



AMERICAN **BAR** ASSOCIATION

Center for Human Rights



Trial Monitoring of Proceedings against Ahmed Manseri

(Algeria)

July 2019

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

ABOUT THE AMERICAN BAR ASSOCIATION'S CENTER FOR HUMAN RIGHTS

With more than 400,000 members, the **American Bar Association** is one of the largest voluntary professional membership organizations in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The ABA Center for Human Rights has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries.

ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice** focused on monitoring and responding to trials around the world that pose a high risk of human rights violations. TrialWatch is global in scope and focused on trials targeting journalists, LGBTQ persons, women and girls, religious minorities, and human rights defenders. It works to expose injustice and rally support to secure justice for defendants whose rights have been violated.

EXECUTIVE SUMMARY

ABA Center for Human Rights staff who are members of the TrialWatch Expert Panel assigned this trial a grade of D:

The appellate proceedings against Mr. Manseri comprised violations of international standards that resulted in significant harm: namely, violations of the right to adequate time and facilities for the preparation of his defense; of the right to equality of arms; and of the right to freedom of expression. Although Mr. Manseri was ultimately acquitted, the judicial harassment he experienced through the proceedings and the threat of further such action led him to temporarily flee the country, a significant harm. The grading methodology can be found in the Annex.

In January 2019, the American Bar Association (ABA) Center for Human Rights¹ monitored criminal proceedings against Algerian human rights defender and blogger Ahmed Manseri as part of the Clooney Foundation for Justice's TrialWatch initiative.²

Given the generally closed nature of the country, few if any other trials have been monitored by international non-governmental organizations in recent years. For two decades, President Abdelaziz Bouteflika - who resigned in April in the face of mass protests - cracked down on criticism of his regime, restricting fundamental freedoms such as the rights to freedom of expression, association, and assembly.³ Although the government lifted a longstanding state of emergency in 2011, the human rights situation has not markedly improved.⁴ In its 2018 Human Rights Report on Algeria, the U.S. State Department highlighted the continued perpetration of significant violations, stating, "authorities arrested and detained citizens for expressing views deemed damaging to

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² The statements and analysis contained herein are the work of the American Bar Association's Center for Human Rights. The statements and analysis expressed are solely those of the authors, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and do not represent the position or policy of the American Bar Association. Furthermore, nothing in this report should be considered legal advice for specific cases. The Center would like to thank the Clooney Foundation for Justice for providing funding for the monitoring of Mr. Manseri's case and the production of the report. The Center is also grateful to all those who provided valuable information about the trial and helped with the observation mission.

³ See Frank La Rue (Special Rapporteur on the right to freedom of opinion and expression), *Right to Freedom of Expression Vital as Algeria Embarks Upon Reforms*, (Apr. 19, 2011), available at <https://news.un.org/en/story/2011/04/372722-right-freedom-expression-vital-algeria-embarks-reforms-un-expert>.

⁴ Front Line Defenders, *Algeria*, available at <https://www.frontlinedefenders.org/en/location/algeria> (last visited Apr. 17, 2019).

state officials and institutions"⁵ Front Line Defenders has likewise tracked the curtailment of freedoms in Algeria, noting that human rights activists regularly face "harassment, threats, physical attacks, arbitrary detention, and legal proceedings."⁶

Mr. Manseri serves as head of the Tiaret city section of the Ligue Algérienne pour la Défense des Droits de l'Homme (Algerian League for the Defense of Human Rights), an independent association that documents human rights violations in Algeria. Over the past decade, Mr. Manseri and his colleagues have reportedly been subjected to frivolous legal allegations on multiple occasions.⁷

In the present case, Mr. Manseri was charged with criminal defamation after filing a complaint against the head of the Tiaret police for assault. The alleged assault occurred in mid-2016, when Mr. Manseri was detained by the police in apparent retaliation for his work as a human rights activist. According to Mr. Manseri, various police officers at the Tiaret station - including the police chief - physically and psychologically abused him, after which he was left bleeding outside. While a criminal court convicted the Tiaret police chief of assault, he was acquitted on appeal. Subsequently, Mr. Manseri was charged with criminal defamation. He was acquitted by both the trial and appellate criminal courts. The Center monitored proceedings before the criminal appellate court, which considered the evidence and arguments presented at trial anew.⁸

Although Mr. Manseri was ultimately acquitted of criminal defamation, Center staff who are members of the TrialWatch Expert Panel and were responsible for evaluating the fairness of the trial noted several fair trial violations. Mr. Manseri was not informed of the factual basis of the allegations against him.⁹ Moreover, as observed by the monitor, the court refused to provide Mr. Manseri with a copy of the trial judgment until twenty minutes before the proceeding was set to start.

It also appeared that the monitor's presence improved the fairness of the hearing. The court was notified in advance of the Center's intent to send an observer. The monitor reported that all other hearings that took place that day lasted 5-15 minutes, whereas the proceeding against Mr. Manseri was allocated several hours.¹⁰ Correspondingly,

⁵ U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Country Reports on Human Rights Practices for 2018: Algeria*, (2018), available at <https://www.state.gov/j/drl/rls/rrpt/humanrightsreport/index.htm?year=2018&dlid=289199#wrapper>.

