

Morocco's Truth Commission

Honoring Past Victims during an Uncertain Present

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Organizations and Commissions mentioned in this report

Advisory Council on Human Rights (ACHR, *Conseil consultatif des droits de l'Homme*)

Follow-Up Committee on Grave Human Rights Violations (*Comité de suivi relatif au traitement du dossier des violations flagrantes des droits humains au Maroc*, a group formed by the Moroccan Human Rights Association, the Moroccan Human Rights Organization, and the Moroccan Forum for Truth and Equity to follow the work of the Equity and Reconciliation Commission and the treatment of past abuses)

Equity and Reconciliation Commission (ERC, *Commission Equité et Réconciliation*)

Indemnity Commission (IC, *Instance d'Arbitrage Indépendante pour l'indemnisation des préjudices matériels et moraux subis par les victimes de la disparition et de la détention arbitraire et leurs ayants droit*)

International Human Rights Federation (FIDH, *Fédération internationale des ligues des droits de l'Homme*)

Moroccan Forum for Truth and Equity (FVJ, *Forum marocaine pour la vérité et la justice*)

Moroccan Human Rights Association (AMDH, *Association Marocaine des droits humains*)

Moroccan Human Rights Organization (OMDH, *Organisation Marocaine des droits humains*)

I. Summary

On January 7, 2004, King Mohammed VI created Morocco's Equity and Reconciliation Commission (ERC). This was an unprecedented development in the Middle East and North Africa, and Moroccan authorities presented it as proof of the country's commitment to political reform.

The king made clear that he considered this body a truth commission. Its mandate is to investigate forced disappearances and arbitrary detentions carried out between 1956 and 1999, to prepare a report containing specific as well as general information concerning these violations, and to recommend forms of compensation and reparation for the victims, including measures of rehabilitation and social, medical, and psychological assistance. The king also asked the ERC to recommend measures to help Morocco memorialize these abuses and to prevent their recurrence in the future.

The ERC is expected to submit its final report and recommendations to the king at the end of November 2005. This will conclude a historic stage in Morocco's efforts to acknowledge and address grave human rights violations of the past.

But as in other countries that have created truth commissions for similar purposes, the ERC is only one phase in a longer process, a phase whose ultimate contribution to reconciling with the past and building a more democratic future depends on the extent to which the state acts on the letter and the spirit of the ERC's recommendations.

In the nearly two years since its formation, the ERC has interviewed thousands of victims and conducted field investigations in different parts of the kingdom. It also organized seven public hearings, some of them televised, at which Moroccans described the abuses to which they or their relatives had been subjected. The ERC also arranged medical assistance for victims of past abuse who urgently needed it.

Under its statutes, the ERC's mandate was to have ended in April 2005. However, the king approved an extension until the end of November 2005. During the first year of its work, the ERC stimulated many controversies. Observers largely welcomed the ERC's mandate to reopen the question of past abuses (a question that the palace had insisted earlier was closed) and to address these abuses with measures that went beyond financial compensation. They also welcomed the designation of several respected and independent human rights activists as members of the commission.

But critics regretted the considerable constraints on the ERC. First, the ERC cannot publicly name officials whom it finds to be responsible for, or implicated in, the commission of grave human rights abuses. This limitation seemed that much harder to accept given that a number of officials suspected of ordering or participating in the commission of grave abuses continue to hold high positions within the government, and certain types of abuses were continuing to occur in Morocco.

There were also concerns about the ERC mandate, which seemed to focus on forced disappearances and arbitrary detention while excluding other forms of grave abuse, such as torture. Critics also asked how the ERC would go about obtaining the cooperation of state agencies, given that it had no statutory powers to compel cooperation or punish non-cooperation. Some also voiced frustration with what they perceived as inadequate ERC communication with families of the “disappeared.”

The ERC is an advisory body, and except in the realm of paying compensation to victims, no text obliges state institutions to obey or even to consider seriously the ERC’s recommendations. Morocco’s is not the first such body that cannot publicly name perpetrators or compel witnesses to cooperate. Nor is it the first truth commission to have a mandate that is limited in terms of the period and the types of abuses it covers.

Truth commissions can serve different functions in different societies. The ERC, despite its limitations, has an important role to play in addressing Morocco’s human rights past, and, potentially, in strengthening the rule of law in the future.

But whatever the conclusions and recommendations of the ERC, it is the obligation of Moroccan authorities to ensure that all victims of grave violations enjoy their rights under international law, including the right to compensation, without discrimination. It is up to them to implement the ERC’s recommendations on acknowledging, memorializing, and heightening public awareness of past abuses, and to adopt measures that consolidate the rule of law and safeguard against a recurrence of grave human rights abuses. And it is their obligation to ensure that those responsible for committing grave violations do not benefit from impunity but are instead identified and brought to justice.

II. Human Rights Watch Recommendations

To Moroccan Authorities

- Ensure the implementation of reforms, recommended by the ERC or otherwise, that contribute to ending impunity for grave human rights abuses past and present, that fulfill the rights of victims, and that safeguard against a repetition of grave abuses of the past.
- Direct a high-level public office to monitor and evaluate, in a public and ongoing fashion, the state's implementation of the recommendations made by the ERC; or create a new body with this responsibility.
- Commit to providing a public response to each of the ERC's recommendations, specifying a plan and timetable for compliance, or an explanation why the government does not intend to comply.
- Bring to justice those individuals identified by the ERC as having committed grave human rights violations, where sufficient evidence exists to bring them to trial, and ensure that they are provided with a fair trial where their rights are protected. The king, who is both the recipient of the ERC's complete report and head of Morocco's Supreme Council of the Magistrature, has a special responsibility in this regard. He should ensure that all evidentiary material collected by the ERC is turned over to judicial authorities, in contemplation of bringing charges where the evidence warrants.
- Refrain from declaring any amnesty or similar measures that would exempt from prosecution persons implicated in carrying out "disappearances" or other grave violations of human rights; any eventual measures of clemency should come after individual responsibilities have been established, not before.
- Consider extrajudicial sanctions, such as dismissals from posts, for public officials against whom solid evidence exists of participation in grave abuses, where the post they occupy enables them to continue to violate the human rights of others. Such actions should be carried out in a fair manner that guarantees the due process rights of the accused, and without prejudice to their eventual prosecution in a court of law.
- Examine the issue of statutes of limitations under Moroccan law, favoring an approach that does not double-penalize the victims. Authorities could, for example, advocate holding that the period during which victims did not have an effective remedy under domestic law does not count toward prescription.
- Declare that any case of "disappearance" that the ERC has not fully clarified shall continue to be the subject of investigation until the fate of the victim is established.

- If there are victims of grave human rights violations whose applications are rejected by the ERC on the grounds that the types of violations they suffered fell outside its mandate, ensure that these victims receive the same consideration, in terms of reparation, as those whose cases were accepted by the ERC.
- Publicly remind victims and their beneficiaries of their continuing right to obtain redress from courts, which has not been compromised by the existence of the ERC or by their acceptance of reparations from the ERC.
- Ensure a legal and administrative framework that preserves, and ensures easy public access to, the archival material generated by the ERC, except that which should legitimately remain classified.
- Acknowledge that grave human rights abuses in the period under study by the ERC were systematic and ordered at the highest levels of the state, and offer official statements of regret to the victims and their families.
- Strengthen Morocco's commitment to international treaties by continuing to implement the pledge made by Prime Minister Driss Jettou to withdraw Morocco's reservations to those treaties. It should lift its reservation to Article 14 of the Convention on the Rights of the Child (CRC), recognize the competence of the Committee against Torture under Article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and join the optional protocol to the International Covenant on Civil and Political Rights (ICCPR). Morocco should also withdraw its substantial reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a step that the prime minister said would be studied. It should also ratify the Rome Statute of the International Criminal Court, which Morocco signed in 2000.

To the Equity and Reconciliation Commission

- Disclose publicly the extent to which the ERC received the necessary cooperation of past and present officials in its investigations, cooperation being measured in terms of the provision of oral testimony, documents (including medical-legal records and existing court files), and other items of evidence; and disclose the impact of any non-cooperation on the commission's task of providing a full and truthful account of the period under its consideration.
- Alert the appropriate public authorities if it encounters any evidence of the destruction of, or tampering with, public records or other evidentiary materials, and ensure that evidence of such activity is made public at an appropriate time.
- Publicly reaffirm the need for criminal accountability for grave abuses, even if the commission itself is prevented from naming individual perpetrators.

- Support the submission to Morocco’s judiciary of all evidence collected by the ERC that might contribute to bringing to justice perpetrators of grave abuses of the past, or that might help victims or their beneficiaries to obtain justice in the courts for past abuses.
- Make public, to the fullest extent possible, the testimonies and information collected by the ERC from former and current agents of the state.
- Urge that any “disappearances” not successfully elucidated by the commission remain the subject of ongoing investigation until the fate of the missing person is fully clarified, and that no amnesty or statute of limitations apply to those implicated in “disappearances” or other grievous human rights abuses.
- In recommending measures to prevent the recurrence of grave abuses and to strengthen the rule of law, stress the importance of reforming Morocco’s justice system, so that judges reliably conduct independent and thorough inquiries, bring charges when warranted, and render decisions that are just, whether in cases involving recent offenses or concerning abuses of the past, and whether the defendants are ordinary citizens or state agents.
- In light of the contested nature of events in the Western Sahara, the tighter security conditions in that region, and the large number of cases emanating from there, ensure that in the Commission’s final report, reparation policies, and recommendations, the human rights violations and the victims in this region receive consideration that is equal to that accorded to those of other regions.

III. Background: The State of Human Rights in Morocco

Morocco’s Acknowledgement of Past Abuses

Morocco began making progress on human rights during the last years of King Hassan II’s thirty-eight year reign. That progress continued under Hassan’s son and successor, Mohammed VI, who ascended the throne after his father’s death in July 1999.

Progress occurred on many fronts. Elections became more transparent. Citizens enjoyed increasing freedom to criticize those who governed them, both in the press and in public gatherings. In the late 1980s Hassan II began releasing batches of political prisoners. These included the alleged coup plotters held at the notorious secret prison of Tazmamart, where they had been incarcerated since completing their sentences years earlier. In 1991, Hassan II freed about 270 persons whom the security services had

“disappeared” as long as nineteen years earlier.¹ In 1994, the king amnestied more than 400 political prisoners.² Opposition figures returned to Morocco after years of exile; the king named one of them, Abderrahmane Youssoufi, prime minister in 1998. In 2000, Mohammed VI ended the ten-year-long house arrest of Shaikh Abdeslam Yassine, leader of the non-recognized Islamist movement Justice and Charity.

In 1993, Morocco ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC). However, it entered formal reservations to each.³

Over the past decade, authorities showed growing tolerance toward the activities of local and international human rights organizations. They also opened prisons to inspections by the Moroccan Observatory for Prisons, an independent group that publishes each year a critical report on the conditions of incarceration.

In October 2003, revisions to the code of criminal procedure enhanced the right of defendants to a fair trial. The amendments made to articles 396-415 of the code gave defendants facing time in prison the possibility of appealing their conviction on the basis of the facts; they previously had only the possibility of applying to the Court of Cassation to quash their conviction on the grounds of mis-application of the law by the lower courts.⁴

In February 2004, the parliament approved the king’s proposal to overhaul the family code, abolishing most of the provisions that discriminated against women in matters of marriage, divorce, and custody of children.

Morocco’s press enjoyed an increasing liberty of tone, publishing articles that it could not or would not publish before. Newspapers broke taboos on reporting about government corruption, financial scandals, human rights abuses, and social ills such as poverty, prostitution, violence against women, AIDS and pedophilia. Some newspapers even criticized the government’s handling of the Western Sahara conflict.

