



Moving from Mirage to Reality

**TRANSITIONAL JUSTICE AND
PREVENTION IN MOROCCO**

June
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Cover Image: Moroccans take part in an annual human rights march organized by the Moroccan Forum for Truth and Justice and the other members of the follow-up committee for the implementation of the recommendations of the country's Equity and Reconciliation Commission. (Moroccan Forum for Truth and Justice)

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About the Research Project

This publication is part of an ICTJ comparative research project examining the contributions of transitional justice to prevention. The project includes country case studies on Colombia, Morocco, Peru, the Philippines, and Sierra Leone, as well as a summary report. All six publications are available on ICTJ's website.

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About ICTJ

The International Center for Transitional Justice works across society and borders to challenge the causes and address the consequences of massive human rights violations. We affirm victims' dignity, fight impunity, and promote responsive institutions in societies emerging from repressive rule or armed conflict as well as in established democracies where historical injustices or systemic abuse remain unresolved. ICTJ envisions a world where societies break the cycle of massive human rights violations and lay the foundations for peace, justice, and inclusion. For more information, visit www.ictj.org

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Introduction

The preventive potential of transitional justice lies in its operationalization of the rights to truth, an effective remedy, guarantees of nonrecurrence, and justice.¹ However, the prevention of human rights violations and relapse into conflict or authoritarianism goes beyond institutional engineering and laws that might look comprehensive and balanced on paper but are ineffective on the ground because of their lack of implementation. Laws are not self-executing; they require for their effective application, among other things, political will to ensure enforcement and financial and human resources to create the necessary institutional arrangements. Furthermore, as the United Nations (UN) Special Rapporteur on the Promotion of Truth, Justice, and Guarantees of Non-recurrence has stressed, prevention requires interventions not only in institutional domains but in the cultural and individual spheres as well.²

A comprehensive transitional justice process can also play a positive role in addressing horizontal inequalities and economic exclusions, which are known to be sources of unrest and conflict.³ The UN Special Rapporteur argues that prevention has an economic and developmental dimension, as “inequality and poverty correlate robustly with violence and the violations of various rights.”⁴ Articulating responses that tackle the complexity of conflict and rights violations is of paramount importance for sustaining peace and preventing the recurrence of human rights violations, repression, and authoritarianism, and “neither cost nor complexity of interventions is a legitimate excuse for inaction.”⁵

Truth-telling is a common transitional justice measure that, in addition to offering an account of what happened—a necessary step in the process of healing and closure for victims, their families, and society—can provide a thorough diagnosis of state institutions and society as a whole and pinpoint the political, economic, social, and environmental dysfunctions that led to conflict, repression, and human rights violations. Moreover, truth commissions, as one form of truth-telling, often recommend that additional measures and reforms be implemented to remedy injustice and prevent its recurrence. For instance, during the 2011 upheavals in the Arab world, the monarchy in Morocco was, to a certain degree, responsive to the demands of the 20 February Movement in part because the Equity and Reconciliation Commission (IER: Instance Équité et Réconciliation in French), which operated from 2004 to 2006, had already recommended solutions to many of the country’s institutional and legal dysfunctions. In fact, King Mohammad VI stressed, in his March 9, 2011, speech, the importance of consolidating the rule of law and institutions, widening the

- 1 See UN Human Rights Council, *Joint Study of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence and the Special Advisor to the Secretary-General on the Prevention of Genocide* (A/HRC/37/65, June 6, 2018), para. 12.
- 2 See UN Human Rights Council, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence* (A/HRC/30/42, September 7, 2015).
- 3 United Nations and World Bank, *Pathways for Peace: Inclusive Approaches for Preventing Violent Conflict* (Washington, DC: World Bank, 2018).
- 4 UN Human Rights Council, *Report of the Special Rapporteur*.
- 5 Ibid.

field of individual and collective freedoms, and strengthening the human rights system in all its dimensions. “This should be done in particular,” he said, “through the constitutionalisation of the judicious recommendations of the Equity and Reconciliation Commission, as well as Morocco’s international commitments in the matter.”⁶

Additionally, prevention calls for multidimensional measures that are necessary to foster an enabling environment for different actors in society to fulfill their functions. Civil society, for instance, if it operates in a free or relatively free civic space, could go beyond its traditional role of reporting, monitoring, and advocacy.⁷ Civic engagement is important to fostering an open and inclusive society in which citizens can contribute meaningfully to public debates and build networks to advance societal values and protect rights. For example, it was civil society in Morocco that kept the issue of the grave and systematic human rights violations on the political agenda; likewise, it was civil society that advocated for an independent national truth commission after the authorities had tried to submerge the issue of past gross human rights violations through the Independent Arbitration Panel, which was meant to indemnify victims of enforced disappearance and arbitrary detention, but whose approach was limited to providing financial compensation without seeking to ensure justice or provide an adequate form of redress to victims and their families or to society as a whole through guarantees of nonrecurrence.

Transitional justice mechanisms are not the only elements of a prevention framework, but they are arguably among the most useful preventive tools available to countries that are going through transition after a period of conflict, massive human rights violations, repression, or authoritarianism. Morocco, for instance, which had experienced during the reign of King Hassan II massive human rights violations and violations of humanitarian law, tried to address its somber past through a transitional justice process that was adapted to its own political and social reality and that was part of an ongoing dynamic of change.⁸ A genuine transitional justice process can help to tackle—or at least point to—many of the structural drivers of conflict and rights violations that feed cycles of violations and disregard for human rights. However, the government and society must follow up on the results of the transitional justice process in order to rebuild trust in state institutions and reconstruct a social contract on a sound basis through “an actionable non-recurrence policy.”⁹

This study examines the extent to which transitional justice processes in Morocco may have contributed to the prevention of serious human rights violations, mainly in the form of state violence and repression and social and economic exclusion. Beginning in the 1990s, Morocco, a constitutional monarchy, engaged in a process of liberalization that included efforts to address past grave human rights violations, which had been committed by the government during the “Years of Lead.”¹⁰ In the 2000s, these efforts were centered

6 The full text of the March 9, 2011, speech is available online: www.maroc.ma/fr/discours-royaux/texte-integral-du-discours-adresse-par-sm-le-roi-la-nation.

7 The Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence makes a thorough analysis of the contribution of civil society to prevention. See UN Human Rights Council, *Report of the Special Rapporteur*.

8 Bettina Dennerlein, “Remembering Violence, Negotiating Change: The Moroccan Equity and Reconciliation Commission and the Politics of Gender,” *Journal of Middle East Women’s Studies* 8, no. 1 (2012): 10–36.

9 UN Human Rights Council, *Report of the Special Rapporteur*, para. 22.

10 The Years of Lead refer to the reign of the late King Hassan II (1961–1999). During this period, the human rights of King Hassan II’s opponents and political dissidents were systematically violated. Violations such as enforced disappearance, extrajudicial killings, and arbitrary detention were used to silence dissident voices, and economic exclusion was used against regions of the country that were deemed rebellious or that housed secret detention centers.

around the Equity and Reconciliation Commission, a truth-telling initiative that recommended and helped bring about other transitional justice processes such as reparations, the preservation of memory, and a series of institutional and legal reforms that were intended to prevent the recurrence of those violations. Morocco is a difficult case to analyze in terms of the contribution of transitional justice to prevention, however, because it is not in a context of regime change. Despite the political liberalization that was underway, the regime that committed the violations of the past remained in charge of the efforts that were meant to address their legacies, which, at a fundamental level, calls into question the state's commitment to actually prevent future such violations.

The human rights violations that were committed during the Years of Lead included both state-sponsored violence and repression against those who were considered to be political dissidents and those who engaged in social unrest, as well as violations of the economic and social rights of entire regions of the country that housed secret detention centers or were considered rebellious. While political violence targeted both men and women, in many ways it was women who bore the brunt of repression and exclusion. In the 1990s, the government began a process of political reform and adhered to key international human rights instruments in an effort to renew its political legitimacy at home and improve its reputation abroad. Part of this process involved the provision of financial compensation to victims of repression, but civil society and victims' organizations, who did not see this as meaningful redress or change, continued to advocate for a vision of transitional justice that would help to make sure the tragedies of the past did not happen again.

When the IER was established in 2004, its commissioners wanted it to lead to outcomes and reforms that would prevent the recurrence of past violations. The IER, however, was ultimately always a royal initiative, that is, a process that would be under the monarchy's control and would not be detrimental to its hold on power, and that would, in the monarchy's view, foster development rather than division. The IER was given a narrow mandate to address only two violations, enforced disappearance and arbitrary detention, and not the economic and social violations and issues that affected much of the country. Nor was it meant to question the legitimacy and authority of the security apparatus and judiciary, which had been so complicit in past injustices. With a lack of investigative powers, time constraints, minimal outreach and visibility, and little to no representation of women and Islamists, the positive impact and inclusiveness of the commission was mostly limited to victims themselves and human rights organizations. In addition, the regime's ongoing repression of Islamists as part of its fight against terrorism, combined with the absence of individual accountability through the justice system or a vetting process, undermined the credibility of the government's commitment to ending abuses.

However, the IER's approach to individual reparations was more expansive than that of previous compensation programs, providing valuable benefits such as reintegration to jobs, health care, and psychological counseling, all of which can help to reduce grievances and foster inclusion in society. Furthermore, reparations adopted a gender approach, to a certain extent, allocating more compensation to women because of the ways in which they suffered harm and disregarding Shari'a inheritance rules in the distribution of benefits. Despite the slowness of the process for some victims, those who received benefits were impacted positively by reparations. At the same time, however, those who did not receive benefits because of administrative and practical barriers, a lack of access to information, distrust of state institutions, and confusion about the application window often felt that they had been unjustly excluded. Furthermore, the promise of collective reparations created high expectations for socioeconomic and cultural programs targeted at

regions that had been economically excluded, marginalized, and stigmatized during the Years of Lead. Minimal and slow implementation, however, funded mainly by international donors, has left expectations unmet, done little to reduce regional inequality or preserve memory, and even reinforced grievances and feelings of exclusion.

The IER made wide-ranging recommendations designed to prevent the recurrence of human rights violations, including a series of long-term institutional and legal reforms. As many of these reforms were not compatible with the 1996 constitution, however, it was not until the adoption of a new constitution in 2011 that they became even possible. The new constitution provided for human rights protection (including the criminalization of human rights violations and respect for due process), a clearer separation of powers, a stronger legislature, and the primacy of international law. Despite the creation of institutions to promote good governance, transparency, economic inclusion, and human rights, though, the legislation that is needed to activate these institutions has been limited, leaving them with little impact or awareness among the public. Furthermore, while the country has joined numerous international human rights treaties, it has used various strategies to lessen their impact.

Despite the IER's recommendations for transparency and oversight, the security sector, widely seen as a tool of repression, remains the domain of and publicly supported by the monarchy. Given this support, as well as the security agencies' role in the fight against terrorism and in putting down recent social uprisings, they are unlikely to be reformed from within. While some efforts have been made to improve the reputation of the agencies, institutionalize checks, and increase compliance with human rights, this has not been part of a broader public policy and has focused on effectiveness and efficiency rather than integrity and legitimacy. The 2011 constitution also led to greater independence of the judiciary, including the adoption of a Judicial Reform Charter, which includes the protection of human rights as one of its objectives, but this has not been implemented. The judiciary remains mired in corruption and a frequently used tool to silence dissent.

Morocco's experience with transitional justice suggests that limited political reform in the absence of regime change can allow for real but restricted impact on the prevention of human rights violations. As a truth-telling measure, the IER diagnosed some of the wrongdoings of the past and called for reform to prevent their recurrence. Reparations provided important benefits to victims that had a positive impact on inclusion, while collective reparations drew attention to regional exclusion and inequality. Beginning in 2011, a new constitution facilitated institutional and legal reforms that had been recommended by the IER, many of which included the protection of human rights. Nevertheless, the fact that the same regime that was responsible for past human rights violations remained in control of the transitional justice processes, at the same time that it was perpetrating abuses in the name of anti-terrorism, has undermined the legitimacy of those processes and constrained their impact. While the monarchy may have no desire to return to the widespread repression of the Years of Lead, the persistence of human rights violations, corruption, inequality, and social unrest in the country suggests that a transitional justice approach that is more comprehensive and inclusive and, in the end, more fully implemented has the potential to make a greater contribution to preventing future wrongs.

General Context

Morocco, which has both territorial and maritime borders in addition to economic and demographic ties with Europe, is a key country for stability in North Africa, and a strategic partner to the West in the fight against terrorism and in other critical dossiers. Therefore, Morocco is as crucial to the West as the West is to Morocco's stability and viability. The North African kingdom has also often instituted reform initiatives that set it apart from other countries in the Middle East and North Africa. Morocco was the first country to grant a general amnesty to political prisoners in 1994, to allow the formation of a rotation government headed by the opposition in 1998, and to grant more rights to women through the reform of the family code in 2004. The creation in 2004 of the Equity and Reconciliation Commission, or IER, was one of those instances, making Morocco the first country in the Arab world to have had such a truth commission.

The influence of context on any experience is undoubtedly colossal, for it delineates the contours within which the different moving parts of the whole evolve and take shape. The political and social realities of the time define the scope and depth of interaction between the different actors, especially those with divergent interests, agendas, and intentions. Transitional justice processes are not one-size-fits-all measures that can be reproduced without taking into consideration the particularities of each situation and the power dynamics that exist between the various political and social actors. Thus, the Moroccan transitional justice process was influenced and shaped by the international and national contexts in which it took form.

The State of Human Rights in Morocco Before the IER

Since its independence from France and Spain in 1956, Morocco has experienced much political and social unrest with wide ramifications. The enthronement of Hassan II in 1961 marked a turning point in the country's history, particularly after the promulgation of the 1962 constitution that gave the monarchy extensive powers in the three branches of government and made the "king's person inviolable and sacred,"¹¹ creating an authority that could govern, legislate, and dominate the polity in religious as well as political terms, as detailed in Article 19 of the constitution.¹² During his 38-year reign, Hassan II was challenged by civilian opposition as well as by two military coups, in 1971 and 1972. The military officers who were directly implicated in the coups were executed; those whose roles were marginal were sentenced to a few years in prison

¹¹ On the "king's person," see the 1962 constitution, Art. 23.

¹² Article 19 first appeared in the 1962 constitution and remained until it was changed in the 2011 constitution. Article 19 reads: "The King, 'Amir Al Mouminine' (Commander of the Faithful), symbol of the unity of the nation, guarantor of the sustainability and continuity of the State, ensures respect for Islam and the Constitution. He is the protector of the rights and freedoms of citizens, social groups and communities. He guarantees the independence of the nation and the territorial integrity of the kingdom within its authentic borders."

but then disappeared. Thus, 58 officers and soldiers found themselves in illegal detention in the infamous Tazmamart secret prison, where more than half of them died and were buried in the prison's courtyard.¹³

The monarchy responded to the civilian and military challenges with repressive means that ranged from using disproportionate force against unarmed demonstrators during the urban disturbances of 1965, 1981, 1984, and 1990, killing hundreds of innocent people, including children as young as 10 years old, to extra-judicial killings, kidnappings, and arbitrary detention of political dissidents.¹⁴ Some of the emblematic cases of the disappeared are those of the renowned opposition leader Mahdi Ben Barka, who was kidnapped in Paris in 1965, never to be seen again, and the labor union activist Houcine Manouzi, who was kidnapped in Tunisia in 1972. Both cases remain unsolved to this day.

Violations of human rights law and international humanitarian law worsened after Morocco annexed the contested territory of Western Sahara in 1975. In the context of the low-intensity conflict between Morocco and the POLISARIO Front (the Popular Front for the Liberation of Saguia el-Hamra and Río de Oro), the civilian population was caught between the two warring parties and subjected to many abuses. Those who did not align with Morocco's policies in the territory disappeared in secret detention centers like the notorious Agdez, Kalaat M'Gouna, and Laayoune, to cite a few.¹⁵ The security services were the spearhead in this struggle, carrying out gross violations of human rights law as well as international humanitarian law with total impunity.

Political violence in Morocco targeted men as well as women. In fact, a study by anthropologist Nadia Guessous found that four main categories of women bore the brunt of state violence during the Years of Lead:

1. "Women relatives of political activists living in rural and marginalized areas;
2. Women from rural and marginalized communities targeted for collective punishment;
3. Relatives of political activists living in urban centers;
4. Politically active women."¹⁶

The majority of women who were victims of state repression were illiterate and belonged to poor rural communities.¹⁷ Their economic situation and social status caused them additional suffering. These disempow-

13 Tazmamart refers to the secret prison that was built on the military base located in the village of Tazmamart, near the city of Rich. The prison was built for those who were implicated in the two failed military coups of 1971 and 1972. At first, all of the 58 officers were sentenced to three years or more and sent to the Kenitra prison, but in August 1973, they were secretly transferred to Tazmamart, where they were detained in inhumane conditions, which caused the death of 31 of them. Those who stayed alive were released in 1991 and 1992.

14 See the summary of the IER's final report, (2006) 10, accessible at https://www.cndh.org.ma/sites/default/files/documents/rapport_final_mar_eng-3.pdf

15 Agdez refers to an ancient fort that was built in the 1950s in the small town of Agdez and in 1977 turned into a secret detention center, primarily for the Sahrawis. The fort was abandoned in 1983.

16 Nadia Guessous, The Consultative Council on Human Rights, "Women and Political Violence During the Years of Lead in Morocco" (2009).

17 *Ibid.*, 33–32.

ered women were considered enemies of the state merely because they had communal or familial ties with men political activists.

The human rights violations of the Years of Lead were not only of a political nature. The regime violated the economic and social rights of entire parts of the country. The regions that housed secret detention centers, such as those in the southeast and those that were considered rebellious, like the Rif region, saw their right to development violated. Furthermore, in 1981, under pressure from international financial institutions, the Moroccan government took austerity measures that prompted widespread demonstrations in Casablanca, the biggest economic center in the country. The June 20, 1981, riots were suppressed after the military intervened, killing hundreds and injuring thousands. As a consequence, the government retracted its austerity plan.¹⁸

However, in 1983 Morocco started the implementation of the Structural Adjustment Plan, as directed by the International Monetary Fund, making it hard for Morocco's most vulnerable clusters of society to make ends meet. Inflation soared, unemployment rates skyrocketed, and school registration fees were raised, rendering the enjoyment of social and economic rights difficult for many Moroccans. In response, the "bread and dignity riots" erupted on January 19, 1984, in cities such as Al-Hoceima, Nador, Ksar Lakbir, Fez, and Marrakech. King Hassan II, in a televised speech, threatened the demonstrators and called them "scumbags" and "agitators."¹⁹ Once again, the security apparatus, especially the military, intervened with severe brutality against civilian protestors, causing the death and disappearance of hundreds.

