Kingdom of Morocco
Equity and Reconciliation Commission

Final Report

Volume 4

THE COMPONENTS OF REFORM AND RECONCILIATION

A National Commission on Truth, Equity and Reconciliation

Kingdom of Morocco
Equity and Reconciliation Commission

Final Report

Volume 4

THE COMPONENTS OF REFORM AND RECONCILIATION

TABLE OF CONTENTS

Chapter One

NEW INSTITUTIONAL, LEGAL, POLITICAL AND GOVERNMENTAL REFORMS

Foreword

Since the beginning of the 1990s, Morocco has witnessed a series of reforms, with participation of the State, political forces, civil society associations, and in particular human rights associations. Without wanting to ignore the important and influential role played by the political opposition in adopting and promoting these demands, the appeals for reform gained an extreme importance for many reasons, including in particular :

1. They shed light on aspects of violations and gaps in legal guarantees ;
2. They reflect the level of awareness of the civil and human rights elite of the human rights culture ;
3. They give a developed picture of the developments occurring in the dynamics of thought concerning Moroccan democratic reform.

They opened important arenas that helped to advance the process of settling the gross human rights violations of the past, and also made this process one of the mechanisms of reform. As the Equity and Reconciliation Commission presents its recommendations concerning the reforms necessary to guarantee non-repetition, it recalls the institutional, legal and political reforms that have already been introduced, and that have a direct role in promoting human rights, and individual and group freedoms. These reforms basically involve on the one hand the constitutional entrenchment of human rights and the creation of new institutional mechanisms to guarantee the protection of human rights, and on the other legislative reforms intended to enshrine that protection.

I. Institutional Reforms

1. The Constitutional Entrenchment of Human Rights

The constitutional review of 1992 instated a group of provisions in the constitution that strengthened the rule of law. In particular, it contained :

- An assurance that the preamble of the constitution would contain a reference to Morocco's adherence to human rights as they are universally recognized ;
- The establishment of a constitutional council, one of whose tasks is monitoring the constitutionality of laws ;
- Specification of a deadline for issuing the order to bring the law into force ;
- The introduction of provisions intended to establish the principle of the separation of powers and to extend the prerogatives of the House of Representatives.

The establishment, by virtue of the 1992 constitutional review, of the principle of Morocco's commitment to the international conventions on human rights, is of historic importance. This was confirmed in the 1996 constitutional review, in that the third paragraph of the preamble states : "... Aware of the need of incorporating its work within the frame of the international organisations of which it has become an active and dynamic member, the Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organisations, as it reaffirms its determination to abide by universally recognised human rights".

This provision possessed a dimension of great importance in terms of the constitutional order, in that it came after the definition of the identity of the state. In addition, the preamble did not content itself with confirming the importance of international conventions, but also refers specifically to commitment to the obligations relating to the three aspects of human rights provisions the convention focuses on, namely principles, rights and duties.

On the incorporation in the constitutional charter of the commitment and referral to the international authority of human rights, a legal, procedural and jurisprudential controversy arose when amending the 1992 constitution, concerning the meaning of commitment and the concept of internationally recognized rights, and their relation to the contents of the obligations and commitments found in the relevant international convention.

The highest authority in the country would offer interpretations of this constitutional provision when the late King Hassan II confirmed that "since the formulation of the previous constitution, the concept of human rights had come to constitute one of the pillars of international law". Moreover, numerous speeches by King Mohammed VI, delivered on numerous occasions, would shed light on the meaning of the constitutional commitment to human rights, in its cultural, civilizational, political and societal dimensions, in that human rights are the fruit of struggles and contributions by human beings of different religions and civilizations, and represent a continuous series of confrontations with the challenges they faced.

The letter sent by the King to the participants in the 34th International Conference of the International Federation for Human Rights (FIDH), held in Casablanca on 8 January 2001, contained the following: The fact that you belong to different cultures and geographical and religious spaces, and to various schools of thought is no more than an additional chapter in this continuous enrichment and adaptation to the specificities of the challenges that face humanity. We believe that human rights issues are the possession of the whole of humanity, with no precedence going to anyone, because they are the fruit of a historical process in the gestation of which participated human beings from different cultures and civilizations. Moreover, various peoples of the world, who yearned for freedom and justice, paid a high

price to achieve it, through the struggles and tragedies of world wars, colonial wars, and waves of racism, fanaticism, terrorism and violations around the world.

This process yielded significant gains that gave victory to democracy and human rights and opened promising horizons for hope, reflection and strong faith in the future of man.

2. The Development of the Advisory Council on Human Rights

The qualitative review of the prerogatives and the composition of the Advisory Council on Human Rights represented a significant stage in the process of settling the grave violations of the past, by providing an excellent framework and a suitable political and human rights space, since it is a human rights "parliament", involving most political, intellectual and associational schools of thought relating to human rights. This was a suitable arena for the settlement issue to interact with ideas and opinions and to discuss possible consensual ways for sorting out the issue.

The reasons making it necessary to refound and restructure the Advisory Council on Human Rights, and to broaden its prerogatives, can be summarized as follows :

2.1. Establishment and Entrenchment

The Dahir reorganizing the Council contains a preamble explaining the reasons necessitating the new prerogatives, the new membership and the new working methods. The main reasons are as follows :

- To complete the construction of a modern state based on the rule of law, in the context of a constitutional, democratic and social monarchy, based on adherence to human rights as recognized internationally and the democratic gains that have been made in culture and practice ;
- To maintain the rights and freedoms of citizens, groups and organizations, and to ensure that their practice is constitutionally secure. They are also an embodiment of civilizational and cultural principles, tolerant Islamic values, and international human rights obligations ;
- To promote human rights, maintain freedoms, establish a state based on the rule of law, and reinforce the dignity of the citizen within a comprehensive understanding of human rights, seeing that they are a powerful stimulus for development in which all the political, civil, economic, social and cultural dimensions complement each other ;
- To establish the new concept of authority through institutions meant to serve the citizen and protect him from any excess or abuse of power by the administration, groups or individuals ;

- To give civil society the status it deserves in the Council, in view of the dynamism it has shown ;
- To be careful when choosing the members of the Council that they be known for their objectivity, their moral integrity, their intellectual ability, their genuine attachment to human rights and their distinguished contribution to strengthening them ;
- To make the composition of the Council more pluralistic in terms of its representation of political and civil society ;
- To enable the Council to exercise its prerogatives in such a way as not to prejudice the exercise by the legislative, judicial and executive apparatuses of their prerogatives, in accordance with the independence and separation of powers required in a state based on the rule of law.

Within this framework fall all the considerations and requirements for developing the Advisory Council so that Morocco may remain dynamically involved in modernity and faithful to its international obligations in the realm of human rights, qualified to meet the challenges of the 21st century in harmony with its history and culture, based on the divine honour given to man, and on the virtues of freedom, equality, peace, brotherhood, tolerance, moderation and the prohibition of injustice.

2.2. The Prerogatives of the Advisory Council on Human Rights

The functions of the Council have begun to be described as prerogatives. Contrary to the Dahir that established it on 20/04/1990, it was defined as a specialized institution whose "mission is to assist His Majesty the King" in all matters relating to defending and protecting human rights, ensuring that they are practised and promoted, and maintaining the dignity, rights and freedoms of citizens, groups and institutions". In the context of its advisory role, it also falls to it to bring, present, or explain opinions, positions and recommendations concerning issues relating to human rights.

The mission of the Advisory Council on Human Rights centres around thirteen prerogatives touching the areas of protection and promotion, harmonization of laws, the implementation of international obligations, and national and international cooperation, including :

- The prerogatives of the Council to express an opinion when His Majesty the King consults it concerning general or special matters relating to the protection and respect of human rights and the freedoms of citizens, groups and organizations ;
- Submitting reports and proposals, especially concerning matters relating to the protection, promotion and better development of human rights ;

- Expressing an opinion on the annual report presented to the Council by the member responsible for the apparatus entrusted with promoting communication with citizens, institutions and the administration ;
- Studying to what extent domestic legislative and regulatory texts are in conformity with the international conventions relating to human rights that the Kingdom has ratified or acceded to, and which have been published, and making appropriate recommendations ;
- Encouraging continued ratification of or accession to international conventions and treaties on human rights, and studying draft international conventions and treaties and legislative and regulatory texts relating to human rights that are referred to it ;
- Contesting cases of violations of human rights, either automatically or at the request of those involved, by studying them and making recommendations concerning them to the competent body ;
- National, regional and international cooperation. The Council is responsible for managing cooperation between the public authorities and representatives of national and international associations and persons competent in the field of human rights, as well as cooperation with the United Nations and the bodies appertaining to it, and the international and regional bodies specialized in the protection of human rights. Moreover, whenever required, the Council shall help to prepare the reports that the public authorities have to submit to UN bodies and the competent international and regional institutions, in accordance with the Kingdom's international obligations, as well as offering assistance, when required, to delegations participating in international meetings on human rights ;
- Spreading the culture of human rights, and enshrining its ideals. The Council shall help in spreading and entrenching them by all appropriate means. It shall also encourage and support all humanitarian work aimed at defending, respecting and promoting human rights, and helping to enshrine their lofty ideals ;
- Protecting Moroccan immigrants. The Council shall actively help to cooperate with similar institutions in protecting the freedoms and defending the rights of Moroccans residing abroad.

3. Establishing Administrative Courts and Launching a New Movement of Innovation

The administrative courts were established pursuant to Dahir 255.91.1 relating to the implementation of Law No. 90/41 issued on 10 September 1993. Their prerogatives include

making final decisions concerning petitions of nullification on the grounds of abuse or misuse of authority.

The birth of the administrative courts constituted a turning point in giving the citizen more scope for seeking redress against the administration. This event was and still is of great importance because of its implications for the construction of a state governed by the rule of law. From the first year that the courts began to operate, the courts began to accumulate new jurisprudential innovations ensuring the implementation of legal principles guaranteeing the protection of human rights. The jurisprudential work also confirmed that administrative justice played a key role in the protection of human rights.

The following principles drawn from the jurisprudence of these courts reflect this role :

- The administration is a public facility in the service of the citizen ;
- Administration has ethics, and the means of proving that a public servant has committed a breach must be legal and legitimate ;
- Public servants are equal before the law, and should be given equal opportunities for promotion ;
- Administrative justice does not create budgetary posts, nor does it oblige the administration to exceed the number of posts allocated, but it monitors to what extent the administration respects the principle that public servants are equal before the law and should enjoy equal opportunities ;
- The state is responsible for damages resulting from the management of any administrative facility and for the administrative errors committed by its employees ;
- If the administrative authorities ignore the judicial provisions in force, they are thereby violating the basic principles governing the judicial procedures by respect of which public order is respected ;
- If an administration being prosecuted invades the premises of a third party through direct action by it alone, without resorting to the judicial procedure that should be followed, intervention by the judiciary shall be justified to put an end to this illegitimate action ;
- Merit and abilities are the measure for justice and equity, and shall be considered the spirit of all legislation ;
- The right to education is a basic constitutional right that must not be subject to any limitation. Any change or reorganization of the educational process in any of its stages must be in the direction of developing it and broadening its programmes without prejudicing the core of the right or the principle of universalizing education ;

- The state is responsible for damages suffered by a third party resulting directly from the mismanagement of its facilities. The court shall unify the concepts of error and negligence through broadening of the content of responsibility ;
- In case an institutional error by a security facility is the direct cause of the occurrence of the damages suffered by a plaintiff, and thus the causal relationship between these damages and the institutional error of the security facility is clear; and where investigations reveal that the damages suffered are the result of an institutional mistake by the security facility, the responsibility of the state stands ;
- Maintaining the right to continue higher studies is a matter of the utmost seriousness, not only because it is linked to a constitutional right and the general benefit it brings to the society whose children are keen to devote themselves to science and knowledge, but also given the general benefit the right brings to society. There is no reason to deprive society of this right for formal and procedural reasons which themselves constitute a subject of conflict before the competent judge ;
- To implement the standard of balance and proportionality, it is better to suspend the implementation of a decision that prevents an appellant exercising a constitutional and natural right, until his lack of legal claim is confirmed by virtue of the laws and regulations in force ;
- If an appellant does not enjoy satisfactory safeguards before he is sentenced to solitary confinement, and is deprived of the rights of defence, the decision is unjust ;
- Freedom of movement is guaranteed by virtue of the constitution and shall only be restricted pursuant to the law ;
- Dissolution of associations, declaration of nullification, or orders to close premises or prevent any meeting may only be issued according to the law ;
- Authorization of associations is not conditional on any approval, and the public authority is only able to exercise post hoc control on the basis of any change that it considers in violation of the law. Only the competent judicial body has the right to monitor and make judgements concerning the legality of such change ;
- If it is claimed that there are serious differences between the members of a party, those differences remain internal and an extraordinary conference can be held to study and find satisfactory solutions to them ;
- Freedom of assembly follows from the freedom of individuals to hold opinions and move around. Without this freedom, it is not possible for individuals to exchange ideas amongst themselves on matters that concern them or the group. Concerning

human rights and the universalization of the principles of the practice of democracy, the charters and constitutions recognize this right ;

- The right to strike is guaranteed. Whereas in its generality this provision expresses a deep political and social necessity, embracing the public service sector and the private employment sector, and insofar as this constitutional provision is absolute and general, public servants cannot be excluded from enjoying it. The right to strike is not absolute, but is subject, like other rights, to restrictions that ensure that it is exercised in a safe manner, and that the orderly running of the facility is maintained while ensuring the freedom to express occupational demands.

4. The Establishment of the Diwan al-Madalim

On the eve of the 53rd anniversary of the Universal Declaration of Human Rights on 9/10/2001, the Dahir was issued regulating the institution of the Diwan al-Madalim (ombudsman), which replaced Dahir No.279-56-1 dated 10/11/1956 and Dahir No.325-56-1 dated 16/4/1957, relating to the establishment and the regulation of the Office of Research and Information.

In terms of its nature, the Diwan al-Madalim is an institution "entrusted with developing communication between citizens, individuals and groups, and between government departments or anybody exercising the prerogatives of the public authority, and encouraging them to commit themselves to the controls of the rule of law and equity".

4.1. The Causes for the Establishment of the Diwan al-Madalim

The preamble of the Dahir establishing the Diwan al-Madalim contains a list of the reasons for its establishment, some of which are as follows :

- To enforce rights and right wrongs ;
- To support the work of institutions involved with the rights of citizens ;
- To find someone to communicate with and intervene in government departments.

4.1.1. Enforcing Rights and Righting Wrongs

The aims reflect the purposes for the establishment of this instrument, and can be summed up as follows :

- Entrenching the continuous progress that has been made in promoting truth, justice and equity ;

- Making concern for the interests of the citizen, maintaining his rights, and communicating with him the mainstay of the new concept of authority ;
- Responding to citizens' desires for equity when they come face to face with administrative procedures that are becoming increasingly complicated, in view of the fact that the matters submitted to government departments are becoming more and more numerous, technical, and complex, and because of the difficulty of adapting the management of public facilities to the requirements of some personal situations ;
- Finding an institution to take on the prerogative of searching, within the limits imposed by respect for the specificities of public authorities, for means of overcoming injustices that occur because of situations contrary to the requirements of equity that prejudice the interests of those who have dealings with public facilities.

4.1.2. Supporting the Work of Institutions Involved with the Rights of Citizens

By supporting the role played by the Advisory Council on Human Rights in the framework of the prerogatives invested in it.

4.1.3. Finding Someone to Communicate with Government Departments

To this end, the Diwan al-Madalim shall undertake the following :

- Submit proposals and recommendations intended to enforce rights to the departments involved ;
- Help to improve the running of the administrative apparatus in the service of the citizenry, within the framework of the rule of law and equity. This shall be done by submitting an annual report to His Majesty, and submitting reports to the Prime Minister and Advisory Council on Human Rights.

4.2. The Competences of the Diwan al-Madalim

The Diwan al-Madalim is competent to examine the complaints and grievances of citizens who consider themselves the victims of any decision or act contrary to the principles of the rule of law and equity uttered by departments of state, local communes, public institutions or anybody invested with prerogatives of the public authority.

On this basis, the Diwan al-Madalim is not competent to handle or examine complaints relating to issues that are up to the judicial system to make final decisions on, grievances intended to deal with a final judicial judgement, petitions within the jurisdiction of the

parliament, cases falling within the jurisdiction of the Advisory Council on Human Rights, or those where the aggrieved person has not undertaken any official endeavour or ''petition for pardon'', and has not exhausted all the appeal procedures available under the legal system in force to right wrongs, to claim reparation for injuries and to restore a person's violated rights.

In cases where it does not have jurisdiction, the Wali al-Madalim (complaints ombudsman) or his deputies may, at the request of the parties involved, seek for solutions meant to find a swift and equitable settlement to the dispute. If it transpires that the body involved has been dilatory in implementing a final judicial ruling resulting from deeds committed by a public servant or a public agent belonging to the body against whom the ruling has been issued or resulting from his failure to carry out a duty, the Wali al-Madalim shall submit a report on the subject to the Prime Minister.

