



COMPARATIVE STUDY OF TRANSITIONAL JUSTICE IN AFRICA

# MOROCCO

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# African Comparative Transitional Justice Study:

## Moroccan Case

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## Introduction

The focus of this study is the Moroccan experience of transitional justice, a period spanning roughly from the mid-1950s through the end of the 1990s under the reign of King Hassan II and continuing through 2011 under the reign of his son, King Mohammed VI. In the early 1990s, due primarily to international pressure, King Hassan II, in power since his father's death in 1961, began to introduce changes in public discourse as well as political practices. These changes included an acknowledgment of the existence of secret prisons, the release of political prisoners (especially those with international connections), and a loosening of limitations on public discourse. The other notable change was the introduction of concepts of human rights and democracy into the state's discourse to align with the dominant political discourse of the era and to prepare for his son's transition after his death. Soon after his death in 1999, his son Mohamed VI assumed power as the rightful heir to the throne (as his father before him) and quickly ordered for the creation of an indemnification commission to compensate victims of crimes perpetrated by officials acting in the name of the state. This signalled the beginning of a process of addressing the legacy of his father's ruthless rule and, for many, a new page in Moroccan political life. The impact of this commission proved limited, so the Commission for Equity and Reconciliation (IER) was established by royal decree in late 2003. The IER's mandate was to establish the truth about the violations that occurred during the Years of Lead (1956-1999), compensate victims, initiate a process of national reconciliation and, most importantly, promote a culture of human rights and respect for human dignity and life to contribute to the associated project of democratic transition.<sup>1</sup> Far from meeting with unanimity, however, the Moroccan project of transitional justice has its supporters as well as its detractors. What is certain, however, is

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<sup>1</sup> IER mission: <http://ier.ma/?lang=en>

that the process of transitional justice has inaugurated a national conversation about the meaning of reparations, justice and democratic reforms.

The current king, Mohammed VI, is a descendent of the Alaoui dynasty, a monarchy that has been ruling the country since the mid-1600s and has become an uncontested symbol of religious and political power, continuity and relative stability, both nationally and internationally. Since the launching of the process of transitional justice, Morocco has been hailed as a pioneer in the so-called Arab world and applauded internationally. Additionally, after the Arab Spring and the inauguration of transitional regimes in neighbouring countries such as Tunisia, Libya and Egypt, Morocco was called upon to provide expertise in the field of transitional justice, a testament to the perception that its experience had been relatively fruitful and successful. Internally, however, the project of transitional justice is heavily criticised by victims, civil society and other political actors for its inability to secure a genuine political transition and for failing to address one of the main stated/advertised goals of this entire process: accountability.

The first part of this study provides an overview of the historical background of Morocco, a country with roughly 36 million inhabitants (2016 Census). Much like its African counterparts, Morocco is also a country with multiple and (often distinct) ethnic, racial and religious and linguistic identities: Arab, *Amazigh* (the original inhabitants of Morocco), Muslim, Jewish, Saharan and African. However, unlike most African countries, these diverse ethnic and racial groups have cohabitated for many centuries in relative peace and, have rarely, if ever, suffered from inter-ethnic or interracial tensions. This is not to suggest that Moroccan society does not suffer from racism and other forms of bigotry but simply to note that, at a political level, these issues have not surfaced or have been kept under a lid. In other words, ethnic identities have not become a significant source of political or social

tension. As will be discussed later on, every time these have surfaced, the king has been swift in finding ways of social appeasement.

Particular attention is given to the colonial period and the period right after the end of the French protectorate where Sultan Mohammed V came back from exile in Madagascar and was welcomed back as a national hero. Soon after his death in 1961 from a minor surgery, his son Hassan II became the newly enthroned King of Morocco and remained in power for thirty-eight years until his death in July 1999. It is the period spanning from his enthronement in 1961 until his death in 1999 (38 years) that the Moroccan process of transitional justice sought to address. In order to remain in power at all costs, Hassan II used all necessary means to quell any and all opposition to his rule. This includes anyone who was seen as a potential threat to his authority. Additionally, this discussion includes an overview of religious and political factors that allowed this regime to weather important and sometimes seismic events such as the military coups of 1971 and 1972, events that could have potentially shattered other political systems or, at the very least, shook them at their core but that, in the Moroccan context, have on the contrary allowed the regime to consolidate its rule.

## **1. Colonialism in Morocco**

### **a. Pre-colonial and Colonial factors:**

The first part of this study focuses on the colonial history of Morocco and the country's tumultuous post-colonial period. More specifically, the discussion addresses how colonial factors have shaped institutions, societal relations and conflicts in the long run. Unlike its closest neighbours, Morocco never fell under Ottoman rule. It was nonetheless included in the negotiations between imperial powers, French, Spain and England (and to some extent Germany) in the mid-1800 and early 1900s. While its immediate neighbour, Algeria, fell to

French colonisation for over a century in 1834, Morocco remained largely independent for most of the 19<sup>th</sup> century. However, throughout the end of the 1800s, it became the stage of a succession of regional revolts and battles with the Spanish culminating in a dispute over the city of Ceuta in the North, which ended with a Spanish protectorate that was established in 1884 over coastal regions. As this section shows, the sultan of Morocco was losing control amongst the tribes, who were beginning to question not only his religious legitimacy but also the taxes that were imposed on them.

The Alaoui dynasty is a tribe originally from the Hejaz in Saudi Arabia who came to the South of Morocco (Tafilalet) in the 1300s. Known for their *baraka* (good luck or blessing in Arabic) that their *Sherifian*<sup>2</sup> lineage endowed them with, they snatched the control of Morocco from their Saadi predecessors in the mid-1600s. Throughout many power struggles with opposing tribes, the Alaoui dynasty was able to maintain ownership of the country by resorting to the Black guard, an army of black slaves that continues to protect the king's palace. Much ink has been spilled on the role that *Sherifian* lineage plays in the aura the Alaoui monarchy enjoys. In Morocco and in other Muslim (and Arabic-speaking) countries, a *Sherif* is a person who claims to be a descendant of the Prophet. This lineage grants the person great respect and aura in society because it *defacto* confers a divine that person to the divine. The Alaoui dynasty, as well as other dynasties across the Middle East (such as Jordan and Saudi Arabia), have claimed such lineage throughout the years to give legitimacy to their rule.

This principle, by which the Alaoui family claims direct lineage from the Prophet Mohammed, provides male descendants with the title of *sherif* and the eligibility to be the

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<sup>2</sup> Sherifian means lineage from the prophet Mohammed.

*khalif* or the *imam*, a spiritual as well as political leader of their community: the Commander of the Faithful (*Amir al-Mu'minin*). Miller and Bourquia point out that:

“Compared to other Maghribi (Muslim North African) and Middle Eastern States, the Moroccan political system has preserved a remarkable constancy over time. Since the early ninth century, Morocco has been more or less continuously ruled by a sultan-king who has monopolized the levers of government. The present dynasty, the ‘Alawis, first came to power in the seventeenth century and has governed the country ever since in an extraordinary unbroken chain of rule. This striking longevity invites questions about the institutions and social forms that have given substance to monarchical power and the role they play in implanting it so deeply in society”<sup>3</sup>

The ‘*Sherifian* formula’ has been instrumental in allowing the Alaoui dynasty to exercise both political and religious power over Morocco for centuries. Such longevity has both political and psychological implications for Moroccan society.

However, despite all of its political and psychological hold on the population, the state was very weakened after its defeat against the French in the battle of Isly in 1844, followed by the defeat by the Spanish Armada in 1859-1860. Indebted to European powers and forced to pay the fines imposed by the winners of the war, its legitimacy started to be questioned by the tribes who were unsure of the sultan’s ability to defend the “land of Islam.” In effect, the sultan was struggling to keep it together internally amidst the growing demands for influence of the (European) colonial powers. To continue to respond favourably to the financial demands of Great Britain and France, the state continued to coerce tribes into paying various kinds of taxation, which were reinstated in 1850.<sup>4</sup> As the tribes began to refuse to pay what they considered to be unjust taxes and resisted the orders of the sultan,

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<sup>3</sup> P. 2

<sup>4</sup> See: <http://www.san.beck.org/16-8-Algeria,Tunisia,Morocco.html>



more coercion and repression ensued. The tribes' anger grew as they were not only subjected to racketeering but France and Spain began acting as if Morocco was indeed their legitimate territory while the Sultan did nothing to stop them. The tribes, on the other hand, were actively trying to stop the invading powers.

European powers started protesting and asking for reparations for the harm and damages caused by indigenous populations, leading the Sultan to hire armed gangs (*Harkas*) to correct the rebellious tribes in the Sahara and the Rif who were refusing to pay the heavy taxes, in what was referred to as "bled siba," meaning the land of anarchy as opposed to "bled el makhzen," the land of law and order. The ruling Sultan, Moulay Abdelaziz, was deemed weak and was consequently deposed to the benefit of his brother, Moulay Hafid who was hostile to colonial powers and became known as *the Sultan of Jihad* and proclaimed as a Sultan in Marrakech in August 1907.<sup>5</sup> In January 1908 in Fez, he was proclaimed Amir Al Mouminin, the Commander of the Faithful, after the first ceremony of the Bey'aa (allegiance), a ceremony that would become a hallmark of the Alaoui Dynasty. But, as the tribes' discontent grew louder, the sultan felt besieged and defacto asked the French for help in subduing the population, as Sater suggests.

Since its occupation of Morocco's immediate neighbours Algeria and Tunisia, the French were looking to expand their territory in North Africa, especially amidst increasing needs and demands for agricultural land to produce food. To get Britain off their back, the French agreed to allow the British free reign in Egypt but the Spanish wanted to keep their influence in ports in the North and the South of Morocco. The Algeciras Conference in 1906 sealed the deal with both countries. While the talks confirmed the independence of Morocco and its Sultan, it simultaneously gave French the leading role in controlling

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<sup>5</sup> James N. Sater. Morocco: Challenges to tradition and modernity

Moroccan affairs. The situation did not sit well with the local population, leading the French to justify increasing their military presence on the grounds to squelch mounting tensions. This situation was temporarily halted when Germany sent a gunboat to the Southern coastal city of Agadir. To settle the situation the French conceded some of its territory in Central Africa in return for the German retreat, putting an end to European powers jockeying for influence in Morocco. In 1912, the Fez Treaty was signed, whereby Sultan Hafid defacto handed over the country to French authorities and the title of sultan to his brother, Moulay Youssef. Spain had control of the ports in the Mediterranean Coast, and France had indirect control over the rest of the country, while Tangier was granted the status of “international city.” The far north region of Morocco was under the control of the Spanish Protectorate whose territory included the disputed enclaves, Melilla and Ceuta. Spain had also control over Ifni, in the South. The capital of the Spanish Protectorate was Tetouan while the French administration chose Rabat as its administrative capital.

*b. Colonial powers: France and Spain*

While France gained control of most of Morocco under the administration of the French Resident General Lyautey, the sultan of Morocco became a figurehead, a fictional king. Having learned from its previous experiences in Algeria and Indochina as well as countries in Sub-Saharan Africa, France used all possible measures to pacify the indigenous populations in rural areas, which were first to resist the occupation. Resistance to colonial presence started amongst the tribes in rural Morocco and was mostly armed.

One of the most famous wars against colonial powers was fought in the Rif mountains, under the leadership of Abdelkrim El Khattabi. Originally he and his army defeated the Spanish in the famous battle of Anoual in 1921, after which he proclaimed the Republic of the Rif. His dream of the Republic of the Rif would last until 1926, when he and

his army were defeated at the hands of a coalition of French, Spanish and Sherifian armies, following the bombing of defenceless populations with toxic gas. Facing such intense and ruthless aggression that murdered hundreds of civilians, El Khattabi surrendered to the French Army in 1926 and was soon after sent to exile in Reunion. El Khattabi continues to be a hero in Moroccan collective consciousness.<sup>6</sup>

Immediately after his father's death, Sultan Moulay Youssef was enthroned in 1927. This was a colonial decision motivated by the fact that he was known for his timid temperament and the French believed he would be easier to manipulate. However, this appointment, coupled with the establishment of the Berber law (*Addahir Al Barbari*) in 1930 that sought to create discord and division between different ethnic groups by separating Arab and Berber (or Amazigh) people did not work out as well as the French had planned.<sup>7</sup> This law allowed people of Amazigh descent to be able to follow their customary (tribal) laws instead of Moroccan common law (which was the Sharia law at the time). However, the Berber law backfired and stirred up nationalism within the Amazigh population. Stephen Hughes notes that:

It was widely believed that the Berbers were simple, reasonable and reliable people, if not noble savages, who were much more tractable than the people in cities like Fez, a hotbed of nationalism. The French believed they could manipulate what they perceived as the Berber majority in order to master an Arab minority or the nationalists in cities like Fez, Rabat and Casablanca.<sup>8</sup>

A direct result of the renewed union between the Arab and the Amazigh populations was the creation of a national day to celebrate the enthronement of the king, called Throne Day, in

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<sup>6</sup> Abdelkarim Khattabi

<sup>7</sup>It is important to note that the Berber or Amazigh/Imazighen people, as they prefer to be called as Berber has a connotation of barbarism while Amazigh or Imazighen means the free people.

<sup>8</sup> Stephen O. Hughes, *Morocco Under Hassan II*, 49.

1933. This day is still celebrated as part of the annual royal ceremony. This series of events marked the beginning of the end of the military conquest by colonial powers and the birth of the first Moroccan political party, the CAM (Committee for Moroccan Action), which included prominent young men of the like of Allal El-Fassi, Mohammed El-Ouazzani and Ahmed Balafrej.

The new party for independence gave Moroccans the impetus to rally behind the nationalist cause to gain greater control of their country and, ultimately, their independence from the French. In 1937, riots erupted in various cities across the country, which were met with repression. The outbreak of World War II shifted the tide and initially slowed down nationalist efforts towards independence, as the sultan called for Moroccans to support France in the war, and many Moroccans ended up serving on behalf of France. Most of those who served were Berbers from the Middle Atlas Mountains and were referred to as the Goums or the Tirailleurs Marocains.<sup>9</sup> But the end of the war ended the so-called entente between the two countries and in the late 1940s to the early 1950s, military hostilities between French troops and Moroccan nationalists reached a peak, killing thousands and forcing the French to seek a way out of Morocco.

