



Shadow Report of the Initial Report Of the Kingdom of Morocco

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I. General Context

1. Justice and Human Rights Forum (JHRF) is an independent non-governmental organization that works to promote the protection of human rights, spread their culture, and urge States to respect them and strengthen their protection mechanisms in accordance with the international bill. It was established in 2017 in the Kingdom of Morocco and has representatives in several European and African countries.
2. This shadow report represents a contribution within the framework of the examination of the Kingdom of Morocco's initial report on the implementation of the Convention for the Protection of Persons from Enforced Disappearance during the International Committee on Enforced Disappearance's twenty-third session, as it seeks to assess the extent to which the Kingdom of Morocco has fulfilled its international obligations in protecting persons from enforced disappearance and redressing the victims of this crime, which constituted the most prominent features of the period of repression that Morocco experienced, known as "the years of lead" ¹, and whose recognition by the State revealed a dark page of the past of grave violations of human rights in Morocco .
3. After its independence and the beginning of the reign of the late King Hassan II, the Kingdom of Morocco experienced a period of political instability between the Palace and the opponents, reaching its peak after the king was subjected to two successive coup attempts .It was characterized by the severe repression of popular and student demonstrations and enforced disappearance against opposition activists whose atrocities were revealed only after the establishment of the Equity and Reconciliation Commission ² by King Mohammed VI in 2004. Its tasks involved the investigation of that period issues culminating in the elaboration of recommendations accepted mostly by the State. They revolve at large around individual and collective reparation by providing compensation to victims and their families, health care and social inclusion ³ .
4. The Kingdom of Morocco signed the International Convention for the Protection of All Persons from Enforced Disappearance on February 6th 2007 and ratified it on May 14, 2013 ⁴ .
5. Under article 29 of the Convention ⁵, the State is obliged to submit its report on the measures taken within two years of the date of its entry into force, which means that the initial report the subject of the examination is eight years late, as its publication in 2015 would have been an opportunity to assess the Moroccan experience in the course of civil reconciliation and transitional justice at a time new Arab countries were suffering from civil wars resulting from the Arab Spring revolutions.
6. The assessment of a series of legal sources and documents related to enforced disappearance in Morocco and the events covered during the initial report examination, as included in this report, shows that the Kingdom of Morocco has made several reforms such as the adoption

¹ [https://fr.wikipedia.org/wiki/Ann%C3%A9es_de_plomb_\(Maroc\)](https://fr.wikipedia.org/wiki/Ann%C3%A9es_de_plomb_(Maroc))

² https://fr.wikipedia.org/wiki/Instance_%C3%A9quit%C3%A9_et_r%C3%A9conciliation

³ https://cndh.ma/sites/default/files/documents/rapport_final_mar_fr.pdf

⁴ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=117

⁵ <https://www.ohchr.org/sites/default/files/disappearance-convention.pdf>

of legal frameworks to protect persons from enforced disappearance, the criminalization of this practice, fortification of society, as well as, partnership and consultation with civil society and the media, which have opened public debates about what were previously called taboos that were incriminating to speak about. It has also accumulated several best practices in breaking with the past grave violations and building the State of institutions. Arguably, the implementation of the Moroccan State commitments related to the enforcement of the Convention for the Protection of all Persons from Enforced Disappearances is satisfactory, but there are still shortcomings that should be addressed and questions whose answers reassure the future of Morocco as a State of institutions that protect human rights.

7. The organization commends the Moroccan State adoption, represented by the Interministerial Delegation for Human Rights, of a participatory approach with civil society in preparing this report with, where Justice and Human Rights Forum participated in a remote consultation meeting on Friday, June 4, 2021, to prepare for the submission of the initial report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance to the relevant UN Committee .

