Kingdom of Morocco
Equity and Reconciliation Commission

Final Report

Volume 1

TRUTH, EQUITY AND RECONCILIATION

A National Commission on Truth, Equity and Reconciliation

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INTRODUCTION

The Equity and Reconciliation Commission was established at a critical and delicate stage in the process of development that Morocco went through at the beginning of the 1990s following the political changes that were faced by the state and the political and social components of society. As an instrument of transitional justice, it was one of the fruits of this gradual, difficult and complex development towards solving the problems and issues linked to the past grave violations of human rights, and a product of interchanges and discussions within the political class and among the forces active in civil society, to find the best ways to settle the conflicts of the past and solve them in a just and equitable manner.

The experience of the Equity and Reconciliation Commission falls within what has come to be known today as the Truth and Reconciliation Committees round the world, which have been set up in the context of what has been called ‘‘transitional justice’’. This is a term that is assigned to issues studied in Political Transition Studies and other related disciplines. When used in the context of the settlement of problems and effects arising from violations committed in the past, it refers to an attempt to apply types of justice that are appropriate to a transitional stage that occurs under a political or social regime. One of the basic conditions for creating such committees is the existence of a political will to reform, to continue reform or to complete a particular reform project.

When one considers the geographical, historical and cultural space that is Morocco, its experience in the field of truth and reconciliation is unprecedented. Observers from outside the Moroccan context consider that the first characteristic distinguishing the Moroccan experience is that, for the first time in about forty experiences round the world, such an instrument was established under a regime that continued unchanged in terms of its political nature, a constitutional monarchical regime that has legal bases and governmental and administrative institutions. From within the regime itself, there arose a desire to venture along this path, and it decided with great audacity and wisdom to take positive strides in the direction of modernization and democratization, and to put an end to the use of force in settling political differences. This was not the experience of other countries. Their experience was characterized, for the most part, by sharp breaks with the past as a result of either violence that led to the overthrow of the previous regime, its removal on the basis of elections, a radical change in its system of government, or a context of peaceful negotiations that resulted in new balances in the management of public affairs of a country in the stage following an armed conflict over power.

Thus, the establishment of the Equity and Reconciliation Commission is part of Morocco's path to the settlement of its past of grave violations of human rights that has been pursued since the beginning of the 1990s. One of the main characteristics of this process has been to make a complete break with these violations, and to lay the foundations for a period of radical new beginnings, and to adopt a gradual process of democratization and the construction of a state based on law and institutions. The aim of all this is to ensure that the values and the culture of human rights prevail, and that the pillars of the Moroccan state continue while developing a special model of democratic transition having the strong support of the highest authorities in the land.

It is worth pointing out here that in his report submitted to the Security Council on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (August 2004) the General Secretary of the United Nations referred to the Moroccan experience as one of the five most distinguished of over thirty experiences. Moreover, the inspiration of the directives of His Majesty and the national accumulation of experience in the area of human rights enabled the Commission to draw up statutes, programmes and methods of work to match the country's ambitions to make a break with the excesses of the past and to give positive closure to the past of grave violations of human rights.

The Equity and Reconciliation Commission has helped to gain normative status for the Moroccan experience of transitional justice through strategic initiatives and goals and a work plan to achieve them. It has concentrated on uncovering and establishing the truth about all the grave violations that our country experienced during the relatively long period stretching from the beginning of independence to the summer of 1999. This mission has required the Commission to establish the contexts of the events to which those violations were linked and the legal and institutional development of human rights issues during that period. It has also adopted its own philosophy and a comprehensive approach in dealing with reparation for injuries and justice for victims, through a policy and programmes characterized by more than just added value. With a view to consolidating the current reforms and ensuring non-repetition, the Commission has drawn up recommendations and proposals in the areas of democratization and the construction of a state based on institutions, respect for human rights and the rule of law.

Chapter One

THE EQUITY AND RECONCILIATION COMMISSION ESTABLISHMENT, REMIT AND ACTIVITIES

I. Establishment

The Equity and Reconciliation Commission was established on the basis of a royal decision dated 6 June 2003 ratifying the recommendation of the Advisory Council on Human Rights issued by virtue of Article 7 of Sherifian Decree No. 1.00.350 relating to the reorganization of the Council.

By virtue of the royal approbation, the Commission is composed of a chairman and sixteen members, half of them selected from members of the Advisory Council on Human Rights, and half selected from outside it. The purpose of this was to guarantee the representation of a wide variety of viewpoints, experience and specialities, all united in the purpose of protecting and promoting human rights. When its chairman and members were installed by His Majesty the King on 7 January 2004, he delivered a speech on the occasion granting the Commission a historical dimension and entrusted it with great responsibilities by characterizing it as a Truth and Reconciliation Commission.

In order to strengthen its independence, the Commission drew up its statute, which is a foundational document including a detailed description of the tasks entrusted to it, a definition of the violations falling within its remit, and the methods to be used in organizing and carrying out its work. This statute was ratified by virtue of Sherifian Dahir No. 1.04.42 issued on 10 April 2004.

II. Mandate

On the basis of its statute, the Commission had two competences: one temporal and the other with regard to subject matter:

1. The Temporal Competence

The temporal competence of the Commission covers the period stretching from the beginning of independence to the date of the royal approbation of the establishment of the Independent Arbitration Commission to Compensate the Victims of Enforced Disappearance and Arbitrary Detention in 1999.

2. The Subject Matter Competence

The subject matter competence of the Commission is limited to assessment, inquiry, investigation, arbitration and formulating proposals concerning the grave violations of human rights that occurred in the period defined by the temporal competence, with the purpose of developing

and enriching the culture of dialogue, and establishing the components of reconciliation in order to support the democratic transformation of our country and the construction of a state based on the rule of law, and to spread the values and culture of citizenship and human rights.

2.1. Assessment

The Commission undertook a comprehensive assessment of the process of settlement of the enforced disappearance and arbitrary detention file, in consultation with the government, the public and administrative authorities involved, human rights organizations and the victims and their families and representatives.

2.2. Inquiry and Investigation

The Commission devoted itself to carrying out investigations, receiving communications, perusing the official archives and obtaining any information and data made available by the bodies involved with the purpose of uncovering the truth, in order:

- To establish the nature and the gravity of the violations of the past, in their contexts and in the light of the standards and values of human rights, democratic principles and the rule of law.
- To continue to make inquiries regarding the cases of enforced disappearance whose fate is not yet known, and to make every effort to investigate facts that have not yet been brought to light, to reveal the fate of those who have disappeared, and to find suitable solutions for those whose deaths are proved.
- To reveal the degree of responsibility of state or other apparatuses for the violations and the events object of its investigations.

2.3. Arbitration

The Commission continued the work previously undertaken by the Independent Compensation Arbitration Commission to settle requests submitted to it relating to compensation for injuries suffered by victims of grave violations or their rightful claimants. It also submitted proposals and recommendations to find solutions for cases of psychological and physical rehabilitation and social reinsertion, and to complete the process of solving the remaining administrative, employment and legal problems, as well as the cases relating to dispossession.

2.4. Formulating Proposals

In implementation of this competence, the Commission undertook to prepare a final report including the main findings of its inquiries, investigations and analyses relating to the

violations and their contexts, and to submit recommendations and proposals intended to preserve the memory, to ensure non-repetition, to erase the effects of the violations and to restore and strengthen trust in the rule of law and respect for human rights.

3. Violations falling within the Remit of the Commission

The violations falling within the remit of the Commission are enforced disappearance and arbitrary detention insofar as they are types of violations of civil and political rights characterized by their intensified and systematic nature.

According to the statute of the Commission, enforced disappearance is defined as "the abduction of one or more persons, or their arrest and restraint in secret locations, against their will and with deprivation of freedom, without any right, by public servants or individuals or groups acting in the name of the state, or not admitting to that, and the refusal to reveal their fate, which deprives those individuals of all legal protection".

Arbitrary detention is defined as "any restraint or detention contrary to the law that violates the principles of basic human rights and especially the right of individuals to freedom, life, and physical safety, for engaging in political, trade union or association activities".

III. The Organization of the Work and Administration of the Commission

By virtue of its statute, the Commission adopted an internal organization that corresponded to the specificities of the tasks entrusted to it. Thus the Commission was organized into work groups and special committees.

It also created administrative and technical units responding to the needs of the work groups and the committees created within them.[1]

1. Work Groups and Special Committees

1.1. Work Groups

The Commission consists of three work groups:

- The work group responsible for investigations, which undertakes the following tasks:

1 For more information concerning the organization of the methods of work of the Commission, see Volume V relating to the organization of the method of work and activities of the Commission.

- The investigation of cases of enforced disappearance where the fate of the victim is unknown, whether the victim is alive or dead;
- Gathering all information and documents, and receiving communications relating to the events and facts relating to the violations of the past in their various types.

- The work group responsible for investigations, which undertakes the following tasks:
  - Continuing the work previously undertaken by the Independent Arbitration Commission concerning compensation of the victims (or their rightful claimants) for physical and mental injuries or being subjected to enforced disappearance and arbitrary detention, depending on the same basis for arbitration and the same principles of justice and equity;
  - Obtaining reparation for injuries incurred by victims of enforced disappearance and arbitrary detention, as provided for in Paragraph 5 of Article 9.

- The work group responsible for investigations, which undertakes the following tasks:
  - Conducting the research necessary to accomplish the tasks of the Commission;
  - Gathering and analyzing data, information, and the main conclusions reached from material obtained by the other work groups, to aid the Commission in preparing its Final Report.

1.2. Special Committees

The Commission established special work committees, both standing and ad-hoc. It also entrusted specific tasks to some of its members as special rapporteurs.

The most important committees established were:

- The work plan committee;
- The communication strategy committee;
- The committee for recording and assessing the experience of the former Arbitration Commission;
- The committee to study the legal problems relating to competence;
- The committee for organizing information;
- The committee for public hearings;
- The committee for thematic dialogue sessions;
- The committee for developing an approach to reparation for injuries;
- The final report committee.

In order to coordinate the activities of the work groups and committees, and to ensure harmony in carrying out its different tasks, the Commission was careful, in accordance with its statute, to organize regular coordination meetings, under the supervision of its chairman. In addition, in view of the linkage and the complementarity between the tasks entrusted to the Commission, the possibility was left open for all members to participate in the activities of all groups and committees.

2. The Administration of the Commission

The Commission set up an administration consisting of administrative, technical and support personnel. It also sought the help of experts and consultants.

2.1. Administrative Organization

The administration of the Commission was structured in terms of administrative units attached to the work groups and the technical committees entrusted with handling issues of a crosscutting nature, or with carrying out specific administrative or technical tasks linked with one of the special tasks entrusted to the Commission. The details are as follows:

- Administrative units linked to work groups:
    - The administrative unit linked to the committee entrusted with investigations;
    - The administrative unit linked to the committee entrusted with reparation for injuries;
    - The administrative unit linked to the committee entrusted with studies and research.
- Administrative units entrusted with handling issues of a crosscutting nature:
    - The secretariat of the chairman and members of the Commission;
    - The administrative coordination committee;
    - The administrative and financial affairs unit;
    - The information organization unit;
    - The unit responsible for managing files, documentation and archives;
    - The communication and media unit;
    - The medical unit.

- Units or administrative or technical committees entrusted with handling specific issues:
    - The committee for the pre-analysis of files;
    - Special committees for the organization of conferences and public activities for the Commission;
    - Committees for the organization of public hearings and dialogue sessions;
    - The final report committee.

2.2. Human Resources

The Commission adopted a flexible method of recruitment and appointment within the administrative units, according to the development of the different stages of the work. Thus it recruited administrative staff and personnel with different specializations to monitor and implement its programmes. It also depended on well-resourced full-time staff put at its disposal by the Advisory Council on Human Rights and some departments of the government.

The inclusion of a significant number of young people in its human resources enabled them to become involved in the project and the issues of human rights in general. The Commission also sought the assistance of Moroccan experts with different specializations to carry out studies, prepare reports and submit consultation documents, whenever these were needed.

IV. Activities

The Commission organized various activities to achieve the basic goals linked to carrying out its tasks. These group around the following four headings:

1. Establishing the Nature and the Gravity of Past Violations of Human Rights

This goal involves uncovering and establishing the truth, in a public capacity, concerning grave violations falling within the remit of the Commission. This is done by analyzing those violations and defining their nature, how grave they are, the causes that gave rise to them, and their effects on the victims, whether individuals or groups, and on society.

But as much as these facts concern the victims, they also relate to the right of society to know what happened. Moreover, they will also help to draw lessons leading to guarantees of prevention and non-repetition.

This basic goal gives rise to the following procedural goals:

- Continuing to investigate cases of enforced disappearance whose fate is not known;
- Investigating facts which have not been explained and uncovering the fate of the disappeared;
- Finding suitable solutions for cases of individuals whose deaths are established by the Commission;
- Establishing the degree of responsibility of state or other apparatuses for the violations and the events object of the investigations.

To achieve those goals, the Commission organized a series of activities aimed basically at:

- Uncovering the truth about the past grave violations of human rights in such a way as to respond to the demands of their victims;
- Helping to ensure the right of society, both individuals and groups, to know what happened;
- Ensuring that the state acknowledges and admits its responsibility for what happened.

The tasks and activities organized in this connection can be summarized as follows:

- To make enquiries and investigations in order to establish whether or not the grave violations constituted a systematic pattern of violations of human rights by listening to the victims and their families and those entrusted with enforcing the law, and carrying out in situ investigations concerning centres and places where the violations took place;
- Negotiating and consulting concerning cases of individuals whose deaths are established, and completing the administrative and judicial procedures necessary to pinpoint their burial places and the method of dealing with their rightful claimants and families, as well as concerning those whose fates are unknown, in order to discover their fate;
- Determining the nature, the causes and the degree of gravity of the violations, by investigating the circumstances, factors, context and motives that led to them being committed; and establishing the degree of responsibility of apparatuses, authorities, institutions and organizations that may be behind their being committed;
- Gathering information and receiving communications from different sources in order to establish the identities and fates of the victims and the harm that they have suffered;

- Analyzing the reports and studies that are available, and the official archives (judicial transcripts, judgements issued, detention registers ...), as well as analyzing the cases that are well known and do not require in situ investigation as much as they need study of the information available;
- Determining the burial places of the victims who died in the centres of enforced disappearance or arbitrary detention, or during civil disturbances, and informing the families of the victims, human rights organizations, and national public opinion.

2. Reparation for Injuries and Justice for Victims

The second basic goal is reparation for injuries, and justice and reinstatement for the victims, in accordance with a comprehensive approach requiring first of all the acknowledgement and admission by the state of the violations that it did indeed commit, and erasing their effects with regard to the victims, whether individuals or groups, and with regard to society.

The Commission developed its comprehensive approach in order to realize this goal while being careful of the following:

- To bear in mind the developments occurring in international law, both on the conceptual and practical levels;
- To examine the experiences of truth committees around the world in the field of compensation and reparation for injuries;
- To record the approach of the previous Independent Arbitration Commission and evaluate its experience;
- To provide the main findings and results of in situ visits organized by the Commission, partnerships with public authorities, both central and local, and civil rights and development organizations, especially in the regions involved in the violations that raise the necessity of community reparation.

Thus the realization of this goal led to the activities of the Commission not being confined just to completing a process of financial compensation and reparation for remaining injuries, according to the provisions of its statute. Rather, it went beyond that to play a mediating role in specific fields of reparation for injuries, like urgent health needs or defining economic and social development programmes which may help, in some regions, to erase the effects of past violations of human rights and to bring justice to victims and regions.

The basic tasks and activities of the Commission to achieve this goal can be represented as follows:

- Conducting studies and making reports concerning the approach of the Commission in the field of reparation for injuries;
- Analyzing and categorizing the petitions presented to the Commission, and harmonizing the violations that have been admitted with the provisions of its statute, the international standards of human rights, and the relevant national legislation;
- Preparing the files that have been opened on the basis of those requests in terms of the information, the details, and the documents necessary in order to make the appropriate final decision;
- Issuing arbitration rulings concerning the requests for financial compensation for injuries suffered by victims or by their rightful claimants;
- Formulating proposals and recommendations to solve cases of psychological and physical rehabilitation and social reinsertion, and to solve the remaining administrative, occupational and legal problems, and issues relating to dispossession;
- Playing a mediating role between the public authorities, at both the central and local levels, and local development associations, in order to take into account the situation following the violations and the injuries resulting from them in programmes of economic and social development devoted to the regions damaged as a result of the occurrence of the grave violations;
- Preparing a field study concerning gender for samples of women who were victims of grave violations of human rights;
- Preparing a reparation scheme for injuries to health.

3. Preparing the Final Report and the Recommendations

The statute entrusts the Commission with the task of preparing a final report including the results and the main conclusions of its work relating to the tasks entrusted to it, and the recommendations and proposals meant to ensure non-repetition and to erase the effects of the violations and restore and strengthen trust in the rule of law.

For this purpose, the Commission has been careful, ever since its inception, to conduct the studies and research and prepare the reports that may help it to analyze the events and the contexts relating to the grave violations of human rights falling within the remit of the Commission. In so doing, the Commission aims to throw light on what happened and open ways and provide opportunities for research by experts and specialists in human rights issues, political science, law and history, in the post-Commission phase.

The most important tasks included within this goal can be summarized as follows:

- Formulating recommendations and proposals meant to preserve the memory;
- Formulating recommendations and proposals relating to the legislative, institutional, judicial, security, administrative, and educational reforms necessary to ensure non-repetition and that the effects of the violations are erased;
- Formulating recommendations and proposals meant to restore and strengthen trust in the rule of law and respect for human rights.

The activities organized by the Commission contributing to the preparation of the Final Report can be summarized as follows:

- Preparing periodic reports about the tasks and activities of the work groups and special committees;
- Conducting studies and research and obtaining advice from experts and consultants;
- Perusing materials written by researchers, universities and non-governmental organizations;
- Collecting and analyzing data, information and findings arrived at by the work groups;
- Organizing conferences and academic meetings concerning the contexts, circumstances and accompanying factors, including in particular conferences open to the public around the following themes:
    - Writings about political detention;
    - State violence;
    - Truth;
    - Political trials;
    - The archive and preserving the memory.
- Formulating a plan for the preparation of the Final Report.

4. Consolidating the Process of National Reconciliation

This goal is a process that all bodies and institutions and other components of political and civil society can contribute to by becoming involved in all stages of the process of completing the reforms that have been going on since the beginning of the nineties, and which concern institutions and legislation, aimed at consolidating the democratic transition and supporting the construction of a state based on law and institutions.

The Commission's contribution to this process is the restoration of trust between the state, society and all its components. Therefore, the Commission has been careful to orientate all its work relating to the subjects of uncovering the truth, reparation for injuries, reinstatement, justice for victims, and all the decisions and recommendations that it has come to, towards encouraging this process. Thus, the Commission defined some procedural goals in order to achieve this aim, which can be summarized as follows:

- Helping to spread the values and culture of human rights and citizenship;
- Promoting the culture of dialogue between society (victims, families, associations, universities) and the state;
- Establishing the ingredients of reconciliation between victims and their past, by making their voices and their sufferings heard;
- Establishing a centre or centres for preserving the memory.

In addition to the Commission participating in divers activities, inside and outside Morocco, that formed part of its consolidation of this process, it has organized activities that can be listed under the following basic headings:

- Encouraging national dialogue concerning the components of transitional justice, by organizing study days and academic conferences relating to the subject;
- Organizing communication meetings in cooperation with educational institutions to publicize the tasks of the Commission;
- Organizing public hearings for the victims and special sessions for some individuals who lived through particular events;
- Sponsoring numerous activities organized on the subject of human rights by national associations and institutions concerned with development and education;
- Disseminating the Moroccan experience in the field of non-judicial settlement of past violations in many international gatherings and fora (Montreal, Berlin, Brussels, Amsterdam, Cairo, Paris, Geneva);
- Organizing training sessions for Arab non-governmental organizations in the field of transitional justice;
- Organizing dialogues around the following themes:
  - The problem of democratic transition;
  - Moving beyond violence as a strategy for political management;
  - Economic and social reforms;

- Educational and cultural reforms;
- Legislative, executive and judicial reforms;

- Initiating a debate concerning the archive in Morocco;
- Creating a written and audio-visual archive of some of the subjects and places related to the grave violations of human rights, which may help to preserve the memory.

V. Some Appropriate Tools

One of the main tasks undertaken by the Commission has been to assemble and document an archive from numerous and varied sources and of different and varied types. This led it to help in filling the gaps that are apparent in the different archives relating to the grave violations of human rights falling within its remit. For this reason it has sought to organize and maintain it in accordance with a special system for archiving and documentation, on the one hand, and an information system depending on a data principle of the utmost importance in storage, ordering and analysis, on the other hand. In order to ensure the involvement of all sectors of society in monitoring its work and interacting with it, the Commission has been careful to draw up a plan for communication with the victims or their families and representatives, and with the audio-visual media and the press, as well as the other components of civil society.

