

Morocco's Equity and Reconciliation Commission & the Restoration of Dignity

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ABSTRACT

This paper assesses to what extent Morocco's Equity and Reconciliation Commission achieved its stated goal of restoring dignity to the victims of the Years of Lead. It begins with an exploration of the concept of dignity, in order to understand what is meant by the term and how it might be said to be restored. Next, the Commission's approaches to the issues of public testimony, accountability, non-recurrence, official apology, socio-economic reparations and provision of healthcare are studied in order to determine whether they were conducive to the restoration of dignity. Ultimately, the paper concludes that while the Commission was only partially successful in its goal of restoring dignity, its work- and the domestic criticisms of when it failed to do so- speaks to the willingness and commitment of many Moroccans to build a world in which the inherent dignity of all Moroccans is respected.

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Introduction

Over the past decades, truth commissions have become a common feature of transitional justice. Transitional justice “refers to the ways countries emerging from periods of conflict and repression address large scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response.”¹ Truth commissions are one-way countries attempt to address these large-scale human rights violations. As violations of one’s human rights constitute an (attempted) violation of one’s dignity, many truth commissions seek, either implicitly or explicitly, to restore the dignity of victims in various ways, such as with reparations or giving the victims the opportunity to publicly speak about their experiences.

Following a politically repressive period in the country’s history known as the “Years of Lead”, the Kingdom of Morocco established its own truth commission, known as the Equity and Reconciliation Commission, in 2004. The Commission had many goals, one of which being to restore the dignity of those whose rights had been violated by the state during the Years of Lead. It is this goal that forms the basis of the question asked by this essay, namely: to what extent did Morocco’s Equity and Reconciliation Commission achieve its stated goal of restoring dignity to victims

In order to assess this question, the following topics will be explored. The essay will begin with introductions to the general history and goals of truth commissions and to the historical context of the establishment of Morocco’s truth commission. Next, the concept of dignity itself will be studied, in order to understand what is meant by the term dignity and how it might be said to be restored. The assessment of the essay’s question will then begin, by analyzing how the Moroccan Commission’s approach to the issues of public testimony, accountability, non-recurrence, official apology, socio-economic reparations and the provision of healthcare was or was not conducive to the restoration of the victims’ dignity. In order to better evaluate Morocco’s approach

¹ International Center for Transitional Justice, “What is Transitional Justice?” (accessed December 12 2017), *Justice, Truth, Dignity*, online: <https://www.ictj.org/about/transitional-justice>.

with regard to these issues, comparisons with the approaches of other truth commissions, notably South Africa's Truth and Reconciliation Commission, will be used.

Throughout the essay, the term victim will be used to refer to the Moroccans whose rights were violated by the state during the Years of Lead, and the term perpetrator will be used to refer to the individuals who committed these violations. This language is only used to bolster the clarity of the text for the reader. It is not meant to be a comment in the important discourse regarding the role of the language used in human rights texts in perpetuating victimization and unnuanced 'good versus evil' narratives. Such commentary lies outside the scope of this essay.

The History and Goals of Truth Commissions

While truth commissions can take various forms and may have various goals, they generally share the following characteristics: they are "(1) focused on past, rather than ongoing, events; (2) investigate a pattern of events that took place over a period of time; (3) engage directly and broadly with the affected population, gathering information on their experiences; (4) are a temporary body, with the aim of concluding with a final report; and (5) are officially authorized or empowered by the state under review."² The author of this definition, Priscilla Hayner, adds: "what is special about truth commissions is their intention of affecting the social understanding and acceptance of the country's past, not just to resolve specific facts."³

Hayner lists Uganda's National Commission on the Disappeared, established in 1974, as the first truth commission. However, most scholars agree that it was the subsequent commissions in South America (notably in Bolivia, Chile and Argentina) that popularized such commissions on a global scale. Since Uganda's commission, more than forty truth commissions have been undertaken at the time of writing. Among the most well-known and influential of these commissions is undoubtedly South Africa's Truth and Reconciliation Commission, established in 1995 "to help heal the country and bring about a reconciliation of its

² Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed (New York: Routledge, 2011) at 12.

³ *Ibid* at 11.

people by uncovering the truth about human rights violations that had occurred during the period of apartheid."⁴

In Hayner's words,

The task of these truth bodies will never be easy. Truth commissions are difficult and controversial entities; they are given a mammoth, almost impossible task with usually insufficient time and resources to complete it; they must struggle with rampant lies and denials to uncover still-dangerous truths that many in power may resist. At the end of a commission's work, a country may well find the past still unsettled and some key questions still unresolved.⁵

It is thus inevitable that truth commissions face valid criticisms. Since truth commissions are typically non-judicial bodies, often established in a context where recourse to the courts is unavailable (for instance, due to continued judicial partiality), one of the most common criticisms is that they perpetuate ongoing impunity for perpetrators of human rights violations. The common response to this criticism is that truth commissions provide a complementary approach to justice that is not meant to necessarily replace legal consequences for perpetrators. "Despite their more limited legal powers, their broader mandate to focus on the patterns, causes, and consequences of political violence allows truth commissions to go much further in their investigations and conclusions than is generally possible (or even appropriate) in a trial."⁶ They can also provide a space for individual healing and national reconciliation, goals for which the criminal justice system is generally not well-suited. Despite such valid criticisms, truth commissions remain a widely respected and desired tool in the complex process of transitional justice and they will remain so for the foreseeable future.

⁴ Desmond Tutu, "Truth and Reconciliation Commission, South Africa (TRC)" (accessed December 12 2017), *Encyclopedia Britannica*, online: <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa>

⁵ *Supra* note 2 at 18.

⁶ *Ibid* at 13.

