



SPECIAL REPORT

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ABOUT THE REPORT

This report is part of an ongoing study of the mechanisms of transitional justice. Based on extensive data and interviews in 2005–06 with ordinary citizens, victims who both testified and refused to testify, commissioners, high-ranking bureaucrats, political leaders, and Moroccan and international NGOs, it explores the potential and limits of the first truth and reconciliation commission (TRC) in the Arab world. It demonstrates the difficulties of a TRC when society is caught up in a struggle between Islamic extremists and repressive security organs of the state. Despite its limitations, the Moroccan TRC provides a road map to further democratization.

It also provides a positive model for social and political reforms in the rest of the Arab world and encourages local and international players to support such reforms, which could contribute to stability in Northern Africa and security in Western Europe.

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JULY 2006

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Pierre Hazan

Morocco

Betting on a Truth and Reconciliation Commission

Summary

- Facing the Atlantic and Mediterranean, just nine miles from the Spanish coast, Morocco is essential for stability in Europe, Africa, the Middle East, and American interests in these regions. The United States and the European Union fully recognize its strategic importance. Its proximity, large diaspora, and extensive trade with Europe place it at the top of the EU's Mediterranean strategy agenda. The United States has designated Morocco a major non-NATO ally; it also was one of the first Arab countries to sign a free-trade agreement with the United States.
- The Kingdom of Morocco is facing four challenges: weak economic growth; a social crisis resulting from social inequalities, with 20 percent of the population in absolute poverty and 57 percent illiterate; lack of trust in the governing institutions because of the high level of corruption; and an unstable regional and international environment. These factors strengthen the appeal of various Islamist movements, from moderate to more radical groups such as the authors of the deadly bombings in Casablanca in 2003 and Madrid in 2004. Moreover, the conflict over the Western Sahara places Morocco's and Algeria's armies, the two most powerful in North Africa, toe to toe.
- Unlike Tunisia and Algeria, since the end of the Cold War Morocco has taken steps toward political liberalization, and its pace has accelerated since Mohammed VI came to the throne in 1999. As part of the process of liberalization, the king established a truth and reconciliation commission (TRC) in January 2004. This is one of very few cases in which a TRC was created without a regime change. Thousands of victims tortured during the reign of King Mohammed's father, King Hassan II, have been given the opportunity to voice their sufferings publicly and have been promised financial compensation. Such outcomes are unprecedented in a region known for its culture of impunity.
- Morocco is the first Arab Islamic society to establish a TRC. Its experience shows that political factors play a primary role in the functioning of such a body, while religious and cultural factors are of secondary importance. Although the Moroccan TRC is not

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an exportable model, it could inspire other majority Muslim societies, such as Afghanistan and Lebanon, which are envisaging or might set up TRCs to confront crimes of past regimes.

- Some security experts hoped the TRC would be effective in the “soft war” against terrorism by winning the hearts and minds of the population. The actual experience in Morocco shows the limits of this approach. The tension is too strong between the perceived requirements of the antiterrorist struggle and a process to establish accountability for past crimes and advance democratization. In the final analysis, the “war against terrorism” has limited the TRC’s impact in Morocco.
- The report of the Moroccan TRC, published in early 2006, recommended diminution of executive powers, strengthening of parliament, and real independence for the judicial branch. The king and the political parties must decide in the coming years if they will permit the transformation of the “executive monarchy” of Morocco into a parliamentary monarchy. This decision will affect the stability of the kingdom, North Africa, and, to a lesser extent, Europe and the Middle East.

Introduction

After forty-four years as a French protectorate, Morocco gained its independence in 1956 under King Mohammed V. In 1961 Hassan II succeeded to the throne and ruled until his death in 1999. He was the main architect of the “executive monarchy” that still rules Morocco today. Under the constitution promulgated by Hassan II in 1962, the king has nearly unlimited powers. Article Twenty-three of the constitution states, “The king is inviolable and sacred.” He holds sole executive power. He appoints and fires the prime minister. He can suspend the constitution or dissolve the assemblies and is chief of the armed forces. As Commander of the Faithful (as Hassan II styled himself in the constitution), he exercises spiritual power over Moroccan Muslims.

Context: The Progressive Process of Liberalization

Hassan II’s reign spanned two distinct periods. The “Years of the Iron Fist” (known in Morocco as “les années de plomb,” or years of lead) began in 1961 and lasted until the end of the Cold War in 1989. A climate of intimidation characterized this period. The security services were responsible for the “disappearance” of hundreds of political opponents and the torture of thousands. After 1989 Hassan II oversaw a period of liberalization prompted by the new international environment and intense external pressures.

After his father’s death, Mohammed VI succeeded to the throne in July 1999 and immediately accelerated the process of political liberalization. In 2002 he allowed the freest organization of legislative elections the country had ever seen. The new king also authorized the return of political exiles, allowed somewhat more freedom of the press, reformed the penal code in 2003, and adopted a code (*moudawana*) guaranteeing the equality of women in 2004. King Mohammed VI also pushed for the creation of a TRC, established later as l’Instance Équité et Réconciliation (IER).

This process of reform and democratization had its limits. Justice remained susceptible to executive pressure. The media were prohibited from questioning Moroccan sovereignty over the Western Sahara and from attacking the monarchy. Social questions were dealt with very timidly.

