

(Translated from Arabic)

Reply of the Moroccan authorities to the communication regarding Mr. Abdessadeq El Bouchtaoui

The Moroccan authorities wish to submit the following comments in response to the note verbale received on 20 October 2017 from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers concerning the case of Mr. Abdessadeq El Bouchtaoui, who is described by the source as a human rights defender and a lawyer representing the activists arrested in the context of the case known as the events of Al-Hoceima.

1. Grounds for prosecuting Mr. El Bouchtaoui

Mr. El Bouchtaoui is being prosecuted in response to complaints lodged against him and on the grounds that he has violated the law, as demonstrated by his activities on social media:

(a) The Ministry of the Interior has submitted a complaint regarding comments that the accused made in a video published on the social media site Facebook, under the name “Rif Bladi”. The comments contained serious accusations concerning the involvement of the security forces in the events in the town of Al-Hoceima. The videos were published under various titles, including “Abdessadeq El Bouchtaoui challenges Governor Yaqoubi and the Minister of the Interior regarding the events in Al-Hoceima”, “Abdessadeq El Bouchtaoui discusses the oppressive treatment of the Hirak popular movement in the Rif region” and “The State is corrupt and the Government is full of thugs”. He also claimed that evidence had been fabricated against the individuals arrested in connection with the events in Rif. In addition, he published a blog post entitled “The ideal government” in which he listed the names of individuals whom he would appoint to a regional government of Rif, awarding himself the post of Minister for Justice and Freedoms.

(b) An individual from Al-Hoceima region has lodged a complaint against Mr. El Bouchtaoui for insulting public security officers during the exercise of their duties, reporting false events and inciting crime and civil disobedience by claiming that an individual named [REDACTED] died as a result of tear gas used by security forces. Mr. El Bouchtaoui posted the following on his personal Facebook account: “An individual identified as [REDACTED] is in a coma in the resuscitation unit of Mohammed V Hospital in Al-Hoceima as a result of asphyxia caused by inhaling tear gas on the evening of Thursday, 10 August 2017. Mr. [REDACTED] has been in a coma since that evening.” He also claimed that the wife of the dying man had filed an immediate complaint of medical negligence with the police against the doctor who had been working the night shift at Mohammed V Hospital, on the grounds that he had given her husband an injection that was not suitable, given that he had been a long-term sufferer of acute asthma who used inhalers to help himself breathe and, as such, should have been transferred to the university hospital in Oujda.

(c) [REDACTED] has filed a complaint against Mr. El Bouchtaoui, in which she states that the accused was never employed to defend her or her husband, Mr. [REDACTED] (who died on 18 August 2017 at Mohammed VI Hospital in Oujda from heart failure caused by an acute asthma attack). She claims that Mr. El Bouchtaoui contacted her by telephone three times and introduced himself as a lawyer. He urged her to claim that her husband had died as a result of inhaling tear gas and that the security forces were ultimately responsible. Without her permission, he released online press statements, in which he referred to false events supposedly related to her husband’s death. He also published a photograph on his personal Facebook page of Mr. [REDACTED] in his hospital bed, without the permission of Ms. [REDACTED]. He also claimed, via social media, that she had told him that she



was under enormous pressure from the Al-Hoceima authorities. A witness, [REDACTED], a friend of [REDACTED], confirmed that Mr. El Bouchtaoui had contacted her to ask if [REDACTED] had died as a result of inhaling tear gas and whether or not he had already been buried. [REDACTED] had told him to stop exploiting the people's pain and the death of her friend's husband.

On 21 August 2017, [REDACTED] — [REDACTED] — also lodged a complaint with Al-Hoceima police department against Mr. El Bouchtaoui on the grounds that Mr. El Bouchtaoui had used the death of his uncle to deviate public opinion by publishing false information and inciting local residents against the police.

In addition, [REDACTED] states that he met Mr. El Bouchtaoui through an acquaintance, [REDACTED], who had been asked to find rental accommodation for Mr. El Bouchtaoui in Al-Hoceima. Mr. El Bouchtaoui had asked [REDACTED] to collect donations for [REDACTED] in order to encourage her to report to the Public Prosecutor of Al-Hoceima Court of Appeal that her husband had died as a result of inhaling tear gas. Mr. El Bouchtaoui had also asked [REDACTED] to encourage local residents to participate in a protest scheduled for 20 August 2017. [REDACTED] had also delivered 5,000 dirhams (DH) to Mr. El Bouchtaoui in exchange for supporting the activities of the Hirak social protest movement.

2. Violations committed by Mr. El Bouchtaoui

Mr. El Bouchtaoui has published a number of posts through his Facebook account in which he urged the local population to rebel against the authorities and to participate in the protest scheduled for 20 July 2017, despite being aware of the fact that the authorities had banned the protest from taking place. He insulted the security forces by deriding the report published by the Public Prosecutor of Al-Hoceima Court of Appeal. He also insulted a judge, claiming that he issued the rulings that he was told to issue. Furthermore, Mr. El Bouchtaoui incited other persons to commit offences and insult members of the public security forces and public institutions, including the army, and he attempted to instil fear among the local residents. Among other things, he published posts on Facebook in which he:

- Called on residents to join the protest on 20 July 2017, despite the fact that the protest had been banned by the local authorities. As a man of the law, he more than anyone should have respected decisions issued by the authorities in accordance with current legislation;
- Stated that the 20 July protest would take place as agreed and that peaceful protests would continue to be held until all members of Hirak had been released, their torturers held accountable and their legal demands met;
- Called on the public to participate in the protest scheduled for 20 July 2017 by the National Association of Young Lawyers in Morocco;
- Called on the public to protest publically against the authorities and to announce a popular revolution in the event that any members of Hirak who had entered into a hunger strike were mistreated;
- Claimed that the police had brought heavy weaponry into Al-Hoceima and questioned their motivations for doing so.