The Context and Development of the Equity and Reconciliation Commission

From 1956, the year of Morocco's independence from France, until the 1990s, Moroccans lived through a period of the country's history characterised by state violence, known in the country as *sanawat ar-rassas*, *les années de plomb*, the Years of Lead. King Mohammed V, wanting to re-establish the sovereignty of the monarchy⁷ after France's departure, sought to quell any perceived opposition and competition to the monarchy's power. After his death in 1961, this legacy of state repression continued under the rule his son, King Hassan II, who was in power until his death in 1999. Citizens perceived to be critical of the monarchy, of the geographical integrity of the state (i.e., involved in independence movements in the Western Sahara or the northern Rif region), of Islam as the state religion and source of the monarchy's legitimacy, or who associated with people who were critical of such subjects, were targeted by the state. Methods of repression included harassment, murder, forced disappearance, arbitrary arrest and imprisonment, torture, violent suppression of public strikes and protests (the term Years of Lead itself refers to the lead bullets fired at protesters⁸), and 'collective punishment' of regions like the Rif.⁹

The 1990s marked the beginning of a period of reform and of assuagement of state repressive policies. Hundreds of political prisoners were released, financial compensation was given to some of the victims of human rights violations, and a number of legal and institutional reforms were undertaken, including notably the establishment of the Advisory Council on Human Rights, precursor to the National Human Rights Council. Essentially, the state sought to "turn the page on past human rights

⁷ Khalid Amine, "After the 'Years of Lead' in Morocco: Performing the Memory" (2016) 32: 2 *New Theatre Quarterly* 121.

⁸ *Supra* note 7.

⁹ International Center for Transitional Justice, "Truth and Reconciliation in Morocco" (accessed December 12 2017), *Focus: Morocco*, online: <https://www.ictj.org/sites/default/files/ICTJ-Morocco-TRC-2009-English.pdf>

violations"¹⁰ in response to increasing domestic and international criticism.¹¹ Shortly before he died, King Hassan II approved the Advisory Council's recommendation to "establish an official body to compensate victims of past human rights abuses."¹²

His son and successor, King Mohammed VI, was more progressive-minded than his forebears and continued the reforms begun in the last years of his father's reign. He established the Independent Arbitration Commission, which provided financial reparations to victims of forced disappearances arbitrary detention during the Years of Lead.¹³ However, many Moroccans, including former victims of the state, believed that this was an insufficient response to the widespread state violence during this period of the country's history, and demanded "greater disclosure of government wrongdoings [and] the adoption of a comprehensive approach to dealing with the past."¹⁴ As a result of political pressure from various civil society groups (notably the Moroccan Forum for Truth and Justice, the Moroccan Organization for Human Rights, and the Moroccan Association for Human Rights) and an official recommendation from the Advisory Council on Human Rights, King Mohammed VI established the Equity and Reconciliation Commission in 2004.¹⁵

The Commission was composed of a president and 16 members, "half of them selected from members of the Advisory Council on Human Rights, and half selected from outside it. The purpose of this was to guarantee the representation of a wide variety of viewpoints, experience and specialities, all united in the purpose of protecting and promoting human rights."¹⁶ Notably, the Commission included people formerly persecuted by the state.

¹⁰ Amnesty International, *Broken Promises: The Equity and Reconciliation Commission and its Follow-Up* (London: Amnesty International Publications, 2010) at 4.

¹¹ International Center for Transitional Justice, "Morocco" (accessed December 12 2017), *Middle East and North Africa*, online: <https://www.ictj.org/our-work/regions-and-countries/morocco>

¹² *Ibid.*

¹³ *Supra* note 9.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Equity and Reconciliation Commission, *Final Report* (Rabat: The Advisory Council on Human Rights Publications, 2009) at 12.

The Commission's president, for example, had been imprisoned for 17 years due to his participation in left-wing politics. In terms of structure, the Commission consisted of work groups responsible for the investigations, and special committees responsible for various other tasks, such as organizing the public hearings, providing reparations, preparing the final report, and so on.

The Commission's mandate covered the period from 1956 to 1999 and was "limited to assessment, inquiry, investigation, arbitration and formulating proposals concerning the grave violations of human rights that occurred"¹⁷ in that period. The Commission's goals were numerous, but can be grouped under four general categories: establishing the nature and the gravity of past violations of human rights; reparations for injuries and justice for victims, preparing the final report and the recommendations, and consolidating the process of national reconciliation.¹⁸ Within these categories, the goal of restoring dignity to the victims was listed under reparations for injuries and justice for victims, as well as under establishing the nature and the gravity of past violations of human rights.

The Commission began its work in 2004 and published its final report in 2006. Approximately 20 000 cases were submitted to the Commission over the course of its work.¹⁹ Domestic and international opinions on the Commission's work has been mixed. Amnesty International, for example, published a critical report of the Commission, noting their concerns regarding issues such as the perceived lack of accountability for perpetrators of human rights violations, the lack of implementation of its recommendations in Moroccan society, the insufficient acknowledgement of the human rights violations suffered by Sahwaris in the Western Sahara, and so on. Many of these concerns will be explored in more detail in section 5 of this essay. Nonetheless, most critics acknowledge it as a positive sign of Morocco slowly coming to terms with its past and working to ensure a future free of the kinds of human rights violations that characterized the Years of Lead, and as a groundbreaking first example of a truth commission established without

¹⁷ *Supra* note 16.

¹⁸ *Ibid.*

¹⁹ *Supra* note 9 at 44.

a political regime change.²⁰ At the time of writing, Morocco is still in the process of implementing many of the Commission's recommendations. Representatives of what is now the National Human Rights Council have shared practices and knowledge gleaned from Morocco's experience with the Commission with representatives of countries who are themselves going through a process of transitional justice, such as the Ivory Coast, Burundi and Tunisia.

What is the meaning of dignity?

In order to assess to what extent Morocco's Equity and Reconciliation Commission was able to restore dignity to the victims, one must first understand what is meant by dignity and its restoration. The concept of dignity has long been a part of human rights-related discourse and the language of truth commissions, yet it has rarely been clearly defined, and so there is no universally accepted understanding of the concept. This section will consist of a brief overview of the history of the term and the concepts associated with it, in order to establish a working understanding of the meaning of dignity for the purposes of this essay. Morocco's geographic position and history has made it particularly affected by the influences of European, Arab and Sub-Saharan African philosophy and events, and so it is mostly these influences which will be addressed in this section and in the essay as a whole.