The IER was an important part of the king’s political reforms. It had manifold purposes: to build a new social pact between Moroccan subjects and their institutions, close the dark chapter of decades of repression, solidify the image of a new, young, and modern

monarchy, and project to the world the image of a dynamic, democratic Morocco. It was also a response to growing pressure from society for change.

Both radical and more moderate Islamist movements were becoming increasingly popular. They expressed the frustrations of many Moroccans facing a social crisis fueled by the high level of unemployment among young people, including college graduates; the absolute poverty that forced some 20 percent of the population to live on less than a dollar a day; an illiteracy rate of more than 50 percent; and rampant corruption. Transparency International's corruption perceptions index shows that Moroccans think the level of corruption is much worse now than a few years ago. (On its list of perceived less-corrupt countries, Morocco slid from forty-fifth in 1999 to seventy-eighth in 2005.) All these factors reinforced the appeal of the Islamist movements, which capitalized on their image of honesty and their social work. They also benefited from the fact that a significant segment of the Moroccan population was hostile to the U.S.-led military interventions in Afghanistan and Iraq, Israel's policy toward the Palestinians, and the king's close political ties with the West.

Tolerated as a social movement but not recognized as a political party, the (Islamist) Movement for Charity and Justice, led by Sheik Yacine, a staunch critic of the monarchy and the corruption of the regime, gained strong popular support. In 2002 the Justice and Democracy Party (PJD), a moderate but very heterogeneous Islamist party, became the third largest political group in parliament. Its gains would have been greater, but the PJD had decided not to run in many municipalities, fearing that its growing popularity could trigger a bloody confrontation with the military.

Last but not least, radical groups affiliated with al-Qaeda were the authors of the Casablanca bombings of May 16, 2003, which resulted in forty-five deaths, including those of the twelve bombers. Another al-Qaeda group composed mostly of Moroccans hit Madrid in 2004, leaving 200 people dead and 1,000 wounded. The "Zacarias Moussaoui syndrome"—named after the man convicted of involvement in the conspiracy that resulted in the September 11, 2001, attacks on the United States—stoked fear that European citizens of Moroccan descent could be attracted to terrorist networks and carry out actions in the West and their country of origin. By striking such targets and seeking to destabilize the monarchy, these bombers sent a shock wave through Morocco's ruling class.

Genesis of the IER

King Mohammed VI announced the establishment of the IER in a speech on January 7, 2004. Created by royal decree, the commission reported to him. This peculiar genesis structured and influenced the IER's work. Political parties were largely excluded from its establishment. Instead, the IER came about through lengthy consultations between the throne and certain elements in civil society, including former political prisoners. All these actors saw the IER as a tool to carry out their specific interests.

The idea for a TRC in Morocco came from Driss Benzekri, a former Marxist-Leninist imprisoned for seventeen years between 1974 and 1991. Following his release he became a human rights activist. He and a group of former detainees offered a "deal of historic importance" to the monarchy: They would collaborate with the regime and even support an amnesty of their former torturers and their superiors on the condition that the throne would strongly pursue democratization. They saw the TRC as a tool to give new impetus to democratization by publicly denouncing past systemic violations of human rights and recommending broad institutional reforms. They believed the domestic system could be reformed from within and wanted to use the TRC as a lever for democratic change.

They supported a "strategic amnesty," basing their arguments on two premises. One was that like the rest of the Arab world, Morocco was in a profound crisis whose resolution required swift democratization. The other was that a historic opportunity existed to have

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as an interlocutor a modern sovereign, willing to democratize the political system to a certain extent and improve the efficiency of state institutions.

Regarding the first point, Driss el Yazami, who would become a prominent figure in the IER, called attention to the somber state of affairs described in a 2004 United Nations Development Program (UNDP) report on the Arab world. He reiterated the UNDP's findings: "The Arab states are actually less developed than they were fifty years ago. There are fewer Internet connections in the whole of the Arab world than in the state of Israel alone. More than 20 percent of the Moroccan population is malnourished, and the majority of Moroccans are illiterate."

Driss Benzekri, Salah El-Ouadie, and Driss el Yazami, the future leaders of the IER, agreed with the UNDP analysis, but they believed Moroccan society had the chance to rise to the challenge of development. Strategically, that implied a pragmatic alliance with the "young guard" surrounding King Mohammed VI. These human rights activists were influenced by the examples of Solidarity in Poland and Gorbachev in the former Soviet Union. They dreamed of being in Solidarity's position, and they hoped for an interlocutor like Gorbachev, not General Jaruzelski, Poland's former communist president. They wagered that they could reform the system from within with the support of the modern elites close to the king. For them, the clarification of past crimes, democratization, and the establishment of the rule of law were preconditions of social and economic development. Given the considerable powers he enjoyed through the constitution, the king was their indispensable partner.

They accepted the price to be paid: the absence of punishment for those who had committed human rights abuses. For these human rights activists, renouncing justice was easier to accept because "the conditions for an impartial process for the perpetrators and those that gave the orders are not feasible due to the lack of a proper judicial system," as Driss el Yazami told the author during an interview in Rabat on January 25, 2005. They also believed that without an alliance with the palace, no way existed to pursue democratization.

