention should be the exception, rather than the rule.\(^{234}\) That is, courts are expected to provide an evidence-based rationale as to why pre-trial detention is necessary, such as to prevent flight, interference with evidence, or the recurrence of serious crime.\(^{235}\)

In Mr. Radi’s case, the investigating judge justified initial pre-trial detention in light of “the dangerous nature of criminal acts, breach of public order and the presence of evidence.”\(^{236}\) This reliance on the ostensible seriousness of the crimes charged, as well as alleged evidence of guilt, is inconsistent with international standards. In fact, the UN Working Group on Arbitrary Detention has previously held that suspicion or seriousness of the charges, alone, cannot justify pre-trial detention.\(^{237}\)

On multiple subsequent occasions, the court either overlooked or explicitly rejected Mr. Radi’s requests for provisional release.\(^{238}\) For example, in response to a September 3,
Inhumane Treatment

ICCPR Article 10 provides that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” CAT Article 16 prohibits intentionally inflicting pain on persons by “acts of cruel, inhuman or degrading treatment or punishment [that] do not amount to” the Article 1 definition of torture.

The HRC maintains that the ICCPR Article 10 obligation to treat detained individuals with respect for their inherent dignity encompasses the provision of adequate medical care during detention. For example, in Sendic Antonaccio v. Uruguay, the HRC found that the accused’s Article 10 rights had been violated when guards denied him medical attention after ill-treatment in prison, as this constituted a failure to treat him with humanity and with respect for his inherent dignity during his detention.

The Committee Against Torture has found CAT violations where an individual is “subjected to solitary confinement for a prolonged and indefinite period, without being provided with the rationale behind it and without reassessment of his situation at regular

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239 Morocco: Espionage Case Against Outspoken Journalist, supra note 72.
241 See European Court of Human Rights (Grand Chamber), Bykov v. Russia, App. No. 4378/02, Mar. 10, 2009, ¶ 65. In Bykov, defendant spent one year, eight months, and fifteen days in detention between his arrest and the criminal trial, and local courts rejected his petitions for release at least ten times, invoking the gravity of the charge and the general “likelihood of his fleeing, obstructing the course of justice and exerting pressure on witnesses” without providing “relevant and sufficient reasons.” The European Court found that this was a violation of Article 5(3) of the European Convention on Human Rights, which entitles defendants to trial within a reasonable time or provisional release when continued detention is no longer reasonable. Id. at ¶¶ 61, 67-68.
242 ICCPR, supra note 20, at art. 10.
243 CAT, supra note 208, at art. 16.
intervals, in accordance with his procedural rights" and where “his contacts with his family are restricted, he has limited access to a doctor in prison and he has not been allowed the opportunity to be examined by an independent doctor[].” In that case, Ali Aarrass v. Morocco, Morocco’s conduct lacked “certain basic guarantees that must be applied to all persons deprived of their liberty in order to prevent them from being subjected to torture or ill-treatment[,]” and the conditions of detention imposed “were not proportional to the [State’s] alleged disciplinary objective.” Further, the Committee Against Torture has reiterated that “solitary confinement and seclusion should be used as measures of last resort, for as short a time as possible, under strict supervision and with the possibility of judicial review.”

Here, Mr. Radi was detained for nearly a year before his conviction, primarily in solitary confinement. His isolation was widely reported by multiple online accounts. Additionally, Mr. Radi suffered significant medical issues. For instance, Mr. Radi endured a number of inflammatory outbreaks of his Crohn’s disease, which resulted, among other things, in “bleeding” and rapid weight loss. Mr. Radi received insufficient medical care during this period, such that his preexisting conditions approached a “dangerous level of infection.” Further, on multiple occasions, Mr. Radi was examined by a doctor while in handcuffs or under the supervision of security guards. Mr. Radi’s defense counsel raised his health condition during the hearing on June 1, 2021, and the judge authorized Mr. Radi to make a statement. Mr. Radi revealed that he had “refused to undergo treatment because he was” to be treated in a hall while “security guards were present alongside the doctor,” and that “the prison director promised [him] that he would be treated in a room on his own.” However, as stated by Mr. Radi during this hearing, despite the prison director’s promise, he was not treated in his own room and was forced