In his study on the history of dignity as a quasi-legal concept, Christopher McCrudden begins with classical Roman thought, in which *dignitas hominis* generally referred to one's (high) social status, but was also sometimes interpreted as a quality inherent in human beings as human beings regardless of one's status.²¹ The subsequent rise of the three major monotheistic religions affirmed the idea that dignity is an inherent quality in people, but on the basis that Man is made in the image of God.²² In Europe, the concept of inherent dignity became somewhat more

²⁰ John Perry & T. Debey Sayndee, *African Truth Commissions and Transitional Justice* (Washington, DC: Lexington Books, 2015) at 69.

²¹ Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008) 19: 4 *European Journal of International Law*.

²² *Ibid.*

secularized with the influences of Enlightenment, republican, and social democratic philosophy.²³ Today, the idea that dignity is inherent in human beings has garnered widespread acceptance, although dignity is also sometimes understood as something needing to be strived for or restored, either in contrast to its characterization as an inherent quality or coinciding with this characterization. For example, “the African Charter on Human and Peoples’ Rights refers to African people as ‘still struggling for their dignity and genuine independence,’ highlighting the difficulty associated with the notion of dignity, the tension between its ‘inherentness’ and its need to be actualized.”²⁴

The term dignity mostly began explicitly appearing in legal and human rights-related texts in the twentieth century, especially following the Second World War and the establishment of the United Nations; the reaction to the horrors of the latest war, the rise and rhetoric of the various civil rights movements and the inclusion of the word dignity in the United Nations Charter and the Universal Declaration of Human Rights being particularly influential in this regard.²⁵ By the late twentieth century, dignity had become recognized as central to the concept of human rights itself, and thus in truth commissions as well. Most, if not all, truth commissions either make explicit reference to dignity either in their official documents and discourse, or the individuals involved in the commissions (testifiers, organizers, witnesses, etc.) refer to the concept in the context of their participation in the commission.

Despite the long history of the term and the concept, dignity is rarely defined in its modern usage in human rights-related texts and truth commissions. Rather than having its own definition, dignity seems to be implicitly defined or understood through the lens of different concepts with which it is commonly associated. Many of these concepts, which are often also associated with the larger work of truth commissions, will be addressed in section 5 of this essay. They include agency, testimony, truth, healing, accountability, and recognition. The concepts associated with dignity are often closely interrelated in the context of truth commissions and complex in themselves, giving

²³ *Supra* note 21.

²⁴ *Ibid.*

²⁵ *Ibid.*

dignity an amorphous or nebulous quality that makes the task of defining it even more difficult.

The definition of dignity is therefore difficult to precisely and clearly articulate; and yet people from around the world seem to have an intuitive understanding of its meaning and accept its centrality in human rights discourse. McCrudden quotes Shultziner's suggestion that this surprisingly universal acceptance and understanding of dignity is due to the fact that "different parties [take] part in a constitutive act [and] conceive human dignity as representing their particular set of values and worldview [...] dignity is used as a linguistic-symbol that can represent different outlooks, thereby justifying a concrete political agreement on a seemingly shared ground."²⁶ But as McCrudden emphasises, this does not imply that the word dignity has no content or meaning at all: dignity simply carries "an enormous amount of content, but different content for different people."²⁷ The different concepts associated with dignity mentioned above can be considered as part of this enormous amount of content.

As stated previously, restoring dignity to the victims of the Years of Lead was amongst the goals of Morocco's Equity and Reconciliation Commission. However, the word dignity is infrequently mentioned in the Commission's final report, and the Commission also does not define the term. The excerpts where the term appears in the final report can be found in the attached appendix. All the mentions of dignity appear in the same chapter of the report entitled Truth, Equity and the Components of Reconciliation, and essentially refer to methods of torture that demean dignity and the measures the Commission undertook to restore dignity. The relevant mentions of dignity in the final report will be cited and explored in greater detail in the following sections of this essay.

With all this in mind, for the purposes of this essay I will conclude that dignity is not easily definable but it can be understood through the lens of various concepts as mentioned above. The subsections of part 5 of this essay will address how these concepts relate to dignity and its restoration. I will also posit that although dignity is an inherent quality that therefore cannot

²⁶ *Supra* note 21.

²⁷ *Ibid.*

be 'lost', human rights violations constitute an assault on one's dignity, and so obtaining some form of justice for such violations is how dignity can be said to be 'restored'.

To what extent does Morocco's Commission restore dignity?

In order to assess this question, the following aspects of the Commission's work will be explored: public testimony, accountability, non-recurrence, official apology, socio-economic reparations and the provision of healthcare. These issues were selected because they relate to the concept of dignity and its restoration, as will be explained below.

Public Testimony

As with most truth commissions, public testimony was one of the main features of the Commission's work in Morocco. The Commission held seven hearings throughout the country (notably, however, none were held in the Western Sahara). Laetitia Grotti and Eric Goldstein of Human Rights Watch describes these hearings as follows:

At each hearing, about ten victims narrated before those assembled – members of the ERC, journalists, and members of the public [...]. Each one had about twenty minutes to speak, after which no one could ask questions or otherwise respond to the speaker. Those present were to maintain absolute silence and refrain from applause or other expressions of emotion.²⁸

Testifiers could speak in the language of their choice, and psychological counseling was offered to them after they spoke (the costs being borne by the Commission).²⁹ The hearings had full audiences, and were closely followed by Morocco's citizens and domestic press. The hearings were broadcast on television, and summaries, clips and footage were uploaded to the Commission's website.³⁰ In the Commission's words, the main goals of allowing

²⁸ Eric Goldstein & Laetitia Grotti, "Morocco's Truth Commission: Honoring Past Victims during an Uncertain Present" (2005) 17: 11 Human Rights Watch at 35.

²⁹ *Ibid* at 34.

