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BROKEN PROMISES:

THE EQUITY AND RECONCILIATION COMMISSION AND ITS FOLLOW-UP

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1. INTRODUCTION

In 2009, the Kingdom of Morocco celebrated the 10th anniversary of the accession of King Mohamed VI to the throne. The official discourse marking the occasion emphasized the progress made since the rule of King Mohamed VI in a numbers of fields including democratic governance, economic development and human rights. In the past decade, the human rights situation in Morocco and Western Sahara witnessed some improvements. However, the Moroccan authorities' prevention of a weekly to distribute an issue carrying a census on the popularity of the King in the wake of celebrations - albeit demonstrating a favourable opinion of the ruler- was a grim reminder that some issues remain taboo and that red lines continue to exist and to be enforced against those who dare to transcend them.[1]

There is no doubt that the human rights situation in Morocco and Western Sahara today has much changed since the "years of lead" (*les années de plomb*)- a period under the rule of King Hassan II marked by widespread political repression and grave violations of human rights. While the whole period between Morocco's independence in 1956 and the death of King Hassan II in 1999 was characterized by serious human rights violations, it is between the 1960s and early 1990s that human rights violations reached their highest level. Violations were particularly rampant when the Moroccan authorities felt under internal or external security threat from opponents of the status-quo such as in the aftermath of the attempted military coups and during the armed conflict with the Polisario Front[2]. Systematic use of torture or other ill-treatment, the enforced disappearance of hundreds of individuals and the arbitrary detention of thousands characterized this dark period.

Since the early 1990s, there have been efforts to "turn the page" on past human rights violations through the release of hundreds of political prisoners and prisoners of conscience, the introduction of some legal and institutional reforms and the financial compensation of a number of victims of human rights violations and their families. However, it was the establishment and work of the Equity and Reconciliation Commission (Instance Equité et Réconciliation, IER), following King Mohamed VI's decision in November 2003 approving the IER's creation, that truly signalled a symbolic break with the past.

The IER, which was mandated to enquire into gross human rights violations that occurred between 1956 and 1999 particularly enforced disappearance and arbitrary detention with the aim of ensuring that such violations are never repeated, gave birth to hopes that a genuine effort was under way to address the legacy of the past. Its creation signalled that there was strong political will at the highest level of the state to improve the human rights situation in Morocco and Western Sahara. Indeed, the IER's work was unprecedented in acknowledging the Moroccan government's responsibility for committing grave human rights violations in the past and in seeking to provide redress for its many victims. However, the IER

was born with serious flaws that partially explain its failure to deliver on all the promises of equity and reconciliation. The IER's mandate did not encompass all human rights violations committed between 1956 and 1999, and regrettably, despite outcries by victims and human rights organizations, excluded the identification of perpetrators of grave human rights violations. While the IER interpreted its mission more widely and addressed certain violations initially left outside its mandate, it was not as innovative and assertive in challenging the exclusion of justice from its work. Particularly disappointing was its failure even to recommend that perpetrators of human rights violations are held accountable. To date, the overwhelming majority of Moroccan officials alleged to have committed gross human rights violations during the period covered by the IER's mandate have not been brought to justice; and there are no indications of the authorities' intention to do so in the future. Instead, the official discourse promotes the notion of "reconciliatory justice rather than accusatory justice", which translates into impunity for grave human rights violations.

The IER's final report submitted to the King in November 2005 and made public in January 2006 did help shed light on the scale and seriousness of human rights violations that took place in the past. It also offered a series of recommendations aimed at providing reparation for victims and at reforming the legal and institutional framework as to ensure the non-recurrence of such gross human rights violations. However, four years after the IER finished its work, the expectations raised by this groundbreaking initiative – the first and sole such effort in the Middle East and North Africa region - have not been fully met. Of particular concern is the failure of the Moroccan authorities to fully comply with their international obligations in granting victims of human rights violations their rights to truth, justice and adequate reparation.

A major shortcoming of the IER truth-seeking process is its offer of only partial truths: truths as seen and lived by the victims and their families, without including in its work the narratives and perspectives of the perpetrators and the forces behind such human rights violations. This timidity was perhaps out of fear that unveiling the whole truth would lead to unacceptable conclusions, from the perspective of the Moroccan authorities, about the monarchy and about individuals who continue to hold powerful positions of authority; thereby, shaking the fundaments of the country's political structure. Even those "truths" that the IER declared to have uncovered such as reaching conclusions in about 750 cases of enforced disappearance have yet to be made public. Four years have gone by since the end of the truth-seeking process, yet a list of all cases of enforced disappearance clarified by the IER has not been published despite repeated promises. This failure, while regrettable in itself, is also highly symbolic of undelivered promises to take concrete steps to address the legacy of the past.

Another major concern is that the IER rather than addressing the particular breadth of violations suffered by Sahrawis, increased their feelings of marginalization. It failed to organize a public hearing in Western Sahara on par with other regions where it held televised sessions, which gave voice to victims recounting their suffering. The IER's final report provided very little detail of enforced disappearance and other human rights violations targeting Sahrawis. It failed to even acknowledge that the region suffered disproportionally as exemplified by its exclusion of Western Sahara from the collective reparation programme

designed for areas particularly affected by violations during the "years of lead". Neither did the IER succeed in improving communications and rebuilding trust with victims, families and civil society organizations in Western Sahara – this lack of trust itself being a by-product of the violations suffered in the region at the hands of the Moroccan authorities.

After the IER ended its mandate in November 2005, the Advisory Council on Human Rights (Conseil Consultatif des Droits de l'Homme, CCDH), the national institution for the protection and promotion of human rights, was tasked by the King with following-up the IER's work and implementing its recommendations. A major responsibility entrusted to the CCDH has been putting in place a reparation programme for victims including following-up on the decisions made by the IER on financial compensation and other forms of reparation. While over 17,000 individuals have been awarded financial compensation by September 2009 according to the CCDH, and a smaller number of victims have also benefited from other forms of reparation such as health care and restoration of employment; questions remain as to the reparation scheme's ability to meet victims' needs. A major shortcoming is the lack of an appeal mechanism enabling victims to challenge the decisions in their cases - particularly regrettable given the fact that complaints persist regarding the transparency and equity of the reparation programme. Other tasks performed by the CCDH in the framework of its follow-up to the IER included investigating 66 pending cases of enforced disappearance that the IER did not clarify and advocating for institutional and legal reforms.

Many victims and non-governmental organizations (NGOs) have expressed their frustration to Amnesty International with the CCDH's implementation of the recommendations of the IER including delays in delivery, lack of consultation with independent bodies and absence of transparency. Despite its efforts to follow-up on the work of the IER, the CCDH has not shown initiative in challenging the official discourse and approach to addressing violations of the past. Particularly disappointing is its reluctance to play a more positive role in publicly calling on the Moroccan authorities to comply with their international human rights obligations. Instead, the CCDH appears at times to be defending and protecting the Moroccan authorities' human rights record, as exemplified by its President's, Ahmed Herzenni's, actions in 2008 of suing newspapers which revealed the content of closed hearings of some high-level state officials with the IER.

During a meeting with Amnesty International in June 2009, Ahmed Herzenni, argued that the task of following-up on the work of the IER is almost completed and that his institution, the CCDH, is preparing to turn its attention away from violations of the past to other pressing issues such as socio-economic development. Victims of human rights violations and their families, associations representing them, and other national human rights organizations disagree with his assessment. Amnesty International shares their concerns that the full truth in all cases of enforced disappearance has not been established, that justice has not been addressed and that adequate reparation for all victims of human rights violations has not been awarded. Without denying the importance of addressing other social ills and ongoing human rights violations by the CCDH, Amnesty International firmly believes that prematurely bringing the process of addressing the legacy of the past to a close without resolving pending concerns undermines the progress made and risks to leave victims frustrated by the initiative and society unprotected from further human rights violations.

Furthermore, reforms of the legal and institutional framework that facilitated the commission of such abuses to continue in a climate of virtually total impunity are yet to be implemented despite the stated objective of the IER to introduce and consolidate safeguards against the recurrence of such gross human rights violations. Despite endless talks of reform by the Moroccan authorities and the CCDH and the launch of several official initiatives notably in regards to the reform of the justice system, undue delays question the political will to install safeguards against the commission of human rights violations and to fundamentally change the political structure which allowed them to occur. Even less controversial measures proposed by the IER such as the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty have not been implemented.

Human rights violations such as the excessive use of force by law enforcement officials, unexamined claims of torture or other ill-treatment, undue limitations to the rights to freedom of expression, association and assembly in relation to issues deemed sensitive by the Moroccan authorities such as the status of Western Sahara – all violations common during the "years of lead"- persist today, albeit on a reduced scale. This demonstrates how essential it is to address the concerns of victims and human rights organizations on the shortcomings of the work of the IER and its follow-up. King Mohamed VI, as head of state and instigator of the equity and reconciliation process, should entrust all relevant authorities with the responsibility of addressing the flaws in the process without any further delay. As a sign of genuine intent to improve the human rights situation in Morocco and Western Sahara, the King should issue an explicit public apology for violations committed by the Moroccan government. Such an apology would help restore the victims' dignity and rebuild their trust in the Moroccan authorities fading against the backdrop of unmet promises four years after his speech marking the end of IER's work on 6 January 2006. Unless real political will is shown to deliver on the pledges made by the IER and the CCDH, whatever progress made to date will be overshadowed. Without revealing the whole truth, ensuring accountability for human rights violations and putting in place safeguards against their recurrence, talk of a genuine desire to face the past in the aim of building a better future seems hollow. To avoid the risk of the process launched with the creation of the IER being perceived as a public relations exercise designed to improve Morocco's image and pacify victims and their families with financial compensation and other benefits, it is crucial to immediately rectify shortcomings and gaps in the work of the IER and its follow-up.

ABOUT THIS REPORT

This report provides an assessment by Amnesty International of the work of the IER and the efforts of the CCDH to follow-up on its work and recommendations after the end of the Commission's mandate in November 2005. It outlines Amnesty International's concerns that the rights of victims to truth, justice and adequate reparation have not been fully met as set out in international human rights law and standards; and offers recommendations in light of Morocco's international obligations. In doing so, the organization hopes to support the efforts by victims and their families, associations representing them and other human rights NGOs in Morocco and Western Sahara who have been at the forefront demanding that Moroccan authorities provide an adequate response and an effective remedy to victims and their families - many of whom have been waiting for decades for an explanation and reparation for

their suffering.

This report is based on information collected by Amnesty International since the creation of the IER, including during a fact-finding visit to Morocco and Western Sahara in February and March 2008. During the visit Amnesty International delegates met with members of the CCDH, the Minister of Justice and the Minister of Interior, victims of past and current human rights violations and their relatives, including associations of victims and of families of the disappeared, and other civil society organizations. The information provided in this report has also been enriched by further discussions with various senior government officials and the President of the CCDH, Ahmed Herzenni. For instance, Amnesty International's Secretary General, Irene Khan, met with the Moroccan Minister of Justice, Abdelwahed Radi, and the Moroccan Minister of Interior, Chakib Benmoussa, in March 2009 and discussed, among other issues, the efforts of the Moroccan authorities to address the legacy of past human rights violations. Amnesty International also had the opportunity to deepen its understanding of developments in the work of the CCDH during meetings with its President, Ahmed Herzenni, in Washington DC and London in March and June 2009, respectively.

The material used to compile this report also includes information provided to Amnesty International throughout the years by victims of human rights violations, their families, associations of victims and families of the disappeared and other human rights organizations and groups in Morocco and Western Sahara. The organization has a long history of documenting human rights violations in Morocco and Western Sahara, and Amnesty International members have advocated on behalf of many individual victims of human rights violations, in particular political prisoners and prisoners of conscience.[3] Specifically, Amnesty International members have campaigned on the cases of victims of enforced disappearance after their arrest by members of the Moroccan security forces, have continuously asked for clarification of their fate and whereabouts and have tried to provide support and show solidarity to their relatives over time.

Since the establishment of the CCDH in 1990 and the Moroccan authorities' public pledge to resolve outstanding human rights issues, Amnesty International has actively monitored progress made in this stated objective. The organization collaborated with the CCDH and with the IER in providing recommendations to address the legacy of the past and encouraged both institutions to ground their efforts in human rights law and standards. In its meeting with and submissions to the IER and to the CCDH, Amnesty International presented recommendations and suggestions based on international human rights law and standards at various stages of the work of the IER and its follow-up. It also submitted information on specific cases of human rights violations, particularly individual cases of enforced disappearance in Western Sahara.[4] In August 2009, Amnesty International submitted a Memorandum to the Advisory Council on Human Rights on the follow-up to the Equity and Reconciliation Commission. This memorandum addressed to the CCDH detailed shortcomings in the process launched with the establishment of the IER to fully realize the rights of victims to truth, justice and adequate reparation. It sought a number of clarifications and formulated a series of recommendations aimed at ensuring that Morocco complies with its international obligations and at improving the human rights situation in Morocco and Western Sahara. Amnesty International received the explanations and clarifications of the CCDH in September 2009, which this report reflects as

appropriate and which can be found in their entirety in French in the Annex of this report.

Amnesty International also presented the concerns and recommendations outlined in this report to the Moroccan authorities so that "the violations of the past are not repeated", a stated aim at the time of the establishment of the IER urging them to implement the recommendations made throughout this report, but treating as immediate priorities those highlighted in Part 8.2. Amnesty International firmly believes that the objectives set out by the IER will only be achieved when the full truth about past violations is revealed; perpetrators of human rights violations are brought to account in proceedings meeting international standards for fair trial; adequate reparation is awarded to all victims of human rights violations and comprehensive legal and institutional reforms are put in place.

The report starts by providing a background on the nature and extent of violations that took place during the period examined by the IER (1956-1999), on the official initiatives introduced to tackle past human rights violations in the run-up to the establishment of the IER, and on the two institutions, the IER and the CCDH, whose role in addressing the legacy of the past is examined in this report. The remainder of this report is devoted to assessing the work of the IER and its follow-up by the CCDH in light of international human rights law and standards. The main body of the report is subdivided into five parts – the first looks at the mandate, methodology and characterization of human rights violations by the IER; the next three parts look at the way the IER and its follow-up mechanism addressed the rights of victims of human rights violations to truth, justice and adequate reparation; while Part 7 looks at the legal and institutional reforms recommended by the IER and their current state of implementation. The report closes with Part 8 which provides a snapshot of the current human rights situation and offers concluding remarks and key recommendations intended to contribute to Morocco's fulfilment of its human rights obligations and to respond to the demands of victims of human rights violations and their families.[5]

2. BACKGROUND

2.1. THE PERIOD UNDER THE MANDATE OF THE IER - 1956 TO 1999

Grave human rights violations such as the imprisonment of prisoners of conscience, arbitrary detention, unfair trial, torture or other ill-treatment and enforced disappearance ,which were routine in Morocco and Western Sahara during the period commonly known as the "years of lead", have been well documented by Amnesty International.[6]

One of the grimmest legacies that marked this period was that of enforced disappearance of hundreds of Moroccans and Sahrawis at the hands of Moroccan security forces. Moroccan victims of enforced disappearance – a phenomenon which took place mainly between 1963 and 1984 – included political opponents, supporters of attempted military coups, students, members of trade unions, and even farmers who led demonstrations. During the "years of lead", the majority of victims of enforced disappearance were Sahrawis – as a group disproportionately affected by the phenomenon. Disappearances of Sahrawis began to occur at the end of 1975, following Morocco's annexation of the territory of Western Sahara and lasted until the early 1990s.[7] Sahrawi victims of enforced disappearance included not only known or suspected supporters of the Polisario Front or of the independence of Western Sahara, but also women, elders and children with family links with real or perceived opponents of Moroccan rule in the region.

A variety of routes led to hundreds of victims being subjected to enforced disappearance – defined in Article 24 of the International Convention for the Protection of all Persons from Enforced Disappearance as the "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".[8] Some of those who had disappeared simply vanished after being taken away by Moroccan security forces who denied arresting them. Others disappeared after arrest - for periods reaching over two years in some cases - before being brought to trial. Yet others disappeared after being tried or after being imprisoned. For instance, in some cases, while the initial arrest and detention of individuals was acknowledged by the authorities and they were facing regular judicial proceedings; victims were later transferred to secret detention centres and their families lost their trace as the authorities refused to provide them with any information on the fate and whereabouts of their relatives.

Information began to emerge throughout the years regarding the fate of victims of enforced disappearance particularly from released survivors. Victims of enforced disappearance have been held for years, cut off from the outside world in secret detention centres: villas, camps,

isolated farms, and old forts. Gradually, the inhumane and in some cases life-threatening conditions of detention have been revealed through sneaked correspondence out of a number of secret detention centres and after the releases of victims. Many of the victims have died in secret detention; where they have been buried hastily and secretly in the courtyards of their detention centres. At the time, their families were not informed of their death.[9]

In addition to hundreds of enforced disappearances, other grave human rights violations took place during the period covered by the mandate of the IER. For instance, thousands of cases of arbitrary detention were reported including the imprisonment of prisoners of conscience and the continual detention of political prisoners following unfair trials or after they had served their sentences. Victims of such violations spanned from students, suspected Marxists and Islamists as well as slum-dwellers or homeless individuals. Torture or other ill-treatment were reported to be systematic particularly in political cases, but also reported in non-political ones. Law enforcement officials used excessive force to break-up anti-government protests or general strikes resulting in deaths and injuries of demonstrators.

While the human rights situation in the 1990s, the last decade covered by the mandate of the IER, vastly improved as compared to that of the 1960s, 1970s and 1980s; serious human rights violations continued to take place in Morocco. Reported violations included the excessive use of force to break-up anti-government demonstrations, the judicial harassment and at times prosecution of political opponents and of individuals deemed to have insulted the monarchy and torture or other ill-treatment in detention centres and prisons. During this period, reports of arrests, incommunicado detention, torture or other ill-treatment were higher in Western Sahara than in Morocco, where restrictions on freedom of expression, association and assembly remained severe.

Nonetheless, the early 1990s marked the beginning of a series of efforts by the Moroccan authorities to break with the past of grave human rights violations. In 1991, some 300 Sahrawi victims of enforced disappearance were released after up to 16 years in secret and unacknowledged detention. Around 50 Moroccan victims of enforced disappearance were released in 1984, 1991 and 1992 after spending up to 18 years completely cut off from the world in secret detention centres. None of them were provided with an official explanation for their arrest, enforced disappearance and release.[10]

In the course of the 1990s some 500 prisoners of conscience and political prisoners imprisoned after unfair trials have also been released. Other prisoners of conscience imprisoned during the time period under the mandate of the IER were not released until the early 2000s.[11]

In addition to the aforementioned releases, the 1990s witnessed a number of amendments to laws and procedures that facilitated the commission of grave human rights violations in the past and the introduction of institutional developments reflecting changes in the authorities' approach to human rights. Of note, was the creation in 1990 of the CCDH by King Hassan II, and in 1993 of the Ministry for Human Rights.[12]

During the 1990s, Morocco also ratified a number of international human rights treaties most

notably the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in June 1996.[13]

2.2. ARBITRATION COMMISSION ON COMPENSATION

Up until the releases of scores of victims of enforced disappearance in the early 1990s, the Moroccan authorities denied any knowledge of the enforced disappearance of hundreds of individuals and the existence of secret detention centres. Until the late 1990s, the Moroccan authorities continued refuting reports on the existence of many other victims of enforced disappearance, particularly those of Sahrawis. During this period, the wall of silence on enforced disappearance had gradually been broken by victims and families, human rights organizations and some media outlets. Open discussion and public debate regarding the existence of Saharawi victims of enforced disappearance lagged behind that of Moroccan victims, given that human rights violations in Western Sahara remained a taboo subject. Significantly, on the occasion of the 50th anniversary of the Universal Declaration of Human Rights in 1998, former victims of enforced disappearance from Morocco and Western Sahara have come together for the first time to call on the Moroccan authorities to address unresolved issues relating to enforced disappearances as a matter of urgency.[14]

A small but insufficient step was taken in October 1998, when the CCDH published a list containing the names of 112 disappeared, which was divided into various groups. The largest group of 56 included some 30 victims who died in the secret detention centre of Tazmamart in the 1970s and 1980s and whose deaths had already been acknowledged by the government in 1994, when the authorities issued death certificates to most families. Others on the CCDH list were marked as having probably died, having disappeared in unknown circumstances and as being alive in Morocco or abroad. In all these cases no information or clarification was provided by the CCDH or by the authorities about the circumstances in which these victims had disappeared; about the place, date and causes of their deaths; about the whereabouts of those marked as alive or about the alleged perpetrators. No Sahrawi victim was included on the list despite the fact that the majority of victims of enforced disappearance during the “years of lead” were people from Western Sahara. That same month in October 1998, King Hassan II announced that he had ordered the Moroccan authorities to address all outstanding human rights dossiers within six months. Six months later, in April 1999, the CCDH proposed that an arbitration body be established to decide on compensation claims for victims. However, under this proposal the only claims which would be considered were those connected with some of the individuals mentioned in the list of 112 disappearance cases published by the CCDH in October 1998.[15]

The proposed body was set-up after the passing of King Hassan II in July 1999. His son King Mohammed VI ordered the establishment of an Arbitration Commission on Compensation in August 1999 to decide on compensation for material and psychological damage suffered by victims of enforced disappearance and arbitrary detention and their families. The Arbitration Commission on Compensation began its work on 1 September 1999 and claimants were required to submit their applications for compensation by the end of the year. The Commission's internal regulations stated clearly that its decisions were final and could not be appealed. At the end of 1999, the Commission announced that it had received more than 3,900 applications and that it

had "been able to examine... several dossiers and had completed the examination of a few of these".[16] It appears that the Arbitration Commission on Compensation continued to accept applications by victims and their families after the expiry of the deadline, as by the end of 2000 it had received 5, 819 compensation claims. According to information given by the CCDH to Amnesty International in September 2009, the Arbitration Commission on Compensation had issued a total of around 8,000 arbitration decisions on compensation for direct victims and families by the end of the process in 2003.

The Commission's work was severely criticized as it only awarded financial compensation without enquiring into the gravity of human rights violations or the harm suffered, did not offer any other form of reparation and did not allow for an appeal mechanism. A number of victims have also complained that the criteria for compensation were not clear and that there were large discrepancies in the amounts provided to victims of similar human rights violations. Sahrawi victims felt particularly marginalized.

The establishment and work of the IER did remedy some of the criticisms raised in relation to the approach undertaken by the Arbitration Commission on Compensation, as the IER was tasked with granting victims forms of reparation other than financial compensation and examining additional cases of human rights violations excluded by the Arbitration Commission on Compensation.

2.3. THE ESTABLISHMENT AND WORK OF THE IER

In November 2003, King Mohamed VI approved the recommendation submitted by the CCDH in October 2003 calling for the establishment of the IER to enquire into past human rights violations. In a speech in Agadir in January 2004 marking the IER's inauguration, King Mohamed VI emphasized the role of the IER to "close the file" on past human rights violations and provide an extra-judicial mean to resolve outstanding issues. The IER's Statute was approved by *Dahir* (Decree) 1-04-42 on 10 April 2004. The length of its mandate which was originally established to last nine months with a possible extension of three months was then further extended to November 2005 upon the end of the originally prescribed mandate term in April 2005. According to its Statute, the IER was mandated to enquire into human rights violations that occurred between 1956 and 1999, particularly those of enforced disappearance and arbitrary detention. The Statute confirmed the IER's main tasks and objectives to include:

- the establishment of truth through demonstrating the gravity and systemic nature of past human rights violations including through the provision of an analysis of reasons behind their occurrence and the identification of state and non-state bodies responsible;

- the pursuit of investigations into unresolved individual cases of enforced disappearance;

- the provision of financial compensation for certain categories of victims that have not been awarded under the Arbitration Commission on Compensation, and the provision of other forms of reparation for victims of enforced disappearance and arbitrary detention; and

- the publication of a final report summarizing the IER's findings and providing

recommendations to ensure the preservation of memory, the non-repetition of past human rights violations and the restoration and consolidation of trust in the rule of law and respect of human rights.

The involvement of former political prisoners in the IER was particularly welcome. The IER was headed by late Driss Benzekri, who had spent 17 years in prison for left-wing student activism. Among the 16 Commissioners, several previously served prison sentences of up to ten years and two were formerly living in exile. There was only one female commissioner and one Sahrawi, the President of the Laayoune Court of Appeal at the time.

As expanded further in this report, the IER made great efforts to accomplish the tasks prescribed by its mandate, to utilize international human rights law and standards in the course of its work and its analysis of violations and to learn from experiences of truth commissions around the world. The IER created three working groups, namely: one responsible for investigations, one in charge of reparation and one taking the lead in research and studies. The IER collected information from a variety of sources including public archives, medical and morgue records; it received lists prepared by national and international NGOs including Amnesty International; and it gathered testimonies from victims, families and officials. In addition to focusing on the scale of the human rights violations, the IER paid great attention to the seriousness of the violations and the suffering of individual victims and their families by, for example, including a study on the long-term medical effects of human rights violations. It also held public hearings in six regions in Morocco, where victims related their grievances– an unprecedented and much welcome move aimed at restoring the dignity of victims and shedding light on violations of the past, albeit under condition that participants not name individual perpetrators. In addition, the IER held thematic hearings on issues such as arbitrary detention and organized a number of seminars, workshops and forums on topics such as transitional justice, the concept of truth and reparation.

The IER's work cumulated into a six volume report, which was presented to the King in November 2005, and made public in January 2006. The six volumes of the report were entitled: Truth, equity and reconciliation; Truth and responsibility for violations; Equity and reparation for victims; the Components of reform and reconciliation; Mode of working and activities of the Commission; and Study on the state of health of victims of gross human rights violations in the past. [17]

The final report included recommendations for follow-up on establishing the truth in outstanding cases of enforced disappearance, awarding compensation and other forms of reparation to victims and introducing and consolidating institutional and legal reforms to guarantee non-repetition of human rights violations. On the operational level, the IER final report had advised for the creation of a follow-up mechanism within the CCDH to facilitate the implementation of its recommendations.

2.4. THE CCDH AND ITS FOLLOW-UP TO THE WORK AND RECOMMENDATIONS OF THE IER

The CCDH was created in 1990 by King Hassan II to play a consultative role in the field of

human rights. *Dahir* No.1-00-350 of 10 April 2001 introduced amendments to its mandate and structure in allowing the institution to look into individual complaints of violations of human rights and to increase the representation of NGO members in the composition of the body's membership.[18] Its mandate includes providing advice to the King in matters relating to human rights; making proposals and recommendations to improve the human rights situation; raising human rights awareness; interfacing with national and international human rights organizations and collaborating with various UN bodies in matters relating to human rights. In terms of the composition of the CCDH, the King appoints its President for renewable six-year terms and directly appoints 14 of its members through *Dahirs*. The remainder of the members of the Council, a maximum of 44, are also appointed by *Dahirs*, based on suggestions solicited from a variety of stakeholders including NGOs, political parties and official or semi-official institutions.

While the CCDH has certainly made significant contributions to the field of human rights since its creation, it has not been known to take positions diverging from official discourse in denouncing human rights violations particularly on sensitive issues such as continuing violations taking place in Western Sahara and undue limitations to freedom of expression of human rights defenders, journalists or others deemed to offend the monarchy. Furthermore, a climate of distrust has characterized its relationship with some of the major human rights organizations in Morocco and Western Sahara.

In a speech to mark the end of the work of the IER on 6 January 2006, King Mohamed VI placed its contribution within the framework of a process started by King Hassan II and emphasized the nature of its work as a sign of collective pardon. He also expressed sympathy for victims of human rights violations and for King Hassan II and stated that the CCDH was tasked with following-up on the IER's work and recommendations. Pursuant to the recommendations of the IER, the follow-up mechanism created within the CCDH (hereafter the Follow-up Committee) is responsible for:

- continuing investigations into unresolved cases of enforced disappearance;
- implementing the decisions made by the IER regarding financial compensation and other forms of individual and collective reparation;
- monitoring the implementation of recommendations of the IER for legal and institutional reforms; and
- preserving the archives of the IER and other relevant public archives.

In fulfilling its tasks to implement the recommendations of the IER, the CCDH created a Follow-up Committee. The Follow-up Committee continued to research the outstanding cases of enforced disappearance; it followed-up on the IER's decisions on individual claims for compensation and other forms of reparation for victims and their families; it launched a programme of collective reparation and engaged in some initiatives aimed at implementing the IER's recommendations in the field of legal and institutional reforms. In its response to Amnesty International's Memorandum to the Advisory Council on Human Rights on the

follow-up to the Equity and Reconciliation Commission, the CCDH indicated in September 2009 that a report outlining its efforts in following-up on the work and recommendations of the IER is being prepared and will be published shortly without specifying a date.