The widespread and systematic human rights violations were a state-sponsored policy that was used against political dissidents who were considered enemies of the state because of their political opinions or labor union activism. In fact, any person who expressed an opinion that diverged from the regime's "*opinion officielle*" ran the risk of being imprisoned after a farcical trial.²⁰ Unauthorized views on sensitive issues like the conflict in Western Sahara and the state of human rights and governance in the country were a risky business. Furthermore, Morocco's tripartite components of God, Country, and the King were the red lines that no one was allowed to cross. Questioning the state religion, the territorial integrity of the country, or the king's authority was considered a major offence. In this context, Moroccan authorities instrumentalized state institutions to quell dissident voices and limit public space.²¹

The advent of King Mohammed VI gave some encouraging signs, in particular after the new king ousted the infamous minister of the interior, Driss Basri, the visible face of the regime's repressive machinery. However, Morocco's engagement in the "war on terror" lowered political liberalization among the government's priorities. Many human rights violations that took place in the context of the fight against extremism proved that Morocco's reforms should not be taken for granted and that they were not consolidated enough to prevent the recurrence of the patterns of abuses of the Years of Lead. Unfair trials, arbitrary detentions,

18 In a derogatory way, the infamous minister of the interior, Driss Basri, called victims of the 1981 Casablanca riots "bread martyrs."

19 Youssef Dahmani, "Maroc: Les émeutes de 1984, quand Hassan II qualifiait les manifestants de « Awbach »" (Morocco: the 1984 uprisings, when Hassan II called demonstrators « scumbags ») (2019), available at <https://www.yabiladi.com/articles/details/73556/maroc-emeutes-1984-quand-hassan.html>

20 Susan Slyomovics, "A Truth Commission for Morocco," *Middle East Report* no. 218 (2001): 18–21.

21 The regime attempted to use the education system to condition the population, but at the same time much of the social movements and opposition to the regime originated in high schools and universities, suggesting that education was both a source of enlightenment and oppression.

torture, kidnappings, and illegal detention centers, like the one in Temara, made their comeback. The war on terror demonstrated that the regime's repression had not changed; rather, only the victims had changed, from predominantly leftists, Marxist-Leninists, and Sahrawis to predominantly Islamists.

An International Context Conducive to Change

The contours of political liberalization in Morocco were shaped by a plethora of internal and external factors. Indeed, the fall of the Berlin Wall in 1989 and the dismantlement of the former communist block sent shockwaves throughout the world. These events gave momentum to the “third wave of democratization,” reaching the former members of the Warsaw Pact and leading other authoritarian governments to revamp their regimes in a way that was suitable for the new era.²² The impetus for change continued with the adoption in 1993 of the Vienna Declaration, which brought to the fore human rights principles and values and consecrated their universality and indivisibility. The protection of human rights and the inherent dignity of peoples were, therefore, reinforced.

All of these international developments could not leave Moroccan authorities indifferent. In order to preserve its dominance and renew its political legitimacy, the monarchy needed to take certain steps: at the national level, to change its approach to dealing with its political detractors and opponents, and at the international level, to adhere to human rights standards. The repressive approaches and disregard for human rights of the past were no longer plausible options, for they only brought criticism of the monarchy and damaged the country's reputation. For instance, Morocco's image was tarnished when Amnesty International made public two key reports on disappearances and torture in Morocco, published respectively in 1990 and 1991. Amnesty International's reports exposed the gravity of the human rights situation in the kingdom, as did an incendiary book by Gilles Perrault, *Note Ami le Roi (Our Friend the King)*, published in Paris in 1990, that revealed the ugly face of Morocco's autocratic regime.²³

Additionally, Morocco's economy was on the brink of collapse. King Hassan II in an alarming speech warned that “Morocco was nearing cardiac arrest,” summing up the findings of a 1995 World Bank report that advised that Morocco's economy was at risk due to a bloated and inefficient administration, a corrupt judicial system, and a bankrupt education system.²⁴ The country needed to ameliorate its human rights record and reform its institutions in order to attract more foreign investment and financial and technical support. Moreover, beginning in the 1990s, Morocco's main economic partner, the European Union, incorporated a “human rights conditionality” in its trade policy. Morocco had to signal that it was reforming and aligning itself with this new set of rules, especially after its 1987 application to join the then European Economic Community was turned down.

22 Samuel Huntington coined the expression “third wave of democratization.” Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991).

23 See Amnesty International's 1990 report, “Morocco: Disappearances of People of Western Saharan Origin” (AI Index MDE 29/17/90), and 1991 report, “Morocco: A Pattern of Political Imprisonment, ‘Disappearances,’ and Torture” (AI Index MDE 29/01/91).

24 On Morocco's “cardiac arrest,” see the IER's final report, Book 4, 68–69. See also Driss Bennani, “La Fin de Hassan II ou l'autre Printemps Marocain” [“The End of Hassan II or the Other Moroccan Spring”], *Telquel*, December 13, 2012.

In a move to show its intention to respect and be part of the human rights system, Morocco adhered to key human rights instruments such as the Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child.

The Monarchy and Human Rights

Starting in the early 1990s, King Hassan II initiated a process of political liberalization through initiatives that were meant to ease the tense political climate that had reigned over Morocco since its independence in 1956. The acknowledgment, after years of denial, of the existence of victims of enforced disappearance and political prisoners and their gradual release were encouraging signs. A first group of six disappeared was released in 1984 after 10 years of secret detention. The second group of 321 disappeared, mainly Sahrawis, was released in June 1991 from Kalaat M'Gouna and Laayoune, and in September 1991, the 27 survivors of the infamous Tazmamart secret prison were released after 18 years of detention in inhumane conditions.²⁵ The famous political prisoner Abraham Serfaty was also released from the Kenitra civilian prison, where he and other opposition figures from the extreme left spent 17 years in detention. The wife and other family members of General Mohammed Oufkir, the former minister of defense and the man behind the 1972 military coup, were also released from detention, though they were not allowed to leave the country. Following a July 8, 1994, speech in which he promised to “turn the page definitely,” Hassan II granted a general amnesty benefiting 424 political prisoners.²⁶

Simultaneously to the reappearance and liberation of political prisoners, Hassan II triggered several constitutional and institutional reforms. The constitution was amended twice: in September 1992, to reaffirm Morocco's commitment to human rights as they are universally recognized, and in 1996, to institute a bicameral legislature whereby the members of the house of representatives were, for the first time, elected through direct universal suffrage. Inspired by the French experience, Hassan II also created the Advisory Council on Human Rights (CCDH: Conseil Consultatif des Droits de l'Homme in French) in 1990; the Ministry of Human Rights and Administrative Tribunals in 1993; and the Royal Advisory Council for Saharan Affairs (commonly known as CORCAS), which played a role in the release of hundreds of Sahrawis, in 1991.²⁷

By initiating these constitutional and institutional reforms, in addition to the revision of laws that were nefarious to individual as well as public liberties and other rights, the monarchy tried to clear the legal, procedural, and institutional hurdles that were preventing citizens from exercising their political rights in a meaningful manner and the political opposition from participating in political action, given that public space was unfairly distributed among political actors.²⁸ The reforms were also seen as a clear indication of

25 International Federation for Human Rights, « Les Disparitions Forcées aux Maroc : Répondre aux Exigences de Vérité et Justice » [“Enforced Disappearances in Morocco : Meeting the Requirements for Truth and Justice”] (November 2000). The report can be accessed through the following link: www.fidh.org/fr/regions/maghreb-moyen-orient/maroc/Les-disparitions-forcees-au-Maroc

26 As cited in Susan Slyomovics, “A Truth Commission for Morocco,” *Middle East Report* no. 218 (2001): 18–21. See also Bennani, “La Fin de Hassan II.”

27 The CORCAS became dormant for over a decade, until the advent of King Mohammed VI, who reactivated it in 2006. See also Bennani, “La Fin de Hassan II.”

28 The reforms included the revision in 1996 of the Code of Penal Procedure, which limited incommunicado detention to 48 hours, with one possible extension for 24 hours, and the implementation in 1998 of the law that required autopsies for deaths that occur

the monarchy's desire to close the chapter of political prisoners and the repression of political opponents, and to move toward establishing a new set of political rules that would allow the opposition gradual access to high office.

Indeed, these reforms paved the way for the organization of the general elections of November 1997, in which the main opposition party, the Socialist Union of Popular Forces, won the highest number of seats and was selected by King Hassan II to form the 1998 rotation government (*Gouvernement d'alternance* in French), presided over by Abderrahmane Youssoufi, a prominent socialist opposition figure who himself was a former political prisoner and had been in exile for many years. King Mohammed VI's accession to the throne then brought a great deal of hope, especially when he promised, in his first speech of July 30, 1999, to be

extremely attached to the constitutional monarchy, to the multiparty system, to economic liberalism, to the policy of regionalization and decentralization, to the construction of the rule of law, to the safeguard of human rights and individual and collective freedoms, and to maintaining security and stability for all.

As far as constitutional institutions are concerned, our task will be to give guidance, precious advice and to play the role of the arbitrator who is above all affiliation.²⁹

The reform process continued with, notably, the creation of the High Commission for Audiovisual Communication in 1999, the Royal Institute for the Amazigh Culture in 2001, and the Ombudsman (*Diwan Al Madhalim* in Arabic) and the strengthening on April 10, 2001, of the prerogatives of the CCDH.³⁰ These institutional developments were seen as a signal that Morocco had made the choice to create an environment to ensure political inclusion and to guarantee the protection of its citizens' rights against the oppressive tendency of the state.³¹

Ultimately, the monarchy used its appropriation of human rights discourse and its reform initiatives to renew its political legitimacy internally and to receive international recognition. This move helped it to keep the entire process under its control and to direct it in a way that promoted its interests. Being the driver of the process allowed the palace to determine the speed, direction, and depth of the reforms.

in detention. See King Hassan II's speech of May 8, 1990, on the occasion of the creation of the CCDH, in which the monarch stated, among other things, that it was time to start reforms that would protect the rights of citizens. The text of this speech is available in Arabic on the CNDH website: www.cndh.ma.

29 Quotations from sources not in English are translated by author. The French translation of the July 30, 1999, speech is available online: www.maroc.ma/fr/discours-royaux/discours-du-trone-de-sa-majeste-le-roi-mohammed-vi.

30 This reform sought to align Morocco's human rights institution with the Paris principles.

31 "We reiterate our attachment to human rights and to the values of freedom because we have the firm belief that the respect of human rights and the adherence to international charters enshrining these rights are not luxury or fashion, but of a necessity dictated by the requirements of evolution, development and progress. We believe, for our part, that there is no incompatibility between ambition for development and human rights, especially as there is no contradiction between Islam, which has honored the human being, and human rights. For all these reasons, [we] believe that the next century will be par excellence the century of respect for rights or will not be." Excerpt from the royal message of December 10, 1999, on the occasion of the 51st anniversary of the Universal Declaration of Human Rights.

The Path Toward the IER

Morocco prides itself on having established the first truth commission in the Middle East and North Africa.³² Indeed, the IER was a novelty in the region, but it was also rare even beyond the area in that it enabled a transitional justice process not after a regime change, but rather from within a regime that sought to renew its political legitimacy through self-reform and by incorporating human rights in its political discourse. Morocco did not experience a revolution but a “regime evolution,” which, some analysts argue, is still a process to be applauded in a region that is known for its stagnant authoritarian regimes.³³ The road to the IER, however, was not a straight one. It was, rather, an accumulation of human rights and political liberalization initiatives that started in the early 1990s when King Hassan II began to gradually open up political space. The advent of King Mohammed VI in July 1999 offered an opportunity for more political liberalization and respect for human rights, particularly after the new monarch promised to consolidate the democratic choice of the country.

Morocco’s transitional justice process began in August 1999 with the creation of the Independent Arbitration Panel (IIA: Instance Indépendante d’Arbitrage in French), whose mandate was limited to giving financial compensation to victims of enforced disappearance and arbitrary detention. The IIA did not manage to close the file of past human rights violations as its initiators had hoped. Victims and the human rights community considered this first attempt to be superficial and anything but a genuine transitional justice process, and therefore continued advocating for a truth and reconciliation commission that would investigate past violations and shed light on the many dark corners of the country’s infamous Years of Lead.

Morocco’s First Transitional Justice Attempt: The Independent Arbitration Panel

The process leading to the creation of the IIA (August 1999–July 2003) was initiated by the late King Hassan II, who in his October 9, 1998, speech before the parliament stressed the need “to close the file of human rights within six months” and called on the CCDH to activate the necessary mechanisms to achieve that objective.³⁴ Hassan II wanted the issue of human rights abuses to be settled once and for all “so that Morocco

32 Many critics think that Morocco’s IER was not a truth commission per se for it did not have the mandate or the means to thoroughly investigate the past violations to uncover the truth even in its relative meaning.

33 Interview with a former National Council on Human Rights (CNDH) senior staff member, Rabat, December 18, 2019.

34 See Hassan II’s October 9, 1998, speech, available online: www.chambredesrepresentants.ma/ar/-الرباط-09101998-خطاب-المغفور-له-جلالة-الملك-الحسن-الثاني-بمناسبة-افتتاح-السنة-التشريعية-1998-1999.

does not remain trailing behind it a reputation that is not the truth, and does not reflect its past, nor does it reflect its reality nor benefit it in its future.”³⁵

A week later, on October 15, 1998, the CCDH issued a list of 112 disappeared persons, 56 of whom were said to have died while in detention. The list was criticized by civil society because it was ambiguous, did not provide many details, and did not reflect the real numbers of the disappeared.³⁶ On April 2, 1999—six months after King Hassan II’s speech before the parliament—the CCDH published its final report and its findings and submitted a recommendation to the king asking for the creation of an Independent Arbitration Panel to indemnify the victims of enforced disappearance and their rightful claimants. Hassan II approved the CCDH’s recommendation and ordered it to select the members of the panel. On July 2, 1999, the CCDH addressed a memorandum to King Hassan II with the names of nine members that it had chosen. However, King Hassan passed away on July 23, before the IIA was activated.

King Mohammed VI continued the process that had been initiated by his late father and approved the CCDH’s July 2, 1999, memorandum. Consequently, on August 17, 1999, the palace’s spokesperson issued a statement through which it informed the public that his Majesty King Mohammed VI had ordered the creation, within the CCDH, of an Independent Arbitration Panel to indemnify the victims of enforced disappearance and arbitrary detention. It is worth noting that the CCDH’s recommendation and memorandum focused only on the victims of enforced disappearance, which the human rights community considered outrageous. The new king rectified this, however, by expanding the panel’s mandate to include arbitrary detention as well.

The IIA’s rules of procedure included 35 articles, and its task was to review and make decisions about requests for financial compensation that were submitted by victims or their rightful claimants. The panel had no investigative powers, its meetings were not public, its decisions were final, and victims had to sign a declaration stating that they would accept the panel’s decisions as a condition for their requests to be considered. The IIA was also criticized because of its lack of independence. In fact, it was a body created within the CCDH, and included among its members a representative of the ministry of the interior, an institution that was implicated in human rights abuses, and a representative of the ministry of justice, an institution that was accused of staying idle while the human rights of citizens were being violated.

The IIA gave victims a window of three months to submit their claims for compensation. It received 5,127 claims within the three-month window, as well as 6,500 requests after the December 31, 1999, deadline, which it did not consider. In its three years of activity, the IIA issued 3,635 decisions for financial compensation for a total of 954,000,000 Moroccan dirhams (about US\$100 million), rejected 885 requests, and omitted 139 requests because the claimants did not submit supporting documents as they were instructed.³⁷

³⁵ Ibid.

³⁶ International Federation for Human Rights, “Les Disparitions Forcées au Maroc: Répondre aux Exigences de Vérité et de Justice” [“Enforced Disappearances in Morocco: Meeting the Requirements for Truth and Justice”] (November 2000).

³⁷ For more details on the Independent Arbitration Panel, see Conseil Consultative des Droits de l’Homme, “هيئة التحكيم المستقلة لتعويض ضحايا الاختفاء القسري و الاعتقال التعسفي. اللجنة الاولى لمسار العدالة الانتقالية في المغرب” [“The Independent Arbitration Panel to Compensate Victims of Enforced Disappearance and Arbitrary Detention. The First Block of the Transitional Justice Process in Morocco”] (2010).

Turning the page on past gross human rights violations through mere financial compensations was not considered an effective remedy by victims and their families or by the human rights community. Moroccans were eager to see real change, especially after the advent of a young and modern king who from the onset of his reign expressed his desire to continue reforming the state and to safeguard human rights.³⁸ However, what they saw from the IIA was “window-dressing” measures, which only added to their disappointment. Driss Benzekri, the renowned political prisoner who later became the secretary general of the CCDH and the president of the IER, qualified Morocco’s approach as being underdeveloped and the least serious among comparative international experiences.³⁹ Moubarak Fajr, a former political prisoner and a local human rights activist in Errachidia, described the IIA’s process in the following words: “I went before the panel, who asked me hastily to present my documents; once I did, they asked me to leave. They did not make an effort to listen to us. The process was anything but dignifying.”⁴⁰

The IIA’s reduction of the transitional justice process to giving financial compensation to victims, without seeking to investigate what happened, why it happened, who was responsible for what happened, or how to make sure that what happened never happens again, backfired. These shortcomings galvanized civil society, particularly victims’ organizations, which saw the panel as a tool created by the authorities to buy the silence of victims without providing effective redress for the grave human rights violations that were committed by the regime or effecting the meaningful political, legal, and institutional reforms that were necessary for a country that claimed to be transitioning toward democracy and rule of law.

Civil Society’s Response: The 2001 National Symposium on Grave Human Rights Violations in Morocco

The CCDH’s 1998 press release that limited the number of the disappeared to 112 cases (56 of whom were declared dead)—a figure that was far below the real number, which was estimated to be in the hundreds—was considered outrageous by the human rights community.⁴¹ Nonetheless, civil society considered this and the IIA to represent a first solemn acknowledgment by the regime of its responsibility for gross human rights violations. It was the starting point for civil society and victims’ organizations to press for an independent and transparent truth and reconciliation commission that would uncover the truth about the country’s painful past, provide redress to victims, preserve memory, ensure nonrecurrence, and put an end to impunity.

Organizations such as the Moroccan Human Rights Association (AMDH: Association Marocaine Des Droits Humains in French), the Moroccan Human Rights Organization (OMDH: Organisation Marocaine Des Droits Humains in French), and the Moroccan Forum for Truth and Justice (FMVJ: Forum Marocain pour la Verité et la Justice in French) championed many initiatives that kept the debate about past human rights violations going and the struggle for uncovering the truth about the past alive.⁴² These initiatives maintained the

38 See King Mohammed VI, July 30, 1999, speech.

39 Slyomovics, “A Truth Commission for Morocco.”

40 Interview with Moubarak Fajr, Errachidia, January 15, 2020.

41 Slyomovics, “A Truth Commission for Morocco.”

42 The FMVJ was created in 1999 by former political prisoners in response to the creation of the IIA. Currently the FMVJ counts about 2,000 members.

pressure on Moroccan authorities and exhorted them to create a truth and reconciliation commission with a broad mandate and adequate means of action.

