

Provisional Balance of the Justice and Reconciliation Commission

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On 7th January 2004, King Mohamed VI created the Justice and Reconciliation Commission (IER), to investigate human rights violations which have taken place since the country's Independence in 1956 leading up to 1999. On 30th November 2005, the IER handed in their final report to his Majesty after 23 months of activity, and considered their work to be completed.

The work realized by the IER can be assessed on two levels. In the first place, according to its capacity and efficiency to carry out the mandate, as it is formulated in the Dahir n. 1.04.42 of the 19 safar 1425 (10th April 2004), by which they pass the IER Statutes. In Article 9, the IER's mission is defined according to the following 7 points which can be summarized in this way: to establish the nature and degree of serious human rights violations taking into consideration the context in which they took place; to continue previous investigation work on those who have disappeared; to determine the official entities responsibilities or other roles; to work on the victim's compensation; to write a report with conclusions and recommendations; and, finally, to develop and promote a culture of dialogue and lay down the bases for a national reconciliation process.

With respect to this mandate, it should be remembered that:

- The Commission is an advisory-type institution which was summoned by

the King and whose mandate has reached a consensus with the Presidential Palace. Out of its 17 members, 9 come from the Advisory Council on Human Rights (ACHR), another advisory-type commission chaired by the same person, Dris Benzekri, an old political prisoner.

- Its work is of an extra-judicial nature. Furthermore, publication or public mention of the names of those accountable for human rights violations is prohibited. Likewise, no mechanism to judge these people has been envisaged. Just as those responsible declare: The "Moroccan Authority opted for a restorative judicial appeal and not for an accusatory appeal, and for historical truth in place of legal truth, because the restorative law is not limited only and exclusively to the courtroom, as it also extends out to the public sector covering social, cultural and political actions." The objective is: "To determine the State's responsibility instead of the individual's responsibility."

In the final report's summary, it hereby states the general responsibility of the state with regards to the facts, but it does not explain in a systematic way those bodies which are more involved in repression, nor does it ask old torturers to leave their posts, so they could continue to stay active in their jobs, as different human rights associations denounce them. In the case of repressing demonstrations, for example, it is stated that the diverse security bodies which intervened in the demonstration made it difficult to determine the responsibilities.

- Its mandate has a temporary jurisdiction limited to the previous period of

the current Mohamed VI's reign – in spite of the fact that the human rights situation continues to be worrying, as is shown in the national and international human rights organizations' reports.

It can be concluded that the IER has been relatively successful in implementing their mandate. "Success" with respect to:

- The IER's experience constitutes a novelty in the Arabian world and it also includes new aspects, if you compare it with similar experiences in other countries, for example the fact that they can grant compensations to the victims directly.
- It has given a voice to the victims, to the suffering of various generations who suffered abuses in silence due to an autocratic regime. And it has especially been able to reach far away regions from the capital, and which have been traditionally separated from the processes of claim and compensation.
- Their work has had a prominent symbolic, educational and pedagogical aspect. The work has led to the occurrence of seven public auditions in six regions of the country, and the television broadcasting of some victim's testimonies that had been previously chosen. This task of raising awareness does not only affect society, but also the state concerning the emphasis on respecting human rights and contributing to solidifying the obligation of preserving and promoting human rights.
- It has allowed the advancement in the establishment of truth. A total of 742 cases of missing people have been

cleared up (in comparison to 112 identified by the CCHR in a previous investigation process), and 66 other cases have been pointed out which the State should continue to investigate. The IER has instructed and taken decisions concerning the need for amends (whether in the form of compensation, or medical and psychic rehabilitation) on 16,861 cases.

- Furthermore, all of the information and documentation obtained turns out to be very valuable material for analysing an especially agitated period of Moroccan history. The IER has been able to establish an expansive file containing hundreds of recorded testimonies, which should be preserved. This effort constitutes an important contribution in constructing a collective memory.

This success can be qualified as “relative” for the following reasons:

- The Authority has not been able to carry out investigations in certain areas due to a lack of collaboration from key institutions like the Army. In its report the Authority talks of: “The Security Department’s inadequate cooperation, the inaccuracy of certain ex-criminals’ testimonies and the outright rejection of others to collaborate towards this cause.” Another section establishes that: “Neither the Court could access a part of the official records which existed, due to misrepresentation or because they had been handed in late.” This situation exists in spite of their mandate stemming from a Royal Decree which establishes that all authorities and public institutions should give information and collaborate with the IER. However, the lack of coercion mechanisms (like for example those foreseen in the parliamentary investigation commissions which give prison sentences for those people who refuse to collaborate) and the same fact that certain people in charge have refused to collaborate points towards a lack of political willpower to go further in the investigations. On the other hand, the Report is grateful for the central and provincial Home Office services.
- In some cases their conclusions are

clearly insufficient and even incorrect. This is the case of the “forced disappearances” of Sahrawis, estimated at 211 cases, a significantly lower figure to the one considered by the human rights organizations, from the Rif events, or from the Casablanca demonstration repression in 1981.