### *c. End of colonisation*

As noted in the section above, while the early 1930s were marked by the emergence of the nationalist movement, the late 1930s were characterized by intense protests and the creation of the Moroccan committee for action (CAM).<sup>10</sup> But it was the establishment of the Vichy regime in France in 1940 that accelerated the Moroccan march towards independence as it opened up the country to British and US influence. Some have speculated that the US landing in Morocco in 1942 had an immense impact on the process of independence. At the

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<sup>9</sup> Stephen O. Hughes. Morocco Under Hassan II, 49.

<sup>10</sup> BenBarka, 102

Casablanca Conference where the Allied Powers met in 1943, Franklin Roosevelt and Winston Churchill met with the sultan and guaranteed him their support for independence.<sup>11</sup> All of these circumstances emboldened nationalists, leading to the creation of the independence party or the Istiqlal party in 1943, a political formation made up mostly of sons of established aristocratic families. The rising popularity of the Istiqlal party did not sit well with General Nogues (the representative of the French government in Morocco), especially after the publication of the manifest for independence in 1944. The Istiqlal party and those associated with it became the target of French harassment and repression, leading to the arrest of several leaders in 1944. In their attempt to force the sultan to dissociate from the Istiqlal party and counter resistance efforts, the French used Amazigh leaders to pursue their agenda and create further turmoil in local politics. For instance they used Thami al Glaoui and his circle of influence to discredit the sultan and force him to submit to French designs for the country.<sup>12</sup> But events in neighbouring Tunisia (the assassination attempt by the French of a union leader) sparked protests in Casablanca in 1952, leading to a series of arrests of nationalists, who were held without due process. In the meantime, France and its Moroccan accomplices continued to try to force the sultan to fulfil their plan, which ultimately led to him being deposed and forced him into exile.

Stephen O. Hughes recounts that it was the French administration's collaborators, led by Thami El Glaoui, the Pasha of the city of Marrakech, who had asked for the sultan to be deposed.<sup>13</sup> While it seemed that the French Foreign Minister Georges Bidault was not in agreement with Augustin Guillaume (who was the Resident-General at the time) but El Glaoui and his accomplices jumped the gun and singlehandedly proclaimed the sitting sultan

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<sup>11</sup> Did *Amrika* promise Morocco's independence? The nationalist movement, the Sultan, and the making of the 'Roosevelt Myth' <http://www.tandfonline.com/doi/abs/10.1080/13629387.2014.946825>

<sup>12</sup>

<sup>13</sup> Reference

as unworthy of his title as Commander of the Faithful and put in his place, Moulay Ben Arafa, a distant royal cousin who was more of puppet.<sup>14</sup> This started rioting in several cities, which the French feared was the beginning of anarchy and potentially civil war in the country. In an effort to avoid such a feat, the French administration gave the sultan an ultimatum: to abdicate or be sent to exile. The sultan chose exile, to which he was immediately sent in Madagascar in 1953, with his children, wives and concubines, leaving behind the puppet government led by Ben Arafa that El Glaoui and the French had put in place.<sup>15</sup> With this action, the French had created a new national hero, Sultan Mohammed V, and accelerated the path to independence.

In December 1953, the General Assembly at the UN called for the right to self-determination for Morocco. Tensions were mounting and more people were dying. Among the casualties, twenty-five individuals were killed in in Fez and Port Lyautey between July 31-August 15, 1954, about six people were executed by the French government in Casablanca on January 4, 1955 and other sixty or more were killed in Casablanca on July 14-18, 1955. The death toll quickly rose to about 2,000 people during the crisis, leading to increased anger and discontent amongst the population. After the Aix-les-Bains conference in August 1955 between the French administration and Moroccan representatives, the Sultan returned from exile in November 1955 and was celebrated as the liberator of Morocco. Soon after, on March 2<sup>nd</sup>, 1956, the Fez Treaty was abolished and Morocco was declared an independent country.

In May 1956, the Royal Armed Forces (FAR) were constituted and in August of the same year, the National Consultative Council was created, led by Mehdi Ben Barka, a leader in the nationalist movement. By October of the same year, Tangier was re-integrated in

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<sup>14</sup> REFERENCE

<sup>15</sup> Stephen O. Hughes. Morocco Under Hassan II, 53

Morocco. In July 1957, prince Moulay Hassan was declared the legitimate heir to the throne, followed by a declaration of kingdom by his father. Sultan Sidi Mohammed assumed the title of king Mohammed V, a more modern and benevolent title.

While the end of colonialism could have signaled the end of an era of repression and violence and perhaps the inauguration of a modern state, that was not the case. The struggle for power between the palace and the political parties that worked very hard to secure independence emerged soon after the French left Morocco. Some of the policies and practices used by the colonizer became part of local politics. As Susan Miller notes, the after independence years are a highly controversial and contested period of Moroccan history. She states that this period represents immense suffering on the part of the masses and of prosperity on the part of certain elites; of ambiguous actions and failed leadership from colonial power; of feebleness from a weakened monarchy; of brutal propaganda, accusations, and lies traded by adversaries; of divisive diatribes; of pervasive class struggle; of growing nationalist fervour.<sup>16</sup>

*d. Path Dependencies*

The French presence in Morocco was supposed to be an indirect type of colonialism. However, France did not merely watch over Morocco and protect it as the type of foreign presence would suggest, it did make structural changes in the local governance at many levels, in the schooling system, in the administration and the economy. While the French colonization in Morocco did not last nearly as long as it did in Algeria, the impact on Moroccan society was palpable, especially in its creation of elites that had access to resources and education and were closer to the palace leaving the rest of the population

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<sup>16</sup> See <http://www.tandfonline.com/doi/full/10.1080/13629387.2014.953815?src=recsys>

deprived of opportunities to make a decent living. This led to increasing economic and social inequities that have contributed to mounting tensions throughout the years.

But, for the Alaoui dynasty, the outcome of French colonization was just short of miraculous, insofar as it not only restored its symbolic power, but it considerably enhanced it. Susan Miller and Rahma Bourquia advance that the French colonisation saved the monarchy. By the time Morocco fell to French powers, the “sultanate was exhausted and close to expiration, torn apart by internecine struggles and successive European incursions. Preserved and resuscitated by the French under the Protectorate, the monarchy arose from the ashes, stripped of its political power but with its symbolic richness intact and even raised to new heights.”<sup>17</sup> French colonization did a huge favour to the monarchy as it helped restore its political capital and endowed it with a heroic aura. In contrast, another by-product of colonization was that it created a situation of cultural and political schizophrenia, as it did in Algeria and countries subjected to foreign intervention and deeply penetrated by colonizers. Miller and Bourquia state that: “During the period of French rule, structures of power inherited from the Maghribi past were overlaid with other kinds of authority derived from Western sources. After independence in 1956, French and Spanish rule gradually melted away, but the institutions it had imposed on Moroccan political culture remained behind.”<sup>18</sup> The influence of this *mélange* of cultures explains the variety of references and models that the monarchy and Moroccan people resort to in both private and public spheres. At the political level, this duality is evident in references to both the Quran and Western discourses of human rights and democracy. This duality is also manifest in the mix of both religious and secular references in the monarchy’s official discourse, which combines

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<sup>17</sup> (Miller and Bourquia 11).

<sup>18</sup> Ibid



the image of the king's role as the religious leader (*Amir Al Mouminine*)<sup>19</sup> with that of a benevolent leader seeking to modernize the country.

During their tenure in Morocco, the French tried to frantically industrialize the country and build infrastructure to support their settlement and exploitation of resources. This included roads, dams and a railway system that linked Tangier to Fez in 1927. Most of their modernization efforts focused on what came to be known as the "useful Morocco," lands and regions that were fertile enough for farming. Areas that were neglected were typically areas that were inhabited by tribes that were resistant to colonial powers and deemed as useless by and to the French. This concept of Useful Morocco was a phrase made up by Marechal Lyautey, the first administrator of colonial Morocco. Useful Morocco (*Maroc Utile*) refers to areas in Morocco that have been industrialized and modernized during French colonization. The distinction between different regions of Morocco created an imbalance in terms of allocations of resources and infrastructure, leaving large parts of Morocco underdeveloped and underserved until this day.

They also created an important institution in the country, one that continues to play a crucial role in the country's economy, the Moroccan phosphates company (OCP) in 1920. The OCP helped finance the French administration's budget during the protectorate while its control was given to the makhzen. Many industrial sectors emerged in the mid-1930s, along with the mining sector, both of which represented about 31% of the total GDP in 1955, while agriculture represented more than 40% of exports. The economy's dependence on agriculture continues to this day, making the economy susceptible to poor weather conditions such as droughts or floods.<sup>20</sup> Abdelahad Sebti notes that the spatial re-organization of the country into *bled al-makhzen* and *bled al-siba* as well as useful vs.

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<sup>19</sup> Arabic expression meaning: commander of the faithful, the ultimate religious leader in the country.

<sup>20</sup> See Belaich

useless Morocco caused a “devastating strain on the power of the makhzen,” what he calls “territorial stress.”<sup>21</sup> Another spatial organization during colonialism that will have lasting effects was the division of the country into ‘civil regions’ that included cities like Rabat, Casablanca and Oujda and, ‘military regions’ (Marrakech, Fez, Meknes and Agadir. This early industrialization and division of the country helped attract capital flows that were seeking cheap labor and low rates of taxation.

Abdelahhd Sebti notes that this was part of the “contours of a real economic geography” that was tied to the activities of ports in cities between Casablanca and Kenitra, where most modern infrastructure and communications were established. This spatial organization of the country contributed to a “new urban hierarchy, exclusion and marginalization” and a distinction in the cities themselves that included two cities, one was the modern European city (*ville Européenne*), intended for the Europeans and the Moroccan elite that was groomed by the French and the medina, old city (*ville indigène*) for the rest of Moroccans. In fact, Paul Rabinow argues that the country was the experimenting grounds for modern urbanism and zoning, led by General Lyautey and his dream team of architects who tried to do in Morocco what they were unable to do in their homeland.

## **2. Conflict Factors**

This section focuses on conflict factors by highlighting how the struggle for political power between the palace (the king, his family and the makhzen), and political parties was a struggle between citizens who wanted Morocco to gain genuine independence and build a modern state with democratic institutions and the palace and the makhzen that did not want to lose any of its privileges by sharing power. The conflict that emerged in the post-independence era is intimately connected to the legacy of colonial penetration and the

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impact it had on Moroccan society, the political ambitions of the emerging and newly formed elite as well as the increasingly ruthless practices of a monarchy that is riven with the fear of losing its grip and control over the country amidst a legitimacy crisis. To better understand these dynamics, it is important to understand the role of the *makhzen* in Moroccan politics as well as the dual role that the Moroccan monarch plays as both the religious as well as the political leader.

#### The Alawi monarchy and its *makhzen*

As previously suggested, due to its long reign over Morocco, the monarchy has become an essential part of the Moroccan identity, so much so that any challenge to the institution of the monarchy is often perceived as a personal attack by citizens.<sup>22</sup> The belief that the monarchy is a shield against extremists, political chaos or anarchy, and the aggressiveness of the Algerian “enemy” has deep roots in the Moroccan psyche. This belief has only been strengthened in the aftermath of the Arab Spring, which has caused death, destruction and uncertainty in other MENA countries while Morocco has so far been spared such instability.

Through religious rituals and other traditions established after independence, especially the practice of *al bay'aa*, the king is celebrated yearly as the legitimate political and religious leader of the kingdom. The *bay'aa* is an annual public ceremony, which is the equivalent of a public testimony of loyalty and allegiance to the person of the king, that brings together hundreds of (male) public servants, officials and notables from all parts of the country to pledge their unwavering support to the institution of the monarchy. The ceremony requires that all of the officials who attend to wear white hooded *djellabas* and stand for hours (in the rain or in the hot sun) in an outside location waiting for the king to appear on his horse, to finally bow to him and yell “long live the king” as he passes by. But,

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<sup>22</sup> reference

in the aftermath of the so-called Arab Spring that was launched by the youth, this ritual has become a symbol of the backward and anti-modern practices of the Alawi monarchy. For instance, the February 20<sup>th</sup> movement, a youth protest movement that has emerged during the Arab Spring in 2011, has organized events that mock the Bay'aa where protestors re-enact this ritual but show allegiance and loyalty to the people instead of the monarch, with the slogan "long live my people!" The image of the king riding on his white horse while hundreds of men prostrate themselves as he passes by them chanting "long live my master!" has become the ultimate example of the slavish mentality of the Alawi monarchy. But it should be clear that the monarchy in Morocco has been able to sustain itself mostly thanks to its immense security apparatus, referred to as the *makhzen*.

The *makhzen* is the security apparatus that is in charge of keeping the monarchy afloat at all costs, figuratively in its mythical aspect and in reality (with its violence against citizens) in everyday life as it continues to permeate all areas of political and social life in Morocco. The *makhzen* refers to anyone endowed with power from the state, military or police or even an agent in a ministry who has some authority over regular citizens, and feels entitled to use or abuse his/her power. The *makhzen* has free reign to ensure that no one threatens the stability of the system. The *makhzen* can even predict that a person would commit an act that is harmful to the monarchy, and then interdict to stop it.<sup>23</sup> It acts "both as investigator and as judge presuming the crime while imagining, indeed foreshadowing, the eventuality of criminal charges and while preemptively acting on a punishment that might be meted out."<sup>24</sup>

In popular language, the term is often used to describe the State and its agents, while the term is used politically to refer to the King and his entourage. Remy Leveau argues that

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<sup>23</sup> Smith and Loudiy

<sup>24</sup>Slyomovics 15

historically, the *makhzen* referred to the “territory administered by the monarch, as opposed to the *bled siba*, which was territory outside the control of the central administration.”<sup>25</sup> While it historically refers to the royal household, the storehouse of power, this abstract and omnipotent entity in charge of law and order as previously noted, in today’s Morocco, the *makhzen* refers to those associated with the king, his entourage and those either officially (police and military) or unofficially who serve his interests.<sup>26</sup> The *makhzen* is somewhat of a mythical figure in the consciousness of ordinary Moroccans, an omnipresent oppressive force that watches their every move and must be either avoided or corrupted. The degree of fear the *makhzen* provokes in Moroccan citizens is captured by the following popular sayings:

Three things cannot be overcome: fire, flood, and the *makhzen*;

Only God and the *makhzen* can defeat you;

The *makhzen* takes care of itself;

We cannot match up to the *makhzen*<sup>27</sup>

It is this mission of protecting (and propping up) the monarch that has motivated *makhzen* involvement in the thousands of cases of torture, abuse and, sometimes execution. It should be clear that the *makhzen* does not wait for a warrant or proof of guilt to take care of the situation that might be endangering the monarchy or its entourage. Storm notes: “The *makhzen* does not officially exist apart from in a few administrative denominations.”<sup>28</sup> The military is part of the *makhzen* and includes three branches: the Royal army (includes the Royal guard), the Royal air force and the Royal navy. Other military and paramilitary forces include the Royal gendarmerie and the auxiliary forces, whose mission is to guarantee

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<sup>25</sup> See Storm 15 and discussion under 1.2.