247 Id. at ¶ 8.5 (pointing specifically to “the complainant’s solitary confinement and its duration, which were aggravated by the lack of periodic monitoring of this regime, his limited contact with his family and his irregular access to health care”).
248 Id.
250 Trial Monitor Notes, May 18, 2021 (on file with authors).
251 Radi lost over 15 kg during this hunger strike and suspended it due to health issues. Le journaliste marocain Omar Radi suspend sa grève de la faim, FRANCE 24 (Apr. 30, 2021, 9:34 PM), https://www.france24.com/fr/afrique/20210430-le-journaliste-marocain-omar-radi-suspend-sa-gr%C3%A8ve-de-la-faim; Hunger Strike Is Last Resort for Some Imprisoned Moroccan Journalists, supra note 54 (describing Mr. Radi’s symptoms, including diarrhea and vomiting).
252 Morocco: Concern Over the Health of Detained Journalists on Hunger Strike, supra note 163.
253 Trial Monitor Notes, May 18, 2021 (on file with authors).
254 Trial Monitor Notes, June 1, 2021 (on file with authors).
255 Id.
to seek treatment in front of the guards due to the severity of his physical pain. Further, Mr. Radi described that “[a] prison guard record[ed] everything he sa[id]” when he was on calls with his family.

Similar to the complainants in Sendic Antonaccio and Ali Aarrass, Mr. Radi was denied medical treatment in disregard of his humanity and without respect for his inherent dignity, and his detention and confinement were prolonged, indefinite, and lacked basic guarantees, such that he was subjected to inhumane treatment in violation of Article 16 of the CAT and Article 10 of the ICCPR.

C. VIOLATIONS AT TRIAL

Right to Call and Confront Witnesses

The ICCPR protects an accused’s right “to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.” Though the right to call witnesses is not unlimited, an accused should be permitted to call and have admitted any witnesses that are “relevant for the defence” where he requests them in compliance with court procedures. A violation of the accused’s rights under 14(3)(e) has been found where “the majority of the witnesses whose questioning was requested by the [accused] and his counsel were not questioned at the hearings” and the court “did not provide any reasons for not allowing those witnesses to be questioned.”

The HRC has further explained that this right includes affording the accused a “proper opportunity to question and challenge witnesses against them at some stage of the proceedings.” The accused ought to have “the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”

In Mr. Radi’s case, on several occasions, the court violated this right.

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256 Id.
257 Id.
259 ICCPR, supra note 20, at art. 14(3)(e).
262 HRC, General Comment No. 32, supra note 211, at ¶ 39.
264 On multiple occasions, Mr. Radi’s attorneys reminded the court of its obligation to hear from witnesses, including those heard at the investigative stage, but the court declined to call the requested individuals. See, e.g., Trial Monitor Notes (June 8, 2021) (on file with authors); Trial Monitor Notes (June 15, 2021) (on file with authors); Trial Monitor Notes (June 22, 2021) (on file with authors); Trial Monitor Notes (June 29, 2021) (on file with authors).
As a preliminary example, the defense sought to call Arnaud Simons, Mr. Radi’s alleged Dutch “handler.” His testimony would have been directly relevant to the charge of “harming external security” against Mr. Radi. Indeed, the prosecution alleged that Mr. Radi provided Mr. Simons with information about the Rif unrest for Dutch officials to use in public statements aimed at harming Morocco’s foreign relations; Mr. Simons, however, has publicly denied the prosecution’s allegations. Had he been permitted to testify in court, he could have put such denials on the record.

Nonetheless, the court did not permit Mr. Radi to call Mr. Simons as a key witness in his defense. Despite Mr. Simons’ provision of documents verifying his identity, the court declined to consider his availability to testify on Mr. Radi’s behalf or address inconsistencies in the court’s treatment of the facts. At the time, the court offered no explanation for its decision. Later, in the Judgment, the court explained that it had employed its “discretionary powers” and determined that calling foreign individuals to testify “would be futile[,] since the evidence present in the case file, including the witness statements as heard by the investigating judge[,] [made] it unnecessary to resort to that procedure.” The court applied similarly spurious reasoning in excluding testimony from witnesses at the Bertha Foundation, claiming that “dealing with these organisations is criminal, as they have ties with intelligence, and their testimonies will not be impartial as they have a vested interest in the case.” This violated Mr. Radi’s right to call relevant witnesses in his defense.

