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**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

## **Доклад Рабочей группы по насильственным и недобровольным исчезновениям\***

Добавление

## **Миссия в Марокко\*\***

### *Резюме*

По приглашению Королевства Марокко Рабочая группа по насильственным и недобровольным исчезновениям посетила Королевство с визитом в период с 22 по 25 июня 2009 года. Рабочая группа была представлена ее Председателем – Сантьяго Коркуэрой и двумя ее членами – Оливье де Фрувилем и Джерами Саркиным. Цель визита состояла в сборе информации в целях выяснения некоторых невыясненных до сих пор случаев насильственного или недобровольного исчезновения, рассмотрения ситуации с исчезновениями в стране в свете норм международного права в области прав человека, и подведения итогов работы Органа по восстановлению справедливости и примирению (ОВСП).

Рабочая группа положительно оценивает работу, выполненную ОВСП, и полагает, что его опыт должен служить примером для других государств. Она, в частности, высоко оценивает его подход к масштабам этой проблемы, его практику публичных слушаний, его усилия по выяснению истины в связи с грубыми нарушениями прав человека и его творческий подход к возмещению ущерба, проводя при этом различие между возмещением ущерба отдельным лицам и возмещением ущерба общинам в целом.

\* Представлен с опозданием.

\*\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на английском языке.

Вместе с тем Рабочая группа выражает сожаление по поводу того, что спустя четыре года после завершения работы ОВСП многие его рекомендации не выполнены до сих пор, тем более с учетом того факта, что задача по обеспечению контроля была возложена на соответствующее национальное учреждение, ответственное за соблюдение прав человека, – Консультативный совет по правам человека (КСПЧ), независимость и полномочия которого необходимо усилить дополнительно.

Хотя работа ОВСП позволила пролить свет как минимум на 742 случая недобровольных исчезновений, все же полный перечень исчезнувших лиц с указанием их фамилий, а также все данные, содержащиеся в их досье, пока еще не опубликованы. До сих пор остаются сомнения по поводу выяснения личности некоторых эксгумированных тел. Королевство Марокко должно рассеять эти сомнения, проведя соответствующих анализ ДНК.

Кроме того, объективно оценить результаты реализации этой части программы не позволяет отсутствие опубликованных цифр и решений, принятых в части возмещения ущерба, причиненного отдельным лицам. Что касается возмещения ущерба общинам в целом, то Рабочая группа призывает Марокко ускорить эту работу на основе процедуры участия, разработанной ОВСП.

До сведения Группы были доведены утверждения, в соответствии с которыми недобровольные исчезновения имели место и после 1999 года в контексте борьбы против терроризма, поэтому с учетом провозглашенного правительством желания не проявлять никакой терпимости по отношению к этому виду практики, она призывает его принять все необходимые меры с целью не допустить ее повторения в будущем.

Рабочая группа рекомендует принять ряд законодательных мер, таких как включение в Уголовный кодекс определения отдельного преступления, которое выражается в недобровольном исчезновении, и ратификация Марокко некоторых международных конвенций, в частности Международной конвенции для защиты всех лиц от насильственных исчезновений 2006 года.

Рабочая группа рекомендует также принять меры с целью положить конец безнаказанности, что могло бы явиться первым шагом на пути обеспечения такого положения, при котором случаи недобровольного исчезновения не могли бы повториться в будущем.

## Annex

### Report of the Working Group on Enforced or Involuntary Disappearances

#### Addendum

#### Mission to Morocco 22 to 25 June 2009

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## **I. Introduction**

1. At the invitation of the Government of Morocco, the Working Group on Enforced or Involuntary Disappearances visited the country from 22 to 25 June 2009. The Working Group was represented by its Chairman, Mr. Santiago Corcuera, and two members, Mr. Olivier de Frouville and Mr. Jeremy Sarkin. The purpose of the visit was to gather information with a view to clarifying certain unresolved cases of enforced or involuntary disappearance, to study the situation with respect to disappearances in Morocco in the light of international human rights standards and to take stock of the work of the Equity and Reconciliation Commission.

2. The delegation was able to meet with the Minister of Justice and senior representatives of the Government and the judicial system, members of the Consultative Council on Human Rights, NGOs, victims' family members, lawyers and other civil society actors. The Working Group visited the former detention centres and the cemeteries in Kelaat M'Gouna and Agdez and the former Derb Moulay Cherif detention centre in Casablanca. At the end of the visit, the delegation held a press conference in Rabat.

3. The delegation expresses its deep gratitude and appreciation to the Government of Morocco for inviting the Working Group to visit the country and for its positive cooperation before and during the mission. The delegation also thanks the Government for the assistance it provided in obtaining information which may lead to the resolution of some cases.

4. In addition, the delegation wishes to thank the United Nations Resident Coordinator, the United Nations Development Programme in Morocco and the United Nations Secretariat for their invaluable support during the mission. The Working Group was very impressed by the level of engagement of Moroccan civil society and thanks the NGOs, lawyers and individuals it met during the visit.

## **II. General observations**

### **A. General context**

5. The history of Morocco after independence and at the beginning of the reign of King Hassan II was marked by a period of political tension between the monarchy and the opposition parties. There was much political persecution, which resulted in serious human rights violations. In 1975, a dispute arose concerning the Sahara following the withdrawal of Spain from that territory. The status of Western Sahara is to be determined in a referendum organized by the United Nations, which, however, has been postponed several times, owing to fundamental differences between the parties. This unresolved situation is closely connected to many cases of human rights violations and enforced disappearance reported in the country. Nevertheless, in the last decade of the reign of King Hassan II and under the current monarch King Mohammed VI, Morocco has sought to achieve reconciliation with the victims by investigating the abuses committed and acknowledging the responsibility of the State.

### **B. Legal and constitutional framework**

#### **1. The Constitution**

6. The 1996 Constitution contains several provisions on the protection and promotion of the main human rights. It reaffirms the independence of the judiciary.