1. The Information System

The Commission has adopted a specialist programme conforming to the standards and principles of modern technology in order to facilitate the preservation, management and processing of the files and requests submitted to the it. This programme has been able to collect and analyze the information relating to those files. It has also been used as a tool to gather and analyze information throughout the period of work of the Commission.

2. Communication

The Commission's communication plan has depended on the principles of openness, listening and positive interaction and involvement with the parties to its tasks, including victims and their rightful claimants (both individuals and groups), officials, political actors, human rights organizations, academic circles, media institutions, international partners and others.

This plan has focused on the following:

- Informing public opinion about the work programmes, activities and methods of work of the Commission;
- Communication, by arranging media dialogue and discussion sessions and by contributing to discussions on subjects related to the tasks entrusted to the Commission through the information media (radio, television, the press, and the internet).

The key elements of the Commission's communication plan have been as follows:

- Openness to divers audio-visual media, national and international, forming partnerships with some of them, especially public television and national and regional radios;
- Printing and distributing materials publicizing the Commission and intended for the general public;
- Setting up an internet site for the Commission that it has been careful to update daily with news, articles and new reports concerning the activities of the Commission.

Chapter Two

THE CONTEXTS OF THE VIOLATIONS

I. The Problems of the Historical Context

Writing about the historical context of the violations experienced by Morocco since independence poses major problems as regards the mission entrusted to the Commission. These problems can be summarized under the following three points:

1. The problem of the meaning of the phrase "historical context";
2. The problem of the lack of data about the events linked to the violations;
3. The problem of contradiction between the hypotheses that have been put forward as explanations and contexts for these events.

The violations are linked to historical events that are not sufficiently documented to allow detailed and trustworthy readings. All that is available concerning these events are incomplete documents and testimonies, and only a few limited studies have been produced about them, most of them written by foreigners. Although these studies are documented concerning events that continued to be considered politically taboo for decades, the conclusions of these studies favoured the theoretical context at the expense of the data available, which it is true to say were meagre. They therefore require constant revision in the light of new data that appear.

Since the 1990s, various writings have appeared about those events that have presented much information in the form of autobiographies, testimonies or political and historical analyses. These new publications have helped to throw light on previously unknown or ignored aspects. They have helped to some extent to make up for the lack of documentation, which will nevertheless always remain in need of being supplemented. However, using these writings to understand the contexts of the past requires awareness of the considerations that weighed upon the people who wrote them, and the subjective choices which entered into the process of selecting the events and reconstructing, arranging and interpreting the facts.

In addition to that, there is the deplorable and confusing state of the public archives in Morocco, the contents of which, as well as the type, are unknown. Because of this, it is difficult to judge their value through the approximate inventory available for them, as sources of documentation for the modern political history of Morocco, especially the modern history of human rights. On this basis, the Commission's goals of defining the contexts of the violations and drawing out lessons from them have been achieved on the basis of incomplete information, and with the awareness that the production of data is a process that is continually developing, and that it too is subject to variable historical and political contexts and to the subjective considerations of those who produce it.

The readings and judgements circulating concerning the events linked to the violations are varied, and sometimes totally contradictory, as is the case with what are described as the "party struggles", the incidents in the Rif and the Atlas regions at the beginning of independence, the struggle between the political factions, the failed coup attempts, the events linked to the urban protest movements etc.

In the light of these considerations, the Commission has preferred not to venture into the numerous and contradictory hypotheses, since this is the task of historians and specialist researchers. Instead, what the Commission has been able to do is as follows:

- To present the files which it received, and the testimonies that were submitted to it as it carried out its tasks, to researchers for their use, while not infringing the confidentiality of information regarding individuals, thus safeguarding freedom of thought and expression;
- To insist on the creation of a relaxed atmosphere for a transparent and free reading of the historical events;
- To recommend the creation of a legal framework for the public archives.

II. The Legal Context

The grave violations of human rights committed during the period of the Commission's remit coincided with and accompanied a retreat from the legal guarantees for basic rights and freedoms.

1. Basic Rights and Freedoms in the Moroccan Constitution

The constitution of 1962 granted basic rights and freedoms to individuals and groups. The preamble states that Morocco subscribes to the ''principles and obligations'' arising from the charters of international bodies. Its provisions also stipulate the protection of civil and political rights, especially the freedoms of opinion, expression, assembly and movement, as well as the inviolability of the home and the confidentiality of correspondence. It also contains the right to strike, while referring this to a regulatory law that has not been issued until now to define its conditions and the ways in which it may be exercised. By virtue of the amendments introduced by the 1992 constitution, the preamble now began to affirm the attachment of the Kingdom of Morocco ''to Human Rights as they are universally recognized''. This means the enshrinement of Morocco's commitment to international norms regarding human rights, and its commitment to operate according to the standards relating to them, by completing its ratification of the relevant treaties and relevant agreements.

Article 9 of successive constitutions states that the exercise of these freedoms can only be restricted by law, and rules out any restriction of such exercise by means of an organizational regulation adopted by the government.

1.1. Constitutional Provisions relating to Justice

The constitution enshrines the independence of the judiciary from the legislative and the executive branches (Article 82). As a result, the executive branch does not have the right to interfere in the exercise by trial judges of their profession, nor do judges have the right to receive orders from the political authority, let alone implement them. However, the statute of the judiciary, which falls in principle within the remit of the parliament, has the form of an ordinary law. Thus, its conformity with the constitution is not subject to prior review.

The King chairs the Supreme Council of the Magistracy which is entrusted with ensuring the application of the guarantees granted to the judiciary concerning their promotion and discipline, and also appoints judges at the recommendation of the said council. Judgements are issued in his name and he is the one who exercises the right of pardon. The judiciary is independent in principle from the legislative and executive branches. One of the other guarantees of the independence of the judiciary is represented in the Supreme Council, which ensures the application of the guarantees granted to judges concerning their promotion and discipline (Article 87).

Successive constitutions enunciate the principle of the irremovability of judges as one of the basic guarantees of the independence of justice. The current constitution enshrines this principle in Article 85 which states that "trial judges shall not be removed or transferred except by law". According to the interpretation given to this provision, the principle of the irremovability of judges means that trial judges cannot be given, without their consent, a new appointment, even in case of promotion.

The constitution also enshrines principles that are basic to the rule of law like: the law shall have no retroactive effect (Article 4); the equality of all before the law (Article 5); the principle of the legality of punishments. Article 10 states that "no one shall be arrested, put into custody or penalised except under the circumstances and procedures prescribed by law". It also puts the same restrictions on the right to search, in that the same provision enshrines the principle of the inviolability of the home.

1.2. The Legislation relating to the Judiciary and the Conditions for its Implementation

The judiciary plays a decisive role in confronting grave violations of human rights, in that it is entrusted with the application of the legal provisions guaranteeing the fundamental

liberties and rights of individuals and groups, which are included basically in the legislation relating to the judicial system and the conditions of its implementation, that relating to public freedoms, and the Code of Penal Procedure.

a. The principle of immunity from removal

The Moroccan constitution enshrines the principle of the irremovability of judges as a basic guarantee of their independence. Dahir 30 of December 1958 is the first legal instrument stating this principle through the provisions relating to assessment, promotion, suspension and discipline (Articles 20, 21 & 25).

However, the amendments introduced by Dahir 11 of November 1974 breached this principle, which can be considered as a reduction of the guarantees of the independence of the judiciary because of prerogatives granted in Articles 26, 55 & 62 to the minister of justice. These prerogatives grew stronger as a result of the paralysis experienced over many years by the Supreme Council of the Magistracy. This relates to the prerogatives relating to appointment to new posts, transfer, being entrusted with a mission, and suspension.

As a result of this, the scope of the disciplinary authority of the minister of justice increased. It started to include the initiation of proceedings against judges and their suspension on the basis of his own personal estimation of the gravity of the offenses attributed to them, without reference to the opinion of the Supreme Council of the Magistracy. In addition to that, appointments to new posts, which should have been proposed by the Supreme Council, also remained for a long period subject to the decisions of the minister.

b. The legal guarantees of the independence and impartiality of the judiciary

- Independence from political authorities

The Moroccan constitution provides for the separation of powers and the independence of the judicial branch from the executive and legislative branches. The Penal Code also forbids interference by the representatives of those branches in the prerogatives of the judicial branch by taking decisions in any cases falling within the jurisdiction of the courts. This is punishable as a misdemeanour with a custodial penalty from one month to two years (Article 239).

However, it became clear to the Commission, as a result of the studies and analyses that it carried out on proceedings, trials and cases in a large number of files submitted to it, that there was evidence that on many occasions there had been interference by entities linked to the executive branch in the conduct of justice. This meant that those trials were deficient as regards guarantees of a fair trial.

- Integrity, impartiality and rectitude

In order to guarantee the integrity, impartiality and rectitude of judges, insofar as these are basic conditions of their independence, the Penal Code refers to the prohibition of bribery, abuse of power, and partiality (Articles 248, 251 & 254). For this reason, the law requires judges to disclose their original and additional property in accordance with the provisions of Articles 16 & 17 of the Statute of the Judiciary. The minister of justice has the prerogative to assess the wealth of judges by conducting an inspection with the agreement of the Supreme Council of the Magistracy. However, this mechanism remained inactive for decades, and its impact has remained limited. Moreover, the provisions regarding penalties to be imposed on judges for partiality have not been implemented.

c. The Competence of judges

The Statute of the Judiciary issued on 30 December 1952 states that judges shall be appointed on the basis of a competitive examination open to all those holding a B.A. in Law or an equivalent in accordance with a ministerial decree and after consultation with the Supreme Council of the Magistracy (Article 14). However, the implementation of this provision did not lead to an improvement in conditions of recruitment. Training was relatively unguaranteed until the creation of the National Institute of Judicial Studies in 1970, and conditions for entry into this institute were neither strict nor transparent.

According to the statute of 1974, and excluding exceptional cases laid down in the law, judges were appointed as judicial officers who were subject at the end of their training to an examination that was administered in accordance with conditions laid down in a ministerial decree (Article 7). Restriction of entry to the judiciary and its regulation within the framework of a competitive examination were not achieved until the administrative courts were created in 1993, when judicial appointments began to require the acquisition of a suitable training.

d. The duties of judges

Judges must maintain “in all circumstances the attributes of sobriety and dignity that are required by their functions” (Article 13 of the Statute of the Judiciary). Moreover, the principle that the deed determines the disciplinary measure to be imposed on them shall be applicable to them in case of “breach of professional duties or of honour, sobriety and dignity”, which breach represents “a fault liable to disciplinary sanctions”. Such breach against those duties may expose judges, in accordance with Article 60 of the Statute of the Judiciary, to the following disciplinary sanctions:

- Delayed advancement from one echelon to another;
- Removal from the eligibility list;
- Automatic transfer;
- Reduction to a lower rank;
- Temporary exclusion from function.

2. Legislation relating to Public Freedoms

The legal guarantees protecting public liberties retreated as a result of the amendments introduced to Dahir 15 of November 1958 by virtue of Dahir 10 of April 1973 on the one hand, and the marginalization that it suffered in favour of emergency texts going back to the protectorate era.

The distance of this retreat was increased by the arbitrary practices of public authorities as well as the deficiencies in the system of justice.

2.1. Public Liberties Laws 1958-1999

a. Concerning the establishment of associations

Dahir 15 of November 1958 had a liberal character. Evidence of this is that the establishment of an association was subject simply to an administrative declaration, whereas it could only be dissolved in case it was spurious on the basis of a judicial decision.

Thus the existence of an association could not be challenged unless it was judicially ruled as being spurious for seeking to achieve an illegal goal contrary to the law and public decency or aiming to prejudice territorial integrity or the monarchical system. However, since the 1973 amendment, it could effectively be suspended or dissolved by a decree of the prime minister for the same reasons or because its activity could prejudice public order.

b. Concerning freedom of the press

The successive amendments to the provisions relating to the regulation of freedom of the press in Dahir 15 of November 1958, which aimed at strengthening the administrative surveillance of individuals and groups and increasing the severity of penalties in case of violations, weakened the legal guarantees of rights related to the freedom of the press.

If the provisions of the 1958 Dahir permitted the minister of the interior to order the administrative confiscation of a newspaper or a periodical whose publication might "prejudice public order", the amendment introduced by the provisions of Dahir 28 of May 1960 empowered him to order the suspension of any newspaper or periodical "if there was violation of the institutional, political or religious foundations of the kingdom". In this case, and if the newspaper was confiscated for prejudicing public order, its publication could be banned by a decision of the prime minister.

Meanwhile, the amendment introduced by Dahir 13 of November 1963 extended the period of prescription for public prosecutions with regard to press misdemeanours from five months to a year.

One of the retreats introduced by the amendments of the 1973 Dahir was to increase the severity of freedom-depriving penalties and raise the amounts of fines for misdemeanours relating to the exercise of press freedom, in addition to introducing the possibility of the newspaper being suspended on the initiative of the crown prosecutor in case the fine imposed was not paid within a period of fifteen days from the date of the judgement. In cases of conviction for a number of misdemeanours, the court could order the suspension of publication for a period of three months.

There is an important legal guarantee of the freedom of expression and the press that was suppressed when the code of penal procedure was reviewed on 31 December 1991, the first time this had been done since 1974. While the draft proposed by the Advisory Council on Human Rights sought to review police custody periods on the one hand and strengthen defence rights when the accused appears before the public prosecutor on the other hand, the final paragraph of Article 76, which excludes prosecutions relating to press misdemeanours, disappeared from the government draft. As a result of this, it became possible for the crown prosecutor to order journalists to be placed under preventive detention and prosecuted within the framework of what is called flagrante delicto procedure.

c. Concerning public gatherings

Some deficiencies are apparent in the legal guarantees relating to public gatherings. The official charged by the administrative authority with attending such was given the prerogative to order that it be dispersed, not only when the executive body responsible for organizing the gathering requested it or in case of an outbreak of quarrelling or actual fighting, but also "if he considered that the conduct of the meeting was prejudicing or could prejudice public order (Article 7). In addition, unarmed gatherings that might "prejudice public order", which were permitted in the context of the 1959 Dahir (Article 17), were forbidden.

2.2. Arbitrary Practices by the Administration

The arbitrary practices of the public authorities, which have helped to weaken the practice of public freedoms, include the following:

a. The freedom to establish associations

- The unqualified refusal by the competent authorities to take receipt of the request file and the accompanying documents referred to in the law;
- The refusal by the competent authorities to hand over a receipt in return for the declaration to found an association, changing it to an administrative license;
- Sometimes the administration resorts to conducting an unconditional "suspension" of freedoms on the basis of a memorandum, a leaflet or even mere verbal instructions.

b. The freedom of the press

The practice of prior restraint imposed on the press, which was applied for many years, did not depend on any legal basis. The managing editor of the newspaper or the periodical had to hand over to the police a copy of the publication and wait for their orders before beginning the print run. This arbitrary procedure was not lifted until 1977, on the eve of the parliamentary elections. The confiscation referred to in the law is authorized by a verbal command, but this administrative procedure should only be adopted on the basis of a written decision by the minister of the interior served on the person responsible for publishing.

2.3. The Use of Emergency Legislation

This includes the Dahirs of 1935 and 1939 whose date of issue goes back to the era of the protectorate.

a. The 1935 Dahir

The Dahir of 29 June 1935 was meant to suppress the nationalist movement, especially following the demonstrations organized against the Dahir of 16 May 1930. Its provisions penalize the following:

- Active or passive resistance to the application of laws, decrees, and systems, and the orders of the public authority;
- Incitement to disorderly behaviour and demonstrations;

- Any act that may prejudice order, tranquillity or security;
- Prejudicing the respect due to the French or Sherifian authorities.

If the perpetrator of the deed was a public servant or agent or an employee in a public office, the penalty laid down, which ranged between three months and two years of imprisonment as well as a fine, would be doubled.

This text, which should have been rescinded with the issue of the Penal Code and the Public Freedoms Code, was revived with the declaration of a state of emergency in 1965. It was used widely to suppress party and association activities and expression of opinion.

In the face of protests challenging its legality, it was amended pursuant to Dahir 26 of September 1969 by inserting the word ‘‘authority’’ instead of the expression ‘‘the French or Sherifian authority’’. On the basis of numerous prosecutions undertaken within the framework of this emergency text, the courts handed down activated custodial penalties as a matter of course, considering that actions falling within the ordinary practice of basic freedoms could prejudice public order.

It is worth noting that this Dahir was only rescinded on 15 July 1994.

b. The 1939 Dahir

The Dahir of July 1939 banning subversive pamphlets, which was issued on the eve of the outbreak of World War II, prohibits “the distribution of tracts, bulletins and fliers that may prejudice order, tranquillity or security, or selling or displaying them for sale, or displaying them in public view, or owning them with the intention of distributing, selling or displaying them for the purpose of propaganda”. The penalty laid down for these actions ranged between six months and five years of prison, in addition to a fine and a total or partial ban from exercising civil, civic or family rights of the family, and an area banishment ranging between five and ten years. This Dahir, which is in total contradiction with the text and the spirit of the Press Code, should have been rescinded when the latter was issued. Nevertheless, it was applied from the mid 1960s until the 1980s against journalists and members of opposition parties in cases of distribution of tracts.

2.4. The Role of the Judiciary in Restricting the Exercise of Freedoms

Under the influence of security concerns, some trial judges interpreted the law in such a way as to restrict the range of legal guarantees granted, thus prejudicing in practice some constitutional principles.

In many trials arising from the ordinary practice of public freedoms, which were undertaken on the basis of the legislative texts mentioned above, a narrow interpretation of these texts

was adopted even though their provisions contradicted the legislative text issued after independence.

Moreover, simple criticisms of the conduct or administration of justice were considered as falsehoods and those responsible for them received severe prison sentences on the basis of the Press Code.

3. The Code of Penal Procedure

The Code of Penal Procedure, issued by virtue of Dahir 10 of February 1959, possesses outstanding importance among the legislative reforms that were introduced during the first years of independence, both in terms of the guarantees relating to the protection of the right to personal freedom and security, and the right to a fair trial.

3.1. The Foundational Principles

One could say that this law was able to combine the guarantee of freedom for individuals with the effective legal prevention of crime. This is clear in the main principles included in its preamble. Among them are:

- The principle of the presumption of innocence and the resulting obligation upon the public prosecution to prove felonies and misdemeanours;
- Detailed regulation of the periods and conditions of police custody to be used by the judicial police;
- The exceptional character of preventive detention;
- The inviolability of the home and thus the detailed regulation of searches;
- The freedom to defend oneself at any stage of the trial;
- The judge can only build his decision on arguments presented during the proceedings and discussed orally and presentially before him (Article 289).

3.2. Placement in Custody, or "Detention" as Practised by the Judicial Police

a. The original text

The original text of the Code of Penal Procedure states that an individual placed in custody in cases of flagrante delicto misdemeanours cannot be kept in custody for more than 48 hours. Article 68 states that placing someone in custody is justified by "the exigencies of investigation" without specifying the nature of these exigencies. This loose justification for placing someone in custody gives wide scope for the discretionary power enjoyed by

the judicial police which allows it to deprive an individual of his freedom, at least before he is presented before the public prosecutor. "And if strong and consistent circumstantial evidence is found against this person", custody may be extended for a period of 24 hours with the written permission of the crown prosecutor (Article 68). However, this condition relating to strong circumstantial evidence is only to be found in the original text published in French.

If the case concerns a misdemeanour or a felony punishable by imprisonment, the person placed in custody "must most definitely be presented before the state prosecutor before the end of this period" so that written permission can be issued to extend custody for 24 hours. However, the said permission may be granted "on the basis of a justified decision" without the person being brought before the prosecutor (Article 82).

In the context of the Letter Rogatory that the examining magistrate dispatches, if the officer of the judicial police has to keep a person in custody, he must "without fail present him within 24 hours before the examining magistrate within whose jurisdiction the execution of the Letter Rogatory falls". This judge may give permission for the extension of the custody period to 48 hours. Nevertheless, permission may be given exceptionally, "on the basis of a justified decision without the person being brought before the examining magistrate" (Article 169). It is worth mentioning that these periods may be doubled in all three cases whenever the case has to do with prejudicing the internal or external security of the state.

b. The amendments of 1962

The amendments introduced to this law on 18 September 1962 constituted a retreat from the gains introduced by the original text. The legal period for placing someone in custody was fundamentally changed. It also became possible for the crown prosecutor or the examining magistrate to give a written order renewing the extension enunciated in the law when necessary. On the one hand, the necessity of presenting the person placed in custody to the crown prosecutor was no longer raised, nor was contenting oneself "exceptionally" with the issue by this crown prosecutor of a justified decision if the person was not presented, as was the case with the original law. On the other hand, the "necessity" remained subject to the sole discretion of the said authority or to its superiors, in the absence of any actual challenge. Lastly and more importantly, the judicial authority could extend the period of police detention to a long period, which constitutes a flagrant infringement of the rights of individuals.