The court also did not permit Mr. Radi’s defense counsel to examine Hassan Ait Braim, the fiancé to whom the complainant claimed she reported the incident. The

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265 See, e.g., Trial Monitor Notes (June 1, 2021) (on file with authors).
266 Brought under the aforementioned Article 191 of the Moroccan Penal Code, the charge revolves primarily around texts Mr. Radi exchanged with a Dutch contact.
267 Simons, supra note 107; Arnaud Simons (@Arnaud_Simons), TWITTER (July 6, 2021, 4:41 AM), https://twitter.com/Arnaud_Simons/status/141234604631562374. Mr. Simons has denied any past or present involvement in espionage, noting that he and Mr. Radi met during a Belgian ministerial visit in 2012 and developed a friendly relationship thereafter.
269 Judgment, “After Deliberations.” Per the court, “the judge has the right not to call all declarants as long as the witness testimonies who have been heard are believed to be honest, true and conform to the circumstances of the incident,” and “trial judges are not obliged to hear witnesses if they don’t have to, as long as the evidence does not depend on them[.]” Id. The court also claimed that calling the additional witnesses would “delay the trial” in contravention of international standards requiring promptness as an element of a fair trial. See also id. (“[W]hat matters however is what the judge sees fit, and that he may rely on the statement of the victim as long as he is convinced of its truthfulness and that it is conform to the circumstances of the incident.”). Though it is the court’s prerogative to accept and dismiss certain evidence, here, it elected to favor spurious and circumstantial evidence over the possibility of direct evidence from relevant sources.
270 Morocco: Ensure Fair Appeal Trial to Journalist Omar Radi, supra note 268.
investigating judge apparently summoned the fiancé in August 2020 amid border closures, and during a period of judicial recess, to take his testimony. Though the court arranged for Mr. Ait Braim to provide testimony within two days of the complainant’s request that he be heard as a witness, at no point was Mr. Radi’s team given the opportunity to question or cross-examine him. In fact, Mr. Radi’s team was not made aware that Mr. Ait Braim had given testimony until several months afterward. Mr. Radi’s defense team was also not permitted access to key information surrounding his identity until after the trial began, leading them to suspect that he did not in fact exist.

The fiancé’s account of his calls with the complainant played a significant role in the court’s consideration of the rape charge. Mr. Radi’s inability to cross-examine him—either during the investigation or at trial—violated his right to “examine” the witnesses against him and interrogate the accuracy of their testimony.

Right to an Impartial Tribunal

The ICCPR provides that “[i]n 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.” As the International Commission of Jurists has observed, “[t]he right to be tried by an independent and impartial court is a sine qua non to ensuring a fair trial.” The Human Rights Committee has identified two components critical to the impartiality of the tribunal. “First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbour 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, judges “must also appear to a reasonable observer to be impartial.” These priorities are also reflected in the Moroccan Constitution, which emphasizes each person’s “right to an equitable process,” the judiciary’s “duties of independence and of

272 Trial Monitor Notes (Jan. 27, 2022) (on file with authors); Morocco: Journalist in Prison After Unfair Trial, supra note 96.
273 See Judgment, “After Deliberations.”
274 Id.; Trial Monitor Notes (June 8, 2021) (on file with authors); Trial Monitor Notes (Jan. 27, 2022) (on file with authors); Trial Monitor Notes (Feb. 3, 2022) (on file with authors).
275 See Trial Monitor Notes (June 1, 2021) (on file with authors); Trial Monitor Notes (June 8, 2021) (on file with authors); Judgment, “After Deliberations.”
276 See Judgment, “After Deliberations.” Notably, in a letter submitted to the court as part of the request to testify, Mr. Ait Braim apparently admitted that he “[did] not know the truth of what happened” following the abrupt end of his video call with the complainant, raising questions about the court’s high appraisal of his testimony. Morocco: Journalist in Prison After Unfair Trial, supra note 96. However, when he later testified in the investigative stage, he stated he “was looking at [the complainant] as she was lying on her back when he suddenly witnessed a man passing behind her in his boxers and the call ended.” Judgment, “Witnsses.”
277 ICCPR, supra note 20, at art. 14(1).
impartiality,” and the primacy of the “establishment of the truth.”  