3. Conformity of the prosecution brought against the defendant with the international human rights obligations of Morocco, in particular those related to freedom of speech and expression and freedom of assembly, and the steps taken to protect the accused from all forms of judicial harassment

Contrary to the information provided in the joint communiqué, Mr. El Bouchtaoui was summoned to Tetouan Police Station on 9 August 2017 by the President of the Bar Association in Tetouan, Mr. Nour al-Din al-Mousawi, on the order of the Public Prosecutor of Al-Hoceima Court of Appeal.

Mr. El Bouchtaoui was interviewed on 10 August 2017 (not 11 August 2017, as stated in the joint communiqué) by the Tetouan police, on the instructions of the Public

Prosecutor of Al-Hoceima Court of Appeal, in the presence of the President of the Bar Association and a number of lawyers from Tetouan.

Mr. El Bouchtaoui was summoned to appear before the Public Prosecutor of Al-Hoceima Court of First Instance on 18 September 2017 (and not before the police, as stated in the joint communiqué). Mr. El Bouchtaoui presented a doctor's letter, which was valid for four days, in order to avoid appearing before the court. He also requested that he be interviewed under the jurisdiction of the Tetouan authorities.

In the light of the complaints filed against Mr. El Bouchtaoui, as detailed above, and the reports and records produced by the Al-Hoceima criminal investigation department concerning the acts and offences of which Mr. El Bouchtaoui was accused, the Public Prosecutor of Al-Hoceima conducted a recorded interview with Mr. El Bouchtaoui on 26 September 2017, in the presence of the President of the Bar Association of Tetouan and the representative of Nador Bar Association. After examining Mr. El Bouchtaoui, the Public Prosecutor of Al-Hoceima ordered that he be arrested for insulting public officials and members of the security forces during the performance of their duties, threatening and insulting organized entities, expressing contempt for judicial rulings, inciting other persons to commit offences, participating in an unauthorized protest, calling on others to participate in an unauthorized protest and soliciting clients, in violation of articles 263, 265, 266, 295 and 295 (1), (11) and (14) of Royal Decree No. 1.58.377 of 15 November 1958 on public gatherings, in addition to article 100 of the Act Regulating the Legal Profession. The case is scheduled to be heard on 18 January 2018.

Mr. El Bouchtaoui was one of a group of lawyers supporting individuals who are connected with the events in Al-Hoceima and are being pursued before the Al-Hoceima courts and the Casablanca Court of Appeal. None of the individuals arrested had complained that they had been placed under duress or that the sanctity and independence of their defence have been violated. Quite the contrary, Mr. El Bouchtaoui was accused of having used practices that violated the dignity and prestige of the defence and of having failed to uphold the principles of independence, objectivity, impartiality and integrity, in addition to ethical requirements and the conventions and traditions of his profession. For example:

- He organized a gathering on a public street outside the court as soon as the session was finished, during which he gave speeches to the crowd and, when asked by members of the public security forces to uphold the law, called them "oppressors".
- He published posts on Facebook with the aim of encouraging the public to protest and spreading false information. As an example, he alleged — falsely — that the individuals arrested during the events in Al-Hoceima had been tortured. He published eleven video clips on the subject, despite the clear provisions defining the role of lawyers set out in article 30 of the Act Regulating the Legal Profession. Furthermore, article 35 of the same Act prohibits lawyers from carrying out any activity with the aim of soliciting clients, including any form of advertising. Under that article, lawyers are entitled to use the Internet to provide a brief outline of their lives, their course of study, their professional career, their legal interests and their areas of research, provided that prior permission has been obtained from the President of the Bar Association. Under article 36 of the Act, lawyers have an obligation to respect the confidentiality of investigations during criminal cases and to refrain from sharing any information included in the case file or circulating any documents or correspondence related to ongoing investigations. Mr. El Bouchtaoui was found to have failed to respect these requirements, as he persisted in publishing posts and comments that included mostly false and misleading information which could not be corroborated. His comments and posts served to inflame the tensions in Al-Hoceima and to influence public opinion, as occurred in the Amad al-Atabi case.

Moroccan law guarantees the right of all persons to freedom of expression in accordance with the standards set out in the international human rights treaties which Morocco has ratified. This right is not without limitations, however, as it is subject to a number of constitutional, legal and moral restrictions that comply fully with the limitations permitted under international human rights law, in particular those set out in article 19 of

the International Covenant on Civil and Political Rights. Freedom of expression cannot, therefore, be invoked for the purpose of inciting violence, defaming or insulting another person, or undermining the rights of others.

In addition, article 3 of the Act Regulating the Legal Profession provides that “Lawyers, in their legal capacity, must uphold the principles of independence, objectivity, impartiality and integrity, in addition to ethical requirements and the conventions and traditions of their profession.” Article 14 of the Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Havana from 27 August to 7 September 1990 provides that “Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.” Furthermore, article 12 provides that “Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.”

Lastly, Mr. El Bouchtaoui, like all other members of the defence in this case, maintains the full right to express his opinions and convictions, without restriction, before the court while defending his clients during the proceedings related to the events in Al-Hoceima. Mr. El Bouchtaoui was arrested on the grounds that he had committed a number of criminal offences; his arrest was in no way connected to his role as lawyer or human rights defender.