¹ Amnesty International, “The Disappeared in Morocco,” (London: Amnesty International, April 1993) MDE 29/01/93, [online] <http://web.amnesty.org/library/index/ENGMDE290011993>.

² Jacques de Barrin, “L’amnistie royale pourrait décrier la vie politique,” *Le Monde* (Paris), July 23, 1994.

³ For details of Morocco’s reservations, see [www. http://www.ohchr.org/english/countries/](http://www.ohchr.org/english/countries/).

⁴ The cassation process aims at reviewing the legal application that the lower judges have given to the incriminating acts. In other words, the cassation reviews the application of law and procedure and does not review the facts.

But the progress has been both partial and conditional. The courts continued to render rulings motivated by political considerations rather than the evidence presented, and defendants in sensitive cases had little chance of receiving a fair trial. For journalists and dissidents, “red lines” remained in place on what could be expressed publicly, and those who crossed them risked lawsuits or imprisonment, and their publications risked suspension or closure. While demonstrations became commonplace in the capital, Rabat, participants in opposition rallies and sit-ins were sometimes dispersed by club-wielding police, and charged with participating in “unauthorized” gatherings.

The File of the “Disappeared”

One of the measurements of progress has been the extent to which taboos that had surrounded the earlier decades of repression have lifted. Since the mid-1990s, Moroccans began recounting, in a blizzard of books and essays, how Hassan II’s security services crushed suspected opponents, including leftists, Islamists, advocates of independence for the Western Sahara, and suspected coup plotters. They described how the secret police “disappeared” hundreds of men and women, including the exiled opposition leader Mehdi Ben Barka, who was kidnapped on a Paris street in 1965 and never seen again (see below).

The luckier among Morocco’s “disappeared” were freed by Hassan II after years in secret prisons, but a few hundred, it is estimated, remain missing today.⁵ Hundreds of other suspected opponents of Hassan II were arbitrarily arrested and tortured in police stations like the notorious *Derb Moulay Cherif* in Casablanca, before being sentenced in unfair trials to long prison terms.

For years, Moroccan officials from the king down categorically denied all serious human rights violations. In a 1989 television interview, Hassan II declared, “If one percent of the human rights violations denounced by Amnesty International were true, I would no longer be able to sleep.”⁶ But in the face of growing domestic and international pressure, the king in 1990 created an Advisory Council on Human Rights (ACHR) in order, he said, to “put an end to all of the allegations...and to close this [human rights] file.”⁷

⁵ The FIDH, relying on information provided to it by nongovernmental organizations, concludes in a 2000 report that the number is at least 600. FIDH, “Les disparitions forcées au Maroc: répondre aux exigences de vérité et de justice,” November 2000, rapport hors série de la lettre mensuelle de la FIDH, no. 298, p. 9, [online] www.fidh.org/IMG/pdf/dispmar.pdf.

⁶ Quoted in Jacques de Barrin, “Le sort des prisonniers politiques, droits du Roi, droits de l’Homme,” *Le Monde* (Paris), November 30, 1990.

⁷ Speech by King Hassan II on the occasion of the establishment of the ACHR, May 8, 1990, [online in French] http://www.ccdh.org.ma/_fr_rubrique.php?id_rubrique=113.

Among the ACHR's activities was an inquiry into past human rights violations. In October 1998 it announced the results, asserting that a total of 112 Moroccans had been the victims of "disappearances," of whom 56 were dead. Hassan II accepted the conclusions of the ACHR and asked it to lay out a plan to address the unresolved cases among the 112 within a period of six months. The king told the Moroccan parliament on October 9, 1998:

I wish – and am resolved – to close definitively the human rights file. . . .
I have given orders that the procedures necessary to close this file be put in place, so that Morocco shakes off an image that does not reflect its true self and that corresponds neither with its past nor its present.⁸

Then-Minister of Human Rights Mohamed Aujjar declared, in response to the list of 112, "Those who have perished will be declared dead. Death certificates and compensation will then be issued."⁹

In April 1999, the ACHR issued its final report on the 112 "disappearance" cases. It proposed that the king set up a mechanism to give financial compensation to certain victims and thereby close the file on "disappearances."

Human rights organization lost no time in attacking the ACHR's handling of the issue. They charged that the figure of 112 was well below the real number of Moroccans and Western Saharans still missing after being taken into custody, and claimed the true number was closer to 600. They also criticized the AHCR for providing no details on the 112 cases – how these "disappearances" were carried out, by whom, and where the persons had been taken.

Far from definitively closing the file, the ACHR's 1999 report turned out to be only the first in a series of measures taken by authorities to address the problem of past human rights violations. These steps were shaped on the one side by the pressure exerted by victims and human rights organizations, and on the other side by the determination of authorities to protect institutions and individuals complicit in the violations.

⁸ *Associated Press*, "Hassan II appelle le Parlement marocain à résoudre le dossier des droits de l'Homme," October 9, 1998.

⁹ José Garçon, "Geste du Maroc pour les droits de l'Homme," *Libération* (Paris), October 2, 1998.

In a speech delivered on August 20, 1999, one month after he ascended the throne, Mohammed VI acknowledged the state's responsibility for past "disappearances," something his father had never done. Mohamed VI also announced the creation, within the ACHR, of an "Independent Arbitration Commission for the Compensation of Moral and Material Harm Suffered by Victims of Disappearance and Arbitrary Detention, and by their Beneficiaries" (the IC). He assigned the IC the task of receiving applications for compensation from victims of "disappearances" (or their survivors) and of arbitrary detention, and determining the amount of compensation the state should pay them.¹⁰

According to an information sheet prepared by the ERC:

By the December 31, 1999 deadline, the IC had received 5,127 applications [for compensation]. It listened to 8,000 persons in the course of 196 hearings. As of July 10, 2003, the date at which it completed its mission, the IC had issued 5,500 rulings. In 750 cases, the IC requested an examination by an expert or issued provisional compensation. It issued 4,700 final decisions, of which nearly 3,700 involved payment of definitive compensation. 870 applications were rejected because the case fell outside the categories of forced disappearance or arbitrary detention. There were 130 decisions not to pay compensation because the applicants did not appear despite their having been formally invited to do so or because they did not submit the necessary forms. The total amount of compensation paid was nearly one billion dirhams, or the equivalent of U.S.\$100 million.¹¹

Abdelaziz Benzakour, a member of the IC (as well as the ACHR and, later, of the ERC), presented these figures orally at the ERC's forum on reparations, adding, "Practically all of the compensation total was paid out, since the office of the prime minister carried out the rulings of the IC as soon as it was notified about them."¹²

The IC was nevertheless criticized by human rights organizations and boycotted by many victims and their survivors. Among their criticisms:

¹⁰ Internal regulations of the IC, issued in August 1999, [online in French] http://www.ccdh.org.ma/_fr_article.php?id_article=87.

¹¹ ERC, "L'expérience de l'Instance d'arbitrage indépendante pour l'indemnisation," information sheet distributed at the National Forum on Reparations in Rabat, organized by the ERC September 30, October 1 and 2, 2005.

¹² Oral presentation at the ERC's National Forum on Reparations, Rabat, October 1, 2005.

- the commission was mandated, in an arbitrary fashion, to compensate victims of certain categories of abuse but not others;
- it was empowered only to issue financial compensation while making no contribution to the cause of exposing the truth in each case or identifying the perpetrators and holding them accountable;
- the IC was not composed of persons selected by the different parties to the process but rather of persons serving at the pleasure of the king;
- its methods of working and setting the level of compensation were never made transparent; and
- it required that applicants for compensation agree in writing, at the start of the process, to accept the IC's ruling as final.

The 1998-1999 ACHR inquiry into “disappearances” and the work of the IC from 1999 to 2003 constituted two steps toward acknowledging and making reparations for grave past violations. But these steps remained inadequate, at a time of rising domestic and international expectations as to how a state should face the issue of past grave violations. Having won official acceptance of the principle of compensation, Moroccan civil society focused its demands concerning past abuses on the creation of an independent truth commission.

In November 2003, the ACHR, recently restructured so as to enhance its powers and independence from the palace, formally proposed that the king establish an Equity and Reconciliation Commission to address the issues of “disappearances” and arbitrary detention. The king agreed and, in a January 2004 speech inaugurating the ERC, presented it as “the last step in a process leading to the definitive closure of a thorny issue.”

Once again, the Moroccan monarch was speaking of grave human rights abuses as if they were an issue of the past that would be laid to rest by an initiative from the palace.

While the Commission was itself the product of improving human rights conditions in Morocco, it was born at a moment when those conditions in Morocco were in flux and in some respects worsening as the result of terrorism and the state's response to it. This deterioration posed a predicament for the Commission: Focused on the past and on recommendations for the future, what were the commission's obligations, if any, toward present-day abuses? This issue is explored in Section VIII of this report.

The Aftermath of the Casablanca Bombings

The fragility of Morocco's human rights progress was laid bare by the state's response to Morocco's first-ever mass terrorist attack. On the night of May 16, 2003, suicide bombers struck several locations in Casablanca, killing forty-five persons, including twelve attackers.

Less than one week later, parliament unanimously adopted an anti-terrorist law (Law 3/2003), which had been under debate since autumn 2002 and which raised numerous human rights concerns. The law extended the maximum duration of pre-arraignment detention from eight to twelve days in cases considered to involve terrorism. It also defined the term in a very broad manner. The law considers an act as terrorist if its "main objective is to disrupt public order by intimidation, force, violence, fear or terror" and is composed of one or more acts listed in the article. These include, in addition to physical attacks on other persons, "the involvement in organized groups or congregations with the intent of committing an act of terrorism," and "the promulgation and dissemination of propaganda or advertisement in support of the above-mentioned acts." In the months following the Casablanca attacks, the government used this broad definition to convict hundreds of suspected members of terrorist cells, as well as several journalists accused of being apologists for terror.

Various human rights organizations documented widespread abuses of the rights of the more than 2,000 suspected Islamists detained by the security forces and the Moroccan courts in the weeks following the attacks in Casablanca.¹³ Many were held for days or weeks in secret detention, where the police subjected them to various forms of ill-treatment and in some cases to torture in order to extract confessions. The courts denied them their right to a fair hearing. They routinely refused defense motions to call witnesses, and refused to order medical examinations of those who claimed to have been tortured. Many were tried in haste and convicted before October 2003, when legal

¹³ See Moroccan Human Rights Organization, *Muhakamat ikhtal fiha mizan al-'adalah* [Trials in which the scales of justice have been tipped], Rabat, November 2003, [online in Arabic] <http://www.omdh.org/news/16mai.htm>; "Morocco: Human Rights at a Crossroads," *A Human Rights Watch Report*, vol. 16, no. 6(E), October 2004, [online] <http://hrw.org/reports/2004/morocco1004/>; Amnesty International, Morocco/Western Sahara: "Briefing to the Committee against Torture" (London: Amnesty International, November 2003) [online] <http://web.amnesty.org/library/Index/ENGMDE290112003?open&of=ENG-MAR>; Amnesty International, "Morocco/Western Sahara: Torture in the 'anti-terrorism' campaign - the case of Témara detention centre" (London: Amnesty International, June 2004), [online] <http://web.amnesty.org/library/Index/ENGMDE290042004?open&of=ENG-MAR>; International Human Rights Federation, "Les autorités marocaines à l'épreuve de terrorisme: la tentation de l'arbitraire," February 2004, no. 379, [online in French] <http://www.fidh.org/IMG/pdf/ma379f-3.pdf>.

reforms took place giving defendants the right to appeal their conviction on the basis of the facts (see above).¹⁴

On July 11, 2003, a court convicted Moustapha Alaoui, director of the Arabic-language newspaper *al-Ousbou`*, of “justifying acts of terrorism via a publication” and sentenced him to one year in prison, suspended, and ordered his weekly banned for three months. The prosecutor charged that *al-Ousbou`* had committed a “clear-cut violation” of the 2003 anti-terror law by publishing on page one a text emanating from an unknown organization calling itself “as-Saiqa” that claimed responsibility for three of the five attacks perpetrated in Casablanca. Alaoui was freed after spending forty-five days in prison. On August 4, 2003, Mohamed el-Hourd and Abdelmajid Bentaher, director and editor-in-chief respectively of the weekly *ash-Sharq*, along with Mustapha Kechnini, director of the weekly *al-Hayat al-Maghribiyya*, were convicted and sentenced to prison terms ranging from one to three years for “inciting violence” by having published a text by Islamist Zakaria Boughrara that allegedly praised the actions taken by the jihadist movement in Morocco. The king pardoned and freed the three journalists in January 2004.