For the IER commissioners, its political functions differed from those of its predecessors elsewhere. Morocco's TRC did not emerge out of political upheaval, as South Africa's did, but was intended to accelerate democratic change. The commissioners aimed to revitalize civil society and political debate, expand the democratic space, and give the king additional support to pursue reforms. Through the participation of victims who publicly testified about the tortures they had endured, and through denunciation of state organs that had violated human rights, the commission wanted to "push the envelope" of acceptable discourse in Moroccan society.

King Mohammed VI's support for the IER can be explained by a combination of factors. The king viewed the IER as serving his interests by disarming criticism, improving his image as a modern and democratic ruler, and countering the growing force of the Islamists. He also expressed his desire to modernize Morocco and state institutions, based on the assumption that it was necessary to restore trust between the state and citizens to "liberate energies" and turn toward the challenges of economic and social development.

The monarchy has used human rights to create political legitimacy for the king. Public opinion views most of the political parties, except the Islamist organizations, as co-opted by the monarchy. The king's alliance with NGO representatives, some of whom are ideologically distant from the monarchy and have long years of imprisonment to prove it, shelters him from suspicion that the IER is simply a pawn of the palace. Politically, this alliance with personalities on the left (which has been weakening in the past few years) counterbalanced the most conservative elements of the Makhzen, the system of formal and informal power that controls the state, which were intent on slowing political and economic liberalization to maintain the status quo. The alliance was also beneficial for the modernizing elite, which was positioned to profit from privatization and the enhancement of institutional functionality.

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This strategy of equilibrium also countered the rising power of the Islamists. The alliance was presented as an embodiment of the “Moroccan voice,” an alternative to Islamist theocracy and part of the soft war against radical Islamist networks.

The selection of the IER’s seventeen commissioners reflected the alliance between elements of civil society and the throne. The king chose nine of the commissioners from members of the Consultative Council on Human Rights (CCHR); the others were civil-society members, such as the heads of NGOs, a political scientist, and a medical doctor. Six of the IER commissioners were former political prisoners and former far-left activists, some of whom had been forced into exile for years. The activists have abandoned their revolutionary ideologies and invested themselves in human rights organizations.

The four most prominent commissioners, beginning with the IER president, Driss Benzekri, are former Marxist-Leninist activists. Salah El Ouadie was sentenced to twenty years but paroled after ten. Driss el Yazami was forced into exile, and Latifa Jbadba, the only female commissioner, was first sent to prison at age fifteen. Mbarek Boudarka was sentenced to death in absentia and pardoned much later.

Not a single religious figure is included among the commissioners. Nor are any Islamists, who represent the main political force in the country today. This is partly because the initiative to establish the IER came from members of the left, who paid the highest price during decades of repression. In addition, the inauguration of the IER came shortly after the Casablanca bombing, and the throne wanted to keep some distance from even moderate Islamists.

The king gave a triple mandate to the IER: to shed light on all the cases of “forced disappearance and arbitrary detention,” oversee “payment of reparations,” and “ensure that the reparations compensated for all of the material and moral damage done to the victims.” Finally, the IER was charged with “publishing a report ... composed of an analysis of human rights violations ... as well as recommendations and propositions, not only to preserve the memory of these past violations, but also to guarantee a definitive break with the former practices that had brought about the suffering of these victims, re-establishing and strengthening confidence in a state of law and the respect for human rights.” (The IER’s complete mandate may be found at www.ier.ma.)

No TRC had ever covered such a long period; its mandate encompassed a total of forty-three years, from independence in 1956 until the death of King Hassan II in 1999. Officially, the end of the IER’s mandate coincided with the establishment of an independent arbitration commission to pay indemnities to victims of “disappearance” and torture, foreshadowing the IER. But 1999 also was the year of King Hassan’s death, and the cutoff date of the IER’s mandate may be seen as a clear line of demarcation between the new king and his father.

The IER’s mandate was constrained by numerous limitations. It forbade mentioning the names of those who had ordered the human rights violations or those who had carried them out. Thus, these persons were sheltered not only from criminal prosecution, but also from public stigmatization. Before they could testify publicly, the victims had to sign a form agreeing not to mention the names of the perpetrators. This prohibition was an essential part of the deal between the palace and Driss Benzekri that led to the IER’s establishment. The monarchy did not want to undermine the security organs or overtly criticize King Hassan’s reign.

These limitations prevented the commissioners from lifting the veil from past crimes. The commission was not given the power of subpoena. Therefore, security service agents could decide for themselves if they would cooperate with the IER, and to what extent. Finally, the commission could present only recommendations for political and institutional change. It had no real teeth, except in the domain of reparations.

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The IER at Work

The Moroccan commissioners saw hearings as an effective tool to convey a political message, because not only words but also deep emotions and old scars would be revealed.

Public hearings played an essential role in the work of the commission. Influenced by the South African TRC, before which 20,000 victims and hundreds of perpetrators had testified in highly dramatic proceedings, the Moroccan commissioners wanted to use public hearings to define the new narrative of decades of repression and unleash a social dynamic that would influence all of society, literate or not. They saw hearings as an effective tool to convey a political message, because not only words but also deep emotions and old scars would be revealed.

The commissioners obtained permission from the royal cabinet to broadcast the hearings on national television and radio. Because most of the populace was illiterate, TV and radio were the most effective vehicles of communication, with the potential to reach millions of people, in contrast to the daily press, whose total circulation is only 300,000 to 400,000.