2.5. COMMUNICATIONS BETWEEN THE CCDH AND VICTIMS OF HUMAN RIGHTS VIOLATIONS AND HUMAN RIGHTS ORGANIZATIONS

An underlying concern highlighted throughout the report relates to the state of communications between the CCDH as the body tasked with following-up on the work of the IER and key stakeholders in the process of addressing the legacy of past human rights violations initiated with the establishment of the IER. The lack of (or perception of the lack of) effective communications with the CCDH has been one of the recurring criticisms voiced by victims of human rights violations and civil society organizations. Both the IER and the CCDH have made efforts to maintain contacts with individual victims of human rights violations and civil society organizations and they have been confronted with the reluctance of certain groups to engage with them. However, many victims and human rights groups with whom Amnesty International has talked felt misled or excluded from the important efforts undertaken towards truth and reparation because communications with them have been sporadic, non-existent or perceived as inappropriate or lacking transparency.

Victims of human rights violations must be at the centre of the work of truth commissions; this is crucial, particularly if the stated aim is to build a future based on the respect of human rights and mutual trust and understanding. The existing lack of trust between victims of human rights violations and official bodies, which is a result of the very violations the IER was mandated to investigate, should be addressed. The CCDH should therefore regularly report back on the progress of investigations into individual cases directly to victims and to the public on the work it generally carries out, provide explanations for the delays or difficulties experienced in certain areas of its work and establish a transparent and accountable system of communications for dealing with such stakeholder groups. Such efforts to improve communications will help restore a climate of trust, and will mitigate the risk of this groundbreaking truth-seeking and reparation initiative from being discredited.

THE RIGHT TO A REMEDY: TRUTH, JUSTICE AND REPARATION

Under international law, states have an obligation to respect, protect and fulfil international human rights law, including the right of victims to an effective remedy.[19] This obligation includes three elements:

Truth: establishing the facts about violations of human rights that occurred in the past;
Justice: investigating past violations and, if enough admissible evidence is gathered, prosecuting the suspected perpetrators;
Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Principle VII of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law sets out:

"Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms."[20]

With respect to past human rights violations, states must ensure that the truth is told, that justice is done and that reparation is provided to all the victims without discrimination. In this sense, truth, justice and reparation are three aspects of the fight against impunity.

3. MANDATE, METHODOLOGY AND CHARACTERIZATION OF VIOLATIONS BY THE IER

3.1. THE MANDATE OF THE IER

A major shortcoming of the IER's remit was the exclusion of the identification of perpetrators of human rights violations. King Mohamed VI's speech marking the inauguration of the IER on 7 January 2004, emphasized that the role of the Commission was to provide an equitable non-judicial means to address past human rights violations. This approach was reflected in Article 6 of the Statute of the IER approved by *Dahir* 1-04-42 on 10 April 2004. It stated: "The purview of the committee is non-judicial. It will not determine responsibility for violations".[21] Furthermore, the IER did not have the power to compel state officials to collaborate with its investigations. While Article 10 of the Statute of the IER stipulated that, to implement King Mohamed VI's decision establishing the IER, all public institutions and officials ought to collaborate with the IER and enable it to access any information needed to fulfil its task of establishing the truth; there were no legal repercussions or other penalties for those who refused. As expanded in the remainder of the report, particularly in Part 4 on the right to truth and Part 5 on the right to justice, these limitations on the mandate of the IER partially explain key shortcomings and gaps in the whole equity and reconciliation seeking process.[22]

Despite limitations to its mandate, the IER adopted a constructive and creative approach in interpreting it. Tasked with investigating enforced disappearance and arbitrary detention between 1956 and 1999, according to Article 9 of its Statute, it interpreted its mandate broadly to include other human rights violations such as torture of detainees, sexual violence, deprivation of the right to life due to excessive and disproportionate use of force by the security forces and coerced exile. The IER gave specific attention to violations suffered by women, including methods of interrogation that rendered them vulnerable to intimidation and rape or the threat of it, and women's physical integrity during detention.

However, certain human rights violations have remained outside the mandate of the IER, for example torture or other ill-treatment of persons not subjected to detention and "executions following unfair trials". Moreover, cases of arbitrary detention which the IER deemed not to be of a "political" nature were considered to be outside its mandate. While the IER considered as violations falling within its remit the excessive use of force by law enforcement officials during what it called "social disturbances" which led to death; it did not consider other violence inflicted upon demonstrators even when it resulted in permanent injuries.

The final report of the IER gave as an example of violations falling outside of its mandate the case of persons previously detained in the Tagounit detention centre, near Zagora in the early 1970s. Some 215 persons, mostly homeless people and beggars, were arrested in 1971 in Casablanca as part of a "cleansing" operation in advance of the city's hosting of the Summit of the Organization of the Islamic Conference. These victims were held arbitrarily for three years, during which they were subjected to torture or other cruel, inhuman or degrading treatment. The IER's findings confirmed that five individuals from the group died as a result of the living conditions in the Tagounit detention centre.[23] The remaining detainees were never brought to trial. The final report of the IER recommended that cases falling outside its mandate such as the case of the Tagounit detainees be examined by the Follow-up Committee and that the victims obtain adequate reparation.

During two meetings with the CCDH in February and March 2008, Amnesty International argued that Tagounit detainees ought to receive adequate reparation for their arbitrary detention regardless of whether or not they took part in "political, trade union or association activities".[24] In meetings, the President of the CCDH, Ahmed Herzenni told Amnesty International that it was decided that the ex-detainees from the Tagounit detention centre were eligible to receive medical cover and social rehabilitation, but not to obtain financial compensation. Such an approach would have treated Tagounit detainees differently from other victims of arbitrary detention. Therefore, Amnesty International was pleased to learn through the CCDH's written response to Amnesty International's concerns in September 2009 that the Tagounit detainees who made claims were eligible to receive financial compensation.

Another example of a case deemed to fall outside of the mandate of the IER, was the case of some cadets at the Ahermoumou School detained following the Skhirat attempted coup on 10 July 1971, who were acquitted by a military court in Kenitra in 1972.[25] The IER noted that this case fell outside its mandate arguing that their detention was not a result of "political, trade union or association activities" as specified in the IER Statute. The IER did not recommend granting reparation to these cadets for the time spent in detention.

The length of the mandate of the IER considering the scope of its work covering violations committed between 1956 and 1999 was a concern since the inception of the IER. Originally set to nine months with a possibility to be extended by three months, it was further extended by six months until November 2005. Within this limited timeframe, new applications for compensation and other forms of reparation for victims could only be made between 12 January 2004 and 13 February 2004 as per Article 9 of the Statute of the IER.[26] Nonetheless, it seems that the IER and the CCDH accepted claims by victims after the expiry of the deadline. Particularly welcome was the fact that, in the case of enforced disappearance, the Follow-up Committee confirmed that there is no time-limit for relatives to submit requests for the establishment of truth.

Amnesty International is concerned that victims of human rights violations not covered by the mandate of the IER were treated differently from victims of human rights violations falling under the mandate of the IER and its interpretation thereof. All victims of human rights violations have the same right to a remedy, including truth, justice and reparation, in all forms. The limitations of the mandate of the IER should not create limitations in the

enjoyment of victims' rights. To remedy these shortcomings, the Follow-up Committee must provide all the information it has collected about instances of human rights violations which the IER considered not to fall under its remit to the judicial authorities to facilitate investigations. The Moroccan authorities must ensure that full, impartial and independent investigations are conducted into all cases of human rights violations, including those not considered by the IER.[27]

3.2. METHODOLOGY AND CHARACTERIZATION OF VIOLATIONS UNDER INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

The IER made great efforts to examine human rights violations it was mandated to investigate within the framework of international human rights and humanitarian law. The final report of the IER made frequent references to international law and standards, in particular with regards to reparation.

Regarding the crime of torture for instance, the IER did not only consider the physical pain or suffering as torture or ill-treatment, but also psychological pain or suffering, in line with Article 1 of the CAT, to which Morocco is a state party and Article 231-1 of the Moroccan Penal Code. The IER final report detailed various forms of torture or other ill-treatment used, noted their long-term effects on detainees, such as permanent disabilities and psychological scars, and acknowledged that torture or other ill-treatment led in some cases to deaths in custody. The report also acknowledged that such methods were used against people detained in political and ordinary criminal cases.

The IER gave specific attention to gender-based violations. The report made particular reference to the pain suffered by women in detention. It acknowledged that women were subjected to violations due to their own political activities and their opinions and also because they challenged a social system that considered public affairs as the concern of men only. Women were also subjected to violations due to the opinions or activities of their male relatives. They were routinely interrogated by men, which put them at additional risk of abuse. They were sometimes forced to stay naked during interrogation, which further put them at risk of sexual assault, and is a cruel, inhuman or degrading treatment in itself. Some women were threatened with rape, and the report acknowledged the occurrence of rape in some cases. The IER final report did not exonerate the state from its responsibility to ensure the protection of women in detention from rape and other forms of sexual violence, particularly as those responsible were members of state bodies, even though it argued that rape and other forms of sexual violence against women were not carried out in a systematic way and were not a result of official directives.

Despite these efforts to ground its work in international human rights law and to give special attention to a gender-specific analysis of human rights violations, the IER has not used definitions of violations that are fully consistent with international human rights law and standards.

The IER final report stated that, in contrast with enforced disappearance, which placed individuals outside the protection of the law, arbitrary detention mainly occurred "within the framework of the law", and the IER considered cases where Moroccan national law itself had

been violated. The IER did not use a definition of arbitrary detention fully consistent with international human rights law.[28] The definition used by the IER did not explicitly include cases where persons were detained for the peaceful exercise of their right to freedom of expression, association or assembly (among other rights), or following a trial where there had been a complete or partial non-adherence to international standards for fair trial.

In this regard, the Statute of the IER and its final report referred to past violations of arbitrary detention as a result of "political or trade union or association activities".[29] This approach excluded victims who were subjected to arbitrary detention for other reasons. This was the reasoning used to exclude the Tagounit detainees and other cases of detention with "no relation to political or trade union or association activity" such as those of cadets acquitted by a court in Kenitra following the failed Skhirat military coup.[30] In a similar vein while the IER considered some cases of arbitrary detention where there was a total or partial non-observance of fair trial guarantees; it did so only for cases it deemed to be of a "political" nature. However, all victims of arbitrary detention as defined in international law have a right to an effective remedy.

On the other hand, for enforced disappearance, the IER used a definition mostly, although not fully, consistent with international law and standards.[31] One initial concern was that the definition of enforced disappearance as set out in Article 5 of the Statute of the IER, seemed to exclude individuals who were forcibly disappeared in official places of detention, even if the detention was illegal or was followed by a refusal to disclose the whereabouts of the person. The IER did, however, interpret its mandate widely and considered cases of victims who were detained in regular detention facilities and then subsequently transferred to unrecognized places of detention such as the Tazmamart detention centre and other military barracks.[32]

The CCDH should ensure that its follow-up to the work of the IER is fully consistent with the definition of crimes as provided under international human rights and humanitarian law. In particular, it should clearly consider all cases of enforced disappearance and arbitrary detention and encompass a wider range of situations than those on which the IER had focused.

In correspondence and meetings with the IER, Amnesty International indicated that violations which took place during the period falling under the IER's mandate may have constituted crimes against humanity as they appear to have been committed by members of security forces as part of a widespread, as well as systematic, attack on political opponents or perceived political opponents, and pursuant to a government policy to commit this attack. Therefore, Amnesty International encouraged the IER to analyze the violations it was investigating in the framework of crimes against humanity.[33]

The IER considered enforced disappearance and arbitrary detention as gross human rights violations, but did not consider the crimes under its mandate in light of international legal instruments pertaining to crimes against humanity such as the Rome Statute of the International Criminal Court.

Article 7 of the Rome Statute of the International Criminal Court, which reflects customary international law, provides a list of acts which amount to crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian

population, with knowledge of the attack. These include: imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape and other forms of sexual violence, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds, enforced disappearance of persons, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The characterization of certain violations as crimes against humanity would have immediate practical consequences in the Moroccan domestic criminal justice system. International law excludes amnesties, immunities, statutes of limitations and any other obstacle or limitation to the prosecution of alleged perpetrators of violations of international human rights and humanitarian law that constitute crimes under international law, such as crimes against humanity.[34] As it is, Moroccan legislation, including the Constitution and the Code of Criminal Procedure, is not in compliance with international law. For example, it contains provisions which provide immunity for the head of state, the King, and which limit the time and scope under which victims of crimes under international law may initiate judicial action.[35]

The Moroccan authorities should ratify the Rome Statute of the International Criminal Court as recommended by the IER without further delay and bring national legislation in line with the Rome Statute including by abrogating any immunity, statute of limitations and other obstacle to prosecution provided for in national law for crimes under international law.

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4. TRUTH: INVESTIGATIONS INTO PAST HUMAN RIGHTS VIOLATIONS

The IER devoted considerable efforts to establish the truth about numerous cases of human rights violations. The IER put a great emphasis not only on trying to paint an overall picture of the scale of the violations which have occurred over the period covered under its mandate (1956 to 1999), but also to investigate violations in depth as well as their long-term effects suffered by individuals.

4.1. INVESTIGATIONS INTO INDIVIDUAL CASES OF ENFORCED DISAPPEARANCE

THE RIGHT TO TRUTH

The right to truth has an individual and a collective dimension. It is embedded in the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by the General Assembly in Resolution 60/147 of 16 December 2005, the United Nations Commission on Human Rights, Resolution 2003/72 ("Impunity") of 25 April 2003, the United Nations Human Rights Council Resolution 9/11 ("Right to the Truth") of 24 September 2008, and the International Convention for the Protection of All Persons from Enforced Disappearance.

Individual dimension of the right to truth. Victims of gross human rights violations and their families, as well as other members of society, have the right to know the whole truth about past human rights violations. Principle 4 of the Updated Set of Principles to Combat Impunity states:

"Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate".

According to Principle 24 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation:

"Victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations".

Collective dimension of the right to truth. Principle 2 of the Updated Set of Principles to Combat Impunity[36] states:

"Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations".

An Investigations Working Group was created within the IER to pursue investigations into individual cases of human rights violations, specifically unresolved cases of enforced disappearance. During its investigations, it examined cases submitted to the Moroccan Arbitration Commission on Compensation in 1999 and the list of 112 enforced disappearance cases established by the CCDH in 1998.[37] In addition, the Investigations Working Group used lists established by Moroccan and Sahrawi groups representing families of victims of enforced disappearance and other Moroccan and Sahrawi human rights groups, lists of international human rights organizations such as Amnesty International and those of UN bodies such as the UN Working Group on Enforced and Involuntary Disappearances. The CCDH also indicated to Amnesty International that the IER's investigations were able to uncover additional cases of enforced disappearance neither submitted by victims' families nor by any other organization.

Through its investigations, the IER met with a wide range of victims and relatives of disappeared individuals, and travelled throughout the country to collect data and to encourage relatives of the disappeared to make applications for compensation. It also collected information from persons who had disappeared and who reappeared after decades, requested answers from the security forces and the armed forces, interviewed former wardens of secret detention centres, and examined registries of detention centres, hospitals and cemeteries. The Statute of the IER, demanded cooperation from state institutions in the search of the whereabouts of persons subjected to enforced disappearance. The Investigations Working Group said it was able to access a wide range of official documents, state and military archives, as well as to interview state and security forces officials who may have had information about enforced disappearance cases. While the IER claimed that it generally benefited from good cooperation by state bodies, in its final report the Commission acknowledged being confronted with the lack of cooperation of some state bodies and officials.[38]

The Investigations Working Group created a database encompassing existing lists of disappeared persons. Initially, it categorized any persons whose whereabouts were unknown as "missing persons" whose fate should be investigated. Investigations revealed that among these were persons who had been killed by the security forces during the violent repression of demonstrations and armed clashes, and whose fate their relatives did not know.

The final report of the IER stated that the cases of 742 "missing persons" had been elucidated, including:

- 89 who died in secret detention centres;

- 173 others who also died during arbitrary detention or after being subjected to enforced disappearance but whose places of burial were not determined;

- 11 who died in armed clashes in 1960 and 1964;

- 325 who died as a result of excessive use of force by security forces while policing demonstrations; and

- 144 who died during armed clashes in the contested territory of Western Sahara.

The final report also stated that 66 individuals believed to have been victims of enforced disappearance were handed over as prisoners of war in the Western Sahara conflict to the International Committee of the Red Cross (ICRC), which was responsible for their transfer to the Tindouf camps in Algeria on 31 October 1996.

The IER final report revealed some of the identities of those "missing persons", including:

- 87 of the 89 individuals who died in secret detention centres referencing the two others – an unidentified woman who died at Tagounit and an "African" who might have died and was buried at Tazmamart;

- 11 individuals who died in armed clashes in 1960 and 1964;

- 27 of the 50 victims who died during or in the aftermath of protests in Casablanca in 1965;

- 26 of the 114 victims who died during or in the aftermath of protests in Casablanca in 1981.

In the category of individuals who died as a result of the excessive use of force by law enforcement officials, the final report acknowledged that the IER was unable to establish the identities of some of the victims and described steps taken to uncover the truth, such as examining mortuary and hospital records. In other cases, it is unclear why the IER final report did not name individual victims. For example, the names of victims who died during protests in Tetouan in 1984 were not revealed in the final report even though it stated that the investigations were conclusive and that the IER was able to cross-reference names of suspected victims with Tetouan official hospital records.[39]

For the last two categories identified by the IER, namely those individuals who died in armed clashes in the context of the conflict in Western Sahara and those handed over to the ICRC, scarce information and no names were published in the final report. The unavailability of this information, which pertained to Sahrawis, might increase the sense of marginalization among the population in Western Sahara.

It is particularly important to transparently communicate this information to victims' families and the public at large given allegations by some families that their relatives disappeared following arrests by Moroccan security forces, contrary to authorities' assertions that individuals died in armed clashes in the context of the conflict in Western Sahara.

In addition to providing information on the 742 cases the IER considered elucidated, the report also stated that 66 other cases remained pending, which should be investigated by the

Follow-up Committee. In June 2009, the President of the CCDH, Ahmed Herzenni, said during a meeting with Amnesty International in London that of the 66 pending cases, about 60 had been resolved. He also acknowledged that the Follow-up Committee was not able to solve the case of the enforced disappearance of opposition leader Mehdi Ben Barka. In its written reply to Amnesty International's concerns, the CCDH confirmed that 58 of the 66 cases the IER considered outstanding have been resolved by the end of September 2009.

A list of all cases of enforced disappearance investigated by the IER and the Follow-up Committee was to be published by the CCDH six months after the release of the IER final report as confirmed by the late President of the IER, Driss Benzekri, during a meeting with Amnesty International in London in January 2006. To date, the complete list has not been published. In March 2008, the CCDH told Amnesty International that a final, exhaustive list would be published only once investigations in all cases end and once all the relatives are satisfied with the results of the investigations and the information gathered. It also expressed concern that some families may not be ready to accept that their disappeared relatives were classified as dead. The Follow-up Committee said that a list could probably be published by the end of 2008, although it did not commit to a precise publication date.

During a meeting with representatives of Amnesty International USA in March 2009, Ahmed Herzenni, mentioned that the list was near completion and that it would be published around the end of April 2009. In a subsequent meeting with Amnesty International in June 2009, Ahmed Herzenni stated that the list, along with a report on the implementation of recommendations of the IER, will be published once submitted to and approved by King Mohamed VI. Further confirmation that the list will be included in the CCDH's report on the follow-up to the IER was received by Amnesty International in a written communication from the CCDH in September 2009. However, no specific date was indicated.

Many families and human rights groups question the delay in the publication of such a list. Amnesty International shares their dismay at the failure of the CCDH to publish the list four years after the end of IER's mandate. In meetings with Amnesty International, members of the CCDH argued that the delay is caused by the fact that not all families accepted the results of IER and its own investigations into their relatives' enforced disappearance. Some families who are not satisfied with the outcome of the investigations told Amnesty International that they would not object to the publication of a partial list, or even an exhaustive list which would also detail cases yet to be fully resolved. Therefore, there are no obstacles to the publication of a list other than a lack of political will.

The importance of publishing such a list cannot be stressed enough. It will clarify in the eyes of the victims, the Moroccan public at large and the international community how the IER had undertaken its investigations and help reveal the extent to which crimes of enforced disappearance were committed in the country. It will serve as evidence that the IER and the Follow-up Committee had successfully fulfilled their mandate and delivered on the stated aim to provide truth and reparation. If the publication of the list is postponed for any longer, victims may further lose faith in official institutions and such delays will undermine the entire truth-seeking process. It is understandable that the facts are difficult to establish in a number of individual cases which have occurred over four decades ago in some instances.

However, these constraints should not hold up the publication of the list of disappeared persons indefinitely, particularly as the final report of the IER had already revealed some of the names of victims of enforced disappearance amongst the 742 cases it considered resolved. In line with international law and standards and with a view to fulfil the promises made with the establishment of the IER, the Follow-up Committee must immediately publish without delay the list of all cases of enforced disappearance brought to the attention of the IER and the Follow-up Committee. The list should contain the names of the disappeared, the circumstances of their disappearance, the information gathered in each case, and whether the case has been transferred to the authorities for further investigations. The list must also detail unresolved as well as resolved cases. In cases where the families do not want details of their disappeared relatives to be disclosed, the Follow-up Committee should conceal the name and any identifying information but publish details about the circumstances of the enforced disappearance and the bodies or agencies responsible.

In the cases that the IER and the CCDH considered resolved, and where relatives of victims of enforced disappearance had filed an application for compensation to the IER, the institution contacted the families, explained to them the way investigations were conducted and the conclusions they reached. When relatives demanded further investigations, for instance in the cases of persons whom the IER had concluded have died, but whose remains have not been located, the cases were sent by the Follow-up Committee to the Prime Minister, for further investigations. However, to Amnesty International's knowledge, no further investigations have taken place. Amnesty International reminds the Moroccan authorities of their obligations to ensure that full, independent and impartial investigations are conducted into all unresolved cases of enforced disappearance. The investigative body must have the authority to compel witnesses, and powers of subpoena, search and seizure.

If the families accepted the results of the investigations, they were then asked to provide documents certifying who are the next of kin entitled to compensation; a death certificate was delivered; and an official Arbitration Decision (*décision d'arbitrage*) was issued by an Arbitration Committee within the CCDH. Such decisions summarized the claims of the families and the results of the investigation, recognized state responsibility for human rights violations suffered by the individual, detailed the names of the relatives entitled to compensation and the nature and amount of compensation. They also recommended whether the victims should receive other forms of reparation.

Many families expressed their frustration to Amnesty International that the results they received after investigations and the information recapped in Arbitration Decisions was generally identical to information they already knew, in many cases information that they had themselves given to the IER. The lack of sufficient information can in part be explained by the IER's limited mandate and the IER's lack of power to compel state officials to cooperate in its investigations.[40]

Some families have criticized the fact that a death certificate is sought or issued in cases where the burial place of the person has not been precisely located and the remains have not been identified. Some of them refused to provide documents identifying them as the next of kin entitled to compensation until the remains of their relative are found and scientifically

identified. Amnesty International understands that several Arbitration Decisions remained pending as families awaited further confirmation of the identification of the remains.

In meetings with relatives of victims of enforced disappearance, Amnesty International was told that certain families, in particular relatives of persons disappeared in Laayoune and Smara in Western Sahara, have not yet received any communication nor any results from the IER and its Follow-up Committee. The Follow-up Committee told Amnesty International that a file was opened in every case of enforced disappearance they were aware of, even in the absence of an application for compensation by families, but that the absence of formal communications with certain families could possibly be explained by the fact that they had not made applications to the IER. It is urgent for the Follow-up Committee to contact families who may not have made applications for compensation, or whose applications may not have been registered properly, in order to share with them information gathered on their disappeared relative.

All relatives of disappeared individuals have an inalienable right to know the truth, irrespective of whether they have filed an application with the IER or its follow-up mechanism. They should receive all the information gathered by the IER or its follow-up mechanism on their disappeared relatives.

Other families say that they were promised the full results of investigations in writing, but have not received them. In meetings with the CCDH, Amnesty International was told that there is a file on each individual case investigated kept in the archives of the IER. The file, in which the Investigations Working Group describes its methodology and the trail of its research into the case, mentions relevant official documents and archives it has been able to access and information it has been able to obtain from other witnesses and sources such as registries of cemeteries and hospitals. The CCDH told Amnesty International that the full details of the investigations are given orally to the families, for them to be able to decide whether to accept the results reached. The CCDH also explained that they privilege oral feedback because many of the relatives of victims of enforced disappearances are illiterate.

Amnesty International believes that relatives of victims of enforced disappearance should obtain a copy of the complete file containing all the details of investigations. Families have a right to know the whole truth about the enforced disappearance of their relatives, and the right to be informed of the steps taken to establish the truth. International human rights standards emphasize the right of victims to know the full truth about gross human rights violations including information on not only the fate and the whereabouts of missing or disappeared persons, but also on the causes leading to the person's victimization, the circumstances and reasons for the perpetration of crimes under international law, and the progress and results of the investigation.[41] The right to truth is closely related to other rights, such as the right to an effective remedy, the right to family life, the right to an effective investigation, and the right to obtain reparation, rights which the Moroccan authorities have pledged to uphold under their international human rights obligations.[42] The right to the truth is a fundamental element of the inherent dignity of victims and is closely related to the obligation of the Moroccan authorities to fight impunity, principles underlined by the IER in its final report.

In this sense, the right to truth is linked to the principles of transparency, accountability and

good governance, [43] principles which the Moroccan authorities have been promoting in the past few years. The right to know the truth is also related to the right to information, which can only be limited in cases of public security concerns, or violations of the right to privacy.[44]

Obtaining the full file can also help to improve confidence in the steps taken by the IER and the CCDH to establish the fate of the disappeared, including in cases where Arbitration Decisions are pending an acceptance by the families of the results of the investigations of the IER and its Follow-up Committee. The Follow-up Committee must ensure that the full details of the investigations are made available in writing to the victims and their relatives.[45] In particular, victims and their relatives should be given a copy of the file that retraces the investigations into their case, the methods used and any official documents uncovered during the course of the investigation. Every effort should be made to communicate in writing the information uncovered during investigations to the families of persons who have been subjected to enforced disappearance, even in the absence of official applications to the IER.

4.2. COOPERATION OF STATE OFFICIALS AND STATE BODIES

Although the IER was established and given full recognition by the King of Morocco, it did not have the authority to compel witnesses and state officials to cooperate or give information, or the powers of subpoena, search and seizure. The final report of the IER itself recognized that while the IER generally benefited from good cooperation with state bodies, there were difficulties to obtain some information, including due to "the deplorable state of national archives and the inadequate cooperation of certain authorities, whereby certain officials gave incomplete answers about cases they were questioned about, while certain former, retired officials refused altogether to contribute to the efforts to reveal the truth".[46] The final report also states that: "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".[47]

It is a regrettable shortcoming of the IER that the alleged perpetrators of human rights violations have been notably absent from the narrative of the "years of lead" as written by the IER. The testimonies or views of high-level officials on a period when gross human rights violations were committed are not known to the victims or to the public at large. The state recognized its responsibility in the human rights violations committed, but did not provide its own full account or explanations to the victims as to the reasons why they were victimized. As one victim put to Amnesty International in February 2008: "I know my truth; but I still don't know what the state's truth is".

In its written response to Amnesty International in September 2009, the CCDH undermined the importance of testimonies of state officials in shedding light on past human rights violations. It argued that the testimonies of state officials were gathered to obtain information regarding the political context, rather than to "establish the truth."

Amnesty International believes that it is essential, both to fulfil the right to truth of victims of human rights violations and to help further investigations to continue, that the CCDH publishes an account of the obstacles the IER and the CCDH faced. This account should clearly state in which cases and which instances it and the IER have faced reluctance or non-

cooperation by state officials and members of the security forces. Bodies or individuals who have refused to cooperate should be named, so that appropriate measures are taken against those who hinder investigations. In light of the fact that the IER had finished its work in November 2005, the Follow-up Committee, which has been entrusted to investigate pending cases, must transmit all information it has to the judicial authorities to investigate cases where conclusions were not reached due to the lack of cooperation by public officials and state security bodies. Investigations conducted by a body with the authority to compel witnesses and powers of subpoena, search and seizure are the only alternative to end the impasse into cases of enforced disappearance unresolved due to the refusal of state bodies or officials to cooperate.

