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Transitional Justice in Morocco: A Progress Report

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I. INTRODUCTION

“My story is that of thousands of Moroccans. I dream of lifting the veil on the dark years without fear of repression in the future.”— Jamal Ameziane³

Morocco has long held a reputation as a moderate “bridge” state able to link disparate regions and balance international political tensions. Former King Hassan II embodied this quality in his ruling style. Yet behind his positive image as an international ambassador lay a brutal reality. Within Morocco, the King often ruled with an iron fist.⁴ Those who were considered a threat to the regime were subject to a wide range of human rights violations. Thousands were subjected to arbitrary arrest, torture, and enforced disappearance, leaving behind a bitter legacy. Starting in the early 1990s, however, a gradual process of dealing with the past began to take root, culminating most recently in the work of the Moroccan Equity and Reconciliation Commission (*Instance Équité et Réconciliation* (IER)), established by the successor to the throne, King Mohammed VI.

Since January 2004, the IER has been working on addressing the terrible legacy of this era by investigating some of the worst abuses in Morocco and arranging reparations for victims and their families. The Commission represents a groundbreaking approach for the entire region and is exceptional in many respects. It has the blessing of a King examining the crimes of his own father; its membership comprises many victims of arbitrary detention and torture; it is the only truth commission to ever have possessed the power to grant compensation directly to victims; and it is the first truth commission in the Arab world. For these and other reasons, the IER has the potential for significant regional and international influence, both in the short and long term.⁵

Over the duration of its mandate, the IER has amassed an archive of more than 20,000 personal testimonies from victims and their families, which it has organized in a central database in Rabat. It has conducted a range of meetings, conferences, and seminars around a multitude of issues that are key to understanding Morocco’s past and present. It has also taken the monumental step of holding public hearings to give victims a platform from which to share their sufferings. Throughout its work, the Commission has aimed to document, preserve, and analyze the roots of the crisis in an attempt to help Morocco come to terms with its past. While it is still too early to assess the outcome, it is clear that the IER’s work will have an enduring impact.

This report seeks to trace the events that led to the development of the IER and its current work, providing both a historical reference and laying the foundation for a more thorough analysis once the Commission’s work has been completed. The report is largely based on

³ One of the first to testify at the public hearings in Rabat in December 2004. His father was “disappeared” in 1958 after leading an antigovernment revolt. See “Morocco Confronts Past Rights Abuses,” Al-Jazeera net, Dec. 22, 2004, available at English.aljazeera.net/NR/exeres.

⁴ See generally Patricia J. Campbell, “Morocco in Transition: Overcoming the Democratic and Human Rights Legacy of King Hassan II,” *African Studies Quarterly*, March 2003, Vol. 7, No 1, at 51, available at web.africa.ufl.edu/U7/v7i1a3.htm.

⁵ This is not to imply homogeneity throughout the Middle East and North Africa, but rather to suggest the domino effect these initiatives sometimes have.

work carried out by the International Center for Transitional Justice (ICTJ)⁶ in Morocco since December 2003, just weeks prior to the appointment of the IER's members. The ICTJ has worked closely with the Commission in the period leading up to its establishment, encouraging a transparent and participatory process for establishing the mandate and selecting commissioners. The Center has provided the Commission with ongoing technical assistance in areas such as conducting public hearings, developing communications and outreach strategies, and providing comparative analyses on reparations and human rights archives. The ICTJ has also been actively engaged with Moroccan nongovernmental organizations, stressing their role in monitoring and critiquing the IER and assisting victims in presenting their submissions.

In anticipation of the IER's submission of its final report to the King in November 2005, this paper offers several recommendations meant to bolster and augment Morocco's truth-seeking experience in the coming months and years:

- *Truth-seeking.* The IER's final report should be made promptly and broadly available to the public in the principal languages of the country.
- *Justice and Accountability.* Where serious crimes were committed and individual perpetrators identified, the Moroccan government should take steps to bring perpetrators to justice.
- *Vetting.* The IER should consider recommending a fair and effective vetting process in Morocco for the removal of abusers from public positions in the justice and security sectors.
- *Institutional and Legal Reforms.* The IER should recommend other reforms to laws and institutions that will increase the independence, transparency, and integrity of public institutions that deal with human rights violations.
- *Reparations.* The IER should propose a reparations program that effectively addresses the problems that plagued the Independent Arbitration Panel, particularly regarding the disparities in the amounts of individual awards and the lack of transparency in the panel's methodology.
- *Memorials.* The IER should recommend a process of extensive consultation with victim groups as part of any subsequent state effort to create memorials commemorating those who suffered.
- *Archives.* The IER should propose a protocol and timeframe based on best international practices to govern future access to archives of thousands of victims' testimonies in its possession.
- *Formal Apology.* The final report will provide an opportunity for King Mohammed VI to issue a full and formal apology to victims on behalf of the state for its role in violations against its own people, and an opportunity to renew his pledge to end impunity in Morocco.

⁶ The ICTJ assists countries pursuing accountability for past mass atrocity or human rights abuse, providing comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others. For more information about the ICTJ, see www.ictj.org.

II. BACKGROUND: THE ERA OF REPRESSION (1950s–1990s)

Standing at the northwestern tip of Africa, only a few miles from the southern end of Spain, Morocco is situated at the crossroads of the Christian and Muslim worlds, and at the confluence of Western, African, and Arab cultures.⁷ The influences of these traditions and many others (including the indigenous Berber culture) are apparent throughout the country.⁸

Until the twentieth century, the ‘Alawi monarchy ruled Morocco. Based on the so-called “Sharifian principle,” Morocco’s monarchs lay claim to being the direct descendants of the Prophet Muhammad, making them both the temporal and spiritual rulers of the country.⁹ From 1912 to 1956 the country was a protectorate of France (in the south) and Spain (in the north), but in 1956 it regained its independence and the monarchy was restored. Today Morocco is a constitutional monarchy, with political power concentrated in the royal palace and limited powers residing in the elected parliament.

The population of Morocco, mostly arabophone and Muslim, comprises approximately 30 million inhabitants. There is also a large Moroccan diaspora (almost 2 million) concentrated in Europe, principally France. Although Morocco is a stable country, it remains very poor, with high rates of unemployment and low levels of literacy.¹⁰ At the same time, Morocco stands out among Arab countries for its relative openness and tolerance.

A. Political Turmoil, Reward, and Punishment

The era of widespread repression in Morocco, commonly known as the “years of lead” (*les années de plomb*), began shortly after the country gained its independence from France in 1956.¹¹ The roots of state violence can be traced to the struggle for independence that spawned regional revolts and two major political parties.¹² In an effort to eliminate all opposition, entire areas that had joined in the struggle for independence were subsequently subjected to severe crackdowns under Morocco’s first post independence ruler, King Mohammed V. The Northern Rif, for example, found its anticolonial struggle turned against it as soon as independence was achieved. The region revolted in 1958, only to be brutally crushed by the Royal Armed Forces, resulting in thousands of deaths. To this day, it remains relatively isolated from the rest of the country, with high unemployment and limited investment from the central government.

⁷ See Campbell, *supra* note 4 at 38.

⁸ Other traditions, such as that of Morocco’s once-large Jewish community, are also present, but much less apparent.

⁹ See Campbell, *supra* note 4 at 39.

¹⁰ Morocco was ranked 124th in the UN’s most recent human development index. For details, see the UNDP’s Human Development Report, available at www.hdr.undp.org/statistics/data/countries.cfm?c=MAR. See also the World Bank’s 2004 data on Morocco, available at devdata.worldbank.org/AAG/mar_aag.pdf.

¹¹ Technically the “years of lead” started in 1969, but the era of abuses has its roots in the first days of postcolonialism. See Pierre Vermeren, *Histoire du Maroc Depuis L’indépendance*, Paris: La Découverte, 2002.

¹² These were the Istiqlal Party (conservative nationalist) and the Union National des Forces Populaire (a leftist offshoot of Istiqlal). See generally Abdeslam M. Maghraoui, “Democratization in the Arab World: Depolitization in Morocco,” *Journal of Democracy*, Oct. 2002, Vol. 13, No. 4.

When Hassan II inherited the throne from his father in 1961, he adopted a softer style of repression that blended handsome rewards and harsh punishments. His preferred tactic was to neutralize potential power contenders through incentives such as generous land grants, business deals, and offers of well-paid government positions.¹³ Indeed, Hassan II's skill lay in the fact that he "could co-opt members of various parties, squelch dissent, crush enemies, and still be regarded by many as a beloved monarch."¹⁴

The 1960s and 1970s witnessed the worst abuse against perceived or potential enemies. Trade unionists, Marxists, intellectuals, farmers, Islamists—anyone suspected of being critical of the monarchy—could potentially be subject to a wide range of punishments, often just for the "crime" of a rumored political affiliation.¹⁵

The crackdown was especially severe against members of the left-leaning National Union of Popular Forces Party (UNFP), whose leader, Mehdi Ben Barka, was forced into exile in France and later forcibly disappeared. Speculations around his death have implicated a range of French, Moroccan, and American agents who appear to have acted in collusion. It is rumored that he was tortured and killed in France and that his body was dissolved in a vat of acid.¹⁶

In 1970 and 1971, two unsuccessful attempted *coups d'état* provoked wide-scale arrests, military trials, and executions of those thought to be involved. In 1973, 58 members of the armed forces who received prison sentences were transferred to the secret detention center of Tazmamert, where they were held in conditions that led to long, slow deaths.¹⁷ The trials themselves were mostly conducted *en masse* and, by all accounts, were sham proceedings.¹⁸ Punishment was meted out broadly, sometimes drawing in family members who were imprisoned together for decades at a time.¹⁹

¹³ It has been said that Hassan II "used modern institutions to preserve medieval political authority." See Abdeslam Maghraoui, "Political Authority in Crisis," *Middle East Report*, Spring 2001, Vol. 218.