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<sup>27</sup> Bourquia 244

<sup>28</sup> Note about Lise Storm

national security, public safety and order. Two or more types of security forces have been created in the aftermath of the rise of terrorist threats to the country, after the Casablanca attacks of 2003 where 16 people were killed and many more injured.<sup>29</sup>

As Mohammed Maghraoui argues, the system of the *makhzen* is the most difficult to dismantle in Moroccan politics because it is engrained in the political culture of the country and constitutes the most rooted and ominous “institutional and ideological component of Hassan II’s legacy.”<sup>30</sup> While the police, the military and any agent of the state is part of the *makhzen*, the contours of who belongs or does not belong to the *makhzen* remain blurry, purposefully so. The blurring of these contours is orchestrated and nurtured by the state, to continue to instil fear in the subjects of the king. Moroccan citizens are not considered citizens but rather subjects of the king, with the *makhzen* acting both as their benevolent protector and their subjugator.

#### The emergence of the political elite and the struggle for power

The independence of Morocco was achieved thanks to the blood and sweat of thousands of Moroccans. It is in the midst of this struggle that the party for independence emerged, leading the political and ideological aspect of this effort. While the activity of the members of the party for independence was mostly clandestine during the protectorate, they resumed their activities soon after the return of Mohammed V. Lise Storm notes that political affairs in the post-independence in Morocco were highly volatile, especially between 1956 and 1972, which she divides in two phases: 1956-1962 and then 1962-1972,

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<sup>29</sup> <http://www.nytimes.com/2003/05/17/world/aftereffects-morocco-suicide-bombs-kill-at-least-14-in-casablanca.html>

<sup>30</sup> Political Authority 3

each phase characterized by the prominence of different political actors, new constitutional changes and a particular type of power dynamics.<sup>31</sup>

The period immediately after Morocco gained its independence was characterised by the battle for power between the monarchy and the Istiqlal party. The first step taken by the monarchy was the establishment of the FAR (Forces Armees Royales) a few weeks after securing independence from the French. Soon after, in 1957, prince Hassan II is declared the heir to the throne and soon after his father, previously referred to as the Sultan, becomes the king of Morocco, a title with modern overtones.

The most important political formation in the post-independence era was the Istiqlal party, the party that led the struggle for independence and was supportive of the king. Storm argues that in the first phase it was this party that hindered efforts at democratization that the king tried to implement, first by creating a multi-party system. It should be clear that in the post-independence area, the king and the Istiqlal party were the only players in the political scene, both heroes in the eyes of the people. Maghraoui points out that it was “with the acquiescence of the nationalist parties” that the king “emerged as the symbol of national liberation and, became, constitutionally, the supreme arbitrator, legislator and guarantor of political legitimacy” (“Political Authority” 3). This alliance did not last long as it became clear, as noted, that not only did the nationalist parties that fought for independence and supported the legitimacy of the monarchy want a share of the political pie, so did entire regions that had given their blood to free the country, the Rif for example. The ICTJ’s report provides details:

In an effort to eliminate opposition, entire areas that had joined in the struggle for independence were subsequently subjected to severe

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<sup>31</sup> Storm 13

crackdowns under Morocco's first post-independence ruler, King Mohammed V. The Northern Rif, for example, found its anticolonial struggle turned against it as soon as independence was achieved. The region revolted in 1958, only to be brutally crushed by the Royal Armed Forces, resulting in thousands of deaths (4).<sup>32</sup>

As previously noted, the end of colonization did not mean the end of civil unrest in Morocco. Two main political formations were the target of crown prince Moulay Hassan: the Rif region which had been a rebellious thorn in the heels of the monarchy and the Istiqlal party, which had led the movement for independence and was expecting to have a share of the political pie in post-independent Morocco. The monarchy, on the other hand, had no plans to allow the rising Istiqlal party to become a threat to its absolute power or the Rif region to become secessionist. Its modus operandi was systematic repression of any and all competition on the political arena so that it alone is the only legitimate source of power.

The Istiqlad party convened its first congress in December 1<sup>st</sup>, 1955, just a few days before the constitution of the first independent Moroccan government, commonly referred to as the 1<sup>st</sup> Bekkai government, in which several members of the Istiqlal party participated. The freshly instituted government was soon dissolved and replaced with what's known as the 2<sup>nd</sup> Bekkai government, with Aberrahim Bouabid as the head of the Ministry of National Economy. In November of 1956, King Mohammed V announced his eagerness to engage the country in a process of democratization that will <sup>33</sup>

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<sup>32</sup> For additional details, see Vermeren and Perrault. Perrault's book was banned in Morocco when it was published in 1990 and a major campaign was launched against it. The book was based on information gathered by Perrault from correspondence with a political prisoner and depicted Hassan II as a ruthless dictator who may have even participated in his own father's death in order to be the only one in charge of political matters in Morocco.

<sup>33</sup> <http://www.asfar.org.uk/the-struggle-for-power-post-independence-1956-62/>



In the aftermath of independence, political parties began to emerge. The party that led the struggle for independence, the Istiqlal party, a conservative nationalist party, split into two. One that kept its name and its conservative flavour and direction and, the other, the Union National des Forces Populaires (National Union of Popular Forces), become the first leftist party in Modern Morocco. As their participation in the political affairs of the country began to less and less secure, tensions began rising. Nationalists who had participated in the movement for independence were beginning to ask for political power to participate in the building of the country.

### **2.1. Conflict dynamics**

The first part of the 20<sup>th</sup> century brought about colonization and foreign oppression while the second half was marked by state violence and political terror caused by the Alaoui monarchy and its associated system of repression, the *makhzen*. These years, which span roughly from the birth of independent Morocco (1956) until the death of Hassan II (1999), has come to be known as the Years of Lead or the “black years.” The Years of Lead were marked by arbitrary arrests, forced disappearances, assassinations and random acts of repression and violence against opponents of the regime, their families and anyone who came under suspicion of being associated with anyone involved in politics. Maghraoui describes this period in the following terms: “From 1961 to 1999, King Hassan II reigned over Morocco exactly as if he were running a medieval absolutist state. Suddenly endowed with the power of a modern bureaucracy, he was accountable to no one but God and commanded total obedience.”<sup>34</sup> And, because Hassan II was supposed to be acting on behalf of God as a representative of the Prophet’s family, “taking care” of those who dared

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<sup>34</sup> Maghraoui, political authority 3. See also Susan Slymowics, whoc states, “an era of grayness and lead bullets,” the black years evoking “the times of fear and repression, and *les années sombres*, the gloomy years of forcible disappearances, farcical mass political trials, and long prison sentences for large numbers of people who from a variety of political positions voiced opposition to the regime and became prisoners of conscience.”<sup>34</sup>

to challenge the status-quo was not only legitimate, but totally justifiable. Hassan II considered his actions against insubordinate subjects as “divine intervention.”<sup>35</sup>

Hassan II’s style differed from his father in that he understood that violence alone would not secure or explain his longevity. Waterbury has stated in *the Commander of the Faithful* and reiterated years later in a public presentation about his experience in the MENA region, Hassan II relied significantly on corruption and ‘patronage’ to keep his regime afloat. The ICTJ states that: “His preferred tactic was to neutralize potential power contenders through incentives such as generous land grants, business deals, and offers of well-paid government positions. Indeed, Hassan II’s skill lay in the fact that he ‘could co-opt members of various parties, squelch dissent, crush enemies, and still be regarded by many as a beloved monarch”<sup>36</sup>. The quelling of dissent and crushing of enemies (real or imagined) included torture, forced disappearances, arbitrary arrests, and executions.<sup>37</sup> Those who were lucky escaped and lived in exile in France or other European countries, and worked hard to alert international public opinion and human rights organizations to the abuses that were taking place in Morocco. The exact number of citizens remains unknown, as is often the case in these situations, but the ICTJ estimates are around 50,000 people, a large enough number to suggest that it was systematic rather than haphazard. Scare tactics and harassment were also used against foreign nationals (journalists or Amnesty International volunteers) who came to Morocco in search of information about the political situation in the country. Others (journalists) were charmed with Hassan II’s luxurious gifts, knowledge of Western culture and charisma.

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<sup>35</sup> Find speech when Hassan II said this.

<sup>36</sup> ICTJ report (5)

<sup>37</sup> The report published by the ICTJ provides details of these events.

The International Commission for Transitional Justice (ICTJ) explains that “the roots of state violence can be traced to the struggle for independence that spawned regional revolts and two major political parties” (4). These political parties were the independence party mentioned previously, the *Istiqlal* party, and the Union Nationale des Forces Populaires (UNFP), which was an offshoot of the *Istiqlal* party led by Mehdi Ben Barka. Ben Barka was a leftist charismatic leader who Hassan II perceived as a threat to his power and who was kidnapped in Paris in 1965. While official details about his fate remains unknown, there is evidence and testimonies that reveal that that he was kidnapped and killed by Moroccan security forces (in collaboration with French, US and Israeli secret service agencies), and his body dissolved in a vat of acid.<sup>38</sup> After his disappearance and untimely death, Ben Barka became a symbol of resistance in Morocco and other neighboring countries.

Dissent in all its forms was not tolerated, even among high school students, even if the dissent was based entirely on rumours. In addition, as Slyomovics points out: “The nature of the Moroccan approach to criminal procedure—the inquisitorial system—serves to reinforce bureaucratic attitudes that presume the guilt of the accused” (19). Abderrahman Benameur, a Moroccan former political prisoner, human rights advocate and lawyer, offers this explanation of what constitutes a political act or crime, according to the Moroccan state: “Detention for political and union offences is not a contingent fact in contemporary Moroccan history, nor purely a series of provisional measures required by particular circumstances, nor a kind of extortion on the part of certain officials exercising the authority conferred by their job. On the contrary, detention for crimes of opinion, political and union activity is a method constantly used to destroy non-official opinion” (2).

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Any acts that denounced abuse of power were considered a crime and the *makhzen* spared no means to criminalize actions of those who were bent on exposing their corrupt practices. The *makhzen* is known to fabricate evidence to incriminate those that disrupt their practices or tries to expose them. Slyomovics affirms that: “The state, in effect, has criminalized all manifestations of political activity and thought that promote *l’opinion non-officielle*: political acts such as writing tracts, holding meetings, and demonstrating” (20). Furthermore, the ICTJ reports that “The 1960s and 1970s witnessed the worst abuse against perceived or potential enemies. Trade unionists, Marxists, intellectuals, farmers, Islamists—anyone suspected of being critical of the monarchy—could potentially be subject to a wide range of punishments, often just for the ‘crime’ of a rumored political affiliation” (5).

Arrests and prosecutions of persons who were unpopular with the regime constituted cases of collusion between all branches of government, where the judiciary was subservient to the executive and had no independence in its decision-making process. While the constitution identifies the political system as a constitutional monarchy, the king remains the absolute ruler, above the law and everyone else. This lack of accountability and sacredness of the person of the king (a status that is magically transferred to his entourage and, generally speaking, the *makhzen*) means that there are no checks or balances in the system, putting citizens at the mercy of those who are above the law<sup>39</sup>.

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<sup>39</sup> In the introduction to the English translation of El Bouih’s memoirs, *Talk of Darkness*, Slyomovics and Moustapha Kamal describe her kidnapping and arrest: Fatna El Bouih [...] became active in the National Union of High School Students, the organization deemed illegal by the regime of King Hassan II because it was formed by the underground Marxist movement. By the mid-1970s, during El Bouih’s high school years, Morocco’s political crisis came to a head: there were two failed military coups in 1971 and 1972 against Hassan II, and in 1973 the brutal suppression of an armed insurrection, followed by a wave of mass kidnappings targeting the regime’s opponents that swept the country. Fatna El Bouih was arrested briefly for the first time as a leader of the January 24, 1974 high school student strike to protest conditions in Morocco’s secondary education. Her second arrest came in 1977 for membership in ‘March 23,’ a Marxist group named to commemorate the Casablanca uprising of March 23, 1965. She was forcibly disappeared with other women activists from May to November 1977 into Derb Moulay Cherif, Casablanca’s notorious secret torture center (xi).

Power and its legitimacy in Morocco is primarily defined by royal authority, which cannot be questioned (Miller and Bourquia; Hamoudi). Claiming descent from Prophet Mohammed provides the monarchy and its descendants with legitimacy they would not have otherwise, ostensibly endowing their persons with divine aura. The lineage from the Prophet (and thus connection to God) has been instrumental in gaining and maintaining power for centuries. Maghraoui argues that Moroccan citizens see in the king the embodiment of “institutional monarchical authority, not of personal royal power” (2001: 73). The king’s person is not only symbolically sacred but it is legally so as well as the Constitution of the Kingdom of Morocco (CKM) clearly constructs the king as “inviolable,” and anyone who attempts to violate his person, even symbolically through crucial comments or caricatures, is criminalized.

The divine dimension between ruler and ruled has great psychological consequences on the relationship between the ruler and the ruled that becomes the equivalent of a relationship with Allah or at the very least his prophet Mohammed (see Waltz). Instead of a social contract that can either be affirmed, broken or renewed, a psychological contract is difficult to dissolve or break because that would be considered heresy, a betrayal of the Prophet himself or even a rejection of one’s father, which in Muslim societies would be the ultimate sin. In addition, Campbell argues that the trinity (God, King, Country) created by Hassan II is powerful rhetorically because of the mythical (constructed as mystical) link to the Prophet and God: “by linking himself to God, through the Prophet, the monarch ensures that challenges to his divine right to rule are indeed challenges to God” (3). The mastermind of the Alaoui “system,” Hassan II often justified his absolute rule and violence against citizens with references to the Koran “Islam forbids me from implementing a constitutional

monarchy in which I, the king, delegate all my powers and reign without governing. [...] I can delegate power, but I do not have the right, on my own initiative, to abstain from my prerogatives, because they are also spiritual” (Campbell 3). Whenever the King mentions the Quran, it is a signal that all discussion has ended, is invalid or irrelevant. When God speaks, there is nothing more to be said. The king’s religious and spiritual role subsumes his political role, making it easier for him to have absolute power in all matters, religious and political. To challenge the legitimacy of the monarch’s authority is to risk being accused of heresy and treachery, and “it is this position that enabled the monarchy to retain stature and power under French colonialism (1912-1956) and to emerge as the symbol of nationalism during the struggle for independence.”<sup>40</sup> Slyomovics points out in *The Performance of Human Rights in Morocco*, the only time that the rule of the dynasty to which the current king belongs was seriously undermined was during French colonial rule and, accordingly, Morocco gained independence in 1956 thanks to a strong local resistance and the symbolic role of the king, Mohammed V. There were distinct dimensions of apartheid that collectively deprived black people<sup>41</sup> of their socioeconomic, cultural, and political rights – and, ultimately, their dignity and freedom. This resulted in a political climate that can be characterized with violence, fear and paranoia. Consequently, deep-seated suspicion and fear was sown within anti-apartheid movements.