4.3. The Procedure for Approaching the Wali al-Madalim

The procedure for approaching the Diwan al-Madalim is flexible in that all that is required is :

- To send grievances and complaints to the Wali al-Madalim or to his ministerial and regional deputies directly from the injured party or from someone representing him in this matter ;
- The said grievances and complaints should be written, justified and signed personally by the originator of the petition. He should also explain what endeavours he has made to regain his rights with the body that wronged him. If it is impossible to present a written complaint, the aggrieved party should present an oral complaint supported by justificatory arguments and documents.

4.4. Intervention by the Wali al-Madalim

The Wali al-Madalim shall make the investigations necessary to check the truth of the acts that have come to his knowledge and shall examine how seriously the rights of the originator of the grievance were violated, and what adjustment is required. He shall also make enquiries of the authorities involved about the acts subject of the grievance.

To this end, heads of departments and other public institutions, local communes or anybody invested with the prerogatives of the public authority who have cases submitted to them by the Wali al-Madalim or his deputies shall give their support so that it is possible to grasp all sides of the dispute. He shall do this by ordering the public servants, agents and the monitoring bodies under his authority to cooperate in facilitating the task of the Wali al-Madalim or his deputies in the investigations they undertake.

The Wali al-Madalim or his deputies may obtain documents relating to the grievance subject of investigation apart from those considered state secrets.

The Wali al-Madalim shall make every endeavour to mediate that he considers may remedy any violations that may be proved, by relying on the rule of law and equity. He shall send his proposals, recommendations and observations to the body involved. The Wali al-Madalim or his deputies must also inform the aggrieved party of the fate of his grievance.

4.5. The Reports and Recommendations Made by the Wali al-Madalim

The activities of the Wali al-Madalim derive additional importance from the reports and recommendations he submits, in so far as :

- He shall submit to His Majesty annual reports dealing with his work, which shall be published in whole or in part by royal order ;
- He shall submit to the Prime Minister general recommendations concerning measures intended to enforce the right as regards the grievances submitted to it ;
- He shall submit proposals concerning measures intended to improve the efficiency of departments concerning which complaints are made, to correct irregularities and deficiencies that affect the running of facilities attached to them, and to reform the laws regulating them. When necessary, he shall inform the Prime Minister when the departments involved refrain from responding to his recommendations ;
- He shall submit to the Advisory Council on Human Rights a report concerning matters relating to the promotion of human rights in the framework of its prerogatives.

5. The Creation of the Royal Institute for Amazigh Culture

The subject of the recognition of Amazigh language and cultural rights has remained a taboo for many years. The political elite has made scant attempt to deal with it, and civil society's efforts remain only modest.

In the context of his bold political treatment of issues relating to the modernization of society, His Majesty Mohammed VI created the Royal Institute for Amazigh Culture by virtue of a Dahir that was announced on 17 October 2001[1].

The Dahir creating the Institute contains its prerogatives, its composition, its administration and the way it is to be managed. The reasons for its creation and its prerogatives can be summarized as follows :

[1] Dahir No.299.01.1 (17 October 2001) regarding the Creation of the Royal Institute for Amazigh Culture. Published in the Official Gazette No.4948 dated 1 November 2001.

5.1. Reasons for the Creation of the Institute

These reasons are as follows :

- Moroccan pluralism is fed by different streams, Amazigh, Arab, African Sahrawi, Andalusian, which have all helped by being open to and interacting with different cultures and civilizations in moulding and enriching our identity ;
- Acknowledgement of the total cultural and linguistic heritage of the people strengthens national unity and reinforces national identity ;
- The purpose of practising democracy in the framework of a rule-of-law state is to achieve equality in rights and duties for all citizens ;
- To deepen the culture and strengthen the fabric of the rich national identity by diversifying its streams ;
- To deepen the language policy spelt out in the National Educational and Training Charter by inserting Amazigh into the curriculum ;
- Recording the Amazigh script in order to facilitate teaching, learning and spreading it so as to guarantee equal opportunities for all children to acquire knowledge and so as to strengthen national unity ;
- To give a new impetus to Amazigh culture insofar as it is a national treasure and a source of pride to all Moroccans.

5.2. The Mission of the Institute

The mission entrusted to the Royal Institute for Amazigh Culture, as an institution enjoying comprehensive legal competence and financial independence, is as follows :

- To express its opinion concerning measures intended to preserve and promote Amazigh culture in all its forms ;
- To cooperate with government departments and the institutions involved to implement policies that will help to incorporate the Amazigh language in the curriculum and ensure its spread in society, culture and the media at the national, regional and local levels ;
- To gather, record, and preserve the different expressions of Amazigh culture, and to ensure that they spread ;
- To conduct research and studies into Amazigh culture and put it within reach of the largest possible number of specialists in the fields relating to it ;

- To promote artistic creation in Amazigh culture in order to help to renew and disseminate the Moroccan heritage and its civilizational specificities ;
- To study various written scripts intended to facilitate the teaching of the Amazigh language, to produce the didactic materials necessary to achieve this goal, and to produce general and specialized lexicons and dictionaries ;
- To prepare pedagogical work plans in public education and in that part of the programmes relating to local affairs and the life of the region. All this should be done in harmony with the general policy followed by the state in the field of national education ;
- To help to prepare basic and in-service training programmes in the Amazigh language for educational personnel, public servants and employees whose occupation requires that they use it, and in general for all those who desire to learn it ;
- Where necessary, to help universities to organize centres to study and develop the Amazigh language and culture, and to train trainers ;
- To seek for programmes capable of strengthening and encouraging the role of the Amazigh language in the fields of communication and the media ;
- To establish relationships of cooperation with national and foreign bodies and institutions concerned with cultural and academic life and seeking to realize similar aims.

II. Basic Legal Reforms relating to the Protection of Human Rights

1. New Criminal Procedure Legislation

The Code of Penal Procedure created by virtue of the Dahir of 10 February 1959 was the first code established by the state in this field at the beginning of independence. When it was introduced, it was characterized by openness and the fact that it contained a group of rights and guarantees of great importance.

The original text of the Code of Penal Procedure was full of indications of its liberal legal culture, providing strong guarantees of a fair trial, and referring to the spirit of the Universal Declaration of Human Rights issued on 10 December 1948.

There is no doubt that political factors and others emanating from the nationalist climate of the time helped those who drafted it, by virtue of the intellectual principles of the Code of Public Liberties prevailing at the time, and the existence of political powers deriving from

the body of the nationalist movement in the institutions and bodies of the state (the Advisory Council and the government).

The Code of Penal Procedure is not an ordinary code regulating purely technical matters. Rather, it is a code that highlights supremely the degree of civilizational development prevailing in a certain society, in terms of the regulation of the boundaries between the private and the public domains, and the sphere of state authority and what is left up to the individual. It is a code by which to measure the level of development achieved in the field of human rights, and a state based on institutions and the rule of law. Amendments were introduced to it about the founding philosophy and the guarantees defining the boundaries of freedom.

The amendments were not introduced in isolation from the political context of the country. They were introduced during two significant historical periods, namely the early 1960s, marked by major political struggles for power, and those (the so-called transitional amendments) that were introduced in 1974 following the two abortive coup attempts and the events of March 1973.

The main tendencies that characterized the amendments and dominated them in terms of scope and procedure were :

- The powers of the public prosecutor were strengthened ;
- The power of the examining magistrate to intervene was curtailed ;
- The scope for investigation and judicial oversight was curtailed ;
- The scope of the defence was narrowed.

Thus, the amendments that were introduced especially by means of Dahir 18 of September 1962 and Dahir 28 of September 1974 included the following :

- An amendment in favour of the public prosecutor granting him discretionary authority concerning the possibility of issuing an order of placement in custody, which had been restricted to flagrante delicto cases if the perpetrator of the misdemeanour did not have sufficient guarantees of attendance. This situation enabled the public prosecutor to be the prime determiner of the procedural route of a case involving liberty and its restriction ;
- An amendment raising the maximum period of preventive detention with regard to acts for which the maximum sentence laid down was less than two years from ten days to one month, a threefold increase ;
- An amendment raising the period of preventive detention, as well as raising the period by which it can be extended ;

- An amendment raising the permissible periods of placement in police custody ;
- An amendment restricting the necessity of investigation to felonies punishable by the death penalty or life imprisonment while previously it was obligatory in all felony cases ;
- An amendment abolishing the chamber of accusation that was responsible for examining appeals brought against rulings of the examining magistrate, which represented a second judicial safeguard on his rulings.

Thus the amendments introduced to the original Code of Penal Procedure by virtue of Dahir 18 of September 1962 broadened the prerogatives of the public prosecutor, strengthened his discretionary power, especially as regards prosecution and orders of placement in custody, increased the periods of preventive detention, and abolished the possibility of cassatory appeal against rulings of the board of indictment issued in cases of preventive detention.

The amendments introduced by virtue of Dahir 28 of December 1974, known as the Transitional Procedures Decree, were characterized in particular by their direct assault on two protective judicial positions. They were formulated in the foundation document of 1959 as follows :

- Curtailing the role of examining magistracy in terms of both their position and their role ;
- Abolishing the chamber of accusation, which was a sort of second stage after the examining magistracy.

It thus condemned the philosophy of the Code of Penal Procedure deriving from the foundation stage to become a part of the memory of independent Morocco, and the fundamental changes issued in 1962 and 1974 gave rise in practice to a new law.

The law did not experience any positive change until the beginning of 1991 at the initiative of the Advisory Council on Human Rights.

It is worth mentioning that the amendments introduced at the initiative of the Advisory Council on Human Rights included in particular a change in the period of police custody in matters involving the internal or external safety of the state, fixing it at 96 hours renewable once with the written permission of the public prosecutor. They also obliged the judicial police to inform the family of the detainee as soon as a decision was taken to place him in custody. In addition, a daily list of names of those placed in custody during the last 24 hours should be sent to the public prosecutor. It also enunciated the right of the suspect to seek the help of a lawyer when presented to the crown prosecutor, and the right of the latter to attend the interrogation. It also stated that the crown prosecutor was obliged, if requested to do so

or on the basis of his personal examination, to submit the suspect to an examination to be carried out by a specialist doctor.

These amendments were not sufficient to bring about a fundamental change in the Code of Penal Procedure, and it required an additional period of no less than ten years for the first more or less comprehensive review of this code to be undertaken.

After a long gestation, the government referred a new draft law to parliament, accompanied by in-depth discussions by the Justice, Legislation and Human Rights Committee in the House of Representatives.

Under the supervision of the Speaker, and for the first time in the history of the House of Representatives, this Committee organized a study day attended by personalities from the judiciary, the universities and human rights circles, which helped immensely to improve the draft legislation. It was also submitted to the parallel committee in the Chamber of Councillors, which in its turn approved it, and a few months after it was ratified by parliament, some amendments were attached to it relating to the war on terror[2].

The preamble of the Code of Penal Procedure highlights the philosophical bases and the normative principles governing the choices on the basis of which this code was drawn up. They focused in particular on :

1.1. The Basic Principles

They are :

- The criminal procedure should be equitable and presential, should preserve the balance between the parties, and should guarantee the separation between the authorities entrusted with exercising public prosecutions and investigation and those giving judgements ;
- Individuals found under similar conditions and prosecuted for the same acts should be tried on the basis of the same principles ;
- All persons who are suspects or who are being prosecuted should be assumed innocent as long as their conviction is not confirmed in accordance with a final ruling. All violation of the principle of the assumption of innocence is forbidden and punishable in conformity with the law ;
- Doubt shall always be interpreted to the benefit of the accused ;

[2] Dahir No. 255.02.1 was issued on 3 October 2002 in implementation of Law 01.22 relating to the Penal Procedure and was published in the Official Gazette No. 5078 dated 30 January 2003. It came into force on 10 October 2003, and was amended and complemented by Law No. 03.03 relating to the war on terror.

- Every individual shall enjoy the right to acquaint himself with all the evidence standing against him and to contest it, and shall have the right to the assistance of a lawyer ;
- Indictments against an individual should be the subject of a definitive judgement within a reasonable period ;
- All sentenced individuals have the right to request a re-examination of the indictments against them before another court through the means of appeal laid down in the law.

1.2. Presumption of Innocence

The law enunciates clearly that an individual is innocent until the indictment is established by a judgement that is won because of the strength of the evidence, on the basis of a fair trial provided with all legal guarantees and safeguarded by a number of procedural measures to reinforce them, including in particular :

- Preventive detention and judicial oversight should be considered as exceptional measures ;
- Conditions of police custody and preventive detention should be improved and safeguarded by judicial oversight procedures ;
- It should be entrenched in the law that the accused has the right to be informed of the charges against him and the right to contact a lawyer during the period of extension of police custody, and that the lawyer has the right to submit written observations during this period ;
- The suspect should have the right to inform his family that he has been placed in police custody ;
- It should be possible to publish in the papers, in whole or in part, a decision of non-prosecution issued by the examining magistrate, pursuant to a request made by the person involved or the public prosecution ;
- It should be forbidden, under penalty of the law, for a detained person to be photographed, or to be manacled or bound, or for his photograph or his name or any sign that may identify him, to be published without his approval. Nor should it be permitted to publish by whatsoever means an investigation, a comment, or an opinion poll relating to the person subject to legal procedure, whether suspect or victim, without his consent.

1.3. An Effective Role for the Judiciary in Overseeing and Evaluating the Means of Proof

The provisions of the penal procedure asserted the role of the judge in formulating his opinion, by emphasizing the following :

- The role of the judge in examining and assessing the evidence ;
- The necessity of the judge including the justification of his opinion in the judgement that he issues ;
- Any confession extracted by violence or under compulsion should be disregarded.

1.4. Strengthening Pre-trial Safeguards

The Code of Penal Procedure laid down a number of safeguards relating to the strengthening of the principles of human rights during the pre-trial stages, including in particular :

- The judicial police officer has to seek the assistance of an interpreter if the person being questioned speaks a language or a dialect that the judicial police officer does not speak well ;
- This safeguard also applies when the accused appears before the public prosecutor as well as when he appears before the examining magistrate or the sentencing magistrate ;
- The role of the lawyer during the interrogation conducted by the public prosecutor of the accused in case of flagrante delicto cases has been strengthened. He now has the right to request that his client undergo a medical examination, or to represent him in presenting written documents or evidence, or bail him out ;
- Deadlines are set for carrying out judicial procedures so as to achieve speed and efficiency in administering criminal justice especially in cases involving detainees ;
- The principles of Islamic Shari'a and the values and traditions of Moroccan society must be preserved in dealing with women, and they must be searched by other women ;
- It strengthens the monitoring of detainees and prisoners by stating that penitential institutions must be visited in an organized and periodic manner by judges from the public prosecutor's office, examining magistrates, juvenile magistrates, sentencing judges and the president of the criminal chamber of the Court of Appeal ;
- In addition to the role played by the provincial committee chaired by the Wali (prefect) or the governor, the new law strengthens its membership by involving

actors from civil society and broadening the range of government departments included ;

- It strengthens judicial control of the work of the judicial police. The crown prosecutor must inspect police custody facilities once every week to check on the legality and the conditions of detention ;
- It requires the public prosecutor to evaluate and mark the performance of the officers of the judicial police, while maintaining the prerogatives of the Criminal Chamber of the Court of Appeal as the disciplinary authority with regard to the officers of the judicial police ;
- It states that the minister of justice must oversee penal policy and transmit it to the crown prosecutors so that they can check on its application ;
- It states that the instructions given by the minister of justice to the public prosecutor's office, in view of its attachment to him, must be put in writing ;
- It defines the transcript that the officers of the judicial police must draw up and specifies the forms required in its composition with a mind to precision, accuracy and correct procedure ;
- The complainant must be informed of the filing decision taken by the public prosecutor concerning his complaint within 15 days from the time it is taken so that he can take the measures permitted to him by law in order to preserve his rights ;
- It clarifies the judicial cooperation procedure with foreign countries, and incorporates a procedure for the handing over of criminals within the Code of Criminal Procedure in a manner that is in conformity with the provisions of international law ;
- The code of procedure deals with imprisonment for non-payment of debts in a manner that is in conformity with the content of Law No. 97.15, which is a body of laws for the recovery of public debts, both in terms of the length of this imprisonment and in terms of its procedure ;
- It considers the inability to pay a reason for not applying coercion and lays down prior judicial control for requests for coercion, while leaving the right to appeal against the validity of its procedures or the difficulties faced in applying it, and raising the minimum age for imprisonment for non-payment of debts from 16 to 18 and lowering the maximum age from 65 to 60 ;
- It revises some deadlines for reinstatement, lowering them in such a way as to ensure the reinsertion of persons benefitting from it into society.

In addition to these basic principles, some of which were strengthened, and others of which were formulated for the first time, the law introduced innovations to provide better conditions

for a fair trial and to strengthen the principles of human rights and protect the rights of individuals, whether suspects, victims or witnesses. Among these innovations were :

- The establishment of a procedure for reconciliation in cases specified in law ;
- Surrounding the procedure for tapping phone lines and intercepting, recording and seizing communications carried out by means of distance communication with strong safeguards and placing it under judicial control when it was being practised by the examining magistrate, whenever necessity required. Its scope was limited to specific crimes of a particularly serious nature ;
- Adding placement under judicial supervision as an alternative to preventive detention, which gives the examining magistrate important and effective alternatives ;
- Allowing the rulings of the Chambers of Felonies to be appealed, thus providing more safeguards for a fair trial ;
- Strengthening some of the procedures for cassatory appeal and review ;
- Creating a new means of appeal by review of rulings of the Supreme Court, thus preserving the rights of the parties, in some cases.

