



## Preliminary findings

### Observation of Mr. Soulaïmane Raïssouni and Mr. Omar Radi' trials for sexual violence related offences

- Pursuant to article 161 of the Constitution,
- Pursuant to articles 4 and 11 of the law reorganizing the National Human Rights Council (CNDH)<sup>1</sup>;
- Recalling the various provisions of UN General Assembly Resolution 48/134 on the principles relating to the mandate of national institutions in promoting and protecting human rights (known as the Paris Principles), in particular those relating to “*the adoption or amendment of administrative measures*” and the provisions relating to “*judicial organizations, intended to preserve and extend the protection of human rights*”<sup>2</sup>;
- Given the importance of combating sexual harassment and preventing sexual violence within our society, particularly for vulnerable populations;
- Taking into account the Supreme Will of our Country to work towards the consolidation the rule of law and the judicial system reform so as to guarantee an equal, equitable, and free access to justice, without discrimination;

The CNDH would like to bring to the public opinion's attention the following elements:

- Having noted, in recent years, the worrying rise of campaigns intended for the vilification and stigmatization of presumed or proven victims of sexual assault and violence, in particular when the perpetrators of said assaults and violence enjoy a certain position in society;
- Having conducted, pursuant to article 6 of the law reorganizing the CNDH, 10 visits to Soulaïmane Raïssouni and Omar Radi, including a visit by a CNDH team on 06/27/2021 which had concluded that Mr. Raïssouni state of health is stable; the latest visit took place on August 3, 2021 and was conducted by the Regional Human Rights Commission (CRDH) Casablanca-Settat<sup>3</sup>, the date on which Mr. Raïssouni announced "to have decided to abandon his hunger strike" and put an end to his refusal of medical treatment prescribed in the context of a drastic reduction of food intake; As of the date

<sup>1</sup> <https://www.cndh.org.ma/fr/textes-de-referance/loi-ndeg76-15-relative-la-reorganisation-du-conseil-national-des-droits-de>

<sup>2</sup> <https://undocs.org/ch/A/RES/48/134>

<sup>3</sup> [https://www.facebook.com/crdh.casablancasettat/posts/2912798388961450?\\_\\_tn\\_\\_=-R](https://www.facebook.com/crdh.casablancasettat/posts/2912798388961450?__tn__=-R)



of this communiqué publication, Mr. Raissouni has undergone, on 7 August 2021, medical examination and tests at the hospital which seem to be extremely reassuring.

- Having monitored the detention conditions of both Mr. Raissouni and Mr. Radi;
- Having intervened to facilitate an appropriate care for the two detainees, whilst keeping communication channels open with their families;
- Having dispatched two teams of the Regional Human Rights Commission Casablanca-Settat, to monitor 28 first instance sessions of their trials;
- Having held a meeting with Radi's defense coordinator on the two hearings of his trial held behind closed doors;
- And after cross-checking and verifying information collected and gathered by CNDH's teams; and on the basis of the minutes of the sessions prepared by court's clerks, as well as the decisions rendered by the Court, in addition to reports prepared by the court's clerk and the judicial police and submitted to the administration of the penitentiary establishment;

The CNDH presents to the public some of its preliminary observations, pending presentation of its final report after publication of judgments and exhaustion of judicial process:

#### Common preliminary observations:

- Trials were held in open and public court proceedings.
- Arrest procedures complied with the law and criminal procedure
- Defense requests for in-person trial were accepted by the judges for both trials.
- Both trials were held within a reasonable time.
- The accused were informed of the charges held against each one of them, had access to a lawyer of their choosing and had adequate time and facilities to prepare their defense, adjournment requests presented by the defense to prepare for the trials were granted by the court.

#### Preliminary observations on Mr. Raissouni's trial

- Mr. Raissouni attended the first seven sessions of his trial until the hearing session held on 6/15/2021. From that date, he refrained from appearing for the remainder of his trial, justifying his absence by his health conditions. The Court, considering the grounds for his absence inadmissible, continued to conduct the trial in the presence of only the defense and in the absence of Mr. Raissouni, after notifying and warning him, in accordance with article 423 of the Code of Criminal Procedure, as it was noted in the judicial police report examined by the CNDH.



