



**Parallel report of the National Human Rights Council of the
Kingdom of Morocco**

to

**The United Nations Committee on Enforced Disappearances
(CED)**

June 2022

I. Introduction

1. The National Human Rights Council (CNDH) was established in 1990 as the national human rights institution constitutionally vested with the mandate to protect and promote human rights and prevent their violation. It has been accredited with “A” status since 1999. With 12 regional human rights commissions covering the entire national territory, the CNDH has a president, a secretary general, presidents of regional commissions and 27 members selected from among personalities known for their expertise, integrity, impartiality and commitment to human rights values and principles. Members are selected in compliance with the principles of intellectual and social pluralism as well as parity, cultural and linguistic diversity, regional representation, representation of Moroccan expatriates, youth, persons with disabilities and children.
2. The new law 76.15 reforming the CNDH, which was unanimously adopted by the Parliament in February 2018¹, considerably broadens the mandate of the CNDH, particularly by entrusting it with the mandate of three mechanisms provided for by international human rights instruments. These are the National Preventive Mechanism against Torture (NPM), in line with OPCAT, the National Child Redress Mechanism, in line with General Comment 2 of the Committee on the Rights of the Child, and the National Monitoring Mechanism for Persons with Disabilities, in line with Article 33 of the Convention on the Rights of Persons with Disabilities.
3. The CNDH welcomes the national initial report on the implementation of the International Convention on the Protection of All Persons from Enforced Disappearances submitted under Article 29(1). It also welcomes the adoption of a participatory approach in the development of the report. Indeed, during the preparation phase, the CNDH took part in many consultations including with civil society organizations and human rights defenders. The CNDH issued many observations specific to the form and content of the draft national report which it later communicated to the government.
4. Nevertheless, the CNDH deplores the delay in the presentation of the initial report. Indeed, Morocco ratified the Convention on 14 May 2013 and was published on the Official Gazette on 10 February 2014². It is worth noting that the CNDH, in its annual report for 2019³, the CNDH drew the attention of the government to the delay in the submission of several reports to treaty bodies, including the initial report on the implementation of the International Convention on the Protection of All Persons from Enforced Disappearances that should have been submitted in June 2015. The CNDH recommended making up for this delay and submitting reports to treaty bodies on a timely manner while adopting a participatory approach in the development of those reports.
5. The Equity and Reconciliation Commission (know under its French acronym “IER”) was set up in January 2004 and ended its mandate on 30 November 2005 by issuing a final report⁴. The IER looked into grave human rights violations that occurred in the past during

¹ Law reforming the CNDH is available at:

https://www.cndh.ma/sites/default/files/lqnwn_rqm_76.15_lmtlq_bd_tnzym_lmjls_lwtnty_lhqwg_lnsn.pdf

² Official Gazette, Issue No. 6229, dated 10 February 2014.

³ See paragraph 263, page 69, of the 2019 CNDH Annual Report, available at: http://www.cndh.org.ma/sites/default/files/cndh_-_rapport_annuel_2019.pdf

⁴ Final Report of the Equity and Reconciliation Commission, available at: <https://www.cndh.ma/ar/rubriques/ltwthyq/lstdrt/tqyr-hyy-lnsf-wlmslh>

a period of time from 1956 to 1999, including enforced or involuntary disappearances. In 2006, the Advisory Council on Human Rights⁵ was entrusted with following up on the implementation of the IER recommendations, and for this purpose, it established a follow-up committee⁶.