This emergency legislation was integrated into the Code of Military Justice by virtue of Dahir 26 of July 1971, which was applied not only to the military but to civilians in case of prosecution for prejudicing the external security of the state.

The revision that took place on 30 December 1991 once more restricted the scope of the use of placement in detention. In case of crimes against public order, the period was shortened to 48 hours subject to extension for a further 24 hours with the written consent of the public prosecutor. With regard to cases involving the security of the state, the period was set at 96 hours subject to renewal once with the consent of the public prosecutor. However, the provisions of the Code of Military Justice relating to placement in custody remained unchanged.

c. Preventive detention

Preventive detention, which is an exceptional measure, was limited in the 1959 Dahir. The public prosecutor can issue an order for the suspect to be placed in prison after being interrogated concerning his identity and the acts attributed to him where the matter relates to flagrante delicto misdemeanours punishable by prison, and where it is a case which has not yet been brought before the examining magistrate (Article 76). This provision was not applied in press misdemeanours or in misdemeanours of a "purely political character". However, this exception was suppressed in conformity with the amendments of Dahir 13 of November 1963.

The use of this procedure, that had been stipulated exclusively until that time with regard to cases of flagrante delicto misdemeanours, was widened in conformity with the review of 1962 to include cases in which the person being prosecuted did not possess "sufficient sureties of appearance". However, these sureties left to the assessment of the crown prosecutor the right to resort to a preventive detention order whenever he decided to prosecute for a misdemeanour, and this practice assumed for many years a systematic nature.

This review also extended the period of preventive detention by increasing it from ten days to thirty days in cases where a misdemeanour had been committed whose maximum penalty was less than two years. In addition, preventive detention, whose maximum period was originally set at two months, was doubled in other cases to four months. The examining magistrate, after hearing the pleas of the crown prosecutor, could decide to extend the period of detention to the same period in conformity with a justified judicial decision.

d. The prerogatives of the public prosecutor

The 1959 Dahir empowered the public prosecution with broad prerogatives that continued to increase uninterruptedly from that time, which resulted in an imbalance between the authority of the prosecution and the rights of the defence.

- The original text

The prerogatives of the public prosecution and the rights of the defence were relatively balanced. Moreover, the preliminary investigation constituted in principle a basic stage in the procedure.

The examining magistrate investigated "with the purpose of incriminating or exculpating" in complete independence from the authority of the prosecution. The investigation, which is compulsory in criminal matters, takes place in two stages in that the pre-trial chamber, whose president and members are elected by the General Assembly of the Court of Appeal, enjoys significant prerogatives in this field. These are as follows:

- It may in all circumstances order the undertaking of any and every complementary investigation that it considers beneficial (Article 222);
- It checks the validity of the procedures of the case referred to it, and if it discovers a ground for nullification, it shall order the nullification of the procedure containing the ground, and if necessary the nullification of all or some of the subsequent procedures (Article 227);
- After nullification, it may "either oppose the pursuit of the case ... or refer the file of the procedure to the examining magistrate or to someone else to pursue the investigation procedure (Article 227)'';
- It issues a decision of non-prosecution if it considers that "the acts do not bear the character of a felony or a misdemeanour or an infraction or ... that there is not sufficient evidence against the suspect or that the offender could not be identified" (Article 232);
- It orders the referral of the case to the competent court if it considers that the acts bear the character of a crime;
- The indictment decision must include a list of "the acts that are the subject of the accusation and their legal quality. Otherwise, nullification results." (Article 236). Contrary to judicial judgements of re-investigation on the basis of the existence of new evidence, judgements of the pre-trial chamber are disclosed to the accused and their lawyers, and civil parties (Article 239). The accused has the right of cassatory appeal before the Supreme Council against the decision to refer within a period of eight days and to use any means of cassation (Article 451). The Supreme Council has to be careful that "the courts have scrupulously respected the law" and to check "the legal description characterizing the facts" (Article 568).

- "The pre-trial chamber oversees the work of the officers of the judicial police" (Article 244). If it is convinced "that they have failed to carry out their responsibilities" (Article 245) it orders an enquiry to be carried out into the matter. In the light of that, it has the right to suspend them temporarily or dismiss them totally from work and to order the file to be referred to the head of public prosecutions.

Nevertheless, some of the provisions of the Code of Penal Procedure were contrary to the principle of the presumption of innocence, by virtue of which preventive detention was considered an exceptional measure. In this way, if the public prosecutor appealed the decision of temporary release issued by the examining magistrate, the suspect remained in custody.

In any case, this suspect was only released after the expiry of the appeal deadline unless the public prosecutor approved his release (Article 204). Despite the appeal, the court could order the detention of such accused as had been given a sentence equivalent to imprisonment for one year or more, enforced (Article 400).

One could say that the guarantees prescribed by law, which are important in themselves, remained theoretical in cases of a political character whether as regards the role of the pre-trial chamber, which is crucial in principle in the preliminary investigation, or as regards oversight of the conduct of the judicial police.

Moreover, the means of nullification in the hands of defence lawyers of suspects always resulted in systematic refusal. In addition to that, violations of the law committed by officers of the judicial police were not subject to examination or punishment.

- Strengthening the authority of the prosecution at the expense of the rights of the defence, and the conditions for a fair trial

If the revision of the Code of Penal Procedure of 1962 prejudiced the guarantees of individual freedom, the revision of 1974 epresented a retreat with regard to the guarantees of a fair trial. The so-called transitional provisions (comprising 24 articles) upset the balance between the accused and the defence, through what it sought to achieve, including:

- Empowering chief public prosecutors in the appeal courts to pursue public appeals in criminal matters, except in a few instances. Thus the pre-trial chamber, whose role was crucial as far as preliminary judicial investigation was concerned, was abolished;
- Handing the task of decision making in criminal matters to one of the chambers of the court of appeal composed totally of judges, which resulted in the abolition of the system of sworn counsellors;

- Submitting the institution of the examining magistrate, who is originally appointed, as previously explained, by the Minister of Justice, to the public prosecution;
- Strengthening the prerogatives of the prosecuting authority in a palpable manner at the expense of the examining magistrate and the rights of the defence.

In addition to this, the preliminary investigation, which was undertaken by the examining magistrate alone, became optional in all flagrante delicto cases, unless the matter concerned a crime punishable by death or life imprisonment. In these cases, if "it appeared that the case was ready for judgement", then the public prosecutor issued an order placing the suspect in detention and referring him to the Chamber of Felonies in the Court of Appeal. If the case was subject to preliminary investigation, the examining magistrate referred the case directly to the panel of trial judges.

Thus, crimes punishable by imprisonment for a period of thirty years or less were considered as simple misdemeanours according to the fast-track procedure, called the flagrante delicto procedure, in the knowledge that the files contain a crucial document, the transcript from the judicial police. Regrettably, the new law maintains this situation.

The accused does not have the right to appeal a decision of referral to the Chamber of Misdemeanours. On the other hand, the public prosecution can challenge the decision of the judge not to prosecute.

The prerogatives that were previously granted to the pre-trial chamber have been transferred to the Chamber of Misdemeanours "provided this does not conflict with the provisions of the 1974 Dahir" (Article 10 of the Dahir of Transitional Procedures). The prerogatives transferred to the Chamber of Misdemeanours do not include, in this case, cassatory appeals against decisions of the examining magistrate (appealable) or police custody.

When investigation is compulsory, and where it appears that the case is not ready for a judgement, the investigation is usually restricted to a mere interrogation on the basis of the transcript from the judicial police and, when necessary, on the basis of staging a confrontation between the suspects. Moreover, requests for expert opinions in order to examine indications of torture result in systematic refusal. The same is true with regard to requests to summon witnesses or to give them a hearing. This means that preliminary investigation does not contain any new element contrary to the content of the transcripts from the police apart from the declarations of the suspects.

3.3. Trials in Cases of a Political Character

Trials in cases of a political character are characterized by numerous deficiencies leading to infringement of the conditions of a fair trial, including:

- Failure to respect the principle of open sessions;
- The excessive presence of the security apparatuses beyond what is required in order to guard those being prosecuted. This hinders the openness of discussions and has a negative effect on the trial;
- Combining the formal pleas which in general seek nullification, and which are always raised by the defence before discussing the substance and the facts, the failure to make a final decision regarding them in a timely manner, and always refusing them in the end;
- Systematic refusal of the defence's initial requests relating to the examination of the effects and indications of torture with the aim of carrying out a medical examination of those bearing them;
- Refusal of requests to summon witnesses;
- Failure by the judges to respect the necessity of constructing their rulings "on arguments presented and discussed orally and presentially" (Article 289 of the Code of Penal Procedure);
- Rushing the trial, issuing hurried decisions and continuing sessions night and day in some cases;
- In state security cases, the purely preparatory acts are considered as the initiation of implementation, so they would be considered as an attempt to commit the crime and thus subject to the same penalty as the crime itself;
- Lack of proportionality of the judgements issued, which impose harsh punishments, with the acts attributed to the suspect or actually committed by them;
- Lawyers being forced in many courts to withdraw from the trial in the face of the systematic refusal of means of defence;
- Appeals brought by the accused against the judgements and rulings against him are usually ineffective in that they are emptied of content, contrary to the cassatory appeals brought by the prosecuting authority.

The severity of the violations committed by the security apparatuses, which are embodied in the testimonies of victims, are the result of the inadequacy and weakness of legal protection for the individual during the period of detention before judicial prosecution. Although the reform of the system of placement in custody of December 1990 represented a significant advance after the retreat it had experienced in 1962, fixing the maximum period for detention in case of prosecution for prejudicing the integrity of the state at eight days was contradictory to the necessity of presenting the individual being prosecuted before the judge as soon as possible.

III. The Institutional Context

1. The First Reforms

The first reforms relating to human rights and public freedoms that were implemented in the period after independence are the following:

- The creation of the National Advisory Council by virtue of the Royal Decree of 17 August 1957, that is less than a year after independence. It mainly consisted of representatives of the Istiqlal Party (P.I.) and the Democratic and Independence Party (P.D.I.), the only trade union at that time and economic and community bodies. It is a consultative council under the authority of His Majesty the King entrusted with the prerogative of questioning members of the government concerning the state budget and all political, economic and social matters.

- The creation of a supreme council by virtue of Dahir 27 of September 1957, which was entrusted with the following tasks:

  - The supervision of judicial work and the application of the law;
  - The examination of cases where final rulings have been handed down by the common law courts or the modern courts;
  - The examination of pleas for annulment because of abuse of authority presented against administrative decisions;
  - The issue of the Dahir of July 1957 by virtue of which trade union freedoms were regulated;
  - The royal charter that announced in terms of principle the establishment of democracy, the practice of basic freedoms and the enjoyment of human rights (the royal speech of 2 May 1958);
  - The issue of three dahirs dated 15 November 1958, which form a dahir law establishing public freedoms, a sort of code of public liberties including fundamental guarantees relating to rights of public assembly, associations and the press;
  - The issue of the Dahir of 30 December 1958 laying down the statute of the judiciary, which included general provisions relating to the regulation of the judiciary, the rights and duties of judges, the disciplinary procedure that they should be subject to and their departure from the profession. The task of implementing these rights and duties was entrusted to the Supreme Council of the Magistracy, which had to work under the orders of the prime minister;
  - The issue of the Code of Penal Procedure on 10 February 1959, which introduced fundamental guarantees of individual freedom;

- In 1960, the late King Mohamed V established a council to prepare a draft constitution. However, the attempt to formulate this draft by consensus ended in failure;
- The announcement in the Basic Law of the Kingdom, issued in conformity with the Dahir of 2 June 1961, of the principle of "the equality of Moroccans within the framework of the separation of powers and the independence of justice, and making the protection of "public and private freedoms" a duty laid upon the state.

2. The Institutional System and Relations between Branches of Government

2.1. Constitutional Provisions

a. The constitution of 1962

The constitution of 1962 represented the first attempt to put an end to the overlap between branches of government that characterized the traditional political system. The constitutional institutions existing beside the king, according to this constitution, were the parliament, the government, and the judicial branch. Instead of overlap of branches, it established the principle of separation between them. The parliament, whose members hold their mandate from the Nation, exercise the legislative power. According to the 1962 constitution, it was composed of two houses. In case of lack of Agreement with the House of Counsellors, the draft bill law could be either presented or proposed once more to the House of Representatives, which could approve or reject it by a two-thirds majority. In case of approval, the final decision on it was referred to the King. In addition, the House of Representatives alone had the right to call the government to account by calling for a vote of no confidence. Individual and group freedoms, as well as the basic principles of the civil law code and the criminal law code, fell within the law as laid down limitatively in the constitution (Article 48).

Nevertheless, the King can use the mechanism of a legislative referendum in order to propose any bill or draft law for popular approval.

The King can dissolve the House of Representatives provided that an election for a new house is held within forty days. He also appoints the prime minister and the ministers. In addition, he makes appointments to civil and military posts, although he can delegate this right. The government, which possessed the regulatory power, is responsible to the King and to the House of Representatives (Article 65). If the responsibility to the King is a continuing element, the responsibility to the House of Representatives (alone, without the House of Counsellors, which is elected by indirect ballot) is a new development. In principle, it allows

the political responsibility of the government to be aroused concerning freedoms, after the two houses of parliament have been elected, according to the constitution, in a normal manner for less than two years.

b. The state of emergency

About three months after the events of 1965, the King declared a state of emergency in accordance with Article 35 of the Constitution, and the legislative work of the parliament was frozen. This state of emergency, which lasted for a period of five years, was subject to criticism by a number of political parties.

c. The constitution of 1970

The constitution issued on 31 July 1970 and abrogated in March 1972 represented a significant retreat from the first constitution. In the section on the organization of powers, it introduced provisions that did not conform to the principles of democracy. National representation was less, in that the parliament was now composed of one chamber, and only one third of its members were elected by direct ballot. Moreover, the prime minister lost his prerogatives relating to the regulatory authority in favour of the King.

d. The constitution of 1972

The provisions of the constitution of 1972 reinstated the parliament to some extent, in that two thirds of the House of Representatives began to be elected by direct ballot. Moreover, the King, contrary to the provisions of the previous constitution, could not in his relations with parliament resort to the legislative referendum except within specific limits enunciated by the provisions of Article 68 of the constitution. The King now had the right to put to a referendum any bill or draft law after it had been given one reading "unless the text of the bill or draft law was accepted or refused after its first reading by a majority of two thirds of the members composing the House of Representatives". However, in case the referendum is organized and the popular vote goes against that of parliament, there does not automatically have to be a dissolution.

Although the constitution was adopted, a number of institutions introduced under its provisions were only established in 1977. This was because the House of Representatives was only elected on June 3 of that year. When the first legislative term ended under the constitution of 1972, whose length was fixed at four years, it was extended until 1983 in conformity with a constitutional revision that raised the legislative term to six years.

e. The revised constitution of 1992

The amendments introduced into the Moroccan constitution of 1992 established a system that was somewhat more democratic as regards the public authorities. It introduced important changes both in the texture of the relationship between the branches and in terms of the structures and mechanisms supporting and implementing this relationship. Before 1992, the King appointed the government at his sole discretion, which was not linked in any legal manner with the logic of the parliamentary majority. The King's appointment of ministers took place without the counter-signature of the prime minister. The appointed government began its work as soon as it was appointed by the King.

In this regard, the constitution of 1992 introduced different reforms that constituted an opening up to the logic of the parliamentary majority. The prime minister now does the following:

- On the basis of the royal appointment and when the government is being formed, he proposes the other members of the government. He does the same thing when there is a government reshuffle;
- Then he puts his counter-signature to the Dahirs naming the members of the government;
- Straight after the government is formed, he presents the government's programme to be debated and voted on by parliament. In case the government's programme is refused by an absolute majority of members, the vote leads to the resignation of the government.

While the ratification of laws was subject to the discretionary power of the King, Article 26 of the revised constitution enunciates expressly that the King issues "the order to implement the law within thirty days of it being referred from the House of Representatives to the government after its approbation". So ratification, which was a royal prerogative, is no longer a discretionary act. With the fixing of the deadline for ratification, the elements of the independence of the parliamentary institution to carry on its tasks, on the constitutional level, are now complete.

Concerning the relationship between the parliament and the government, we can note three points relating to the questioning of the government, the parliamentary commissions of enquiry and the fate of the parliament during a state of emergency.

The questioning of the government usually proceeds by means of written and oral questions. Regarding rights and freedoms, this is a means of raising the issue of how much the state respects its domestic and international obligations in this regard. The deadline for the answer is fixed at twenty days starting "from the date when the question is put to the government" (Article 55).

The parliamentary investigation committees introduced at the initiative of the King or at the request of the majority of members of the House of Representatives, can be charged with gathering essential information concerning specific events or concerning probable violation of rights and freedoms.

The fact that the declaration of a state of emergency does not lead to the dissolution of parliament (Article 35) makes the political system in principle enjoy democratic continuity. The preservation of the continuity of parliament is a positive influence with regard to the rights and freedoms that are liable to be weakened during a state of emergency.

Moreover, the control of the constitutionality of laws, which is, in the end, an unavoidable element in order to guarantee the harmony of the legal system, also bears, in addition to that, an outstanding importance with regard to the promotion of legal guarantees for basic rights and freedoms. It is obvious that the creation by the 1992 constitution of the Constitutional Council represents a great gain in this respect. With regard to the 1992 constitution's enshrinement of human rights in its preamble, this monitoring led to the promotion and acceleration of the process of bringing national legislation into conformity with international standards of human rights.

In addition to the control of the constitutionality of laws which has, in the case of organic laws, to be carried out before the laws are ratified, the mandate of the Council has the potential to be broadened to some extent. In addition to the King, the Prime Minister and the president of parliament, representatives of the nation may avail themselves of this right. However, we cannot but notice that resort to the control of the constitutionality of laws remains, apart from the organic laws which are enunciated limitatively, very circumscribed.

f. The revised constitution of 1996

The amendments introduced to the Moroccan constitution in 1996 reintroduced the bicameral system that had been adopted by the first constitution.

Nevertheless, the procedure enunciated is somewhat slow in cases where the House of Counsellors does not agree with the House of Representatives on the joint adoption of the text of a law. This results in delay in adopting draft laws.

2.2. The Security Apparatuses

These apparatuses comprise: the Directorate-General for National Security (created by Dahir 16 of May 1956), the Royal Gendarmerie (Dahir 24 of April 1957), the Directorate for the Surveillance of the Territory (Dahir 12 of January 1973, amended by Dahir 2 of January 1974), the Rapid Intervention Force (Residency General Decision dated 26 January 1956),

the Auxiliary Forces (Dahir Law issued on 12 April 1976), and the Royal Armed Forces (Dahir 25 of 1956). The memorandum published on 3 January 1959 gave responsibility for maintaining order to the governors of provinces and prefectures, and granted them the authority to call upon all elements of public force to that end. The Dahir of February 1977 confirms these prerogatives of the governor. He may employ the auxiliary forces and the police forces and may call for the assistance of the Royal Gendarmerie and the armed forces to maintain order in the governorate and the region. It is of note, however, that the conditions and modalities for the use of public force are not specified in the law. It has become clear that during major disturbances prejudicing public order, the central authority is the one that decides in practice how to manage the use of the armed forces.

IV. The Societal Context

1. Ways of Combating Violations: the Main Actors

The role played by political and civil society in confronting violations is characterized by continuous resistance and the strategic transformations experienced by this resistance.

This resistance adapts itself in different ways according to the laws in force, or to challenge these laws. Similarly, the multi-partism that Morocco had adopted played a fundamental role in guaranteeing the continuity of this resistance and ensuring that it took many forms. By virtue of this multi-partism, the political parties and movements of the opposition, and the professional, and civil rights organizations linked to them, played a leading role in publicizing and criticizing the violations, in the knowledge that some members of those parties and currents were among the victims of the violations.

The resistance to the grave violations of human rights took varied forms and used divers means to expose and criticize them, through the legally permitted newspapers, or through secret pamphlets, or through trials in cases of a political character, or through organizing demonstrations and strikes, or on the occasion of referenda on constitutions and legislative, local and professional elections by voting or boycotting the ballot.

This resistance also appeared in other forms including different literary and artistic productions by artists and people of culture in the form of writings, plays, poetry, and popular oral arts.