³⁰ *Ibid* at 36.

the victims to testify publicly was to “restore the dignity of the victims whose rights had been violated, to reinstate them morally, to preserve the group memory, to share their pain and their suffering, and to alleviate the psychological after-effects.”³¹

The relationship between the public hearings of a truth commission and restoring dignity has long been recognized by victims and commentators. As alluded to in the Commission's description of its goals quoted above, this relationship also overlaps with the concepts of truth, healing, recognition and agency. In the South African context, Archbishop Desmond Tutu stated that the Truth and Reconciliation Commission's goal was to “rehabilitate the human and civil dignity of victims [by allowing] those who came to testify to tell their own stories [and receive acknowledgment, i.e.], an affirmation that a person's pain is real and worthy of attention.”³² As alluded to in the phrase ‘to tell their own stories,’ control and agency on the part of victims are crucial aspects of the restoration of dignity. Holly Guthrey elaborates on this idea in her discussion of the causal link between what she terms ‘voice’ and restoring dignity:

The ability to give testimony [...] in a truth commission can be considered [an] aspect of voice that may help victims to restore a sense of control that was lost as a consequence of victimisation. [...] This feeling of empowerment may also increase victims' sense of dignity as the ‘restoration of dignity is not simply a function of restored voice, but of a voice in control’ (Ross 2003, p. 336). Having the ability to share one's story during a truth-telling process may thus help to reinstate dignity that was lost as a result of past abuse, [particularly when that experience of abuse was] previously silenced by the ancien régime (Laplante and Theidon 2007).³³

Martha Minow also supports the conclusion that testimony can lead to healing the restoration of dignity. Quoting Richard

³¹ *Supra* note 16 at 96.

³² Eleni Coundouriotis, “The Dignity of the ‘Unfittest’: Victims’ Stories in South Africa” (2006) 28 : 4 *Human Rights Quarterly* at 847.

³³ Holly L. Guthrey, *Victim Healing and Truth Commissions: Transforming Pain Through Voice in Solomon Islands and Timor-Leste* (New York: Springer, 2015) at 38.

Mollica, an expert in refugee trauma, she writes: “the trauma story is transformed through testimony from a telling about shame and humiliation to a portrayal of dignity and virtue,”³⁴ and adds that “therapists working with survivors of political torture have found the process of developing and revising testimony an important element of healing.”³⁵

There are, however, notable criticisms of whether the testimonial process facilitates healing and the restoration of dignity. Rosalind Shaw, for example, argues that testifying is not necessarily a universally or inherently beneficial process. She writes that while testifying may be conducive to healing in the context of “covert, state-sponsored violence”³⁶ in which the experiences of victims were concealed (echoing Guthrey’s observations regarding silenced abuses above), but that “after a genocide, for example, truth may not be an adequate response, especially in cases [...] where no attempt was made to conceal the killing in the first place.”³⁷ Furthermore, she argues that the “ideas concerning the conciliatory and therapeutic efficacy of truth telling are the product of a Western culture of memory,”³⁸ and may not be conducive to healing in all contexts. Indeed, Shaw’s study focused on the disruptive effects of testifying truth commissions on local methods of healing in Sierra Leone. Within this Western culture of memory, Shaw lists “the redemptive significance of confession in the church, and developing more recently through Freud’s ideas about repressed memories, the psychiatric construction of the increasingly dominant concept of Post-Traumatic Stress Disorder and its treatment through verbal processing, and the place of the Holocaust as the paradigmatic modern atrocity that must be remembered in order to prevent recurrence”³⁹ as particularly influential. In the context of truth commissions, I also would add to her list the influence of the South African rhetoric described above.

³⁴ Martha Minow, “Between Vengeance and Forgiveness” South Africa’s Truth and Reconciliation Commission” (1998) 14 : 4 *Negotiation Journal* at 323.

³⁵ *Ibid.*

³⁶ Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions: Lessons from Sierra Leone* (Washington, DC: United States Institute of Peace, 2005).

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

Another important criticism of the testimonial process of truth commissions is the lack of numerous empirical studies proving that testifying is a healing and restorative process. As Karen Brounéus notes in her study of Rwanda's Gacaca courts, some theorists have argued that "the beneficial claims made in the literature of truth-telling and truth-seeking mechanisms on reconciliation and peace have been based on flawed assumptions and faith rather than on empirical evidence."⁴⁰ Indeed, some studies have already shown that testifying does not inevitably lead to healing. For example, Shaw cites a study from the Trauma Center for Victims of Violence and Torture in Cape Town which found that 60% of those who testified in South Africa's TRC felt worse after testifying,⁴¹ and warns against treating truth commissions as therapy.

To what extent are these criticisms applicable to the Moroccan context? Ideally, this assessment would be primarily based on testimonials and assessments from the victims themselves, but having been unable to find such sources, I undertook a broader evaluation. As the state violence of the Years of Lead was generally covert or officially denied, and the victims welcomed on a large scale the opportunity to publicly testify, the arguments regarding the inappropriateness of public testimony raised by authors such as Shaw do not apply. Furthermore, in terms of treating truth commissions as a replacement for therapy, the Commission did provide counselling for victims after they testified and ongoing psychological help was included as part of its healthcare provisions, implying that the Commission did not in fact treat public testimony as interchangeable with therapy despite its potentially therapeutic qualities.

Another important aspect to consider is to what extent the testifiers were able to share the full story of their experiences on their own terms, this having been identified as a way of restoring dignity by Tutu, Guthrey and Mollica above. Giving victims the freedom to testify publicly in the language of their choice, and the

⁴⁰ Karen Brounéus, "Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan Gacaca Courts" (2008) 39 :1 Security Dialogue at 58.

⁴¹ *Supra* note 36.

amount of attention their immediate audience and the country as a whole paid to their testimony (thus recognizing their pain), was certainly conducive to the restoration of their dignity. However, perhaps the most important issue the Commission faced with regards to allowing victims to tell their full truth was its rule that the victims could not name the perpetrators in their public testimony. This controversial rule will be discussed in more detail below. With the exception of this censorship, however, the Commission created a testimonial process conducive to healing and restoring dignity.