II. The legal Framework for the Implementation of the Convention's Articles:

8. The Moroccan Constitution incorporates Equity and Reconciliation Commission's recommendations in implementation of the Convention for the Protection of Persons from Enforced Disappearances' articles, the reinforcement of the judiciary's independence, and equality before the law, the protection of people's rights in detention and the promotion of political and civil pluralism ⁶.
9. In its preamble, the Moroccan 2011 Constitution recognizes the primacy of international conventions as soon as they are published over national legislation. It grants "international conventions duly ratified by the Kingdom supremacy over domestic laws - within the framework of the provisions of the Constitution, the laws of the Kingdom, and respect for its immutable national identity, and as soon as these conventions are published".
10. The Moroccan Constitution ' article 23 contains important provisions that criminalize enforced disappearance and guarantee the publicity of the fate of persons and the protection of the personal integrity of anyone. It states the following : " No one shall be arrested, detained, prosecuted or sentenced except in cases and conditions provided by law. Secret or arbitrary detention and enforced disappearance are crimes of the utmost gravity. Their perpetrators shall be liable to the most severe punishment.
Any arrested person shall be immediately informed, in a way that he or she can understand, of the reasons for his or her detention as well as of his or her rights, including the right to remain silent. He or she shall have the right to legal assistance and the possibility to contact relatives, as soon as possible, and in accordance with the law.
The presumption of innocence and the right to a fair trial are guaranteed.
A detained person shall enjoy his or her fundamental rights and shall be entitled to humane conditions of detention. He or she may benefit from training and rehabilitation programs.
Any incitement to racism, hatred or violence is prohibited.

⁶ http://www.sgg.gov.ma/Portals/0/constitution/constitution_2011_Fr.pdf

Genocide, crimes against humanity, war crimes and all grave and systematic violations of human rights shall be punished by law. "⁷.

11. The Moroccan Constitution also includes several articles making the protection of the person's security and freedom and the right to life ⁸ under judicial supervision⁹.
12. The Constitution likewise criminalize torture in all its forms¹⁰. Indeed, the prohibition of torture can be considered as strengthening protection against enforced disappearance. It is interesting that the Kingdom of Morocco ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on November 24, 2014, when the Universal Forum on Human Rights was held in Marrakech, just one year after the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (May 2013), which reinforces the belief that there are serious intentions to eradicate the crime of enforced disappearance.
13. With regard to the legislative framework for the protection of the security, safety and rights of persons, freedoms and criminal justice as recognized by constitutional guarantees and international obligations related to human rights, the Kingdom of Morocco is engaged in revising the Criminal Code and the Code of Criminal Procedure, as Draft Law No. 10.16 related to the change and supplementation of the Criminal Code group was submitted to the House of Representatives on June 24, 2016. "It criminalizes acts prohibited by international conventions, the most important of which are:
 - Enforced disappearance: This crime has been defined in accordance with the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, penalties commensurate with the gravity of the criminal act have also been determined in accordance with the principle of progressively increasing the penalty (articles 9-231 to 15-231 of draft law 1659) .¹²
 - Crime of torture: The definition of the crime of torture in article 1.231 has been revised to bring it into line with the definition provided by the Convention against Torture and the Special Rapporteur on torture, with regard to the impact that may incur from torture, which may result in severe mental pain or suffering¹³;
 - Criminalization of the crimes of genocide, crimes against humanity and war crimes: These acts were criminalized in articles 1-448 to 10-448 of Part Seven bis¹⁴.
14. The draft Code of Criminal Procedure comprises several provisions in accordance with the implementation of the articles of the Convention for the Protection of Persons from Enforced Disappearance, the most prominent of which are:
 - The audio-visual recording of the interrogation of persons put into custody suspected of committing felonies or misdemeanors, with the record attached to a copy of the recording to be placed in a sealed envelope. The content of the recordings, like that of other means of proof, is subject to the inherent conviction of the judge;

