



International Convention for the Protection of All Persons from Enforced Disappearance

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Consideration of lists of issues

Replies of Morocco to the list of issues in relation to its report submitted under article 29 (1) of the Convention**

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** The present document is being issued without formal editing.



General information

I. Replies to the list of issues

A. Reply concerning paragraph 1 of the list of issues (CED/C/MAR/Q/1)

1. In 2011, the Government of Morocco established the Ministerial Delegation for Human Rights as a national mechanism to report and follow-up on human rights matters. One of the Delegation's roles is to deal with all individual communications transmitted to it by the United Nations human rights mechanisms. To this end, it prepares and submits replies in a timely manner and follows up on cases in close coordination with the relevant governmental sectors and institutions. The Government of Morocco is committed to responding in a timely manner to all requests for interim and protection measures and for urgent action that are transmitted to it by the Committee on Enforced Disappearances. Seven such cases have been found to have nothing to do with enforced disappearance.

B. Reply concerning paragraph 2 of the list of issues

2. Pursuant to the provisions of the Constitution, the international treaties to which Morocco is a party take precedence over national laws as soon as they are published. In keeping with those provisions, the country's laws and the deep-rooted national identity of Morocco, individuals are entitled to invoke the provisions of the Convention directly before the national courts, whether they do so themselves or through their lawyers. The courts may also invoke the Convention when adjudicating cases brought before them. Under article 713 of the Code of Criminal Procedure, international treaties take precedence over national laws in the context of judicial cooperation with foreign States.

3. There is a solid body of case law that shows how international human rights law has been invoked in cases that have a bearing on other international human rights treaties. Since Morocco became a party to the Convention in 2013, no cases of enforced disappearance within the meaning of the Convention have been referred to the national courts.

C. Reply concerning paragraph 3 of the list of issues

4. The Government of Morocco reaffirms its continued engagement with the United Nations complaints procedures. In 2022, it acceded to the First Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Government remains open to engaging with other United Nations complaints mechanisms whenever the objective conditions to do so are met.

D. Reply concerning paragraph 4 of the list of issues

5. The National Human Rights Council is a national institution, established in keeping with the Constitution, which enjoys complete independence in carrying out its role of promoting and protecting human rights and preventing violations. The Council comprises a chairperson, a general secretary, heads of regional committees and 27 members who are known for their expertise, integrity, impartiality and commitment to human rights values and principles. Members are selected and appointed with an eye to reconciling the principles of intellectual and social pluralism with those of equity, cultural and linguistic diversity and regional representation. Moroccans living abroad, young people, persons with disabilities and children are also represented. Article 39 of Act on the Reorganization of the National Human Rights Council sets out all the conditions in which an individual's membership of the Council may cease.

6. Under Act No. 76.15 and article 161 of the Constitution, the Council is tasked with addressing all issues relating to the defence and protection of human rights and freedoms,

with guaranteeing and promoting the full exercise of these rights and freedoms, and with safeguarding the dignity and individual and collective rights and freedoms of citizens. Enforced disappearances are included among those issues. The Council organizes various Convention-related activities related in the areas of legal and institutional protection. It follows up on the complaints that it receives and undertakes awareness-raising activities with a view to the prevention of enforced disappearances.

7. With regard to the victims of enforced disappearances between 1956 and 1999, the Council has forged partnerships with civil society organizations that deal with past human rights violations, particularly enforced disappearances. It is committed to supporting the work of these organizations and receiving them at its headquarters. In the context of its relationships with them, the Council also makes sure to preserve and document the memory and to honour past victims.

8. In the past three years, the Council has hosted meetings arranged by past victims to discuss issues linked to truth and memory and action to ensure that such gross human rights violations do not happen again. The Council has also supported activities organized by civil society organizations to commemorate past victims of enforced disappearance.

9. A committee within the Council has been tasked with following up on the recommendations issued by the Equity and Reconciliation Commission, including those linked to cases of enforced disappearance. The committee has been carrying out those functions since 2006.