Accountability & Non-Recurrence

One of the most controversial aspects of the Equity and Reconciliation Commission's process was its decision to not publically release the names of perpetrators of human rights violations. Testifiers in the public hearings were required to sign agreements stating that they would not identify the individuals who had abused them⁴² (although Amnesty International has confirmed that "some relatives of victims of enforced disappearance [...] were told by members of the [Commission] or the CCDH information about the alleged perpetrators in private meetings"⁴³). Furthermore, state officials were not obliged to participate or cooperate with the Commission's activities.⁴⁴ While victims were not prevented from formally naming and accusing perpetrators in court, most of the victims did not believe that the legal system was sufficiently independent and impartial to provide justice, and so chose not to pursue this path.⁴⁵ At the time of writing, no significant trials involving perpetrators of the Years of Lead have taken place. Many continue to hold positions of power in the government,⁴⁶ but the president of the Commission has stated to Human Rights Watch: "We are already seeing certain parties being relieved of their posts [but] in some cases this has

⁴² United States Institute of Peace, "Truth Commission: Morocco" (accessed December 12 2017), *Publications*, online:

<https://www.usip.org/publications/2004/12/truth-commission-morocco>

⁴³ *Supra* note 10 at 38.

⁴⁴ Pierre Hazan, "The nature of sanctions: the case of Morocco's Equity and Reconciliation Commission" (2008) 90 : 870 *International Review of the Red Cross* at 403.

⁴⁵ *Supra* note 10 at 40.

⁴⁶ *Supra* note 42.

not happened because of concerns about maintaining stability within the institutions."⁴⁷ However, these parties were not named by the president.

The decision not to name perpetrators was an aspect of the Commission's approach to reconciliatory justice and its desire to focus on institutional rather than individual responsibility. The Dahir (royal decree) establishing the Commission states: "the prerogatives of the Equity and Reconciliation Commission are nonjudicial and do not call into question the individual responsibility for the violations."⁴⁸ In a speech marking the end of the Commission's mandate, King Mohammed VI said:

The goal is to reconcile Morocco with its past ... Some say this initiative is not enough, because the witnesses cannot reveal the names of their torturers. Obviously, again, I do not agree. This is not an initiative, as some would have it, that will divide Morocco in two. There are no judges and no defendants. We are not in court. [This] is a gracious gesture of collective pardon.⁴⁹

As Pierre Hazan notes, the King's religious authority was at play in this invocation of forgiveness.⁵⁰ On a practical level, the Commission also cited concerns that should their work name perpetrators, "[we] would get bogged down in defamation, and in political charges and counter-charges."⁵¹ The president of the Commission continued, "it is not individual responsibility that we are after. We don't have enough proof to be able to pinpoint the individual commanders who gave the orders. [Instead], we will establish responsibility of the state, and the institutions of the state."⁵²

Amnesty International strongly criticized the Commission's decision to not name perpetrators, stating in its report that "the recognition of [the responsibility of state actors] in the abuses

⁴⁷ *Supra* note 28 at 24.

⁴⁸ *Constitution du Maroc*, dahir no 1.04.42, 2004.

⁴⁹ *Supra* note 44 at 406.

⁵⁰ *Ibid.*

⁵¹ *Supra* note 28 at 27.

⁵² *Ibid.*

victims have suffered is crucial to restore their dignity."⁵³ This reflects the position of many authors who have studied the relationship between public accountability and the restoration of dignity. For example, Jaime Goti writes:

Our sense of worthlessness, of shame, and of guilt [caused by state terrorism] demand a "political remedy" to dignify us in our own eyes. The affirmation by the governing institutions that we were wronged will strongly contribute to self-legitimization. Punishing those people who violated our rights is the clearest and strongest statement that a governing institution may issue to that effect.⁵⁴

Derek Summerfield also questions the value of forgiveness without consequences, alluded to in the King's characterization of the Commission's work as a 'collective pardon'. As he points out, "one man's revenge is another's social justice."⁵⁵ Anger and the desire to punish perpetrators should not be immediately rejected as threats that inevitably perpetuate the 'cycle of violence,' but might instead be seen as expressions of an individual's dignity, in the sense of the victims recognizing that they have been treated in a way that infringed their dignity and having the self-respect to demand consequences for the perpetrators (in the words of Goti, "it [dignifies] us in our own eyes"⁵⁶). Summerfield was referring to criminal trials as consequences, but this is not the only form of public accountability and consequences. For instance, South Africa's Truth and Reconciliation Commission famously offered amnesty for perpetrators in exchange for their full and honest disclosure of events. Publicly acknowledging one's wrongdoing is a form of extrajudicial accountability, and the demand for it illustrates the previously discussed link between the restoration of dignity and the truth. Indeed, the Equity and Reconciliation Commission itself links these two concepts: "[The Commission]

⁵³ *Supra* note 10 at 42.

⁵⁴ Jaime Malamud Goti, "Dignity, Vengeance and Fostering Democracy" (1998) 29: 3 *The University of Miami Inter-American Law Review* 421.