## **2.2. Conflict Characteristics**

As previously mentioned, the source of the political conflict in Morocco can be traced back to the colonization and post-independence eras. It is best explained as a battle for power between a monarchy that wanted to keep total control of political affairs and a rising

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<sup>40</sup> (Campbell 3).

<sup>41</sup> It should be noted that South Africa had administrative control over Namibia (then South West Africa). This control was granted under a League of Nations mandate from 1915 to 1945, but South Africa maintained its administrative control until 1990. This saw a spill-over of the racist policies that were promulgated in South Africa into Namibia. While this paper does not discuss the involvement of South Africa in Namibia, it is worth acknowledging this process, as well as the fact that South Africa’s transitional justice mechanisms did not engage with this administrative occupation.

political elite that wanted to partake in the political game. This resulted in relentless and ruthless repression of opposition forces and all those who were deemed a threat to the monarchy. The resistance to this systemic despotism was

Moroccans had awaited the end of French colonization with great anticipation, with the hope that it would be the beginning of the construction of a just society, away from foreign intervention and exploitation. But sixty years later, the political scene is just beginning to slowly change. Like so many other post-colonial contexts, independence did not lead to greater freedom or socio-economic justice for Moroccans. There are even jokes about how Morocco was better off under the French protectorate and how it is thanks to the French that the country developed paved roads and infrastructure. On the contrary, in the course of the past fifty years, the Moroccan State has arrested, tortured, disappeared, exiled, and executed thousands of its own citizens.<sup>42</sup> The violence has targeted people across all ethnic (Arab, Amazigh, Jewish), religious (Muslim, Jewish and non-religious), and gender lines as well as political affiliations. Any person or group who has voiced a political opinion that runs against the official line is deemed a threat to national security and stability, and dealt with violently. Speech that criticizes the monarch or his family, or is perceived as a potential threat to its legitimacy, is considered unlawful and potentially punishable.

During the Years of Lead, those who were targeted with torture, imprisonment or disappearances were typically citizens (or dissidents) who had the courage to denounce corruption or unjust policies, refused to show allegiance to the king, challenged his religious title, or questioned the legitimacy of the king's claims over Western Sahara.<sup>43</sup> In other words, the policy of the State from the 1960s through the 1990s was a zero tolerance for dissent and this policy was made explicit in the acts of violence perpetrated by state officials

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<sup>42</sup> REFERENCE

<sup>43</sup> See Smith and Loudiy; Maghraoui.

against citizens who dared to cross what came to be known as the “red lines”: territorial sovereignty (the nation), the king and the royal household (*dar al mulk*), and Islam as a state religion, all of which are considered inviolable and sacred. It is interesting to note here that in Arabic, *al mulk* means both royalty and property and that the Arabic word for kind, *malik*, also connotes someone who has ownership, a sort of benevolence.

It would be naïve to suggest that violence alone can explain the longevity of the Moroccan monarchy or any authoritarian regime, although violence is the defining feature of such systems. No regime can sustain power based on violence alone. As Hannah Arendt argues, force alone undermines legitimacy.<sup>44</sup> The Moroccan monarchy’s rule has been one of savvy rhetorical skill (God, bullets and cash) that projects an image of being a protector and even a savior from colonialism, militarism, Islamism and territorial encroachment from aggressive neighbors such as Algeria. Although it is now clear that Morocco is not the exception it’s been touted to be in the MENA region. This style is, however, rich of contradictions that are easily spotted. The bullets and cash aspects are somewhat in contradiction with the king’s role as a benevolent monarch in keeping with the constraints of *Amir al-Mu’minin*.

Marina Ottaway offers some insights on the development (and relative longevity) of authoritarianism and other non-democratic regimes in recent history. She argues that while true authoritarianism and totalitarianism are on the decline, they have been replaced by a new political genre which she refers to as “semi-authoritarian regimes” and defined as “ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions, and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits” (3). Ottaway insists that this

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<sup>44</sup> REFERENCE



ambiguity is not only deliberate but even nurtured. In this type of regime, citizens are never sure on which foot to dance, so to speak. The lack of the rule of law promotes a culture of arbitrariness while there are defined red lines, the boundaries of which can stretch or contract at the whim of a police officer or a government official. Even an ordinary citizen such as a teacher can determine the crossing of red line, as when high school student's writing on a blackboard became criminalized in 2010, with the student doing jail time, for glorifying the Spanish soccer team Barça instead of the king in the Moroccan trinity: "Allah, Nation and King." Another example, in 2011 after references to the sanctity of the king were removed from the CKM, the a eighteen-year old blogger Walid Bahomane was arrested for defamation of the king after posting caricatures of the king Mohammed VI on Facebook that were constructed as a violation of the person of his person.<sup>45</sup>

Morocco has a hybrid form of authoritarianism, similar to Jordan. What should be clear is that it is not democratization that these regimes are pursuing (despite their proclamations to the contrary) but a modernization and institutionalization of semi-authoritarian practices. The status quo is maintained through the ambiguity that Ottaway suggests through the creation of paradoxical situations and arbitrary acts and actions (4). In Morocco, this state of affairs is secured through "patronage rituals, legal shackles, spiritual rarefactions, political constraints, symbolic invocations, and, of course, the tacit threat of force" (Smith and Loudiy, "Testing" 1107).

The different ancestries and cultures make of Morocco a complex tapestry of

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<sup>45</sup> REF IN Chicago style <http://pomed.org/blog/2012/02/in-morocco-freedom-of-speech-meets-limits-despite-reforms.html/>  
[https://www.huffingtonpost.com/yassine-aitmoulay/maati-mounjib\\_b\\_8463534.html](https://www.huffingtonpost.com/yassine-aitmoulay/maati-mounjib_b_8463534.html)  
<https://publicintelligence.net/ufouo-open-source-center-morocco-bloggers-concerned-after-facebook-arrest/>  
<https://www.hrw.org/report/2017/05/04/red-lines-stay-red/moroccos-reforms-its-speech-laws>

identities have been recognized in the 2011 revised CKM that states in the preamble:

[...]the Kingdom of Morocco intends to preserve, in its plentitude and its diversity, its one and indivisible national identity. Its unity, is forged by the convergence of its Arab-Islamist, Berber [amazighe] and Saharan-Hassanic [saharo-hassanie ] components, nourished and enriched by its African, Andalusian, Hebraic and Mediterranean influences [affluents].

It is important to note that while the revised CKM (2011) has kept Arabic as the national language it has added Amazigh as an additional national language after Arabic, and an expressed commitment to the preservation of the Hassani language used by inhabitants of the Saharan region, a territory whose fate still remains undecided. The inclusion of the Amazigh language and culture in the preamble of the constitution has been controversial. While it is seen as the Palace's attempt to placate Amazigh activists and turn them into allies of the monarchy, many see it as a poor tactical move that is not in the short-term interest of the country as the inclusion of another language will require funds to be deployed for translation and interpretation, among other things.

While the linguistic (legal) situation of Morocco remains to some extent vague in this text (Amazigh language is not cited at the same time as Arabic hence it is clearly seen as secondary), there is no ambiguity about the country being a Muslim nation. Article 3 of the new constitution states, somewhat equivocally: "Islam is the religion of the State, which guarantees to all the free exercise of beliefs [cultes]".<sup>i</sup> The second part of this sentence could suggest that Moroccans are free to have beliefs that are not related to the State's religion (Islam), or that the exercise of cultural practices that are not religious in nature is protected by the law. The term "belief" leaves the door open to all kinds of interpretations. It is only in the fleshing out of organic laws (which is ongoing) that the intended meaning of this phrase

will be revealed. There is a large movement among human rights activists and intellectuals to push for secularism (*laicity*) so that citizens no longer risk being persecuted for failing to follow the state's religious diktats, like eating publicly during Ramadan, the fasting month for Muslims. One such effort has led to the creation of MALI, Alternative Movement for Individual Liberties in 2009, whose members decided to eat publicly during the month of Ramadan. They were arrested and harassed but ultimately released.<sup>46</sup> Their action inaugurated a public conversation about the boundaries of individual liberty in Morocco, both legal and social. During their ordeal, some of the members of MALI have since reported that the police told them that they arrested them in order to protect them from public harm since they believed that they would be attacked had they left them in the street, eating in front of fasting pious Muslims.

There is also a process of reform of the judicial system that has been launched soon after the ratification of the revised constitution in mid-2012, though the jury is still out on the effectiveness of this particular reform.<sup>47</sup> Of this revised constitution, Ahmed Benchemsi states:

All the foregoing provisions are indeed found in the new constitution, and Morocco is a place where the constitution matters and is taken seriously by all. But here is the tricky—and yes, possibly the exceptional—thing about Morocco: Nothing is quite what it seems. Whoever does a closer reading of the new document, or takes the trouble to consider its articles in relation with one another, or views the whole text in light of other legal texts and the larger political, economic, and social context of the country will understand how

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<sup>46</sup> REFERENCE

<sup>47</sup> You've mentioned several periods when the constitution was changed – what prompted all the changes? It might be worth adding a footnote that just highlights the major constitutional reviews and why they were each undertaken.

misleading appearances are. Morocco's monarchy has made some concessions, but they are less than meets the eye, and autocratic features remain.<sup>48</sup>

Many analysts agree with this assessment, nationally and internationally. Although the constitutional reform in the wake of the Arab Spring took the steam out of the February 20<sup>th</sup> Movement, as intended, and although the political system is referred to as a constitutional monarchy, sufficient ambiguity remains to allow makhzen to rule as they please. The cosmetic changes catering to the Amazighist movement coupled with Western (U.S. and Western Europe) demands for institutionalizing cultural diversity serve effectively as a counter-balance to the Islamist movement, reflecting again the age-old monarchical game of "divide to rule."

Morocco has been hailed as a pioneer in transitional justice in the MENA region.<sup>49</sup>

For instance, an authoritative report on the this experience states:

Morocco initially decided to address the consequences of political violence and serious human violations committed between its independence in 1956 and 1999, when King Hassan II established the Independent Arbitration Panel—a commission in charge of delivering compensation to the victims of disappearance and arbitrary detention. Five years later, in 2004, King Mohammed VI, who succeeded his father in 1999, established the Equity and Reconciliation Commission (known by its French acronym, IER). The IER's mandate addresses a period that spans 43 years, which is the longest time period ever covered by a truth commission to date. By means of victim

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<sup>48</sup> [http://iis-db.stanford.edu/pubs/23580/Benchemsi\\_JoD\\_2012.pdf](http://iis-db.stanford.edu/pubs/23580/Benchemsi_JoD_2012.pdf)

<sup>49</sup> The Rabat Report:12

testimonies, field research, documentation, and archival examinations, the IER attempted to gain an understanding of the context of certain violations such as enforced disappearances, arbitrary detention, torture, and the use of excessive force against protesters.<sup>50</sup>

The process of transitional justice in Morocco was initiated by victims, victims' families and human rights activists in what became known as the Forum for Truth and Justice. The examples of South Africa, Chile and Argentina, among others have inspired and guided them in advancing an agenda for truth and accountability for the past, and hope for imagining a future free of state repression and violence. Ideals of justice and accountability have wholeheartedly been adopted by victims groups and human rights activists and helped them frame claims for truth and justice in response to the mass violations perpetrated against innocent citizens during the Years of Lead. In addition, institutions and practices of truth and reconciliation, reparations, and memorialization have re-energized political engagement within the civic arena and boosted citizens' demands and hopes for greater liberties and socio-political rights. Waltz explains that, like in most places, human rights' organizations in North Africa are "essentially political actors. They are different from other kinds of political actors, however, in that they neither vie for spoils within the political system nor attempt to overthrow that system. Rather, they work from within a recognized game of national politics to change its operating rules. Neither saints nor revolutionaries, they are political actors with a stake in the system, seeking reform" (viii). Given that Morocco is established as a constitutional monarchy, these groups have focused their efforts on constitutional reforms, trying to shift the balance of power in favor of the people since, as it currently stands (and has for over fifty years), political power lies totally in the hands of

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the monarch even with the latest change (the new CKM of 2011). In an effort to take charge of the national grassroots' incursion into the past and the peoples' thirst for democracy, the Moroccan state (i.e., the monarchy) has adopted the rhetoric of transitional justice to frame the changes that were introduced to secure survival and regain legitimacy on the international stage. Hassan II did not want to be a political pariah on the international scene. His image with the West was important to him, so important that he would prevaricate in order to preserve it.

Elaine Combs-Schilling explains that "Islam and monarchy have been essential to the Moroccan nation since its beginning but have been articulated in different ways" (177). Only after the country gained its independence did it adopt a constitution and become a constitutional monarchy. But Maghraoui warns that one should not to be fooled by the "constitutional" designation: "Officially, Morocco is a constitutional monarchy, but in practice, ultimate authority continues to rest with the king" (78). While Morocco's political system allows for plurality (in terms of political parties) and does have a bicameral parliament whose members are elected, there is no balance of power in the three branches of government, and, as Maghraoui argues with reference to Hassan II's rule, "the three branches of the government operated more as a rubber stamp for [the king's] decisions and policies than as autonomous institutions" (78). The justice system is under the thumb of the palace, and as such corruption is rampant and the institution lacks credibility; despite the project for reform of the justice system, it remains unclear how such a system can change in the midst of corrupt practices engaged by those who are ostensibly in charge of reform. In other words, all branches of the government are subservient to the king who has the ultimate say in all political and economic affairs—which was true of King Hassan II's rule as it is now of with Mohammed VI. In his explanation of what he calls "the paradox of the

popular (but unjust) prince” (which became evident during Hassan II’s funeral in 1999), Maghraoui argues that there is actually no paradox and that “while they may consider the king personally unfair or unjust, they [the overwhelming majority of Moroccans] nonetheless identify with the monarchy as a symbol of national unity and a legitimate form of governance” (“Political Authority” 74). This ambivalent relationship is crystalized when those who do not benefit whatsoever from being connected to the monarch in any way become defensive and in fact aggressive when confronted with the truth about the monarchy’s terrorizing citizens and engaging in corruption, or if accused as the primary cause behind Morocco’s lack of progress socially, economically and politically. In sum the conflation (or lack of formal differentiation) of religious and political spheres is legitimized by the way in which the person of the monarch is constructed constitutionally; even though references to his sanctity have been removed from the CKM, his person and all that is attached to his person are still recognized as “inviolable.”<sup>51</sup>

This analysis coheres with what other scholars have suggested about the Moroccan monarchy, that it has managed to keep its power for so long through a mix of a carrot and stick approach while also nurturing political segmentation, by fueling conflict among political actors so that there is never a serious and viable alternative (or threat) to the regime. As previously noted, fear and violence have been an important part of this strategy. For instance, in his seminal book, *The Commander of the Faithful: The Moroccan Political Elite—A study in Segmented Politics*, John Waterbury states that:

The administration in a global sense, but particularly the Ministries of Interior and Justice, the army and police, the royal cabinet and the press are the essential instruments of royal control. They constitute the means or channels

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<sup>51</sup> See Smith and Loudiy

by which the king can intervene directly in the political process. Through the administration the king is able to maintain the inner conflicts of the elite and to reaffirm the primacy of the throne in the allocation of goods and power.