It was in this context that a three-day national symposium was organized in Rabat in November 2001 in order to formulate a common vision for a transitional justice process. The final declaration of the 2001 symposium stated that

all of [the] stakeholders' divergent approaches were analyzed and that all tend toward turning the page of the past human rights violations on the basis of the rule of law and the eradication of the causes of those violations, and after all the legislative, institutional, political, administrative, and educational guarantees are put in place, so that the tragedies of the past do not happen again.⁴³

The organizers adopted a collaborative approach and sent invitations to all stakeholders, including the full spectrum of political parties, nongovernmental organizations (NGOs) with different affinities, human rights activists, journalists, and government representatives, to cite a few.⁴⁴ Significantly, the main political parties that formed the governmental coalition at the time, such as the Socialist Union for Popular Forces and the Independence Party, did not respond to the invitation of the organizers, and therefore did not send representatives to contribute to the debate.⁴⁵

The three-day forum culminated with pertinent recommendations, which urged the authorities to take urgent measures, including releasing the remaining political prisoners, handing over the remains of the disappeared who had died in detention and issuing death certificates to their families, and allowing former political prisoners to have a passport and lifting their travel ban. Other recommendations requested the authorities to give victims and their families a comprehensive reparation package, issue an official public apology to victims and society at large, and take appropriate measures for the preservation of memory. And, in order to end impunity and ensure nonrecurrence, the symposium recommended institutional, legal, administrative, and educational reforms such as ratifying the Rome Statute of the International Criminal Court, giving primacy to international conventions over national legislation, ensuring the transparency and independence of the judicial system, reforming the penal code, protecting free speech and the freedom of the press, putting in place mechanisms of oversight of the security apparatus, incorporating human rights culture in education, and ensuring the protection of human rights defenders.⁴⁶

The three NGOs behind the forum created a committee to follow up and engage with different stakeholders so that the recommendations would not remain mere words on paper. The Follow-Up Committee held many meetings and made several propositions for the proper course of action to take to achieve its goals. The organizations kept the pressure on the government through gatherings, debates, news conferences, and

43 See the November 11, 2001, final declaration of the National Symposium on the Grave Human Rights Violations in Morocco.

44 This included the minister of justice, the minister of human rights, and members of the Parliamentary Commission of Justice, Legislation and Human Rights.

45 The Socialist Union for Popular Forces and the Independence Party were not among the participants. Their absence was confirmed by Boubker Largou, president of the OMDH, in an interview in Rabat, January 21, 2020.

46 See AMDH, OMDH, FMVJ, (November 2001). "أشغال و نتائج المناظرة الوطنية حول الانتهاكات الجسيمة لحقوق الإنسان بالمغرب" ("The Works and Results of the National Symposium on the Grave Human Rights Violations in Morocco"), 102–106. This book is not available online nor in libraries. A copy of the book is on file with the author.

caravans to some of the notorious detention centers, like the caravan titled “*La caravane pour la Vérité. Afin que Kalaat M’Gouna retrouve ses roses*” (The Caravan for Truth. So that Kalaat M’Gouna Reclaims Its Roses) to the notorious Kalaat M’Gouna secret prison, and the Mahdi Ben Barka Paris caravan in October 2002, both of which called for the creation of a national independent truth and reconciliation commission.⁴⁷

The activism of civil society and victims and their families paid off when on November 6, 2003, King Mohammed VI approved the CCDH’s recommendation of the creation of the IER. The new commission was announced shortly after the controversial IIA ended its work and two years after the November 2001 symposium for justice and reconciliation.

⁴⁷ Ibid., 288–289.

The Equity and Reconciliation Commission: A Limited Approach to Transitional Justice

The IER was an initiative that brought Morocco international recognition and made it a pioneer in the Middle East and North Africa in initiating reforms and taking steps toward democratic transition and the rule of law. Indeed, the commission was a positive development within a process of reforms that had started in the early 1990s. However, the IER received its share of criticism because of its narrow mandate, its lack of powers, and its limited subject matter jurisdiction (enforced disappearance and arbitrary detention). The IER was also criticized about the period of time under its consideration, which covered 43 years, from the country's independence from France and Spain in 1956 to King Mohammad VI's accession to the throne in 1999, skipping the controversial period between 1999 and 2004, the year the IER was created.

Mandate

The IER considered the CCDH's recommendation, the king's speeches about the closure of the file of gross human rights violations, and its statutes of April 10, 2004, as its main documents of reference.⁴⁸ However, given the symbolic and political weight of royal speeches, it was the January 7, 2004, speech that defined the IER's approach and breadth of action. This was reflected in the commission's first communiqué, published on January 11, 2004, which unequivocally stated:

This historic royal speech will remain the benchmark for the orientation of the activities of the IER and already constitutes the basis of the appropriate approach to promote eq-

⁴⁸ See the presentation of the IER mandate.

uity and reconciliation so as to consolidate and strengthen the gains accumulated to date and to complete the equitable and extrajudicial settlement of past violations, within the framework of a global and enlightened vision.

By taking this speech as its guiding document, the IER from the onset of its work acknowledged and adhered to the kind of transitional justice process that the palace envisioned: one that is limited in its mandate, does not assign individual responsibility, and does not dig deep in its search for truth. The rationale for this reductionist approach to transitional justice was that Moroccans needed to avoid being vindictive if they were to “liberate their energies” to build a prosperous future. Furthermore, according to this view, truth is relative in its nature; absolute truth is something that escapes human beings and falls within the realm of the divine, for it is “only God who knows the whole truth.”⁴⁹ The monarch wanted Moroccan society as a whole and victims and their families in particular to be forgiving because it is a noble thing to do. The king’s speech had a religious angle (corroborated with two verses from the Quran) that was difficult to challenge in a society where religion still occupies center stage. Furthermore, in the first paragraph of his speech, the king emphasized that the IER is a *royal* initiative, a tacit way of saying that the process has to respect the royal will and that the IER could not derogate or transgress the limits that had been set for it.

In this context, the IER commissioners found themselves in a difficult situation. The monarchy used a religious discourse to achieve political objectives, that is, a transitional justice process that would not escape its control and whose outcomes would not be detrimental to the palace. The commissioners, in contrast, wanted to keep the process politico-legal so that it would lead to outcomes and achieve reforms that would safeguard against the recurrence of gross human rights violations and facilitate a healing process for a society that wanted to uncover and learn from the truth about its past. A former political prisoner and human rights activist who was involved in the IER process emphasized that what mattered the most was to make sure that a new generation of Moroccans would not relive the same painful experience that their parents had to endure.⁵⁰ For Mohamed Hassine, from the FMVJ, the executive bureau of his organization was interested more in guarantees of nonrecurrence than financial compensation: “We wanted our children to not be subjected to the cruel human rights violations of the past.”⁵¹

The monarch wanted a transitional justice process that would help the country to tackle pressing issues of development, not one that would divide society.⁵² In the palace’s logic, political and institutional reform was an ongoing process dating back to the early 1990s, but what mattered more was finding solutions to the vulnerability and poverty that affected large segments of society. The other concern of the palace was to keep intact the legacy of the former king. Hassan II’s memory is inseparable from that of the monarchy. Therefore, King Mohammad VI was unequivocal when he stated that the process of political liberalization

49 King Mohammed VI speech of January 7, 2004.

50 Interview, name withheld, Casablanca, January 8, 2020.

51 Second interview with Mohamed Hassine, Casablanca, February 10, 2020.

52 The preamble of the IER statutes reads: “Basing itself on the royal speech delivered in Agadir by His Majesty the King Mohammed VI on the 7th of January 2004, given that it constitutes a reference for the Equity and Reconciliation Commission whose work and activities aim at strengthening and consolidating the ‘acquisitions’ and at completing the extrajudicial equitable settlement of the gross human rights abuses that occurred in the past, and this within the framework of a comprehensive approach which is intended to heal the wounds of the past, compensate for the damage, establish the facts and learn the lessons of the past in order to reconcile Moroccans with their history and themselves and release their creative energies.” The English translation of the IER statutes is available online, through the United States Institute of Peace: www.usip.org/sites/default/files/file/resources/collections/commissions/Morocco-Charter.pdf.

and reconciliation was initiated thanks to the late king's vision and his relentless efforts to close the thorny chapter of past grave human rights violations. In this line, the January 2004 speech states the following: "In this regard, We bow, with humility and deference, to the memory of the initiator of this process, Our August Father, His Majesty King Hassan II, may God have Him in His holy mercy."⁵³

It was no surprise that the IER's statutes, published by Dahir (royal decree) No 1.04.42 on April 12, 2004, reflected the royal vision. Hence, Article 5 of the statutes includes as gross human rights violations only enforced disappearance and arbitrary detention in the sense that they constitute massive and systematic violations. Furthermore, Article 5 defines a victim as "a person who was subjected to arbitrary detention or enforced disappearance." This narrow definition of gross human rights violations left many other violations outside the scope of the commission's work. In practice, however, the IER included related violations such as torture and forced exile—torture was widely used against the disappeared and arbitrarily detained, and many political activists fled the country in fear for their lives—because it determined that they were massive and systematic.

Nonetheless, the commission was not mandated to address violations of economic, social, and cultural rights, even though the social unrests of 1965, 1981, 1984, and 1990, which were brutally quashed by the regime and engendered hundreds of deaths and injuries, were triggered by spikes in the price of staple products and school registration fees. Moreover, in many cases, private property and victims' right to work were violated, while the regime used economic exclusion to punish regions it perceived to be rebellious.⁵⁴ The initiators of the commission seemed to have forgotten that rights are indivisible and that in the Moroccan context, the violation of political rights went hand in hand with the violation of socioeconomic and cultural rights.⁵⁵ By ignoring the latter, the IER did not give a full account of what happened and did not provide redress for all victims.

In addition, Article 6 of the statutes further delineates the IER's mission in the following terms: "The prerogatives of the Equity and Reconciliation Commission are nonjudicial and do not call into question the individual responsibility for the violations. These prerogatives include the inquiry, the investigation, the assessment, the arbitration, and the recommendation." Morocco chose a nonjudicial process to address its past grave human rights violations, claiming that it did not want to create schisms within society through a judicial process. Tellingly, the CCDH's recommendation reads: "The Instance [IER] may not, in any case, after carrying out the necessary investigations, invoke any individual responsibilities. It will take care not to take any initiative likely to cause disunity or resentment or sow discord."⁵⁶ Careful analysis of the context in which the IER emerged, however, suggests that the state wanted to avoid calling into question the legitimacy and authority of key state institutions like the security apparatus and the judiciary, which carried out most of the violations at a time when the fight against extremism was ongoing.

53 King Mohammed VI speech of January 7, 2004.

54 The IER report recommended individual as well as collective reparations as a way to remedy these violations.

55 See Amine Abdelhamid, Le Centre Tricontinental (CETRI) "Le Sombre Bilan de l'Instance Équité et Réconciliation" ["The Dark Results of the IER"] (March 18, 2009).

56 The recommendation of November 6, 2003, is related to the creation of the IER.

Lack of Investigative Powers

While the IER was tasked to investigate past violations, it was not given the means to do so. The commission did not have subpoena power to compel state officials to appear before it, give it access to archives, or provide it with the information that was necessary for an effective and serious investigation. The IER acknowledged in its report the incompleteness of its investigations and expressed its disappointment with the partial cooperation of security institutions and the fact that state officials provided incomplete accounts or simply refused to cooperate with the commission.⁵⁷ Former commissioner Mohamed Nachnach said that the military showed some goodwill when it was approached by the IER, providing the commission with information about burial sites in the southern provinces.⁵⁸ However, the Royal Gendarmerie, under the leadership of General Hosni Benslimane, ignored the IER's requests and adamantly refused to cooperate at all. The secret services did not say no to the IER's request, but they did not cooperate effectively, either; according to Mohamed Nachnach, they "opened a huge hangar with thousands of boxes and said these are our archives, please help yourselves. We did not have time nor human resources to sift through millions of documents."⁵⁹

Temporal Constraints

The CCDH recommendation that ultimately created the IER gave the commission nine months, with the possibility of a three-month extension, to investigate, document, process the requests for reparations of thousands of victims, and issue recommendations for the preservation of memory and guarantees of non-recurrence. Surprisingly, the IER's statutes themselves were silent regarding the duration of the commission's work. In contrast to the IER, the IIA, which had the task of issuing financial compensation to victims of forced disappearance and arbitrary detention, had been given from 1999 to 2003 to accomplish its work. In order to remedy the short period of time the IER was given to investigate 43 years of gross human rights violations, then, the commissioners delayed presenting the IER's statutes to the king to turn them into law through a Dahir.⁶⁰

The IER started working when its president and members were appointed by the king in January 2004, but officially it only began operating after its statutes were published in April. The IER still could not finish its work within one year, so it asked for a six-month extension in order to wrap up its activities and submit its final report for royal approval in November 2005. The IER's delay maneuver might have given its commissioners extra time, but it also created confusion, especially about the very tight one-month application window. This kept thousands of victims outside the process and prevented them from receiving reparation and being recognized as victims by the state. The situation engendered contested victimhood.

The statutes were published in Official Bulletin number 5203 on April 15, 2004. Legally speaking, that is the date they came into force. However, the statutes said that the IER would review the cases that were submitted to it between January 12, 2004, and February 13, 2004, by victims or their rightful claimants, which put

57 See the summary of the IER's final report, (2006) 43.

58 Moroccans use the term "southern provinces" to refer to Western Sahara.

59 Interview with Mohamed Nachnach, Tangier, February 13, 2020.

60 Interview with Jamal Eddine Rouissi, Casablanca, February 21, 2020.

the deadline for receiving applications more than two months before the statutes entered into force. Due to this discrepancy, the applications of thousands of potential victims were rejected by the IER under the pretext that they were submitted after the deadline. The narrow window that was opened for the submission of applications and the late publication of the IER statutes raises questions about the transparency and inclusiveness of the process.

The IER commissioners and staff were under tremendous pressure to accomplish a near-impossible mission. Mohamed Nachnach described the last week of the IER's mandate:

Most of us were sleep-deprived. We had one week left but we still had thousands of files to process. To be honest, we did not follow the proper procedure in processing those files. For instance, each file needed to be sent to a consultant doctor to determine the level of disability of the victim. This determination was necessary for the assessment of the monetary compensation. Since I am a medical doctor, I was doing that part and commissioner Chawki Benyoub was writing the decisions so that we can process all requests before IER's mandate ends. Having said that, I still believe that the IER experience was not perfect, but it tried to achieve some gains in a context that was not in its favor.⁶¹

Blind Spots

In addition to its limited mandate and lack of powers, the IER had other operational lacunas that called into question its legitimacy, independence, and real purpose. For Abdelilah Benabdessalam of the AMDH, the IER's mandate alone was so limited that it crippled the commission;⁶² others argued that it was also not representative enough, lacked the necessary powers, and was not given enough time to conduct its work. Still others critiqued the IER for doing more outreach activities abroad than in Morocco, especially in regions that were hit hard by repression and marginalization of all sorts during the Years of Lead.⁶³

Outreach and Visibility

Even though the IER developed a communication strategy and organized many events in several cities in Morocco, its mandate was not clearly understood by large segments of society, and its work was only followed by victims, their families, and human rights organizations. Jamal Eddine Rouissi, the brother of the disappeared Abdelhak Rouissi, said that the IER did not make the necessary efforts to disseminate information about itself to become known to victims, their families, or the public at large. He explained, "We raised the issue of lack of visibility and outreach in a meeting with the commissioners. I think that if you ask a taxi driver about a public institution and he does not know about its location, then there is a problem. How do you expect someone coming from a remote region of the country to know about and have access to that institution?"⁶⁴

61 Interview with Mohamed Nachnach, Tangier, February 13, 2020.

62 Interview with Abdelilah Benabdessalam, Rabat, December 17, 2019.

63 Interview with a former political prisoner from the Islamist group 71, Rabat, February 27, 2020.

64 Interview with Jamal Eddine Rouissi, Casablanca, February 21, 2020.

Its seven public hearings, particularly the few that were broadcast live on national TV, shed the most light on the IER's work. It was also after the first public hearings aired on TV, however, that many victims started submitting their claims for reparation; there are reports indicating that the IER received over 30,000 files after the one-month deadline elapsed.⁶⁵ The commission was criticized because it did not ensure that all potential victims knew about the process; only those who were organized in groups and victims' organizations or affiliated with political parties had the necessary information to make informed decisions. Those who were not in these groups or who were vulnerable economically and socially found themselves outside the IER machinery. In 2004, the year the IER was established, over 48 percent of Moroccans were illiterate, and most victims lived in marginalized regions and in difficult socioeconomic situations.⁶⁶ Intensive media and TV campaigns would have contributed to informing and educating the public about the IER's process.

Representation

King Mohammad VI nominated as president of the IER Driss Benzekri, a former political prisoner who spent 17 years behind bars for his political activism, as well as 16 commissioners, of whom eight were members of the CCDH (two of them former members of the IIA) and eight were from outside the human rights institution (six from former leftist political opponents to the reign of the late King Hassan II). There was only one woman commissioner, Latifa Jbabdi, a former political prisoner and a known and respected women's rights advocate. There was one Sahrawi from the contested territory of Western Sahara, from one of the renowned families with strong ties to the Moroccan crown, a fact that was not fortuitous. The IER did not have, however, any commissioner from the Islamic movement, even though several former Islamist political prisoners were members of the main victims' organization, the FMVJ (whose first president was Driss Benzekri).

The fact that the IER did not include any figure from Morocco's Islamists raised many questions about its inclusiveness. Islamists were victims of state repression under the reigns of both Hassan II and Mohammad VI, especially after the Casablanca bombings.⁶⁷ Their exclusion from the composition of the IER was unjustified from the standpoint that all views needed to be considered in order to facilitate reconciliation. Furthermore, the lack of representation of Islamists was interpreted as a maneuver by the authorities to dismantle the growing solidarity within civil society in spite of the divergent ideological affinities of its members, and to split the human rights community—which was unanimous about the need to end impunity and to establish the truth about past human rights violations—between those with whom the state wanted to collaborate and those it perceived as dangerous and, therefore, wanted to keep outside the process.⁶⁸ In this regard, Mohamed Masbah, director of the Moroccan Institute for Policy Analysis, argued that in addition to revitalizing its internal legitimacy and garnering international recognition, the monarchy most importantly sought to create a new elite to counter the mounting force of Morocco's moderate Islamists who had become active politically, in particular after their mobilizing power and political potential became noticeable during the country's first free parliamentary elections of 2002.⁶⁹

65 Victims had from January 12 to February 13, 2004, to submit their claims. In contrast, the 1999 Independent Arbitration Panel gave a time window of over two months.