⁶ Front Line Defenders, *Algeria*, available at <https://www.frontlinedefenders.org/en/location/algeria> (last visited Apr. 17, 2019).

⁷ Front Line Defenders, *Ahmed Manseri*, available at <https://www.frontlinedefenders.org/en/case/judicial-harassment-ahmed-manseri> (last visited July 20, 2019).

⁸ See James G. Apple & Robert P. Deyling, *A Primer on the Civil Law System*, p.28, Federal Judicial Center, (2012) ("A primary difference between common-law and civil-law appellate procedure is that intermediate appellate review in the civil-law tradition often involves a *de novo* review of both the facts and law of the case. Thus, intermediate appellate courts may obtain additional testimony, supervise the collection of new evidence, and seek out expert opinions."), available at <https://www.fjc.gov/sites/default/files/2012/CivilLaw.pdf>.

⁹ Counsel informed the experts about the content of the trial court's notice to appear - which can function as a charging document - and the experts reviewed the appellate court's notice to appear. Mr. Manseri did not receive any other information about the charges against him apart from the notices to appear.

¹⁰ The monitor reported that the cases before the court that day involved civil offenses as well as criminal offenses such as assault and cyber-crime. In some cases, the judge issued decisions, whereas in others, he postponed the proceedings. Overall, the monitor emphasized that the treatment of Mr. Manseri's case differed significantly from the treatment of any other case heard that day.

according to the monitor, the judge grouped all other cases into batches of 4-5 for deliberation, whereas he afforded Mr. Manseri's case individual consideration.

This apparently *ad hoc* treatment of cases raises questions about the arbitrariness of the process provided to Mr. Manseri as well as the fairness of trials in Algeria more broadly. Mr. Manseri is facing additional criminal charges related to his human rights work and if such cases proceed to trial and are not monitored, courts may fail to uphold fair trial standards. Furthermore, the fact that the security services called Mr. Manseri in for questioning soon after the acquittal indicates a persistent threat of harassment. Due to these risks, Mr. Manseri temporarily fled the country.

Additionally, based upon the history of the case, the vagueness of the notice to appear, and the arguments presented on appeal, it seems that the prosecution may have been aimed at stifling Mr. Manseri's legitimate human rights work. First, according to Mr. Manseri's counsel, Salah Dabouz, the police chief issued various threats in the wake of the earlier case (where the police chief was first convicted and then acquitted of responsibility for the assault against Mr. Manseri): the chief allegedly proclaimed that Mr. Dabouz was a foreign agent working to undermine the Algerian state and warned counsel that he would "keep an eye" on him and his family. Second, during the monitored proceedings, the police chief testified that human rights activism constituted a "threat to state security." Third, in court the police chief repeatedly cited Mr. Manseri's general advocacy activities as evidence of defamation, meaning that the prosecution likely encompassed protected speech relating to Mr. Manseri's human rights activism. Fourth, as discussed above, Mr. Manseri was not informed of the factual basis for the allegations against him. This failure is both a fair trial violation and an additional indication that Mr. Manseri may have been prosecuted for his efforts to highlight human rights abuses, especially when considered in combination with the police chief's statements throughout the proceedings.

Human rights defenders and their lawyers must be free to carry out their work absent retaliation and intimidation. The UN Declaration on Human Rights Defenders makes clear the state's obligation to protect human rights defenders from "any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action ..." ¹¹ Similarly, the UN Basic Principles on the Role of Lawyers require that "[g]overnments shall ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference ..." ¹² Reports that both Mr. Manseri and his lawyer Mr. Dabouz have experienced intimidation by state actors in relation to their work are deeply troubling. Algeria's new government - propelled into power by demands for reform - must ensure that the rights of human rights defenders and lawyers are respected.

¹¹ G.A. Res. 53/144, ¶ 12(2), (1999), Declaration on Human Rights Defenders, available at <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>.

¹² U.N. Office of the High Comm'r for H.R., Basic Principles on the Role of Lawyers, ¶ 16, (1990), available at <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

BACKGROUND INFORMATION

A. POLITICAL AND LEGAL CONTEXT

The trial against Mr. Manseri is consistent with a broader pattern of state harassment of human rights activists. Front Line Defenders has mapped the repressive landscape in Algeria, noting, “[h]uman rights defenders have continued to be subjected to harassment, threats, physical attacks, arbitrary detention, and legal proceedings. Peaceful protests have been forcibly dispersed and protesters and human rights defenders have been arrested and charged.”¹³ It is worth noting that due to the oppressive political climate, trial monitoring in Algeria happens rarely, if at all.

With respect to the courtroom, international organizations and institutions have repeatedly questioned the independence of the judiciary.¹⁴ The President controls the appointment of judges and prosecutors. Accordingly, protection against the politicization of the judiciary is insufficient. Meanwhile, fair trial violations regularly occur.¹⁵ Although proceedings are generally open to the public, the risks of monitoring mean that - as noted above - trial monitoring is uncommon.

