

HUMAN RIGHTS WATCH

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September 09, 2014

Government Chief Abdel-Ilah Benkirane
Office of the Government Chief
Rabat, Morocco

Your Excellency:

I write to you in connection with the case of Abdeslam Loumadi, a resident of El-Ayoun and vocal Sahrawi opponent of Morocco's claim to Western Sahara, who is currently serving a ten-month sentence in that city's civil prison.

Human Rights Watch has concluded, after reviewing Loumadi's case, that El-Ayoun's Court of First Instance violated his right to a fair trial, principally by failing to investigate his allegations of police torture and by convicting him on the basis of a statement that he denied making to police, also without apparently investigating his claim that it was falsified (decision 98 of May 7, 2014 in criminal case 2014/2610/263). Despite these omissions by the lower court, we note that the appeals court did not overturn Loumadi's conviction and sentence.

Morocco's Code of Criminal Procedure (CCP) states that courts trying cases of offenses that carry sentences of less than five years are to deem a statement prepared by the judicial police as trustworthy unless the defendant can demonstrate it is not (article 290). This rule appears to undermine the presumption of innocence. As a state party to the UN Convention against Torture Morocco, is bound to ensure that no evidence obtained through torture is admissible in legal proceedings, and that any individual who complains about torture has his or her allegation promptly and fairly investigated by impartial authorities.

The prosecution and imprisonment of Loumadi bears similarities to the case of the 21 Sahrawis now serving long prison terms in connection with the violent events at Gdeim Izik in November 2010. Their trial was conducted before a military court, from which there is no right of appeal. That court convicted the defendants, in February 2013, on the basis of confessions that police said the defendants had made to them in pre-trial custody but which the defendants

repudiated, alleging that police had obtained the statements through torture. The military court accepted the contested statements as the main inculpatory evidence against the defendants and dismissed their allegations of torture without conducting or ordering an investigation into their veracity.

At a time when Morocco's leaders have pledged an ambitious overhaul of the judiciary system, we deplore the continuing tendency of courts in politically charged cases to use "confessions" as the main inculpatory evidence while responding inadequately, if at all, to complaints by defendants that they have been tortured or that the statements have been falsified.

Police arrested Loumadi, who is 27 and unemployed, at his home in El-Ayoun on January 21, 2014, and held him under garde à vue until January 24. On that day and again on February 4, during his first two appearances before the investigating judge, Loumadi complained to the judge that police officers had tortured him during interrogation, Mohamed Lehbib Rguibi, his lawyer, informed us. Loumadi told the judge that the police had suspended him using handcuffs, that he had refused to sign the statement that the police attributed to him, and that he denied the contents of the statement.

Loumadi told his mother, Fatma Maskour, that police had tortured him when she visited him in prison on 27 January. On January 30, Maskour wrote to the El-Ayoun prosecutor to request that he open an investigation into her son's allegation of torture, sending her letter by registered mail. She received no response, her husband, Mohamed Loumadi, told Human Rights Watch.

In the statement that the police attributed to Loumadi, dated January 24, Loumadi "confessed" to having enlisted and paid a group of persons in April and May 2013 to barricade streets in El-Ayoun and throw stones, and to having participated in an attack on a police vehicle using Molotov cocktails. According to the statement, Loumadi also "confessed" to being the owner of a knife that police said they had found at the scene of the attack, and to having stored Molotov cocktails in a place that he could show to the police.

The court charged Loumadi with forming a criminal gang in order to set fire to a vehicle with passengers inside, blocking a public thoroughfare; participating in an armed mob, inciting others to commit acts of violence and revolt, assaulting public servants, possessing weapons and disturbing the public order. He denied all of the charges.

At Loumadi's trial, the prosecution relied on the statement that police said he had made in pre-trial custody. The prosecution produced no knife or Molotov cocktails or other incriminating physical evidence against Loumadi. The police agents who

testified were unable to identify Loumadi as one of the people who had attacked their vehicle.