¹⁴ See Campbell, *supra* note 4 at 39.

¹⁵ "By 1973 all the constituent elements for widespread abuse were in place: the criminalization of political opinion, arrest without warrant, detention without reason, unlimited extensions of time spent in *garde a vue* or preventative detention, the creation of secret prisons, and the institutionalization of torture." Susan Slyomovics, *The Performance of Human Rights in Morocco*, Philadelphia: University of Pennsylvania Press, 2005, at 21.

¹⁶ For a detailed background on this case, see Bernard Violet, *L'Affaire Ben Barka*, Paris: Fayard Press, 1991.

¹⁷ In 1991, 27 surviving members of this original group were released.

¹⁸ The trial of the so-called "Group of 71" is a frequently cited example of a sham trial. See "Hidou Abdallah Calls for Reassuring Moroccans that Human Rights Violations will not Occur Again," Arabic news On-line, Dec. 12, 2004, available at www.arabicnews.com/ansub/Daily/Day/041224/2004122423.html.

¹⁹ The most notorious case concerned the wife and six children of 1971 coup leader Colonel Oufkir, who was said to have committed suicide just after the failed coup. His family spent 18 years in a secret prison. One of his daughters wrote a book about the ordeal. See Fatima Oufkir, *Dans les Jardins du Roi*, Paris: Lafon Press, 2000.

Although repression in Morocco was widespread, the Sahrawis of the Western Sahara bore the brunt of it.²⁰ Under Spanish colonial rule since 1884, the region had a long history of struggle against external power. The discovery of high-grade phosphate deposits there in 1949 increased Spanish resistance to allowing Sahrawi self-rule,²¹ but in the 1970s Spain came under increasing pressure to withdraw as the indigenous armed Polisario movement emerged and strengthened.

In November 1975, Spain began plans to withdraw from the territory of the Western Sahara. Around the same time, the International Court of Justice published a decision against Morocco's claim to rule the territory.²² Sensing an imminent loss of control, Hassan II ordered the so-called "Green March" to lay claim to the region as part of Moroccan territory. As many as 350,000 Moroccan civilians and 50,000 soldiers crossed into what was still the Spanish Sahara to claim possession of it for the King. Spain subsequently ceded the region to both Morocco and Mauritania, denying local claims to an independent Sahrawi Arab Democratic Republic (SADR). Two years later, in 1979, Mauritania signed a peace treaty with the Polisario front and withdrew from the territory. Morocco then annexed the entire region of what is now called the Western Sahara, prompting an armed conflict between the government and Polisario. Thus began a long era of violence and struggle that often affected relations with Algeria as it became increasingly supportive of the Sahrawi cause.

Disappearances of Sahrawis started in the 1970s and appear to have continued up until the early 1990s, when several hundred "disappeared" persons were released. Consistent with repression against other dissidents, Sahrawis of all walks of life were subject to detention, torture, and disappearance simply on the suspicion that they did not support Moroccan control of the territory. This included "elderly people and children, disappeared because of their family links with little known or suspected opponents to Moroccan government policy in the Western Sahara."²³

Despite a UN-sponsored cease-fire in 1991, the Western Sahara continues to experience violence and human rights abuse, although not on the scale of previous years. It also remains a taboo subject in public discourse. The political atmosphere around the crisis has made dealing with crimes especially problematic. Considered a high security threat, access to the region is strictly controlled, rendering investigations into abuses there difficult.

²⁰ According to Amnesty International, more than 900 people were disappeared in Morocco between the mid-1960s and early 1990s, the vast majority from the Western Sahara. The last-known large wave of Sahrawi disappearances took place in 1987.

²¹ Battles between the Sahrawis and Spanish troops started just after the Berlin Conference of 1884. The phosphate discovery of the 1950s made the region one of the richest high-grade deposits in the world and greatly increased its value as a colony. For a historical timeline, see www.wsahara.net/history.html.

²² See the International Court of Justice Advisory Case Archives, available at www.icj-cij.org/icjwww/idecisions/isummaries/isasummary751016.htm.

²³ See Amnesty International, "Turning the Page: Achievements and Obstacles," MDE 29/001/1999, Aug. 4, 1999, available at web.amnesty.org/library/Index/ENGMDE290011999?open&of=ENG-MAR.

B. Characteristics of Human Rights Violations

Morocco's "years of lead" were characterized by a wide variety of abuses. Thousands of individuals were victims of violations that ranged from arbitrary detention and torture to extrajudicial execution and forced disappearances. Survivors of torture in Moroccan prisons have written autobiographical accounts of captivity in dark and cramped cells deep within secret detention facilities. It is difficult to establish the exact number of disappearance cases, but estimates run between 1,000 and 2,000 victims. The fate of hundreds of disappeared persons remains unknown.

C. Locations of Abuses

The use of secret detention facilities was widespread in Morocco. Some of these were prisons or forts, some were buildings in the middle of tourist routes or downtown areas, and some were secluded villas, farms, or private homes. Most were not included in the Ministry of the Interior's registry of official detention centers. In other cases, prisoners were also secretly kept in official prisons without access to the outside world.

The most notorious secret detention centers included:

- *Tazmamert*: (تازمامرت) A secret prison, near Er-rachidia's main road, specifically built for those implicated in the coup attempts of 1971–1972. A total of 58 officers were sentenced to anywhere from three years to life here. The aim of this prison appears to have been the "slow death of its inmates."²⁴
- *Agdz*: (أكزز) An ancient fort at the center of a small town in southern Morocco used primarily to hold Sahrawis from 1977 to 1983.
- *Qal'at M'gouna*: (قلعة مكنونة) A detention center in the valley of Wadi Dades, a popular tourist haunt. It was built to hold Sahrawi and Moroccan prisoners who, in many cases, would later be forcibly disappeared.
- *Dar al-Mokri*: (دار المقرري) The most notorious of 11 private villas in Rabat, where political prisoners were sent after being detained at detention centers.
- *Derb Moulay Cherif*: (درب مولاي الشريف) A secret detention center in Casablanca used mostly for political prisoners, secret trials, and torture.

III. THE 1990s: REFORMS, REAPPEARANCES, AND HUMAN RIGHTS

A. The Beginning of the End

The most widespread and systematic human rights violations in Morocco abated toward the late 1980s and early 1990s.²⁵ The decrease was partly due to the end of the Cold War, which led to an easing of repression in many countries around the world.²⁶ Nevertheless, many other events contributed to the change. In September 1990, the influential book

²⁴ See Amnesty International, "The Disappeared in Morocco," MDE 29/004/1993, April 1, 1993, available at web.amnesty.org/library/Index/ENGMDE290041993?open&of=ENG-MAR.

²⁵ This is not to suggest that they stopped completely or that they haven't become a problem again. Much has been written in the past few years about a renewed era of abuses since September 11, 2001, and the Casablanca bombings of May 16, 2003. See Human Rights Watch, "Morocco: Human Rights at the Crossroads," Oct. 21, 2004, available at hrw.org/reports/2004/morocco1004/index.htm.

²⁶ See Campbell, *supra* note 4, or Vermeren, *supra* note 12.

Notre Ami le Roi was published in Paris, revealing explosive details about the secret world of human rights violations in Morocco since the 1950s.²⁷ That same year, Amnesty International published a report detailing abuses in Tazmamert,²⁸ the secret prison whose existence King Hassan II had consistently denied.²⁹

In 1991, in response to these and other developments, the King released more than 330 “disappeared” persons, some of whom had been imprisoned for up to 18 years. These reappearances helped to break the silence around claims of abuse, and provided a rare glimpse into the world of Morocco’s secret detention centers.³⁰ It also fed the hopes of families still waiting for answers about their loved ones—answers that many felt could only be obtained through an open and official investigation.

B. The King’s Human Rights Council: CCDH

Ever sensitive about his image, in 1990 King Hassan II took the important step of establishing a Human Rights Advisory Council (*Conseil Consultatif des Droits de l’Homme* (CCDH)). The Council was tasked with advising the King on “all matters concerning human rights.”³¹ In the Council’s inaugural speech, the King hinted at the need for truth and reconciliation.³² At the same time, he made it clear that he would not tolerate open criticisms of the state or himself.³³

The establishment of the CCDH represented the first official step in dealing with Morocco’s legacy of abuse. The Council initially focused on legal and administrative reforms, particularly in regard to the Code of Criminal Procedure provisions dealing with

²⁷ The book is banned in Morocco. See Gilles Perault, *Notre Ami le Roi*, Paris: Folio Actuel, 1990.

²⁸ Amnesty International’s 1990 report, “Morocco: ‘Disappearances’ of People of Western Saharan Origin,” AI Index MDE 29/17/90, was followed by: “Morocco: A Pattern of Political Imprisonment, ‘Disappearances,’ and Torture,” AI Index: MDE 29/01/91. “These prisons are not on any list held in the prison administration division of the Ministry of Interior.” Source: The Moroccan government’s response to the UN Human Rights Committee’s questions on the whereabouts of Tazmamert, 1991. See Amnesty International, “The ‘Disappeared’ in Morocco,” April 1993, available at web.amnesty.org/library/Index/EngMDE29001193?openandof=Eng-Mar.