## 2. The Criminal Code

7. There is no specific offence of enforced disappearance in national criminal legislation. However, the Criminal Code envisages a series of offences directly related to enforced disappearance, such as abduction, which, under certain circumstances, is equated with an act of terrorism (art. 218.1). Articles 224 et seq. and article 436 contain rules applicable, in many respects, to enforced disappearance.

8. Article 225 provides that any public servant who orders or commits an arbitrary act which infringes the rights of citizens is liable to loss of civic rights (*dégradation civique*). One concern of the Working Group is that, if a public servant pleads that he or she was acting on the orders of a superior, this is considered grounds for absolute discharge, and, consequently, the penalty can be inflicted only on the superior who gave the order. Exempting the actual perpetrator of the act from liability in this manner is incompatible with the first and second paragraphs of article 6 of the Declaration on the Protection of All Persons from Enforced Disappearance, which provide that no order may be invoked to justify an enforced disappearance, that any person receiving such an order has the duty not to obey it and that States must prohibit such orders. At any event, the penalty of loss of civic rights is insufficient, given the stipulations of article 4 of the Declaration.

9. During its mission, the delegation of the Working Group was informed that a new Criminal Code had been drafted and was about to be adopted. The new Code should include a separate offence of enforced disappearance, as called for in the Declaration (art. 4). A copy of the draft was provided to the delegation as the present report was being completed. The Working Group therefore had to analyse the situation and make recommendations on the basis of the Code currently in force.

## 3. Protection during arrest and detention

10. With regard to guarantees in case of arrest or detention, the Constitution provides that no one may be arrested or detained pending investigation or trial except under the conditions and procedure stipulated by law (art. 10).

11. Articles 66 and 88 of the Code of Criminal Procedure provide for a maximum period of 48 hours of detention in police custody, which may be renewed once, for 24 hours, on the written authorization of the Chief Prosecutor. However, in cases where there is a threat to national security, the duration of police custody may be up to 96 hours, renewable once on the written authorization of the Chief Prosecutor. In cases involving an act of terrorism, the 96-hour period of police custody may be renewed twice, each time for a further period of 96 hours. The Chief Prosecutor must authorize each application for renewal in writing. When each period of police custody expires, the person being held must be released or brought before the prosecutor.

12. A person in police custody is not entitled to the assistance of a lawyer until after the renewal of the period of custody. In terrorism cases, however, the prosecutor may delay the meeting between the client and his or her lawyer at the request of the police (art. 80). Article 67 provides for the registration of the arrest, questioning and release of a person in police custody and, in addition, requires the police to notify the person's family of his or her detention. The Code stipulates that representatives of the prosecutor or the investigating judge must visit police and gendarmerie custody facilities to verify the lawfulness of the conditions of detention.

## 4. International human rights treaties

13. Morocco is a party to the seven major international human rights treaties, the two Optional Protocols to the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

14. It has also ratified the Geneva Conventions of 12 August 1949. Morocco has signed but not ratified the two Additional Protocols to the Geneva Conventions, the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance.

15. The Moroccan courts, by applying the provisions of the international treaties, have on several occasions confirmed the primacy of international human rights law over domestic law. The Code of Criminal Procedure recognizes explicitly the primacy of international texts over national laws. The Supreme Court ruled that article 11 of the International Covenant on Civil and Political Rights takes precedence over national laws (judgement of 26 September 2000).

### **C. Measures taken to clarify the enforced disappearance cases submitted to the Working Group**

16. The Working Group expresses satisfaction at the large number of cases clarified by the Government of Morocco. To clarify the remaining cases, the Government has established an inter-ministerial committee to investigate them with assistance from the local judicial authorities and thus to shed light on the status of the victims of enforced disappearance. The efforts made by the Government should be an example to other States.

17. The Government and the delegation exchanged views on the working methods to be employed in respect of the as yet unresolved cases. One of the main obstacles identified by the Government is the phonetic transcription of names, which has prevented the identification of persons who have disappeared. In addition, the need to produce official translations of all documents drafted in Arabic before they can be examined by the experts has significantly delayed the progress of the work.

## **III. The phenomenon of disappearances in Morocco**

### **A. Historical context**

18. From its establishment up to the end of 2008, the Working Group had transmitted 249 cases to the Government. Of those cases, 191 have been clarified, 144 on the basis of information provided by the Government and 47 using information from other sources. Fifty-eight cases remain pending. The majority of the disappearances occurred between 1972 and 1980. Most of these cases involved persons alleged to have disappeared because they — or members of their families — were known or suspected to belong to the Frente Polisario, because they were known or suspected to have ties to left wing intellectual movements, or because they had participated in putsches organized against King Hassan II. Some of these persons were students or trade unionists, while others were journalists or members of opposition political parties.

19. One aspect which distinguishes the phenomenon of enforced disappearances in Morocco is the fact that more than 100 disappeared persons were eventually freed at the beginning of the 1990s following a royal pardon. Consequently, they were able to testify about the conditions in which they were held and about the systematic use of torture. They were also able to identify the various detention centres to which they were taken and to provide information on the fate of other disappeared persons. These survivors bear living witness to the physical and mental harm resulting from years of secret detention and to its lasting effects.

## **B. Allegations concerning recent disappearances**

20. The Working Group has received allegations of persons being arrested, abducted or detained pending investigation or trial for prolonged periods since 1999, mainly in the context of the fight against terrorism; the victims did not have access to a lawyer, and their families were not notified. These periods, during which the victim is placed outside the protection of the law by government agents who refuse to provide information on their status or whereabouts, may be considered enforced disappearances under the Declaration and in accordance with the general comment of the Working Group on the definition of enforced disappearance (A/HRC/7/2, para. 26).

