



المجلس الوطني لحقوق الإنسان
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Conseil national des droits de l'Homme

**SUBMISSION OF THE NATIONAL HUMAN RIGHTS COUNCIL OF MOROCCO
TO
THE HUMAN RIGHTS COMMITTEE ON THE LIST OF ISSUES AND REPLIES
PROVIDED BY THE GOVERNMENT**

19 September 2016

1. The National Human Rights Council of Morocco welcomes the opportunity to make this submission to the Human Rights Committee (Committee) after the shadow report it prepared in February 2016¹ with a view to adopting the list of issues (LoI). In this submission, the CNDH formulates recommendations that the Committee may wish to include in its concluding observations and makes comments on the replies provided by the Government and issues raised by the Committee.

Key recommendations that the Committee may wish to address to the government in the concluding observations:

- The CNDH recommends that the Government accelerate the adoption of the new draft law establishing the CNDH and take steps to increase the budget allocated to it, particularly in light of its forthcoming broader mandate, as 3 new mechanisms will be established, including the National Preventive Mechanism against Torture provided for by the OPCAT, the redress mechanism dealing with complaints lodged by children victims of human rights violations and the independent mechanism for the protection of the rights of persons with disabilities.
- While expressing satisfaction about the positive interaction with the Parliament concerning the draft laws relating to human rights and the implementation by the Government of several recommendations made by the CNDH, including those concerning the military justice and the adoption of a new migration policy², the CNDH recommends that the government build on this momentum by giving priority to recommendations and proposals concerning certain group rights, especially the rights of women, children and persons with disabilities.
- While welcoming the integration of the recommendations of the Equity and Reconciliation Commission (IER) in the Constitution of 2011 and the implementation of most of these recommendations, the CNDH proposes that the still-unimplemented recommendations, mainly the abolition of the death penalty and accession to the Rome Statute on the International Criminal Court (ICC) be given effect.
- The CNDH recommends that the National Plan of Action on Democracy and Human Rights developed pursuant to the Vienna Declaration and Program of Action, be adopted and implemented in such a way as to reflect the human rights principles enshrined in the Constitution and Morocco's international engagements.

Information requested by the Committee under the LoI as to the operation and the role of the CNDH and its regional commissions:

2. The CNDH is a constitutionally mandated and independent National Human Rights Institution (NHRI). It is a Paris principles-compliant NHRI. In March 2016, the CNDH was re-accredited with the "A" status by the Global Alliance of National Human Rights Institutions (GANHRI, formerly known as the ICC). The CNDH discharges its mandate in all questions relating to the protection and the promotion of human rights. Thus, it conducts

¹http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFL%2fMAR%2f23037&Lang=en

² *Ibid*

investigations concerning human rights violations, on its own initiative or following a complaint by the concerned parties. It may also intervene anticipatorily when there arise circumstances that would potentially lead to human rights violations. The CNDH conducts visits to deprivation of liberty facilities (prisons, child protection centers, psychiatric hospitals, centers hosting undocumented foreigners, etc.) and elaborates relevant reports. It submits to the Parliament annual reports on the situation of human rights in the country.

3. Regarding the promotion of human rights, the CNDH provides advice to the Parliament³ and the Government as to the compliance of bills and laws with the relevant international instruments. It interacts with the UN human rights system by systematically submitting shadow reports to treaty bodies and Human Rights Council mechanisms. The CNDH contributes with the appropriate means to the promotion of a culture of human rights and citizenship through education, teaching, awareness-raising and training.
4. In practice, the CNDH presented in June 2014 its first annual report⁴ to the Parliament. It has also published six thematic reports⁵ on prisons, child protection centers, mental health, the status of foreigners in Morocco, election monitoring, and the state of equality and parity in Morocco. The publications of the CNDH further include 22 memoranda⁶ and advisory opinions on various human rights issues (parity, violence against women, justice reform, elections, participatory democracy, freedom of association, right to public assembly, freedom of the press, etc.).⁷
5. The CNDH has 13 Regional Human Rights Commissions (CRDHs). These proximity-based commissions exercise on the local level the same prerogatives as the CNDH on the national level. In addition to the CRDHs and the administrative team, the CNDH is composed of the following organs: the presidency, the general secretariat, the coordination bureau, permanent working groups and *ad hoc* commissions. Each of the five working groups is vested with the following mandates: protection of human rights; promotion of human rights; parity, non-discrimination and new generation of human rights; international relations, partnership and cooperation; and public policy.
6. The National Human Rights Training Institute (INFDH) was established by the CNDH in July 2014 in partnership with international stakeholders, including the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), the Council of Europe, The European Union, UNICEF and UNESCO. This center provides capacity building actions to CNDH members and staff, Moroccan and international civil society, Moroccan public institutions (judiciary personnel, law enforcement personnel, law practitioners, medical personnel, education personnel), media outlets, private and public enterprises and similar NHRIs in other countries. From January to July 2016, the center has provided 25 training sessions.

