



Free hands Association

Written contribution

For the purposes of examining the initial report of the Kingdom of Morocco on the International Convention for the Protection of All Persons from Enforced disappearance

27th session of the Committee on Enforced Disappearances

Geneva, September 2024

Free hands Association in collaboration with:

- **_Prepared by Free Hands Association in cooperation with:**
- **- Sahara Observatory for Economic and Social Development**
- **- Afoulki Women's Association**
- **- Women's Leadership Observatory**
- **- Moroccan Association for Relief and Solidarity**
- **- Taouja Association for Women, Children and Development**
- **- Brotherhood Association for the Development of Cultural Heritage**
- **- Taourirt Foundation in the Netherlands**
- **- Moroccan Civil Alternativer**

- - Moroccan Solidarity Initiative

Presentation of the Association and its areas of work

- Free Hands Association is an independent national association concerned with development in its human, cultural, environmental, economic and social dimensions, within a modern democratic community project. It is based on an open and balanced civilizational vision that draws from the foundations of the Mediterranean-African identity and the universal civilization in its comprehensive dimensions.

- It considers that the human being is the pole of the development process and its highest goal, so the association is biased towards defending human rights in general and the human rights of women. Free Hands is considered an active actor that moves in a relationship of integration, cooperation and defense with associations with common goals that aspire to build a modern democratic society. Therefore, the issue of women, in all its aspects, is considered a general human, social and societal issue. This is done by defending and preserving women's gains, and placing the issue of women at the heart of community issues while strengthening and defending their rights to achieve equality and parity as stated in the 2011 Constitution. It works to combat violence in all its forms, especially political violence against women, and to fight to strengthen and support women's presence in decision-making centers. Thus, keeping pace with women's issues, working for equality and fairness, strengthening and supporting women's presence in decision-making centers.

Notes on the report of the Kingdom of Morocco on the International Convention for the Protection of All Persons from Enforced Disappearance

- This report expresses the views of the organizations and associations participating in this report on enforced disappearance, which comes within the framework of interaction with international human rights organizations, with the aim of examining the initial report of the Kingdom of Morocco on the International Convention for the Protection of All Persons from Enforced Disappearance at the 27th session of the Committee on Enforced Disappearances. We will discuss the progress made in this area, as well as the imbalances, and finally the measures to completely eliminate enforced disappearance..

Enforced disappearance in the international system

As a result of the rise and spread of enforced disappearances around the world, the United Nations issued the Declaration on the Protection of All Persons from Enforced disappearance in 1992, the first international document directly related to the crime of enforced disappearance, which clearly referred to the crime of enforced disappearance, defined its aspects and how to combat it and held those responsible to account. the Declaration contains (21) an article urging the State to prevent the practice, tolerance or toleration of enforced disappearance.

It also urges States to take all legislative, administrative and judicial measures to prevent acts of enforced disappearance, and stresses that enforced disappearance is a criminal offense punishable by appropriate penalties that take into account its extreme seriousness under criminal law; he also stressed that no exceptional circumstances or any order or instruction issued by any public authority may be invoked as a pretext for enforced disappearances.

Detention results in deprivation of liberty and is arbitrary whenever it is carried out outside the conditions and forms provided for by law. International instruments contain important requirements for the prevention of arbitrary detention and any other violation that may be associated with it.

In international criminal law, we find that the statutes of the Provisional Criminal Courts do not explicitly mention the crime of enforced disappearance, nor do they address its criminalization per se, but implicitly refer to it by criminalizing various inhuman and degrading acts, while the Statute of the International Criminal Court, the crime of enforced disappearance is enshrined as a crime against humanity in Article (7-2/i) thereof.

Under the International Convention for the Protection of All Persons from Enforced disappearance, enforced disappearance is defined as: "Arrest, detention, abduction or any form of deprivation of liberty by State officials, or by persons or groups of individuals acting with the authorization, support or consent of the State. it is followed by a refusal to acknowledge the deprivation of liberty or to conceal the fate or whereabouts of the disappeared person, thereby depriving him of the protection of the law." Article IV of the Convention provides for a number of obligations for States, including:

- Not to practice, permit or tolerate enforced disappearance;
- Promptly and promptly investigate any complaint of enforced disappearance and inform the family of the disappeared person of his fate or whereabouts;
- Imposing penalties for the crime of enforced disappearance;
- Cooperation between the State concerned and with the United Nations to contribute to the prevention, investigation, punishment and elimination of enforced disappearance;
- Provide adequate and prompt compensation for the harm caused to the victim of enforced disappearance.