21. According to these allegations, the National Surveillance Directorate, which is responsible for ensuring the security and protection of the State and its institutions, is involved in the enforced disappearances. Since its staff are not judicial police officers, the Directorate is not authorized to make arrests, hold persons in custody or question suspects. There are allegations that the Directorate's agents have carried out arrests without providing any explanation to the persons concerned or producing any arrest warrant. Reportedly, these persons are taken to the Directorate's headquarters in Témara, which, it is claimed, is a secret unofficial detention centre. Furthermore, the victims' families are generally not notified of the arrest of their loved one, or of the place in which he or she is being held, although article 67 of the Code of Criminal Procedure requires that the family of a suspect be informed as soon as a decision has been taken to detain him or her pending investigation or trial. It was also reported that family members who demanded that the authorities inform them of the fate and whereabouts of their loved ones received no response or were told that no information was available. Persons were thus held for long periods in the centre in Témara without having access to either a lawyer or their families.

22. After being detained secretly for a certain time, some persons were reportedly transferred to official detention centres and proceedings were initiated against them. The Working Group received allegations that, in certain cases, the date of arrest indicated in the report submitted to the judicial authorities was falsified in order to cover up the prolonged period of illegal detention.

23. The Working Group has also received information concerning Morocco's participation in the "extraordinary rendition" programme and the secret transfer of persons to Morocco, to unofficial facilities in which they were tortured. These "unacknowledged detentions" amount to enforced disappearances.

24. The Working Group notes that the Government considers these allegations to be abusive and unjustified. It notes with satisfaction the commitment of the Moroccan authorities not to tolerate or permit any form of forced or secret detention, even for short periods. The Government has stated that a visit by the Chief Prosecutor of the Rabat Court of Appeal to the headquarters of the National Surveillance Directorate established categorically that it is not a secret detention centre. Nevertheless, the Working Group reminds the authorities that they are obliged to investigate all serious allegations of enforced disappearances, in accordance with article 13 of the Declaration. The Working Group has received numerous allegations of such practices and is convinced that more effort should be made to investigate these allegations, in order to prevent the crime of enforced disappearance from recurring. The Moroccan authorities assured the Working Group that they have investigated systematically the allegations brought to their attention.

## **IV. Legal and institutional means of combating disappearances: work and recommendations of the Equity and Reconciliation Commission**

### **A. Establishment of the Equity and Reconciliation Commission**

25. In recent years, as Morocco has become more open to democracy, it has developed mechanisms for the promotion and protection of human rights. It has also sought to make reparation for the significant human rights violations committed in the past. In this respect, Morocco may be regarded as a genuine model for the countries of the Middle East.

26. The process of instituting mechanisms to protect human rights and achieve reconciliation with the past began in 1990, when King Hassan II established the Consultative Council on Human Rights.

27. In 1999, the Council drafted a solemn recommendation to King Mohammed VI, inviting him to set up a body to compensate victims of human rights violations. The King, in his first public statement, recognized the responsibility of the State for the disappearances. He appointed an independent arbitration commission to determine the different amounts of compensation payable in respect of arbitrary detention or enforced disappearance cases between 1956 and 1999. The commission began its work on 1 September 1999 and was active for about four years.

28. Pursuant to a recommendation of the Council, in 2003 the King established the Equity and Reconciliation Commission by royal decree. From 2004 to 2005, the Commission investigated serious human rights violations which had occurred between independence (1956) and 1999. It is rather unusual for a State to look so far back into its past (43 years); that this was done without a change of political regime is all the more remarkable. Some of the Commission's members, including its Chairperson, were former political prisoners and torture survivors, which gave greater credibility to the authorities' expressed intent to treat past human rights violations seriously.

### **B. Report of the Equity and Reconciliation Commission**

29. In November 2005, the Commission submitted its report to the King, who decided to make the document public on 6 January 2006. The report comprises three sections, concerning the historical aspects, the issue of reparation and, lastly, proposals for reform.

30. The Working Group views the work of the Equity and Reconciliation Commission in Morocco as a remarkable undertaking which may serve as an example for other countries of the region or other regions of the world where it is decided to embark on a process of transitional justice, with a view to achieving reconciliation with the past. While there is room for criticism, the Commission has achieved very positive results.

31. The fact that the Commission's work covered such a long period, that it gathered testimony from thousands of victims, held public hearings, including some with media coverage, and initiated a process which should lead to the creation of an archive, are extremely positive aspects. The Working Group congratulates the Commission on integrating the gender dimension in its working methods and notes that the assistance requested and received by the Commission from international experts was particularly helpful. The Commission appears to have examined numerous cases, determined the fate and identified the remains of some victims, and established in its reports the details of the violations committed and, where relevant, the causes of death.



32. Nevertheless, the Commission has also been the subject of much criticism, notably concerning its inability to compel persons who might be responsible for past abuses or who might have information on such abuses to give evidence. Other criticisms relate to the political context in general and, in particular, to the impunity of the perpetrators of serious human rights violations.

33. The Consultative Council on Human Rights was entrusted with the follow-up to the Commission's work, including the investigations which remained incomplete and the making of reparation.

## C. The right to truth and reconciliation

### 1. Public hearings and testimony

34. The public hearings organized for victims constituted the most visible dimension of the work of the Equity and Reconciliation Commission. The Commission's mandate did not refer to the holding of hearings, but its members interpreted the provisions requiring it to contribute to and enrich the culture of dialogue as authorizing such hearings. Seven public hearings took place, in Rabat, Figuig, Rachidia, Khenifra, Marrakech and El Hoceima, between December 2004 and May 2005. A final public hearing scheduled to be held in Laayoune, Western Sahara, was cancelled for political and security reasons.

35. The hearings drew a large number of participants. The media paid greater attention to the live broadcasts of the hearings on Moroccan television and radio than to other aspects of the Commission's work. Given the high rate of illiteracy among the population, television and radio were the most effective means of communication, capable of reaching millions of people.

36. Although the hearings were subject to strict rules, they enabled some victims to tell their stories publicly. These accounts helped to bring about an experience of catharsis. No questions were allowed, and it was prohibited to identify the perpetrators or persons responsible; the testimony given focused on witnesses' experiences as victims, precluding accusation. They could mention only the place where they had endured their suffering and the authorities which had maltreated them. Some victims felt that these constraints rendered the process of establishing the truth, which had been the goal set by the Commission, considerably less effective.