- The defense announced its withdrawal from the session after the Court's decision to continue conducting the trial in the absence of Mr. Raissouni. Based on this withdrawal decision, the presiding judge ordered to provide him with lawyers within the framework of legal assistance proceedings, as it was verified by the CNDH. The President of the Bar appointed three lawyers in this context, but his defense team announced that it had not withdrawn its assistance, and therefore, there was consequently no reason to provide Mr. Raissouni with legal assistance. The defense renewed its request to bring Mr. Raissouni to the court room, which was rejected by the court, so his defense announced once again its withdrawal from the session. The Court decided therefore to continue with hearing proceedings, the withdrawal having no legal effect in the eyes of the law on the Profession of lawyers;
- The Court upheld its decision to continue conducting the trial in the absence of Mr. Raissouni, in accordance with Articles 443 and 446 of the Code of Criminal Procedure, despite the defense's request.
- Mr. Raissouni was not summoned for the subsequent hearings as the Court reiterated its decision related to article 423 of the Code of Criminal Procedure. Pursuant to the provisions of the latter, he was kept informed, from his cell, of the content of the minutes of each session by a Court clerk.
- A forensic audio examination of the recording presented by the complainant was ordered by the investigating judge, after which it was included into the trial file.
- On 07/09/2021, the Court ordered the defendant to appear before the Court for his sentencing, as the CNDH was able to verify. Due to his refusal, the judgment was pronounced in his absence and in the presence of his defense only. The session clerk subsequently informed him of the verdict in his cell.

### **Preliminary observations on Mr. Radi's trial**

- Defenses relating to procedural irregularities raised the issue of the minutes not being signed during the hearing of the defendants by the Royal Gendarmerie, to which the Prosecution replied that the procedure was sound and in accordance with Dahir Royal 1.57.280, which provides for the inclusion of the statements of any questioned person in a "Register of Declarations". This register includes signatures of persons the Royal Gendarmerie heard. The contents of the statements in the said Register have not been contested by the defense.



- The defense requested the appearance before the Court of witnesses previously heard by the investigating judge and the prosecution. The Court dismissed this request, recalling the Court of Cassation's case law, according to which there is no obligation to resubmit witnesses who have already appeared and taken an oath before the investigating judge (decision 283 of file 19016/99 dated 03/02/2000 of the Court of Cassation).
- Although the complainant was immediately heard by the Public Prosecutor after filing her complaint, there was no request for an examination to document her state of health.
- Two hearings were held behind closed doors following requests of the civil party.

Although the two monitored trials were carried out in conformity with the law and article 110 of the Constitution, according to which: " The presiding magistrates are only subject to the application of the law. The decisions of justice are rendered on the sole foundation of impartial application of the law alone", the CNDH concludes, in the light of the aforementioned preliminary observations, that there remain elements of issue in the course of these trials. These elements are neither specific nor unique to these two cases, but result from flaws and insufficiencies of the law compared to international standards; these cases only represent two case-studies on the incompatibility between some of the provisions of the said law and the constitutional and international provisions on fair trial, in particular article 120 of the Constitution of Morocco and article 14 of the international Covenant on civil and political rights, including sub-paragraph e) which stipulates that everyone shall be entitled " *to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him*".

The CNDH recalls that it is recommended, in accordance with international standards in this regard, to hear, in certain circumstances, statements made before the court in addition to statements made during the investigation phase, in order to encourage witnesses to testify before the court in an open session.

In addition, the CNDH insists on the fact that judicial care for victims of sexual crimes and offences includes medical and psychological care, in accordance with article 117 of the Constitution of the Kingdom, according to which: "The judge is in charge of the protection of the rights and freedoms and of the judicial security of individuals and groups, as well as of the application of the law".