B. CASE HISTORY

Ahmed Manseri is an Algerian human rights defender, blogger, and trade unionist. He heads the Tiaret city section of the Ligue Algérienne pour la Défense des Droits de l’Homme (Algerian League for the Defense of Human Rights), an independent association that documents human rights violations in Algeria. The organization primarily focuses on cases of prisoners of conscience and enforced disappearance. Over the course of his work, Mr. Manseri has repeatedly spoken out about violations committed by state actors.

Mr. Manseri was brought into the Tiaret police station in June 2016. According to Mr. Manseri, officers interrogated him about an interview he had given to a Moroccan news channel, during which he lamented the human rights crisis in Algeria and recounted abuses perpetrated by the security forces. Mr. Manseri alleges that several police officers - including the chief of the station - started beating him, after which he lapsed into unconsciousness. The police then deposited Mr. Manseri outside, leaving him bleeding and inert. Mr. Manseri’s account is supported by a medical report issued by the hospital that treated him.

¹³ Front Line Defenders, *Algeria*, available at <https://www.frontlinedefenders.org/en/location/algeria> (last visited Apr. 17, 2019).

¹⁴ See Freedom House, *2018 Algeria Report*, available at <https://freedomhouse.org/report/freedom-world/2018/algeria> (last visited Apr. 17, 2019); International Commission of Jurists, *Algeria*, p.12, available at <https://www.refworld.org/pfdid/48a3f0280.pdf> (last visited July 10, 2019).

¹⁵ See International Commission of Jurists, *Algeria*, available at <https://www.refworld.org/pfdid/48a3f0280.pdf> (last visited Apr. 17, 2019); U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Country Reports on Human Rights Practices for 2018: Algeria*, (2018), available at <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/algeria/>.

In 2018, Mr. Manseri filed a criminal complaint against the head of the Tiaret police before the local misdemeanors court, alleging the chief's responsibility for the assault. The court convicted the police chief and imposed a suspended six-month prison sentence. The police chief appealed the decision. In the appellate proceedings before the Judicial Council of Tiaret, a medical expert who had initially testified about the severity of Mr. Manseri's injuries recanted her statement. According to counsel, the court refused to allow Mr. Manseri to cross-examine the expert.¹⁶ The police chief was acquitted.

Subsequently, the police chief filed a criminal lawsuit against Mr. Manseri, which the public prosecutor joined. Mr. Manseri - this time the defendant before the Tiaret misdemeanors court - was charged with "slanderous denunciation against police or justice officials."¹⁷ From the outset, the proceedings against Mr. Manseri were marred by fair trial violations. Mr. Manseri alleges that he was interrogated without access to a lawyer and was not informed of the factual basis of the charges. Although Mr. Manseri was ultimately acquitted, the police chief and the public prosecutor appealed the decision. This appellate proceeding before the Judicial Council of Tiaret was monitored for the purposes of the Fairness Report.

¹⁶ While the veracity of Mr. Manseri's torture allegations and the State's response to said claims are not the subject of this report, the court's refusal to allow Mr. Manseri to cross examine the expert who recanted her testimony, particularly given the sudden and suspicious nature of her disavowal, seemingly falls short of Convention against Torture requirements: namely, the requirement that States Parties provide individuals who allege that they have been subjected to torture with an impartial examination of the given complaint. G.A. Res. 39/46, Art. 13, (1984), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

¹⁷ Algerian Penal Code, Art. 300.

METHODOLOGY



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, the ABA Center for Human Rights deployed a monitor from the region. The monitor was fluent in Arabic and able to understand the proceedings. Prior to the trial, the Center conducted background research and consulted with country experts. The Center prepared a memorandum for the monitor outlining key information on human rights in Algeria as well as the facts of the case at hand.

In advance of the proceedings, the Center sent a letter notifying the court - the Judicial Council of Tiaret - of the observation. The monitor did not experience any impediments in entering the courtroom and was present for a full day of hearings on different cases, including that of Mr. Manseri. During the appellate proceedings against Mr. Manseri, the monitor witnessed the police chief's arguments, defense counsel's cross-examination of the police chief, defense counsel's arguments, and Mr. Manseri's testimony. The public prosecutor, joined in the proceedings against Mr. Manseri, did not put forth any evidence or arguments.

The monitor used a standardized TrialWatch questionnaire to record and track what transpired in court and the degree to which the defendant's fair trial rights were respected. The monitor's questionnaire responses and notes were shared with Center staff, the members of the TrialWatch Expert Panel responsible for evaluating the fairness of the trial.

B. THE ASSESSMENT PHASE

To evaluate the proceedings' fairness and arrive at a grade, Center staff who are members of the Trial Watch Expert Panel reviewed responses to the standardized TrialWatch questionnaire, notes taken during the proceedings, and court documents related to the case.