37. The process itself, and its conclusions, are a powerful legacy of the Commission's work, mainly in terms of the realization of the right to truth and the promotion of reconciliation. The national dialogue and the numerous events, workshops and other activities held to promote and facilitate the Commission's work made a valuable contribution to the reconciliation process. Some victims with whom the Working Group met described this process positively and emphasized their desire to play a part in it. Others have written books recounting their experiences, which deserve to be more widely publicized among the Moroccan community as they are a tool for reconciliation.<sup>1</sup> These

<sup>1</sup> See in particular: Ahmed Marzouki, *Tazmamart. Cellule 10* (Casablanca, Tarik éditions; Paris, Éditions Paris-Méditerranée, 2000), 336 pages; Mohammed Errahoui, *Mouirs: Chronique d'une disparition forcée*, preface by Abdennaceur Bnouhachem (Saad Warzazi Éditions), 341 pages; Ahmed El Ouafi, *Opération Boraq F5. 16 août 1972, l'attaque du Boeing royal: Témoignages recueillis par François Trotet* (Tarik éditions, 2004), 191 pages; Jaouad Mdidech, *La chambre noire ou Derb Moulay Cherif*, preface by Abraham Serfaty (Éditions EDDIF, 2002), 251 pages; Midhat René Bourequat, *Mort vivant. Témoignage. Rabat 1973, Paris 1992* (Paris, Éditions Pygmalion, Gérard Watelet, 2000), 286 pages; Malika Oufkir and Michèle Fitoussi, *La Prisonnière* (Paris, Grasset, 1991), 331 pages.

victims have stated that, even though they remain forever marked by what they underwent, the fact of having attended the hearings has helped them to feel at peace with themselves. Other victims, however, have been less positive about their experiences.

## **2. The right to truth and the cases of enforced disappearance**

38. With regard to establishing the truth, the final report of the Equity and Reconciliation Commission states that the cases of 742 disappeared persons have been resolved. Of these persons, 89 died in secret detention centres; 173 during their arbitrary detention or enforced disappearance, though their place of burial has not been determined; 11 during armed clashes between 1961 and 1964; and 325 owing to the use of excessive force during demonstrations. Lastly, 144 perished in armed clashes in the disputed region of Western Sahara. The report also indicates that 66 cases remain pending; these cases are reportedly to be investigated by the committee established by the Consultative Council on Human Rights to follow-up on the Commission's work.

39. The Working Group welcomes the efforts which have led to the resolution of 742 cases of enforced disappearance. It notes, however, that some of these cases have not been clarified in the manner specified in its methods of work. In other words, detailed information on the fate and whereabouts of the disappeared persons — that is, at the very least, the circumstances of the disappearance and the name of the place of detention or place of burial if the person has died — has not been disclosed.

40. The Council has been assigned the task of monitoring the implementation of the Commission's recommendations, in cooperation with the Government and the other stakeholders. It had announced that the detailed list of the disappearances examined by the Commission would be published in 2006, but, three years later, this has yet to be done. The Working Group was informed after its mission that a follow-up report drafted by the Council was being finalized. According to the Council, 58 additional cases have been clarified, while 8 remain unresolved and are still being investigated by it.

41. The Working Group is cognizant of the difficulties inherent in this exercise, particularly where DNA testing is concerned, but it calls on the Council to publish as soon as possible a consolidated list of the 742 disappeared persons' cases, stating the circumstances of the disappearances, and the 66 pending cases.

42. The publication of the names would be helpful in determining whether there is any overlap with the cases still pending before the Working Group. It would also dispel some uncertainty as to the supposed number of disappeared persons, an issue raised by certain families with whom the Working Group met; they assert that, while they submitted disappearance cases and gave evidence to the Equity and Reconciliation Commission, no mention was made of these cases subsequently. The families state that they wrote to the Council to request information but received no response. Moreover, research carried out by the Working Group has shown that some families have had access to information on their own cases through informal channels, while others have not. The publication of the results would thus remedy any inequality of treatment among the different victims' families.

43. The process of identifying the victims sometimes appears controversial, with families refusing to accept that the graves they are shown contain the remains of their loved ones. Some families ask how the State can rely on the word of prison staff to determine which bodies are resting in which graves and have demanded DNA testing.

44. The Working Group considers it very positive that some burial sites have been located, but it also believes that the bodies recovered from these graves must be identified with certainty. Some families allege that results have yet to be received from the DNA samples taken from relatives. The Working Group is of the view that the use of independent pathologists could resolve these problems. Lastly, there is a need to continue the search for

bodies, including in places which have not yet been excavated, such as Fixed Point 3 in Rabat (PF 3).

45. Many disappearances are linked to the situation in Western Sahara. They represent the majority of the cases before the Working Group. The reports of the Equity and Reconciliation Commission also attest that many disappearances took place in the region and that prisoners of Saharan origin died in secret detention centres such as those in Kelaat M'Gouna and Agdez. However, the Working Group has received allegations that the goals of truth and reconciliation have not been realized in this region. According to these allegations, the Commission did not succeed in shedding light on many of the cases referred to it. The Working Group therefore regretted the cancellation of the public hearing scheduled to take place in Laayoune. Some witnesses claim that victims from Western Sahara have not received equal reparations (see paras. 47 et seq. below).

46. The Working Group considers that reconciliation is a long-term task and that it may therefore be some years before the positive effects become apparent. To ensure a successful outcome to the process, it is vital to achieve greater involvement of groups and individuals who have felt excluded from it.

## **D. The right to reparation**

47. The Working Group is of the view that article 19 of the Declaration encompasses not only the right to financial compensation, but also the right to obtain "the means for as complete a rehabilitation as possible". This refers to "medical and psychological care and rehabilitation for ... physical or mental damage as well as to legal and social rehabilitation, guarantees of non-repetition, restoration of personal liberty, family life, citizenship, employment or property, return to one's place of residence and similar forms of restitution, satisfaction and reparation which may remove the consequences of the enforced disappearance" (Working Group on Enforced or Involuntary Disappearances, general comments on article 19 of the Declaration (E/CN.4/1998/43, para. 75)).

