



Moroccan Instance for Human Rights



Moroccan Observatory of Prisons



Moroccan Association for Human Rights



Moroccan Association for Human Rights



North American Human Rights Center



Moroccan Association of Progressive Women



Association for the Defense of Human Rights in Morocco, France

Parrallel report to the governement's initial report

On relation with the international convention for the protection of all persons from enforced disappearance

The Committee on Enforced Disappearances

June 2022

The Moroccan Association for Human Rights and the human rights organisations that are signatories to the shadow report, after having taken note of the government's initial report on the implementation of the International Convention for the Protection of all Persons from enforced disappearance, it makes the following observations:

- 1- The inordinate and inexcusable delay in its submission to the UN committee on relation with enforced disappearances, which took nearly a decade, instead of two years.

On conventional basis :

- 2- The state's continuous and repeated refusal to recognize what provides the article 31 of the convention, relating to the committee's competence to receive and consider communications complaints and allegations from any party, renders its commitment flawed and its willingness to fully implement the terms of this present convention appears to be incomplete.
- 3- Morocco's non-ratification of the Rome Statute of the international criminal court, its inability to lift reservations and interpretative declarations on some conventions relating to Women and children, its unwillingness to ratify several protocols attached to the fundamental conventions and treaties, and its reluctance to work on the compatibility of its laws and legislation with the latter:
- 4- The optional protocol to the Convention on the right of the child on a communications procedure, the optional protocol to the international covenant on economic, social and cultural rights and the second optional protocol to the international covenant on civil and political rights, aiming at the abolition penalty, also did not ratify the 1948 genocide convention, despite acceding to her on January 24, 1958.
- 5- Morocco's violation of the clauses of the convention regarding the recognition of the supremacy of international human rights conventions over domestic legislation, by stipulating it in the Moroccan constitution and in the current laws while respecting the national constants, which is a fundamental impediment to this recognition's content with a further limiting scope.

Concerning the definition and the criminalization of enforced disappearance in the Moroccan legislation:

- 6- Although article 23 of the Constitution criminalizes « Arbitrary, secret detention and enforced disappearance » considering it 'one of the most serious crimes' exposing its perpetrators to severe punishments' the criminal code has still not criminalized it, the proposed draft revision of the criminal code's definition submitted to parliament for years, does not comply with the

requirements of the convention under consideration, and does not meet all aspects related to the issue pursuant to articles 2, 3, 4 and following.

- 7- Law No. 12-01 relevant to the basic guarantees granted to the military personnel of the royal armed forces, the first paragraph of article 7, stipulates the following: «The military personnel of the royal armed forces who, in fulfillment of orders received from their superiors, carry out faithfully the legal tasks entrusted to them within the national territory, in accordance with the legal and regulatory provisions in force.

With regard to the Equity and Reconciliation Commission:

- 8- Nearly sixteen years have passed since the royal ratification of the final report of the equity and reconciliation commission, on January 06, 2006. Nonetheless, its most important recommendations did not find their way to implementation. Whether the right to the truth in relation to enforced disappearances, which were not complete as the commission kept many files open, or regarding the right to reparation, more than 25000 files are still untreated, under the pretext that they exceeded the deadlines, or that they not meet the criteria set by the to provide reparation to victims of enforced disappearance and arbitrary detention that was previously created in 1999, and then the equity and reconciliation commission, or collective reparation in which the confusion between the national initiative for human development and the rehabilitation of areas affected and damaged by uprisings and rebellions, or an official apology or the abolition of the death penalty, the accession to the Rome Statute of the international criminal court, the implementation of a national strategy to fight impunity and preventing a recurrence.

As for the file of gross violations of human rights:

- 9- It must be recalled that the way in which the state dealt with the file of grave human rights violation, including the file of kidnapping and enforced disappearance, within the framework of what it called the 'Transitional justice' and based on the experience of the Equity and Reconciliation Commission, was tainted by many shortcomings which requires the following:
 - Disclosure violations, particularly those related to enforced disappearance, assigning responsibilities in order to prevent impunity.
 - Responding to the minimum demands of the human rights movement, embodied in the recommendations of the national debate on grave violations of human rights held in November 2001, and the international conference on 'the path of equity and reconciliation in Morocco under the overarching theme of: 'In order to ensure a non-recurrence' on 20/21/22 April 2018 in Marrakesh, inviting the state to work on a national mechanism of truth

seeking, to continue revealing the truth about all files related to grave violations of human rights, especially enforced disappearances.

The role of the judiciary in dealing with enforced disappearances:

- 10-Despite all the reforms, the judiciary is still under the yoke of the security services of the executive authority following its instructions regarding the cases of enforced disappearances, as it has not carry out yet its functions and responsibilities concerning what was proposed in the file of enforced disappearance. We can refer here to the file of the kidnapped Abdellatif Zeroual, his family filed an official complaint, while the Court of appeal in Rabat rejected the complainant's appeal, the defense was forced to present the case in front of the court of cassation, which twice pronounced a partial cassation of the rejection decision of the court of appeal and considered the crime of hiding the body not obsolete, and referred the file in front of the same court, which is still reluctant to conduct and open an investigation.
- 11-As for the file of kidnapping and assassination of Mahdi Ben Baraka, despite the complaint submitted by the Mahdi's family, which was renewed in 1975, and despite the french judiciary, within the framework of the judicial agreement between Morocco and France, submitted to this moroccan counterpart judicial commissions in 2003 to listen to a number of people, the moroccan judiciary, this request was not responded to. In November 2005, the french judge Patrick Ramarel, in charge of the file, visited Morocco, based on a prior agreement with the moroccan judge Sarhan at the court of appeal in Al Bayda, this is in order to listen to moroccan people who have doubts and have evidence of their relationship to the file, and one of them was sentenced in abstencia to life in prison, he also submitted a request to visit the secret detention place called PF3, but the moroccan judicial authorities refused under the pretext of not knowing the addresses and the location of the detention center. The french judge provided the adresses and location of the detention center, before returning to France without listening to anyone. The french minister of justice submitted a request to issue an international memorandum ordering the arrest of a number of moroccan persons concerned with judicial representation but the french prosecutor canceled the decision.
- 12- Not enabling victims of gross human rights violations and their families to have their legitimate right to the 'judicial truth', and removing the complications and obstacles placed in relation to the files before the judiciary.

Enforced disappearances in Morocco and cases of kidnapping:

- 13- The truth has not been revealed about many cases of enforced disappearance, among the pending cases, thoses included in the report of the Equity and

Reconciliation Commission, especially the files of Mehdi Benbarka, Hussein Al-Manouzi, Abdelhak Rouissi, Wazan Belkacem, Omar Al-Wasouli, Mohamed Eslami and others.

- 14- The annual report of the UN working group on enforced and involuntary disappearances for the year 2019 indicates that there are 153 pending cases related to Morocco. This number concerns the cases in which the team received complaints from rights holders, while there are other numbers of victims whose files were not presented to it, in addition to others of unknown identities whose remains were found in the tombs that were exhumed.
- 15- The lack of transparency and clarity in communicating with the UN team on enforced and involuntary disappearances, the adoption of the method of denial and the incorrect claim that all outstanding files were resolved and that the truth was known about them.
- 16- Not knowing the burial places of a large part of the victims of enforced disappearance who were counted, and not carrying out genetic analyzes of a large number of those whose graves were found.