In all, we can say that the principles and safeguards established constituted a turning point and a complete break with a stage that had lasted forty years.

2. Legal Protection for the Rights of Prisoners

2.1. Modernization of the Controls Regulating Penitentiary Institutions

For many decades, the provisions regulating penitentiary institutions continued to be derived from the Dahirs issued in 1915, 1930 and 1942. These provisions, as well as the conditions inside prisons, continued to be in breach of the minimum ideal conditions for the treatment of prisoners recognized internationally, and were the subject of wide ranging legal and human rights criticism.

In the context of the changes seen in the 1990s, the matter would be reconsidered, starting with the important legal studies and the in situ visits carried out by the Advisory Council on Human Rights. This opened the door officially for the first time in 1997 for human rights organizations to visit prisons. Thus the state launched a new policy intended to renovate and reform the institutions and construct new ones. It also opened the door for legal review which was characterized by the effective participation of human rights activists in the preparatory proceedings for drawing up a new law.

Thus, the law regulating penitentiary institutions[3] was issued, including the shared general provisions for all prisons as well as those specific to juvenile offenders.

The new law contains a number of rights and safeguards that conform in their general orientation with the minimum model conditions for the treatment of prisoners as internationally recognized, including in particular :

- Splitting penitentiary institutions into two main groups : local prisons devoted generally to housing preventive detainees and those sentenced to prison terms of short duration, and those imprisoned for debt, and penitentiary institutions devoted to housing convicts ;
- Subjecting penitentiary institutions to categorization according to their importance and their type of use, in implementation of a decision by the minister of justice published in the Official Gazette ;
- Total separation of accommodation set aside for women in terms of supervision and entry ;
- Separation of preventive detainees from convicts ;
- Separation of those imprisoned for debt for civil reasons from preventive detainees and convicts ;
- Setting aside places for solitary confinement of preventive detainees in agricultural prisons ;
- Setting aside central prisons for housing convicts sentenced to prison terms of long duration ;
- Considering the agricultural prisons that have been established in all regions as institutions with a semi-open system for the enforcement of prison sentences ;
- Setting aside local prisons for giving convicts, according to their qualifications, a vocational training with the aim of preparing them for reinsertion into occupational life ;
- Setting aside places for group detention for convicts qualified to live together ;
- Organizing detention registers in a clear manner under judicial supervision ;
- Not considering placing the detainee in solitary confinement pursuant to a preventive measure as a security measure ;

[3] Dahir No. 200.99 dated 25 August 1999 in implementation of Law 98.23 relating to the regulation and management of penitentiary institutions. In addition, Applicatory Decree No. 485.00.2 was issued on 3 November 2000.

- Detainees placed in solitary confinement must be examined at least three times a week by the institution's doctor, who shall give his opinion after every visit as to whether the solitary confinement should be continued or stopped. In addition, the detainee placed in solitary confinement must be examined on the other days of the week by the head of the cell block ;
- The period of solitary confinement must not exceed one month, and when it has to do so, it must be in conformity with a decision taken by the Director of the Prisons Department on the basis of an opinion given by the director and the doctor of the institution ;
- Convicts shall spend one day together to pursue vocational or physical activities, to do physical exercise, to study, to undertake training, or to do cultural or relaxational activities ;
- Establishing the right of preventive detainees and those imprisoned for non-payment of debts to request to work ;
- Establishing the principle of compensation when any work is entrusted to detainees, and granting them an equitable remuneration the amount of which shall be set in conformity with a joint decision taken by the minister of justice and the minister of finance ;
- The minister of justice should be granted the authority, either automatically or at the suggestion of the director of the institution, to grant convicts who have served half their sentence and who are of good behaviour licenses to leave the prison for a period of no more than ten days, especially at festivals or to preserve family ties or to prepare for reinsertion into society ;
- All detainees should be examined on entry to the penitentiary institution, either by its director or by the public agent in charge of the social department. The public prosecutor must be informed of all visible injuries or symptoms ;
- The detainee should be subject to a medical examination within three days at most of entering the penitentiary institution ;
- When placed in the penitentiary institution, all detainees should be informed of the legal provisions and in particular of their rights and duties. A handbook should be placed at their disposal, prepared for this purpose ;
- It establishes the right of the detainee to the assistance of anybody he chooses before the disciplinary committee, and to be helped by a translator or anybody else if he does not understand Arabic ;

- The decision concerning the measure taken by the disciplinary committee shall contain the reasons for the decision and the detainee shall have the right to contest it within five days of being informed of it ;
- The director of the Prisons Department must make a final decision on the request to contest within one month of his receipt of it, and must justify his decision ;
- It is not permitted to use means of restraint like manacles, bonds or a straitjacket ;
- The right of detainees to receive family members or those responsible for them should be humanized, and visits should be conducted in a visiting hall without a barrier ;
- It establishes the principle that, with the permission of the director of the Prisons Department, members of human rights organizations and associations or members of religious organizations may visit prisoners and check on their welfare ;
- It forbids photographs, video clips, pictures, drawings or audio recordings within, or in the immediate vicinity of penitentiary institutions except with the permission of the minister of justice ;
- It establishes the right of prisoners to send and receive mail ;
- It establishes the right of prisoners to submit grievances to the director of the institution, or to the director of the Prisons Department, the judicial authorities and the provincial committee of control regulated by the provisions of the Code of Penal Procedure ;
- It establishes the right of prisoners to submit a request to be heard by the judicial or administrative authorities, when there is a visit or inspection, in a soundproof location ;
- Complaints must be reviewed and the necessary action must be taken ;
- The prisoner must be enabled to live in conditions conducive to health and safety in terms of the upkeep and maintenance of buildings ;
- Principles of personal hygiene, physical exercise, and balanced diet must be applied ;
- Places of detention, especially residential ones, must meet the requirements of health and hygiene, taking into consideration the air space, the minimum space allocated to each prisoner, heating, lighting and ventilation ;
- Part of the timetable should be devoted to physical exercise ;
- Each prisoner should be permitted to take a daily walk of at least one hour in the open air or in the prison yard ;

- All prisoners should be permitted to buy food and necessities from the daily allowance they receive. They also have the right to ask to receive extra food and clothes ;
- All prisoners have the right to observe religious ceremonies ;
- All prisoners have the right to receive newspapers, magazines and books, while applying the law in force ;
- In addition to medical assistants, every penitentiary institution shall have at least one doctor and be able to call upon the services of specialist doctors ;
- Penitentiary institutions shall be supervised by the chief doctor of the prefecture or the province ;
- All penitentiary institutions shall have a sanatorium ;
- The doctors of penitentiary institutions shall be vested with the authority to check on the health and medical condition of prisoners, and the nutrition and hygiene regimes, as well as with the authority to transport prisoners for treatment outside the penitentiary institution ;
- It establishes the right to conjugal privacy.

2.2. The Advisory Council's Proposals for Strengthening Legal Safeguards

The law regulating the situation inside penitentiary institutions raised a number of problems when it came into force. This was highlighted especially when organizations and associations were given the right to conduct on-site visits.

When it prepared the special report on the situation in prisons issued in 2004, the Advisory Council on Human Rights was able to formulate a group of observations and proposals focusing on amending the legislation and implementing the legal provisions relating to the Prison Code, the Code of Penal Procedure and rules for pardon.

The Advisory Council's proposals vary between issues requiring amendment and others requiring implementation.

2.2.1. The Law regulating Penitentiary Institutions

Amendment :

- The sentencing judge should be granted the right to express his views on requests for conditional release and to take the final decision on disciplinary measures, while cutting the deadline for final decisions ;

- Conjugal privacy should be regulated by law ;
- Article 12 dealing with placement of juvenile offenders in reform and correction centres should be amended ;
- Article 72 of the law regulating penitentiary institutions should be amended to expose the prisoner to the outside world ;
- Special care should be given to the handicapped and the aged.

Implementation :

- In deference to the law, disciplinary transfer should not be resorted to ;
- The conditional release system, enunciated in Articles 154-9 of the decree applying the law regulating penitentiary institutions, should be activated ;
- The special license system, enunciated in Articles 46-9 of the law regulating penitentiary institutions, should be activated ;
- In accordance with what is enunciated in the decree applying Articles 132-141 of the law regulating penitentiary institutions, social assistance should be activated ;
- Article 7 of the law regulating penitentiary institutions should be activated ;
- The legal provisions relating to the eradication of illiteracy, education and vocational training enunciated in the decree implementing the law regulating prisons should be activated ;
- More flexibility should be exercised in permitting civil society organizations to visit penitentiary institutions.

2.2.2. The Code of Penal Procedure

Amendment :

- The prerogatives of the sentencing judge should be broadened, especially with regard to conditional release and examining disciplinary decisions in case of dispute ;
- The regularity of the sessions of the committee entrusted with conditional release should be specified and increased ;
- The regularity of the supervisory sessions entrusted to the provincial committees should be specified ;
- The deadlines for legal and judicial reinstatement should be shortened.

Implementation :

- People should be sensitized to the negative effects of the systematic use of preventive detention ;
- Judicial control should be implemented as a new measure enunciated by the Code of Penal Procedure ;
- The provincial committees enunciated in Articles 620-1 of the Code of Penal Procedure should be activated ;
- The system of conditional release enunciated in Articles 622-32 of the Code of Penal Procedure should be activated ;
- Files submitted to the Supreme Court should have final rulings delivered on them more swiftly.

2.2.3. The Penal Code

Amendment :

- The crime of torture should be enunciated, both in terms of definition and penalty, so as to bring the code into conformity with the Convention against Torture ratified by Morocco ;
- The system of alternative sanctions should be inserted ;
- Article 53 should be amended and the prerogatives vested by virtue of it should be broadened to include those convicted of felonies.

Implementation :

- The provisions of Article 53 should be activated ;
- The legal structure should be strengthened and varied as regards the provisions relating to short-term sentences, so as to make use of suspended sentences and fines, and to reduce the minimum sentence ;
- Article 120 should be correctly activated, innovations regarding it should be standardized, and courts should be urged to make final rulings quickly on requests for reinsertion.

2.2.4. The Public Service Law

- Guarantees were proposed in favour of some classes of former prisoners to have access to public service in the framework of reinsertion programmes.

2.2.5. Rules for Pardon

- A draft recommendation should be prepared relating to amnesty, in terms of its procedure and criteria.

3. Reforms in the Field of Public Rights and Freedoms

3.1. The Press Code

The Press Code is linked with other special codes to the structure of public liberties, namely associations and public gatherings.

The Press Code is one of the codes that is most liable to retrograde tendencies. Since 1958, it has suffered a number of amendments, the most notable of which took place in 1973. This law aimed in particular to strengthen restrictions by increasing penalties and fines and to enable the executive branch to suspend and ban newspapers without submitting the matter to the judiciary.

It was subject to wide-ranging legal and human rights criticisms before the subject of reviewing it was opened in the context of the ministerial committee on liberties. It then passed through the ministerial and governmental councils before being referred to parliament in the autumn 2001 session. The reforms that were intended by the Press Code embraced four main fields :

3.1.1. Principles

It enunciated basic principles relating to :

- The citizen's right to be informed ;
- The right of the media to reach news sources and to obtain information from different sources provided that it is not confidential according to the law ;
- Freedoms should be exercised in the framework of constitutional principles, the provisions of the law and professional ethics, and the media should transmit news honestly and faithfully.

3.1.2. The Foundation

The foundational statute contains a group of formal procedural principles containing a group of safeguards that make a break with the security policy that governed practice in the past.

3.1.3. The Competence of the Judiciary in Disputes

The reforms violated important aspects of the code relating to the implementation of the principles by :

- Abrogating the prerogative of the executive branch to suspend or ban newspapers and placing this competence in the hands of the judiciary ;
- Linking the Minister of the Interior's ability to confiscate newspapers to a justified decision appealable before the administrative courts as an urgent matter ;
- Cancelling prison sentences with regard to a large number of misdemeanours ;
- Cancelling the provisions that obliged the editor-in-chief, under threat of suspension of the newspaper, to deposit the sums of the fines and compensation imposed within a period of fifteen days from the day that the provisional ruling was issued ;
- Reducing the period of prescription for public prosecutions from one year to six months with regard to misdemeanours and infractions ;
- Cancelling some of the provisions that granted the prosecution or the court wide discretionary power to prosecute or punish on the basis that these are cases that are likely to prejudice security or public order ;
- Extending the time limit for proving slander.

3.1.4. Strengthening the Rights of Third Parties insofar as they are Human Rights

It also included reforms that incorporated provisions relating to :

- Criminalizing incitement to hatred and violence on the grounds of sex, origin, colour, or ethnic or religious affiliation ;
- Strengthening the protection of the sanctity of private life.

Despite the significant safeguards that were incorporated in the Press Code, a number of issues remained pending, since no political agreement was reached concerning them during the parliamentary deliberations. In particular, there is the subject of delivery of the receipt for the newspaper's authorization and matters relating to the immediate and final temporary receipt, as well as the lack of precision concerning some crimes like denigrating or attacking the Islamic religion, the institution of the monarchy or territorial integrity.

Practise also gave rise in particular to other problems relating to respect for the rights of others and the need for a power of disciplinary professional settlement before referral to the judiciary.

3.2. The Law of Associations

The reforms embraced by the Law of Associations contained a number of safeguards that included in particular :

- Modification of the authorization procedures relating to the founding of associations, making it sufficient to submit one declaration to one body (the territorial authority) which should send it in its turn to the public prosecutor ;
- A statement that the temporary receipt should be handed over immediately and the final receipt should be handed over within thirty days so that the association can begin its activities ;
- The law conforms with the Convention on the Elimination of Racial Discrimination by declaring the nullity of any association that incites to discrimination, and that it shall be dissolved ;
- Provisional legislation about the possibility of availing themselves of public benefit, since recognition must be granted or refused within six months ;
- It broadens possible sources of finance for associations by enunciating their right to receive assistance from domestic or foreign sources, while being subject to financial control.

3.3. The Law of Public Assembly

The issue of public assembly has been strengthened by legal provisions and by a legal human rights interpretation by the prime minister.

Prime Minister's bulletin No.28.99 issued on 5 November 1999 contains a regulatory reform that strengthens the right of freedom of public assembly. This relates to the use of public halls by associations, political parties and trade unions to express their opinions and interests. This is on the basis that all this falls within the freedom of assembly, and the freedom of opinion and expression, which requires a positive attitude to requests to use halls and buildings in a framework of total respect for the principles of legality and equality.

Secondly, the provisions relating to dispersal of crowds have been strengthened by obliging the representative of public force to read out loud the penalties enunciated in Article 19 of the law when giving a crowd an order to disperse. It also obliges the representative to give a second and third warning and to conclude the final warning with a public authorization to resort to the use of force to disperse the crowd.

4. The Qualitative Review of the Family Code

The new family code was issued on 4 February 2004 in the Official Gazette, with the following effects :

- It acknowledges the equality of the sexes in the field of civil rights and specifically in the realm of the family, both in concluding the marriage contract and in the rights and duties linked to that ;
- It removes the guardianship of the woman by enabling her to conclude a marriage contract without a guardian ;
- It enables the wife to conclude a civil contract to divide the property acquired during the marriage in a manner that is fair to the woman ;
- It asserts the joint responsibility of the spouses to manage family affairs ;
- It opens the possibility of the woman enjoying the right to her share of the family property in case of divorce, while placing this in the hands of the judiciary ;
- It restricts the multiplication of wives with a number of legal controls and financial conditions, while placing it under the control of the judiciary ;
- It strengthens the safeguards protecting the rights of the woman and the child during matrimony and after the marriage is dissolved ;
- It defines the rights of the child over the father and the mother in accordance with the provisions of the Convention on the Rights of the Child.

To this extent the reform of the Family Code represented an advance in the activation of the universal values of human rights, particularly women's rights, and a qualitative jump in the implementation of the Convention on the Elemination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and other international covenants. It also enables a renewed activation of the mechanisms of innovation, proving that it is possible to base reform on the Shari'a and to promote women's rights and assert their equality from within Islam. It also consecrates the arena of social reform and gives a powerful boost to the process of constructing democracy, strengthening the human rights and modernizing society. Thus the demand for the liberation of women, which has enticed generations of men and women, intellectuals and victims of violations, has been able to cut a way through state and society in a model application of the possibility of making positive break-ups within the continuity of the political and constitutional system.

In the framework of consolidating this qualitative reform of the Family Code comes the royal decree ruling that a child of a Moroccan mother and a foreign father should have the right to obtain Moroccan nationality. To this end, it has been deemed necessary to undertake an in-depth review of the Nationality Law of 1958 in order :

- To bring it into compliance with the spirit of the new Family Code (2004) ;
- To enshrine equality between man and woman ;
- To safeguard the rights of the child ;
- To maintain the cohesion of the family ;
- To entrench positive and responsible citizenship.

