



Kingdom of Morocco  
Equity and Reconciliation Commission



# Final Report

Volume 3

## JUSTICE AND REPARATION FOR VICTIMS

A National Commission on Truth, Equity and Reconciliation

**Kingdom of Morocco  
Equity and Reconciliation Commission**

# **Final Report**

**Volume 3**

**JUSTICE AND REPARATION  
FOR VICTIMS**



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## FOREWORD

The Commission dealt with the subject of reparation from the very beginning, and devoted a significant amount of time to it in its meetings, with a view to drawing up a comprehensive approach to it, since it is closely tied to uncovering the truth and categorizing the violations. In addition, it has an important place in the process of giving justice and reparation to the victims and their rightful claimants, as well as in erasing the effects of the violations that affected individuals, society and the collective memory.

The Commission also considered that coming to a final decision on the relevant approach, policies, programmes and procedures represented a major task in the mission to establish transitional justice in Morocco on deep and firm foundations. Therefore, it was careful, when preparing its approach and its programmes in this field, to bear in mind all the legal developments occurring internationally, whether on the level of theory or practice, by examining the experiences of truth commissions round the world. This enabled it to reach conclusions that would be taken into account<sup>1</sup>. In parallel with that, the Commission recorded and assessed the experience of the Independent Arbitration Commission for Compensation for material and moral harm suffered by victims of enforced disappearance and arbitrary detention and their rightful claimants, as part of the process of settling the violations that occurred in the past in our country and formulating its philosophy and approach to the subject.

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<sup>1</sup> See in the appendices a reference document relating to the approach of the Independent Arbitration Commission for compensation for the material and moral harm suffered by victims of enforced disappearance and arbitrary detention and their rightful claimants, established pursuant to the Royal Decree issued on 16 August 1999.



# Chapter One

**STANDARDS, REFERENCES AND LESSONS LEARNED  
FROM OTHER EXPERIENCES**

# 1. Reparation in International Human Rights Law

Reparation has been the subject of increasing international interest as a result of the status it has acquired in the jurisprudential and theoretical innovations of the Human Rights Committee and the other committees involved. In addition to the political efforts expended in the framework of the above-mentioned committee, these innovations led to the adoption of a document including the basic principles and guidelines on the right of victims of gross violations of international human rights and humanitarian law to remedy and reparation<sup>2</sup>.

## 1.1. Reparation according to International Standards of Human Rights

Numerous international instruments relating to human rights, both global and regional, contain express provisions concerning the right of all individuals to be able to avail themselves of “means of redress” before a competent body when they become victims of grave violations of human rights. Some of these instruments refer specifically to the right to compensation in accordance with the law (Article 10 of the American Convention on Human Rights), and the right to appropriate compensation (Article 21.2 of the African Charter on Human and Peoples’ Rights). Other provisions speak more specifically to the subject like Article 9 (Paragraph 5) of the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which affirms “the right to reparation”. Moreover, the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14 Paragraph 1) affirms the necessity of ensuring that “the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation”.

In harmony with this, Article 14, Paragraph 6 of the above-mentioned Covenant and Article 11 of the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment contain express provisions asserting the victim’s right to compensation in accordance with the law of each state. For its part, the International Convention on the Elimination of All Forms of Racial Discrimination affirms in Article 6 provisions relating to the victim’s right to seek “just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination”.

Article 68 of the American Convention on Human Rights rules that compensation is due to the victim, and Article 63 Paragraph 1 states that “the consequences of the measure or situation that constituted the breach of such right or freedom should be remedied, and fair compensation should be paid to the injured party”.

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<sup>2</sup> The Human Rights Committee is a body composed of independent experts who monitor the implementation of the International Covenant on Civil and Political Rights by member states.

## 1.2. Standards relating to the Prevention of Crime and Criminal Justice

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>3</sup> contains important provisions concerning restoration of rights, compensation and assistance for such victims, including:

- They should be entitled to access to prompt redress;
- Victims should be informed of their rights in seeking redress;
- Offenders should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights;
- When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation;
- Victims should receive the necessary material, medical, psychological and social assistance.

To implement this, the Declaration urges states in Article 9 to “review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases”.

## 1.3. Reparation in the jurisprudence of some international bodies involved in human rights.

### 1.3.1. The Human Rights Committee

The issue of compensation of victims of violations of human rights referred to in the International Covenant on Civil and Political Rights is prominent in the jurisprudence of the Human Rights Committee<sup>4</sup> as a basis for the following rights:

- The right to life (Article 6);
- The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7);
- The right to liberty and security of person (Article 9), including:
  - The right not to be subjected to arbitrary arrest or detention;

<sup>3</sup> Issued by the 7th UN Conference on the Prevention of Crime and the Treatment of Criminals, adopted by General Assembly resolution 40/34 of 29 November 1985.

<sup>4</sup> The Human Rights Committee is a body composed of independent experts who monitor the implementation of the International Covenant on Civil and Political Rights by member states.

- The right to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention.
- The right to be treated with humanity during the period of his detention (Article 10);
- The right to a fair trial (Article 14 Paragraph 1), including:
  - The right to trial by a competent, independent and impartial tribunal;
  - In the determination of any criminal charge against him, the accused shall have the right to legal assistance and to communicate with counsel of his own choosing;
  - The right to be tried without undue delay;
  - The right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - The right to have his conviction and sentence reviewed by a higher tribunal;
  - The right not to be compelled to testify against himself or to confess guilt.

The jurisprudence of the Human Rights Committee insists, particularly when dealing with Articles 6 & 7 of the International Covenant on Civil and Political Rights, on the relationship between the means of redress that the victim(s) have available to them, whose goal is to ensure non-repetition, and the procedures that must be adopted by the state involved. Concerning the duty of member states to ensure that everybody whose rights have been violated has the right to benefit from effective means of redress (Article 2 Paragraph 3), the Committee announced time and again that states were obliged to adopt effective procedures to deal with the violations. It also enumerated a number of obligatory procedures depending on the nature of the violations and the state of the victim, including:

- Exhaustive investigation must be made concerning the facts;
- The victims(s) must receive a just settlement in accordance with the provisions of the International Covenant on Civil and Political Rights;
- The victim(s) must be provided with medical treatment;
- The victim(s) or their relatives must be given compensation for the injuries that they have suffered.

From the innovations that the Committee formulated as it examined the cases presented to it, two important things can be deduced:

- The first relates to the basis for determining the nature and value of the compensation for the physical and financial injuries suffered, giving special attention to moral damage;
- The second is the right of the victim's family to compensation for the suffering, the pain and the distress that they have suffered, as well as the right to compensation for the injuries that the victim himself has suffered.

The above-mentioned committee also gives the utmost importance to the aspect of deterrence and measures aimed at correcting situations. It will often demand that states parties adopt the procedures necessary to prevent recurrence of similar violations in the future.

### 1.3.2. The Committee against Torture

From the innovations that were formulated by the Committee, which was established by virtue of the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment in the course of examining the cases submitted to it, it is clear that it is demanding that the states involved do not deprive victims of torture or their rightful claimants of the possibility of resorting to means of redress. It also recommended the implementation of the provisions of Article 14 of the Convention, which affirms the right to fair and adequate compensation and the establishment of appropriate procedures to enable the victim to obtain such.

### 1.3.3. The Inter-American Court of Human Rights

In the context of the examination of cases of enforced disappearance against a number of countries of Latin America, especially its ruling issued on 29 July 1988, while examining the case of *Velasquez Rodriguez v Honduras*, the Inter-American Court of Human Rights<sup>5</sup> made a special innovation focused mainly on three elements, which are:

1. The duty of granting compensation in so far as it is connected to the duty to prevent, investigate and punish;
2. Determining damage;
3. Implementing the decision of the court.

From this innovation, it appears that the Inter-American Court of Human Rights adopted a similar approach to that adopted by the Human Rights Committee, in that it considered that the state's duty to prevent the occurrence of violations is linked to the duty to remedy the situation and grant reparation. Among the means of remedying the situation referred to by the court was the necessity of conducting an inquiry into the violations committed, punishing

<sup>5</sup> *Velasquez Rodriguez V Honduras* Judgement of July 29, 1988, Human Rights Law Journal Vol 9 1988; 212.

the victims, and granting appropriate compensation to the victims. In other words, reparation for injuries means affirming justice towards society, those responsible for the violations, and the victims, which means that compensation procedures are included as part of that justice. In this judgement, the court relied on Article 63.1 of the American Convention on Human Rights, ruling that the state involved is obliged to grant fair compensation to close relatives of the victim within six months of the issuance of that judgement, unless an alternative agreement is reached. The form and the amount of the compensation were also fixed by the court, which examined the case once again on 12 July 1989 and issued a decision regarding the matter of compensation<sup>6</sup>. In its decision, it fixed the extent and the content of the fair compensation that must be granted to the family of the victim. The court explained that the duty of appropriate compensation for injuries resulting from failure to meet an international obligation is one of the principles of international law. It considered that compensating the victim requires complete reparation for the injuries that he has suffered, including rectifying the former situation and remedying the situation resulting from the material and non-material injuries, including moral injuries.

#### 1.4. Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights

The document entitled “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 Humanitarian Law” is one of the most important documents whose contents were borne in mind by the Commission as it formulated its approach to reparation for injuries.

This document contains a set of principles and concepts including in particular:

##### **- The concept of the victim of grave violations**

Principle 5 of the document defines victims as “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.

“A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim”.

<sup>6</sup> Decision of the Inter-American Court of Human Rights , Series C, No.7 (1989).

## - The victim's right to reparation

According to Principle 9 of the document, “adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attribute to the State and Constitute gross violations” (...) and shall “establish national programmes for reparation and other assistance to victims”, while ensuring that the content of those programmes is proportionate to the gravity of the violations and the injuries resulting from them.

This principle enunciates various forms of reparation including:

- **Restitution:** Restitution includes restoration of liberty, legal rights, social status, family life, citizenship, return to one's place of residence, restoration of employment and return of property.

- **Compensation: Compensation can be calculated economically and covers**

- Physical or mental harm;
- Lost opportunities, including employment, education and social benefits;
- Material damages and loss of earnings, including loss of earning potential;
- Moral damage;
- Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

- **Satisfaction and guarantees of non-repetition, through**

- The cessation of continuing violations;
- Verification of the facts and full and public disclosure of the truth concerning the violations committed;
- Acknowledgement of responsibility for the violations committed, along with a public apology;
- An official declaration or a judicial decision restoring the dignity, the reputation and the legal and social rights of the victims and of persons closely connected with them;
- Judicial and administrative sanctions against persons liable for the violations;
- Commemorations and tributes to the victims;

- Inclusion of the results of the analysis of the violations in training and educational materials.

### **- The right to have access to relevant information concerning violations and reparation mechanisms**

Principle 10 urges states to “develop means of informing the general public and, in particular, victims of gross violations of international human rights law and international humanitarian law, of the rights and remedies and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access”. It also states that victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

## **2. Lessons Learnt from the Experience of Truth and Reconciliation Committees around the World**

The Commission examined the experience of truth committees regarding reparation and compensation, and through the comparative studies that it conducted, it concluded that there were different approaches to the subject. Every national experience has its peculiarities and specificities. Although the guiding principles of the different experiences are sometimes similar or the same, the contexts, the actors and the results differ from one experience to another.

Analysis of international experience regarding reparation has enabled the Commission to reach the following conclusions:

- In some ways, reparation programmes aim to provide individual justice for each individual victim by trying to compensate him for the injuries resulting from the grave violations that he was subject to. Despite the importance of such an attempt to deal with individual cases by erasing the effects of the violations to which victims were subject, focusing reparation programmes on that goal, when the process of dealing with the grave violations of the past requires confronting different forms of violence, does not lead to a complete solution;
- In reparation programmes where compensation is individualized, compensation is considered by the victims as a mere accounting operation. These experiences gave priority to financial aspects, because the criteria of justice were defined in terms of financial loss or economic damage. Programmes of this sort, through which victims were able to obtain financial benefits, applied the greater part of their procedures

to possessions and economic results relating to the victim. As a result of this, when victims were given the opportunity to talk about their sufferings resulting from the violations they had been subject to, during public hearings for example, they gave priority to talking about financial compensation because of the accounting approach to reparation that had become engrained in them;

- The Commission therefore came to the conclusion that a reparation programme must not concentrate on financial and accounting considerations by giving priority to documents of an economic nature, but rather should focus on those that talk about suffering. Such a programme makes people aware that the financial benefit distributed is limited and will not cover the real and mounting economic injuries. In addition to financial compensation that can be granted to victims, reparation is also concerned with other forms of reparation linked to procedures concerning transitional justice, including for example admitting responsibility for violations and uncovering the truth about what happened;
- None of the various reparation programmes around the world produced results satisfactory to all the victims. Trying to apply financial compensation in favour of all the victims in the experiences that tried to deal with violations of human rights that were committed in an intense manner has proved to be very expensive and does not always end up satisfying all the victims. This is in the knowledge that it is a mistake to consider the matter simply in terms of financial costs, since reparation programmes have in view a goal that transcends financial compensation. They are linked to structural changes since what is at stake is how to confront cases of subjection to intense and systematic violations;
- When it is a case of dealing with scattered and isolated cases springing from independent causes, one does not face the same challenges that one does when dealing with cases happening at the same time, springing from structural and systematic causes. There is a difference between ordinary crime and organized crime. Although the two cases appear similar when one is dealing with reparation, there is a difference between compensation in scattered cases, which is a response to ordinary crime, and a general treatment that is a response to organized crime;
- Attempting to apply the principle of total restitution is a danger to the process of democratic transition. In cases where it was applied, it led to divisions among the victims, dissipation of the efforts of the state, and the entrenchment of inequality because it sends an implicit message that violation of the human rights of the rich is more serious than violation of the rights of the poor, especially as it is being carried out in the context of democratic transition, one of whose basic goals is to strengthen an understanding of citizenship;

- Reparation programmes involve three overlapping elements: the victims, the beneficiaries, and the benefits. One can conclude from experiences round the world that there must be congruence between the victims and the beneficiaries. A reparation programme is perfect when all the victims can benefit from it. Excluding victims who deserve justice and reparation has two results. The first is that the effort that has been expended to achieve equity becomes deficient. The second is that it prejudices the agreements that led to the adoption of the reparation programme and thus damages the equity and reconciliation process in its entirety;
- At the same time, care must be taken that all the beneficiaries obtain the same benefits, which requires thinking about the contents of the recommendations, which are very complex. The reparation programme must not be confined to granting financial compensation. If the goal behind it is to satisfy the beneficiaries, it must also live up to the expectations of the victims, which is not without difficulties. The reparation programme must cover the distribution of a many of benefits: symbolic and material of different types:
- The reparation programme has three goals linked to justice:
  1. Recognition of the victims as citizens with rights. The reparation programme must contribute to creating trust between citizens and restoring trust in institutions;
  2. Contributing to the development of a feeling of social solidarity;
  3. The reparation programme must be linked to the effort to uncover the truth. A reparation programme that does not focus totally on economic aspects is likely to enable the victims to become involved with it as it constitutes a mechanism that permits them to express their sufferings and talk publicly about the violations they were subjected to. All the experiences confirm the great concern that victims give to the subject of uncovering the facts. In spite of the efforts expended in some cases to grant high compensation, the victims were not satisfied because compensation was not linked to uncovering the truth.
- The idea that the justification for compensation is suffering or that what justifies reparation is the violations committed requires that the after-effects of the crimes committed be taken into consideration, which results in a rise in the number of beneficiaries. However, if the goal of the reparation programme is to solve the problems linked to the grave violations of the past, a person does not have to be a direct victim in order to benefit from it, because society as a whole has been harmed as a result of those violations;

- However, the idea of adopting a large number of victims requires planning for a comprehensive institutional reform, which is a task that goes beyond the mandate granted to commissions like a truth and reconciliation commission. Indeed, such an idea transforms the reparation programme completely, turning it into a social services programme, which, despite its importance, is totally different from a reparation programme. Thus, what is required is to find a common thread linking the idea of the victim and the idea of compensation, which requires an innovation to define who are the victims, while bearing in mind that there must be congruence between victims and beneficiaries;
- Concerning the gender approach in some experiences of truth committees round the world, since it is noticeable that there are female victims of violations, who are usually indirect victims, the Commission came to the conclusion that in all the experiences around the world, women bear both the direct and the indirect consequences of violations. When they are indirect victims, they bear very great responsibilities that they were not accustomed to bearing. Insofar as international law does not limit the concept of the ‘victim’ to include only the direct victim but allows it also to cover indirect victims, some reparation programmes tried to grant importance to indirect victims, which category included women. One thing that can be done is to include the sexual crimes to which women are exposed among the violations dealt with.



## Chapter Two

**RECORDING THE APPROACH OF THE FORMER  
ARBITRATION COMMISSION AND THE  
CONCLUSIONS FROM THE ASSESSMENT**

The experience of the former Arbitration Commission represents an important stage in the process of settling the violations of the past. From the very beginning, the Equity and Reconciliation Commission concentrated on examining the experience of the Commission and recording its approach as a first stage, in preparation for conducting a comprehensive objective assessment of its experience as a second stage, and then beginning to draw up a vision of reparation in the light of the Commission of Equity and Reconciliation's statute.

## **1. Recording the Approach of the Arbitration Commission**

The Commission recorded the proceedings of the Independent Arbitration Commission for Compensation for the material and moral harm suffered by victims of enforced disappearance and arbitrary detention and their rightful claimants by returning to the bases, principles, criteria and rules that it adopted to estimate and calculate the compensation due to victims and their rightful claimants.

### **1.1. Bases of the Arbitration Commission's Approach to the Issue of Compensation**

#### **1.1.1. Normative Violations**

The violations that the Arbitration Commission addressed can be basically categorized in terms of enforced disappearance and arbitrary detention. On the basis of these two violations, it worked out its approach to the other violations. It thus considered the following as grave violations for its purposes in the context of the non-judicial settlement:

- Enforced disappearance;
- Arbitrary detention;
- Violations occurring during painful events;
- Forced exile outside the homeland;
- Forced exile within the homeland.

#### **1.1.2. Definition of Violations and Justifications**

The Arbitration Commission drew its inspiration from the international criteria relating to grave violations of human rights and adopted the relevant provisions of domestic law. In the light of that it arrived at principles that blended the constitutive elements of the definition and the justifications regarding the two main categories of violations that fall within its mandate.

On this basis, it defined ‘enforced disappearance’ as acts carried out by state apparatuses and represented in taking a particular individual without any legal right, depriving him of his freedom, and restraining him in a secret location, without giving out any information about him. He thus remains in a state of anonymity as an individual who is alive but about whom nobody knows anything and who is deprived of any legal protection.

“Arbitrary detention” was defined as restraint undertaken by state apparatuses without regard for the key conditions and procedures relating to deprivation of freedom because citizens were exercising their basic rights and in particular freedom of opinion, freedom of expression or the right to participate in public life, either through politics, trade unions or associations.