6. The CNDH continued to introduce the Moroccan experience on transitional justice to Arab and African countries. Sessions were organized recently for the national human rights institutions in Libya and Niger as well as human rights activists, judges and doctors from Sudan. The CNDH also continued to engage with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, who visited Morocco on the occasion of the 26th session of the International Publishing and Book Fair, held in Casablanca in February 2020, as well as filling out questionnaires on transitional justice processes it shared with the Special Rapporteur.
7. This report, which is based on the analysis of national context regarding the provisions of the Convention, was developed drawing on a comprehensive observation and a documentary study informed mainly by the reports of the IER as well as the annual and thematic reports, studies and memoranda of the CNDH.
8. The CNDH welcomes the normative, legal and institutional developments related to the elimination of enforced disappearances. These include mainly the establishment of the Equity and Reconciliation Commission (IER), the adoption of a new Constitution in 2011 which incorporates many of the IER recommendations, criminalizes gross human rights violations including enforced disappearances, reaffirms the State's attachment to human rights as universally recognized, and provides for the supremacy of international conventions ratified by Morocco over national legislations. These developments also include the constitutionalization of several institutions, including the National Human Rights Council (CNDH) (art 161)⁷ and the ratification of the core 9 human rights instruments, including the International Convention on the Protection of All Persons from Enforced Disappearances in 2013 as well as several protocols, including the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 2014 and the first Optional Protocol to the International Covenant on Civil and Political Rights in 2022. Morocco also withdrew several reservations, including those to Article 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Non-governmental organizations have played a key role in advocating for reinforcing Morocco's treaty practice.
9. The CNDH hopes that this submission will provide additional information to the Committee, be subject of constructive and fruitful dialogue with the government and serve as a reference for the Committee in drawing up its list of issues. The report recalls the historical context of the use of enforced disappearance as a means of political conflict between political stakeholders. It also provides an account of the societal forms of addressing those violations, the adoption of transitional justice principles with a view to peacefully settling the impacts of violations and the major findings reached in the area of establishing the truth and breaking with the practices of the past. Likewise, the report includes updates and issues of concern about the implementation of the IER

⁵ This is the former name of the National Human Rights Council.

⁶ See Royal Speech of 2006, following the end of the IER mandate.

⁷ Constitution of Morocco of 2011, available at :

https://www.cour-constitutionnelle.ma/sites/default/files/documents/constitution_arabe_2011_0.pdf

recommendations as well as the contribution to legislative reform regarding enforced disappearances and proposed questions that the CED could address to the government and that could be the subject of a constructive dialogue between the two parties.

II. Historical context for the use of enforced disappearances as a means of conflict between political stakeholders

10. Since its independence on 18 November 1956, Morocco has seen grave and systematic violations of human rights committed by State agencies against all factions of the political opposition, due to the conflict over power. These violations expanded to include a broad range of citizens who participated in social protests in major cities. Members of the army were similarly victims of violations after the two failed coup attempts which took place in 1971 and 1972. Non-state actors were also involved in kidnappings, assassinations and violence, during the postcolonial era and during the armed conflict over the Sahara, which erupted after Morocco had regained its Southern Provinces as from 1976 and signed the tripartite agreement with Spain on 14 November 1975.
11. Since the late 50s, partisan press and lawyers' pleas in trials started to bring to light the grave human rights violations perpetrated by State agencies, and helped denounce and prevent these violations. During the second half of the 1970s, families of detainees started confronting these violations, showing solidarity with the victims, and getting involved in civil and human rights associations in their bid to face State violence. The role of the human rights movement evolved during the eighties of the last century, especially with the emergence of a new generation of human rights defenders embracing the universal human rights norms and getting inspired by the major political and intellectual transformations that the world witnessed at that time.
12. These positive developments, both at the international and national levels, have paved the way for the State to get increasingly involved in this momentum and to engage in the major international political and intellectual transformations taking place at the time. Accordingly, the State launched a series of positive initiatives aimed at breaking with the past human rights abuses. These initiatives culminated in the creation, in 1990, of the Advisory Human Rights Council (CCDH) which was mandated with supporting these changes and reinforcing Morocco's involvement in the democratic edification and the protection of human rights, by contributing to the settlement of the issues of grave human rights violations and establishing relevant mechanisms. Upon its establishment, the CCDH sought to advocate for releasing victims of enforced disappearances, shutting down illegal detention centers, setting free political detainees and allowing expatriates to return to the country.
13. As part of this dynamism, the 1992 Constitution stated in its preamble, for the first time, that the Kingdom of Morocco is attached to human rights as universally recognized. Amendments were then initiated to ensure that domestic laws are in line with international human rights instruments. In late 1999, the CCDH established the Independent Arbitration Commission to compensate a considerable number of victims of arbitrary detention and enforced disappearances and their deceased rights holders. However, this commission did not meet the aspirations of victims and their representatives neither those of human rights activists even from the NHRI itself.