²⁹ In response to Amnesty International’s allegations, Hassan II stated publicly that “if 1% of the human rights violations suggested by Amnesty were true” he “wouldn’t get a wink of sleep.” See Human Rights Watch, “Morocco: Human Rights at the Crossroads: The Structural and Political Limitations Within which the IER Operates,” Vol. 16, No. 6(E), available at hrw.org/reports/2004/morocco1004/3.htm.

³⁰ It is worth noting, however, that freedom came at a cost for most of the reappeared. They faced constant harassment, questioning, and restricted freedom of movement because the security apparatus feared they would reveal too much. See Slyomovics, *supra* note 16 at 48–49.

³¹ Dahir No. 1.90.12, issued April 1990, Art. 1.

³² “I urgently ask you, members of this council, and appeal to your integrity and sense of civic responsibility for help to bring fairness where a wrong has been done and for help so that we can together succeed in raising this country to the level of civilized countries and states of the rule of law. I finally ask you to judge in all serenity whether, in such or such a case, human rights have been violated. In the affirmative, you will cry out the truth. In the negative, you will not hesitate to state that human rights have not been violated, that there was a lie, false testimony, or fabrication.” Speech of King Hassan II, May 8, 1990. See Human Rights Advisory Council, “CCDH: Ten Years in the Service of Human Rights,” Rabat: Al Maarif Al Jadida, 2000.

³³ “All Moroccans are tired of hearing that there are people imprisoned for political reasons in Morocco...should we some day read that a Moroccan has stated that such and such a region is not part of Moroccan territory, I should consider this a heresy and he could not be tried within the framework of the law, so that neither the status of a detainee nor a political prisoner could apply to this case.” *Id.*

limits on police custody and incommunicado detention periods (*garde à vue*).³⁴ Later it focused on other reforms, including limiting the terms of all police custody procedures, legislating the right to counsel, and creating a functional bail system.³⁵ Despite these and other notable advances, the CCDH failed to directly address cases of abuse from the “years of lead.”

In 1998, the King asked the CCDH to “examine the so-called pending files (on disappearances) in order to clear them once and for all.”³⁶ The CCDH did so, but dealt with a limited list of prisoners and missing persons, who it characterized as either “repentants” or “disappeared.”³⁷ The Council concluded that there were only 112 cases of missing persons.³⁸ Of these, 56 were declared dead, 12 were declared alive and living abroad or in unspecified locations in Morocco, and 44 were declared to have “unknown fates.” These conclusions were heavily criticized by local and international human rights organizations, all of which had documented cases numbering in the hundreds or thousands. Not a single Sahrawi case made it onto the list and no details were given about any of the people declared dead. At the same time, the Council characterized its findings as only a “first step” in investigations, and asked the King to allow the formation of a committee “to look closely and examine more deeply the aforementioned cases,” to publish the findings of that committee, and to issue death certificates to families.³⁹ The Council also requested that the King consider establishing a reparations committee:

(We ask) that all those concerned or their inheritors benefit from the appropriate compensation following your Hassanian tradition that protects and helps the dignity of your subjects. Then a special arbitration committee should be formed dealing with the amounts of compensation for those who deserve them.⁴⁰

This request would help form the basis for the next significant phase in Morocco’s confrontation of past abuse, as discussed below.

C. A Human Rights Culture Grows

Alongside the burgeoning activity of the CCDH, many other important events occurred. Two independent human rights organizations, the Moroccan Association for Human Rights (AMDH), established in 1979, and the Moroccan Organization for Human Rights (OMDH), established in 1989, became prominent voices in the public domain. In

³⁴ Much abuse stemmed from these *garde à vue* laws, which put Moroccan police in the position of serving both as “investigator and judge presuming the crime while imagining the eventuality of criminal charges.” Suspects could be legally detained for a maximum of four days before being charged. This was changed to six days in 1962, but for those accused of being “threats to the state” this could be doubled to 12 days. There was also an obligation to inform families right away, but this was rarely implemented in practice. See “The ‘Disappeared’ in Morocco,” *supra* note 29.

³⁵ See CCDH report, *supra* note 33 at 59–61.

³⁶ *Id.* at 113–128.

³⁷ *Id.* at 114. The report also contained the following request: “Your faithful servants...request from your majesty (that you consider) forgiving those who repent and regret and giving them a chance to prove themselves in the future, that You grant pardon to the following prisoners.”

³⁸ See “Turning the Page,” *supra* note 24.

³⁹ See CCDH report, *supra* note 33 at 119–120.

⁴⁰ *Id.* at 122–123.

addition, external organizations like Amnesty International and two Paris-based groups added vigilance to the struggle for accountability.⁴¹

At the state level, a Ministry for Human Rights was established in 1993.⁴² In addition, several steps were taken to integrate former “enemies” of the state into the system of national governance, including the appointment of the long-exiled human rights defender, Abderrahmane al-Youssoufi, as Prime Minister.⁴³

D. The Independent Arbitration Panel

In April 1999, the CCDH made a formal recommendation to the King to establish a body to compensate victims of certain categories of past human rights violations. The King approved this request just two weeks before his death in July of the same year. His son, Mohammed VI, assumed the throne at the end of the month.

In his first national speech, the young King began by acknowledging state responsibility for disappearances.⁴⁴ Seeking to portray a “kinder, gentler monarchy,” he rapidly took steps to mark a break with the repressive elements of the past, including the firing of the feared Interior Minister, Driss Basri.⁴⁵ He also appointed the members of a so-called Independent Arbitration Panel, which he charged with determining different levels of compensation for cases of arbitrary detention and enforced disappearance that occurred between 1956 and 1999. The Panel comprised three magistrates from the Supreme Court (one of whom served as President of the Panel), four members of the CCDH, one representative of the Ministry of the Interior, and one representative of the Ministry of Justice. The Panel operated under the auspices of the CCDH.

Despite the relative significance of this step, the initial tone set by the CCDH implied a lack of empathy toward victims. At the Panel’s inauguration, its members apparently asked the King:

to shed forgiveness on all those who were fool enough to commit, help, or participate in a crime and threatened the security of the State, and whatever may have resulted in the concerned authorities’ reactions or auxiliaries in order to protect the country.⁴⁶

The Panel started its work on September 1, 1999. The deadline for receipt of all applications was December 31 of the same year. This tight deadline was immediately, but

⁴¹ The Committee for the Struggle against the Repression and the Association for the Defense of Human Rights in Morocco. See www.mygale.org/06/maghreb.

⁴² The Ministry was closed in 2004.

⁴³ See Campbell, *supra* note 4.

⁴⁴ For full text of speech, see www.maec.gov.ma/fr.

⁴⁵ Basri’s name became synonymous with repression and corruption over the decades he worked for King Hassan II. Basri’s firing coincided with Mehammed El Battiui’s petition against him for “crimes against humanity” under Belgium’s former universal jurisdiction law. See Susan Slyomovics, “A Truth Commission for Morocco,” *Middle East Report 218*, Spring 2001. See also Abdeslam Maghraoui, “Political Authority in Crisis,” *Middle East Report 218*, Spring 2001, available at www.merip.org/mer/mer218.

⁴⁶ CCDH report, *supra* note 33.

unsuccessfully, criticized. The Panel received a total of 5,127 applications before the deadline, and more than 6,000 applications thereafter. The latter applications were excluded from consideration.

The Panel operated for approximately four years. In total, approximately 8,000 people testified at 196 general hearings and nearly 400 individual hearings. The Panel rendered 5,488 judgments: 3,681 applications were successful; 889 were rejected (due to the absence of any relation to forced disappearance or arbitrary detention); 750 were remitted for future deliberation; and 133 were deemed to lack sufficient evidence.⁴⁷ For the successful cases, the Panel awarded a total of nearly US\$100 million.⁴⁸ The lowest award was approximately US\$600 and the highest was approximately US\$300,000.

In some respects, this represented a remarkable advance. The operation of the Panel was premised on an implicit acknowledgment of responsibility by the state—not insignificant for a constitutional monarchy situated in the Arab world. In addition, substantial and much-needed compensation was provided to a significant number of victims and families.

At the same time, there were many serious criticisms. First, many disapproved of the disparity in the amounts of individual awards and the lack of transparency in the Panel's methodology for determining awards. A known factor in assessing individual awards was a person's income at the time of the violation.⁴⁹ Victims who were high-income earners received larger compensation awards than those who were not, even when the actual violations were, in factual and moral terms, equivalent. A second criticism related to the Panel's primarily "monetary" understanding of reparations. Victims, families, and their advocates had urged reparations packages that would also include the issuance of death certificates, the return of bodily remains, mental and physical health care, and an official acknowledgement of abuse by the state.⁵⁰ Yet another criticism of the Panel focused on the exclusion from its mandate of other important categories of human rights violations, such as extrajudicial executions.⁵¹ The deadline for applications, which resulted in more than 6,000 being excluded from consideration, constituted a further source of dissatisfaction. A final criticism concerned the absence of publicity about the process, and the absence of investigation by the Panel. None of the Panel's work was conducted in the public spotlight, and no investigation of individual or institutional responsibilities for past violations was undertaken.