#### 1.1.3. The Principles behind the Arbitration Commission’s Approach to Compensation for Grave Violations

In its approach to compensation for physical or moral injuries arising from the violations subject of its mandate, the Arbitration Commission relied on the following guiding principles:

- Precise classification of the key violations mentioned above;
- The state is responsible for its apparatuses;
- The criterion of deprivation of liberty;
- The principles of justice and equity;
- Specifying the shared injuries and the personal injuries suffered by victims of detention in one group or similar groups according to the violations;
- Using comprehensive financial compensation for all physical and moral injuries resulting from the violations subject of its mandate.

When formulating the principles of its approach to compensation, the Arbitration Commission relied on the premise of not opening a new door to settlement.

#### 1.1.4. The Judicial Instrument

When specifying the violations, the Arbitration Commission bore in mind the extent of their effects in terms of referrals to the courts, and the subsequent fate of the file. In this context, it considered the following cases:

- Arbitrary detention followed by release;
- Arbitrary detention followed by the issue of a decision not to prosecute;

- Arbitrary detention despite the existence of a not-guilty verdict;
- Arbitrary detention and the issue of a guilty verdict;
- The issue of a guilty verdict and the enforcement of most of or more than the period of the sentence in an illegal detention centre;
- Arbitrary detention leading to a situation of enforced disappearance ending in release after a long period;
- Arbitrary detention leading to a situation of enforced disappearance during which the victim died;
- Forced exile to avoid the dangers caused by the arbitrary behaviour of national apparatuses and the impossibility of enjoying the protection of the law.

#### 1.1.5. The Consequences of Deprivation of Liberty

After studying the files submitted to it, hearing victims and examining the relevant documents and literature, the Arbitration Commission analyzed the effects of the grave violations on issues relating to the right to life, physical safety, human dignity and legal protection, starting from the principles of justice and equity. On this basis, the Commission formulated the effects in a paper on the consequences of deprivation of liberty, including the following items:

- Deprivation of contact with the outside world;
- Deprivation of communication with family;
- Injury resulting from depression and fear of the unknown;
- Pain suffered during and after detention;
- Permanent partial disability;
- Physical deformity;
- Handicap and chronic illness;
- Dependence on others;
- Deprivation of rehabilitation to face the living requirements;
- Deprivation of health care and services.

#### 1.1.6. Classification of the Locations where Gross Violations were Practised

Through studying the files, hearing victims and examining relevant details, the Arbitration Commission ended up with a special classification of the places where arbitrary detention

was practised in a systematic and intensive manner, based on length of time, location, and type of treatment.

The Commission considered that restraint in the locations concerned was contrary to the provisions of the law, since detention must take place within the bounds of the law, be in accordance with the regulatory provisions, and be conducted in such a way as to preserve and ensure respect for the right of the detained person to security, physical safety, and preservation of his dignity, in a framework of supervision by an independent judicial body, so as to check that periods of detention are reasonable and that all legal guarantees are available to the person involved.

Among these centres can be mentioned:

- Regular centres used for other purposes (like police stations and gendarmerie posts);
- Main centres used for the practice of grave violations (Dar El-Moqri, Derb Moulay Cherif);
- Special centres used to practise grave violations (the Complexe);
- Group detention centres (Courbiss);
- Centres that were like annexes (military barracks, estates, villas).

## 1.2. Criteria Used for Compensation

In its estimates of compensation, the Arbitration Commission has relied according to the cases on the following criteria:

- The circumstances of detention, in terms of length of time, place and treatment, and as regards the legal instrument, whether or not it existed;
- The person's presumed remaining active life since the date of his disappearance;
- The person's income, updated and raised if necessary to the minimum level required to ensure a decent life in current circumstances;
- Reliance on a suitable minimum income for those who did not have a fixed income before the violation;
- Family responsibilities, taking into account whether or not the victim was before his death the bread-winner and the one responsible for his family;
- The results of expert medical reports, or failing that the relevant medical file submitted.

## **- The Technical Medical Elements for Estimating Injuries**

The Arbitration Commission conducted, systematically in a number of cases, especially those relating to Tazmamart, Agdez, Kelaât M'gouna, original expert medical reports, complementary or second expert evaluation when necessary, for individuals or groups, and specialized when the case required. The task assigned to the experts was as follows:

- To summon the victim within a reasonable period, while notifying him of his right to have a doctor of his choice monitor the preparation of the expert report if he so desired;
- To examine the victim and describe the illnesses and the injuries that he has suffered, and determine to what extent they are linked to the circumstances of detention, and what treatments or surgical operations he has undergone or will undergo, as well as the expenses related to them;
- To determine the overall proportion of permanent partial disability resulting from these injuries;
- To determine the severity of the effects resulting in terms of physical pain, handicap, and repercussions on his working life;
- To determine whether the victim needs assistance from a third party in order to face the daily living requirements;
- To use whatever technical means they consider necessary, and where necessary to seek the help of another specialized sworn doctor to discover the various injuries and to respond to all the points raised.

### **1.3. Principles and Units of Account**

The Commission recorded the principles and the units of account utilized by the former Arbitration Commission in estimating the financial compensation. In general, these were determined by utilizing mainly the criterion of deprivation of liberty, while bearing in mind the circumstances and locations in which the grave violations were committed and the previous economic situation of the victims.

### **1.4. Determining the Beneficiaries from Compensation**

The Arbitration Commission has determined the victims, their rightful claimants or their heirs benefiting from compensation on a case-by-case basis, as follows:

- Persons who were directly subject to a violation but survived;

- The rightful claimants of those who died during detention or disappearance, determining the compensation due to each one according to the type and extent of the direct personal injuries resulting from the loss of the victim;
- Considering those who died shortly after they were released as if they had died because of detention;
- The heirs of those who died after release (as a result of a cause unrelated to detention). This is done by distributing the compensation among the heirs according to the principles of Shari'a law.

### 1.5. Cases outside Competence

The Arbitration Commission decided to consider a group of cases submitted to it outside its subject matter competence. These are as follows:

- Execution in implementation of a judicial sentence;
- Victims of the Skhirat coup of 10 July 1971;
- Death as a result of bullet wounds during specific incidents;
- Detention in Ksar Tagounite;
- Exceeding the period of placement in custody in public order cases;
- Demands to return to work;
- Reinstatement;
- Benefit from retirement pensions;
- Benefit from health and social cover;
- Obtaining accommodation;
- Restitution of moveable property and livestock that are not proved to have been lost, and of real estate;
- Employment of descendants;
- Administrative promotion;
- Obtaining passports;
- Discovering burial places and handing over mortal remains.

## 2. Conclusions from the Assessment of the Experience

Undertaking an objective evaluation of the work carried out by the Arbitration Commission requires that one remember the circumstances in which it was established. It was set up in response to a recommendation issued by the Advisory Council on Human Rights (CCDH) calling for a settlement of the enforced disappearance file. It restricted the issue of dealing with the violations to which victims of enforced disappearance were subjected to financial compensation. However, the sphere of compensation was broadened pursuant to the royal decree issued on 16 August 1999 ruling that the Commission should be set up and expanding the mandate of the Commission to include arbitrary detention.

Despite the constraints that the said commission faced, represented in particular in the limited mandate with which it was invested, it left behind a significant body of work that the Equity and Reconciliation Commission depended on as it continued the work of the former commission concerning financial compensation to victims depending upon the same arbitration basis as it depended on in exercising its competences. This work also enabled it to develop a new concept of reparation by taking into consideration the developments taking place in international law and the conclusions from the experience of truth committees round the world while bearing in mind the specificities of the Moroccan experience.

### 2.1. The Special Features of the Innovations

The innovations formulated by the Independent Arbitration Commission in the context of the Moroccan approach to settling the past of grave violations of human rights can be summarized under the following main points:

- Clear acknowledgement of the state's political and civil responsibility for the grave violations of human rights committed in the past. This was formulated clearly in all aspects of the positive arbitral decisions, in addition to the fact that the elements of this responsibility were highlighted in the decisions to refuse reparation;
- Broadening the scope of innovation as regards subject matter competence, which came to include, in addition to enforced disappearance and arbitrary detention, other violations at the head of which were those resulting from the civil disturbances that saw the occurrence of grave violations of human rights;
- Uncovering past events that were the occasion of grave violations of human rights, which helped significantly to pave the way for the issue of discovering the truth and analyzing the contexts linked to those events;
- Organizing individual hearings of victims, which it is impossible to imagine happening in front of an official commission outside the judicial settlement. The

need also became apparent to organize public hearings in accordance with new forms;

- Checking cases and the extent of arbitrary detention for political, trade union, and associational reasons;
- Taking into account the effects of arbitrary detention on the legal situation of the victim by referring the matter to the judiciary;
- Laying down a system of financial and moral compensation, depending on the following:
  - The criterion of deprivation of liberty, while bearing in mind the circumstances and locations in which the grave violations were committed and the previous economic situation of the victims;
  - Distinguishing, in a hypothetical manner and in favour of the victims, between shared injuries that they had suffered and the individual injuries that they had suffered, on a case-by-case basis;
  - Covering all types of injuries prejudicing physical safety in case they were proved on the basis of expert medical reports, original, complementary or second expert assessment, and presential in cases of enforced disappearance;
  - Laying down measures for compensation that were generally compatible with the criterion of deprivation of liberty in accordance with the appropriate case;
  - Granting legal status to women and children as beneficiaries from compensation due to rightful claimants.

## 2.2. Deficiencies

The former Arbitration Commission took a legal approach to the task it was entrusted with, since the innovations it undertook were inspired by the bases of civil law in particular. Among the results that this led to are the following:

- Focusing attention on legal procedures, which resulted in treating the violations which it was empowered to investigate in isolation from the other aspects which were no less important as far as the victims were concerned since they represented elements in the achievement of justice regarding the violations they were exposed to;
- Focusing the effort expended by the Commission on compensating victims economically by laying down detailed criteria and standards of measurement with the aim of providing justice in a large number of very varied and exceedingly

complicated cases that were presented to it. One of the results of that was that they used the actual or the lowest income in estimating financial compensation, which rendered the decisions issued by it liable to litigation by some of the beneficiaries.

### 2.3. General Conclusions

The Independent Arbitration Commission represents a qualitative advance in the process of developing the Moroccan approach to settling the past grave violations of human rights. Despite its limited mandate, it was able to make significant progress in the area of reparation relating to financial compensation in particular, and to give the opportunity to victims who presented petitions to it to express their suffering. Thus it represented an important stage in the process of public acknowledgement of the reality of the grave violations of human rights and establishing the state's responsibility for them.

It also paved the way for the establishment of the Equity and Reconciliation Commission through the dynamic it created within society. This is mainly represented in the intellectual struggle it kindled concerning the necessity of completing the process of settlement through raising the subject anew within what came to be internationally known as transitional justice in the framework of the democratic transition that the country is experiencing.

## **Chapter Three**

### **THE COMMISSION'S APPROACH AND PROGRAMMES IN THE FIELD OF REPARATIONS**

The Equity and Reconciliation Commission prepared its policy and its programmes regarding reparation on the basis of a set of ideas and opinions found in papers on the subject written by its members, and from conclusions drawn from discussions that took place within it, bearing in mind the broad outlines of national experiences round the world, and seeking guidance from the bases and principles of the relevant parts of international law.

Taking advantage of all that, the Commission laid down the bases for a philosophy and approach to reparation in the context of the comprehensive vision it had of the mandate enunciated in its statute.

## **1. The Commission's Philosophy of and Approach to Reparation**

### **1.1. Elements of the Philosophy of and Approach to Reparation**

The Commission's philosophy towards reparation was based on the basic principles of justice and equity, and on what has come to be known round the world today as transitional justice, since reparation is a set of procedures that the state must take to strengthen justice in order to remedy or make reparation for the grave violations of human rights in a manner commensurate with their gravity and the injuries suffered by the victims as a result.

The Commission's comprehensive approach is based in particular on the following:

- Uncovering the truth and drawing lessons, in such a way as to preserve the memory and furnish guarantees of non-repetition;
- Bandaging the wounds of the past by granting justice to victims, reinstating them and the whole of society and considering reparation as an official acknowledgement by the state that the victims and their families are fellow citizens;
- Reconciling Moroccans with their history and with themselves, with the intention of releasing their energies, restoring trust between all constituents of society, involving everybody in building a state based on law and institutions and promoting the culture and values of human rights;
- Putting the process of truth, equity and reconciliation in the context of democratic transition, and strengthening the trust of citizens in democratic institutions;
- Considering the issue of reparation as more than a set of measures or procedures involving individual or group cases. Above all this, it is a process aiming at strengthening the feeling of citizenship;
- Strengthening group solidarity bearing in mind the rights of present and future generations;

- Bearing in mind the special place of women in the reparation programmes, thus helping to strengthen the gains that have been achieved in the field of improving the situation of women;
- Making proposals for the adoption of measures to ensure the permanent effectiveness of all forms of reparation with regard to the victims.

To this end, the Commission has considered all the activities that it has organized under the heading of reparation, including investigations, field visits, public hearings and dialogue sessions, as real opportunities to honour and reinstate the victims.

## 1.2. The New Components in the Approach to and Philosophy of Reparation

### 1.2.1. Community Reparation

The Commission's statute referred expressly to the concept of collective or community reparation. This enabled it to establish its approach to the subject on the results and findings of the on-site visits to the regions that had experienced incidents in the past and were characterized by the occurrence of grave violations, or those in which were located illegal enforced disappearance or secret detention centres. To the same extent, the Commission was able to use the conclusions of the studies and research available to it, and the analyses and discussions conducted concerning them, in order to develop a mediation mechanism in the fields of economic and social development in the regions involved.

The Commission was also helped in formulating this new direction by the participative approach it had adopted with all those involved throughout its work in the regions involved: during the investigations it conducted to uncover the facts about enforced disappearance; when it was completing the information and details concerning a group of files submitted to it; when it was managing the cases linked to the burial places; and through the organization of public hearings in those regions.

The Commission also involved the human rights activists of civil society, working in the field of local development and also the development agencies and institutions working in those regions.

On this basis the Commission was able, in cooperation and partnership with the above-mentioned parties, to examine economic and social development programmes. This meant that community reparation could take on its full meaning in the approach to reparation, which helped the Commission to make proposals to strengthen existing projects and to propose that attention be given to other fields that were not mentioned in the projects that had been planned. This strengthened the community reparation approach and the mediation mechanisms.

### 1.2.2. Incorporating the Gender Approach into the Reparation Policy

In incorporating the gender approach, the Commission was careful to supplement its conception of this field in the following ways:

- Supplementing and processing the data it had about women victims, and deriving trends or classifications in terms of groups, incidents, regions and violations;
- Revisiting the data and the information relating to women, derived from the results and conclusions of the field visits organized by the Commission when it was conducting investigations or organizing public hearings or other activities;
- Categorizing the particular violations and injuries that were suffered by women, developing the conceptual framework for the Commission's philosophy on this basis, and translating it into different types of reparations;
- Conducting a national study on women and grave human rights violations of the past.

## 2. The Commission's Reparation Programmes

The Commission's comprehensive concept of reparations did not distinguish uncovering the truth and the official public acknowledgement of it from reinstatement and preserving the memory. Therefore, it considered that reparation should not be restricted to compensation for physical and moral injuries, but should go beyond this to include other individual injuries, relating to the settlement of legal, administrative and employment situations, physical and psychological rehabilitation and social reinsertion. It should also include reparation for community injuries, whether those suffered by regions where grave violations occurred in the past and took on an intensive and systematic character, or by regions that witnessed the establishment of secret detention centres.

Starting from a data base and from an in-depth analysis of the files of the petitioners, especially those considered as falling within the temporal and subject-matter competences of the Commission, programmes were defined that aimed to grant reparation to individuals and communities, while always bearing in mind the specificity of each individual programme. With regard to individual reparation, the Commission used the following programmes:

- Reinstatement by uncovering the truth in an attempt to erase the effects of the violations;
- Financial compensation for physical and moral injuries;
- Psychological and physical rehabilitation;

- Social reinsertion;
- Providing education and vocational training;
- Settling legal situations.

With regard to community reparation, the Commission used the following programmes:

- Open dialogue with the different actors and associations involved in citizenship, human rights and local development, operating in the regions which were subject to violations in the past;
- Mediation so that the injured regions might benefit from economic and social development programmes and receive justice and reinstatement.

## 2.1. Individual Reparation

### 2.1.1. Reinstatement by uncovering the truth and erasing the effects of the violations

The Commission paid attention to the justifications adopted in the arbitration decisions, since they represent an expression of its philosophy and the way it made reparation to victims, and an additional tool to help in the reinstatement of victims because of the summaries of the events asserted, the truth they reveal about the violations the victims were subject to, and the way they acknowledge the responsibility of state apparatuses for them.

### 2.1.2. Financial Compensation

The Commission gave great importance to the issue of financial compensation within its comprehensive concept of reparation. It compensated victims of grave violations in accordance with principles, criteria, rules, procedures and measures in harmony with its aims, which were established after exhaustive discussions. This was crowned by the preparation of a special grid of criteria and units of account used to assess the financial compensation due for grave violations falling within the Commission's remit to victims and to rightful claimants. This grid was developed and made more precise in the light of deliberations regarding the different categories with the aim of achieving justice and equity, while bearing in mind the various special features.

#### a. The Concept of compensation in reparation

Financial compensation is one form of reparation used by the Commission, and represents an acknowledgement of the state's responsibility for the grave violations that the victim was subject to.

Whatever the amounts spent on the victim, they cannot compensate for the suffering and the physical, psychological and financial injuries that the victim has been subject to. The main value of financial compensation lies in the contribution it makes, along with the other forms of reparation, to restoring the dignity of the victim, helping him to be reinserted into society, and lessening the pain resulting from these violations.

Relying on aims related to achieving justice and equity, the Commission linked financial compensation with the other goals it wanted to achieve relating to reconciliation and institutional, legislative and educational reforms, as well as other measures it proposed to avoid future repetition of the grave violations.

#### b. Basic principles

In the view of the Commission, the issue of financial compensation to victims of grave violations is based on the following basic principles:

- Consideration of the dignity of man and the values of citizenship;
- Deprivation of liberty with regard to all victims of enforced disappearance and arbitrary detention;
- The occurrence of grave violations other than enforced disappearance or arbitrary detention, of an intensified and systematic character;
- The element of gender;
- Social solidarity;
- Equality between victims.

#### c. Criteria used

The Commission has used the following main criteria in estimating financial compensation for victims of grave violations of human rights:

- Considering deprivation of liberty as a common criterion for all the victims. This means that financial compensation will be equal for all, while bearing in mind the periods they spent in enforced disappearance or arbitrary detention;
- Considering the special nature of enforced disappearance in that it is a combination of abuses that violates a number of basic human rights, at the head of which is the right to life. At the very least, it constitutes a threat to the continuation of that right;

- Bearing in mind the circumstances of detention, like being exposed to other accompanying violations like torture, assault, ill-treatment and infringement of dignity;
- Considering the special circumstances of women, and the specificities of the violations they were exposed to;
- Granting victims whose administrative and financial situations have been settled, or may be settled, the same benefits as other victims, with the exception of compensation for loss of income or loss of opportunities;
- Determining lump-sum compensation on the basis of income and opportunities lost for the rest of the victims.