The Committee has said that where a court has “failed to ensure the presence and the questioning of important witnesses” and “several of the lawyers’ requests were not given due consideration[,]” a violation of the accused’s rights under Art. 14(1), as well as Art. 14(3), has occurred. In general, to observe the requisite impartiality in a case, “the parties in the proceedings have to be heard and their objections properly addressed[,]” particularly when raising concerns about the reliability of or discrepancies in evidence presented against the accused. The HRC has previously found that where a trial judge declines to “show sufficient latitude in permitting the defendant to prove [his] defence,” a fair trial violation has occurred.  

Here, not only did the court reject requests to summon or cross-examine witnesses, it also confined its analysis in the Judgment to conclusory statements about the “suspicious” nature of Mr. Radi’s conduct and dismissed evidence to the contrary, rather than assessing the evidence thoroughly and impartially. For example, the Judgment points to the fact that Mr. Radi’s communications with the Dutch Embassy diplomat took place “exclusively via text messages” as evidence that Mr. Radi was aware of the “suspicious nature of the activities” and took security precautions in interacting with the diplomat. However, as Human Rights Watch highlights, “[t]he fact that a person relies on text messages as a primary channel of communication does not appear to be evidence of any secret activity or evidence of guilt.” In addition, the Judgment reasons that “the fact that [Mr. Radi] never published any article or other journalistic work” relating to his contacts with the Dutch Embassy demonstrates that these contacts were with “secret agents from the Dutch Embassy in Morocco [and] had no relation with his journalistic work.” Again, the court reached these conclusions without full consideration of the

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281 Constitution (Morocco), supra note 6, at arts. 109, 120, 128. Notably, there are significant systemic concerns related to the independence of the tribunal. The HRC has said that “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.” HRC, General Comment No. 32, supra note 211, at ¶ 19. “The requirements of independence and impartiality mean that members of the Court need to be free from both political and private influences.” Int’l Comm’n of Jtuls, supra note 278, at 72. Though the judiciary is formally independent of the legislative and executive powers, “the King is the guarantor of the independence of the judicial power.” Constitution (Morocco), supra note 6, at art. 107. In the past, “outcomes of trials in which the government had a strong interest . . . appeared predetermined[,]” and the judiciary served as an instrument to “selectively target, prosecute, jail, and harass critics” like Mr. Radi, raising questions about the court’s impartiality. Country Reports on Human Rights Practices: Morocco (2018), supra note 9; Morocco/Western Sahara – Events of 2019, Hum. Rts. Watch (2019), https://www.hrw.org/world-report/2020/country-chapters/morocco-western-sahara. As discussed above, the nature of Mr. Radi’s prosecution and conviction suggests this trend has not yet abated.  


286 Morocco: Journalist in Prison After Unfair Trial, supra note 96  

287 Morocco: Journalist in Prison After Unfair Trial, supra note 96.  

288 Id.
available evidence, which “give[s] rise to reasonable doubt about the propriety of [a defendant’s] conviction.” The judge made inferential leaps and treated them as dispositive of the issues raised in the case. Where there were “serious doubts about the reliability and accuracy” of “decisive evidence” against the accused, such that a domestic court’s conviction was “manifestly unreasonable,” and where a court “attached probative value only to the evidence that could convict [a defendant]” while “disregarding any and all evidence that could support the [defendant’s] version of the events,” international bodies have found violations of fair trial standards.