⁷ http://www.sgg.gov.ma/Portals/0/constitution/constitution_2011_Fr.pdf

⁸ Same reference : Article 20

⁹ Same reference : Article 117

¹⁰ Same reference : Article 22

¹¹ http://www.sgg.gov.ma/Portals/1/PL/projet_loi_10.16.pdf

¹² http://www.sgg.gov.ma/Portals/1/PL/projet_loi_10.16.pdf

¹³ Same reference

¹⁴ Same reference

- The creation of a national electronic register and a regional custody register , which will permit the centralization of data relating to persons put in custody. It will be placed at the disposal of the Public Prosecution and the bodies designated by law;
 - Stipulation for the invalidity of any measure relating to a person who is under theoretical custody, if it is taken after the expiry of the legal period of theoretical custody or after the extension authorized by law;
 - Obligation for the procurator or one of his deputies to visit places intended for custody if he is informed of arbitrary arrest or arbitrary action.
 - Enhancement of the presence of the lawyer during the interrogation stage as a basic guarantee to prevent any torture that may be inflicted on the suspect, the draft Code of Criminal Procedure includes a set of requirements that can be summarized as follows:
 - Enhancement of the right of a person in police custody to communicate with his or her lawyer with additional guarantees, by granting the right to communicate with the lawyer from the first hour of the suspect's arrest, without the requirement of a permission from the Public Prosecution and by reducing the delay in communication to the lowest possible level;
 - The presence of the lawyer during the hearing of juvenile suspects detained in accordance with the first paragraph of the Code of Criminal Procedure's article 460, or of persons put into custody if they have one of the impairments referred to in the Code of Criminal Procedure 's article 316;
15. Unfortunately, despite the fact that the draft criminal law and criminal procedure comprises important amendments that reflect a serious will to cut with these practices, they have not yet acquired legal force, as the draft law No. 10.16 related to the change and completion of the criminal law group in the House of Representatives since June 24th 2016¹⁵ and it awaiting ratification. As for the draft law supersede sing the Code of Criminal Procedure No. 22.01, it has still been subject to updates since 2014 ¹⁶ dictated by the independence of the Public Prosecution from the Ministry of Justice, and it has still not been ratified as a law, as the last update occurred in the name of Draft Law No. 01.18 (bypassing the stage of a draft law) in November 2021 (outside the period covered by the report, the subject of the opening)
16. Despite the supremacy of the constitutional provision criminalizing enforced disappearance over other laws, the failure to ratify the draft amending and completing the Criminal Code No. 16-10 in accordance with the amendments compatible with the implementation of the Convention for the Protection of Persons from Enforced Disappearance may lead to contradictions in the legal adaptation to face enforced disappearances. The Criminal Code 's article 436 stipulates that "anyone who abducts, arrests, detains or incarcerate a person without an order from the competent authorities, and in cases where the law permits or requires the seizure of persons"¹⁷ . "If the arrest or abduction is committed either by a person wearing a uniform or carrying a uniform badge or similar to that provided for in Article 384, or by impersonating a false name, submitting a false order to the public authority, using an engine means of transport or threatening to commit a crime against persons or property, the

¹⁵ Same source

¹⁶ <http://www.abhato.net.ma/page-principale/informer-textual/the-development-economic-and-social/the-development-social/the-law-the-justice/the-law-criminal/draft-project-law-accomplishes-in-change-and-completing-law-the-ruler-criminal>

¹⁷ <https://www.cspj.ma/uploads/files/maktaba/04/group-of-the-law-aaljnaay'y.pdf> voir page 148

penalty shall be 20 to 30 years imprisonment."¹⁸. "The penalty referred to in the third paragraph above shall apply if the perpetrator is a person exercising public authority or one of the persons provided for in article 225 of this Law when the act is committed for a self-purpose or for the purpose of satisfying personal whims." ¹⁹.