#### d. Category-based ways for determining financial compensation

In addition, financial compensation for victims takes into account their social situation, the extent to which they benefit from other reparation programmes. By categorizing victims' cases in terms of their social and administrative situations, the following categories were established:

- Persons whose employment, administrative and financial situations have been settled. Such people can benefit from compensation for physical and moral injuries like all the other victims;
- Persons whose employment, administrative and financial situations have not been settled. In these cases, it has been necessary, in addition to granting compensation for physical and moral injuries, to make recommendations for the settlement of those situations;
- Persons who were pursuing their studies, were able to pursue them during the period of detention, and successfully reinserted themselves after their release. Their compensation has been assessed on the basis of physical and moral injuries;
- Persons who were pursuing their studies, were able to pursue them during the period of detention, but have not successfully reinserted themselves after their release. Their compensation has been assessed on the basis of physical and moral injuries, and recommendations have been made for their reinsertion;
- Persons who were high school or university students and were not able to pursue their studies during the period of their detention. Provision has been made for them to benefit from educational and vocational training programmes if their age permits, and they have received compensation for physical and moral injuries;

- Persons working in the liberal professions or farming, or in the private sector. Compensation has been paid to them for physical and moral injuries, and they have been allowed to benefit from other reparation programmes;
- Persons who have reached an age that does not permit them to pursue any trade, and/or who cannot, by virtue of their training, pursue any trade. Compensation has been paid to them for physical and moral injuries, and they have been offered social services.

e. The Grid for assessing financial compensation

e.1. The victim survived-compensation of the direct victim

e.1.1. In case of enforced disappearance

Circumstances of disappearance (and effects)		Loss of income or opportunities		
Deprivation of liberty	Threat to the right to life and harsh treatment	Health conditions not covered by a medical programme bearing in mind the accompanying injuries and gender	Income	Opportunities

- **Distinguishing enforced disappearance from arbitrary detention** in view of the gravity of the former violation and the fact that it is a combination of violations that results in the violation of a number of basic human rights, in particular the right to life.

- **Compensation for deprivation of liberty**

- Compensation is calculated in terms of months using a standard amount as a unit of account for all victims, on a basis of complete equality between them;
- Compensation is calculated by multiplying the number of months spent in detention by this unit of account.

- **Compensation for the circumstances and effects of detention**

This covers two components:

- **Threat to the right to life and harsh treatment**

- Compensation in terms of months by using a unified amount as a unit of account for all victims on a basis of complete equality between them. Compensation is calculated by multiplying the number of months the victim spent in detention by this unit.

- **Health conditions not covered by a medical programme**

- In view of the existence of a physical and psychological rehabilitation programme, compensation is in principle not given for injuries to health;
- Compensation for each point of partial permanent disability in case of physical injuries not covered by a medical programme using an amount with an upper and a lower limit;
- The lower limit is used in case of minor accompanying injuries;
- The upper limit is used in case of major accompanying injuries;
- The upper and lower limits are raised if the victim is a woman.

- **Loss of income or opportunities**

- **Loss of income**

- Compensation is not assessed on the basis of the former income of the victims, but by determining lump-sum compensation on the basis of a unified unit of account for all victims on a basis of absolute equality multiplied by the number of months the victim spent in detention.

- **Loss of opportunities**

This is compensated by a lump sum ranging between an upper and a lower limit bearing in mind the following:

- Loss of studies;
- Complete loss of the future expected;
- Loss of work apart from public employment;
- Gender, with respect to which a sum of between 10% and 20% is added;
- The length of time the victim spent in prison if it exceeded ten years.

e.1.2. In case of Arbitrary Detention

Circumstances and effects of detention			Loss of income or opportunities			
Maltreatment and infringement of dignity	Deprivation of liberty	Torture	Health conditions not covered by a medical programme	Opportunities	Income	Other consequences

**- Compensation for the circumstances and effects of detention**

This includes three components:

• **Ill-treatment and infringement of dignity**

- Compensation in terms of months by using a standard amount as a unit of account for all victims on a basis of complete equality between them. Compensation is calculated by multiplying the number of months the victim spent in detention by this unit;
- Bearing in mind the circumstances of detention, whether it occurred in a legal or illegal detention centre;
- The financial value of the two limits is raised when the victim is a woman.

• **Torture**

- Compensation is paid using a lump sum with an upper and a lower limit calculated on the basis of the effects and the circumstances of the torture;
- Bearing in mind the circumstances of the torture, whether it occurred in a legal or illegal detention centre;
- The financial value of the two limits is raised when the victim is a woman.

• **Health conditions not covered by a medical programme**

- In principle, compensation is not paid for injuries to health in view of the existence of a physical and psychological rehabilitation programme;
- However, compensation is paid for each point of partial permanent disability in case of physical injuries not covered by a medical programme using an amount with an upper and lower limit;
- The lower limit is used in case of minor accompanying injuries;

- The upper limit is used in case of major accompanying injuries;
- The upper and lower limits are raised if the victim was a woman;

## **- Loss of income or opportunities**

### **• Loss of income**

Compensation is not assessed on the basis of the former income of the victims, but by determining lump-sum compensation on the basis of a unified unit of account for all victims on a basis of absolute equality multiplied by the number of months the victim spent in detention.

### **• Loss of opportunities**

This is compensated by a lump sum ranging between an upper and lower limit bearing in mind the following:

- Loss of studies;
- Complete loss of the future expected;
- Loss of work apart from public employment;
- The type of work, with respect to which a sum of between 10% and 20% was added;
- The length of time the victim spent in prison if it exceeded ten years
- As regards persons who were arrested during civil disturbances, they are compensated for loss of opportunities for those who deserve such treatment (high school and university students and people with jobs).

### **• Other consequences**

This refers to the period that the victim spent in prison as a result of arbitrary detention followed by a trial that was influenced by that detention. Compensation is calculated in terms of months using units of accounting lower than those used to compensate for deprivation of liberty, while distinguishing between the following cases:

- Conviction and sentence to a term of imprisonment, enforced;
- Conviction and sentence to a freedom-depriving penalty, suspended;
- Non-prosecution or a not-guilty verdict;
- Conviction and sentence to a term of imprisonment, enforced, in the context of civil disturbances.

e.2. The victim died during the violation-compensation for the spouse, children, parents, and brothers and sisters

e.2.1. In case of enforced disappearance

Circumstances and effects of the violation			Material injury
Deprivation of liberty and harsh treatment	Deprivation of the right to life	Concealment of fate after death	

### - Circumstances of the violation

This includes the following components:

- Deprivation of liberty and harsh treatment;
- Deprivation of the right to life;
- Concealment of fate after death;
- Distributing the compensation among the following relatives: the wife, the husband, the children, the parents, the brothers, the sisters;
- Fixing a ceiling for compensation for the circumstances of the violation going to the children if they number more than five, provided that it is divided between them equally;
- Fixing a ceiling for the total sum of compensation allocated to brothers and sisters if they number more than five. This sum is divided among them equally.

### - Material injuries

- Compensation is calculated in months beginning from the date of disappearance;
- Compensation is granted for the remainder of active life beginning from the date of disappearance up to the age of sixty, using a lower overall limit so that it might be distributed among the beneficiaries;
- Proportions for the distribution of compensation for material injury:
  - The mother - 10%; the father - 10%; the spouse - 40%; the children - 40% (this portion is to be distributed equally between the children);
- If the husband and wife were divorced during the violation, the portion going to the surviving spouse is reduced proportionally depending on the length of the marriage.

### e.2.2. In case of Arbitrary Detention

#### - **Death as a result of torture during arbitrary detention**

In this case the same units and rules are applied as in the case of death during enforced disappearance.

#### - **Death in prison**

The same units are used, reduced by half without taking into consideration the category of concealment of death.

### e.3. Death of the victim after the violation

The grid found in Paragraphs 1.1. and 1.2. above is applied in this case;

- Compensation goes to the spouse, the children and the parents;
- Proportions for the distribution of compensation: the mother - 10%; the father - 10%; the spouse - 40%; the children - 40% (this portion to be distributed equally between the children);
- If the husband and wife were divorced during the violation, the portion going to the surviving spouse is reduced proportionally depending on the length of the marriage.

### e.4. Death apart from cases of enforced disappearance or arbitrary detention- compensation for the spouse, the children, the parents, the brothers, the sisters

Circumstances of violation		Material injury
Deprivation of the right to life	Concealment of body after death	

Compensation for the spouse, the children, the parents, the brothers and the sisters for:

#### - **The circumstances of the violation, including two components**

- Deprivation of the right to life;
- Concealment of the body after death:
  - A lump-sum compensation for the spouse, and the children (with equal sums going to each of the latter);

- Special compensation for the brothers and sisters, with an overall ceiling fixed if they number more than five, the compensation to be divided equally between them.

### - Material injury

- Compensation is calculated in months beginning from the date of death;
- Compensation is granted for the remainder of active life beginning from the date of disappearance up to the age of sixty, using the lower overall limit to be distributed among the beneficiaries;
- Proportions for the distribution of compensation for material injury:
  - Proportions for the distribution of compensation for material injury in this case: the mother - 10%; the father - 10%; the spouse - 40%; the children - 40%;
  - If the husband and wife were divorced during the violation, the portion going to the surviving spouse is reduced proportionally depending on the length of the marriage;
  - Fixing a ceiling for compensation for the circumstances of the violation going to the children if they number more than five, provided that it is divided between them equally.

#### e.5. Forced Exile

Direct compensation for the victim

	Compensation for the period in years
Forced exile	

- Compensation in years for the period of exile;
- Utilization of a lump sum on the basis of complete equality between all the victims;
- The amount due is reduced by 50% in case the administrative, employment and financial situation of the person concerned has been settled.

#### e.6. Being forced to go into hiding inside the homeland

- The same unit of account is to be used as for forced exile, but the sum due should be reduced by half if the employment, administrative, and financial situation of the person involved has been settled.

## e.7. Rape

	Lump-sum compensation
Rape	

- Compensation is to be paid for rape on the basis that it is a unique violation;
- Utilization of a lump sum on the basis of complete equality between all the victims;

In all cases the principle is affirmed that the specificities of each case should be borne in mind when determining appropriate compensation. This principle has been activated with regard to many victims, both male and female.

### 2.1.3. Other Forms of Individual Reparation

In accordance with the provisions of its statute, the Commission has focused on, in addition to financial compensation for injuries suffered by the victims, giving reparation for other individual injuries, namely: physical and psychological rehabilitation, social reinsertion, settling employment, administrative, and financial situations, settling legal situations, and examining cases of dispossession.

#### a. Settlement of legal situations

By settlement of legal situations is meant the nullification of previous offences recorded in judicial and/or security registers concerning persons who were subject to arbitrary detention or forced exile, and against whom judicial verdicts and decisions were issued for misdemeanours or felonies, or persons who were the subject of prosecutions or investigative orders but against whom no judgements were issued.

It also means lifting any hindrances that individuals might face at border crossing points when leaving or entering the homeland, and allowing individuals involved in suspended cases to exercise their right to obtain a passport.

#### b. Settlement of employment situations: administrative and financial

By settlement of administrative situations (employment and financial) is meant: finding solutions for some suspended cases involving some victims of arbitrary detention and forced exile for political, trade union or associational reasons, who held public or semi-public office and whose situations were not settled totally or partially in accordance with the measures spelt out in the Prime Ministerial Memorandum dated 04/05/1999.

The said memorandum covers the settlement of the administrative and financial situations of former detainees and persons who were forced to go into exile. From the organizational point of view, it concerned the following forms:

- Settling the situation of those who have been suspended, on the basis of the budgetary posts that they still occupy, counting the period of suspension for promotion in rank on a fast track basis without requiring a quota for their promotion from grade to grade;
- Settling the situation of those who have been dismissed by reinserting them and providing budgetary posts for them while comprehensively rearranging their career development in the same way as those who have been suspended, while granting them overall compensation for the period between the date of their suspension and the date of their reinsertion.

With regard to those who have been dismissed and have chosen not to return to their work, it has been decided to pay compensation estimated at half the sum due in the context of this settlement. This settlement is paid from the date of their dismissal until the date of the settlement - February 1999. It has been decided to pay it over a period of two years.

#### c. Social reinsertion

The social reinsertion programme was intended to prepare recommendations meant to find solutions for:

- Cases of victims who did not have a social position and because of their age or health are no longer able to perform any type of work or are not capable of social reinsertion;
- Cases of victims who worked in major private institutions and who lost their jobs. The Commission recommended that their situations should be settled with the institutions involved, if they had not already been settled;
- Cases of victims who were pursuing their studies and were able to obtain educational certificates during the period of their detention but were not successful in reinsertion after being released;
- Cases of victims who were high school or university students but were not able to pursue their studies during the period of their detention, and were unsuccessful in reinsertion after their release;
- Cases of minor children of victims who, after the victim was subject to the violation, were unable to complete their education and were unsuccessful in reinsertion.

#### d. Health rehabilitation

The Commission considers the health care of victims of grave violations of human rights as one of its work priorities, and has included it in a comprehensive approach to reparation. Therefore, since it was established, it has taken measures to offer health services to victims and to intervene in emergencies by:

- Establishing a medical unit at the Commission's headquarters, where doctors and psychologists work. It has examined about 1,000 victims;
- Organizing visits to the regions where medical tests have been carried out on a considerable number of victims. They have been given medicines and necessary emergency treatment and a number of them have also been transferred to specialist medical centres in Agadir, Casablanca and Rabat;
- A partnership agreement has been concluded with the Ministry of Health aiming at creating a framework for cooperation between the Ministry of Health and the Equity and Reconciliation Commission in order to improve the physical and psychological state of the victims.

In order to diagnose the conditions of persons complaining of physical or psychological illnesses, the Commission analyzed information given in medical documents contained in victims' files and with that as a basis, conducted a study of the health situation of victims.

The main goal of this study was to assess the nature and the severity of the illnesses that the victims of human rights violations were suffering from and to look for solutions so as to provide permanent cover for their treatment, both for individuals suffering from illnesses or disabilities, and for the group of victims and their rightful claimants.

Analysis of the files submitted to the Commission showed that 9,992 of them (64.1%), related to victims or rightful claimants who had stated that they suffered from injuries to health. Of these, there were 2,006 (20.1%) whose files contained medical documents of high or medium worth for proving their health situation and/or who had previously undergone medical examinations either in the Commission's medical unit or in the framework of the examinations that the Commission organized on-site in partnership with the Ministry of Health.

To analyze the data contained in the medical documents and to formulate the diagnosis or diagnoses and the main findings concerning the case of each victim, the Commission used a group of doctors who were either experienced general practitioners or specialists, who were put at its disposal by the Ministry of Health.

The results of the analysis of the illnesses diagnosed with regard to 2,006 victims were gathered into groups in accordance with the International Classification of Diseases (ICD-10), which enabled it to uncover the general health aspects of the injuries resulting from the violations, delimiting different sorts, especially chronic illnesses linked to age with regard to a group of victims, whose acuteness increased the effects of the different physical and psychological injuries that they were subject to.

This study enabled the Commission to submit proposals and recommendations (c.f. the recommendations) meant to find solutions for cases of victims who deserved health rehabilitation. Victims whose petitions the Commission has stated that it has received will be followed up.

#### e. Restitution

Restitution involves filing recommendations to the bodies involved with the aim of encouraging them to find solutions for real estate whose owners claim that it was seized from them by the state or bodies attached to the state after they or their loved ones had been subject to grave violations, so that the said owners no longer gained any benefit from the property.

## 2.2. Community Reparation

The Commission is non-judicial in character, which means that it had to deal with victims in accordance with the principles of justice and equity and take into consideration all the components of the right to remedy and reparation. In the light of this, it asserted a comprehensive and total understanding of reparation by going beyond the traditional forms that focus on the individual by also dealing with that side of the issue that involves communities, districts and regions that had been harmed by the grave, systematic, and intensified violations that they witnessed. It also asserted that reparation involves the whole of society, in that the effects of the violations that were committed touched everybody.

Therefore, using a mechanism of mediation as regards some programmes, and direct intervention in others, the Commission proposed tangible measures aimed at community reparation for regions that had witnessed the occurrence of grave violations and were included in the punishment that ensued. They were subject to marginalization, and were prevented from benefiting from development projects, their image was tarnished and their reputation was sullied by the presence of illegal detention centres within their borders. Therefore, the Commission sought to reinstate the victim, in the general sense of the term, by proposing that some detention centres be converted into socio-economic projects within the framework of a positive approach to preserving the memory.

The content of these programmes can be summarized as follows:

- Reinstatement of victim communities, according to the nature and the extent of the injuries resulting from the violations linked to the incidents or the detention centres that the regions were involved with;
- Reinstatement of the individual or the society as a whole, including restoration of trust in institutions and in the rule of law, in addition to what was achieved during the public hearings of victims in six regions and the dialogue sessions on subjects included in the reform projects that have been started in our country.

Reparation in general also includes the following:

- Public and official acknowledgement of the truth of the violations;
- Erasing the effects of the violations;
- Entrenching guarantees of non-repetition;
- Preserving the collective memory.