The IER originally decided to hold twenty public hearings in every region of the country. The number later was reduced to seven (two in Rabat, one each in Errachidia, Figuig, Khénifra, El Houcéma, and Marrakech), because the commission worried about trivializing them and because of the huge amount of resources each one required.

As a result of the strict limitations on its mandate, the IER's position during the hearings was delicate. Its goal was to signify the beginning of a new era with the opening of the democracy desired by Mohammed VI. But the break with the past had to be made with great care. The reign of King Hassan II, under which almost all the human rights violations had taken place, could not be criticized.

Since naming the torturers and their superiors was not allowed, the "truth" the witnesses expressed was limited to victimization, not accusation. They could mention only the locations of their suffering (Tazmamart, Agdez, or Derb Moulay Chérif, for example) and the agencies (army, police, security services) that had mistreated them. Because no perpetrator was present or could be named and no one asked them any questions, the victims were the main characters on the stage. The dramatic intensity of the hearings depended solely on their accounts.

The commissioners' aim was to break the silence about the decades of repression. These hearings were a subtle exercise in indirect criticism of Hassan's reign and an all-powerful monarchy. From the commissioners' perspective, the emotional impact of the testimonies was greater when the victims themselves were shaken by their own accounts of tortures and rapes, especially if they were unengaged politically. Sometimes their only "fault" was their blood relationship to a political opponent. They projected an image of innocence disfigured by an arbitrary and cruel system, although that was never said explicitly. The message was nonetheless clear: "Never again."

The TRC encountered a mixed reception from human rights movements. Although some applauded the idea, others harshly criticized its limitations. The Moroccan Human Rights Association (AMDH), a number of former victims, human rights activists, Islamists, and most of the victims from the Western Sahara complained that the IER had granted impunity to the torturers and their superiors. They accused the IER of distorting transitional justice mechanisms to protect those responsible for the repressive system—if not white-washing their past then sparing them any punishment. For the critics, installing the rule of law meant exacting justice for past crimes.

The human rights activists also charged that the IER mandate did not cover current human rights violations—in particular, those against nearly 3,000 Islamists after the bombings in Casablanca—under an antiterrorist law passed during an emotionally charged emergency.

The AMDH disagreed with the IER's careful approach. The association decided to organize parallel public hearings, an unprecedented step in the history of transitional justice. Called the "Completely Free Testimonies for Truth," these hearings took place in some of the same cities chosen by the IER: Rabat, Khénifra, El-Houcéma, and Marrakech, as

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well as Paris. They publicly announced the torturers' names and denounced human rights abuses committed against Islamists after 1999, the period not addressed under the IER mandate.

Ironically, the establishment of the IER enabled these public hearings to take place, creating a space for expression that surpassed the limits of the official truth commission. These unofficial hearings revealed the ambiguity and arbitrariness of the authorities' decision to ban criticism of the regime. Since the mid-1990s, NGOs, the press, activists, authors, and numerous ex-prisoners have broken the silence about the identity of the torturers. There has been no retaliation against those making the denunciations, but also no judicial consequences for the perpetrators.

The IER's seven official hearings took place between December 2004 and May 2005. Another was scheduled in the Western Sahara in May 2005, then postponed to July before being cancelled for political and security reasons. This hearing was of special significance and the toughest test for the commission. By holding a public hearing there as it did in other regions of the country, the Moroccan state would have demonstrated that the situation in the Western Sahara had been normalized.

To this day the Western Sahara conflict has not been resolved. Moroccan authorities consider the region an integral part of the kingdom and have occupied it since the Green March in 1975. The independence movement of the Saharawis, Polisario (Popular Front for the Liberation of Saguia el Hamra and Gold River), supported by Algeria, claims their right to self-determination.

In 1975 the International Court of Justice recommended holding a referendum, which never took place. The most recent plan for peace, in 2003, came from James Baker, former U.S. secretary of state, but Morocco rejected it. Today no international solution is in sight. In November 2005 the U.S. Congress held a public hearing on the issue. Supporters of self-determination for the "last African colony" clashed with Congress members sympathetic to Morocco, who asserted it was "absurd" to create a state in a sprawling territory with no more than 300,000 inhabitants, which moreover would be a haven for terrorists.

The commission faced a real challenge: How could a transitional justice mechanism be successful while the key question of sovereignty was not yet resolved? The IER did not rise to the challenge. The task might have exceeded its capacity: A commission established by Morocco's king would have had difficulty appearing neutral in the disputed region. Confidence between the IER and the Saharawi victims was hardly the rule. Only one of the seventeen commissioners was Saharawi, and he was from an old local family with ties to the Moroccan elite.

Nevertheless, four to five thousand men and women, almost a quarter of the people who identified themselves as victims to the IER, were originally from the Western Sahara. Despite their doubts about the commission's neutrality, they agreed to collaborate for a variety of reasons: Some perceived the commission as a rare platform for denouncing human rights abuses; others hoped to obtain information about the circumstances of deceased victims who had been close to them and, above all, the location of their graves. Living in destitution, they also wanted compensation for their suffering.

Lahcen Moutik, a leading human rights activist in Layoune, explained to the author in an interview on December 3, 2005: "For the first time, we had a chance to speak to the Moroccan people about a reality that has been hidden from them. In addition, by collaborating with the IER, we can honor the memory of the disappeared and receive individual and collective reparations."