66 More details on Morocco's social indicators can be found on the website of the High Commission for Planning of Morocco: www.hcp.ma/downloads/Indicateurs-sociaux_t1188o.html.

67 For more details on human rights abuses concerning Islamists, see Alkarama, "Le Maroc Devant de Nouveaux Défis" ["Morocco Before New Challenges"] (October 14, 2011).

68 Islamists participated in the 2001 forum and other events.

69 Interview with Mohamed Masbah, Rabat, January 8, 2020.

Others attribute the exclusion of Islamists to the IER being a negotiated deal between the monarchy and the former leftists, with political parties not taking part in the process,⁷⁰ and Islamists not organized in human rights organizations, unlike the leftists, who had overlapping memberships in human rights organizations and victims' organizations; a considerable number of the commissioners were from the executive bureau of the OMDH.⁷¹ Such explanations for the exclusion of the Islamists might be plausible but are only one facet of a multifaceted reality, as some Islamists were interested in the process and wanted to be a part of it.⁷²

The IER was indeed the result of negotiations between the palace and victims' organizations, whose leadership was mainly from the extreme left organizations that sought to change the regime. While the monarchy was negotiating with its enemies of the past, however, the state was using an iron fist to quash its new enemies: the Islamists, especially those who were violent or perceived to be violent. The state used its security apparatus, with its repressive means, to keep this first category of Islamists at bay. But it needed to use a different approach with the moderate Islamists, like the Party of Justice and Development, which adhered to the political rules and agreed to work within the confines of the preexisting framework, and the al-Adl wal-Ihsane (Justice and Benevolence), which remained outside the official political arena but nonetheless respected its rules.

Counteracting these two currents of political Islam required innovative strategies. The monarchy was still consolidating its powers, and needed to create an equilibrium between the different political players to ensure that it remained the epicenter of the country's political edifice. Not willing to relinquish under Mohammad VI the powers it had had under Hassan II, the palace saw the IER as an opportunity to renew its legitimacy, forge an alliance with the left to counter the Islamists, and receive international recognition as a modern monarchy initiating revolutionary reforms in a region plagued by dictatorships, extremism, and all kinds of human rights violations.

In terms of gender representation, while the IER included many women in leadership positions among its administrative staff, it had only one female commissioner. The absence of a gender perspective was especially unfortunate given that women suffered the most during the Years of Lead, directly as victims of torture, sexual violence, and arbitrary detention and indirectly as mothers, sisters, and spouses of political prisoners and disappeared. In Morocco's patriarchal social order, women were subjected to many violations and were stigmatized and discriminated against because they themselves were detained or because one of their relatives was labeled as an enemy of the state due to political activities. Appointing an adequate number of female commissioners would have signaled Morocco's serious intention to put an end to the prevalent discrimination against women in society, and to align the country with its international obliga-

70 Mohamed Hassine, a former political prisoner and member of the FMVJ, unequivocally stated that the IER resulted from negotiations between the monarchy, through royal advisers, and the leadership of the FMVJ. Interview with Mohamed Hassine, Casablanca, January 8, 2020. Two interviews were conducted with Mr. Mohamed Hassine, the first in January 2020 and the second in February 2020.

71 Former commissioner Mohamed Nachnach, the IER president, Driss Benzekri, and IER members Mohamed Nachnach and Ahmad Chawki Benyoun (the current inter-ministerial delegate on human rights) were members of the executive bureau of the OMDH.

72 Many Islamist organizations, like al-Adl wal-Ihsane (Justice and Benevolence) and the Al-Badil Al-Hadhari (The Civilized Alternative), a political party known for its Islamist leanings, participated in the 2001 National Symposium on Grave Human Rights Violations, which was organized by the FMVJ, AMDH, and OMDH. Furthermore, some former political prisoners like Ahmed Haou, an Islamist from the 71 Group, took part in 1999 in the creation of the FMVJ and became one of the 13 members of its first executive committee.

tions under CEDAW and UN Security Council Resolution 1325, which stresses the importance of the role of women in peacebuilding and security.

King Mohammad VI had initiated in 2003 the reform of the family code, commonly known as Moudawana, which entered into force in 2004 and was praised nationally and internationally. He was also the first monarch in Morocco's modern history to name a female royal adviser, the late Zoulikha Ennaciri. Naming only one female commissioner was therefore seen as a setback, particularly since Morocco's official discourse was leaning toward empowering women and ensuring their inclusion in order to prepare society for an effective legal and political equality between the genders. For Mohamed Nachnach, Latifa Jbabdi, a member of the working group on investigations, was the most active commissioner in the IER, and having more women commissioners would have enriched Morocco's experience in many ways.⁷³

The Impunity Gap

Three dramatic incidents in the early 2000s form an important part of the backdrop to transitional justice in Morocco. The first was the 9/11 terrorist attacks on the United States, the second was the 2003 Casablanca bombings that killed 45 civilians (including 12 suicide bombers) and injured dozens, and the third was the March 11, 2004, Madrid bombings that killed more than 190 civilians and injured hundreds. Moroccan nationals were directly involved in the Casablanca and Madrid attacks. Consequently, Morocco was globally and nationally engaged in the war on terror.

In the aftermath of the Casablanca attacks, Morocco's security apparatus enacted serious measures against Islamists and their sympathizers: Thousands of suspects were arrested and indicted on terror charges and later given long prison sentences without due process, and many cases of torture were reported, though no investigations were opened.⁷⁴ Abdelilah Benabdessalam of the AMDH reported that the late minister of justice, Mohamed Bouzoubaa, told the Follow-Up Committee, for which he was the coordinator, that "the security services arrested over 8,000 individuals on terror charges."⁷⁵ Many of the people who were arrested had nothing to do with the terrorist attacks. Furthermore, there were kidnappings and a number of suspected extremists who died under torture. The cases of Abdelhak Benasser, known as Moul Assabat (the Shoe Guy), and Mohamed Bonait, both of whom died in detention and, human rights groups say, under torture, are revealing in this regard.⁷⁶

King Mohammad VI even recognized a number of torture cases in his 2005 interview with the Spanish newspaper *El Pais*, in which he said, "There is no doubt that there have been cases of abuse. We found about twenty of them. Today they are in court."⁷⁷ It is worth noting that no official was indicted in the cases of abuse the monarch referred to, raising questions about the state's credibility in ending impunity and its

73 Interview with Mohamed Nachnach, Tangier, February 13, 2020.

74 Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Morocco* (CCPR/C/MAR/CO/6, December 1, 2016), paras. 33–34.

75 Interview with Abdelilah Benabdessalam, Rabat, December 17, 2019.

76 Ibid.

77 The text of the interview is available online: www.maroc.ma/fr/discours-royaux/texte-integral-de-lentretien-de-sm-le-roi-mohammed-vi-avec-le-quotidien-espagnol-e-o.

seriousness in putting an end to torture, disappearance, and arbitrary detention, practices that had decreased in frequency after the advent of Mohammad VI but reemerged after 2001 and increased again after the 2003 Casablanca bombings.

The government's conduct brought further criticism to the IER and its commissioners, who were perceived by some as accomplices—through their silence—to the ongoing human rights violations, raising questions about the commission's ability to effect change. Abdelhay Moudden, one of the commissioners, stated that the IER's many challenges included the human rights violations that were occurring while it was conducting its work. He said that at one point he was about to resign from the commission after he saw, from the window of his office at the IER headquarters, a number of security officers beating a protestor from the groups of the unemployed who were protesting that day. He only reconsidered his decision after the president of the commission, the late Driss Benzekri, told him to be patient because those who were against change and democratization wanted the IER experience to fail.⁷⁸

Furthermore, the enactment on May 28, 2003, of Act 03-03 (known as the anti-terrorism law) in an emotionally charged context was interpreted by human rights organizations as another indication that the state was not ready to let go of its repressive approaches in dealing with those it perceived as a threat. The anti-terrorism law gives security services latitude in detaining suspected terrorists for up to 12 days in incommunicado detention, leaving detainees susceptible to abuse and without any legal protection. The definition of terrorist acts was also criticized for its vague wording, giving the authorities a dangerous legal tool to use against potential political rivals or anyone it deems a threat.⁷⁹

In the context of the government's response to the threat of terrorism, human rights organizations such as the AMDH and victims' organizations such as the FMVJ saw the exclusion of individual responsibility from the onset of the transitional justice process as a setback that would further entrench the prevalent culture of impunity and make uncovering the truth about the past more difficult. Some critics argue that the nonjudicial nature of the process should have been flexible enough to ensure that torturers at least have their identity revealed to the public and be dismissed from office.⁸⁰ Pierre Hazan, in his 2005 report titled "Morocco: Betting on a Truth and Reconciliation Commission," recommended lustration as a way for the Moroccan authorities to strengthen the credibility of the state.⁸¹ Indeed, removing from office those who are responsible for human rights abuses is a nonjudicial mechanism that would have ensured some sort of accountability.

The AMDH pressed for the prosecution of former and sitting government officials for their alleged human rights violations. In its efforts to bring alleged torturers to justice, the AMDH sent on October 23, 2000, a letter to the minister of justice with a list of 14 alleged perpetrators, and in December 2000 it addressed an open letter to the parliament with a revised list, now of 16 alleged torturers, requesting the parliament to form a commission of inquiry.⁸² The names of General Hosni Benslimane, the former head of the Royal

78 Interview with Abdelhay Moudden, Rabat, December 18, 2019.

79 Human Rights Committee, *Concluding Observations*, para. 17.

80 Interview with Idriss Lagrini, Marrakech, February 17, 2020.

81 Pierre Hazan, United States Institute of Peace, "Morocco: Betting on a Truth and Reconciliation Commission" (July 2006), 16.

82 See Human Rights Watch, "Morocco's Truth Commission: Honoring Past Victims During an Uncertain Present" (November 27, 2005).

Gendarmerie, and General Hamidou Laanigri, the former chief of the Directorate-General for Territorial Surveillance, both heavyweights of the regime, figured in both lists, in addition to Mohamed Archane, a former police commissioner turned parliamentary deputy.

The two letters went without a response, even though the AMDH declared that there were victims who were willing to appear before a parliamentary commission. But the organization's efforts to unveil the identity of alleged human rights abusers did not go without incident or resistance from the establishment. In December 2000, 36 activists from the AMDH and the FMVJ were forcefully arrested while they were on their way to demonstrate in front of the parliament, asking it to form a commission of inquiry. The activists were sentenced to a few months in prison before being acquitted by the Rabat appellate court.⁸³ The AMDH continued its efforts to ensure accountability by establishing in 2001 an updated list of 45 alleged torturers. Neither the state nor the personalities who figured on the list reacted to it.⁸⁴

At the IER, victims were made to sign a declaration before the public hearings promising not to name public officials who were responsible for their suffering—an arrangement that did not sit well with many critics. Human rights organizations had been hoping that the public hearings would be an opportunity for Moroccan citizens to learn about the scope and intensity of the violations that were committed during the Years of Lead, and that seeing victims talk freely about their ordeals would help citizens to start getting over the deep-seated fear they had lived with for decades. It also would have signaled the state's genuine intentions for change. In this spirit, the FMVJ, in a letter dated July 16, 2004, and addressed to the IER's president, called for the participation of officials who were responsible for grave human rights violations in the public hearings.⁸⁵

Given the arbitrary limitations that were imposed on victims' right to free speech during the IER's public hearings, the AMDH organized eight sessions of "*Témoignages en toute liberté pour la vérité*" (uncensored testimonies for truth), in which victims were encouraged to name those who had tortured them and to speak freely about their experiences. However, the impact of such initiatives remained limited to victims and their families and human rights organizations because the state media did not provide any coverage of such a parallel initiative in order to maintain the impression that the IER's approach was uncontested.⁸⁶

83 Interview with Abdelillah Benabdessalam, Rabat, December 17, 2019.

84 Ibid.

85 The FMVJ graciously shared this letter with the author.

86 See Abdelhamid, "Le Sombre Bilan de l'Instance Équité et Réconciliation."

Reparations

Morocco's first provision of reparations as a way to remedy the human rights violations of the past came in 1993, when the government disbursed monthly salaries to the survivors of the Tazmamart illegal detention center, who had resurfaced in 1991 after more than 18 years of enforced disappearance. Then, in 1999, the Independent Arbitration Panel was set up to issue financial compensation to victims of enforced disappearance and arbitrary detention, and in 2000, the Youssoufi government initiated efforts to settle the administrative situation of former political prisoners and political activists who were fired from public employment.⁸⁷

All of these attempts showcased a narrow understanding of reparation, however, for they focused mainly on financial compensation and ignored other elements of reparation. The IER, which came, to some extent, as a response to the shortcomings of the IIA, adopted a more holistic approach to the issue. The IER's reparation philosophy was guided, inter alia, by international documents such as UN decisions and recommendations and the reports of UN Special Rapporteurs.⁸⁸ These documents enshrine the right to an adequate remedy that extends beyond financial compensation to include other forms of redress.

The IER's statutes, especially Articles 5, 9, and 17, tackle the issue of reparation. For instance, Article 5 defines the reparation of damage as

all measures taken for the victims because of the material or moral damage sustained by them or by their legal successors as a result of enforced disappearance or arbitrary detention, as well as the general and collective measures. The reparation of damage may take different shapes and be put into practice through various measures such as compensation, readjustment, reintegration, rehabilitation, the preservation of memory, and guarantees against the repetition of the violations.⁸⁹

This is an expansive definition of reparation that goes beyond individual financial compensation to include collective reparation, the preservation of memory, and guarantees of nonrecurrence. Furthermore, Article 9 defines individual reparation to include, in addition to monetary compensation, "medical and psychological re-adaptation, social integration, settlement of administrative, legal, and professional issues, and restitution of property," elements that were all essentially missing in the IIA's reparation approach.⁹⁰

87 Ahmed Chaouki Benyoub, *المنظمة المغربية لحقوق الإنسان والعدالة الانتقالية* ("OMDH and Transitional Justice") (2018), 71. A copy of this book is on file with the author. (The copy was handed to the author by the president of the OMDH.)

88 The presentation is on file with the author.

89 IER statutes, 2004, Art. 5.

90 *Ibid.*, Art. 9.

Individual Reparation

In its statutes, the IER stated that its individual reparation approach was guided and inspired by national documents such as the CCDH's recommendation, based on which it had been created, and international documents and jurisprudence.⁹¹ When it came to individual reparation, the IER sought to complement and expand the work that had been accomplished by the IIA. Therefore, Article 9(4) of the IER statutes states that one of its missions is to

compensate for the material and moral damage sustained by the victims or their legal successors by carrying on with the work of the former Independent Arbitration Panel and by giving decisions on all requests:

- submitted to the aforesaid Panel after the deadline that was formerly the end of December 1999;
- submitted to the IER within the new period of one month between January 12, 2004 and February 13, 2004;
- submitted by the legal successors in cases in which the fate of the victims of enforced disappearance is still unknown or their death has been established after the necessary inquiries and investigations are carried out.⁹²

The IER's approach was broad in the sense that, in addition to financial compensation, victims received other forms of redress, such as reintegration into government jobs, settlement of administrative, legal, and professional issues, health care coverage, and psychological counseling.

The IER's report indicates that it reviewed and made decisions on 16,861 of the individual files it received. It gave a favorable decision for financial compensation to 9,280 of these, of which 1,895 also benefited from the other reparation measures mentioned above. Furthermore, the IER issued special recommendations for the benefit of 1,499 victims whose cases had been reviewed by the IIA, so that they received other forms of reparation.⁹³

The Follow-Up Committee, set up by the CCDH to follow up on the execution of the IER's recommendations, continued providing reparations to victims or their rightful claimants, such as those who had not completed their files before the end of the IER's mandate; those who were arbitrarily detained at the Tagounite illegal detention center, for reasons that the IER thought to be outside its scope because these victims were not detained due to their political or labor union activities or their affiliation with an association; and those who were kidnapped and tortured by the POLISARIO Front, who did not fall within the mandate of the IER. However, it still recommended that they be indemnified, along with cadets of the Ahermoumou military school who had been arbitrarily detained after they were acquitted by the military court and barred from the military after the failed military coup of 1971.

⁹¹ These were available on the IER website www.ier.ma until the website was disabled in April 2020.

⁹² IER statutes, 2004, Art. 9.

⁹³ See the summary of the IER's final report (2006), 26.

The victims of the POLISARIO Front and the cadets of the Ahermoumou military school were the last two groups of victims to receive reparations, in August 2019—14 years after the IER concluded its mandate and recommended that they receive reparations, given the damages they had sustained. The slow execution of reparation decisions issued by the IER, the Follow-Up Committee of the CCDH, and later on the National Council on Human Rights (CNDH: Conseil National des Droits de l’Homme in French) was subject to criticism by many, since most of the victims or their rightful claimants live in difficult socioeconomic conditions and many of them suffer from chronic illnesses and are, therefore, in dire need of financial compensation and health insurance to cover their medical expenses and accumulated debts.⁹⁴

This problem was highlighted by the FMVJ in a letter dated December 15, 2006, to Driss Jettou, then the prime minister. The letter, which came one year after the IER concluded its mandate, referred to all of the IER’s recommendations, especially those that required immediate implementation, such as reparations. The letter states that “many victims died before receiving their monetary compensation” and calls upon the prime minister to “expedite the disbursement of compensations before it is too late.” The FMVJ’s letter also raised other issues such as health care coverage for victims and their families and the obstacles that were hindering the reintegration of victims into their former jobs. In this regard, the FMVJ reminded prime minister Jettou of his predecessor’s decision to reintegrate many of those who had been dismissed from their jobs due to their political or union activities. Based on Abderrahmane Youssoufi’s decision, many victims were reinstated in their former employment, most of which was in the education sector. However, the situation of many others remained unresolved.⁹⁵

The issue of reparations remained open and evolving. The CNDH president acknowledged that the process of reparation was slow when she received at the institution’s headquarters in Rabat, on August 6 and 7, 2019, the 80 victims who had been kidnapped by the POLISARIO Front and the 367 cadets of the Ahermoumou military school. In order to assuage the disappointment of these groups of victims and their families, the CNDH president offered them “her sincere apology for the slow execution of the IER’s recommendations and the delay recorded since 2012 in the handling of the claims of victims.”⁹⁶ According to the communiqué released by the CNDH, there were other beneficiaries who received arbitral decisions, including

- 39 beneficiaries whose files were incomplete and who furnished the missing documents;
- 28 beneficiaries among the rightful claimants of victims whose fates were unknown and who presented the documents that were necessary for the finalization of their files; and
- 110 victims or beneficiaries who had benefited from social integration.

94 Interview with a former CNDH official, Rabat, December 20, 2019. See also Souleïman Bencheikh, “Années de Plomb: Les Oubliés de l’IER au Maroc” [“Years of Lead: The Forgotten of the IER in Morocco”], *Forum Algeria*, May 25, 2008. This article was first published in 2008 in the Moroccan weekly magazine *Telquel* (print and online). The author could not find the article in the magazine’s online archives, so he emailed *Tequel* magazine to no avail. The editorial line of the magazine changed and most of its online archives were removed after its acquisition by new investors (less critical than the previous ones).