14. In parallel with these changes witnessed in Morocco, the CCDH hosted extensive discussions that brought together various stakeholders represented at the CCDH to determine the appropriate pathways to continue the process of repairing past violations. These discussions resulted in the establishment of a new transitional justice mechanism tasked with revealing the truth about enforced disappearances, breaking with past practices, ensuring reparation, establishing guarantees of non-recurrence, and preserving memory.
15. IER members were installed on 7 January 2004. The IER was considered in the Royal speech as a truth committee and a transitional justice mechanism installed in light of the continuity of the same political regime, a constitutional monarchy with legal foundations and governmental and administrative institutions. The establishment of the IER came as the fruit of a gradual trend upwards in human rights reforms and a qualitative step in addressing serious past human rights violations.
16. The IER Statutes, approved by virtue of Royal Decree 1.04.42 dated 10 April 2004, determines the scope of IER work in establishing the truth about gross human rights violations, establishing the nature and scope of violations, continuing investigations into cases of enforced disappearance of victims whose fate remains unknown, and determining the responsibility of the State agencies or any other actor regarding violations and incidents being investigated.
17. Upon inception, the IER established among its priority actions the mission of revealing truth about cases of victims whose fate remained unknown and identifying burial sites of the deceased. As soon as it embarked on addressing the issue of enforced disappearances, a complicated issue due to conflicting data about circumstances of disappearances, the IER faced other challenges related to the absence of a precise definition of enforced disappearances in Moroccan law, lack of legal safeguards likely to ensure protection against enforced disappearances.
18. In order to overcome these difficulties, the IER's work was guided by the provisions of International Human Rights Law related to the protection against enforced disappearances as well as best practices and literature of truth and reconciliation commissions set up to settle and manage past conflicts in their respective countries and the jurisprudence of the Independent Arbitration Commission for Compensation that had been established to compensate victims in Morocco.

III. Outcome of transitional justice process regarding the revelation of truth about cases of enforced disappearances:

19. The IER fulfilled considerable achievements in the revelation of truth. These are as follows:
 - Defining enforced disappearance in the IER Statute, based on the Universal Declaration of Human Rights and International Humanitarian Law: "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law;

- Ensuring that claimants, members of their family or acquaintances do not carry the burden of proof and adopting flexible means to prove the claims by examining evidence, investigating the circumstances, the context, testimonies of witnesses; improving the procedure in force to benefit the victims and their families;
- Expanding the IER mandate to include other abuses, including the execution of death sentences pursuant to a court order, extrajudicial killings, deaths from bullet wounds sustained during social unrestful events, and rape which affects the fundamental human right to physical integrity and dignity;
- Considering the victims of social unrestful events among the cases of disappearance, since the victims' corpses were concealed and buried in the absence of their families;
- Considering the suffering of minors endured during their detention alongside their mothers as a grave violation of the rights of the child, in line with the Convention on the Rights of the Child ratified by Morocco.
- Adopting a gender-based approach in addressing the cases of enforced disappearance and adopting positive discrimination in the estimation of the amounts of financial reparation to be granted to women.
- Compensating victims who were forced to disappear inside the national territory or to self-exile abroad to flee persecution by State agencies due to their political, trade union or association activities conducted without being legally protected.
- Compensating surviving victims and right-holders of deceased victims of enforced disappearance who were imprisoned outside the Moroccan territory during the armed conflict which erupted after recovering the Sahara, based on the theory of risks whereby the State is responsible for protecting its nationals;
- Compensating victims who were detained in severe conditions without trial in an illegal detention center despite the fact that their detention does not fall in the scope of the IER's competence, given that the victims had no direct affiliation to any political, associative or union activity.