- The report has not been able to throw light on the circumstances of some especially emblematic cases, like the disappearance and killing of the Socialist leader Mehdi Ben Barka in 1965. The IER has justified its inability to have gone further in investigations than what it has already done in all of these subjects due to a lack of time in carrying out its work (23 months).
- Lastly, the IER has not been able to obtain an official apology for the victims on behalf of the King in the name of the State.

The Court can also be assessed on a second level: as an institution with a decisive role to play in the Moroccan democratization. According to an analysis of their prerogatives and mechanisms it can be declared that the Court does not have either the jurisdiction or, even in the case of claiming it, the power to carry out this role; although it can contribute effectively to advancing in this direction. Despite of not playing a main role, the IER’s vision as a main character in the democratization of the system has been supported by different factors.

In the first place, the quite extensive vision of the process of Moroccan liberalization started during the last decade of Hasan II’s reign is in reality a process of transition towards democracy, and therefore, all initiatives which affect the arena of civil and political rights (whether that being the *Mudawana* reform or the IER work) becomes interpreted as proof that Morocco moves in that direction. Maybe this idea seems altogether crazy or totally dismissible, but a serious analysis of the political reform processes should be put into process in order to verify that the power structure in Morocco today has an enormous resemblance to the lead years existence, and that the regime’s autocratic behaviour is undeniable. From here one should an-

alyze which effective steps by those in power have been taken to dismantle the current system and promote a “change in regime.”

In second place, this IER vision, as a mainstay for a future transformation in deepening the system has been supported above all in official speech, and by the very own IER – in their documents, in their member’s declarations, especially during the international tour to publicize their work. Their work forms part of a link in the transition process. According to what the final report says: “An initial process of reconciliation was started at the beginning of 1990” by introducing reforms in the final years during Hasan II’s reign (legislative reforms, changing government in 1988, etc.). For the IER: “These changes formed the basis of the process of reconciling the Moroccans with their history.” Morocco finds itself at an advanced stage of the transition phase to democracy. The IER’s contribution to this objective will be carried out thanks to:

- The work carried out will have a catalyst effect which will trigger, by itself, new processes, in this way allowing “things to move.” Once the “truth” is expressed, it follows its own path.
- And once the final elaborated recommendations have been put into practice by the Court with regards to structural character reforms which are necessary so that there will not be a repeat of revealed abuses and that “the reform process is consolidated in the corresponding country.” The proposed program is of a very expansive and ambitious nature and, on applying it, will constitute a true democratization program. These recommendations include four aspects:
 1. The consolidation of human rights’ constitutional guarantees. This point includes the reinforcement of the separation of powers principle, and the constitutional prohibition of all executive power interference in the organization and the operation of judiciary power.
 2. The adoption and the putting into practise of an integrated national strategy to fight against impunity by the application of public politics in legal sectors, security sectors, law

- and order, education and permanent training sectors.
3. The consolidation of the law's state through reforms in the area of security (governing most security force agencies); of law (like the revision by means of the organic law of the Statute of Magistrate's Superior Council), the update of legislation, and the improvement in criminal law.
 4. The follow up of the IER work concerning decisions relating to compensation and other modalities, forms of damage, on establishing the truth in cases which are still not clear, the application of the recommendations laid out by IER and the preservation of its files and of public files.

Without denying the positive aspect a

Court stand-in manifests on questions as necessary as the constitutional reform, there's still a way to go before it has a real impact on the elite leader. It is worth considering why the Presidential Palace and the surroundings needed of an institution like IER (or its extension, the CCHR) in order to develop the reforms, in as far as that the Court recommendations are not so new and have been protesting from within and outside the country since, at least, the 1970s. And why we need to rest the weight of these reforms on an institution which has not been moulded out of the urns, and furthermore, is not of a consulting character. The thesis of the needs of a democracy "granted" by some reformist elites opposing some incompetent political parties, proves to be very doubtful and, above all, anti-democrat-

ic, and loses credibility before those repressive methods used against the Islamic opposition, the control of the elections or the legal and economic siege of the independent press which are all in process of disappearing, are just a few examples to name.

The work carried out by IER is without a doubt a necessary element, but not sufficient in the running of a true democracy. But all democratization processes rely on the citizen's participation in the election of a good representative government with power to rule with a true separation of powers and in which there is a clear decision-taking process in use. Some of these conditions are not being currently fulfilled in Morocco.

Web of interest:
www.ier.ma