2. Options for Combating the Violations

Societal resistance to the violations had two options, which played different roles that crystallized in particular from the beginning of the 1950s as follows:

- The first option linked dealing with the violations of human rights with the necessity of comprehensive political change, starting by amending the constitution again to separate the executive branch from the legislative branch as a basic condition of any real reform. Although throughout this period demands surfaced for sectoral reforms in numerous fields linked to human rights, like the judiciary, the press, criminal law, education, and public freedoms, these demands were considered as part of the comprehensive strategic option;
- The second option, however, which grew stronger from the end of the 1980s, is distinct from the first option in focusing on aspects linked with human rights as a strategic priority preceding major constitutional changes.

3. Combating Violations in the Context of the Struggle for Power

The demand for amendment of the constitution formed a major field of struggle between the state and the opposition parties, which called for a boycott of the three draft constitutions that were put to the ballot. Unanimity among the main political parties only occurred over the constitutional amendments of 1996.

The second area is represented on the occasion of local or parliamentary elections, when the opposition criticized the lack of any guarantee of the freedom or the fairness of the vote.

The opposition movement embraced political parties, trade unions and professional and cultural associations, human rights associations, professional organizations, and the Bar Association of Morocco and the National Union of Moroccan Students.

The third field for this political struggle appears in the opposition to the policies pursued by the state in the economic and social fields, and in its foreign relations. The opposition considered that the policies pursued only reflected the interests of the minority that the state represented, and that they were contrary to the interests of the broad swathes of society in whose name the opposition spoke, which the state deprived of free representation in the political institutions by failing to hold fair elections. In this confrontation, the opposition employed divers means of protest, opposition and criticism, and also used the national and international media. It also organized gatherings, strikes and demonstrations. A number of cultural figures and artists contributed through various means of intellectual and creative expression out of solidarity or compassion with the opposition.

Thus, the demand for the guarantee of freedoms and rights and the criticism of the violations was a means by which the opposition could expose the inability of the authority to enter into free and democratic political competition within the framework of the institutions and laws in place.

The fourth field is characterized by opposition movements adopting options rejecting the constitutional political system and seeking to overthrow it.

In spite of the armed character that sometimes distinguished the disturbances, the state confronted it by use of force that was both excessive and disproportionate with their size and extent.

Since the mid 1970s, the Moroccan political arena experienced a new political dynamic that led to the struggle between the state and the opposition being confined to the battlefronts of the constitution, elections and political programmes. Gradually this initiated a cumulative process out of which grew a gradual political agreement over a new formula for the participation of political parties in the constitutional institutions.

4. Human Rights as a Strategic Option to Oppose Violations

This human rights option is characterized by its adoption of human rights as a priority, and by separating the defence of these rights from the struggle over the division of power that had dominated the Moroccan political arena since independence.

The first rudiments of this approach appeared in the 1970s with the emergence of associations specializing in the defence of victims of state violence and cases relating to human rights. Thus, the Moroccan League for the Defence of Human Rights (L.M.D.D.H.) and the Moroccan Association for Human Rights (A.M.D.H.) were launched in the context of a human rights dynamic that would shortly be consolidated with the birth of the Moroccan Human Rights Organization (O.M.D.H.) and the Moroccan Forum for Truth and Justice (F.M.V.J.). In addition, a number of professional associations adopted human rights among their demands, and played important roles in publicizing the violations practised by the state, and in disseminating human rights cases.

Congresses of the Moroccan Bar Association continued, since its founding in 1962, to be considered as an outstanding opportunity to bring up and criticize human rights violations and to present demands regarding the development of these rights in terms of texts and practice. The national debate on human rights, the first of its kind, which was organized by the association in the city of Oujda in December 1987, was able to undertake a developed analysis of human rights violations and the relationship of human rights with the contexts of this political stage.

The first buds of the movement of families and relatives of political detainees appeared from the mid 1970s and then blossomed gradually to include families of the abducted and people whose fate is unknown.

This trend was to be characterized by the appearance of a new political discourse springing from the emphasis on the priority in principle of human rights demands, and pushing in the direction of the independence of negotiations over these rights from conditions of political participation. It also threw up actors who reflected a new political culture characterized by its prioritization of the human rights dimension, its utilization of human rights concepts and terminology, and its pragmatic approach in moving gradually towards its goals.

By focusing on the priority of human rights, this human rights trend helped to establish the shared conviction of the possibility of achieving gradual reforms in the context of the political dynamic that the country had been experiencing since the end of the 1980s, which coincided with the momentous political and intellectual transformation that the world was going through.

5. The Role of Women in Combating Gross Violations of Human Rights

Women were primary players in combating the gross violations of human rights committed in the past. They assumed vital roles in exposing them and combating them, and mobilizing against them, and in maintaining the cohesion of their families and the morale of victims who were their relatives. Thus they made a major contribution to our modern history and to the process of dealing with the file of the violations of the past. We can examine their role in combating these violations on the following levels:

5.1. The Movement of Families of Political Detainees

The Movement of Families of Political Detainees played a leading role in raising the profile of the file of grave violations of human rights. It was composed basically of mothers, wives and sisters of detainees, both men and women. They mobilized continually, to criticize the violations and to demand the right of their sons and daughters to receive a free trial and to have their situation admitted as political detainees, to have their conditions improved, and to be set free, as well as to demand that the fate of those of unknown fate be revealed. Thus they organized protest sit-ins and vigils, and brought pleas before the bodies responsible. They also drummed up support for their demands, and the battles of their detained relatives, especially during the hunger strikes, in communication with the political parties, international and national human rights organizations after they had been founded, and with the media. Because of their actions, they were liable to detention, assault and abuse.

The families movement formed spontaneously, as a solidarity network between the families to facilitate accommodation and transport, and to provide supplies and support for the detained. It gradually developed its strategies to mobilize, protest, and pressurize, and to

combat the attempts at repression that the women were the target of. It is worth pointing out that most of the mothers and some of the sisters were illiterate and unpoliticized. In fact, some of them had not left their villages or their neighbourhoods, and they had never set foot in an office before. Some of them only spoke Tamazight. But they surmounted the barriers and overcame all the obstacles. They seized their freedom of movement and obtained the courage to resist and to express themselves. They changed into women different from what they had been before, into human rights activists, and to them go the honour and the precedence in raising the file of grave violations of human rights.

5.2. The Movement of Families of the Abducted and Those of Unknown Fate

Similarly, women assumed an important role in the Movement of Families of the Disappeared, and in the Moroccan Forum for Truth and Justice, and participated in truth caravans and sit-ins, giving testimonies and mobilizing in order to reveal the fate of the disappeared, and dealing with the file of grave violations of human rights. Outside this group dynamic, women undertook audacious individual initiatives to search for their disappeared loved ones. Some reached Tazmamart despite all the difficulties, and others made the connection between families and relatives of those restrained in secret detention centres, and smuggled information about their situation to human rights organizations.

5.3. On the Private Level

On the private level, which bears an importance no less than the public roles mentioned above, the wives of victims of enforced disappearance and arbitrary detention assumed a critical role in maintaining the cohesion of their families, and ensuring a minimum of provision for their families, in circumstances and conditions of the utmost severity. They also protected their sons from the effects of social harassment, exclusion and disgrace, and generally lightened the severity of the violation.

Chapter Three

TRUTH, EQUITY AND THE COMPONENTS OF RECONCILIATION

I. Investigations to Uncover the Truth about the Violations

The Commission embarked on its approach to investigating and uncovering the truth about the violations, and especially those involving enforced disappearance, from the principles and foundations of international law that relate to the right to know the truth, which has seen uninterrupted development during the last two decades. It has also been mindful of the link that exists between the right to know the truth and the right to reparation and justice.

1. Standards and References

Enforced disappearance is one of the most abominable violations of human rights. It is a combination of violations that threatens a large number of internationally protected basic rights. What makes it graver is that the harm resulting from it goes beyond the individuals whose rights have been violated directly to threaten their families and friends and indeed the whole of society.

Because the phenomenon of "enforced disappearance" is relatively new, general conventions concerning human rights, on both the international and regional levels, do not include any express provisions about the right not to be exposed to this violation. However, with the rampant spread of the practice of enforced disappearance in many countries, the international community has become seriously concerned about dealing with it, through establishing binding legal mechanisms to protect and guarantee the right not to be exposed to this violation.

In addition, a number of countries, which have experienced the phenomenon of enforced disappearance in a widespread and systematic way, have enacted legislation aiming at criminalizing enforced disappearance on the basis of the provisions of the Declaration on the Protection of all Persons from Enforced Disappearance and the contents of the recommendations of the UN work group involved.

1.1. Protection against Subjection to Enforced Disappearance in International Law

The provisions of International Human Rights Law relating to protection against exposure to enforced disappearance and to the guarantee of the rights of individuals who are subject to this practice - or their families - are scattered among a group of international instruments relating to human rights. The International Covenant on Civil and Political Rights includes a group of basic rights that are violated whenever the individual is subjected to enforced disappearance. Among them are the following main rights: the right to life; the right not to be exposed to torture and ill-treatment; the right to legal personality; freedom of opinion, expression and belief, etc. In addition, the efforts of the committee involved with human rights made a great effort to ban enforced disappearance.

As regards the provisions of International Humanitarian Law, they are applied to all forms of enforced disappearance in case of armed conflict, whichever side is responsible. Thus, their field of application includes individuals whom their families have lost contact with as a result of armed conflict.

Although the statute of the International Criminal Court enunciates the prohibition of enforced disappearance, it does not address disappearances in a comprehensive manner. In conformity with Article 7, enforced disappearances constitute a crime against humanity when they are committed in the context of a widespread and systematic assault on civilian inhabitants.

Finally, the jurisprudence of the Human Rights Committee, in addition to the continuous political efforts of the said committee, led to the drawing up and the ratification of a special international convention concerned with protection against enforced disappearance.

It is worth mentioning that International Human Rights Law has been consolidated with a number of legally non-binding texts. This constitutes a beginning in guaranteeing the protection of a number of rights that are coming into existence in the form of general directive principles including the right to know. These texts have helped to consolidate the process of investigating and finding out the truth about the grave violations committed during the previous period. These directives are rooted in the context of the experience of the truth and reconciliation committees in the framework of what has come to be known as transitional justice.

1.2. In National Legislation

Moroccan legislation does not furnish the legal guarantees that might help to protect against the practice of enforced disappearance. This is despite the fact that some constitutional provisions still stipulate, albeit implicitly since 1962, the banning of such practices. In particular, this concerns the principle that no-one shall be arrested, taken into custody or penalised except under the circumstances and procedures prescribed by law. This principle finds its legislative expression in the provisions of the Penal Code and the Code of Penal Procedure.

2. The Mandate of the Equity and Reconciliation Commission

The statute of the Equity and Reconciliation Commission defines its mission as uncovering the truth about the gross violations of human rights committed in the past, including the facts about them, their contexts and the responsibility of those who participated in them. It empowered them:

- To establish the type and degree of gravity of those violations, by analyzing them in the framework of the contexts in which they were committed and in the light of the standards and values of human rights, the principles of democracy and the rule of law. This was to be done by carrying out investigations, receiving communications, and perusing the official archives and obtaining any information and data made available by the bodies involved with the purpose of uncovering the truth;
- To continue to make enquiries regarding the cases of enforced disappearance whose fate is not yet known, and to make every effort to investigate facts that have not yet been brought to light, to discover the fate of those who have disappeared, and to find suitable solutions for those whose deaths are proved;
- To reveal the degree of responsibility of state or other apparatuses for the violations and the events object of its investigations.

The Commission has been guided in interpreting its mandate and defining its mission in this regard by the developments that have occurred on the international level referred to above regarding standards, and also the lessons learned from the experience of the truth and reconciliation commissions during the settlement and management of the conflicts of the past in a peaceful manner that is appropriate to the nature of democratic transition.

3. Methods of Work and Means of Enquiry and Investigation

In its investigations concerning the grave violations of human rights, the Commission adopted an approach based on the involvement of all those having an interest in this matter, and especially former victims or their families. The Commission's methods depended on the following basic elements:

- Gathering and analyzing data obtained from different sources;
- Receiving communications from former victims;
- Receiving communications from former or current public officers;
- Perusing registers and documents kept by the public authorities;
- Undertaking in situ visits (detention centres, places of burial etc);
- Communicating directly with security officials.

The Commission undertook a procedural definition of the fields of its investigations concerning cases of persons whose fates were unknown that had been submitted to it, in the following manner:

- Investigating cases of disappearance and deaths that happened during the first years of independence;

- Investigating cases of victims who died in arbitrary detention centres or as a result of physical elimination;
- Investigating the civil disturbances that Morocco experienced from the sixties;
- Investigating special cases of violations.

3.1. Investigating the File of Persons of Unknown Fate

3.1.1. The data collection phase

Before beginning to investigate the file of persons of unknown fate, the Commission listed all sources of information, which enabled it to prepare reference lists by depending on:

- Reports of national non-governmental organizations involved with human rights;
- Reports and memoranda of the Advisory Council on Human Rights;
- Rulings issued by the former Arbitration Commission and the relevant files;
- Reports and rulings of international bodies and organizations involved in human rights that were relevant to the subject;
- Reports of the UN work group involved with the subject of enforced disappearance;
- Reports of the International Committee of the Red Cross;
- The archive of the former Ministry of Human Rights;
- Information coming from official sources;
- Rulings and reports prepared by former victims or the families of victims;
- Communications received by the Commission while undertaking in situ visits;
- The Commission's data bank to obtain information available in files and memoranda submitted to it.

3.1.2. The preliminary analysis phase

The Commission analyzed the data available in the above-mentioned sources. The results of this preliminary analysis enabled it to establish the fact that the matter not only related to assumed cases of persons who were victims of enforced disappearance in accordance with the provisions of the statute of the Commission, but also, generally, with cases of persons whose fate was unknown for many and varied reasons. This made it possible to categorize all cases subject of analysis as follows:

- Cases of persons concerning whom there was evidence that they had died in detention centres;

- Cases of persons concerning whom there was strong circumstantial evidence that they had died as a result of various incidents, or in special circumstances;
- Cases of persons who had gone missing or who had disappeared in various incidents or in special circumstances;
- Cases of persons concerning whom there are sufficient clues to describe the facts regarding them. On this basis they could be classified as cases of assumed enforced disappearance in accordance with the provisions of the statute of the Commission and the relevant international standards.

For procedural reasons, the Commission classified the files they depended on regarding these cases as follows:

- Cases of persons of unknown fate that occurred in the first years after independence;
- Cases of persons of unknown fate that occurred in the 1960s;
- Cases of persons of unknown fate that occurred in the 1970s;
- Cases of persons of unknown fate that occurred in the 1980s;
- Cases of persons of unknown fate that occurred in the 1990s;
- Cases where information available to the Commission indicates that they died in different places.

3.1.3. Reception of communications from families and former victims

The Commission was careful to undertake visits to the families of persons of unknown fate or to receive them in its main office in order to listen to them, to determine their demands, and to explain the Commission's approach and the method adopted to settle this file. It also held closed hearings of witnesses who had spent periods in the company of victims whose fate had not been determined.

3.1.4. Gathering data from other sources

In this connection, the Commission perused the hospital registers that were available, mortuary registers belonging to local health offices and those kept by cemetery custodians. It also benefitted from data available concerning a number of cases held by associational actors. In addition to all this, it undertook in-situ investigations.

3.1.5. Compiling a file and a reference card for each case of unknown fate

The Commission then proceeded to compile a record file and a reference card of each case,

with the aim of ensuring a strict track keeping procedure and in preparation for submitting them to the authorities (the Ministry of the Interior, the Gendarmerie, the army, and the Directorate of Surveillance of the National Territory, etc.).

3.1.6. Handing over lists of cases of unknown fate to the public authorities

On the basis of the evidence available, the Commission submitted a list of cases of unknown fate first jointly to all the apparatuses involved and then to each one individually on the basis of the evidence gathered concerning the responsibility of these apparatuses for each case. Following this came the phase of receiving responses, and cross-checking between the authorities' data and those of the Commission, in order to form a definite opinion, to harmonize the cases, and to formulate recommendations.

3.2. Investigation into the Disappearances and Deaths that Occurred Shortly after Independence

In this connection, the Commission depended upon:

- Gathering data and written testimonies;
- Preparing reports and conducting studies and research;
- Hearing testimony from former members of the Army of Liberation and Resistance who lived through this period;
- Hearing individuals who had previously held responsibility in places known as places of detention;
- Hearing former victims;
- Hearing the families or friends of victims who died in detention;
- Proceeding to places of detention or actual or assumed places of burial;
- Writing reports and forming opinions.

3.3. Investigating Cases of Victims who Died in Illegal Detention Centres

Since the very beginning, the Commission was concerned about the file of detained persons who had met their end while being restrained in illegal detention centres since the beginning of the 1960s. In this connection the Commission set itself the mission of uncovering the truth about the contexts and circumstances of the detention and treatment of victims of enforced disappearance in these centres and discovering the places of burial of those who died, then establishing the identity of the occupant of each individual grave.

The Commission embarked on this subject from the assumption of the responsibility of the state and the officials entrusted with executing the laws or the individuals who worked in an official capacity in the field of protecting the freedoms of individuals and groups and guaranteeing that their basic rights would not be violated, chief among which is their right to life. In doing this, it distinguished these cases from those that occurred during civil disturbances.

The Commission sought to uncover the truth and discover the contexts and the circumstances of the detention and treatment of individuals who died in detention centres, considering them as assumed victims of enforced disappearance, and to determine their places of burial.

In brief, we can say that in its efforts to discover the circumstances of detention and death, and to determine the places of burial, the Commission adopted methods of work combining receiving oral communications from numerous sources, perusing written documents and lists, and cross-checking the different sources for all the information and communications available, in addition to in situ examinations.

After a preliminary determination of the contexts within which those victims were detained, the Commission devoted itself to collecting the data available in the lists prepared by the survivors. Then it proceeded to hear direct testimony from those detained and also heard the testimonies of former or current officials involved. The Commission perused documents and registers kept by the local authorities and also undertook in situ investigations for direct examination.

To facilitate the study of cases of the individuals concerning whom dependable facts indicate that they died in detention centres, the Commission adopted, for procedural and practical exigencies, a categorization based on the circumstances and elements shared by each group.

3.3.1. The Preparatory steps

Gathering elements found in common behaviour, and extracting data included in the requests presented to the Commission.

3.3.2. Receiving the communications of families, former victims and local residents

In closed sessions, the Commission proceeded to hear the families of victims, and witnesses who had spent periods in the company of victims who had been declared to have died in illegal detention centres or before that in other centres. It also depended on the statements of local residents.

3.3.3. Receiving communications from former or present public officials

There was cooperation with the central and local authorities attached to the Ministry of the Interior to draw up lists of public officials who had previously worked in the ranks of the security apparatuses that had supervised former centres that had become well known as places where grave violations occurred, or had previously worked under their supervision. These were heard in closed sessions so that their communications could be received concerning the events that they had lived through.

3.3.4. Perusing the registers and documents kept by the authorities

The Commission perused registers and documents held by local public authorities, and the latter submitted clarifications concerning the places of burial subject of investigation, especially concerning the dates of their deaths.

3.3.5. Proceeding to the locus in quo and establishing the places of burial

The places of burial of the persons who died in those centres were examined in order to establish the graves and the identities of their occupants. This was done either individually by the Commission or in the presence of the local authorities or the offices attached to them, and eye witnesses who had participated in the burials. The Commission also made use of in situ investigations in the presence of the authorities and witnesses, in order to establish whether or not there was a grave, especially in places where there were no clear markers.

3.3.6. Deliberations and forming an opinion

In cases submitted to the Commission, deliberations were carried out through meetings of the investigation group or the committee for coordination between the groups. Then they were submitted to the meetings of the Commission, when the decision was taken concerning the announcement of the results from them, after informing the families.

3.4. Investigations into Deaths Occurring during Civil Disturbances as a Result of the Disproportionate Use of Public Force

In contrast to the methods of enquiry and investigation with regard to persons who died in detention centres, and in view of the large number of assumed locations with regard to deaths resulting from the excessive and disproportionate use of public force while confronting some civil disturbances, the Commission gathered the largest possible amount of information about the disturbances that the country experienced and which happened in 1965 and 1981 in Casablanca, in 1984 in some cities of the north, and in 1990 in Fez.

When it began to deal with the subject, the Commission faced a problem of lack of information, which led it to conduct studies and research depending upon all the sources of information available. After that, it began to receive communications from some witnesses who were contemporaries of these events and from the rightful claimants of some of the victims.

