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The Equity and Reconciliation Committee and the Transition Process in Morocco

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Established in 2004 by King Mohammad VI, the Equity and Reconciliation Committee (ERC) worked over a period of 18 months and delivered a report which reflects the Moroccan State's willingness to reconsider its attitude towards human rights issues in their political and legal dimensions. The process as well as the outcome of the Committee's work reflect the nature of the reform process in the country, a top-down controlled process in which a vibrant civil society, particularly the human rights movement, and political opposition forces are very critical of the ruling authorities but ultimately abide by the terms of an implicit contract of change through consensus, defined by the King.

The Moroccan ERC was inspired by other commissions of this kind around the world, particularly South Africa, Peru and Chile. In spite of its serious limitations, such as the avoidance of any criminal prosecutions and only partial reparations, the Committee is the first experience in the Arab world of transitional justice and reconstruction of collective memory.

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Introduction:

The “Equity and Reconciliation Committee” was established by virtue of a royal decree issued in April 2004. After seven public hearings held in the first semester of 2005, the Committee issued its final report on the 30th of November 2005, with six sections related to the action of the Committee: the issue of truth, the responsibilities, the prejudices, compensations and equity, the continuation of reforms, in addition to a number of different recommendations. After examining the documents and records pertaining to the 1956-1999 period, the Committee concluded that the total number of cases of persons whose fate has been clarified is 742. All in all, the Committee examined 16,861 cases under the principle of compensation for coercion or injury and took positive decisions on 9,779 of these cases.

This is the outcome of a process that started in the early 1990s, when the Moroccan State embarked on a series of initiatives aiming at reconsidering its attitude towards rights based issues in its political and legal dimensions. This was possible in an atmosphere of true consciousness that started to appear within the Moroccan elites, of different schools of thought, about the necessity to adapt to the deep transformations that were invading the world at many levels.

The human rights and public freedoms issue represented a political and symbolic charger that was used by the Authorities during the last decade, in view of absorbing the external pressures they were being subjected to in terms of human rights violations, in order to restore balance to the human rights field first, as battle field for power, by introducing to it some modernizing materials, then to the political field that became in the early nineties in need for new contracts between the Authorities and the elites with the emergence of a number of internal and external constraints.

Analyzing and dissecting the public policy in the field of human rights from the early nineties till now require a thorough examination of the speeches that prevailed over every stage of the inception and implementation of this policy, which allows suggesting new analytical frameworks for the relationship of the State with the public field in Morocco.

Therefore, one can note three types of speeches that penetrated and impacted the structure of the

public rights achievement during the mentioned period:

a- The “completion of the Rule of Law” speech: It has prevailed over the human rights performance of the Authorities from 1990 to 1993 and early 1994. During that period, the Law became just a political stake swung by the different actors’ visions and positions. In this regard, the preamble of the September 4, 1992 Constitution stipulates the attachment of Morocco to human rights as internationally defined. Many laws were also issued to solve some of the loopholes of the Moroccan legal system related to human rights.

b- The “politicization of human rights issue” speech: It prevailed from late 1993 early 1994 to the 14th of March 1998, day of the installment of the government of Abdelrahman Alyusufi. During that stage, a significant transformation took place in the understanding by the actors of the role played by the human rights issue in establishing new balances within the Moroccan political field. This speech became the central and vital resource for public policy in the field of human rights during that period. Therefore, there was the need for formulating an integrated public intervention that would be based on the rectification of all the imbalances that characterized the human rights situation.

The intervention by the Authorities to solve the sensitive human rights cases (political detention – forcible disappearance) contributed partially to the restoration of balance in the Moroccan political field in the second half of the nineties. This happened in the form of very significant turning points such as the establishment of a Ministry of Human Rights on 11 November 1993, the cancellation of the royal decree (Dhaheer) of 29 June 1935 that was the basis for many arrests and trials against the opposition on 1st June 1994. The amnesty that concerned the political detainees on 8 July of the same year constituted a crucial moment for moving from a rights-based solution of the political detention affair that was claimed by the Moroccan human rights movement to a political solution; the human rights issue has thus become a basic and vital factor serving the consultations taking place between the Palace and a major sector of the conventional opposition in view of pushing the latter towards the constitution of a government of alternation.