On May 7, 2014, the court acquitted Loumadi of participating in the attack on the police vehicle and creating a criminal gang, but convicted him on the lesser charges – that is, those to which the afore-mentioned evidentiary rule of CCP article 290 apply. These included participating in an armed mob, possession of weapons, and assaulting public servants. On July 8, the El-Ayoun Court of Appeals upheld the verdict and the ten-month prison sentence to which the Court of First Instance sentenced Loumadi. He is due to be released in November 2014.

The First Instance Court based its guilty verdict on Loumadi's alleged statement to the police. Yet, before doing so, it took no steps to conduct or order an investigation into the defendant's allegations of torture. Nor did the court address these claims in its written judgment. It said that it deemed Loumadi's police statement credible because it was detailed, provided specific dates, and had a "spontaneous" feel. The court dismissed his later repudiation of the statement and its contents as "merely an attempt to evade punishment" (page 6 of the judgment).

Human Rights Watch has [documented](#) numerous cases where Moroccan courts have admitted as evidence confessions allegedly made to the police in garde à vue without investigating defendants' allegations that police tortured them or falsified their statements. This practice undermines the presumption of innocence and, in some cases, breaches the prohibition under international law on the acceptance by courts of evidence obtained under torture.

Human Rights Watch is concerned that authorities may have prosecuted Loumadi in reprisal for his peaceful political and human rights activities. Before his arrest, Loumadi participated frequently in efforts by Sahrawis to demonstrate in El-Ayoun in favor of self-determination for Western Sahara. Authorities systematically refuse permission for such rallies and the police pre-empt such gatherings or disperse them, often using excessive force.

Loumadi is also the author of numerous complaints submitted to the prosecutor concerning alleged police abuse. For example, in a complaint dated June 27, 2013, he asked the prosecutor to investigate police violence when breaking up a "peaceful sit-in to demand self-determination for the Sahrawi people" five days earlier. In a complaint dated October 2, 2013, he asked the prosecutor to investigate police violence against him while demonstrating on September 30, 2013 on behalf of human rights in Western Sahara and for the release of "Sahrawi political prisoners." The following day, according to a complaint he submitted to the prosecutor, police detained him and questioned him about that complaint, beating and insulting him and threatening him with prison. Loumadi has been imprisoned two times prior to his current term.

Human Rights Watch applauds the vote on July 23, by Morocco's Chamber of Deputies to [approve](#) in a unanimous vote a number of revisions to the law on military courts, including an end to their jurisdiction over civilian defendants. Authorities first announced the proposed amendments to the law in March 2013, one month after a military court convicted 25 Sahrawi civilians for their alleged role in the deaths of security force members during an operation to dismantle a protest camp that Sahrawis had set up at Gdeim Izik, outside El-Ayoun. The defendants, 21 of whom remain in prison, included a number of human rights activists.

The expected adoption of the amendments to the military justice law, which requires approval by the second chamber of parliament, the chamber of counselors, has [fueled hopes](#) for some form of review of the Gdeim Izik verdict, but to date no steps have been taken publicly. Military court verdicts are not subject to appeal, except for cassation by the Supreme Court. The Supreme Court has not yet ruled on the petition for cassation, filed by the Gdeim Izik defendants nearly a year and-a-half ago.

Human Rights Watch is encouraged that Morocco seems ready to end military court jurisdiction over civilians. However, the trial of Abdeslam Loumadi reminds us that, military or civilian, courts cannot be relied upon to deliver justice as long as they admit confessions into evidence without examining allegations of torture and falsification.

We urge Moroccan authorities to set aside the verdicts against Abdeslam Loumadi and the defendants in the Gdeim Izik military trial, and to free the defendants unless they are granted a fair trial in a civilian court that fully respects their rights and critically examines allegations of torture before admitting police statements into evidence.

We invite any information or comments you have on the cases we have mentioned in this letter.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in dark ink, appearing to be 'Sarah Leah Whitson', with a long horizontal flourish extending to the right.

Sarah Leah Whitson
Executive Director
Middle East and North Africa Division
Human Rights Watch