

HUMAN RIGHTS WATCH

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March 17, 2015

Minister Mustapha Ramid
Ministry of Justice and Liberties

Fax: 05-37-26-31-03

Minister-Delegate Abdellatif Loudiyi
National Defense

Fax : 037-762-720

Dear Ministers Ramid and Loudiyi:

Human Rights Watch welcomes Morocco's recent [adoption](#) of amendments to the Code of Military Justice that end military court jurisdiction over civilian defendants. We consider this an important, if overdue, step that addresses a longstanding divergence from international norms relating to the right to fair trial and one that should significantly enhance the future administration of justice in Morocco.

I write now to request clarification concerning the status of two civilians whose cases have, until now, been addressed under the jurisdiction of the Permanent Military Tribunal of the Royal Armed Forces (hereinafter, the military court) jurisdiction. They are Sahrawi activist Mbarek Daoudi, about whom we issued a public [statement](#) of concern on December 22, 2014, and Mamadou Traoré (referred to in his case file as "Mamadou Diarra"), on whose case I will first focus in this letter.

We ask that you inform us whether these two cases have yet been, or will shortly be, transferred from military to civilian jurisdiction in light of the new law, Law 108-13 Relative to Military Justice, promulgated by Dahir n° 1-14-187 of December 10, 2014. Our reading of article 218 of Law 108-13 is that all cases of civilians whose trials before military courts have not concluded by the time that Law 108-13 enters into force on July 1, 2015, six months after its promulgation, will be transferred to the civilian judiciary system.

We wish to note that one of the rights available to defendants in civilian courts is a right to an appeals trial, followed by cassation, whereas military court verdicts are not subject to appeal, but only to cassation.

We are concerned that Mamadou Traoré, a young Malian migrant, has been

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detained by Moroccan authorities for 32 months while awaiting trial before a military court, and that no date for the trial has yet been set.

The case of Traoré goes back to the early hours of July 10, 2012 when he and other migrants from countries in sub-Saharan Africa attempted to enter the Spanish enclave of Melilla by scaling the fences that separate it from Moroccan territory.

A member of a Moroccan Auxiliary Forces (AF) patrol that intercepted the migrants, 52-year-old Sgt. El-Hassan Majidi of the Auxiliary Forces (AF), was struck in the chest, allegedly by a stone thrown by one of the migrants, and died later that day.

Human Rights Watch has reviewed the court file for Traoré, which indicates that about 40 migrants were nearby at the moment when Sergeant Majidi was struck, according to an AF agent who was present. Security forces arrested at least 26 of the migrants as suspects, including Traoré, and took them to Nador for police interrogation.

In the police statement that is attributed to him, Traoré admitted to throwing stones in the direction of the security forces to stop them from pursuing the migrants, but denied that he threw the stone that hit Sergeant Majidi. The statement attributed to Traoré, to which he applied his fingerprint, is a typed statement in Arabic (preliminary investigation minutes N 1204, July 10, 2012); however, we understand that Traoré neither speaks nor reads Arabic.

The authorities charged Traoré in connection with Sergeant Majidi's death. (Traoré reportedly gave the name "Mamadou Diarra" to the police at the time of his arrest, and that name continues to be used in the court documents.)

The civilian investigative judge in the city of Nador promptly referred the case to the military court, since article 3 of [Morocco's Code of Military Justice](#), prior to its amendment in 2015, gave the military courts jurisdiction over civilians accused of inflicting harm on members of the armed forces.

During Traoré's appearances before Military Judge Col. Abdelkarim Hakimi, he denied the charges.

According to the case file, the lone eyewitness who identified Traoré as the culprit, an AF agent, later retracted much of his statement. The agent initially described apprehending the stone-thrower at the scene, but at a hearing with the suspect on December 7, 2012 the agent told the judge that he no longer believed that Traoré had thrown the stone that struck Sergeant Majidi. The agent said he had based his earlier identification of Traoré on account of his height, build, and clothing, but that he now realized that Traore's face did not match that of the stone thrower, on which he – the agent – had observed distinctive markings (testimony before the military investigating judge. case number 1991/1781/2012 ع.ع).

On July 11, 2013 – just shy of one year after receiving the case – Judge Hakimi referred Traoré to trial on charges of violently resisting a public agent performing lawful duties (penal code

articles 300-302) and committing an act of violence against a public agent while on duty that caused his death without intending to cause it (penal code article 267(4)) (Decision to refer to trial, case number: 1991/1781/2012 ع.ع.). The penalty upon conviction for the first offense is one to three years in prison and a fine; and for the other offense, 20 to 30 years in prison.

Although the court charged Traoré with causing the agent's death, the autopsy report on Sergeant Majidi present in the case file states that the "cause of death is not determined." (Autopsy report, cadaver 168, July 10, 2012).

Traore was refused provisional release on the ground that he had no documents or fixed address and was in Morocco illegally.

Traoré has remained in custody since his arrest as the 12-month limit on pre-trial detention provided by Moroccan law refers only to the period of judicial investigation, not to detainees whose cases have been referred for trial.

Traoré's trial before the Permanent Military Tribunal in Rabat was due to open on February 3, 2014, eight months after he was sent for trial, but on that date, the court immediately adjourned the proceedings as authorities had failed to bring Traoré from Salé Prison to the courthouse. When a new date was eventually set—January 21, 2015—the same thing happened again.

Moroccan authorities have not explained their repeated failure to bring Traoré to the court, his lawyer told Human Rights Watch. At this writing, a new date for Traoré's trial to begin is yet to be set and he remains in Salé Prison.

Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR), to which Morocco is party, requires 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."

The U.N. Human Rights Committee, which is the body responsible for authoritative interpretation of the ICCPR, elaborates in its General Comment 35 the requirement in relation to the article 9 right to be tried within a reasonable time or release:

That requirement applies specifically to periods of pretrial detention, that is, detention between the time of arrest and the time of judgment at first instance. Extremely prolonged pretrial detention may also jeopardize the presumption of innocence under article 14, paragraph 2. Persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defense. The reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the executive and judicial authorities. Impediments to

the completion of the investigation may justify additional time, but general conditions of understaffing or budgetary constraint do not. When delays become necessary, the judge must reconsider alternatives to pretrial detention.

Having regard to the long period that Traoré has already spent in prison since his arrest, Human Rights Watch urges the Moroccan authorities to request his provisional release. If he is still to face prosecution, we seek your firm assurance that he will be tried before a civilian rather than a military court, and that his trial should now take place promptly.

Turning to the case of Mbarek Daoudi, we request clarification of his current legal status, and specifically the grounds and legal basis for his continuing detention. In particular, we wish to know whether he still faces charges before a military court and, if so, seek your assurance that his case will now be transferred to civilian jurisdiction in accordance with Law 108-13.

According to our information, the Permanent Military Court recently declared itself incompetent to try Daoudi on at least some of the charges and referred him to a civilian court. On March 9, 2014, the Court of First Instance in the city of Guelmine convicted him of a misdemeanor involving the unauthorized wearing or possession of a military uniform and sentenced him to three months in prison. However, authorities did not release Daoudi even though he had already spent 18 months in pretrial detention.

We urge the Moroccan authorities to request the release of Daoudi on the basis that he has already served his sentence, unless he is to be tried promptly on any outstanding credible charges before a civilian court.

We look forward to receiving a response at your earliest convenience.

Sincerely yours,

A handwritten signature in black 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