5. The Initiative to Criminalize Torture

Morocco ratified the Convention against Torture[4], while at the same time registering its reservations concerning Articles 28 and 30. However, human rights and legal communities continued to demand that the Penal Code be brought into compliance with what Morocco had ratified.

Finally, in the light of the recommendation concerning torture submitted by the Advisory Council on Human Rights on the occasion of its 2003 report on the status of human rights, the government officially announced that it was reviewing its reservations and submitting a draft law on the subject.

5.1. The Government Announcement Revising the Reservation

In a memorandum signed by the minister of justice and the minister of the interior, and sent to the Advisory Council on Human Rights on 16/7/2004, the Moroccan government announced the following:

5.1.1. Reforms in the Law

Among the recommendations that the government decided to give priority to were those relating to the criminalization of torture in the Moroccan Penal Code and the withdrawal of Morocco's reservation concerning Article 20 of the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[4] Dahir No.3.93.4 dated 14 June 1993 concerning the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 21 June 1993. At the time of ratification, Morocco registered the following reservations :
1. "In accordance with Paragraph 2 of Article 28, the government of the Kingdom of Morocco declares that it does not recognize the competence of the committee provided for in Article 20."
2. "In accordance with Paragraph 2 of Article 30, the government of the Kingdom of Morocco also declares that it does not consider itself bound by Paragraph 1 of the same article."
The convention was published as ratified by Morocco in the Official Gazette No. 4440 dated 19 December 1996 in accordance with Dahir No.362/93.1 ruling that it should be published.

Concerning the first point :

- The cabinet ratified the draft law relating to the criminalization of "torture" in accordance with the UN Convention against Torture ;
- According to this draft, resorting to torture will be punished severely depending on the circumstances under which it was committed.

Concerning the second point :

- The government confirms that it is not opposed to withdrawing the reservation regarding Article 20 above-mentioned and will make the necessary changes to the penal procedure as soon as possible.

Having brought to the knowledge of the Advisory Council on Human Rights a group of clarifications and decisions, the government confirmed once more its desire to shed light on all claims relating to torture.

The presentation delivered by the minister of justice to the Advisory Council on Human Rights contained a draft law relating to the amendment and complementation of the Penal Code as it relates to torture.

5.1.2. The Philosophy and Bases of the Government Initiative

The draft law penalizing torture as submitted is based on the following grounds and considerations :

- The Kingdom of Morocco commits itself to the principles of human rights as internationally recognized and enshrined by virtue of the 1996 constitution ;
- It takes into account the Universal Declaration of Human Rights, which states in Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" ;
- Its conviction that torture strikes at the most deeply rooted values of any society that is committed to respect the rule of law, human rights and basic liberties ;
- Its consideration of the relevant provisions, including in particular the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment which has been ratified by our country and which states in Article 2: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" ; and again in Article 4: "Each State Party shall ensure that all acts of torture are offences under its criminal law" ;

- Its realization that acts constituting torture constitute a violation of the principles contained in international conventions ;
- Its conviction that there is now a pressing need to put in place criminal legislation criminalizing and penalizing this sort of act independently of other crimes violating the physical integrity of individuals ;
- Its concern that national legislation comply with the provisions of the international convention, which has led it to prepare a draft law relating to the criminalization of the practice of torture, by virtue of which the Penal Code is complemented[5].

5.2. The Criminalization of Torture in Draft Law No. 04.43

On 20 October 2005, the House of Representatives ratified the draft law relating to amendment and complementation of the Penal Code. In this amendment, torture means "any act resulting in severe pain or suffering, whether physical or mental, committed intentionally, incited, approved or concealed by a public servant, against a person in order to frighten him or to force him or another person to provide information or a confession with the purpose of punishing him for an act that he or a third party committed or is suspected of committing, or when such pain or suffering is attached to any cause based on discrimination of any type. Shall not be considered torture any pain or suffering produced by, resulting from or accompanying legal punishments.

This law, without prejudice to the possibility of imposing more severe punishments, stipulates imprisonment for a period of between 5 and 15 years or a fine ranging between Dh10,000 and Dh30,000 for any public servant who practises torture as referred to above on any person.

The law also contains other amendments relating to increasing penalties and the deprivation of some rights enunciated in Article 40 of the Penal Code.

6. Towards a New Penal Policy

The subject of drawing up a new penal policy continued to be delayed for decades, and remained the prisoner of academic preoccupations. Nor did it begin to be discussed or formulated in professional circles until the Moroccan Bar Association held its symposium[6].

[5] Dahir No. 200.99.1 dated 25 August 1999 in implementation of Law 98.23 relating to the regulation and management of penitential institutions. In addition, Applicatory Decree No. 485.00.2 was issued on 3 November 2000 relating to this law. This amendment mainly concerns Section 3, Chapter 2, Part 1, Volume 3 of the Penal Code. Section 3 relates to "abuse of authority by public servants against individuals and the practice of torture".

[6] The National Symposium on Penal Policy, organized by the Moroccan Bar Association on 9-10 December 1994 in Fez.

The Ministry of Justice organized the first symposium in the context of government work on penal policy in Morocco on 9-11 December 2004, with the participation of personalities from judicial, legal and political circles in addition to various government sectors.

The debate was characterized by the large number of concerned parties who participated and by the frank dialogue and analytical debate that took place. It came to a number of conclusions and formulated a number of recommendations that represent excellent material for formulating methods of reforming the country's penal policy. The recommendations and conclusions focused on a number of essential and formal issues including in particular :

6.1. General Provisions

- One should be aware of the gravity of the crime and be prepared to confront it resolutely, to protect people from it and to put a stop to its causes ;
- A penal policy should be adopted appropriate to the Moroccan situation, open to comparable experiences, and in conformity with international conventions ;
- Respect for human rights as internationally recognized should be made the framework for any legislative review ;
- One should be concerned about the human beings entrusted with law enforcement insofar as they are the basic instrument for implementing the will of the legislator ;
- Appropriate resources should be provided for the various mechanisms of criminal justice like the judiciary, the judicial police, defence lawyers, experts and other judicial agents, as well as to respect international standards relating to these classes of actors ;
- The adoption of appropriate practical measures should be speeded up to activate the existing texts by means of the human and material sources available that have not yet been exploited or benefited from ;
- More consultations should be conducted in the form of workshops to deepen the discussion on real data and legislative solutions appropriate to the national situation and international trends, and to form a committee of the personalities involved to formulate a draft legal text based on the recommendations produced out of the proceedings of the workshops ;
- Efforts should be continued to protect disadvantaged groups, especially granting justice and assistance to victims ;
- The independence of the judiciary should be strengthened and modernized ;
- Specialization among the apparatuses of criminal justice should be encouraged ;

- Punitive texts should be gathered into one code or a number of harmonized codes.

6.2. Conformity of Legislation with International Conventions

- The superiority of international conventions over domestic law should be adopted by virtue of a constitutional text confirming the judicial innovation ;
- The study of international conventions on human rights and the prevention of crime should be completed with the aim of ratifying them ;
- The provisions of international conventions should be inserted into domestic law, especially in the fields of torture, terrorism, the death penalty, imprisonment for non-payment of debts, the grave violations enunciated in international humanitarian law, and the crimes enunciated in the statute of the International Criminal Court ;
- The Code of Military Justice should be reviewed with the purpose of applying the Code of Penal Procedure and restricting the jurisdiction of the court to military misdemeanours.

6.3. Punishment Policies

Detention and freedom-depriving penalties :

- The power of preventive detention should be rationalized by bearing in mind the assumption of innocence, by careful activation of the legal provisions regulating conditions of detention, and by the public prosecutor defining the penalties that he is seeking to impose on the accused ;
- The power to individualize the punishment should be activated so that penalties conform with the seriousness of the crime and the character of the criminal ;
- The reasons given for punishment and reasons given for the conviction should be justified ;
- Short-term freedom-depriving penalties enunciated in the law should be reviewed with the aim of abolishing them in view of their ineffectiveness for the application of any rehabilitation programme, and to think of replacing them with alternative penalties ;
- Legislative or application solutions should be found to practical problems like converting felonies where the harm done is minor into misdemeanours ;
- The sentencing judge should be invested with new functions like supervising the lightening of punishments, converting some freedom-depriving sentences into

other penalties, suspending the enforcement of sentences against prisoners who are ill, and consolidating sentences ;

- Prison should be made a place for reforming prisoners' behaviour and training them to prepare them for reinsertion into society as upright citizens when they have served their sentence ;
- Society should participate in the reinsertion of prisoners and more attention should be given to the care they receive ;
- The automatic reduction of sentences for convicts whose conduct and behaviour improves inside prison in order to encourage reinsertion should be acknowledged in law.

The death penalty :

- The death penalty should be restrictech and a plan made for it to be abolished ;
- The imposition of the death penalty should be made conditional on unanimity of judges.

Alternatives to freedom-depriving sentences and to public prosecutions :

- Thought should be given to the institution of new mechanisms to solve minor disputes outside the judicial system ;
- Alternatives to freedom-depriving penalties should be inserted into criminal legislation ;
- Alternatives to public prosecutions should be provided in the domestic justice system ;
- There should be openness to the experiences of comparative law concerning alternatives to public prosecutions and to freedom-depriving sentences ;
- There should be openness to alternatives to trials ;
- Alcoholics and drug addicts and the mentally ill should be treated rather than punished.

Protecting and helping victims :

- Medical or psychological treatment for victims should be provided ;
- Centres should be devoted to the reception and counselling of victims ;
- Support should be given to civil society organizations involved in helping and protecting victims ;

- A think-tank or national monitoring group should be established for victims ;
- Judicial assistance should be provided for needy victims.

Protecting disadvantaged groups :

- Children should be protected from exploitation in serious crimes like terrorism and drug trafficking, and from being exposed to the dangers of clandestine immigration ;
- A comprehensive penal policy should be drawn up for juvenile offenders ;
- There should be a focus on reforming the behaviour of juveniles and avoiding punishing them ;
- Criminal justice mechanisms should be established specifically for juveniles ;
- Juvenile cases should be treated in an educational framework. For instance, members of the judicial police should not wear police uniform and juveniles should be received in locations independent of security centres, or at least in suitable locations ;
- Mechanisms should be established to protect women from violence, and to establish counselling and assistance groups and centres for women victims of violence.

6.4. Developing Criminal Justice Mechanisms

- The legal framework of the judicial police should be modernized ;
- Deepening specialization by members of the judicial police and the judicial corps should be encouraged and supported ;
- Direct communication between the judiciary and the judicial police should be encouraged ;
- Specialized and in-service training for members of the criminal justice apparatus should be promoted ;
- Regional and international cooperation in the field of exchanging experience should be strengthened ;
- A national council of forensic medicine and a high institute for the exchange of experience should be set up ;
- The organizational framework of the Institute of Forensic Medicine should be re-examined to link it directly with the public prosecutor's office ;
- The legal framework of the opposability of forensic medicine reports should be examined.

6.5. The Role of Society in Crime Prevention and Improving the Effectiveness of Criminal Justice

- Negative patterns of thought about the role of criminal justice should be changed ;
- The litigant and the complainant's awareness of the need not to burden the judiciary with weak or unfounded complaints should be raised ;
- There should be specialization in the field of protecting society from crime ;
- Cultural and sports clubs should be created to soak up the tide of crime ;
- A budget should be devoted to protecting society from crime ;
- Associations should be assisted in raising awareness in order to prevent crime ;
- Witnesses should be protected, so as to encourage them in helping to achieve justice ;
- The citizen should make a positive contribution to the effectiveness of criminal justice by testifying and giving information about crimes ;
- The media should help in raising the citizen's awareness about his role in combating crime.

Chapter Two

THE COMMISSION'S ROLE IN BROADENING THE SCOPE OF THE REFORMS

In order to submit proposals aimed at broadening the scope of the current reforms, an opportunity was given to civil and political circles to help in achieving the mission of the Commission, especially as regards building the future by putting in place safeguards against non-repetition. The Commission relied on all the memoranda and proposals that it had received from those constituents, and sought to involve them directly in many of its activities.

As it drew up ideas and proposals relating to means of achieving a just and equitable settlement to the grave human rights violations of the past, the Commission also bore in mind all the contents of memoranda sent by a group of national human rights associations, representatives of victims, the Moroccan Bar Association and other national bodies and international organizations involved in human rights issues. During its term, it received memoranda and proposals from human rights associations and political bodies relating to various or specific subjects falling within the scope of its mission. It also organized individual and public meetings inside and outside its headquarters with many associations and representatives of the victims, and held meetings with political and trade union bodies, either at the request of the latter or on the initiative of the Commission. This approach enabled all those bodies to keep abreast of the work of the Commission.

In order to involve public opinion in a wide-ranging debate about necessary reforms, in connection with the mission of the Commission, the latter organized dialogues about the components of reform and reconciliation.

I. Human Rights Associations and Organizations

The human rights movement constituted a strong moral tributary and an important bargaining chip along Morocco's process towards a just settlement of the gross human rights violations of the past, and strengthening the reforms so as to help to ensure non-repetition.

It is possible to read the principles and approaches that governed and characterized the work of the human rights associations with regard to the settlement of the violations of the past in terms of three main stages :

- The first stage stretching from the beginning of the 1990s when the forcibly disappeared were released until 2 April 1998, the date when the Advisory Council on Human Rights issued its famous recommendation ;
- The second stage, which began immediately after the Council's recommendation and stretched until the National Symposium on the Gross Human Rights Violations of the Past was held from 9-11 November 2001, and the beginning of the work of the Follow-Up Commission that sprang from it ;

- The third stage began when the Advisory Council on Human Rights submitted its recommendation to His Majesty King Mohammed VI concerning the creation of the Equity and Reconciliation Commission.

In all the previous stages the individual and shared positions of the human rights associations and organizations differed in terms of their intellectual approaches to issues, their principles and the way they reacted to political developments and the problem of reform.

The establishment of the Commission represented another occasion for civil society activists to express their conceptions and their suggestions concerning the process of settling the various aspects of the gross violations of the past. Thus, in addition to the human rights organizations concerned, both nationally and internationally, who played a fundamental role in this process, the Commission received memoranda and suggestions from other associations and committees directly or indirectly concerned about the subject, especially local development organizations in the regions that suffered from the violations of the past, a broad swathe of whose inhabitants had begun to feel that the causes of the marginalization that they were experiencing went back to those violations. Therefore, they were drawn in to help think about mechanisms for community reparation for injuries.

The spheres in which the civil society activists contributed by submitting memoranda and suggestions tending to consolidate the reforms can be summarized as follows :

- Uncovering the truth about the violations in such a way as to reinstate and restore the dignity of victims ;
- The constitutional entrenchment of human rights ;
- Enshrining the role of the judiciary in solving political and social disputes and allowing the law to be the arbitrator in solving these disputes ;
- Providing the conditions for eliminating impunity ;
- Providing community reparations for injuries for the regions involved, through economic and social development programmes especially for them ;
- Enshrining cultural pluralism.

II. Political Parties and Trade Union Bodies

The Commission held meetings with a number of political parties and national trade union and professional organizations with the desire of acquainting them with its approach to the various issues that fall under its jurisdiction and to involve them in formulating the recommendations and suggestions of the Commission concerning reforms and guarantees of non-repetition.

These meetings sprang from the Commission's desire to launch a broad and bold national debate about the violations of the past and means of achieving equity and reconciliation, within a framework of disclosure and safeguarding the memory, so as to help strengthen the immune system of society and to ensure democratic transition and the construction of a rule-of-law state.

The goals set out by the Commission for these meetings can be summarized as follows :

- To understand the positions of political and social actors concerning the issue and their approach to analyzing the context of the gross human rights violations, and their suggestions regarding safeguards for the future ;
- Completing the data concerning the historical events linked to the violations of the past identified by the Commission, through the studies conducted by the study group and the contents of communications received from the victims of those violations ;
- Trying to record a joint memory by using a standard of equality when dealing with the numerous readings of these events by political parties and trade union organizations ;
- Making sure the final report reflects a part of the political actors' reading of events ;
- Opening a dialogue with political actors about their conceptions and suggestions concerning the components necessary for national reconciliation ;
- Drawing the political actor closer to the concerns and work of the Commission, insofar as he is one of the concerned parties having a central role in implementing the recommendations of the Commission, especially through his performance in the legislative institution.

III. The National Dialogue concerning the Components of Reform and Reconciliation : The Dialogue Sessions

From 15 February to 23 March 2005, the Equity and Reconciliation Commission organized a series of dialogue sessions with the following goals :

- To involve public opinion in a frank and responsible reflection on the political, intellectual and historical contexts of the human rights violations that Morocco experienced since the early years of independence, the causes that led to their being committed and the repercussions they had on the political development of Morocco ;

- To encourage constructive thought regarding the formulation of practical projects and programmes to establish a state based on the rule of law and institutions, to protect freedoms and to help to ensure non-repetition.

The Commission was keen to involve in these sessions personalities with academic and practical experience and those concerned or active in political and civil society.