Despite these criticisms, Morocco's Independent Arbitration Panel constituted an important regional precedent in the area of reparations for state-sponsored human rights violations. Just as important, its successes and shortcomings paved the way for the establishment of the IER.

⁴⁷See Benyoub Ahmed Chaouki. "The Independent Arbitration Panel Report." *The Moroccan Center for Documentation, Information, and Training in Human Rights*, June 2004.

⁴⁸ See "Human Rights at the Crossroads," supra note 30.

⁴⁹ See supra note 48.

⁵⁰ The importance of these death certificates cannot be understated. Many of the victims were women whose husbands, sons, or fathers had been disappeared, which created severe complications in their attempts to claim inheritance, divorce, or benefits from the state.

⁵¹ See "Human Rights at the Crossroads," supra note 30. The Panel took a liberal interpretation of forced disappearance by including cases of persons forcibly exiled "within" or "outside" of Morocco.

E. Moroccan Forum for Truth and Justice: “No to forgetting, yes to truth!”⁵²

When the Arbitration Panel started its work in 1999, a group of former political prisoners and human rights activists joined forces to make their concerns and demands heard. At a conference in Casablanca in October 1999, they established an NGO called the Moroccan Forum for Truth and Justice (*Forum Vérité et Justice* or FVJ). A 13-member executive committee was formed with Driss Benzekri, future head of the IER, at the helm.

During the Arbitration Panel’s operation, the FVJ campaigned relentlessly for an independent truth commission and a broader working definition of reparations. The FVJ drafted a standard form for all victims and families to use in documenting details of violations. It also organized several important commemoration activities.⁵³ In addition, together with other local NGOs like the AMDH and OMDH, the FVJ organized truth caravans (*caravanes de vérité*) to former detention centers, where they conducted and recorded testimonial sessions akin, in some respects, to truth commission public hearings.

IV. TOWARD A TRUTH COMMISSION

In April 2001, the King made some fundamental changes to the CCDH’s structure in response to growing criticism of its narrow mandate and composition, and in an effort to conform to the UN’s “Paris Principles.”⁵⁴ By royal decree, the King decreased the number of seats reserved for political parties and unions, making way for greater participation by NGOs.⁵⁵ He also appointed Driss Benzekri as secretary general.

In November 2001, several human rights organizations organized a symposium in Rabat to discuss the feasibility of creating a truth commission for Morocco. At the symposium, the OMDH, AMDH, and FVJ elaborated a formal proposal to the King to create what would later become, in modified form, the IER.⁵⁶ The newly configured CCDH was openly receptive to the symposium’s recommendations. In late 2003, it prepared a formal submission to the King that emphasized the need to “deepen the democratic transition” and “turn the page of the past once and for all” through the establishment of a truth commission. The King approved the recommendation on November 6, 2003, and ceremoniously inaugurated the Commission on January 7, 2004, in Agadir. On that occasion, the King delivered a speech that made extensive reference to the IER as a mechanism “adopted to uncover the truth” and a “truth and fairness body.” This was a

⁵² The quote is taken from the slogan displayed on banners at the first press conference organized by the Forum for Truth and Justice. The full slogan read, “No to forgetting, no to a spirit of revenge, yes to truth, yes to steps that restore justice and permit the page to be truly turned.” See Campbell, *supra* note 4 at 76.

⁵³ For example, the FVJ declared October 29 as the National Day of the Disappeared with a press conference featuring testimonials and a mass demonstration in front of the Parliament building. It also started memorialization work in museums and schools. See Slyomovics, *supra* note 46.

⁵⁴ Principles relating to the status of national institutions vested with the competence to promote and protect human rights. Adopted by the UN General Assembly Resolution 48/134 of December 1993. See www.ohchr.org/English/law/parisprinciples.htm.

⁵⁵ For the full text of the dahir, see www.ccdh.org.ma/article.php3?id_article=82&lang=fr.

⁵⁶ For the full text, see www.omdh.org/communiqués/symposiu.htm.

noteworthy emphasis, given that the Commission does not have the word “truth” in its title.⁵⁷

V. THE IER IS BORN: A FRAMEWORK FOR ACTION

A. Composition

The IER comprises a president and 16 members, each of whom was chosen and appointed by the King upon the recommendation of the CCDH. Nine are members of the CCDH, including the President. Several commissioners are former political prisoners and torture survivors, again including the President.⁵⁸

Although the IER staff includes many women in key positions, the IER has only one female commissioner. At the height of its activities, the IER employed close to 200 staff working in various capacities.

B. Mandate: Truth, Reparations, and Prevention

The period of January to April 2004 constituted the IER’s preparatory phase when, among other things, the Commission drafted its mandate, hired staff, and commenced research and investigation. The IER mandate was based on the original CCDH recommendation, but it also drew inspiration from the King’s January 7 speech and the terms of reference of truth commissions in other countries. On April 10, 2004, the IER’s mandate was adopted and issued by the King by means of a dahir (royal decree).⁵⁹ The dahir was published in the Official Bulletin on April 12, 2004.

Although the mandate did not include a specific time frame for the IER’s operation, the Commission aimed to take one year to complete its work (April 12, 2004–April 12, 2005).⁶⁰ Consistent with the original CCDH recommendation, the mandate tasked the IER with investigating violations committed during the period starting with independence in 1956 and ending with the date of the inception of the Arbitration Panel in 1999.⁶¹ In the government’s words:

The creation of the Equity and Reconciliation Commission seeks to close definitively the file of human rights abuses committed in the past. It is tasked with making just reparations to achieve the rehabilitation of victims, and their social reintegration, while conducting investigations to clarify cases of disappearance. The commission is working to seek the truth on enforced disappearances, arbitrary detentions, and the pursuit of a judicial treatment of human rights violations. It must respond to the demands of families, emphasizing the need to repair the harm suffered, which should not be limited to paying compensation but

⁵⁷ See also the IER’s website at www.ier.ma. The commission describes itself as “a national commission for truth, equity, and reconciliation.”

⁵⁸ For a full list of names and a short bio on all the commissioners, see www.ier.ma/_fr_article.php?id_article=204.

⁵⁹ Dahir no. 1.04.42 of 19 Safar 1425 (April 10, 2004). See www.ier.ma/_fr_print.php?id_article=221, Appendix III.

⁶⁰ The commission’s mandate has since been extended to November 30, 2005.

⁶¹ Article 8.

should also include rehabilitation, both in an individual and collective sense, of the victims. In the case of persons who are determined to have died, the commission will seek to find where the bodies are buried and to establish the responsibilities of different state bodies.⁶²

The mandate comprises 27 articles organized into six distinct parts: general provisions, powers, operational structure, administration and financial issues, communication and information, and final provisions.

The Commission's primary objectives are specified in Article 9 and include establishing the truth about past violations, providing reparations to victims and families, and recommending measures aimed to prevent future abuses. These objectives are partly intended to redress criticisms made of the Arbitration Panel. For example, rather than adopting a narrow view of reparations, Article 9 recognizes reparations as comprising "medical and psychological re-adaptation, social integration, settlement of administrative, legal, and professional problems, and restitution of property." Also significant is Article 17, which confers to the IER the power to deal with unresolved or unaddressed cases of the former Panel.

Concerning the objectives of truth and prevention, the mandate requires the Commission to situate past violations in historical context and contrast them against the values of human rights and democracy.⁶³ While its mandate prohibits the publication of findings of individual responsibility as part of the truth-seeking process, the IER is required to determine "the responsibilities of the state organisms or any other party."⁶⁴ The IER is also tasked with clarifying specific incidents through the gathering of forensic and factual evidence about particular cases that remain unresolved, and with elaborating "proposals of measures to preserve memory and guarantee the non-repetition of the violations."⁶⁵

C. Subject Matter Jurisdiction

The IER's mandate specifies that the violations under investigation are limited to the same two on which the Arbitration Panel focused: enforced disappearances and cases of arbitrary detention. Nevertheless, from its inception the IER interpreted its mandate in a broad fashion in recognition of the fact that both crimes may entail the violation of various rights, including the rights to life, liberty, and judicial protection. Such a broad approach is also consistent with the terms of the mandate, which give the Commission the discretion to establish "the nature and amplitude of the violations"⁶⁶ within its remit.

D. Personal Jurisdiction

The IER's work is meant to focus on violations committed by state agents or individuals acting on behalf of the state. The mandate explicitly defines the crimes of enforced

⁶² From Morocco's report on compliance with the International Covenant on Civil and Political Rights, excerpted in: Human Rights Watch, "Human Rights at a Crossroads," supra note 30.

⁶³ Article 9, para. 1.

⁶⁴ Article 9, para. 3.

⁶⁵ Ibid.

⁶⁶ Article 9, para. 1.

disappearance and arbitrary detention as systematic manifestations of the government's brutality against its people, rather than as incidents of "individual excess."⁶⁷ This is a useful starting point for identifying chains of command, broad patterns of abuse, and the complicity of state institutions.

E. Territorial Jurisdiction

The IER is mandated to investigate violations committed anywhere on the territory of Morocco, including in the contested area of the Western Sahara. Its territorial jurisdiction also extends to work outside the country. This is significant because many Moroccans were forced into exile in Europe and elsewhere during the "years of lead." The IER encouraged such expatriates to submit information about their cases.