4.3. IDENTIFICATION OF BURIAL PLACES AND OF HUMAN REMAINS

As part as its truth-seeking efforts, the IER located individual places of burial and mass graves. It stated in its final report that it verified places of burial and the identity of those buried most notably in the vicinity of secret detention centres, such as Tazmamart, Agdez, Qal'at Mgouna, Tagounit, or in some cases of persons killed as a result of armed clashes.

The Follow-up Committee proceeded to the exhumation of human remains in some former secret detention centres, in regular cemeteries and in mass graves. The exhumations seem to have generally been carried out by the Moroccan judicial authorities in the presence of members of the IER or the CCDH, and the relatives of those presumably buried were invited to attend. However, the exhumation of a mass grave by a fire station in Casablanca in December 2005, thought to contain the remains of persons killed in the violent repression of demonstrations against food prices in 1981, provoked outrage among civil society organizations. It was reported that bodies were exhumed from a mass grave and then reburied the same day in individual tombs, without the presence of relatives of those presumed dead.

The CCDH claimed that it would have been impossible to conduct this exhumation in the presence of families, but that the IER had, in parallel with the exhumations, contacted relatives of persons who disappeared in the context of the 1981 events, and organized the collection of DNA samples from the remains and from the presumed relatives.

Amnesty International stresses the importance of not only respecting the standards laid out in the UN Model Protocol for Disinterment and Analysis of Skeletal Remains, when conducting investigations on clandestine graves, but also of explaining to families of the disappeared and civil society how the Moroccan authorities are applying these standards.[48]

Despite efforts to identify burial places, the precise location of the bodies of many persons subjected to enforced disappearance remains unknown. Amnesty International believes that if the IER and its Follow-up Committee had been empowered to compel officials to cooperate with its investigations, more information could have been obtained to identify these locations precisely. In 2008, three multiple graves were discovered in the cities of Nador, Fes and Al Jadida. The human remains uncovered in Nador in April 2008, in the northern region of the Rif, are thought to be those of persons killed during a demonstration in the city in 1984, which had been violently repressed. There had been suspicions that victims of this event had been buried clandestinely in mass graves in Nador for some time, based on the testimonies of

some survivors and witnesses to the demonstration. According to the CCDH, investigations conducted by the authorities revealed that the other two mass graves in Fes and Al Jadida are linked to events which took place before the period falling under the mandate of the IER. The results of these investigations should be made public and disseminated as widely as possible.

In Western Sahara, in the cities of Laayoune and Smara, human rights groups have regularly denounced the presence of clandestine graves and the lack of transparency and information as to whether and how the human remains found in anonymous graves are identified. The CCDH told Amnesty International that these allegations are ill-founded and that there is no concrete evidence pointing to the existence of such graves, but neither the IER nor the Follow-up Committee are known to have conducted an investigation around the presumed locations to substantiate or refute such claims. These claims and counter-claims by Sahrawi groups and the CCDH point to the need to have greater cooperation between victims and human rights organizations and the Moroccan authorities and official institutions. Such cooperation would greatly facilitate the identification of burial places and the establishment of truth. The Moroccan authorities should engage much more actively in searching and identifying the burial places of all those subjected to enforced disappearance. They should open independent and impartial judicial investigations into all credible allegations of the existence of individual, multiple or mass clandestine graves. The investigating authority should be vested with powers to compel past or present members of the security forces to appear, testify and produce evidence. Such exhumations must take place according to international standards, and the results of the investigations made public.

The relatives of those presumed buried have the possibility, if they wish so, to have the remains scientifically identified through DNA testing. The CCDH told Amnesty International in March 2008 that, although it is not encouraging families to resort to DNA testing, because of the costs and lengthy wait for results, it always follows the wishes of the families.

Some 165 DNA samples were taken for scientific examination, according to the CCDH[49], to which one must add samples taken from remains discovered in 2008 in Nador. However, some families are reported to still be waiting for the results – for some, more than three years after the samples were taken. Other families have expressed concern at the fact that DNA tests were done in a laboratory of the *Gendarmerie royale*, a security agency which has been implicated in past human rights violations. The CCDH explained to Amnesty International that the premises of the *Gendarmerie royale* provided the most suitable location for DNA testing. However, Amnesty International is concerned that forensic examinations were conducted in the premises of a body which may be implicated in the commission of human rights violations under investigation and which could have access to inculpatory evidence. International standards as stipulated in Article 14 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions underline that in conducting autopsies the principles of independence and impartiality must be respected in order to ensure objective results. To that effect, persons and/or institutions potentially incriminated by the results ought not to take part in the investigations. The same principles ought to apply to any other forensic investigations, including DNA testing. In the future, Moroccan authorities must ensure that the forensic and DNA investigations are carried out by

independent bodies, with no possibility of access to sensitive information by bodies or individuals that may be implicated in human rights violations. Any authority involved in exhuming and identifying human remains should respect internationally-established standards, as set out in the *UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions of 1991*, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Model Protocol for Disinterment and Analysis of Skeletal Remains.

Initially, the CCDH justified the length of the procedure of DNA testing by the fact that they have opted to build national capacity and DNA technology rather than solely rely on foreign expertise, and that there was a small scientific laboratory which could process only a few samples at a given time. Amnesty International appreciates that the procedure of DNA testing is lengthy. Experience in another part of the world suggests that an expert analyst working in a well equipped and resourced laboratory could on average process up to ten cases a month.[50] Amnesty International argued that while the development of national capacity is important; the CCDH should not have precluded international cooperation, such as international technical assistance, particularly in view of realizing the right to truth of relatives of those presumed disappeared or dead. Some families have been waiting to know the fate of their relative for more than 40 years, and if international expertise can help reduce their long wait and anguish, it should be sought. Moreover, expertise acquired in other parts of the world on the scientific identification of remains can benefit the work of the Follow-up Committee and the Moroccan authorities. Therefore, Amnesty International welcomed that the CCDH met the Argentine Forensic Anthropology Team (EAAF) in June 2006, during a visit organized by the International Centre for Transitional Justice. The CCDH should seek further international cooperation from bodies specialised in forensic and DNA testing work, in order to boost Moroccan capacity to process DNA assisted identification of disappeared persons with a view to upholding the right of families to know the whole truth.

The EAAF and other groups involved in investigative and forensic work, such as the International Commission on Missing Persons (ICMP), based in Bosnia and Herzegovina, have insisted on the importance of engaging with families of those missing and civil society in the investigative and forensic process. Doing so builds confidence in the process. These groups have experience in explaining the process of forensic investigations to families of disappeared individuals and in ensuring that they understand what can be expected of such tests. Moreover, the families of those missing do not only have a right to know the results of the investigation, but also a right to information as to the process of tracing and resolution.[51] The views of the families of the missing must be taken into account. For instance, the Follow-up Committee should have taken into account the high level of mistrust that victims of human rights violations still hold against the *Gendarmerie royale* in its choice of laboratory for DNA testing.

Some three years later, a number of the DNA samples sent to the *Gendarmerie royale* were sent to a laboratory in France for retesting, particularly in those cases where the results were inconclusive or negative, according to information provided by Ahmed Herzenni during a meeting with Amnesty International in June 2009. He, however, neither specified the number of samples sent nor the anticipated time of the expected results. Initial DNA results issued in July 2009 confirmed that

the remains of a body exhumed from a cemetery in Sbata in Casablanca in January 2006 were those of Abdelhaq Rouissi, who forcibly disappeared in October 1964. However, DNA results were not officially communicated to all his family members, nor were they provided with the results in writing. No public information is available on whether other DNA results are ready or have been shared with victims' families. The Follow-up Committee must engage more with the families of disappeared individuals and civil society organizations to ensure that they are fully aware of the process of the forensic examinations taking place on human remains and that the process of DNA assisted identification is transparent and well understood. It must provide families of victims of enforced disappearance with results of DNA tests as soon as possible and transparently communicate the reasons for delays.

4.4. DETERMINATION OF THE RESPONSIBILITIES OF STATE BODIES

According to Article 9(3) of its Statute, the IER was mandated to determine "the responsibilities of the state bodies or any other party". Indeed throughout the process, and in its final report, the IER underlined the responsibility of the state in the gross human rights violations committed during the "years of lead". The IER also mentioned the responsibility of non-state actors in some of the events it scrutinized.

The IER dedicated sections of its final report to the concept of historical truth and reconciliation. It also helped shed light on the structural factors which led to the commission of gross human rights violations, and to this effect it organized several workshops on topics such as state violence, political trials and prison literature, and helped to initiate debates about formerly taboo subjects including enforced disappearance.

The IER final report acknowledged that in most cases of enforced disappearance, a number of state organs were responsible particularly pointing to those tasked with maintaining "national security" such as the *Gendarmerie royale*, the Auxiliary Forces, and the Royal Armed Force. However, it did not explicitly indicate which specific organs or individuals held primary responsibility for the violations nor did it clarify the chain of command for specific events it scrutinized.

While the limitations of the IER's mandate prevented it from identifying individual perpetrators of human rights violations, it is regrettable that the IER and the Follow-up Committee did not officially attribute responsibility to specific state organs or branches of the security forces in all investigated events. The IER stated in its final report that for example in the case of large-scale demonstrations repressed by excessive use of force it was impossible to determine responsibility as too many state organs were involved:

"And the large number of security apparatuses intervening in order to maintain public order during civil disturbances, either consecutively or in parallel, or overlapping, made it impossible to determine the degree of responsibility of each of the apparatuses for grave violations committed during these incidents."[52]

This failure to explicitly point to individual and primary state organ responsibility is the more regrettable as Arbitration Decisions sent to victims and relatives of disappeared persons mention the security force responsible for the initial arrest (for instance, the Auxiliary Forces,

the 16th battalion of the armed forces, the *Gendarmerie royale*, etc). These decisions usually recount the information received from the victims themselves, or relatives and witnesses, in the case of enforced disappearance. However, the IER did not publicly name the security agencies bearing primary responsibility in committing gross human rights violations leaving a major gap in the narrative of the "years of lead" and many questions unanswered.

With a view of addressing this shortcoming, the Follow-up Committee should disclose which state security organs and individuals bear primary responsibility for the commission of human rights violations between 1956 and 1999, according to the evidence gathered from the investigations undertaken. It must also forward all evidence indicating individual criminal responsibility to the relevant judicial authorities.[53]

4.5. PRESERVATION OF AND ACCESS TO INFORMATION AND ARCHIVES

The IER accorded great importance to the preservation of memory as an integral component of honouring the victims and ensuring non-repetition of grave human rights violations. It recommended that the Follow-up Committee be mandated with preserving the archives of the Commission and regulating their use. The IER and the CCDH have also engaged in debates about the duty to preserve the memory for past human rights violations and the role of history in education and reconciliation. An institute for the history of Morocco was created, and the IER also recommended the establishment of a national history museum.

A law to regulate the use of archives in the country (Law No. 69.99 of 30 November 2007) was adopted by *Dahir* 1-07-167. This law was prepared at the initiative of the CCDH and reportedly incorporated most of the CCDH propositions. Law No. 69.99 of 30 November 2007 stipulates that public archives can be "communicated" to the public after 30 years, apart from documents that can be "communicated" freely to the public without delay. Article 17 of the same law, however, extends the length of the period, before public archives are freely accessible, for documents which could undermine, *inter alia*, secrets of national defence, the continuity of Morocco's foreign policy, national security, public security or individuals' security, or privacy without providing specific definitions for these categories and what they encompass. Article 18 states that consultation of public archives for scientific research can be authorized, unless this undermines secrets of national defence, national security or privacy.

At present, the CCDH remains the depository of the archives of the IER, pending a probable transfer to the "Archives of Morocco", a national institution to be created under Law No. 69.99 of 30 November 2007. The CCDH has also created a working group composed of experts, historians and archivists to "reflect on" the implementation of Law No. 69.99 and organized a workshop on the modernization of Moroccan archives in April 2009.

Despite these efforts, there are still questions as to the application of this law promulgated to regulate archives, in particular with regards to the regulation of access to the archives of the IER. Some of these questions surfaced when a Moroccan daily newspaper, *Al Jarida Al Oula*, published the content of closed hearings of some high-

level state officials with the IER in mid-2008. Ahmed Herzenni, President of the CCDH, sued the newspaper in order to stop the publication of further such testimonies, referring to the newly-adopted law on archives. On 19 June 2008, the Court of First Instance of Rabat ordered the newspaper to stop publishing such testimonies reportedly referring to Law No. 69.99 in its decision. Some civil society actors raised concerns about such a decision, arguing that the testimonies of high-level officials are integral to the establishment of truth and should be known to the public. They argued that the court decision infringed on the right to information and press freedom. Ahmed Herzenni justified his action to prevent the emergence of these testimonies in the public domain as necessary to protect the CCDH from libel by suspected perpetrators in the absence of procedures regulating the application of the Law No.69.99. In its written explanations to Amnesty International's concerns on this point, the CCDH contended that private testimonies collected by the IER were not intended to shed light on human rights violations in the past, but rather to better understand the political context and specific events leading to violations.

The incident underlines the gaps that still exist in the work undertaken by the IER and the Follow-up Committee to uncover the truth and to combat impunity. Many victims of human rights violations were able to relate their experience, both in private communications with the IER and in public through the public hearings organized by the IER, although victims were instructed not to name individual perpetrators.[54] However, as mentioned in section 4.2, the perpetrators of human rights violations have been notably absent from the narrative of the "years of lead" as written by the IER. The state recognized its responsibility in the human rights violations committed, but did not provide its own account or explanations to the victims as to the reasons why they were victimized.

Moreover, the truth-seeking process in Morocco and Western Sahara has not been complemented by judicial investigations and prosecutions against suspected perpetrators, or any other process to ensure accountability for human rights violations. Therefore, the testimonies or views of high-level officials on a period when gross human rights violations were committed are not known to the victims or to the public at large. It is difficult to initiate a healthy debate on past human rights violations, and therefore to promote reconciliation, if the state, which bears great responsibility in these violations, does not genuinely engage in such discussions. The Follow-up Committee must impress on the Moroccan authorities that state officials' accounts of past human rights violations also form part of the public record.

The Moroccan authorities should immediately develop guidelines for the use of and access to the archives of the IER that are in accordance with Principles 14, 15, 16, 17 and 18 of the Updated Set of Principles to Combat Impunity. Such guidelines should be based on the need to preserve evidence of and ensure accountability for human rights and should not create impediments to the right to truth and justice.

THE RIGHT TO KNOW AND ARCHIVES

Principle 14 of the Updated Set of Principles to Combat Impunity states:

"The right to know implies that archives must be preserved. Technical measures and penalties should be applied to prevent any removal, destruction, concealment or falsification of archives, especially for the purpose of ensuring the impunity of perpetrators of violations of human rights and/or humanitarian law".

Principle 16 gives guidance as to the issue of national security. It states:

"Courts and non-judicial commissions of inquiry, as well as investigators reporting to them, must have access to relevant archives. This principle must be implemented in a manner that respects applicable privacy concerns, including in particular assurances of confidentiality provided to victims and other witnesses as a precondition of their testimony. Access may not be denied on grounds of national security unless, in exceptional circumstances, the restriction has been prescribed by law; the Government has demonstrated that the restriction is necessary in a democratic society to protect a legitimate national security interest; and the denial is subject to independent judicial review".

Principle 17 gives guidance as to the guarantees to give to individuals named in archives:

"(a) For the purposes of this principle, archives containing names shall be understood to be those archives containing information that makes it possible, directly or indirectly, to identify the individuals to whom they relate;
(b) All persons shall be entitled to know whether their name appears in State archives and, if it does, by virtue of their right of access, to challenge the validity of the information concerning them by exercising a right of reply. The challenged document should include a cross-reference to the document challenging its validity and both must be made available together whenever the former is requested. Access to the files of commissions of inquiry must be balanced against the legitimate expectations of confidentiality of victims and other witnesses testifying on their behalf in accordance with principles 8 (f) and 10 (d)."

5. THE RIGHT TO JUSTICE

Despite demands by victims, their families and various national and international human rights organizations including Amnesty International, the Statute of the IER excluded the identification of perpetrators of human rights violations from the institution's mandate. Article 6 of the IER's Statute stipulated that: "The purview of the committee is non-judicial. It will not determine responsibility for violations."[55] The exclusion of justice from the mandate of the IER has been a major impediment to the success of the whole equity and reconciliation process and to the achievements of the IER's stated objectives of providing adequate reparation to victims and guaranteeing non-repetition. Not only did the IER fail to address the aspect of justice itself; it even failed to recommend that the Moroccan authorities grant victims and their families their right to justice as a natural progression of its work to establish the truth about human rights violations. To date, the vast majority of those suspected of committing gross human rights violations during the period under the IER's mandate have not been held accountable for their crimes.

The IER stated in its final report that it focused on "historical truth rather than judicial truth", and "reconciliatory justice rather than accusatory justice". The King's speech to mark the completion of the work of the IER on 6 January 2006 emphasized that the IER in itself can be seen as a gesture of collective pardon and that only history can judge the past. However, justice for the victims of human rights violations cannot be disassociated from the process of seeking to address the legacy of past human rights violations, healing those affected by such violations and inspiring confidence within society that such violations will no longer be tolerated. On the contrary, only if the right of victims to an effective remedy and the obligations of the authorities to prosecute suspected perpetrators are upheld, will citizens trust that the abuses of the past will never be repeated. Under international law, the Moroccan authorities are still obliged to investigate human rights violations, identify the suspected perpetrators and bring them to justice in fair proceedings. The Moroccan authorities were reminded of their obligations to routinely investigate and prosecute alleged perpetrators of serious human rights violations by UN human rights monitoring mechanisms. For instance, the Human Rights Committee, which is responsible for overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR), to which Morocco is a state party, expressed concern that "those responsible for disappearance have still not been identified, tried and punished" in Morocco and Western Sahara.[56]

THE RIGHT TO JUSTICE

Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR) lays down the obligations of state parties to provide an effective remedy to persons whose rights, as enshrined in the ICCPR, have been violated.

Article 2 (3) requires that states should "ensure that any person whose rights or freedoms … recognized [in the ICCPR] are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." General Comment No.31 of the Human Rights Committee expands on this obligation to mean that "... States Parties must ensure that those responsible [for violations of the rights recognized by the ICCPR] are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman or degrading treatment (Article 7), summary and arbitrary killing (Article 6) and enforced disappearance (Articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations. When committed as part of a widespread or systematic attack on a civilian population, these violations of the Covenant are crimes against humanity (see Rome Statute of the International Criminal Court, Article 7)".

Principle 19 of the Updated Set of Principles to Combat Impunity requires states to: "undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished".

Principle 22 of the Basic Principles on the Right to a Remedy and Reparation states that an element of satisfaction includes "*judicial and administrative sanctions against persons liable for the violations*".

The IER and its follow-up mechanism told Amnesty International that when they gave oral feedback to relatives of victims of enforced disappearance about their investigations, in practice they did not necessarily hide the identity of the suspected perpetrators. Indeed, some relatives of victims of enforced disappearance have confirmed to Amnesty International that they were told by members of the IER or the CCDH information about the alleged perpetrators in private meetings.

However, the IER set as a condition for victims testifying in public hearings that they could not mention the name of persons implicated in human rights violations, citing limitations to its mandate. Some victims and human rights groups in the country severely criticized this condition.[57] Additionally, individuals suspected of having committed or participated in human rights violations were not mentioned in the IER final report. The IER cited concerns that if persons suspected to have perpetrated human rights violations were named, they could sue the IER for libel, and they would not benefit from the presumption of innocence. However, such justifications to exclude the identification of alleged perpetrators of gross human rights are not credible.

Even though the IER final report called for developing an integrated strategy to combat impunity in the country, it did not recommend that suspected perpetrators of crimes under international law be brought to justice. Neither the IER nor the Follow-up Committee clarified

whether they systematically sent their files to judicial authorities for further investigations and prosecutions. In order to address this fundamental flaw, the Follow-up Committee must compile all information gathered on suspected perpetrators and forward all evidence indicating individual criminal responsibility to the relevant judicial authorities for further investigation, with a view to bringing the suspected perpetrators to justice without delay.

Subsequently, the Moroccan authorities must ensure that all cases of past human rights violations including all cases the IER and the Follow-up Committee might have sent to them are the subject of full, independent and impartial judicial investigations. The investigating body must have the power to summon members of the security forces, state officials and other potential witnesses, to demand the production of evidence and have powers of search and seizure.

Once investigations are conducted, the Moroccan authorities must bring perpetrators of human rights violations to justice, before an independent judiciary or an appropriate mechanism established for that purpose. Such a mechanism should be a product of a wide consultation between the Moroccan authorities, the CCDH, victims and victims' families, associations representing families of the disappeared and other NGOs including human rights organizations, and national and international experts on transitional justice.

In addition to keeping silent on the need to prosecute alleged perpetrators of human rights violations, the IER did not recommend either vetting mechanisms or other administrative measures against suspected perpetrators. Security officials reasonably suspected of serious human rights violations should be suspended from their posts, pending independent and impartial investigations, particularly in the Moroccan context where some high-level serving officials are alleged to have been responsible for such violations. The Moroccan authorities should establish an impartial mechanism to ensure that those reasonably suspected of crimes under international law or other serious human rights violations are not placed in positions where they could repeat such violations. Such a screening mechanism should be set up alongside independent and impartial investigations to identify suspected perpetrators and judicial proceedings to bring them to justice as recommended above.

Driss Benzekri, late President of the IER said in communications with Amnesty International that victims of human rights violations were free to file complaints against suspected perpetrators in courts. He also said that some of the deaths resulting from the violent repression of the Casablanca demonstrations in 1981 had been referred to the judicial authorities for further investigation. Amnesty International understands that the cases in which relatives have made an explicit request to the IER for the suspected perpetrators to be brought to justice, a request which the IER was not mandated to fulfil, were sent to the Prime Minister for the authorities to follow-up. However, Amnesty International is not aware of any prosecution in relation to these events or any other human rights violations that have taken place during the period falling under the IER's mandate.

Amnesty International is deeply concerned that the burden of calling for further investigation and prosecution for past human rights violations is left on the victims and their families, rather than a systematic policy of fighting impunity and prosecuting alleged perpetrators in

compliance with Morocco's international obligations. This concern is heightened by the fact that the Moroccan authorities have received evidence of human rights violations and have not acted appropriately on such information. The fact that justice was excluded from the mandate of the IER from the onset and that the whole process was presented by King Mohamed VI as an initiative to address the legacy of the past in a non-judicial way raises serious questions on the intent of the Moroccan authorities to substitute justice with an incomplete truth-seeking and reparation scheme.

Some victims have considered bringing complaints to the courts. However, many of them have little faith in the ability of the justice system to provide an effective remedy as it is widely regarded by some victims as lacking the necessary independence and impartiality. The IER and its Follow-up Committee have not proposed any measures to assist victims to bring complaints to the courts, a practice followed by truth commissions in other countries. To remedy this flaw, the Follow-up Committee should help victims and their families who express the wish to bring complaints to courts, including by providing them with legal advice.

6. THE RIGHT TO ADEQUATE REPARATION

International law and standards, in particular the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and the UN Human Rights Committee in its General Comment No.31 consider that reparation includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

In its work, the IER placed a strong emphasis on reparation for victims of human rights violations as a means to provide a remedy for their suffering and as an integral component of national reconciliation. In designing its reparation programme, the IER considered the moral, physical and material damage suffered by victims. In a particularly welcome step, it grounded its work in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and on lessons learnt from the work of truth commissions in other parts of the world.

Both the IER and its Follow-up Committee have adopted a constructive approach to define and implement a comprehensive programme of reparation for individual victims of human rights violations. The IER started its work from the premise that no matter how much financial compensation would be provided, other forms of reparation were needed to ensure that victims obtain an effective remedy for their suffering. The IER was tasked with assessing the financial compensation payments made by a previous body, the Arbitration Commission on Compensation to victims of enforced disappearance and arbitrary detention and their families.[58] The IER did not only review the many cases which had not been dealt with by the Arbitration Commission on Compensation, but also extended reparations to medical, physical and psychological rehabilitation and social reintegration for loss of jobs, income or property. The IER organized a national forum on reparation to present its ideas and discuss them with civil society organizations in September 2005.

While the framework for providing reparation had been defined by the IER itself as set out in Chapter 3 of Volume 3 of its final report and although it began making decisions in individual cases of human rights violations, it was the task of the Follow-up Committee to complete the process of awarding financial compensation and other forms of reparation to victims of human rights violations.

6.1. RESTITUTION

According to Article 19 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty[59] , enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

The final report of the IER emphasized that the approach taken on reparation was underpinned by the principles of honouring the victims, rehabilitating them and fostering their sense of citizenship.

The organization of seven public hearings in the country giving a voice and a platform to victims of human rights violations, including families of direct victims was a groundbreaking initiative. The purpose of the public hearings was, according to the IER, to rehabilitate victims, to help them recover their dignity, to alleviate their suffering, to preserve collective memory and to educate the authorities, the public and future generations. The hearings were broadcasted nationally and internationally. The victims who testified were selected by the IER to represent a wide range of violations committed throughout the country and to ensure a regional and gender balance. Those providing testimonies had to agree with the IER not to use the hearings to push political agendas and not to name individual perpetrators as stipulated in IER's "Code of Conduct on the Obligations of the Equity and Reconciliation Commission and the Victims Participating in the Public Hearings". The second condition angered many human rights organizations and victims.[60]

The hearings took place in regions particularly affected by human rights violations: the capital Rabat, Figuig, Errachidia, Khénifra, Marrakech, and El Hoceima in the Northern region of the Rif. However, a public hearing scheduled in Laayoune, Western Sahara, did not take place, reportedly because of security concerns. This is regrettable as many of the human rights violations recorded between 1956 and 1999 were committed in Western Sahara, and an opportunity to give a voice on equal footing with others to the region, historically repressed and still presently suffering from restrictions on freedom of expression, association and assembly, was missed. To remedy this shortcoming, the Follow-up Committee should ensure that victims of human rights violations in Western Sahara are given the same opportunities to recount their suffering as victims in several regions of Morocco through immediately organizing hearings in Western Sahara.

The recognition of state responsibility in the abuses victims have suffered is crucial to restore their dignity. The IER had underlined the responsibility of the state in the human rights violations committed during the "years of lead", both in its final report and in individual Arbitration Decisions sent to victims.

Another important element of restitution to the original state prior to the occurrence of the human rights violation is reinstatement of employment.

According to the IER final report, some victims of arbitrary detention or coerced exile for political reasons had already been reinstated into their public sector jobs or otherwise

financially compensated following a directive by the Prime Minister of 4 May 1999. The IER had recommended reinstatement of employment or other financial measures to the intended beneficiaries of the aforementioned 1999 directive by the Prime Minister. The CCDH explained that in implementing this recommendation, it sent requests for reinstatement of employment to relevant government bodies, studied their responses and analyzed possible solutions in conjunction with relevant government authorities. Even according to the statistics provided by the Moroccan authorities in the fourth periodic report submitted to the Committee against Torture in April 2009, under one hundred individuals had benefited from the programme of the Follow-up Committee out of the 414 cases sent to relevant authorities requesting reinstatement of employment in various public sector or semi-public sector positions held prior to the violation.[61] On the other hand, the CCDH stated in its written response to Amnesty International in September 2009 that approximately 1,000 individuals have benefited from reinstatement of employment. The discrepancy in the numbers highlights the need for the Follow-up Committee to publish without delay statistics on the number of beneficiaries of the reinstatement of employment programme, indicating the public or semi-public sector position to which the individuals had been reinstated, the dates of reinstatement and the nature of the violation which the individuals suffered that led to loss of employment.

In addition to the reinstatement of employment, for those victims not previously employed in public sector or semi-public sector positions, the IER recommended to find solutions to "socially reinsert" them. Without providing specific recommendations on the nature of the proposed benefits, the IER final report included the following categories of victims who should be "socially reinserted":

- those who were unemployed prior to the violation or those who can no longer work by virtue of age or health condition;
- those employed in large private sector institutions;
- those who obtained academic degrees while in detention, but who were unable to find employment after release;
- school or university students who were unable to complete their education while in detention and were not able to find employment upon release; and
- minor children of victims who were unable to complete their education or find employment as a result of the violation.

Some victims complained to Amnesty International that they were still waiting to be reinstated into the jobs they had lost as a direct result of their detention. The Follow-up Committee, which was tasked with implementing the recommendation of the IER on reparation, told Amnesty International that "social reinsertion" was being organized in conjunction with the Moroccan authorities, including at the level of the *wilayas* (governorates) and that in some cases, there were difficulties to find vacancies, or that the age and the level of education of certain persons presented obstacles to reintegration into past jobs. The Follow-up Committee specified that in some cases, "social reinsertion" may be achieved through financial compensation.