Center experts conducted their assessment based on the following components of the right to a fair trial; the right to be presumed innocent; the right to be informed of the charges; fitness to plead; the right to interpretation; the right against double jeopardy; the right to a speedy trial; the right to be tried by a competent, independent and impartial tribunal established by law; the right to counsel; the right to adequate time and facilities to prepare a defense; the right to a public hearing; the right to be tried in one's presence; the right not to incriminate oneself; the right to call and examine witnesses; the right to appeal, including the right to a public, reasoned judgment; and the right to fairness (other fairness concerns such as abuse of process and violations of the right to freedom of expression).

Mr. Manseri was ultimately acquitted based on the Judicial Council of Tiaret's finding that the complainant and public prosecutor were unable to prove bad faith on the part of Mr.

Manseri.¹⁸ Center experts, however, noted several fair trial violations, primarily regarding the right to prepare a defense and the right to equality of arms. Meanwhile, the case itself raises concerns due to the use of defamation laws in a criminal prosecution; the possibility that the prosecution encompassed protected speech; and corresponding indicia that Mr. Manseri was targeted for his human rights activism.

¹⁸ Judicial Council of Tiaret, Case of Ahmed Manseri, Case No. 18/06438, (Mar. 19, 2019), p. 5 (unofficial translation).

ANALYSIS



A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR); jurisprudence from the United Nations Human Rights Committee (HRC), tasked with monitoring implementation of the ICCPR; the African Charter on Human and People's Rights; jurisprudence from the African Commission on Human and People's Rights, tasked with interpreting the Charter and considering individual complaints of Charter violations; and jurisprudence from the African Court on Human and People's Rights, which - complementing the African Commission's work - has jurisdiction over cases involving the interpretation and application of the African Charter.¹⁹

The African Court has frequently relied on jurisprudence from both the European Court of Human Rights and the Inter-American Court of Human Rights, noting that the two bodies have analogous jurisdiction and are guided by instruments similar to the African Charter.²⁰ The Court has also stated that where the ICCPR provides for broader rights than those of the Charter, it can apply the ICCPR if the country under consideration has already acceded to it.²¹ The Court's decisions are final and binding on States Parties who have ratified the Protocol on the Court's establishment. Algeria ratified the ICCPR in 1989 and the Covenant entered into force that same year. Algeria ratified the Protocol on the Court's establishment in 2003 and is thereby subject to the African Court's jurisdiction.

Lastly, the report draws upon relevant provisions in the Algerian Criminal Code: namely, Article 300 of the code, under which Mr. Manseri was prosecuted.

B. INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

In the investigation and pretrial stage of the case against Mr. Manseri, violations were reportedly committed that compromised the fairness of the proceedings. According to Mr. Manseri and his lawyer, Mr. Manseri was arrested and interrogated without being informed of the reasons for said actions or allowed access to counsel. Moreover, Mr. Manseri was never informed of the factual basis for the charges against him.

Right to be Informed of the Reasons for Arrest

¹⁹ While Algeria has also acceded to the Arab Charter, the rights protected therein are substantially the same as those protected in the ICCPR and African Charter. The analysis therefore focuses on the latter documents and related jurisprudence.

²⁰ See Jamil Ddamulira Mujuzi, *The African Court on Human and People's Rights and Its Protection of the Right to a Fair Trial*, The Law and Practice of International Courts and Tribunals, p. 193, Vol. 6, Iss. 2, (Dec. 5, 2017), available at https://brill.com/abstract/journals/lape/16/2/article-p187_187.xml.

²¹ African Court on Human and People's Rights, Alex Thomas v. Tanzania, App. No. 005/2013, ¶ 88-89, (2015); African Court on Human and People's Rights, Wilfred Onyango Nganyi et al v. Tanzania, App. No. 006/2013, ¶ 165-166, (2016).

Arresting an individual without explaining the rationale behind the arrest violates both the ICCPR and the African Charter. Under Article 9(2) of the ICCPR, “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”²² The Human Rights Committee has further clarified that the information provided must “include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint.”²³ One of the motivations behind Article 9(2) is to enable the accused to seek immediate release if he or she believes that the basis of the complaint is unfounded.²⁴

Article 6 of the African Charter prohibits arbitrary arrest and detention. In its Principles and Guidelines on the Right to a Fair Trial, the African Commission on Human and People’s Rights has explained that Article 6 requires “anyone who is arrested [to] be informed, at the time of arrest, of the reasons for his or her arrest . . .”²⁵ In the present case, Mr. Manseri alleges he was arrested without being notified of the rationale - in violation of the ICCPR and African Charter.

Right to Communicate with Counsel of One’s Choosing

The fairness of a trial is further undermined when a detainee is interrogated without defense counsel present. The Human Rights Committee has stated that such a situation endangers the right to a defense under Article 14(3)(b) of the ICCPR, given that the lack of legal advice during interrogation can compromise a defendant’s case.²⁶ The African Commission and Court have likewise interpreted the Charter’s fair trial provisions to require the presence of a lawyer during interrogation - unless the defendant has waived the right in writing.²⁷ To the contrary, Mr. Manseri allegedly requested a lawyer and was nonetheless interrogated without one, contravening his right to a fair trial. Mr. Manseri’s account of events is consistent with reports that detainees in Algeria are periodically refused access to counsel.²⁸ The Center’s experts thereby find his claims credible.