F. Investigative Powers

The IER lacks powers of investigation such as subpoena or search and seizure powers. Public officials in the country are, however, under a legal obligation to cooperate with all IER requests for information and evidence, as the Commission's mandate comes directly from the King by way of a royal decree. Yet it remains unclear what level of cooperation the IER has received from state institutions. For its part, the Commission has not publicly complained of any lack of cooperation. However, it will be surprising if the IER experiences the full cooperation of state institutions that might be directly implicated in past abuse. The experience of other truth commissions in this regard is far from encouraging.

G. Commission Working Groups

The IER is organized into three main working groups, each representing a pillar of the mandate.⁶⁸ These groups are required to report periodically to the plenary, where all major policy decisions are taken. The groups are organized as follows:

- The Investigations Working Group is tasked with "conducting investigations on cases of enforced disappearance that haven't yet been clarified, and gathering all information and declarations about past serious violations."⁶⁹
- The Reparations Working Group is tasked with "completing the work of the previous arbitration board on reparations for moral and material damages suffered by victims of enforced disappearances and arbitrary detentions and their heirs, on the basis of the same arbitral procedures and principles of justice and equity. It must also ensure reparations for other kinds of damages suffered by the victims of forced disappearance and arbitrary detentions."⁷⁰
- The Research Working Group tasked with "undertaking the necessary research and studies to fulfill the mission of the IER and to gather and analyze the

⁶⁷ Ibid.

⁶⁸ January 7, 2004.

⁶⁹ Article 16.

⁷⁰ Article 17.

information, data, and conclusions of the different working groups in the perspective of the writing of the final report.”⁷¹

The IER later established two ad hoc committees, both comprising members of the three working groups:

- The Public Hearings Committee was formed in July 2004 after IER members made the formal decision to hold public hearings. The committee was responsible for devising general operating principles and procedures for public hearings, arranging logistics, and working with the media.
- The Final Report Committee was formed in September 2004 to begin work on the final report. According to the IER’s mandate, and consistent with the practice of other truth commissions, the report will contain detailed findings of fact, together with recommendations for how to address past abuses and prevent future violations.

VI. THE IER AT WORK

A. Fact-finding and Reparations

On January 12, 2004, prior to the promulgation of the IER’s mandate, the newly appointed commissioners announced they would accept applications for compensation from victims for a period of one month. By February 12, the office in Rabat had received more than 13,000 submissions. The Commission added these to the thousands of unexamined dossiers of the Arbitration Panel, as well as other dossiers from that era that were deemed crucial in the context of the IER’s investigative mission. The one-month deadline was not enforced for cases of disappearances that remained unresolved.

One of the IER’s first tasks was to review and organize the approximately 20,000 cases under its charge. The reparations working group hired more than 100 temporary staff and graduate students to assist in the process. The IER also benefited from extensive assistance from international experts who had worked on other truth commissions. It designed a sophisticated database to capture and analyze the information contained in the case files, and provided immediate medical treatment to those in urgent need.⁷² In spring 2005, the reparations working group presented a comprehensive analysis and proposal to the IER plenary that comprised individual, collective, material, and symbolic forms of reparation, including the conversion of former detention centers into socio-economic projects and cultural centers. In September 2005, the general outline of its proposed national reparations program was presented to the public in a three-day National Forum that was attended by hundreds of state and nonstate representatives from all parts of the country (and the broader region), including many victim groups and human rights organizations. The Forum included workshops on topics such as: community and regional

⁷¹ Article 18.

⁷² In total, nearly 1,000 victims received medical and psychological attention from the IER’s medical unit. The Commission and the Ministry of Health estimate that more than 9,000 victims suffer from various forms of ongoing illness. See *Notes de cadrage des ateliers*, distributed by the IER at its National Forum on Reparation.

reparation and development; the link between memory, history, and archives; gender dimensions of reparations; and physical and mental health issues for survivors.⁷³

In the area of investigation, the IER investigations working group met with thousands of victims and families to take their statements. It also conducted in-depth investigations into many complex or unresolved cases. Members of the working group traveled at regular intervals, covering more than 30 districts throughout the country. The information it obtained was circulated among other IER working groups and committees. The IER has already indicated that it has been able to clarify many cases of missing persons. These cases have been variously categorized, *inter alia*, as enforced disappearance (in the international legal sense of the term), death in prison, or death in the context of a riot or conflict.⁷⁴

The IER's research working group complemented the investigations working group by examining the broader set of factors that contributed to violations. This task was sometimes pursued in a public and interactive manner. For example, the IER organized several televised national forums on topics such as prison literature, state violence, and the concepts of truth and reconciliation. These forums were meant to enhance "an active thinking mode, to set up projects and action plans with a view to reinforce the rule of law and guarantee the non-recurrence of such violations."⁷⁵ Behind the scenes, the working group also managed to prepare more than 20 studies on subjects including constitutional human rights protections, security sector reform, and the promotion of democratic values and practices.

B. Public Hearings

The Commission's most visible work was the public hearings it organized for victims. The IER's mandate omits mention of such hearings, but commissioners interpreted the charge to "develop and promote a culture of dialogue" as an authorization to hold public hearings.⁷⁶

Commission members sought to craft the most appropriate and functional format for public hearings, based on both the Moroccan context and previous experiences worldwide. On its website, the IER affirms an intention to help "rehabilitate the victims by giving them voice and letting them share their suffering with the nation." Commissioners envisioned the hearings as education and sensitization tools that could help restore victims' dignity and contribute to a national vigilance against recurrence.⁷⁷

The IER held a total of seven sessions, mostly in regions known for relatively higher levels of repression during the relevant time period. The first two hearings were held in Rabat. These were followed by hearings in Figuig, Rachidia, Khenifra, Marrakech, and

⁷³ For details of the Forum, see www.ier.ma.

⁷⁴ See further details in the IER's *Fiche methodologique succincte*, available at www.ier.ma.

⁷⁵ "Rights Body Holds Parallel Dialogue Sessions to Public Hearings," Arabic News On-line, Feb. 12, 2005, www.arbaicnews.com/ansub/Daily/Day/050212/2005021221.html.

⁷⁶ Dahir, Article 9, para. 7. The formal announcement of this decision is available at www.ier.ma/_fr_article.php?id_article=575.

⁷⁷ See www.ier.ma/_fr_print.php?id_article=416.

El Hoceima. A final session, planned for Laayoune in the Western Sahara, was postponed due to security concerns.

All public hearings were held in auditoriums and meeting halls. They were widely attended, in some cases by senior advisers to the King, government ministers, opposition party leaders, diplomats, international press, and representatives from the country's major human rights NGOs. Hearings were initially broadcast live on Moroccan television and radio, with highlights beamed throughout the Middle East by Al-Jazeera. Subsequent hearings were taped and excerpts televised afterward.⁷⁸

Typically, testifying victims sat on stage directly facing the audience, flanked in silent solidarity by roughly 30 additional victims and commissioners. Each witness was given approximately 20 minutes to speak. By design, commissioners refrained from asking questions of the witnesses during or after their testimonies. Anyone called to testify was asked not to invoke the name of persons deemed responsible for the violations in question. This expectation provoked significant controversy and criticism.⁷⁹

The public hearings generally operated in a solemn, victim-centered fashion, and included prior and follow-up emotional and psychological support for those who testified. The hearings covered a wide variety of violation types, regions, and historical periods in order to create as representative a picture as possible of the different episodes and forms of abuse. Individuals were selected to testify on the basis of specific criteria: gender balance, regional representation (based on historical events, type of violations, and location of detention centers), clarity and significance of the specific story, psychological strength of the particular victim, and diversity of stories (in order to avoid repetition).⁸⁰ Such criteria were essential, as less than one percent of the total pool of identified victims would have the opportunity to testify publicly.⁸¹

The hearings were widely viewed within Morocco and the region, and received far more media attention than other aspects of the Commission's work. Despite a few disruptive incidents,⁸² the hearings were well received in their own locales and provoked significant public debate and an outpouring of emotion.⁸³

⁷⁸ According to the IER, the decision not to use live broadcasting after the first two hearings was both a precautionary measure against unplanned outbursts and a way to improve the quality of the broadcasts by selecting excerpts that would attract a wider audience. The audio and video of all of the IER's hearings can be downloaded directly from www.ier.ma.

⁷⁹ As a reaction to the IER's approach, the AMDH organized non-televised "alternative hearings" at which victims could name perpetrators. Over the years, the AMDH has also published extensive lists of presumed torturers. See "Témoignages en Toute Liberté pour la Vérité," Feb. 12, 2005, available at amdh.org.ma/html/act_pub.asp. See also "Public Hearings Point out 'Polisario' Human Rights Violations," Arabic News On-line, April 28, 2005, available at www.arabicnews.com/ansub/Daily/Day/050428/2005042803.html.

⁸⁰ The criteria are posted at www.ier.ma.

⁸¹ Given resource and time limits, as well as the large number of victims and their families, the IER sought to capture a representative cross-section from each region.

⁸² For example, the hearings in Al Hoceima in May 2005 were disrupted by a group of young men chanting, "Today, today, not tomorrow! We demand the executioners be tried!" The hearing was suspended for several hours but resumed later that day.

⁸³ See "Emotional Moments at Morocco's Rights Commission Hearings," *Khalleej Times*, Feb. 4, 2005.