The court also arbitrarily discounted testimony from Imad Stitou as to the sexual assault charge against Mr. Radi. During the preliminary investigation, Mr. Stitou, as the sole witness to the incident, provided testimony to the court that corroborated Mr. Radi’s description of the event as a consensual encounter. Shortly thereafter, the prosecutor opened an investigation into Mr. Stitou, accusing him of being “complicit” in Mr. Radi’s alleged conduct and charging him with “participation in rape” and “participation in the indecent assault of a woman with violence.” The court then declined to take Mr. Stitou’s potentially exculpatory testimony into consideration, stating in the Judgment that his testimony about the encounter being consensual is “unreliable because he is co-accused, and he has interest to have the charges against him dropped.” Then, in the Judgment, the court accorded greater attention to the description by the owners of the villa in which the encounter took place as to the complainant and her character rather than the testimony of an individual present in the area where the encounter occurred. As noted previously, the court did so even though the owners of the villa never testified as to any awareness of the alleged rape.

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289 CLOONEY & WEBB, supra note 215, at 236; Human Rights Committee, Ashurov v. Tajikistan, U.N. Doc. CCPR/C/89/D/1348/2005, Mar. 20, 2007, ¶ 6.7. Such exclusion, per the HRC, constitutes “manifest arbitrariness” and a “denial of justice.” Similarly, a conviction based on the testimony of a prosecution witness as “circular” and its treatment of Mr. Stitou as “an abuse of process . . . showing bias and the absence of an objective assessment of both defence and prosecution evidence without a prior assumption about the case.”

290 Judgment, “After Deliberations.”


294 Judgment, “After Deliberations” (“[T]he statement of the accused Imad Stitou relating to the fact that the sexual intercourse was consensual, is unreliable because he is co-accused, and he has interest to have the charges against him dropped.”). See Morocco: Ensure Fair Appeal Trial to Journalist Omar Radi, supra note 268 (describing the court’s argument against proper consideration of the testimony of a defense witness as “circular” and its treatment of Mr. Stitou as “an abuse of process . . . showing bias and the absence of an objective assessment of both defence and prosecution evidence without a prior assumption about the case”).

295 See, e.g., Judgment, “After Deliberations” (referring to the testimony of Ali Amar and his wife Fatima Zahra as to what the complainant would do as probative against Mr. Radi’s account while dismissing Mr. Stitou’s eyewitness account summarily, as described above); see also id. at “Witnesses.”
D. ABUSE OF PROCESS

Per the ICCPR, no one shall be subject to “unlawful attacks on his honour and reputation.” Further, no one shall be subject to abuse of process.

While the HRC has yet to establish clear criteria for assessing such situations, jurisprudence from the European Court of Human Rights (ECtHR) is instructive in evaluating whether a legal proceeding has been driven by improper motives. Among factors considered are: whether the ultimate decision was well-reasoned and based on law; the political context in which the prosecution was brought; and the broader context, including any pattern of politicized arrests and prosecution.

The ECtHR has also made clear that though a legal proceeding may have both proper and improper motives, it will nevertheless find a violation where the improper motives “predominated.” Further, acknowledging that it is very often difficult to adduce direct evidence of a State’s bad faith, the European Court has held that proof of an illegitimate purpose may be shown by way of circumstantial evidence leading to inferences about primary facts. In past cases, the ECtHR has relied on the following elements as circumstantial evidence of a State’s bad faith: the fact that the acts giving rise to the defendant’s arrest and detention are protected under human rights law; the behavior of prosecuting authorities, including delays between the arrest and the laying of

296 ICCPR, supra note 20, at art. 17.
297 These priorities are also reflected in the ICCPR, though the doctrine of abuse of process was primarily developed in the European Court of Human Rights.
302 Merabishvili, App. No. 72508/13, at ¶¶ 316-17; European Court of Human Rights, Ibrahimov & Mammadov, App. No. 63571/16, at ¶ 147.
charges;\textsuperscript{304} and appearances of political interference in the case, especially when there appears to be a correlation between hostile statements by public officials\textsuperscript{305} and the timing or wording of criminal charges against the applicant.\textsuperscript{306}

Abuse of process may be demonstrated where there is a "coexistence of sufficiently strong, clear and concordant inferences" suggesting that an unlawful purpose "predominated" the proceedings.\textsuperscript{307} The proceedings against Mr. Radi meet the standards for finding an abuse of process, principally due to the political context, the flawed process through which he was convicted, and the leaps of logic in the Judgment.