³ The CNDH signed on the 10th December 2014 a memorandum of understanding with the two chambers of the Parliament, in compliance with the Belgrade Principles.

⁴ http://cndh.ma/sites/default/files/report_ofthe_national_human_rights_council_to_the_parliament.pdf

⁵ <http://www.cndh.ma/fr/rubriques/documentation/publications/rapports-thematiques>

⁶ <http://www.cndh.ma/fr/rubriques/documentation/publications/memorandums>

⁷ <http://www.cndh.ma/fr/rubriques/documentation/publications>

Information requested by the Committee under the LoI as to the powers of the CNDH to receive and respond to complaints of human rights violations:

7. Pursuant to Article 5 of its enabling law of 2011: “*the CNDH examines all cases of human rights violations, either at its own initiative or following a complaint by the concerned parties*”.⁸ Complaints are received and complainants are given hearings nationally or locally. The CNDH may hear the concerned parties as well as all whose testimony could clarify or complete information relating to the complaint. The CNDH has set up a decentralized information system for the collection and management of complaints. The CNDH and the CRDHs also have hosting facilities for complainants.
8. The CNDH and the CRDHs received, from March 2011⁹ to June 2016, a total of 51,758 complaints and requests, of which 10,054 were received from January 2014 to June 2016, including 1,216 not falling within the remit of the CNDH. These complaints and requests mainly regarded judicial procedure, the rights of litigants, prisoners’ rights, and the rights of users of public administration. It should be noted that a part of the complaints falling within the jurisdiction of the CNDH concerns the abuse of power, violations of bodily integrity and ill-treatment.
9. The CNDH notes with satisfaction the decision taken by the Government in March 2014 to interact with and respond promptly and effectively to the complaints and proposals made by the CNDH and its regional commissions. However, the CNDH notes that the implementation of this decision differs from one Government department to another.

Information requested by the Committee under the LoI as to the prohibition of torture and fight against discrimination:

10. The draft law on the CNDH provides for its competence to exercise the powers of the National Preventative Mechanism (NPM).¹⁰ The CNDH, in cooperation with international partners (The Council of Europe and The Association for the Prevention of Torture) has begun a capacity-building program for its members and personnel in anticipation of the operationalization of the Moroccan NPM. It has also organized discussion seminars with national and international actors on the status, organization and operation of the future NPM.
11. As to the matter of security governance, the CNDH contributes to a training and awareness program in cooperation with the Government. This training program targets law enforcement officials. Accordingly, in 2015 and the first semester 2016, more than 600 police officers of all ranks were trained on security and human rights.
12. The CNDH calls on the Government to accelerate the process of adopting the law on the authority for parity and fight against all forms of discrimination, in such a way as to ensure that this authority discharges protective, preventive and promotional mandate in the field of equality and parity between men and women.

⁸ See http://www.sgg.gov.ma/Portals/0/lois/CNDH_Fr.pdf

⁹ Date of the reform of the CNDH through the promulgation of a new law establishing the CNDH and broadening its mandate.

¹⁰ As of the 1 August 2016, the draft law is before the General Secretariat of the Government.

Information requested by the Committee under the LoI as to enforced disappearances:

13. The Equity and Reconciliation Commission (IER), established on 7 January 2004, achieved its mandate on 30 November 2005 and published its final report. The IER looked into relevant cases of past gross human rights violations, including cases of enforced or involuntary disappearances.
14. The number of cases of enforced or involuntary disappearances processed and clarified by the IER and the Follow-up Committee (established in 2006 by the CNDH (then Advisory Council on Human Rights (CCDH)) to monitor the implementation of the IER recommendations), totaling 803 cases, surpasses the number of requests lodged with the IER by the relatives of victims and figures provided by national and international NGOs. After the termination of the mandate of the IER, the CNDH conducted investigations into the cases left unresolved.
15. The 803 cases processed by the IER and the Follow-up Committee are broken down as follows:
 - 657 cases were clarified and resolved¹¹ by the IER and the Follow-up Committee;
 - 140 cases were clarified pending the reception of legal documents necessary to determine the rightful claimants (for each claimant: a copy of the family booklet, a certificate of life and a copy of the National Identification Card);
 - 6 unresolved cases of enforced disappearances.
16. Also, the following findings have been reached regarding enforced disappearances:
 - 385 burial grounds have been localized with certainty;
 - 185 exhumations of human remains have been conducted in Agdez, Kelaat M'gouna, Tazmamart, Gourama and Ghafsay, following investigations by the IER and the Follow-up Committee, to ascertain the supposed burial locations of former victims of enforced disappearances. These exhumations were conducted in the presence of representatives of the competent authorities, and under the effective supervision of the judiciary;
 - 44 bone biopsies were conducted by a team of medical examiners, between December 2005 and May 2012. DNA analysis was assigned to a French laboratory¹² to crossmatch the samples with the respective families; and
 - 2 mass graves were discovered in Casablanca and in Nador.
17. All exhumation and sampling operations were conducted by a national team of forensics, according to the scientific methods in force. The same team conducted the sampling of the families of victims.

Information requested by the Committee under the LoI as to the steps taken to solve hitherto unsolved disappearances and to shed light on and inform the families of the disappeared persons of their circumstances, in addition to the compensation provided for under the extrajudicial procedure before the Equity and Reconciliation Commission:

¹¹ A case is declared to be clarified and resolved when its circumstances are investigated and established and an arbitral decision recognizing the responsibility of the State, determining the amount of the compensation and its beneficiaries, and recommending other modalities of reparation, is transmitted to the rightful claimants.

¹² *Institut Génétique Nantes Atlantique.*

18. Rightful claimants were treated equally in the process of establishing the truth concerning the fate of the victims of enforced disappearances, victims of arbitrary detentions deceased during detention, and persons deceased during times of social unrest.
19. Civil society organizations were informed of the results of the analyses conducted on the remains, and the families of victims received copies of the DNA analysis reports.
20. For unresolved cases of enforced disappearance, the CNDH communicated the information received from State administrations and institutions to the representatives of victims and their families.
21. The CNDH associated the representatives of victims and their families in making the decision to close a case. This approach has enabled numerous families to resolve the judicial issues arising from the non-registration of the death of their relatives in the civil status booklet.
22. While being aware of the complexity of unresolved cases, the CNDH stressed the need to maintain efforts to shed light on unresolved cases of enforced disappearance.

Information requested by the Committee under the LoI as to whether all the victims, including Saharans, identified by the Equity and Reconciliation Commission have received adequate reparation:

23. As of 30 June 2016,¹³ the Government has compensated 26,998 victims of serious human rights violations and their rightful claimants, for a budget totaling 1,868,917,688.80 MAD (191.44 million USD).¹⁴
24. In the Southern Provinces, 5,783 persons have received compensation, including 269 civil victims (or their rightful claimants), who had been abducted and sequestered by the Polisario Front.
25. In addition, compensated victims of serious human rights violations benefit from medical coverage extending to all victims without medical insurance as well as their rightful claimants and their families. As at 30 June 2016, the number of cards issued by the National Fund of Social Security Organisms (CNOPS), a public health insurance body, has reached 8,261 cards for the insured beneficiaries, for 18,133 beneficiaries whose medical care is covered by the general budget of the State. As at 30 August 2016, a sum of 85 million MAD (8.7 million USD) has been allocated to this medical coverage. Further, 332 victims and rightful claimants benefited, between 5 July 2007 and 31 December 2015, from direct coverage from the CNDH for urgent medical interventions, for a total of 7,183,754 MAD (735,880 USD).
26. The number of medical coverage cards delivered to victims, their spouses and their children in the Southern Provinces totaled 2,311 cards, as at 30 August 2016.

¹³ The State continues to secure, annually and from the State's general budget, the financing of medical care expenses for victims and their rightful claimants, up to an average of 10 million MAD (1.02 million USD).

¹⁴ Exchange rates on 2 August 2016.

27. With respect to the social reinsertion program, the number of beneficiaries has reached 1,335, including 1,137 resolved cases, 47 cases under implementation, and 151 cases where support resulted in self-reinsertion.