C. VIOLATIONS AT TRIAL

²² International Covenant on Civil and Political Rights, Art. 9(2) Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368, (1967), 999 U.N.T.S. 171 [hereinafter “ICCPR”].

²³ Human Rights Committee, *General Comment No. 35*, ¶ 25, U.N. Doc. CCPR/C/GC/35, (Dec. 16, 2014), available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en.

²⁴ Id.

²⁵ African Commission on Human and People’s Rights, *Principles and Guidelines on the Right to a Fair Trial*, Principle M(2)(a), (2003) [hereinafter “African Commission Principles”], available at http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf.

²⁶ See Human Rights Committee, *Gridin v. Russian Federation*, U.N. Doc. CCPR/C/69/D/770/1997, ¶ 8.5, (2000); Human Rights Committee, *Lyashkevich v. Uzbekistan*, U.N. Doc. CCPR/C/98/D/1552/2007, ¶ 9.4, (2010); *John Murray v. UK*, Eur. Ct. H.R., App. No. 18731/91, ¶ 66, (1996).

²⁷ African Commission Principles, Principle M(2)(f); African Court on Human and People’s Rights, *Mohamed Abubakari v. Tanzania*, App. No. 007/2013, ¶ 121-122, (2016); African Court on Human and People’s Rights, *African Commission on Human and People’s Rights v. Libya*, App. No. 002/2013, ¶ 93, (2016).

²⁸ U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Country Reports on Human Rights Practices for 2018: Algeria*, (2018), available at <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2018&dlid=289199#wrapper>.

Right to be Informed of the Charges

The ICCPR and the African Charter mandate that defendants be notified of the factual underpinning of criminal charges.²⁹ Under Article 7(1) of the African Charter, the right to a defense includes the right of an accused to be informed of the details of the charges he or she is alleged to have committed.³⁰ The ICCPR likewise deems it mandatory that a defendant be informed of the facts supporting said charges.³¹

In the case at hand, the trial court's notice to appear - and its appellate counterpart - failed to provide a factual basis for the complaint against Mr. Manseri. The notice to appear can function as a charging document: this document was reportedly the only information Mr. Manseri received about the allegations. According to Mr. Manseri and counsel, the notice to appear merely listed the charge - "slanderous denunciation against police or justice officials" - without any indication as to which of the defendant's many human rights activities were at issue. This omission contravenes fair trial rights established by the ICCPR and African Charter.

Right to Prepare a Defense

Just as "a defendant has the right to adequately prepare her/his defense in a criminal trial, there is also a right to adequately prepare for review by a higher tribunal."³² The appellate proceedings against Mr. Manseri were marked by several violations of his right to prepare a defense.

Adequate Materials

According to counsel, Mr. Manseri never received the trial judgment. Both the African Charter and the ICCPR mandate that the defense be provided the trial judgment prior to review by a higher tribunal. As stated by the African Commission, "the accused or the defense counsel has a right of access to (or to consult) the evidence which the judicial body considered in making a decision and the judicial body's reasoning in arriving at the judgement."³³ Similarly, the HRC has noted that effective preparation for review by a second instance court means that the defense must be given access to the first instance judgment.³⁴

In the present case, the monitor - as will be discussed in more detail below - reported that the defense was denied access to the judgment until immediately before the appellate

²⁹ ICCPR, Art. 14(3)(a); African Commission Principles, Principle N(1)(b).

³⁰ African Commission Principles, Principle N(1).

³¹ ICCPR, Art. 14(3)(a); Human Rights Committee, *Bee v. Equatorial Guinea*, U.N. Doc. CCPR/C/85/D/1152 & 1190/2003, ¶ 6.3, (2005). See also *Mattoccia v. Italy*, Eur. Ct. H.R., App. No. 23969/94, ¶ 59-61, (2000).

³² Organization for Security and Cooperation in Europe, *Legal Digest of International Fair Trial Rights*, p. 223, (2012).

³³ African Commission Principles, Principle N(3)(e)(vii).

³⁴ See ICCPR, Art. 14(3)(b); Human Rights Committee, General Comment No. 32, ¶ 33, 49, U.N. Doc. CCPR/C/GC/32, (Aug. 23, 2007), available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en; Human Rights Committee, *Mennen v. the Netherlands*, U.N. Doc. CCPR/C/99/D/1797/2008, ¶ 8.2, (2010).

hearing. Understanding the rationale behind the trial court's acquittal could have aided Mr. Manseri in court. If the judge had explicitly deemed the doctor who recanted her statement untrustworthy, for example, or had concluded that the prosecution had improperly targeted Mr. Manseri for protected speech, Mr. Manseri could have employed these findings to prepare his defense against the complainant and public prosecutor.³⁵

In an additional violation, defense counsel claims that the trial court did not record the proceedings and that Mr. Manseri was thereby unable to obtain transcripts. The HRC has found that the lack of access to court transcripts contravenes the right to a defense.³⁶ Given that appellate proceedings center on the arguments, evidence, and testimony presented at trial, reviewing trial transcripts is a necessary component of preparation. Mr. Manseri was thus at a disadvantage in the appellate proceedings before the Judicial Council of Tiaret.