Other continuing human rights concerns

The crackdown on suspected militants after the Casablanca bombings constituted an alarming deterioration in rights conditions. However, it is not the only realm where violations continue to occur in Morocco, or where authorities instrumentalize the courts to serve political ends.

¹⁴ In November 2003, the U.N. Committee against Torture said it was concerned by “The considerable extension of the time limit for police custody, the period during which the risk of torture is greatest, both in criminal law and in anti-terrorist legislation (...)” and “the increase, according to some information, in the number of arrests for political reasons during the period under consideration, the increase in the number of detainees and prisoners in general, including political prisoners, and the increase in the number of allegations of torture and cruel, inhuman or degrading treatment or punishment, allegations implicating the National Surveillance Directorate (DST).” Conclusions and Recommendations of the Committee against Torture, Morocco, February 5, 2004, CAT/C/CR/31/2, [online]

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/35b5adec21c0a623c1256e680033c4fb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/35b5adec21c0a623c1256e680033c4fb?Opendocument).

On November 5, 2004, after examining the fifth periodic report presented by Morocco on its compliance with the International Covenant on Civil and Political Rights, the U.N. Human Rights Committee noted a number of concerns, including, “The numerous allegations of torture and ill-treatment of detainees and ... the fact that the officials who are guilty of such acts are generally liable to disciplinary action only, where any sanction exists. In this context, the Committee notes with concern that no independent inquiries are conducted in police stations and other places of detention in order to guarantee that no torture or ill-treatment takes place.” The committee also noted that “independence of the judiciary is not fully guaranteed.” United Nations, “Human Rights Committee Concludes Eighty-Second Session,” November 5, 2004, [online]

<http://www.unhchr.ch/hurricane/hurricane.nsf/0/5201618D9776587FC1256F4300579F8A?Opendocument>.

Freedom of assembly, association, and expression are tolerated only up to a point. Peaceful demonstrations and sit-in protests occur frequently in Rabat, but are sometimes forbidden by the interior ministry and violently dispersed by the police. For example, the police broke up a small protest on January 28, 2004, in Rabat against the proposed U.S.-Morocco free trade agreement. Sit-ins organized by the National Association of Unemployed College Graduates – to which the government has thus far failed to grant legal recognition – are frequently dispersed by force. Following an April 2005 protest march by residents in the Rif region in northern Morocco to demand more post-earthquake assistance, three organizers of the march were jailed and charged with “insulting civil servants and elected officials” and “subversive behavior inciting the population to revolt.” Police forcefully broke up a second march in the region in May 2005.

The Press Code of 2002 prohibits attacks on “the Islamic religion, the institution of the monarchy, or the integrity of national territory” (Articles 29 and 41); “integrity of national territory” is understood to refer to Morocco’s claim over the Western Sahara. Foreign publications deemed to have committed this offense can be banned by the government. Moroccan journalists convicted of this offense face prison terms and fines, and judges can suspend their publications.

Nadia Yassine, of Justice and Charity – an Islamist formation the government has refused to recognize – went on trial on June 28, 2005, for “attacking the monarchy” by declaring that the institution did not suit Morocco and would not last much longer. Journalist Ali Mrabet spent seven months in prison in 2003 for “insulting the king,” “undermining the monarchy,” and “endangering the integrity of national territory” for articles, interviews and cartoons that appeared in two Casablanca-based publications. In a separate case, in April 2005 – after Mohamed VI had amnestied him from prison – Mrabet was convicted of libel and banned from practicing journalism for ten years. Mrabet had contradicted the officially held position by stating that the Sahrawis living in camps in Tindouf, Algeria were refugees rather than captives of the Polisario. The court ruled that this assessment had defamed an obscure Moroccan association. The decision in this case illustrates the continuing lack of independence of Moroccan courts when judging political cases.

In the disputed Western Sahara region, the presence of Moroccan security forces is heavier than elsewhere, civil liberties are more restricted, and there is less tolerance of dissent. In 2003, authorities shut down the Western Sahara chapter of the Moroccan Forum for Truth and Equity, an independent rights organization. The AMDH obtained legal recognition in 2005 for a chapter in the city of El-Ayoun in the Western Sahara, but only after two years of bureaucratic obstacles and delays.

In late May 2005, demonstrations in El-Ayoun turned into a sustained confrontation with police in several cities. National and international human rights organizations accused the police of torturing and ill-treating those they arrested in connection with these demonstrations.¹⁵ Twenty-one protesters were sentenced, on appeal, to up to four years in prison, on charges of formation of a criminal gang, use of weapons, sabotage of public property and violence against public servants on duty. In June and July, police arrested six Sahrawi human rights defenders in connection with the demonstrations, charging them with inciting the demonstrations and participating in an armed gathering. Two of them were reportedly tortured by police while under interrogation, according to Amnesty International.¹⁶ In a separate incident in 2003, in the coastal city of Safi south of Casablanca, police tortured another human rights defender in their custody, Mohammed Rached Chrii of the AMDH.¹⁷

Positive steps

Authorities have taken some steps in response to criticism of its recent human rights record. On December 28, 2004, the government council, headed by the prime minister, approved a law defining torture as a criminal offense. Parliament approved the measure on October 21, 2005. This law, which is pending publication in the official bulletin, makes it easier to prosecute acts of torture. It also subjects torturers to long prison terms and stiff fines.

In a related step, Prime Minister Driss Jettou indicated on February 22, 2005, that Morocco would withdraw its declaration relating to the U.N. Convention against Torture, where it stated that it does not recognize the competence of the Committee against Torture. He also said that Morocco would become a party to the optional protocol to the International Covenant on Civil and Political Rights (ICCPR), and withdraw its declaration on Article 14 of the International Convention for the Elimination of All Forms of Racial Discrimination (CERD). Jettou also announced plans to lift Morocco's reservation to Article 14 of the CRC, and its replacement by a declarative explanation, to be followed by an inquiry into the possible lifting of Morocco's substantial reservations to the CEDAW.¹⁸

¹⁵ Amnesty International, "Morocco/Western Sahara: Justice Must Begin with Torture Inquiries," June 22, 2005, MDE 29/003/2005, [online] <http://web.amnesty.org/library/Index/ENGMDE290032005?open&of=ENG-MAR>; and the AMDH, "Rapport de la Commission d'Enquête relative aux événements de Laâyoune," October 15, 2005.

¹⁶ Amnesty International, "Morocco/Western Sahara: New arrests and allegations of torture of Sahrawi human rights defenders," August 1, 2005, MDE 29/004/2005, [online] <http://web.amnesty.org/library/Index/ENGMDE290042005?open&of=ENG-MAR>.

¹⁷ See Amnesty International, "Briefing to the Committee against Torture."

¹⁸ On Morocco's reservations, see Amnesty International, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women: Weakening the protection of women from violence

Some of these pledges had been filled by the time this report went to press. Morocco has recognized the competence of the U.N. Committee against Torture under Article 22 of the CAT but not under Article 20. The former allows the committee to investigate complaints of torture that are submitted by individuals; the latter allows the committee to launch an inquiry upon receiving information that torture is being practiced systematically. Morocco lifted its reservation to Article 14 of the CERD, but not yet its reservations to the CRC or the CEDAW. Nor has it yet joined the optional protocol of the ICCPR.

In contrast to some countries where state agents have carried out “disappearances,” Morocco played a constructive role in the U.N.-sponsored committee that drafted the International Convention on the Protection of all Persons from Enforced Disappearance, approved by the United Nations (U.N.) on September 23, 2005.¹⁹ The draft convention, which applies to future cases of disappearance but not past ones, will be opened for ratification by countries once it is approved by the U.N. General Assembly. It requires states to make forced disappearances a crime in their legislation (Article 7) and to pursue the suspected perpetrators, as well as any superiors who ordered or knew about the commission of “disappearances” (Article 6). It enumerates safeguards for those being held in detention (Article 17) and establishes a “right to know” for relatives of persons in detention (Article 24.2).

IV. Mandate of the ERC

On January 7, 2004, Mohammed VI, acting on the recommendation of the ACHR, inaugurated the Equity and Reconciliation Commission. “The purpose of this commission,” he said, “is to ensure that Moroccans make peace with themselves and their history, that they free up their energy, and they join in building a modern and democratic society, which is the best protection against backsliding.”

While the commission does not have the word “truth” in its name, the king made clear that he considered it a truth commission. “The work accomplished by the previous commission [the Indemnity Commission], and the final report that you will prepare to set forth the facts, within a finite period of time, mean that we consider your body to be

in the Middle East and North Africa region,” November 3, 2004, IOR 51/009/2004, [online] <http://web.amnesty.org/library/Index/ENGIOR510092004?open&of=ENG-IRQ>.

¹⁹ E.CN.4.2005.WG.22.WP.1.REV.4, [online]

www.ohchr.org/english/issues/disappear/docs/E.CN.4.2005.WG.22.WP.1.REV.4.pdf.

a truth and equity commission,” he said.²⁰ The preamble of the decree defining the ERC’s statutes also calls the new body “a commission of truth and equity.”

Government officials repeated the king’s assertions that the mission of the commission was to definitively close the file on human rights abuses, and that it was a landmark in Morocco’s democratic transformation. In its written report to the U.N. Human Rights Committee on Morocco’s compliance with the ICCPR, the government stated: “The appointment by King Mohammed VI of the members of the Equity and Reconciliation Commission represents a decisive step towards completing the process of democratic transition in Morocco.”²¹

That said, the ERC remains an advisory body, and the commission’s referential texts specify nowhere the obligation of the state to implement or even to seriously consider the ERC’s recommendations. The only domain where the ERC’s actions are understood to compel state action is in the area of compensating individual victims and their beneficiaries. As explained by ERC President Driss Benzekri, under Article 9.4 of its statutes, the ERC rules on the amount due each applicant, and the office of the Prime Minister makes the payments.²²

Morocco’s civil society activists generally welcomed the creation of the commission. According to AMDH President Abdelhamid Amine, this step “permitted a reopening of the file of grave violations of the past after the palace had declared it to be closed, and did so on a basis that was broader than just financial compensation, which was the case with the Indemnity Commission.”²³

Truth commissions are usually created at a time of political transition – after a civil war, the ouster of a dictatorship, or a long period of oppression – and are presented as mechanisms that help to consolidate a more democratic future. The timing of the creation of the ERC was unusual in that Morocco has not experienced any institutional break with the past, but only gradual reforms. Some of the institutions and individual officials implicated in the gross violations of the past remain in place.

²⁰ The text of the king’s speech is on the ERC’s website in French at http://www.ier.ma/_fr_article.php?id_article=23.

²¹ CCPR/C/MAR/2004/5, May 11, 2004, [online] www.ohchr.org/english/bodies/hrc/hracs82.htm, p. 4.

²² Human Rights Watch interview, Rabat, April 6, 2004.

²³ Public presentation in Paris, March 29, 2005, attended by Human Rights Watch.