48. The approach adopted by the Equity and Reconciliation Commission was intended to respond to the criticisms directed at the work of the arbitration commission which preceded it. The Commission's statute establishes its competence to pursue the work undertaken by the arbitration commission, but also to make recommendations regarding the provision of compensation for all other harm suffered by victims, in the form of medical and psychological rehabilitation as well as social reintegration. The Commission was also mandated to resolve any administrative, legal or employment-related problem and to deal with cases of deprivation of property. In addition, the Commission was given the task of formulating recommendations regarding the preservation of memory, the prevention of a recurrence, the removal of the consequences of the violations, and the restoration and consolidation of confidence in the rule of law and respect for human rights.

49. The Commission carried out its mandate in a progressive manner, basing itself not only on international legal norms in this area, but also on the latest developments and the discussions which have taken place at the international level concerning reparation for victims of violations. Thus, it took account of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Commission on Human Rights resolution 2005/35). This text contains broad definitions of the concept of "victim" of human rights violations and that of "reparation", which covers not only compensation, but also restitution, satisfaction and guarantees of non-repetition, including disclosure of the truth and acknowledgement of State responsibility. The Commission also gave consideration to the need to integrate a gender perspective in the reparation

programme, women having suffered different violations from those inflicted on men or, where the violations were the same, having been affected differently by them.

50. The Commission based its own approach to and philosophy of reparation on these elements and instituted a reparation programme consisting of two components: individual reparations and community reparations.

## **1. Individual reparations**

51. According to the final report of the Equity and Reconciliation Commission (vol. 3, p. 66), 16,861 complaints were received in total. Of these, 7,082 were declared inadmissible on the basis of various criteria; the Commission ruled on the 9,779 remaining cases. In 6,385 cases (37.9 per cent), it decided to grant financial compensation; in 1,895 cases (11.2 per cent), it granted financial compensation while making recommendations for other types of reparation; and, in 1,499 cases (8.9 per cent), it made recommendations only. The Consultative Council on Human Rights continued the Commission's work on the expiry of the latter body's mandate, taking over both pending cases and the disbursement of compensation to victims. In a document transmitted to the Working Group concerning the follow-up to the Commission's recommendations, the Council affirmed that, as at 20 September 2009, no fewer than 17,012 victims had received compensation.

52. The Commission has given a detailed account of the methodology on which its decisions were based. According to its report, it combined fixed payments (in rape cases, for example) with compensation reflecting the particular circumstances of each case, in order to achieve equality and fairness, the two concepts being central to its approach. It also established its own rules for determining the compensation due to plaintiffs, following very specific criteria. The report bears witness to the scientific and rigorous approach adopted. Nevertheless, during the visit by the Working Group, NGOs and individuals expressed criticism of the Commission's work on individual compensation and the follow-up undertaken.

53. Inexplicable differences of treatment were alleged between victims who had met the same fate. It was reported that victims of Saharan origin, in particular, were better compensated than others; at the same time, other sources indicated that numerous cases from the region had been unjustly declared inadmissible or rejected by the Commission. The decisions on compensation made by the arbitration commission and the Equity and Reconciliation Commission have not been published. The reason put forward by the former members of the Commission and the current members of the Consultative Council on Human Rights is that publishing these decisions would violate the victims' right to confidentiality. However, some victims have informed the Working Group that they would not oppose publication of the decisions concerning their own cases. The Working Group considers that it is the failure to publish the decisions which has caused the controversy as to whether the principles of equality and fairness foregrounded by the Commission have been respected.

54. According to the explanations given to the Working Group, the Commission decided on compensation once families had accepted the results of the investigations. However, the Working Group has been informed that victims' full case files were not transmitted to the families; instead, the results of the investigations were communicated orally. Some families refused compensation on the grounds that the information provided to them was insufficient, particularly in cases where the Commission had concluded that the victim was dead but that the place of burial could not be identified, or where it claimed to have identified the place of burial, but the family disputed its conclusions.

55. Concern was also expressed to the Working Group about the follow-up to the Commission's recommendations on measures other than compensation, measures in

respect, for example, of employment, social reintegration, the problem of dispossessions and medical rehabilitation. The Commission recommended that health coverage should be granted to victims pursuant to Act No. 00-65, but also that a permanent structure should be established to provide advice and assistance to victims, and, lastly, that some 50 victims suffering chronic serious health problems should receive immediate medical attention. According to some sources, these recommendations have not been implemented since 2004, and the situation of the victims remains unchanged. The Council asserts that the programme is being implemented and that 2,886 victims have been given a card enabling them to receive medical coverage.

## 2. Community reparations

56. The granting of community reparations represents the most original part of the work of the Equity and Reconciliation Commission. While the concept of community reparations exists in legal philosophy and in some judgements of the Inter-American Court of Human Rights, examples of its application remain rare and limited in scale. The Commission's decision to develop this aspect of reparation was unanimously welcomed. In its final report, the Commission explains that community reparations are a response to the situation of certain communities which consider themselves to have suffered collectively, directly or indirectly, from the consequences of the outbreaks of political violence and the ensuing serious violations and which are in regions where serious violations occurred or where centres for enforced disappearance or arbitrary detention were located. By way of community reparations, the Commission has called for the adoption of and support for numerous socio-economic and cultural development programmes to benefit several regions as well as groups of victims (notably women) in a number of cities and regions. The Commission has recommended, in particular, that former illegal detention centres, including Tazmamart, Agdez and Derb Moulay Cherif in Casablanca, should be converted to other uses.

57. In practice, the community reparation programme is twofold: it involves the conversion of former detention centres to memorials, but it also provides for the launching of social and development programmes from which regions and individuals who have been victims of serious human rights violations may benefit.

58. The programme is financed in large part by the European Union. On 5 July 2007, the European Union signed an agreement with Morocco under which it pledged to provide 3 million euros out of total programme costs of 4 million euros, with the remaining 1 million euros to be provided by Morocco.