The fourth periodic report submitted by Morocco to the Committee against Torture in April 2009 stated that 770 cases out of 1,017 eligible cases have been sent to the Department of the Prime Minister, while the remainder was being processed at the time of writing.[62] The report did not, however, specify whether the Department of the Prime Minister found solutions or whether any of the intended beneficiaries have been rehabilitated. The CCDH specified to Amnesty International in its written response in September 2009 that the programme of "social reinsertion" related to 1,046 cases of victims and families; but also failed to specify whether these cases have already been resolved.

Victims who feel left out or let down by the restoration of employment or "social reinsertion" schemes would greatly benefit from obtaining detailed information and statistics on the programme, its achievements and challenges faced by the Follow-up Committee. The Follow-up Committee must guarantee that the principles, criteria and factors used to recommend reinstatement of employment or "social reinsertion" are communicated to all victims and the public in a clear format, that they are understood by the victims, and that they are non-discriminatory by nature or in their implementation. To rebuild trust in this form of reparation, the Follow-up Committee should publish without delay statistics on the implementation of the IER's recommendations regarding the reinstatement of employment and "social reinsertion" schemes including the number of beneficiaries, the positions to which they have been reinstated and the amount of financial compensation provided with indications of the type of violation which they suffered.

It is of particular concern that the decision to restore employment or provide "social reinsertion" falls on a multitude of public and semi-public institutions, that no doubt use varying criteria and have varying capacity to absorb employees. This is in disregard to the entitlement of all victims of human rights violations to the same reparation with the only variables being the gravity of the violation and the harm suffered.

Amnesty International calls on the Moroccan authorities to award all victims of human rights violations adequate reparation as appropriate in relation to the gravity of violation and harm suffered. The Moroccan authorities must also take concrete steps to provide for the restoration of employment or other relevant means of restitution to victims who have lost their employment or have been unable to secure an employment as a result of a human rights violation. In cases where it is not possible, adequate compensation should be granted.

6.2. FINANCIAL COMPENSATION AND APPEAL MECHANISM

According to Article 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:
"(a) Physical or mental harm;
(b) Lost opportunities, including employment, education and social benefits;
(c) Material damages and loss of earnings, including loss of earning potential;
(d) Moral damage;
(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services."

In relation to financial compensation, the IER was tasked with assessing the work of the Arbitration Commission on Compensation set up in September 1999. The Arbitration Commission required claimants to submit their applications for compensation by 31 December 1999, though the information provided by victims and associations representing them seems to suggest that applications were also accepted after this deadline. The decisions of the Arbitration Commission on Compensation were final and those who applied for compensation had to sign a waiver recognizing that the Commission's decision on their claim was not subject to appeal. This prevented victims from challenging the decision on their case. One recurrent complaint has been that certain victims of prolonged secret detention had received a higher amount of financial compensation than others who were victims of a similar violation. For instance, some ex-detainees of the Qal'at Mgouna detention centre stated that they had received a considerably lesser amount than the ex-detainees of the Tazmamart detention centre, for an equivalent time spent in secret detention.

Although the IER's final report stated that it assessed the work of the Arbitration Commission on Compensation and examined its decisions, the IER and its Follow-up Committee did not challenge the financial amount awarded to those the Arbitration Commission on Compensation found eligible for compensation. Rather, they reviewed cases which had been disregarded or deemed outside the mandate of the previous Arbitration Commission on Compensation. In other cases where compensation had been awarded by the Arbitration Commission on Compensation, the IER and its Follow-up Committee added medical and social rehabilitation to the financial amount already distributed.

While the IER began during its mandate to prepare Arbitration Decisions which spelt out the amount of financial compensation to be awarded to each victim and his/her relatives, and indicated whether they should receive other forms of reparation, the Follow-up Committee was effectively in charge of finalizing this task. In its written response to Amnesty International, the CCDH stated that by 20 September 2009, a total of 17,012 victims and families have been financially compensated. It did not however specify the total amount awarded.

According to statistics released in July 2007, the total distribution of financial compensation was completed for 23,676 persons, for a global amount of 1.56 billion dirhams (about 138 million Euros), which included the sum of 1 billion (about 88.6 million Euros) distributed by the Arbitration Commission on Compensation.[63] Statistics available in Morocco's fourth periodic report submitted to the Committee against Torture in April 2009 state that a total of 16,892 persons benefited from a total financial award of about 666 million dirhams (about 58.8 million Euros) by the end of 2008. The report specified that out of this award, an actual 538.6 million dirhams (about 47.6 million Euros) was distributed as of 19 April 2009, which represents a lower figure than that provided by the CCDH in July 2007, once the 1 billion dirhams (about 88.6 million Euros) awarded by the previous Arbitration Commission on Compensation is excluded.

In order to consolidate trust in the process of truth-seeking and reparation and to transparently communicate the results of the financial compensation schemes, the Follow-up Committee should publish detailed statistics on financial compensation for human rights violations; clearly indicating the following:

- number of beneficiaries by category (direct victims or family members);
- categories of violations for which compensation was awarded;
- the global amounts of financial compensation for each category of violation; and
- the range of the amount of financial compensation received in individual cases for each category of violation.

Such statistics should also indicate whether financial compensation was awarded by the Arbitration Commission on Compensation, or by the IER and its follow-up mechanism within the CCDH. The publication of detailed statistics can help respond to concerns by certain groups of victims that the amount they received is inferior to amounts received by victims of similar violations.

Volume 3 of the IER final report sets out the general principles and the specific criteria to be used in determining the amount of financial compensation for victims of human rights violations. In accordance with international standards, the IER took into consideration the gravity of the violation and the harm suffered as criteria for the determination of the amount of compensation. The general principles for determining financial compensation identified by the IER were the respect of human dignity, deprivation of liberty, the occurrence of gross human rights violations other than arbitrary detention and enforced disappearance in a systemic manner, the gender dimension, social solidarity and equality between victims. In turn, the IER spelt out criteria for compensation for different categories of victims and their families such as for victims of enforced disappearance who are still alive and for those who have passed away during the violation; for victims of arbitrary detention who are still alive and for those who have died as a result of torture or in other circumstances while in custody; and for victims of enforced disappearance and arbitrary detention who have died after the violation occurred.

For victims of enforced disappearance, Chapter 3 of Volume 3 of the final IER report outlined several determining factors including deprivation of liberty, loss of income or opportunity and conditions of the enforced disappearance and its consequences including threats to the right to life, ill-treatment and permanent disabilities. For victims of arbitrary detention, the criteria took into account the conditions of detention and their consequences, including torture or other forms of ill-treatment as well as permanent disabilities and loss of income or opportunity. Furthermore, the IER provided for additional compensation for victims of arbitrary detention for time spent in prison as a result of trials that followed arbitrary detention – stipulating amounts inferior to those for time spent in “arbitrary detention” as defined by the IER. This suggests that detention resulting from trials where there might have been a partial or total non-observance of standards of fair trial was not considered to be arbitrary, contrary to the definition of arbitrary detention in international law.

In explaining the criteria applied for determining the amount of financial compensation, the CCDH told Amnesty International delegates in March 2008 that financial compensation was calculated on the basis of six factors related to the violation suffered: deprivation of liberty, specificity of the violation of enforced disappearance, conditions of detention, torture and

cruel, inhuman or degrading treatment, and the consequences of physical and psychological abuse. The CCDH explained the difference in the amount received by ex-detainees of the Qal'at Mgouna detention centre and those of Tazmamart by the fact that conditions of detention in Tazmamart were the worst and that more than half of the detainees in Tazmamart had died as a result of the harsh conditions of detention. While this might explain the difference in amounts received by victims of arbitrary detention, it poses concerns for victims of enforced disappearance as according to the IER's criteria, all victims of enforced disappearance were awarded the same amount for conditions of detention with the only variable being the length of the deprivation of liberty. Amnesty International is concerned that some former victims of enforced disappearance, as defined in international customary law, in other words individuals who were placed outside the protection of the law and whose detention was denied by the authorities, were classified as victims of arbitrary detention by Arbitration Decisions rather than victims of enforced disappearance.[64] Amnesty International calls on the Follow-up Committee to ensure that all victims of enforced disappearance as defined in international law are classified as such in Arbitration Decisions.

While the Follow-up Committee devoted considerable efforts to communicate with victims and their families; some victims remain unclear as to the criteria for determining financial compensation, established by the IER and implemented by the Follow-up Committee, and are seeking clarification as to the way the criteria were applied in their individual case. Such an explanation for each individual case would eliminate the perception among victims and their relatives that compensation has been awarded randomly, and demonstrate that objective criteria have been used, justifying a differentiated treatment of victims in allocating compensation. In respect to international standards, the Follow-up Committee should communicate the principles, criteria and factors used to award financial compensation to all victims in a clear format and ensure that they are non-discriminatory by nature or in their implementation.

Amnesty International is also concerned that not all victims received compensation in contravention with the right to an effective remedy for victims of human rights violations. For example, in some cases defined as falling outside the mandate of the IER, no financial compensation was awarded. For instance, the IER did not even recommend reparation for some human rights violations that it considered outside its mandate such as cases of individuals executed following the July 1971 coup attempt following their sentencing by a military council (*majlis harbi*) whose proceedings did not meet international standards for fair trial and in some cases of arbitrary detention "not of a political nature". On the other hand, the IER recommended the provision of reparation for the Tagounit victims due to the seriousness of the violations they suffered even though it considered their case to be outside its mandate because their detention was not of "political nature".

In a welcome move the CCDH confirmed that for cases of enforced disappearance there is no time limit to send an application to the Follow-up Committee, that such cases would be investigated to establish the truth; and the families of victims would be provided reparation. This approach is compliant with Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance, which while not in force has seen signed by Morocco in February 2007 and whose provisions for the majority reflect international customary law. A similar approach should be adopted for all other cases of human rights

violations, and not only those of enforced disappearances. Victims of human rights violations should not be denied their right to adequate reparation on the basis that they have not sent their claims within the timeframe established by the IER.

The task of the IER was enormous; it covered a period of 43 years (1956-1999) and it did examine the files of thousands of victims – all in 18 months. Regardless of the constraints of the IER in terms of length and nature of the mandate, each victim of human rights violations has the right, under international law, to a remedy, including financial compensation. If the IER and its follow-up mechanism have not been able to provide compensation, the Moroccan authorities have an obligation to do so. Specifically, the Moroccan authorities must ensure that all victims of human rights violations including those whose cases the IER considered to be outside of its mandate receive compensation which is appropriate and proportional to the gravity of the violation and the circumstances of their case.

In addition, Moroccan authorities must establish an appeal mechanism to enable victims of human rights violations who feel that their claim for reparation has not been examined adequately to challenge the decision.

6.3. REHABILITATION

According to Article 21 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, rehabilitation should include "medical and psychological care as well as legal and social services".

In addition to looking at the scale of human rights violations committed during the period under its mandate, the IER looked at the depth and long term consequences of such violations on individual victims. For instance, the IER paid particular attention to the medical problems encountered by victims of prolonged arbitrary detention and torture or other ill-treatment, and by their relatives. Its final report contains a section (Volume 6) studying the health consequences of the gross human rights violations committed during the "years of lead". The study detailed health problems affecting several body functions, for instance the nervous system, the digestive system, the respiratory system, the metabolism, bones/joints, genitalia and presented statistics organized from different angles (gender, age, level of education, profession, family status, place of detention, etc). The IER also assisted victims of past human rights violations in urgent need of medical care throughout its mandate. It recommended that medical cover be awarded to victims and their relatives suffering from medical problems related to the human rights violations they had endured, that psychological programmes be put in place, that a permanent medical centre be established to assist victims of human rights violations and that some 50 victims suffering from severe health problems following human rights violations benefit from immediate medical care.

According to a statement by the CCDH dated 21 March 2009, 12,000 families were to benefit from medical coverage managed by the National Fund of Social Security Bodies (Caisse Nationale des Organismes de Prévoyance Sociale, COPS). That same communiqué indicated that 2,951 healthcare cards were issued by the COPS, representing 92% of the files received. According to Morocco's fourth periodic report submitted to the Committee against Torture in April 2009, 3,087 cards have been issued while 2,385 have been distributed. By September 2009, the CCDH confirmed that a total of 3, 559 cards have been

issued, while 2,886 have been distributed. However, it remains unclear whether and when the remainder of the 12,000 families eligible to receive medical cover will be issued with healthcare cards.

As indicated above, the Follow-up Committee took a number of positive steps to implement the medical rehabilitation programme recommended by the IER. Nonetheless, a number of complaints from victims of human rights violations concerning the implementation of this form of reparation have not been adequately addressed.

For instance, healthcare cards given to victims do not cover 100% of medical costs, the percentage varying from type of service. Victims and human rights organizations provided Amnesty International with information that coverage of costs spanned from 30% to 80 %. The absence of full medical coverage is particularly problematic for those victims who come from lower income strata. The Moroccan authorities should ensure that all victims of human rights violations are entitled to full medical care.

Some victims who received healthcare cards also complained that they were not working when they first started seeking medical care at hospitals or clinics, even though according to the CCDH, those were activated in September 2007. Apparently names of victims were not appearing on the databases in hospitals. Some victims told Amnesty International that whereas victims in urgent need of medical care were able to benefit from IER members' intervention with the medical authorities during the mandate of the IER, they were not always able to obtain similar help from the CCDH. In March 2008, the CCDH acknowledged to Amnesty International that there were information technology problems in certain cases for the registration of new healthcare card-holders but that victims in need of medical care could communicate with the CCDH for help. In several cases from Western Sahara where healthcare cards did not work when victims tried to use them at first, the problem had been subsequently rectified. Nonetheless, complaints by victims and human rights organizations remain that initial problems with the healthcare cards deterred some victims from collecting them. Additionally, there are concerns that rectifying technical problems experienced by victims when they first try to use their new healthcare cards places the burden on the victim to complain – creating difficulties for victims particularly in remote areas far from the support of national human rights organizations.

In meetings with Amnesty International the Medical Association of Rehabilitation of Victims of Torture (Association médicale de réhabilitation des victimes de la torture, AMRVT), an NGO set up in the 1970s to provide medical help to victims of torture, also pointed at the fact that full medical cover is not provided, and that a permanent centre to assist victims of human rights violations, as recommended by the IER, has yet to be set up. AMRVT also told Amnesty International that greater outreach by the Follow-up Committee is needed to ensure that victims are aware of their right to medical cover. The Follow-up Committee should respond to this suggestion and reach out to victims and their families, particularly in remote areas, to inform all those entitled to medical cover of their right and clearly communicate procedures for the collection of healthcare cards to the intended beneficiaries. The Moroccan authorities should establish without further delay a permanent centre to assist victims of human rights violations as recommended by the IER. Such a centre should have branches across various regions of Morocco and Western Sahara to ensure that all victims can easily access its facilities.

6.4. SATISFACTION

According to Article 22 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, satisfaction should include, where applicable, any or all of the following:

"(a) Effective measures aimed at the cessation of continuing violations;
(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;
(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;
(f) Judicial and administrative sanctions against persons liable for the violations;
(g) Commemorations and tributes to the victims;
(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels."

6.4.1. APOLOGY

The IER final report acknowledged the importance of a public apology to restore the dignity of victims and recommended that the Prime Minister issues a formal public apology. However, this recommendation has not been implemented to date. Moreover, Amnesty International supports the call from many victims and civil society organizations for the King, as head of state, to present a public apology. On numerous occasions, the CCDH expressed its view that the King's speech to mark the end of the work of the IER on 6 January 2006, should be interpreted as an apology, since it presented the IER as an effort of collective pardon. However, Amnesty International shares the views of victims and civil society organizations that do not consider the speech of the King, who expressed sympathy for the victims as well as for his father King Hassan II, as a public apology. Many victims and several human rights organizations expressed their view that trust in the state can only be restored when King Mohamed VI offers a clear, explicit apology for the violations committed by the Moroccan authorities in the past. From the work of Amnesty International undertaken in other countries, such a public apology at the highest level of the state is particularly important. Such an apology would be consistent with the Basic Principles on the Right to a Remedy and Reparation, which consider that a "public apology, including acknowledgement of the facts and acceptance of responsibility", is an element of satisfaction, one of the five forms of reparation. Therefore, Amnesty International calls on the King, as head of state, to issue a formal and public apology to victims of human rights violations during the period covered by the mandate of the IER.

6.4.2. COLLECTIVE REPARATIONS

In addition to reparations for individual victims of human rights violations and their families, the IER put forward a programme for collective reparations. It proposed ideas to preserve the memory of the past and to address the marginalization and socio-economic deprivation of certain regions which have been particularly affected by the political repression of the "years of lead".

The IER identified 11 regions eligible for collective reparations, based on two criteria: the presence of a secret detention centre and the fact that the local population was subjected to collective punishment. The 11 regions identified are Figuig, Errachidia, Zagora, Ouarzazate, Al Hoceima and Nador in the Northern region of the Rif, Hay Mohammadi, Khénifra, Azilal, Tantan and Khémissat.

The Follow-up Committee is implementing the proposed programme for collective reparations set out by the IER. To that effect it has signed partnership agreements with a number of national and international bodies including the Ministry of Interior, the Ministry of Employment, the Ministry of National Education and Higher Learning, the European Union, the United Nations Development Fund for Women (UNIFEM), the Royal Institute of Amazigh Culture and provincial councils of Azilal, Tantan and Khémissat.

Regarding the preservation of memory, the Follow-up Committee is considering transforming some of the most notorious secret detention centres into memorials, museums or public and educational spaces. For instance, it is proposed that the Agdez former secret detention centre would partly become a social complex, with public gardens. It has also held two workshops on the preservation of memory on the Tazmamart and Agdez detention centres in December 2008 and January 2009, respectively.

The CCDH stated that projects to transform former secret detention centres were elaborated in consultation with the Ministry of Interior, which administers most of the former secret detention centres, with victims and with the local population. The CCDH set up a pilot committee to oversee the consultation and implementation process of these projects throughout 2007 and 2008. In addition, local coordination committees have been created in the regions chosen for collective reparations, composed of local community and development associations and representatives of the local authorities. In a welcome development, the CCDH also signed an agreement with the Ministry of Housing for the restoration of former detention centres as both a means to preserve memory and to create income generating projects. The President of CCDH, Ahmed Herzenni declared in a media interview in November 2008 that three former detention centres were selected for transformation in 2009, namely Agdez, Qal'at Mgouna and Derb Moulay Cherif.[65]

Some victims have complained that they have not been consulted during the process. For instance, the CCDH stated that the Benouhachem group[66] of detainees have been consulted for ideas of how to transform the secret detention centre of Agdez where they were detained, but Sahrawis formerly detained in Agdez and Qal'at Mgouna told Amnesty International that they have not been approached by the Follow-up Committee to discuss such issues. Amnesty International underlines the importance of bringing into the consultation process all victims of human rights violations, not only to fully restore their dignity and trust in official institutions but to ensure a comprehensive narrative of events. Amnesty International urges the Follow-up Committee to establish and promote accessible mechanisms enabling victims of human rights violations to be consulted on the design and implementation of memorials and the transformation of secret detention centres. The Follow-up Committee should also publish a list of all the places which it has recorded as secret detention centres in Morocco and Western Sahara.

In order to address the marginalization and socio-economic deprivation of certain regions which have been particularly affected by the political repression of the "years of lead", the Follow-up Committee launched an ambitious programme of communal reparations with the aim of establishing socio-economic development projects in the identified regions that would benefit mainly women and the youth. In preparation for the launch of the programme, workshops were held in the concerned regions in conjunction with local coordination committees in the period between April and July 2008. On 1 April 2009, the CCDH held a ceremony to mark the launch of the implementation of the first projects of the programme covering the regions of Ouarzazate, Errachidia, Zagora, Nador, Al Hoceima, Hay Mohammadi, Khénifra and Figuig. Thirty-three projects were selected following a call for proposals in July 2008 by the Foundation of the Savings and Management Fund (Fondation Caisse de Dépôt et de Gestion, Fondation CDG), a body partnering with the CCDH. According to the CCDH, the projects selected revolved around these three axes: capacity building such as the integration of women into civil society and trainings for youth; income generating activities such as the building of wells and the promotion of eco-tourism and the preservation of memory such as a documentary on the events of Nador of 1984 and the restoration of a memory site at Douar el Morabite. The CCDH indicated that 14 million dirhams (about 1.2 million Euros) were set aside for 2008 for various collective reparation projects, some funded by the European Union.

One example highlighted by the CCDH in meetings with Amnesty International delegates in March 2008 is a project conducted with UNIFEM and other national and international bodies on the promotion of women's rights and their role in the process of transitional justice. One example was a project aimed at preserving the memory of human rights violations suffered by women in the region of Soutate, complemented with the promotion of the rights of women living in rural areas in the village of Ksar Soutate, in the region of Imilchil, through supporting women's education and literacy. The CCDH gave examples of other projects including the creation of centres intended to improve the situation of women in regions such as Zagora and Figuig. Furthermore, the Follow-up Committee conducted a number of studies on women's rights and their contribution to transitional justice.

In addition to these projects already launched, two further calls for proposals were made by Foundation CDG for a total sum of over 20 million dirhams (about 1.8 million Euros) for 2009, targeting the following regions: Figuig, Zagora, Errachidia, Khénifra, Al Hoceima, Nador, Hay Mohammadi, Azilal, Khémissat and Tantan.

Amnesty international welcomes the efforts conducted by the Follow-up Committee to establish partnerships with a wide array of national and international bodies and to launch a programme of collective reparations. However, some human rights groups complained that they were excluded from the consultation process to discuss "development projects" in the regions identified. The CCDH told Amnesty International that, while it welcomed the participation of any organization in the consultation process, it could not force those who did not want to collaborate. This was perhaps a reference to the dissensions and lack of trust which have characterized the relations between the IER and the Follow-up Committee with some of the main human rights groups in Morocco, including the Moroccan Association of Human Rights (Association marocaine des droits humains, AMDH) and the Forum for Truth and Justice (Forum pour la Vérité et la Justice, FVJ). It also pointed that groups specialized

in development were probably more suited to collaborate on development projects rather than human rights groups. However, Amnesty International believes that a truly participative process should seek the views of every actor in society. In addition, human rights groups can greatly contribute to design and implement "development projects" which respect human rights principles, build in accountability and aim to protect and promote economic, social and cultural rights. The Follow-up Committee must ensure that human rights groups are consulted in the design and implementation of "development projects" in regions targeted for collective reparations, and that such projects are guided by human rights principles including the principle of non-discrimination.

Others have also felt excluded from the process initiated by the IER and taken forward by the Follow-up Committee, including in the collective reparations programmes. For instance, some people in the Rif and Western Sahara have complained that they have not been adequately integrated into the IER process, nor their suffering acknowledged in the IER final report. Two areas in the Rif (Al Hoceima and Nador) have been selected for collective reparations, but none in Western Sahara. In discussions with the CCDH, Amnesty International pointed at the fact that its research demonstrates that a disproportionately high number of victims of enforced disappearances were Sahrawis, that secret detention centres existed in Western Sahara, and that the region had experienced armed conflict between the Moroccan armed forces and the Polisario Front. Some members of the CCDH argued that this may not necessarily mean that the population in Western Sahara was collectively punished. Other members said that there were hundreds of places used as secret detention centres during the "years of lead", and that it was those secret detention centres, known and "designed to disappear" a large number of people, which were selected. The President of the CCDH recognized that the fact that Western Sahara had not been selected was an anomaly. He stated that a local coordination committee would be established in the Smara region, which according to information available to Amnesty International has not been the case to date. The Follow-up Committee should immediately address the perceived marginalization of certain areas, such as Western Sahara, by as a first step extending its programme of collective reparations to the region and involving human rights organizations and groups in Western Sahara including those that have been unable to obtain legal registration.

Amnesty International has long expressed concern about the human rights violations affecting the contested Western Sahara territory. From the end of 1975 to the early 1990s, hundreds of Sahrawi men and women were subjected to enforced disappearance, because of their alleged pro-independence activities, support for the Polisario Front, and opposition to Morocco's control of Western Sahara. Others, including elderly people and children, were forcibly disappeared because of their family links with known or suspected opponents to Moroccan authorities' policy in Western Sahara. While today the extent and gravity of the human rights violations in the region are of a lesser scale, restrictions on freedom of expression, association and assembly remain in place, and torture or other ill-treatment of detainees as well as unfair trials continue to be reported. Human rights activists are harassed and assemblies are often broken up by excessive use of force. Amnesty International urges the CCDH to address the restrictions on civil and political rights which exist in Western Sahara as a first step towards setting up collective reparations. The respect of such rights is a precondition to any meaningful consultation with the local population on the development of

the region. Doing so would be in line with the institutional reforms recommended by the IER. In line with its mandate to protect and promote human rights, the CCDH should advocate for the respect of the rights to freedom of expression, association and peaceful assembly in the territory, and for human rights activists to work without fear of harassment or intimidation.

7. LEGAL AND INSTITUTIONAL REFORMS

According to Article 23 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

"(a) Ensuring effective civilian control of military and security forces;
(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
(c) Strengthening the independence of the judiciary;
(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law."
Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (Updated Set of Principles to Combat Impunity), Addendum to the Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher (UN Doc. E/CN.4/2005/102/Add.1), 8 February 2005:

"Principle 35: General Principles

States shall ensure that victims do not again have to endure violations of their rights. To this end, States must undertake institutional reforms and other measures necessary to ensure respect for the rule of law, foster and sustain a culture of respect for human rights, and restore or establish public trust in government institutions. Adequate representation of women and minority groups in public institutions is essential to the achievement of these aims. Institutional reforms aimed at preventing a recurrence of violations should be developed through a process of broad public consultations, including the participation of victims and other sectors of civil society.
Such reforms should advance the following objectives:
(a) Consistent adherence by public institutions to the rule of law;

(b) The repeal of laws that contribute to or authorize violations of human rights and/or humanitarian law and enactment of legislative and other measures necessary to ensure respect for human rights and humanitarian law, including measures that safeguard democratic institutions and processes;
(c) Civilian control of military and security forces and intelligence services and disbandment of parastatal armed forces;
(d) Reintegration of children involved in armed conflict into society.

Principle 36: Reform of State Institutions

States must take all necessary measures, including legislative and administrative reforms, to ensure that public institutions are organized in a manner that ensures respect for the rule of law and protection of human rights. At a minimum, States should undertake the following measures:
(a) Public officials and employees who are personally responsible for gross violations of human rights, in particular those involved in military, security, police, intelligence and judicial sectors, shall not continue to serve in State institutions. Their removal shall comply with the requirements of due process of law and the principle of non-discrimination. Persons formally charged with individual responsibility for serious crimes under international law shall be suspended from official duties during the criminal or disciplinary proceedings;
(b) With respect to the judiciary, States must undertake all other measures necessary to assure the independent, impartial and effective operation of courts in accordance with international standards of due process. Habeas corpus, by whatever name it may be known, must be considered a non-derogable right;
(c) Civilian control of military and security forces as well as of intelligence agencies must be ensured and, where necessary, established or restored. To this end, States should establish effective institutions of civilian oversight over military and security forces and intelligence agencies, including legislative oversight bodies;
(d) Civil complaint procedures should be established and their effective operation assured;
(e) Public officials and employees, in particular those involved in military, security, police, intelligence and judicial sectors, should receive comprehensive and ongoing training in human rights and, where applicable, humanitarian law standards and in implementation of those standards."

A particularly welcomed component of the IER's work has been the development of a comprehensive set of recommendations for legal and institutional reforms which aim to ensure that the human rights violations of the past will not recur.[67]

The Follow-up Committee has been tasked with pursuing these recommendations, although the Moroccan authorities are ultimately responsible for implementing this comprehensive programme of reforms. It has been four years since the final report and the recommendations of the IER were made public. The overwhelming majority of reforms it put forward have yet to be implemented.

According to information available to Amnesty International, the CCDH is following up on legal and institutional reforms through mixed commissions, comprising government authorities, CCDH representatives and experts, looking at penal and criminalization policies and other topics identified by the IER. In discussions with Amnesty International, the CCDH also pointed at the democratization process underway in Morocco, laws adopted in the past few years, such as the law introducing additional safeguards against torture promulgated in 2006 and the law on archives promulgated in 2007. The CCDH also emphasized the fact

that grave human rights violations of the past are not repeated in the country today on the same scale. While the human rights situation in Morocco has much improved compared to that of the "years of lead", concerns remain that the length of time taken to implement the reforms recommended by the IER reveal a lack of political will on the part of the Moroccan authorities and debilitates the achievements of the IER. Amnesty International is similarly concerned about the ongoing allegations of human rights violations being committed in Morocco and Western Sahara, particularly in relation to the status of Western Sahara, national security and counter-terrorism measures and criticism of the monarchy, all issues deemed sensitive by the Moroccan authorities.