3.4.1. The 1965 disturbances in Casablanca

The methods of investigation into this subject depended upon the following elements:

- Holding preparatory meetings with the local authorities in the city;
- Perusing information recorded in:
    - The register of the mortuary office;
    - The registers of the emergency department and the reception desk in the Ibn Rushd Hospital;
    - The register of the forensic medicine department attached to the Ibn Rushd Hospital;
    - The registers of the emergency department and the reception desk in the Soufi Hospital (now Moulay Youssef);
    - The burial register in the Chouhada Cemetery (Cemetery of the Martyrs).
- Hearing the testimony of a doctor who had worked in the Ibn Rushd emergency department during the disturbances;
- Hearing the person entrusted with digging the graves in the Chouhada Cemetery;
- Examining the graves in the Chouhada Cemetery;
- Asking the state prosecutor about burial permits issued by the public prosecutor's office during the disturbances.

3.4.2. The 1981 disturbances in Casablanca

The methods of investigation into this subject depended upon the following elements:

- Holding preparatory meetings with the local authorities in the city;
- Perusing information in registers belonging to the mortuary office, hospitals and emergency departments;
- Proceeding to the cemeteries and hearing from their custodians;

- Examining detention centres used during the disturbances (in the former Municipal Arrondissement 46, the auxiliary forces barracks at Ain Harrouda);
- Hearing witnesses;
- Hearing medical personnel who were in charge at that time;
- Hearing the former mortuary superintendent;
- Hearing former and current civil defence officials;
- Investigating whether or not a decision was issued by the public prosecutor's office concerning burial after the disturbances.

3.4.3. The 1984 disturbances in cities of the north

The methods of investigation depended on:

- Undertaking a number of in situ visits to each of the cities involved;
- Direct examination of the places that witnessed these disturbances;
- Hearing a number of rightful claimants of the deceased persons;
- Hearing the representatives of the local authorities;
- Hearing those who supervised the burial operations at the cemeteries;
- Hearing some medical personnel working or retired in the regions involved;
- Perusing, at the locus in quo, the registers relating to the deaths;
- Perusing, at the locus in quo, the family status registers and the registers at the local health authorities, and perusing the registers of deaths held by them;
- Hearing eye witnesses;
- Holding work sessions with elected officials;
- Visiting the assumed graves;
- Hearing the families of the deceased, including those who had not approached the Commission.

3.4.4. The 1990 disturbances in Fez

The methods of investigation depended on:

- Undertaking a number of in-situ visits to each of the cities involved;
- Direct examination of the places that witnessed these disturbances;

- Hearing a number of rightful claimants of the deceased persons;
- Hearing the representatives of the local authorities;
- Hearing those who supervised the burial operations at the cemeteries;
- Hearing some medical personnel working or retired in the regions involved;
- Perusing, at the locus in quo, the registers relating to the deaths;
- Perusing, at the locus in quo, the family status registers and the registers at the local health authorities, and perusing the registers of deaths held by them;
- Hearing eye witnesses;
- Holding work sessions with elected officials;
- Visiting the assumed graves;
- Hearing the families of the deceased, including those who had not approached the Commission.

3.5. Investigations into Special Cases and Issues

The investigations carried out into this subject depended on the method of combining receiving communications from different sources involved with the issues on the one hand, and on the other hand studying the memoranda it had received. In addition, they included hearing former officials and public agents in the apparatuses involved in these cases, and also analyzing the information and the data circulating about each case individually.

4. Main Findings and Conclusions

4.1. The File of Cases of Unknown Fate

The lack of a precise definition of enforced disappearance in Moroccan law, in addition to the fact that it is a combination of violations resulting in the infringement of all internationally protected human rights, chief among which is the right to life, led to it being given many descriptions including ‘‘those of unknown fate’’, ‘‘abducted - fate unknown’’, and ‘‘abducted’’. However, these descriptions do not include only enforced disappearance according to the internationally recognized definition, but also refer to other forms of arbitrary deprivation of freedom, which lead in many cases to the deprivation of the right to life. This is either because of abuse of authority or because of the disproportionate or excessive use of public force when facing civil disturbances, or as a result of exposure to torture and ill-treatment, or through armed confrontations.

What increases this confusion is the presence of some of the constitutive elements of enforced disappearance in some cases of arbitrary detention, including in particular the length of it, the concealment of the place of detention, and the refusal to disclose the fate of the person who has been deprived of his freedom.

The Commission during its treatment of the truth of enforced disappearance and fixing responsibility for it faced great expectations on the part of society and the families of the persons involved. It also found itself face to face with divers and exceedingly complicated cases along with a lack of any information that might help to harmonize the facts depended on as constitutive elements of the crime of disappearance.

By analyzing the disturbances and the events linked to the cases of enforced disappearance that had been proved by the Commission, we could say that this violation was resorted to as one form of repression, in order to intimidate and instil fear in political opponents and society.

Thus by virtue of analyzing the files submitted to it and the results of the investigations that it carried out into cases of disappearance, the Commission came to the conclusion that enforced disappearance was practised against individual or collective persons in connection with political disturbances usually occurring during the temporal competence of the Commission. This allowed it to finally consider the cases in question as cases of enforced disappearance in accordance with the definition found in its statute. However, it recorded other cases of disappearance in which the victims involved had no direct connection with political, associational or trade union activity. Most of the time, these cases occurred in special circumstances.

In addition, through its analyses of cases of enforced disappearance subject of its remit, the Commission established that this deed was generally committed against isolated individuals after they had been abducted from their places of residence or in unspecified circumstances, and after they had been detained in illegal places.

- Categorizations and conclusions concerning persons whose fate is unknown

The Commission received petitions in which those who submitted them described how relations of theirs had gone missing. Following this up, the Commission has gathered all similar cases that have been considered for years as cases of unknown fate or disappearance. It has worked to prepare and study these cases, and has sought to obtain information from the apparatuses involved who were considered responsible for the events referred to in these petitions, and was careful to complete the relevant information by receiving communications from their relations and acquaintances.

The Commission has received official documents from the Royal Armed Forces, the Royal Gendarmerie and the General Directorate of National Security, and it has also reviewed a part of the archive of the Ministry of Human Rights.

The documents received from the Royal Armed Forces contained detailed information, including lists, pictures and data about different cases linked to the investigations that its departments carried out concerning cases of disappearance and unknown fate that were subject of investigations by the Commission and requests for clarification by the International Committee of the Red Cross. Studying them enabled the Commission to come to the following conclusions:

- The deaths following the armed clashes in the southern regions

This group is made up of two sub-groups:

- A sub-group including 40 persons who met their end on the field of battle and were buried in known places. 8 of them were buried in Zmoul Niran, and 8 others in Oued Lehchibi in Haouza, 1 in Argoub, 4 in Lahricha, 3 in Oum Dreiga, 2 in Sebkhat Aridal, 2 in Boucraa, 1 in Mahbes, 1 in Deloua, 1 in Ichergan, 1 in Boujdour, 4 in Aguerguer Argoub, 1 in Khang Znitmate in Amgala and 1 in Farsia.
- A sub-group including 88 persons who died during scattered battles that were witnessed by numerous districts in the southern regions of the Kingdom between 1975 and 1989, in Farsia, Haouza, Smara, Guelta Zemmour, Erni, Amgala, Bir Lehlou, Lemaallek, Ech-chaab, Tartak, Tifariti, Chebbi, Douaiheb, Zag, Lemzareb, Ghnijate, Legtifa, Lahrichat, and Mahbes, in addition to the above-mentioned places.
- Added to the number of dead in battle are 12 cases where the identities of the victims were not discovered because their bodies were burned on the fields of battle.

- People dying in hospitals after being wounded during the clashes

This relates to 4 persons who were detained following armed clashes after being wounded severely, and who died in hospitals and were buried in the cities of Marrakech, Agadir, Laâyoune and Salé.

- Cases of persons who were handed over to the International Committee of the Red Cross

This relates to 67 persons who were captured following armed clashes and were handed over to the International Committee of the Red Cross, which transferred them to Tindouf in the south of Algeria on 30 October 1996.

After perusing the archive of the former Ministry of Human Rights and the results of the investigations carried out by the public authorities concerning the cases submitted to the government by the UN work group involved with enforced disappearance, and which were handed over to this group in its meeting held in November 2005, the Commission was able to conclude that 15 had died natural deaths.

The Commission also perused the data that it received from the Royal Gendarmerie concerning a number of cases that had been submitted to it. It examined information indicating that 36 detained persons had died, 23 subject to arbitrary detention, and 13 of them through execution of a death sentence. However, because it received data relating to these latter cases during the last week of its term, it was not able to obtain and analyze the relevant judicial files.

It finally categorized the petitions it received and the different cases discussed nationally and internationally according to the results reached concerning deaths while subject to detention in illegal centres, or as a result of the excessive and disproportionate use of public force, or following armed clashes, or because of conditions of detention or following various incidents.

Its work relating to the hearings, cross-checking, and studying responses it received from the public authorities enabled it to do the following:

- It was able to discover, check or determine the identity of 89 persons who had died while in detention, and uncovered their places of burial in Tazmamart (31), Agdes (32), Kelaât M'gouna (16), Tagounit (8), Gourrama (1), and near the Al-Mansour Eddahbi Dam (1).
- It discovered and determined the identity of 11 persons who died following armed confrontations and located their places of burial. 7 persons died in 1960 (the Barkatou and Moulay Chafaï group) and 4 in 1964 (the Sheikh al-Arab group).
- It established that 325 of the persons, some of whose names were listed among those of unknown fate, had died following the civil disturbances that occurred respectively in 1965 (50 deaths), 1981 (114 deaths) and 1984 (49 deaths distributed as follows: 13 in Tetouan, 4 in Ksar El-Kebir, 1 in Tangier, 12 in Al Hoceima, 16 in and around Nador, 1 in Zaio, and 2 in Berkane), 1990 (12 deaths), due to the excessive and disproportionate use of public force. The Commission managed to determine the places of burial of some of them and was not able to discover the identity of others, and in other cases again it was able to discover the identity without being able to determine the place of burial. With the exception of the Casablanca disturbances, the Commission concluded that the dead had been buried by night in regular cemeteries and in the absence of their families, and without the intervention of the public prosecution department. It also came to the Commission's knowledge, via a medical source, that the total number of victims of the riots of June 1981 in Casablanca was 142, which total needs to be confirmed.

- It also determined that 173 persons had died while in arbitrary detention or enforced disappearance in the period between 1956 and 1999, in detention centres like Dar Bricha, Dar El-Moqri, Derb Moulay Cherif, Tafnidilt and Courbiss. However, it could not determine their places of burial. 39 deaths were linked with the first years after independence in the context of the struggles between non-state actors. Another 14 occurred during the 1960s and a high number were recorded during the 1970s, when the figure reached 109 deaths. By contrast, the 1980s and 1990s saw a significant drop, with 9 cases in the 1980s and 2 cases in the 1990s.
- In the context of the struggle in the southern regions, its investigations revealed the fate of 211 cases of persons who had been counted among the disappeared, as follows:
    - 144 persons died during the armed clashes. The identity and places of death and burial of 40 of them were determined, while the identity and places of the remains were determined in 88 cases, but without being able to discover their graves. The Commission was unable to determine the identity of 12 persons who had died, while it established that 4 persons had been detained and transferred to hospitals after they had been wounded during the clashes. They died there and were buried in ordinary graves.
    - The Commission established that 66 persons who had not been accounted for had been handed over to the International Committee of the Red Cross on 31 October 1996.

- Conclusions

The total number of cases where persons' fate was discovered was 742.

Concerning 66 cases which were examined, the constitutive elements of enforced disappearance were present and the Commission considers that the state has a duty to continue the investigations with the aim of uncovering their fate. The investigations carried out by the Commission enabled progress to be made in uncovering the truth. Therefore, the Commission recommends that full use should be made of the experience, testimonies, indicators, research methods, and the accumulated investigations, which elements are part of the Commission's archive.

While seeking to uncover the truth, the Commission faced obstacles. These included the limited and fragmentary nature of some of the oral testimonies, which it overcame by resorting to written sources. It was also hindered by the deplorable state of the national archive and the patchy cooperation of some apparatuses. Some of these gave incomplete responses to the files presented to them, and some ex-officials who had been retired, refused to assist the efforts to uncover the truth.

At the end of its term, the Commission considers that the mission it has undertaken in implementation of its competences, represents an important step in promoting the right to

know the truth, through the unusual means and forms it has devised, which have helped to increase the likelihood of uncovering the truth about the grave violations of human rights which our country witnessed during the previous period.

4.2. Arbitrary Detention

In contrast to enforced disappearance, whose objective is to deprive the victim of any legal protection, since all its constitutive acts are committed outside the scope of the law, without any heed whatsoever to its requirements, arbitrary detention usually occurs within the framework of the law, with contravention of some or all of its requirements. In our country this was usually done by violating the legal provisions regulating placement in custody. Thus arbitrary detention, as described above, was practised in our country in a systematic manner since the beginning of the 1960s, especially in cases of a political character falling within the competence of the ordinary courts. We could say that the practice of arbitrary detention was achieved, in fact, by granting the public prosecution departments and the judicial police a broad authority exceeding the recognized authority of the courts of appeal and the courts of first instance, which are obliged to pronounce freedom-depriving sentences within the limits laid down in the Penal Code.

Concerning conditions of detention in the period prior to the trial, when the detainee was supposed to be placed in custody, we can say in general that it was characterized by the following:

- The detained person was forced to remain continuously from the time he arrived in the illegal detention centre, with the exception of those periods when he was subject to torture, in a fixed position, either sitting or lying prostrate on the ground with his hands bound and his eyes blindfolded;
- Talk or communication between the prisoners was forbidden;
- They were fed badly both in terms of quality and quantity;
- They were allowed to go only rarely to the bathroom, according to the whim of the guards;
- Basic hygiene was lacking and the detained person was only allowed to shower after months of detention. This situation caused women great psychological suffering, especially during menstruation. Lice were widespread and the insecticides used on some occasions to deal with them were ineffective;
- In case of illness, treatment was not offered, and in case of severe emergencies, only when it was too late;

- In specific cases, women were deprived of medical assistance in case of miscarriage or when giving birth.

Through the investigations it carried out, the Commission uncovered, in addition to centres used for purposes of detention in cases of enforced disappearance, illegal or legal centres used for purposes of arbitrary detention. Information obtained from victims, from eye-witnesses heard, and from in situ examinations carried out by the Commission, enabled it to locate a number of places and centres that were used for purposes of arbitrary detention. It became clear to the Commission that, during the periods when the grave violations occurred, some security apparatuses worked to keep control of them to ensure that the violations committed in them were covered up. This cover-up also included the hospital wings used for admission of victims of torture and the places of burial of victims who died.

4.3. Torture and Maltreatment

The analysis of data contained in files submitted to the commission, as well as oral testimony given during open and closed hearings organized at the headquarters of the commission, revealed different means used in a systematic manner to torture detainees in order either to extract confessions from them or to punish them during the period falling within the remit of the Commission. Comparisons carried out between the descriptions given by the victims enabled the Commission to reach the following conclusions:

- Methods of torture were used that varied according to their nature, all aimed at causing physical or psychological pain, or both;
- Among the forms used to inflict physical pain, the following can be mentioned:
  - "Suspension" in its different forms, accompanied by beatings on the soles of the feet or other parts of the body;
  - Burning with cigarettes;
  - Pulling out finger and toe nails;
  - Forcing victims to drink polluted substances;
  - Forcing victims to sit on a bottle.

In addition to the psychological harm and physical pain resulting from this, in some cases these methods caused serious injuries leaving psychological scars and permanent disabilities. In fact, in specific cases the severity of the torture practised resulted in death. Among the methods used to cause psychological pain to both male and female detainees, the following can be mentioned:

- Death threats;
- Threats of rape;
- Insults, defamation and the use of all other means that might demean dignity;
- Fettering the hands and blindfolding the eyes with the aim of preventing sight and movement;
- Isolation from the outside world and the insecurity that results;
- Deprivation of sleep;
- A total ban on conversation with other detainees;
- Torturing a family member or relative, or threatening the same.

We could say that the practice of torture was the preferred method adopted to interrogate detainees in cases of a political character. Its purpose was no longer just to extract confessions but also to punish, to take revenge, and to physically and mentally humiliate the suspect. It is worth mentioning that the desire to obtain confessions by any means, capriciousness, and lack of professionalism were all factors that helped to broaden the scope of torture to include individuals being prosecuted for common law crimes.

In addition to the various forms of torture mentioned above, the women's suffering was more acute in that during the period prior to prosecution, they were subject to special forms of torture. This is due to the fact that women are tortured by men without any consideration for the dignity of the victim. Sometimes women are forced to stand naked in front of their torturers with all the accompanying danger of rape and the threat of it both as an apprehension and as a reality.

Women's suffering is increased when they are deprived of toilet facilities during menstruation as a means of intensifying the torture.

4.4. The Excessive and Disproportionate Use of Public Force

The analysis of data and information culled from different sources concerning the grave violations falling within its remit, as well as the investigations carried out, enabled the Commission to uncover the responsibility of the different security apparatuses for those violations in most of the cases submitted to it. Indeed, in many cases it was proved to the Commission that there was joint responsibility, and in some cases solidary responsibility among numerous apparatuses. To facilitate the analysis of the political and legal responsibility arising from the actions and the interventions of those apparatuses, it is worth remembering the legal systems regulating them.

Analysis of the files presented to it concerning the events occurring during the years 1965, 1981, 1984 and 1990, the investigations and the studies carried out by the Commission, enabled it to reach the following conclusions:

- Those disturbances saw the commission of grave violations of human rights mainly represented in infringement of the right to life of a number of citizens including children and also persons who had no involvement in those events;
- Those violations resulted from a failure to abide by international standards and principles in the field of human rights concerning the conditions and limitations on the use of public force. This led to the disproportionate and excessive use of this force resulting in deaths;
- The results of the investigations carried out, as well as the analysis of the events linked to those disturbances enabled the Commission to uncover the fact that the authorities opened fire with live ammunition, and failed to resort to other methods in order to disperse the demonstrations without causing deaths;
- Evidence from different registers and testimonies relating to the incidents in question show that many victims died as a result of gunshots in the skull, the rib cage or the abdomen;
- The Commission registered a significant number of children among the dead, some of them no older than ten years old;
- In some cases, the apparatuses intervening opened fire into houses through open windows or through doors, and struck people including children, old men and women, some of whom died as a result of bullet wounds. These facts are corroborated by testimonies presented before the Commission, as well as by mortuary registers, which establish the occurrence of cases where corpses were removed from inside houses;
- When they removed the corpses of those who had been wounded while inside their houses, the intervening apparatuses prevented the families of the deceased from knowing where their bodies had been taken. In addition, the place of burial was concealed. Indeed, the authority refused to record the dead in the death registers held by the offices involved;
- Officials refrained from offering help and assistance to wounded citizens, including children who died as a result of gunshot wounds;
- The Commission recorded actions committed by the authorities that in some cases demonstrated lack of respect for the dead, shown by transporting them in lorries in a manner that gave no weight to their inviolability;

- The Commission uncovered the places of burial of victims of civil disturbances in numerous cases, and recorded that in these cases the burials, although they took place in regular cemeteries and the appropriate religious rituals were observed, were carried out by night without the families being notified and without their being present in most of the cases recorded. On other occasions, the Commission recorded cases where these rituals were not respected and the victims were not buried in a regular manner;
- In all the cases investigated, the Commission confirmed that the security authorities did not notify the public prosecution department of the deaths or of their number and causes, except in one case. This was the reason why the burials took place without the knowledge of the public prosecutor's office and without the medical authorities carrying out the autopsy prescribed by law. Moreover, the public prosecution did not seek to open an investigation into the said events, despite the issue of official communiqués concerning them which stated that there had been fatalities;
- The official communiqués that were published following all these events, with one exception (Nador 1984), systematically included information that did not conform to the reality concerning the number of fatalities and their causes.

4.5. Conclusions and General Deductions

The mission that the Commission undertook in implementation of its mandate constituted a significant step in promoting the right to know the truth through the unusual means and forms it devised, which helped to increase the likelihood of uncovering the truth about the grave violations of human rights which our country witnessed during the previous period.

The oral testimonies, as one of the sources used by the Commission, helped to clarify the circumstances surrounding the facts linked to the events object of its investigations. However, in some cases, their limited and fragmentary nature was apparent, when the same events were talked about in different and sometimes contradictory ways by those who had experienced them. This meant that they were only partially helpful in uncovering the truth in specific cases. This obstacle was overcome by cross-checking the data found in these testimonies with information derived from other sources, especially official documents and registers.

The latter helped to reveal the truth about numerous aspects of files and cases concerning which it would not have been easy to reach an opinion without comparing the plentiful and varied information concerning them with what is recorded officially in the registers kept by different public offices. However, on numerous occasions the Commission uncovered the miserable state of the archive, in addition to the lack of a unified legal framework to

regulate and organize it, and to manage access to it and provide for sanctions for damaging or destroying it. Nor was it able to peruse a part of the official registers which should have been available either because of hesitation about or delay in handing them over, or because the fixed deadline it was working to prevented it from fully exploiting the documents and registers of the archive that some institutions agreed to put at its disposal (the military archive relating to the history of the armed struggle in the southern provinces of the Kingdom).