Powers of the ERC

Three documents serve as “texts of reference” for the ERC, as noted on its website: the ACHR’s recommendations to the king on establishing the ERC, dated October 16, 2003; the king’s speech of January 7, 2004, on the creation of the ERC; and the royal decree of April 10, 2004, specifying the statutes of the ERC. It is the last of these that defines the ERC’s mandate, powers and structure.²⁴

The decree specifies that the ERC reports to the king. The ERC is not a court or a judicial body and “will not determine individual responsibility” (Article 6). It shall complete the work undertaken between 1999 and 2003 by the Indemnity Commission (IC), in determining the level of compensation the state should pay to victims and beneficiaries in cases of forced disappearance and arbitrary detention (Article 7). In charting the mandate of the ERC, the decree refers to “grave abuses” but specifies only “forced disappearances” and “arbitrary detention” that took place between 1956 – the year of Morocco’s independence from France, and 1999 – the year that Hassan II died and the IC was created.

The decree calls on the ERC “to establish the nature and the extent of grave violations of human rights committed in the past, to place them in context and in light of norms and values of human rights, as well as the principles of democracy and of the rule of law” (Article 9.1). In its reporting, the ERC is to determine “the responsibility of organs of the state or of any other party for grave human rights violations” (Article 9.3).

The ERC’s research will culminate in “an official report providing the conclusions of the investigations, inquiries, and analysis conducted into the violations and their context” (Article 9.6).

The decree specifies the means by which the ERC is to carry out these tasks: it is to “investigate, collect information, consult official archives and gather from every party

²⁴ Decree N° 1.04.42 of April 10, 2004, approving the statutes of the ERC, [online] http://www.ier.ma/_fr_article.php?id_article=221. The king’s approval of the ACHR’s recommendations, on November 6, 2003, makes them a referential text for the functioning of the ERC. The ERC also embraced the king’s speech of January 7, 2004 as a referential text: “This royal speech will remain the reference guiding the activities of the ERC and hereby constitutes the foundation of an approach capable of promoting equity and reconciliation.” Statement of the ERC, issued January 11, 2004, [online in French] http://www.ier.ma/_fr_article.php?id_article=222. In a similar vein, the decree of April 10, 2004 calls the king’s speech “a reference for the Equity and Reconciliation Commission, whose approach and work aim to reinforce and consolidate that which has been achieved and to finalize an equitable extrajudicial settlement of serious abuses that occurred in the past.”

information and facts that are useful to discovering the truth” (Article 9.1). The ERC is to “carry out research into cases of forced disappearance where the person’s fate remains unknown, and to make every effort to investigate the facts that have yet to be clarified, to reveal the fate of persons who ‘disappeared’ and to propose adequate measures in those cases where the person is determined to have died” (Article 9.2).

The ERC is also charged with deciding the level of compensation the state is to pay victims of grave human rights abuses or their beneficiaries for the material and moral harm they suffered.²⁵ The ERC’s responsibility over compensation is not limited to financial compensation: it is also to prepare recommendations and proposals to ensure psychological and medical care and social reintegration for victims who need it, and to help them resolve any problems related to the administration, the law, employment, and property (Article 9.5).

Finally, the ERC must “recommend measures designed to memorialize the human rights violations as well as to guarantee their non-repetition, remedy their effects, and restore confidence in the primacy of the law and respect for human rights” (Article 9.6).

In terms of its scope and mandate, the ERC thus goes beyond what the former Indemnity Commission was empowered to do. For one thing, the ERC is responsible for producing what promises to be an unprecedented account of the forms of repression practiced since independence, and thus, a major contribution to the writing of Morocco’s history. According to ERC President Benzekri, the full version of the report that goes to the king will include the names of persons that the ERC has identified as suspected perpetrators – even if the ERC cannot itself make these names public (as per Article 6 of the decree).

With respect to reparations, the ERC’s broader mandate when compared to that of the IC constitutes a recognition that the victims and their families have a right to forms of reparation in addition to monetary compensation, and that past violations against individuals create obligations toward a society as a whole.

²⁵ The Commission’s action in this realm is to “follow the activities undertaken by the Indemnity Commission” and to examine and rule on all requests that were “submitted to the [IC] after its deadline of December 31, 1999”; or “submitted to the ERC during the month that the process was reopened, from January 12 to February 13, 2004”; or “submitted by the beneficiaries of a person forcibly disappeared and whose fate remains unknown and whose death has been confirmed, after the necessary investigations and inquiries have been carried out.”(Article 9.4)

The ERC spelled out its expansive notion of reparations at a seminar it held on September 30-October 2, 2005, as it was nearing the end of its mandate. A document it circulated at this event states:

Individual reparation encompasses compensation, medical and psychological readaptation, the social rehabilitation of victims who need such reintegration, and resolving all administrative, legal, and professional problems, as well as questions relative to recovering property.

General and collective reparation encompasses the formulation on the one hand of recommendations to establish safeguards to ensure a break with past practices and on the other hand to ensure the rehabilitation of regions that suffered violations and were marginalized economically and socially, and also the preservation of memory.

The document also states that the ERC's conception includes "integration of the gender dimension in the policy and the plan of action concerning reparation." At the seminar, ERC President Benzekri presented orally the substance of this document.²⁶

Composition of the ERC

The Equity and Reconciliation Commission is made up of seventeen commissioners, including its president. Eight of the commissioners are also members of the ACHR. The seventeen include six former political prisoners, including two who were forced into exile. One of those, Mbarek Boudarka, had been condemned to death *in absentia*. ERC President Benzekri spent seventeen years in prison because of his leftist opposition political activities. His activism on behalf of the fight against impunity, particularly when he served as president of the Moroccan Forum for Truth and Equity, an organization he co-founded in 1999, made him one of the most respected figures in Morocco's human rights movement. (In July 2005, Mohamed VI named Benzekri president of the ACHR, to serve concurrently with his post as ERC president.)

The recruitment of human rights activists and former political prisoners into the ERC gave credibility to the notion that the authorities intended to treat past human rights violations in a serious manner. Another commissioner is Driss el-Yazami, who, while

²⁶ ERC, "La question de la réparation," information sheet, August 2005.

joining in his individual capacity, is secretary-general of the Paris-based International Human Rights Federation (FIDH).

The ERC created three main working groups. Seven commissioners sit in the group on reparations, six in the group in charge of investigations, and three in the study and research group.

The ERC has a paid staff of about one hundred persons to help with receiving complainants, processing information, and other tasks. They also have medical staff at their Rabat headquarters to assist victims with health needs stemming from the abuses they suffered. The medical unit includes a psychiatrist, a nurse, and a social worker.

Like all Moroccan institutions created by royal decree, the operating budget of the ERC comes directly from the palace, one of the institutions whose alleged role in past abuses the ERC is supposed to investigate. ERC President Benzekri dismissed concerns that this would impede the work of the ERC. “We have the means to do our work properly,” he told Human Rights Watch. “We can do what we decide to do. Our only limitation is our own conscience. I am the one who decides how the money is spent, and we are audited by the state accounting office.”²⁷

According to Benzekri, the ERC independently determines the level of financial compensation that the state is to award to victims of past abuse who apply for it. The money issued to them comes from the state budget. “Our decisions on compensation are sent to the prime minister, and he signs the checks,” Benzekri said. He added that the state has not specified to the ERC any limits on the amount it can award, either overall or in individual cases.

The ERC has not yet disclosed its criteria for determining how much compensation to pay in each case, nor are the criteria spelled out in the royal decree setting forth its statutes. According to the ACHR’s proposal for establishing the ERC, “When ruling on requests that are submitted to it,” the ERC should “pursue the activities of the Indemnity Commission...relying on the same arbitration basis and principles of justice and equity.” However, as noted earlier, the IC’s action in this area drew criticism from victims and human rights organizations for a lack of transparency and of clear logic in determining compensation levels.²⁸

²⁷ Human Rights Watch interview, Rabat, April 6, 2005. All subsequent quotations attributed to ERC President Driss Benzekri are from this interview unless otherwise noted.

²⁸ See, e.g., FIDH, “Les disparitions forcées au Maroc,” pp.13-14.

Article 7 of the ERC's statutes states that it is "to reach a settlement of the issues of forced disappearance and arbitrary detention while working together with the government, with relevant public officials and agencies, human rights organizations, victims, their families, and their representatives." The preamble calls on the ERC to take into account "the memoranda of national human rights organizations, representatives of victims, the bar associations of Morocco, and all national relevant national bodies, taking into account their conceptions and proposals as to how best to achieve a just and equitable resolution of grave human rights violations of the past."

The ERC publicly declared its eagerness to work with victims of past human rights abuse, their families, and Moroccan civil society, including Moroccan human rights organizations. It held working meetings with various civil society groups. The ERC has also received assistance from the New York-based International Center for Transitional Justice in various realms, including training in database development, the organization of public hearings, preparation of its final report, and comparative practices of reparation.

V. Constraints on the ERC

Impunity

Morocco has obligations under international law regarding past abuses. These include ensuring that those responsible for serious violations are identified and brought to justice. Authoritative U.N. and regional human rights bodies, as well as international criminal tribunals, have established that there should be no amnesties from prosecution or similar measures for serious human rights abuses. The U.N.'s Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity states, in Principle 24:

Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency shall be kept within the following bounds: (a) The perpetrators of serious crimes under international law may not benefit from such measures until such time as the State has met the obligations to which Principle 19 refers or the perpetrators have been prosecuted before a court with jurisdiction – whether international, internationalized or national – outside the State in question.

These Updated Principles define the phrase "serious crimes under international law" to include, among others, genocide, crimes against humanity, and "other violations of

internationally protected human rights that are crimes under international law and/or which international law requires States to penalize, such as torture, enforced disappearance, extrajudicial execution, and slavery.”²⁹

Human Rights Watch recognizes the potential of truth commissions to ensure the emergence of the truth about past abuses. However, suspected perpetrators of gross violations must also be brought to justice and their responsibilities determined in a court of law. Even if the ERC succeeds in producing an exhaustive and definitive account of the repression that was practiced during the period from 1956 and 1999, and even if it provides compensation and rehabilitation to the victims, it cannot, by itself, end the impunity that the perpetrators of past human rights abuse in Morocco continue to enjoy. The ERC’s mandate states, “The commission is not a judicial body and cannot assign responsibility to individuals for violations” (Article 6). This point was already contained in the ACHR’s Recommendations, which the king accepted:

The ERC’s activities constitute a part of the ongoing extrajudicial resolution of the question of past human rights violations. The ERC cannot, in any instance, after having conducted the necessary investigations, refer to responsible parties by name, whatever their deeds may have been. The commission will ensure not to take any steps likely to provoke divisions or rancor or to sew divisions.

ERC President Benzekri told Human Rights Watch that the ban on naming perpetrators applied only to the realm of the ERC’s public disclosures. He said that in the course of its research, the ERC routinely noted the names of alleged perpetrators. The section of the final report containing the names of perpetrators constituted the only part of that

²⁹ Commission on Human Rights, Sixty-first session, Item 17 of the provisional agenda, E/CN.4/2005/102/Add.1, February 8, 2005, [online] www.derechos.org/nizkor/impu/principles.html. The Updated Principles constitute authoritative guidelines representing the prevailing trends in international law and practice, and reflect the contents of international jurisprudence and the best practice of States. Principle 19 states,

States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished. Although the decision to prosecute lies primarily within the competence of the State, victims, their families and heirs should be able to institute proceedings, on either an individual or a collective basis, particularly as *parties civiles* or as persons conducting private prosecutions in States whose law of criminal procedure recognizes these procedures. States should guarantee broad legal standing in the judicial process to any wronged party and to any person or non-governmental organization having a legitimate interest therein.

report that would be delivered to the king rather than made public, Benzekri said.³⁰ It would then be up to the king what to do with this information.³¹

Benzekri said that some measures of accountability were already being implemented. “We are already seeing certain parties being relieved of their posts,” he said. “Though in some cases this has not happened because of concerns about maintaining stability within the institutions.”³² Benzekri did not name public officials who had been dismissed in connection with grave human rights abuses.