⁵⁵ Derek Summerfield, "Effects of war: moral knowledge, revenge, reconciliation, and medicalized concepts of 'recovery'" (2002) 325 *BMJ*

⁵⁶ *Supra* note 54.

intended that the process of uncovering the truth [should enable] them to regain their dignity."⁵⁷

Many Moroccans strongly opposed the lack of public accountability of perpetrators. During the Rif region's public hearing, members of the audience "stood up in a gesture of protest at the [Commission's] rule that public witnesses could not name those responsible for committing the abuses they suffered or witnessed."⁵⁸ Recognizing the popular demand for such public accountability, the Moroccan Association for Human Rights organized alternative public hearings in which the testifiers could name their abusers. The Association's president complained, "the [Commission] categorically refuses to designate individual perpetrators, which means that we will have, at best, only partial truths."⁵⁹ The Commission's inability to provide the truth and public accountability led many victims to feel like they were not being treated with respect and dignity by state representatives and the Commission, as demonstrated, for example, by Khadija Rouissi's experience:

Rouissi, a founding member of the Coordinating Committee of Families of the Disappeared and the sister of one of the best-known of the "disappeared," Abdelhak Rouissi, [said]: "I met a person thought to have been involved in the abduction of Abdelhak. He advised me in a sarcastic and arrogant way to go to court if I wanted to go after those who were responsible."⁶⁰

Furthermore, the Commission paid comparatively little attention to the human rights violations that occurred in the still-disputed region of the Western Sahara during the Years of Lead:

[The Commission] failed to organize a public hearing in Western Sahara on par with other regions where it held televised sessions, which gave voice to victims recounting their suffering. The [Commission's] final report provided very little detail of enforced disappearance and other human rights violations targeting Sahrawis. It failed to

⁵⁷ *Supra* note 16 at 95.

⁵⁸ *Supra* note 28 at 35.

⁵⁹ *Ibid* at 34.

⁶⁰ *Ibid* at 32.

even acknowledge that the region suffered disproportionately as exemplified by its exclusion of Western Sahara from the collective reparation programme designed for areas particularly affected by violations during the “years of lead”.⁶¹

In other words, the Commission failed to genuinely seek to uncover the truth of what Sahrawi victims had experienced during the years of Lead and fully acknowledge state responsibility for this victimisation. In short, the Commission’s approach led to a lack of accountability and obscured the truth of what occurred during the Years of Lead in the eyes of many victims, thus hindering the restoration of their dignity.

However, it is important to consider the ways in which the Commission’s approach might foster the restoration of dignity of victims. The truth commissions of South Africa and Sierra Leone offer interesting examples in this regard. In the latter, many victims refused to name perpetrators and rejected the Western “memory practice [of] truth telling,”⁶² instead choosing to follow “local understandings of healing and reconciliation in terms of social forgetting.”⁶³ In an observation reminiscent of King Mohammed VI’s speech, Shaw noted:

When I asked survivors of the violence in the northern Sierra Leonean communities in which I worked what form of justice they wished to see [...] an overwhelming majority responded “I have no power; I leave my case to God.” If encouraged to think about what they would want if they had power, most then replied “If I had power, I would still leave my case to God, for the sake of peace,” deferring to divine justice and viewing punishment and retaliation alike as escalating rather than ending the cycle of violence.⁶⁴

In the South African context, Archbishop Tutu has stated that “retributive justice is largely Western. [...] The justice we hope for

⁶¹ *Supra* note 10 at 5.

⁶² *Supra* note 36.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

is restorative of the dignity of the people."⁶⁵ The decision to offer amnesty to perpetrators and in many cases to allow them to keep their positions was seen by many South Africans as an act of courage, restraint, hope and healing.⁶⁶ These examples demonstrate that retributive justice is not necessarily conducive to restoring dignity, as implied by Amnesty International's report, and that believing this to be the case may be an expression of unexamined Western bias.

There are crucial differences between the Moroccan context and those of South Africa and Sierra Leone. Unlike Morocco, South Africa did have public accountability: victims were permitted to name the perpetrators, and perpetrators gave full and public accounts of their actions. Unlike Morocco, there was no popular desire in Sierra Leone for public accountability in the shape of naming perpetrators or criminal proceedings. Furthermore, given the amount of domestic criticism of the Moroccan Commission's approach, the valid arguments against retributive justice explored above do not appear to speak to the Moroccan experience. For these reasons, the Commission was unsuccessful in its goal of restoring dignity to the victims in this context.

Public accountability is also related to the Commission's goal of preventing the kinds of human rights violations that took place during the Years of Lead from reoccurring, which itself is related to restoring dignity. Accountability can help prevent recurrence in that it is a way for the state to condemn such violations and demonstrate that they will not be tolerated again, either by deterring individuals from violating human rights in the future or by removing those who already have from positions of state power. This can also help restore trust in official institutions, a concept which the Equity and Reconciliation Commission links to regaining feelings of citizenship, which it also links to the restoration of dignity: "granting justice to victims should first of all ease their sufferings and reinstate them by enabling them to regain their dignity and their complete feelings of citizenship."⁶⁷ Ensuring non-recurrence also relates to dignity in that it is a way of fundamentally recognizing and acknowledging another's pain.

⁶⁵ *Supra* note 34 at 330.

⁶⁶ *Ibid.*

⁶⁷ *Supra* note 16 at 95.

Speaking in the context of South Africa's Truth and Reconciliation Commission, commissioner Glenda Wildschut noted: "It's senseless just to acknowledge someone's pain, someone's contribution and then a few years down the line it happens again."⁶⁸

However, the vast majority of the Commission's recommendations regarding institutional reforms to prevent future human rights violations have yet to be implemented.⁶⁹ This cannot be said to precisely be the Commission's 'fault'- this implementation relies, after all, on the political will of the Moroccan state. However, the Commission's lack of political power to implement these reforms, combined with its decision to forbid the public naming of perpetrators and the fact that human rights violations characteristic of the Years of Lead continue to happen in Morocco (albeit on a reduced scale), has created the impression amongst many victims and commentators that the Commission has no power to truly encourage institutional reform, and perhaps more damningly, was never meant to have this power.

Hazan noted that many Moroccans "saw the Commission as a veiled attempt to rehabilitate, to confer impunity on the repression's leaders and their underlings."⁷⁰ Amnesty International argued that the Commission's "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."⁷¹ The importance that Morocco places on its international reputation certainly does nothing to dissuade from the idea that the Commission may have been, at least partially, intended to be a public relations move rather than a committed attempt to undertake institutional reform and hold perpetrators accountable. Indeed, when King Hassan II began the reforms of the 1990s, he

⁶⁸ Glenda Wildschut et al, "Stories of Silence: Women, Truth and Reconciliation" (1996) 30 *Agenda: Empowering Women for Gender Equality* at 71.

⁶⁹ *Supra* note 10 at 55.