Part 7 of this report examines some of the key recommendations made by the IER on legal and institutional reforms. This Part also reviews a number of steps taken by the CCDH and the Moroccan authorities since the publication of the IER final report and offers recommendations for carrying out these reforms.

7.1. RATIFICATION OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The IER recommended to the Moroccan authorities to ratify additional human rights instruments, including the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Rome Statute of the International Criminal Court. However, regrettably the recommendations did not explicitly include the ratification of the Optional Protocol to CAT, which allows for visits of places of detention by national and international inspection mechanisms. Unfortunately, since the publication of the final report in January 2006, the Moroccan authorities have not ratified the aforementioned instruments.

While the IER encouraged the Moroccan authorities to withdraw reservations to the CEDAW; it did not extend this call to lifting the state's declaration on Article 14 to the Convention on the Rights of the Child (CRC) which states "The Kingdom of Morocco, whose Constitution guarantees to all the freedom to pursue his religious affairs, makes a reservation to the provisions of Article 14, which accords children freedom of religion, in view of the fact that Islam is the State religion". Amnesty International notes that Morocco withdrew its reservation to Article 14 of the CRC in October 2006, while maintaining the declaration that it interprets the Article in light of Moroccan legislation notably Article 6 of the Constitution, which provides that Islam, the state religion, guarantees freedom of worship for all.

In a positive step, King Mohamed VI announced on the occasion of the 60th Anniversary of the Universal Declaration of Human Rights in December 2008 that Morocco will withdraw reservations to CEDAW and ratify the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disability. Indeed, Morocco ratified the latter on 8 April 2009, but to the best knowledge of Amnesty International did not communicate the withdrawal of reservations to CEDAW to the Secretary General of the United Nations.

While welcoming Morocco's withdrawal of its reservation to Article 20 of the CAT and its acknowledgment of the competence of the Committee against Torture under Article 22 of the Convention to receive and review individual communications in October 2006, Amnesty

International regrets that these positive developments against torture were not accompanied by the ratification of the Optional Protocol to CAT, despite statements that Morocco has signed the protocol, read on behalf of the Minister of Justice during a seminar on the implementation of the Optional Protocol to CAT organized by the CCDH in February 2009.[68]

In a missed opportunity to take further steps towards the abolition of the death penalty, Morocco abstained during the vote on Resolution 62/149 and Resolution 63/430 on a "moratorium on the use of the death penalty" adopted by the United Nations General Assembly (UNGA) in December 2007 and in December 2008, respectively. In a meeting with Amnesty International's Secretary General, Irene Khan, on 20 March 2009, the Minister of Justice Abdelwahed Radi pointed to the lack of consensus within Moroccan society regarding the abolition of the death penalty – an argument he had previously put forth in Moroccan Parliament in December 2007 to forecast Morocco's abstention in the UNGA vote on Resolution 62/149. This argument does not justify the retention of the death penalty, particularly as Morocco has maintained a *defacto* moratorium since 1993. A seminar organized by the CCDH and the coalition, based in France, Together against the Death Penalty (Ensemble contre la peine de mort, ECPM) on 11 and 12 October 2008 on capital punishment contributed to stimulating the public debate on the issue, but unfortunately confirmed the approach adopted the Ministry of Justice of reducing the number of criminal offences in the Penal Code rather than abolishing capital punishment all together. Earlier that year, officials within the Ministry of Justice informed Amnesty International during a meeting on 7 March 2008 that there are plans to reduce the number of crimes punishable in law by death from 29 to about seven to nine crimes.

To date, the Moroccan authorities have not ratified the International Convention for the Protection of All Persons from Enforced Disappearance which it signed in February 2007, nor reviewed national legislation in order to ensure its conformity with international law and standards, including in relation to enforced disappearance as recommended by the IER. Promptly ratifying the International Convention for the Protection of All Persons from Enforced Disappearance would send a strong message to victims and families in Morocco and Western Sahara, society at large and the international community that the authorities have truly broken with the past of enforced disappearance in the country and have undertaken international commitments to prevent the recurrence of this serious crime under international law. Morocco's Minister of Justice Abdelwahed Radi indicated during a meeting with Amnesty International's Secretary General, Irene Khan, on 20 March 2009 that Morocco intents to ratify the treaty. However, he did not specify a date.

To demonstrate their commitment to "turning the page" on past human rights violations, the Moroccan authorities should ratify without further delay the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court and lift all reservations and declarations to the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination

against Women, which are not compatible with the object and purpose of the treaties, and communicate these to the Secretary General of the United Nations.

7.2. REFORM OF THE JUDICIARY

The IER recommended a number of specific reforms intended to strengthen and improve the functioning and independence of the judiciary. These recommendations are particularly welcome as guaranteeing the independence of the judiciary is instrumental in ensuring an effective remedy to victims of human rights violations and combating impunity.

The IER called for more independence for the Supreme Council of the Judiciary (Conseil supérieur de la magistrature) vis-à-vis the Minister of Justice including by consolidating constitutional guarantees of the independence of the Council and authorizing it to organize the appointment, tenure and career of judges.

Other recommendations intended to strengthen the independence of the judiciary include a call to explicitly ban the interference of the executive in the organization and functioning of the judiciary and to provide for harsher penalties against any infringement on the independence of the judiciary. Amnesty International also supports the IER's recommendation to set out in the Constitution the right to challenge the unconstitutionality of laws and decrees issued by the executive, with the final decision lying with the Constitutional Council, as a way to ensure checks and balances and limit the power of the executive branch.

The IER also called for the improvement of the infrastructure of Moroccan courts and the training of judges and other officials involved in the administration of justice.

The implementation of these recommendations aimed at strengthening the independence of the judiciary and improving the administration of justice is key to ensuring non-repetition of grave human rights violations particularly in light of persistent allegations that in a number of politically sensitive cases, defendants do not enjoy their right to a fair trial.[69] Amnesty International remains particularly concerned regarding the apparent lack of investigations into allegations of torture or ill-treatment of detainees in custody of the police and the security forces and allegations that statements extracted under torture or duress are used as evidence in legal proceedings in contravention of international human rights law and standards. The Moroccan authorities must immediately enact legislation to ensure that no statement obtained under torture can be used as evidence in trial proceedings in accordance to Article 15 of the CAT, to which Morocco is a state party.

Unfortunately, four years after the publication of the final report of the IER judicial reform has yet to take place and no amendments to the Constitution have been adopted to reflect the IER's recommendations. The authorities' promises to reform the judiciary have yet to be translated into reality.

During a meeting with Amnesty International's Secretary General, Irene Khan, on 20 March 2009, Minister of Justice, Abdelwahed Radi, confirmed that a project to reform the judiciary is near completion and that once finalised, it will be presented to the King. On 3 April 2009, the Minister of Justice presented his vision of the reform to the inter-ministerial committee

mandated to prepare the reform project, to which 10 Moroccan human rights organizations reacted by presenting their own reform proposals on 6 April 2009. In parallel to this process, the CCDH presented its own proposals for reforming the judiciary to King Mohamed VI as confirmed by Ahmed Herzenni on 18 June 2009 during a meeting with Amnesty International.

It is particularly important for the Moroccan authorities and the CCDH to involve all relevant stakeholders, including judges, lawyers, victims of human rights violations, their families and organizations representing them, as well as other human rights organizations, in any further preparation of the reform. Specifically, the Moroccan authorities should publish proposals to reform the justice system as to allow for public debate and effective consultation. They should also ensure that the envisaged reforms take into account the recommendations of the IER and international law and standards pertaining to the independence of the judiciary and the administration of justice.

King Mohamed VI has consistently championed calls for the reform of the judiciary. He emphasized the need to reform the justice system to ensure good governance during his speech on the occasion of the tenth anniversary of his accession to the throne, pronounced on 31 July 2009, and during his speech on the occasion of the 56th anniversary of the Revolution of the King and the People, pronounced on 20 August 2009. On the latter occasion, the King announced his decision to give increased attention to the reform of the judiciary. He confirmed that such reform will take into account the proposals prepared by the Ministry of Justice and various other consultations led by the aforementioned Ministry as well as Morocco's international obligations. He set out the priority axes of the reform that included strengthening the independence of the judiciary and guarantees of fair trial.

Amnesty International urges the Moroccan authorities to capitalize on this momentum and ostensible political support at the highest level of the state to introduce long-awaited reforms of the judiciary without any further delays. Such reform to the justice system should be in line with international law and standards, in particular the UN Basic Principles on the Independence of the Judiciary and UN Basic Principles on the Role of Lawyers. It should also ensure that victims of human rights violations have a right to an effective remedy.

7.3. STRENGTHENING THE CONSTITUTIONAL, LEGAL AND JUDICIAL PROTECTION OF HUMAN RIGHTS

In its recommendations, the IER called for strengthening the constitutional, legal and judicial protection of human rights. It called for the inclusion of additional human rights principles and provisions in the text of the Constitution of Morocco, such as those guaranteeing fundamental rights and freedoms, including the right to freedom of movement, expression, assembly, association as well as the right to privacy and to strike. The IER also encouraged the adoption of legislation regulating the exercise of these rights and freedoms, including the protection of such rights against ordinary administrative, organizational and legislative action, and the right of recourse for citizens who are claiming their rights have been violated. The IER also called for the explicit protection in the Constitution of the principle of presumption of innocence and fair trial guarantees.

The IER recommended the strengthening of constitutional guarantees to ensure the equality between men and women in the enjoyment of political, economic, social and cultural rights; but excluded civil rights. This omission is regrettable as discriminatory laws, policies and practices remain even after amendments to the Moroccan Nationality Code in 2007 (*Dahir* 1-07-80 of 23 March 2007 promulgating Law No.62-06, modifying and completing *Dahir* 1-58-250 of 6 September 1958 on the Moroccan Nationality Code), and to the Family Code in 2004 (*Dahir* 1-04-22 of 3 February 2004 promulgating Law No.70-03 on the Family Code) particularly in matters of inheritance and divorce.

To implement the IER's recommendation, the Moroccan authorities should introduce constitutional amendments to include additional human rights principles and provisions in the text of the Constitution. Such amendments should be in accordance with international law and standards.

Of particular importance is the IER's emphasis on the principle of the supremacy of international human rights and humanitarian law over national legislation, and its calls for ensuring the conformity of Moroccan legislation with international law and standards in relation to:

- the definition of enforced disappearance and arbitrary detention, the establishment of criminal responsibility and the imposition of appropriate penalties;

- holding criminally responsible perpetrators of human rights violations such as arbitrary detention, enforced disappearance and torture;

- the empowerment of public officials to report the occurrence of or attempts to commit the violations of arbitrary detention and enforced disappearance, regardless of the rank of the authority under whose orders they are acting; and

- the protection of victims of human rights violations as well as their next of kin.

The IER's final report also recommended criminalizing genocide and crimes against humanity. However, the IER's recommendations did not include all crimes under international law such as war crimes.

The Moroccan authorities should amend national legislation to include all crimes under international law: genocide, crimes against humanity, war crimes, enforced disappearance, extrajudicial executions and torture. The definitions must be in accordance with international law, and barriers to prosecutions of these crimes, such as amnesties, immunities and statutes of limitations must be prohibited.

In relation to the crime of torture, the IER noted the government's initiative to introduce legislation prohibiting torture. While the promulgation of Law No. 43-04 in February 2006 strengthening legal safeguards against torture is a welcome step, the legislation does not fully conform with international law and standards on torture. Specifically, the "attempt to commit torture" and "complicity or participation in torture" are not explicitly defined as an offence, as they should be according to Article 1 and Article 4 of the CAT. Therefore, the

Moroccan authorities should introduce amendments to legislation prohibiting torture to ensure its full conformity with international law and standards; specifically it should explicitly define the "attempt to commit torture" and "complicity or participation in torture" as criminal offences.

7.4. FIGHT AGAINST IMPUNITY

The IER final report called for the development of an integrated comprehensive national strategy to combat impunity to be firmly grounded in international law and standards which should include the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity. The IER encouraged the involvement of all relevant stakeholders through a variety of tailored programmes aimed at putting an end to impunity. The Commission also highlighted the importance of monitoring mechanisms to put an end to impunity.

To the best of Amnesty International's knowledge, there has been no centralized committee established by the government to develop such a strategy as recommended by the IER, although the fourth periodic report submitted by Morocco to the Committee against Torture in April 2009[70] refers to steps taken in implementing the IER's recommendation to put in place a national strategy to combat impunity. According to the report which did not provide further details, these steps included the preparation of proposals to introduce legislation to criminalize enforced disappearance and projects to ensure the conformity of national legislation with international law and standards.

Amnesty International had requested additional information from the CCDH in relation to the development of such a strategy and the role of the Follow-up Committee in its design and implementation. However, the organization received no further information on the status of this recommendation by the IER.

The Follow-up Committee should assist the Moroccan authorities in bringing together all relevant stakeholders, including independent human rights organizations, to design and implement a national strategy to combat impunity that would build upon the full implementation of all of IER's recommendations designed to combat impunity and ensure non-repetition of grave human rights violations. Such a strategy should include the establishment of monitoring mechanisms to ensure its effectiveness.

In addition to actively investigating allegations of human rights violations and bringing those responsible to justice, the Moroccan authorities should transparently communicate information regarding steps taken to design and implement a national strategy to combat impunity and consult all stakeholders, including independent human rights organizations and the CCDH in its development and implementation.

7.5. REFORM OF THE CRIMINAL JUSTICE SYSTEM

The IER presented recommendations to reform the criminal justice system, specifically in relation to the level of arrests and penalties leading to the deprivation of liberty. It also aimed at identifying alternatives to criminal prosecution while guaranteeing the protection and assistance of victims, particularly those from marginalized groups within Moroccan society. It also recommended

adopting directives towards "inquisitorial justice" rather than an "adversarial one". Such an approach can contribute to improving the administration of justice in Morocco and Western Sahara, if implemented alongside other IER recommendations to guarantee the independence of the judiciary and ensure the conformity of the Moroccan Code of Criminal Procedure to international human rights law and standards, particularly in relation to consolidating safeguards against the abuse of the rights of detainees or individuals facing judicial proceedings.

In a welcome step, the IER also called for the review of the Moroccan Code of Criminal Procedure by including some provisions and amending others to ensure its respect of human rights. However, it is regrettable that the IER did not explicitly call for amendments to Law No.03-03 on Combating Terrorism promulgated in 2003 which amended the Code of Criminal Procedure to increase the period of *garde à vue* detention to 12 days in cases involving terrorism-related activities. These amendments effectively prolonged to six days the period in which detainees in such cases have no access to lawyers, increasing their vulnerability to torture or other forms of ill-treatment and affecting their right to legal representation. To introduce additional safeguards against human rights violations, the Moroccan authorities should amend the Moroccan Code of Criminal Procedure to ensure its full conformity with human rights law and standards, including the amendment of Article 66, by limiting the period of *garde à vue* to a strict minimum and granting detainees' immediate access to their lawyers and families

The IER also urged for the amendment of the Moroccan Penal Code to include a clear definition of violence against women in line with international human rights standards criminalizing violence and harassment against women and increasing the penalties for these crimes including rape committed by law enforcement officials. Amnesty International welcomes these recommendations, but regrets that the IER did not explicitly encourage the Moroccan authorities to criminalize marital rape.

The CCDH told Amnesty International in its written response dated September 2009 that it had contributed to the work of a governmental commission tasked with preparing proposals to reform the Penal Code, including integrating recommendations of the IER to criminalize grave violations of human rights. [71] Amnesty International urges the Moroccan authorities to make proposals to reform the Penal Code public as to allow input from all relevant stakeholders including judges and lawyers, victims of human rights violations and their families and organizations representing them, political parties, legal experts and human rights organizations.

To ensure the conformity of Moroccan legislation to international law, the Moroccan authorities must amend the Moroccan Penal Code to criminalize sexual harassment and violence against women including marital rape, to ensure the protection and rehabilitation of victims of domestic violence, and to bring perpetrators to justice.[72]

The Moroccan authorities should also bring in line with international law and standards all provisions in the Penal Code, particularly those criminalizing activities that amount to the peaceful exercise of freedom of expression, such as Article 267-1 under which individuals who express criticism of the monarchy have been prosecuted.

7.6. PRISON REFORM

The IER has called on the Moroccan authorities to implement the recommendations of the CCDH around the state of prisons in Morocco with a view of improving the penitentiary system. As a way to improve prison conditions, the IER recommended increasing the powers of judges responsible for the implementation of penalties (*juges d'application des peines*) and improving the mechanisms for amnesties and conditional releases.

The IER also recommended the establishment of an administrative body of experts to provide advice on the effective management of penitentiary facilities as well as the appointment of prison directors.

Amnesty International supports efforts to improve the conditions in prisons given the persistence of reports by detainees and their families provided to Amnesty International of overcrowding and the poor state of hygiene in prisons across Morocco and Western Sahara.

The Moroccan authorities should ensure that the conditions in Moroccan prisons and other detention facilities are in line with international law and standards as set out in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles for the Treatment of Prisoners and the CAT. Any prison reform should put in place a system to guarantee that all allegations of torture or other cruel, inhuman or degrading treatment or punishment inside penitentiary establishments are investigated and that perpetrators are brought to justice. The Moroccan authorities should also ensure that administrators, guards and other employees at penitentiary establishments are trained in national and international human rights law and standards.

7.7. REFORM OF THE SECURITY SECTOR

The IER made extensive recommendations in relation to the security sector to improve the transparency of its operations, to devise clear standards of conduct for law enforcement officials in line with international human rights standards, to create stronger oversight mechanisms and to conduct human rights training for members of security bodies.

The IER reiterated the principle it emphasized in its recommendations on consolidating the constitutional protection of human rights that the government is responsible for security operations, for preserving public order and protecting human rights and for informing the public and parliament on security operations.

A key recommendation of the IER revolved around the need to clarify and publish the rules and regulations governing law enforcement agencies, including the use of force, and to make transparent the decision-making processes in security matters and operations. The IER also called for the publication of reports on the background and outcome of security operations in order to ensure transparency and oversight of security organs' conduct.

As part of safeguards against excessive use of force by law enforcement officials and to ensure accountability, the IER also called for keeping records of decisions leading to security interventions or the use of force, for limiting the use of verbal commands to exceptional

circumstances to be followed by written confirmations and for introducing administrative and criminal penalties for excessive use of force and for any non-transparent conduct or action.

Despite the IER's extensive recommendations on improving the functioning and accountability of the security sector, no specific references were made regarding the need to introduce clear procedures to report and investigate cases of death or injury resulting from the use of force in conformity with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[73]

In the framework of following-up on the recommendations of the IER, the CCDH informed Amnesty International in September 2009 that it is in the process of devising proposals for reforming the security sector to fulfil the aims set out in the recommendations of the IER as described above. The CCDH confirmed that the proposals will be presented to the King once finalized. While the CCDH can play a positive role in making specific proposals to the authorities aimed at reforming the functioning of the security sector and contribute to expediting the process; it is the responsibility of the Moroccan authorities to introduce these reforms without further delay.

The Moroccan authorities ought to implement the IER's recommendations and additional reforms to ensure congruence with international law and standards as a matter of priority in light of the frequent allegations of excessive use of force by law enforcement officials during anti-government demonstrations or other security operations. The events of Sidi Ifni on 7 June 2008, when law enforcement officials entered the city to end a blockade at its port and committed a number of human rights violations, have received wide national and international media attention. Amnesty International's recent research shows that anti-government protests across Morocco and Western Sahara have been dispersed with excessive use of force, such as the student protests in the Caddi Ayyad University in Marrakesh in May 2008 and the demonstrations calling for the self-determination of the people of Western Sahara in the city of Assa in October 2008. Amnesty International has called on the Moroccan authorities to investigate such incidents to determine whether excessive force was used, but regrettably received no answer. Similarly, no answer was received in response to the organization's calls to establish an investigation to examine the behaviour of security forces at the border between Morocco and the Spanish enclave of Melilla on 1 January 2009 and the circumstances surrounding the killing of a migrant with a view to determining whether excessive force was used by Moroccan security forces.

Amnesty International regrets that despite the urgent need as evidenced by the frequency of reports of excessive use of force by Moroccan security forces, four years after the IER made its recommendations public, little developments occurred in reforming the security sector. The implementation of the IER's recommendations on reforming the security sector would contribute to ending impunity and truly turning the page of the "years of lead", which were characterized by the excessive use of force by law enforcement officials particularly in breaking-up anti-government protests leading to deaths and injuries on a number of occasions, examples of which were scrutinized by the IER and included in its final report.

Pursuant to the recommendations of the IER, the Moroccan authorities should reform the security and law enforcement agencies in order to ensure that their policies and practices are

in line with international law and standards including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. As a matter of urgency clear instructions on the use of force, including the use of firearms, must be adopted and made public. They should also introduce clear procedures to report and investigate cases of death or injury resulting from the use of force or firearms by law enforcement officials.

In order to combat impunity and send a sign that excessive use of force will no longer be tolerated, the Moroccan authorities should conduct full, impartial and independent investigations into reports of the excessive use of force by Moroccan law enforcement officials during anti-government protests and other security operations and to bring perpetrators of human rights violations to justice.

7.8. HUMAN RIGHTS AWARENESS AND EDUCATION

In recognition of the importance of consolidating a culture of human rights, the IER put forth a number of recommendations to develop and implement a national plan for human rights education. The IER's final report went on to list a number of areas it considered as priorities, such as the need to include the principles of human rights and gender analysis in educational curricula, to build the national research capacity in the field of human rights, to utilize the media to spread a culture of human rights and to continuously conduct trainings in human rights education, organize seminars, promote research and encourage publications on the topic. The IER's recognition of the need to build and maintain an effective partnership with human rights NGOs in any national effort to promote a culture of human rights was particularly welcome.

The CCDH launched various human rights awareness and education initiatives since the termination of the mandate of the IER, such as the organization of seminars and workshops on a variety of topics, including transitional justice, women's rights, children's rights and international human rights conventions . The CCDH also played a leading role in the coordination in the development of a National Plan of Action on Democracy and Human Rights in Morocco (Plan d'action national en matière de démocratie et droits de l'homme au Maroc, PANDDH). While the CCDH is making efforts to invite a number of human rights organizations to take part in its events and to participate in the pilot committee in the framework of PANDHH, other human rights organizations continue to feel marginalized and excluded. For instance, it appears that the CCDH failed to extend invitations to the main human rights associations in Laayoune such as the Sahrawi Association for Victims of Gross Human Rights Violations Committed by the Moroccan State (Association sahraouie des victimes des graves violations des droits de l'Homme commises par l'Etat du Maroc, ASVDH) and Collective of Sahrawi Human Rights Defenders (Collectif des défenseurs sahraouis des droits de l'Homme, CODESA) to attend the public debate on human rights it held in the city on 29 and 30 November 2008. The exclusion of these two associations which document past and present human rights violations in Western Sahara in the face of ongoing harassment and intimidation by the authorities is regrettable as their representatives could have shared their perspectives on the human rights situation in Western Sahara. Their lack of official registration should not be used as a reason to exclude them from events to which they can greatly contribute, particularly given the politically motivated administrative obstacles faced by Sahrawi associations seeking to

obtain legal registration. Such an omission aggravates the climate of mistrust and lack of collaboration between the CCDH and Sahrawi human rights activists, including victims of enforced disappearance and their families.

Putting the emphasis on the importance of preserving the memory of past human rights violations and restoring the dignity of victims, the IER has put forward specific recommendations to promote the role of scientific research with regard to the history of Morocco.

While the importance of the IER's recommendations on the preservation of archives, the gradual review of education curricula in the subject of history and the creation of an institute to research and disseminate studies on past human rights violations and developments in the human rights field is undeniable, such measures are not sufficient to consolidate a culture of human rights and guarantee non-repetition of violations, as they should be accompanied by justice for victims and survivors.

Pursuant to its mission as defined in *Dahir* No.1-00-350 of 10 April 2001, the CCDH should continue its human rights education initiatives bringing together all relevant governmental and non-governmental stakeholders to develop and implement a national plan for human rights awareness and education as recommended by the IER. In carrying out its mission, it should ensure the effective participation of civil society in Morocco and Western Sahara, particularly independent human rights organizations including those whose views on human rights issues and concerns differ from that of the authorities and the CCDH in all efforts to promote a culture of human rights.

In order to advance national reconciliation and to consolidate a culture of human rights, the CCDH should implement the recommendations of the IER to ensure the preservation of the memory of past human rights violations and to promote independent research in the history of human rights violations in Morocco and its public dissemination.[74]

7.9. ROLE FOR THE CCDH

In its final recommendation on the major areas of reform needed to ensure non-repetition of grave human rights violations and to combat impunity, the IER recommended the empowerment of the CCDH to investigate human rights violations whether on its own initiative or upon request, to observe trials and to obtain the necessary information on human rights violations through a greater cooperation with public authorities.

In line with the Principles relating to the Status of National Institutions (The Paris Principles), the CCDH should investigate human rights violations even in the absence of formal complaints and publicly report on such investigations. It should also draw the attention of the Moroccan authorities to situations in any part of Morocco and Western Sahara where human rights are violated and make proposals for initiatives to put an end to such violations and provide an effective remedy to victims.

The CCDH must also play a proactive role in encouraging the Moroccan authorities to implement the recommendations of the IER on legal and institutional reforms intended to combat impunity and guarantee the non-repetition of grave human rights violations.

The IER has made extensive recommendations in the area of legal and institutional reforms – which if implemented would greatly improve the human rights situation in Morocco and Western Sahara and consolidate the achievements accomplished by the work of the IER. While the authorities and the CCDH continually emphasize reform plans and proposals under way and reiterate promises of putting them in place; the vast majority of these reforms are yet to be implemented. The same political will, which drove the establishment of the IER, needs to be shown in realizing needed legal and institutional reforms.

8. ONGOING HUMAN RIGHTS VIOLATIONS, CONCLUDING REMARKS AND KEY RECOMMENDATIONS

8.1. ONGOING HUMAN RIGHTS VIOLATIONS

Morocco and Western Sahara today continue to witness serious human rights violations, albeit not at the same scale as during the "years of lead", further highlighting the importance of taking effective measures to combat impunity and reform the institutional and legal context that facilitated and continues to facilitate human rights violations to take place.

For instance, impediments to the rights of freedom of assembly, association and expression remain particularly in relation to sensitive or "taboo" issues such as criticism of the monarchy, the status of Western Sahara, and security and counter-terrorism.

The Moroccan authorities continue to adopt a very restrictive view on the monarchy and several provisions within the Penal Code and the Press Code criminalize the peaceful exercise of freedom of expression. In recent years, human rights activists, journalists and others have faced prosecution for peacefully expressing their views on the monarchy. In 2007, 17 members of the AMDH were convicted for "undermining the monarchy" following a number of protests and sit-ins where slogans critical of the monarchy were chanted. Eight of the AMDH members, including 72 year old Mohamed Boughrine, served parts of their sentences in jail before all 17 were granted a royal pardon on 4 April 2008. In another example, a blogger, Mohamed Erraji, was sentenced to two years in prison for "lack of respect due to the King" by the Court of First Instance in Agadir. He was convicted after writing an online article suggesting that the King encouraged a culture of economic dependence and handouts. While the sentence was overturned on procedural grounds in September 2008 by the Court of Appeal of Agadir, the ordeal sent a message that criticism of the monarchy remains "taboo". In another attack on freedom of expression, the Court of First Instance of Rabat sentenced on 15 October 2009 the publisher and two other employees of the weekly *Almichaal* to prison terms ranging from one year to three months and heavy fines, for spreading false information with "malicious intent" in relation to articles published by the weekly in September 2009 on the health of the King. Sentences were confirmed upon appeal, and *Almichaal* was closed following a decision by the Crown Prosecutor of the Court of First Instance in Casablanca in November 2009. Several other independent media publications carrying information deemed offensive to the King or the royal family received several severe blows in 2009. The publisher of and a journalist in the daily *Jarida Al-Oula* were found guilty on similar charges also for having run a story on the health of the King. The Court of First Instance of Rabat gave them

suspended prison terms ad fines. A few days later, on 30 October, the Court of First Instance of Casablanca convicted the director of and a cartoonist in the daily *Akhbar Al-Youm* in two separate criminal trials. In one, brought against them by Prince Ismail, who had been depicted by the newspaper in a cartoon against the backdrop of the Moroccan flag the two were sentenced on a number of charges under the Press Code to three-year suspended prison terms and fined for offending a member of the royal family. They were also ordered by the court to pay three million dirhams (about 264,900 Euros) in damages. In the other trial, they were sentenced to suspended one-year prison terms and heavily fined for "offending the national flag" under Article 267(1) of the Penal Code. In late September, the Prime Minister ordered the closure of *Akhbar Al-Youm* after the cartoon was published. Such restrictions on freedom of expression in Moroccan legislation and the prosecution of individuals for offences against the monarchy demonstrate the persistence of red lines and question the Moroccan authorities' genuine commitment to human rights.