C. Other IER Activities

Throughout its operation, the IER conducted a variety of additional activities. For example, it organized meetings between individual victims and representatives of various public institutions. It also met with international organizations and agencies, ranging from the International Rehabilitation Council for Torture Victims,⁸⁴ to officials and NGOs from foreign states looking to create their own truth-seeking mechanisms. The Commission also conducted a modest publicity and outreach campaign and co-sponsored two training workshops on transitional justice for human rights activists from across the region. On gender issues, the IER worked with both national and international NGOs to ensure attention to women's distinctive needs and preferences in its work. Work on this topic informed the research strategy, public hearings, reparations policy, and final report.

VII. THE IER: CRITICISMS, HOPES, AND RECOMMENDATIONS

A. Key Criticisms

The IER has been the subject of public criticism on many fronts. Until it held its first public hearings, many focused on its lack of rapport with the broad public. There were also concerns expressed about politicians' lack of engagement in the truth commission process. Members of government and parliament are expected, and will need, to play a key role in implementing the IER's recommendations.

Limited decentralization of its operations was another noted problem. Throughout its operation, the Commission had only one permanent office, located in Rabat.⁸⁵ The Commission's perceived inability to compel testimony from those who might be responsible for, or have information about, past abuses was another source of concern. Although the IER's mandate requires all parties to cooperate with the Commission, there is little leverage to elicit information and evidence from implicated parties.⁸⁶

The lack of adequate differentiation between the CCDH and the IER was yet another subject of criticism. The fact that the IER president and half of the other commissioners retained their positions with the CCDH during the IER's period of operation diminished the IER's appearance of independence.

Probably the greatest shortcoming, however, was the Commission's relationship with some of the country's main human rights organizations, including the AMDH, OMDH, and FVJ. Some NGOs felt from the very beginning that the Commission's mandate fell short of full truth and accountability. Others felt frustrated by their own seemingly

⁸⁴ "IRCT Praises Morocco's Efforts to Rehabilitate Victims of Torture," Arabic News On-line, May 9, 2005, available at www.arabicnews.com/ansub/Daily/Day/050509/2005050929.html. See also "Réunie avec la Fédération des Editeurs de Journaux: L'IER S'engage Pour une Culture des Faits."

⁸⁵ The Commission briefly established an office in the Western Sahara. Its role was limited to statement taking.

limited role and the IER's lack of organized consultations. Disparaging public remarks about NGOs that were made by the IER president in February 2004 only added fuel to the fire. This set off a negative dynamic that tainted several organizations' relations with the IER during most of its period of operation. This dynamic notwithstanding, Moroccan groups established a truth commission monitoring committee. They also prepared their own detailed report containing recommendations on the political and legal reforms they deem necessary to consolidate democracy, human rights, and the rule of law. By the final weeks of the IER's work, relations had improved considerably, but an opportunity for closer collaboration had been missed on both sides.⁸⁷

B. Additional Concerns

Other concerns about the IER relate to the broader political context in which it operates, particularly the issue of ongoing impunity for serious human rights violations. The Moroccan government appears to be backsliding in the area of civil liberties and human rights.⁸⁸ Although the government has taken steps to criminalize torture under domestic law, there are new reports of forced confessions, torture, and violations of *garde à vue* laws being committed in the country's own "war on terrorism."⁸⁹ In addition, renewed concerns about freedom of the press have been expressed following a crackdown on journalists such as Ali Mrabet, who was forced to serve jail time and is forbidden to write for the next 12 years for "insulting the King," "challenging the territorial integrity of the state," and "undermining the monarchy."⁹⁰ In addition, the Western Sahara remains an area marred by violence and a virtual media blackout. Recent reports indicate significant abuses against civilians and suspected rebels, both by the Moroccan military and by Polisario.⁹¹ In this context, it is unfortunate that the public hearing at Laayoune was cancelled, especially given that most cases of enforced disappearance seemed related to the Western Sahara.

C. Positive Signs

Despite these concerns and criticisms, it is important to acknowledge that the IER represents the most comprehensive investigation of the "Hassanian" era of violations ever undertaken in Morocco. Through its work, the Commission has compiled a massive archive of information on victims, violations, and perpetrators. Its files appear to be well organized and highly detailed, supplying not only a rich historical account of past abuses, but substantial evidence for future accountability and institutional reform efforts. In addition, the Commission has created a broad definition of possible remedies for victims,

⁸⁷ While many human rights NGOs had a tense relation with the IER, women's organizations and development groups had a more fruitful relationship with it.

⁸⁸ See, e.g., Bureau of Democracy, Human Rights, and Labor, "Morocco: Country Reports on Human Rights Practices—2004," Feb. 28, 2005, available at www.state.gov/g/drl/rls/hrrpt/2004/41728.htm.

⁸⁹ See, e.g., International Mission of Investigation, International Federation for Human Rights, "FIDH Report: Morocco—Human Rights Abuses in the Fight against Terrorism," July 2004, No. 379/2.

⁹⁰ See, e.g., Committee to Protect Journalists, "Morocco: King Pardons Jailed Journalists," Jan. 7, 2004, available at www.cpj.org/news/2004/Morocco07jan04na.html.

⁹¹ See, e.g., Amnesty International, "Morocco/Western Sahara 2004," Dec. 2004, available at web.amnesty.org/web/web.nsf.

ranging from monetary awards to economic, social, and institutional remedies.⁹² In other words, the Commission has sought to address the broader socio-cultural contexts that lump-sum monetary payments cannot sufficiently redress by themselves. This has apparently led the IER to develop detailed recommendations on gender equality, community mediation, poverty reduction, the normalization of legal status, continuing education and professional development, medical and psychological rehabilitation, and the use of symbolic measures such as memorials. The Commission's use of professional researchers, interviewers, investigators, archivists, psychiatrists, and medical staff is another promising sign for the quality of the forthcoming final report.

D. Recommendations

The IER's imminent final report and the processes that may flow from it will provide Morocco with tremendous opportunities to further advance victims' rights, to underscore the need to prevent future abuse, and to strengthen the rule of law in the country.

The completion of the IER process should also invite reflection on the sufficiency of the steps toward truth and justice taken thus far, including through work of the CCDH, the Independent Arbitration Panel, and the Ministry of Human Rights. Building on the momentum of the IER, coordinated and comprehensive follow up efforts will be required. Consistent with international experience, such efforts should entail the broadly consultative approach that has been found to be a key ingredient of effective transitional justice policy making.

Drawing on international best practices, the following issues should be touched upon in the final report or addressed immediately afterward by the Moroccan government as part of a coordinated follow-up strategy.

1. *Truth-seeking.* It is important for the IER to conclude its truth-seeking work in the most transparent and communicative manner possible. Based on previous international experiences with truth commissions, it is critical that the final report be made available promptly and broadly to the public in the principal languages of the country.⁹³ If the report is not made public, perceptions of the government's commitment to a future premised on respect for human rights could be significantly undermined.
2. *Prosecutions and Accountability.* Where there is overwhelming proof of criminal responsibility, the IER should make recommendations aimed at facilitating future prosecutorial action. This might include passing the names of such individuals, and the evidence against them, under seal to the appropriate public authorities for judicial action or recommending that the government establish special mechanisms to advance the preparation of future trials. Criminal prosecution is especially important against those individuals who bear greatest responsibility for past serious violations.

⁹² "La réparation par l'indemnisation matérielle, la réhabilitation et la réinsertion sociale et toutes autres modalités sur la base des investigations menées en vue de l'établissement de la vérité," available at www.ier.ma/_fr_article.php?id_article=147.

⁹³ The principal languages, aside from Arabic and French, are Tamazight, Tachelhit, and Tarifit.

Even if prosecutions are not immediately viable, it is important for the IER to underscore the importance of criminal accountability. Although it is rarely possible to prosecute all human rights abusers, those who bear the greatest responsibility for the most serious crimes should be held to account.

3. *Vetting.* As a complement to prosecutions, removing abusers from positions of power in the justice and security sectors through a “vetting” process can be a powerful component of justice reforms in transitional contexts. Vetting, when carried out fairly, can help reduce the likelihood of new abuses while also increasing public trust and confidence in state institutions. The IER should consider recommending a vetting process in Morocco that adheres to fundamental principles of procedural fairness.
4. *Institutional and Legal Reforms.* Vetting programs should be accompanied by broader, systemic reforms that will increase the independence, transparency, and integrity of the justice system. In light of the country’s history of arbitrary detention and enforced disappearance, it could be especially important to create civilian-oversight bodies to better monitor state security agencies, protect detainees, and enforce transparent reporting practices to avoid abuses in police custody.
5. *Reparations.* The IER should propose a reparations program that effectively addresses the shortcomings of the Independent Arbitration Panel. These included concerns about the lack of transparency in the Panel’s methodology, large disparities in the amounts of individual awards, and the Panel’s primarily “monetary” understanding of reparations. The Moroccan government should give serious consideration to implementing all of the Commission’s recommendations in the area of reparations.
6. *Memorials.* In conjunction with material forms of reparations, symbolic measures like public memorials for victims can be an effective way to promote collective memory and social solidarity. The IER should recommend robust consultation with victim groups in undertaking any planned memorial. This will offer better chances of appropriate memorialization and impart a sense of ownership to victims.
7. *Archives.* Given that the IER has extensive archives of more than 20,000 victim and witness testimonies, in its final report it should underscore the notion that the information gathered by its investigations belongs first and foremost to the individual deponents who gave it, but that it is also part of the historical wealth of the Moroccan people. In that light, educators, journalists, and researchers should have access to parts of the archives without more than the requisite restrictions imposed by a competent jurisdictional authority seeking to ensure the protection of both victims and witnesses. It is vital to decide on how the information gathered by the IER will be managed, accessed, and used, not least for the reason of protecting the personal data of those who provided testimony. By the same token, the IER should develop an explicit policy on how it will deal with the

names of alleged perpetrators and adjust access to the archives according to principles of procedural fairness. Its recommendations on preservation of, and access to, archives should accord with the best practices prescribed in the most recent UN guidelines on impunity.⁹⁴

8. *Formal Apology.* At the end of his life, former King Hassan II expressed regrets about the abuses suffered under his rule.⁹⁵ By establishing the IER and giving it his official support, King Mohammed VI has taken a significant step forward. With the impending delivery of the IER's final report, the King will have an appropriate opportunity to issue a full and formal public apology for the government's role in violations against its own people, and to renew his pledge to end impunity in Morocco. The importance of a formal apology cannot be understated in terms of its potential to mark a symbolic break with a painful era and help restore public confidence in state institutions.