17. This article refers to a series of interpretations that may affect the constitutionality of the criminalization of enforced disappearance, including :
 - The act of abduction is not criminalized if it is ordered by the competent authorities, even in cases other than those permitted by law;
 - The law permits the act of kidnapping as a measure of restraint;
 - The term "competent authority" ordering the abduction and detention may be used by authorities other than the judiciary;
 - The act of abduction may be carried out by written order and that only its forgery is punishable by law;
 - The statutory emblem to which Criminal Code's article 384 refers includes uniforms belonging to the Royal Armed Forces, the Gendarmerie, the General Police, the Customs Department or any officer performing the function of the Judicial Police or auxiliary forces, in which persons wearing such uniforms and statutory emblem may resort to disappearance based on the orders of the competent authority, which may be their presidential authority;
 - For example, the abduction made by a public official for the purpose of a security interest or preventing the testimony of a witness is not punishable, unlike kidnapping carried out for a personal purpose or to satisfy personal whims.
18. Thus, article 436 of the current Criminal Code does not establish criminal liability for the offence of enforced disappearance as defined in the Convention, nor does it apply to the penalties provided for or to the taking of legal measures against the perpetrators of enforced disappearance.
19. On February 11th , 2019, the Parliament approved the Law No. 89.18, which stipulates the amendment and completion of the Law No. 22.01 on the criminal procedure. It enhances the rights of persons in custody and juveniles held in custody. Such an important measure strengthens the safeguards against enforced disappearance.
20. The deprivation of liberty is subject to public proceedings under article 66 of the Code of Criminal Procedure. Indeed, the Public Prosecutions is immediately notified of the detention of the detained person put into custody and has the right to contact a relative. No person can be deprived of liberty except by virtue of a document issued by the judicial authority and under its supervision. Detention can only be carried out in legal prison institutions ²⁰. With regard to the task of monitoring places of detention to verify the legality of the placement and the extent to which the persons placed enjoy legal guarantees, it is carried out under judicial supervision by the judges of public prosecution under the requirements of the Code of Criminal Procedure's articles 620 and 621. The law likewise prohibits the warden of a prison

¹⁸ Same reference

¹⁹ Same reference

²⁰ Code of Criminal Procedure's article 608

institution from seizing or accepting a person except on the basis of an arrest warrant issued by a judicial body ²¹ .

21. The Kingdom of Morocco has taken very important steps in strengthening the legislative framework of the justice system and strengthening the independence of the judiciary. It entrusted it with the protection of the person and groups' rights and freedoms and their judicial security, as well as, the rights of persons to litigate and appeal every administrative decision, whether organizational or individual, before the competent judicial body. In this vein, a number of laws have been adopted including, the Organic Law No. 100.13 on the High Judiciary Council, the Organic Law No. 13.106 on the Statute of the Judiciary and Law No. 13.108 on the Military Justice System.
22. Besides, the judicial institution's independence was strengthened via the separation of Public Prosecution from the Ministry of Justice under Law No. 33.17, related to the transfer of the powers of the government authority in charge of justice to the Public Prosecutor to the Court of Cassation in his capacity as the Head of the Public Prosecution, as well as, the establishment of rules for regulating the presidency of the Public Prosecution.
23. Arguably, the current legislative framework ensures that people are protected from the crime of enforced disappearance altogether. They do not protect the person or authority that commits it or any authority, whether it is a security one. However, the speeding up of the ratification of the proposed amendments to the Criminal Code and the Code of Criminal Procedures' Draft Laws will ensure that the implementation of the Convention for the Protection of Persons from Enforced Disappearance's articles is explicitly enforced.

III. Break with crimes of enforced disappearance committed in the past: Recommendations of the Equity and Reconciliation Commission and legitimate questions:

24. The establishment of the Equity and Reconciliation Commission by King Mohammed VI in 2004 was the most prominent milestone in the history of Morocco. It investigated cases of enforced disappearance and arbitrary detention occurring in the period between 1956 and 1999.²²
25. During the period of its mandate, the Equity and Reconciliation Commission organized public sessions for surviving victims and witnesses. It also conducted a huge documentary research, including the study of records and documents, the compilation and analysis of data collected from various sources circulated nationally and internationally (regulations, reports) and the regulations of national human rights organizations, Amnesty International regulation, and the documents of the United Nations Group on Enforced Disappearances. It likewise studied the answers of the security services, the Royal Armed Forces, and the documents available to the

²¹ Code of Criminal Procedure's article 6011

²² https://en.wikipedia.org/wiki/Equity_and_Reconciliation_Commission

International Committee of the Red Cross regarding missing persons following the armed conflict in the southern regions of the Kingdom of Morocco²³.