28. In the Southern Provinces, social reinsertion concerned 566 cases, including:

- 114 persons that have received financial aid in order to benefit from professional training;
- 127 persons that have benefited from housing and financial compensation;
- 153 persons that have benefited from commercial transport licences;
- 99 persons that have been recruited by local communes or government departments;
- Two (2) persons that have been financially supported to establish income-generating projects;
- 70 persons that had already been reinserted, were deceased or were living abroad; and
- One (1) case that is unresolved.

29. The regularization of the administrative and financial situation has covered a total of 540 cases at the national level, including 382 cases that are definitively resolved.

30. In the Southern Provinces, the regularization of the administrative and financial situation has covered 155 cases, including 92 resolved cases, 29 cases underway, 30 cases lacking documents, and 4 cases awaiting regularization of their retirement situation.

31. The global budget allocated by the State in the context of the transitional justice process¹⁵ totals 2,602,371,541.83 MAD (266.57 million USD). This amount corresponds to individual reparation, community reparation as well as the functioning of the IER.

32. The amount is fixed as at 30 June 2016 and thus remains subject to increase in view of the continuation of mechanisms monitoring the implementation of IER recommendations. The global budget is broken down as follows:

a. Individual reparation totals 2,402,571,649.83 MAD (246.11 million USD):

- 1,868,917,688.80 MAD (191,44 million USD) for the compensation of victims and their rightful claimants;
- 85 million MAD (8.70 million USD) for the coverage of medical expenses of victims and their rightful claimants;¹⁶
- 7,183,754.00 MAD (735,883 USD) for the coverage of urgent medical interventions;
- 236,520,207.03 MAD (24,22 million USD) for the regularization of the administrative and financial situation of victims;
- 22,5 million MAD (2,30 million USD) for the regularization of situations of retirement pensions;
- 95,7 million MAD (9,80 million USD) corresponding to the real estate value of allocated or subsidized housing in the context of social reinsertion;

¹⁵ This process is based on the findings of the three *ad hoc* organs: The IER, the CNDH's Monitoring Committee, and the Independent Arbitration Commission.

¹⁶ Sum of contributions between the 5 July 2007 and the 31 December 2015.

- 52,75 million MAD (5.40 million USD) as financial support for income generating projects; and
 - 34 million MAD (3.48 million USD) as contributions to supplementary retirement for persons having been reinstated into civil service at a late age.
- b. Communal reparation totals 159,799,892.00 MAD (16.30 million USD).¹⁷
- c. Operating costs of the IER total 40 million MAD (4.09 million USD).

Information requested by the Committee under the LoI as to the efforts undertaken to give effect to the recommendations of the Truth and Reconciliation Commission, in particular the recommendations concerning the community reparations program

33. The community reparation program was launched in 13 regions¹⁸ considered as having suffered most of the consequences of gross human rights violations in terms of social and economic development. The CNDH has monitored the implementation of 149 projects across 13 provinces Morocco. This program targeted four essential areas: capacity building of local actors, preservation of memory, improvement of the standard of living of the population, and promotion of human rights of women and children. These projects have been mainstreamed in the local development programs in the regions concerned based on a participatory approach.
34. The budget allocated to this program totaled 159,799,892.00 MAD (16.30 million USD), divided as follows:
- State contribution (59.99%);
 - international cooperation (24.95%): European Union and United Nations Development Fund for Women;
 - CNDH (6.58%);
 - Deposit and Management Fund (CDG) Foundation (4.80%); and
 - Contributions from local associations (3.68%).

Information requested by the Committee under the LoI as to the human rights of women and children

35. Mothers may have legal *Wilaya* (guardianship) over their minor children only under very restrictive conditions. The Family Code stipulates that in case of partial or total physical incapacity of the father, and provided that the mother is financially stable, she has an obligation to cater for the family's household needs (Art. 199). This material responsibility, however, does not entitle her to *Wilaya* over her children.
36. The unequal inheritance legislation contributes to women's increasing vulnerability to poverty. Moreover, the rules governing collective land have contributed to dispossessing women of their rights to land and inheritance. It is to be noted that the Ministry of Interior issued in October 2010 and March 2012 two circulars (N°60 and N°17) on women's rights

¹⁷ See details in the following section regarding communal reparation.

¹⁸ Figuig, Errachidia, Ouarzazate, Zagoura, Tan Tan, Azilal, Khemisset, EL Hoceima, Nador, Casablanca (Hay Mohammedi), Khenifra, Tinguir and Midelt.

to financials returns from collective land. However, the legal framework on collective land still needs to be amended.