But riots denouncing "thirty years of Moroccan occupation" erupted in spring 2005, and the Moroccan flag was burned. Polisario sympathizers were determined to prevent the hearing from taking place in the Western Sahara because they did not want any Moroccan institution to have a shred of credibility in this region. These activists believed that questions surrounding arbitrary arrests, disappearances, and inequitable legal proceedings could be resolved only by "the end of Moroccan occupation." They viewed independence as a prerequisite for the improvement of human rights.

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In the IER's summary report, not one word was devoted to the Western Sahara.

Faced with the radical independence movement and the ill will of the local authorities who were to provide security, the IER postponed the scheduled date of the hearings and finally cancelled them altogether. Both the security forces and the radical militants thus achieved their goal of preventing the public hearings from taking place.

Regrettably, in the IER's summary report, not one word was devoted to the Western Sahara, the area that undoubtedly had been hardest hit by repression. Nor did it confront the Moroccan agencies that had carried out the "disappearances" of dozens of Saharawis, tortured hundreds, and inflicted collective punishments whose numbers are still controversial but nonetheless significant.

Analysis of the IER

The IER is based on two ambiguities. The first is the legacy of Hassan II to his son, Mohammed VI. The second concerns the IER's political purpose. Both strongly affected the commission's work and are likely to affect its impact.

King Mohammed VI is caught between his proclaimed loyalty to his father and his need to put some distance between himself and his father's reign. His ambiguous attitude toward Hassan II is striking. The IER's mandate could have terminated in 1990, with the beginning of liberalization, or with the general amnesty of 1994. Instead, Mohammed VI decided to end it in 1999, the very year he came to power. Therefore, the IER's mandate marks the boundary between the past and present sovereign. However, Mohammed VI's distance from his father is countered by the fact that he justifies the establishment of the IER in the name of his father, who started the liberalization process. Addressing some of the victims of Hassan's repression, he spoke about the "immaculate soul of Hassan II."

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Not once does Mohammed VI assign responsibility for the decades of repression. He never questions his father's repressive regime, nor does he accuse the groups that advocated armed struggle to overthrow the monarchy. Instead, he often has emphasized the need for "Moroccans to reconcile themselves to their past" and exhorted citizens "not to be prisoners of the negative past." The IER denounces the manifestations of repression—torture, disappearances carried out by state agents, secret prisons, and arbitrary detention—but never the system that created the repression. And the state remains silent.

During the seven public audiences organized by the IER, portraits of Hassan II were sometimes present, sometimes absent. Whenever they were there, they were in a position equal or inferior to the present king's. The ambiguity about the previous king was never elucidated: Was Hassan II the builder of modern and democratic Morocco or the primary architect of decades of repression? And if he was both, how is it possible to separate the two aspects? The right to list the pros and cons seems to be forbidden up to the present day, as the IER's final report shows. A torture victim from the reign of Hassan II explained the rationalization he had to make while testifying between portraits of the current king and his father: "I imagined that the left portrait (Mohammed VI) was defending me against the right portrait (Hassan II)."

This first ambiguity in the legacy of Hassan II leads to the second. What is the goal of the IER? What is the final destination of this process of democratization? Some IER commissioners and the monarchy disagree about these questions.

Driss Benzekri wagers that the work of the truth commission will create a dynamic for institutional reform, leading to a parliamentary monarchy in the near future. In a speech in Washington before the National Endowment for Democracy on January 19, 2006, he said such reform would mean "a limitation on executive powers, strengthening the role of the parliament, and a strict separation between the branches of power, with real independence of the judiciary."

King Mohammed VI affirmed his desire "to complete the democratization process and to install the rule of law."

King Mohammed VI never has fully explained his political objectives. In the speech establishing the IER in January 2004, he affirmed his desire "to complete the democratiza-

tion process and to install the rule of law” and “to build a modern, democratic society, where all citizens can exercise their rights and comply with their obligations, with liberty and responsibility.” But what political future does he envisage? Does he accept Benzekri’s idea of establishing a parliamentary monarchy in the near future? In a recent interview, the sovereign refuted the idea that Morocco would be transformed into a constitutional monarchy with himself as a new Juan Carlos. “We cannot transport the European model of constitutional monarchy. We have our specific needs and obligations that direct us on the road we pursue” (“The Objective of the Public Hearings Is to ‘Reconcile Morocco with Its Past,’” *El Pais*, January 24, 2006). Is King Mohammed ready to renounce the almost unlimited powers the constitution gives him?

Moroccan authorities emphasized time and again that establishment of a TRC in the Arab Islamic world was unprecedented. In fact, thirty or so other commissions have been established in Christian or African societies, some of which include sizable Muslim minorities. The absence of TRCs in Islamic countries does raise a number of questions. Are truth commissions truly universal instruments, or does the lack of democratic regimes explain their absence in this part of the world? Does Islamic exceptionalism block the concept of forgiveness, and has Morocco succeeded in breaking through it? Or are westerners and Africans exaggerating the importance of their own cultures in establishing TRCs?

The Moroccan example shows that the way these questions are being framed is part of a political debate. The king stresses the importance of religion and the search for national unity in achieving reconciliation through forgiveness. On the other hand, the commissioners want to use the TRC to democratize institutions and are ready to grant political amnesty to the torturers and their superiors to achieve this objective. The result is practically the same: Both advocate a nonjudicial approach, but the terms used—forgiveness vs. amnesty—reveal differing strategies and goals. By using the term amnesty (which can be rescinded), the commissioners are trying to keep the process in the realm of politics. Meanwhile the king depoliticizes impunity by justifying it spiritually as forgiveness.