26. The Commission's work ended with the issuance of compensation decisions for 9,280 victims, including 1,895 victims, for whom additional recommendations were issued in other forms of reparation for social inclusion, the settlement of high administrative and functional conditions, and others, and the issuance of recommendations for other forms of collective reparation through material compensation for 1499 victims, who had previously benefited from financial compensation under decisions issued by the Independent Arbitration Commission for Compensation. These decisions were issued for the benefit of the victims of the following violations²⁴:

- Enforced disappearance;
- Arbitrary detention followed or not followed by trial or followed by death as a result of execution of a judicial sentence of death;
- Death, bullet wound or arbitrary arrest during social events;
- Compulsory exile;
- Rape.

27. In this connection, the compensation decisions approved by the Equity and Reconciliation Commission fall within the framework of a number of recommendations²⁵ that it provided to the Moroccan State, including :

- "Continuance of the investigations initiated by the Equity and Reconciliation Commission by going deeper into some thorny cases;
- Reform of both the security sector and the judiciary, including the establishment of an independent judiciary;
- The amendment of the Constitution to guarantee certain rights, particularly human rights.
- Permission to Compensate: Financial, psychological, medical and social;
- Ratification of the Rome Statute of the International Criminal Court, including the abolition of the death penalty;
- The State must be held accountable for violations including disappearance, arbitrary detention, torture and the excessive use of force;
- Reduction of executive powers and the strengthening of the legislative power;
- Detailed recommendations in certain domains: Gender Equality, community mediation, poverty reduction, normalization of legal status, continuing education, professional development, medical and psychological rehabilitation, memorials and so on. "

28. The State has accepted these recommendations and made them one of the pillars of the democratic transition that Morocco underwent in 2011. In this vein, the Moroccan King Mohammed VI said in a speech on 9 March 2011 on expanded regionalism and the formation of a Special Committee to revise the Constitution:

"It is in this constant frame of reference that we have decided to undertake a comprehensive constitutional amendment, based on seven fundamental pillars:

...

²³ <https://democraticac.de/?p=81917>

²⁴ <https://democraticac.de/?p=81917>

²⁵ shorturl.at/bgCXY

Secondly : Consolidating the State of rights and institutions, expanding and ensuring the scope of personal and collective freedoms , promoting the human rights system, in all their dimensions, whether political,economic, social, developmental, cultural and environmental, especially the constitutionalization of the notable recommendations elaborated by Equity and Reconciliation Commission and Morocco's international commitments " ²⁶ .

29. The adoption of the Moroccan Constitution by the Moroccan people in the July 2011 referendum, which constitutionalized Equity and Reconciliation Commission 's recommendations and reparation as a recognition of national reconciliation and a commitment by the state to cut through the past of grave violations, of which enforced disappearance and arbitrary detention were the most important features.
30. The National Human Rights Council (formerly the Advisory Council for Human Rights) is still mandated to follow up the implementation of the recommendations of the Equity and Reconciliation Commission under King Mohamed VI's royal speech addressed to the Moroccan people on 6 January 2006 on the occasion of the end of the mandate of the Equity and Reconciliation Commission and the submission of its final report to the Royal King²⁷ .
31. The National Human Rights Council is working to incorporate in its annual reports an aspect of the results of its follow-up of the implementation of the Equity and Reconciliation Commission 's recommendations, the last of which was its annual report for the year 2021, which comprised the achievements regarding memory preservation program in the space of the former secret prison in Tazmamart and Akdz,the space of the Al-Hoceima Museum, the cemeteries of the events of June 1981,the victims of social events in Nador, as well as, reparation for individual damages and the preservation of the Moroccan experience 's archieve in the field of transitional justice ²⁸ .
32. In August 2019, the National Human Rights Council handed over compensation to 80 civilian victims, or the families of the deceased, who were abducted by elements of the "Frente Polisario" in the late 1970s, and took them to the Tindouf camps in southern Algeria, where they were tortured and deprived, including those who lost their lives in the Polisario militia's prisons or Algerian prisons, within the framework of the implementation of the recommendations of the Equity and Reconciliation Commission, which decided to settle the case of the 367 victims²⁹ .
33. The President of the National Human Rights Council apologized to the beneficiaries during their reception at the Council's headquarters for the delay in settling their cases and those of a number of victims or the deceased's rights beneficiaries. Although the case of these abductees does not fall within the cases of human rights 's grave violations between 1956 and 1999, whose commission is attributed to the Moroccan State agencies, nor it is related to their employees or individuals, the President of the National Human Rights Council considered that the abduction to which they were subjected against the requirements of international law, their exposure to systematic torture throughout their abduction, their deprivation of the most basic legal guarantees , their relative's ignorance of their fate and whereabouts and the denial of the party responsible for their abduction does not exempt the State from its responsibility because it did not protect them from these violations, including disappearance and torture as

