

**PARALLEL REPORT SUBMITTED TO THE
COMMITTEE ON ENFORCED
DISAPPEARANCES FOR THE REVIEW OF
MOROCCO'S INITIAL REPORT DURING THE
27TH SESSION OF THE CED COMMITTEE**

(SEPTEMBER 23 - OCTOBER 4, 2024)

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INSTITUT PROMETHEUS

pour la démocratie et les droits humains

Submitted by

**The Prometheus Institute for Democracy and Human Rights
(IPDDH)**

AUGUST 2024

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INSTITUT PROMETHEUS
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**Parallel Report Submitted to the Committee on Enforced
Disappearances for the Review of Morocco's Initial Report
during the 27th Session of the CED Committee
(September 23 – October 4, 2024)**

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The Prometheus Institute for Democracy and Human Rights (IPDDH)

August 2024

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About the NGO Submitting this Report

The Prometheus Institute for Democracy and Human Rights (hereinafter referred to as “IPDDH”) is an independent NGO, free from state, political party, and trade union influence. It serves as a platform for young Moroccans committed to promoting universally recognized human rights values.

Established in 2013, the NGO engages with the United Nations human rights system, particularly through the Universal Periodic Review mechanism and special procedures.

The drafting of this report aligns with its contribution to submitting observations to the Committee on Enforced Disappearances for the 27th session, in compliance with Article 28 of the Convention, following the adoption of the list of issues in accordance with the procedure for the submission and examination of State party reports (CED/C/2).

Introduction

1. On September 10, 2021, the Kingdom of Morocco submitted its Report to the Committee on Enforced Disappearances (hereinafter referred to as “the Committee”) pursuant to Article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/MAR/1).
2. Morocco ratified the Convention on May 14, 2013, and it was published in the Official Bulletin No. 6229 on February 10, 2014. The IPDDH regrets the delay in the submission of Morocco’s Initial Report, which was initially due in 2015.
3. In its Initial Report, Morocco recalls in paragraph 3 that it continues to make efforts in promoting and protecting human rights, highlighting the adoption of the National Action Plan for Democracy and Human Rights in December 2017. Seven years after its adoption, an evaluation of this Action Plan is necessary, particularly concerning measures related to combating enforced disappearances.
4. The 2021-2026 Government Program does not include specific measures to promote and protect human rights, particularly concerning the fight against enforced disappearances.

I. Absolute Prohibition of Enforced Disappearances

5. In a context of multiple health crises, above all, food and environmental, and the declaration of states of health emergencies, Morocco should adopt a provision to meet its obligations under Article 1 of the Convention, stating that “No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”

The IPDDH believes that for the effective implementation of the Convention (notably Article 1), Morocco should take measures concerning emergency situations (e.g., health pandemics) by adopting a provision stating that “no exceptional circumstances whatsoever, may be invoked as a justification for enforced disappearance ” ;

II. Definition and Criminalization of Enforced Disappearances

6. Article 31 of the Moroccan Constitution states that “arbitrary or secret detention and enforced disappearance” are considered serious crimes. This article reflects Morocco’s commitment to protecting human rights and rejecting any form of illegal detention or enforced disappearance. However, despite the recognition of enforced disappearance as a serious crime under Article 31 of the Constitution, the Moroccan Penal Code still lacks a clear and precise definition of enforced disappearance as a distinct crime. Crimes related to enforced disappearance are addressed by other articles, notably those concerning kidnapping and illegal detention. These provisions do not cover all aspects of enforced disappearance;
7. Currently, enforced disappearance is included in Moroccan legislation only under Article 218-1 of Law No. 43-05. While this law addresses some acts that may overlap with the concept of enforced disappearance, such as “voluntary attacks on the life of persons or their integrity, or their freedoms, kidnapping or sequestration of persons,” it does not contain an explicit definition or specific sanction for this offense. The current Moroccan Penal Code mainly focuses on other types of crimes, such as murder and kidnapping, without including a precise definition of enforced disappearance in accordance with the International Convention. Moreover, Article 264 of the Penal Code, concerning kidnapping and illegal detention, provides for penalties for persons who kidnap or detain someone against their will. However, this article does not comprehensively address enforced disappearance, particularly concerning the concealment of the place of detention or associated practices;
8. In paragraph 9 of the list of issues adopted on October 5, 2022, the Committee asked Morocco, inter alia, “with regard to paragraph 28 of the State party’s report, please describe the measures taken or envisaged to establish enforced disappearance as a separate offence under national law, in line with article 2 of the Convention (arts. 2 and 4–5) ”; ¹
9. However, the State party’s report only mentions the provisions currently included in the draft revision of the Penal Code and the Code of Criminal Procedure, which at present represents the preliminary version of a draft law that has not yet been placed on the Parliament’s agenda or subjected to consultation with civil society actors;

¹ Committee on Enforced Disappearances (CED), List of issues to be taken up in connection with the consideration of the report of Morocco (CED/C/MAR/Q/1), in accordance with article 29, paragraph 1, of the Convention. [G2251424.pdf](https://www.refworld.org/docid/4251424.pdf)

The IPDDH believes that to respect its conventional obligations, Morocco should establish enforced disappearance as a specific and separate offence in its new Penal Code, in accordance with Article 4 of the Convention.