The Moroccan authorities adopted an increasingly restrictive approach and imposed undue limitations to the right of Sahrawis to freedom of expression, association an assembly. The Moroccan authorities' intolerance to activities deemed to challenge Moroccan "sovereignty" over Western Sahara rose particularly in the wake of the visit of seven Sahrawi activists to Algeria, including the Tindouf camps, in late September and early October 2009. The seven, whom Amnesty International considers to be prisoners of conscience, have been arrested upon return on 8 October and deferred to military trial on charges of undermining Morocco's security. Since their visit to the Tindouf camps, Amnesty International has noted an increase in reports of harassment of Sahrawi human rights defenders and activists including violations of their freedom of movement, the confiscation of identification and travel documents, verbal intimidation and threats, and increased surveillance as well as the prevention of activists meeting with foreign observers. Such tactics appear to be aimed at dissuading Sahrawi defenders and activists from carrying out their human rights work or punishing them for their public expression and campaigning in support of the right of Sahrawi people to self-determination. This growing intolerance was reflected in the Moroccan authorities' expulsion of well-known Sahrawi human rights defender Aminatou Haidar from Laayoune on 14 November 2009. Following international pressure, she was allowed to return on 17 December. Another major impediment to Sahrawi human rights organizations in carrying out their work is the persistence of politically motivated administrative obstacles preventing them from obtaining legal registration.

The Moroccan authorities also continue to arrest scores of Sahrawi activists in the context of demonstrations calling for self-determination amid concerns that Moroccan law enforcement officials use excessive force in breaking-up such protests. In recent years, dozens have been brought to justice in trials that do not meet international standards for fair trial. In particular, serious concerns remain that evidence allegedly extracted under torture or duress is invoked in trial proceedings and torture allegations are rarely fully, independently and impartially investigated.

Amnesty International is also seriously concerned by reports regarding the treatment of migrants, refugees and asylum seekers. In recent years, thousands of people, mostly from Sub-Saharan Africa, suspected of being irregular migrants continue to be arrested,

detained and subjected to unlawful expulsion. Reports persist that expulsions have taken place without providing affected individuals the chance to appeal against the decision to remove them or to challenge the grounds on which the decision was taken, despite these rights being guaranteed by Moroccan and international law. Reports also suggest that some of those expelled were refugees or asylum-seekers, and possessed UNHCR documentation. Some of those expelled are abandoned in small groups at the Algerian or Mauritanian border with little or no food and water. Amnesty International remains concerned about the Moroccan and Spanish authorities' treatment of people attempting to cross the Spanish/Moroccan border clandestinely at Ceuta and Melilla. Investigations reveal breaches of the principles of *non-refoulement*, lack of due process, excessive use of force and allegations of sexual abuse and beatings. Amnesty International has called on the Moroccan authorities to conduct independent investigations into any allegation of death, injury or sexual assault of migrants and asylum-seekers by law enforcement officials and to make the results public. For example, at least 28 migrants including four children drowned off the port of Al Hoceima on 28 April 2008. Survivors claimed that members of the Moroccan security forces who intercepted their inflatable boat punctured and shook it when the migrants refused to stop. The Moroccan authorities denied the responsibility of security forces, but no investigation was conducted. The survivors were reportedly transported to the city of Oujda and left at the frontier with Algeria.[75]

Although Amnesty International acknowledges the decrease in the frequency of reports of serious violations such as torture or other forms of ill-treatment, secret and unacknowledged detention and unfair trials committed in the context of the "war on terror" since their peak following the 2003 Casablanca bombings, it remains concerned that security officers accused of committing grave human rights violations enjoy quasi total immunity.

Torture or other ill-treatment in the context of the "war on terror" was generally reported to have taken place in the custody of the security forces, particularly the Directorate for the Surveillance of the Territory (Direction de la surveillance du territoire, DST) and the police. The detention centre of Témara, operated by the DST, is one of the main places where torture is reported to occur. Dozens have been held there, in the context of counter-terrorism measures, in secret and unacknowledged detention, in breach of both Moroccan law and international human rights law and standards. Members of the DST are not considered members of the judicial police and, consequently, are not authorized to arrest suspects nor permitted to detain or question them.

To Amnesty International's knowledge, in the majority of cases where complaints were made involving allegations of torture or other ill-treatment, investigations have either not been opened, have been dismissed without adequate investigation, or have not resulted in perpetrators being prosecuted. A number of detainees report that they were denied medical examinations to substantiate their complaints and seek redress. For example, hundreds of Islamist prisoners convicted after the 2003 Casablanca bombings continue to demand their release or the judicial review of their trials, many of which were tainted with unexamined claims of confessions extracted under torture. In protest, hundreds of them launched hunger strikes throughout 2009 in various prisons in Moroccan to draw attention to their plight.

Amnesty International is concerned by reports that a number of those arrested in February 2008 in connection to the alleged terrorist network under the leadership of Belgian-Moroccan national Abdelkader Belliraj have been subjected to incommunicado detention and torture and other forms of ill-treatment. Reports also indicate that a number of the detainees were arrested by officials of the DST and were held in the detention centre of Témara. Furthermore, Amnesty International received information that a number of individuals suspected of terrorism related activities were arrested by the DST in September and November of 2009 and held incommunicado in the detention centre of Témara. In at least five cases, their families were not informed of their arrest and whereabouts. In addition, Ahmed Mahmoud Haddi, a Sahrawi political activist accused of criminal activities, was also believed to have been held and tortured in the detention centre of Témara between 28 October 2009 and 15 November 2009 with no contact to the outside world. Amnesty International considers these allegations to represent a particularly worrisome set-back given the decrease in the frequency of allegations of violations committed in the context of counter-terrorism and security in recent years and urges the Moroccan authorities to ensure that DST officers and agents comply by the law and stop carrying out arrests and detaining people in its centre in Témara or elsewhere and to conduct investigations into all allegations of torture and other forms of ill-treatment.

The persistence of such human rights violations in a climate of quasi total impunity for past and present human rights violations question the Moroccan authorities' expressed commitment to human rights, risk to reverse any advances made by the establishment, work and recommendations of the IER and heightens the urgent need to implement these recommendations without delay.

8.2. CONCLUDING REMARKS AND KEY RECOMMENDATIONS

Amnesty International recognizes the groundbreaking work conducted by the IER and welcomes the advances made by the Moroccan authorities in recent years to improve the country's human rights situation. However, delays in putting in place a number of key recommendations of the IER in the fields of truth, reparation and legal and institutional reforms risk to undermine the successes achieved by the initiative and cast doubts on the commitment of the Moroccan authorities to properly address past human rights violations, and to promote and protect human rights.

Since the termination of the mandate of the IER, no efforts have been made to identify and bring perpetrators of past human rights violations to justice – issues that were unfortunately outside the remit of the IER. For many victims, their families and a number of human rights organizations in Morocco and Western Sahara no reconciliation can be achieved without justice.

To consolidate and build on the progress already made, Amnesty International urges the CCDH not to prematurely bring to an end its efforts in the follow-up to the work of the IER and in the implementation of its recommendations before addressing concerns raised by victims, their families and human rights organizations and shortcomings outlined in this report. Amnesty International calls on the Moroccan authorities to address issues falling outside of the remit of the IER and the CCDH particularly in bringing to justice perpetrators of human rights violations and introducing legal and institutional reforms without any further delay.

In order to preserve the spirit of the IER, rebuild trust in the truth-seeking process among victims of human rights violations, ensure the non-repetition of grave human rights violations and demonstrate the genuine commitment of the Moroccan authorities to human rights, Amnesty International urges the Follow-up Committee and the Moroccan authorities to implement all recommendations provided in this report, while treating the following as immediate priorities:

TRUTH

The Follow-up Committee should:

- publish without delay the list of all cases of enforced disappearance brought to the attention of the IER and the Follow-up Committee. The list should contain the names of the disappeared, the circumstances of their disappearance, the information gathered in each case, and whether the case has been transferred to the authorities for further investigations. The Follow-up Committee should publish a list detailing unresolved as well as resolved cases, rather than delay the publication of the list unduly. In cases where the families do not want details of their disappeared relatives to be disclosed, the Follow-up Committee should conceal the name and any identifying information but publish details about the circumstances of the enforced disappearance and the bodies or agencies responsible;

- ensure that the full details of investigations are made available in writing to the victims and their relatives. In particular, victims and their relatives should be given a copy of the file which retraces the investigations into their case, the methods used and any official documents uncovered during the course of the investigation. Every effort should be made to communicate in writing the information uncovered during investigations to the families of persons who have been forcibly disappeared, even in the absence of official applications to the IER; and

- disclose which state security organs and individuals bear primary responsibility for the commission of human rights violations between 1956 and 1999, according to the evidence gathered from the investigations undertaken.

The Moroccan authorities must:

- ensure that full, impartial and independent investigations are conducted into all cases of human rights violations committed in the period falling under the remit of the IER including those where the IER or its Follow-up Committee were not able to reach conclusions, giving particular attention to cases of enforced disappearances. The investigative body should have the authority to compel witnesses including past and current state officials, and powers of subpoena, search and seizure; and

- immediately develop guidelines for the use of and access to the archives of the IER that are in accordance with the Updated Set of Principles to Combat Impunity. Such guidelines should be based on the need to preserve evidence of and ensure accountability for human rights violations.

JUSTICE

The Follow-up Committee should:

- forward all evidence indicating individual criminal responsibility to the relevant judicial authorities for further investigation, with a view to bringing the suspected perpetrators to justice without delay.

The Moroccan authorities must:

- investigate all past human rights violations, including those outside of the mandate of the IER, and bring suspected perpetrators to justice in fair proceedings without further delay; and

- establish a vetting system to ensure that those reasonably suspected of crimes under international law or human rights abuses are not placed in positions where they could repeat such violations; such a screening mechanism should work alongside independent and impartial investigations to identify suspected perpetrators and judicial proceedings to bring them to justice. It should comply with international law, in particular standards of fairness.

REPARATION

The Follow-up Committee should:

- ensure that human rights groups are consulted in the design and implementation of "development projects" in regions targeted for collective reparations, that such projects are guided by human rights principles, and that the programme is extended to Western Sahara.

The Moroccan authorities must:

- ensure that all victims of human rights violations, including those whose cases the IER considered to be outside of its mandate, receive financial compensation and other forms of reparation which is appropriate and proportional to the gravity of the violation and the circumstances of their case; and

- establish an appeal mechanism to enable victims of human rights violations who feel that their claim for reparation has not been examined adequately to challenge the decision.

Amnesty International also calls on King Mohamed VI to:

- issue a formal public apology to victims of past human rights violations.

LEGAL AND INSTITUTIONAL REFORMS

The Moroccan authorities must:

- ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court and to lift all reservations and declarations to the Convention to the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women, which are not compatible with the object and purpose of the treaties;

- amend national legislation to include all crimes under international law: genocide, crimes against humanity, war crimes, disappearances, extrajudicial executions and torture. The definitions must be in accordance with international law; and barriers to prosecutions of these crimes, such as amnesties, immunities and statutes of limitations must be prohibited;

- implement the recommendations of the IER to reform the judicial system and ensure its independence in line with international law and standards, in particular the UN Basic Principles on the Independence of the Judiciary and UN Basic Principles on the Role of Lawyers. Any reform of the justice system should ensure that victims of human rights violations have a right to an effective remedy;

- amend the Moroccan Code of Criminal Procedure to ensure its full conformity with human rights law and standards, including the amendment of Article 66, by limiting the period of *garde à vue* to a strict minimum and granting detainees immediate access to their lawyers and families;

- reform the security and law enforcement agencies in order to ensure that their policies and practices are in line with international law and standards including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. As a matter of urgency clear instructions on the use of force, including the use of firearms must be adopted and made public.

ANNEX

Observations and comments on the report and memorandum of Amnesty International addressed to the CCDH

Royaume du Maroc

Conseil Consultatif des Droits de l'Homme

Observations et commentaires à propos du rapport et du mémorandum d'Amnesty International adressés au CCDH

Le Conseil Consultatif des Droits de l'Homme (CCDH), institution nationale indépendante pour la promotion et la protection des droits de l'Homme, se félicite de la coopération établie depuis des années avec Amnesty International (AI) et note avec satisfaction la soumission dans un délai raisonnable avant publication du mémorandum sur les résultats des travaux de l'Instance Equité et Réconciliation (IER) et du suivi des recommandations par le CCDH. Le CCDH apprécie également l'ouverture d'AI aux commentaires, remarques, clarifications et compléments d'information de la part du CCDH.

Le CCDH qui suit de prés les activités d'AI, apprécie à leur juste valeur les efforts déployés par cette organisation dans le domaine de la promotion et la protection des droits de l'Homme à travers le monde.

Le CCDH, qui a consacré au rapport et au mémorandum qui lui ont été envoyés une attention particulière, soumet à son tour à AI ce document comportant des éclaircissements, des observations et des commentaires dans le but d'enrichir l'esprit de coopération qui existe entre les deux institutions.

1- Observations d'ordre général

Le rapport commence par un jugement d'une extrême sévérité sur l'ensemble des travaux de l'IER, et émet des doutes sur leurs résultats en prétendant que "les promesses non tenues risquent de voiler les quelques progrès realises". Le moins que l'on puisse dire est qu'un tel jugement pèche par un manque d'objectivité flagrant concernant les travaux de l'IER, les résultats réalisés et le suivi de la mise en oeuvre des recommandations.

Pour mémoire, l'expérience marocaine a été considérée par l'ex Secrétaire Général des Nations Unies, Monsieur Koffi Annan, parmi les cinq expériences les plus intéressantes du monde. (voir rapport.....).

Selon le rapport les violations des droits humains continuent à être commises présentement au Maroc bien que ce ne soit pas sur la même échelle.

La vérité est que les cas isolés de violations, quel que puisse être leur nombre, ne sauraient être comparés aux violations graves commises dans le passé et traitées par l'IER, qui revêtaient un caractère **systématique et massif**. Ce sont précisément les **violations graves** des droits de l'Homme commises de façon systématique et massive qui font l'objet des travaux des commissions de vérité et de réconciliation à travers le monde. Elles sont traitées dans le cadre de la justice transitionnelle jugée plus appropriée dans des situations de conflit et de post conflit caractérisées par l'usage de la violence donnant lieu à des violations graves des droits de l'Homme.

La dimension politique est nécessairement présente dans ces processus soit de la part des victimes elles même eu égard à leurs activités en tant qu'opposants au régime politique en place, soit de la part des appareils étatiques ou autres acteurs impliqués dans le conflit.

La justice transitionnelle est née de l'accumulation des expériences de commissions de vérité et de réconciliation et connaît un développement constant qui est en train d'être couronné par l'établissement de principes et normes par la communauté internationale. Ceci dit, il est bien établi qu'il n'existe pas de modèle en la matière mais que chaque pays développe sa propre expérience dans des situations et circonstances qui lui sont spécifiques.

Ces normes et critères sont mis en oeuvre dans un contexte national qui, dans la plupart des cas, se distingue par des difficultés et contraintes inhérentes à la transition vers la démocratie et le respect des droits de l'Homme. Dans le contexte marocain caractérisé, et ce pour la première fois par rapport à d'autres expériences de vérité et réconciliation, par la continuité du même régime politique, c'est celui-ci qui a accepté le lancement de ce processus.

Il convient de rappeler que le processus de règlement des violations graves du passé a été initié au début de la décennie 90 par la libération des victimes de la disparition forcée et des détenus politiques, le retour des exilés et la mise en place de l'Instance d'Arbitrage Indépendante pour l'Indemnisation des Victimes de la Disparition forcée et de la Détention arbitraire en 1999 laquelle a émis des décisions arbitrales d'indemnisation financière en faveur de près de 8000 bénéficiaires comprenant victimes et ayants droit.

La création de l'Instance Equité et réconciliation (IER) en Janvier 2004 (et non pas en 2003 comme mentionné dans le mémorandum) a constitué le couronnement de

ce processus. Afin de garantir un règlement équitable, global et définitif du dossier des violations graves des droits de l'Homme, les travaux et activités de l'IER se sont focalisés sur trois axes stratégiques intimement liés et interdépendants:

1. L'établissement de la vérité sur les violations graves des droits de l'Homme perpétrées au Maroc entre 1956 et 1999.
2. La justice et l'Equité par la réparation des préjudices individuels et collectifs subis par les victimes et leurs ayants droit.
3. L'élaboration d'un rapport final comportant les résultats des travaux de l'instance et ses recommandations visant à garantir la non répétition des violations graves.

2- Etablissement de la vérité

2-1- Approche et résultats des travaux de l'IER

En ce qui concerne l'établissement de la vérité, il est à rappeler qu'outre les investigations menées par l'IER sur toutes les violations graves des droits de l'Homme dont la disparition forcée, les activités de l'Instance dans ce domaine ont également concerné l'analyse des contextes politiques, juridiques, économiques et sociaux dans les quels ont été perpétrées les violations, l'organisation d'auditions publiques des victimes, des études sur les événements liés aux violations graves du passé et le cadre institutionnel et juridique dans lequel elles ont été commises, l'organisation de colloques scientifiques, l'examen d' archives et de documents officiels, l'audition à huis clos de centaines de victimes et de témoins et des visites *in situ* (anciens centres de détention secrète, hôpitaux, cimetières etc.)

L'objectif principal de ces activités était de permettre à la société de connaitre la réalité de ce qui s'est passé dans sa globalité tout en établissant la responsabilité de l'Etat, permettant ainsi de dégager une macro-vérité.

L'autre aspect du travail de l'IER a concerné l'établissement de micro-vérités à travers l'étude, l'analyse et l'investigation de cas individuels.

Il est à noter que l'IER, dans le but de garantir la réconciliation la plus large possible, a interprété son mandat de façon à inclure toutes les violations graves qui ont été perpétrées de façon systématique. C'est ainsi qu'elle a considéré non seulement la disparition forcée et la détention arbitraire, mais aussi d'autres violations graves telles que les exécutions sommaires, l'atteinte au droit à la vie suite à l'usage disproportionné de la force publique lors d'événements sociaux, l'exil forcé, la torture etc.

Comparée aux autres commissions de vérité et de réconciliation qui l'ont précédée, sa compétence *ratione materiae* a été la plus large possible.

Au sujet des disparitions forcées, il est à rappeler la spécificité de l'expérience marocaine, notamment la réapparition de la plupart des disparus.

Les listes prises en considération et étudiées par l'IER **ont largement dépassé les différentes listes adoptées par les ONG des droits de l'Homme tant nationales qu'internationales dont Amnesty International, le CICR, le Groupe de travail sur les disparitions forcées et involontaires des Nations Unies…**

Les investigations de l'IER visant l'établissement de la vérité n'ont pas concerné seulement les cas de disparition forcée telle que définie par le droit international des droits de l'Homme, mais aussi tous les cas de personnes dont le sort était inconnu, victimes de violations graves autres que la disparition forcée. Ces investigations ont permis de découvrir et d'élucider des cas qui ne figuraient sur aucune des listes disponibles et n'avaient fait l'objet d'aucune demande de la part des familles.

A ce propos, le livre II du rapport final de l'IER consacré à l'établissement de la vérité, comporte l'analyse des contextes, la catégorisation des violations, les conditions dans lesquelles elles on été perpétrées, et des données concernant les cas de personnes dont le sort était inconnu ou qui étaient victimes de disparitions forcées.

Il est vrai que le rapport final de l'IER ne contient pas toutes les listes. Le CCDH auquel a été confié le suivi de la mise oeuvre des recommandations de l'IER, a poursuivi les investigations concernant les 66 cas qui n'avaient pas été élucidés par l'IER durant son mandat, tout comme il a continué le travail sur les listes à publier.

Lors de sa session plénière du 11 juillet 2009, les membres du CCDH ont débattu d'un projet de rapport élaboré par la Commission de suivi sur l'ensemble des résultats relatifs à la mise en oeuvre des recommandations de l'IER depuis que le CCDH en a été chargé. Ce rapport qui est en voie de finalisation et qui sera publié incessamment, dresse le bilan en ce qui concerne:

- Les résultats des travaux relatifs aux investigations dans les cas qui restaient en suspens, les listes et des données sur les cas clarifiés par l'IER et le CCDH dans le cadre du suivi;
- Les indemnisations financières des victimes et les autres formes de réparation;
- L'état d'avancement du programme de réparation communautaire;
- L'état des lieux en matière de suivi de la mise en oeuvre des recommandations relatives aux réformes.

Une copie de ce rapport sera envoyée à Amnesty International dans les meilleurs délais.

2-2- Résultats des travaux du CCDH en matière de suivi

Le Conseil Consultatif des Droits de l'Homme (CCDH) a considéré les travaux relatifs au parachèvement des investigations concernant les cas en suspens comme une priorité. Il s'agit notamment des 66 cas au sujet desquels l'IER a conclu qu'il existe de fortes présomptions quant à leur disparition forcée, des victimes de l'usage disproportionné de la force publique lors d'événements sociaux et des personnes décédées dans des centres de détention.

Le CCDH a poursuivi des contacts avec les autorités publiques, notamment des responsables du ministère de la justice et des appareils sécuritaires. Ces contacts ont permis d'auditionner un certain nombre d'anciens responsables et gardiens des lieux de détention secrets, de conservateurs de cimetières, des documents officiels etc. C'est ainsi qu'il a pu obtenir des informations précises concernant les lieux d'inhumation de victimes décédées en cours de détention arbitraire dans des centres que l'IER avait identifiés en s'assurant de la date de décès de certains d'entre eux, sans pour autant pouvoir déterminer avec exactitude les sépultures de la plupart d'entre eux. Le CCDH a veillé également à associer les familles des victimes et leurs représentants à toutes les étapes de l'évolution des ses travaux et les a informées des résultats et conclusions des investigations effectuées.

Le CCDH a poursuivi les investigations concernant les cas de personnes dont les lieux d'inhumation n'avaient pas été identifiés ou celles dont l'identité n'avait pas été déterminée. C'est ainsi qu'il a été procédé à l'exhumation des dépouilles, au prélèvement d'échantillons en vue de l'analyse ADN et de leur comparaison avec les éléments génétiques des proches des victimes. IL s'agit des victimes des événements de 20 Juin 1981 enterrées dans deux fosses communes isolées au sein du siège de la protection civile à Casablanca, des victimes décédées du fait de l'usage disproportionné de la force publique et enterrées dans une fosse commune à Nador, des victimes de la disparition forcée décédées à Tazmammart, Agdz, Mgouna, Gourrama et prés du Barrarge Mansour Eddahbi. Toutes ces opérations ont été effectuées par des spécialistes de la médecine légale et de l'anthropologie dans le respect des normes et lois en vigueur. Les données anthropologiques recueillies des prélèvements et celles concernant les victimes avant leur décès, ainsi que les témoignages des rescapés et les travaux d'investigation ont permis de s'assurer de l'identité des victimes. La Commission de suivi a également fait appel à l'expertise des laboratoires génétiques de la police scientifique et de la Gendarmerie royale dans un premier temps et a conclu un protocole avec un laboratoire international français dans un deuxième temps.

Les premiers résultats obtenus sont extrêmement encourageants, en ce sens qu'ils

confirment les investigations et conclusions de l'IER et de la Commission de suivi.

Le CCDH a pu identifier les tombes d'un certain nombre de victimes dont le décès était avéré mais dont les sépultures demeuraient inconnues. Il s'agit notamment des victimes des événements sociaux de 1965 et 1981 à Casablanca et de 1984 à Nador, ainsi que de personnes décédées lors des événements du 3 mars 1973.

En ce qui concerne les 66 cas objet de la recommandation de l'IER, le Conseil Consultatif a pu élucider 58 cas dont le décès est avéré et il poursuit ses investigations concernant les huit cas restants.

(Tous les détails figureront dans le rapport du CCDH concernant le suivi de la mise en oeuvre des recommandations de l'IER.)

3- Réparation individuelle: Indemnisation, réhabilitation des victimes

3-1- Résultats des travaux de l'IER

L'IER a adopté un concept de réparation englobant l'ensemble de mesures et modalités visant à remédier aux préjudices subis par les victimes des violations graves des droits de l'Homme. Dans son approche, L'IER a lié la réparation aux autres missions dont elle était investie, à savoir l'établissement de la vérité, l'instauration de l'équité et la consolidation des fondements de la réconciliation. Elle a considéré que la réparation ne saurait se limiter à l'indemnisation financière des victimes pour les préjudices matériels et moraux subis, mais doit englober la réparation des autres préjudices à travers la réhabilitation médicale et psychologique, le règlement de la situation administrative et financière , la réinsertion sociale ainsi que la réparation des préjudices collectifs dans les régions et communautés ayant souffert de violations graves des droits de l'Homme ou celles ayant abrité des centres de détention illégale.

L'IER a veillé à ce que son programme de réparations soit aussi étendu que possible et ce, en prenant en considération l'ensemble des violations graves des droits de l'homme ayant revêtu un caractère systématique et / ou massif, et en adoptant l'approche genre.

Elle a consacré une attention particulière à l'indemnisation financière, en tant que forme de réparation, droit fondamental des victimes des violations graves des droits de l'Homme et reconnaissance de la responsabilité de l'Etat, et a adopté à cet effet des principes, des critères et des unités de compte, prenant en considération le type de violation subie, ainsi que l'égalité et la solidarité entre les victimes ayant souffert des mêmes violations. C'est ainsi que les indemnisations ont pris en considération essentiellement les violations subies par les victimes, ce qui a constitué une première dans les expériences de commissions de vérité. L'IER a aussi adopté la privation de la liberté comme critère unifié par rapport à toutes les

victimes, ce qui c'est traduit par l'octroi des mêmes indemnisations, mais en tenant toutefois compte de la durée de la disparition ou de la détention arbitraire, des conditions de la détention et des violations associées, telles que la torture, les mauvais traitements et l'atteinte à la dignité, la perte des revenus ou la perte d'occasions et les séquelles.

Ainsi, sur la base des requêtes reçues, L'IER a ouvert des dossiers individuels qui ont tous été instruits et fait l'objet de décisions arbitrales. Il est à noter que **c'est la première fois dans les expériences de justice transitionnelle que des décisions concernant la réparation et l'indemnisation ont été prises lors du mandat de la Commission.**

3-2- Résultats du suivi par le CCDH

3-2-1- Indemnisation financière

Concernant l'indemnisation financière, le CCDH a placé parmi ses priorités la formulation définitive des décisions arbitrales prises par l'Instance durant son mandat afin d'assurer le règlement des indemnisations dans les meilleurs délais.

C'est ainsi qu'il a procédé à la finalisation des aspects administratifs et techniques relatifs aux décisions de l'Instance.

Une fois finalisés tous les aspects administratifs et techniques (réclamation de documents manquants ou jugés nécessaires dans la perspective de faciliter le paiement des indemnisations dues aux victimes et ayants droit , révision des décisions pour rectification d'erreurs éventuelles matérielles ou de forme), les décisions arbitrales ont été classées selon un ordre de priorité établi selon des critères objectifs par la commission, en vue de leur transmission à la primature pour la prise des dispositions nécessaires.

Dès le 12 septembre 2006, la commission de suivi a entamé la remise, à la primature, des décisions arbitrales stipulant l'indemnisation financière afin que celle ci, en coordination avec le Ministère des finances, entame la procédure d'exécution.

Dans le cadre de la politique de proximité, le choix s'est porté sur la Poste qui dispose de bureaux dans toutes les villes et villages du Royaume pour le paiement des indemnités aux bénéficiaires. A cet effet une convention a été signée entre la primature, le CCDH et Barid Almaghrib en vertu de laquelle les fonds correspondants aux indemnisations sont mis à la disposition de la poste par la primature, et des listes comportant les noms, les numéros des cartes d'identité des bénéficiaires et les sommes dues fournies par le CCDH, la poste étant tenue d'assurer le paiement en n'importe quel lieu sur simple présentation de la carte d'identité et d'une copie de la décision arbitrale.