c- The “pending issues” speech: One can say that the “politicization of human rights issue” speech has exhausted all its objective justifications with the advent of Yusufi’s government. Therefore, there was a need to look for a speech that would lead and orient public policy in the field of human rights with all its strategic and tactical contents. So there was a tendency to develop a different speech that would contribute to the development of the actors’ cognitive structure as to the human rights issue in Morocco, in order to look for a “formula” that would allow the recognition by the State of flagrant violations taking place on one hand, and a rational arrangement for the political implications of such recognition on the other hand. The considerable rise of the human rights issue with all its complexities to the forefront of the public debate in the late nineties led to a restorative approach that materialized in the creation of a special arbitration committee entrusted with the task to determine the adequate compensations for the victims of arbitrary arrest and coercive disappearance.

Although this step was important in terms of recognition by the State of its responsibility for the flagrant violations of human rights in Morocco in the last decades, new objective considerations appeared (such as the passing of King Hassan II – the emergence of new jurisprudences within the Moroccan human rights movement for this purpose and leading to the establishment of the Moroccan Forum for Truth and Equity on 27 November 1999 – then the Casablanca bomb explosions on 16 May 2003). This seemed to push towards going beyond the restorative approach to reach another one based on reconciliation with memory in view of recovering it and rebuilding it. This indicated the beginning of the Moroccan experience in the field of transitional justice.

First: Creation of the Equity and Reconciliation Committee

The ratification by King Mohammad VI on 6 November 2003 of the recommendation issued by the Human Rights Advisory Council to establish an equity and reconciliation committee constituted a significant transformation in the official approach of the Moroccan human rights issue. This transformation was mostly dictated by the necessity to absorb the tensions that were raging within the human rights field, and mainly the critics that followed the recommendation issued on

2nd April 1999 by the Human Rights Advisory Council and the fact that this problematic issue was restricted by the former arbitration committee to an approach based merely on compensation, along with the maturation of the human rights movement’s claims of a “national debate on the serious human rights violations in Morocco” on 11 November 2001.

These considerations placed the Authorities in front of a real challenge that made them look for another approach to the treatment of those tensions and the capacity to steer them according to very accurate calculations. This becomes even more significant with the repercussions of the Casablanca attacks that placed the Authorities, along with the other actors, in front of the necessity to intervene in order to redefine the priorities linked to the human rights field in Morocco. After the events, critics rose around the lack of justice in the trials against the members of the Djihad Salafi movement and the loopholes in the anti-terrorism law.

By virtue of the aforementioned recommendation that foresees the creation of the Equity and Reconciliation Committee, the nature of the choices that ruled over the experience of transitional justice in Morocco appears very clear. In fact, although the recommendation referred to the international experiences concerned with the creation of truth committees, the presence of the Moroccan symbolic conventionalist political reserve was strong; this appeared in the assertion of the monopoly by the Authorities on the human rights production mechanisms and the launching of this endeavour to the “goals of the great Islamic Sharia” as well as portraying it as the completion of “achievements and gains (...) realized, according to the recommendation, under late King Hassan II”.

On the other hand, the recommendation worked on restricting the serious human rights violations to forcible disappearance and arbitrary detention; which represented a clear, and not insignificant, difference with what was mentioned in the aforementioned national debate recommendation that considered that those violations cover forcible disappearance, arbitrary detention, unfair trials, killing, torture to death or causing physical and psychological prejudice, execution outside the context of Law, exile, forced deportation, expatriation, blockade and expropriation.

What acquired the clearest and deepest political significance is that the recommendation absolutely put away criminal accountability and declared that the work of the committee falls within the non-judiciary settlement process for the human rights issue. This exclusion of the criminal accountability was an indication of the Authorities' attempt at maintaining a monopoly on human rights, political and symbolic production with a large margin of maneuver preserved in order to avoid any possible "deviation" in the approach towards a radicalism that might jeopardize the existing socio-political balances.