### 3. A Table Presenting the Programmes Used by the Commission

#### a. Individual Reparations

Programme	Content	Beneficiaries
<p><b>Reinstatement by uncovering the truth and erasing the effects of the violations</b></p>	<ul style="list-style-type: none"> <li>• Proving and acknowledging the violation that the victim was subject to;</li> <li>• Erasing the effects of the violations.</li> </ul>	<ul style="list-style-type: none"> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Victims of forced exile;</li> <li>• Rightful claimants of the groups mentioned above;</li> <li>• Rightful claimants of individuals who died during civil disturbances from injuries suffered as a result of excessive use of force.</li> </ul>
<p><b>Psychological and Physical Rehabilitation</b></p>	<ul style="list-style-type: none"> <li>• Conduct of medical tests and specialist reports;</li> <li>• Medical and psychological referral to public and non-public health centres;</li> <li>• Intervention in cases of serious emergency by providing:               <ul style="list-style-type: none"> <li>- Medical and surgical treatment;</li> <li>- Physiotherapy;</li> <li>- Psychological treatment;</li> </ul> </li> <li>• Conducting a study and preparing a recommendation concerning a rehabilitation centre for victims;</li> <li>• Presenting a recommendation for the provision of health cover by inclusion in social insurance institutions.</li> </ul>	<ul style="list-style-type: none"> <li>• Persons who were subject to enforced disappearance and who suffer from illnesses as a result of the violations they were subject to;</li> <li>• Persons who were subject to arbitrary detention and who suffer from illnesses as a result of the violations they were subject to;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Victims of forced exile.</li> </ul>

Programme	Content	Beneficiaries
<b>Social Reinsertion</b>	<ul style="list-style-type: none"> <li>• Continuing coordination with the government to complete the process of settling the situations of:               <ul style="list-style-type: none"> <li>- Those suspended who want to be reinserted in public office;</li> <li>- Those dismissed who want to be reinserted in public service;</li> <li>- Granting overall compensation to those dismissed who choose not to return to their posts.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Persons who were subject to forced exile.</li> </ul>
	<ul style="list-style-type: none"> <li>• Coordination with the government, the private sector, the body responsible for solidarity and the institutions responsible for employment in order to:               <ul style="list-style-type: none"> <li>- Reinsert persons able to work who were high school students when they were subject to violation and who were able to complete their studies or obtain a specific training;</li> <li>- Help persons who have no training and who are still of an age that permits them to find job opportunities;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Victims of forced exile;</li> <li>• Children of persons who were subject to:               <ul style="list-style-type: none"> <li>- Enforced disappearance;</li> <li>- Arbitrary detention;</li> <li>- Death during civil disturbances;</li> <li>- Injuries during civil disturbances as a result of excessive use of force;</li> <li>- Forced exile.</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• Studying the possibility of granting compensation in the form of a pension to persons who want this, who have no training and who cannot practise any trade or work.</li> </ul>	<ul style="list-style-type: none"> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Victims of forced exile.</li> </ul>

Programme	Content	Beneficiaries
<p><b>Pursuing Education and Vocational Training</b></p>	<ul style="list-style-type: none"> <li>• Concluding agreements with:               <ul style="list-style-type: none"> <li>- The Ministry of National Education, Higher Education, Executive Training and Scientific Research;</li> <li>- The Ministry of Employment and Vocational Training;</li> <li>- Private institutions in the fields of education and training.</li> </ul> </li> <li>• This is in order to help persons who want to continue their studies or to benefit from training that will qualify them to enter the labour market and who are still of an age that permits them to do this, by offering the following services:               <ul style="list-style-type: none"> <li>- Allocating grants for higher education;</li> <li>- Claiming exemption from payment from private education and training institutions;</li> <li>- Claiming exemption from fees from vocational training institutions.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Victims of forced exile;</li> <li>• Children of persons who were subject to:               <ul style="list-style-type: none"> <li>- Enforced disappearance;</li> <li>- Arbitrary detention;</li> <li>- Death during civil disturbances;</li> <li>- Injuries during civil disturbances as a result of excessive use of force;</li> <li>- Forced exile.</li> </ul> </li> </ul>
<p><b>Settling Legal Situations</b></p>	<ul style="list-style-type: none"> <li>• Nullification of previous offences recorded in judicial or security registers in implementation of the comprehensive royal pardon;</li> <li>• Lifting any hindrances at border crossing points when leaving or entering the homeland.</li> </ul>	<ul style="list-style-type: none"> <li>• Persons who were subject to arbitrary detention and against whom judicial sentences and decisions were issued;</li> <li>• Persons who were subject to arbitrary detention but against whom no judgement was issued;</li> <li>• Persons who were subject to forced exile and against whom judicial sentences and decisions were issued;</li> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Persons who were subject to forced exile.</li> </ul>

<b>Programme</b>	<b>Content</b>	<b>Beneficiaries</b>
<b>Compensation for Physical and Moral Injuries</b>	<ul style="list-style-type: none"> <li>• Assessment of compensation for physical and moral injuries.</li> </ul>	<ul style="list-style-type: none"> <li>• Persons subject to enforced disappearance;</li> <li>• Persons subject to arbitrary detention;</li> <li>• Persons injured during civil disturbances as a result of excessive use of force;</li> <li>• Persons who died during civil disturbances as a result of excessive use of force;</li> <li>• Victims of forced exile;</li> <li>• Rightful claimants of the groups mentioned above.</li> </ul>

#### b. Community Reparations

<b>Programme</b>	<b>Content</b>	<b>Beneficiaries</b>
<b>Symbolic Reparations</b>	<ul style="list-style-type: none"> <li>• Uncovering the truth by establishing the type of violations and determining the degrees of responsibility of the state apparatuses;</li> <li>• Taking steps to erase the effects of violations;</li> <li>• Converting some former illegal detention centres and taking steps to preserve the memory.</li> </ul>	<ul style="list-style-type: none"> <li>• Victims of grave violations of human rights;</li> <li>• Regions harmed as a result of the intensified occurrence of grave violations.</li> </ul>
<b>Development and Reinstatement Programmes</b>	<ul style="list-style-type: none"> <li>• Converting former illegal detention centres into development, economic and social projects;</li> <li>• Cooperating with the government sectors involved, elected officials, local authorities and associations from civil society working in the field of development in order to set up development, economic and social projects.</li> </ul>	<ul style="list-style-type: none"> <li>• Regions harmed as a result of the intensified occurrence of grave violations.</li> </ul>



## **Chapter four**

**PROCEDURES USED TO PROCESS THE FILES AND  
MAKE FINAL DECISIONS ON THEM**

## 1. The Methodology used in Analysis and Classification

About 20,046 petitions were received by the Commission. This number does not correlate with the number of files submitted to the Commission because in many cases, the same violation is the subject of more than one petition. Moreover, in view of the variety of cases and incidents submitted to it, and in view also of the length of time subject of its jurisdiction (1956-1999), the initial phase of file processing focused on analyzing and classifying them bearing in mind the following elements:

### - Analyzing the type of petition, in terms of the following

- Its nature: Is it a new petition submitted to the Equity and Reconciliation Commission or a petition arriving after the deadline set by the former Arbitration Commission?

Type of petition	Number of petitions
Petitions received after the deadline set by the former Arbitration Commission	9,106
New petitions submitted to the Commission	10,940
<b>Total</b>	<b>20,046</b>

- Its subject matter: Does it seek financial compensation for alleged events or other types of reparation, or does it relate to a review of decisions issued by the former Arbitration Commission?
- Does it include requests other than compensation, like uncovering the truth, acknowledgement and apology?

Requests	Number of petitions
Financial compensation	18,545
Other types of reparation	7,548
Review of decisions of the former Arbitration Commission	3,195
Other requests	4,612
<b>Total</b>	<b>33,900</b>

- **Classification of the violations by means of an initial harmonization of the facts contained in the petitions.** By interpreting the competence invested in it, the Commission was able to harmonize the violations asserted according to the provisions of its statute, international human rights standards and relevant national legislation. In addition to enforced disappearance and arbitrary detention, the Commission uncovered other violations as detailed in the table below:

Classification of petitions according to violation	Number
Death during disappearance or detention	148
Torture	10,758
Death during civil disturbances	60
Bullet wounds during civil disturbances	48
Forced exile	295
Being forced to go into hiding inside the homeland	102
Sexual assault	386

- **Geographical distribution of victims or violations** (See the tables below). This facilitated the analysis as regards the events linked to the violations asserted and uncovering the size and nature of the relevant facts. It also facilitated the task of the Commission in investigating and completing the information relating to the files.

**Tables showing the Distribution of Victims according to Region, Province, and Abroad**

**Table showing the distribution of victims according to region**

Region	No. of Victims	Proportion
Oued-Eddahab - Lagouira	83	0.9
Laâyoune-Boujdour-Saqia El Hamra	2,256	25.0
Guelmim-Es Smara	656	7.3
Souss Massa Draâ	462	5.1
Gharb-Chrarda - Beni Hssen	116	1.3
Chaouia-Ouardigha	81	0.9
Marrakech-Tensift-Al Haouz	294	3.3
Oriental	646	7.2
Greater Casablanca	693	7.7
Rabat-Salé-Zemmour-Zaër	452	5.0
Doukkala-Abda	104	1.2
Tadla-Azilal	1,663	18.4
Meknes-Tafilalt	926	10.3
Fez-Boulemane	123	1.4
Taza-Taounate-Al Hoceima	229	2.5
Tangier-Tetouan	245	2.7
<b>Total</b>	<b>9,029</b>	<b>100</b>

Province	Rural	Urban
Azilal	1,311	22
Assa-Zag	2	55
Safi	1	68
Ifrane		21
Agadir Idaoutanan		61
Jadida	1	34
El-Hajeb		11
Al Hoceima	33	114
Al Haouz	6	24
Khemisset	32	80
Casablanca		647
Errachidia	37	191
Rabat		215
Es Smara	3	350
Skhirat Temara		29
Essaouira		6
Larache		84
Laâyoune	107	2,036
Kenitra	2	94
Mohammedia		44
Nador	2	152
Nouasser	2	
Inezgane Ait Melloul		12
Berkane	3	107
Ben Slimane		3
Beni Mellal	148	182
Boujdour	5	108
Boulemane	1	10
Taroudannt	1	6

Taza	9	60
Taourirt		9
Taounat	3	10
Tiznit		14
Tetouan		92
Jerada		17
Khouribga	1	54
Khenifra	72	500
Zagora	1	9
Settat	2	21
Salé		96
Sidi Kacem		20
Chtouka Ait Baha	6	11
Chefchaouen	2	5
Chichaoua	8	29
Sefrou		22
Tata	3	8
Tan-Tan	9	193
Tangier Asilah	1	61
Fes		90
Figuig	2	90
Kelâat Es-Sraghna		21
Guelmim	2	31
Marrakech		200
Meknes	1	93
Oued Ed-Dahab		83
Oujda Angad	5	259
Ouarzazate	10	331
<b>Total</b>	<b>1,834</b>	<b>71,195</b>

### Petitions coming from persons living abroad

Country	No. of Petitioners	Proportion
Germany	2	1.7
Spain	3	2.5
Algeria	7	5.8
Sweden	1	0.8
Norway	1	0.8
United States	1	0.8
Italy	1	0.8
Belgium	20	16.5
Czechoslovakia	1	0.8
Switzerland	1	0.8
France	65	53.7
Canada	2	1.7
Mauritania	2	1.7
Holland	13	10.7
<b>Total</b>	<b>121</b>	<b>100</b>

#### - Age groups and occupations of victims (see tables)

These are important elements for estimation used in submitting recommendations regarding reparation.

**Table showing age groups of victims**

Distribution of victims according to age	Number	%
Less than 20	59	0.6
20-30	253	2.6
30-40	890	9.2
40-50	2,232	23.2
50-60	2,028	21.1
60-70	1,678	17.4
Over 70	1,591	16.5
<b>Total</b>	<b>9,632</b>	<b>100</b>

**Table showing distribution of victims according to occupation**

<b>Distribution of victims according to occupation</b>	<b>Number</b>	<b>%</b>
Senior management & liberal professions	2,025	31.7
Middle management	229	3.6
Employees	1,177	18.4
Qualified workers & craftsmen	584	9.1
High school and university students	41	0.6
Housewives	227	3.6
Unemployed	1,459	22.9
Retired, aged or disabled	641	10.0
<b>Total</b>	<b>6,383</b>	<b>100</b>

**- The causal relationship between the injuries asserted and the violations claimed**

This constitutes an important element in the analysis, which, along with the other elements for estimation used by the Commission, enables it to present proposals and recommendations appropriate for granting reparation to the victims.

For purposes of classification, the files were processed according to groups and events, paying attention to the following elements:

- To categorize them according to the type, gravity and scope of the violations while bearing in mind the contexts of the events that they related to;
- A general assessment of the groups and incidents, in terms of whether or not they were linked to trials;
- Determining special features or special cases within one and the same group or incident;
- Laying down the basic elements for assessing reparation or compensation;
- Surveying individual cases and classifying them according to the violations asserted in order to facilitate coming to final decisions, by:
  - Drawing analogies with recognized groups and incidents;
  - Studying the contexts and the data available regarding them from the different sources available;
  - Determining points of congruence, as regards temporal scope and nature of violations, with the groups or events.

## 2. The Method of Processing Files for Final Decisions

After the initial analysis and classification of the files, the Commission started on the second stage, the task of explaining competence as regards reparations arising from the gross violations of human rights. It also harmonized more carefully the facts alleged in the petitions in accordance with the provisions of national legislation and those of the Commission's statute, while bearing in mind the relevant international human rights standards. In order to do this, and in view of the fact that the majority of files were deficient in terms of information and details, the Commission sought to determine and delimit the documents required in order to process the files in readiness for final decisions and recommendations to be issued concerning them. Therefore, the Commission corresponded with the petitioners, and organized field visits to the regions where a large number of petitions originated.

Since some facts that had been asserted and some incidents connected with violations that were the subject of numerous petitions were cloaked in obscurity, the Commission conducted studies, research and investigations and heard trustworthy witnesses, some of whom had actually participated in the said events. This enabled the Commission to uncover the truth about these incidents, as regards their scope and dimensions, and the nature and extent of the violations committed during them, the bodies to whom the violations were attributed, the number and age of the victims at the time of the incidents, and the length of the violation in case of detention. After comparing all this with the facts asserted in the petitions, the Commission determined which of the requests relating to such events were accepted.

Overall, it can be said that the initial classification and analysis of all the files submitted to the Commission, made it clear that the majority of them simply contained letters that lacked information relating to the identity of the persons involved and details and documents relevant to the claims made in the petitions. After the Commission opened files on all the petitions submitted to it, it began work on completing the information and details relating to them by:

- Conducting field visits to the regions where a large number of petitions originated from. During these visits, those involved were heard from directly in order to complete the information relating to their files;
- Corresponding with the rest of the petitioners in order to complete the details and the documents relating to their petitions;
- Organizing receptions at the Commission's headquarters in order to hear the petitioners so as to complete the information relating to their files.

In an advanced stage, the processing relied on classifying the files submitted to the Commission according to whether they were:

- Ready, in that the details and documents required for making a final decision were complete and the proof of the claims made was available. In this case, the facts were harmonized more exactly with the criteria detailed above, and summaries of the relevant petitions were prepared. This helped the Commission to form a conviction concerning the alleged violations and to make an appropriate decision;
- Or unready, in that there was no evidence to prove or disprove the claims found in them. All the files of this type were set apart in order to investigate the facts attested.

Processing the files in this way enabled the Commission to:

- Make final decisions concerning the acceptability of the files;
- Define the files that relate to subjects not falling within the jurisdiction of the Commission according to its statute;
- Define the files that fall within the Commission's jurisdiction and the persons who deserve compensation according to the criteria, standards and elements of assessment used by the Commission;
- Define the files that need evidence to prove or refute the allegations contained in them concerning the subjection of the persons involved to violations of human rights;
- Define the cases relating to persons of unknown fate in order to refer them to the Commission's work group on investigation so that they might study them and carry out the necessary investigations regarding the claims found in them, then return them to the work group on reparation so that they might make a final decision on them regarding reparation in the light of the results arrived at.

The processing also included the study of all the files submitted to the Commission, one by one, in terms of the following:

- Study of the claims and facts mentioned in the petition and comparing them with the completed details and documents;
- Preparing summaries of those facts and updating them in the light of new elements appearing from the completion of the information and direct hearings;
- Classifying the files according to the incidents and groups, and preparing reports and a special study regarding each incident based on data and information available to the Commission from different sources, documents and studies and the investigations it carried out;

- Classifying the files in terms of the processing method appropriate to each group or incident to which they belong. This enabled the Commission to make a general classification of all the files in terms of their readiness for a final decision;
- Extracting information relating to other forms of reparation relating to legal, employment, administrative and financial problems, as well as social reinsertion.

### 3. Deliberations within the Work Group on Reparation

Based on what had been decided by the Commission from the beginning of its work, the work group on reparation prepared draft decisions concerning financial compensation for the grave violations spelt out in the statute of the Commission where it had been proved that the victims were subject to them and for the injuries that they or their rightful claimants suffered as a result of these violations. It also prepared proposals and recommendations aiming at granting reparation for other injuries relating to issues of psychological and physical rehabilitation, social reinsertion, and other problems of an administrative, employment or legal nature, and issues relating to dispossession.

In order to facilitate processing in the manner detailed above, the work group used the system of special rapporteurs. Every member was charged with studying and processing the files given to him with the help of assistants and an administrative unit to meet his various needs and to prepare first drafts of the decisions or proposals relating to them before submitting them to the work group for deliberation.

The special rapporteur was directly responsible for all the procedures relating to the files given to him, while he was required to refer to the work group whenever there was an issue requiring consultation.

When examining issues submitted to it by the rapporteurs, the work group utilized all the evidence, communications, documents, reports and results of investigations conducted in order to form a conviction characterized by independence, impartiality and objectivity.

The work group came to a final decision on the issues submitted to it by ratifying the proposals presented to it or submitting new proposals whenever necessary.

The work group also sought the assistance of medical experts whenever that was needed in the case of persons who stated in their petitions that they were suffering from injuries to health not covered by a medical programme resulting from violations that they had been subject to. In this process, the work group used the following principles:

- Entrusting the production of an expert report to one of the specialist experts recorded in the list of sworn experts;

- Specifying precisely the different aspects of the task entrusted to the expert, and if the matter concerned health conditions, determining the overall proportion of permanent partial physical disability, the degree of physical pain, the degree of handicap, and the repercussions of these injuries on the victim's working life and the probable need of assistance from a third party;
- Fees and expenses connected with the expert reports were paid by the Equity and Reconciliation Commission, and also travel and accommodation for individuals involved in the expert reports.

When the requests for reparation related to investigations concerning cases of unknown fate, the work group suspended their examination until it received the results of investigations conducted by the work group assigned to this task.

#### **4. The Commission's Ratification of Drafts Prepared by the Work Group**

The decisions concerning financial compensation and the special memoranda concerning the proposals and recommendations concerning reparation for the remaining injuries were issued in the name of the Equity and Reconciliation Commission on the basis of drafts prepared by the work group on reparation, which were presented to the Commission for discussion and ratification.

The final form of the arbitration decisions contained the following details:

- An introduction giving references;
- The full identity of the petitioner, with his address and NID card number;
- A summary of the facts relied on in the petition;
- A description of the violation subject of the petition;
- A justification of the decision, whether of acceptance or rejection;
- Specification of the amount of compensation due to the victim or to his rightful claimants, both in figures and in words;
- The date of issue of the decision.

The special memoranda, in which the proposals and recommendations relating to other reparations was formulated, contained all the necessary details, both in terms of form and content. As a result of experience, the Commission came to consider that the above-mentioned proposals and recommendations should be inserted where necessary within the arbitration decisions issued in favour of the victims.

## 5. Overall Results of the Commission’s Work in the Field of Individual Reparation

a. No of files opened by the Commission: 16,861.

b. A classification of the files concerning which positive decisions were taken :

Decision taken	No. of files	Proportion
Financial compensation	6,385	37.9%
Financial compensation with recommendation for reparation for remaining injuries	1,895	11.2%
Recommendation alone	1,499	8.9%
<b>Total</b>	<b>9,779</b>	<b>58%</b>

c. Classification of the other files

Decision taken	No. of files	Proportion
Lack of competence, with referral to the competent body	66	0.4%
Classified	18	0.1%
Rejected	854	5.1%
Dismissed	150	0.9%
Inadmissible	927	5.5%
Outside its jurisdiction	4,877	28.9%
Incomplete files	190	1.1%
<b>Total</b>	<b>7,082</b>	<b>42%</b>

## **Chapter five**

**METHODS OF FORMING INTIMATE CONVICTION  
AND JUSTIFYING THE DECISIONS ISSUED BY THE  
COMMISSION**

## 1. Methods of Forming Intimate Conviction

In processing the files, the Commission used the following elements and procedures:

- Classifying groups or incidents in a manner respecting the contexts, the data and details obtained from different sources;
- Using a data bank and utilizing the results of field visits to the regions involved;
- Summaries of reports about the contexts of the incidents;
- Results of investigations conducted;
- Organizing individual hearings for petitioners;
- Familiarizing itself with testimonies of trustworthy eyewitnesses.