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Although Waterbury's research is nearly four decades old, it remains relevant. The monarchy continues to fortify its control of economic resources and the king still has absolute political power, despite a few minor changes in the constitution and many popular outbursts. Like most semi-authoritarian regimes, the monarchy does not rule with a stick alone. It has managed to stay in power this long because it continues to entice or otherwise buy off the allegiance of key actors including former dissidents, which enables it to stay in control, counteracting resistances or creating enemies within the system so that it becomes the mediator instead of the focus of the political battle. In so doing, the monarchy and those it protects maintain immunity from prosecution or any check or balance in the system. The immunity enshrined in the constitution, that the person of the king shall be inviolable, is extended to all those who serve him loyally.<sup>52</sup> Correlatively, Ottaway's analysis suggests that political cronyism and hybridity are evident in semi-authoritarian regimes, which is strategic and quite clever in that they "leave enough political space for political parties and organization of civil society to form, for an independent press to function to some extent, and for some political debate to take place... [but] they allow little real competition for power, thus reducing government accountability" (3). These regimes manage to give the illusion of democracy but never truly allow other political players a share of power in the political game. Whenever there is a "gift" of political power, it is always a calculated gift (in reality, a favor) and premised on the idea that only the monarchy is able to move things

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<sup>52</sup> See Slyomovics, *Performance*.



forward in the country. The fact that none but the monarchy has executive powers makes it difficult for any political party or entity to genuinely enact change; that is why advancing revolutionary change has become the modus operandi of many groups.

Further, Ottaway argues that: "Semi-authoritarian regimes are not failed democracies or democracies in transition; rather, they are carefully constructed and maintained alternative systems. If semi-authoritarian governments had their way, the system would never change" (7). But authoritarian and semi-authoritarian systems cannot have it their way simply by manipulating the system; to stay afloat and dominate discourse and actions in the public sphere, they ultimately resort to violent means, quelling citizens' demands for a share of power. These days, where technology makes it relatively easy to communicate information about violations and abuses despite all attempts on the part of the regime to control information and maintain opacity, individuals and groups are taking matters in their own hands and demanding accountability for both present actions, but also the past.

The end of the cold war brought with it popular demands for democracy and social justice around the globe. In Morocco and other countries where political violence was used as a means to control dissent and terrorize citizens, that meant that Western powers could no longer sustain a 'blind eye and a deaf ear' approach to the human rights violations occurring in allied (but oppressive) regimes. Mohammed Karam, a Moroccan human rights lawyer, explains that in Morocco:

1989 was a turning point but only after decades of internal and external pressures... Demands for respect for human rights coincided with the fall of the Soviet Union. Morocco's role as a pro-Western ally, as opposed to neighboring Algeria's alignment with the Soviet Union, became geo-politically

irrelevant. Morocco, no longer shielded from scrutiny about domestic violations, was forced to accede to changes, among them the practice of human rights. (Slyomovics, 21)

Within this new geo-political climate, the investigative and advocacy work of Amnesty International and other international human rights organizations made it difficult for Hassan II to continue to deny the accusations of human rights abuses and forced him to modify his public discourse, as “the 1990s was a decade of change in Moroccan law and procedure” (Slyomovics 21). This is not meant to imply that Moroccan citizens had no or little impact on the political change in the country; on the contrary, it is the efforts and courage of thousands of citizens that other countries and organizations took on their struggle. International organizations exposed the truth about human rights violations in Morocco, which forced foreign governments to pressure the monarchy to change its practices so that they would not be seen as complicit with the murders and disappearances of innocent citizens. These international organizations were grounded in their research and advocacy efforts by accounts of suffering and atrocity by local Moroccan dissents and human rights organizations.

Waltz argues that the development of the human rights discourse in Morocco in the 1990s was aided by international pressure on the monarchy to favor the human rights movement to the detriment of the Islamic movement as well as the development of human capital and resources within the human rights movement itself. One can add that technology itself has been on the side of the human rights movement as the internet and other novel means of communication have facilitated the work of organizations by providing them with access to information as well as allowing them to publicize their work to larger audiences. In a similar vein, the ICTJ notes that the 1990s were the beginning of the end as

far as systematic human rights violations in Morocco were concerned, and they attribute this development to the changing international geo-political climate and to the explosive book (*Notre Ami le Roi, or, Our Friend the King*) by French author Gilles Perrault, who revealed embarrassingly atrocious details about the situation of human rights in Morocco. Further, Amnesty International's report on Tazmamart put Hassan II's regime in the spotlight.

After the failed coups of 1971 and 1972, fifty-eight military officers (air force pilots mostly) were taken to Tazmamart for their supposed involvement in the coups. They were kept in abject conditions and less than half of these men survived after eighteen years of captivity. Their superiors, including those who masterminded the coups, were executed without trial or opportunity to talk about planning and accomplices so these officers were detained in this prison without any proof of wrongdoing and, as it turns out, most were innocent and had nothing to do with the coups.

These circumstances were instrumental in changing the tide of human rights in Morocco by empowering local activists and organizations working to put an end to political violence and impunity. It is difficult to believe that as a ruler with absolute power, King Hassan II did not know of the rampant violations taking place in his country and, in fact, many accounts clearly show that he did know but he did nothing. The story told by Salah Hachad of his daughter who, at ten years old, at considerable risk to her own life, is a good example. When Hachad was in prison, his daughter appealed to the King while he was playing golf, asking why he would not allow her to see her father or improve his jail conditions, since he was innocent, never brought to court but left to die a slow death in the gulags of Tazmamart. These memoirs tell about the inhumane conditions that Hachad and his colleagues endured for twenty years in total isolation in a secret prison because of their presumed guilt in the 1973 failed military coup against Hassan II. Hachad was innocent but

the state never provided with the opportunity to either state his innocence nor prove it.

Most inmates in the Tazmamart prison died within a few years; those who survived lived in those conditions for almost twenty years.<sup>53</sup>

So even though Hassan II first denied any knowledge of abuses or secret prisons with inhumane conditions, he later advertised his tolerance of human rights development because he wished Morocco to be perceived as a civilized state. However, these progressive developments did not signal a democratic revolution or an end to crimes against citizens who expressed an opinion that was critical of the monarchy or infringed upon the “red lines,” but rather a softening in the magnitude of the oppression, hence creating an ambiguous and paradoxical situation where it was not always clear what was allowed or tolerated, and what was not. Lise Storm argues that “as much as the King was in favor of the democratic element of political contestation when it came to competition between the parties, he was entirely opposed to the idea when there was a chance that it might eventually result in a diminished role for the monarchy in political life” (13). Conversely, while the monarch rhetorically accepted human rights and democracy as legitimate and “civilized” frameworks for managing political affairs, the fear of actually making these principles an authentic part of public and political life was too great. The king has absolute power while in a democracy, that power is shared among different players in the political arena. So, if respect for human rights meant to allow citizens to express their discontent as well as their consent in the public sphere, then there was a serious problem because that constituted a significant threat to the king’s tight hold on power.

This ambiguity regarding legitimate power and the exercise of rights (and wrongs!) was evident in the discrepancy between the public discourse of the king and actual political

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<sup>53</sup> See KABAZAL: Les Emmurés de Tazmamart, Mémoires de Salah et Aida Hachad (Kabazal: The Walled up People of Tazmamart: Memoirs of Salah and Aida Hachad).

practices on the streets. Still, the introduction of the concept of human rights into state rhetoric coupled with the 1992 constitution constituted an important development; it was a point of no return. Article 9 in that constitution, for example, provided for freedoms in keeping with the Universal Declaration of Human Rights, while Article 19 and related Articles ensured that the sanctity of the monarch, his discourse in all of its manifestations, and his household, are consecrated constitutionally as sacred (see Smith and Loudiy). Storm argues that although the constitution “duly followed the tradition established by the 1962 constitution and although it was a case of cosmetic surgery, this time the changes made bordered on being substantial in that the 1992 constitution contained new provisions which provided Morocco with a basic framework that made further democratization very much a possibility” (61).

### **3. Transitional Factors and Societal Factors**

This section chronicles and explains the different steps that led to the initiation of the transitional justice process in Morocco and the role played by different political factions and actors in this process.

#### *Transitional justice in the Hassan II era (1992-1999)*

While the idea of democracy was introduced and adopted in official communication in the early 1990s, its practice has been extremely slow. Campbell argues that “Hassan’s flirtation with democracy began with the 1962 constitution” but she also clearly states that despite the different constitutional amendments (1970, 1972 and 1992), each only served to confirm “the preeminence of the monarchy and subordination to it of all other political institutions, whether legislative, executive, or judicial” (3). As previously suggested, although certain Articles referred to the sanctity of the king, the discourse that grants absolute power is found in Article 19 (of the 1996 revised constitution), which states that:

The King, 'Amir Al-Muminin'(Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organisations. The King shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries."<sup>54</sup>

In fact, the introduction of the discourses of human rights and democratization into the State's rhetoric has had little impact on how citizens who voice an unpopular opinion are treated today. Many national and international watchdog (and human rights) organizations continue to report instances of arbitrary arrests, disappearances and other violations of physical integrity. The Moroccan Association for Human Rights (AMDH) has documented hundreds of human rights abuse cases; the target this time is the Islamists<sup>55</sup> Maghraoui unambiguously states that "Morocco is no closer today to a decisive democratic breakthrough than it was four decades ago" (73). Still, the state's rhetoric of democratization has led to the implementation of new practices to remedy the harm that was done to innocent citizens (mostly political dissidents) during the Years of Lead.

Morocco's transition is generally atypical but not uncommon in Africa. Transitional justice typically implies that there has been a regime change or some change in the political system, even a cosmetic one. This has not been the case in Morocco. The process has been hailed a transition within a continuation of the same political apparatus. Waltz argues that:

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<sup>54</sup> <http://www.al-bab.com/maroc/gov/con96.htm>.

<sup>55</sup> For details: <http://www.amdh.org.ma/> .

“regime transformation necessarily involves alteration of the system itself and entails efforts to reset the operating political parameters. It is the nature of a transition to call into question old arrangements” (8). The first of these steps came with the creation of the Advisory Council on Human rights (Conseil Consultatif des Droits de l’Homme, or CCDH), presented as “a national institution for the promotion and protection of human rights.”<sup>56</sup> The CCDH was created by royal decree in May of 1990, and in the speech where he addressed the members of the newly formed agency, Hassan II urged the members of the council “to help bring fairness where a wrong has been done and for help so that we can together succeed in raising this country to the level of civilized countries and states of the rule of law. I finally ask you to judge in all serenity whether in such or such case, human rights have been violated. In the affirmative, you will cry out the truth. In the negative, you will not hesitate to state that human rights have not been violated, that there was a lie, false testimony, or fabrication” (quoted in the ICTJ’s report: 8).

This commission was established by a Royal Dahir (a royal decree) and chaired by Driss Dahak, the president of the Supreme Court. The commission’s members included ministers and members of political parties represented in the existing parliament. At the same time, Hassan II cautioned (if not threatened) Moroccans that if anyone was foolish enough to believe that this signals a change in how citizens who dared to support or claim that “such and such a region is not part of Moroccan territory” they would be considered heretics and would be dealt with outside the framework of the law and in such a case, the king made it clear that “neither the status of a detainee nor a political prisoner could apply” (quoted in ICTJ’s report: 8). The king here indirectly invokes Article 19 and his responsibility to protect the borders (even as those very borders are being contested) and not be subject to the law

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<sup>56</sup> <http://www.ccdh.org.ma/?lang=en>.

he was directing CCDH to carry out against wrongdoers. As the Wrongdoer par excellence, he was exempt from the law that he himself created, just as his people would not be allowed to be authors of the laws that constrained them.

Despite published accounts of extensive human rights violations, the CCDH's first mission was to focus on legal reforms, which had not much to do with acknowledging the situation on the ground or stopping abuses. The ICTJ's report notes: "Despite these and other notable advances, the CCDH failed to directly address cases of abuse from the Years of Lead" (9). The file on human rights violations was shelved until a later date, despite the continuous focus in official rhetoric on the issues of human rights and democracy and their importance for the Moroccan state. But in 1993, a Ministry of Human Rights was set up to address similar issues that CCDH was already dealing with, namely to look into the accusations of human rights violations and promote a culture of human rights in the country. The prerogatives of this new ministry were clearly limited so its existence was of little consequence for those who had hoped that the book of the past was going to be opened and investigated. This is perhaps not surprising given that no authoritarian state creates agencies (even one with human rights as its *raison d'être*) to promote greater liberty and accountability; rather they are euphemized fronts to be used to further control citizens' efforts. For instance, Ministry of Human Rights was created when it became increasingly evident that human rights organizations in Morocco were forming transnational alliances and having international reverberations.

The year of 1996 brought about several new developments, most significant was Morocco's ratification of an important United Nations convention, a change in the penal code, and amendments to the elections system in the new constitution. Storm states that:



It was the adoption of Morocco's sixth constitution in 1996, which slowly reignited the flame of the democratization process, as reasonably competitive elections, devoid of massive fraud and with broad suffrage, were once again provided for in the constitution having been missing since the adoption of the 1970 constitution. [...]the adoption of the 1996 constitution and the provision of this core democratic principle was not an improvement to the situation under the original constitution of 1962. However, compared to the four constitutions immediately preceding it, this was a substantial advancement as Morocco went from not having provided for this core democratic principle in a period of no less than 26 years—an era that included the holding of three parliamentary elections—to providing for reasonably competitive, free and fair elections in the two most recent parliamentary elections of 1997 and 2002 (96).