Adequate Time

As observed by the monitor, the Judicial Council of Tiaret denied Mr. Manseri access to the trial judgment until twenty minutes before the hearing, a significant fair trial violation. This truncated opportunity to review the judgment did not afford counsel adequate time to prepare a defense.

The African Charter and the ICCPR both establish the defense's right to adequate time for preparation.³⁷ The African Court has stated that delays in sharing key documents mean that the Accused is "not in a favourable position to proceed with [the] defense",³⁸ while the HRC has deemed the right "an important element of the guarantee of a fair trial."³⁹ The calculus of what constitutes adequate time involves inquiries into the extent to which parties were able to familiarize themselves with the evidence, whether the case is particularly complex, whether the charges are serious, the volume of relevant materials, and the amount of time provided. In *Bee v. Equatorial Guinea*, for example, the Human Rights Committee found that informing the defense of the basis of criminal charges only two days before the hearing was insufficient time for adequate preparation.⁴⁰

In the present case, the monitor noted that the defense had only twenty minutes to examine the judgment. At the beginning of the day's proceedings, which included

³⁵ It is worth noting that these allegations could also be analyzed under the right to a public judgment and/or the right to an appeal with respect to the proceeding before the trial court. For the purposes of the present case, in which the monitor observed the appellate level hearing, the report analyzes how the lack of the judgment - and the lack of trial transcripts - impeded Mr. Manseri's right to a defense.

³⁶ See Human Rights Committee, *General Comment No. 32*, ¶ 33, 49, U.N. Doc. CCPR/C/GC/32, (Aug. 23, 2007), available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en; Human Rights Committee, *Mennen v. the Netherlands*, U.N. Doc. CCPR/C/99/D/1797/2008, ¶ 8.2, (2010).

³⁷ African Commission Principles, Principle N(3)(a); ICCPR, Art. 14(3)(b).

³⁸ African Court on Human and People's Rights, *Mohamed Abubakari v. Tanzania*, App. No. 007/2013, ¶ 160-161, (2016).

³⁹ Human Rights Committee, *General Comment No. 32*, ¶ 32, U.N. Doc. CCPR/C/GC/32, (Aug. 23, 2007), available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en.

⁴⁰ Human Rights Committee, *Bee v. Equatorial Guinea*, U.N. Doc. CCPR/C/85/D/1152 & 1190/2003, ¶ 6.3, (2005).

numerous cases, Mr. Manseri's counsel requested to view the updated case file, to which the trial judgment had been added. The judge denied this request and stated that he would only provide counsel with the file - and judgment therein - immediately prior to the hearing of Mr. Manseri's case. According to the monitor, defense counsel was given roughly twenty minutes to review the contents of the trial judgment, an interval that falls far below the threshold of "adequate time" for effective preparation.

Right to Cross-Examination

Due to the defense's lack of access to the judgment and trial transcripts, Mr. Manseri was unable to fully exercise his right to cross-examination. The African Charter and the ICCPR provide for this right.⁴¹ While the obvious violation of said right is a court's refusal to permit cross-examination, the denial of access to key materials can also hinder the defense's capacity to question witnesses.⁴² In the present case, the defense could have used evidence and/or findings in the judgment and trial transcripts to question the Head of the Tiaret Police.

D. OTHER FAIRNESS CONCERNs

Right to Equality of Arms

The defense's lack of access to the trial judgment violated the principle of equality of arms. Both the ICCPR and the African Charter establish that all parties before judicial proceedings have the right to be treated equally.⁴³ This principle "means that the procedural conditions at trial and sentencing must be the same for all parties. It calls for a 'fair balance' between the parties, requiring that each party should be afforded a reasonable opportunity to present the case under conditions that do not place her/him at a substantial disadvantage vis-à-vis the opponent."⁴⁴ Specifically, the accused must have access to all information in the prosecution's possession that might assist the defense.⁴⁵

In Mr. Manseri's case, the defense was at a "substantial disadvantage" in its ability to prepare for the proceedings because of the deprivation of access to the updated case file, which contained the trial judgment. Meanwhile, the complainant and prosecution reportedly had access to the judgment as necessary to fully prepare for trial. The disparate positions of Mr. Manseri and the complainant/prosecution do not reflect a "fair balance" between the parties.

Criminalizing Expression

⁴¹ African Commission Principles, Principle N(6)(f); ICCPR, Art. 14(3)(e).

⁴² Human Rights Committee, Peart v. Jamaica, U.N. Doc. CCPR/C/54/D/464/1991 & 482/1991, ¶ 11.4-11.5, (1995).

⁴³ ICCPR, Art. 14(1); African Commission Principles, Principles A(2), N.

⁴⁴ Organization for Security and Cooperation in Europe, *Legal Digest of International Fair Trial Rights*, p. 110, (2012).