The king finds it appropriate to invoke Islam because one of his titles and roles is Commander of the Faithful. Unlike in other Arab regimes, Moroccan royal power is exercised in the religious arena, and the sovereign holds spiritual power. In a speech on January 6, 2006, the king invoked God to legitimate the lack of punishment of human rights violators: “The sincere work of reconciliation that we have achieved ... is in keeping with the divine injunction which says: ‘So overlook human frailty with gracious forgiveness...’ This is a gracious act of collective forgiveness.” Another cultural argument favorable to the monarchy asserts, “Moroccan culture does not practice revenge.” Punishment of a criminal act is presented as an act of vengeance. The meaning of the words is elided to remove any value from punishment. (King Mohammed’s speech, marking the conclusion of the IER’s work, may be found on www.ier.ma.)

Another argument the king put forth in favor of pardoning perpetrators of human rights abuses is simultaneously cultural, political, and developmental. From this perspective, forgiveness is a precondition of reconciliation “between Moroccans and their past,” to free energies to build a new Morocco. This argument is essentialist (reflecting the supposed essence of the Moroccan nation), political (searching for national unity), and developmental (liberating productive energies).

The IER commissioners are reluctant to use religious and cultural arguments to justify amnesty. They accept “strategic” forgiveness, nothing more, elaborating an ethic of responsibility, assessing that the political and social benefits of establishing the rule of law outweigh punishing the authors of the repression and past crimes. In his 2005 interview with the author, Salah El-Ouadie explained: “I do not want only certain individuals to pay for the state’s responsibilities. The individualization of the punishments would have relieved the state of its responsibilities, and that is exactly what we wanted to avoid. Those who stake out an extremist position are mistaken.”

According to this line of reasoning, putting the perpetrators on trial would create a false sense of good conscience, because it is the system that is really responsible. Salah

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El-Ouadie believes that to “purify” the society, the individual authors of state crimes should not be punished; rather, the criminal system should be proscribed. It is as if the agents of the repressive apparatus did not matter.

For the IER commissioners, forgiveness—or rather amnesty—is purely a political act, and it is essential that society understand it as such. In an interview with the author on February 4, 2005, IER commissioner Abdelhay Moudden opposed cultural justification of the IER because “the commission has been thought of, conceived, and defined as a means to achieve a political objective, that of democratization.” To transform the amnesty into “cultural forgiveness” would give it some local color but would depoliticize it and damage its potential to foster social mobilization.

The IER cannot be understood outside the political and security context in which it was created. At each stage of the commission, the “war against terrorism”—in particular the Casablanca and Madrid bombings—played a major role. It affected the commission’s establishment, mandate, functions, perception by the public, and effects. Some state organs also used the rhetoric of “the war against terrorism” to justify their refusal to cooperate with the IER.

The king established the IER about seven months after the Casablanca bombings of May 16, 2003. At that time Morocco had become one of the theaters of the “war against terrorism” announced by the Bush administration eighteen months earlier. Morocco’s association with terrorism intensified with the Madrid bombings (March 11, 2004), perpetrated mostly by Moroccan nationals.

Some Moroccan officials in the interior ministry wanted to use the TRC in psychological warfare. “The IER is a weapon in the antiterrorist struggle. We are taking this war to two fronts. One, the hard war, includes the repressive aspects of dismantling terrorist cells; the other, the soft war, is to bring the population to our side. The IER is an element of this soft war,” a high interior ministry official stressed during an interview with the author on December 3, 2005. By winning the confidence of the population, the IER could dry up the support essential for the hard-core “terrorists” to reach their goals.

In practice, however, making the IER an instrument of antiterrorism led to considerable difficulties and created a contradiction between the agendas of security and democracy. The authorities believed they had to reassure the repressive organs that were dismantling Islamist networks. Therefore the monarchy guaranteed those organs impunity and the option of refusing to cooperate with the IER, and they took advantage of those prerogatives. But to what degree can society adhere to a process that sheds light on the Years of the Iron Fist if the highest state officials refuse to cooperate with a commission created by the king? How can society subscribe to democratization, supposedly exemplified by the IER, if, in the name of the struggle against terrorism, the security services continue to make massive arrests marked by mistreatment and extremely flawed police work?

Abdelhay Moudden noted in an interview with the author on December 8, 2005: “People ask us, how can you investigate the past while the human rights abuses still go on, even if they don’t compare with the past? How can these abuses continue like that and even be encouraged by our American allies?” There is little doubt that the way the Moroccan state organs conducted the war against terrorism weakened the IER.

The IER Report

After twenty-three months’ work, the IER published its conclusions, including a thirty-page summary in French and a report of almost seven-hundred pages in Arabic, available at www.ier.ma. The IER report is one of the commission’s main accomplishments. It presents a new historical narrative as it interprets a period marked by massive human rights violations and asserts the value of spotlighting them in the present. It also assigns responsibility and recommends institutional and political reforms to prevent repetition of past crimes. In his speech of January 6, 2006, the king announced his decision to make the report public.