In addition, 1997 marked the first time since Morocco gained its independence in 1956 that the country's legislators were elected directly; however, the impact of this major development was limited by continuous corruption and unlawful practices. Storm notes:

Pledging the country's support to democratic values and commitment to embark on a democratization process by adopting a new constitution in 1996 seemed to have a positive effect on the parliamentary elections of 1997 as these turned out to be the country's first reasonably competitive elections, devoid of massive fraud, with broad suffrage. As in previous elections, however, fraud and manipulation did take place, with the points of criticism centering on the issue of direct manipulation by the makhzen (79).

Positive institutional developments (reforms) continued to be overshadowed by rampant corruption and nepotism. In other words, even when the law provided citizens with rights, these rights were not automatically granted or exercised. The rights that citizens have as prescribed in the constitution, are in practice configured as privileges that can be taken away from under any arbitrary condition.

Morocco's ratification of the United Nations Convention Against Torture in 1996, was followed by a new law enacted in 1998 whereby it was required that autopsies be performed for deaths that occurred during an arrest.<sup>57</sup> Whether the law was enforced or not in those cases is a different story but, again, this is the main problem in Morocco: even the laws that are in place to protect citizens from abuse and violation are often disregarded and not enforced, because of a lack of accountability at all levels of government, especially at the highest levels, which sets a poor example for those in even lower levels of governance. The same year the autopsy law was enacted, the king summoned the members of the CCDH to inform them that they had six-months to investigate all of the human rights cases of disappearance, execution, torture, etc., so that the file on human rights issues can be closed forever.

These changes were followed by what seemed to be a radical shift in Hassan II's rule as he invited Abderahman El Youssoufi, one of his most famous long-time political opponents, a former exile for almost twenty years and the leader of the main opposition party, the Socialist Union for Popular Forces (commonly referred to in Morocco as the USFP), to lead the country's government as its prime minister within what was referred to as "the

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<sup>57</sup> Slyomovics, *Performance* 21.

government of change.”<sup>58</sup> Storm argues that this was a sign of the King’s willingness to “open up the political system and move the country further towards democracy” since his invitation to El Youssoufi to join the government was “a move he was by no means forced to make” (97).

The year of 1998 was a year full of hope for Morocco’s future as it appeared that change was indeed happening, especially with the nomination of El Youssoufi. This extraordinary development was only matched by what seemed to be “reconciliation” between the king and Amnesty International, an organization that he had previously discredited because of its public and continuous criticism of the human rights situation in Morocco. So in 1998, the organization was given the green light, so to speak, to open up a regional office in the Moroccan capital, Rabat, which seemed to be an indicator for better days to come. Perhaps King Hassan II was about to keep his 1994 promise “to turn the page definitely on the abuses of the past” with Morocco on its way to becoming a democracy where the rule of law was supreme. Or perhaps, these developments were a ploy to persuade Moroccan citizens as well as international public opinion that Morocco was indeed becoming a democracy since the country was now governed by a socialist prime minister and Amnesty International now had an office on its soil. There were rumours that El Youssoufi and the king had made a pact (a secret pact) and no one knows for sure what the details of the agreement was exactly. But there are suggestions that the pact involved El Youssoufi’s assurance (he supposedly swore on the Koran, which means that he gave his word to never tell anyone) that the monarchy will be “saved” and that the name of Hassan II will not be sullied in the investigations of the Years of Lead.

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<sup>58</sup> El Youssoufi is considered to be one of the founding fathers of the socialist left in Morocco, even before the country’s independence.

It was not until a few months before his death, in April of 1999, that there was an acknowledgment of the veracity of the allegations of abuse against thousands of innocent citizens leveled by human rights organizations inside and outside of Morocco. So as to appease those insisting on unveiling the truth about the past, in a press release, the CCDH confirmed that its members had established a list of 112 disappeared people, half of whom were declared dead and with the rest suffering an unknown fate. Slyomovics notes that “While these figures were absurdly low, the ACHR memorandum confirmed official recognition by the state of the fact of forcible disappearance” (*Performance* 22). These figures were the first acknowledgment of Morocco’s ugly and traumatic past, but they were, of course, not accurate and far from the whole truth. This confession did not appease victims and their families, but despite this and the frustrations that they caused the human rights community and the victims of the Years of Lead, they provided an opening that could be furthered. This signalled the beginning of the digging into Morocco’s past. Slyomovics states that:

The disappointing early 1998 CCDH bulletin that announced a mere 112 "disappeared" could still serve as a point of departure for a genuine truth commission. A Commission of Verification of the Inquiry (Commission de la Verification de l'Enquete) was established within the CCDH in 1998. [...]The commission's original inquiry that identified 112 disappeared could be redone, and the commission's mandate and powers be expanded. In this way, the new king could preserve an image of continuity with the initiatives of Hassan II's regime. Mohammed VI has made no public criticism of his father -- in fact Moroccan law prohibits negative commentary about members of the royal family, present and past (*Truth* 8).

Another important outcome of the CCDH's investigation was that the council's members recommended that a compensation commission be created to repair the harm incurred to the victims, a fact that constituted yet another acknowledgment that damage was done and something needed to be done to address it. But the decision to follow up on this recommendation was left to Hassan II's son, the new king of Morocco, Mohammed VI.

#### *Transitional justice in the Mohammed VI era (1999-2011)*

The death of King Hassan II and the enthroning of his son, Mohammed VI, provided a boost to the changes discussed earlier. Early in his reign and only a few weeks after his enthroning, Mohammed VI gave the CCDH orders for the activation of the Indemnity commission to start looking into the eligibility of victims for reparations, meaning financial compensation. The mandate of the commission, which was set up before Hassan II's death in 1998, was clear: to financially compensate those people who suffered moral or physical harm due to disappearance or arbitrary detention. What was not clear was the time limitation imposed on its mission: less than six months to address injustices that took place for close to forty years (1961-1999). Still, it appeared, as Storm states: "On 16 August 1999, after years of campaigning for truth and justice, the efforts of the country's human rights campaigners and their international supporters eventually bore fruit, as Mohammed VI announced the creation of the *Instance d'Arbitrage Independante* (Independent Arbitration Commission, IAI), a commission charged with addressing the claims and compensation of victims of disappearance and arbitrary detention" (102).

Originally, the calls for transitional justice came from victims and their families. In the late 1990s, when Hassan II initiated the committee for reparations (primarily for victims of Tazmamart and other secret prisons), there were talks amongst former (leftist) political prisoners to organize and ask for reparations. Original talks were focused on financial

reparations, as most or many former prisoners who were deprived of education opportunities or were arrested while working, were unable to find a job and enjoy a decent livelihood. After Hassan II died in July 1999 and his son came to power, these groups came together and created an organization called the Forum for Truth and Justice (FJV) . It was the first organized effort of victims and human rights activists to address and establish a process to engage the legacy of the years of lead.

Almost immediately after the creation of the FJV, the newly enthroned King rushed to make public statements about the country embracing a democratic transition (hinting at the beginning of a new era) and gave orders for the creation of an official body to investigate the Years of Lead and provide recommendations for dealing with the legacy of his father's rule. As Slyomovics notes: "Eight days after the death of King Hassan on July 23, 1999, his son and heir Mohammed VI affirmed in his first throne speech a commitment to establish the rule of law, and to safeguard human rights, individual and collective liberties, a constitutional monarchy, a multi-party system, economic liberalism and policies of regionalism and decentralization" (2001: 2). These efforts by Mohammed VI were in keeping with Hassan II's later efforts, after the acknowledgment of secret prisons and detention centers, when he moved to establish government agencies to tackle issues of human rights.

In most experiences of transitional justice, the first step taken is the establishment of the truth or, in other words, constructing a narrative about the past that identifies the victims, the violations and those responsible (either directly or indirectly) for the violations. The purpose, typically, is to gain understanding and appreciation of the causes and consequences of these events on individuals and society as a whole. It is after these important elements of the past have been settled—who did what to whom, why and how—that the next course of action is taken and compensations, restitutions or reparations

provided; typically prosecutions then ensue. This process has been the case, for instance, in South Africa, which served as a model for Morocco and other countries seeking to deal with a past of rampant political abuse. As explained in chapter two and summarized here:

Human rights violations evoke several national responses: create a governmental organ intended to record the truth about past history; declare an amnesty, prosecute those responsible, or do both; arrange indemnities for the victims and their dependents by means of official rehabilitation and material compensation. (Slyomovics 27)

The process of transitional justice was *inaugurated* with talk of money and financial reparations, contrary to most, if not all, similar cases. One major problem with this first stage of transitional justice was that no victim was asked to testify in a public hearing and no perpetrator was asked to give an account of their actions. In fact, Slyomovics argues that during this phase “there were [...] no attempts to provide the nation with an account of the past, and blanket amnesties were part of the creation of the Indemnity Commission” (*Performance* 25). In sum, it was an expedient attempt to turn the page on the past without giving history and its victims their proper due.

The new king’s impulse to buy off the victims of the past was an old trick for the monarchy since it was not the first time money was used to deal with the consequences of the regime’s violent actions against its own citizens. For instance, there have been various money-based programs to indemnify victims of state abuse throughout the 1990s and these programs included cash payments as well as job re-integration, which have been referred to at one point as “reclassifying.” But these programs were secretive and did not include official recognition of the harm done; worse, the citizens who were included in such programs were not allowed to break the vow of silence about their experience, lest they would be punished

again. Chari El Hou, who was part of such a program, talked about his experience during a public testimony and stated that for him silence was “greater than fear,” and in his case, because he was a teacher, his silence was a condition of his job application at the Ministry of Education (in *Slyomovics, 2009*: 100). It is interesting that the figures recently published by the CCDH suggest that at least one-third of the victims of the Years of Lead were educated intellectuals, which is an indicator that “the Moroccan regime targeted most ferociously its own intellectuals.” (100). Be that as it may, initial (unofficial and above the law) financial reparations, conducted behind closed doors and in absolute secrecy, were considered a favor bestowed by the monarch upon his disloyal subjects, not a legitimate due or an attempt at serving some kind of justice. As such, they can be seen to be as arbitrary as the violations that harmed those citizens—the same trend, same register but, of course, different outcome. Conversely, Slyomovics states that these programs “served to wipe out past suffering by redefining restitution in extreme and novel forms in Morocco: Past suffering never happened” (100).

In addition to the fact that this indemnity commission worked on the principle that money could buy off the years of suffering that people endured, or even attempt to erase them, it wanted to do so expediently and rigidly. With a mandate set to expire less than six months after it was inaugurated, it was clear that not all victims, not even the majority of victims, would have the opportunity to apply for the indemnities and even, more important, gain the state’s recognition that a wrong was committed on their behalf. So by the end of its mandate, the commission had received about 6,000 applications, a number that was far from a reflection of the reality of the Years of Lead. In the end, the indemnification commission’s intended goal was defeated as it clearly did not succeed in closing the accounts on the Years of Lead; on the contrary, the immediate and most positive



consequence of the commission's work was that it opened up public discourse about the entire process of a nation confronting its past: the genie (of the past) was out of the bottle.

The humiliation and frustration that many victims and their families felt as a result of the expedient attempt of the state indemnity commission to close the books on the past led to an attempt to take ownership of the framing of the conversation about the past. The Moroccan Forum for Truth and Justice (le Forum Marocain pour la Vérité et la Justice, or, FMVJ) was created soon after the indemnity commission as a response to the inadequacy of such an effort to deal with the past and its victims. It was established by a group of former political prisoners and human rights advocates and its mission was to join and guide the conversation about the Years of Lead by stressing the importance of the truth, justice and accountability; it was also meant to establish a foundation for a democratic future, free of the abuses of the past and the culture of impunity that accompanied them. For the FMVJ, if the monarchy was serious about engaging the consequences of the culture of violence and fear it had created and cultivated for almost forty years, its members would be willing interlocutors in the conversation.

Like Jamal Ameziane, a former political prisoner, members of the FMVJ have been working to lift "the veil on the dark years without fear of repression in the future" (in ICTJ's report, 1). Since its inception, made explicit in its name, the mission of the FMVJ has been to unveil and communicate the truth (since they consider it to be known, not simply made public) about the Years of Lead, serve justice for those victims who are still living, and preserve the memory of those who perished like Saida Menebhi, Abdellatif Zeroual and Amine Tahani, among many others. This was evidenced in the commemorative activities that the FMVJ's members organized in collaboration with other local human rights groups. One of their most publicized events is "the truth caravan," where citizens were invited to join

members of the Forum in visits to infamous places such as the secret prisons of Tazmamart and Ka'laa M'gouna, and torture centres of Derb Moulay Ch'rif and Dar Mo'kri.

The FMVJ, a non-governmental organization constituted by victims and families of victims of the years of lead was created to shed light and seek the truth, all of the truth on the crimes committed by the monarchy and to find out what happened to disappeared victims. Reparations were included as part of a comprehensive process of genuine dealing with the past, they never thought they were sufficient. In effect, the FMVJ has been asking for a comprehensive approach to the past, one that includes “rehabilitation of the victims, restitution of remains of ‘disappeared’ persons for reburial and monetary benefits to victims and relatives with medical care, education and shelter for all those involved:”<sup>59</sup> They also demanded that the State recognize its responsibility in the suffering that citizens endured and offer an official apology to victims. For the FMVJ, the goal of transitional justice has been to establish the truth so that responsibilities are assigned and a culture of accountability develops.

Like other victims' groups in Latin America, the FMVJ's slogan has been “so that it never happens again.” The report of the National Commission on the Disappeared in Argentina, entitled *Nunca Mas* (Never Again), has popularized the phrase “never again,” which has become a common motto among truth and reconciliation commissions worldwide. For the Years of Lead to never be reproduced, the members of the Forum believed that it was necessary to delve into their history and learn from it. Otherwise, the past would come back to haunt them or their children, like what is currently happening in Spain after it seemed that the country had definitely turned the page after the end of the Spanish civil war and Franco's death. As explained in chapter two, one of the victims' main concerns after a past

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<sup>59</sup> Sylmovics, 5

of abuse and violations, like Nazi Germany, Franco's Spain, or South Africa, is to ensure non-repetition for future generations. The state's focus on financial compensation as the primary mechanism for dealing with the legacy of the Years of Lead has been inadequate and insufficient. So, in a response to this rhetoric of accounting, victims and their families have advanced a rhetoric of accountability to reveal responsibilities for the past and establish safeguards of non-repetition for the future.