The disappearance has a doubly negative impact on the victim who is deprived of the protection of the law, and the family that is ignorant of the fate of the disappeared origin or branch, which is often subjected to torture and is accompanied by constant fear for their life, and oscillating between hope and despair, and the family and the interested live in constant questioning and waiting, may take years, and the news may never come.

However, the acts leading to enforced disappearance are kidnapping, detention and, in some cases, extrajudicial physical liquidation or death due to conditions of detention, which are criminalized in all national legislation. The institutional and legal safeguards normally available in the States to which the term "State of law" applies provide adequate protection against this practice.

- Psychological impact: Victims and their families suffer from severe psychological trauma due to not knowing the fate of their loved ones.
- Human rights violation: Enforced disappearance is a flagrant violation of human rights, including the right to life, liberty, and security of person.
- Justice: This type of abuse impedes access to justice and impedes accountability for perpetrators.

Morocco's efforts to address human rights violations in the past

Since gaining independence in 1956, Morocco has witnessed serious human rights violations committed by the state bodies in the face of the political opposition of various factions and orientations due to the struggle over power, and these violations have expanded to include large categories of citizens due to their participation in demonstrations and protests of a social nature in major cities. It also included members of the army after the coup attempts in 1971 and 1972, and non-international forces were involved in kidnappings, assassinations and the use of violence, with Morocco's independence from French colonialism in 1956 and during the armed conflict over the Sahara. It was established after Morocco's restoration of the southern provinces in 1976 and the signing of the tripartite agreement in 1975 with Spain.

In this context, enforced disappearance in Morocco was considered a serious violation that relates to a specific time period in the country's history, known as the "years of bullets" (1956-1999). During this period, numerous human rights violations occurred, including enforced disappearances of political opponents and human rights activists.

In order to address this past, a process of legislative and institutional reform was launched, characterized by laying the foundations for national reconciliation between the State and the various political and **human rights forces. Thus, the Consultative Council for Human Rights was established in 1990** and its updated Dahir was amended in 2001. It has expanded its competence and areas of intervention

in accordance with the Paris Principles Governing National institutions for the Promotion and Protection of Human Rights. The Council has engaged in a cumulative and participatory process with various actors to promote and protect human rights. Most notably, the release of political prisoners and the empowerment of expatriates to return to their homeland. In the context of this dynamic, Morocco ' s commitment to human rights as universally recognized was first stated in the preamble to the 1992 Constitution. Initiate the amendment of national laws to conform to international human rights instruments. At the end of 1999, Morocco had established an independent arbitral tribunal alongside the Consultative Council on Human Rights, which had resulted in the establishment of a new transitional justice mechanism.

This process, which was marked by a remarkable dynamism of civil society, passed through a number of prominent and qualitative stations that have focused on pivotal moments that contributed to the process of building the State of law and law, especially at the levels of laying the foundations for reconciliation and promoting the culture of human rights.

Thus, the issuance of a report by the Council on the situation of human rights in Morocco in 2003 was a landmark moment that made it possible to identify developments in this field in Morocco and subsequently, by virtue of its regular annual publication, constituted a documentary asset that allows for quantitative and qualitative reading of human rights developments in Morocco and provides concrete indicators on the course of the rule of law. in view of the comprehensiveness of those reports, their respect for international standards and their commitment to objectivity.

On the other hand, the issuance of the fact-finding report on the events of illegal migration in Ceuta and Melilla during the autumn of 2005, and before the formation of a Commission of inquiry on the events of Fez in 1990, to strengthen the role of the Council as a national mechanism to protect human rights and address violations by addressing the events independently and impartially.

In 2004, it established the equity and Reconciliation Commission to investigate human rights violations that occurred between 1956 and 1999. The Commission has worked on the basis of a well-structured and participatory methodology with all public institutions, authorities, civil society organizations and victims' associations to collect data, information and testimonies to study the context in which these grave violations were committed, analyze political and social facts and events in order to deal with victims' files, uncover the truth and understand what happened.

The objectives and tasks of the equity and Reconciliation Commission were as follows:

- **Investigation of violations:** Investigation of enforced disappearances, arbitrary detention, torture and other human rights violations from 1956 to 1999.

- **Gathering** testimonies: Gathering testimonies from victims, their families and witnesses about disappearances and abuses.
- Identify responsibilities: Identify those responsible for these violations and make recommendations to prevent their recurrence.
- **Compensation and reparation**: Make recommendations to compensate victims and their families for the damage they have suffered.