⁷⁰ *Supra* note 44 at 405.

⁷¹ *Supra* note 10 at 5.

told the Moroccan parliament: "I wish – and am resolved – to close definitively the human rights file.... I have given orders that the procedures necessary to close this file be put in place, so that Morocco shakes off an image that does not reflect its true self and that corresponds neither with its past nor its present."⁷² With the criticisms outlined in this section in mind, I would conclude that the Commission was mostly unsuccessful in guaranteeing non-recurrence and in holding perpetrators accountable in a satisfactory way for victims, and as such was not able to restore dignity in these contexts.

Official apology

Official apologies have commonly been recognized as a form of justice and one method of restoring dignity, as they have the potential to "affirm that the state is committed to recognizing [the] dignity of victims and their well-being."⁷³ As explained in the previous section on accountability and non-recurrence, this affirmation can help restore victims' trust in official institutions, thus restoring the feelings of citizenship and the dignity of victims, according to the Commission.

In its report, the Equity and Reconciliation Commission recommended that the Prime Minister make "official apology in the name of the government for the state's responsibility for the proven grave violations of human rights of the past,"⁷⁴ and the CCDH later characterized King Mohammed VI's speech, discussed above, as an apology.⁷⁵ However, at the time of writing, such an apology has not been given by the Prime Minister, and many "victims and civil society organizations [do] not consider the speech of the King, who expressed sympathy for the victims as well as for his father King Hassan II, as a public apology. Many victims and several human rights organizations expressed their view that trust in the state can only be restored when King Mohammed VI offers a clear, explicit apology for the

⁷² *Supra* note 28 at 9.

⁷³ International Center for Transitional Justice, "More Than Words: Apologies as a Form of Reparation" (accessed December 12 2017), *Reparative Justice*, online: <https://www.ictj.org/sites/default/files/ICTJ-Report-Apologies-2015.pdf>

⁷⁴ *Supra* note 16 at 112.

⁷⁵ *Supra* note 10 at 50.

violations committed by the Moroccan authorities in the past.⁷⁶ As such, one can conclude that the Commission was unsuccessful in its goal of restoring dignity to the victims in this context.

Socioeconomic Reparations

Many theorists have recognized the link between one's socioeconomic capabilities and one's dignity. The International Covenant on Economic, Social and Cultural Rights of the United Nations, to which Morocco is a party, recognizes that socio-economic rights "derive from the inherent dignity of the human person."⁷⁷ The link between these two concepts rests in the belief that one's dignity is compromised if one does not have access to the "material conditions necessary to enable people to develop and exercise their capabilities."⁷⁸

In the Moroccan context, the Commission acknowledged that many victims found themselves in situations in which they struggled to meet their fundamental needs as a result of state actions (actions which themselves violated their dignity), and as such incorporated socio-economic reparations in their approach. These reparations took the form of financial compensation and social reinsertion (for instance, restoration of employment and property).⁷⁹ As of 2009, over 17 000 people had been given financial compensation, and over a thousand were involved in a program of social reinsertion; however, it is unclear how many cases in this program have been resolved.⁸⁰

This lack of clarity and communication one of the main criticisms of the Commission's work in this field: many victims felt "left out or let down by the restoration of employment or "social reinsertion" schemes [and] complained to Amnesty International that they were still waiting to be reinstated into the jobs they had lost as a direct result of their detention. [This illustrates the need for] detailed information and statistics on the programme, its

⁷⁶ *Supra* note 10 at 50.

⁷⁷ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

⁷⁸ Sandra Liebenberg, "The Value of Human Dignity in Interpreting Socio-Economic Rights" (2005) 21: 1 *South African Journal on Human Rights* at 1.

⁷⁹ *Supra* note 16 at 86.

⁸⁰ *Supra* note 10 at 6.

achievements and challenges.”⁸¹ It is also questionable to what extent these programs of social reinsertion are achievable: the Commission stated that “in some cases, there were difficulties to find vacancies, or that the age and the level of education of certain persons presented obstacles to reintegration into past jobs.”⁸² Nonetheless, the amount of people who did receive financial compensation, and the Commission’s focus not only on financial compensation but also on socio-economic reinsertion, is commendable. If the concerns raised by Amnesty International are adequately addressed by the Commission, then the Commission’s approach regarding socio-economic rights could very well achieve the goal of restoring dignity in this context.

Healthcare

The concepts of healing (both in terms of physical and psychic injuries) and the restoration of dignity are commonly linked in transitional justice literature. The beneficial effects of healing and the restoration of dignity seem to operate in both directions: the restoration of dignity is healing, and healing helps restore dignity. The relationship between these two concepts has already been discussed in section 5.1 with regard to psychological and emotional healing in the context of public testimony and the extent to which this action has therapeutic effects. This section will address another aspect of healing and its relation to the restoration of dignity: that of the provision of healthcare services for victims of human rights violations.

Much like official apologies, public testimony and public accountability, the relationship between healing and dignity is also related to truth and the recognition of the suffering of victims. As Guthrey explains, medical support of victims can “aid in the restoration of victim dignity when others offer sympathy which acknowledges victims’ suffering.”⁸³ She provides an example of this with regard to state responsibility: “According to responses from victims of the communist regime in Czech Republic, many felt that ‘by [the state] not providing them with adequate healthcare, society is quietly wishing them to die faster, thus bringing an end

⁸¹ *Supra* note 10 at 44.

⁸² *Ibid* at 43.