95 Due to financial difficulties, the FMVJ does not have a website; therefore, the above referenced letter and other documents pertaining to Morocco’s transitional justice were handed to the author during a visit to the FMVJ’s office in Casablanca.

96 See the CNDH’s communiqué on beneficiaries of new arbitration decisions, available on its website: www.cndh.ma/fr/communiqués/624-beneficiaires-de-nouvelles-decisions-arbitrales-dans-le-cadre-du-suivi-de-la-mise-en.

It seems that these victims appreciated the symbolic gesture of the CNDH president, but what they appreciated more was being recognized as victims for what that entails in moral as well as material terms.⁹⁷ Indeed, these groups of victims, who waited years to see their files processed, received financial compensation. The 367 cadets of the Ahermoumou military school received a total of 36,560,000 million dirhams (approximately US\$4 million), and the civilians who were kidnapped by the POLISARIO Front received a total of 114,914,657 million dirhams (approximately US\$13 million).⁹⁸

Reparation and Gender

When it comes to monetary compensation, the IER took into consideration gender and women's vulnerability, using positive discrimination in their favor. For instance, the IER used parameters such as conditions of detention and loss of income and opportunities when calculating financial compensation for arbitrary detention and enforced disappearance. In computing the damage that had been sustained by victims for loss of income and opportunities, women were entitled to between 10 percent and 20 percent more financial compensation than men.⁹⁹ The other novelty brought by the IER was its disregard for the Shari'a-based inheritance rules, which discriminate against women, in the distribution of financial compensation between deceased victims' female and male rightful claimants. This was a courageous approach by the commissioners, given that inheritance rules are an integral part of the Code of Personal Status, which is based on the Quran and Sunna (the Sayings of Prophet Mohammad). The IER's gendered lens seems to align with its recommendation for the creation of a national mechanism to ensure the protection and promotion of women's rights, which could be seen as an effort to dismantle the discriminatory attitudes and practices that deprive women of their basic rights and put them at a disadvantage in society in comparison to men.

Critics argued, however, that the IER's reparation program was limited, for its gender approach did not take into consideration the rights that are inherent to women, such as reproductive rights. For instance, many women victims, especially those from Western Sahara who were detained between 1976 and 1991 in the illegal detention centers of Agdez and Kalaat M'Gouna, suffered harm because of the conditions of detention. Many of these women had health complications due to lack of hygiene and access to health care while they were in detention. Some of them had their uteruses removed, thus losing the faculty to bear children.¹⁰⁰ Furthermore, the IER's report did not include any recommendation concerning female victims who were indemnified by the IIA, which did not use positive discrimination in favor of women as the IER did regarding financial compensation, meaning that women victims did not receive the same compensation for identical violations.¹⁰¹

97 Some victims expressed their appreciation during the reception at the CNDH headquarters.

98 Ghita Ismaili, "Années de Plomb: De Nouvelles Victimes Indemnisées, avec du Retard" ["Years of Lead: New Victims Indemnified, with Delay"], *Telquel*, August 8, 2019.

99 Khadija Marouazi et al., "تقييم تقرير هيئة الانصاف و المصالحة. من اجل التعاقد حول منجز هيئة الانصاف و المصالحة" ["Evaluation of the IER's Report in Order to Contract on the Achievement of the IER"] (2009), 71. The report is in Arabic and was given to the author by Dr. Marouazi.

100 *Ibid.*, 81–82.

101 *Ibid.*, 81.

Reparation and Exclusion

Despite the flaws of the IER's individual reparation approach, it still had a positive impact on the lives of those who were officially recognized as victims, for it provided much-needed benefits such as money, health care, and job reinsertion, and it recognized many people who had been considered by the state and society as "criminals" or "enemies" now as victims of the state's repressive machinery.

The situation, however, is quite different for the many victims who were excluded from the reparation program. Chief among the reasons for this exclusion was the fact that the IER's work and mandate were not widely disseminated. Many argue that the IER should have made more efforts to reach out to victims, in particular those living in difficult socioeconomic conditions and those living in what is commonly referred to as the "forgotten regions" of Morocco (*Almaghrib Almansî* in Arabic). While the IER established an ad hoc presence in some regions of the country to collect testimonies of victims, it did not establish temporary outposts to collect applications.

Moreover, those who were not members of a political party, victims' group, or the FMVJ did not have access to information, and therefore did not know about the opportunity to receive reparation or the deadline for applications. The IER president, Driss Benzekri, issued a statement on January 10, 2004, informing victims of arbitrary detention and enforced disappearance or their rightful claimants that the IER would be receiving requests from January 12, 2004, until February 13, 2004, and that the requests could be mailed to the IER's address or sent to the CCDH's address.¹⁰² One cannot help but notice that this statement was laconic, inviting only victims of enforced disappearance and arbitrary detention to send in their requests, without explaining what the two human rights violations meant. The IER statutes wherein definitions of enforced disappearance and arbitrary detention were provided were published by royal decree on April 12, 2004, two months after the deadline for submission had elapsed.

The other source of confusion, as mentioned above, was related to timing: The CCDH recommendation that led to the creation of the IER stated that victims had one month to file their claims starting from the day the recommendation was approved by the king—that is, November 6, 2003.¹⁰³ The deadline for submission should therefore have been December 7, 2003, not February 13, 2004, as stated in the IER's statutes. Many human rights activists and victims argue that the majority of those who sent their applications after the deadline knew of the IER's work and reparation program only after they saw the first public hearings on national television. In addition, according to Mohamed Nachnach, one of the commissioners of the IER, "At the time many people were illiterate, did not have a cell phone, and many did not even have a television. So of course, many did not know of the IER."¹⁰⁴ Another reason might have been victims' fear and lack of trust in the state. Kamal Lahbib, a former political prisoner, explained that victims "did not trust or did not believe that the government was serious in its efforts or...feared there would be some kind of reprisals from the security apparatus. Seeing other victims talk about their sufferings at the public hearings might have

102 The statement was available on the IER website www.ier.ma until the website was disabled in April 2020.

103 The CCDH's recommendation reads as follows: "To this end, a period of one month is open to receive requests for compensation, from the date of the announcement of the approval of this recommendation by His Majesty the King."

104 Interview with Mohamed Nachnach, Tangier, February 13, 2020.

reassured a lot of those who were afraid.”¹⁰⁵ Mohamed Nachnach concurred that “many victims and many of those who lived through the Years of Lead did not trust the state.”¹⁰⁶

Many victims felt that they were unjustly excluded from the process, a notion that is echoed in a September 2019 documentary about the 1990 social unrest in Fez. The victims of those events expressed their dissatisfaction regarding the IER’s low-key communication strategy, especially toward victims and their families.¹⁰⁷ The victims who appear in the documentary said that they did not know about the IER or the possibility of receiving reparation until they saw the public hearings on television. They sent in their files and received a reply letter from the IER informing them that their files were under review, but later on they were surprised to receive another letter stating that their requests were rejected because they had been submitted after the deadline. All of the victims who appeared in the documentary live in difficult socioeconomic conditions. A number of them still have bullets or shrapnel in their bodies and visible wounds. Some could not stop crying when they talked about their ordeal or when they expressed feelings of exclusion and marginalization at being barred from the reparation program for nonsensical technicalities.¹⁰⁸

A number of former victims, like Mohamed Nadrani, a member of the National Council of the FMVJ, were unequivocal in critiquing the IER for excluding many victims from the process, thereby depriving them of a much-needed reparation package. For Nadrani, “It is not for the victim to start the proceedings to be compensated. These kinds of administrative obstacles have discredited the work of the IER.”¹⁰⁹ That many victims remained outside the IER’s process exacerbated the already existing feeling of exclusion. Some claim that there were victims who suffered doubly: Not only were their files rejected because they were sent after the deadline, but individuals who claimed to be the representatives of civil society asked them for submission fees.¹¹⁰

One unintended consequence of the reparations program was contested victimhood. A number of people were recognized as victims based on a sworn statement (*declaration sur honneur*) in which they declared that they were victims of the violations that the IER was investigating. This meant that “the IER accepted some requests for reparation in good faith; however, there were rumors that some of those who submitted the requests seem to not have been victims.”¹¹¹ The commission used this procedure because it lacked access to state archives, or the archives were in deplorable conditions, or no records existed. Some of those who were disappeared or were detained, however, were shocked when they saw people receiving monetary compensation who were not victims, but rather fellow residents who had informed on them during local rebellions, like the one that took place in the Atlas in 1973.¹¹² While this kind of contested victimhood was not widespread, it was the result of a process that was given neither enough time nor the necessary power to

105 Interview with Kamal Lahbib, former political prisoner, president of Morocco’s Alternatives, Casablanca, February 11, 2020.

106 Interview with Mohamed Nachnach, Tangier, February 13, 2020.

107 Mohamed Ezzouak (film director), “Histoire Enterrée: Grève Générale à Fès, le 14 Décembre 1990” (“Buried History: The General Strike in Fez, December 14, 1990”) (2019), available at www.yabiladi.ma/articles/details/83519/

108 Ibid.

109 Bencheikh, “Années de Plomb.”

110 Interview with Ahmed Haou, former political prisoner, former member of the FMVJ executive bureau, and former staff member of the CNDH, Rabat, February 27, 2020.

111 Ibid.

112 Ibid.

conduct its investigations, and whose outreach strategy was neither efficient nor adapted to the complexity of truth-seeking and the diverse ecosystem of victims.

Abdelkrim Manouzi, the brother of the famous disappeared Houcine Manouzi and president of the Medical Association for the Rehabilitation of Victims of Torture, summed up everything that did not work in Morocco's individual reparation approach as follows: "There are those who dispute the amount of their compensation, those for whom the IER declared that it was incompetent, citing very vague reasons. Others have simply not been told that they have to make a claim, especially since they only had one month to do so."¹¹³ Moubarak Fajr, a former political prisoner, said the IER "lacked transparency, did minimal outreach activities to engage victims, and caught everyone by surprise because of its tight application window."¹¹⁴

No one denies that the IER's individual reparation approach was more expansive than that of the IIA, which focused on mere monetary compensation. However, even those victims who received reparation did not hide their disappointment at the slow pace of the process and the administrative and practical barriers that prevented them from fully receiving and enjoying their reparation packages. The effort was even more disappointing for those who were excluded from the process altogether. The victims of the urban riots of Fez, many of whom live with disabilities and suffer from other illnesses, called for a transitional justice process that does not exclude anyone under any pretext, including the submission of an application after the deadline. One of those victims wondered sarcastically why "the state did not have any deadlines when it was killing, raping, and imprisoning people, but once there was a way for the victims to receive some reparation, then they discovered that they were beyond the deadline."¹¹⁵

Collective Reparations

The IER's report identified 11 regions that suffered the most from economic exclusion because they housed illegal detention centers and/or because they were considered rebellious due to social unrest or armed uprisings; most of these areas are in either the Rif or Morocco's southeast, historically known for bearing the brunt of state repression during the protectorate era and after independence.¹¹⁶ Consequently, the IER sought to provide redress to these regions and communities, which had suffered collectively, directly or indirectly, from state repression, through "measures to promote equal opportunities and a gradual process of positive discrimination in favor of the regions and communities concerned."¹¹⁷

Many victims and human rights activists agree with the IER's findings and its identification of regions that were excluded from development programs for decades. For example, Idriss Fakhr Eddine, a victim and the son of a victim of the 1973 events, and a member of the FMVJ, stressed that Tinghir and the other regions of the southeast had not received their share of development for political reasons and as a kind of collective

¹¹³ Bencheikh, "Années de Plomb."

¹¹⁴ Interview with Moubarak Fajr, Errachidia, January 15, 2020.

¹¹⁵ Yabiladi and Ezzouak, "Histoire Enterrée."

¹¹⁶ Examples of unrest are 1958–59 in the Rif region and 1973 in the Atlas. Regions that bore the brunt of state repression were Figuig, Errachidia, Midelt, Ouarzazate, Tinghir, Zagora, Tan-Tan, Azilal, Khemisset, Hay Mohammadi in Casablanca, Hoceima, Nador, and Khenifra.

¹¹⁷ The CNDH website includes a brief description of community reparation: www.cndh.org.ma/an/presentation-program/community-reparation.

punishment. “Our region was marginalized and stigmatized because it was the scene of uprisings against the regime and because it housed illegal detention centers,” he explained. “The IER in its report acknowledged that systematic exclusion was used against 11 regions of the country.”¹¹⁸

Some members of victims’ organizations and the human rights community argue that the IER would not have included a collective dimension in its reparation approach had it not been for their pressure and advocacy. For instance, according to Miloudi ElKabir, a former political prisoner and member of the AMDH, “Civil society worked hard so that collective reparation be included in the IER’s approach.”¹¹⁹ This relentless advocacy included a 2004 memorandum to the IER from the FMVJ in which it stressed the importance of a holistic approach to reparation, one that would include, in addition to an expansive individual reparation effort, the collective reparations that were necessary for the rehabilitation and reintegration of the regions that suffered the most from marginalization.

The IER organized seminars on reparation in cities such as Figuig, Errachidia, Al-Hoceima, Khenifra, and Marrakech, to cite a few, and a national forum on reparation to which national and international experts were invited, and in which more than 200 local NGOs participated. Moreover, the IER report states that it organized many consultations with civil society organizations and government entities, and advocated support for numerous socioeconomic and cultural projects, particularly for places like the Rif, Figuig, Tazmamart, Agdez, and the Middle Atlas.¹²⁰ The organization of such events brought to the fore the weaponization of development in political struggles: The state under King Hassan II deprived many regions of the country of their right to development for political reasons, with government development programs unevenly distributed between the different regions of the country. This history, among other things, helps to explain why Morocco is one of the most unequal countries in North Africa.¹²¹

The inhabitants of the aforesaid regions hoped that the IER, through its collective reparations mandate, and the government, through the adoption of corrective measures, would alleviate their dire socioeconomic situation. The local populations’ expectations were high as a result of the IER’s many seminars and conferences and the media coverage of its collective reparation approach. “Community reparation” thus became a buzzword in Morocco’s civil society landscape and media scene, stretching the meaning of the term beyond its intended objectives until it became understood by many as a form of development policy.

Unmet Expectations

The IER emphasized in its report that measures would be taken to implement socioeconomic and cultural projects as part of its collective reparation approach. However, facts on the ground and interviews with stakeholders show that not much has been accomplished. For instance, many cities and regions for which the IER recommended collective reparation, especially those in Morocco’s southeast and the Rif, are still underdeveloped and lack basic infrastructure; in those regions, community reparation stayed in its concep-

118 Interview with Idriss Fakhr Eddine, Tinghir, January 14, 2020.

119 Interview with Miloudi ElKabir, Khemisset, December 28, 2019.

120 See the summary of the IER’s final report, 27.

121 See Maïne Allaoui, “Selon Oxfam, le Maroc est le pays le plus inégalitaire D’Afrique du Nord” [“According to Oxfam, Morocco Is the Most Inequal Country in North Africa”], *Telquel*, January 20, 2020.

tual form rather than becoming a reality.¹²² Some socioeconomic projects were included under the National Human Development Initiative, which was launched in 2005, but this was before the IER completed its mandate and these projects were not realized as part of a community reparation program; many were symbolic in nature and would not by themselves suffice to lift the local populations out of poverty or bring the lagging regions up to par with the other regions of the country. The communities that were affected by decades of economic exclusion had high expectations regarding community reparation, but the state did not meet those expectations with the necessary resources.

An activist from Gourama, a small town that housed an illegal detention center, asserted, “Nothing has been done. We still live in difficult socioeconomic conditions. Women are the ones hit the most by lack of opportunities and gloomy prospects. Collective reparation was a joke.”¹²³ Abdellah Souhir, a human rights activist and the president of the Network of Associations for the Development of the South-East Oases, could not hide his disappointment at the gap between what was promised for the marginalized regions in the framework of collective reparation and what has, in reality, been realized. “It is difficult to fathom that some regions of Morocco have bullet trains and thousands of kilometers of highways, whereas the southeast still lacks even the most basic infrastructure,” he said. “What is needed is a Marshall Plan, and if the state wants to build trust with the local communities, then it needs to provide real redress, not some cosmetic changes.”¹²⁴ For Mohamed Chinyar Kadach, a labor union activist in Tinghir, even talk about transitional justice in general, and in particular collective reparation, is premature: “One cannot talk about reparation when people in this region [Tinghir] still live in caves and pupils still study in old prefabricated classrooms, which are proven to be a health hazard.”¹²⁵ Many do not understand why the government invests heavily in services and infrastructure in some regions and marginalizes others, especially since Morocco is not a federal state.

Many activists think that the way the government presented community reparation in conferences and in meetings with foreign entities was exaggerated and catered to foreign media and donors more than anything else.¹²⁶ Indeed, Morocco stated in its 2008 report to the Working Group on the Universal Periodic Review that “the Commission gave high priority to community compensation, which constitutes a major new departure in the international process of transitional justice.”¹²⁷ The focus on and heavy marketing of community reparation as a novelty, and the subsequent creation of a national Follow-Up Committee, a Steering Committee, and 13 local coordination units, each headed by a province governor, made local populations think that collective reparation would be “serious business” and that long-awaited development and rehabilitation would at last become a reality.

Despite the expectations of the populations, the legacy of oppression and five decades of neglect and marginalization were not going to be addressed with the amount that was allocated to community repara-

122 The same point of view was reiterated by civil society representatives and human rights activists in Errachidia, Agdez, Tinghir, Sakoura, Kalaat M’Gouna, Khemisset, Tazmamart, and Imilchil.

123 Interview with an NGO activist, Gourama, January 30, 2020.

124 Interview with Abdellah Souhir, Errachidia, January 13, 2020.

125 Interview with Mohamed Chinyar Kadach, Tinghir, January 14, 2020.

126 Interviews with Miloudi ElKabir, Khemisset, December 28, 2019; Idriss Baakri, Skoura, January 29, 2020; and Ali Maghraoui, Errachidia, January 14, 2020.