20. Given the interdependence between the right to know the truth and right to reparation and redress, the number of beneficiaries of the individual reparation programs, as at 30 July 2022, totaled:

- ✓ 20,339 victims and rights holders received MAD 1,309,905,878.93 in financial compensation (almost USD 127.7 million);
- ✓ 8,844 health care cards were delivered to 19,852 beneficiaries. These cards costed the State general budget MAD 215,000,000.00 (almost USD 21 million);
- ✓ 1,502 victims and rights holders benefited from social integration programs, including 183 persons who were integrated into the public and semi-public sectors, of whom 99 were above the age of 40 on the date of their recruitment. These required additional efforts embodied in the launch of the supplementary retirement plan for the victims by virtue of an agreement signed on 4 May 2021 by the CNDH, the Chief of the Government, the Deposit and Management Fund (CDG), a body in charge of running this retirement plan;

- ✓ 510 victims who were fired from their employments because of their union or political affiliation have had their administrative and financial situation settled;
 - ✓ 386 enforced disappearance victims who were detained for long years in illegal detention centers were released. Those victims were a major source of testimonies about fellow victims who died during detention;
 - ✓ Enhance the process of the revelation of the truth regarding most of the cases received by the IER and its follow up committee from various sources (surviving victims/victims' families/national and international organizations/official archives/investigations of the IER and the follow up committee), following the procedures, principles and foundations of the international law related to the right to truth;
21. The overall total of the victims of enforced disappearances the IER and its follow up committee investigated in depth to find their whereabouts reached 805 cases, broken down as follows:
- 51 victims died during their kidnappings or detention by political groups due to the conflicts that erupted between contending political forces in the wake of the independence of Morocco;
 - 16 persons died during the unrestful events of the Rif in 1958;
 - 9 persons died in armed confrontations in the early 1960s;
 - Assassination and concealment of the body of one (1) person outside the national territory;
 - Assassination of 2 guards who were involved in the escape of prisoners victims of enforced disappearances;
 - 224 persons died in the prolonged arbitrary detention during the period from 1961 to 1992;
 - 86 persons executed by a court order and buried in the absence of their family members;
 - 144 persons died fighting during armed confrontations during the conflict over the Sahara;
 - The lack of the responsibility of the State in one case of disappearance which has no connection with enforced disappearance;
 - Lack of certainty of the State's responsibility in the disappearance of 2 persons in 1997 and 1999.
22. The CNDH contributes to providing all the necessary information and documents regarding victims of enforced disappearances referred to the authorities by the Working Group on Enforced or Involuntary Disappearances or the International Committee of the Red Cross.
23. Regarding community reparation and memory preservation, secret detention centers were revealed and shut down and some of them were converted into memory preservation spaces, including the detention centers of Tazmammart, Agdez and Kelaa M'gouna. Also, cemeteries and burial sites where the remains of victims are buried, were revealed, including two mass graves that have been rehabilitated as memory spaces: the first in Casablanca and the second in Nador.
24. Over 23 months, the IER was working on cases of victims of enforced disappearances that took place from the independence of Morocco to 1999 (43 years) and recommended the creation of a mechanism to follow-up on the implementation of its recommendations, including truth-seeking and investigating cases for which the truth remained unknown. The

establishment of a committee to follow up on the implementation of the IER recommendations, after the termination of its mandate, is a human-rights gain and a key safeguard for ensuring the implementation of those recommendations. The Committee is hosted and maintained by the CNDH which increased its human resources. In the CNDH's current mandate, the CNDH President issued, on 3 September 2020, a decision to reorganize the Committee, reinforce its administrative staff and ensure its full dedication to speeding up the implementation of the remaining recommendations and overcome the lax implementation by successive governments of some recommendations and programs.