⁸³ *Supra* note 33 at 16.

to their remembrance.”⁸⁴ In the Moroccan context, the Commission recognized this state responsibility: it explicitly acknowledged that the healthcare coverage it would provide to victims was intended as a form of reparation for the physical and psychological harms they suffered as a result of state violations of their rights and dignity. Furthermore, the Commission also undertook a detailed study of the ongoing and long-term health consequences of these violations, in order to better understand them and ensure the permanent coverage of their healthcare needs.⁸⁵

These healthcare reparations, however, did not always reach all the victims who were eligible for them. Amnesty International notes that, as of 2010, the healthcare cards received by the victims did not cover their full health-related expenses; approximately half of the victims eligible for cards had not yet received them; victims living in rural areas had less access to the healthcare they were entitled to compared to those who lived in urban areas; and that some cards did not initially work (i.e., they were not recognized by hospital databases), although this latter issue has mostly been subsequently rectified.⁸⁶ Other commendable recommendations of the Commission, such as the establishment of a permanent centre to assist victims with accessing their health care,⁸⁷ have also yet to be achieved. Nonetheless, the attention devoted by the Commission to meeting the healthcare needs of the victims, and particularly its explicit acknowledgement that these needs are a result of state actions and thus the state’s responsibility, was conducive to the restoration of the dignity of the victims.

Conclusion

Morocco’s Equity and Reconciliation Commission was only partially successful in its goal of restoring dignity to the victims. The Commission’s organization of opportunities for victims to publicly testify was helpful, but arguably undercut by its restrictions on naming perpetrators. The Commission’s provision

⁸⁴ *Supra* note 33 at 16.

⁸⁵ *Supra* note 16 at 90.

⁸⁶ *Supra* note 10 at 49.

⁸⁷ *Supra* note 16 at 91.

of socio-economic and healthcare reparations was helpful, but it was unable to reach everyone who was entitled to them. The Commission was unable to compel Moroccan state representatives to issue an official and satisfactory apology to the victims, which would have been beneficial to the goal of restoring dignity. Finally, the Commission's lack of enforcement capabilities led to a legitimate perception of the part of victims that perpetrators were not held accountable and that the human rights violations that characterised the Years of Lead would continue to occur in Morocco, all of which was not conducive to the restoration of the victims' dignity.

It is easy to become disheartened when the accomplishments of Morocco's Equity and Reconciliation Commission with regard to restoring dignity seem minor and overshadowed by its failures. But as Morocco's history demonstrates, positive societal change is often a gradual, slow, and inconsistent process, made up of small actions and successes when one looks only at the trees and not the forest. With a broader perspective, it is clear that Morocco has made significant progress in the field of human rights since the Years of Lead- for example, the existence and royal support for a commission such as the Equity and Reconciliation, even with its flaws and relative lack of power, would have been unthinkable during the Years of Lead.

During my internship in Morocco, I often had the opportunity to discuss the human rights situation in the country with my colleagues at the National Human Rights Council and with other Moroccans and non-Moroccans interested or involved in the topic. Many would express their own frustrations with the slow, incremental and sometimes only superficial societal reforms undertaken in Morocco, calling it characteristic of Moroccan caution and conservatism. Nonetheless, they would often also acknowledge the progress the country has made, citing, for instance, the openness with which civil society could now speak of the Years of Lead, the increasing public confidence in the National Human Rights Council as an institution officially charged with protecting human rights in the country, and the King's willingness to undertake certain institutional reforms to maintain stability in the country during the Arab Spring. They cited these positive developments while still decrying the ongoing human rights abuses in the country, but generally gave the impression that they believed, on some level, that more progress was possible, even if

they would not live to see all the changes they want in their lifetimes.

This is certainly not to say that I, or they, believe that positive societal change is inevitable, but rather it is a recognition that people must, and are, working on achieving it. There is value in being reminded that positive societal change can happen in small and slow increments, and in being reminded to recognize successes when they occur. Some of the Equity and Reconciliation Commission's achievements were conducive to the restoration of dignity. Moreover, despite its failings, the Commission's work in attempting to restore dignity- and the domestic criticisms of when it failed to do so- speaks to the willingness and commitment of many Moroccans to build a world in which the inherent dignity of all Moroccans is respected.

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Appendix

The following excerpts constitute the mentions of 'dignity' in Morocco's Equity and Reconciliation Commission's Final Report. Equity and Reconciliation Commission, Final Report (Rabat: The Advisory Council on Human Rights Publications, 2009):

- p.70: In a section entitled 'Torture and Maltreatment', the Commission lists a compilation of "methods used to cause psychological pain to both male and female detainees" based on the testimonies of the victims. "Insults, defamation and the use of all other means that might demean dignity" was listed as one of these methods.
- p. 71: In the same section, the Commission addresses particularly gendered forms of violence (such as rape and denial of menstrual products), and writes: "In addition to the various forms of torture mentioned above, the women's suffering was more acute in that during the period prior to prosecution, they were subject to special forms of torture. This is due to the fact that women are tortured by men without any consideration for the dignity of the victim."
- p. 83: The restoration of dignity is later mentioned under the heading of 'Reparation for Injuries and Justice for Victims': "The general concept of reparation for injuries is presented in a group of measures and procedures aimed at giving reparation to victims for the harm they have incurred from human rights violations. These measures and procedures usually take various forms, whether the classic form involving financial compensation or other forms of reparation such as recovery of their despoiled rights, reinsertion, restoration of dignity or confiscated rights and restitution."
- p. 95: Under the heading 'Reconciliation', the Commission wrote: "the Commission placed at the heart of its concerns the need to give persons harmed by the grave violations of human rights access to opportunities for reinsertion in order to restore their dignity, linked with reparation for group injuries to enable society at both the local and national levels to be positively involved in the ongoing process of building democracy in order to restore trust in a state of institutions and the rule of law, and to ensure its effective participation by means of citizenship, thus ensuring the enrootment of social justice and the success of the modern democratic society project. [...] [The Commission] intended that the process of

uncovering the truth and granting justice to victims should first of all ease their sufferings and reinstate them by enabling them to regain their dignity and their complete feelings of citizenship.”

- p. 96: Under the subheading ‘The Revelation and Confession of What Happened: Public Hearings’, the Commission wrote: “In the context of supporting the process of reconciliation, the Commission organized seven public hearings in six regions of the kingdom of samples of victims, in order to restore the dignity of the victims whose rights had been violated, to reinstate them morally, to preserve the group memory, to share their pain and their suffering, and to alleviate the psychological after-effects.”