ERC commissioners have said on numerous occasions that while the commission itself lacks authority to publicly name perpetrators or to try or punish them, nothing prevents Moroccans from turning to the courts to seek justice for past abuses. According to Benzekri,

Nothing prevents a victim from going to court. I, as a human rights activist, believe that the best way to change a situation is to participate in that change. Let us say that I have a case: I file it in court, and then I fight to win my case. This kind of strategy can bring about real change. The role of lawyers and of human rights organizations is to prepare cases that are strong and well-supported, cases that will put pressure on the judiciary, and oblige the state to respond in a serious fashion.

This assertion, if true in a general sense, minimizes the problem of judicial independence in Morocco today. Although Morocco’s constitution guarantees judicial independence from the legislative and executive branches (Article 82), it is doubtful the courts can equitably judge politically charged cases of past abuse, especially when they involve officials who continue to hold office. The justice system has consistently deprived defendants in political cases of a fair trial. Today, when the defendant is a provocative journalist or a suspected Islamist militant, he has little chance of receiving an independent judgment based on the facts in the case. The same impression emerges from the courts’ handling of cases that have been filed concerning past abuses, although the number of such cases that have been filed remains small.

One such case involves the abduction of exiled socialist opposition leader Mehdi Ben Barka. On October 29, 1965, French police agents acting at the behest of Moroccan

³⁰ Human Rights Watch interview, Rabat, April 6, 2005.

³¹ Human Rights Watch interview, Rabat, October 20, 2004.

³² Human Rights Watch interview, Rabat, April 6, 2005.

security services intercepted Ben Barka on a Paris street. He was escorted into their car and has not been seen since. Moroccan authorities have never identified or held accountable the high officials implicated in the abduction, or disclosed Ben Barka's fate. (A French court, however, convicted *in absentia* the alleged mastermind of the operation, Morocco's then-Minister of Interior Mohamed Oufkir.) On July 5, 2001, the Socialist Union of People's Forces party (*Union Socialiste des Forces Populaires*, USFP) filed a complaint regarding the "disappearance" of Ben Barka. The USFP filed the complaint in response to just-published revelations by Ahmed Boukhari, a retired agent of the secret police who was on duty in Rabat at the time of the Ben Barka abduction in Paris. Boukhari stated that his agency, known as "Cab 1," engineered the kidnapping and that Ben Barka was tortured to death in custody. Moroccan agents then arranged the secret transfer of Ben Barka's body back to Morocco, where they dissolved it in a vat of acid.³³

To date the USFP case has gone nowhere. The original investigating judge to whom it was assigned passed away, and a new one has yet to be named. The prosecutor is seeking dismissal of the complaint on the grounds that the USFP, the party that grew out of the one co-founded by Ben Barka, lacks standing to bring the case and that the statute of limitation applies, since the crime occurred more than twenty years ago. For his role in divulging details of the case, Ahmed Boukhari has faced a series of politically motivated prosecutions and restrictions, further discrediting Moroccan courts as a venue for obtaining justice for past abuses. Moroccan police arrested Boukhari in August 2001, six weeks after publication of his revelations, and he was tried and sentenced to one year in prison on charges of passing bad checks several years earlier. Boukhari was released after serving three months in prison, but the authorities have refused to give him a passport, despite a decision in his favor by a Casablanca administrative court. This refusal has prevented him from traveling to France, where an investigating judge in charge of the Ben Barka abduction investigation has sought to interview him as a witness.³⁴ (France assigned a judge to the case because the crime occurred on French soil, and because Ben Barka's family filed a complaint for murder, after the conclusion of the first trial on kidnapping charges.)

The AMDH has also attempted to get the courts and parliament to investigate past abuses. On October 23, 2000, the association sent an open letter to then-Minister of Justice Omar Azzimane, urging him to initiate proceedings against fourteen current and

³³ See Stephen Smith, Ali Amar and Aboubakr Jamaï, "La vérité sur l'assassinat en France de Mehdi Ben Barka," *Le Monde*, June 30, 2001, and "La vérité sur la 'disparition' au Maroc de Mehdi Ben Barka," *Le Monde*, July 1, 2001. See also, Ahmed Boukhari, *Le Secret: Ben Barka et le Maroc: un ancien agent des services spéciaux parle* (Paris: Michel Lafon, 2002).

³⁴ See Human Rights Watch letter to Morocco's then-Minister of Justice Omar Azzimane concerning Ahmed Boukhari, August 30, 2001, [online] www.hrw.org/press/2001/08/morocco-0830-ltr.htm.

former government officials whom the AMDH accused of complicity in torture and other grave human rights violations. On December 4, 2000, the AMDH addressed an open letter to parliament, asking it to form a commission of inquiry, in accordance with Article 42 of the Constitution, to investigate sixteen men named in the letter as responsible for “disappearances” and torture. The letter added two names to the fourteen cited in the October letter addressed to the Justice Minister. The AMDH declared that there were victims willing to testify against the accused before a parliamentary commission. Neither the government nor parliament responded officially to the AMDH letters.³⁵

Moroccan courts need not wait for victims and other citizens to submit complaints about past abuses. The law authorizes the office of the prosecutor general to initiate criminal investigations even in the absence of a complaint. Despite the public testimonies by ex-policeman Boukhari and by victims of grave abuses in the past, who in many instances named their suspected abductors and torturers, no Moroccan prosecutor or investigating judge has, to Human Rights Watch’s knowledge, used this prerogative of *auto-saisine* (to initiate a procedure on one’s own) to open a criminal investigation.

If Morocco’s courts have contributed nothing to ensuring individual accountability for past abuses, the ERC cannot by itself fill that gap. It cannot publicly name individual perpetrators, although it can identify them in its confidential report to the king. It also has a responsibility to assign institutional responsibility for abuses, under Article 9 of its statutes. The limitation on divulging names provides, according to ERC President Benzekri, a kind of trade-off:

It’s a mistake to assume that the justice system is the best way to handle past abuses....In court, the victim is there as a party. But for us, the victim is the hero of the story.³⁶

Benzekri maintains that the ban on publicly naming suspected perpetrators was in keeping with the ERC’s objectives:

³⁵ The AMDH’s list of alleged torturers included three sitting officials whose names have often been cited as responsible for grave abuses in the past: Hosni Benslimane, head of the Gendarmerie, Hamid Lâanigri, chief of the Directorate of Territorial Security, and parliamentary deputy Mohamed Archane. The AMDH’s list of forty-five suspected torturers, updated in 2001, is online at http://www.maghreb-ddh.org/article.php3?id_article=163. Neither Benslimane nor Lâanigri responded formally to the accusations; Archane, in statements published in the press, said he had always served his country and observed the laws.

³⁶ Human Rights Watch interview, Rabat, April 6, 2005.

If we were to arrogate to ourselves the right to judge persons, we would be in complete contradiction with the ideals we defend. We are busy with a process of memory that is taking place ten, twenty, thirty years after the fact. We can't toss out names, outside of the established judicial procedures. Human rights is not like a supermarket where we can ignore, at the moment that we feel like it, the presumption of innocence.³⁷

“Were the ERC to name perpetrators,” he said at another point,

our work would get bogged down in defamation, and in political charges and counter-charges. We do not have the means to manage all of that information. Moreover, not all of the victims know their torturers. Too much time has passed. It's not practical. It is not individual responsibility that we are after. We don't have enough proof to be able to pinpoint the individual commanders who gave the orders. We work on the basis of victim's testimony, and the victims do not have information on those who issued the orders. What they have more useful information on are the low-level officers – the inspectors, the local bosses, those who carried out the orders. It is about these perpetrators that the victims have the most to say. When we have information of this nature, we will categorize it and make recommendations, for example, in certain cases, that persons be dismissed from their posts. At the same time, even if we cannot identify those who gave the orders, we can still reconstruct the structure from which the orders came. We will establish responsibility of the state, and the institutions of the state.³⁸

If it accomplishes this, the ERC will contribute significantly to illuminating how repression was practiced in the past. And while the ERC cannot publicly name perpetrators, it should nevertheless argue, citing international human rights norms, against any amnesty measure for grave abuses that pre-empts the courts from fulfilling their role in judging suspected perpetrators.³⁹ It should also argue against the validity of a

³⁷ “Trois questions à Driss Benzekri, président de l'instance équité et réconciliation,” *Le Monde*, April 13, 2005 [online] www.ier.ma/_fr_article.php?id_article=993.

³⁸ Human Rights Watch interview, Rabat, April 6, 2005.

³⁹ See the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, Principle 24.

statute of limitations for the commission of grave abuses, for any period during which victims had no effective recourse in the justice system.⁴⁰

Arbitrary Limits

The statutes of the ERC stipulate that its mandate is limited to two types of grave violations, “enforced disappearances” and “arbitrary detention,” without clarifying its responsibilities toward other types of abuses and their victims. A “victim” is defined as “any person who was subject to an enforced disappearance or an arbitrary detention.” The “reparation of harm” is defined as “all those measures that are taken to assist the victim ... following the forced disappearance or the arbitrary detention.” In inviting requests for compensation, the ERC specifies that applicants should be persons who “suffered material and moral harm from forced disappearance and arbitrary detention.”⁴¹ This invitation is intended for both direct victims and their families or beneficiaries.

Despite the clear wording of its statutes, the ERC has insisted that it will give a far wider interpretation of the abuses falling within its mandate. On April 15, 2004, following the publication of the statutes, the ERC distributed a document, “Presentation of the statutes of the ERC,” which states:

The ERC’s mandate encompasses grave violations of human rights that were systematic and massive in nature, bearing in mind that the ERC’s prerogatives to investigate and determine the truth allow it to establish the categories, gravity, and the massive or systematic character of past abuses of human rights.⁴²

“We started from the idea that these two violations were the main instruments of repression,” ERC President Benzekri told Human Rights Watch. “But [our mandate to] search for the truth means that we can go much further.” Benzekri added that the ERC intended to extend eligibility for reparations to victims of other types of violations, since “torture, assassinations, and killings caused by the use of disproportionate force by the

⁴⁰ The Updated Set of Principles states, in Principle 23, “Prescription – of prosecution or penalty – in criminal cases shall not run for such period as no effective remedy is available. Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries.”

⁴¹ Communiqué de l’Instance Equité et Réconciliation relatif au dépôt de nouvelles demandes d’indemnisation pour les préjudices matériels et moraux résultant de la disparition forcée et de la détention arbitraire, January 10, 2004, [online] www.ier.ma/_fr_article.php?id_article=1171.

⁴² Présentation des Statuts de l’Instance Equité et Réconciliation, [online] www.ier.ma/_fr_article.php?id_article=1273.

security forces during disturbances, can be considered as massive and systematic violations.” Benzekri also said that “the violations that touch on the right to life fall within our mandate.” As for the ERC’s notion of “arbitrary detention,” Benzekri said, it would include not only persons detained without trial but also those who had been imprisoned after an unfair trial. In those cases, “Our intention is to say how the trial was unfair.”⁴³

Benzekri told Human Rights Watch that for every case it received, the ERC would “present it in its entirety and classify it in legal terms,” suggesting that every case submitted to the ERC will receive a substantive response, whether the request for compensation is accepted or denied.

At the seminar it organized in Rabat on September 30–October 2, 2005, the ERC distributed a document listing “violations likened to forced disappearances according to the ERC philosophy.” This document confirmed an expansive notion of the violations included in its mandate:

- cases of “disappearance” as recognized by the definition found in the ERC statutes and in the international human rights instruments, notably in the declaration [on the Protection of All Persons from Forced Disappearances] of 1992 and the draft Convention on [the Protection of all Persons from] Forced Disappearance;
- persons who died during detention;
- cases of “disappearance” where the State recognizes that the person has died and has paid compensation to the family and beneficiaries, but where the body has not been identified or turned over to the families;
- persons who died during the disturbances of a social or regional character (such as those of 1958, 1965, 1981, 1984 and 1990), following interventions to restore order and the use of excessive or disproportionate force by law enforcement forces;
- persons who died from ill-treatment, torture, or conditions of detention in prisons, places of pre-arraignment detention or in prolonged arbitrary detention;
- persons who “disappeared” in circumstances that remain unclear and/or in circumstances that have not been established but are not attributable directly or indirectly to the state; and

⁴³ Human Rights Watch interview, Rabat, October 20, 2004.