Une copie de la décision arbitrale et une lettre individuelle signée par le président du CCDH notifiant au bénéficiaire le contenu de la décision prise par l'IER concernant son dossier, et comportant tous les renseignements relatifs à la procédure de versement des indemnisations ont été envoyées à chaque bénéficiaire, victime ou ayant droit.

Une unité d'accueil, d'orientation et de communication a été mise en place dans les anciens locaux occupés par l'IER durant son mandat pour faciliter l'accès des victimes et des ayants droit à toute information concernant leur dossier.

Le CCDH a ainsi assuré le suivi de l'exécution des décisions concernant la totalité des dossiers sur lesquels l'IER avait statué.

Le nombre de victimes et ayants droit bénéficiaires de l'indemnisation financière ayant reçu les décisions arbitrales les concernant et perçu leurs indemnisations a atteint 17 012 au 20 septembre 2009.

- **Mise en oeuvre de la recommandation concernant les victimes du centre de détention de Tagounit**

Considérant la gravité des violations subies par les victimes du centre de détention de Tgounit, l'IER a recommandé la réparation de leurs préjudices en dépit du fait que leur cas n'entrait pas dans sa compétence et ce , « en raison des souffrances qu'elles ont endurées suite à leur privation de leur droits en tant que citoyens et qu'êtres humains, des peines provoquées par les conditions de leur séquestration, ainsi que des préjudices matériels et moraux subis par eux même et leur familles et des séquelles psychologiques qui en ont résulté ».

Pour la mise en oeuvre de cette recommandation, la commission de suivi du CCDH a émis des décisions arbitrales d'indemnisation en faveur de 62 victimes sur les 77 qui avaient présenté des demandes auprès de l'IER. Les 15 autres dossiers restants sont en instance en raison d'un manque de documents essentiels.

3-2-2- Autres formes de réparation

3-2-2-1- Réhabilitation médicale

L'IER a considéré l'assistance médicale aux victimes des violations graves des droits de l'Homme comme prioritaire et l'a intégrée dans son approche globale en matière de réparation.

Outre ses interventions en faveur de victimes nécessitant des soins d'urgence, l'IER a préconisé dans ses recommandations l'extension de la couverture médicale obligatoire à toutes les victimes et à leurs ayants droit.

Le CCDH a poursuivi la mise en oeuvre des recommandations relatives à la situation sanitaire des victimes.

Concernant l'intégration des victimes dans le système de couverture médicale, une commission bilatérale a été constituée entre le ministère de la Santé et la commission de suivi avec comme objectif la présentation de propositions concernant la prise en charge médicale permanente des victimes et des ayants droits.

Les résultats des travaux de cette commission ont abouti à la signature solennelle en juin 2007 d'une convention entre le CCDH, le Ministère des finances, le Ministère de la santé publique et la Caisse nationale des organismes de prévoyance sociale (CNOPS) assurant à l'ensemble des victimes et de leurs ayants droit dans les meilleures conditions possibles une couverture médicale à la charge de l'Etat.

Dans le cadre du suivi de la mise en oeuvre de cette convention, le CCDH poursuit ses efforts pour constituer les dossiers des bénéficiaires et la distribution des cartes à leurs titulaires. Le nombre de cartes reçues par le CCDH à ce jour est de 3559 dont 2886 ont été remises à qui de droit, alors que 677 autres cartes sont en cours de distribution. Afin de faciliter la remise des cartes, le CCDH coopère avec certaines associations de droits de l'Homme telles que le Forum Marocain pour La vérité et la Justice et l'Association Médicale pour la réhabilitation des victimes de la torture à Casablanca.

3-2-2-2- La réinsertion sociale:

Dans le cadre du suivi des recommandations de l'IER relatives à la réinsertion sociale, le CCDH a établi les listes des bénéficiaires victimes ou ayants droit selon la région dont ils sont issus, les catégories d'âge, le niveau d'instruction ou de formation et tous autres renseignements susceptibles de faciliter la tâche des autorités publiques. Ces listes ont été remises à la primature ainsi qu'à d'autres départements ministériels et sont à l'étude. Ce programme concerne 1046 victimes et ayants droit.

3-2-2-3- Règlement de la situation administrative et financière

Dans le cadre du suivi des cas pour lesquels l'IER avait recommandé le règlement de leur situation administrative et financière, le CCDH a soumis leurs listes à la primature et leur cas aux différents secteurs gouvernementaux concernés.

Les réponses reçues des différentes administrations ont été examinées et les documents et informations demandés leur ont été fournis.

En coordination avec la primature, le CCDH a tenu des réunions avec les départements ministériels concernés par les recommandations. Les commissions

techniques mixtes qui ont été constituées entre le CCDH, la primature et les différents départements concernés, étudient actuellement les cas en suspens afin de leur apporter les solutions appropriées.

4- Réparation communautaire

4-1- Approche et recommandations de l'IER en matière de réparation communautaire

Partant du constat que certaines régions et communautés ont souffert collectivement de manière directe ou indirecte des séquelles des violences politiques et des violations qui s'en sont suivies, l'IER a accordé un intérêt particulier à la réparation communautaire et a préconisé dans ce domaine, l'adoption de nombreux programmes de développement socio-économique et culturel en faveur de plusieurs régions et groupes de victimes, dont en particulier les femmes et les jeunes.

Il s'agit de régions et de communautés dont les populations ont souffert directement de violations des droits de l'Homme suite à des événements politiques, de régions ayant abrité des centres de détention secrète ou de régions ayant connu les deux à la fois.

Ces programmes portent principalement sur la reconversion des anciens centres de détention illégaux en centres de développement communautaire et de citoyenneté active.

Convaincue de la nécessité absolue d'associer la population concernée à l'élaboration du programme de réparation communautaire, l'IER a adopté une approche participative. Les organisations de droits Humains, les associations de développement, et les agences gouvernementales de développement ont été associées ainsi à la démarche.

L'approche a été également basée sur les études et recherches menées à ce propos, ainsi que sur les analyses et les débats qui en ont découlé.

4-2- Suivi de la mise en oeuvre des recommandations par le CCDH concernant la réparation communautaire

Dans le cadre du suivi de la mise en oeuvre des recommandations de l'IER en matière de réparation communautaire, le CCDH a adopté une approche participative envers tous les acteurs concernés de la société civile et du gouvernement ainsi que d'autres partenaires.

Au lendemain du lancement de ce programme en 2007, le CCDH a procédé à la mise en place du cadre institutionnel adéquat pour cette mise en oeuvre a travers l'installation d'un comité de pilotage national, des unités de gestion et des coordinations locales. Le comité de pilotage national, qui a été installé le 9 juillet 2007, se compose du CCDH, du ministère de l'intérieur, du ministère de finances et de la privatisation, de la Caisse de dépôt et de Gestion, de la Délégation de la Commission Européenne, du Fonds des Nations Unies pour la Femme, de la Coordination Nationale de L'Initiative Nationale pour le Développement, de représentants du Comité National pour La Réparation Communautaire et de représentants des coordinations locales pour veiller à assurer la conformité des programmes avec les recommandations de l'IER et garantir une dimension stratégique, une transparence financière et assurer le plaidoyer externe. Deux unités de gestion ont été également installées, la première en coopération avec La Caisse de Dépôt et de Gestion chargée de la gestion du « programme d'appui aux recommandations de l'IER concernant les régions qui ont connu des violations graves des droits de l'Homme ayant engendré des préjudices collectifs », la deuxième en coordination avec le Fond des Nations Unies pour la Femme chargée de la gestion du programme « Promotion des droits des femmes et leur rôle dans le processus de justice transitionnelle ». Les coordinations locales du programme ont été installées et le cadre institutionnel parachevé le 8 Juillet 2008 par la mise en place du Conseil de coordination qui a pour fonction de faciliter la coordination entre le comité et les coordinations locales.

Parallèlement à la mise en place du cadre institutionnel, le CCDH poursuit la mobilisation des différents partenaires. Au cours des deux dernières années, des conventions importantes ont été signées avec 7 ministères, les agences de développement de la région orientale et des provinces du sud, l'Agence belge de coopération technique, l'Institut Royal de la Culture Amazigh et l'Entraide Nationale.

D'avril à juillet 2008, en coopération avec l'Union Européenne et la CDG, des ateliers ont été organisés avec les coordinations locales en vue de mettre au point les projets de programmes locaux concernant Figuig , Er-Rachidia, Ouarzazate, Zagora, Al-Hoceima, Nador, Ain Sebaa - Hay Mohammedi à Casablanca, Khénifra, Azilal, Tan-Tan et khemisset. D'une manière générale les programmes locaux proposés tournent autour de quatre axes principaux:

- Renforcement des capacités des acteurs locaux ;
- Préservation positive de la mémoire ;
- Amélioration des conditions de vie des populations (amélioration des services,
- désenclavement, activités génératrices de revenus, protection de l'environnement)
- Promotion de la situation des femmes et des enfants.

Pour le CCDH, le processus de concertation et d'implication de tous les acteurs concernés est d'une importance primordiale dans le sens où, il constitue une occasion de sensibilisation sur les droits de l'Homme en général et sur les questions liées aux travaux de l'IER en matière de réparation communautaire et de leurs mise en oeuvre. Les associations des victimes, les ONG des droits de l'Homme et de développement local font partie des acteurs associés dans ce programme.

Dans le cadre du renforcement des capacités des acteurs locaux, le CCDH a organisé, pendant la période d'avril à décembre 2008, en collaboration avec l'Union Européenne, La CDG, l'UNIFEM et l'Agence technique belge de Coopération des sessions de formation au profit de toutes les coordinations locales sur les réparation communautaires, l'approche participative, l' "*empowerment*", la gestion pacifique des conflits, la bonne gouvernance, l'approche genre et la gestion des projets.

Le CCDH a également organisé, en coopération avec l'Unité chargée de la gestion du programme dépendant de la CDG, des journées de sensibilisations au profit du Tissu associatif local chargé de présenter des propositions de projets dans les régions concernées par le programme de réparation communautaire, et ce dans le but de faire connaitre le programme d'une part et d'expliquer les lignes directrices en vue de préparer des fiches synthétiques des projets, conformément aux procédures de l'Union Européenne.

En outre, le CCDH a organisé d'autres ateliers et journées d'études, dont un Forum National sur « genre et justice transitionnelle » le 25 novembre 2008 à Rabat dans le cadre du projet de promotion des droits des femmes et de leur rôle dans le processus de justice transitionnelle au Maroc, un atelier sur la préservation de la mémoire dans la région de Tazmammart le 22 décembre 2008 à Rabat, un atelier sur la préservation de la mémoire à Agdez le 31 Janvier 2009, une rencontre internationale sur les réparations collectives en collaboration avec ICTJ le 12- 14 février 2009 à Rabat, un atelier sur les contraintes à la prise en compte de la dimension genre et les moyens de les surmonter au profit des acteurs locaux des régions concernées par le programme de réparation communautaire en Février 2008.

Dans le cadre de la promotion des droits des femmes et de leur rôle dans le processus de justice transitionnelle au Maroc, les études et publications suivantes ont vu le jour:

- Elaboration d'une Synthèse en arabe et en anglais d'une étude sur la violence politique dirigée contre les femmes;
- Publication de récits de femmes victimes de violations graves des droits de l'Homme dans le passé;
- Elaboration d'une étude sur les activités génératrices de revenus au profit des femmes de Figuig;

- Préparation de la première partie de l'étude analytique sur la mise en oeuvre de l'approche genre et les droits des femmes dans le processus de justice transitionnelle au Maroc;
- Réalisation d'un DVD (12 minutes) résumant les moments forts des témoignages de femmes victimes lors des auditions publiques et d'un autre DVD à la mémoire de Fadma Ouharfou dans le cadre du projet Imilchil;
- Réalisation d'un documentaire sur la mise en oeuvre du genre dans l'expérience marocaine de justice transitionnelle (en cours de préparation);

Trois autres projets prenant en considération le genre social ont été initiés, le premier concerne la création d'un espace femmes et d'un réseau associatif féminin a Zagora, le second concerne la préservation de la mémoire et la réconciliation dédié à la mémoire de Fadma Ouharfou à Imlchil et le troisième, la création d'un centre socio-économique pour la promotion de la situation de la femme à Figuig. A signaler également la création au sein du CCDH d'une commission genre qui élabore actuellement son programme d'action.

Toutes les activités rentrant dans le cadre du programme de réparation communautaire ont été très largement publicisées et ont été conduites dans la plus grande transparence, en stricte conformité avec les exigences procédurales du premier bailleur de fonds du programme, l'Union Européenne.

5- Les Recommandations concernant les réformes juridiques et institutionnelles

5-1- Les recommandations de l'IER

L'IER a terminé ses travaux par la publication d'un rapport final dans lequel elle a formulé des recommandations et des proposition destinées à garantir la non répétition des violations graves des droits de l'Homme.

Certaines de ces recommandations appellent à la poursuite de l'adhésion du Maroc aux instruments internationaux des droits de l'Homme, notamment la ratification du second Protocole annexe au Pacte International relatif aux droits civils et politiques concernant l'abolition de la peine de mort, du Protocole facultatif annexe à la CEDAW et la levée des réserves que le Royaume avait émises concernant certaines dispositions de cette convention.

L'IER a recommandé de renforcer la protection constitutionnelle et judicaire des droits de l'Homme par la protection des droits individuels et collectifs, l'harmonisation de la législation pénale avec les normes internationales, la mise à niveau de la politique et de la législation pénales dans le cadre d'une réforme de la justice visant le renforcement de son indépendance…

Elle a également recommandé l'établissement d'une bonne gouvernance sécuritaire, de la responsabilité gouvernementale en matière sécuritaire, du contrôle parlementaire en matière sécuritaire, de normes et de limites à l'usage de la force publique et de la formation continue des agents de sécurité aux droits de l'Homme.

5-2- Suivi de la mise en oeuvre par le CCDH

Concernant le suivi des recommandations de l'IER relatives aux réformes juridiques et institutionnelles, il convient de préciser que le rôle du CCDH consiste à présenter des propositions, des études et des avis consultatifs sur la mise en oeuvre des réformes recommandées. Cette mise en oeuvre concerne plusieurs acteurs : gouvernement, parlement, partis politiques, société civile. Le CCDH est appelé essentiellement à veiller au respect des normes internationales relatives aux droits de l'Homme dans cette mise en oeuvre.

Pour ce qui est des recommandations de l'IER relatives au renforcement des garanties constitutionnelles des droits de l'Homme, rappelons que l'instance avait bien précisé dans son rapport final qu'elle n'est pas habilitée à demander la révision de la constitution laquelle concerne les différents acteurs de la vie politique marocaine, mais que si la constitution devait être révisée ,elle devrait prendre en compte les propositions formulées dans le rapport final.

5-2-1- Poursuite de l'adhésion aux instruments internationaux

5-2-1-1- Dans le cadre de la mise en oeuvre de la recommandation de l'IER concernant la ratification du second protocole annexe au Pacte international relatif aux droits civils et politiques, le CCDH a organisé en collaboration avec l'association « Ensemble contre la peine de mort » un colloque scientifique qui a constitué l'occasion d'un débat serein et profond et permis de dégager les principales tendances au sein de la société marocaine. Le CCDH a veillé en collaboration avec ECPM à la publication des actes et résultats de ce débat et a procédé à leur diffusion auprès de tous les participants et tous les acteurs concernés.

5-2-1-2- concernant la recommandation relative à la criminalisation de la disparition forcée, le CCDH a pris note du fait que le Maroc a participé à la préparation du projet de convention internationale pour la protection des personnes contre les disparitions forcées. Le CCDH a soumis à qui de droit, un mémorandum insistant sur la nécessité de prendre les mesures nécessaires pour la ratification de la convention par le gouvernement.

5-2-1-3- Levée des réserves concernant certaines dispositions de la CEDAW

Le CCDH a noté avec satisfaction l'annonce dans le message royal à l'occasion du

soixantième anniversaire de la Déclaration Universelle des Droits de l'Homme, de la levée des réserves désormais dépassées par les législations nationales. Le CCDH a par ailleurs créé en son sein une commission genre composée de membres du CCDH et de représentants de la société civile qui élabore actuellement son plan d'action.

5-2-1-4- Ratification de la convention internationale concernant la protection des personnes handicapées.

Le CCDH a exprimé sa satisfaction, suite à la ratification de cette convention annoncée également dans le même message royal. Dans ce cadre, le CCDH a organisé un colloque international sur la mise en oeuvre de cette convention avec la participation de représentants des pouvoirs publics et de la société civile, d'experts nationaux et internationaux dont des membres du comité de l'ONU chargé de la Convention concernant personnes handicapées. Le colloque avait pour objectif l'approfondissement du débat sur les dispositions de la convention et de son Protocole du point de vue normatif et institutionnel, et ce dans le but de garantir les conditions d'une mise en oeuvre effective de ces dispositions.

5-2-1-5- Vers un mécanisme national de mise en oeuvre du Protocole facultatif à la Convention contre la Torture

Dans le cadre du suivi de la recommandation de l'IER, le CCDH a organisé un colloque national sur la mise en oeuvre du Protocole facultatif et ce, dans le but de s'informer des expériences internationales en la matière et de réfléchir à un modèle national qui prendrait en considération les progrès réalisés, les spécificités et les défis ainsi que les engagements internationaux du Maroc dans ce domaine.

5-2-2- Mise à niveau de la justice et renforcement de son indépendance

Le CCDH a ouvert un débat interne avec la participation d'experts extérieurs, sur les voies et moyens garantissant la mise en oeuvre des recommandations de l'IER relatives à la réhabilitation de la justice et au renforcement de son indépendance. Les travaux ont abouti à l'élaboration d'un mémorandum comportant des propositions relatives au renforcement des garanties constitutionnelles de l'indépendance de la magistrature, la réorganisation du Conseil Supérieur de la Magistrature, la réforme des statuts des magistrats et de l'organisation judicaire du Royaume, la révision du décret organisant les compétences du ministère de la justice et de la loi organisant l'Institut Supérieur des Etudes judicaires…

Le CCDH prend acte avec satisfaction de la décision de « donner une nouvelle et forte impulsion à la réforme de la justice, suivant une feuille de route claire dans son référentiel, ambitieuse dans ses objectifs, précise dans ses priorités et rigoureuse dans ses mécanismes d'application » qui a été solennellement annoncée par SM le Roi dans le Discours prononcé le 20 août 2009.

La réforme « prend en considération les différentes propositions et recommandations nationales pertinentes, ainsi que les conclusions constructives dégagées du projet du Ministère de la justice et des larges consultations initiées par lui ainsi que les engagements internationaux souscrits par le Maroc »

Elle s'articule autour de six domaines d'action prioritaires:

- La consolidation des garanties de l'indépendance de la justice, en assurant au Conseil supérieur de la magistrature un statut digne de son rang en tant qu'institution constitutionnelle à part entière.
- La modernisation du cadre normatif, notamment pour ce qui est de la garantie du procès équitable (nouvelle politique pénale et révision et adéquation du code pénal et du code de procédure pénale)
- La mise à niveau des structures judiciaires et administratives
- La mise à niveau des ressources humaines, aux plans formation, performance et évaluation
- L'amélioration de l'efficience judiciaire par la lutte contre les précarités, lenteurs et autres complexités qui handicapent le système judiciaire
- La moralisation de la justice pour la prémunir contre les tentations de corruption et d'abus de pouvoir et lui permettre à son tour de contribuer par les moyens juridiques à la moralisation de la vie publique.

5-2-3- Mise à niveau de la politique et de la législation pénales

Le CCDH qui a accompagné le processus de préparation du projet de code pénal par une commission gouvernementale, s'est attaché entre octobre 2008 et mars 2009 à l'élaboration d'une étude sur l'harmonisation de ce projet avec les normes internationales des droits de l'Homme, tenant compte des recommandations de l'IER visant la criminalisation des violations graves des droits de l'Homme.

5-2-4- Suivi des recommandations de l'IER en matière de gouvernance sécuritaire

Le CCDH prépare actuellement un projet de mémorandum en matière de bonne gouvernance sécuritaire qui fixe comme principaux objectifs, la rupture avec toutes les représentations négatives liées au passé concernant le rôle de la sécurité au sein de la société, le droit d'accès aux informations relatives aux opérations sécuritaires et à la préservation de l'ordre public, l'instauration d'un contrôle politique, juridique et administratif sur toutes les autorités chargées de la sécurité et de la préservation de l'ordre public et autorisées à faire usage de la force publique, l'établissement de critères et de normes de proportionnalité entre l'utilisation de la force dans les cas d'atteinte à la sécurité et à l'ordre public d'une part, et la préservation des droits et libertés fondamentales d' autre part. Le

mémorandum propose, en vue d'assurer l'élargissement du débat national sur la réforme sécuritaire, le recueil et l'étude de tous les textes législatifs et réglementaires relatifs aux statuts, attributions et pouvoirs des appareils chargés des opérations sécuritaires et de la sauvegarde de l'ordre public afin de préciser les compétences en matière de police judicaire et celles relatives à la préservation de l'ordre public.

Le projet lie la bonne gouvernance sécuritaire aux autres chantiers de réforme, notamment la réforme de la justice, la révision du corpus pénal et la mise en oeuvre du programme de formation continue dans les écoles et instituts dépendants du ministère de l'Intérieur conformément à la convention signée entre le CCDH et le ministère précité. Il appelle également à prendre en considération les recommandations de l'IER en matière de lutte contre l'impunité.

Le projet de mémorandum sera finalisé dans les prochaines semaines, débattu par les instances du CCDH et soumis sous forme d'avis consultatif à Sa Majesté le Roi.

5-2-5- Suivi des recommandations concernant les archives et la préservation de la mémoire

Le CCDH a constitué un groupe de travail composé d'experts et de chercheurs universitaires en vue de mener une réflexion et de suivre le chantier de modernisation des archives nationales.

Suite à l'adoption de la loi 69.99 en date du 30 novembre 2007 relative aux conditions de préservation des archives, de leur ouverture au public, aux conditions de leur exploitation et aux peines prévues pour leur destruction, le CCDH a entrepris des concertations avec les services de la primature et du ministère de la culture pour hâter la prise des décrets d'application de la dite loi.

Le CCDH a également lancé un programme de coopération avec l'Union Européenne laquelle a exprimé son soutien aux recommandations de l'IER relatives aux archives, à l'histoire et à la mémoire. Ce programme concerne l'accompagnement des activités relatives à la préservation des archives de l'IER et le soutien à la modernisation des archives nationales.

Concernant les archives de l'IER, le CCDH est actuellement en train de les répertorier et de mettre au point un système informatique pour leur gestion comme première étape importante précédant leur structuration, traitement, préservation et gestion de l'accès.

5-2-6- Promotion de la culture des droits de l'Homme

Dans le cadre de la mise en oeuvre de la recommandation de l'IER relative à la promotion de la culture des droits de l'Homme, le CCDH a donné, le 20 avril 2006, le coup d'envoi officiel du processus de préparation de la Plateforme citoyenne pour la promotion de la culture des droits de l'Homme avec la participation de toutes les parties gouvernementales et non gouvernementales concernées dans le cadre d'une commission nationale indépendante chargée de la supervision du projet.

La plateforme adopte trois axes principaux d'intervention interdépendants, à savoir la formation, la formation continue et la sensibilisation. Les concertations avec les acteurs concernés par la mise en oeuvre de la plateforme ont abouti à la constitution d'un comité de pilotage national composé de représentants des secteurs gouvernementaux, des institutions nationales, des universités, des medias et de la société civile chargé de coordonner la mise en oeuvre des actions énoncées dans de la plateforme, de déterminer les moyens d'action et d'assurer le suivi en matière d'encadrement, de gestion, d'exécution et d'évaluation.

5-2-7- Présentation d'excuses publiques

En ce qui concerne la recommandation de l'IER relative à la présentation d'excuses publiques par le Premier ministre, il convient de rappeler qu'à l'occasion de la présentation du rapport final de l'IER, dans le discours à la nation prononcé au palais royal à Rabat en présence, entre autres, de dizaines de victimes des violations graves des droits de l'Homme perpétrées dans le passé et de leurs ayants droit, d'associations représentant les victimes et de défenseurs des droits de l'Homme, Sa Majesté le Roi a exprimé **sa sympathie et sa sollicitude à toutes les victimes, personnes ayant subi des préjudices et familles endeuillées** et a considéré **« le geste gracieux du pardon collectif comme à même de constituer un solide pilier de la réforme institutionnelle, une réforme profonde susceptible d'aider notre pays à s'affranchir des défaillances du passé concernant les droits civils et politiques ».**

Ce geste hautement symbolique de la part de Sa Majesté dépasse largement la recommandation de l'IER laquelle concernait la présentation d'excuses publiques par le Premier ministre.

5-2-8- Elaboration du Plan National en Matière de Démocratie et Droits de l'Homme.

Consacrant le processus de construction démocratique et d'établissement d'un Etat de droit, et dans l'objectif de consolider les acquis en matière de démocratie et l'intégration effective des principes de droits de l'Homme à travers la mise en place d'une politique publique en la matière, Le CCDH à lancé, en avril 2008, le processus d'élaboration du Plan d'Action National en matière de Démocratie et des Droits de l'Homme au Maroc (PANDDH), et ce après une série de consultations et de concertations visant à garantir la représentation de tous les parties prenantes : gouvernement, institutions nationales, organisations professionnelles, institutions

représentatives, société civile et média. Un comité National de pilotage a été officiellement installé lors d'une cérémonie présidé par le premier ministre le 25 avril 2008.

Le PANDDH, première expérience du genre dans la région de l'Afrique du Nord et du Moyen-Orient, est le premier Plan d'Action National intégrant à la fois la dimension démocratie et droits humains. Il répond à la nécessité, pour le Maroc ,de disposer d'un cadre cohérent permettant d'inscrire et de coordonner l'ensemble des actions qui visent la diffusion, la promotion , la protection et le renforcement du respect des droits humains au Maroc.

Le processus d'élaboration du PANDDH est un processus participatif, qui assure une forte participation du gouvernement, des institutions nationales, des institutions de recherche, et des différentes composantes de la société civile, ainsi que des experts en droits de l'Homme. C'est un processus de dialogue et de concertation entre ces différents acteurs qui a pour finalité la mise en oeuvre d'une STRATEGIE NATIONALE qui place la promotion et la protection des droits de l'Homme au coeur des politiques publiques.

Le PANDDH a pour objectif de garantir la coordination entre les différents intervenants ainsi qu'entre les plans d'actions sectoriels, notamment ceux concernant les droits catégoriels et thématiques, dans le cadre d'un processus participatif associant toutes les parties prenantes et prenant en considération le genre social.

Le processus d'élaboration du PANDDH bénéficie d'un programme d'appui qui fait l'objet d'une convention de partenariat entre le Conseil Consultatif des droits de l'Homme et l'Union Européenne.

Le CCDH assume, dans ce processus, une double fonction à travers le Centre de Documentation, d'Information et de Formation en tant qu'organe exécutif, et à travers la contribution au cadrage stratégique du PANDDH.

6- commentaires et précisions complémentaires

Le CCDH pense avoir apporté dans cet exposé les éclaircissements nécessaires concernant les résultats des travaux de l'IER et du suivi de la mise en oeuvre des recommandations par le CCDH. Il formule ci-après un certain nombre d'observations, commentaires et précisions complémentaires dans l'espoir qu'ils seront pris en compte dans la version finale du mémorandum d'AI.

6-1-Mandat et prérogatives de l'IER

- Le CCDH note une certaine incompréhension concernant le domaine de compétence de l'IER. En demandant au comité de suivi de traiter toutes les

violations, même celles considérées par l'IER hors compétence, le Rapport dépasse le mandat et les prérogatives de celle-ci. Cela apparait aussi dans les paragraphes et recommandations du rapport relatives à la responsabilité individuelle et à leur présentation à la justice.