127 Human Rights Council, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Morocco* (A/HRC/WG.6/1/MAR/1, March 11, 2008), 37.

rations—a mere 102 million dirhams (approximately US\$10.2 million), of which 37 million dirhams (US\$3.7 million) came from grants from the European Union and UN Women.¹²⁸ Many found that the resources that were allocated for community reparations were small in comparison to the damage that had been sustained by the affected communities. According to Idriss Fakhr Eddine, the reason Morocco’s community reparation did not yield tangible outcomes was that “the government did not invest or allocate a budget for collective reparation programs. It received money from the European Union and other donors and disbursed some of it to a number of local NGOs, and the rest was spent on expert meetings and conferences.”¹²⁹

Additionally, the reparation program was set up in a way that provided governors leverage when it came to implementation at the local level. This fact should not be neglected for it has important consequences: Governors who are a part of the security apparatus and were agents of repression during the Years of Lead, who were necessarily sensitive to the implications of the politically charged concept of reparation, were unlikely to see it through the same lens as human rights activists and victims.¹³⁰ One NGO representative from Tazmamart, for example, indicated that “in a meeting, the governor of our region clearly stated that if our NGO wants to get some funding, then we have to stop talking about collective reparation or us[ing] it in our letters to his office or to state agencies.”¹³¹ Based on his experience and that of other activists in the southeast, it is safe to say that “the use of catchy concepts such as collective reparation was used to get funding from Western donors and to embellish Morocco’s image abroad, that is all.”¹³²

Exclusion

The economic disparity between Morocco’s regions is something that has been underlined by government institutions such as le Haut Commissariat au Plan, and has found its way into public debate in the context of the IER and most recently in the context of the “advanced regionalization” project, which, if it is implemented effectively, would give more autonomy to the country’s 12 regions.¹³³ The communities and regions that had not benefited from development programs for political reasons saw in the IER’s report official recognition of the moral and material damages they had sustained. They thought that the IER’s community reparation, the monarchy’s National Initiative for Human Development, and the government’s positive discrimination would be the remedy for decades of economic exclusion and the scarce provision of social services.

The slow implementation of some projects and the nonimplementation of others, like the projects concerning sites of memory (which will be discussed in the next section), however, eroded the minimal trust the affected communities had in the state. A local NGO representative in Errachidia stated, “There will be change when the state behaves differently than the way it did in the past, to give us our share of development or at least to follow through with what it promised us, and to stop considering us as second-class Moroccans.”¹³⁴

128 See Libération, “Réparation Communautaire: Les Précisions du CNDH” [“Community Reparation: The Clarifications of the CNDH”], April 12, 2012.

129 Interview with Idriss Fakhr Eddine, Tinghir, January 14, 2020.

130 Governors are high-ranking officers of the ministry of the interior. See Dahir n° 1-08-67 du 27 rejev 1429 (31 juillet 2008) relatif au Corps des agents d’autorité (B.O n° 5680 du 6 novembre 2008): bdj.mmsp.gov.ma/Fr/Document/3281-Dahir.aspx.

131 Interview with an NGO representative, Tazmamart, January 30, 2020.

132 Ibid.

133 More details about poverty and inequality in Morocco are available on the website of the High Commission for Planning of Morocco: www.hcp.ma/Indices-de-pauvrete-vulnerabilite-et-inegalite-selon-la-region-2001-2014_a661.html.

134 Interview with a local human rights activist, Errachidia, January 15, 2020.

Unkept promises reinforced grievances and feelings of exclusion and marginalization, as the protectorate epoch's categorization of Morocco as having two opposite facets, "useful Morocco" versus "useless Morocco," seems to have been revived in people's collective imagination. Such sentiments were reiterated by victims, human rights activists, and ordinary citizens in cities and towns like Errachidia, Agdez, Kalaat M'Gouna, Imilchil, Gourama, Rich, Tazmamart, and Khemisset. And while in the Rif region there is a feeling that the local infrastructure was in fact improved in cities like Nador and Al-Hoceima, local NGO representatives stressed that the Rif still lacks well-equipped hospitals and universities and noted that "al-Hoceima is not well linked to other cities with decent roads. It is as if the regime wants us to be separated from the other regions of the country so that every marginalized region suffers in isolation."¹³⁵

This sense of exclusion is even more entrenched in relation to the natural resources and the extractive industries. The southeast is home to several mines of silver, copper, gold, cobalt, and other minerals, but their economic impact on the local populations is minimal to nonexistent. The companies that own the mines are located predominantly in Casablanca, meaning that taxes are not paid to the local governments where the mines are located.¹³⁶ This in turn deprives local municipalities and communes of much-needed resources. The other point of contention is that the local populations work in mostly seasonal, low-paying jobs at the mines, whereas most high-paying jobs are held by outsiders.

Additionally, the exploitation of mines has damaging consequences for the environment and the health of residents. Mining is known for using chemicals like cyanide and mercury, which pollute and drain water tables, leaving communities with neither potable water nor water for irrigation. This was the reason the residents of Imider in August 2011 organized one of the longest sit-ins in Morocco's history, which only ended in 2019 when the authorities responded to some of the demands of the local population.¹³⁷ Another consequence of the lack of localized social responsibility in the extractive industries in Morocco was the 2018 social uprising in the eastern mining town of Jerrada, whose residents live in dire socioeconomic conditions after the mines stopped production, leaving the population without any source of income or a socioeconomically viable town.

Given the negative impact of mining, local populations see their natural resources as a curse rather than an economic godsend. Idriss Baakri, a local civil society activist in Skoura, for example, finds it ironic that his region is full of mines but remains one of the poorest in the country:

We have some natural resources like the Bouskour mine, but unfortunately, we do not benefit from our resources. Ironically, we suffer more from them than we benefit. For instance, big trucks break our roads and at every passage leave huge trails of dust which cause respiratory problems to us and our kids; additionally, the mountains are full of natural resources but the state does not want to open up the isolation of this region, so that it would be easy for those who are in power to exploit our resources without any accountability.¹³⁸

¹³⁵ Interview with a local NGO representative from Al-Hoceima, February 26, 2020.

¹³⁶ Some of these companies belong to the royal family.

¹³⁷ Hicham Oulmouddane, "L'Éternel Sit-in d'Imider" ["The Eternal Sit-In of Imider"], *Telquel*, January 22, 2014.

¹³⁸ Interview with Idriss Baakri, Skoura, January 29, 2020.

The opacity and secretive nature of extractive industries in Morocco make it difficult for observers to come by reliable data regarding the real production, profits, and environmental and social impact of mining. In this regard, former political prisoner Kamal Lahbib calls for more transparency and social responsibility from mining companies.¹³⁹ In the end, many still do not understand why their land is full of natural resources, yet they still live in poverty and lack decent schools and other necessary infrastructure, contributing to the perception of an intentional impoverishment of the local communities, and further fueling the already prevalent feeling of exclusion.

The Heavy Weight of Memory

One of the IER's objectives was the preservation of memory. This was apparent from its statutes, especially Article 5, which considered memory preservation a component of a comprehensive approach to reparation. In the IER's philosophy, memory preservation was crucial because it fulfills an educational function, which is critical to the long-term prevention of recurrence.

The Politics of Memory

The preservation of the memory of the Years of Lead, despite its bitterness, is of great importance for victims and the human rights community because it reminds society of the state's repressive tendency when it is not kept in check, and because of what it means in itself for the families of the disappeared and the victims who suffered under the regime. At the same time, however, there are many indications that the state, or at least some of its actors, do not have much interest in keeping the memory of the dark years alive, particularly its visible manifestations in the form of the many former notorious illegal detention centers that are scattered all over the country.

Before the advent of the IER, it was the FMVJ commemoration events that incrementally started bringing to the mainstream the narratives and stories of the victims of the Years of Lead.¹⁴⁰ Events such as the "National Day of the Disappeared (October 29, 1999) was memorialized with a press conference of testimonies of the disappeared of Tazmamart, the Saharan groups, and Group Bnouhachem."¹⁴¹ The FMVJ kept the momentum going by organizing other public commemoration events that aimed at keeping the memories of the victims alive through culture and literature.

The FMVJ efforts to memorialize the lives of victims and their fight for recognition were reinforced when a number of former political prisoners started writing about their experiences, offering Moroccans a narrative about their struggle and suffering that differs greatly from the official one. The book by Mohamed Raiss, *De Skhirat à Tazmamart, retour du bout de l'enfer (From Skhirat to Tazmamart, Back from the End of Hell)*, published in 2000, and the book by Ahmed Marzouki, *Tazmamart: Cellule 10 (Tazmamart: Cell 10)*, published in 2001, were instant best sellers in Morocco, demonstrating that Moroccans were eager for new perspectives on their historical grievances to challenge the dominant official narrative. These books shocked many Mo-

139 Interview with Kamal Lahbib, Casablanca, February 11, 2020.

140 Susan Slyomovics, "A Truth Commission for Morocco."

141 Ibid.

roccans with their detailed description of the horrors of Tazmamart and raised awareness about enforced disappearance and the gross human rights violations of the past. In all, the survivors of Tazmamart wrote five books, each of which offered a unique personal perspective on suffering, while describing the same chilling reality about the slow, agonizing death the writers believed they faced in detention. The emergence of these victim-centered accounts gave a human face to victims and shed light on parts of the country's history that were unknown to many, thus challenging official accounts.

In this context, some researchers argue that through the work of the IER, the state sought to contain the plurality of narratives about the Years of Lead.¹⁴² While the IER offered and broadened space for new historical accounts, it also tweaked them in a way that served the interests of the establishment. It is important to emphasize again here that Morocco's transitional justice process happened without a regime change; the government still had control over the entire country and could deliver services to the most remote areas if it wanted to do so. Given this lack of regime change, the competition between views of memory preservation that often occurs during transitions has been particularly salient in the Moroccan context. Victims and the human rights community, on the one hand, see memory as testimony of their struggle and suffering and as a symbol of the state's oppressive legacy. The regime, on the other hand, views memory preservation with skepticism, with an interest in co-opting parts of it and controlling the narrative about it, or at least highlighting certain elements of memory while downplaying those it deems subversive.

In this regard, Abderrahmane Ben Mammase, a human rights activist from Agdez, explained the authorities' reluctance to preserve notorious illegal detention centers like that in Agdez: "Memory preservation is not good for the state because of its subversive effect.... [T]he regime wants to erase memory in order to cover the heinous crimes it committed."¹⁴³ NGO representatives and activists in Tinghir, Errachidia, Rich, and Imilchil wondered why in Aghbalou N'Kerdous the state built a memorial engraved with the names of the Moroccan nationalists who were detained under the French protectorate, whereas no memorials were erected for the thousands of victims of the Years of Lead, especially in places like Tazmamart, Agdez, Kalaat M'Gouna, Barb Moulay Cherif, or any of the 30 secret detention sites.

The preservation of memory is a multilayered process that requires actions on different fronts and a certain degree of consensus about what it means and how its objective can be achieved. In Morocco, however, disjointed understandings of memory lead to different actions. Victims' organizations and the human rights community seek memorialization, the creation of new museums, and the turning of former illegal detention centers into museums or sociocultural centers to keep the memories of the victims alive and, at the same time, benefit the local populations who were direct or indirect victims of state repression. The state, however, acts at the central level through the enactment of the Archive Act (Law 69.99) and the creation of the institution of the Archives of Morocco in 2007, while remaining reluctant to follow through with the IER's recommendations concerning the preservation of memory at the local level. As a result, the preservation of sites of memory remains a matter of promises rather than concrete outcomes.

¹⁴² Dennerlein, "Remembering Violence, Negotiating Change."

¹⁴³ Interview with Abderrahmane Ben Mammase, Agdez, January 29, 2020.

Selective Memory

The Moroccan government adopts a selective approach to memory preservation. This is well illustrated by its focus on the technical aspects of memory preservation while avoiding taking specific steps to achieve concrete results to preserve sites of memory. It is true that the government in 2006 created institutions such as the Royal Institute for Research on Morocco's History, and in 2007 enacted Law 69.99 that created the Archives of Morocco, to which the CNDH recently handed the files of the IIA and the IER.¹⁴⁴ However, these steps, despite their importance, are considered by many as insufficient, especially since the only tangible step that has been taken to preserve the memory of victims was the rehabilitation of burial places of the victims of Agdez, the 1981 Casablanca events, and the 1984 Nador events. In contrast, no initiative was taken to rehabilitate the burial site of the victims of Tazmamart.

When it comes to the preservation of sites of memory, the regime exhibits a lack of political will. Needless to say, these sites are symbols of the crimes that were committed by the regime of Hassan II, of which the regime of Mohammad VI is a mere continuation. A point that is often overlooked, however, is that when it comes to the former illegal detention centers, the ministry of the interior—which, through its governors, has the upper hand—sees the issue through a security prism. This explains why the notorious detention centers of Agdez, Kalaat M'Gouna, and Tagounite are left to crumble, despite many promises that they would be restored and turned into socioeconomic centers and museums, and why other places such as the Point Fix 3 (PF3) and Laalou prison in Rabat have been demolished or disfigured.¹⁴⁵ For instance, the Tazmamart prison was razed by the military before it abandoned the base, which many interpreted as an erasure by the state of the atrocities that took place in it.

Consequently, the debate about the conversion of the illegal detention centers into sites of memory with memorials for victims and sociocultural projects for the local communities has faded from public debate. In this regard, local activists believe that the promises that were made about memory preservation were mere conference talk. Mohamed Al-Othmanie, a human rights activist from Agdez, did not hide his discontent: "We have been told that a budget has been allocated to convert the detention center into a sociocultural venue, and that in view of ensuring gender equality, an equal number of men and women would be employed. Unfortunately, nothing has been done, and the detention center has been closed for a long time, to the point that parts of it are crumbling and there is not any indication that the authorities are going to save the kasba."¹⁴⁶ Other activists from Agdez added that the state's unkept promises victimized the local population further, entrenching their distrust in the government and in the bureaucrats of the CNDH.¹⁴⁷

144 Law 69.99 stipulates in its Articles 15 and 16 that archives are only accessible 30 years after their creation. However, sensitive archives, such as those pertaining to state security and strategic interests, can only be accessed 60 years after their creation.

145 Abdelhamid, "Le Sombre Bilan de l'Instance Équité et Réconciliation."

146 Interview with Mohamed Al-Othmanie, Agdez, January 29, 2020.

147 Ibid., and interview with Abderahmane Ben Mammase, Agdez, January 29, 2020.

Guarantees of Nonrecurrence: The Unfinished Journey

In a 2004 report, eight months after Morocco initiated its transitional justice process, the UN Secretary General defined transitional justice as

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.¹⁴⁸

Taking this definition as a starting point, the Moroccan transitional justice process falls short. Accountability in the broad sense, including both judicial and non-judicial efforts, has not been ensured, nor has justice been served or an acceptable level of reconciliation achieved. Nonetheless, Morocco's transitional justice experience brought to the fore issues that were unspoken in the past in public debates, gave a platform to victims to voice their grievances and inform the public of their pain, helped raise awareness about the human rights violations of the past, pinpointed the dysfunctions and the structural drivers of these, and offered recommendations that were intended to prevent the recurrence of the past large-scale violations and lay the groundwork for a democratic society. The fact that thousands of victims received reparation packages was an indication from the state of its responsibility for past violations and an acknowledgment of the suffering of victims and their families.

Moreover, despite its limited powers and the short period of time it was given to conduct its work, the IER managed to elucidate 742 cases of the disappeared, of whom 173 had died while in arbitrary detention and 325 were killed during the social unrests that erupted in numerous Moroccan cities in 1965, 1981, 1984, and 1990.¹⁴⁹ The IER's investigations also covered the contested territory of Western Sahara, despite the issue of the unsettled sovereignty over the territory and the possible political instrumentalization of the IER's

¹⁴⁸ UN Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* (S/2004/616*, August 23, 2004), para. 8.

¹⁴⁹ See summary of the IER's final report, 10–12.

findings. In the face of many challenges, like the mistrust of the local population and the limited cooperation of Morocco's security agencies, the IER clarified 211 cases of the disappeared, of whom 144 persons died during military operations; the remaining 67 cases of the disappeared were transferred on October 31, 1996, to Tindouf in Algeria by the International Committee of the Red Cross.¹⁵⁰ The IER, however, could not solve many of the cases of the disappeared that were under its review, thus leaving the file open through a recommendation that urged the Moroccan authorities to continue their efforts until light is shed on the remaining 66 cases. The CCDH/CNDH was tasked with following up on those cases and on the implementation of the IER's legal and institutional reforms. An analysis of the extent to which those recommendations were implemented and led to long-term reform introduces the notion of guarantees of nonrecurrence to the discussion of Morocco's transitional justice process.

The IER Recommendations: Setting the Stage for Prevention?

To compensate for the narrow mandate and limited powers of the IER, the commissioners used the leeway they had to draft far-reaching recommendations directed at preventing the recurrence of grave human rights violations. In addition to reparation and the preservation of memory, these recommendations addressed a range of long-term legal and institutional reforms, such as security sector reform and the ratification of human rights treaties and their incorporation into the legal arsenal of the country.

The IER's recommendations encouraged the consolidation of constitutional guarantees and the safeguard of human rights and liberties by enshrining the primacy of international law over national legislation in the constitution, and the constitutionalization of principles such as the presumption of innocence, the right to an equitable trial, and the separation of powers. Moreover, the commission urged for the clarification of constitutional provisions that guarantee fundamental freedoms and stressed the need for strengthening due process through the control of the constitutionality of laws and decrees, therefore allowing citizens to challenge the constitutionality of a law in court.

The commission also recommended the adoption and implementation of an integrated national strategy to end impunity, grounded in the rules of international law and standards of international practice. And, given the involvement of the security sector and judiciary in the large-scale abuses of the past, the commission preconized the reform of the security sector, the reform of the judiciary and the strengthening of its autonomy, and the overhaul of penal policy and legislation. Importantly, it recommended the creation of a follow-up mechanism to ensure that the reforms and reparation decisions would not stay *lettre morte*.¹⁵¹

A careful reading of the IER recommendations shows that their final goal was to prepare the groundwork for a real democratic transition and the rule of law as the best remedy to the large-scale human rights violations of the past. The recommendations touched upon—directly or indirectly—issues that had prevented the synchronization of the different moving parts (legal, institutional, political, and societal) that were necessary for a political culture in which differences would be managed through peaceful means and politi-

¹⁵⁰ See the summary of the IER's final report.

¹⁵¹ See in particular pages 46 through 48 of the summary of the IER's final report.

cal dissidents would no longer be seen as enemies but rather as adversaries with whom the government could negotiate.