- persons who died in situations of armed conflict, in the Western Sahara, notably during military battles with armed militias or Polisario units supported by the Algerian military.⁴⁴

At the same time, the ERC seemed to rule out compensation for certain other grave human rights violations if it determines that they were not practiced in a systematic fashion. “There were summary executions,” Benzekri explained, giving an example. “But when we worked on this issue we did not find enough elements to say these cases amounted to a systematic kind of violation.”

The former Indemnity Commission also had a mandate that was limited to forced disappearances and arbitrary detentions. It went beyond this mandate in a limited number of cases. For example, it provided compensation to some Moroccans who had been forced into political exile. Benzekri told Human Rights Watch that the IC had also issued compensation to some persons whose detention occurred after a trial, but whose conviction and sentence the IC considered to have been unjust. It did so, said Benzekri, because the restrictive notion of arbitrary detention in the IC’s statutes “posed a problem.”⁴⁵ In the majority of cases, however, the IC rejected applications for compensation when the victim’s claim related to a type of violation that did not fall explicitly within the mandate of arbitrary detentions and forced disappearances.

It is not clear why eligibility for compensation should depend on whether the abuse a person suffered is classified as systematic or non-systematic. Compensation policies should not discriminate among victims of state-sponsored human rights abuses, except in terms of the gravity of the violation suffered. If the ERC considers itself limited statutorily in terms of which victims it can compensate, it should nevertheless advocate for the right of all victims of grave human rights abuses, as the term is understood in international law, to enjoy equal consideration from state bodies in terms of reparation and compensation.

Inability to Compel Cooperation

Most of Morocco’s security services (police, army, intelligence agencies) were implicated in the grave human rights violations committed between 1956 and 1999. Thus the ERC’s search for the truth seems dependent on access to the archives and other documents of these services, and on the testimonies of current and former agents and

⁴⁴ ERC, “Traitement des cas présumés de disparition forcée,” information sheet, August 2005.

⁴⁵ Human Rights Watch interview, Rabat, October 20, 2004.

their superiors. Because these documents and testimonies could incriminate these agents or their colleagues, the agents seem to have little incentive to comply with ERC requests for cooperation.

In contrast to South Africa's truth and reconciliation process, Morocco has not offered state agents the possibility of an amnesty in exchange for full disclosure of crimes they committed in furtherance of their official duties. The ERC's work does not affect, in theory at least, the criminal liability of perpetrators.

The statutes of the ERC endow it with no power to compel state agents to respond to requests to testify or furnish documents. The statutes merely call on state bodies to help the ERC in the accomplishment of its work: "In order to achieve the goals set out by these statutes and to carry out the high royal decision creating the Equity and Reconciliation Commission, all the authorities and public institutions shall provide to the Commission their help and provide it with all information and facts enabling it to accomplish its missions" (Article 7). To date, Moroccan authorities have never stated that there would be sanctions of any kind for state agents who did not cooperate with requests for information from the ERC.

This absence of subpoena power contrasts with the law in Morocco governing parliamentary commissions of inquiry, which provides prison terms for persons who refuse to cooperate with these bodies.

ERC President Benzekri told Human Rights Watch on April 6, 2005 that "no official who is currently serving in office was interviewed by the ERC because our philosophy is to place the victim at the center of our work." The ERC submitted to state agencies the case files of victims who had approached the ERC, and waited for the state agencies to provide information about these cases.

Benzekri told Human Rights Watch shortly after the ERC's creation, "The king told us he would ensure that authorities would cooperate."⁴⁶ A little more than a year later, on April 6, 2005, he told Human Rights Watch, "Cooperation with various state agencies has been effective, in terms of our getting access to army archives, visiting [former] secret detention facilities, and establishing programs for social assistance and rehabilitation for the communities around these facilities. Without such cooperation we would never have been able to do what we were able to do."

⁴⁶ Human Rights Watch interview, Rabat, February 3, 2004.

Until the ERC discloses the results of the claimed cooperation with state agencies, it is not possible to evaluate the effectiveness of this voluntary approach. As of early November 2005, the ERC had not indicated that the quality of cooperation it had been receiving from state officials was problematic in any way.

The Coordinating Committee of Families of the Disappeared criticized this silence. The committee voiced frustration that the ERC, more than a year after its creation, had provided them with no information concerning the fate of their missing relatives. In a communiqué dated March 20, 2005, the Committee underscored “the importance of being kept informed of the difficulties that the commission might be confronting during its investigations concerning the fate of the disappeared and the identity of the agencies behind these obstacles.”⁴⁷ Benzekri responded that the investigation was still ongoing and added that it would be irresponsible to give information bit by bit to families, especially if that information was incomplete or unconfirmed.⁴⁸

For Khadija Rouissi, a founding member of the Coordinating Committee of Families of the Disappeared and the sister of one of the best-known of the “disappeared,” Abdelhak Rouissi, the ERC’s lack of powers of compulsion is a real problem because the authorities refuse to collaborate:

The families wonder what the ERC has been able to do to convince officials to speak.... I met a person thought to have been involved in the abduction of Abdelhak. He advised me in a sarcastic and arrogant way to go to court if I wanted to go after those who were responsible. Others have said, “If the top officials aren’t going to talk then I am not going to talk either.”⁴⁹

(In March 2005, Rouissi joined the staff of the ERC. However, she made these observations in the name of the Coordinating Committee.)

⁴⁷ See *al-Ittihad al-Ishtiraki* (a Moroccan Arabic-language daily), March 22, 2005.

⁴⁸ Human Rights Watch interview, Rabat, April 6, 2005.

⁴⁹ Human Rights Watch interview, Rabat, March 31, 2005.

VI. The ERC in Action

Caseload

Three months after its official inauguration by the king on January 7, 2004, the ERC reported having received more than 20,000 cases.⁵⁰ A few days before the end of its official mandate, the ERC President Benzekri said it had received “close to 40,000 pieces of correspondence, concerning between 25,000 and 30,000 cases.” He added that “when the work is completed, it is likely that only 10,000 to 15,000 of these cases will be determined eligible for compensation.”⁵¹

According to Benzekri, more than 10,000 persons have been received at the headquarters of the ERC in Rabat to provide testimony or other information. The staff of the commission’s Investigation Division has met nearly 10,000 persons, including victims, their relatives, persons living near detention centers, and retired security agents.

In the months following the ERC’s creation, numerous political parties, nongovernmental organizations (NGOs), and victims’ groups submitted memoranda to it. These included the Follow-Up Committee on Grave Human Rights Violations (a consortium of the AMDH, OMDH and FVJ), the nongovernmental Truth Commission for the Rif, Sahrawi activists, and parties such as the Socialist Union of People’s Forces (*Union Socialiste des Forces Populaires*, USFP), the Unified Socialist Left (*parti de la Gauche Socialiste Unifiée*, GSU) and the Constitutional Union (*l’Union Constitutionnelle*, UC).

In the three relatively remote regions that were most touched by political strife and ongoing repression – the Middle-Atlas, the Rif and the Western Sahara – the ERC established a temporary presence to collect additional information. It staffed field offices in the Middle Atlas cities of Beni-Mellal and Azilal from December 13 to 28, 2004, in the Western Sahara from February 4 to 13, 2005, and in the Rif, in the towns of El-Hoceima and Nador, from April 26 to 30, 2005.

Closed and Public Hearings

The ERC conducted a number of closed meetings with former officials who might be in a position to provide information on a number of specific cases, as well as offer their perspectives on events being investigated. The outcome of these meetings has not been

⁵⁰ “Maroc: 20 000 demandes d’indemnisation pour les abus des années de plomb,” Agence France Presse, April 15, 2004.

⁵¹ Human Rights Watch interview, Rabat, April 6, 2005.

made public. According to ERC President Benzekri, “Many wanted to participate, others were less willing.”⁵²

Between December 2004 and May 2005, seven public hearings were held around the country, including in areas that had experienced some of the harshest repression. Direct and indirect victims of human rights abuses spoke. The eighth and final hearing, planned for El-Ayoun, in the Western Sahara, was postponed and eventually cancelled, reportedly due to the political unrest that shook the region in May 2005 (see above).

Morocco’s human rights organizations, politicians and political activists, union officials, and media welcomed the ERC’s decision to organize public hearings, but expressed reservations concerning the form and substance of the hearings. Most of the criticisms centered on the last clause of the “pact of honor” between the public witnesses and the ERC that forbids witnesses from citing suspected perpetrators by name.⁵³ This ground rule was unacceptable to some victims, such as the “Benouhachem Group” (a group of ex-detainees who were arrested as high school students in 1975 and held at the secret detention centers of Agdez and Kal`at M`gouna until the late 1980s), and to some human rights organizations, including the AMDH. Abdelhamid Amine, AMDH president, said on March 29, 2005, “The ERC categorically refuses to designate individual perpetrators, which means that we will have, at best, only partial truths. The aftermath of the [suicide] attacks of May 16, 2003 [in Casablanca] revealed the fragility of what has been achieved in terms of human rights, and thus the importance of the struggle against impunity and for the truth.”⁵⁴

The “pact of honor” required public witnesses to attend preparatory meetings prior to the hearing itself, and refrain from defending or attacking any political, union, or association. The “pact of honor” obliged the ERC, for its part, to seek wide and diversified media coverage for the hearings (see below); to permit the witnesses to testify in the language of their choice (classical Arabic, dialectal Arabic, Amazigh, French or Spanish); to bear the transportation and lodging costs of the witnesses; and to offer psychological counseling to the witnesses.

⁵² Human Rights Watch interview, Rabat, April 6, 2005.

⁵³ Speakers had to pledge “not to cite by name the persons whom the victims hold responsible for violations that they were subjected to, in conformity with the non-judiciary character of the ERC, and with the provisions of its statutes, which calls for avoiding any assigning of individual responsibilities.” See the “Charte d’honneur relative aux engagements de l’Instance Equité et Réconciliation et des victimes participant aux auditions publiques,” [online] www.ier.ma/_fr_article.php?id_article=639.

⁵⁴ Public presentation in Paris, March 29, 2005, attended by Human Rights Watch.

The hearings in Rabat (of which there were two), Marrakesh, Figuig, Khénifra, and Rachidiyya all followed the same format. At each hearing, about ten victims narrated before those assembled – members of the ERC, journalists, and members of the public – under a portrait of Mohamed VI, what they had suffered during the reign of his father, Hassan II, and grandfather, Mohamed V. Each one had about twenty minutes to speak, after which no one could ask questions or otherwise respond to the speaker. Those present were to maintain absolute silence and refrain from applause or other expressions of emotion.

The events evoked by the witnesses included the uprising in the Rif in 1958, the guerrilla movement in the region of Goulmina in 1973, and the 1981 bread riots in Casablanca. They spoke of arbitrary arrests, “disappearances,” unfair trials, torture, rapes, and reprisals against relatives.

In these five cities, the hearings were packed and emotion-filled. But perhaps most harrowing was the public hearing at al-Hoceima in the Rif, much anticipated because of the lack of information about repression in this region during and after the 1958 rebellion. When the hearing opened on May 3, 2005, members of the audience stood up in a gesture of protest at the ERC’s rule that public witnesses could not name those responsible for committing the abuses they suffered or witnessed. A week earlier, a collective of local associations had already declared their opposition to the ERC’s approach, notably the ban on public naming of perpetrators. The protests delayed the start of the hearing until late in the evening.