The efficient cooperation of central and regional offices of the Ministry of the Interior enabled the Commission to benefit greatly from the facilities made available to it. This cooperation also helped the Commission to reach numerous witnesses of different administrative ranks and grades whose testimonies helped uncover many facts.

In addition, regular work sessions were held with the General Directorate of Studies and Documentation and the General Directorate of National Security, which helped to open new paths of investigation concerning a number of cases by facilitating the process of hearing some former officials and facilitating visits to some centres and "fixed points" that were used in the 1960s and 1970s for purposes of detention. However, this level of cooperation did not characterize all apparatuses, as some of them submitted incomplete responses to the files submitted to them.

The work sessions that were held on a high level with the Royal Armed Forces soon after the Commission began its work contributed to the progress made in accomplishing its mission, both concerning the cases of unknown fate and with regard to analysis of the contexts of the violations in the southern provinces.

The closed hearings held for some former officials also contributed to progress in some cases, although in other cases the Commission recorded a lack in the testimonies given.

Moreover, some former officials refused to give their testimonies before the Commission, which deprived it of sources of information that may have helped to uncover the truth about the events under investigation.

And the large number of security apparatuses intervening in order to maintain public order during the civil disturbances, either consecutively or in parallel, or overlapping, made it impossible to determine the degree of responsibility of each of the apparatuses for the grave violations committed during these incidents.

II. Conclusions concerning Gender-specific Violations of Human Rights

1. Points of Departure and Methodology

The Equity and Reconciliation Commission adopted the dimension of gender in its approach as a crosscutting methodological option to be applied to the different aspects of its work. As a result, it was faced with the necessity of clarifying what were the specific characteristics of the violations to which women were exposed, the harm resulting from them, their experiences and their roles in standing up to the violations. It also had to find out what deductions can be drawn from that concerning the adaptation of the violations and uncovering the different aspects of their impact and the requirements for ensuring non-repetition.

At the beginning of its work, the Commission discovered how meagre were the data, the writings and the testimonies, as well as the complete absence of research, concerning gender and the past of grave violations of human rights. This means that the suffering and experiences of women and their roles have been insufficiently known, or rather invisible, and as a result the prevalent ideas concerning the victims of political violence and the actors in public life have been reinforced. These ideas, which place women outside our recent history, depend in their turn on a patriarchal culture, one of whose basic components is the formal sexual division of roles between the public sphere and the private sphere.

Truth cannot be complete unless the experiences and sufferings of men and women are taken into account, giving consideration to both what is common to both of them and what is distinctive of each of them. Moreover, reformulation of the group memory requires liberation of the voice of women also, helping it to be heard and preserved, while reconciliation and ensuring non-repetition require that justice be given to women victims and that they be reinstated and recognized for the sacrifices they have made and the roles they have played, and that their status in society be generally strengthened.

For all the above reasons, the Commission adopted a methodology whose goal was to highlight the dimension of gender in the grave violations of human rights, by:

- Giving a hearing to the largest possible number of women, insofar as the oral memory is the most important reservoir for memories of the violations of the past, including the misconceptions and the resulting mental, social and physical suffering that permeate it. It did this through holding closed individual and group hearings, and through public hearings where the testimonies of women constituted the most powerful moments;

- Obtaining quantitive data relating to women from the data base, and drawing conclusions concerning the broad patterns formed by the categories of violations and the harm resulting from them, and the demographic characteristics of women victims;
- Studying a sample of summaries of requests submitted to the Commission by women and men victims and drawing conclusions regarding the violations and the harm resulting differentiated with regard to each sex;
- Conducting a qualitative study about "gender and political violence", through field-work covering seven main regions and women from different age, cultural and social groupings, who had lived through experiences of different types of violations and had played different roles and been involved in different events and different political trends. For its research method, the study depended upon ''the life-story interview'', using interviews and ''focus groups'';
- Organizing meetings with women's associations, to involve them in formulating summaries of the experience and suffering of women, and formulating draft recommendations for reparation for injuries incurred by them, on the group, symbolic and general human rights levels;
- Using the gender workshop organized in the framework of the National Reparation for Injuries Forum to receive communications, opinions and proposals from local men and women involved in human rights issues.

2. The Distinctive Character of the Violations to which Women were Subjected

The different sources and tools used by the Commission enabled it to come to the following general conclusions:

2.1. Gender-based Distinctives

Women were subject to different types of violations like their male counterparts, including arbitrary detention, enforced disappearance, compulsory displacement and death while in detention or during the civil disturbances and the excessive use of public force that accompanied them. However, their sufferings as a result of those violations and their conditions, the way they imagined the violations, and the psychological impact on them, distinguishes their experience from that of the men. We can summarize the sharpest of these distinctions as follows:

- A number of women were subject to violations as a result of their opinions and their political and trade union affiliation, especially when they belonged to left-wing

parties or organizations, or because of concealing and provisioning rebels with food. The methods of interrogation and torture that were used on them were clearly and characteristically distinctive because they were women, not only because they held opinions opposed to the existing political order but also because they defied a social order in which public affairs were considered a male domain. This multiplied their suffering from types of violation like degradation, humiliation and abuse.

- Women who were detained or subject to forced disappearance because of the opinions or the activities of their male relatives represent a significant proportion of female victims. Some of them were in the position of hostages to force the one being pursued to surrender himself, and others were targeted to extract confessions from them or to put pressure through them to extract confessions from their male relatives, or to inflict a sort of collective punishment on families or villages. This deepened their sense of shock when faced with violations, and the sharpness of their sense of injustice and helplessness because they were not prepared politically or psychologically to withstand them. It also gave birth within them to a sense of betrayal because they were not familiar with the thoughts their husbands harboured or what they were doing outside the family space. Indeed, some of them could not grasp what was going on around them, and the political context which controlled it, especially housewives, peasants and nomads for whom violation characterized their first relationship with authority, seeing that in the case of most of them, their field of concern and activity did not go beyond the affairs of the home and the field etc.

- Torture and sexual exploitation: Women suffered from different types of torture, abuse and violation of physical safety, like trampling, slapping and beating, and the technique known as ‘‘the aeroplane’’, as well as electric shock, suffocating, and drinking polluted water. However, they were subject to special methods as women. In the context of the prevailing conception of femininity, and in the absence of any protection for women in a position of violation, and with the certainty of impunity, and given the fact that women were at the mercy of men, both during interrogation and detention, many women were targeted as regards their honour, their affections and sometimes their bodies. Some were subject to being totally stripped in front of men (sometimes in front of their relatives or in the snow), observation in the toilets, body searches, offensive and humiliating insults (like being called prostitutes), harassment, being threatened with rape (deepening their feelings of insecurity and anxiety) and in some cases actually being raped (which apart from the pain and the brokenness gave rise to a sense of dirtiness and shame). If these forms of violations were not systematic and subject to instructions, this does not relieve the state of responsibility for them, because ensuring protection and punishing wrong-doers is

its concern, and because they were committed by and while under the hospitality of its apparatuses. These violations are usually catastrophic for women, whether in terms of their long-lasting psychological effects or in terms of their social impact, which can lead to the total shattering of their lives.

- Giving birth before or during the violations did not arouse compassion for the women. Rather, it was used as a tool for psychological torture and pressure. A number of women were detained while they were pregnant, and sometimes when they were in the last stages. This did not cause them to be spared from torture, and in some cases it did not even spare them from rape. They were detained in conditions that did not respect even the minimum degree of hygiene required by their condition, and had to sleep on the ground or at best in a light blanket. They suffered from malnutrition and were deprived of any medical care. Some of them miscarried as a result of all this. Those who saw their pregnancy to term usually gave birth inside the detention centre without any medical supervision. The new-born babies were not provided with any swaddling clothes, which forced the mothers to tear their own clothes so that they could wrap them in strips of blouse. Some of these they used as nappies, which they could not wash and which were only changed after a period of days. Moreover, the women had no milk in their breasts to suckle their babies, which led to the deaths of some of them. In all cases, this suffering represented the severest moments of violation with regard to those women, and they experienced it as a regime meant to destroy them psychologically.
- A number of women were detained with their children, who were usually of a young age, and they suffered from the same conditions mentioned above. This led to the death of some of them inside the detention centre or straight after their mothers were released. A large number of women were separated from their children, even suckling babies. This caused them deep psychological pain and distress, and fearful nightmares concerning their fate, especially when the father was detained as well and the children remained without any protection or care. This led to some of these children becoming runaways and going missing. Some deaths were also recorded among them. The children were used to pressurize, terrorize and extract confessions from the women, and some women declared that they had been tortured in front of their children or that their children were tortured in front of them, or that threats were made that something terrible would happen to them. Usually this was done to force them to confess to things that they did not know anything about.
- The women suffered more acutely from the conditions of detention, whether because of the nutritional regime adopted or the hygiene or sleeping conditions. This was not manifest just in cases of pregnancy, birth or when accompanied by children, but

even in ordinary cases. Perhaps the most outstanding example of this is what all the women complained of concerning menstruation, that they were left for months filthy with blood without health care or any possibility of washing. The starvation method used also had an increased effect on health because of menstruation. Being blindfolded during detention also increased their feelings of disorientation and terror in strange, hurtful and featureless surroundings, especially when they were snatched away from their traditional roles inside the family, without any prior comprehension of matters beyond their narrow boundaries.

2.2. The Concept of the Victim

Dealing with the subject of gender and the grave violations of human rights raised the question of the concept of the "victim". This is because distinguishing between "direct victims" and "indirect victims", and "primary victims" and "secondary victims" implies a conceptual problem and an insinuation of hierarchy. The fact is that victims of the violations of the past are not confined to those who were subject to arbitrary detention and enforced disappearance ... but also include (especially in cases of enforced disappearance or death during the violation) their families and in particular their wives, mothers and children, because they were subject to the violation of their basic rights to support, care, stability, security and knowledge of the fate of their loved ones. They were also subject to maltreatment, harassment, search, threats, and displacement, as well to restrictions on their freedom of movement and their freedom to receive visitors, exclusion from work opportunities, and being prevented from benefitting from some social programmes. This is what has led the Commission to consider the families of detainees and disappeared persons as victims.

In addition, reconsideration of the psychological, economic and social injuries, and of the human dimension of the violations, has enabled it to reconstruct the concept of ''victim'' in such a way as to make it more susceptible to the specificities of the suffering of women.

The grave violations of human rights represented a decisive break in the lives of wives and mothers, causing them to lose any sense of stability and serenity. Their sufferings arising from the loss of their relatives were aggravated by harassment, interference, threats, detention, restriction, and their fears over the fate of their sons and daughters. Their sufferings also removed them from the round of family life to cast them into the maze of searching for relatives and loved ones, bringing grievances before the authorities or being maltreated by them. They had to travel far from their familiar world in order to keep visiting prisons or to attempt to uncover the fate of their loved ones. Most of them had never or only rarely ventured outside the neighbourhood where they lived. They had never previously had dealings with the authorities or travelled on their own.

The families had lost their bread-winner and sometimes the source of their livelihood as well (livestock, the shop etc.). So wives and mothers were forced to go out to work in very difficult circumstances because most of them were illiterate and did not have any income-generating work or any training. They worked as maids, in weaving or other menial jobs. Indeed, some of them were forced to beg in order to provide a crust of bread for their children, because everybody was afraid to employ them. In addition, they had to save the food they had been able to obtain in order to take the regular basket to their husbands or their sons-if of course they were being held in regular detention centres.

Many of these women were bereaved of husbands and children in the prime of life, and they were not able to grieve for their lost loved ones. This was not only in cases of disappearance but also in cases of certainty of death without knowledge of the place of burial or having the right to be shown compassion. This in itself is a violation of the right to know the fate of a person.

What increased their compound sufferings was their inability in most cases to ensure sufficient income to cover their living needs and the schooling of their children. This led to the children either having their studies interrupted or not going to school at all, and sometimes they were even forced to send their children out to work at an early age. This generated in them feelings of guilt, depression and helplessness, and their hopes of ensuring a stable future for their sons were disappointed. Indeed, they could not register children born after the disappearance of the father, so they remained without identity and deprived of the rights of schooling and employment.

3. The Impact of the Violations on Women: Compound Injuries that Make them Victims of Twofold Violence

In previous paragraphs, we have already indicated some of the injuries to which women were subject as a result of the grave violations of human rights. Here, we want to present summaries of some forms of injury resulting from the mechanisms of state oppression and the violence of instruments of surveillance and punishment in a patriarchal society. These made the impact of the violations more painful, more long-lasting, and more destructive of the progress of their lives. This can be explained in terms of the following categories of injury:

3.1. Economic and Social Injuries

Based on the above, we can say that the violations exacerbate the poverty, the social exclusion, and the precarious position of women and families. This is because they lose the

bread-winner, and the family's standard of living deteriorates despite their hard work, and their social position and status drops. It also means that their prospects of social betterment are closed because of the repercussions of these situations on their children, and their loss of opportunities for training and improving their working conditions. What aggravates these effects is the dissolution in many cases of the networks of social solidarity in their near and family environment as a result of the harassment and the threats, or the fear of suffering the same punishment or because of social stigma. This deepens their sense of being let down and their feelings of depression.

Usually women victims of violations are subject to the punishment of society through the mechanisms of social stigma and exclusion. Because, in the opinion of the masculine culture, they embody the honour of the group, they are metamorphosed into the embodiment of its shame if they are detained. If they are not subject to rape, they are considered under suspicion because they were in the hands of gaolers who were men. This led to them being marginalized, ostracized and placed outside the group, especially in some regions. According to the same logic, they were often subject to divorce or abandonment by their husband and children. And if they were unmarried, they could be deprived of marriage throughout their lives, and thus of the right to bear children.

Detention of women who were mothers, and especially in cases of enforced disappearance, had more disastrous consequences on the family than if it had been the fathers who had disappeared. In such cases, the family often disintegrated and the children found themselves homeless and without prospects, and sometimes they would begin to suffer from psychological problems. In some cases, infants also died.

The injuries, particular to women victims of enforced detention, which for some of them lasted for more than 16 years, were characterized by sufferings involving loss of opportunities to marry or have children, which is something that remains possible for men, however long they are detained and whatever age they are. This means that they are deprived of basic rights that mark the injuries resulting from the violation with a permanence that is exacerbated further by the values and ideas prevalent in society.

Even after their husbands are released, some women are subject to divorce or their husbands take a second wife. They are then faced with hostile ingratitude towards themselves and their children, in spite of waiting such a long time, suffering state violence and being made social outcasts, toiling to care for their children and their detained husbands after they are transferred to a regular prison, and sometimes after struggling to uncover their fate, improve their conditions and obtain their release. Some women complained of the same conditions even after their husbands had received compensation, so that they were left in abject poverty with their children.

3.2. Psychological and Physical Injuries

This violation represented a moment of sudden and deep change in the life of women, and the study conducted on gender and political violence concludes by "considering that it turned their lives upside down". It was not simply an upset but an earthquake that shook their beings, changed the course of their lives, shattered their dreams, and left a life-long scar on their minds and their emotions. It also cut their ties with their close environment and laid on their shoulders burdens and challenges that in the vast majority of cases they were not prepared or expecting to bear. This resulted in anxiety and disorientation, which in turn produced feelings of loss, isolation and helplessness.

The violations, accentuated by the system of social punishment, led the women to see themselves not as victims but as criminals. Some violations, like sexual exploitation as well as the social stigma, which always assumes sexual exploitation anyway, creates in women a sense of dirtiness and shame, especially when they are subject to exclusion, ostracism and divorce. All this has deep and long-lasting psychological effects, like lack of self-esteem and self-confidence, a guilt complex and introversion. These violations also force women to keep silent and to avoid disclosing their sufferings, even to the people closest to them, for fear of social sanction, and of the position of the family itself, and in the light of their own view of themselves as being the guilty ones. For this reason, some categories of violations, and especially rape and sexual abuse, remain taboos that are difficult to break and whose extent is difficult to assess as long as they remain among those things that are unspoken.

The loss of a foetus or a child is a painful experience in the life of any woman. However, for it to happen because of detention or physical or psychological torture makes it deeper and more painful, because miscarriage or death is not regarded in this case as divine fate but rather as a crime committed against them. It is therefore a wound that cannot heal, and women still burst into tears when it is talked about. Indeed, a woman from the outskirts of Khenifra was placed in detention and her baby died six months later in 1973. As she told that story, she was holding her stomach with great violence and screaming, "They've torn out my insides; they've taken out my insides. I wish I had died." And she wept hot tears as if it had just happened.

No less violent suffering is caused by enforced separation from her children when the mother is detained, especially when they are left on their own without any protection. Anxiety and apprehension over the dangers that lie in wait for them, and fear concerning their fate without food or care are at their most intense. Women agree in expressing it in terms of "I almost went mad." or "I lost my mind." ... and their cry becomes more acute when it involves a baby or young children. In words from the testimony of a woman from Imilchil who was detained and her little girl was snatched from her breast when she was no more

than two years old, "I swear that this was the hardest trial that I have ever lived through. My heart shuddered (she breaks into tears). I almost went mad because she did not stop crying "Mummy, Mummy, Mummy!" They began to beat me and my children were left alone in the house. Nobody stayed with them even though they were very young indeed. Nobody asked about them."

The same feelings of panic, insecurity and pain beset women accompanied by their children. They tell of their feelings of distress when they see their children writhing with hunger or shivering with cold and fear, or struck down with sickness for which it is impossible to provide treatment, or when they are tortured in front of them.

Women are subject to health complications, some of which are common to both sexes, like rheumatism and illnesses of the digestive system, the heart and the arteries, and mental disorders. Others are specific to them as women, like suffering from infections and inflammation in their reproductive organs because of the absence of even a minimum level of hygiene, especially during menstruation.

III. Reparation for Injuries and Justice for Victims

The general concept of reparation for injuries is presented in a group of measures and procedures aimed at giving reparation to victims for the harm they have incurred from human rights violations. These measures and procedures usually take various forms, whether the classic form involving financial compensation or other forms of reparation such as recovery of their despoiled rights, reinsertion, restoration of dignity or confiscated rights and restitution.

Guided by its holistic approach to reparation for injuries, the Commission sought to link this with its other tasks in the fields of uncovering the truth, establishing justice and promoting the components of reconciliation. It was therefore keen that reparation for injuries should possess various symbolic and material dimensions, affecting individuals, groups and regions. It also made it one of the main elements through which the state could admit its guilt for what had happened.

It also considered it a key element of reform with the aim of guaranteeing non-repetition and the entrenchment of the components necessary for the construction of the future. Therefore, in the process of restoring confidence, we cannot confine ourselves to simply providing for material compensation or social services. We must also make sure that as citizens victims enjoy all their rights including the right to participate in the process of reform to consolidate the construction of a state based on law and institutions.

1. References and Standards

During the first meetings that it devoted to the subject, the Commission gave the utmost importance to international references on the subject of reparation for injuries, both at the level of the Commission as a whole and also on the level of the work group entrusted with reparation for injuries. From the beginning, it bore in mind the developments in international law regarding reparation for injuries, both on the theoretical level and on the level of practice. By perusing a group of relevant documents and references, the Commission was able to come to the following main conclusions:

- The provisions of international law contain important principles and standards scattered among a number of international and regional instruments related to human rights. These contain provisions expressly enunciating the right of persons who are the victims of grave violations to benefit from the right of recourse to the competent bodies on the national level. Indeed, some instruments contain provisions expressly enunciating the right of victims to compensation and reparation for injuries;
- The issue occupied an important place among the jurisprudential and theoretical innovations pioneered by the Human Rights Committee and the other committees involved. As well as the political efforts expended in the framework of the above-mentioned committees, these innovations led to the adoption of a document including the basic principles and guidelines on the right to remedy and reparation for victims of gross violations of International Human Rights Law and International Humanitarian Law;
- The above-mentioned document is one of the most important documents whose contents were borne in mind by the Commission, in view of the guiding principles and specific concepts it contains relating to the issue. Perusing its contents helped the Commission to formulate its approach to the subject of reparation for injuries.

2. The Experience of Truth Committees round the World

The Commission also gave the utmost importance to the experience of previous truth committees, as well as to those that were in existence during its term. To this end, the Commission devoted in-depth studies and consultations to the subject of reparation for injuries in other experiences round the world, in cooperation with experts from the International Centre for Transitional Justice. This enabled the Commission to discover that there was no one model to be adopted in this field. By virtue of this, the Commission was also able:

- To uncover the strengths and weaknesses of the different experiences, and the additions that the Commission could benefit from;

- To make deductions and draw conclusions concerning the philosophy and dimensions of the subject of reparation, especially the links between the subject of truth and how to confront the violations of the past in the framework of what has come to be known as transitional justice.