10. In addition to the information provided in paragraphs 22–24 of the initial report (CED/C/MAR/1) and the positive aspects described in paragraphs 29 and 31 of the present document, the Government recalls that the cases of 805 victims were clarified following investigations carried out by the Equity and Reconciliation Commission during its mandate, and by the committee responsible for follow-up on its recommendations, to establish the truth about enforced disappearances that occurred between 1956 and 1999. The findings of the investigations conducted to ascertain the fate of the victims are listed below.

- A total of 51 victims died when they were abducted or being held by political groups, owing to conflicts that broke out between rival political powers at the dawn of Moroccan independence.
- A total of 16 people died during the events in Rif in 1958.
- A total of 9 people died during armed confrontations in the early 1960s.
- One person was killed outside national territory, and the body was concealed.
- Two prison guards were killed on account of their involvement in the escape of two victims of enforced disappearance.
- A total of 224 persons died while being held in arbitrary detention between 1961 and 1992.
- A total of 86 victims of long-term enforced disappearance died in detention centres.
- A total of 203 people, including women and children, died of shot wounds or suffocation while they were being held in custody, during the tragic events that occurred in the country.
- A total of 66 people were sentenced to execution and buried in the absence of their families.
- A total of 144 people died while bearing arms during armed clashes in the Moroccan Sahara conflict.
- In one case, there was no connection to enforced disappearance.
- Investigators could not confirm that the State bore responsibility for two disappearances that took place in 1997 and 1999.

11. Post-1999, the Council received complaints from families claiming that a total of 15 of their offspring had disappeared on 25 December 2005 while illegally crossing the Atlantic Ocean on their way to the Canary Islands. They never reached their destination. In

March 2006, the Council met with the families during a visit to the city of Layounne. On a visit to the region in April 2006, the Council raised the issue with the Office of the Public Prosecutor. The Office launched a judicial investigation, which established that the individuals had disappeared because they had drowned in the ocean. The Moroccan authorities were in contact on this issue with the Working Group on Enforced or Involuntary Disappearances, which ascertained that the cases had been clarified and had nothing to do with enforced disappearance.

E. Reply concerning paragraph 5 of the list of issues

12. The Government of Morocco drafted its initial report using the participatory approach adopted for the preparation of such reports for United Nations human rights mechanisms. This involved the full range of public authorities, from government sectors to national institutions and bodies, particularly the Council and Parliament, as well as civil society organizations. Twenty-eight such organizations took part in the consultations held for this purpose at a meeting in June 2021.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

A. Reply concerning paragraph 6 of the list of issues

13. The Moroccan authorities use an electronic system to collate all research materials published in the legal cases handled by specialized security units under the supervision of the public prosecution service. This includes cases of disappearance reported by family members or lawyers. The system can retrieve all the information that it contains on the persons being searched for and the results of investigations. Access to the data is reserved for the authorities that manage and update the system and for those working on investigations.

14. The Equity and Reconciliation Commission set up a dedicated information system to process the cases of victims of human rights violations between 1956 and 1999. Special tags are used to record various details in each case. Some tags indicate the sources of information, including official data and information about the victim or the person who made the request, such as whether that person is the victim's lawyer or is connected to the victim or his or her family. Other tags indicate the violation or violations faced by the victim; the harm suffered; the requests made; and all information coming from more than one source or for which further specifics have been requested.

15. The database for victims of past violations is part of the Council's information system. Like all other sources of information, the system is controlled by the Council's information technology protection and security system, which is in conformity with ISO 27001, the international standard for data management and protection.

B. Reply concerning paragraph 7 of the list of issues

16. The Government of Morocco should like to stress that, since becoming a party to the Convention, no cases of enforced disappearance within the meaning of the Convention have been registered.

C. Reply concerning paragraph 8 of the list of issues

17. The reply concerning paragraph 6 above mentions that the Moroccan authorities use an electronic system to collate all research published in all cases handled by the Royal Gendarmerie and National Security.