After the IER submitted its report to the king, who agreed for it to be made public, the debate shifted from the commission's limited mandate and lack of powers to the demand for the rapid and genuine implementation of its recommendations. In this regard, the Follow-Up Committee on the recommendations of the 2001 National Symposium on the Gross Human Rights Violations enjoined the government, in a 2018 conference in Marrakech, to "consider IER's recommendations a commitment for the state that must be implemented."¹⁵²

The CCDH/CNDH was directed to follow up on the implementation of the IER recommendations and to continue investigating the unsolved cases of the disappeared, particularly the 66 cases that the IER was unable to solve due to the lack or late cooperation of state organs, particularly the security agencies. In this regard, Abdelhay Moudden, one of the IER's 16 commissioners, indicated that some security institutions used dilatory tactics and were reluctant to cooperate with the commission, although once its mandate was about to expire, some agencies were more prone to open their archives. In addition, the IER chose not to go forward because it did not have much time left.¹⁵³

The CCDH/CNDH continued to investigate the unsolved cases and managed to solve most of them except a handful, especially the ones that were politically charged and might have implicated the palace, namely the cases of Mahdi Ben Barka and Houcine Manouzi, which seem to have reached a definite impasse. For instance, the Ben Barka case is very sensitive because of the stature of the disappeared and the people and actors that might have commissioned his disappearance, and because the case is still being reviewed by French courts; therefore, any new elements might have legal and political ramifications both in France and in Morocco.¹⁵⁴

The Implementation Gap

Most of the IER's recommendations have in general been slow to become concrete. As discussed above, the execution of individual reparation decisions faced delays, and community reparation and memory preservation have not been implemented more than a decade and a half later. The legal and institutional reforms that the IER supported would not have been possible under the 1996 constitution because it did not offer an adequate framework for those reforms to take shape. Constitutional reform was therefore a necessary undertaking. The IER itself did not call directly for constitutional reform, but it did list steps to be taken into consideration in the case of such reform. However, the palace was not ready to change the constitution that gave it extended powers. Consequently, Moroccan authorities tried to find a middle ground by incorporating the bulk of the recommendations into a 2008 National Plan on Democracy and Human Rights, which also was intended to ensure Morocco's alignment with the recommendations of the 1993 Vienna Declara-

¹⁵² This was one of the recommendations of the conference on the Trajectory of Equity and Reconciliation in Morocco, which was organized by civil society on April 20–22, 2018, under the title of "Guaranteeing Non-Recurrence."

¹⁵³ Interview with Abdelhay Moudden, Rabat, December 18, 2019.

¹⁵⁴ The IER in its findings concluded that both governments were implicated in Ben Barka's kidnapping and assassination.

tion. But the 2008–2012 National Plan never saw daylight, remaining a prisoner of the drawers of the Ministry of Justice and Liberties.¹⁵⁵

The IER recommendations that called for long-term institutional and legal reforms designed to tackle the direct and indirect drivers of human rights violations made it back into the public debate in the tumultuous context of the 2011 Arab uprisings and the emergence of Morocco’s 20 February Movement (20FM). When street pressure made their implementation a necessity, most of those recommendations found their way into the 2011 constitution.

The 2011 Constitution: The “Resting” Place for the IER’s Recommendations?

The new constitution did not meet all of the protestors’ demands, first because of the controversy that surrounded the process leading to its adoption, in which the constitutional commission was not elected but appointed by the king and presided over by Abdeltif Menouni, a former IER commissioner, and second because it did not culminate in a parliamentary monarchy as many protestors had hoped. Nonetheless, many saw a meaningful improvement in the constitutionalization of human rights guarantees and standards, the enunciation of a clearer separation of powers, and the reinforcement of the powers of the legislature, especially since in conjunction with his reform promises, King Mohammed VI freed many political prisoners.

In this regard, the OMDH president, Boubker Largou, contends that “the IER contributed to changing the reality of human rights for the better.”¹⁵⁶ “Let’s not forget,” he added, “that the IER recommendations were the backbone of the 2011 constitution.”¹⁵⁷

Tellingly, the constitution in Article 23 criminalized the violations that were the subject matter jurisdiction of the IER, enforced disappearance and arbitrary detention, in addition to torture. Article 23 was comprehensive in the sense that it criminalized all serious human rights violations, stipulated the respect of due process, and provided for the protection of detainees:

- No one may be arrested, detained, prosecuted, or condemned outside of the cases and the forms provided by the law. Arbitrary or secret detention and forced disappearance are crimes of the greatest gravity. They expose their authors to the most severe sanctions.
- Any detained person has the right to be informed immediately, in a fashion which is comprehensible to him, of the reasons for his detention and of his rights, including that of remaining silent. He must benefit,

¹⁵⁵ See Hassan Bentaleb, « La version actualisée du Plan national en matière de démocratie et de droits de l’Homme serait fin prête » (“The Updated Version of the National Democracy and Human Rights Plan Would Finally Be Ready”), *Liberation*, November 23, 2017, available at https://www.libe.ma/La-version-actualisee-du-Plan-national-en-matiere-de-democratie-et-de-droits-de-l-Homme-serait-fin-prete_ag2484.html. The CCDH in its December 2009 report on the implementation of the IER’s recommendations used, in many instances, a convoluted language when talking about the institutional and legal reforms that the IER requested, as a way to justify the non- or partial application of those recommendations. In the institutional realm, there was the creation of the Royal Institute for the Research on the History of Morocco in 2006 and the Council on the Moroccan Community Abroad in 2007. The legal arsenal of the country was enriched by Act 69-99 on Archives. The promulgation of this act on November 30, 2007, provided the legal basis for the preservations of state archives whose absence or deplorable conditions hindered the IER’s efforts to uncover the truth about the past.

¹⁵⁶ Interview with Boubker Largou, Rabat, January 21, 2020.

¹⁵⁷ *Ibid.*

as well, from juridical assistance and of the possibility of communication with his relations, in accordance with the law.

- The presumption of innocence and the right to an equitable process are guaranteed.
- Any detained person enjoys the fundamental rights and humane conditions of detention. He must benefit from programs of instruction and of reintegration [reinsertion].
- All incitement to racism, hatred, and violence is prohibited. Genocide and all other crimes against humanity, the crimes of war and all the grave and systematic violations of the Rights of Man are punished by the law.¹⁵⁸

The other laudable progress brought by the 2011 constitution was that it enshrined the primacy of international law over the national legislation of the kingdom, which had been recommended by the IER and demanded by the human rights community for many decades. The last paragraph of the constitution's preamble made it a constitutional duty for Morocco

to comply with the international conventions duly ratified by it, within the framework of the provisions of the Constitution and of the laws of the Kingdom, within respect for its immutable national identity, and on the publication of these conventions, [their] primacy over the internal law of the country, and to harmonize in consequence the pertinent provisions of national legislation.¹⁵⁹

In practice, however, to date national legislation has not been harmonized to comply with duly ratified international human rights instruments, for two main reasons. First, there is a lack of political will. Second, the constitutional text is misleading and contradictory in regard to the primacy of international conventions because it made this primacy contingent upon the respect of Morocco's "immutable national identity," that is, Islam, territorial integrity, and the monarchical system. Put differently, the constitutional text states that international instruments have primacy only if they are aligned with Islam and the other components of Morocco's national identity.

The constitutional protection of human rights has been limited because many constitutional provisions have not been followed by the legislative measures that are necessary for their application. According to Boubker Largou, president of the OMDH, the IER process offered a thorough diagnosis of what needed to be reformed, and the best way to consolidate democracy and the protection of human rights is "to formulate what is in the constitution into laws and implement them."¹⁶⁰ Similarly, Abderrazak Rouwane, a former member of the IER's senior staff, contended that "the guarantee of nonrecurrence is the effective and genuine implementation of all of IER's recommendations."¹⁶¹

¹⁵⁸ Constitution of Morocco, 2011, Art. 23.

¹⁵⁹ *Ibid.*, preamble, para. 4.

¹⁶⁰ Interview with Boubker Largou, Rabat, January 21, 2020.

¹⁶¹ Interview with Abderrazak Rouwane, Rabat, December 19, 2019.

The government's 2018–2021 Plan on Democracy and Human Rights reflected in its goals many of the IER's recommendations, in particular those pertaining to the criminalization of human rights violations, ending impunity, governance of the security sector, and public liberties like the right to assembly. However, this document is a mere stated set of measures without any binding force, and while there is still time left in the plan, there are no encouraging signs that its measures and goals will be implemented. Similarly, a previous such plan from 2008 went entirely unimplemented.¹⁶²

More Institutions, Less Impact

The 2011 constitution enhanced Morocco's institutional framework with new institutions and bodies designed to ensure good governance, transparency, economic inclusion, and the protection of human rights. Yet, most of these institutions have not been operational due to a lack of political will or the late adoption of the legislative measures that are necessary for their functioning. A salient example in this regard is the Competition Council, created by Article 166 of the constitution, whose president was appointed by the king only in late 2018 under the pressure of an ordinary citizens' boycott campaign that targeted three major companies owned by influential personalities close to the regime. In fact, one of those companies is owned by Aziz Akhanouch, the current minister of agriculture and head of the Rassemblement National des Indépendants, a political party known for its ties with the establishment. Another example of a dormant institution is the Authority for Parity and the Fight Against All Forms of Discrimination (Autorité pour la Parité et la Lutte contre la Discrimination in French), created by Article 19 of the constitution, whose goal is to ensure equality between men and women. It was only on December 21, 2017, that Act 79.14 on this authority was promulgated, however, and in spite of having the necessary legislative measure, the members of the institution have not yet been appointed by the king.

Morocco does not suffer from a penury of institutions; in fact, it has a surplus. However, they still have not yielded tangible results. A renowned scholar and human rights activist stressed that in Morocco many institutions and laws look nice on paper, but many are in fact empty shells, and the creation of these ineffective institutions is a form of political bribery. He noted that the creation of these institutions does not stem from the regime's efforts to achieve transparency and good governance, but rather is intended to accomplish two functions: create a facade of democracy to give the impression of a democratizing regime, and neutralize activists and public figures who have a certain moral and intellectual authority and whom the regime perceives as a threat. Consequently, these public figures are incorporated into the system but within institutions that have no real power. He observed that most of those who were critical of the regime became its first advocates once they were given access to high office and enjoyed the privileges that came with it. For him, the regime is crafty in using the carrot-and-stick strategy with dissident voices.¹⁶³ The side effect of this "political bribery" is that it fosters more mistrust in public institutions and in society in general, thus blocking any meaningful change that could suppress the prevalent corruption and restore citizens' faith in government institutions.

¹⁶² See Hassan Bentaleb, « La version actualisée du Plan national en matière de démocratie et de droits de l'Homme serait fin prête ».

¹⁶³ Interview, name withheld, Rabat, February 24, 2020.

It is also important to stress that ordinary people are not aware of the mandate or purpose of the new institutions. This is likely in part due to the little to no effort that has been made by the authorities to disseminate knowledge about these institutions in a manner that makes it easy for people to understand. The institutions remain esoteric for the majority of Moroccans. Nonetheless, there is one institution that was in place before the 2011 constitution, whose mandate was reinforced by the constitutional text, and whose annual reports spark debates in different news outlets as well as among the public. The Court of Audits (La Cour des Comptes in French), whose work includes overseeing public expenditure and public finance, on the one hand contributes through its reports to shedding light on issues of mismanagement of public funds and corruption within ministries and public administrations. On the other hand, however, the fact that no minister or high-ranking public officer has been charged or resigned because of these reports further entrenches the already prevalent perception of a lack of accountability, emboldens corrupt public servants, and fosters more mistrust in public institutions.

Morocco and the UN Human Rights System

In its effort to end impunity and ensure the government's compliance with human rights instruments, the IER recommended that Morocco adhere to human rights conventions and that it lift its reservations to treaties it had already ratified.¹⁶⁴ Moroccan authorities were called upon to ratify the second optional protocol of the International Covenant on Civil and Political Rights (ICCPR), CEDAW's optional protocol, and the statutes of the International Criminal Court (ICC), which the country had signed in 2000.

Morocco lifted its reservations to CEDAW (making declarations on its understanding or interpretation of its articles and provisions instead) and other conventions. It did not abolish the death penalty, but did put it in a moratorium since 1993, when the last execution in the country's history was carried out. Nonetheless, human rights activists are adamant about Morocco's adherence to the ICCPR's second optional protocol because "capital punishment is an issue given that 55 out of 57 past executions were for political reasons."¹⁶⁵

The ratification of the ICC statutes is also on the advocacy agenda of human rights organizations that think that Morocco is invoking unsubstantiated arguments (such as the issue of Western Sahara) to justify its reluctance. Some activists and researchers think that the "lack of international monitoring and accountability encourage Moroccan officials, especially those in the security apparatus, to violate human rights, which reinforces the prevalent culture of impunity."¹⁶⁶ Therefore, they keep stressing the need for the authorities to ratify the ICC statutes and the other human rights conventions.

In what can be seen as an effort by Morocco to ensure nonrecurrence, the government ratified the treaties that are relevant to the subject matter jurisdiction of the IER, including in 2013 the Convention for the Protection of All Persons from Enforced Disappearance. In 2014, it joined the optional protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which calls for the establishment of an anti-torture monitoring mechanism. Morocco instituted such a mechanism in 2019.

¹⁶⁴ Morocco's ratification status is listed in the UN Treaty Body Database: tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117&Lang=EN.

¹⁶⁵ Interview with Boubker Largou, Rabat, January 21, 2020.

¹⁶⁶ Interview with Naima Benothmane, Rabat, December 18, 2019.

Even though it has joined most key human rights treaties, however, Morocco uses different strategies to lessen the impact of these mechanisms.¹⁶⁷ The kingdom's practice in this regard can be summarized as follows:

- Sign a treaty without ratifying it (for example, the ICC statutes).
- Access or ratify a treaty while putting reservations on key provisions.
- Join a treaty without accepting its review mechanisms, especially its individual complaints procedure.
- Do not submit reports to treaty bodies in a timely fashion.
- Promulgate at the domestic level the laws that are necessary for treaty ratification, but do not deposit the instruments of ratification at the secretariat of the relevant bodies. For instance, in 2013 Morocco ratified by Act 59.12 the optional protocol to the Convention on the Rights of the Child allowing for individual communication, but did not follow through with the ratification process.¹⁶⁸ This also goes for CEDAW's optional protocol and ICCPR's first optional protocol, which were respectively ratified by Acts 125.12 and 126.12 and published on August 17, 2015, in Official Bulletin number 6387.

All in all, in addition to the lack of genuine implementation, Morocco's evasive strategies in regard to the international human rights system have allowed it to escape accountability and have been detrimental to the state of human rights in Morocco, given that there are virtually no venues for citizens to uphold the rights granted and protected under those treaties.

Unfinished Institutional Reforms

Human rights organizations and opposition political parties have always stressed the need for long-term institutional reforms to democratize the country and to prevent the recurrence of the grave human rights violations of the past. King Mohammed VI echoed this demand from the onset of his reign and promised to revamp the state's administrative apparatus to make it more transparent and accountable. The "new concept of authority" emerged in Morocco's public debates, another addition to the country's political jargon. Furthermore, the need for genuine institutional reforms was reiterated by the IER, whose report pinpointed the institutional dysfunctions that facilitated the abuses of the Years of Lead. And in the context of the Arab Spring, the 20FM petitioned for, among other things, social justice, transparency, and accountability, demands that made the need for legal and institutional reforms crucial for the stability of the country. Public

¹⁶⁷ Morocco is a state party to the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocol; the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of the Child and its optional protocols. The country has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.

¹⁶⁸ See Official Bulletin no. 6140 of April 4, 2013.

space was filled with debates about the need to end the rentier economy and reform the judiciary and the security sector, which were the oppression tools of the regime in its efforts to silence dissident voices.

The Security Sector: An Accountability-Free Zone

The security apparatus was directly implicated in the large-scale human rights violations of the past and those that occurred in the context of the fight against extremism. As a result, Moroccan citizens see the security services as tools of oppression rather than a public service whose *raison d'être* is to ensure their protection and be accountable to them. The IER's investigations concluded that past human rights abuses were the result of an unchecked security sector that worked outside the law. Therefore, it recommended that a number of measures be taken to ensure transparency and oversight in the security system. The IER urged the government to

develop a public national security policy, clarify and publish the legal framework regulating the institutional attributions, decision-making, and supervision and evaluation mechanisms of all security forces and administrative authorities, oblige the government to inform the public and parliament about any event that required the intervention of security forces, and to establish just and transparent internal control mechanisms within security forces.¹⁶⁹

Such recommendations align with the UN's normative framework that, *inter alia*, calls for "building a professional and accountable security sector by establishing robust oversight mechanisms" as a way to safeguard against the recurrence of gross human rights abuses.¹⁷⁰

Article 54 of the 2011 constitution seems to have been the regime's response to the IER's recommendations. This article created the Superior Council of Security, which, among other things, is intended to oversee the institutionalization of good governance standards in the security sector. This council, which is yet to become operational, is presided over by the king, who can delegate its presidency to the head of government. The prerogatives of the Superior Council of Security are limited, as it is a mere organ for consultation on matters of internal and external security and the management of crises.¹⁷¹

In practice, however, the security sector in Morocco remains the exclusive domain of the monarchy. All heads of the different branches of the security services are appointed by the king without any confirmation process before the parliament. Furthermore, while harshly criticizing public institutions and political parties for their ineffectiveness, Mohammed VI has increasingly spoken approvingly of the security apparatus, praising them several times in his speeches. This was most notable in his speech on the 19th anniversary of his enthronement in Al-Hoceima, a city that was the epicenter of the Rif Movement and where, a few months before the king's speech, the security services had used harsh measures to intervene against

¹⁶⁹ DCAF (Geneva Centre for Security Sector Governance), "Security Sector Reform: In Light of the Recommendations of Morocco's Equity and Reconciliation Commission" (2009).

¹⁷⁰ UN Human Rights Council, *Joint Study*, para. 25.

¹⁷¹ Constitution of Morocco, 2011, Art. 54.

civilian protestors to put an end to a 10-month-long social movement. In his speech, the king praised the security apparatus in the following words:

The moment is also propitious to pay a vibrant tribute to the Royal Armed Forces, the Royal Gendarmerie, the Auxiliary Forces, National Security and Civil Protection, in all their components, for their constant mobilization, under Our command, in order to defend the integrity, security, and stability of the country.¹⁷²

King Mohammed VI's commendation of the security sector has become a tradition. Already in 2005, and despite acknowledging the involvement of security agencies in many cases of human rights abuses, the king downplayed those abuses while commending the tremendous efforts of the security services in the fight against extremism.¹⁷³ This royal support of and trust in the security agencies reinforces their autonomy vis-à-vis civilian institutions, thus making it difficult for civilian oversight mechanisms to emerge and consolidate.

The Military

As a consequence of the two failed military coups of 1971 and 1972, Morocco dismantled the ministry of defense and replaced it, in 1972, with a small National Defense Administration, whose director is a civil servant who has no power over the military and whose administration is tasked with mere legal, financial, and administrative matters rather than strategic military affairs.¹⁷⁴ The king is the commander in chief of the armed forces and the one who appoints and removes military personnel. In practice, the government has no effective control over the military, and the parliament has minimal oversight. The military budget is always voted on without much debate or amendment. During the Years of Lead, the military was responsible for many human rights violations, such as extrajudicial killings and arbitrary arrests of scores of civilians, particularly during the 1958 Rif uprising, the four major urban social unrests, and the conflict in Western Sahara. Yet, the military is an institution about which Moroccans know very little, which totally escapes civilian oversight, and which demonstrates no accountability.