²⁶ <https://tinyurl.com/apkenjsy>

²⁷ <https://www.maghress.com/attajdid/22414>

²⁸ https://www.cndh.ma/sites/default/files/cndh_-_rapport_annuel_2021_va.pdf

²⁹ <https://tinyurl.com/29ssuvhz>

civilians. Therefore, the Follow-up Committee for the implementation of the recommendations of the Equity and Reconciliation Commission recommended reparation for all damages of the victims, or their rights³⁰.

34. The National Human Rights Council adopted a “theory of risk that considers the State responsible for protecting its citizens and for the damage caused to them even if it is not the doer of the acts”. The case law of a number of countries, including Morocco, in addition to liability based on error, has established the responsibility to protect against risks, taking into account the nature of the damage suffered by individuals, and their compensation for it, within the principle of equality of citizens before public burdens.³¹
35. The National Human Rights Council still has to continue its work, particularly with regard to the processing of all outstanding cases in order to finalize that of enforced disappearance and arbitrary detention’s victims.
36. Arguably, the continuance of the National Human Rights Council to follow up on the implementation of the recommendations of Equity and Reconciliation Commission is one of the indicators of the de facto severance of enforced disappearance's crime.

IV. Jurisdiction and enforced disappearance of nationals outside Moroccan territory:

37. The Convention for the Protection of Persons from Enforced Disappearance recognizes, in article 9, the criminal jurisdiction of the courts of the State party to consider the offence of enforced disappearance:
 - a) (a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - b) When the supposed person committing the crime is its citizen;
 - c) (c) When the disappeared person is one of its nationals and the State Party considers it appropriate.

In deciding on a crime of enforced disappearance when the presumed perpetrator is present in any territory under its jurisdiction, unless it is handed over or dissolved by that State in accordance with its international obligations or to an international criminal court recognizing its jurisdiction. - The convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

38. Concerning the Kingdom of Morocco, the jurisdiction of Moroccan courts generally includes crimes committed on Moroccan territory, regardless of the perpetrators ‘nationality under the Code of Civil Procedure's article 704³². The Moroccan territory involves Moroccan-flagged vessels, if a crime is committed on the high seas, regardless of the perpetrators'nationality, as well as, crimes committed inside a Moroccan seaport on board a foreign merchant ship to

³⁰ <https://tinyurl.com/29ssuvhz>

³¹ <https://tinyurl.com/29ssuvhz>

³² https://menarights.org/sites/default/files/2021-08/CriminalProcedureLaw_Mor_2005_AR.pdf

look into the crime of enforced disappearance³³, alongside Moroccan aircrafts on which a crime is committed, regardless of the perpetrator' nationality, or foreign aircrafts in the event that the perpetrator has the Moroccan nationality³⁴ .

39. For a foreigner who commits a crime outside the Kingdom of Morocco, the victim of which is a Moroccan, whether he is an original actor, contributor or participant, who can be followed up and sentenced in accordance with Moroccan law³⁵ .
40. With regard to the crime of enforced disappearance in particular, except for the constitutional provision stipulating that enforced disappearance is one of the most serious crimes punishable by the harshest punishment, the current Criminal Code and the Criminal Procedure Code do not meet the requirements of article 9 of the Convention, since for the judiciary, the constitutional text is reasoned for the provisions, but the filing of public action is under indictment instruments based on the requirements of definitive legal provisions.
41. This contributed to the fact that the judiciary remained shackled in declaring its jurisdiction to consider enforced disappearance crimes committed against Moroccan nationals who had been subjected to enforced disappearance by polissario elements, who had been taken under threat of weapons and transported in trucks to the Tindouf camps in southern Algeria, where they had been subjected to the most heinous forms of psychological and physical torture, without the recognition of their whereabouts by the Algerian authorities or the Polisario militia.³⁶