In the same vein, one should examine the nature of the composition of the committee that was announced for the first time on 15 December 2003. From the list of members (eight belonging to the Human Rights Advisory Council, eight others representing the judiciary and university actors), it seems very clear that the Authorities have been working on considering a number of balances of pure political character. The composition of the Committee reflects to a high degree the consensual tendency that has started to characterize a wide space of the Moroccan political practice in the last years. The appointment of Mr Idriss Benzekri, the former political detainee and the first chairman to the Moroccan Forum for Truth and Equity, as chairman of this Committee is an attempt to recuperate the political and symbolic reserve on which the Moroccan human rights movement relies, in order to reproduce it and reshape it in formulations that fit the Authorities' visions. What is even more significant is the absence of the aforementioned Forum and the Moroccan Association for Human rights from the composition of the Committee and their continuous claim of the principle of criminal accountability for those who are responsible for the serious human rights violations in Morocco during the last decades.

Second: The Committee and the Search for Truth

With the by-laws issued by virtue of a royal statement on 12 April 2004, the Equity and Reconciliation Committee has embarked on a strategy aiming at producing a consensual "truth", away from the radical approaches that were expressed by some of the components of the Moroccan human rights movement.

The experiences of transitional justice in the world are ruled by a clear relativity partly justified by the difficulty, and even impossibility, to reach the full truth, especially if we know that most of the serious human rights violations come within the social and political conflicts of the concerned State. By looking at some international experiences, one can see that the responsibility for such violations is not necessarily fully that of the ruling political regime. In Peru for instance, the Truth Committee established, in its final report issued in August 2003 that the Peruvian Party was responsible for 45% of the violations in the country during the eighties and the nineties.

In the Moroccan case, and although the holding of seven public hearings by the Committee in the first half of 2005 constituted a crucial moment in terms of transferring some aspects of the collective memory to the public arena for discussion and accountability, the Committee asked the victims not to mention the names of the persons responsible for their abduction or torture. This led the Committee to formulate a "special" vision of truth that is very cautious and reserved and seems to be linked to the Authorities' will to "insure" its social and political environment against any "adventure" that might result from this initiative. This remains nevertheless a significant experience if it is placed in its regional Arab context that is witnessing a noticeable deterioration in terms of human rights and freedoms.

Moreover, most of the transitional justice experiences in the world occur within a larger process of political transformation of a racial system (South Africa) or a military one (Latin America) to a democratic elected one based on the respect of rights and freedoms and on alternation of power. Therefore, the issue of disclosure of the truth, in all its circumstances, is at the heart of this transformation, and interacts with all its dynamics and contributes to its deepening towards the establishment and consecration of the Rule of Law. If every experience has its own specificities, the Moroccan one is mainly characterized by the fact that it occurred under the same political regime that continued to exist with all its institutional and constitutional structures.

On the other hand, the Authorities benefited from the non-agreement of the different components of the Movement on a common vision. Since the late nineties, some divergent approaches appeared within the human rights field concerning the

Moroccan human rights problematic issue. Here the following trends are to be mentioned:

- a consensual approach expressed by the Moroccan Human Rights Organization, demanded the constitution of an independent research committee and requested an apology on behalf of the State. The Organization developed this approach later on to exclude the judiciary accountability of the authors of serious human rights violations. It seems that the consensual character of this Committee was linked to its close relationship with the Socialist Union Party of the Popular Forces (USFP) that led the experience of alternation between 1998 and 2002 and adjusted it to fit the general consensual context in which the Alyusufi's government started its settlement of many issues.
- a reconciliatory approach expressed by the Moroccan Forum for truth and equity, asserted the necessity to build reconciliation with the human rights memory, and also between the State and the society on the basis of reviewing all legal and procedural paths followed by the Authorities. In this context, the Forum requested to disclose the truth, to push the State to recognize its responsibility and offer apologies to the victims and their families, to render the true criminals responsible for their acts, to restore the prejudice and to compensate the victims. The Forum worked on developing this approach towards proposing to create a "truth and equity committee" by a royal initiative and fixing responsibilities, which made it somehow closer to the approach of the Moroccan Human Rights Organization. The development of the Forum's approach also stems from the diversity and differences among its political components.
- a punitive approach expressed by the Moroccan Human Rights Association, asked for a disclosure of all circumstances of violations, a material compensation to be given to the victims and track the persons responsible for all serious human rights violations. The Association worked on pushing its claims in a more radical direction by issuing many times lists of people involved in acts of kidnapping and forcible disappearance. The Association's

approach is highly influenced by its close relationships with the neo-leftist political parties and organizations.