3. Recording the Approach of the Former Arbitration Commission and Assessing its Experience

Based on one of the competences entrusted to the Commission in line with its statute, empowering it to make a comprehensive assessment of the process of settling the file of the past of grave violations of human rights, one aspect of which was to peruse the experience of the Arbitration Commission, the Commission devoted itself:

- To studying and analyzing all the files concerning which the Independent Arbitration Commission for the Compensation for Moral and Material Harm Suffered by Victims of Enforced Disappearance and Arbitrary Detention and their Rightful Claimants handed down arbitration decisions either to compensate, to dismiss or to declare that it was not competent. All this was with the desire to formulate a sound opinion concerning the nature and quality of the jurisprudence presented by the former commission;
- To recording the approach of the previous commission, in a general manner, regarding the principles, the criteria and the rules that it adopted to assess and calculate the indemnities due to the victims and their rightful claimants. In this connection, the Commission prepared a document concerning the proceedings of the previous arbitration commission which was used as a reference in guiding the national experience of settling the past of grave violations of human rights. The document also provided some elements and conditions for the assessment of this experience, which made it easier to integrate it into the new components of reparation for injuries in the context of the broadened mandate of the Equity and Reconciliation Commission.

4. Formulating a Policy and Programmes of Reparation

The Commission devoted a significant part of its meetings and its activities to preparing its approach to and its policy on reparation for injuries. Keen to involve national public opinion, it took into consideration the opinions of national human rights organizations, whether working in the field on the national level or in immigration countries. Sometimes it did this by holding direct meetings and in other cases by what it deduced after studying the memoranda and proposals that were submitted to it.

In addition, the Commission categorized and analyzed the files submitted to it that it considered within its competence. This enabled it to extract the data and details that those files contained concerning the stated violations and the resulting harm suffered by the victims and their rightful claimants.

Based on the studies, research and assessments of the subject accumulated in the above-mentioned manner, the Commission formulated a philosophy, an approach and specific programmes in the field of reparation for injuries.

Concerning financial compensation, the Commission considered it a basic right of victims of grave violations of human rights, and gave it special attention. It adopted principles, criteria and precise units of account observing equality and solidarity among victims with the main purpose of seeking compensation for violations committed. The Commission also gave the same importance to the other forms of reparation for injuries. Pursuant to this, it adopted other forms of reparation programmes, in view of the fact that it had competence, in accordance with the provisions of its statute, to grant reparation for other individual injuries including: physical and psychological rehabilitation, social reinsertion, settlement of employment, administrative and financial situations, settlement of legal situations, and settlement of cases of dispossession.

It also considered reinstatement by means of uncovering the truth, erasing the effects of the violations and preserving the memory as a major component in its approach to reparation for injuries, with the same importance as the above.

The new components adopted by the Commission in comparison with the experience of other truth committees are the following:

- Community reparation, which aims mainly at helping to reinstate the regions which witnessed the occurrence of grave violations, and were harmed by that as a result of the marginalization and exclusion they were subject to;
- Gender mainstreaming, by bearing in mind the conditions that were specific to the women who were subject to grave violations.

In general, we can say that the Commission's approach to reparation for injuries, including financial compensation depends on the following main principles:

- Justice and equity;
- The provisions of International Human Rights Law, Morocco's international obligations, and the lessons and the precepts gleaned from the experience of transitional justice round the world;
- Admission of violations, uncovering the truth, and ensuring non-repetition;

- Taking measures to grant reparation for injuries on the individual and collective levels;
- Mainstreaming the dimension of gender in the policy and programmes of reparation for injuries;
- Developing a special approach in the field of community reparation for injuries;
- Involving civil society;
- Defining the obligations of all the partners in the field reparation for injuries on the individual and collective levels;
- Restoring trust, serenity and security;
- Honouring and recognizing the victims, and enshrining a sense of citizenship.

5. Processing the Files

First the Commission carried out a preliminary categorization and analysis of all the petitions that it had received, totalling 20,046. After the final preparation, it determined the exact number of petitions fulfilling the conditions of admissibility, which totalled only 16,861. This was due to the fact that a large number of the petitions related to the same cases or persons. In the process, it became clear that the majority of these petitions were simply letters, lacking information relating to the identity of the persons involved and the details and documents relevant to the claims made in the letters. Therefore, after the Commission had opened files for all the petitions submitted to it, it proceeded to complete the information and details relating to them. It did this by:

- Organizing field visits to the regions from which a large number of petitions came. During these visits, those involved were heard from directly in order to complete the information relating to their files;
- Corresponding with the initiators of the other petitions in order to complete the details and the documents relating to their petitions;
- Organizing receptions at the headquarters of the Commission in order to hear the petitioners so as to complete the information relating to their files;
- Preparing reports and conducting studies, investigations and hearings about the facts and the events which are surrounded by great ambiguity as regards the locations where they occurred, the nature and the scale of the violations committed, the parties to which the violations are attributed, the number and ages of the victims, and the periods of detention.

In processing the files submitted to it, the Commission relied on categorizing them into two types:

- Files that were ready, insofar as the details and the documents necessary to take a final decision were complete and the means of establishing the claims are included in the petition. In this case, the degree of correspondence with the facts relied on was checked, and summaries of the relevant petitions were prepared. This helped the Commission to formulate an opinion concerning the alleged violations and to make an appropriate decision;
- Files that were not ready in that they lacked means of proof that could confirm or deny the allegations contained in the petitions. All the files of this type were set apart in order to investigate the facts relied on.

In processing the files, the Commission sought the assistance of a group of university lecturers, researchers and lawyers, under the supervision of the members of the work group entrusted with reparation for injuries.

6. Final Decisions on Files

Processing the files in the way described above enabled the Commission to determine precisely the files relating to subjects not falling within the competence of the Commission, according to the provisions of its statute, and also to determine those which did fall within its competence. It was also able to determine the persons who fulfilled the requirements for compensation as set out by the Commission. In this way it was also able to determine the files that needed evidence to prove or deny the allegations contained in them concerning the subjection of the persons involved to violations of human rights.

Beginning from this point, the Commission made final decisions on the files as regards financial compensation and the other components of reparation for injuries.

6.1. Financial Compensation

On the above basis, the Commission was able to issue rulings fixing the compensation owed in each case where it was proved that the victims were subject to violations falling within its competence.

6.2. The Other Components of Individual and Community Reparation

a. Individual reparation

Concerning settlement of legal situations, the Commission did the following:

- It drew up a list of persons who were still suffering from problems linked to freedom of movement, and made contact on the subject with the Ministry of the Interior in order to lift the hindrances at border crossing points, and in order to remove the obstacles that still faced some victims of violations over their right to receive a passport;
- It prepared a draft memorandum explaining the royal pardon issued on 4 July 1994, and clarifying its purport.

b. Settlement of employment situations: administrative and financial

- The Commission determined the cases of persons suspended or dismissed from public or semi-public office whose situation had not been partially or totally resolved on the basis of the data contained in the files and the memoranda submitted to it;
- It prepared recommendations and memoranda containing cases and measures that it proposed should be taken by the government departments involved.

c. Social reinsertion

- It prepared lists of persons qualifying for social reinsertion according to the groups listed in the paragraph devoted to this under the heading of reparation for other injuries;
- It organized meetings with the government departments involved, the Mohamed V Solidarity Foundation, the institutions responsible for employment and the General Federation of Contractors to look for solutions for the victims who needed social reinsertion or qualifying professional training;
- It formulated proposals to help victims or the children of victims to enable them to benefit from education and professional training programmes if they were of an age permitting them to do that.

d. Dispossession

It carried out an inventory of cases related to dispossession and prepared reference cards relating to its material and legal aspects according to the following categorization:

- Cases of dispossession by the state following violations the victim had been subjected to;
- Cases of deliberate physical assault on real estate in the period during which the victim disappeared;
- Cases of dispossession in the public interest, where the Commission had to study the possibility of finding a settlement with the department involved;
- Preparing memoranda concerning the proposals submitted.

e. Health rehabilitation

The Equity and Reconciliation Commission considered health care for the victims of grave violations of human rights as one of its priorities and included them within its holistic approach to reparation for injuries and the health problems which the victims or their rightful claimants suffer from, in order to determine them and seek for ways to ensure that they are dealt with.

In order to diagnose the conditions of the victims complaining of physical or psychological illnesses, the Commission carried out a study that enabled it to prepare a preliminary report on the physical condition of the victims of human rights violations by analyzing the data found in the medical documents contained in their files.

The main goal of this study was to assess the nature and the severity of the illnesses that the victims of human rights violations were suffering from and to draw up options and strategies for permanently covering their treatment, both as regards individuals who suffer from illnesses or disabilities, or as regards the group of victims and their rightful claimants.

f. The results of the study

From a total of 15,592 files of victims and their rightful claimants that were processed by the Commission, 9,992 files (64.1%) relate to victims who stated that they suffered from health problems. Of these, there were 2,006 (20.1%) whose files contained medical documents of high or medium worth for proving their health situation and/or who had previously undergone medical examinations either in the Commission's medical unit or in the framework of the examinations that the Commission organized on-site in partnership with the Ministry of Health (Southern Provinces).

To analyze the data contained in the medical documents and to formulate the diagnosis or diagnoses and the main findings concerning the case of each victim, the Commission sought the assistance of a group of doctors who were either experienced general practitioners or specialists, who were put at its disposal by the Ministry of Health.

The results of the analysis of the summary of the illnesses diagnosed with regard to 2,006 victims were gathered into groups in accordance with the International Classification of Diseases (ICD – 10), which enabled it to uncover the general health aspects of the injuries resulting from the violations, delimiting different sorts, especially chronic illnesses linked to age with regard to a group of victims, whose acuteness increased the effects of the different physical and psychological injuries that they were subject to.

In addition to its interventions during its work in favour of numerous victims in cases of health emergencies etc., the Commission recommends that:

- All the victims concerning whom positive rulings have been issued in their favour after it was established that they had been subject to violations, who numbered 9,779, should benefit from the health cover system in the manner spelt out in the recommendation relating to this issue;
- Immediate comprehensive medical care should be given to 50 victims suffering from serious and chronic health conditions;
- A permanent structure should be set up to advise and assist the victims of violations and ill-treatment.

7. Community Reparation

The statute of the Commission enunciated the principle of collective or community reparation for injuries. This enabled it to establish its approach to the subject on the results and findings of the on-site visits to the regions that had experienced incidents in the past and were characterized by the occurrence of grave violations, or those in which were located centres of enforced disappearance or irregular secret detention centres. To the same extent, the Commission was able to use the deductions of the studies and research available to it, and the analyses and discussions conducted concerning them, in order to develop a mediation mechanism in the fields of economic and social development in the regions involved.

The Commission was also helped in formulating this new direction by the participative approach it had adopted with all those involved throughout its work in the regions involved: during the investigations it conducted to uncover the facts about enforced disappearance; when it was completing the information and details concerning a group of files submitted to it; when it was managing the cases linked to the burial places; and through the organization of public hearings.

The Commission also involved the human rights activists of civil society, associations working in the field of local development and also the development agencies and institutions working in those regions.

With the cooperation and participation of the above parties, it was able to set up economic development programmes, which enabled community reparation to take on its full meaning and significance in its approach. This helped it in submitting proposals to strengthen existing projects and to propose that attention be given to other fields that were not included in the projects that had been established thus far. This strengthened the community reparation approach and the mediation mechanisms.

- **Proposals and Recommendations** (See the other projects proposed in the appendices to Volume 3).

The Commission proposed the adoption and support of socio-economic and cultural projects in favour of a group of towns (Casablanca), communes (with special attention being given to women), and regions (the Rif, Figuig, Tazmamart, Agdez-Zagora, the Middle Atlas etc.). In particular, the Commission recommends transforming the former illegal detention centres (Tazmamart, Agdez, Derb Moulay Cherif in Casablanca).

Steps have been taken towards this, in that the Royal Armed Forces have moved out of the military barracks situated near Tazmamart, and the occupants of the building on whose bottom floor is situated the former detention centre in Derb Moulay Cherif have also been moved out and are in the process of being resettled.

8. Overall Results of the Commission's Work in the Field of Individual Reparation

a. The number of files submitted to the Commission: 16,861

b. A categorization of the files concerning which positive decisions were taken

Decision taken	No. of files	Proportion
Financial compensation	6,385	37.9%
Financial compensation with recommendation for reparation for other injuries	1,895	11.2%
Recommendation alone	1,499	8.9%
Total	**9,779**	**58%**

c. A categorization of the other files

Decision taken	No. of files	Proportion
Lack of competence, with referral to the competent body	66	0.4%
In abeyance	18	0.1%
Rejected	854	5.1%
Dismissed	150	0.9%
Inadmissible	927	5.5%
Lack of competence	4,877	28.9%
Incomplete files	190	1.1%
Total	**7,082**	**42%**

IV. Reconciliation

1. Processes and Components of Reconciliation

A gradual process of reconciliation began in the country under various forms and in various fields from the beginning of the 1990s. It focused on seeking decisions on the basis of constitutional principles and was crowned with the opposition voting to approve the constitutional amendments of 1996, its agreement to form a government, and an agreement being reached concerning a range of laws relating to the creation of a state of institutions and human rights.

This dynamic saw important legislative reforms, beginning with the provisions regulating public freedoms, elections, the repeal of laws dating back to the colonial era, and the historical compromise reached between different political, ideological and religious trends with regard to the amendment of the Personal Status Code (the Mudawwana). In this context, our country also saw qualitative changes on the level of institutional guarantees relating to the strengthening and protection of human rights, beginning with the creation of the Advisory Council on Human Rights (C.C.D.H.), and its development within the framework of the Paris Principles, the creation of the administrative courts, the establishment of the Royal Institute for Amazigh Culture (I.R.C.A.M.), and the creation of the Diwan Al-Madhalim (Board of Grievances) and the High Authority for the Audio-Visual Media (H.A.C.A.).

This development helped in the wide spread of the consciousness of the importance of citizens' participation in the management of public affairs, nationally and locally. In addition, the freedoms of expression, the press, affiliation and assembly grew stronger.

These changes are an expression of the reconciliation of Moroccans with their history, which was confirmed by the royal speech on the occasion of the inception of the Equity and Reconciliation Commission.

Against the background of these political and institutional developments, the human rights issue witnessed noticeable and accelerating progress on the level of thought and culture. This enabled the human rights dynamic to open up to doctrines of new schools relating to international human rights law and the experiences of transitional justice round the world regarding tackling the file of the past of grave violations of human rights in the country.

In harmony with their reconciliation with their past, Moroccans chose to reach a peaceful, just and equitable settlement of the past of violations by adopting restorative justice rather than adversarial justice, and historical truth rather than judicial truth, because the arena for this sort of justice is not the law courts but the public space, whose horizon stretches to include all spaces of social, cultural and political action.

In implementation of the provisions of the Commission's statute, and in particular Paragraph 7 of Article 9, which lays down, among the strategic goals, "contributing to the development and enrichment of a culture of dialogue, enrooting the components of reconciliation in support of democratic change in the country, constructing a state based on the rule of law, and spreading the values and culture of citizenship and human rights", and taking into account the fact that reconciliation is a constant process, the Commission sought to make the task of broadening its scope a horizontal objective that was invoked in all the programmes and activities that it organized. Since the beginning of its work, it was careful to create the conditions of free debate about the components of reconciliation, by organizing numerous conferences, seminars and field visits covering most regions of the national territory. To achieve this, it adopted a methodology of outreach work and communication in its informative dimension and its social content in partnership with different actors in order to achieve a common reading that would help to find the key to understanding the violations, irregularities and infringements that occurred, and allow the construction of a common memory, which is often absent in periods of repression.

Constructing a common memory requires the release of the dynamic of free discussion and debate, and democratic argument, with the purpose of strengthening once more a shared identity insofar as it is one of the constituents of the nation. Thus, working to uncover and affirm the truth, and to achieve a reading of the violations that occurred is a deep and long-term contribution to the reordering of this memory and a manifestation of the enrootment of the elements of reconciliation in its social and cultural sense without resorting to constraint, or imposing any form of forgiveness or individual reconciliation between the victims and those presumed to be responsible for the violations.

Given the close link between reconciliation and the preservation of a collective memory, the Commission sought to broaden the scope of those benefitting from reparation programmes, by including regions whose inhabitants had begun to feel that they were subject to marginalization and a sort of collective punishment by dint of specific historical events linked to grave violations of human rights or because of the presence of secret detention centres in them. Thus, the reparation for collective injuries programme began to be a physical expression of the spirit of positive citizenship and social solidarity, and a contribution to the strengthening of the presence of the human rights, democratic, and participatory approach in the ongoing economic and social development programmes.

In harmony with this, the Commission placed at the heart of its concerns the need to give persons harmed by the grave violations of human rights access to opportunities for reinsertion in order to restore their dignity, linked with reparation for group injuries to enable society at both the local and national levels to be positively involved in the ongoing process of building democracy in order to restore trust in a state of institutions and the rule of law, and to ensure its effective participation by means of citizenship, thus ensuring the enrootment of social justice and the success of the modern democratic society project.

The Commission adopted the principle of affirming the truth concerning the violations in a public manner and within a framework of free debate and calm discussion, in groups open to all elements of society, as a strategic choice to express the responsibility of the state rather than the responsibility of individuals.

One of the manifestations of reconciliation was the expression of the issue of non-repetition insofar as it is a component that concerns the future. Because of this, the Commission considered that the reform begun since the 1990s should be continued in order to ensure respect for human rights, in legislation, by means of institutions, as well as in practice. The purpose of this was to strengthen the process of constructing a state of law, so that democracy does not change into mere forms and mechanisms.

Thus the Equity and Reconciliation Commission intended that the process of uncovering the truth and granting justice to victims should first of all ease their sufferings and reinstate them by enabling them to regain their dignity and their complete feelings of citizenship. Secondly, this process was intended to help to deepen society's understanding of the events of the past, and to develop its concern to respect human rights as one basic element in strengthening national solidarity and social cohesion, thus creating the conditions of truth in order to transcend the tensions, the lack of trust, the despair within society and the tendency to manage conflicts in a violent manner.

2. Basic Elements of Reconciliation

2.1. The Revelation and Confession of What Happened: Public Hearings

In the context of supporting the process of reconciliation, the Commission organized seven public hearings in six regions of the kingdom of samples of victims, in order to restore the dignity of the victims whose rights had been violated, to reinstate them morally, to preserve the group memory, to share their pain and their suffering, and to alleviate the psychological after-effects. These hearings also played an educational role with regard to those responsible, public opinion, society and future generations, and they therefore represent a moment of great significance in the process of achieving justice and reconciliation.

For the first time, the victims were allowed to make their voices heard from an official public platform and to have people listen to their testimonies. This is an educative message raising awareness of the forms of those violations and the pain resulting from them, thus sensitizing people to the necessity of all the collective will of the state and society cooperating together to avoid repetition. Thus the first and second sessions, organized in Rabat on 21-22 December 2004, paved the way for the establishment of ''a national narrative'' about the suffering and pain of the past, thus creating additional gateways for Moroccans to be reconciled with their past and with themselves. They also helped to disseminate the Moroccan experience and to reaffirm Morocco's involvement in and commitment to democracy and modernity.

The idea of organizing the hearings focused on their educational role in creating greater preparedness for and acceptance by society and the state, and convincing them of the necessity of holding fast to, protecting and promoting the principles of human rights. It intended to enshrine the duty of bringing a just and equitable close to the page of grave violations and to prevent its repetition by affirming and broadcasting in an open and official way the scale those violations reached in the country, and the pain that they caused in their victims and their families, relatives and acquaintances, and their psychological, moral and physical effects on the local and national levels.

In parallel with this, it held open meetings to consult with and to gauge the opinions of local actors concerning the best methods to achieve community reparation in their regions and ensure citizens' reconciliation with their contexts and their history in many Moroccan towns and villages.

2.2. National Dialogue concerning the Components of Reform and Reconciliation

Since the beginning of its work, the Commission was careful to create conditions conducive to free discussion and serious dialogue about the components of reconciliation, by organizing

numerous conferences, seminars and field visits covering most regions of the national territory.

These field visits were an opportunity to communicate directly with the victims and their loved ones. These visits were powerful occasions either to listen to the victims or to support them psychologically and socially, or to complete the information in their files. In cooperation with the offices of the Ministry of the Interior, it also opened centres to welcome and to receive communications from petitioners and their rightful claimants in Azilal, Beni Mellal, and in the southern and northern provinces of the kingdom.

In the same provinces, it held dialogue sessions with victims and their rightful claimants, in an atmosphere of frankness and transparency, which made these sessions therapeutic moments complementary to the role played by the public hearings.