V. General assessment:

42. As a preliminary report, it can be said that the Kingdom of Morocco has succeeded completely in cutting off the crime of enforced disappearance and arbitrary detention, as the examination of constitutional and legislative reforms, the strengthening of the independence of the judicial institution, the diversification of mediation institutions, the adoption of national plans in the field of democracy and human rights, interaction with special procedure bodies and the strengthening of the practice of the Convention, whether by ratifying protocols or lifting reservations and establishing a procedural path to fair trial, leads to the strengthening the of institutional aspect and oversight role of civil society and human rights organizations. This is due in our organization's estimate to:
 - a) King Mohammed VI of Morocco's desire to get rid of the legacy of the past of gross human rights violations;
 - b) The momentum created by the creation of Equity, Reconciliation Commission and the exposure of crimes committed by individuals on behalf of the State to national and international public opinion and the trauma they have left;

³³ https://menarights.org/sites/default/files/2021-08/CriminalProcedureLaw_Mor_2005_AR.pdf Article 705

³⁴ https://menarights.org/sites/default/files/2021-08/CriminalProcedureLaw_Mor_2005_AR.pdf Article 706

³⁵ https://menarights.org/sites/default/files/2021-08/CriminalProcedureLaw_Mor_2005_AR.pdf Article 710

³⁶ See paragraphs : 32 , 33 et 34 of this report

- c) Moroccan society acceptance of reconciliation by ratifying the 2011 constitution, which is included the implementation of Equity and Reconciliation Commission's recommendations;
- d) Morocco's economic strategy of making Morocco an economic pole in North Africa requiring the reinforcement of democracy and human rights;

VI. Recommendations:

Justice and Human Rights Forum Organization , in the light of Moroccan Kingdom's achievements in implementing the Convention's articles and cutting off with the crime of enforced disappearance, and the course of reparations that continue to date with the plans and programs of memory preservation as one of the guarantees of non-repetition, which has become impossible due to the tremendous development of the legislative and legal arsenal that protects the freedoms and security of persons, recommends the following to the Kingdom of Morocco:

i. With regard to legal framework to implement the Convention's articles:

- Adaptation of the laws with the the Convention for the Protection of all Persons from Enforced Disappearances' provisions , especially by ratifying the Draft Criminal Law No10-16, which contains amendments in accordance with the articles of the Convention, under which the public case is initiated and clear indictments are issued ,as article 436 of the current Criminal Code cannot cover the deficiency in the current Criminal Code in terms of the definition of the crime of enforced disappearance or penalties.
- the ratification of the Criminal Procedure Code Draft No. 18.01, which includes sophisticated procedures that permanently strengthen the safeguards of cutting with enforced disappearances, the adoption of the presumption of innocence and the documentation of hearings in audio and visual.
- The ratification of the Draft Law No. 19.21 on the regulation of prison institutions. It should include provisions that give the right of NGOs to visit detainees and the prison, submit reports on prison conditions to the competent government authorities, promote the rights of detainees and provide additional strong guarantees of public detention other than those set forth in the Criminal Code.

ii. Regarding the course of cutting with the past of enforced disappearance and arbitrary detention:

- The Justice and Human Rights Forum commends the provisions of Law No. 76.15 on the reorganization of the National Human Rights Council, in particular the establishment of three national mechanisms of its own: The National Protective Mechanism against Torture, the National Mechanism for the Grievance of Children Victims of Violence and the National Mechanism for the Protection of the Rights of Persons with Disabilities. It considers that an implmentation of the Kingdom of Morocco's commitments emanating from its ratification of related conventions.
- It likewise commends the continued implementation of the recommendations of the Equity and Reconciliation Commission and its continued issuance of arbitration decisions stating reparations for victims of enforced disappearances or their families, memory preservation, integration into public life and care for treatment. Such a process reflects a strong indicator of the cutting off with the crime of enforced disappearance and arbitrary detention.
- The Forum for Justice and Human Rights also notes the decisions of the Follow-up Committee for the Implementation of Equity and Reconciliation Commission's recommandations, affiliated to the National Human Rights Council,to compensate the victims and victims' families who have been

subjected to enforced disappearance by the Polisario militia in the framework of the implementation of "risk theory that the State is responsible for the protection of its citizens, and for the harm done to them even if it is not responsible for the acts"

- It is essential for the Kingdom of Morocco to ensure that the past of serious violations, the equity, and reconciliation's course are integrated into history courses as part of memory preservation, learning from the past and the immunization of future generations.

iii. Legal and legislative framework for the implementation of human rights obligations:

- The Amendments to the draft Code of Criminal Procedure should include the enforcement of Moroccan judiciary's jurisdiction in considering the crimes of enforced disappearance, whether the perpetrator is Moroccan or foreign, or occurred within the territory of the Kingdom of Morocco within the meaning of the Code of Criminal Procedure 's articles 705 and 706 , or outside the territory of the Kingdom of Morocco, whether the victim is Moroccan or foreign, and the interruption of the statute of limitations in cases of enforced disappearance and torture with the complaint of the presumed victim.
- The judicial cooperation between the Kingdom of Morocco and States for the extradition of persons suspected of involvement in enforced disappearance must be strengthened.
- After the ratification of the Draft Criminal Code and the Code of Criminal Procedure, it is necessary to implement article 9 of the Convention for the Protection of Persons from Enforced Disappearance in order to enforce the Moroccan judiciary's competence to follow up on Moroccan nationals' enforced disappearance by the Polisario militia, who were taken to the Tindouf camps inside Algerian territory. The responsibility of the Algerian State in this disappearance must also be raised.

VII. List of questions addressed to the State party through the Committee on Enforced Disappearances:

a) Regarding the legislative reform:

1. What are the legal deadlines for ratification of the the Criminal Code Draft and the Code of Criminal Procedure Draft?
2. Could the Committee on enforced disappearance concluding observations emanating from the examination of the initial report be included in the Criminal Code Draft and the Code of Criminal Procedure Draft, to be added to the amendments already included in line with the implementation of the Convention for the Protection of Persons from Enforced Disappearance?

b) Concerning the results of transitional justice embodied by the path of Equity and Reconciliation Commission:

3. Up to the period covered by the initial report, what is the number of cases handled? And how many are left? And what are the obstacles that stand in their consideration?
4. What is the total amount of compensation since the commencement of individual and collective reparations?
5. What actions were taken to save the memory?

6. How many dramatic, documentary, literary and artistic works have been funded within the framework of memory preservation?
7. What are the aspects of the guarantees of non-repetition of the State's recourse to enforced disappearance?
8. What are the aspects related to security governance in relation to cutting with the crime of enforced disappearance, especially since the security services are fully responsible for enforced disappearance during the period of violations?
9. Are the victims of enforced disappearance and their relatives entitled to obtain administrative documents from the authorities recognizing that they have been subjected to enforced disappearance, as well as, safeguarding their rights to restitution of property seized by some of their relatives during their enforced absence?
10. Were all the forcibly disappeared persons found to have died during their detention?
11. Were the victims' DNA results revealed?
12. What is the development in forensic medicine and how does it preserve its independence as a neutral institution to ensure that it helps reveal the fate of people?

c) Concerning the disappeared Moroccan nationals by the Polisario:

13. Has the true number of disappeared persons been recorded by the Polisario from the documented archive of Polisario militia attacks on the southern cities of the Kingdom of Morocco in the late 1970s?
14. Has the Moroccan State ever contacted the Algerian authorities in this regard, either directly or through international bodies such as the Red Cross?
15. What are the measures taken by the Moroccan State, represented by the judicial authorities, to prosecute the leaders of the Frente Polisario responsible for the abduction of Moroccan civilians and their extra-territorial transfer?