These sessions were organized in the form of discussion panels that were broadcast over the audio-visual media and the Commission's web page. Each panel was chaired by a member of the Commission and animated by a person of its choice. The panels focused on analyzing the political contexts of the violations and discussing practical means of avoiding the use of punishments that were contrary to human rights. Institutional and legal reforms were also proposed intended to entrench the rule of law and the protection of freedoms. The proceedings of the panels focused on the following subjects :

- The problem of democratic transition ;
- Moving beyond violence as a strategy for political management ;
- Economic and social reforms ;
- Educational and cultural reforms ;
- Legislative, executive and judicial reforms.

1. The Issue of Democratic Transition

The subject of the first discussion panel, which was organized on 15 February 2005, was the issue of democratic transition in the light of the major political events linked to the violations experienced by Morocco since independence, the components of the political regime, and international experiences of transitional justice. It was attended by about two hundred persons representing political parties, trade unions, associations for the defence of human rights, and organizations from civil society and the media.

This session focused on approaching the problem of democratic transition on the basis of a reading of the public hearings that the Equity and Reconciliation Commission had begun to organize on 21 December 2004 in terms of their benefit and significance. How much educational impact have they had on public opinion? How have they affected national political culture? How should we analyze the gross violations of human rights in Morocco in the context of political history in comparison with other international experiences?

The debate concentrated on the development that Morocco is currently experiencing in dealing with the gross human rights violations of the past, starting from the approach of the Equity and Reconciliation Commission and from the roles that civil and political society

play. It also sought to determine the hindrances to democratic transition in Morocco and how to develop approaches and roles for actors in civil and political society that would speed up democratic transition in the light of international experiences in this field.

1.1. Democratic Transition and the Reading of the Public Hearings

Concerning the reading of the public hearings, in the context of the discussion of the topic of this discussion panel, we can summarize the most important ideas put forward in this session under the following points :

- Considering the public hearings of victims of human rights violations as part of a vast work that the Commission is undertaking, in that parts of it deal with enquiries and investigations into the violations ;
- The hearings constituted an important historical moment in broadening the scope of freedoms, as well as having a fundamental pedagogical dimension in that they were an opportunity for victims to express and publicize their suffering and reclaim their dignity ;
- The public hearings represented one of the main features of the political landscape, and a fruit of the process of the political advances that had been accumulated during previous years. It was without doubt a courageous event, and out of the ordinary for the political history of Morocco, as the country opened up its wounds and made the pages of its history available for review and self-criticism. It was also an opportunity for Morocco to arraign a specific historical period with courage and objectivity ;
- The public hearings also represented a historical event with deep implications, because it came as a result of a political movement springing from the political parties and civil society, and encountering the political will. In this connection, the hearings stood out as an opportunity for victims to tell their stories, to talk about their pain, to disclose what they had gone through and to denounce the excesses. Thus they constituted a watershed between two stages and a test to see whether we can present an appropriate understanding of what happened and what is happening in Morocco. It also provided the opportunity to be heard as an important virtue that our country had previously been lacking. If these sessions had any significance, it was to appreciate the deep meaning of its sufferings, which had not been previously possible ;
- The important thing about the testimonies is the future result they might have of removing fear and re-establishing the relationship between citizens and the state, and also making citizens feel that politics must become a concern of theirs.

1.2. Democratic Transition and the Specificities of the Moroccan Experience in the field of Transitional Justice

During the discussion of the subject of the democratic transition and the experience of transitional justice in our country, the discussion crystallized a number of thoughts and conclusions, which may be summarized as follows:

- It emphasized that this process did not come, as happened in other countries, as a result of a change in the political system, but arose in the context of the historical continuation of the same political system. This is what constitutes the uniqueness of the Moroccan experience. In this connection, some wondered if the current experience fell in the context of containing an issue that raises its head continuously or in the context of a strong desire by the political system to bring about change ;
- What Morocco is currently going through must be handled in the context of the comprehensive process of democratic transition and consideration of the extent of society's involvement in this dynamic. Is there a type of political charter with clauses or conditions for the establishment of the next stage, wich is the entrenchment of democracy, one of whose main goals is to safeguard the future and make politics a legitimate practice and a national duty ;
- The experience of Morocco in the field of transitional justice stimulates the desire to offer readings of the problem of transitional justice in the light of the standards and values of human rights and democratic principles through throwing light on the contexts of past violations of human rights experienced by Morocco since independence, trying to analyze the components of the political system, and examining its strengths and weaknesses. Thus the importance of analyzing the stage in terms of its place in the political transition being experienced by Morocco, emphasizing the necessity for quiet collective thought to interrogate the previous stage on the theoretical level, and attempting to look to the future ;
- Around the world there are about 40 experiences of reconciliation and transitional justice. They all use different types of models of transition, containing different types of queries according to the nature of the transition. Their common denominator is their endeavour to present key reforms in favour of the future ;
- The Moroccan experience was characterized by a sort of modernization in dealing with the subject, which was contributed to by the national and international situation, and was accompanied by political, social and economic changes, devoid of any external influence to direct it. In this connection, people were reminded of the major changes seen by Morocco in different processes, which were strengthened

by the work of the Equity and Reconciliation Commission, like the reform of the Family Code and the very advanced approach it takes to women's rights ;

- What is happening in Morocco today is an event of historic dimensions, but it is also the result of the accumulation of a number of domestic factors and changes that have been in operation since His Majesty Mohammed VI came to the throne. Among the indications of that are the return of some exiles, the launch of a new understanding of authority, the investigation of the conditions of remote provinces and isolated villages, the issue of the Family Code, which is an expression of rare political courage, and then the adoption of a formulation of truth, equity and reconciliation ;
- In the same context, the Moroccan experience was praised, since the equity and reconciliation project began before the concept of the Greater Middle East saw the light and before the United States began to exert pressure for reforms to be undertaken in the Arab world, thus showing that this process is the result of an accumulation of domestic developments ;
- On the other hand, the discussion made it clear that now that the state had opened the issue of the violations of the past, admitting its mistakes, it was now up to the political parties and other social actors to open the issue of this past and to account for their mistakes, seeing that this painful past includes a continuous chain of causes, not all of which can be attributed to the state and its mechanisms of repression ;
- The prevailing trend was to keep on criticizing and calling the state to account while rarely raising questions about the mistakes of other parties like political parties and trade unions. When there is a failure of accountability within the political parties, and when conferences are not held on time, it is impossible to exert the effort necessary to wage the war for democracy in Morocco ;
- Some participants also called for a frank and constructive debate to be opened, with the participation of all, concerning this process which Morocco is witnessing, and for this dialogue to be deeper and more mature than the articles currently published in the press about the hearings and the democratic transition, which are mostly superficial in their analysis. This is because the early stages of democratic transition are delicate and a lot of caution has to be exercised.

1.3. Democratic Transition, Memory and the Writing of History

On the subject of democratic transition and the experience of transitional justice in Morocco, the participants came to the conclusion that this was particularly important. The discussion of this subject can be summarized under the following points :

- The importance of the work of the Equity and Reconciliation Commission lies in producing an archive as raw material for writing the history of Morocco after decades of domination by the official memory, which eclipses other memories ;
- The importance of the hearings contribution to rewriting history is not just because these testimonies presented a narrative that was different to the official narrative, but also because this narrative provided data that was out of reach of many or forbidden and taboo. In this connection, the testimonies presented in the context of these hearings were of great importance for the rewriting of chapters of the nation's history for three main reasons :
    1. Because many of the barriers that prevented history being written officially began to disappear and at the same time the margins of liberty began to expand ;
    2. Because many who were either subjects or objects in the writing of history, it was now possible for them to confess and to express themselves with complete freedom thanks to this dynamic ;
    3. As a result of the change in the relationship between the centre (the capital) and the periphery (especially remote towns and villages). Whereas the history that was written in the past was the history of the centre, nowadays the margins and the periphery are coming to the fore with their own histories and these margins have become a partner in the rewriting of this history.
- The role of the Commission's work in reconstructing the memory. The participants recorded the emergence of a quiet, gradual form of political discourse that was quite new, in the need to reconstruct a pluralistic national memory that is neither selective nor built on exclusion. What Morocco is experiencing today requires free and critical thought which was not possible in the past. Therefore, all are summoned to think and discuss so that there might be creative interaction between political issues and social ones.

2. Moving beyond Violence as a Strategy for Political Management

The subject of the second discussion panel, which was held on 2 February 2005, was to think about how to move beyond political violence in managing and solving political disputes. It concentrated its proceedings on evaluating the political results of violence in Morocco, and appraising the roles played by the political and intellectual elite in combating political violence and how to develop these roles to prevent repetition. The proceedings of the session centred on three basic elements in approaching the subject :

- The reasons and the contexts for the use of violence in managing political struggles ;
- The moves that our country is experiencing towards moving beyond violence as a strategy for political management ;
- The components of reconciliation to move beyond violence.

2.1. The Reasons and the Contexts for the Use of Violence as a Strategy for Political Management

While the participants in this session stressed the responsibility of the state for the use of violence in managing political affairs, they also highlighted the way political and social components resorted to violence during various stages of the historical period falling within the temporal competence of the Commission, from the beginning of the independence period until 1999. In this context, they examined the causes linked to the general context of the beginning of the construction of the post-independence state, those linked to the legal and institutional aspects, and the lapses experienced at specific times, and other related reasons of an economic and social nature. The most important thoughts and ideas expressed on this topic were as follows :

- While every state is responsible for protecting the security and freedoms of its citizens, the exercise of legitimate violence, when necessary, must be in conformity with the legal texts, which must in turn be in conformity with recognized international standards. In this connection, people were reminded that the first independence law codes (especially the 1958 Code of Public Freedoms) were of a distinctly liberal character. However, in succeeding years, they were subject to amendments that emptied them of their content ;
- The use of violence in the Moroccan political arena began from the dawn of independence. This period witnessed a number of violent incidents including arbitrary detentions, kidnappings and other grave violations of human rights even going so far as assassinations and forced disappearance. In this connection, it was pointed out that numerous political groupings resorted to violence during this period, considering that the independence that Morocco had achieved was not total and that the time to lay down arms had not yet come, while others considered that independence was incomplete. In addition, there were fierce disputes and struggles, sometimes taking on a tribal nature that went on and on within Moroccan society. However, it must be made clear that the basic problem does not lie in the struggle, which is natural in all societies, but in the lack of mechanisms to manage differences peacefully. In this period, many groupings considered that violence was a useful means of managing disputes ;

- Violence was a historical phenomenon that impinged on various aspects of social life and even impinged on the development of the country. It was primarily political violence, but it impinged on different levels of society and polarized all actors in the political arena. This violence broke out directly after independence, with the goal of "shattering the capabilities of individuals and making them doubt the political situation, lowering their morale, and paralyzing their activities at different levels". It was also used as an instrument of revenge and for correcting and disciplining individuals because they were wrong, in the eyes of the state, in their assessment and analysis of public affairs ;
- Morocco lived through a mixture of violence whose basic tributaries were numerous and varied, ranging from state violence (detentions and abductions), social violence (anarchy and inter-tribal struggles), violence stemming from the resistance, which considered the rifle and the revolver as a type of struggle, to the violence that the regime inherited with all its mechanisms from the French colonizer ;
- Some attribute the causes of the violence that characterized the previous period to the absence of political discussion or argument. During that period, the state was seeking to establish its authority in a society emerging from colonization and still seething with the spirit of resistance and the Army of Liberation. It was possessed by visions of revenge and some groupings still considered that they were facing the colonizer. This led them to carry out individualistic and sometimes capricious actions that led to the events that Morocco experienced ;
- Some participants mentioned that "immediately after independence the state was operating with a small number of civil servants with little experience or knowledge. This led to deficiencies in dealing with crises, especially since the state was torn between facing up to these problems and the issue of completing the unification of the territory". They added that "during this period the state was seeking to concentrate its efforts on achieving legitimacy", pointing out that there was no separation between the prosecuting, investigating and judicial authorities. On the whole, the legal texts were developed but the basic problem of the independence of the different authorities remained. In this context, they criticized the performance of the judiciary, "who in many cases lacked independence" ;
- Political violence was a strategy to shatter the national balance that had been generated by independence, and to wreck the concord existing between the king and the people, in addition to new balances arising that bred violence ;
- Violence was used as a means of impeding the production of new policies, shattering the means of peaceful expression of protest and transforming dynamism

into tension. The strategy of violence aimed at doing away with the shared public sphere, freezing social processes, and nullifying the structured in favour of the unstructured. In this connection, attention was drawn to the fact that vacuum and rigidity generate extremism and explosion, and stripping society of means of peaceful expression produces conditions favourable to the spread of violence ;

- Others considered that during this period political struggles obscured social struggles, pointing out that the way the state dealt with the situation in 1981 differed from the way it dealt with the situation in the 1960s. It did not confine itself to violent intervention as it did in 1965, but during the early 1990s it also began to "think about reintegrating protest movements and changing the way it dealt with political actors. This was in accordance with a comprehensive security approach, also taking into account a review of the way the political scene was currently organized".

2.2. Trends Moving beyond Violence

During this session, participants addressed some general trends that the country was experiencing towards moving beyond violence as a strategy of political management, considering that the work of the Commission was a real opportunity to promote these trends and enable them to take their true place in solving disputes, whatever their nature or source. In this context, participants concentrated on the following elements :

- Morocco is today experiencing what could be called a period of historical consciousness, because the state has acknowledged in practical terms the violations of the past and the violence practised during that period ;
- Starting from this critical initiative by the state, it must be acknowledged that this period was riddled with violent struggles, and recorded that the actors agree to conduct an evaluation of the previous period. Thus, we are today faced with the challenge of conducting an objective appraisal of this period ;
- Taking into consideration that the intellectual elite did not participate in the conspiracy of silence or fail to uncover the facts. Discussion of the violations of the past was to be found in the literature of many organizations, in the writings of the victims and in opposition newspapers ;
- The political and social dynamism we are experiencing today, through the hearings of the victims of human rights violations and other initiatives, represent a collective acknowledgement by the state and the political components of society of an agreed determination to make a break with this past and to look towards the future ;

- Considering the decision recently taken by the Moroccan government to drop its reservation with regard to Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and to Articles 20 and 22 of the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment as an important step, since this action will enable injured parties to resort to competent international courts and to bring complaints before them, after exhausting the possibilities of litigation before Moroccan courts ;
- Some remarked the emergence of new models of protest today that make a break with the protest models of the past. The latter were characterized by dangerous social confrontations like what happened in 1981, 1984 and 1990, while the current protests are organized in nature and one can talk with them about the "modernization of protest". Meanwhile, security intervention by the state has retained its "repressive character".

2.3. The Components of Reform and Reconciliation for Moving beyond Violence

The main thoughts and opinions falling within this topic can be summarized as follows:

- It was stressed that one of the components of national reconciliation is the peaceful management of the right to differ and to protest. This gives rise to the necessity of undertaking a number of institutional and legal reforms and beginning a quiet and constructive national discussion on various issues of reform ;
- It is strategically important to develop the capacity of Moroccan society to provide education about human rights and democratic practice. In this context, praise was heaped on the draft plan regarding education on human rights in educational institutions, which both the Advisory Council on Human Rights and the Ministry of National Education helped to prepare ;
- Amendments must be made to the legal texts relating to public freedoms to bring them into conformity with national and international developments and to regulate practices for the private management of the public sphere ;
- The Commission is working with university academics and experts to build up documentary and digital resources and to conduct documentary and academic studies about the violations of the past and their contexts and to help formulate projects and practical programmes that enshrine the rule of law, entrench the rule-of-law state, protect freedoms and help to prevent the repetition of violations. However, it is faced with the difficult problem of writing the modern history of Morocco, which

the Commission is indirectly helping to write. In the course of its examination of the violations in a systematic and documented manner, it has recorded a number of gaps, the most notable of which is the absence of writings by witnesses and actors about the previous period and its minute events. In addition, there is a great weakness in writings relating to violations, and the Moroccan university in its turn has not conducted much research about this subject, a deficiency which it is more important than ever to make up ;

- Moving beyond violence as a strategy for political management is the responsibility of all, and dependent upon everybody participating in the construction of the nation, and preparing all institutions to serve pluralism and dialogue so that this transitional stage that is being experienced by the nation be a vehicle to bring us into a new stage in the modern history of Morocco. At the present time, we are all responsible, and it is up to the state and society to promote the culture of dialogue and to move beyond the strategy of political violence that previously prevented it from finding solutions to the fundamental issues facing the country, upon which depended the construction of its present and future ;
- The modern democratic political institution based on representation and pluralism has the sole right to use legitimate violence. This is because the most healthy means of moving beyond violence as a strategy for political management does not lie in diagnosing violence as a phenomenon but in entrenching and consolidating democratic values ;
- Security intervention must be modernized and its apparatuses reformed, by adopting protective measures that are consistent with the democratic choice that the country is involved in, and making a break with security based on violence.

3. Economic and Social Reforms

This session was held on 1 March 2005, and dealt with the analysis of the various human rights violations of the past, on the economic and social levels, and the relationship between economic and social reforms and entrenching respect for the law and the guarantee of individual freedoms. The proceedings of the session focused on two basic questions. Firstly, what are the links between the gross human rights violations committed in the past and economic and social issues? Secondly, how can economic and social reforms help to ensure non-repetition? Participants tried to present some answers while promoting a comprehensive approach to combating gross human rights violations on the one hand, and consolidating the process of reconciliation in its various aspects and dimensions on the other.