The goals of the public hearings were two-fold, according to the ERC’s website and statements made to the media by its members: to inform the Moroccan people of the violations committed by the state and to show the suffering and the dignity of the victims.

The ERC selected the public witnesses from among those who had applied to speak on the basis of several criteria. It said it wanted those it chose to be broadly representative of the different violations that had occurred.⁵⁵

The AMDH, which criticized the ERC hearings not just because witnesses could not name perpetrators but also because post-1999 abuses were excluded, organized its own public hearings between February and May 2005, in Rabat, Khénifra, al-Hoceima,

⁵⁵ See “Critères et sources du choix des témoins,” on the ERC website, at www.ier.ma/_fr_article.php?id_article=582.

Marrakesh, and Paris, under the title, “Testimonies in Complete Freedom for the Truth.”⁵⁶ During these hearings, some victims named those they held responsible for violating their rights. In contrast to the ERC public hearings, Moroccan television did not cover the AMDH hearings, although the association said it had invited both stations to attend.

The AMDH, in an e-mail to Human Rights Watch dated October 26, 2005, said that those whom the AMDH’s witnesses had accused by name could exercise their right of response if they wished to do so. To date, none of those who testified at the AMDH hearings have faced complaints of libel.

In addition to the victims’ hearings, the ERC organized a series of thematic seminars. These had two purposes: to complement the “victims’ hearings” by furnishing contextual information about the violations committed over four decades, and to debate the reforms needed to establish the rule of law, the protection of freedoms, and to guarantee the non-repetition of past violations. Five thematic hearings were held between February 15 and March 15, 2005. Each was broadcast on Moroccan state television’s Channel 2 during prime time. The subjects were “Democratic Transition in Morocco,” “Eliminating Violence as a Means of Governing,” “Political, Economic, and Social Reform,” “Cultural and Educational Reform,” and “Legislative, Executive, and Judiciary Reform.” The speakers and discussants were primarily scholars and policy analysts.

Publicity and Issues of Transparency

The national and international news media – notably the print press – followed the ERC public hearings closely. The leading state channel broadcast the first hearing live and in full. Then, in contrast to what had been initially announced, the subsequent hearings were not broadcast live or in their entirety. Some defenders of the switch to edited coverage said that it was more successful at holding the interest of ordinary viewers than the longer, sometimes sprawling live coverage. The ERC also put on its website summaries and audio clips of the testimonies, as well as photographs of the hearings.

Some Moroccan newspapers published the testimonies of victims and witnesses who were not among those selected to speak at the ERC’s public hearings. In some cases, these other witnesses named those they held responsible for human rights abuses.⁵⁷

⁵⁶ See information provided on the website of the AMDH, at www.amdh.org.ma/html/act_pub.asp.

⁵⁷ See, for example, *Le Journal Hebdomadaire*, December 25, 2004, no. 188 [online] http://www.lejournal-hebdo.com/rubrique.php3?id_rubrique=200, in which several victims accuse perpetrators by name.

The ERC statutes specify the need for both transparency and confidentiality. Article 4 states: “The deliberations of the Commission are confidential. All members are to maintain strict confidentiality concerning the sources of information and the progress of the investigations.”

Such a confidentiality clause is understandable. It can protect both the commissioners and witnesses from being subjected to pressure. It can also encourage state agents to cooperate with the ERC.

Article 24 states, “In order to ensure the interaction and participation of all sectors of society in following its work, the Commission shall establish a plan for maintaining contact with victims or their families and their representatives, with the print and broadcast media, and with all parts of civil society.” The ERC statement of April 15, 2004 explaining its mission identifies “those who make up the human rights movement and civil society” as among the ERC’s “essential partners.”⁵⁸

The conflicting needs of confidentiality and transparency have caused some tensions. In a communiqué dated February 7, 2005, the three Moroccan human rights organizations that make up the Follow-Up Committee on Grave Human Rights Violations accused the ERC of failing to involve them in its work. According to members of the groups, during the first year of its work the ERC met with them only twice.⁵⁹ At a third meeting, on July 8, 2005, the Follow-Up Committee presented its recommendations to the ERC, which published them on its website.

The Coordinating Committee of Families of Disappeared Persons also complained that the ERC was not communicating sufficiently with it. It said that committee members were among the first to visit the ERC after it set up shop, with some members paying more than one visit, to provide details of their individual cases. Since that time, the committee claimed a year later, the ERC has had no further contact with the families. The family of one of the best-known “disappeared” persons, Hocine Manouzi, issued a statement dated March 10, 2005 stating:

With the announcement of the results of the ERC’s investigations only a few days away – investigations that unfortunately did not involve us by

⁵⁸ Présentation des Statuts de l’Instance Equité et Réconciliation, [online] www.ier.ma/_fr_article.php?id_article=1273.

⁵⁹ Human Rights Watch interviews, Rabat, with Mohamed Sebbar, president of the FVJ, March 29, 2005, Abdelaziz Nouaydi of the OMDH, April 1, 2005, and Abdelillah Benabdeslam of the AMDH, March 29, 2005.

providing us with all of the information concerning the search, and with the possibility to furnish other kinds of evidence relating to the facts – our right to know has been abridged. It has been abridged by the non-respect for the principle of allowing all concerned parties to see and respond to the evidence.⁶⁰

According to its president, the ERC has adopted a policy of refraining from communicating partial information to families of the “disappeared,” preferring to wait until its investigation has been completed.

The ERC website (www.ier.ma) represents a laudable effort in transparency and communication on the part of the ERC. The site contains the ERC’s basic referential texts, biographical data about its members, summaries of the ERC’s hearings and of the various seminars at which commissioners spoke, press coverage of the ERC, a bibliography on the theme of violations of the past, and links to other sites containing information about human rights and truth commissions.

The ERC has no statutory obligation to publish on its site documents other than its own. But, having decided to place on its website some articles published by the press and some materials issued by human rights organizations, it is regrettable that the ERC has chosen to present selective perspectives on its work. While the site presents some articles and communiqués critical of the ERC, the accent is on the positive. Abdelillah Benabdeslam of the AMDH said, for instance, that a critical memorandum that the AMDH submitted on January 29, 2004 was not posted. Nor were recommendations of the FVJ concerning compensation, or a communiqué issued by the Follow-Up Committee on Grave Human Rights Violations that criticized the lack of cooperation it said it received from the Commission.⁶¹

Presentation of ERC findings

On October 9, 2005, the ERC announced the first results of its efforts to determine the fate of “disappeared” persons. It reported having located the burial places of fifty men and women who had “disappeared” during the 1970s, 1980s, and early 1990s. The ERC communiqué listed the names of all fifty and said that it had contacted the families before making the announcement. All of those named had previously figured on

⁶⁰ Communiqué de la famille de Houcine el-Manouzi, “La vérité, toute la vérité, rien que la vérité,” Casablanca, March 10, 2005; and Human Rights Watch interview, Casablanca, March 31, 2005, with Rachid Manouzi, brother of Hocine.

⁶¹ Human Rights Watch interview, Rabat, March 29, 2005.

established lists of “disappeared” persons; most were from the Western Sahara. Each person had died after being detained in one of three remote secret detention centers – Agdez, Kal`at M`gouna, or Tazounit. They were then buried in cemeteries near these centers, the ERC said.

The ERC stated that it had visited these centers and determined the date and place of death, “thanks to information gathered from national authorities, documents available from provincial authorities, and information collected from former civil servants who witnessed the circumstances of death and of burial.”⁶²

The announcement that the ERC had resolved fifty long-standing cases of “disappearance” raised hopes that additional announcements of this nature would follow, providing answers in other outstanding cases of “disappearance.” But there were also important questions hanging over this first discovery:

- Did the ERC inform the families whether/when they might rebury the bodies in accordance with their preferences?
- By what means did the ERC confirm the identification of the body, and would the family have the opportunity to do so too, if it wished?
- What information, if any, did the ERC provide families concerning what happened to the person between the time of arrest or abduction and the time of death?
- Were the families informed of the cause of death?
- Did the ERC identify to the families any individuals or agencies that were implicated in the deaths of their relatives?
- Were the families provided with, or invited to consult, the archival records that pertain to the person’s case and that were consulted by the ERC?
- Would the public authorities make any comment concerning the discovery of the bodies of fifty persons who had died after being illegally detained by state agents?

The answers to these questions were not known at the time this report went to press.

As noted above, at the end of its mandate, the ERC is to submit to the king a complete report based on its work. Alongside this report, the ERC plans to make public a version

⁶² ERC, “L’IER annonce les résultats relatifs aux lieux d’enterrement des victimes décédées dans les centres de détention illégaux,” October 9, 2005, [online] www.ier.ma/_fr_article.php?id_article=1332.

of the report that is written in a more accessible fashion but, in keeping with the ERC's statutes, will not contain the names of suspected perpetrators.⁶³

In addition to these reports, the ERC will have created, on the basis of its research and investigations, an unmatched database of human rights violations committed in Morocco during the pre-1999 period. The ERC's archives may contain evidence that is of value in judicial proceedings, both for victims and those accused of wrongdoing.

At present, Morocco has no law guaranteeing the preservation of and the right of access to public archives. In their public comments, ERC members have spoken of the need for laws and policies designed to protect and preserve the data they have collected, and to make it as accessible as possible to the Moroccan public. Their final recommendations should address this need in a forceful manner.⁶⁴

The building blocks of the ERC's database are the information sheets completed for each person who submitted a case to the ERC. They contain the name of the victim, the nature of the violation, a description of any torture, or inhuman or degrading treatment alleged by the victim, the place of detention, and the name of the suspected perpetrator(s). According to ERC commissioner Driss el-Yazami, the data collected has made possible a precise and detailed chronology of the principal periods of repression during Morocco's history, as well as a map showing the main secret detention centers.

Like most other truth commissions, the ERC's work has been victim-centered, and this will no doubt be reflected in its documentation of repression in Morocco. A fuller picture would emerge if and when it becomes possible to obtain more information from perpetrators and from state agents.

⁶³ Human Rights Watch interview, Rabat, October 20, 2004.

⁶⁴ See "Question of the impunity of perpetrators of human rights violations (civil and political)," a report prepared for the U.N. Commission on Human Rights:

The right to know implies that archives must be preserved, especially during a period of transition.

The steps required for this purpose are:

- (a) Protective and punitive measures against the removal, destruction or misuse of archives;
- (b) Establishment of an inventory of available archives, including those kept by third countries, in order to ensure that they may be transferred with those countries' consent and, where applicable, returned;
- (c) Adaptation to the new situation of regulations governing access to and consultation of archives, in particular by allowing anyone they implicate to add a right of reply to the file.

"Question of the impunity of perpetrators of human rights violations (civil and political)," revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev.1 October 2, 1997, [online] <http://www.derechos.org/nizkor/impu/joinet2.html>.

As part of the ERC's work on reparation, commissioners visited all of Morocco's known former secret places of detention to reflect on proposals for converting some of these sites into public memorials. (The ERC apparently did not visit the DST facility in Temara, which human rights organizations allege served as a secret detention center for interrogating suspected Islamist militants after 2001 – a period not included in the ERC's mandate.) According to its president, the ERC may also recommend other kinds of collective rehabilitation, such as socioeconomic development programs for regions that suffered from decades of neglect, either because they were considered rebellious or because they happened to be located near secret prisons such as Tazmamart.