37. As amended in 2007, the Nationality Code grants women the right to pass their nationality onto their children (Art. 6). However, the Code recognizes men's right to pass their nationality to their foreign spouses (acquiring nationality through marriage) and denies the same right to women.
38. Concerning women's representation, the CNDH commends the new constitutional provision on equality and parity (Art. 19) and the quota allocated for women to sit in the House of Representatives. However, women represented in 2014 only 10.42% of directors and 9.68% of general secretaries of public administrations. Concerning elected institutions, women represent 37.61% in regional councils, 21.18% in communal councils and 1.79% in professional chambers. In addition, only 14 women were elected in 2015 as members of the House of Councillors (Upper house of Parliament).
39. Concerning women prisoners, the study of the Casablanca-Settat CNDH Regional Commission shows that, in practice, there are some irregularities in conforming to the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). Health facilities are generally located in men's pavilions. Pregnant women and women incarcerated with their children are in the most critical situations, due to the absence of the minimum conditions for decent life. Vocational training and social reintegration opportunities are almost non-existent or limited to professions traditionally perceived as women-oriented (sewing and hairdressing, etc.). Finally, degrading treatment of women detainees on the grounds of their sex is a common practice, including by medical staff.
40. The CNDH published a thematic Report on Gender Equality and Parity in Morocco¹⁹. The report contains 97 recommendations covering different aspects of women's rights in Morocco. The report highlights the progress made in ensuring equality (including in the Constitution, Family Law and Nationality Law, and the withdrawal of reservations to the Convention on the Elimination of All Forms of Discrimination against Women). It also stresses the challenges that continue to hamper women's rights. These challenges include, in particular, the marriage of minors, polygamy, the difficulty of women's access to legal guardianship, divorce for discord (*chikak*), as well as unequal inheritance regulations and rules governing collective land.
41. The CNDH welcomes a broad consultation and dialogue among all sectors of society regarding these recommendations with a view to reinforcing the equality-related measures.
42. Child marriage remains a worrying phenomenon in society. The CNDH calls on the government to amend the Family Law in such a way as to fix the minimum age for marriage at 18 years for both sexes.
43. The Law on domestic workers was published in the Official Gazette in August 2016. While expressing satisfaction over the legal provision that the working age is fixed at 18 years, the CNDH expresses serious concern over the transitional period of five years during which

¹⁹ http://www.cndh.org.ma/sites/default/files/cndh_-_r.e_-_web_parite_egalite_uk_-.pdf

children aged 16-18 years can be recruited as domestic workers.***Information requested by the Committee under the LoI as to the rights of migrants***

44. The CNDH welcomes the adoption of a new migration policy, which has especially led to the launch, in July 2014, of an operation to regularize the situation of undocumented migrants as well as the adoption of a law on trafficking in human beings. It calls on the government to continue to reinforce its migration-related legal arsenal, by adopting the two remaining laws on migrants and refugees.

Information requested by the Committee under the LoI as to the right to life

45. The CNDH reiterates the recommendation made by the IER regarding the abolition of capital punishment. The CNDH has consistently appealed to the Government to vote in favor of the moratorium on the execution of the death penalty.
46. Moreover, as part of the World Human Rights Forum, held in November 2014 in Marrakech by the CNDH and national and international partners, His Majesty the King welcomed the debate on the death penalty, conducted at the initiative of civil society and several parliamentarians and jurists, which would allow the maturation and exploration of this issue.

Information requested by the Committee under the LoI as to the reference to international instruments in court rulings

47. The CNDH welcomes the reference of international instruments in administrative court rulings. For instance, two judgments of the administrative court of Rabat referred to the ICCPR and the Mexico City Declaration on Cultural Policies (1982) in cases related to the freedom of assembly²⁰. Courts are now required more than ever to refer to international instruments in light of the explicit constitutional provision that international instruments have supremacy over national legislation. This would require further capacity building activities for serving judges regarding the international instruments ratified by Morocco. The Government is required to develop a database for the collection of jurisprudence making reference to international human rights standards and disseminate them among judges for peer-to-peer learning.

²⁰ - Judgment N° 5793 , 21 November 2014 (*The Moroccan Association for Human Rights v the Wali of the Region - Rabat Zemmour Zaer*). Judgment N° 114 of 16 January 2015 (*The Moroccan Association for Human Rights v the Ministry of Youth and Sports*).