E. The Road Ahead

To date, the Moroccan experience in the realm of transitional justice is best viewed as part of a long-term process of reckoning with a violent and, until recently, hidden past. Building on the experiences of the CCDH and the Arbitration Panel, the IER is only the latest chapter in this process. Morocco still has a long road to travel in building the "culture of human rights" or achieving the "national reconciliation" proclaimed as objectives by the monarchy.⁹⁶ At the same time, Morocco deserves significant credit for taking steps toward addressing its long and difficult legacy of mass abuse.

One of the most important long-term legacies of the IER process could be its impact in the region. The precedent set by the IER could have a positive ripple effect across the Arab world. Civil society groups and government officials in Algeria, Lebanon, Bahrain, Iraq, and other states have been watching the Moroccan experience closely, while considering options for dealing with their own troubled pasts. While the short-term prospect of similar official truth-seeking efforts in other countries in the region may not be high, those involved in Morocco will have a key role to play in advising regional governments and civil society leaders.

When the Commission delivers its final report to the King at the end of November 2005, it is expected to be made public promptly. The IER will be formally dissolved and all attention will turn to the implementation of its recommendations. IER President Driss Benzekri has already expressed the hope that Morocco is entering into a "new paradigm...that involves political debate centering on political and constitutional

⁹⁴ Diane Orentlicher, "Promotion and Protection of Human Rights: Impunity," UN Doc. E/CN.4/2005/102/Add.1 (2005).

⁹⁵ In a rare interview just weeks before his death, King Hassan II admitted he regretted the unnecessary durations and poor conditions under which people had been detained, as well as the political imperatives that had forced a choice between state security and basic rights. For a full transcript, see Jean Daniel, "Hassan II: 'Nos peuples ont autant besoin de sécurité et liberté,'" *Le Nouvel Observateur*, July 8, 1999, No. 1809.

⁹⁶ January 2004 speech in which he announced the establishment of the IER.

reforms.”⁹⁷ Whether this hope can be realized will, however, greatly depend on the follow-up efforts of both Moroccan civil society and the international community. The story of Morocco’s confrontation of its legacy of mass abuse has not yet reached its final chapter. It can be hoped that, rather than leading to premature declarations of reconciliation and final closure, the Commission’s work will lead to a greater openness and willingness to face the past, matched by renewed efforts to address both past and ongoing abuses through trials and institutional and legal reforms.

⁹⁷ “Driss Benzekri: New Era of Abuses Should Come Within Court Authority,” *Morocco Times*, June 1, 2005.

ANNEX 1: A Timeline of Significant Events (1956–Present)

- 1956: Morocco gains independence from France, King Muhammad V assumes throne
- Late 1950s: Major protests against poverty in the Rif valley brutally suppressed by Moroccan military
- 1961: King Hassan II assumes throne, inheriting social and political turbulence
- 1965: Antipoverty riots around the country
- 1965–1971: State of emergency declared
- 1971 and 1972: Two attempted coups
- 1975: “Green March” by 350,000 Moroccan civilians and soldiers into Western Sahara
- 1976–1991: Polisario Front war with Morocco
- 1979: AMDH established
- 1988: OMDH established
- 1990: CCDH established
- 1990: Amnesty International releases report on Tazmamert secret prison
- 1991: UN-brokered cease-fire in Western Sahara
- 1991: Release of more than 300 disappeared persons
- 1993: Ministry of Human Rights created
- 1994: Corrective amnesty declared for political prisoners
- 1996: Constitutional reforms
- 1998: CCDH reveals results of investigation into disappearances
- 1999: King Mohammed VI assumes the throne and appoints IAI
- 1999: FVJ established
- 2001: Reforms to CCDH structure to enhance its independence
- 2001: National symposium by the AMDH, OMDH, and the FVJ
- 2002: Follow-up committee to the national symposium organizes visits to Qala’at M’Gouna to commemorate the abduction of al Mahdi Ben Barka in Paris and in Rabat, calling for a truth commission
- 2002: Driss Benzekri appointed secretary-general of CCDH
- 2003: IAI submits its final report to King
- 2003: King approves CCDH recommendation for a truth commission
- January 2004: King appoints members of IER
- February 2004: Deadline for submission of claims to IER
- April 2004: IER mandate promulgated by royal dahir
- July 2004: IER announces decision to hold public hearings
- December 2004: IER public hearings begin
- July 2005: IER mandate extended to November 2005
- September 2005: IER holds National Forum on Reparation
- October 2005: IER releases information on disappearance, death, and burial sites of 50 disappeared

**ANNEX 2: Dahir No 1.04.42 of the 19th of Safar 1425 (10 April 2004)
Approving Statutes of the Equity and Reconciliation Commission⁹⁸**

The Kingdom of Morocco

The Equity and Reconciliation Commission

The National Commission for Truth, Equity and Reconciliation

Dahir

Praise be to God

(The Big Seal of His Majesty the King Mohammed VI)

It is to be known by the present Dahir, may God elevate and strengthen its content,

That His Cherifian Majesty

Considering the provisions of the Dahir No 1.00.350 of the 15th of Muharrem 1422 (10 April 2001) reorganizing the Consultative Council of Human Rights and in particular its article 7,

Considering Our high approval of the recommendation made by the Consultative Council of Human Rights concerning the creation of the “Equity and Reconciliation Commission” and including its attributions,

Taking into account Our high decision to approve the appointment of this Commission and the content of Our royal speech of the 7th of January 2004 on the occasion of its installation, especially with regard to the fact that we considered it to be a truth, equity and reconciliation commission,

Has decided the following:

The statutes of the Equity and Reconciliation Commission annexed hereby are approved. As they hold that the Commission has the obligation to abide by its attributions and to establish its internal regulations, they will serve as the Statutes of the aforesaid Commission and will be published in the Official Gazette.

Enacted in Rabat on the 19th of Safar 1425 (10 April 2004)

Statutes of the Equity and Reconciliation Commission

Preamble

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

⁹⁸ Translated by Habib Nassar, consultant to the ICTJ.

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 the Moroccans with their history and themselves and release their creative energies;

Considering the royal decision of the 6th of November 2003 approving the recommendation made by the Consultative Council of Human Rights in accordance with article 7 of the Dahir No 1.00.350 reorganizing the Council, which Dahir is based on article 19 of the Constitution that provides that His Majesty the King is the protector the rights and freedoms of the citizens, social groups and communities;

Basing itself on the approval given by his Majesty to the appointment of the president and the sixteen members of the Equity and Reconciliation Commission and to the setting up of the aforesaid Commission, composed of members from different tendencies, experiences and special fields, chosen in equal numbers among the members of the Consultative Council of Human Rights and from outside the Council, all united around the same objectives of protection and promotion of human rights;

With a view to implement the philosophical import of the profound vision developed by His Majesty the King in the royal speech delivered in Agadir on the occasion of the installation of the Commission, which has endowed it with a historical dimension and entrusted it with eminent responsibilities, especially when His Majesty defined it as a truth and equity commission;

Basing itself on the final report of the Independent Commission of Arbitration previously in charge of the compensation of the victims of forced disappearance and arbitrary detention dated the 20th of November 2003 and submitted to His Majesty the King;

Taking into account the memorandums of national human rights organizations, the representatives of the victims, the Bar Associations of Morocco, and of all involved national institutions, stating their conceptions and propositions concerning the methods for justly and equitably settling cross human rights abuses that occurred in the past;

Basing itself on the constitutional commitment of the Kingdom of Morocco to human rights as they are universally recognized as well as the adherence of Morocco to the international instruments on the subject;

Inspired by the principals and provisions of the international legislation of human rights and the regulations and rules provided for within the context of the United Nations in that regard, as well as the principal lessons drawn from the different experiences of the nations involved in reconciliation processes, in order to preserve the memory, to do justice to the victims and consolidate the national unity by the creation of truth and reconciliation commissions governed by the rules of justice and equity, through an extrajudicial settlement of the cross human rights abuses;

In order to perfect the Moroccan experience regarding justice and reconciliation as an integral part of the national civilizational project of constructing a better future to allow our country to face the internal and external challenges, and this within the context of a

democratic transition initiated by a population that, far from being prisoner of the negative aspects of its past, fully accepts it and endeavor to draw from it strength and dynamism to institute a democratic society in which all citizens exercise their rights and fulfill their duties freely and responsibly in a State that respects the rule of law.