With this discrepancy in the approaches, the national debate was held on 11 November 2001 and issued recommendations requesting the establishment of the "Independent national committee for truth". Although participants in the debate tried to reach a common view concerning the criminal accountability, this could not be achieved because of the differences in estimates on one hand and the non participation of the major political parties that were too busy at that time preparing the elections that were to be held on 27 September 2002 on the other hand.

At the political level, the appointment on 9 October 2002 of Mr Idriss Jetto, a businessman, as a Prime Minister, represented a kind of political conversion after the qualitative transformation witnessed by the Moroccan political arena after the alternation government of Abdelrahman Alyusufi appointed on 14 March 1998. This seems to have deprived the Committee from a true and decisive democratic transformation. As for the human rights level, the Casablanca attacks constituted an opportunity for the revival of many resistances within all the State apparatuses, in addition to the problems that are usually faced by truth committees such as information, procedural and technical coercions (victims' identification – issue of ashes and cemeteries – prejudice compensation – issue of archives...).

Third: The Committee's Final Report – Facts and Results

a- Justice

All experiences in this field show that justice has most of the time a political rather than a judiciary aspect, so the "politicization" of Justice is based on sensitive considerations related to the existing social and political balances. This is why the logic of reconciliation is made to prevail over any other logic as an essential approach to achieve a sound democratic transition without disturbance.

In this regard, it was clear that the Moroccan experience, since its creation in late 2003 to its embarkation on the treatment of the past serious human rights violations in Morocco, is heading now towards becoming an experience based on pure political justice trying to absorb the different

tensions, constraints and expectations in view of reproducing itself in the form of a rights-based great leap formation in the rights area, enjoying all actors' consensus (the Authorities – the NGOs – the victims...). This is why the Committee, as is mentioned in its report, chose “reconciliatory justice instead of accusatory justice, historical truth instead of judiciary truth, because the space for such justice is not that of the courts but rather the public space that is broadly inclusive of all spaces of social, cultural and political action.”

b- The Truth

According to all world experiences, the issue of truth disclosure constitutes the cornerstone of the process. The report mentioned some of the legal obstacles that prevented from developing and building any clearer and more convincing approach as far as the issue of missing persons is concerned. Also according to the report, “the lack of precise definition of forcible disappearance in the Moroccan Law (...) led to the use of different appellations in the debates on human rights issues in Morocco such as “missing persons”, “abducted”, those “whose fate is unknown”.

This legal void was filled in a way that sought to find “moderate” answers to the victims' expectations. The confusion increases in the absence of a clear international legal reference in this regard; there is not more than a simple declaration on missing persons that could not until now become a binding international convention.

The Committee, according to the report, has thus adopted “a methodology of work that combined field investigation with documentary research” in order to disclose a truth that appears so ramified within a time scale of 43 years, the longest ever compared to other international experiences. The Committee could, after a long examination of all documents and records related to the period between 1956 and 1999, reach the following results:

- discovering and identifying 89 persons who died in detention and checking the places where they were buried;
- discovering and identifying 11 persons who died due to armed confrontations and checking the place where they were buried;
- concluding that 325 of the persons whose names were listed as missing persons had died during the social incidents of 1965,

1981, 1984 and 1990 due to excessive or inappropriate use of public force;

- concluding to the death of 193 persons in arbitrary detention or forcible disappearance between 1956 and 1999 in different detention centers, without determining the places they were buried in.

In the context of conflict in the southern provinces, the Committee could establish the fate of 211 cases of missing persons, as follows:

- the death of 144 persons during the armed clashes;
- the Committee discovered that 67 of the missing persons had been delivered to the International Red Cross Committee on 31st October 1996.

The Committee concluded in the end that the total number of persons whose whereabouts have been disclosed was 742 cases. It also reached the conviction that 66 cases fit the missing persons cases standards, therefore the State has the duty to continue the search in order to know their whereabouts.