3.1. The Relationship between the Violations and Economic and Social Issues

The participants in the proceedings of this session tried to approach the relationship between the gross violations of human rights committed in the past and some economic and social issues on the basis of the following main considerations :

- It considered the gross violations of human rights as a denial of the individual's and the group's right to participate in managing their affairs, including their economic affairs. In this connection, reference was made to the fact that groups, families, political parties and whole regions being exposed to grave injuries as a result of those violations, and that whole regions suffered severely from violations which could be considered as a type of community punishment ;
- The Commission examined regions that had been injured as a result of the violations and being deprived of benefit from economic projects, which currently need reparation programmes for the injuries that they were subject to. These regions included for example: the Rif, Imilchil, Agdez, Khenifra, Beni Mellal and Azilal. Their suffering was double, as they endured the violations on the one hand and on the other they were marginalized and did not benefit from development programmes ;
- The phenomenon of gross human rights violations has been witnessed by most societies of the world, because the political struggle is played out because of struggle for public wealth and resources ;
- Morocco did not escape this phenomenon because of the growth of the black economy and the distribution of exploitation licenses and concessions by means of positioning oneself within the current model of authority with the aim of illicit self-enrichment in the absence of monitoring mechanisms regulated by the practice of democracy and by placing those responsible beyond accountability ;
- Political violence in its relationship with the economy is a phenomenon that all countries experience. However, the difference is that this phenomenon led in Morocco to the development of models of the parasitic and black economy ;
- Some participants noticed failure in the management of public affairs by economic institutions that were not subject to modern management or to a system of monitoring and accountability. Moreover, they also noticed that those institutions slipped out of their responsibilities, pointing out that the actual decisions were usually taken outside the economic institution, which was usually exploited for specific goals to promote and broaden the principle of supporting a particular political model. This does not mean that these institutions did not produce anything, but in the absence of

monitoring mechanisms, these institutions strayed from their mission and became a tool to achieve other goals ;

- The lack of democracy led to the emergence of an economy that was not subject to modern standards. Moreover, the fact that these violations stretched over a long period of time damaged the whole fabric of society and society's values and practices were effected ;
- There were a number of deficiencies, the most conspicuous of which were violations of workers' rights in the economic sector, in addition to a sort of ambiguity in the behaviour of businessmen, in that there was a group of them who wanted the law to prevail in order to build a sound economy while others preferred underhand methods. Thus it was stressed that it was important for the state to intervene to introduce controls defining the relationship of economic players, whether with the authorities or with society ;
- Some explained that the economic violations came as a result of the lack of democracy during that period and the dominance of security concerns over the economy, the weakness of the judiciary, the absence of monitoring and the collusion of those close to the decision-making centres, which led to deals, and a number of fertile lands being sold, without serious studies, and the granting of loans without security ;
- During the period of the gross violations of human rights, management of public affairs was characterized by a number of major defects that resulted in a black economy lacking a spirit of honest economic initiative, and many young contractors were excluded because of the dominance of a corrupt economic elite who lacked impartiality and a spirit of responsibility and monopolized the economic sphere ;
- The purification campaign which Morocco experienced in 1995, which affected a number of contractors, had political goals and intended to discipline contractors who criticized the government, established relationships with foreign firms of contractors, and did not follow some instructions. This is in addition to the disastrous effect this campaign had on the national economic level, in that it fell indiscriminately on good and bad contractors ;
- Today we are still experiencing the repercussions of the period of gross violations. This is revealed in contractors' lack of experience in exposing themselves to the risks of competition, the prevalence of tax evasion and the continuation of opaque relationships with the authorities, which are all elements that have contributed to creating a fragile and fragmented economic fabric ;

- It is impossible to achieve and enshrine economic and social rights in Morocco in the context of the current negative indicators, namely the poverty and weakness of the level of education, especially in rural areas, as a result of the policies followed by the state during the period of violations, which helped to exclude and marginalize the rural areas ;
- This period of Morocco's history was devoid of trust and tranquillity, which are essential elements of growth and positive interaction with the international economic environment.

3.2. The Economic and Social Reforms Necessary for Non-repetition

- Participants were invited to draw lessons that would protect us from repeating the human rights violations and practices that led to the defects experienced by Morocco on the economic and social levels. In this context, it was pointed out that there was a relationship between two events that occurred during the period stretching between 1990 and 1995, which were of great significance. These were the simultaneous acknowledgement of the existence of human rights violations, and the release of a number of detainees on the one hand, and on the other hand the comment by the late King Hassan II on the World Bank report that pointed out that Morocco may suffer a sort of heart attack if it does not undertake reforms ;
- The above-mentioned World Bank report was the beginning of consultations and communications with the opposition parties to invite them to participate in the government and save the nation ;
- Although the state was subjecting long-term economic goals to security concerns, and officials themselves were one of the reasons for the economic failures experienced by Morocco during the years of gross violations of human rights, at the same time it constructed a number of institutions during this stage, which enabled the construction of a modern economy and the emergence of a public and a private sector and major economic institutions ;
- Involving all actors in developing a culture of respect for the other and belief in pluralism and difference, developing mechanisms of good governance and providing mechanisms for managing differences by peaceful means are all things that have a positive influence on the economy, along with restoring trust and respect for the law, springing from a human rights approach that allows everybody to participate in public life ;
- Economic and societal growth cannot be achieved "without entrenching the bases of democracy, respect for human rights, rationalization of government work, and

pushing through the series of reforms that up until now are not sufficient and do not meet the requirements of contractors, in spite of the increasing pace of recent years. It is also necessary to build up trust between all actors, and to encourage domestic and foreign investment, in order to create wealth and jobs. Moreover, it is impossible to train contractors in the context of a black economy, since the predominant concern of contractors is currently to deal with the elements of society in order to promote contracting and to increase its competitiveness ;

- Morocco has taken the choice to modernize its economic life to the extent that today we are living through an economic process that is developing and requires new models of management ;
- Any economic fabric can only be productive if the elements of competitiveness, respect for the law, prevalence of trust, and achieving complementarity of activities by concentrating on all the elements that constitute Morocco's economic unity, especially by giving attention to the rural areas, which have suffered from excessive marginalization, leading to the deterioration of economic structures in all regions of the country ;
- Today we are required to make appropriate changes in the law by modernizing legislation and adapting it to the requirements imposed by changes on the international level, while emphasizing the necessity of enforcing respect for the law and combating bribery ;
- The encouragement of investment depends on a number of prerequisites, such as clarity and stability of legislation, optimum utilization of human resources, and the independence and impartiality of the judiciary ;
- We cannot attain the goals we aspire to, such as entrenching economic and social reforms without adopting democracy as a basic and essential reference point, and transparency as a guarantee of economic efficiency, and legal reforms to enshrine fair competition; In the end, this leads to healthy economic performance while strengthening the values of solidarity as a social characteristic to realize social complementarity and then reform of the judiciary ;
- The Commission used a community approach to reparation for injuries in the regions that had experienced slow growth following the gross violations of human rights ;
- The Commission's approach to this issue was to reinstate those regions and to consult the local population and local actors concerning urgent development programmes, which it would then submit to the public authorities so that they could be carried out as quickly as possible ;

- This process is complementary to the development programmes the state is currently undertaking, which are concerned mainly with bringing electricity to the rural areas and breaking the isolation that imprisons them, constructing roads and combating poverty and sub-standard housing. At the same time, it should be noted that the Commission is in the process of formulating an approach to the former detention centres so as to preserve the memory.

4. Educational and Cultural Reforms

This session, which was held on March 8, was dedicated to necessary educational and cultural reforms, so as to consolidate the values of democracy and human rights in society and avoid repetition of the violations of the past. The session dealt with the repercussions of the grave violations of human rights on the educational and cultural levels, and means of achieving the desired reform with the aim of producing a generation who are conscious of and believe in the values of citizenship, tolerance, pluralism and the right to differ, and providing an environment that facilitates the establishment of relationships on the basis of respect for human dignity, and activating the mind, thinking and creating. Thus, its proceedings focused on two main points: the repercussions of the grave violations on some educational and cultural fields, and the methods and possibilities for educational and cultural reform.

4.1. The Effects of the Violations on the Educational and Cultural Fields

- If the violations prejudiced the educational and cultural field, they pointed to the beginning of the end of the individual and the citizen, harmed society as a whole and led to the strangling of creativity and the creation of a generation of youth who are unable to guarantee the future ;
- The educational and cultural fields witnessed violations that reflected on society. Like Amazigh, Arabic was marginalized in that, despite the fact that it is referred to in the constitution as an official language, it has continued to be absent from higher education, administration and commercial transactions in favour of French ;
- The cultural field witnessed violations that prejudiced creativity in poetry, the novel and music, and associations were refused receipts of deposit so that the activities of association enthusiasts could be restricted in the educational and cultural fields ;
- The marginalization suffered by the Amazigh language, which is one of the constituents of Moroccan identity, was criticized, and it was pointed out that the depth of Moroccan identity had been sacrificed. The media also contributed to this process by committing serious violations by transmitting values and programmes that had no relationship with Moroccan culture and identity ;

- Language policy was tied to the political calculations of the state, and resulted in an educational structure that produced generations of Moroccans who had not mastered any language. In addition, the reforms of education and curricula that did take place were not sufficient, and the educational structure remained as it had been previously ;
- Some participants mentioned a group of practices that constituted a violation of the human rights of the Moroccan, his potential and his capabilities, considering that the 48% illiteracy in Moroccan society was a result of choices made in the post-independence period, which did not include that of building Moroccan citizens with productive minds ;
- The horizons of the Moroccan school remained open until the beginning of the 1960s to a number of choices including that of progressing along the path of modernization while preserving Moroccan traditions. However, it should be pointed out that some historians considered that this period was a transitional stage to the Moroccan educational structure during which the critical mind was killed and education of youth to love their country and their homeland with all its cultures and historical depth was replaced by a formal education that depended on a history of images.

4.2. Methods and Possibilities for Educational and Cultural Reforms

- The basic goal is to make a break with all forms of violation, concentrating on constructing what benefits people and what helps to develop a free national culture with original and creative ideas that renounces everything that is likely to stand in the way of the freedom of the Moroccan citizen ;
- The necessity to transcend and immortalize the past, by preserving the memory and offering recommendations and proposals likely to give rise to reforms in the educational and cultural fields with the aim of raising up creative Moroccan young people worthy of the Morocco of the 21st century ;
- It is important to promote the importance of school in society and to inculcate a culture of human rights, beginning from the first stages of studies, and concentrating on educating people in human rights and creating university courses in areas related to human rights, especially since Morocco has accumulated significant experience in this field in recent years. Our country has witnessed a dynamism that has resulted in significant original productions, both novels and films, that handle issues that may further the entrenching of increased originality and develop the process of satisfying the Moroccan citizen's desire for a human rights culture ;

- Participants stressed the need to provide all the conditions necessary for the human rights culture to become the culture of the whole society. This should be translated into a number of controls to which everybody submits in their professional, social and family lives, and a school system that keeps pace with the reform from the earliest stages of the educational process ;
- Since 1991, Morocco has been embarked on a series of reforms focusing on this aspect, reforms that still need to be consolidated. In this context, a reminder was given of the recommendation issued by the Advisory Council on Human Rights in 1991 to instil a human rights culture in police schools and institutes, the 1994 agreement to instil human rights in schools, the issue of the National Charter for Education and Training in 1999, the reform of education curricula and the issue of new textbooks in 2002 ;
- During the last 15 years, associations and organizations from civil society have been active in promoting a human rights culture, and now the issue has been taken on as a project to be pursued by society as a whole. Therefore, work should be conducted to make the human rights culture play its part in constructing a state based on law and freedoms and avoiding repetition of the violations of the past ;
- There was a call for in-depth reform of the educational system and encouragement for the development of critical thinking.

5. Legislative, Executive and Judicial Reforms

The participants in this session, which was held on 15 March 2005, discussed means of establishing a state based on law and institutions, and consolidating the position and independence of each branch of government in a framework characterized by entrenchment of the progress that has been going on since the 1970s. The subject was handled under two main topics. The participants in the first topic tried to analyze the gross human rights violations of the past in terms of legal protection and the role of each branch of government individually in this field. In the second topic, they looked at methods of reform so as to ensure the strengthening of the rule of law, the consolidation of democracy, and the involvement of Morocco in the international effort to make human rights an international standard.

5.1. The Gross Human Rights Violations of the Past in terms of Legal Protection

- On the basis of studies carried out by the Commission, and meetings that took place with political and university actors, it was clear that there was a great deficiency between the occurrence of grave violations in the past and the absence or weakness

of mechanisms for legal protection, in that in the early years of independence our country had legal codes that were advanced in terms of public freedoms and the penal system. However, after that there were grave setbacks and these codes were superseded by vaguely worded catch-all laws. Moreover, parliament was unable to combat the violations and conducted no investigations, and the public prosecutor's office did not fulfil its role of protecting society and preventing violations ;

- Through its studies and analyses, the Commission revealed numerous major loop-holes concerning which it would make recommendations in order to provide methods of reform and mechanisms to automatically combat violations that may occur and ensure non-repetition ;
- The gross human rights violations that occurred in the period between 1956 and 1999 are attributable to two main factors: The first is the absence of standards for democratic institutions. The first constitution was not promulgated until 1962, and the first legislative elections were not held until 1963, and even these steps were taken in such a way as to empty institutions of their effectiveness. The second relates to the changes that were made to laws, in the direction of more suppression and severity, especially as evidenced in the 1958 Code of Public Freedoms, which witnessed further setbacks in 1959. The same applies to the penal system. In this connection, some criticized what they called the bad use of time by decision makers, and the way social problems that arose were ignored as if the train of development and progress were waiting for us. They called for the creation of a political climate based on accountability, responsibility, follow-up and control ;
- Some explained that the party responsible for the violations of the past was not the judiciary or police officers, but rather the state in all its different apparatuses and institutions, and it is the state that must now rehabilitate and reform itself ;
- The concord that Morocco experienced during the independence period was transformed into conflict when the state exploited it to enter into it as a party by using its different means and capabilities, and this is what resulted in the occurrence of the gross violations of human rights ;
- Three basic loop-holes in the field of legal protection were recorded: i. The judiciary gave legitimacy and justification to what occurred; ii. Public force was used without controls; iii. Public funds were used without any restriction or condition, which enabled the gross violations to reach deeper and last for a longer period ;
- The participants considered that the cause of the gross violations of human rights was the struggle for power by violent means, pointing out that violence became a big issue in our society because of its aspects in the verbal context, where the

state and the components of the political and social scene all used it instead of dialogue. In the end, this gave rise to the following principle : "The most violent is the strongest" ;

- Participants explained that human rights include all legal fields, and that the law has been given for the benefit of man, so it is impossible to imagine human rights in an ignorant and illiterate society devoid of basic necessities. Thus it was stressed that the violations of the past must be linked with the level of social and political awareness existing, in terms of the dominance of the discourse of exclusion and the resort to the security approach as the best solution.