VII. Equality of Approach to Victims: the Sahrawis

The ERC faces special difficulties in carrying out its work in the Western Sahara, owing both to operational challenges and the polarized atmosphere in the region. It must also contend with the officially encouraged chauvinism inside Morocco toward the region, reflected in laws punishing speech that questions the “Moroccan-ness” of the region.⁶⁵

As noted above, the public hearing of the ERC scheduled for El-Ayoune, in the Western Sahara, was the only one to be cancelled. Although to Human Rights Watch's knowledge no official reason was given for the cancellation, commissioners told us that it was due to the tense political climate in the region following the violent disturbances in May. One result is that the events in this region are underrepresented overall in the ERC's public hearings. According to statistics furnished by the ERC on its website, events related to the Western Sahara conflict accounted for only 2 percent of the events described by the witnesses in the seven public hearings.

Until the U.N. brokered a ceasefire in 1990, Morocco fought a fifteen-year low-intensity war with the *Frente Popular de Liberación de Saguía el Hamra y Río de Oro*, more commonly known as the Polisario. The Polisario seeks independence for the Western Sahara, a region that the U.N. classifies as “a non-self-governing territory” and that remains under effective Moroccan control. The ceasefire was supposed to lead to a U.N.-organized referendum in the region to choose between on whether to accept Moroccan sovereignty and independence. However, Morocco has used a dispute over the list of eligible voters to keep the referendum plan from moving forward, while proposing regional autonomy within Morocco as an alternative to the referendum.

⁶⁵ A recent indication of this intolerance toward challenges to the official discourse is the sentence imposed on journalist 'Ali Mrabet for characterizing the Sahrawis in Tindouf as “refugees” rather than as a population being held against its will by the Polisario. See above, in section III of this report.

During the period of armed conflict, Moroccan security forces carried out hundreds of forced disappearances in the Western Sahara and arrested hundreds of others and sentenced them to long prison terms after unfair trials. Although the repression eased after 1990 and in 1991 King Hassan II released some 270 of the “disappeared” Sahrawis, security police maintain a tighter control in this region than elsewhere. The continuing repression and political tensions in the region complicate the task of the ERC.

State authorities have restricted independent human rights activities in the region. In June 2003, a court ordered the dissolution of the local branch of the Moroccan Forum for Truth and Equity, on the grounds that it was carrying out “separatist” and “illegal” activities. The Forum is a national organization representing victims of past abuse that has been active in following the work of the ERC. A local group, the Sahrawi Association for Victims of Human Rights Violations Perpetrated by the Moroccan State in the Western Sahara, has encountered numerous obstacles in its recent efforts to obtain legal status. The Moroccan Human Rights Association received authorization to operate a section in the city of El-Ayoun in 2005, but after nearly two years of delays.

Local residents may hesitate to step forward to talk about the abuse they suffered in the past, fearing reprisals from authorities. They may hesitate also because of a feeling of distrust toward Moroccan state institutions, or because of political pressure from separatists to put the “national” cause ahead of individual cases. There is also the fact that a large portion of the Sahrawi population has been living in refugee camps in Tindouf, Algeria since the 1970s, complicating the task of the ERC to solicit their participation in its work.

No one disputes that Moroccan forces “disappeared” Sahrawis during the 1970s and 1980s, but the number of cases is a matter of contention. Over the years, a number of human rights organizations and NGOs sympathetic to the cause of Sahrawi self-determination have prepared and circulated lists of as many as 1,500 Sahrawis deemed to have “disappeared” at the hands of Moroccan authorities.

ERC President Benzekri said the ERC cross-checked all the lists it had obtained of Sahrawi “disappeared,” reviewed relevant army and gendarmerie archives, dispatched researchers to the Western Sahara, interviewed relatives of missing persons, consulted with the U.N. Working Group on Enforced and Involuntary Disappearances and with the International Committee of the Red Cross, and obtained through ICRC auspices information from Sahrawis formerly in Moroccan custody and now living in the Tindouf camps. Benzekri maintained that this research enabled the ERC “to clarify numerous cases, even if there are a lot still to be explained.” He has also said that the number of

persons “disappeared” and still missing from all regions of Morocco totaled about 260, indicating that he considers the number of confirmed cases of “disappeared” Sahrawis to be far lower than most of the estimates put forward by NGOs. Benzekri said that some of the NGO lists included persons for whom there is no available evidence that they had ever been taken into custody by Moroccan forces. He explained that these might include Polisario fighters who were killed by Moroccan forces but whose bodies were either never recovered or were buried without the next-of-kin being informed.

As for other categories of human rights violations in the Western Sahara, Benzekri said the ERC had to determine in which situations international humanitarian law applied. That legal regime gives armies a certain latitude in its dealings with the civilian population. For example, if the Moroccan army removed a civilian population from a zone of conflict, it would be necessary for the ERC to determine whether the Moroccan army “carried out these relocations according to the applicable rules,” said Benzekri.

Ultimately, the ERC must demonstrate that it treated individual cases and the broader history of repression in the Western Sahara in a manner consistent with its handling of victims and repression elsewhere.

VIII. The ERC and Current Human Rights Issues

The ERC, itself a product of the progress Morocco had made in human rights, was established at a moment when that progress was being undermined by attacks on civilians by militant Islamist groups and the state’s response to those attacks. The mistreatment and unfair trials of suspected militants who were rounded up after the suicide bombings of May 16, 2003, recalled in some ways the grave violations of the past that lie at the heart of the ERC mandate.

The parallels are limited: while some of the suspects arrested in 2003 went missing in police custody for up to several months, they were all accounted for eventually. However, many were subjected to torture or mistreatment while under interrogation. Some were held in an unacknowledged detention center in Temara, a facility under the auspices of the National Surveillance Directorate (*Direction de la Surveillance du Territoire*, DST). Some 900 of the suspects were sentenced to prison terms, many in hasty proceedings that did not provide defendants their basic due process rights. Seventeen were sentenced to death, sentences that have not been carried out yet. (Morocco has not carried out an execution since 1993.) If, since 2003, the abuses have been most dramatic in the crackdown on suspected Islamist extremists, the government has also persecuted

other Moroccans for participating in peaceful protest rallies or for criticizing government policies.

Authorities have responded to reports of present-day abuses by characterizing them as isolated phenomena.⁶⁶ Mohamed VI, in an interview published in the Spanish daily *El País* on January 16, 2005, acknowledged the existence of “twenty cases of abuse” that he said were being handled by the courts.⁶⁷ No details of these twenty cases have been disclosed, to Human Rights Watch’s knowledge, making it difficult to verify whether and for what offenses officials were being held accountable.

Overall, the pattern of continuing abuses, criticized by various human rights organizations as well as by the U.N. Human Rights Committee,⁶⁸ shows that security forces continue to operate in a climate of impunity and disrespect for the law, and that the executive branch continues to exercise considerable influence over the courts.

It is unfair to expect the ERC to investigate or speak out on recent human rights practices. Its mandate covers abuses that occurred between 1956 and 1999. Insofar as a state-appointed body has responsibility for examining present-day abuses, it is the Advisory Council on Human Rights. The ACHR is, according to a decree of April 10, 2001, to “examine, on its own initiative or at the request of the party concerned, cases of human rights violations that are brought to its attention, and to make recommendations to the appropriate authorities.”⁶⁹ The ACHR’s internal regulations state it should be “objective and impartial in its démarches and analyses, firm and demanding in the face of violations of human rights.” The annual report that the ACHR is to produce should contain “an objective and precise evaluation of the situation of human rights in Morocco.” That report should document “the violations and abuses of human rights, [and provide] an analysis of the impediments to progress in specific areas.”⁷⁰

⁶⁶ For example, Justice Minister Mohamed Bouzoubaâ said abuses in the context of the round-up of terror suspects were “rare” and “isolated,” but vowed, “We will respond to reports of violations.” Agence France-Presse, “Aucun centre de détention secret au Maroc, selon un ministre,” July 2, 2004.

⁶⁷ King Mohamed VI said, “There is no doubt that abuses took place. We found out about twenty cases. They were cited also by nongovernmental organizations and the ACHR. They are now being handled by the courts.” The interview is online in French at the ERC website, www.ier.ma.

⁶⁸ See the Concluding Observations of the Human Rights Committee on Morocco, November 5, 2004, CCPR/CO/82/MAR, [online] <http://www.ohchr.org/english/bodies/hrc/hracs82.htm>.

⁶⁹ Decree n°1-00-350 of April 10, 2001, on the reorganization of the ACHR, Article 2, [online in French] http://www.ccdh.org.ma/_fr_article.php?id_article=82.

⁷⁰ “Internal regulations of the ACHR,” March 2003, [online, in French] http://www.ccdh.org.ma/article.php3?id_article=84&lang=fr. Published in the *Official Bulletin of the Kingdom of Morocco*, no. 5204, April 15, 2004.

While responsibility for monitoring and responding to present-day abuses resides with the ACHR, the ERC's statutes link its probe of the past to the future, and this linkage inevitably passes through the present. The ERC is asked to propose "guarantees that violations will not be repeated" (Article 5), as well as means for "restoring confidence in the primacy of law and respect for human rights" (Article 9.6). These provisions reaffirm one of the recommendations made by the ACHR in 2003 and endorsed by the king, which is that the ERC propose ways "to guarantee a definitive break with past practices and a re-establishment and re-enforcement of confidence in the state and respect for human rights."

ERC President Benzekri gave an example where the ERC's work depends on assessing current conditions. It seeks to formulate recommendations on "maintaining security in a democratic society," he said, but was finding it difficult to obtain the regulations governing each of the various security agencies, their fields of action, their recruitment policies, their training, and methods of recruiting. This lack of clarity, he said, can make it easier for abuses to take place.

The recommendations that the ERC makes toward preventing a return to the past will be more compelling if it points out, in its final report and in its public declarations, where "past" practices appear to persist at present, and where the structures that made them possible apparently remain in place.

IX. Conclusion

The creation of a truth commission can contribute to fulfilling a state's obligations toward victims of past abuse, and to reconciling a nation with its past. The ERC has already accomplished much by giving victims a voice in public hearings around the country. It has created a valuable archive on past abuses, and trained scores of Moroccans in the collection of human rights data.

But a full assessment of the ERC must wait. Will it clarify what happened to the hundreds of persons who "disappeared" and whose fate is unknown? Did it succeed in eliciting the cooperation of state agents in order to resolve these questions, and to expose the machinery of repression and identify its commanders? What role will the ERC play in fulfilling the right of victims to reparation, in establishing an irrefutable account of historical events, and – looking toward the future – in curbing impunity and preventing a recurrence of future abuses? The answers will become clearer in the

months ahead as the ERC completes its final report and recommendations, and issues decisions on how victims are to be compensated.

Moroccan authorities have presented the ERC as proof of Morocco's enlightenment on human rights, as "a major achievement for the consolidation of the democratic transition."⁷¹ While the ERC is indeed evidence of human rights progress, it has operated during a period when that progress has been marred by setbacks: the repression of suspected Islamists and of independence activists in the Western Sahara, the continued prosecution of journalists and the forceful dispersing of peaceful demonstrations.

The ERC mandate does not include these present-day abuses. But, like many other truth commissions, its mandate does include recommending measures, based on lessons drawn from the past, to prevent future abuses. Will the ERC's recommendations tackle the institutions that facilitated the commission of systematic and grave abuses in the past, and that continue to be problematic today: security services that are not accountable before the law, and courts that lack independence? Will the ERC make recommendations about how to pursue suspected perpetrators of grave abuses, some of whom continue to occupy government posts?

The ERC's answers to these questions will determine in part its legacy. But in the end, much depends on how Moroccan authorities follow through on the ERC's recommendations. A truth commission can advise, but responsibility resides with the state to ensure that security forces are held responsible for their actions, that Moroccans enjoy fully their rights to expression, assembly, and association, and that the courts ensure a fair trial for every suspect. A Morocco that now moves resolutely in these directions will do more than anything else to consolidate the legacy of the ERC.

⁷¹ Message of Mohamed VI to the 49th congress of the International Union of Lawyers on August 31, 2005, [online in French] www.ier.ma/_fr_article.php?id_article=1309.

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