59. Like all other observers, the Working Group warmly welcomed this new approach to reparation. It was able to visit the former detention centres covered by the programme — Kelaat M'Gouna, Agdez and Derb Moulay Cherif — and to meet with the local authorities and voluntary associations involved in community reparation.

60. In Agdez, the members of the Working Group attended a presentation explaining the specific plans developed for the former detention centre. At Derb Moulay Cherif, two voluntary association members gave an account to the Working Group of their project for the conversion of the site. In both cases, it is a question of finding a balance between two imperatives: the preservation of memory, and the adoption of measures to support the socio-economic development of populations that have suffered discrimination. These sites are therefore to incorporate elements intended to preserve memory, for example "corridors of remembrance" or commemorative plaques, while providing a venue for development initiatives, such as dedicated social services for women or cultural centres.

61. The Working Group was very interested in and impressed by the ideas and discussions to which the community reparation programme has given rise. It was

disappointed, however, to observe that work on the renovation of the centres it visited had not actually begun. The centres located near Kelaat M’Gouna and Agdez appear to have been abandoned. Part of the *ksar* (fort) in Agdez is in ruins. In Kelaat M’Gouna, prisoners’ personal effects have been collected and placed in rooms at random: there are suitcases, clothes and mattresses on the floor and, in some cases, drawings on the walls, apparently done by prisoners. At both sites, the only work begun dates from the time of the Equity and Reconciliation Commission, when graves were excavated in order to identify the bodies and re-inter them in new graves bearing the presumed names of the victims.

62. One part of the Derb Moulay Cherif site — the ground floor of a building situated in the middle of a working-class district of Casablanca — is in ruins, while another part (containing the “*chambre noire*” (black room) described by Jaouad Mdidech in his book) is occupied by a tenant. The rest of the building continues to be occupied by tenants and owners. The members of the Consultative Council on Human Rights explained that the issue of the occupancy of the site has yet to be resolved and that this is delaying the start of renovations. However, in 2004, the Commission affirmed in its report that the occupants of buildings, the ground floors of which formed part of the former Derb Moulay Cherif detention centre had been moved and were in the process of being rehoused.

63. In the same paragraph, the Commission mentioned another detention centre, in the vicinity of Tazmamart, which the Working Group was unable to visit owing to lack of time. The Commission indicated that the Royal Armed Forces had left the barracks near Tazmamart. The Working Group was informed by other sources that, when the army left the barracks, it destroyed two buildings in which prisoners had been secretly detained, some of them for 18 years.

64. According to the Commission, the discussions on community reparations were founded on a participatory approach, involving civil society human rights defenders working in the field of local development as well as development agencies and institutions active in the regions concerned. Some of the victims with whom the Working Group met stated that the Consultative Council on Human Rights had not paid sufficient attention to the views of victims. Either they had not been consulted, or else their opinions had not been clearly taken into account.

65. In conclusion, the Working Group acknowledges the innovative approach taken by the Commission in respect of community reparation. A report by the Consultative Council on Human Rights, received by the Working Group after its mission, describes the lengthy process for the implementation of the programme and the many initiatives and events organized since 2007, the date on which the project was officially launched. The Working Group understands the difficulties encountered in putting this new and ambitious idea into practice and the need not to rush the process, so as to allow time for genuine consultation and discussions with the various actors involved. However, the Working Group remains concerned that so little appears to have been done to implement the Commission’s recommendations four years after their formulation.

66. The Working Group recommends that the Government should expedite the implementation of the recommendations while respecting the participatory approach outlined by the Commission, notably through the involvement of former disappeared persons who were held at the centres.

## **E. The right to justice**

67. Morocco has a sophisticated legal framework containing a series of provisions governing the judicial system and other institutions with powers to investigate, prosecute and bring to justice the perpetrators of human rights violations.

68. In addition to the judicial system, Morocco has a national human rights institution, the Consultative Council on Human Rights, which is competent to investigate human rights violations, render opinions on human rights issues and handle cases of violations. The Council has been made responsible for ensuring follow-up to the recommendations of the Equity and Reconciliation Commission.

69. In principle, some lacunae notwithstanding, the configuration of the criminal system appears to be in conformity with the Declaration, which stipulates that: "Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits."

70. Despite this requirement, when the Working Group asked about the number of prosecutions and convictions for enforced disappearances (or abductions committed by State agents), the official sources to whom the question was put replied that the process put in place by the Commission was focused on achieving reconciliation, not bringing legal proceedings.

71. The Working Group recognizes that the role of a reconciliation commission is not to prosecute the perpetrators of human rights violations but to seek justice through non-judicial methods. Nevertheless, experience in several countries where truth and reconciliation commissions have been established shows that this does not prevent perpetrators of crimes from being charged, prosecuted and eventually convicted. Moreover, the Commission itself recommended in its report that a comprehensive, integrated and multilateral national strategy should be developed to combat impunity (vol. 4, p. 82).

72. The Working Group takes particular note of the fact that, four years after the project was launched, this recommendation has still not been implemented in respect of perpetrators of enforced disappearances, even in cases where, according to official sources, the supposed perpetrators testified before the Commission. The Working Group shares the view of the Human Rights Committee, which stated that it was "concerned that those responsible for disappearances have still not been identified, tried and punished" and recommended that the State party should "conduct the necessary investigations to identify, try and punish those responsible for such crimes" (CCPR/CO/82/MAR, para. 12).

73. Senior officials of the Consultative Council on Human Rights indicated to the Working Group that the reason for which no prosecution or conviction had taken place was that victims and their families had not lodged complaints with the authorities.

74. The Working Group noted that the desire to prosecute and punish the perpetrators of enforced disappearances and other flagrant human rights violations was far from unanimous in Moroccan civil society, even among victims. When asked whether they wished to see those responsible for enforced disappearances jailed, some victims and families stated very clearly that they did, while others were more hesitant or replied that they were not seeking to settle a score and preferred to forgive.

75. Some victims told the Working Group that they had attempted to bring certain enforced disappearance cases before the courts but without success. The Working Group also received reports indicating that some perpetrators of violations remained in their posts and that the victims would have appreciated it if these individuals had, at the very least, been removed from their official functions.