The subject of proof covers checking the status of the petitioner, proving the violation subject of the petition, and the resulting injuries. After studying the requests submitted to it, the Commission came to the conclusion that they are divided into four types in terms of their readiness for a final decision:

- Petitions accompanied by documents like judgements issued by the courts and testimonies of detention etc;
- Petitions received from persons who claim that they were subject to violations and give exact information but do not submit any documents to prove their claims;
- Petitions containing communications coming from individuals who confirm that they were detained with the petitioner;
- Petitions received from persons who claim that they were subject to violations but do not provide any details or communications.

Faced with this situation, the Commission decided the following:

- To process the files according to the methodology spelt out in Chapter Four. This enabled the Commission to determine the files that were ready, i.e. those that contained information and documents that could be considered as conclusive proof of the occurrence of the violation, and those needing evidence relating to the violation subject of the petition;
- While the first category does not pose any problem in terms of readiness for a final decision, exposure of the body to whom the violation is attributed during the processing has enabled the Commission to determine the bodies involved possessing relevant information;

- Whenever a violation lasting a long time was involved, the Commission has depended on numerous testimonies given by persons who stated that they had been detained with the person in question, albeit for short periods;
- In cases where a number of persons testify spontaneously on behalf of one another, since they were all subject to detention, investigations have been conducted including contacting those who testified. In addition, contact has been made with witnesses or people who had knowledge or a relationship with the petitioners;

In all cases, the basic method of looking for evidence relating to claimed violations and of forming intimate conviction concerning the causal relationship between those violations and injuries continues to be the incidents and their contexts, on the one hand, and judicial proceedings of a political character on the other hand.

## **2. Justification of the Decisions Issued by the Commission**

The Commission has given special importance to the decisions issued by it in terms of their structure, form and content, whether these decisions are positive or stating the Commission's refusal to accept the petitions or its lack of competence. The grounds and justifications used in these decisions are a sort of practical interpretation of the philosophy and approach of the Commission towards granting reparation to victims. It has achieved this by:

- Making these grounds and justifications more precise and varied so as to make them include all the cases dealt with by the Commission;
- Making them a teaching tool to give guidance to victims and to enable them to clearly understand their files;
- Making them a tool contributing to the reinstatement of the victims by the truths they have uncovered concerning the violations the victims were subject to and by taking into account the evidence of those violations and the official and public admission of the state apparatuses' responsibility for them that they contain.

Thus this part exposes the bases of the innovations that the Equity and Reconciliation Commission has formulated by defining the concepts relating to grave violations subject to its jurisdiction and the way they have been applied in the decisions issued by it, as well as exposing the justifications used by the Commission when stating its refusal to accept the petitions or its lack of competence regarding them.

## 2.1. Cases of Compensation

### a. Cases of enforced disappearance

After studying the documents contained in some of the files submitted to it and the results of investigations it has conducted, the Equity and Reconciliation Commission has come to the conclusion that the violations that the persons in question were subject to fell under the category of enforced disappearance in accordance with the definition enunciated in the provisions of Article 5 of the Commission's statute. The Commission has established that this disappearance was preceded by detention by state apparatuses without any legal instrument or order by the judiciary, that they were detained in an irregular detention centre, and that they were deprived of all the legal guarantees relating to detention enunciated in national legislation and international human rights law. Moreover, their fate and place of detention remained unknown to their relatives despite the approaches they made to the competent public authorities. In fact, they faced secrecy and denial whenever they asked about them. The Commission has also established the deaths of victims as a result of the harsh conditions of detention and the torture and ill-treatment they were subject to. After studying the files submitted to it and the documents they contained, and after examining the physical and moral injuries that the petitioners suffered, consisting mainly of suffering, pain, and deprivation resulting from the disappearance of their relatives in the said circumstances, the Commission decided, on the basis of the assessment elements (deprivation of freedom, harsh treatment, deprivation of the right to life, concealment of fate), and within the framework of justice and equity, to issue decisions compensating the victims.

### b. Cases of arbitrary detention

#### **- Arbitrary detention without trial**

The Commission received a number of petitions claiming compensation for injuries suffered by the petitioners as a result of arbitrary detention in irregular detention centres. After examining the documents submitted, the Commission confirmed the truth of the petitions' claims that the persons involved had really been subject to detention because of their political, associational or trade union activities, and that during their detention they did not benefit from the guarantees enunciated in national law and international human rights standards, especially those provisions relating to placement in custody, its length and rules, and the requirement that they should not be subject to torture or ill-treatment. In view of the fact that this detention took place outside the law, which makes the state responsible and liable to pay reparations to the victims, bearing in mind the violations of their rights as citizens and as human beings and the pain they had to bear as a result of the circumstances of their detention

and its consequences, and the physical and moral injuries that they and their families suffered as a result, and in view of the rules of equity and reconciliation, the Commission stated that they deserved reparations and should receive financial compensation. It therefore ruled that the persons involved should be compensated for the injuries that they had suffered.

#### **- Arbitrary detention followed by a trial**

The petitions submitted by those in question sought compensation for physical or moral injuries they or their relatives suffered as a result of arbitrary detention they had been victims of. After examining the official documents submitted to it, the other papers contained in the files of the persons in question and after the investigations it conducted, it came to the conclusion that the persons in question had really been subject to detention. On the basis of the circumstances of this detention, the Commission came to the conclusion that it took place with no respect for the steps and procedures enunciated in the law, and that the guarantees enunciated in national legislation and international human rights standards, especially those provisions relating to placement in custody, its length and rules. In addition, the arbitrary nature of it all influenced what happened during detention and the events that took place afterwards. Although it is up to the judiciary and the bodies and apparatuses attached to it or supervised by it to prosecute the perpetrators of deeds that infringe the law and to punish them in order to preserve public order and the safety of individuals and communities, their work will not acquire the necessary legitimacy unless it takes place within the framework of the law and a concern to respect the rights of citizens, in the knowledge that any action infringing the law makes the state liable and requires reparations for the victims. In view of the violations of their rights as citizens and human beings, and the pain that the persons in question suffered as a result of the circumstances of detention and events that took place during it and as a result of it, in view of the physical and moral injuries that the victims and their families suffered, and bearing in mind the principles of equity and reconciliation, the Commission stated that they deserved reparations and should receive financial compensation.

#### **- Arbitrary detention followed by death as a result of a judicial sentence imposing capital punishment**

The petitions submitted by those in question sought compensation for physical or moral injuries they or their relatives had suffered as a result of arbitrary detention their relatives had been subject to.

By examining the papers in the files submitted to it, and as a result of investigations it conducted, the Commission has established that the persons in question, upon whom death sentences had been carried out, had previously been victims of arbitrary detention and that

they and their families had been adversely affected by the circumstances of this detention and its consequences. Since the Commission's statute enunciates compensation for victims of gross violations including those who have been subject to enforced disappearance and arbitrary detention, how much more do the principles of equity that are foundational to the work of the Commission and guide its decisions demand that compensation should be paid to the rightful claimants of persons who were subject under the same circumstances and during the same incidents to a more severe violation, namely deprivation of the right to life. On this basis, and bearing in mind the principles of equity and reconciliation, the Commission decided to respond to the relevant petitions by granting compensation to the rightful claimants of the persons in question.

**- Arbitrary detention in case of provisional assumption of good faith on the part of the petitioners**

The Commission received petitions seeking compensation for injuries suffered by persons as a result of arbitrary detention that they stated that they had been subject to. However, the investigations conducted by the Commission into the claims contained in these petitions neither conclusively confirmed nor refuted the detention. Nevertheless, the Commission considered that the inability to conclusively confirm the facts claimed and the petitioners' inability to produce conclusive documentation, justifies the use of provisional assumption of good faith on the part of the petitioners. This requires that, after the facts have been checked by incorporating them into their contexts and examining them in terms of their gravity and their consistency with the injuries that resulted from them, the persons in question should be compensated in harmony with the requirements of equity and reconciliation and turning the page on the gross human rights violations in our country's past. On this basis, the Commission has decided to pay compensation to petitioners in cases of this type.

c. Violations suffered during civil disturbances

During 1965, 1981, 1984 and 1990, some cities of Morocco experienced civil disturbances during which demonstrators took to the streets for reasons of a social and economic nature. These demonstrations were characterized by shooting on the part of the state apparatuses to suppress the demonstrations. This resulted in some persons being injured and others dying, as well as many individuals being detained. After studying the documents in the files submitted to the Commission that were related to these disturbances, and conducting investigations, the Commission came to the following conclusions:

### **- Persons subject to arbitrary detention**

In view of the fact that the procedure according to which the detention of the persons in question took place was not in some respects consistent with the law, which lent the detention they were subject to an arbitrary nature, and in view also of the violation of their rights that they suffered as a result, the pain that they endured due to the circumstances of detention and its aftermath, and the physical and moral injuries suffered by them and their families, and bearing in mind the principles of equity and reconciliation, the Commission stated that they deserved reparation and financial compensation.

### **- Persons shot, and then detained and tried**

After studying the relevant files, the Commission came to the conclusion that the petitions presented by the persons in question sought compensation for physical and moral injuries suffered by them as a result of the bullet wounds and the subsequent arbitrary detention that they had been subject to. The Commission considered that these civil disturbances should have been treated in a way that provided for proportionality between the scale of the events and the force used to confront them. This is in accordance with the provisions of international human rights law and in harmony with the requirements of maintaining public order and safeguarding the physical safety of citizens. Moreover, as stated above, the detention that the petitioners were subject to took place in accordance with a procedure that was not in some respects in conformity with the law, which made the detention seem arbitrary. On this basis, and bearing in mind the principles of equity and the requirements of reconciliation, the Commission decided to compensate the persons in question in the cases submitted to it.

### **- Death after being shot**

After examining the documents in the files submitted to it and the results of the investigations it conducted, the Commission came to the conclusion that persons had died during those disturbances after being shot. Since its statute enunciates compensation for victims of grave violations including those who have been subject to enforced disappearance and arbitrary detention, the Commission considered that the principles of equity that are foundational to the work of the Commission and guide its decisions demand even more strongly that compensation should be paid to the rightful claimants of persons who were subject under the same circumstances and during the same incidents to a more severe violation, namely deprivation of the right to life. On this basis, and bearing in mind the principles of equity and reconciliation, the Commission decided that compensation should be paid in the cases submitted to it.

d. Being forced to go into exile outside the homeland

The petitions that were submitted by the persons in question sought compensation for physical and moral injuries suffered by them as a result of being forced into exile. Investigations conducted by the Equity and Reconciliation Commission, and examination of the official documents submitted to it as well as the other papers included in the files, led it to conclude that the persons in question had been, prior to leaving the country heading for the countries where they were seeking exile, prosecuted in cases relating to political, trade union or associational work, before in absentia sentences were passed by the courts of Morocco.

If they had remained in their country in these circumstances, they would have been subject to the same grave violations of their rights and the same illegal treatment suffered by their colleagues in political, trade union and associational work, who were detained in the same cases and under the same charges. Thus the exile they experienced, which lasted years, although they were included in one of the royal pardons issued in various years, the last of which being the comprehensive royal pardon issued in 1994, was forced.

In recognition of the pain, deprivation, and loss of opportunities for the victims, as well as the mark it left on their personal lives and the lives of their families, and of the problems and hardships that it caused for their families, and bearing in mind the principles of equity and reconciliation, the Commission stated that they deserved compensation.

e. Being forced to go into hiding inside the homeland

The Equity and Reconciliation Commission came to the conclusion that a number of cases submitted to it fell within the category of being forced to go into hiding inside the homeland, which as a concept applies to the situation of somebody who finds himself forced to live in concealment, forced to distance himself from his normal environment for a certain period to avoid the dangers of arbitrary actions by state apparatuses against him, because of his political, trade union or associational activities without the possibility of legal protection. If they had not resorted to concealment, the persons in question would have been subject to grave violations that made those who had been victims of them eligible for compensation for the injuries that they had suffered as a result of them. Moreover, they had also been deprived of their rights as citizens and as human beings, and endured pain as a result of the conditions of their concealment and the events that attended it. As a result of the physical and moral injuries that they and their families had suffered as a result of all this, the psychological after-effects and the loss of opportunities that they had suffered, and bearing in mind the principles of equity and reconciliation, the Commission decided that they deserved financial compensation.

#### f. Victims of the Skhirat attempted coup

The Commission received petitions from the rightful claimants of victims of the Skhirat attempted coup that took place on 10 July 1971 under the leadership of some officers in the Moroccan army. Study of the papers contained in the files submitted to it, and investigations conducted into the events mentioned in them, enabled the Commission to come to the conclusion that the persons who were shot during the painful events mentioned, the majority of whom died as a result, were victims of group detention that took place outside the law carried out by individuals belonging to a state apparatus. Analysis of those events convinced the Commission that they constituted a grave violation of human rights in the form of arbitrary detention, lasting for a particular period under threat of armed force, of persons who held political opinions or who were involved in political activity, or were assumed to be so involved, and that the legal responsibility of the state was proved. These constitutive elements bring it within the jurisdiction of the Equity and Reconciliation Commission as defined in its statute.

Thus, in view of the violations of their rights as citizens and as human beings, the suffering they endured as a result of the illegal detention, which ended in their being deprived of their right to life, and the resulting physical and moral injuries suffered by their families, and bearing in mind the principles of equity and reconciliation, the Commission decided to pay compensation to the rightful claimants of the victims of those events.

## 2.2. Cases of Lack of Competence

### 2.2.1. Cases subject of Recommendations for Compensation despite Lack of Competence

#### a. Those detained in the Tagounite Centre

After studying the files submitted to the Commission on the subject, and after the investigations it conducted into the events mentioned in them, the Commission came to the conclusion that when Casablanca hosted the Islamic Summit Conference in 1971, the security forces detained a number of homeless people and beggars, beginning from January of that year. They were arrested either in the street or in the places that sheltered them at night and were transferred to police stations near those places. They were then transported in inhuman conditions to the Tagounite Centre where they remained in detention for a period of almost three years, during which time they were subject to ill-treatment and infringement of dignity.

It was established that state apparatuses were responsible for the arbitrary detention that the persons in question were subject to as a result of their restraint in circumstances that lacked any legality, since this detention was not ordered by a judicial party, took place in an irregular detention centre, and the victims were deprived of all legal guarantees relating to detention as enunciated in national legislation and international human rights law. However, the Commission considered that these cases did not fall within its jurisdiction, since the detention, in the majority of cases, was not the result of political, trade union or associational activities, which it was competent to deal with in accordance with the provisions of Article 5 of its statute. When it was proved to the Commission, in certain cases, that the petitioners were detained for one of those reasons, it decided to compensate them, activating all the assessment elements applicable in this field.

In view of the severity of the violations that the other persons were subject to, even though they did not fall within the jurisdiction of the Commission, and in view of the deprivation of their rights as citizens and as human beings, the pain they endured because of the conditions of detention and attendant events, the physical and moral injuries that they and their families suffered, and the psychological after-effects that resulted, the Commission decided to submit a special recommendation to grant reparations to the persons in question.

#### b. Victims of violations by Polisario

The Commission received petitions relating to civilians in which they explain that they were kidnapped by Polisario from within the national territory, and remained in detention in the Tindouf camps for many years throughout which period they were subject to torture and ill-treatment.

After examining the cases submitted to it in the light of its statute, the provisions of international human rights law and international humanitarian law, the Commission came to the conclusion, after studying the papers in the files submitted to it and the results of the investigations that it had conducted, that the violations that the persons in question were subject to, although they were grave violations in accordance with the legal provisions referred to above, did not fall under the category of grave violations according to the definition enunciated in the provisions of Article 5 of the Commission's statute since the apparatuses of the Moroccan state were not responsible for them in that they were not committed by public officers pertaining to it or individuals or groups acting in its name or colluding with those apparatuses. However, the Commission came to the conclusion that the violations the persons in question were subject to had the requisite constitutive elements to describe them as enforced disappearance in that the people in question were abducted and detained in breach of the provisions of international humanitarian law, which criminalize

interference with civilians. Moreover, they were deprived of all legal guarantees relating to their treatment that are provided for by this law, and their fate and their place of detention remained unknown to their relatives, which became a matter of denial and concealment by the body responsible. The Commission also established the deaths of victims as a result of the harsh conditions of detention and the torture and ill-treatment they were subject to. After the Commission had studied the files submitted to it and the documents they contained, in view of the gravity of the violations to which those in question were subject, bearing in mind that the state is responsible for the protection of its citizens, and in view of the physical and moral injuries that the victims had suffered, consisting mainly of the suffering, pain and deprivation resulting from their being subject to enforced disappearance in the circumstances described, the Commission decided to file a special recommendation that they and their rightful claimants should be granted reparations for all the injuries they had suffered.

### 2.2.2. Cases of Total Lack of Competence

#### a. Persons claiming that they were detained in the Tagleft camp

Some persons submitted petitions seeking compensation for a violation prejudicing their rights that they claimed they been subject to within a camp that they said had been established by the Royal Armed Forces in 1967 in the region of Tagleft. However, the results of the investigations conducted by the Commission, which were confirmed by some documents presented by those who participated in the said camp, showed that the latter was in reality a workshop conducted in 1967 in the context of the Promotion Nationale, and there is nothing in the said petitions indicating that the claimed violations were the result of political, trade union or associational activities by the petitioners. This led the Commission to state that it was not competent in accordance with the provisions of Article 5 of its statute.

#### b. People assisting the security forces during the incidents occurring in 1960 and 1973

The region of Azilal saw the intervention of the army in pursuit of those who took part in the incidents of 1960 that came to be known as the Caïd El-Bachir revolution, and the Moulay Bouazza incidents that took place in 1973 after armed groups from the cells known as the Tanzim (Organization) infiltrated from Libya across Algeria into Morocco. To achieve this, the armed forces sought the help of the inhabitants of those regions to hunt down the fugitives. They were employed in searching for the wanted infiltrators and carrying arms and supplies. The army also transferred mountain dwellers to centres to facilitate pursuit.

It is worth mentioning that some of the individuals heard stated that they had carried out these tasks by choice, while others said that they were forced to carry them out by the army and the local authorities. After studying the files related to these petitions, and through the investigations conducted by the Commission, the cases linked to these events were divided into two categories:

- Persons who helped the armed forces as part of their job;
- Persons who helped the security forces by force of circumstance, either voluntarily or as requisitioned or unpaid labour, bearing in mind that the last two do not constitute a grave violation of human rights according to the account of the events given by the petitioners.

After referring to the provisions of the international charters and national laws relating to unpaid and requisitioned labour, the Commission came to the conclusion that the facts referred to above do not fit into the category. Moreover, they do not fall within the jurisdiction of the Commission, since it is restricted, according to its statute, to paying compensation for physical and moral injuries resulting from arbitrary detention and enforced disappearance because of political, trade union or associational activity, while granting reparation for other injuries arising from these violations.