The disappearance file with all its complexities has been the object of many divergent approaches. It is not exaggerated to say that it has constituted with time the core issue of truth because of its sensitive nature for many actors, whether it is the State or some other major political parties that many indicators consider as involved in a way or another in some of the serious human rights violations in Morocco in the years following its independence in 1956.

Although the report mentioned other serious violations (arbitrary detention, torture and mistreatment, deprivation of the right to life due to excessive use of public force), the issue of the missing persons remained till the last moment the most contentious issue and one most likely to constitute a spot for reshuffling the positions and approaches linked to the Moroccan human rights as a whole.

c- Prejudice Compensation

In the international experiences, the prejudice compensation constitutes one of the most important aspects of transitional justice since it represents a solution or maybe a decisive substitute to the disclosure of the full truth about the serious human rights violations that took place. Chile is seen in this sense as the best example of huge

amounts of money paid to the victims and their integration at all levels in order to find a way to replace the chasing of the persons responsible for the violations because of the unbearable political and social cost it entails for the country.

For the Moroccan case, the equity and reconciliation committee worked on developing an approach in this regard through two basic elements:

- 1- Financial compensation: In this context, the Committee issued decisions determining the compensation owed to the beneficiaries in all cases that are proven to be cases of violations coming under its competence.
- 2- The other components of prejudice compensation at the individual and collective levels: As far as the legal issues are concerned, the Committee restricted the list of persons suffering from problems related to freedom of movement. It also worked on preparing a draft memorandum to explain the amnesty ordered by the late King Hassan II on 7 July 1994 and clarify its meaning. As for the issues of job, administrative and financial situation settlement as well as the issues of social integration and health rehabilitation, the Committee has delimited the concerned cases and worked on preparing recommendations containing the arrangements that are to be made by the relevant governmental sectors inspired by some international experiences.

In the same context, the Committee also drafted an approach for prejudice compensation in its social aspect, based on the results and conclusions of the visits made to the regions that witnessed serious human rights violations or those where there were centers for forcible disappearance and illegal clandestine detention; this endeavour being part of the development of a mechanism related to social and economic development in the concerned areas.

As a general conclusion to the work of the Committee in the field of prejudice compensation, the number of cases submitted to it was 16,861. The ones about which positive decisions were taken totaled 9779 i.e. 58% distributed as follows:

- financial compensation: 6358 cases / around 37.9%;

- financial compensation accompanied with compensation for remaining prejudices: 1895 cases / around 11.2%;
- compensation of prejudices without financial compensation: 1499 cases / around 8.9%.

Conclusion

The Moroccan experience has chosen from the beginning to embark on a process of transitional justice opting for reconciliation rather than criminal accountability, a reconciliation open to the absorption of what happened in the past to transform it into a memory constructed by all the components of society in view of facing the social and economic challenges that seem today to be more urgent than ever before.

This choice is linked, in one of its aspects, to the existing balances of power. The Committee has acted in a general atmosphere of relatively tight horizons for political openness, in addition to the deterioration of the ageing major political parties and their incapacity to renew their structure and their speeches. This has rendered the Committee almost isolated from the general dynamism of both civil and political societies in spite of all the efforts it undertook in this regard (public hearings for instance).

With such considerations, there was a political, standard symbolic red line that the Committee was not expected to cross. This appears clearly through some sensitive cases for which the Committee was expected to give answers and new considerations such as the case of Unionist leader Al Mahdi Ben Barka who was kidnapped forty years ago in Paris and nothing has been known of him till now. A major part of the sensitivity over this issue is not only related to the possible involvement of some influential parties or bodies belonging to many countries. It is that this case has been instrumentalized for political purposes, especially with rumours about the involvement of the Unionist leader in some of the events that shook the country right after the independence such as the assassination of Abbas Mousaidi, one of the Liberation Army leaders and the abduction of some others.

There is also another aspect that has nothing to do with sensitive cases but is rather related to the

human rights issue as a whole. The Moroccan authorities' behaviour in terms of human rights and freedoms since the early nineties has indicated that they have often worked on avoiding any full response to the expectations and requests of the human rights movement. What is not dealt with is

later used as a political/strategic factor by the Authorities whenever they need to and according to the changes of the political struggle. The fact that the Committee's report has skipped major parts of the "truth" may be part of the actions taken in this sense.

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