76. Even if a large majority of the Moroccan population expressed the wish to forgive the perpetrators of enforced disappearances and other flagrant human rights violations, the State of Morocco would nevertheless have an obligation under international norms to prevent those responsible for these odious crimes from enjoying impunity.

77. The Working Group wishes to emphasize the provisions of articles 13 and 14 of the Declaration and, in addition, article 18, which stipulates that “persons who ... are alleged to have committed offences referred to in article 4, paragraph 1, ... shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction”.

78. The Working Group has stated on other occasions that, even in the absence of an amnesty law, if the circumstances obtaining guarantee absolute impunity, this constitutes a “similar measure” effectively exempting perpetrators from any criminal proceedings or sanction. It considers that such a situation amounts to a “de facto amnesty” and is contrary to the Declaration.

79. A clear sign of the climate of impunity is the fact that, according to some victims, those responsible for enforced disappearances or other flagrant human rights violations have not been removed from their official functions; this represents a violation of article 16 of the Declaration.

80. The issues raised above notwithstanding, the Working Group wishes to take account of the argument put forward by certain official sources to the effect that it is not the prosecution and conviction of perpetrators that represents the route to reconciliation for Morocco, but transitional justice as effected by the Equity and Reconciliation Commission. It is no less the case that absolute impunity remains contrary to international law, even where a commendable reconciliation process is in place.

81. The Working Group, in its general comment on article 18 of the Declaration, recognized that, “in States where systematic or massive violations of human rights have occurred as a result of internal armed conflict or political repression, legislative measures that could lead to finding the truth and reconciliation through pardon might be the only option to terminate or prevent disappearances”, provided that such measures are consistent with the Declaration (E/CN.4/2006/56, para. 49).

82. The Working Group considers that, despite the positive experience of the Equity and Reconciliation Commission, the situation in Morocco does not correspond to the exceptional conditions described in paragraph 8 of the aforementioned general comment.

83. The Working Group considers that Morocco should adopt the necessary legislative and other measures to put an end to impunity. This is the first step towards ensuring the non-recurrence of enforced disappearances and other flagrant human rights violations.

84. The Working Group notes that, pursuant to the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993, “Morocco has begun to devise an action plan and national strategy on human rights, in partnership with the Consultative Council on Human Rights and the European Commission” (A/HRC/WG.6/1/MAR/1, para. 149). It would be desirable for the action plan to be founded on a firm commitment by Morocco to put an end to impunity and to take the measures outlined in the previous paragraphs, under the monitoring and with the support of the Council.

85. In the same vein, the Working Group also wishes to encourage the Council to pursue the work of the Equity and Reconciliation Commission, in particular the investigations into enforced disappearances, and to transmit cases to the competent authorities so that criminal inquiries can be conducted, even where no third party complaint has been lodged. The Working Group is aware that the Council has the power to consider cases of violations of human rights and to make appropriate recommendations to the competent authorities.



## V. Conclusions and recommendations

86. The Working Group wishes to thank the Government of Morocco for its diligence in seeking to clarify the cases pending before the Working Group, for the continuous spirit of cooperation it has shown and for its expressed political will to take all necessary measures to prevent enforced disappearances and build a society based on the principles of democracy, human rights and the rule of law.

87. The Working Group commends the work of the Equity and Reconciliation Commission and considers that this experience should serve as a model for other States. It welcomes, in particular, the Commission's approach to the gender dimension and its creative approach to reparation, distinguishing between individual and community reparation.

88. In order to guarantee that the flagrant violations which have taken place in Morocco do not recur and to give impetus to the reforms under way, the Commission formulated a series of recommendations concerning institutional reform, the adoption of a national strategy to combat impunity and, lastly, the different phases to be followed in implementing these recommendations.

89. The Working Group is conscious of the fact that, four years after the completion of this process, many of the Commission's recommendations have still not been implemented, and it takes note of the Government's commitment to implement them soon. During the universal periodic review of the country's human rights situation, Morocco accepted a total of 11 recommendations encouraging it, *inter alia*, to continue to implement the recommendations of the Equity and Reconciliation Commission, to continue the harmonization of its domestic law with its international human rights obligations and to consolidate the culture of human rights in the country (A/HRC/8/52, paras. 273–287). The Commission's report contains numerous helpful proposals which must be implemented.

90. The Working Group wishes to focus on some of these proposals and to add some supplementary elements, which it considers to be of capital importance for the elimination in Morocco not only of the practice of enforced disappearances, but also of the risk that the practice may recur in a crisis or conflict situation.

### A. Institutional reform

#### 1. Strengthen the independence of the judicial system

91. The Working Group was informed that the Consultative Council on Human Rights had drafted a memorandum on judicial reform, which had been transmitted to the Government. On 20 August 2009, the King delivered an important statement on this theme, in which he expressed his determination to give new impetus to the reform.

92. The Working Group welcomes this new stage in the reform of the judicial system, which demonstrates once again, if more proof were needed, the political will of the authorities to bring Moroccan legislation further into line with international standards. The Working Group is convinced that an independent and impartial judicial system is essential for preventing enforced disappearances and ensuring that perpetrators are effectively punished.

#### 2. Reform the oversight of the security services

93. The Working Group was informed that the Consultative Council on Human Rights is currently drafting a memorandum on this issue. The goals are, *inter alia*, to

enhance the image of the security services among the population, to establish a right of access to information concerning security operations and to put in place a mechanism to oversee all institutions responsible for security.

94. The Working Group welcomes these measures and the efforts made and recommends that the Council should take account of article 12 of the Declaration on the Protection of All Persons from Enforced Disappearance.

### 3. Strengthen the independence and authority of the Consultative Council on Human Rights

95. In order to reinforce the vital role played by the Council in the follow-up to the work of the Equity and Reconciliation Commission, the Working Group suggests that the independence of the Council should be strengthened. To this end, the Working Group considers that no member of the Council should be selected by the King and that no ministry under the Government's executive authority (for example, the Ministry of Justice) should participate in the Council's sessions, even as a mere observer or in an advisory capacity.