5.2. Entry Points

- The approach of the Equity and Reconciliation Commission does not make a separation between the subject of transitional justice and closing the chapter of the gross human rights violations of the past, on the one hand, and the dynamic of reform and strengthening democratic transition, on the other hand. At the same time, it pointed out that Morocco was not starting from zero in this matter, but from a very significant accumulation of experience in the field of reform that it had witnessed in recent years, and was called upon to broaden in the coming years ;
- As a mediatory institution between the state and society, the Commission hopes that its final report, which it submitted to His Majesty at the conclusion of its mandate, will be a sort of practical programme for the coming decade in the field of promoting human rights and comprehensive reform on different levels, including the legal, the legislative, and the judicial ;
- The audience was reminded that the Commission's subject-matter mandate covered any violation of an intensified and grave character. It established the type and the gravity of the human rights violations of the past in their contexts and the light of the standards and values of human rights, democratic principles and the rule-of-law state, and would make every effort to investigate the events that had not yet been clarified, and to uncover the fate of the disappeared, and examine the responsibilities of state and other apparatuses for the violations and the events subject of investigation ;
- In addition to this, the Commission's work also fell within the context of consolidating the process of democratic transition and entrenching the state of law and institutions. Thus, its approach falls within a comprehensive process of reform, with the clarification that the accumulation of experience that Morocco has gained during recent years is focused on developing this dynamic, by doing things like

reforming the family code, initiating a debate about the penal code and submitting a draft law criminalizing torture ;

- It is important to broaden the scope of investigations that Morocco is witnessing, which reflect on social behaviours in that Moroccans have begun to realize that they have the right to call the government to account and make officials accountable. In this context, there was a call for political mechanisms to be developed, so that political forces are able to negotiate amongst themselves and to accept the results, so that parliament might become the arena for political action and thus rebuild its credibility, and so that the government might spring from the parliament after sound elections ;
- The importance of retraining and reforming the judiciary was stressed, as was the necessity for the core of political decision-making to spring from political institutions, while searching for possible ways of broadening the scope of legislation ;
- It was stressed that the current stage requires concord and mutual consent between all components of society to fortify democratic transition ;
- Major reforms must be undertaken focusing on the judiciary and the public authority apparatuses, methods of disbursing public funds, and the provision of mechanisms of control. However, building foundations for the future does not only depend on good intentions but requires sustained long-term work based on comprehensive reconciliation looking always to the future ;
- It was stressed that the group of issues linked to judicial and legislative reforms must be linked to the question of restoring the credibility of these institutions and regaining the confidence of society, which is the best way of solving the problems and removing the constraints that face the country because of the accumulation of disappointments ;
- It was stressed that culture, the media and education play a decisive role in constructing a broad base in order to enshrine comprehensive social reform, that the principles of social justice and respect of human rights and democracy must be considered as national constants, and that the idea of formulating a sort of social charter must be pursued ;
- It was affirmed that the most stable countries in the world are the democratic countries, and that consolidating a state based on law and institutions remains the correct and most ideal policy. However, it should be remembered that there should be universal accord regarding national constants represented in the privileged

status of Islam, the integrity of the national territory, constitutional monarchy, the democratic choice, and looking forward to the future ;

- Reform of the justice system should be considered as the starting point, because this gives security to institutions, citizens and investors. Its impartiality should be ensured by choosing judges carefully, enabling them to enjoy a decent standard of living, and providing them with retraining, because the efficiency of the justice system is dependent on training, modernization and specialization in order to achieve comprehensive equity and real reconciliation ;
- The importance was stressed of fair elections drawing in the widest range of political actors, without excluding anybody, as a means of setting the political stage and consolidating the role of both the majority and the opposition, with an efficient and harmonious government responsible to the King and parliament, and a strong parliamentary institution ;
- Some pointed out that although the justice system was in need of reform, what was more important if we wanted real stability was to retrain society and make it aware of what was going on around it and know what it wanted. They said that when citizens realized that the law was laid down for their protection, violations of the law would diminish, whether in the justice system or in any other facility ;
- It was affirmed that moving society from one state to another requires two main things: retraining the members of society and giving them the means to make them aware of the time they are living in so that they do not become prisoners of superficial demagogic discourses; and rehabilitating the legal system, which must be at a level appropriate for this society in terms of constitutional, legislative, executive and judicial institutions ;
- Inviting various academics and civil society activists to participate in this process, which aims to ensure the future and give immunity to society.

Chapter Three

RECOMMENDATIONS

I. The Principles and the Process of Submitting Recommendations

The work of the Equity and Reconciliation Commission regarding the preparation of the recommendations that crown its Final Report is based on the following principles :

- The country's choice to move towards the future by promoting and protecting human rights in the context of the country's democratic transition ;
- Consolidating the process of the reform going on in various fields related to human rights ;
- The provisions of the statute dealing with the submission of proposals intended to ensure non-repetition and erase the effects of the violations and restore and strengthen trust in the rule of law.

In implementation of the above principles, the recommendations of the Commission are intended to be in harmony with major developments, including :

- Political will at the highest levels, sustained by the constitutional democratic monarchical system, which ensures the sanctity of the state and its institutions, making democracy, the spirit of citizenship and the dissemination of a culture of human rights and duties the best protection of society from extremist and terrorist tendencies, releasing the potential of Moroccans so that they are all in complete harmony with the aspirations of their country and rising to the internal and external challenges that face it ;
- The appeal by His Majesty to reform the justice system, in order to ensure its sanctity and to make its rulings aspire to equity in a framework of independence from all forms of physical or moral pressure, and considering the principle of the independence of the judiciary a basic element of democracy which meant: to ensure the smooth administration of justice, and guaranteeing its constitutionality; to ensure the rule of law and the equality of all before the law in all situations and circumstances; and to ensure the role of the justice system in promoting democracy and development ;
- The broader humanitarian dimensions of the National Initiative for Human Development, which is based on the principles of political democracy, economic efficiency, social cohesion, work, innovation, and enabling the citizen to use his qualifications and abilities in the most advantageous manner ;
- Constitutional entrenchment, in that during the two constitutional revisions of the 1990s, the country has witnessed constitutional entrenchment of human rights as internationally recognized ;

- Resuming the process of modernization of the legal structures related to individual and collective rights and freedoms so as to establish human rights in the warp and woof of public and private laws ;
- Modernizing penal legislation, so as to establish principles and safeguards in the relevant processes and procedures, and in parallel to open a national debate about the options and foundations that must be adopted in the field of penal policy ;
- Establishing a qualitative review of the form and content of the Family Code, in the framework of its conformity with universal standards of human rights, the values of justice and equality, and the purposes of the Islamic Shari'a. This enabled the foundation stone to be laid with regard to the problem of the specificity and universality of a legal structure that safeguards the rights of women and children and establishes the family on a basis of justice and equity ;
- The reinstatement of cultural rights and the Amazigh language as a component of national identity ;
- Political emphasis on the necessity of a separation of powers on the level of the administration and state and providing citizens with swift and efficient means of defending their rights, by establishing a new concept of authority in daily dealings with the administration or by means of a justice competent for that ;
- Putting in place mechanisms for mediation and intervention, in order to protect human rights from violations or to clear up violations.

While recalling these major gains, which were launched in the form of laws mechanisms, and national programmes and workshops, the Commission hopes that its recommendations and suggestions will be an additional contribution to the process of entrenching human rights, anchoring democracy and strengthening the rule of law.

On this basis, the Commission is very aware that the proposals that it submits within its mandate seek no more than to give guidelines and procedures that should consolidate legal safeguards when the legally competent authorities undertake the task of modifying legislation to institute, nullify or complement.

II. Criteria and Methods used in Preparing the Recommendations

In preparing the recommendations, the Commission relied, in addition to the political will of the highest authorities in the country and the process of reform currently going on :

- International human rights standards and the benefit gained from comparative experiences in the field of transitional justice round the world, and also the

innovations formulated with regard to the relationship between human rights and democracy by the United Nations and international parliamentary bodies ;

- The conclusions from the Moroccan experience of the grave violations committed in the past as regards the types, the extent, the responsibilities of institutions linked to them, and the deficiencies in the fields of law, justice and security governance ;
- Academic studies and research into the legislative and regulatory texts relating to human rights, or those that might have a positive or negative impact on how they are respected or enjoyed. This enabled clarification of what safeguards and procedures needed to be consolidated and strengthened, complemented or put in place for the first time ;
- Studies that helped one to examine the consolidation of the prerogatives and the roles of the bodies involved or intervening in the field of human rights, in terms of the way they carry out their tasks ;
- Dialogue and consultation meetings with the political parties, associations and non-governmental organizations involved and the representatives of the public authorities, which resulted in the receipt of various proposals on the subject ;
- In-depth discussions among members of the Commission, in groups or through the teams and experts.

III. The Main Fields for the Proposed Reforms

1. Consolidating Constitutional Protection of Human Rights

It is not the Commission's prerogative to take a position concerning political or party points of view revealed during public debate on the constitution.

Giving due respect to the two branches that the constitution grants the right to initiate amendments, namely His Majesty the King and parliament, the Commission recommends, in its thinking about issues requiring to be taken into account in the heart of the constitution of the country, when possible, the following :

- Consolidating respect for human rights and improving security governance, especially in case of crises ;
- Promoting the constitutional entrenchment of human rights as internationally recognized by clearly rooting the principle of the supremacy of relevant international treaties and conventions and in general the international human rights standards and humanitarian law over domestic laws ;

- Clear constitutional enunciation of the content of basic freedoms and rights, including for example the freedoms of movement, expression, demonstration, trade union and political organization, assembly, and strike, and the confidentiality of correspondence, the sanctity of the home and respect of private life, and to make them sufficiently immune to any disruption by normal legislative, regulatory or administrative work. It must also enunciate the provision that makes the regulation of this field the prerogative of the law, and oblige the legislator himself, whenever he regulates their exercise, to legislate, in addition to the existing safeguards, additional protective safeguards as well as providing means of recourse to the courts for citizens who consider themselves to have suffered injury while exercising any of these rights or freedoms ;
- Consolidating constitutional safeguards of equality, by enunciating gender equality in political, economic, social and cultural rights ;
- Consolidating constitutional control of laws and independent regulatory decrees issued by the executive branch, and enunciating in the constitution the right to claim an exception on the grounds of the unconstitutionality of a law, while referring the matter to the Constitutional Council for a final decision, and to lay down detailed conditions for that, so as to avoid too many claims of unconstitutionality of laws issued by parliament being referred to the Constitutional Council ;
- Criminalization of forced disappearance, arbitrary detention, ethnic cleansing, and other crimes against humanity, as well as torture and all forms of harsh, inhuman and humiliating treatment and punishments ;
- A constitutional ban on all forms of discrimination internationally condemned, and all forms of incitement to racism, xenophobia, violence and hatred ;
- Constitutional acknowledgement of the principle of presumption of innocence and the guarantee of the right to a fair trial ;
- Consolidation of the principle of the separation of powers, especially as regards the independence of the justice system and the Statute of the Judiciary, with an explicit ban of any intervention by the executive branch in the organization of justice and the conduct of the judicial branch ;
- Strengthening constitutional safeguards of the independence of the Supreme Council of the Judiciary and defining its Statute by means of a regulatory law by virtue of which its composition and role will be reviewed with a view to ensuring that it represents other non-judicial parties, acknowledging its human and financial autonomy, giving it wide powers in the field of organizing the profession and laying down its controls, its ethics, and evaluation of the work and efficiency of judges.

It should be given the responsibility of preparing an annual report concerning the administration of justice ;

- Promoting security governance by strengthening security and maintaining public security both in ordinary circumstances and during crises ;
- Clarifying and strengthening the powers of parliament to investigate facts regarding the respect of human rights and uncovering any events that prove the occurrence of gross violations, while obliging it to establish investigation committees with wide-ranging powers to examine cases where it appears that human rights have been violated or are liable to be blatantly violated, and granting the minority also the right to establish such committees ;
- Acknowledging the responsibility of the government to protect human rights and to maintain public security, order and administration ;
- Composing a high-level committee of constitutional, legal and human rights experts to be entrusted with the task of examining the requirements and the repercussions of the proposed constitutional requirements and to submit suitable proposals to achieve conformity between domestic legislation and international conventions ratified by Morocco in the field of human rights.

2. Continuing to Accede to International Human Rights Law Conventions

- Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty ;
- Ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and withdrawing, the reservations that Morocco had made to some provisions of the said convention ;
- In fulfilment of its signature to it, ratifying the statute of the International Criminal Court, while examining the constraints raised.

3. Consolidating Legal and Judicial Protection for Human Rights

3.1. Legal Reinforcement of Individual and Collective Rights and Freedoms

- Examining carefully judicial ante hoc and post hoc procedures and mechanisms intended to ensure a balance between the necessity of broadening the scope of freedoms on the one hand and on the other the preservation of the dignity and

private lives of individuals and the requirements of combating terrorism, hatred, violence and discrimination ;

- Strengthening judicial supervision after rulings are issued ;
- Examining carefully methods of strengthening and improving the self-regulation of professional institutions, especially as regards ethics, code of conduct and settlement of internal disputes.

3.2. Gross Violations of Human Rights

- Conformity of domestic criminal legislation with the country's commitments and obligations as regards international standards, and the crimes of enforced disappearance and arbitrary detention, and in particular as regards :
- Inserting the definitions, descriptions and constitutive elements attributed to them in international conventions into the Moroccan Penal Code, insofar as they are crimes ;
- Inserting the elements of responsibility relating to them and the sanctions laid down, as internationally defined ;
- Punishment of perpetrators of violations and their accomplices with the most severe sanctions, whatever their rank, position, or post, or whatever relationship they had with the restriction of freedom or the implementation of the law, or whoever carried out their orders or by virtue of their post supplied assistance or expertise, in addition to anybody who concealed or failed to provide information relating to the crimes of enforced disappearance, arbitrary detention or torture ;
- Empowering government officials, agents of public authorities, or minor officials who are charged with carrying out the orders of their superiors to report any information indicating that the said crimes are being committed or that there is an attempt to commit such crimes, whatever the capacity of the authorizing authority ;
- Laying down special procedural provisions with regard to the protection of the victims of gross violations of human rights and their rightful claimants, when necessary, in terms of giving them a hearing during the investigation and allowing them to stand as a civil party before the competent judicial body, and in terms of rehabilitation and reparation for injuries ;
- The Equity and Reconciliation Commission records its great interest in the government's initiative to draw up a draft law to criminalize torture, in implementation of the Advisory Council on Human Rights recommendation, and

urges parliament to ratify it with the aim of officially publishing it. It considers it necessary to strengthen its provisions in accordance with the above.

4. Laying down a Strategy to Combat Impunity

- On the basis of the results contained in its Final Report, the Equity and Reconciliation Commission calls for the setting in place of a comprehensive, integrated and multilateral national strategy to combat impunity ; a strategy based on protective legislative provisions in conformity with international standards and the requirements for entrenching and protecting the process of democratization currently under way in the country, in which all legal, judicial, civil, educational and social parties participate by means of programmes aimed at combating, protecting, sensitizing, acculturating and training, and ensuring effective punitive measures and transparent and fair control so as to make a break with all impunity.

5. Rehabilitating Penal Policy and Legislation

- Implementation of the results of the national dialogue conducted on the occasion of the Symposium on Penal Policy in Morocco held in Meknes from 9-11 December 2004. Its conclusions and recommendations are an excellent platform for formulating methods of reform regarding the country's penal policy, and especially levels of detention, freedom-depriving sentences and their alternatives, alternatives to public prosecutions, and safeguards for the protection and assistance of victims, the protection of the most vulnerable groups and mechanisms of penal justice ;
- Consolidating the latest revision of the Code of Penal Procedure with additional provisions and other complementary ones to enshrine respect for human rights and move towards an inquisitorial justice instead of an adversarial one, and to correct deficiencies that have been revealed by practice and have hindered those working in the profession ;
- Consolidating the latest revision of the Penal Code by including a clear and detailed definition of violence against women, adopting international criteria in the field, and enunciating more severe sanctions in case of women being subject to violence in all its different forms, including rape by officers of apparatuses entrusted with enforcing the law, and broadening the scope of the criminalization of sexual harassment to include various spheres (instead of limiting it to the workspace as stipulated recent amendments), and adopting the obligation to place women in custody under the responsibility of women officers.

6. Rehabilitating Justice and Strengthening its Independence

In addition to what has been stated concerning the constitutional strengthening of the judicial branch :

- Separation of the post of minister of justice from the Supreme Council of the Judiciary ;
- Locating the Supreme Council of the Judiciary in the headquarters of the Supreme Court ;
- Monitoring the acceleration of the pace of reform of the justice system and improving its performance ;
- Continuing to modernize the courts ;
- Giving incentives to judges and judicial assistants, providing them with basic and in-service training, and regularly assessing their performance ;
- Continuing projects to regulate the various judicial occupations and enabling them to order their own affairs as regards rights, duties and ethics ;
- Reviewing the regulation and the powers of the ministry of justice so as to prevent any interference or influence by the administrative apparatus on the course of justice or the conduct of trials ;
- Criminalization of intervention by the administrative apparatus in the course of justice ;
- Strengthening penal sanctions against any violation or infringement of the inviolability or the independence of the judiciary.

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

- Implementation of the recommendations issued by the Advisory Council on Human Rights contained in its special report on conditions in penitentiary institutions issued in 2004 so as to reform conditions in them by broadening the prerogatives of the sentencing judge, and implementing the systems of conditional release and judicial supervision, and preparing regulations relating to the system of pardon in terms of its procedures and criteria ;
- The Ministry of Justice should inform the Advisory Council regularly concerning the progress of implementation, the difficulties it has faced, and their causes ;

- Creation of a miniature administrative council, composed of judges, educators and specialists in the field, to give its opinion concerning financial, regulatory and security management, the allocation of human resources, and the choice of prison wardens, their appointment to appropriate positions and assessment of the management of the facility.

8. Rationalization of Security Governance

8.1. Government Responsibility for Security

- Implementation of the effects of the principle that says the government is corporately responsible for security operations, the maintenance of public order, the protection of democracy and human rights, and obliging it to inform the public and parliament of any incidents requiring the intervention of public force, and to give a detailed account of the course of events, of security operations and their results, responsibilities and any corrective measures to be taken.

8.2. Parliamentary Control of and Investigation into Security Matters

- The political parties represented in parliament should implement the principle of their political and legislative responsibility for the protection of human rights and basic freedoms, whenever there are claims of gross violations of human rights, or grave actions that violate or threaten the values of society and its democratic choice ;
- Improving the performance of parliamentary fact-finding committees through the provision of security and legal experts to help them to prepare objective and significant reports devoid of political considerations ;
- Strengthening the mechanism of questions and direct hearings by parliament as regards responsibility for the maintenance of security and public order ;
- Broadening the parliamentary practice of accountability and hearings to include, in addition to ministers responsible for security and justice, all those directly responsible for security apparatuses and operations of deterrence on the national, regional and local levels.