*IER: The Commission for Truth and Equity*

The rhetoric of transitional justice suggests that practices of responsibility and accountability are important to cultivate during a phase of democratization so that they can become an integral part of a nation's political culture. The rhetorical negotiation of the past that Morocco is undergoing is not unlike that of South Africa and similar countries with a traumatic past. Like South Africa, the rhetoric and practices of transitional justice that are central to this public deliberation about the past are important to underscore. The members of Forum for Truth and Justice have shown leadership by inaugurating the conversation about the how, why, who and what of the past that should be included in the deliberative process.<sup>60</sup>

In addition to the FMVJ, the Moroccan Association for Human Rights (Association Marocaine des Droits de l'Homme ou AMDH), the most critical and vocal human rights organization in Morocco, was a great catalyst for these efforts. Through their advocacy

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<sup>60</sup> This information is based on meetings and interviews conducted with members of the Forum during summers 2006 and 2007. These members have been direct victims of the Years of Lead and suffered imprisonment, torture, kidnapping and other forms of torture. For instance, one victim spent ten years in prison and was released in the early 1980s. He was tortured on several occasions during his arrest and although he was unjustly detained, which resulted in his family's suffering and struggle during those ten years, he believes that their struggle was a necessity. Two other members of his family were victimized during the Years of Lead: his brother-in-law, who was tortured and kept in secret detention (disappeared because his family was not informed of his whereabouts) for several months and then fled to France to get treatment for a blood disease that was a consequence of the torture sessions he endured for months, and his sister-in-law, a young woman in her mid-twenties who died in prison after a forty-day hunger strike to protest her and her prison mates status and failed to receive adequate medical care to save her life.

work, the state was forced to recognize that they are a force to be reckoned with. For the AMDH, as expressed by its former president, Abdelhamid Amin, a former political prisoner who spent twenty years in prison because of his political opinions, there are five principles that need to be part of the transitional justice in Morocco:

- (1) Exposing the truth (the extent of the violations, their conditions and consequences) and establishing responsibilities (state, the institution of the monarchy, the army, and different police and security forces).
- (2) Putting an end to impunity by bringing criminal charges against those found guilty
- (3) Achieving equity, which includes reparations (financial as well as moral, individual and collective) and the preservation of public memory (memorials for victims and a public official apology presented to the victims and society as a whole).
- (4) Initiating reform (institutional, educational and other) to ensure the “never again” as well as the establishing of the rule of the law.
- (5) Ensuring that the conversation about political crimes includes economic crimes as well as these two are intimately linked.<sup>61</sup>

When these demands fell on deaf ears and in an attempt to consolidate efforts, the AMDH and the FJV put together a list with the names of those people (state officials) deemed responsible for crimes against Moroccan citizens during the Years of Lead and sent it to the Minister of Justice and to the Parliament, asking for a judicial investigation into the allegations contained in the document. This move led to an invitation in 2001, for all interested parties, to participate in a national symposium on the violations that occurred during the Years of Lead and the feasibility of a national truth commission in Morocco.

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<sup>61</sup> Amin provided this information in an unpublished document in 2006. Campbell also makes the connection between political and economic liberalization, although the argument typically advanced against democratization is that because they are poor and uneducated, citizens are not ready for democracy and, therefore, democratization has to be postponed until citizens are adequately prepared for it.

Finally, in 2003, the CCDH presented the king with a recommendation to set up a truth commission that would contribute to the consolidation of “the democratic transition,” as well as close the books on the Years of Lead once and for all. The Equity and Reconciliation Commission (*Instance pour l’Equite et la Reconciliation*, or IER) was the fruit born out of this dialogue. A self-described “national commission for truth, equity and reconciliation,” although the word “truth” does not appear in either the Arabic nor French title of the commission and unlike previous commissions, the mission of this new body was to listen and record the narratives of those who were victimized by the State and, then, provide redress for the harm incurred by them.

The late Driss Benzekri, a political prisoner who spent seventeen years in prison (1974-1991) and former president of the FMVJ, was appointed by royal decree as the president of the IER. While the IER had seventeen commissioners, the commission’s leadership was made up of former political prisoners, mostly from the left, in particular the Marxist-Leninist movement. Pierre Hazan comments that “These activists have abandoned their revolutionary ideologies and invested themselves in human rights organizations” (5). The mandate of this new commission, which covered a forty-three years period (1956—1999) and about 9000 cases, was to:

- 1) establish the truth (through testimonies and interviews with victims and their families);
- 2) provide recommendations aimed at preserving public memory and guarantee a genuine rupture with the abusive practices of the past, erase the scars of the violations and restore and reinforce trust in the State and respect of human rights;

3) foster reconciliation, defined as “the contribution to the culture of dialogue in order to consolidate the democratic transition and a state where the law rules, in order to promote civic values and a culture of human rights.”<sup>62</sup>

During its mandate (which lasted less than two years), the IER organized and held a series of public testimonies where victims and/or surviving members of families have been invited to speak about their respective ordeals, tell their story of disappearance, torture or arrest but with strict instructions not to assign responsibility. Recent information suggests that the king had specifically requested from the IER that two conditions be respected: one related to the memory of his father, King Hassan II, that he is not named as responsible for any of the violations so that his memory is not sullied.<sup>63</sup> The second condition is intimately connected to the first and relates to the naming of perpetrators during the testimonies. Therefore, witnesses were prohibited from invoking individual responsibilities or naming of torturers, even if they knew them by name. In its constitution, the IER is referred to as a non-judicial body. Pierre Hazan explains that the future leaders of the IER, Driss Benzekri, Salah Ed-Ouadie and Driss el Yazami made a deal with the king:

They accepted the price to be paid: the absence of punishment of those who had committed human rights abuses. For these human rights activists, renouncing justice was easier to accept because ‘the conditions for an impartial process for the perpetrators and those that gave the orders are not feasible due to the lack of a proper judicial system,’ [...] They also believed

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<sup>62</sup> See [http://www.ier.ma/fr\\_article.php?id\\_article=147](http://www.ier.ma/fr_article.php?id_article=147), my translation

<sup>63</sup> Hazan notes that “As a result of the strict limitations of its mandate, the IER’s position during the hearings was delicate. Its goal was to signify the beginning of a new era with the opening of the democracy desired by Mohammed VI. But the break with the past had to be made with great care. The reign of King Hassan II, under which almost all the human rights violations had taken place, could not be criticized” (6).

that without an alliance with the palace, no way existed to pursue democratization (4).

Given the reality that the Moroccan judicial system is corrupt, trials of perpetrators would have been a farce at best. The deal then was to eschew punishment for perpetrators in exchange for providing victims with the opportunity to tell their story publicly. In other words, at the same time that victims were recognized as such and acknowledged in their suffering, those who were responsible for their grief were shielded not only from prosecution but, most importantly, from public scrutiny and shame. What a tragic irony given the fact that the focus of the IER seems to be very much on the victims and their ordeal, as shown in the time allocated to public testimonies and their broadcasting on national television.

For many Moroccan citizens whose families had been spared during the Years of Lead, broadcasted hearings of victims were their first introduction to a story/history that had been hidden from them. During the Years of Lead, fear was the Moroccan regime's modus operandi so even talking with or about neighbors or friends involved in politics could then be interpreted as a crime and become an excuse for arrest, torture or kidnapping. Fear produces silence and political silence produces historical amnesia, so entire generations were growing up in total ignorance of the recent history of their country or had partial or distorted knowledge of it. So, the public hearings that the IER organized in several cities across the country become the occasion for the nation as a whole to come face to face with the horrors of its past and be acquainted with its history. For those who testified, it was time for recognition and acknowledgment, it was time to break the vow of silence. Many of those who testified spoke of the catharsis that resulted from testifying. Catharsis here can be interpreted as relief, fulfilment of a duty, feeling free to speak about the Years of Lead."

M., the widow of a political prisoner who died because of police torture, was a political prisoner herself (arrested due to her marital status) and experienced torture and other inhumane treatments during her time in prison.<sup>64</sup> M. took part in the hearings organized by the IER and when asked to reflect on her experience, she said: "I felt some relief after my testimony, due mostly to the fact that I was finally able to verbalize what I had repressed for so many years."<sup>65</sup> M. also stated that her decision to participate in the public testimonies was motivated by her desire to ensure that "we don't forget and to inform our young citizens about the history that our textbooks omit." The theme of memory is echoed by another female former political prisoner, W., who stated that she accepted the IER's invitation to participate in the public testimonies it was "a duty of memory," a duty she felt compelled to fulfil.<sup>66</sup> Widad Bouab stated that wanted "to inform the public about what was happening during the Years of Lead, and what dissidents have endured because of their opinions." In addition, her testimony had a gendered goal in the sense that "it was an opportunity to denounce practices of torture in secret detention centers and show that women too were victims of arbitrary detention and torture in all its forms."<sup>67</sup> There are five infamous secret detention centers in connection with the torture and secret detentions of the "Years of Lead:" Tazmamart, Agdaz, Qal'ar M'gouna, Dar-al-mokri and Derb Moulay Cherif. The first three were reserved for military officers and armed revolutionaries and the second two were reserved for political prisoners. During her public testimony, Ms. Bouab explained how "women were not respected in terms of their privacy and intimate needs,

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<sup>64</sup> The initials refer to individuals I have interviewed.

<sup>65</sup> Personal interview, Summer 2006

<sup>66</sup> Personal interview, Summer 2006

<sup>67</sup> The ICTJ report and Slyomovics, *Performance*.



which made our suffering even worse.” As Guessous’ study details, no one was spared during the Years of Lead, including children and women. In a public hearing, Khadija El Malki told her audience that during her kidnapping at age fifteen, the police subjected her to practices that she cannot talk about. Ms. Malki’s crime was that her father was a political dissident in the mid-1960s.<sup>68</sup>

For many victims, this was an opportunity to be seized to “reclaim the history of Morocco, as B., a former political prisoner insisted. For him, “it was more of a catharsis [...] and also the opportunity to raise the questions again so that it can be solved.” In other words, B.’s testimony was “once again an opportunity to question the political system.” B. echoed a theme discussed by other victims who testified and mentioned earlier in that he too was aware that his testimony was part of collective consciousness and a tribute to those who disappeared and died. He wanted to “remain faithful and loyal” because “to forget about them would be treason.” Mohammed Bouderdara was arrested, kept in isolation and tortured for four months before being brought to justice and then acquitted of all charges three years later. Prior to his arrest, Mr. Bouderdara had been sentenced in absentia for life because of his involvement with a leftist organization known as the “Anis Balafrej and Co” group. For this victim, testifying was about “collective memory of the Moroccan wound,” because he adds: “When one person is the subject of repression and the sufferings of detention, it is the whole community that becomes violated in its dignity and freedom”.<sup>ii</sup>

Part of the IER’s mission (or hope) for these testimonies was that victims would be able to reconcile as an outcome of their participation in the public hearings. But for B., reconciliation “is part of the demagogy.” Genuine reconciliation depends on a number of

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<sup>68</sup> [http://www.ier.ma/article.php3?id\\_article=805](http://www.ier.ma/article.php3?id_article=805), my translation

things such as “moving away from a system of arbitrariness to a political system where there is a balance, where law prevails, where the disappeared reappear.” It is also interesting that B. linked the idea of reconciliation with the preservation of memory as he pointed out that: “To reconcile with society is to avoid the falsification of collective memory.” For many victims, reconciliation is intimately connected with genuine political change. W., for instance, noted that “reconciliation cannot happen at an individual level, through one simple testimony. On the contrary, a genuine reconciliation can only be achieved through access to truth. It is only by pointing to the truth that it is possible to guarantee that old practices are never reproduced...Access to truth does not always imply establishing tribunals for torturers, but at least riding them from positions of authority.” W is pointing here to what is commonly referred to in the transitional justice literature as lustration. This practice was popular in many Eastern European countries after the fall of the Soviet Union and consists in what Hayner defines as removing “from employment based on their affiliation with the prior regime.” (13)

But lustration has not been considered in Morocco. Not only that, none of those responsible for disappearances, torture and murders were asked to participate in the public testimonies, which led many victims and/or their families to question the sincerity of the IER. Only a select number of victims were invited to participate in the hearings and the selection criteria seemed arbitrary. For instance, A., who when he was a student member of a Marxist-Leninist movement and accused of threatening state security and condemned for ten years in prison without a fair trial, stated that he was never invited to participate in the formal testimonies. Although he said that he would have refused to participate had they invited him, A. felt excluded from the process and believes he and others were excluded “because

they are perceived as having a critical position vis-à-vis the IER.”<sup>69</sup> For him, the IER is another “PR stunt” by the monarchy to legitimize its power and stay in charge without making any substantial reforms. For this process to be genuine and fair, the state cannot be both party and judge; otherwise it is yet another case of “victors’ justice.” In addition, A. insisted that the process of accounting for the crimes of the years of lead has to include all victims and all perpetrators, otherwise it lacks both fairness and thoroughness and does not contribute to the culture of human rights and democracy that all citizens are so eager to embrace.

Conversely, El Boukili, a member of the AMDH, argues that the main problem with the IER is that it was solely focused on the victims, not those responsible for the suffering of the victims. Thus because its mandate was restricted in terms of its scope, the IER was unable to get to the full truth about the years of lead. In fact, “El Boukili maintains that this actually hindered reconciliation because many victims of the grave abuses committed during this period could simply not forgive nor forget unless those responsible for these atrocities were held criminally responsible” (Storm, 104). The exclusion of perpetrators from the process was not accidental. As previously mentioned, it was part of the deal negotiated between the monarchy and those former political prisoners who accepted to be part of the IER. The mandate of the IER did not allow for judicial prosecutions or indictment of those accused of torture, disappearance or murder of thousands of innocent citizens. Furthermore, the fact that the IER’s scope was limited to victims is evidence that any truths that the State has been seeking through this process are bound to be one-sided and partial.

Authentic reconciliation involves or should involve all parties, in a conjoint effort to seek the truth. There is truth in the stories that are told by victims, but truth also requires acknowledgment. The truth of the stories that present atrocity and grief requires

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<sup>69</sup> Personal interview conducted in Summer 2006

recognition from those who committed those atrocities, a public validation of victims' experiences, not only compensation. Victims and their families are not interested only in forensic truth, revealing physical marks and seeking remains of those tortured and disappeared, since it is not retributive justice that most victims seek, because they know that retributive justice is unrealistic for several reasons, not the least of which is a corrupt and broken judicial system. Victims and their families, those who participate hopefully in the testimonial process and critics who remain on the sidelines, voluntarily or forcibly, want first and foremost acknowledgement and recognition of wrongdoing.