During the visits, it organized communication meetings with a broad spectrum of components of the political, trade union, associational and locally elected officials in these regions. They centred around explaining the deep bases of Morocco's experience in the field of transitional justice, and the importance of the process of reconciliation with one's history, one's context and oneself in consolidating the democratic transition.

The Commission was firmly convinced that the question of turning the page on the past and contributing to the construction of a modern democratic state and a society in which rights are protected and duties are clearly recognized, was a societal concern involving all Moroccans, which involvement should be expressed through the social, political and associational organizations that they were involved in. To encourage this, the Commission held a series of consultations in numerous universities and with political, trade union and associational actors. It also sought the assistance of national scholarly and scientific expertise to conduct studies and draft background papers for the final report, relating to issues like enforced disappearance, arbitrary detention, education in human rights, and social gender and the violations, and also to enrich its recommendations and proposals.

The Commission held four public academic conferences in Rabat, Marrakech, Tangier and Casablanca, which dealt with the following:

- The study and criticism of the literature of political detention;
- The problem of state violence from the theoretical, legal, political and historical points of view;
- The concept of truth in its philosophical, humanitarian and legal aspects;
- Trials of a political character witnessed in Morocco and within the remit of the Commission;

- A national forum on reparation for injuries.

These events took place with the participation of a host of human rights activists, various elements of the associational fabric and a number of intellectuals, academic researchers and practitioners.

It also organized five dialogue sessions, in the form of public discussion panels that were broadcast over the audio-visual media and the Commission's web page.

The dialogue sessions were intended to involve public opinion in frank and serious discussion concerning the political, intellectual and historical contexts of the human rights violations that Morocco had witnessed since the early days of independence, and concerning the reasons that led to their occurrence, and their repercussions on the political evolution of Morocco. It also sought to push towards ways of formulating practical projects and work programmes to consolidate a state based on law and institutions that protects liberties and ensures non-repetition.

The proceedings of these sessions took place with the participation of those with theoretical and practical expertise and people concerned and active from political and civil society. They concentrated on analyzing the political, economic and social contexts of the violations, and researching practical ways to transcend means of punishment that were contrary to human rights. There were also proposals for institutional, legal, and educational reforms meant to ensure protection of liberties and the consolidation of the rule of law.

2.3. Positive Preservation of the Memory and Dealing with the Archives

Reconciliation with history also requires removing obstacles that hinder research into this history, organizing the accumulation of experience through the generations, and establishing communication between them in such a way as to preserve the memory. This demands a comprehensive review of the state of the public archives in preparation for a radical reform.

To this end, the Commission organized a seminar on the subject of the archive in Morocco, with the participation of specialists in history, the archive, and documentation. This meeting devoted itself to the following:

- Creating interest in those involved concerning the necessity of organizing the archive;
- Organizing the archive and the national institution in charge of it within a clear and transparent legal framework that ensures the maintenance, preservation, development and exploitation of the archive, and organizing access to it by citizens, researchers and institutions;

- Strengthening and updating training programmes on the archive, in such a way as to provide human resources specializing in this field with the know-how and the competence necessary to manage the archive in a rational and democratic manner.

In the context of the final settlement of the after-effects of enforced disappearance, the Commission formulated a new approach to preserving the memory, aimed at converting former detention centres into profit-generating projects to preserve the memory. To this end, it organized meetings and consultations with local actors, including elected officials, associations, political parties, and local authorities in the regions where these centres were located, as well as with individuals and groups in the regions where the belief prevailed among citizens that their marginalization and isolation were linked to the violations of the past, in the Middle Atlas, the Rif, the East, the South-East and the Haouz.

Chapter Four

RECOMMENDATIONS

I. Basic Motivations

In addition to the provisions of the Commission's statute relating to the submission of proposals meant to ensure non-repetition, the erasure of the effects of the violations, and the restoration and strengthening of trust in the rule of law, the Equity and Reconciliation Commission embarked on the preparation of the recommendations that will crown its final report from the assumption that the political will was present to continue the efforts to promote and strengthen the protection of human rights, in the context of the democratic transition of the country, and to support the process of reform taking place in various fields relating to human rights. In implementation of these general motivations, the Commission's recommendations depend upon the following bases:

- His Majesty's call to reform the judiciary, in order to ensure the rule of law and the equality of all before it whatever the circumstances, and to strengthen its role in winning the struggle for democracy and development; and His Majesty's insistence on the necessity of the separation of powers on the level of the administration and the state; and the necessity to provide citizens with swift and efficient legal means to defend their rights, thus affirming a new understanding of authority;
- The broader humanitarian dimensions of the National Initiative for Human Development;
- The constitutional entrenchment of human rights by stressing the kingdom's commitment to them as they are internationally recognized;
- The continuation of reform projects and the updating of the legal framework relating to individual and collective rights and freedoms to strengthen the protection of human rights in terms of their bases and legal guarantees; and the launch of a national discussion concerning the options and bases that must be laid down in the field of penal policy;
- The affirmation of the need for a qualitative revision of the Family Status Code with a view to consolidating the legal guarantees of the rights of women and children and the support of the family on a basis of justice and equity;
- The reconsideration of cultural rights and the Tamazight language as a constituent of the national identity.

Invoking all these gains, the Commission has prepared the recommendations and proposals that have crowned its final report trusting that they will be an additional contribution to the reform process currently under way in the country aiming to entrench human rights, secure democracy and strengthen the rule of law.

II. Criteria and Methodology used in Preparing the Recommendations

The Commission's work relating to the preparation of the recommendations depended on the following:

- International standards relating to human rights and the benefits gained from the comparative experiences of transitional justice round the world;
- Deductions from the Moroccan experience concerning the grave violations committed in the past in terms of their types, their extent, the responsibility of different institutions for them and the deficiencies in the fields of law, justice, and security governance;
- Academic studies and research conducted on the legislative and statutory texts relating to human rights; and on the prerogatives and functions of the bodies involved in or obtruding into the field of human rights;
- Dialogue and consultative meetings with political parties, associations and non-governmental organizations involved and representatives of the public authorities.

III. Main Fields of Proposed Reform

1. Consolidating Constitutional Protection of Human Rights

The Commission considers that it is not within its prerogatives to take a position concerning the political or party points of view that have been expressed during the public discussion about the constitution. However, it raises a number of issues which it suggests should be taken into account in any revision of the constitution:

- Respect for human rights and improving security governance should be consolidated, especially in case of crisis;
- It affirms the principle of the primacy of the standards of International Human Rights Law and Humanitarian Law over domestic laws;
- The substance and tenor of basic freedoms and rights that the constitution contains should be expressly enunciated therein; so should the principle that the regulation of these rights is the prerogative of the law so that the legislator himself is obligated, whenever he embarks upon regulating their practice, to legislate, in addition to the guarantees already present, other protective guarantees along with the methods of recourse to justice that are open to citizens who may feel that their practice of any of these freedoms or rights has been infringed;

- The constitutional guarantees of gender equality in political, economic, social and cultural rights should be consolidated;
- The independent constitutional control of laws and autonomous regulations issued by the executive branch should be strengthened, and the right of invoking an exemption of unconstitutionality of a given law should be enunciated in the constitution;
- The practice of enforced disappearance, arbitrary detention, genocide, and all forms of cruel, inhuman or humiliating treatment and punishments should be criminalized;
- All forms of discrimination internationally prohibited, and all forms of incitement to racism, xenophobia, violence and hatred should be prohibited on the basis of supreme constitutional principles;
- The principle of the presumption of innocence, and the guarantee of the right to a fair trial should be affirmed in the constitution;
- The constitutional principle of the separation of powers, particularly as it concerns the independence of the judiciary and the statute of the judiciary should be consolidated, and any interference by the executive branch in the organization of justice and the conduct of the judicial branch should be expressly prohibited;
- The constitutional guarantees of the independence of the Supreme Council should be strengthened;
- The powers of parliament to investigate facts concerning respect for human rights and uncovering any events that might be evidence of grave violations should be clarified and strengthened;
- The responsibility of the government to protect human rights and preserve public security, order and administration should be affirmed.

2. Pursuing Adherence to the Conventions of International Human Rights Law

- The Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at Abolition of the Death Penalty should be ratified;
- The Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women, should be ratified, and the reservations held by Morocco about some provisions of the said convention should be withdrawn;

- The statute of the International Criminal Court should be ratified in completion of Morocco's signing up to it, while examining the constraints raised.

3. Consolidating the Legal and Judicial Protection of Human Rights

3.1. Consolidating the Laws on Individual and Group Rights and Freedoms

- The prior and post procedures and mechanisms should be refined in such a way as to guarantee the balance between the necessity to extend the limits of freedom and the protection of the dignity of individuals and their private lives, and the exigencies of fighting terror, hatred, violence and discrimination;
- The judicial supervision of what happens after the issue of judgements should be consolidated;
- The means of strengthening and improving the self-regulation of professional judicial institutions should be refined, especially as regards ethics, principles of behaviour, and the settlement of internal conflicts.

3.2. Criminalization of Gross Violations of Human Rights

- The country's domestic penal legislation should conform with its treaties and obligations regarding international standards relating to enforced disappearance and arbitrary detention;
- The Equity and Reconciliation Commission welcomes the government's initiative to prepare a draft law criminalizing torture, in implementation of the recommendation of the Advisory Council on Human Rights and also welcomes parliament's adoption of it pending its official publication. It considers that its provisions must be strengthened in accordance with the above.

4. Establishing a Strategy to Combat Impunity

Building on the results of its final report, the Equity and Reconciliation Commission calls for the establishment of a comprehensive integrated national strategy aimed at combating impunity, a strategy depending on protective legislative provisions in conformity with international standards and the requirements for entrenching and protecting the ongoing process of democratization, with the involvement of all parties, legal, judicial, civil, educational and social, by means of programmes aimed at combating, preventing, sensitizing, educating and training, and ensuring efficient punitive measures and a transparent and just oversight to make a clear break with the culture of impunity.

5. Upgrading Penal Policy and Legislation

- The results of the national dialogue conducted on the occasion of the Symposium on Penal Policy in Morocco held in Meknes in December 2004 should be implemented, given that its conclusions and recommendations are considered an excellent basis for the formulation of ways to reform the country's penal policy;
- The revision of the Code of Penal Procedure with additional and complementary provisions enshrining the respect of human rights should be consolidated, moving towards an investigative justice rather than an accusatory one, and correcting the dysfunctions that have been exposed by practice and have hindered the legal profession;
- The recent revision of the Penal Code should be consolidated, in order to strengthen the legal guarantees protecting women against violence;
- The recommendations issued by the Advisory Council on Human Rights in its report on conditions inside penal institutions should be implemented.

6. Upgrading Justice and Strengthening its Independence

In addition to what is stated concerning the constitutional strengthening of the judicial branch, the Commission proposes:

- Separating the function of the Minister of Justice from the Supreme Council of the Magistracy;
- Housing the Supreme Council of the Magistracy in the main seat of the Supreme Court in Rabat;
- Continuing and accelerating the pace of reform of the judiciary and improving its performance;
- Pursuing the modernization of courts;
- Giving incentives to judges and judicial officers, improving their basic and continuous training, and assessing their performance on a regular basis;
- Pursuing projects to organize the different judicial professions and make them capable of self-regulation as regards rights, duties and ethics;
- Reviewing the organization and the competences of the Ministry of Justice in such a way as to prevent any interference or influence on the administrative apparatus in the course of justice and the conduct of trials;

- Criminalization of interference by the administrative authority in the course of justice;
- Providing more severe punishments for any breach or infringement of the inviolability and independence of justice.

7. Implementation of the Recommendations of the Advisory Council on Human Rights concerning Prisons

- The recommendations issued by the Advisory Council on Human Rights contained in its special report on the conditions in penal institutions issued in 2004 should be implemented;
- A restricted administrative board should be created, composed of judges, educators and specialists to oversee the management of penal institutions.

8. Towards Good Security Governance

8.1. The Responsibility of Government in the Field of Security

- The principle that "the government is corporately responsible" for security operations, for maintaining public order, and protecting democracy and human rights should be activated. On this basis, the government should be obliged to inform the public and parliament of any incidents requiring the intervention of public force, of the exact course of such intervention, of security operations and their results and responsibilities, and the corrective measures it might adopt.

8.2. Parliamentary Supervision and Investigation of Security Matters

- The political parties represented in parliament should implement the principle of their political and legislative responsibility concerning the protection of human rights and the basic rights of citizens, whenever there are claims pertaining to the occurrence of grave violations of human rights or grave deeds infringing or threatening the values of society and its democratic choice;
- The performance of parliamentary investigative committees should be improved, with security and legal specialists to help them to prepare objective meaningful reports uninfluenced by purely political considerations;
- The mechanism of accountability and direct hearings before parliament concerning responsibility for the maintenance of security and public order should be strengthened;

- The parliamentary practice of accountability and hearings should be broadened to include, in addition to the ministers entrusted with security and justice, all those directly responsible for the security apparatuses and deterrent operations on the national, provincial and local levels.

8.3. The Position and Regulation of the Security Apparatuses

- The legal framework and the related statutory texts concerning prerogatives and regulation of the process of taking security decisions, the means of intervention during operations, the bodies overseeing and evaluating the work of the intelligence services, the administrative authorities entrusted with maintaining public order and those that have the authority to use public force should be clarified and then published.

8.4. National Oversight of Security Policies and Practices

- Security crisis states, the conditions and the technologies for intervening appropriate for each state, as well as the means of oversight and drawing up reports for security interventions, should be described and categorized;
- The political oversight of security operations and maintaining public order should be made immediate and transparent, by publishing reports about the security operations and about the losses that they led to, the reasons for these, and the corrective measures taken.

8.5. Provincial and Local Oversight of Security Operations and Maintenance of Public Order

- Security operations and interventions by public force on the orders of provincial or local authorities should be placed under the immediate supervision of local or provincial oversight and monitoring committees, with a wide range of representation;
- A detailed report after each operation of this kind should be published, describing the events, the operations and the results, and the reasons for any excesses that might have occurred.

8.6. Criteria for and Limits on the Use of Force

- Each organ or agent of authority or security should be obliged to safeguard all documentation of a decision to intervene or resort to public force, in addition to preserving reports, despatches and correspondence connected to such;

- Oral orders or instructions should be considered invalid, except in cases of imminent danger, provided that the oral orders given at that point are followed by others written and signed to confirm such;
- There should be strict administrative and penal sanction for anybody who is proved to have concealed human or material losses that might have resulted from the excessive use of public force, or to have forged, destroyed, hidden or ignored any evidence of excesses that might have occurred or documents relating to such;

8.7. Programmed Training of Agents of Authority or Security in the field of Human Rights

- Basic and continuous training programmes should be established in the field of human rights and the culture of citizenship and equality, for officials and agents of security and those entrusted with maintaining order;
- Guide books and didactic aids should be prepared and published with the purpose of instilling in the various officials and agents of security a comprehensive awareness and sensitivity to the rules of good governance at the level of security, and respect for human rights.

9. Promoting Human Rights through Education and Awareness-raising

- The Equity and Reconciliation Commission calls for the drawing up of a comprehensive long-term national plan concerning this, springing from the national consultations that are taking place concerning the initiative of the Advisory Council on Human Rights aiming at drawing up a national plan of education about and promotion of human rights.

10. Academic Research concerning the Distant and more Recent History of Morocco

- Preservation of all national archives, and coordination of their regulation among all the services involved. A law should also be drafted regulating the conditions of their preservation, the periods when they should be open to the public, the conditions for consulting them, and the sanctions for damaging them;
- There should be a gradual review of the content of the history syllabi in the country;

- An independent national institute should be established among the universities to be given the task of documentation, research and publication concerning the distant and more recent history of the country. Within the framework of the mission entrusted to it, it should undertake everything to do with documentation, research and publication about the historical events connected to the past of grave violations of human rights, and to the developments regarding human rights issues and democratic reform.

11. The Advisory Council on Human Rights in the field of Combating Violations

- The competence of the Council to combat violations (either automatically or on the basis of a request) should be strengthened so that it can investigate the facts relating to human rights violations, and monitor the conduct of trials;
- The level of cooperation of the public authorities with the Council should be raised with regard to its investigations, granting it the right to have access to relevant information and reports, and to be informed of corrective measures taken by the authorities.

IV. The Framework for Submitting the Final Report Containing the Recommendations

- The report should be considered as a national and public reference document to be integrated into the educational system in general, and in the basic and continuous professional training of agents of authority, security men, judges, judicial officers, lawyers, and public officials in penal institutions;
- Activities of a media and educational nature should be organized to present the report to citizens;
- Lectures and fora should be organized to present and discuss the report on the international level in order to disseminate the Moroccan experience in the field of truth and reconciliation;
- A national event should be organized to honour women who were victims of the past of grave violations of human rights, as an acknowledgement of the pain that they endured and the sacrifices that they made.

V. Following up the Implementation of the Commission's Recommendations

- A committee should be created in the Advisory Council on Human Rights to monitor the implementation of the recommendations issued by the Commission in the fields of truth, reparation for injuries, and guarantees of non-repetition;
- A joint ministerial committee should be established on the government level to monitor the implementation of the Commission's recommendations, representing the Ministries of the Interior, Justice, Culture, Media, Education and Professional Training;
- The implementation of the results of the proceedings of the Commission in the fields of reparation for injuries should be monitored by means of a monitoring mechanism to take official responsibility for the preparation of the rulings issued regarding compensation of victims and the procedures for informing the said victims. It should also be responsible for directing the rulings to the government for them to be implemented, and ensuring that the Commission's recommendations are implemented regarding the programmes for reparation for other injuries;
- Technical committees should be established to monitor the implementation of community reparation for injuries projects, on which should be represented the sectors and services involved. It should inform the government and the monitoring committee attached to the Advisory Council on a regular basis of the results of its proceedings;
- Joint monitoring committees should be established composed of elected officials, representatives of the local authorities and non-governmental organizations, and representatives of the government technical services involved. They should be entrusted with monitoring the implementation of the proposed projects on the commune, provincial and regional levels. These committees should present regular reports to the local communes, the government and the monitoring committee attached to the Advisory Council above-mentioned.

VI. The Preservation of the Commission's Archive and Regulating its Use

- The Commission's entire archive should be transferred to the Advisory Council for Human Rights, which shall be responsible for keeping and organizing it, and also determining the method and conditions for consulting it.

VII. The Official Public Apology

- The Commission recommends that, after it has presented its final report, the Prime Minister should make a public announcement before parliament, including an official apology in the name of the government for the state's responsibility for the proven grave violations of human rights of the past.

VIII. Ensuring Health Cover for the Victims

- The Commission recommends ensuring basic health cover according to Law 6500 for persons who have been ruled to be victims of human rights violations;
- Pursuant to this, it proposes that those persons be integrated, in the first phase, in accordance with Clause 2 of this law, as pensioners for whom the state pays the necessary expenses to the bodies responsible for medical cover;
- In the second phase, the Advisory Council on Human Rights may assist in preparing a draft amendment concerning this, in agreement with the parties involved. Pursuant to this, this group should be clearly absorbed within the framework of this law.

IX. The Consolidation of Respect for the Rights and Interests of Moroccan Communities Abroad

- The Equity and Reconciliation Commission commends the royal command of His Majesty Mohamed VI, directed to the government, ordering the guarantee of the full participation of Moroccan emigrants in national elections, and the establishment of a supreme council for Moroccan communities abroad;
- It considers that the drawing up of a political plan respecting the rights and interests of Moroccan communities abroad requires consultation and coordination between the Council which is to be established and all the associations and actors within them on the one hand, and the government on the other;
- It recommends the creation of a National Migration Museum, to preserve the memory of migrants and their contribution to history;
- While waiting for that, it demands a freeze on the activity of Moroccan expatriate associations (*amicales*), which in one way or another had a role in the violation of the rights of migrants, in every public or quasi-public institution;

- It recommends that the committee charged with following up compensation operations take care to resolve the problems of expatriated persons who have not yet returned to the homeland by solving outstanding administrative problems.

X. Completing the Process of Promoting and Protecting Women's Rights

- The significant gains achieved in the field of promoting women's rights and completing the process of reforms in the field should be consolidated by drawing up a comprehensive, forward-looking, integrated, national enhancement strategy aiming to train and empower women, to put an end to their weak position by combating illiteracy, poverty, discrimination and violence, and to develop their participation in public life and decision making by strengthening and consolidating incentive measures;
- A national mechanism should be created to promote and protect women's rights and to follow up the implementation of public policies in the field, invested with the prerogatives and provided with the means necessary to accomplish its task;
- Counselling centres for women, including psychological and legal aid, should be consolidated both institutionally and geographically for women victims of violence. Their services should be available to women victims of the past of violations.

The Advisory Council on Human Rights Publications

2009

Legal Deposit : 2009/0399
ISBN : 978-9954-1-0007- 4

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