As previously mentioned, Mr. Radi’s prosecution is illustrative of a broader, emerging trend in Morocco’s political environment. Here, Mr. Radi, who had a history of speaking out against the Moroccan government,\textsuperscript{308} was charged with crimes following years of reported surveillance by the State. Beyond the problematic surveillance, as detailed below, the bases of the charges themselves are questionable.\textsuperscript{309} For example, the espionage charges stem primarily from Mr. Radi’s interactions with a Dutch contact. It is well understood that "[d]eveloping journalistic contacts or collecting and sharing non-classified information are protected activities under international law."\textsuperscript{310} In the absence of evidence that Mr. Radi “did anything except carry out ordinary journalistic or corporate due diligence work and maintain contact with diplomats, as many journalists and researchers do routinely[,]” or that he obtained, possessed, or provided to anyone classified information, he should not be prosecuted for such protected activities.\textsuperscript{311} Additionally, after the three primary charges were brought, seemingly unrelated charges of public intoxication and tax evasion were added to paint a picture of Mr. Radi as “immoral” and “shameful.”\textsuperscript{312} Per Human Rights Watch, adding a “cascade” of “bogus” supplemental charges involving notions of decency has now proven to "clearly [be] part

\begin{footnotes}
\footnote{\textsuperscript{304} See \textit{id.} at ¶¶ 225-28 (finding relevant the four-year time lapse between the alleged and events and the criminal prosecution when most evidence procured early in the investigation and the authorities failed to provide any justification for the delay); European Court of Human Rights, Demirtas v. Turkey (No. 2), App. No. 14305/17, Nov. 20, 2018, ¶ 271-73 (authorities “pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate” in detaining the accused).}
\footnote{\textsuperscript{305} See \textit{Kavala}, App. No. 28749/18, at ¶¶ 229-30 (finding significant that authorities brought charges shortly after speeches by the President of Turkey naming the applicant); European Court of Human Rights, Ismayilova v. Azerbaijan (No. 2), App. No. 30778/15, Feb. 27, 2020, ¶ 117 (finding relevant the ‘stigmatising’ statements of officials at time of arrest of the accused).}
\footnote{\textsuperscript{306} See \textit{Ismayilova}, App. No. 30778/15, at ¶¶ 114-20 (finding a violation of ECHR Art. 18 where the accused was initially charged on a false claim of coercion and arrested and charged in a way similar to other human rights defenders).}
\footnote{\textsuperscript{309} Amnesty International has referred to the espionage claims as “trumped up charges[,] as they are related to research grants in the context of a journalism fellowship and freelance consultancies, both protected by his right to freedom of expression.” \textit{Morocco: Ensure Fair Appeal Trial to Journalist Omar Radi}, supra note 268.}
\footnote{\textsuperscript{310} \textit{Morocco: Journalist in Prison After Unfair Trial}, supra note 96.}
\footnote{\textsuperscript{311} \textit{Id.}}
\footnote{\textsuperscript{312} Notably, the Court did not hear from Mr. Radi before the sentencing for his public intoxication charge. \textit{Morocco: Jailed Journalist Omar Radi Sentenced for ‘Public Drunkenness,’} supra note 206.}
\end{footnotes}
of the Moroccan government’s playbook for stifling dissent.”313 According to Mr. Radi’s colleague, Imad Stitou, when a journalist is accused of such “shameful crimes . . . , it is guaranteed that public opinion will perceive them as unethical[.],”314 The concoction of politically motivated charges stemming from long-past activities and the combination of seemingly unrelated charges into a single trial suggest abuse of process.315

Further, as described above, the proceedings were marred by fair trial violations and the Judgment piled unreasonable inference on top of unreasonable inference. Mr. Radi was denied the presumption of innocence, as well as fundamental trial rights like the ability to call witnesses on his behalf and confront the witnesses against him. In both the investigative and trial phases, the court disregarded evidence that supported Mr. Radi’s version of events and made assumptions in the prosecution’s favor, all under the guise of judicial discretion.316 For example, in dismissing the notion that Mr. Radi communicated with Dutch nationals in Morocco for journalistic reasons, the trial court determined that “[t]hese claims are disproved by the communications exchanged between the concerned parties since the accused and the diplomat address each other by name.”317 The court also decided that because the exchanged messages indicated that Mr. Radi and a Dutch official “had already met in person several times, . . . [and] if this proves anything, it proves that Omar Radi granted suspicious intelligence services on behalf of the Dutch official,”