However, the Commission considered the cases of persons who were proved to have been subject to detention as a result of their refusal to help as falling within its jurisdiction and decided to grant compensation for the injuries that the persons in question were subject to.

After making final decisions concerning the relevant files, the Commission has made recommendations concerning the harmonization of the national legal texts relating to requisitioned and forced labour.

c. Cases of persons who were executed pursuant to a decision issued by the Council of War

Following the failure of the 10 July 1971 coup, a council of war was held to try senior officers who participated in these events, and they were all sentenced to death.

In a government statement before the House of Representatives, the then Prime Minister explained that the death sentence adopted by this council against those responsible for the rebellion amid the events in Skhirat was a judgement.

On this basis, the Commission considered that the petitions relating to the subject did not fall within its jurisdiction.

d. Detention of soldiers following the Skhirat attempted coup in 1971

The Commission received petitions from cadets at the Ahermoumou School who were subject to detention following the Skhirat attempted coup on 10 July 1971 and who were acquitted by the military court in Kenitra. After studying the files submitted to it and conducting investigations into the matter, the Commission came to the conclusion that it cannot be deduced from the circumstances surrounding the cases in question that the detentions declared took place for carrying out political, trade union or associational activities in the sense intended by this expression in its statute. On this basis, the Commission decided to declare that it was not competent in this matter.

e. Lack of competence because the matter falls before the temporal jurisdiction of the Commission

The Commission received a number of petitions from persons who requested compensation for injuries that they had been subject to as a result of violations committed by the French or Spanish colonial authorities. Since the provisions of Articles 5 & 9 of the Commission's statute limit its jurisdiction to grave violations committed by public officers belonging to the Moroccan state or individuals or groups acting in its name, it is not competent to examine requests for compensation for injuries suffered by men of the resistance as a result of the oppression they were subjected to by the colonizer.

f. Lack of competence because the matter falls after the temporal jurisdiction of the Commission

The Commission also received petitions concerning incidents that occurred after 1999. Since the events attested in these petitions do not relate to the period stretching from the beginning of independence to the date of the royal ratification of the establishment of the Independent Arbitration Commission in 1999, which was fixed by the provisions of Article 8 of the Equity and Reconciliation Commission's statute as a temporal framework for its competence, it decided that it was not competent to make a final ruling on these petitions.

g. Lack of subject matter competence: Miscellaneous cases

**- Cases of detention with no relation to political, trade union or associational activity**

Petitions were submitted to the Commission which, regardless of any violations of human rights or infringements of national legislation that the facts they relate might contain, were clearly not the result of the practice of political, trade union or associational activity. Thus they do not fall within the jurisdiction of the Equity and Reconciliation Commission according to the provisions of Article 5 of its statute.

### **- The cleansing campaign**

Regardless of any violations of human rights or infringements of national legislation that the facts contained in the petitions relating to what has been called the “Cleansing Campaign” submitted to the Commission might contain, they were not the result of the practice of political, trade union or associational activity. Thus they do not fall within the jurisdiction of the Equity and Reconciliation Commission according to the provisions of Article 5 of its statute.

### **- Settling administrative situations unrelated to gross violations**

Files were submitted to the Commission requesting that the petitioners’ administrative situations be settled. After studying them, the Commission came to the conclusion that the facts asserted in these petitions do not fall within its jurisdiction, which is limited, according to its statute, to paying compensation for physical and moral injuries resulting from gross violations, as well as granting reparations for other injuries resulting from these violations.

### **- Victims of contaminated olive oil**

The Commission received petitions in which the petitioners sought compensation for injuries they had suffered as a result of the effects of imbibing contaminated olive oil. However, the facts relied on in these petitions do not fall within its jurisdiction, which is limited, according to its statute, to paying compensation for physical and moral injuries resulting from arbitrary detention and enforced disappearance, as well as granting reparations for other injuries resulting from these violations.

### **- Petitions to benefit from the royal pardon**

After studying a group of files coming from prisoners or their families, the Commission came to the conclusion that they were seeking to benefit from the royal pardon, which does not fall within the Commission’s competence as enunciated in its statute.

### **- Cases in which a judicial ruling has been issued**

The events referred to in the petitions in question have already been the subject of a final decision by virtue of a judicial ruling that has acquired the force of a *res judicata*. Therefore, there is no way to review it outside the judicial framework, because it does not fall within the Commission’s competence as enunciated in its statute.

#### **h. Participation in the Green March**

Petitions were submitted to the Commission seeking to compensate the petitioners for what they claimed as their participation in the Green March, which was staged in order to reclaim

the Moroccan Sahara. Since the events relied on are not a violation of human rights, the Commission decided that the subject fell outside its competence.

### 2.3. Cases that were rejected

#### a. Detention within the scope of the law

Petitions were submitted to the Commission seeking compensation for physical and moral injuries suffered by the petitioners as a result of arbitrary detention. However, the Commission came to the conclusion that the detention that the persons in question were subject to could not, in view of the provisions of Moroccan legislation and international standards of human rights, be considered as arbitrary. This is because the procedure within which the detention took place does not contain, in the opinion of the Commission after examining the papers in the files submitted to it, anything to indicate that it was outside the scope of the law. Therefore, the Commission decided to reject the petitions in question.

#### b. Cases containing unrealistic claims concerning the loss of moveable property

The Commission received a number of petitions seeking compensation for the petitioners for injuries that they claim they suffered, following what they stated to be arbitrary detention and the loss of some moveable property. However, in view of the totally unrealistic nature of the claims made in the said petitions concerning the moveable property lost, especially in view of the circumstances of the case and the temporal context and the location, these claims come to be characterized by a total lack of credibility, justifying doubt even in the veracity of the claim that detention took place. On this basis, the Commission decided to reject these petitions.

### 2.4. Cases for Reconsideration

a. The Commission received petitions concerning which it came to the conclusion, after studying them and comparing their contents with the papers of the files recorded with the Independent Arbitration Commission, that they sought a review of the amounts fixed by the latter as compensation for the physical and moral damages that the victims had suffered. However, it can be deduced from the second part of Paragraph 4 of Article 9 of the Equity and Reconciliation Commission's statute that the only petitions submitted to the Independent Arbitration Commission falling within its jurisdiction and which it should make final decisions on are those that this latter Commission had not previously made a final decision on because they were received after the deadline fixed, namely the end of December 1999. The Commission therefore decided not to accept the said petitions.

b. The Commission also came to the conclusion, after examining documents of other files submitted to it, that the petitioners had previously submitted the same petitions to the Independent Arbitration Commission, but the latter, although it had taken a decision to pay them compensation, did not examine their additional petitions seeking reparation for other injuries. Since the Equity and Reconciliation Commission was set up for this purpose, it was able, unlike the previous Commission, to examine petitions for reparation of other injuries as explained in Paragraph 2 above since they fell within its competence, and on the other hand since the subject did not fall within the scope of the provisions of Part 4 of the Equity and Reconciliation Commission's statute, which prevented it from examining petitions concerning which a final decision had already been made by the Independent Arbitration Commission. It therefore decided to issue recommendations to grant reparation for other injuries to the petitioners in question.

# APPENDICES

## Appendix 1

### Tables used in processing the files

**File Processing Table**

No. of box	No. of file	Name of petitioner or victim NID Card	State of victim	Occupation prior to violation	Current occupation	Type of violation	Date of violation	Location of occurrence of violation	Period of violation		Body to which the violation is attributed	Referral to the judiciary	Requests
									in months	in days			
						Summary						Level of readiness	Proposal

**The Equity and Reconciliation Commission Work Group on Reparation Information card relating to individual reparation for other injuries**

**1. Information about the victim or petitioner**

No. of file	Name of petitioner or victim NID Card	Type of violation	Age at time of violation	Current age	Occupation prior to violation	Current occupation	Last qualification obtained	Professional qualifications

## 2. Information concerning requests relating to reparation for other injuries

Settlement of administrative, employment and financial situations	Settlement of administrative situations	Settlement of legal situations	Social insertion	Restitution
<input type="checkbox"/> Settlement of administrative and employment situation  <input type="checkbox"/> Return to public service <input type="checkbox"/> Return to semi-public service <input type="checkbox"/> Problem relating to promotion <input type="checkbox"/> Problem relating to retirement <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Unspecified  <input type="checkbox"/> Settlement of financial/employment situation  <input type="checkbox"/> Failure to obtain sums owed after settlement of administrative situation <input type="checkbox"/> Lack of compensation for a specific period <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Unspecified <input type="checkbox"/> Administration or institution involved	<input type="checkbox"/> Enablement to return to the homeland  <input type="checkbox"/> Stopping harassment when leaving or entering the homeland  <input type="checkbox"/> Obtaining official documents:  <input type="checkbox"/> Passport <input type="checkbox"/> NID card <input type="checkbox"/> Copy of judgement issued in case <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Specified  <input type="checkbox"/> Unspecified	<input type="checkbox"/> Obtaining a death certificate  <input type="checkbox"/> Recording in the family status booklet	<input type="checkbox"/> victim p rightful claimants <input type="checkbox"/> Obtaining work  <input type="checkbox"/> Obtaining an office in public service  <input type="checkbox"/> Pursuing studies  <input type="checkbox"/> Benefiting from vocational training  <input type="checkbox"/> Unspecifier  <input type="checkbox"/> Health cover	<input type="checkbox"/> Type of real estate  <input type="checkbox"/> Registered  <input type="checkbox"/> Non registered  <input type="checkbox"/> Body responsible for expropriation  <input type="checkbox"/> Moveable property
<b>Remarks:</b>				

## Appendix 2

### Projects and proposals relating to community reparation

#### Date and archive

Project	Information about the project	Remarks
Establishment of the Moroccan Centre for Modern History	Establishment of the Moroccan Centre for Modern History, multi-disciplinary, with the necessary human and financial resources, playing the role of formulating educational programmes and developing academic research in the fields in which it is working. It will also gather testimonies from most actors in society in order to provide an archive that may help in the writing of modern history.	Institutions sponsoring the project: Bibliothèque de documentation internationale contemporaine, Nanterre, France; International Institute of Social History, Amsterdam, Netherlands; La Casa Arabe, Madrid, Spain; There is a budget devoted to similar projects at the EU Commission in Rabat of about 4 million Euros.
Establishment of the National History Museum	The establishment of the National History Museum, to contribute to the creation of a collective memory on the basis of numerous and varied readings of the modern history of Morocco in particular and Moroccan history in general.	
Organizing the archive within a legal framework	Creating interest in those involved concerning the necessity of organizing the archive; Organizing the archive within a clear and transparent legal framework that ensures the maintenance, preservation, development and utilization of the archive, and organizing access to it by citizens and institutions.	The two projects enjoy the support of most of the institutions involved in the subject, of which we can mention the following: The National Library of the Kingdom; the National Centre for Documentation and Information; the Information Sciences School (ESI); the Moroccan Association for Historical Research; the Moroccan Association for Media Workers.
Creating a national institute to oversee the archive	The Supreme Commission for the Archive will take responsibility for preserving and maintaining the archive in Morocco.	

## - The Figuig region

The Figuig region was one of the regions that witnessed the events of March 1973.

In parallel with the public hearing it held in Figuig, the Commission also organized a meeting with representatives of civil society to study issues relating to community reparations in the region. It also received a memorandum summarizing proposals submitted on the subject. Representatives from civil society in Figuig also participated in the Preparatory Committee for the National Forum on Reparation for Injuries which was held in Rabat from 30 September to 2 October 2005. The associations that took part, supported by the Figuig Municipality, presented proposals concerning community reparations.

Project	Information about the project	Remarks
Construction of the Es-Sfaissif dam	<p>Location of project: 30 kms north of Figuig, on the Rkiza and Es-Sfaissif valleys.</p> <p>Goals of the project: to preserve the date palms by providing water for irrigation; to reduce water scarcity in the region; to encourage farmers to increase investment in agricultural projects; to help to preserve the oasis.</p> <p>Cost of project: Dh 10,920,000 according to the speakers.</p>	<p>Agriculture is the main source of income in the Figuig region, and subterranean water resources are the one source of water for irrigation.</p> <p>Lack of water resources is a hindrance to the development of the oasis and in fact threatens its continued existence.</p>
Erection of hill dams and construction of water barriers	<p>Definition of the project: construction of barriers and hill dams to preserve the region's water and to use it for irrigating the neighbouring regions.</p> <p>Location of project: along the Tisserfine, Arja, Hammam Foukani and El Kebir Sedra valleys.</p> <p>Goals of project: to encourage and support agricultural projects in the region by providing water for irrigation; to reduce emigration; to combat desertification; to reduce the danger of flash floods which cause damage to agricultural harvests.</p> <p>Cost of project: Dh 3,240,000 according to the speakers.</p>	

<p>Undertaking a hydro-agricultural project</p>	<p>Definition of the project: construction of two reservoirs each with a capacity of 1,500 m<sup>2</sup> in “the old districts and the regions where the fortresses are found”.</p> <p>Location of project: the south-west side of Figuig (Elmlias) and the south-east side (El-Fougani).</p> <p>Goals of project: optimal exploitation of water resources through the drip irrigation system; to provide water for arid regions; to replace the salt water currently used for irrigation with less salty water; to improve agricultural incomes.</p> <p>Cost of project: Dh 6,500,000 according to the speakers.</p>	
<p>Repair and replacement of drinking water conduits</p>	<p>Definition of project: A number of studies funded by Figuig Town Council state that the current drinking water conduits are out of commission.</p> <p>Location of project: “the old districts and the regions where the fortresses are found”.</p> <p>Goals of project: to improve the living conditions for the inhabitants; and to maintain their safety and health.</p> <p>Cost of project: Dh 4,000,000 according to the speakers.</p>	
<p>Equipping an x-ray department in the hospital</p>	<p>Goals of project: to develop services in the town hospital in order to handle emergencies, give first aid and necessary services.</p> <p>Cost of project: Dh 520,000 according to the speakers.</p>	

<p>Setting up a centre for persons with special needs</p>	<p>Location of project: Figuig, Baghdad Quarter.</p> <p>Goals of project: to reinsert handicapped people into society; to train people with special needs so that they are able to contribute to the process of development; to train them to overcome their disabilities and to exercise their rights.</p> <p>Cost of project: Dh465,000 according to the speakers.</p>	<p>The number of people with special needs in the region is 200;</p> <p>The project has a 400 m<sup>2</sup> plot of land that it was granted for this purpose;</p> <p>The project will be supervised by the Handicapped Association in Figuig.</p>
<p>Improving the school infrastructure</p>	<p><b>Definition of project:</b> to improve the infrastructure of educational institutions including repairing and maintaining the facilities of these institutions, building new facilities like restaurants, libraries and playing fields, and equipping them, as well as organizing training courses.</p> <p>Educational institutions involved in the project</p> <p>Mokhtar Soussi, El-Falah, Ibn Rachik, Imam Ali, El-Yarmouk, Ohoud.</p> <p><b>Goals of project:</b> to improve conditions for scholarization in Figuig; to improve the effectiveness of education in the region; to reduce the school drop-out rate, especially amongst girls.</p> <p><b>Cost of project:</b> Dh200,000 according to the speakers.</p> <p><b>Body that prepared the project:</b> the Future Association for Development.</p>	
<p>Equipping the Milk Cooperative</p>	<p><b>Goals of project:</b> to improve the socio-economic situation of farmers in Figuig.</p> <p><b>Beneficiaries:</b> 1,200 cattle breeders in Figuig.</p> <p><b>Cost of project:</b> Dh1,135,000.</p> <p><b>Body that prepared the project:</b> the Al-Masira Cooperative.</p>	<p>The cooperative is responsible for equipping the milk treatment, collection and distribution unit and is also responsible for training technicians for this purpose.</p>

<p>Creation of projects for the women of the region</p>	<p><b>Definition of project:</b> The project includes programmes to combat illiteracy, the creation of socio-cultural and economic projects for women, subsidizing the scholarization of girls, creating centres to advise and train women in legal and health matters.</p> <p><b>Goals of project:</b> to grant reparations for injuries that women suffered as a result of the violations either directly or indirectly; to help in the reinsertion of women of the region into economic, social and cultural life by building up their abilities and improving their skills.</p>	<p>Institutions sponsoring the project: the American Bar Association.</p>
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### Additional proposals not formulated as projects submitted to the Commission

Proposal	Additional information	Remarks
<p>A study about compensating the inhabitants of the region for the losses they suffered as a result of losing lands neighbouring the Zouzfna Valley.</p>	<p>In the mid-70s and following the tension that the region experienced, the inhabitants lost lands neighbouring the Zouzfna Valley, and as a result lost more than 130,000 palms.</p>	

### - Kelaât M’gouna

The Commission received a letter from civil society activists in Kelaât M’gouna entitled “For Memorial and Memory, Doing Justice to the People and the Place”, in which they proposed the following project:

Project	Information about the project	Remarks
<p>Conversion of the Kelaât M’gouna Centre into a memorial and socio-cultural centre.</p>		<p><b>Institutions sponsoring the project:</b> the Immigration Association for Development and Democracy in France, which attended the proceedings of the National Forum on Reparation for Injuries.</p>

## - Zagora: Tagounite-Agdez

The province of Zagora lies in the south-east of Morocco and includes about 25 caïdats like Agdez, Tagounite, Mhamid-Al-Ghizlane and Tinzouline.

In order to formulate community reparation projects, the Dar'a Federation for Development, in coordination with the Equity and Reconciliation Commission and the Zagora section of the Moroccan Association for Human Rights, organized a study day on the theme Towards Community Reparation in Agdez and Tagounite, and for Sustainable Development in the Zagora region. This was held on 12 September 2004. The Commission also organized five visits to the region of Agdez and Tagounite in order to create links with the victims and the representatives of civil and political bodies. The representatives of civil society participated in the Preparatory Committee for the National Forum on Reparation for Injuries, and more than 18 associations from the region participated in proceedings of the Forum.

Project	Information about the project	Remarks
<p>Converting the former prison into a public space for cultural, associational and touristic activities, as well as activities with a social and economic dimension</p>	<p><b>Definition of project:</b> The proposal was that the centre should include a craft industry complex and a professional training complex for women and young people. Shops would be built for craft industry. Those taking on the running of the shops would be trained in the techniques of management, administration and marketing of products. A centre would also be built for vocational training next to the craft industry complex, including training in traditional handicrafts. It would include levels of vocational training and a level of specialization, and in addition a boarding section would be built to house those coming from distant villages or those in need locally.</p>	<p><b>Institutions sponsoring the project:</b> the Ellen Claire Institute, the Belgian Cooperative Agency in Wallonia</p>
<p>Extending and paving the road linking Tagounite and Fom Zguid to the south-west side of Tagounite</p>		

<p>Digging community wells and equipping them with pumps, which would be administered by the local agricultural associations</p>	<p>The locations of the wells will be fixed after consultation with tribal elders, farmers and development associations. After they are dug and equipped, the costs of the wells will be recovered from revenues obtained from the farmers in return for using the water for their needs. The associations responsible for running the wells will be given financial support until they gain their financial independence.</p>	
<p>Establishment of health centre in Tagounite with the human resources and the equipment necessary</p>		

**- Agdez**

<b>Project</b>	<b>Information about the project</b>	<b>Remarks</b>
<p>Converting the centre into a museum and cultural and social centre</p>		
<p>Establishment of health centre in Agdez with the human resources and the equipment necessary</p>		

**- Zagora**

Project	Information about the project	Remarks
Provision of higher education grants for the students of Zagora Province.	The number of those obtaining the high school certificate annually is only about 400.	
Cancellation of farmers' debts to Crédit Agricole.	In all, these debts amount to Dh21,000,000 distributed among 923 farmers.	
Reopening 11 clinics in the region that had been closed and providing 33 nurses to cover their human resource needs and equipping two clinics.		
Providing the infrastructure needed to ensure the creation of jobs.		
To facilitate procedures of real estate conservation to enable local people to give guarantees in order to obtain loans to finance their projects, especially touristic ones.		
Solving problems relating to the Blida mine.	Definition of project: purifying the region of about four tons of waste which is damaging the environment and the water table.	