IV. Developments and concerns regarding the implementation of the IER recommendations and contribution to the legislative reform on enforced disappearance:

25. To overcome the reluctance of previous governments to support the remaining programs linked to the implementation of the IER recommendations, the CNDH launched a new dynamic during the current mandate to implement the programs and recommendations relevant to the preservation of memory. This new momentum, launched by the CNDH in coordination with local and national authorities, helped speed up the progress made especially with regards to the “memory preservation space” of the former detention center of Tazmamart, which is almost ready to open and host communal reparation projects associated with it. It also helped rehabilitate several memory preservation spaces and launch the second phase of the construction of Al Hoceima Museum.
26. In implementation of the CNDH strategy adopted since 2019, guided by the constitutional provisions and with a view to finalizing the transitional justice process in Morocco, the CNDH adopted a productive scientific approach to shed light on the elements which raise confusion or still seem blurred in the contemporary human rights history in the country. In this regard, the CNDH further strengthened the follow-up committee by establishing a new administrative unit specialized in archives and contemporary history, which included in its membership a former member of the Equity and Reconciliation Commission and experts in archives and history. One of the Unit's missions is to engage with experts, historians and specialists in order to contribute to evoking the issues of the contemporary history of human rights in Morocco, provide perspectives and analysis of violations, preserve the collective memory and transform it into a pillar of productive construction, thus opening new governance horizons and enriching local and human development.
27. According to Article 25 of its founding law, the CNDH shall make opinions on the bills and draft laws relevant to human rights, particularly with a view to bringing them into compliance with international human rights instruments. In this respect, the CNDH issued in 2019 its opinion regarding the draft penal code No. 10.16 through a supplementary memorandum⁸. The CNDH recommended criminalizing enforced disappearances, a cornerstone of the State's efforts to meet its obligations resulting from the ratification of the International Convention on the Protection of All Persons from Enforced Disappearances. In this respect, the CNDH believes that it is necessary to accelerate the adoption of a law which is in line with the CNDH recommendations contained in its memorandum of 2019, in conformity with the constitutional provisions and international human rights standards.

⁸ See page 27 and 28 of the Memorandum on the CNDH proposals and recommendations on the amendment to the penal code. Available here:

http://www.cndh.org.ma/sites/default/files/cndh_-_web_code_penal_va.pdf

28. In line with its opinion on the draft law, the CNDH would like to reaffirm the following:

- The need to accelerate the reform of the justice-related measures, in implementation of the constitutional provisions of 2011, in such a manner as to strengthen the criminalization of enforced disappearance;
- The need for the upcoming penal Code to adopt the same definition of enforced disappearance as stipulated in the International Convention on the Protection of All Persons from Enforced Disappearances;
- The need to criminalize enforced disappearances when perpetrated by persons or groups of persons acting without the permission or support or approval of the State, in application of the Article 3 of the International Convention on the Protection of All Persons from Enforced Disappearances and the constitutional provision criminalizing enforced disappearances;
- Providing for holding superiors accountable for the crime of enforced disappearance perpetrated by subordinates in line with the conditions specified in article 6 of the Convention, as no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance, while sensitizing subordinates of the atrocity of this crime and holding them responsible of their obligations to respecting human rights;
- The necessity to reaffirm that no superior order or instruction of any public authority may be invoked to avoid penal liability and clearly provide for the protection of victims of enforced disappearance.

V. **Questions that may be addressed to the government by the Committee on Enforced Disappearances and can be discussed between the two parties:**

- What are the measures taken by the State Party to ensure engagement with the CNDH recommendations relevant to the crime of enforced disappearances as contained in the CNDH memorandum on the amendment of the Penal Code?
- What are the measures that have been taken by the State Party with a view to harmonizing the draft penal code with the provisions of the International Convention on the Protection of All Persons from Enforced Disappearances?
- What schedule is in place to adopt the draft penal procedure code and draft penal code?
- What are the measures the State Party has taken to implement the remaining recommendations of the Equity and Reconciliation Commission, including the yet three unresolved cases of past enforced disappearances, including through international cooperation?
- What are the efforts being made by the State as part of awareness and training for judges and law enforcement officials to prevent enforced disappearances?