313 Morocco: Espionage Case Against Outspoken Journalist, supra note 72; see Editorial Board, Opinion: Morocco’s Jailed Journalists Deserve the Biden Administration’s Attention, WASH. POST (Apr. 30, 2021, 4:23 PM), https://www.washingtonpost.com/opinions/global-opinions/moroccos-jailed-journalists-deserve-the-biden-administrations-attention/2021/04/30/1a3549cc-a905-11eb-8c1a-56f0cb4ff3b5_story.html. The government has been said to have had similar reasons in electing to pursue espionage charges against dissidents. Per one journalist, “The authorities prefer to use this accusation since they know that the public will never support foreign ‘agents’ and traitors[,]” Ruecker & Schilis-Gallego, Journalist Spied on in Morocco, supra note 226. Officially, “[t]he law [in Morocco] does not define or recognize the concept of a political prisoner.” Per the most recent Country Report on Human Rights Practices for Morocco, although “[t]he [Moroccan] government stated it had charged or convicted all individuals in prison under criminal law[,]”316 the UN Guidelines on the Role of Prosecutors, under which “[p]rosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.” UN Guidelines on the Role of Prosecutors, art. 14 (1990).
314 ElHaies, Morocco’s New Tactic, supra note 38.
315 After the verdict was delivered in Mr. Radi’s trial, attendees erupted in a chant that loosely translates to, “This is a verdict from instructions.” The problematic nature of this scenario also disregards the UN Guidelines on the Role of Prosecutors, under which “[p]rosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.” UN Guidelines on the Role of Prosecutors, art. 14 (1990).
316 See Judgment, “After Deliberations.” The court wrote, “[E]valuating the evidence presented before the Court falls under the Court’s discretionary power, and . . . the Court has the right to admit any of it at any stage of the proceedings as long as it is satisfied by it, and . . . the law does not stipulate specific means of evidence, and . . . in that respect what is being argued [regarding the failure to hear certain witnesses during the trial phase] is a mere discussion of the value of arguments presented to the judges within their discretionary powers.” Similarly, the trial court said that it “has an absolute discretionary power when it comes to the testimony, it can decide whether it is false and to accept the witness testimony at the preliminary examination and not their testimony during the hearing or vice versa. It can also admit the witness testimony regardless of the challenges to its veracity which do not in themselves indicate any lies.” Id.
317 Judgment, “After Deliberations.”
especially since their communications coincided with the visits paid by the accused Omar Radi to [the] Rif region after the events of Al Hoceima.\footnote{Id. Mr. Radi maintains he was conducting research as a freelance journalist during these time periods. \textit{See Morocco: Ensure Fair Appeal Trial to Journalist Omar Radi, supra note 268.}} However, these facts—addressing a contact by name and meeting in person several times—could be equally probative of Mr. Radi’s account of his friendly working relationship with Mr. Simons—a possibility that the court summarily discounted. Similarly, when addressing Mr. Radi’s consultancy with K2, the court concluded that the arrangement was “suspicious” simply because “checking the internet and receiving an answer from a specialized website is enough [for K2] to do without [Mr. Radi]’s services.”\footnote{Judgment, “After Deliberations.”} On this matter, according to the court, “what proves [Mr. Radi]’s claim is wrong[] is his unwillingness to provide evidence of the correspondences between him and the company, claiming that he deletes his electronic correspondences.”\footnote{Id.} To conclude that one’s email retention practices are, on their own, probative of espionage is an insupportable logical leap. Examples of similarly conclusory, thinly supported reasoning abound in the Judgment, demonstrating the dearth of justification for Mr. Radi’s conviction and supporting a finding of abuse of process.

**E. OTHER FAIRNESS CONCERNS**

In addition to the fair trial violations discussed above, there are other substantial issues bearing on the fairness of Mr. Radi’s case. Notably, the prosecution violated Mr. Radi’s right to adequate time and facilities to prepare a defense when it withheld key evidence from the defense until trial began. Additionally, the Moroccan government placed Mr. Radi under data surveillance, which violated his right to privacy.