Its conclusions and recommendations are as follows:

- **Formal recognition**: Recognition of state responsibility for violations and formal apology to victims and their families.
- **Compensation**: Recommendations for financial and moral compensation for victims and their families, including health and psychological rehabilitation.
- **Institutional reforms**: Recommendations to reform the judicial and security system to ensure that violations do not recur, and to promote human rights and the rule of law.
- **Memory preservation**: Establish centers and museums to preserve and document the memory of this period to prevent its recurrence.
- **Full disclosure of the facts**: Despite the efforts of the Commission, some families still feel that the fate of their relatives is not fully disclosed.
- **Reparations to areas** that have suffered abuses through special projects or rehabilitation and development programs.
- **Guarantees of non-repetition**.

To achieve these important achievements, the equity and Reconciliation Commission has relied on a scientific and human rights approach in the field of truth detection, the most important elements of which can be summarized as follows:

- The definition of enforced disappearance in the Statute of the equity and Reconciliation Commission, based on the Universal Declaration of Human Rights, international humanitarian law and international human rights law, and in accordance with this Statute;
- Failure to apply the principle of argument to those who claim to have been subjected to enforced disappearance, or to a relative or acquaintance of the applicant, and to adopt flexible means of proving the facts alleged by the applicants through the application of the evidence, the context of the events, the adoption of witness testimony and the development of procedures for the benefit of victims and their families;
- Extending the competence of the equity and Reconciliation Commission to other types of violations, such as execution by judicial decision, extrajudicial killings, death by shooting during social events, torture and rape affecting one of the fundamental rights to physical integrity and dignity;
- Victims of social events are considered as disappearances, so that victims ' bodies are hidden and buried in the absence of their families;

- Considering that what minors were subjected to during their detention alongside their mothers is a grave violation of the rights of the child, as provided for in the Convention on the Rights of the Child, ratified by Morocco;
- Adopt a gender approach in dealing with cases of enforced disappearance, through positive discrimination in the assessment of the amounts of compensation allocated to women;
- Compensation for victims who have been forced to disappear within the national territory or to flee abroad, in order to face the risk of abuse by the State organs because of their political, trade union or association activities without the possibility of legal protection;
- Compensation for victims of enforced disappearance who were detained outside Moroccan territory during the armed conflict after the recovery of the Sahara, based on the risk theory that the State has the responsibility to protect its citizens;
- Compensation to victims who have been imprisoned in harsh conditions in irregular detention without trial, despite the fact that their detention does not fall within its jurisdiction based on the disruption of the political, trade union or association component of the cause of such detention.
- The Commission submitted a final report in 2006, which included recommendations to reform legislation and institutions and ensure that violations do not recur. The burial sites of some of the disappeared have also been revealed.
- Compensation and reconciliation, where financial and moral compensation was provided to the victims and their families, in addition to recognition of the suffering they suffered and reparations for other damages such as health rehabilitation, social integration and the settlement of administrative, financial and legal situations.

The Commission concluded that enforced disappearance was a systematic practice during the "lead years" (1956-1999). The Commission documented all cases of enforced disappearance (805 cases) and recommended follow-up investigations into a number of other cases (66 cases). Victims and rights holders also benefited from financial compensation in the total amount of about \$127.7 million.

The work of the ERC has not been without some challenges, as it has had difficulty collecting evidence as evidence has disappeared due to the length of time. Many victims and witnesses also preferred to remain silent and remain silent despite the public hearings organized by the Commission.

Guarantees of protection from enforced disappearance in national legislation

Arbitrary detention, which is implicitly referred to in article 225 of the Moroccan Criminal Code as a form of infringement of individual liberty, is formally mentioned in article 228 of the Criminal Code. This chapter punishes any supervisor or guard in a prison or a place designated for the stay of detainees "who receives a detainee

without the legal documents justifying it, in accordance with article 653 of the Code of Criminal Procedure, or who refuses to bring the detainee to the authorities or persons entitled to see him. in accordance with the provisions of articles 660 to 662 of the Criminal Procedure, without an order from the investigating judge to prevent contact with a detainee or refuse to submit his records to those who have the right to consult them.”

However, the text of article 653 referred to provides for the location and conditions required for the execution of deprivation of liberty in the context of pretrial detention or the serving of a prison sentence. This requirement, supported by article 228 of the Criminal Code, obviously constitutes a partial legal guarantee, but it remains without the requirements of protection against arbitrary detention.

In this regard, it should be noted that article 608 of the new Code of Criminal Procedure subjects deprivation of liberty to a decision of the judicial authority with a reservation as to the requirements relating to custody. This chapter clearly states that deprivation of liberty outside the said circumstances is arbitrary.