⁴⁵ See African Commission Principles, Principle N(3)(e)(iii); Human Rights Committee, *General Comment No. 32*, ¶ 13, 32-33, U.N. Doc. CCPR/C/GC/32, (Aug. 23, 2007), available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en.

The right to freedom of expression is a fundamental right guaranteed by Article 19 of the ICCPR and Article 9 of the African Charter. Based on a review of the monitor's notes and Mr. Manseri's advocacy statements, the experts assigned to this trial are concerned that the prosecution was aimed at suppressing Mr. Manseri's human rights work and, correspondingly, his right to freedom of expression.

As discussed above, Mr. Manseri was charged with "slanderous denunciation against police or justice officials." Although the case ostensibly concerned Mr. Manseri's assault allegation, the factual basis for the charges was not disclosed in the notice to appear. Mr. Manseri has frequently given interviews and blogged about government abuses.

During the appellate proceedings, the complainant - the head of the Tiaret state police - did not limit his arguments to Mr. Manseri's claim that he was tortured. The police chief additionally cited Mr. Manseri's general advocacy activities as evidence of the offense of slanderous denunciation: Mr. Manseri's appearance on a Moroccan news channel, during which he spoke broadly about human rights abuses, including violations perpetrated by the security forces; Mr. Manseri's blog posts, many of which do not mention the alleged assault and are critiques of the Algerian government's human rights record; and Mr. Manseri's social media commentary, much of which likewise denounces the administration's human rights record and omits reference to the alleged assault.⁴⁶

Given that statements of opinion regarding the human rights situation in Algeria constitute protected speech, the police chief's arguments in court indicate that the prosecution was geared towards stifling Mr. Manseri's right to freedom of expression. The police chief's explicit testimony that he considers human rights activism a "threat to state security" only heightens this likelihood. The monitor noted that the judge cut the police chief off, stating that the chief's testimony was veering into "political territory": the judge's commentary on the political tenor of the proceedings is further evidence of improper motive.

In any event, the criminal prosecution of Mr. Manseri for defamation is concerning. Under the ICCPR and African Charter, restrictions on the right to freedom of expression must be prescribed by law, necessary to meet a legitimate state interest, and proportionate to that interest.⁴⁷ Criminal penalties are the most severe restriction that may be imposed by law and naturally have a greater chilling effect than civil penalties.

The African Commission on Human Rights has recognized criminal defamation laws as an impediment to freedom of expression, noting that state authorities can easily exploit such legislation to silence critics and stunt the growth of democracy.⁴⁸ For this reason,

⁴⁶ The judgment issued by the Judicial Council of Tiaret supports the monitor's account. Judicial Council of Tiaret, Case of Ahmed Manseri, Case No. 18/06438, (Mar. 19, 2019), p. 5 (unofficial translation).

⁴⁷ See Human Rights Committee, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, ¶ 12.2, (1999) (noting that "[a]ny restriction on the right to freedom of expression must cumulatively meet the following conditions: it must be provided by law, it must address one of the aims set out in paragraph 3 (a) and (b) of article 19 (respect of the rights and reputation of others; protection of national security or of public order, or of public health or morals), and it must be necessary to achieve a legitimate purpose."); African Commission on Human and People's Rights, *Media Rights Agenda v. Nigeria*, Comm. Nos. 105/93, 128/94, 130/194, 152/96, (2000), available at <https://www.globalhealthrights.org/wp-content/uploads/2014/07/Media-Rights-Agenda-v.-Nigeria.pdf>.

⁴⁸ African Commission on Human and People's Rights, *Resolution on Repealing Criminal Defamation Laws in Africa*, (Nov. 2010).

the Commission has limited criminal penalties for defamation to the state interest in protecting security and public order. In *Media Rights Agenda and Others v Nigeria*, the African Commission stated: “[i]t is important for the conduct of public affairs that opinions critical of the government be judged according to whether they represent a real danger to national security” rather than “merely an insult towards [the government] or the Head of State.”⁴⁹ The Commission explained that “[p]eople who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens, otherwise public debate may be stifled altogether.”⁵⁰

The African Court has further clarified that imprisonment as a penalty for criminal defamation is a *per se* disproportionate restriction on the right to freedom of expression. In *Konate vs. Burkina Faso*, a case involving a journalist who had been fined and sentenced to prison for publicly alleging corruption on the part of the Burkinabe state prosecutor, the Court concluded that custodial sentences for the expression of opinion should be reserved for only “serious and very exceptional circumstances”.⁵¹ Similarly, the HRC has called on states to consider decriminalizing defamation entirely, asserting that “imprisonment is never an appropriate penalty [for defamation offenses].”⁵²

In the present case, Mr. Manseri was facing up to five years in prison for the offense of slanderous denunciation. However, Mr. Manseri’s speech regarding alleged police abuse falls within the category of expression that the HRC, African Commission, and African Court have found worthy of the highest level of protection. First, his comments concern state actors and matters of public interest: namely, the human rights record of the Algerian government and the alleged mistreatment of detained citizens by state security services. Second, the government offered no evidence that Mr. Manseri’s comments presented a “real danger to national security” beyond the criminal complainant’s stated opinion that human rights advocacy undermines state security, a position directly repudiated by the African Commission, African Court, and HRC. Third, the threatened imposition of a criminal sanction, as opposed to a fine, was not a necessary or proportionate response to the alleged offense.