**Right to Adequate Time and Facilities to Prepare a Defense**

The ICCPR requires that defendants be given adequate time and facilities for the preparation of their defense.\footnote{ICCPR, \textit{supra} note 20, at art. 14(3)(b).} To have “adequate facilities,” a defendant must have access to all evidence, including “all materials that the prosecution plans to offer in court against the accused.”\footnote{HRC, General Comment No. 32, \textit{supra} note 211, at ¶ 33.} This evidence “must always be provided in sufficient time to allow effective exercise of the right to prepare a defense.”\footnote{CLOONEY & WEBB, \textit{supra} note 215, at 288.}

In the matter of the rape charge, the complainant received a medical certificate in August 2020, documenting the results of a physical examination conducted after her sexual encounter with Mr. Radi.\footnote{Judgment, “After Deliberations”; Case file, “Witnesses.”} The prosecution introduced this certificate into evidence in March 2021, but the defense was not notified of its existence until the trial began in April.\footnote{Trial Monitor Notes (June 1, 2021) (on file with authors).} In fact, while this type of evidence is typically included in the case file, the version...
of the case file that the defense received prior to trial made no mention of the medical certificate.\textsuperscript{326} Thus, until trial began, Mr. Radi had no way to prepare for or rebut the findings in the medical certificate, and his right to adequate time and facilities was violated.

**Right to Privacy**

Also of concern is the alleged use of spyware in investigating Mr. Radi, a violation of his right to privacy. Per the ICCPR, “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”\textsuperscript{327} Any interference with this right must be in accordance with a law that is (i) “sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct data surveillance and under what circumstances”; and (ii) necessary for, and proportionate to, a legitimate aim.\textsuperscript{328} The alleged surveillance of Mr. Radi using the Pegasus spyware, as described by Amnesty International,\textsuperscript{329} does not accord with these standards.

Though Mr. Radi had long suspected he was under surveillance by the State and the Judgment maintains the appropriateness of various surveillance methods as a tool of crime prevention,\textsuperscript{330} the alleged surveillance through Pegasus, which allows the monitoring and manipulation of a target’s internet traffic without the target’s knowledge or consent,\textsuperscript{331} raises questions as to whether any of the evidence used against Mr. Radi in this case was improperly obtained and, therefore, improperly admitted, in violation of his right to privacy.

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\textsuperscript{326} Id.

\textsuperscript{327} ICCPR, supra note 20, at art. 17.


\textsuperscript{330} Though Radi’s attorneys only made mention of eight months of surveillance at trial, see *Trial Monitor Notes* (June 8, 2021) (on file with authors), *Trial Monitor Notes* (June 22, 2021) (on file with authors), and *Trial Monitor Notes* (July 19, 2021) (on file with authors), per the March 2021 indictment, Moroccan authorities first put Mr. Radi under surveillance in December of 2017. *Morocco: Journalist Harassed by Authorities Must Be Granted Fair Re-Trial*, AMNESTY INT’L (July 19, 2021, 5:00 PM), https://www.amnesty.org/en/latest/press-release/2021/07/morocco-journalist-harassed-by-authorities-must-be-granted-fair-re-trial; Errazzouki, supra note 56; Judgment, “After Deliberations.”

\textsuperscript{331} *Moroccan Journalist Targeted With Network Injection Attacks Using NSO Group’s Tools*, supra note 62.
In sum, the treatment of and proceedings against Mr. Radi entailed violations of his right to the presumption of innocence, right not to be arbitrarily detained or subjected to inhumane treatment, right to call and examine witnesses, and right to an impartial tribunal.

Furthermore, this case is situated within the context of Morocco’s ongoing pattern of using a wide variety of laws, including sex-related crimes, to tar the reputation of journalists and dissidents. Speaking out against the Palace, such as by exposing alleged corruption as relates to the monarchy’s financial holdings, appears to have dire consequences. For these reasons, this report finds that the proceedings against Mr. Radi constituted an abuse of process.

GRADE: D
ANNEX

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,”¹ 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.

¹ ICCPR, Article 26.