The CNDH, as a national constitutional human rights institution in Morocco, is aware of what these cases and previous ones represent for the rights of litigants, men and women in our country, and in accordance with its mandate:

- Informs public opinion of its concern about the way cases of sexual violence are addressed in our society, which is inconsistent with Human Rights principles, values and culture.
- Strongly condemns the relentless and unprecedented campaign of defamation, harassment and denigration of which complainants in these two cases have been victims, as well as the slander, attacks and repeated threats they have faced, damaging to their dignity and endangering their security, health and well-being.
- Alerts the public that it has noted the dissemination of numerous false and unverified information about these two cases, especially on social media.
- Reiterates its recommendation aimed at criminalizing defamation speech, discrimination, and incitement to hatred and violence, and reiterates its recommendation on establishing an appropriate legal framework aimed at combating disinformation and fake news.
- Recalls that no person can be subject, as stipulated by the Preamble of the Kingdom's Constitution and article 26 of the International Covenant on Civil and political Rights, to discrimination or persecution for reasons of sex, identity, social origin, opinion; in particular to the purpose of intimidation or to compel them to remain silent.
- Insists on reminding the public opinion that neither the profession, nor the notoriety and the relationships, nor even the opinions of those concerned, can constitute, on their own, elements to charge or to exonerate for crimes/ offences; nor can they undermine the principle of equality of citizens before the law guaranteed by article 6 of the Constitution.
- Invites the Justice bodies to take into account, when it deems appropriate, international provisions ratified by the Kingdom of Morocco, pending the harmonization of the Kingdom's laws with international standards and the provisions of the Constitution, as specified in its preamble.
- Recommends enabling CNDH to attend closed hearings of the trials it monitors;
- Recalls its recommendation<sup>4</sup> aimed at harmonizing the law organizing the Royal Gendarmerie with the provisions of the Constitution provisions and international standards relating to the minutes signing;

<sup>4</sup> <https://www.cndh.org.ma/fr/article/rapport-sur-letat-des-droits-de-lhomme-au-maroc-2020-covid-19-situation-exceptionnelle-et>



- Reiterates the recommendation, included in its annual report for the year 2020, relating to the necessity for lawyers to uphold principles of human rights and fundamental freedoms as recognized by national and international laws. Lawyers must act, in all cases, in conformity with the law, international standards and ethics. The rights and well-being of parties to the trial must be prioritized as supreme interests, in accordance with fundamental principles on the role of lawyers.
- Recalls its recommendation on enabling, by law<sup>5</sup>, an independent judicial appeal regarding all decisions involving deprivation of liberties, in accordance with international standards in this regard.
- Reiterates its recommendation urging for the adoption by the Parliament, as soon as possible, of the criminal code's reform, and enshrine the principles of legitimacy, necessity, proportionality and predictability of laws<sup>6</sup>.
- Reiterates its recommendation on amending Chapter 8 of the Criminal Code, especially articles 468 and articles 489-493, and its recommendation to make consent the basis of legislation on offenses and crimes of sexual nature; and reiterates its call for making effective fight against the impunity of those responsible for sexual assaults and violence a constant with deterrent effect.
- Calls for the acceleration of the Public Prosecutor's Office efforts regarding the rationalization of the use of preventive detention.
- Calls for the implementation of measures to protect victims in accordance with the provisions of Law No. 103.13 and the implementation of measures to protect victims, witnesses and reporting persons in accordance with Law No. 37.10;
- Calls for necessary establishment of a mechanism for medical, psychological and legal care for victims of assault and sexual violence.
- Informs citizens, institutional and non-institutional actors, of the publication in the upcoming months of CNDH's memorandum on the reform of the Criminal Procedure Code; an urgent and necessary reform.
- Recalls its various recommendations included in its annual report for the year 2019, especially those related to necessity of respecting personal data;
- Informs the public that it will continue monitoring detention conditions of the accused, as it will continue monitoring the trials in their appeal phase, and informing the public of any development when it deems it necessary, in accordance with its mandate.

<sup>5</sup> <https://www.cndh.org.ma/fr/article/rapport-sur-letat-des-droits-de-lhomme-au-maroc-2020-covid-19-situation-exceptionnelle-et>

<sup>6</sup> <https://www.cndh.org.ma/fr/communiqués/le-memorandum-du-cndh-relatif-lamendement-du-code-penal-pour-un-code-penal-qui-protège>