**- The Derb Moulay Cherif centre in the Mohammedi district of Casablanca Information regarding the centre**

The Derb Moulay Cherif centre was built in the 1950s after the disturbances following the assassination of Farhat Hachad. The overall area of the centre and the building neighbouring it in addition to the urban commune offices is about 6,000 m<sup>2</sup>.

Since April 2004 the Commission held meetings with a number of civil society activists in the Mohammedi district about the issue of community reparations. The Commission received proposals about this including those of the Shuâla Association and the General Confederation of Moroccan Enterprises' Committee for Good Governance, representatives of both of which helped in organizing the National Forum on Reparation for Injuries. After holding the Forum, an association was established called 'As-Saada Mohammedi District Association, one of whose goals was the formulation and follow-up of community reparation projects in the region.

Project	Information about the project	Remarks
Converting the centre into a museum and a socio-cultural centre.		The necessity of emptying the centre and the building of the present inhabitants in consultation with them and finding appropriate accommodation for them.
Renovation and repair of the Mohammedi District youth centre.	The Mohammedi District youth centre is situated 1,200 metres from the prison, and is one of the biggest youth clubs in Morocco. In the past it used to contain important facilities for the young people of the district, the most important of which was the library.	
Converting the Saâda Cinema into a place of memory; and for disseminating culture in the Mohammedi district.		

## **- The Rif region**

The Commission was careful to involve civil society in the region in the formulation of community reparation projects. Representatives from it attended most of the activities organized on the subject by the Amal Network, the I'lan Arrif Committee, and the branch of the Moroccan Forum for Truth and Justice. The Commission also made visits to the region to discuss specific projects with civil society activists and representatives of the inhabitants and the local authorities.

The Commission held a number of meetings with the Abdul Karim Khattabi research group, which submitted a detailed memorandum on the subject of reparations in the area.

It also received Mr Sa'id Khattabi, the son of Abdul Karim Khattabi at its headquarters. During that meeting, there were discussions about issues of reparations including the return of the remains of Abdul Karim Khattabi to Morocco.

The public hearing organized in Al Hoceima also provided an opportunity to discuss issues of grave violations of human rights in particular and issues of community reparations in general.

Bearing in mind that the Rif disturbances of 1958-9 require an in-depth academic study (gathering testimonies of victims and actors, examining the written archives, including those available in foreign documentary archives, a serious work involving cross-checking and analyzing ...), which is a task regarding which the Commission has not been able to achieve any advanced results; and bearing in mind that uncovering the truth concerning what happened during those events constitutes a key element of reconciliation, the Commission recommends in particular the following:

- Including study of that stage as one of the priorities for the work of the Institute of Moroccan History which it has recommended should be set up;
- Following up communications with the family of Abdul Karim Khattabi in order to study how to bring his remains back to Morocco in accordance with the wishes of both family and relatives;
- Implementing the projects and proposals detailed in the table below:

Project	Information about the project	Remarks
Establishment of the Abdul Karim Khattabi Research Centre.	Location of project: the former pasha's residence in Al Hoceima which will be donated by the town council for this purpose.	Institutions sponsoring the project: Municipality of Al Hoceima, the Ministry of Culture, the regional government of Andalusia, Spain.
To consider the house of Abdul Karim Khattabi as a historic monument.	Definition of project: to renovate the house of Abdul Karim Khattabi and use it as a history centre to publicize the person of Abdul Karim and as a socio-cultural centre.	
To establish a university institute in Al Hoceima.	Location of project: Adjdir in the Al Hoceima region; Location of project: the town of Al Hoceima.	Institutions sponsoring the project: Oujda University in the person of its dean Mr Mohamed El Farissi.
Creation of projects for the women of the region.	<p>Definition of project: The project includes programmes to combat illiteracy, to achieve socio-cultural and economic projects for women, subsidizing the scholarization of girls, creating centres to advise and train women in legal and health matters.</p> <p>Goals of project: to grant reparations for injuries that women suffered as a result of the violations either directly or indirectly; to help in the reinsertion of women of the region into economic, social and cultural life by building up their abilities and improving skills.</p> <p>Location of project: Sidi Bouefif, the old mosque; possible places for burial: near the airport, near the broadcasting station, Dar Selloum, Ait boukhalef, Tribe of Hadj Sellam Amziane, Beni Hdifa, Mausoleum of Sidi Bouchaib.</p>	Institutions sponsoring the project: the American Bar Association.

Enlarging and renovating the mausoleum of Cherif Mohamed Ameziane in the Municipality of Zghenghen.	Definition of project: restoring the mausoleum of the first person to resist colonialism in the region (1910-1912). Location of project: the Nador region.	
Organizing a national travelling exhibition about Abdul Karim Khattabi.		

### - The Courbiss Centre, Casablanca

Project	Information about the project	Remarks
Converting the centre into a sports, cultural and social complex.	Definition of project: to establish a sports, cultural and social complex for the benefit of the young people and children of the region, in such a way as to create job opportunities.	Institutions sponsoring the project: UCPA, France.

### - Ksar Tazmamart

The Commission held a meeting with the Tazmamart Victims' Coordination Committee on 11 March 2004. It also held a meeting about community reparation projects with the Tazmamart Development and Culture Association, which attended the proceedings of the National Reparation for Injuries Forum.

Project	Information about the project	Remarks
Constructing and equipping a clinic, and providing it with human resources.	For the benefit of: the population of Ksar Tazmamart.	The nearest health centre to Ksar Tazmamart is 7 kms away.
Repaving the 3 km long road linking Tazmamart and Regional Highway No.708.		

Constructing a school for the benefit of the children of the region;		
Enabling the inhabitants to use the pastures near the former detention centre.		

### - Tan-Tan

In May 2005 the Commission held a number of meetings with victims, representatives of civil society, representatives of the inhabitants and of the local authorities, during which discussions took place about the proceedings of the Commission and community reparations in the region.

Project	Information about the project	Remarks
Establishing a socio-cultural centre for the benefit of the young people of the region.		
Rehousing some families from Lemsseyed.	<b>Definition of project:</b> About 20 families live in Lemsseyed in houses that are falling down.	It was proposed that the Regional Equipment and Construction Company help in the rehousing, especially as it has houses in the region.
Creation of projects for the women of the region.	<b>Definition of project:</b> The project includes programmes to combat illiteracy, the creation of socio-cultural and economic projects for women, subsidizing the scholarization of girls, creating centres to advise and train women in legal and health matters. <b>Goals of project:</b> to grant reparations for injuries that women suffered as a result of the violations either directly or indirectly; to help in the reinsertion of women of the region into economic, social and cultural life by honing their abilities and skills.	Institutions sponsoring the project: the American Bar Association.

## - Khenifra

Project	Information about the project	Remarks
Creation of projects for the women of the region.	<p><b>Definition of project:</b> The project includes programmes to combat illiteracy, the creation of socio-cultural and economic projects to benefit women, subsidizing the scholarization of girls, creating centres to advise and train women in legal and health matters.</p> <p><b>Goals of project:</b> to grant reparations for injuries that women suffered as a result of the violations either directly or indirectly; to help in the reinsertion of women of the region into economic, social and cultural life by building up their abilities and improving their skills.</p>	Institutions sponsoring the project: the American Bar Association.

## - Ksar Sountat

The Commission organized a visit to the region of Rich, Imilchil and Ksar Sountat from 15-17 May 2004 and held a number of meetings with victims to discuss their files with them and to discuss issues relating to community reparation in the region. Furthermore, the Committee received a letter from the inhabitants of the Douar Bou Khnan, who suggested a project of building a bridge in the region.

Project	Information about the project	Remarks
Constructing a maternity ward in the Bou Azmou health centre.		
Constructing additional classrooms in the Ksar Sountat school.		

Starting the legal proceedings to name the Sountat school Fadma Hrfou School.		
Building a bridge in Douar Bou Khnan.	<p><b>Location of project:</b> Douar Bou Khnan, Imilchil Caïdat.</p> <p>Body that proposed the project: the inhabitants of Douar Bou khnan.</p> <p>Cost of project: Dh440,000 according to the speakers.</p>	Douar Bou khnan is the birthplace of Zayed Ouaboud, one of the victims of the disturbances of March 1973.

### - Oulmes

Project	Information about the project	Remarks
Equipping and opening the hospital situated in the region.	<p>The hospital was built at a cost of about Dh18,000,000.</p> <p>The Ministry of Health is currently conducting a study of how to equip and operate it.</p>	
Enlarging the boarding capacity of the Lycée Mohamed VI.		
Constructing a sports centre, giving particular attention to cross-country running.		
Opening the road between Oulmes and Aklamous, about 50 kms towards Khenifra.		

### - Dar Bricha

After the Commission visited the centre and contacted the civil society activists, a preparatory committee was formed to found an association which set itself the task of preserving the memory in Dar Bricha. Members of that committee attended the proceedings of the National Reparation for Injuries Forum.

Project	Information about the project	Remarks
Converting the centre into a memorial and cultural centre		

#### - Tagleft

The Commission made visits to the region and received a letter from the Anergui Association for Development, Environment and Communication in the district of Ouauizigt in the province of Beni Mellal. In the letter it requested a grant for the association in order to formulate development projects in the region.

Project	Information about the project	Remarks
Paving the road, equipping water sources, forestation, constructing a hospital, providing regions with drinking water and electricity.	The proposals relate to the following regions: Ait Tamejjout, Okssour, Centre of Tagleft, Ait Boulane, Ait Smail, Commune of Anergui, Commune of Tabaroucht, Commune of Tlouguit.	

## Appendix 3

### A Reference Document Concerning the approach of the Independent Arbitration Commission

**A Reference Document concerning the Approach** of the Independent Arbitration Commission for compensation for the material and moral harm suffered by victims of enforced disappearance and arbitrary detention and their rightful claimants, established pursuant to the Royal Decree issued on 16 August 1999.

#### Part One: Bases of the Approach to Reparations

##### I. Normative Violations

The grave human rights violations of the past that the Arbitration Commission occupied itself with mainly involve enforced disappearance and arbitrary detention, and in the light of these violations, elements were deduced that came to constitute other violations.

Thus, what constitutes a grave violation, in the view of the Commission, in the framework of the non-judicial settlement, are the following violations:

- Enforced disappearance;
- Arbitrary detention;
- Painful incidents;
- Forced exile outside the homeland;
- Forced exile within the homeland.

##### II. Definition of Violations and Justifications

The Arbitration Commission was inspired by the international criteria related to grave violations and to the judicial and semi-judicial innovations to human rights. It used the provisions of relevant domestic law, and in the light of that it arrived at principles that blended the constitutive elements of the arguments and the justifications regarding the two main categories of violations that fall within its mandate.

**Enforced disappearance:** acts carried out by state apparatuses and represented in taking a particular individual without any legal right, depriving him of his freedom, and restraining him in a secret location, without giving out any information about him. He thus remains in

a state of anonymity as an individual who is alive but about whom nobody knows anything and who is deprived of any legal protection.

**Arbitrary detention:** restraint undertaken by state apparatuses without regard for the key conditions and procedures relating to deprivation of liberty because citizens were exercising their basic rights and in particular freedom of opinion, freedom of expression or the right to participate in public life, either through politics, trade unions or associations.

### **III. The Principles on which the Arbitration Commission constructed its approach to reparations, within its mandate**

The principles on which the Arbitration Commission constructed its approach to reparation for physical and moral injuries resulting from the violations falling within its jurisdiction are formulated on the basis of a number of complementary guiding principles:

- Normative violations as mentioned above;
- The state is responsible for its apparatuses;
- The criterion of deprivation of liberty;
- The principles of justice and equity;
- Specifying the shared injuries and the personal injuries suffered by victims of restraint in one group or similar groups according to the violations;
- Using comprehensive financial compensation for all physical and moral injuries resulting from the normative violations.

It is worth mentioning that the Arbitration Commission began formulating principles of its approach to reparations from the premise of not opening another door for settlement.

### **IV. The Judicial Instrument**

When specifying the violations, the Arbitration Commission bore in mind the extent of the effects in terms of referrals to the courts, and the subsequent process of filing. In this context, it considered the following cases:

- Arbitrary detention followed by release;
- Arbitrary detention followed by a decision not to prosecute;
- Arbitrary detention followed by a not-guilty verdict;
- Arbitrary detention followed by a guilty verdict;

- The issue of a guilty verdict and the enforcement of most of or more than the period of the sentence in an irregular detention centre;
- Arbitrary detention leading to a situation of enforced disappearance ending in release after a long period;
- Arbitrary detention leading to a situation of enforced disappearance during which the victim died;
- Forced exile to escape the dangers caused by the arbitrary behaviour of state apparatuses and the impossibility of enjoying the protection of the law.

## V. Consequences of Deprivation of Freedom

After studying the files, hearing victims and examining the relevant documents and papers, the Arbitration Commission analyzed the effects of the grave violations on rights including the right to life, physical integrity, human dignity and legal protection, on the basis of the principles of justice and equity.

On this basis, the Commission formulated the effects in a paper on the consequences of deprivation of liberty, including:

- Deprivation of contact with the outside world;
- Deprivation of communication with family;
- Injury resulting from depression and fear of the unknown;
- Pain suffered during and after detention;
- Permanent partial disability;
- Physical deformity;
- Handicap and chronic illness;
- Dependence on others;
- Deprivation of rehabilitation to face the living requirements;
- Deprivation of care and health services.

## VI. The Technical Medical Elements for Estimating Injuries

The Arbitration Commission systematically used original expert medical reports, complementary or second expert evaluation when necessary, for individuals or groups, and specialized when the case required. The task assigned to the experts was as follows:

- To summon the victim within a reasonable period, while notifying him of his right to have a doctor of his choice monitor the preparation of the expert report if he so desired;
- To examine the victim and describe the illnesses and the injuries that he has suffered, and determine to what extent they are linked to the circumstances of detention, and what treatments or what surgical operations he has undergone or will undergo, as well as the expenses related to them;
- To determine the overall proportion of permanent partial disability resulting from these injuries;
- To determine the severity of the effects resulting in terms of physical pain, deformity, and repercussions on his working life;
- To determine whether the victim needs assistance from a third party in order to face the daily living requirements;
- To use whatever technical means they consider necessary, and where necessary to seek the help of another specialized sworn doctor to discover the various injuries and to respond to all the points requested.

## **VII. Classification of the Locations where Gross Violations were Committed**

While analyzing the files, hearing victims and examining relevant details, the Arbitration Commission ended up with a special classification of the places where arbitrary detention was practised in a systematic and intensive manner, based on length of time, location, and type of treatment.

The Commission considered that detention in the locations concerned was contrary to the provisions of the law, since detention must take place within the bounds of the law, be in accordance with the regulations governing it, and be conducted in such a way as to preserve and ensure respect for the right of the detained person to security, physical safety, and preservation of his dignity, in a framework of supervision by an independent judicial body, so as to check that periods of detention are reasonable and that all legal guarantees are available to the person involved.

Among these centres can be mentioned:

- Regular centres used for other than their intended purpose (police stations, gendarmerie posts);

- Main centres used for the practice of grave violations (Dar El-Moqri, Derb Moulay Cherif);
- Special centres used to practise grave violations (the Complexe);
- Group detention centres (Courbiss);
- Centres that were like annexes (military barracks, estates, villas).

## VIII. Criteria Used for Compensation

In its estimates of compensation, the Arbitration Commission relied according to the cases on the following criteria:

- The circumstances of detention in terms of length of time, place and treatment, and the nature of the legal instrument, and whether or not it existed;
- The person's presumed remaining working age since the date of his disappearance;
- The person's income, updated and raised if necessary to the minimum level required to ensure a dignified life in current circumstances;
- Adoption of a suitable minimum income for those who did not have a fixed income before the violation;
- Family responsibilities, whether or not the victim was before his death the breadwinner and the one responsible for his family;
- The results of expert medical reports, or the relevant medical file submitted.

## IX. Beneficiaries

The Arbitration Commission categorized the victims of the grave violations, and their rightful claimants or heirs, according to the circumstances, as follows:

- Persons who were directly subject to a normative violation but survived;
- The rightful claimants of those who died during detention or disappearance, determining the compensation due to each one according to the type and extent of the direct personal injuries resulting from the loss of the victim;
- Considering those who died shortly after they were released as if they had died because of detention;

- The heirs of those who died after release (from a cause unrelated to their detention). This is done by distributing the compensation among the heirs according to the principles of Shari'a law (activating the principles of succession when necessary).

## **X. Cases considered outside its jurisdiction**

The Arbitration Commission decided to consider a number of cases submitted to it outside its subject matter competence. These are as follows:

- Execution in implementation of a sentence;
- Victims of the Skhirat coup of 10 July 1971;
- Death as a result of bullet wounds during specific incidents;
- Detention in Ksar Tagounite;
- Exceeding the police custody period in public order cases;
- Demands to return to work;
- Reinstatement;
- Retirement pensions;
- Health and social cover;
- Obtaining accommodation;
- Restitution of moveable property and livestock that are not proved to have been lost, and of real estate;
- Child employment;
- Administrative promotion;
- Obtaining passports;
- Discovering burial places and handing over mortal remains.

## **Part Two: Principles and Criteria for Compensation with regard to Victims of Enforced Disappearance**

### **I. Victims forcibly abducted to the Tazmamart Centre**

The Independent Arbitration Commission considered petitions submitted by victims of enforced disappearance in the Tazmamart centre as a file constituting a case of violation of

the utmost gravity. In its work, it used this file as model for the application of its conception of reparation for injuries on the bases of the principles and criteria it had defined and the measures of assessment of that compensation in implementation of those criteria.

## 1. Special feature of the Violation

- It was one of the most abominable grave violations;
- Guilty verdicts had been handed down and the first period of the sentence was served in a regular penal institution;
- The convict was forcibly transferred to an irregular detention centre in the village of Tazmamart;
- The violation was categorically denied by the authorities throughout the period;
- The conditions of detention, both in terms of place and treatment, were totally inhumane;
- Half of the forcibly disappeared died;
- The surviving victims reappeared after 18 years;
- The state acknowledged the responsibility of its apparatuses for the violation, and after their release began to pay initial monthly sums to the surviving victims;

## 2. Surviving Direct Victims

### a. Principles for assessing the shared compensation

- Consideration of the above-mentioned special features of the violation;
- Using deprivation of liberty as a main criterion for compensation;
- The negative effects arising from the deprivation of liberty, and taking away the right to life, decent living conditions and physical safety;
- Ensuring that the victims be given public employment at fixed incomes;
- Receiving communications and information from the authorities involved, including obtaining administrative documents relating to employment situations;
- Holding lengthy individual hearings of the victims or their rightful claimants.