8.3. The Situation and Regulation of the Security Apparatuses

- The legal framework and the relevant regulatory texts relating to the prerogatives and regulation of the process of taking security decisions should be explained and published, as well as the means of intervention during operations, and the systems

of supervision and evaluation of the work of the intelligence apparatuses and the administrative authorities entrusted with maintaining public order and those having the authority to use public force.

8.4. National Supervision of Security Policies and Practices

- Description and classification of security crisis scenarios, the conditions and technologies for intervention appropriate for each, as well as the methods of supervision and the drawing up of reports for security interventions ;
- The political supervision of security operations and the maintenance of public order should be made immediate and transparent by publishing reports about security operations, the losses that resulted, the causes for these losses and the corrective procedures adopted.

8.5. Regional and Local Supervision of Security Operations and the Maintenance of Public Order

- Security operations and the maintenance of public order falling within the remit of regional and local authorities should be placed under the immediate supervision of local or regional multi disciplinary, supervisory and monitoring committees ;
- After every operation of this sort, a detailed report should be published concerning the events, the operations, the results, and the causes of any excesses that occurred.

8.6. Criteria and Limits for the Use of Force

- All apparatuses and agents of the public authority or the security forces should be obliged to keep all documentation relating to a decision to intervene or to resort to public force, as well as reports, notifications and correspondence relating to it ;
- Oral orders or instructions should be considered void, except in cases of imminent danger, provided that the oral orders are then followed by written orders, signed to confirm ;
- Anyone who is proved to have concealed the occurrence of human or material losses or to have made excessive use of public force, or to have concealed excesses that occurred or forged, destroyed or concealed documents relating to such should be subject to severe administrative and criminal sanctions.

8.7. In-service Training for Public Authority and Security Agents in the field of Human Rights

- Training and in-service training programmes in the field of human rights and the culture of citizenship and equality should be drawn up for security officials and agents, and those entrusted with maintaining order, using international standards and national legislation relating to human rights ;
- Guidebooks and didactic materials should be continuously prepared and published to raise awareness and sensitize security officials and agents concerning the principles of good governance in the fields of security and respect for human rights.

9. Promoting Human Rights through Education and Awareness-raising

- The Equity and Reconciliation Commission calls for a national comprehensive and long-term plan to be drawn up regarding this, on the basis of the national consultations currently taking place round the Advisory Council on Human Rights' initiative regarding the National Plan for Educating in and Promoting Human Rights. In this context, the Commission considers that the priorities for the promotion of human rights include the following :
  - Inserting the fight against illiteracy and informal education into the National Programme for Education on Human Rights ;
  - Disseminating the experience of citizenship clubs among educational establishments, supporting them and ensuring coordination between them ;
  - Keeping in mind the principles of human rights as a formative background for the compilation of textbooks ;
  - Mainstreamting a gender approach into the various stages of the educational process, including the compilation of textbooks ;
  - Improving the effectiveness of training courses and research groups in the field of human rights in universities, UNESCO chairs, and research groups, and these experiences should be disseminated to all Moroccan universities ;
  - Inserting human rights training, in-service training, and sensitizing programmes within the framework of a work plan aiming to instil the principles of human rights and human rights education in the programmes and policies of the sectors involved in promoting the culture of human rights ;

- Developing the institutional capacities of non-governmental organizations working in the field of human rights and the professionalism of their staff. They should be considered an essential partner when drawing up any policy or work plan seeking to promote human rights culture or education. The continuation and the effectiveness of this partnership should be ensured ;
- The culture of human rights should be enshrined in all streams of national culture by means of research, organizing conferences, supervising training courses and publishing intellectual journals ;
- Renewing religious thought, reforming religious education, and using the audio-visual media, literature and the arts to spread the human rights culture.

10. Academic Research relating to the Ancient and Modern-History of Morocco

- All national archives should be preserved, and their regulation should be coordinated between the different departments involved. A law should also be enacted to regulate the conditions of preservation, hours of opening to the public, the conditions for consulting them, and the sanctions for defacing them ;
- The content of the country's history syllabi should be gradually reviewed ;
- In addition to the tasks entrusted to it, the institute it has recommended to be set up should conduct documentation, research, and publication concerning the historical events relating to the gross human rights violations of the past, development of human rights and democratic reform issues.

11. The Mandate of the Advisory Council on Human Rights to Combat Violations

- The mandate of the Council to combat violations automatically or on the basis of a request should be strengthened, in the field of investigation and fact-finding in cases of human rights violations ;
- It should monitor the conduct of trials ;
- The degree of cooperation given by public authorities in its investigations into violations should be increased. The Council should be given access to relevant information and reports and be informed of corrective steps taken regarding them.

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

- The report should be considered as a public national reference document that should be included in the educational structure in general, and in the occupational and in-service training of authority agents, security officials, judges, judicial assistants, lawyers and officers in penitentiary institutions ;
- Activities of a publicity and educational nature should be organized to present the report to ordinary citizens ;
- Lectures and meetings should be organized to present and discuss the report internationally in order to publicize the Moroccan experience in the field of truth and reconciliation ;
- A national event should be held in honour of the women who were victims of the grave human rights violations of the past, and as an acknowledgement of the suffering they endured and the sacrifices they made.

V. Monitoring the Implementation of the Commission's Recommendations

- A committee should be set up in the Advisory Council on Human Rights to monitor the implementation of the recommendations issued by the Commission in the fields of truth, reparation for injuries and guarantees of non-repetition. This committee should be invested with wide prerogatives and powers to contact all authorities and bodies involved, and should submit a regular report on the results of its work, including progress made or delays occurring in this field. The Council should also include this report in its annual report on the status of human rights in Morocco ;
- A mixed ministerial committee should be set up by the government to monitor the implementation of the Commission's recommendations, on which should be represented the Ministries of the Interior, Justice, Culture, Communication, Education and Vocational Training ;
- The implementation of the results of the work of the Commission in the field of reparation for injuries should be monitored by a monitoring mechanism responsible for the official preparation of decisions issued in the field of compensation of victims and for the procedures for notifying them. It should forward them to the government for implementation and should ensure the implementation of the Commission's recommendations regarding programmes of reparation for other injuries ;

- Technical committees should be set up to monitor the implementation of community reparation projects, on which should be represented the sectors and departments involved. It should provide the government and the monitoring committee emanating from the Advisory Council on Human Rights with regular reports concerning the results of its work ;
- Mixed monitoring committees should be set up composed of elected officials, representatives of local authorities, non-governmental organizations and representatives of the technical government departments involved, which should be entrusted with monitoring the implementation of the projects proposed on the commune, provincial and regional levels. It should submit regular reports to the local communes, the government, and the monitoring committee emanating from the Advisory Council on Human Rights.

VI. Preserving the Archive of the Commission and Regulating its Use

- The entire archive of the Commission should be transferred to the Advisory Council on Human Rights, which should be responsible for keeping and organizing it, and also for defining the means and the conditions for consulting it.

VII. The Official Public Apology

- The Commission recommends that after its Final Report is submitted, the Prime Minister make a declaration before parliament containing an official apology in the name of the government for the state's responsibility for the results of the gross human rights violations of the past.

VIII. Ensuring Health Cover for the Victims

- The Commission recommends ensuring basic health cover according to Law No.00-65 for persons who have been established to be victims of human rights violations ;
- It suggests that by virtue of this, these persons be inserted, in the first stage, in accordance with Clause 4 of this law, as pensioners whose contributions the state will pay on their behalf to the bodies responsible for health cover ;
- In a second stage, the Advisory Council on Human Rights could help to prepare a draft amendment on this point, in agreement with the parties involved, by virtue of which this group could be clearly included in the framework of this law ;

- A permanent structure should be set up to counsel and assist victims, a sort of referral centre specializing in caring for victims of violations and ill-treatment, in accordance with the following suggestions :
  - A national medical coordinator and local medical coordinator should be appointed, attached to the Ministry of Health, especially in the provinces where there are a large number of victims ;
  - In coordination with the sectors involved, the centre should give scientific training to health workers in this field (doctors, nurses, social assistants etc.) ;
  - The centre should offer counsel and scientific and technical services in the field to all bodies and institutions involved, whether inside or outside the country ;
  - In view of the pressing need for a structure of this sort at the level of the regions of the Middle East, North Africa and other regions, it could subsequently play a major role as a regional referral centre. In fact, some international organizations and regional associations have expressed their readiness to support a project of this sort ;
- According to studies and enquiries conducted by the Commission concerning the health condition of the victims, it transpires that there is a group of them who need to be given special importance in view of their health and social condition, which requires that their health needs be met as a matter of urgency in specialist centres.

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

- The Equity and Reconciliation Commission commends the royal decree of His Majesty Mohammed VI, addressed to the government, ruling that the total and comprehensive participation of Moroccan migrants should be guaranteed in forthcoming national elections and in the establishment of a supreme council for Moroccan residents abroad ;
- It considers that drawing up a political plan that respects the rights and interests of Moroccans abroad requires consultation and coordination between the council that is to be set up and the group of associations and activists working within the communities on the one hand and the government on the other :
  - The Commission recommends the creation of a national migration museum to preserve the memory of migrants and their contribution to history ;
  - In the meanwhile, the activities of Moroccan expatriate amicales (associations),

which one way or another played a role in violating the rights of migrants, should be frozen in all public or semi-public institutions ;

- The Commission recommends that the Committee charged with monitoring compensation operations should seek to settle the problems of expatriate citizens who have not yet returned to the homeland, by solving the administrative problems which play a particularly important role in preventing their return.

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

- Consolidating and capitalizing the important gains achieved in the field of promoting women's rights and completing the process of reform in this field, by laying down a comprehensive, integrated and forward-looking national strategy aiming at rehabilitating and empowering women, and drawing them out of their vulnerable position by combating illiteracy, poverty, discrimination and violence, and developing their participation in public life and decision making by establishing and consolidating incentive measures ;
- Creating a national mechanism to promote and protect women's rights, and monitoring the implementation of public policies in the field, and investing it with the prerogatives and means necessary to carry out its tasks ;
- Institutional and geographical consolidation of counselling and legal and psychological aid centres for women victims of violence, opening the door for women victims of past violations to benefit from them.

XI. The Polisario Detainees

In view of the fact that the Commission has received numerous petitions sent to it from people formerly detained by the Polisario, or from their rightful claimants, it has been forced to declare that it is not competent to adjudicate those requests, in view of the provisions enunciated in its statute, which refers only to unlawful events resulting from the actions of public officers belonging to the state, or from the deeds of individuals or groups acting in its name.

In view of all the sufferings that the detainees involved have endured from the excessive physical and moral injuries incurred as a result of their defence of the national territory and its unity, and to strengthen the spirit of citizenship and social solidarity, the Commission recommends that all the necessary steps be taken to grant reparations for all the injuries suffered by the above-mentioned detainees and their rightful claimants.

XII. The Cases of the Tagounite Centre Detainees

In view of the fact that in 1971 the public authorities decided to arrest numerous persons in Casablanca, without any justification, and to transfer them to Tagounite, where it left them in detention for about two years in a place there called Glaoui's Castle ;

And in view of the fact that the Commission has received a number of petitions from those persons and their rightful claimants, it has been forced to declare that it is not competent to adjudicate those requests, in view of the provisions enunciated in its statute ;

But in view, nevertheless, of the arbitrary nature of the said detention, and the state's responsibility for it, whether in legal or human rights terms, and in view of the extremely severe conditions which those involved endured, and the different physical and moral injuries that ensued ;

The Commission recommends that all the necessary steps be taken to grant reparations for all the injuries suffered by the above-mentioned detainees and their rightful claimants.

XIII. Requisitioned and Unpaid Labour during the Disturbances of 1960, 1967 and 1973

The Equity and Reconciliation Commission received a number of petitions relating to unpaid and requisitioned labour during the Azilal, Beni Mellal, and Marrakech disturbances of 1960, the Tagleft disturbance of 1967 and the disturbances of March 1973, totalling 1,168.

After studying these files in the light of the Commission's statute; and after examining the provisions in force nationally and internationally concerning requisitioned labour, like Dahir 10/8/1915 relating to meeting military needs, Dahir 25/3/1918 concerning the regulation of requisitioned civilian labour, Dahir 16/10/1926 concerning requisitioned labour relating to means of transport, Dahir 2/12/1929 concerning requisitioned labour in means of transport, and Dahir 18/3/1931 concerning meeting military needs, Dahir 2/9/1931 concerning means of transport, Dahir 26/5/1933 concerning means of transport, Dahir 22/7/1938 concerning meeting military needs, Dahir 13/9/1938 concerning the general organization of the state in time of war, Dahir 19 June 1940 concerning the use of persons and resources, and the World Labour Organization Convention No. 29 relating to requisitioned labour, and World Labour Organization Convention No. 105 relating to the cancellation of compulsory labour and international human rights law ;

It became clear that the work which the inhabitants of the above-mentioned regions were charged with by the public authorities fall into the category of requisitioned and unpaid labour and in some cases-particularly in 1967-into the category of the works of Promotion Nationale.

In view of the provisions of its statute, the Commission concluded that this requisitioned and unpaid labour did not fall within its competence.

In view of the principles of justice and equity, and in view of the sufferings of the persons who, as requisitioned and unpaid labour, undertook various tasks most of which harmed various regions that subsequently suffered from neglect and marginalization, the Commission recommends the departments concerned to take the necessary steps and measures to give individual and community reparations for the injuries suffered by the said regions.

At the same time, the provisions of the Dahirs and decrees relating to requisitioned and unpaid labour must be amended to bring them into conformity with the provisions of international charters relating to human rights, which the Moroccan constitution says that the country must abide by. The Commission therefore recommends that these provisions be revised to bring them into conformity with these charters.

XIV. Uncovering the Truth concerning Pending Files

1. Preserving the Archive

The Commission believes that many ministries, departments and security services hold registers and documents that could help in the future to shed more light on the truth about the gross human rights violations and clarify many obscure points in the history of the nation. While waiting for a comprehensive and ambitious policy for organizing the national archive (the subject of a separate recommendation), the Commission therefore humbly requests His Majesty the King, in his capacity as protector of the freedoms and higher interests of the nation, to issue an order to the Prime Minister to issue as a matter of urgency a memorandum instructing all ministries, public and semi-public departments, and security apparatuses to maintain the archive and preserve it at least in its present condition. The memorandum must stress that the perpetrator of any act likely to result in the defacing or total or partial destruction of official documents and registers will be liable to the measures and sanctions enunciated in the law.

2. Continuing Investigations

The victims and their rightful claimants have a right to know the truth, and the Commission's investigations have made tangible progress regarding many files that were submitted to it. However, in some cases they have not come to a final, clear and undisputed conclusion concerning the events linked to them. The Commission therefore recommends that investigations be continued using the same methodology and at the same pace as the

Commission was following, for evidence indicating the occurrence of the violations submitted to it, especially as regards pending cases of enforced disappearance, and deaths in illegal detention centres or following civil disturbances.

At the end of its investigations, the Commission was able to prepare a list of the persons who had died in illegal detention centres, but without reaching satisfactory answers concerning their burial places. Therefore, the Commission recommends the following :

- Rightful claimants who so request should be granted the opportunity to obtain financial compensation and all other forms of reparations in accordance with the criteria used in other cases submitted to it ;
- Investigations should be continued to determine the burial places, in order to give comprehensive answers in view of the victims' families' right to know the truth.

3. Civil Disturbances

The number of deaths following the excessive and disproportionate use of public force uncovered by the investigations of the Commission far exceeds the files submitted to it concerning the disturbances. The Commission therefore recommends :

- A toll-free number should be set up at the Advisory Council on Human Rights to enable the families who have not been able to submit their files to the Commission, to submit a petition seeking compensation. This file should be submitted to the committee that will be charged with monitoring the implementation of the rulings of the Commission on such matters, in accordance with the same conditions and criteria prepared by the Commission during its mandate;
- The families should be provided with any information received by the Commission, and should be informed of the burial place whenever that becomes possible.

The investigations conducted by the Commission led to significant progress in finding out about the violations committed following the civil disturbances of 1965, 1981, 1984 and 1990. However, these results were not final, especially as regards the identity and the burial places of a number of victims. The Commission considers that it is the responsibility of every public institution (security apparatus, hospital etc.) and every person (particularly persons working in security apparatuses, medical services, and mortuaries etc.) who has information or details, albeit partial, that are likely to help in uncovering the truth, to present himself before the monitoring committee at the Advisory Council on Human Rights to submit whatever evidence he possesses.

Taking into account the significant number of children and teenagers who died following the civil disturbances, the Commission recommends that they be given a memorial and their memory be preserved by all possible means, in cooperation with their families and the local communes involved (local councils, educational institutions, youth and popular education associations). This memorial could take various forms, like naming educational institutions, youth clubs, streets, sports grounds or squares after them, or organizing moments of remembrance for them in educational institutions, accompanied by activities about human rights in general and the rights of the child in particular.

The Advisory Council on Human Rights Publications

2009

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

Conseil Consultatif des Droits de l'Homme
Place Achouhada - BP 1341
10 040 - Rabat - Maroc
Tél. : +212 (0) 537 722 218 / 207
Fax : +212 (0) 537 726 856
Site web : www.ccdh.org.ma • E-mail : ccdh@ccdh.org.ma / ccdh@menara.ma