In 2012, the Council of Ministers, presided over by the king, at its first meeting approved draft law 01-12 on the protection of military personnel and sent it to the legislature for approval. Through its lobbying and advocacy, civil society triggered public debates about what has become known as the Military Immunity Bill. Indeed, Article 7 of the draft bill granted military personnel immunity from prosecution for crimes that are committed during operations, something that the FMVJ and other human rights organizations qualified as a setback for ending impunity. The FMVJ in its May 28, 2012, memorandum to the head of government, the presidents of the two chambers of the legislature, and the president of the CNDH highlighted the reasons it viewed draft law 01-12 as unnecessary and dangerous. The FMVJ emphasized that the constitution safeguards the fundamental rights of all Moroccans without discrimination, and that ending impunity will

172 The text of the royal speech of July 29, 2018, is available online: www.maroc.ma/fr/discours-royaux/sm-le-roi-adresse-un-discours-la-nation-loccasion-de-la-fete-du-trone-o.

173 See King Mohammed VI's 2005 interview with the Spanish newspaper El País, especially his answer to question 11. The text of the interview is available online: www.maroc.ma/fr/discours-royaux/texte-integral-de-lentretien-de-sm-le-roi-mohammed-vi-avec-le-quotidien-espagnol-e-o.

174 Décret n° 2-82-673 du 28 rebia I 1403 (13 janvier 1983) relatif à l'organisation de l'administration de la défense nationale, from Bulletin Officiel no: 3664 du 19/01/1983, 84, adala.justice.gov.ma/production/html/Fr/75125.htm.

not be achieved if military personnel are elevated above the law. The human rights community's advocacy efforts resulted in the amendment of Article 7, which no longer grants immunity to military personnel for acts that are committed during operations. The bill that was approved by the legislative body stipulates only that military personnel enjoy the protection of the state instead of having immunity from criminal prosecution, as had been specified in the draft law.¹⁷⁵

The military has been absent from public space since the early 1990s, especially after the 1990 events in Fez, when its intervention, along with that of other security services, led to 112 deaths and scores of wounded protestors. The military's retreat from public space was reinforced after Morocco signed, in 1991, a UN-brokered armistice with the POLISARIO Front, thus freezing an armed conflict that had made many civilian victims. The military has not intervened in the majority of social uprisings that Morocco has witnessed since the advent of the current monarch, leaving this and the spearheading of the state's war on terrorism to other security agencies.

The Security Agencies

The palace's continued approval and support of the security agencies, coupled with their central role in the fight against terrorism (internal as well as external), gives them a de facto preponderant position vis-à-vis other state institutions. This relationship makes it difficult for reform initiatives to come from outside the security sector, while self-reform of these agencies is difficult in the current context. For one thing, the "anti-terrorism agenda diverts resources and energy from security sector reform efforts";¹⁷⁶ for another, the security sector has played a prominent role in extinguishing the frequent social unrest that Morocco has witnessed in recent years.¹⁷⁷

However, after the advent of the 2011 constitution, which in its first article specifies that Morocco's regime is founded on the separation of powers, good governance, and accountability, Morocco initiated reforms to improve the police force's transparency and reputation as the state institution concerned with citizens' well-being. The Directorate-General for National Security (DGSN) published in September 2014 a code of conduct for its personnel, which, among other things, instructs police officers to respect the human rights and the dignity of citizens; restricts the use of firearms; prohibits the abuse of power, torture, enforced disappearance, and arbitrary detention; and requires police officers to respect the rule of law.¹⁷⁸ The DGSN has also improved its communication by continually issuing statements to inform the public about security events, and through the organization of annual open-door events in which the public gets to meet police officers and view presentations about police work.

Yet, despite the noticeable efforts the DGSN has made to improve its reputation, the institutionalization of democratic checks on the security sector (which includes, in addition to the DGSN, services such as the Directorate-General for Territorial Surveillance, the Central Bureau for Judiciary Investigations, and the

175 The 01-12 act is available through the Secretary General website: www.sgg.gov.ma/Portals/o/lois/Loi_01.12_Fr.pdf.

176 On the anti-terrorism agenda, see DCAF Trust Fund for North Africa, "Morocco Results Reporting 2017" (2017).

177 The following are the main social uprisings that Morocco has witnessed since the IER ended its work and in which security agencies played a major role: Sidi Ifni in 2008, Igdim Izik in 2010 (Western Sahara), the events of the 2011 Arab Spring, the 2016–2017 Rif Movement, and the 2018 Jerrada uprisings.

178 See Chawki Benyoub, "تقرير حول منجز من توصيات هيئة الإنصاف والمصالحة" ("Report of the Inter-Ministerial Delegate on Human Rights on the Implementation of IER's Recommendation"), 2019.

Directorate-General for Studies and Documentation) through parliamentary oversight and strengthening compliance with human rights has not been part of a broader public policy. Morocco's reform agenda for the security sector has concentrated on increasing effectiveness and efficiency. Because state reforms are not embedded in a comprehensive, thoroughly planned program to reform the security sector as a whole, they are reactive single measures.

The reforms that have been introduced do not comply with the UN framework, especially the UN Security Council's Resolution 2151 of 2014, which defines security sector reform (SSR) "as a process to ensure the enhancement of effective and accountable security for the state and its people without discrimination and with full respect for human rights and the Rule of Law."¹⁷⁹ Furthermore, the reforms that have been initiated by Morocco are not aligned with the policy framework of the African Union, which Morocco rejoined in 2017 after it had left its predecessor, the African Unity Organization, in 1984 in protest against granting membership to the POLISARIO Front. The African Union framework defines SSR as "the process by which countries formulate or re-orient the policies, structures, and capacities of institutions and groups engaged in the security sector, in order to make them more effective, efficient, and responsive to democratic control, and to the security and justice needs of the people."¹⁸⁰

As critical as it is to move the public debate toward an approach that meets the UN's definition of security sector governance, with its five attributes of transparency, responsibility, accountability, participation, and responsiveness, there are many obstacles that stand in the way of genuine reform.

- First, there is an entrenched culture of impunity and superiority that the security apparatus inherited from the late King Hassan II's epoch, which the IER process did not disrupt through vetting and lustration processes.
- Second, there is a tacit accord among political actors that the security sector is the palace's reserved domain and that it should not be questioned, even when the legal framework allows for doing so. For instance, it is said that Abdelilah Benkirane, the former head of government, endorsed the controversial 01-12 act without diligently reading it, claiming that matters pertaining to the military were outside his prerogatives.¹⁸¹ Similarly, the parliament does not exercise its oversight function, even when it comes to the scrutiny of the security apparatus's budget.
- Third, security sector reform has been subject to prevalent reductionism, leading to a focus mainly on the police, while ignoring the other security agencies. For instance, the Directorate-General for Territorial Surveillance and the Directorate-General for Studies and Documentation are two major security agencies that remain opaque and completely escape civilian oversight, even when it comes to their budgets and recruitment.

¹⁷⁹ DCAF (Geneva Centre for Security Sector Governance) and International Security Sector Advisory Team, "Overview of SSR Policies of Multilateral Organizations" (2017).

¹⁸⁰ Ibid.

¹⁸¹ Interview with Mohamed Hassine, Casablanca, January 8, 2020.

- Fourth, there is a lack of expertise and resources among civil society in the field of SSR, preventing it from advocating for, monitoring, and reporting on matters pertaining to the security sector.

Some argue that what is preventing genuine security sector reform is political actors' lack of proactive initiatives. According to Lahbib Belkouch, a former political prisoner and the president of the Center for Studies in Human rights and Democracy, "Reforms by their very nature take time, and...to reform the security sector, political and civil society actors should start somewhere with what they have and not be passive, for reforms need to start somewhere."¹⁸² Mohamed Nachnach, however, argued that the state has no apparent desire to reform security institutions; even worse, "the state is blackmailing its people and making them choose between security without human rights or chaos like that in Syria."¹⁸³ Given all of these factors, the security sector will continue to avoid accountability until all stakeholders take responsibility for and ownership of an SSR process that is still in its burgeoning state.

The Difficult Reform of the Judiciary

The IER made nine recommendations concerning the reform and the modernization of the justice system. These recommendations ranged from stressing the need for modernizing courts and ensuring that judges and court personnel are well trained and benefiting from adequate incentives, to ensuring a real independence of the judiciary through a clearer separation of powers and the criminalization of any meddling of the administrative apparatus in the judiciary's affairs.¹⁸⁴ These recommendations were enshrined in the 2011 constitution, which in spite of its imperfections, has nonetheless brought many improvements, especially when it comes to the independence of the judiciary, which was in the past, de jure as well as de facto, controlled by the executive branch. The new highest law created the Supreme Council of the Judiciary and gave independence to the Public Prosecutor's Office, which previously was under the control of the ministry of justice. The principles of the 2011 constitution laid the ground for the long-awaited reform of the judiciary, which through its disregard of due process, unfair trials, lack of independence, and complicity had facilitated the human rights abuses of the Years of Lead. The reform of the justice system was one of the first reforms that needed to be undertaken because without a fair, independent, and professional judiciary, the other institutional and legal reforms would be void.

Shortly after the promulgation of the constitution, an advisory body was created in May 2012. The High Authority of the National Dialogue on the Reform of the Judicial System (la Haute Instance du Dialogue National sur la Réforme du Système Judiciaire in French) was tasked with developing a road map for an exhaustive reform of the judiciary. The High Authority was constituted by different stakeholders and culminated its work with the adoption of the Judicial Reform Charter, which was presented to the king in 2013. The new charter sought to achieve six main objectives: consolidate the power of the judicial branch, ensure the moralization of the judiciary, strengthen the role of the courts in the protection of the rights and liberties of citizens, improve the effectiveness and efficiency of the justice system, develop the institutional capacities of the judiciary, and modernize the administrative machinery of the justice system.¹⁸⁵

¹⁸² Interview with Lahbib Belkouch, Rabat, December 13, 2019.

¹⁸³ Interview with Mohamed Nachnach, Tangier, February 13, 2020.

¹⁸⁴ See the IER's final report, Book 4, 83.

¹⁸⁵ Abdelhafid Chentouf, "Réforme de la justice: la cadence est au ralenti" ["The Reform of the Justice System: The Pace Is Slowing"], *Challenge*, December 10, 2019.

The charter strove to achieve the colossal task of reforming the judiciary by fully implementing 353 measures during the period of 2014 to 2020. However, with the slow implementation of some of the reform measures and most of them yet to be implemented at all, there is a legitimate fear that these measures might fall into oblivion. The organic laws pertaining to the Supreme Council of the Judiciary and the status of magistrates were only adopted after years of delay. In 2017—six years after the adoption of the new constitution—the king appointed the members of the Supreme Council, which is intended to consecrate the independence of the judicial branch.

It is somewhat telling that the measures concerning the transparency of the judiciary and the protection of human rights and liberties are among those that have not been implemented. According to Transparency International, Morocco's judiciary is one of the most corrupt public institutions, meaning that the improved integrity of the justice system is a sine qua non condition for the successful implementation of the other reform measures and for ensuring the protection of the rights and liberties of citizens.¹⁸⁶ The protection of rights is still fragile given that the reform of the penal procedure and the penal code has not been pushed forward, even though the draft penal code was introduced to the parliament in 2016. That it has not yet been adopted proves once again that reforms can be initiated but will not take shape in the absence of genuine political will.

The unfinished judicial reforms are not without implications for the enjoyment of human rights in Morocco. The judiciary has increasingly been used to silence dissenting voices, especially those of independent journalists and human rights activists. The experiences of independent journalists Ali Lamrabet, Ali Anouzla, Rachid Nini, Taoufik Bouachrine, Hamid El Mahdaoui, Hajar Rissouni, Soulaïmane Rissouni, and Omar Radi are cases in point. El Mahdaoui, a government critic, was sentenced to three years “on a dubious charge of failing to report a security threat.”¹⁸⁷ Bouachrine, the director of a widely distributed Arabic newspaper that is very critical of the establishment, was sentenced to 15 years on human trafficking and sexual harassment charges, after an unfair trial in which he was the victim of a relentless defamation campaign from media outlets close to the regime. The absence of guarantees of a fair trial in this case led the UN Working Group on Arbitrary Detention to conclude that the detention of Bouachrine was arbitrary and to urge the Moroccan government to release him without any further delay.¹⁸⁸ The Moroccan authorities, however, ignored the group's opinion, and Bouachrine and many others are still arbitrarily detained.¹⁸⁹

186 See Coralie Pring and Jon Vrushi, Transparency International, “Global Corruption Barometer Africa 2019” (July 2019).

187 See Human Rights Watch, “Morocco: Journalist Convicted on Dubious Charge,” July 18, 2018.

188 See Working Group on Arbitrary Detention, *Opinion No. 85/2018 Concerning Tawfik Bouachrine (Morocco)* (A/HRC/WGAD/2018/85, January 29, 2019).

189 Just between 2015 and 2019, the WGAD issued 10 opinions in which it determined that the detention of 21 individuals was arbitrary. See opinions 78/2019, 67/2019, 23/2019, 85/2028, 58/2018, 31/2018, 11/2017, 27/2016, 26/2016, and 34/2015. The WGAD opinions are posted on the website of the United Nations Office of the High Commissioner for Human Rights: www.ohchr.org/EN/Issues/Detention/Pages/OpinionsadoptedbytheWGAD.aspx.

Conclusion

Morocco's transitional justice measures were limited in their scope and mandate. At a fundamental level, this was because they were undertaken in the absence of regime change. Indeed, the fact that the regime responsible for past and current human rights violations was in control of the transitional justice process has undermined its legitimacy and constrained its impact. The palace initiated the process to achieve its political objectives by containing and rallying the support of victims' organizations whose influence and legitimacy were gaining strength. In exchange, the monarchy allowed for a transitional justice process that resulted in some truth, provided some reparation, and generated some institutional reform, but also sacrificed justice for political and institutional stability in a time that was characterized by security challenges. The main goal of the initiators of Morocco's transitional justice experience seems to have been regime rejuvenation and consolidation and the creation of new political and civil society elites who would share a common vision with the palace and who could counteract the mounting power of moderate Islamists who were gaining more seats and legitimacy in every election. The IER commissioners—from their first communiqué through their subsequent publications and the declarations of their president—seem to have adhered to the monarchy's vision, although, under increasing criticism and pressure from victims' organizations and the human rights community in general, they did use their report to make far-reaching recommendations that sought to offer legal and institutional guarantees of nonrecurrence via a road map for democratization and rule of law.

No one can deny that the two violations that constituted the subject matter jurisdiction of the IER are no longer as widespread as they used to be. Enforced disappearances reduced in frequency after the advent of the IER and came to a halt after Morocco joined the Convention for the Protection of All Persons from Enforced Disappearance in 2013. In contrast, arbitrary detention is still used by the regime, as has been highlighted numerous times by the Working Group on Arbitrary Detention, to silence journalists, activists, and political opponents. The regime, however, also renewed its tool kit of oppression. Voices of dissent are no longer subjected to clear-cut violations like enforced disappearance but rather are targeted by smear campaigns by media outlets with ties to the regime.¹⁹⁰ The right to privacy of critics is frequently violated by those media outlets, which sometimes explicitly threaten activists or allude to their imminent arrest. Similarly, civil society organizations, in particular those pressing for democratization and respect for human rights, are increasingly facing administrative barriers and harassment by the authorities. In 2019, for example, the NGO Racines (Roots) was dissolved after it hosted a series of meetings where participants spoke freely about topics that are considered taboo, such as religion and the monarchy. Due to these practices, public space is shrinking, civil society is prevented from fulfilling its functions, and free speech and freedom of the press are being muzzled. These are key enabling elements for a country in transition, elements

¹⁹⁰ For instance, scholar and activist Maati Monjib and independent journalists Ali Lmrabet, Hamid Mahdaoui, Hajar Raissouni, Soulaïmane Raissouni, and Omar Radi, as well as many other activists, have been frequently targeted by smear campaigns before being arrested on dubious charges.

without which deep democratization and rule of law, meant to be bulwarks against recurrence, seem to be a mirage rather than a reality.

The persistence of human rights violations—in forms and ways that are subtle and difficult to equate to the kinds of violations of the Years of Lead—in the country could easily be linked to the lack of effective implementation of the IER recommendations, especially those that are long-term and that describe remedying the structural drivers of violations and ending impunity through the adoption of a national strategy. The state appears to be struggling even to adopt symbolic measures. For instance, the IER recommended that the head of government apologize on behalf of the state for past grave human rights violations. Unfortunately, victims and the Moroccan people might have to wait for a long time, if not indefinitely, to hear such an apology. Furthermore, the arbitral decisions for the reparation victims received included not an explicit apology but only an implicit acknowledgment of the state's responsibility for the suffering they had endured. In regard to the politics of memory, the state seems to have achieved its goal of containing subversive narratives about the past. While many former victims published books about their ordeals, the historical elements that are included in the IER report and its archives became the dominant descriptions of the Years of Lead.

The IER requested legal and institutional reforms whose effective implementation would lead to the reconfiguration of the country's political architecture. The palace was only willing to reach a certain ceiling of reform and political liberalization, however, since any deep change would mean that the monarchy would have to let go of its far-reaching prerogatives. All indications suggest that in the current political context, the palace is not ready to sacrifice center stage as the dominant political player for the sake of edifying a democratic state. During the 2011 Arab Spring, the 20FM called for the establishment of a parliamentary monarchy in which the monarch reigns and does not govern; the monarchy responded with the 2011 constitution, through which the king relinquished some of his powers to the head of government and the parliament, but still remained le *maître du jeu*. The adepts of the executive monarchy claim that Moroccans are not ready for a parliamentary monarchy—a paternalistic view that is among the many obstacles that stand before Moroccans and a better future.

In addition to remedying past wrongs and establishing the rule of law, there is still work to be done on many fronts to create an enabling environment for the IER's legacy to ensure nonrecurrence. For instance, development in Morocco is hobbled by endemic corruption and flagrant inequality; the country was given a score of 40/100 on corruption by Transparency International in 2020 (up only moderately from 32/100 in 2006) and was ranked the most unequal country in North Africa by Oxfam International in 2020.¹⁹¹ Therefore, effective and holistic policies are needed to remedy corruption and create inclusive development strategies to ensure that all regions of the country receive their share of socioeconomic development—especially since the country's political and socioeconomic malaise manifests itself in the forms of illegal migration of Moroccan young people and social unrest in marginalized regions, the same ones that were excluded from development during the Years of Lead.¹⁹²

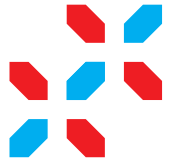
191 According to Transparency International's 2020 Corruption Index, Morocco is ranked 86/180 with a score of 40/100. Additionally, according to Oxfam International's 2020 report, Morocco is the most unequal country in North Africa.

192 In 2018, for instance, Moroccans were the largest single nationality arriving to Europe through Spain. See European Commission, "Communication from the Commission to the European Parliament, the European Council and the Council: Progress Report on the Implementation of the European Agenda on Migration" (March 6, 2019).

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