- Contrairement à ce qui est affirmé dans le rapport et le mémorandum d'AI, l'IER a considéré la torture comme une violation en soi et a indemnisé les victimes. Il est à noter que la torture et les mauvais traitements sont des violations toujours associées à la détention. C'est pourquoi l'IER a pris en considération la torture et les mauvais traitements même lorsque la détention s'est effectuée dans le respect des délais de garde à vue. (L'IER a indemnisé des cas de détention pendant 24 ou 48 heures, dépassant ainsi même la définition du groupe de travail sur les arrestations arbitraires). Elle a également indemnisé les cas de détention suivie de jugement non équitable. Il convient de rappeler que l'Instance avait organisé, à la faculté de droit de Casablanca, un colloque sur les procès politiques dans le passé auquel ont pris part des juristes, des associations de défense de droit de l'Homme, des universitaires et des étudiants.
- Le CCDH note que les victimes des violations graves des droits de l'Homme commises par le Polisario n'ont pas été mentionnées dans le mémorandum d'AI. Quoique n'entrant pas dans la compétence de l'IER, celle-ci les a néanmoins considérées comme victimes de la disparition forcée et autres violations graves des droits de l'Homme et a recommandé à l'Etat la réparation de leurs préjudices.
- Le mémorandum affirme que les définitions des violations telles qu'adoptées par l'IER ne sont pas totalement conformes aux normes internationales des droits de l'Homme, notamment en ce qui concerne la disparition forcée et la détention arbitraire. Il semblerait qu'il y ait une incompréhension de l'analyse faite par l'IER de ces violations. En fait la disparition forcée au Maroc, comme ailleurs, a été pratiquée dans le mépris total des lois en vigueur, alors que la détention arbitraire l'a été dans le cadre de la loi mais en violation d'une ou de plusieurs des ses dispositions. La confusion dans ce domaine provient du fait que certains cas de détention arbitraire comportaient certains éléments constitutifs de la disparition forcée, notamment le refus de dévoiler le lieu de détention ou de donner des informations sur le sort de la personne privée de liberté. Signalons à ce propos que l'IER, qui a adopté les normes internationales des droits de l'Homme, a consacré dans son rapport final, des chapitres introductifs aux dispositions de ce droit.
- Contrairement à ce qui est rapporté dans le mémorandum, l'IER a bien considéré comme des cas de détention arbitraire entrant dans sa compétence, les cas de personnes détenues à cause de leurs opinions ou activités politiques, syndicales ou associatives ou les cas de personnes jugées dans le cadre de procès non équitables.
- Le CCDH s'étonne de l'utilisation de certaines dispositions du droit international relatives aux crimes contre l'humanité dans le cas des violations graves commises dans le passé au Maroc. Il est vrai que certaines violations

telles que la disparition forcée, la torture et les exécutions extrajudiciaires constituent des crimes des droits de l'Homme au regard du droit international, mais il est clair que les elements constitutifs du crime contre l'Humanité tels qu'énoncés par le droit international, sont inexistants dans les violations graves traitées par l'IER. Le CCDH est prêt à continuer un dialogue à ce propos.

6-2- Etablissement de la vérité

- Le mémorandum prétend que **plusieurs** familles de victimes de disparition forcée (sans autres précisions) n'auraient pas reçu des informations au sujet des dispositions prises lors des investigations concernant le sort de leurs proches, alors que l'IER comme le CCDH dans le cadre du suivi ont tenu à se concerter et à associer les familles à toutes les étapes franchies par les investigations et à les informer des résultats.
- En ce qui concerne la détermination de la responsabilité et contrairement à l'affirmation selon laquelle il n'a été fait mention d'aucun appareil responsable, les décisions arbitrales émises par l'IER et le comité de suivi mentionnent avec précision l'appareil ou les appareils responsables de la violation.
- Le CCDH exprime sa surprise quant l'allégation selon laquelle les familles des victimes de la disparition forcée qui n'ont pas présenté leur demande dans les délais fixés par l'IER ne sont pas éligibles à l'indemnisation et autres formes de réparation. Ceci est totalement faux eu égard au fait qu'aussi bien pour l'IER que pour le comité de suivi les cas des personnes au sort inconnu ne font l'objet d'aucun délai. Dans des dizaines de cas, ce sont les investigations de l'IER ou du comité de suivi qui ont mené à la découverte de l'existence de cas dont le sort était inconnu et ont informé les familles des résultats des investigations et de leur droit à la réparation.
- Selon le rapport, les identités des personnes décédées à Tétouan lors des émeutes urbaines de 1984 n'ont pas été révélées. Il semblerait qu'il s'agisse plutôt des cas des personnes décédées à Nador qui ont été mentionnées dans le Rapport final de l'IER et dont le lieu d'inhumation a été découvert par la suite. Quant aux victimes de Tétouan, l'IER avait établi leurs identités et identifié leurs sépultures. (Voir volume II du rapport final de l'IER).
- En ce qui concerne la publication des listes des victimes de la disparition forcée, le CCDH a tenu à concrétiser des avancées surtout en matière d'investigations et de réparation et de conclure ses travaux par un rapport exhaustif sur le suivi de la mise en oeuvre des recommandations. Ce rapport qui sera publié incessamment comportera, comme annexes, les listes des personnes dont le sort était inconnu.
- Pour ce qui est de la coopération des organes de l'Etat, le rapport final de l'IER nomme les différents appareils sécuritaires qui ont collaboré à des degrés divers avec l'IER. (voir le dernier chapitre du livre II du rapport).

- Selon le mémorandum, l'exhumation des dépouilles des personnes enterrées dans une fosse commune à Casablanca sans la présence des familles, aurait soulevé des protestations de certaines associations des droits de l'Homme. Tout en soulignant qu'il eût été impossible de procéder à une telle opération en présence des familles, le CCDH rappelle que les familles concernées ont été contactées et informées le jour même, qu'une réunion a été tenue par l'ancien président de l'IER et du CCDH feu Driss Benzekri avec ces familles au siège du CCDH au cours de la même semaine et **qu'un comité composé de membres des familles** assure depuis lors, le suivi de ce dossier avec le CCDH.
- S'il est vrai que la fosse commune découverte à Nador concerne les victimes de l'usage disproportionné de la force, les fosses découvertes à Eljadida et Fes remontent aux années 40 selon les investigations menées par les autorités.
- Toutes les supputations au sujet de l'existence de prétendues fosses communes sont sans fondement. Aucun indice valable n'a été fourni par qui que ce soit, ni durant le mandat de l'IER ni depuis que le CCDH assure le suivi.
- Les témoignages de personnalités recueillis à huis clos par l'IER, avaient pour seul objectif d'apporter des éclairages sur certains événements et contextes politiques et non de collecter des informations sur les violations graves perpétrées dans le passé. Ces déclarations qui n'étaient nullement destinées à la divulgation et encore moins à la publication font désormais partie des archives de l'IER dont l'accès est à réglementer.
- Conformément à la recommandation de l'IER, une loi sur les archives a été promulguée et les décrets d'application sont en cours de préparation.

6-3- Réparations

- Concernant les allégations de discrimination à l'égard des victimes, notamment celles originaires des provinces du sud, le CCDH tient à préciser ce qui suit:
    - L'un des principes directeurs retenus par l'IER en matière d'indemnisation est l'égalité entre toutes les victimes des violations graves. La seule forme de discrimination que l'IER et le comité de suivi ont pratiqué et qu'ils assument est la discrimination positive en faveur des femmes victimes des violations graves des droits de l'Homme dans le cadre de la mise en oeuvre de l'approche genre;
    - Les normes, critères et unités de compte ont été clairement exposés dans le livre III du rapport final consacré aux réparations;
    - Les doléances de certaines victimes ou ayants droit, notamment les anciens disparus de Mgouna ne reposent sur aucun fondement objectif. Les différences qui pourraient être constatées en matière d'indemnités s'expliquent par la mise en oeuvre des normes, critères et unités de calcul susmentionnées. En ce qui concerne les

différences dans les montants attribués aux victimes de Mgouna comparés à ceux des détenus de Tazmammart, il est à rappeler que les conditions de détention à Tazmammart étaient plus pénibles que celles de Mgouna. En effet, sans minimiser les souffrances endurées par les victimes de ce dernier centre, chaque détenu à Tazmamart était dans l'isolement total, alors qu'à Mgouna les victimes avaient une vie collective ayant plus ou moins droit à la promenade dans une cour ouverte, ayant la possibilité de se laver, de laver leur linge et de préparer leur nourriture. A Tazmammart, à cause de l'extrême dureté des conditions, plus de 50% des détenus ont péri (soit 32 sur 62).

- Les décisions d'indemnisation émises en faveur des victimes sont des décisions arbitrales dont le fondement légal est l'arbitrage, lequel en droit marocain signifie l'acceptation des décisions arbitrales par les deux parties en cause, en l'occurrence l'Etat et les victimes, sans aucune possibilité de recours. Il convient de souligner, cependant, que toutes les nouvelles demandes présentées par les victimes qui avaient déjà été indemnisées par l'Instance d'Arbitrage Indépendante ont été examinées par l'IER qui a émis dans le cadre de son mandat élargi des recommandations en leur faveur concernant les autres formes et modalités de réparation.
- En matière de couverture médicale, le régime octroyé aux victimes et ayants droit est le meilleur qui existe dans le pays et celui qui préserve le mieux la dignité des victimes. Quant aux difficultés rencontrées par rapport à la distribution des cartes, elles sont dues principalement à des retards dans la constitution des dossiers par les bénéficiaires. En vue de surmonter ces difficultés, le CCDH a mobilisé ses bureaux régionaux et coopère avec certaines associations des droits de l'Homme telles que le Forum Vérité et Justice et l'Association médicale pour la réhabilitation des victimes de la torture à Casablanca.
- En ce qui concerne la prétendue exclusion des provinces sahariennes du programme de réparation communautaire, il convient de préciser que s'il est une région qui ne souffre absolument pas de marginalisation c'est bien le Sahara qui connaît depuis sa réintégration dans le giron national un développement continu. D'ailleurs, la province de Tan Tan est concernée par ce programme.
- Les allégations concernant la non concertation et la non association de certaines associations des droits de l'Homme et de familles de victimes dans la conception du programme de réparation communautaire sont dénuées de tout fondement. En effet les recommandations contenues dans le rapport final ont été présentées essentiellement par des associations des régions concernées. Il est à rappeler que l'IER avait organisé un Forum National sur la réparation communautaire auquel ont pris part plus de 300 participants venant essentiellement des associations des droits de l'Homme et des associations locales provenant des régions concernées.

- Le nombre de personnes rétablies dans leurs fonctions tout en bénéficiant avec effet rétroactif des indemnités dues pour les années au cours desquelles elles avaient été suspendues n'est pas de 58 comme affirmé dans le rapport, mais de plusieurs centaines (environ1000).
- Le mémorandum considère le délai fixé par l'IER pour le dépôt des demandes comme étant insuffisant. Or une commission dont le mandat temporel est limité ne pouvait pas ne pas fixer un délai raisonnable au dépôt des demandes. Rappelons néanmoins que l'IER a pris en considération toutes les demandes présentées hors du délai fixé par l'Instance d'Arbitrage qui l'avait précédée, soit des milliers de demandes accumulées au cours de quatre années. En outre et comme précisé ailleurs dans ce rapport, les cas des personnes dont le sort est inconnu n'obéissent à aucun délai.

6-4- Communication

- L'IER comme le CCDH ont toujours placé les victimes et les ayants droit au centre de leur intérêt. Les deux institutions ont mis en place des unités chargées de l'accueil, de l'orientation et de l'information des victimes et leurs ayants droits, organisé à maintes reprises des journées de communication avec les associations et les familles, et pris en considération les propositions et mémorandums émanant des associations des victimes, des partis politiques et des associations des droits de l'Homme.
- Le mémorandum reproche au CCDH de n'avoir pas invité l'ASVDH et la CODESA lors du débat public organisé à Laayoune. Tout d'abord, le Conseil, qui avait adressé une invitation à Amnesty International, regrette profondément qu'elle n'ait pas saisi cette opportunité pour se rendre compte sur place des rapports suivis qu'il entretient avec les anciennes victimes des violations, leurs associations et leurs familles, et suivre le débat franc et profond et les travaux des ateliers qui ont marqué cette rencontre. Ensuite, et tout en rappelant que les deux associations mentionnées par AI n'ont pas d'existence légale, le CCDH tient à souligner que la rencontre portes ouvertes organisée à Laayoune n'a exclu personne, si ce n'est ceux qui se sont exclus eux-mêmes.

7- Un dernier mot

Nous réitérons à Amnesty International notre profond respect et notre désir de

maintenir la coopération entre nos deux institutions. AI a toujours été une grande école non seulement d'engagement pour le respect des droits humains à travers le monde, mais aussi de rigueur et d'objectivité dans la recherche de l'information. Nous sommes sûrs qu'elle restera fidèle à elle-même.

ENDNOTES

[1] Benchemsi, Ahmed R. *"Sondage interdit. Les leçons d'un ratage"*, TelQuel Online 388 found at http://www.telquel-online.com/388/edito_388.shtml.

[2] The Polisario Front which stands for Popular Front for the Liberation of Saguia el Hamra and Rio de Oro, calls for the independence of Western Sahara and runs a self-declared government in exile from the camps of Tindouf, in south-western Algeria.

[3] For more information see:

Amnesty International, *Morocco*: *Turning the Page: Achievement and Obstacles* (Index: MDE 29/01/99) June 1999; Amnesty International, *Morocco/Western Sahara: Human Rights Violations in Western Sahara* (Index: MDE 29/04/96), April 1996; Amnesty International, *Morocco: The Pattern of Political Imprisonment Must End* (Index MDE 29/01/97), 1994; Amnesty International, *Morocco:* Breaking *the Wall of Silence : The "Disappeared" in Morocco* (Index: MDE 29/01/93), April 1993; Amnesty International, *Morocco: Tazmamert: Official Wall of Silence and Impunity* (Index: MDE 29/07/92), 1992; and Amnesty International, *Morocco, A Pattern of Political Disappearances and Torture* (Index: MDE 29/01/91), March 1991.

[4] In 1996 Amnesty International sent the CCDH a non-exhaustive list of hundreds of Sahrawis who disappeared between 1975 and 1987. Cases of disappeared Sahrawis were submitted to the Moroccan authorities in June 1998 and raised again in a letter to the government in April 1999.

[5] As this report analyzes the work of the IER, which looked at violations committed by Moroccan state actors or individuals acting at the instigation of or with the consent or acquiescence of Moroccan officials, it does not address human rights abuses committed by the Polisario Front. The IER final report stated that cases of victims of the Polisario Front were outside its mandate but had recommended that direct victims of the Polisario Front and their families receive adequate reparation. Amnesty International has called on the Polisario Front to address the legacy of the human rights abuses committed in the 1970s and 1980s.

[6] See endnote 2 for references for additional information.

[7] Western Sahara, a former Spanish territory, is the subject of a territorial dispute between Morocco, which controversially annexed the territory in 1975 and claims sovereignty, and the Polisario Front, which calls for an independent state in the territory and has set up a self-proclaimed government-in-exile in the Tindouf refugee camps in south-western Algeria. A UN Settlement Plan was agreed to in 1988 by both the Moroccan authorities and the Polisario Front and was approved by the UN Security Council in 1991. After more than a decade of conflict, both parties agreed that a referendum should be held in which the Sahrawi population would be asked to choose between independence and integration into Morocco. The referendum was to be organized and conducted by the UN Mission for the Referendum in Western Sahara (MINURSO). It was originally set for 1992, but has been repeatedly postponed and has yet to be held. In March 2008, UN-mediated talks on the Western Sahara between the Moroccan government and the Polisario Front ended in stalemate. Morocco insisted on an autonomy plan for the territory annexed in 1975, while the Polisario Front called for a referendum on self-determination, as agreed in previous UN Security Council resolutions. The UN Security Council extended the mandate of MINURSO until 30 April 2010. However, it does not include a human rights monitoring component.

Amnesty International has been regularly calling for independent human rights monitoring to be included in the MINURSO's mandate.

[8] While the Convention signed by Morocco in February 2007 is still not in force, most of its provisions reflect customary international law.

[9] For more information, see section 4 on Truth: Investigations into past human rights violations.

[10] Amnesty International, *Morocco*: *Turning the Page: Achievement and Obstacles* (Index: MDE 29/01/99) June 1999.

[11] Ibid.

[12] The Moroccan Ministry of Human Rights was disestablished in 2004

[13] For further information on Morocco's status of ratification of international human rights instruments, see Part 7 on legal and institutional reforms

[14] Amnesty International, *Morocco*: *Turning the Page: Achievement and Obstacles* (Index: MDE 29/01/99) June 1999

[15] Ibid.

[16] Amnesty International, *Amnesty International Report 2000* (Index: POL 10/001/2000), June 2000

[17] Unofficial translation from Arabic into English used.

[18] *Dahir* No. 1-00-350 can be found on the CCDH's official website at http://www.ccdh.org.ma/spip.php?article175. The internal regulations governing the CCDH can be found in the Official Bulletin number 5204 of Thursday 15 April 2004.

[19] The right to an effective remedy for victims of human rights violations and serious violations of international humanitarian law is guaranteed in international law. It is enshrined in Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR) and further expanded in the Human Rights Committee General Comment No.31 on the*" Nature of the General Legal Obligation imposed on States Parties to the Covenant"*, adopted on 29 March 2004 at its 2187th meeting. It is also recognized in Article 8 of the Universal Declaration of Human Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 39 of the Convention on the Rights of the Child, Article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, Article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), Article 75 of the Rome Statute of the International Criminal Court, Article 7 of the African Charter on Human and Peoples' Rights and Article 23 of the Arab Charter on Human Rights.

[20] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles on the Right to a Remedy and Reparation), adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005 (UN Doc. A/RES/60/147).

[21] See *Dahir* 1-04-42 on the ratification of the central system of the Equity and Reconciliation Commission, issued on 10 April 2004 (19 Safar 1425), Issue 5203 of the Official Bulletin.

[22] For recommendations on the need to address the right to justice for victims of human rights violations, which was regrettably excluded from the mandate of the IER, please see Part5.

[23] The IER's final report did include these five cases in its statistics of the 742 cases of enforced disappearance that the Commission was able to resolve under the sub-category "deaths in secret detention centres".

[24] For the IER's definition of arbitrary detention, see Part 3.2

[25] Following attempted coups against King Hassan II in 1971 and 1972, over a thousand members of armed forces were tried by military courts in 1972. Ten officers were summarily executed after the first coup attempt, and others were brought to trial in Kenitra in 1972. In the first trial, the "Skhirat Trial", in February 1972, 1,081 members of the armed forces were tried for allegedly participating in an attack on the royal palace of Skhirat on 10 July 1971 during celebrations for the King's birthday. Seventy-four of those convicted were sentenced to prison terms ranging from one year to life imprisonment and one cadet was sentenced to death (the sentenced was later commuted); the rest, all cadets, were acquitted. The second trial in November 1972, known as "the Kenitra Trial", involved 220 defendants. They were accused of attempting to kill the King by firing at his aircraft in August 1972. Eleven of the defendants were sentenced to death and were executed two months later; 32 others were sentenced to between three years' and life imprisonment; the rest were acquitted. According to the findings of the IER, following the trials, 58 of those convicted were transferred to the secret detention centre of Tazmamart, where 30 of them subsequently died. The remainder were released in 1994, after up to 18 years in secret detention.

[26] In addition to studying new applications for compensation and other forms of reparation, the IER had reviewed cases submitted to the Arbitration Commission on Compensation. See Part 6 for further details.

[27] For detailed recommendations on the need to address the right to justice for victims of human rights violations, which was regrettably excluded from the mandate of the IER, see Part 5.

[28] The UN Working Group on Arbitrary Detention has identified three categories of arbitrary detention; namely: when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, and that is it is not within the framework of national law (as when a person is kept in detention after the completion of his/her sentence or despite an amnesty law applicable to him/her) (Category 1); when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as states parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category 2); and when the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the states (Category 3).

[29] See Statute of the IER, Article 5, under Definition of Arbitrary Detention, which qualifies arbitrary detention as unlawful detention contravening human rights principles including the right to liberty and security of person as a consequence of political, union or association activism.

[30] For more information on cases that the IER deemed outside its mandate, see Chapter 5, Volume 3 of Final Report.

[31] According to Article 2 of the International Convention for the Protection of All Persons From Enforced Disappearance, enforced disappearance is defined as: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." While the Convention is not yet in force, the definition is accepted as reflecting international customary law.

[32] See Part 6 in regards to Amnesty International's concerns that some victims of enforced disappearance who had reappeared were classified as victims of arbitrary detention for the purposes of compensation.

[33] The period between Morocco's independence in 1956 and the end of the reign of Hassan II in 1999, was marked by the repression of political dissent. In the period between the 1960s and 1990s reports of human rights violations reached the highest levels. During this period there were hundreds of cases of enforced disappearance, thousands of cases of torture or other ill-treatment and thousands of cases of persons imprisoned or deprived of physical liberty in violation of fundamental rules of international law.

[34] See Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (UN doc A/RES/2391 (XXIII)), and Article 29 of the Rome Statute of the International Criminal Court.

[35] For more information, see Amnesty International, *Maroc: Amnesty International exhorte les autorités à ratifier le Statut de Rome de la Cour pénale internationale* (Index: MDE 29/006/2007), 18 April 2007.

[36] Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (updated Set of Principles to Combat Impunity), Addendum to the Report of the Independent Expert to Update the Set of Principles to Combat Impunity, Diane Orentlicher (UN Doc. E/CN.4/2005/102/Add.1), 8 February 2005. These principles updated the Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity (E/CN.4/Sub.2/1997/20/Rev.1, annex II).

[37] See Part 2 for further information.

[38] See Part 4.2. for information on constraints the IER faced due to lack of cooperation by some official bodies.

[39] See Chapter 4 Volume 2 of the IER final report.

[40] For more information, see Part 4.2 on the Cooperation of State Officials and State Bodies.

[41] See Office of the High Commissioner of Human Rights, *Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights* (UN Doc. E/CN.4/2006/91), 8 February 2006, para38 and Conclusions (OHCHR, *Study on the Right to the Truth*).

[42] OHCHR, *Study on the Right to the Truth*, para57 and 60.

[43] OHCHR, *Study on the Right to the Truth*, para56.

[44] See OHCHR, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council" Right to the Truth, (UN Doc. A/HRC/5/7), 7 June 2007, para39.

[45] While international law recognizes that relatives of victims of enforced disappearance are also victims, here Amnesty International is using victims to refer to victims of enforced disappearance who had reappeared.

[46] See IER, *"First: The Truth and Determination of Responsibilities"*, Three-Part Summary of the Final Report, p12 (IER, *Summary of the Final Report*).

[47] See IER, Chapter 5, Volume 2, *Final Report* (English version), p120

[48] United Nations, *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, New York, 1991, pp34-39.

[49] CCDH, *L'expérience marocaine en matière de règlement des violations graves des droits de l'Homme dans le passé*, presentation by Ahmed Herzenni, held in Mauritania, 22-23 January 2008.

[50] See International Commission on Missing Persons, *Colombia's Response to Enforced Disappearances*, April 2008, para149. Report is available at http://www.ic-mp.org/wp-content/uploads/2008/10/colrep-distreng.pdf, accessed 29 December 2009.

[51] See for instance, Ministry for Human Rights and Refugees in Bosnia and Herzegovina, *Application of the Law on Missing Persons of Bosnia and Herzegovina: Guide for Families of Missing Persons*, 2006.

[52] See IER, Chapter 5, Volume 2, *Final Report* (English version), p120

[53] For comprehensive recommendations on the right to justice for victims of human rights violations, see Part 5.

[54] For additional information on public hearings see Part 6.1. on restitution.

[55] See Part 3 on the mandate, methodology and characterization of human rights violations by the IER for further information and *Dahir* 1-04-42 on the ratification of the central system of the Equity and Reconciliation Commission, issued on 10 April 2004 (19 Safar 1425), Issue 5203 of the Official Bulletin.

[56] See Human Rights Committee, *Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant, Concluding Observations: Morocco* (UN Doc. CCPR/CO/82/MAR), 1 December 2004, para12. See also Committee against Torture, Conclusions and Recommendations of the Committee against Torture: Morocco (UN Doc. CAT/C/CR/31/2), 5 February 2004, para5 which states that the Committee against torture expresses concern about: "The lack of information about measures taken by the judicial, administrative and other authorities to act on complaints and undertake inquiries, indictments, proceedings and trials in respect of perpetrators of acts of torture, notably in the case of acts of torture verified by the Independent Arbitration Commission for compensation for material damage and moral injury suffered by the victims of disappearance or arbitrary detention and their next of kin".

[57] One human rights organization, the Moroccan Association of Human Rights (Association marocaine des droits humains, AMDH) organized its own alternative public hearings, during which victims were able to mention the name of alleged perpetrators of human rights violations.

[58] See Part 2 for additional information on the Arbitration Commission on Compensation.

[59] Restoration of liberty is not addressed in this report as hundreds of disappeared persons in Morocco and Western Sahara were released between the mid-1980s and early 1990s, many of them following a royal pardon in 1991, but they were generally not given an explanation for their arrest, arbitrary detention or release. During the 1990s, about 500 prisoners of conscience and political prisoners incarcerated after unfair trials were also released. For more information see Amnesty International, *Morocco: Continuing Human Rights Violations* (Index: MDE 29/06/92), October 1992; *Morocco: Breaking the Wall of Silence: the "Disappeared" in Morocco* (Index: MDE 29/01/93), 13 April 1993 and *Morocco/Western Sahara: Turning the Page: Achievements and Obstacles* (Index: MDE 29/01/99), 3 August 1999.

[60] See Part 5 on the right to justice for additional information. For more information on the Code of Conduct to which victims had to adhere, refer to http://www.ier.ma/article.php3?id_article=669, accessed 29 December 2009. See endnote 57 on the organization of alternative hearing by a leading Moroccan human rights NGO.

[61] See UN Doc. CAT/C/MAR/4.

[62] See UN Doc. CAT/C/MAR/4.

[63] AFP, Maroc: fin du processus d'indemnisation des victimes des "années de plomb", 3 August 2009.

[64] For instance, the Arbitration Decision in the case of Mohamed Daddach classified him as a victim of arbitrary detention. He was arrested in 1976 by members of the army and held in incommunicado and unacknowledged detention for about nearly three years in various locations including military barracks in Agadir and Laayoune, a military hospital in Marrakesh and an unknown prison in Laayoune. During this period, his whereabouts were unknown. The circumstances of Mohamed Daddach's detention during this period correspond to the definition of enforced disappearance in the Convention for the Protection of All Persons from Enforced Disappearance which defines the violation as: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". Amnesty International also regrets that his incarceration from 1979 until his pardon in 2001 for having tried to desert from the Moroccan security forces into which he had reportedly been forcibly enlisted was not considered arbitrary detention by the CCDH. Amnesty International considered Mohamed Daddach, a former member of the Polisario Front, to be a prisoner of conscience, convicted for his objection to military service. See Amnesty International, *Morocco/Western Sahara: Turning the Page: Achievements and Obstacles* (Index: MDE 29/01/99), 3 August 1999; *Morocco/Western Sahara: Release of 56 political prisoners is positive step* (Index: MDE 29/010/2001), 8 November 2001 and Amnesty International's 2002 Annual Report entry for Morocco/Western Sahara (Index: POL 10/001/2002).

[65] M. Hamrouch, *"Ahmed Herzenni: 'Les anciens centres de détention vont devenir des lieux d'espérance'"*, Aujourd'hui le Maroc, 27 November 2008.

[66] The Benouhachem group is composed of ex-detainees who were arrested as high school students in 1975 and held in Agdez and Qal'at Mgouna until the late 1980s.

[67] See Chapter 3 Volume 4 of IER final report, for more detailed set of recommendations put forth by the Commission.

[68] Portail national du Maroc. *"L'harmonisation de la législation nationale avec la Convention contre la torture, un des plus importants chantiers du Maroc"*, 3 February 2009.

http://www.maroc.ma/NR/exeres/53FE2C32-ECF5-4DB3-AF9B-AA32D7B7BD6F.htm ,last accessed 25 December.

[69] For recent Amnesty International concerns over the fairness of trials, see Amnesty International: *Morocco/Western Sahara: Investigate allegations of torture of Sahrawi human rights defender* (Index: MDE 29/004/2009), 12 May 2009; *Morocco/Western Sahara: Irregularities in Sahrawi Activist's Trial* (Index: MDE 29/016/2008), 23 December 2008 and *Amnesty International: Morocco/Western Sahara: Investigate Allegations of Torture and Grant Detainees a Fair Trial* (Index MDE 29/013/2008), 1 July 2008.

[70] See UN Doc. CAT/C/MAR/4.

[71] See Part 7 for specific recommendations of the IER to criminalize crimes under international law.

[72] For more information on preventing domestic violence, see Amnesty International, Amnesty International's 14-Point Programme for the Prevention of Domestic Violence (Index: ACT 77/012/2006) , available at http://www.amnesty.org/en/library/info/ACT77/012/2006 , accessed on 29 December 2009.

[73] The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require:

"6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22. 22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control."

[74] For recommendations on the preservation of archives, see Part 4.5 above.

[75] Amnesty International, *Morocco/Western Sahara: Investigate Migrants' Deaths*, 8 May 2008.

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