The report's three sections deal with historical clarification, the question of reparations, and proposals for institutional reforms. In the historical section, the most sensitive part of the report, the commission sheds light on a number of cases, including 742 forced "disappearances." It documents the practice of arbitrary detention and describes "the systematic use of physical and moral torture," which led to the deaths of some detainees. The report also describes the police's excessive use of force to suppress protests.

While writing the report's historical clarification, the commissioners came under pressure from two sides. Many victims, human rights activists, and leaders of large international NGOs wanted the IER to go as far as possible to highlight the violations and reveal which institution was responsible (since the IER's mandate prohibited placing blame on individuals). On the other hand, the palace and the political parties from left to right, not to mention the security services, had strong reservations about being criticized in a report that would become part of the historical record. It was this pressure group that proved the most effective.

In establishing the facts, the IER thoroughly investigated the forced disappearances. The report concludes that it cannot properly elucidate sixty-six other cases and recommends that the state pursue the investigations the commission already had begun. These cases are the most politically sensitive. The IER fails, for instance, to shed any new light on the fate of the famous leftist and Third World leader Mehdi Ben Barka, although it is public knowledge that the Moroccan secret services played a major role in his "disappearance" in 1965.

At times, the report criticizes the obstacles state agents and agencies created, hindering the commission's work. "The state of the archives is deplorable, if they exist at all; cooperation by the security apparatus was erratic; the testimony of those responsible was sometimes vague, and others refused to cooperate at all to establish the truth," it complains. (See the summary in French on www.ier.ma/_rapport_fr.php.) According to some Moroccan journalists, the army was united in refusing to cooperate with the IER.

The report also documents the practice of arbitrary detention and states that "the systematic resort to physical and moral torture" inflicted upon the detainees often led to "psychological and permanent physical disability or even death." The report notes that the moral and psychological torture of detainees consisted of "threats of death or rape, insults and other attacks on their dignity, torture, or the threat to torture a close family member." It notes that "women were subjected to other, specific forms of abuse," such as rape.

The report documents "excessive and disproportionate use of public force" to suppress demonstrations, resulting in unknown numbers of victims at these events. The commission wanted to "stress that a number of children, some less than ten years old, were among the dead."

The report admits that as a result of lack of cooperation by state agents, certain events are still unclear. It recommends follow-up and clarification of these events within the following six months.

The report is silent on the hierarchical structure of the repression. Who gave the orders? What was the chain of command? The repression was presumably not the product of isolated acts committed by state agents on their own initiative, but rather came from a hierarchical system reaching the state's highest level. The report could have gone much further in explaining the methods of the state organs. After completing the report, Driss Benzekri sent a message to King Mohammed VI with the names of military and government functionaries who were responsible for human rights violations. How and when, if ever, this information will be used or made public depends solely on the will of the king.

The last aspect of historical clarification is the most delicate and important: to deliver to society an interpretation of the political and ideological causes of human rights violations. Since the IER's establishment, interpretation of those decades has aroused intense debate in society. What were the reasons for the repression? What were the respective

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roles of ideology, King Hassan II, and the armed groups that tried to overthrow the monarchy? The report provides no context—to the satisfaction of both the monarchy and the political parties, each of which feared that the IER would become a “historical tribunal.” The monarchy did not want any accusations raised against King Hassan II. And the Union of Popular Socialist Forces (USFP) did not want the left to be blamed for having justified armed struggle in the past. But how can “Moroccans reconcile themselves with the past,” to use the official phraseology, if historical clarification does not lead to analysis of decades of repression and violence?

The IER’s mandate included completing the unfinished work of the 1999 arbitration commission. Accordingly, it has promised financial reparations totaling fifty to seventy million dollars to nearly ten thousand victims. Each victim will receive an average of five to seven thousand dollars.

These payments are intended to compensate victims of forced disappearance and arbitrary detention (with or without due process) that resulted in death or injury, as well as those subjected to arbitrary detention stemming from urban demonstrations or riots, forced exile, and sexual violence. The IER used six criteria to determine reparations: deprivation of liberty; forced disappearance; detention conditions; use of torture and other cruel, degrading, and inhuman treatment; the aftermath of physical and psychological abuse; and the loss of opportunity and potential income. In addition to financial reparations, some victims will regain public office or receive other administrative or professional reparations.

The IER also recommends adopting and supporting socioeconomic and cultural development plans for a number of cities (such as Casablanca), women, and regions such as Rif, Figuig, Agdez-Zagora, Tazmamart, and the Middle Atlas that were hard hit by the repression.

Originally, the TRC’s goal was to give impetus to the pursuit of democratization. This was the objective of the “historic deal” between Driss Benzekri and the monarchy. Once the IER had completed its mandate, Benzekri declared in his speech at the National Endowment for Democracy that he favored the establishment of “some type of parliamentary monarchy in Morocco in the not-too-distant future.” The recommendations in the IER report present a road map to that goal.

The IER recommends constitutional reforms to guarantee human rights—especially inclusion of the primary principles of international human rights law, such as the presumption of innocence and the right to due process, in domestic law. The report proposes that the constitution explicitly state that rights and liberties such as the freedom to travel; freedom of expression, demonstration, and association; the right to strike; the right to private correspondence; the inviolability of the home; and respect for privacy are fundamental. The report also recommends reinforcing the separation of powers, strengthening independent judicial and legislative branches, and adopting national measures against impunity, as well as improving government oversight of the security apparatus.