The Judicial Council of Tiaret ultimately acquitted Mr. Manseri due to the failure of the complainant/public prosecutor to prove bad faith.⁵³ However, the fact that criminal defamation proceedings were brought against Mr. Manseri without specification of the basis for the charge - let alone circumstances sufficient to justify the restriction of a fundamental right - may constitute an abuse of process. A truly democratic society guards against exploitation of the criminal justice system.

⁴⁹ African Commission on Human and People's Rights, *Media Rights Agenda v. Nigeria*, Comm. Nos. 105/93, 128/94, 130/194, 152/96, ¶ 75, (2000), available at <https://www.globalhealthrights.org/wp-content/uploads/2014/07/Media-Rights-Agenda-v.-Nigeria.pdf>.

⁵⁰ Id. at ¶ 74.

⁵¹ African Court on Human and People's Rights, *Lohe Issa Konate v. Burkina Faso*, App. No. 004/2013, ¶ 165, (2014).

⁵² Human Rights Committee, *General Comment No. 34*, ¶ 47, U.N. Doc. CCPR/C/GC/34, (Sept. 12, 2011), available at <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

⁵³ Judicial Council of Tiaret, *Case of Ahmed Manseri*, Case No. 18/06438, (Mar. 19, 2019), p. 5 (unofficial translation).

CONCLUSION AND GRADE

Center staff who are members of the TrialWatch Expert Panel and who evaluated the trial found that the proceedings were marred by fair trial violations but that these violations did not materially impact the outcome of the case due to the defendant's acquittal. However, there are significant grounds for concern about the violation of other substantive rights protected by international law, including the right to freedom of expression.

As stated by the African Commission and HRC, governments periodically exploit criminal defamation legislation to suppress human rights activism and chill speech critical of the government. Given that states should thereby afford the highest level of protection to speech concerning public figures and public affairs, it is troubling that Mr. Manseri was prosecuted for his statements about the Algerian authorities.

It is likewise concerning that Mr. Manseri seems to have been targeted for exercising his right to freedom of expression and, correspondingly, for his human rights advocacy. The criminal complainant's tirade against such activism and the apparent breadth of statements included in the case indicate that the prosecution may have encompassed protected speech relating to Mr. Manseri's work. As discussed above, Mr. Manseri's prosecution is consistent with reported patterns of state harassment of human rights defenders in Algeria.

Finally, the possibility of further government intimidation of both Mr. Manseri and his defense lawyer is deeply troubling. The security services called Mr. Manseri in for questioning immediately following the acquittal and, as mentioned above, Mr. Manseri is facing other criminal charges in connection with his human rights activism. Mr. Manseri temporarily fled Algeria out of fear of further persecution. Mr. Manseri's lawyer Salah Dabouz - already threatened during Mr. Manseri's case - has reportedly been criminally charged in connection with his defense of various human rights advocates and subjected to "judicial control" measures, meaning that he must present himself at a court some 600 kilometres from his home three times a week.⁵⁴ Most recently, reports have emerged that Mr. Dabouz was beaten by security forces while participating in a peaceful demonstration and subsequently detained for several hours.⁵⁵ Mr. Dabouz has started a hunger strike in protest against the harassment he has suffered.⁵⁶

In addition to the obligations on all States to protect and promote human rights and ensure human rights defenders do not suffer retaliation for their work, the United Nations Basic Principles on the Role of Lawyers set forth states' specific responsibilities towards lawyers. Lawyers must be free to defend their clients without being subjected to persecution for fulfilling their professional obligations. Absent such protections, the rights

⁵⁴ Front Line Defenders, *Salah Dabouz*, available at <https://www.frontlinedefenders.org/en/case/intimidation-harassment-human-rights-defender-salah-dabouz-amid-uprising> (last visited Jul. 15, 2019).

⁵⁵ International Association of People's Lawyers, *Rights lawyer Salah Dabouz Beaten by Police and Arrested*, (May 17, 2019), available at <https://defendlawyers.wordpress.com/2019/05/17/algeria-rights-lawyer-salah-dabouz-beaten-by-police-and-arrested/>.

⁵⁶ Front Line Defenders, *Salah Dabouz*, available at <https://www.frontlinedefenders.org/en/case/intimidation-harassment-human-rights-defender-salah-dabouz-amid-uprising> (last visited Jul. 15, 2019).

of access to justice and to fair trials are weakened, undermining the rule of law. Accordingly, lasting democratic change in Algeria will depend on - among other things - ending the harassment of advocates such as Mr. Manseri and Mr. Dabouz.

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,”⁵⁷ 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 pre-trial 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.

⁵⁷ ICCPR, Art. 26.