In general, arbitrary detention can be said to constitute an act of violation of individual liberty which is arbitrarily practiced or ordered by " every judge, public official, man or Commissioner of public authority or power". According to chapter 225 of the aforementioned Criminal Code, it constitutes an offense punishable by deprivation of civil rights.

Article 227 also provides for penalties against an official or a member of the public force assigned to the administrative or judicial police who refuses or neglects “to respond to a request made to him to establish a case of unlawful arbitrary detention. ” whether in places or shops designated for detention or elsewhere, he has not provided evidence that he has communicated it to the presidential authority.

The Moroccan Penal Code in force during the time period under the jurisdiction of the Commission does not define torture or criminalize it as such. Torture is referred to only as an aggravating circumstance when used in connection with the execution of an act constituting a felony (article 399 of the cited Act) or in connection with abduction and detention (chapter 439).

Moroccan legislation is characterized by a lack of legal safeguards to protect against the practice of enforced disappearance, which is not in line with the Moroccan Constitution, which establishes crucial requirements directly for the prevention and punishment of such practices. This is the principle that no one shall be arrested, detained or punished except in the circumstances and in accordance with the procedures provided for by law. This is translated into the legislative provisions of the Code of Criminal Procedure and the Criminal Code.

The Moroccan Penal Code criminalizes all acts that may infringe upon personal freedoms and result from an act of control ordered or committed by a judge, public official or public aid. However, it does not criminalize acts committed by public officials and agents of public authority that cause enforced disappearance when committed in the exercise of their functions. The section “attacks on personal liberty by private individuals” also deals with kidnapping, arrest, detention and detention carried out “without the order of the competent authorities and in cases other than where the law permits or requires the arrest of persons”. Such acts are punishable, as the case may be, from five years ' imprisonment to the death penalty if the victim is found to have been subjected to torture. Public officials are considered as other persons only if the act that impugned the person's freedom was committed “for a subjective purpose or with the intention of satisfying personal passions”. Unless these conditions are met, the abduction or detention of a person by an officer of the Authority shall not entail prosecution or punishment except under article 225 as an infringement of individual liberty.

Despite the efforts made and the marked improvement compared with the past, there is still room for improvement and ensuring that human rights violations, including enforced disappearances, do not recur. Legal and institutional reforms were necessary to strengthen the protection of human rights in Morocco.

The report of the Commission for equity and Reconciliation represents an important step in Morocco’s journey toward addressing its painful past and moving toward a future that respects human rights and ensures that violations do not recur. Despite the progress made, challenges remain that require efforts by the State and civil society to ensure justice and full reconciliation.

Enforced disappearance in Morocco is a painful part of the country’s history, but it is also an example of possible efforts to achieve justice and reconciliation. This is an important lesson on the need to face the past with transparency and courage to ensure a better future in which human rights are respected and protected.

Therefore, Free hands believes that protection against the crime of enforced disappearance in the future requires a comprehensive approach that includes efforts at the local and international levels. Here are some recommendations that can be followed to achieve this:

1. **Harmonization of legislation and laws**, by criminalizing enforced disappearance and adoption by states of clear laws criminalizing enforced disappearance and establishing appropriate penalties for Commission in line with the Constitution and the International Convention.
2. **Promote transparency and accountability** by ensuring access to information and enabling families, lawyers and NGOs to access information about detainees and their places of detention in various places of deprivation of liberty.

3. **Continue institutional reforms and** human rights education programs through the training of law enforcement and law enforcement personnel with appropriate training for security, police and armed forces personnel on human rights and how to deal with detainees and detainees. In addition to continuing the reform of the judicial system, to strengthen the guarantee of the independence of the judiciary and to strengthen its capacity to prosecute those involved in cases of human rights violations of any kind.
4. Supporting victims and their families, by continuing to provide psychological and legal support services to victims and their families who have suffered from past violations.
5. Strengthening the role of civil society, by supporting and facilitating the work of non-governmental organizations concerned with human rights and documenting cases of violations that may occur.
6. Increasing awareness by organizing awareness campaigns to inform citizens of the dangers of violations, especially enforced disappearance, and the importance of combating this crime.
7. International cooperation, through sharing expertise and technical and financial assistance to strengthen national capabilities in combating enforced disappearance
8. Continue serious interaction with the United Nations human rights system, especially the Committee on Enforced Disappearances, the Working Group on Arbitrary Detention, and the Working Group on Enforced Disappearances.
9. Providing all necessary capabilities to strengthen the work of the committee following up on the implementation of the recommendations of the Equity and Reconciliation Commission established by the National Council for Human Rights, and supporting its roles in achieving the goals of reconciliation.