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Conclusion

Internationally, the establishment of the IER helped Morocco improve its human rights image, projecting it as a model of a modern state in the Arab Islamic world. This image is politically and economically important for a regime with close ties to the West, especially at a time of tension between parts of the Muslim world and the United States.

The IER has demonstrated that religious and cultural factors are secondary in choosing between punishment and amnesty for massive human rights violations. These factors might come into play at a later stage, to legitimate political decisions. In this regard the

Moroccan case is particularly revealing. The semantic battle over the king's use of the word "forgiveness" and the commissioners' use of the word "amnesty" shows differing intentions and goals. By employing a spiritual term, the king sought to make a nonjudicial approach to the perpetrators more acceptable and less political. On the other hand, the commissioners sought to keep restorative justice in the political arena. They used political and judicial terms in hopes that society would pressure the state to undertake fundamental reforms.

The framing of the TRC is itself part of a wider debate about the country's political future. It also underlines the fact that TRCs are flexible instruments. They can be used even without regime change, and each state can extract what it wants from its culture and religion to justify a symbolic policy of forgiveness, in line with its political objectives.

However, the "war against terrorism" created insuperable obstacles for the TRC. The "antiterrorist struggle" has superseded the defense of human rights in many official circles in Morocco and elsewhere. In practice, a truth commission cannot be an effective instrument in the soft war against terrorism. The tension is too strong between the interests of repressive agencies that want to operate with fewer restrictions and the TRC's need to shed light on these agencies' actions.

Although it would be difficult to confirm this speculation, the IER's existence and establishment by the king may have prevented further human rights abuses by state organs. The king's personal involvement with the IER gave legitimacy to human rights discourse inside the state apparatus. It also may have increased the perception that future abuses would be prosecuted.

One of the striking peculiarities of Morocco is the absence of dramatic regime change. Without it, the TRC aimed to foster democratization. Has it worked? Did the commissioners have reason to put their faith in the "historic deal" they struck with the monarchy? This is the decisive question. Fulfilling the commission's recommendations would involve a substantial change in the structure of power in Morocco, as Prince Moulay Icham, fourth in line to the throne, stressed: "Democracy and the sacredness of the king are not reconcilable. That is the systemic problem in Morocco. It is a question that we touch upon all the time... The question now is how to disassociate the monarchy from the caliphate system, or to transform the monarchy. Reforming the monarchy is the only way to perpetuate it" (as quoted in *Tel Quel*, December 25, 2004).

Although the current king has broken with his father's autocratic regime, he paradoxically claims continuity with that regime. Before a group of victims he said: "Praise be to Almighty God that as the loyal successor of my venerable father, I have seen to it that this mission has been successfully carried out. On behalf of the entire Moroccan people, I send these glad tidings to his blessed soul to bring joy to his heart, as well as to the hearts of all victims, sufferers who were harmed and their grieving families, about whom I care so deeply" (www.ier.ma). Should this speech be read as empty rhetoric? Or is it, rather, a pledge to the "old guard" who remain at their posts? This persistent ambiguity in the consideration of the legacy of King Hassan II raises uncertainty about Morocco's political development.

Nonetheless, the IER has given legitimacy to the words of the victims. It has proposed reforms that would transform Morocco into a parliamentary monarchy if they were implemented. The IER has offered a road map for political and institutional change that could lead to the establishment of the rule of law. No one knows yet how the security forces will react to this proposition, especially while they engage in a "war against terrorism." Nor can one predict how the economic actors who have a direct stake in the status quo will react. What is the king's margin for maneuver, especially when confronted with opposing pressures from Moroccan society?

No one knows yet if or how the Moroccan monarchy and political class will use the IER's recommendations. If the recommendations do take hold, Morocco will have demonstrated that transitional justice mechanisms can free new political space and rebuild confidence between state and society. This would constitute a stimulating and hopeful precedent in the Arab Islamic world. If the IER commissioners lose their wager to renovate the Moroccan

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can system, that will only reinforce the frustration of those who will feel duped. Thus the IER could have the unintended consequence of playing into the hands of extremist Islamists, who believe that violence is the only way to bring about real change.

Recommendations

1. **Reform the system of governance.** Although it initially made the security apparatus nervous, the platform of reforms advocated by the IER will contribute to strengthening the democratic option, the most conducive to long-term stability. Likewise, as the IER suggested, a public apology by the prime minister or the king to victims of past abuses and the nation would constitute official recognition that the violations were the product of an organized, structural, hierarchical system that reached all the way to the pinnacle of the state.
2. **Lustration.** Even if the Moroccan authorities remain determined not to punish judicially those responsible for repression during the Years of the Iron Fist, they nevertheless could drive those responsible from public office. This measure would strengthen the credibility of the state. If state organs cooperated in revealing the circumstances and fate of the “disappeared,” their credibility also would be enhanced. Without their help, the IER has proven to be incapable of accomplishing this objective.
3. **Providing technical support.** Western governments could help the Moroccan government reform its judicial system and offer technical support in training police forces, judges, and prosecutors, thus reinforcing respect for human rights.
4. **Resolving the situation in the Western Sahara.** In coordination with its European allies, the United States would be well advised to start a diplomatic initiative to help settle the Western Sahara conflict, which has lasted since 1975. This conflict remains the principal barrier to normalization of relations between the two most important countries in North Africa, Morocco and Algeria, both of which play a key role in the stability of this strategic region.

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