III. Criminal Liability Regime

10. The elements, forms and descriptions associated with the crime of torture are currently applicable to enforced disappearance under the current Moroccan Criminal Code ;
11. However, the definition of the crime of torture requires the existence of a relationship between the perpetrator of the offence and the public authority. However, the material acts constituting torture lead to the same harm whether they are committed by a public official or by a person who has nothing to do with public services. These acts must therefore be criminalised when committed by private individuals as well ;
12. According to paragraph 2 of Article 124 of the current Penal Code, there is no crime, offence or contravention ‘when the perpetrator has been materially forced to commit the offence or has been materially placed in the impossibility of avoiding the offence, by an event arising from an extraneous cause which he was unable to resist’;

The IPDDH believes that enforced disappearance should also be punished if it is committed by an individual or a group of individuals acting without the authorisation, support or consent of the State, and we therefore recommend, in application of Article 3 of the International Convention, the need to criminalise in the next Criminal Code enforced disappearances when they are perpetrated by individuals or groups of individuals acting without the authorisation, support or approval of the State for the protection of all persons from enforced disappearance;

IV. Universal Jurisdiction

13. After signing the Rome Statute establishing the International Criminal Court (ICC) on September 8, 2000, Morocco was expected, according to IER recommendations, to ratify the Rome Statute. However, Morocco has not ratified the Rome Statute. Consequently, it reserves the right not to cooperate with the ICC or other international mechanisms established to address serious international crimes;

The IPDDH believes that the ratification of the Rome Statute is a complementary tool in the fight against impunity, aimed at preventing and sanctioning the most serious crimes that could occur in the future

V. Equity and Reconciliation Commission (IER)

14. The victims of prolonged enforced disappearances, who were once state officials, have claimed their right to a monthly pension, similar to that granted to former civilian political prisoners. Their demand is based on the principle of equity and recognition of

the harm suffered, but so far, this demand has not been fully satisfied, adding further injustice to their suffering² ;

15. The Equity and Reconciliation Commission recommended the development of a comprehensive, integrated, and multiparty national strategy to combat impunity, which has not yet been established;

The IPDDH believes that the Moroccan government is obligated to develop, adopt, publish, implement, and evaluate a comprehensive, integrated, and multiparty National Strategy to combat impunity in the context of enforced disappearances;

16. There is no visibility on the fate of the remaining missing persons, including Mehdi Benbarka, Hussein Al Manouzi, Mohamed Eslami, Abdelhak Rouissi, Wazan Belkacem, Omar Al-Wasouli, etc., and no visibility on the concrete efforts to continue investigations into them and their progress in order to know their fate.

The IPDDH considers that the Moroccan experience of transitional justice is pioneering and innovative in terms of new forms of circulation of collective memory. However, a balance between the three pillars of transitional justice is necessary. In this sense, the right to reparation should not replace the right to truth and justice.

All the more so since it is not enough to announce the intention to know the fate of the disappeared. The IPDDH recommends instead the establishment of an action plan to take concrete measures and allocate sufficient resources for the continuation of investigations.

17. No visibility on the efforts of individual identification by DNA of persons declared deceased and buried in certain cemeteries, not communicated by Morocco in its preliminary report;

The IPDDH considers that the right to mourn is guaranteed by the International Charter of Human Rights, and that it is important for families to discover precisely where their deceased loved ones were buried, in order to finally be able to mourn with dignity.

In this sense, human and financial resources and a clear procedure for individual identification by DNA samples corresponding to the persons declared deceased are recommended.

In addition, measures to protect the genetic samples available and communicated to laboratories in Morocco and abroad are also necessary and recommended.

VI. Requests for urgent action under Article 30 of the Convention

18. Pursuant to Rules 57 and 58 of the Committee's Rules of Procedure, all requests for urgent action submitted for its consideration under Article 30 of the Convention are brought to the Committee's attention. In this regard, the Report on requests for urgent action submitted under Article 30 of the Convention was published on 27 March 2024.

² Source: Letter from the Association of Victims of the Tazmamart Prison "AVIBAT" in June 2022

Under the said Report, 7 requests for urgent action were registered in Morocco in 2016, 2017, 2021 and 2022 respectively (point 4), including 1 closed and 3 classified as of 27 February 2024 (point 7).

The IPDDH recommends greater precision regarding the handling of urgent action cases, particularly the closed and classified cases, in accordance with the criteria adopted by the Committee.



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