Taking into account all these considerations, the Equity and Reconciliation Commission whose members' names follow drew up and adopted unanimously the present statutes:

President: Driss Benzekri; *Members:* Ahmed Chawki Benyoub; Abdelaziz Benzakour; Mohamed Mustapha Raissouni; M'barek Bouderkha; Mahjoub El Haiba; Mohamed Berdouzi; Latifa Jbabdi; Mustapha Iznasni; Abdeltif Menouni; Brahim Boutaleb; Mae El Ainine Mae El Ainine; Salah El Ouadie; Abdelaziz Bennani; Driss El Yazami; Abdelhay Moudden; Mohamed Nesh-nash.

First Chapter: General Provisions

Article 1

The present statutes establish, on the Commission's attributions basis, its principal rules of operation, the decision-making modes and the means of communication and management of its administrative and financial matters.

Article 2

The President of the Commission supervises its work, direct its meetings, and acts as its spokesperson. He assumes the supervision and the follow up of all the contacts the Commission has undertaken with the governmental departments, the public and administrative authorities concerned. He reports on the progress of the Commission's work to the Consultative Council of Human Rights, during the latter's sessions according to the provisions of the *dahir* reorganizing the Council.

The President may delegate some of its prerogatives to one or more members of the Commission.

Article 3

The members of the Commission fulfill their missions independently, impartially and objectively. They commit themselves, during their term in office, to work as a group, in a spirit of solidarity, and imbued with the human rights spirit and values.

Article 4

The Commission's deliberations are confidential.

All members are bound by the absolute confidentiality of the information sources and the development of the investigations.

Article 5

For the purposes of these statutes, the following expressions mean:

- “Gross human rights abuses”: the forced disappearance or the arbitrary detention as defined below in the sense that they constitute categories of massive and wholesale violations;
- “Forced disappearance”: the abduction or arrest of one or more persons and their illegal restraint, against their will, in a secret place by unduly depriving them of their freedom through the act of government officials, individuals or groups acting on behalf of the state, or the denial of these acts and the refusal to disclose their fate which deprive them of any legal protection;
- “Arbitrary detention”: any illegal restraint or detention not in conformity with the law and occurring in violation of the basic principals of human rights, in particular the individuals’ rights to freedom, life and bodily integrity and on the grounds of their political, trade-union, or association activities;
- “Victim”: person who was subject to arbitrary detention or forced disappearance as specified above;
- “Reparation of damage”: all measures taken for the victims because of the material and moral damage sustained by them or by their legal successors as a result of forced 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. In case the victim died or her fate could not be determined, the reparation of the damage will be effected in favor of his/her heirs or legal successors.

Chapter II Prerogatives

Article 6

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.

Article 7

The Equity and Reconciliation Commission, after examining the work done by the former Independent Commission of Arbitration in charge of compensation, carries out a comprehensive assessment of the process of settlement of the forced disappearance and arbitrary detention problem, in consultation with the government, the public and administrative authorities concerned, the human rights organizations, the victims, their families and their representatives.

Article 8

The Equity and Reconciliation Commission is competent to deal with the violations committed during the period from the independence to the date of the royal approval creating the Independent Commission of Arbitration in charge of compensation of the victims of forced disappearance and arbitrary detention.

Article 9

The Equity and Reconciliation Commission undertakes, within the framework of its prerogatives, the following missions:

1. To establish the nature and the scale of the gross human rights abuses committed in the past, examined within their context and in the light of the human rights rules and values as well as the principles of democracy and the rule of law, through investigation, information gathering, consulting the official archives and collecting from any party information and data useful to determine the truth.
2. To continue the investigations on the cases of forced disappearance whose fate remains undetermined, to put in all efforts to investigate the facts that have not been elucidated yet, to reveal the fate of the disappeared persons and propose the appropriate measures for the cases in which the death is established.
3. To determine the responsibilities of the state organs or any other party in the violations and facts subject to the investigations.
4. 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 Commission of Arbitration in charge of compensation and by giving decisions on all the requests:
 - Submitted to the aforesaid Commission after the deadline that was formerly the end of December 1999.
 - Submitted to the Equity and Reconciliation Commission within a new period of one month between the 12th of January 2004 and Friday the 13th of February 2004.
 - Or submitted by the legal successors in cases in which the fate of the victims of forced disappearance is still unknown or their death has been established after the necessary inquiries and investigations are carried out.
5. To see to it that the other injuries suffered by the victims of forced disappearance are repaired by formulating propositions and recommendations for the psychological and medical rehabilitation and social reintegration of the victims who need it, and the completion of the process of settling the administrative, legal and professional problems as well as the questions relating to the restitution of property.
6. To draft a report as an official document setting out the conclusions of the inquiries, investigations and analysis on the violations and their context and to formulate recommendations and propositions to preserve the memory and guarantee the non repetition of the violations, repair the effects of the violations and restore confidence in the supremacy of law and respect for human rights.
7. To develop and promote a culture of dialogue and set up the basis of a reconciliation process oriented toward the consolidation of the democratic transition in our country, the strengthening of the rule of law and the propagation of citizenship and human rights values and culture.

Article 10

In order to achieve the objectives of these statutes and to implement the high royal decision creating the Equity and Reconciliation Commission, all state authorities and institutions bring their support to the Commission and provide it with all information and data allowing it to accomplish its missions.

Article 11

The Commission holds two sorts of plenary meetings:

- Ordinary plenary meetings held once every month to assess the work that has been accomplished and take the necessary decisions concerning the cases under investigation.
- Extraordinary plenary meetings convened by the President or the third of the members to resolve urgent questions

Article 12

The Commission's meetings are convened by its president. The notification to attend the ordinary meetings with the agenda and the related documents are sent to the members of the Commission a week, at least, before the date of the meeting. The meetings are considered valid when attended by two-thirds of the members of the Commission.

The extraordinary meetings of the Commission are convened by its President or one third of its members. The notification to attend the extraordinary meetings is sent with the agenda forty-eight hours, at least, before the date of the meeting. These meetings are valid when attended by half of the members of the Commission.

Article 13

The Commission endeavors to take its decision by consensus. If necessary, it may take its decisions by a majority of two-thirds of the members attending the meeting.

If the Commission considers it necessary, the vote will be secret.

Article 14

The Commission appoints two general rapporteurs who draft reports of the meetings.

It may appoint among its members a special rapporteur to follow up a particular case.

It may appeal to specialized experts for assistance in its various field of competence.

Article 15

The Commission is organized in working groups:

- The working group in charge of investigations;
- The working group in charge of reparation;
- The working group in charge of studies and research.

Each group appoints among its members a rapporteur who coordinates its work.

The Commission may adopt other organizational measures it may consider appropriate.

Article 16

The working group in charge of investigation undertakes the following tasks:

- Investigate the cases of forced disappearance victims whose fate is undetermined, whether they are still alive or dead.

- Gather all information and documents, and collect testimonies concerning events and facts related to different type of violations committed in the past.

Article 17

The working group in charge of reparation undertakes the following tasks:

- Continue the work of the Independent Commission of Arbitration in charge of compensation with regard to the compensation for the material and moral damage sustained by the victims of forced disappearance and arbitrary detention and by their legal successors on the same arbitral basis and in accordance with the principles of justice and equity.
- Pursue the reparation of the other injuries suffered by the victims of forced disappearance and arbitrary detention mentioned in paragraph 5 of article 9 above.

Article 18

The working group in charge of studies and research undertakes the following tasks:

- Conduct research and studies necessary for the accomplishment of the Commission's missions.
- Gather and analyze all data, information and conclusions obtained by the other working groups with the prospect of the drafting of the final report by the Commission.

Article 19

The President organizes a weekly meeting for the rapporteurs of the working groups and the two general rapporteurs of the Commission in order to coordinate its activities.

Any member of the Commission may attend this meeting.

At the end of the meeting an informational report is sent to all the members of the Commission.

Article 20

The drafts of the decisions or the propositions are submitted to the periodical meetings of the Commission in order to be examined or approved.

Chapter IV Administration and the Financial Management

Article 21

The Commission has an administration composed of administrative and technical staff as well as agents.

It may appeal to experts and advisors to assist it.

The Commission examines and approves the propositions and drafts relating to its administrative management submitted by its President.

Article 22

The Commission's administration is organized according to the requirements of its missions and the progress of its work.

Standing orders governing the administrative organization and the work of the Commission will be established.

Rules guarantying the confidentiality of the Commission's work and binding on all the members of its administration and those collaborating with it will be established.

Article 23

The Commission has a special budget allocated for equipment and running expenditures. The President is the one entitled to authorize expenditures.

The President submits a budget proposal to be examined and approved by the Commission.

The President presents a detailed report on the budget management.

Chapter V Communication and Information

Article 24

In order to guarantee the interaction and the participation of all sectors of society in its work, the Commission undertakes to set up a communication plan oriented towards the victims or their families and representatives, the audiovisual media, the press and all segments of civil society.

Chapter VI Final Provisions

Article 25

The Commission establishes standing orders and procedures to facilitate the accomplishment of its various missions.

Article 26

The Commission issues, upon the completion of its work, a special recommendation concerning the future of its archives.

Article 27

The present statutes are submitted to His Majesty the King for his approval.