The IER's hearings were seen as disingenuous and exclusive by many victims and human rights advocates, so the Moroccan Association of Human Rights (Association Marocaine des Droits Humains , AMDH) and the FMVJ sponsored alternative public hearings. Hazan notes that "a number of former victims, human rights activists, Islamists, and most of the victims from the Western Sahara complained that the IER had granted impunity to the torturers and their superiors. They accused the IER of distorting transitional mechanisms to protect those responsible for the repressive system—if not whitewashing their past then sparing them any punishment"(6). In these alternative hearings held in 2005 (February-July), which the government did not allow to be televised or broadcast through media outlets (most of which are state owned or controlled), victims were allowed to name their torturers and even implicate those who still hold high office in the government. These events, held in several cities across the country as well as France, were held under the slogan: "Completely Free Testimonies for Truth."

Hazan argues that these hearings were "an unprecedented step in the history of transitional justice" (6). The naming of perpetrators is primarily symbolic since the AMDH does not have

judicial power, but unlike the IER hearings, these had credibility as naming sought accountability from those responsible for the death and suffering of innocent people. Shielding perpetrators of atrocities provides them with impunity, which should not be the case in a society that is democratizing. In effect, the FMVJ and the AMDH argue that the State is attempting to construct a future that is free from the ghosts of the Years of Lead, without accounting for (explaining, understanding, and adjudicating) the actions of the past. The truth these victims' groups attained had little if anything to do with the forensic but did indeed involve a validation of their experiences of suffering. In this instance, hidden from public view, public naming of perpetrators became part of securing and recognizing that truth, but eluded justice.

Since the alternative hearings were held in both France and Morocco and were open to all victims or family members who wished to participate, witnesses included dissidents who had sought political asylum abroad, in France mostly. Abdellah Zniber is a victim who preferred political asylum to life in prison (sentenced in absentia) for a crime he did not commit. During the AMDH sponsored hearings, he identified himself as part of the young generation of the 1970s who dreamed of social justice and paid the price for the struggle for dignity in the face of a corrupt regime that does not respect even the most basic human rights.<sup>70</sup> As Mr. Zniber escaped arrest and the torture, his family was harassed for years. His testimony was homage to his family and all families of victims, especially the brave mothers who were never defeated by the inhumane approach of the regime despite the physical and psychological toll of police harassment.<sup>71</sup> Mr. Zniber did

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<sup>70</sup> "Completely Free Testimonies for Truth."

<sup>71</sup> See "Completely Free Testimonies for Truth" 2006.

not name anyone in his testimony but intimated that he holds King Hassan II to be responsible for the suffering of thousands of citizens, in Morocco and abroad. Many other witnesses mentioned Hassan II as responsible for the grief their families suffered during the Years of Lead.

Sion Assidon, was kidnapped from his house in 1972 and two years later sentenced to fifteen years for “planning a regime change and threatening national security.” Mr. Assidon spent twelve years in prison, during which he was kidnapped from jail twice. He stated that he was testifying for “truth and justice” but he also made it clear that he did not conceive of himself as a victim. During his testimony, Mr. Assidon provided detailed information about torture and terror methods used on him during what he called the “dark journey.” He talked about his torturers by name and explained that his mentioning “of names is not meant to make these people more responsible than they are, since it is clear that political responsibility lies much higher. Still, they are certainly not innocent of the crimes of torture and kidnapping that they engaged in during that period.” (118) Mr. Assidon distinguished between guilt or culpability and political responsibility.

Despite the fact that these parallel hearings focused on naming the perpetrators or those that victims knew to be responsible for their ordeal, few victims did actually provide names. But many of those who testified in the talked about the fact that the state’s efforts have not been successful in providing either truth, justice, or reconciliation. Many noted this is compounded by the fact that the violent practices there were victims of during the Years of Lead are still being used against innocent citizens, in total impunity. Some victims link this aspect to reparations. For instance, K., who spent twenty years in prison for his political opinion, suggested that the reparations program should not be based on monetary

compensation, which he has refused despite his eligibility.<sup>72</sup> For him, to accept money from the same state that victimized him and thousand others without a genuine change in the system would signify “defeat,” that his suffering and that of his family can be put in financial terms, which he insisted, cannot. In addition, to accept the money would also suggest that he accepts the status quo (no change), which he does not. For K., genuine reparations should focus on effecting political and economic change that is conducive to social justice and democracy and “I would feel ‘repaired’ then,” he stated. He added that, in any case, “reparations can only be symbolic, not monetary.” This is a contested claim, however. Not all victims of the Years of Lead feel the same way about reparations. For instance, the majority of those who were eligible for financial compensation accepted it because they felt it was their right and that the damage they suffered because of state’s violence should be monetarily compensated, at least to cover for lost wages. Others would accept no compensation at all, or if they did, it was by pressure or encouragement from family members.

## **6. Effectiveness of Implemented Transitional Justice Policies**

### **6.1. Internal Critique: Fulfilment of Mandate**

Morocco’s efforts to come to terms with its past as it is played out in the public sphere through a rhetorical battle between two primary political formations and actors. On one side there are victims’ groups and human rights’ advocates who have been waging a campaign to account for the past and secure some type of justice while at the same time trying to compel the state to launch reforms that can pave the way to a genuine democratic transition. On the other side, there is the state (the monarchy and its political apparatus, the *makhzen*) which has been focusing its efforts on political survival through an official discourse centered

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<sup>72</sup> Personal interview conducted in Summer 2006.

on democratization and respect for human rights, all-the-while making very little efforts towards consequential constitutional reforms. Although a full discussion of democracy and democratization is beyond the scope of this work, I must agree with Robert Dahl and Susan Waltz in their minimalist understanding of democracy as a political system that first and foremost protects citizens from oppression. “For Dahl, the noteworthy advantage of democracy does not lie in the particular policies it may produce, for in their content democratically produced policies may differ little from those arrived at by other political means. Democracy’s major virtue is found, rather, in the protection from massive coercion it extends to those who enjoy the franchise” (Waltz 5).

Clearly, a genuine democracy does more than protect citizens from state violence and abuse. Unless the king is only a figure head, a symbol of the country’s heritage, like in Spain or Great Britain, a monarchical system of governance remains at great odds with the idea of democracy, even if it is a constitutional monarchy. For instance, a democracy presupposes that the government is representative of and subordinate to the people, not the opposite as is the case in a monarchy, especially one where power is constitutionally centralized within a head of state who is both above the law and has divine aura. For a society like Morocco where citizens are constitutionally conceived as subjects who are required to show loyalty and allegiance to the king, even an unjust one, to live in a democracy would mean to become citizens who do not live in fear of coercion and violence and equally enjoy the rights and responsibilities that are consecrated in the constitution. It is ironic that in many so-called transitional countries, including Morocco, democratization is presented as the “good” that brings the nation together. Democracy is offered as the reward for reconciliation, but while reconciliation presupposes a conciliatory and consensual process, democracy is neither conciliatory nor consensual; it is a cacophony of voices that do not always resonate.



The reality of Moroccan politics and other semi-authoritarian regimes is that, unlike totalitarian states, there is plenty of dissent and dissonance within the public sphere. Daniel Brumberg explains that these regimes, including Morocco, “have not tried to impose a single vision of political community, or to completely swallow up every vestige of organized pluralism in society. Instead, they have put a certain symbolic distance between the state and society in ways that leave room for competitive or dissonant politics” (40). In other words, in Morocco (and other similar regimes), plurality in the political arena is not necessarily synonymous with democracy. It provides a misleading index for inside players and outside observers, but it is one that the state is keen on nurturing. The Palace is also clever at creating its own political parties, for an additional share of political space and power. Its most recent creation is PAM (Party of Authenticity and Modernity), created in 2008 by the King’s best friend Fouad Ali Al Himma to serve as opposition to the Koutla (a coalition of opposition parties from the right and the left). The PAM was able to quickly become a powerful player in the political arena by absorbing (in fact co-opting) a variety of former activists and political pariahs. Recently, after the electoral win of the Islamist party of PJD (Party of Justice and Development), the PAM has declared itself an opposition party now.

Another potentially misleading feature of Moroccan politics or, to be precise, a feature of the state’s political maneuvering is its public discourse, which is often in sharp contrast with its practices. Waltz argues that “the politics of human rights [in North African countries] are essentially a politics of rhetoric. That rhetoric is not to be dismissed for its emptiness, insofar as political discourse ultimately shapes political expectation and political behavior” (233). This is true of all societies, of course, not just

those of North Africa. But it is also important not to divorce discourse from action.

Discourse sets up expectations and compels action. And when people speak of empty rhetoric, it does not mean that rhetoric is empty but simply that speech and deeds do not match up or, in other words, that the rhetoric is disingenuous. Conversely, for

Thomas Moriarty whose work focuses on South Africa, the rhetoric of political leaders in any given country determines the political reality for the audience. He states:

Political figures construct a past, present and desirable and plausible future for their audiences—a political reality—by characterizing or rhetorically constructing key elements of the public scene. [. . .] The resulting political realities determine the nature of the relationship between groups in a given society. The relative proximity of these realities determines whether the relationship between the groups is one of rhetorical or violent conflict. They will disagree or bicker over issues, but their conflict will be of a political, or rhetorical, nature. But if the groups have dissimilar political realities, the relationship between them will be one of violent conflict. (34)

When a state's leader speaks of human rights and democracy in speeches while his police in the street are arbitrarily arresting or beating citizens for demonstrating, expressing an opinion in a newspaper and such, there is a serious problem of political coherence, to say the least. But when violence ceases to be the primary mode of communication for the state, rhetoric assumes its proper place in the public sphere. Meaningful and genuine change in political and socio-economic life in Morocco (or anywhere else for that matter) is effective only when the discrepancy between state's discourse and practices shrinks to a bearable level, a level that is synonymous with good faith.

### **6.3. Lessons from the Moroccan experience**

This section summarises lessons that can be gleaned from the Moroccan experience of transitional justice. An important lesson to be learned from this process concerns the transparency of the process of transitional justice and the fairness associated with the criteria used to assess who is and who is not eligible to partake in the process as well as the financial reparations that were extended to victims. In addition, to invest in a process of TJ without including perpetrators of the violations in the process seems to suggest that their role is negligible or, worse, that their criminal actions have been removed from the harm and suffering caused to victims in particular and society in general. This particular aspect of the Moroccan process should warrant serious caution and pause as it signals a disregard for the victims and their experiences and, more generally, for the rule of law and accountability.

No two experiences of transitional justice are the same and there is certainly no template on how to successfully achieve one. However, there are some basic tenets that theorists and practitioners of transitional justice seem to agree that they are necessary (although not sufficient) to concede that such process did indeed meet its goals. These basic tenets would seem to include the involvement of perpetrators at some level of the process, either in the testimonies, apologies, lustration or the process of reconciliation. In the case of Morocco, the process of transitional justice has been carried out without any input or participation of any perpetrators.

According to most victims (who are the significant party in this process), transitional justice has failed to produce its most important goal: unveiling the truth and putting an end to impunity. For many victims, such as those represented by the AMDH and the FJV, the State's stated goals, approach, and recommendations confuse the moral idea of the pursuit of truth and justice with the more practical issue of financial reparation. To add insult to

injury, in the case of the IER, victims were given two or three months to apply for reparations claims from the state and if they did not do so within that window of opportunity, they did not qualify. This constraint was criticized both locally and internationally, but never reversed. Further, the state (in the person of the King) never officially apologized for its decades of repression and violence against its people. No one in Hassan II's regime has ever stepped forward or taken responsibility for the violations, or been forced to do so. Even worse, many key actors who have actively participated in the regime of Hassan II are still acting officials in the current government, as part of the makhzen. As detailed in the preceding pages, the equity and reconciliation process in Morocco has produced a truth commission for (some) victims to relate their ordeal, with clear instructions not to name any perpetrators. Several Moroccan victims I spoke with have suggested that, for them, reconciliation as presented by the State's commission is meaningless because no one has even acknowledged wrongdoing, which is why many victims and observers question the authenticity of the entire process of transitional justice. An Amnesty International report evaluating the Moroccan state's effort to deal with the legacy of the human rights abuses of the Years of Lead states:

A major shortcoming of the IER truth-seeking process is its offer of only partial truths: truths as seen and lived by the victims and their families, without including in its work the narratives and perspectives of the perpetrators and the forces behind such human rights violations. This timidity was perhaps out of fear that unveiling the whole truth would lead to unacceptable conclusions, from the perspective of the Moroccan authorities, about the monarchy and about individuals who continue to hold powerful positions of authority thereby, shaking the fundamentals of the country's political structure (5).

The fact that the commission was headed by a former political dissident who had spent fifteen years of his life in the country's prisons has provided it with much needed legitimacy. While it is true that this commission and previous commissions have provided monetary compensations for some of the victims and have recorded the stories of their suffering, they have fallen short of providing them with a sense of justice being done. But to insist on financial reparations as a major accomplishment is insulting to victims. In the aftermath of grave human rights violations where people have been raped, maimed, disappeared, murdered, to speak of repairing or restoring things to the way they were before, is tantamount to obscenity. Reparations in this context have a symbolic meaning and need to be understood as such.

The focus of transitional justice has been on financial reparations, to the detriment of accountability, which should be the primary focus of any genuine attempt at providing redress and justice for those who were victims of State violence. To contain the process in terms of its scope, the commission's choice of victims who participated in the public hearings was anything but transparent or democratic. Unlike most TRCs only a handful of witnesses were chosen and the selection criteria never made public. It was clear that anyone who was deemed a threat to the orchestrated process, was not invited. This is to say that the first steps of this commission were in essence anti-democratic.

The mandate of the IER had stated that the commission will seek to determine "the responsibility of governmental entities, or others, for the violations, and the facts under investigation." The conducted investigations and testimonies led to the collection of a huge amount of information and archival material but all of this information is incomplete, highly partial in both senses of the term. While one could argue that some aspect of forensic

(partial) truth has been achieved, this is not the truth that victimized citizens have been seeking. The truth they have been seeking is a validation of their experience, a recognition of the injustice they suffered. As observers, we only know what happened to whom, not who did what to whom. Responsibilities have not been assigned because the perpetrators of the violations have been provided anonymity and truth has not really been sought, as those responsible have been provided with immunity and impunity.

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