**- Assessing the extent of the injuries arising from the violation with regard to the following**

- Permanent partial disability of not less than 50%;
- Significant physical pain;
- Significant handicap.

**- Thus the overall compensation was fixed in an equitable manner in favour of all victims, originally calculated as lump-sum compensation**

- Adding a lump sum in consideration of the treatment and monitoring that the health condition of each victim might require;
- The temporary compensation that the Tazmamart detainees received after release (Dh5,000 per month from the social services of the Royal Armed Forces) should not be stopped ;
- Enabling the victims to receive advance compensation, according to case, while awaiting the final decision on the petitions.

b. Principles for the calculation of compensation in addition to the shared compensation

- The assumption that all victims have suffered permanent partial disability of no less than 50%;
- Ordering that group specialist expert medical opinions be conducted, complementary or second expert evaluation, when necessary;
- Calculating additional compensation according to the following:
  - On the basis of expert evaluations fixing the permanent partial disability at more than 50%;
  - Increasing the sum specified for each additional point of disability;
  - Increasing the sum specified for any increase in severity of pain above the average shared between victims;
  - Clear effect on the life of the person in question. This effect includes for example: loss of sight; total deafness; sterility; sexual impotence; or paralysis. Although these conditions are taken into account as part of permanent partial disability, they deserve special treatment in view of their severity;

- Increasing the sum specified in case the victim has to seek the help of another person;
- In view of the fact that some victims spent periods in detention in addition to the term they were sentenced to, additional compensation was fixed for each additional year.

c. Estimating moral compensation for individuals of the families of surviving victims

In addition to financial and moral compensation owed to surviving victims of enforced disappearance, the Arbitration Commission decided to grant close family members (parents, spouse, and children) additional compensation according to the following:

**- The parents**

The Arbitration Commission considered the moral injuries suffered by the parents of the victim and decided to grant special compensation to both of them.

**- The wife**

In view of the injuries suffered by the wife of the victim, the Commission granted her compensation fixed at a specified amount;

If the woman in question married before her husband was released, the compensation owed was fixed at a specified amount.

**- The children**

The moral compensation for each of the victim's children was also fixed.

### **3. Compensation owed to rightful claimants following the death of the victim**

a. Considerations

In case of death of the victim, the Arbitration Commission based itself on particular considerations, which are as follows:

- Whether the deceased victim is the bread-winner of the family;
- The family suffered much, and endured great deprivation;
- The compensation in this case includes compensation for physical and moral injuries.

## b. Principles

The Commission used the following specific principles:

- It based itself on the salaries of the victims before detention, and applied an update table that took into account the cost of living;
- Based on that, it in all cases used a fixed sum as the net monthly income;
- The comprehensive compensation for rightful claimants contains two types: physical compensation calculated according to specific measures, and moral compensation calculated as a lump sum.

Within these parameters, the Commission respected the specificities of each case, including:

- The age brackets to which the victims belonged to, using special coefficients to update income;
- Injured persons who were dependent on the deceased victim;
- The presumed working age (60 yrs), in order to enable rightful claimants who were supported by the deceased victim to benefit as much as possible from the monies that would presumably have come to them from his income if he was still alive.

On this basis, appropriate coefficients were attached to the age brackets as follows:

- Less than 20, coefficient 1,1;
- 20-30, coefficient 1,2;
- 30-40, coefficient 1,3;
- 40-50, coefficient 1,4;
- Above 50, coefficient 1,5.

## c. Distribution of capital to the rightful claimants in the context of physical compensation

Rightful claimants benefitting from compensation due following death of the victim were divided into four categories:

- The wife;
- The parents;
- Children;
- Dependents.

The adopted capital was divided as follows:

**- The wife**

- If she has not remarried,  $\frac{2}{5}$  (two fifths) of the adopted capital;
- If she has remarried,  $\frac{1}{4}$  (one quarter) of the adopted capital.

**- The parents**

- Each of the parents is due  $\frac{1}{5}$  (one fifth) of the capital;
- If the deceased victim does not have a wife or children, the parents shall receive jointly  $\frac{1}{2}$  (one half) of the capital, to be divided equally between them;
- If the wife of the deceased victim does not have children, she shall receive 30% (thirty per cent) of the capital.

**- The children**

- The children shall receive  $\frac{2}{5}$  (two fifths) if they are more than one;
- If there is only one child, he shall receive 30% (thirty per cent);
- When the capital is distributed, the age of the minor children, as well as unmarried daughters shall be taken into consideration, in view of the fact that providing alimony for them is a legally binding duty.

**- Dependents**

- In case more than one person is dependent on the deceased person,  $\frac{1}{5}$  (a fifth) of the capital shall be distributed between them;
- If there is only one dependent, 10% (ten per cent) of the capital shall be granted to him.

d. Moral compensation due to rightful claimants

The Commission estimated the moral compensation due to the rightful claimants, including brothers and sisters. It was calculated as a lump sum:

**- The wife**

- A specified sum if she has not remarried;
- Half the specified sum if she has married.

### **- The parents**

- A fixed sum shall be given to each of the parents;
- If the deceased was an only son of his parents, the compensation fixed shall be increased for both of them.

### **- Children**

- A fixed sum shall be paid to each one, with an upper limit, to be distributed amongst them equally;
- If the child is an only child, the compensation shall be raised to a fixed sum.

### **- Brothers and sisters**

- A fixed sum shall be paid to each;
- If they number more than five, a ceiling shall be fixed for the compensation to be paid, to be distributed amongst them equally.

## **II. Victims of enforced disappearance in the centres of Agdez and Kelaât M'gouna**

### **1. Special Features of the Violation**

- It was one of the most serious grave violations;
- Irregular detention centres;
- The periods of disappearance lasted between one and sixteen years, with victims in some cases passing through other centres;
- Total denial of the grave violation by the authorities involved throughout the period of disappearance;
- The proportion of deaths was less than that recorded in Tazmamart (55 out of 378);
- They were released at the end of the period;
- The state acknowledged its responsibility.

## 2. Surviving Direct Victims

a. Shared principles for assessing and calculating the compensation

- Consideration of the above-mentioned special features of the violation;
- Using deprivation of liberty as a foundational criterion for compensation;
- The negative effects arising from the deprivation of liberty and of the right to life, decent living conditions and physical safety;
- The variety of the victims' employment situations. They all either had no income or a fluctuating income, which was different from the employment situation of the victims of Tazmamart;
- Holding lengthy individual hearings with the victims, and receiving communications and information from the authorities involved;
- Conducting specialized medical expert reports, complementary, official or second expert evaluation, when necessary, in order to fix the extent of the injuries arising from the violation;
- Enabling the victims to receive advance compensation in all cases, while awaiting the final decision concerning their petitions;
- Fixing an equal overall amount of compensation, for everybody, calculated as a lump sum, as a lower limit.

b. Principles for the assessment and calculation of compensation additional to the shared compensation

In assessing the compensation, the Commission used, in addition to the above-mentioned lower limit, special elements for each victim, as follows:

- **The different lengths of periods of detention**, each victim received an additional supplementary amount according to the length of the period, in accordance with the following classification of those forcibly detained:
  - Up to five years, the addition of a specified sum for each year;
  - From five to ten years, the addition of a specified sum for each year beginning from the first year of detention;
  - If the period of detention was longer than ten years, the victim should be granted a specified additional sum for each year beginning from the first year, taking into

consideration, when calculating the said additional sums, the additional months with regard to the above temporal classification, on the basis of a fixed sum for each extra month.

- **The results of medical expert reports** carried out on the victims as a basis for fixing the compensation with regard to this, according to the following:

- Permanent partial disability: a specified sum for each point;
- Physical pain: the fixed amount increases according to the degree of pain, as follows:
  - Slight;
  - Significant;
  - Very significant.
- Handicap, in a sum, taking into account the degree of handicap;
- Negative effects on occupational life, in a specified sum according to significance;
- Dependence on someone else because of disability, in a fixed sum.

- **Devoting additional Compensation to groups of scholarized victims according to the following**

- For every victim who was a high school student before the occurrence of the violation, a fixed sum;
- For every victim who was a university student before the occurrence of the violation, a fixed sum.

c. Estimating moral compensation for individuals of the families of surviving victims

In addition to the physical and moral compensation due to the surviving victims of enforced disappearance, the Commission decided to grant his closest family members the following sums:

- Parents: a specified sum for each year of detention;
- The wife: a specified sum for each year of detention, if she has not remarried, or until she remarried or was divorced;
- Children: a specified sum for each year of detention until the age of majority for boys or until marriage for girls.

### 3. Rightful claimants benefitting from compensation following the death of the victim

#### a. Considerations

As was the case with the Tazmamart victims, the Arbitration Commission started with regard to the deaths occurring during enforced disappearance in the Agdez, Kelaât M'gouna and similar centres from the following special considerations:

- Whether the deceased victim is the bread-winner of the family;
- The family suffered much, and endured great deprivation;
- The compensation in this case includes compensation for physical and moral injuries.

#### b. Principles and standards for assessing compensation

Principles and criteria specific to the situations of the rightful claimants of those detained in Agdez/Kelaât M'gouna and similar illegal centres not having fixed and stable incomes, as follows:

- Special coefficients because of lack of fixed income were not used;
- The net monthly income was considered as fixed at the lowest sum assessed;
- The adopted capital consisted of annual income multiplied by the remaining working age;
- The beneficiaries from the physical compensation were divided into parents, spouses and children;
- The beneficiaries from the moral compensation were divided into parents, spouses, children and brothers and sisters;
- The sum specified increased for each additional three months;
- In all cases, the adopted capital would not be less than a fixed sum;
- Rightful claimants were enabled to receive overall compensation covering physical and moral injuries.

#### c. Physical compensation due to rightful claimants

The adopted capital was distributed among the rightful claimants as follows:

**- The wife**

- 2/5 (two fifths) if she has not remarried;
- A fixed sum for each year if she has remarried, from the date of disappearance to the date of divorce, and in all cases, the compensation shall not exceed 1/4 (one quarter) of the capital.

**- The parents**

- 1/5 (one fifth), if the victim has children, to be divided between the parents;
- If the victim does not have children, the compensation shall rise to 30%, to be divided between them.

**- The children**

When calculating compensation, the Arbitration Commission distinguished between adults and minors, taking into consideration the respective ages of the latter;

**- Adults**

- 2/5 (two fifths), if they are more than one;
- 30% if there is only one child;

**- Minors: The capital shall be divided among them in the following manner**

- The first third equally;
- The remaining two thirds shall be divided by the remaining number of years during which those children should have been supported;
- The result shall be multiplied by the number of years before the minor reaches the age of majority.

d. Moral compensation due to rightful claimants

**- The husband**

- A specified sum if he has not remarried;
- The specified sum shall be reduced by 50% if he has remarried.

**- The parents**

- A fixed sum shall be paid to each;

- If the victim is an only child, the compensation shall be increased to a fixed sum for each.

#### **- The children**

- A fixed sum shall be paid to each;
- A specific sum shall be set as an upper limit if they are more than one, and shall be divided between them equally.

#### **- Brothers and sisters**

- A fixed sum shall be paid to each;
- A fixed sum as an upper limit if they are numerous, to be divided between them equally.

## **Part Three: Principles and Criteria for Compensation due to Victims of Arbitrary Detention**

### **1. Manifestations of the Application of the Concept of Arbitrary Detention**

The Arbitration Commission formulated the concept of arbitrary detention in various positive arbitration decisions. The application of this concept is manifested in numerous justifications, examples of which, in justification of compensation are the following:

- Detention without any legal instrument by someone without any legal right to do so in an illegal detention centre, which means that the detention had no legal basis;
- Arbitrary detention occurred in violation of the provisions of national legislation and internationally acknowledged principles, because the detention took place because of political activity and in circumstances devoid of legality;
- Bearing in mind the said provisions and principles, the detention took place because of trade union activity and in circumstances some of which were devoid of legality;
- Bearing in mind the said provisions and principles, the detention took place because of associational activity without a legal instrument and without a trial, which means that the detention had no legal basis;
- The detention took place for political or trade union reasons, in circumstances not all of which were in conformity with the law;

- The detention took place because of political activity, in circumstances most of which were devoid of legality.

On the basis of the justifications used in the context of arbitration decisions of rejection, the Commission stated:

- That it was not proved to it that the placement of the person in question in custody was characterized by procedures or actions that fell outside the bounds of the law so that the detention could be considered as arbitrary;
- That the period of detention of the person in question did not exceed the period permitted by the law at that time for holding somebody in custody, and it was also carried out by a party having the authority to do so;
- That the detention that the person in question was subject to was not outside the bounds of the law, since it took place in the context of an ordinary judicial procedure after a legally permitted period of police custody;
- The competence of the Commission is limited to compensation for arbitrary detention committed by the state apparatuses outside the bounds of the law for political, trade union or associational reasons.

## **2. Cases of Victims of Arbitrary Detention in terms of the Judicial Instrument**

When examining the cases of arbitrary detention submitted to it, the Arbitration Commission took into account the judicial instrument behind the cases submitted. On this basis, it examined the following:

- Arbitrary detention followed by referral for investigation and then release or failure to prosecute, or a trial followed by acquittal after detention in a regular prison;
- Arbitrary detention followed by a trial leading to a guilty verdict then a pardon after serving part of the sentence;
- Arbitrary detention followed by a guilty verdict after which the person served his whole sentence in a regular prison.

Thus the Commission also distinguished, in defining the degree of significance of the compensation due, between the presence and the absence of a legal instrument. It also considered as one of the circumstances justifying compensation, albeit within specified limits, regular detention following arbitrary detention, taking into account the effect which the period of arbitrary detention could have had on the circumstances of the trial.

### 3. The Criterion of Deprivation of Liberty as a basis for Compensation

The Arbitration Commission based its initial estimate of compensation on the criterion of deprivation of liberty, and its occurrence in violation of the provisions of national legislation and the relevant international criteria. In this connection, it chose the two factors of location and duration to measure whether or not arbitrary detention had occurred. This was to look into whether the detention:

- Took place in an irregular detention centre;
- Took place without a legal instrument;
- Was implemented by a party without the authority to do so;
- Took place in circumstances partially or totally void of legality;
- Took place for political, trade union or associational reasons.

The criterion of deprivation of liberty is the basis of compensation and is manifest in the classification of irregular places of detention and the length of detention. Thus it is also the basis of compensation due to victims in accordance with the table below.

### 4. Measures of Compensation in application of the Criterion of Deprivation of Liberty

#### a. General compensation

The Arbitration Commission constantly used the criterion of deprivation of freedom, taking into account, in addition to the duration, the type of location (and in principle the resulting type of treatment, especially in the beginning). This is detailed in the following table:

Place of detention	Duration	Compensation
Derb Moulay Cherif Dar El-Moqri	First 6 months Starting from the 7th month	Amount fixed for each month Amount fixed for each month
Courbiss Complexe	First 6 months Starting from the 7th month	Amount fixed for each month Amount fixed for each month

Police stations or gendarmerie posts Barracks, estates, and similar detention locations	First 6 months Starting from the 7th month	Amount fixed for each month Amount fixed for each month
Placement in hospital	Periods spent in annexes such as hospitals are included	
Detention in administrative detention centres		Amount fixed for each month
Placement in a military prison		Amount fixed for each month
Subsequent events	Enforced sentences - first 5 years Enforced sentences - more than 5 years Suspended sentences No prosecution, acquittal	Amount fixed for each month Amount fixed for each month Amount fixed for each month Amount fixed for each month

#### b. Supplementary compensation

Within the bounds of its competence, the Commission took into account the additional injuries resulting from arbitrary detention, and granted compensation according to the following principles:

- A fixed sum for the loss of work the victim had been doing abroad because of having his passport confiscated or because of the length of his detention, which sum could be increased exceptionally when necessary;
- Loss of work in public service: a fixed sum as a lower limit;
- Loss of work in the private sector: a fixed sum as a lower limit;
- Sickneses related to the detention (not necessarily after conducting a medical expert report, but only on the basis of a medical file submitted by the party concerned);
- In case the Commission comes to the conclusion that a medical expert report is necessary: a fixed sum for every point of permanent partial disability.

It is worth mentioning that in all cases of any type, compensation will be no less than a fixed sum for the petitioner involved personally in the violation, in order to preserve his dignity. Nobody will receive less than that amount (unless it is limited to his lawful portion of the inheritance).

## Part Four: Principles and Measures for Compensation owed in Other Cases

### 1. Painful Incidents

The Arbitration Commission handled some violations resulting from painful incidents like the civil disturbances that the country experienced in 1981, 1984 and 1990.

It used the same criteria and measures for compensation of rightful claimants of those who disappeared during those disturbances.

The Commission noticed that the detentions that occurred at those times were generally for relatively short periods. However, they were followed by rapid trials that in most cases did not have the necessary guarantees.

On this basis, the following amounts of compensation were fixed:

#### - Legal limit on period of placement in custody exceeded

Less than 20 days with the judicial police: a specified sum; plus a fixed amount for each additional day:

#### - Enforcement of prison sentences

- 1 month, a fixed sum;
- 2 months, a fixed sum;
- 3 months, a fixed sum;
- 4 months, a fixed sum;
- 5 months: a fixed sum;
- 6 months, a fixed sum;
- 8 months, a fixed sum;
- 10 months, a fixed sum;
- 1 year, a fixed sum;
- 1 ½ years, a fixed sum;
- 2 years, a fixed sum;
- 3 years, a fixed sum;
- 5 years, a fixed sum;

- 7 years, a fixed sum;
- 10 years, a fixed sum.
- Azrou high school students (in view of their special situation), 5 years and in exceptional circumstances, a fixed sum.

## 2. Arbitrary Detention in the Southern Provinces

The Arbitration Commission also dealt with violations occurring in detention centres in the southern provinces, and granted compensation for them, in general taking into account the relatively short periods involved, according to the following measures:

- A fixed sum for each month, for the first three months;
- A fixed sum for each month beginning from the fourth month until the tenth;
- A fixed sum for each month after that.

All this while of course examining the other injuries according to the circumstances, within the limits of the Commission's competence.

## 3. Forced Exile outside the Homeland

- Up to five years: a specified sum;
- More than 5 years up to 10 years: a specified sum;
- More than 10 years but not exceeding 20 years: a specified sum;
- All this while of course examining the effects, on a case-by-case basis.

## 4. Forced exile within the homeland

3 or 4 cases: The sums mentioned above were reduced significantly.

## General remark

In conclusion, it is worth mentioning that the amounts of compensation fixed by the Independent Arbitration Commission generally took into account personal circumstances in terms of the different effects of the violations, leading to an increase or a decrease in the measures, according to the case.



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