## B. Legislative reform

96. The Working Group commends the commitment to legislative reform. It recommends, in particular, that the international norms on enforced disappearances should be taken fully into account in this process.

### 1. The Criminal Code

97. With respect to the strengthening of the legal framework to put an end to impunity and prevent enforced disappearances, the Working Group emphasizes that, in accordance with article 4 of the Declaration, "all acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness". The Working Group notes that, while certain provisions of the current Criminal Code relate to enforced disappearance, there is no article specifically criminalizing the practice. The Working Group takes note that, according to official sources, the new criminal code currently being drafted contains a specific offence of enforced disappearance.

98. The Working Group hopes that the legislative process leading to the realization of this important goal will be concluded successfully, and at the earliest opportunity. The text should, however, not only define the offence but also:

- (a) Specify penalties proportionate to its extreme seriousness;
- (b) Respect the principle that one of the fundamental characteristics of the offence is its ongoing nature;
- (c) Comply with the provisions of article 17, paragraph 3, of the Declaration, which states that "statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence";
- (d) Guarantee that persons responsible for the offence of enforced disappearance are "tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts" (article 16, paragraph 2, of the Declaration);

(e) Guarantee that “no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance” and that “any person receiving such an order or instruction shall have the right and duty not to obey it” (article 6, paragraph 1, of the Declaration).

## 2. Criminal procedure

99. The Working Group observes that current criminal procedural provisions already offer significant guarantees against arbitrary detention and enforced disappearance, notably the provisions on police custody; the obligation on the prosecutor to notify the detained person’s family; the competence given to the prosecutor and investigating judge to visit detention centres and verify the lawfulness of the conditions of detention; and the obligation to maintain official registers of detentions. Nevertheless, the Working Group has received allegations that these provisions are not always applied. The effective implementation of these guarantees is thus a priority.

100. The Working Group is also convinced that the legislation should provide additional guarantees, in accordance with the standards defined in international instruments. Among the measures that should be taken, the Working Group wishes to emphasize the following:

- Deprivation of liberty other than in an official facility must be prohibited and made a criminal offence (article 10 of the Declaration)
- The law must recognize and enforce “the right to a prompt and effective legal remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering ... the deprivation of liberty” (article 9, paragraph 1, of the Declaration), and the obligation to render a decision on the lawfulness of the deprivation of liberty (habeas corpus, as required in article 17, paragraph 2 (f), of the International Convention for the Protection of All Persons from Enforced Disappearance)
- The law must guarantee the authority of the “competent national [institutions to] have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found” (article 9, paragraph 2, of the Declaration)
- The law must establish the jurisdiction of the civilian criminal courts (not the military courts) to try any person alleged to have perpetrated an act of enforced disappearance, on a territorial and a personal, but also on a universal, basis (article 14 of the Declaration)

## C. International conventions

101. The Working Group congratulates the Government of Morocco on its important contribution to the drafting and promotion of the International Convention for the Protection of All Persons from Enforced Disappearance. Morocco was one of the first States to sign the instrument.

102. The Working Group looks forward to Morocco’s ratification of the Convention and its recognition of the competence of the Committee on Enforced Disappearances as provided for in articles 31 and 32 of the Convention, as well as to its ratification of other international instruments which have a bearing on enforced disappearance.

103. Morocco should ratify the Optional Protocol to the International Covenant on Civil and Political Rights, as the Human Rights Committee has well-established case law on enforced disappearances.

104. The Working Group also calls on Morocco to ratify the Rome Statute of the International Criminal Court, which qualifies enforced disappearance as a crime against humanity under certain conditions.

105. It further encourages Morocco to ratify Protocols I and II to the Geneva Conventions of 12 August 1949, as Protocol I contains fundamental provisions on the question of “missing persons” (arts. 32 et seq.).

#### **D. The right to truth**

106. The Working Group considers that the work of the Equity and Reconciliation Commission has enabled Morocco to take an important step towards the realization of the right to truth in respect of past disappearances. The Commission itself recognized, however, that much remained to be done and issued many recommendations in that respect. The Working Group makes the following recommendations:

- The Consultative Council on Human Rights should publish a full report on the follow-up given to the Commission’s recommendations, including a complete and detailed list of the 742 disappearance cases clarified by the Commission and the 66 cases left pending
- The bodies found in burial sites must be formally identified, and the identifications fully accepted by the victims’ families. When doubts remain, DNA testing must be conducted
- The search for bodies must continue, with the excavation of as yet uninvestigated sites
- As part of the follow-up to the Commission’s work, the Council must make the Commission’s archives public, along with any other documents that would make it possible to determine whether similar situations have always been treated equally, particularly where victims of Saharan origin are concerned
- The arbitral decisions on individual compensation should be made public, with the consent of the victims, and widely disseminated, so that all persons have the chance to verify and comment on the “case law” of the arbitration commission, the Equity and Reconciliation Commission and the Council
- The complete file of each victim must be transmitted to the person concerned or to his or her family

#### **E. The right to reparation**

107. The Working Group welcomes the innovative reparation programme put in place by the Equity and Reconciliation Commission. It recognizes the fundamental measures adopted in this area, including the awarding of individual reparations based on arbitral decisions. However, it calls on the Moroccan authorities to go further and makes the following recommendations:

- The amounts of the reparations must be made public and detailed reports published on the steps taken to date

- The implementation of the community reparation programme must be accelerated while respecting the participatory approach stipulated by the Commission, with the involvement, notably, of former detainees held in the centres

## **F. The right to justice**

108. The Working Group acknowledges that the process put in place by the Commission was founded on reconciliation, not criminal proceedings. However, it remains concerned about the consequences of this approach in terms of impunity. It makes the following recommendation:

- Effective legislative and other appropriate measures must be taken to put an end to the impunity of perpetrators, as a first step towards ensuring that enforced disappearances do not recur in the future
-