D. Reply concerning paragraph 9 of the list of issues

18. The draft amendment to the Criminal Code includes a definition of the crime of enforced disappearance that is identical to the one provided in article 2 of the Convention. It also sets out penalties commensurate with the gravity of the crime.

E. Reply concerning paragraph 10 of the list of issues

19. The national courts have not been presented with any cases of enforced disappearance. Where cases resulting in prosecutions have been tried under articles 436–440 of the Criminal Code, they have related to the crimes of abduction and unlawful detention. In the past four years (2019–2022), there have been around 2,202 such cases.

The following table shows the number of cases and prosecutions, disaggregated by year, gender and nationality.

<i>Number of cases and prosecutions for the crimes of abduction and detention in the last four years (2019–2022)</i>										
<i>Years</i>	<i>Cases registered</i>	<i>Moroccan male</i>		<i>Moroccan female</i>		<i>Male foreign national</i>		<i>Female foreign national</i>		<i>Total number of prosecutions</i>
		<i>Detained</i>	<i>Released</i>	<i>Detained</i>	<i>Released</i>	<i>Detained</i>	<i>Released</i>	<i>Detained</i>	<i>Released</i>	
2019	554	561	152	8	6	6	0	0	0	733
2020	516	557	130	6	8	5	0	0	1	707
2021	537	516	203	21	7	10	1	0	0	758
2022	595	525	175	11	7	27	1	0	0	746

F. Reply concerning paragraph 11 of the list of issues

20. The Government of Morocco can confirm that no complaints have been lodged with the authorities regarding enforced disappearances in connection with acts of trafficking in persons or migration.

G. Reply concerning paragraph 12 of the list of issues

21. Article 59 of the Constitution states that the fundamental rights and freedoms enshrined in the Constitution are guaranteed and cannot be violated, even in exceptional circumstances. Protection from torture, arbitrary arrest and enforced disappearance is one of the constitutional guarantees from which there can be no derogation under any circumstances, as explained in paragraphs 25 and 26 of the initial report.

22. The Moroccan legislature has not included any provisions in the Criminal Code or the Code of Criminal Procedure that would justify the crime of enforced disappearance in exceptional circumstances. The Criminal Code applies throughout Morocco, without any restrictions as to time or place. Exceptional circumstances such as a state of war, a threat of war, a threat to national security, internal political instability or any other state of public emergency cannot be invoked to justify the crime of enforced disappearance, any other cruel, inhuman or degrading treatment or any other form of abuse.

23. The emergency measures taken by the public authorities during the coronavirus disease (COVID-19) pandemic did not adversely affect the implementation of the Convention. The measures were put in place to protect citizens' lives and keep them safe and were aligned with the provisions of the Constitution, the country's international human rights obligations and the various guidance documents issued by United Nations mechanisms to facilitate the pandemic response.

24. The truly national approach taken by the Government of Morocco to respond to the pandemic and manage its effects was founded on guaranteeing protection of human rights, notably the rights to life and health, given their position in the hierarchy of rights. The stakeholders were proactive and united in their efforts to provide comprehensive coverage

across all areas of economic and social rights. A careful balance was struck between precautionary measures and action to deal with economic and social challenges and international human rights obligations. The Government of Morocco left no stone unturned in its efforts to manage the effects of the pandemic.

25. The Decree-Law of 23 March 2020, enacting special provisions on the health emergency and the procedures for declaring it, contains nothing that affects the implementation of the Convention. It authorized the public authorities to take whatever measures were needed to protect individuals during the pandemic. The justice system, which has a special responsibility for affording protection from violations, was one of the public sectors that received considerable attention: the work of the courts was adapted to take account of the health emergency, and measures were adopted to ensure the normal functioning of the courts by facilitating access to justice, ensuring that complaints were received, holding court hearings and protecting the rights of the parties at law.

26. The exceptional restrictions that were imposed due to the health emergency did not grant the executive authority absolute powers subject to no oversight. Every constitutional authority and institution remained in place, and the health emergency laws did not suspend national laws; rather, they were in compliance with international human rights treaties, were not absolute in nature and were subject to warranted restrictions.

27. The several public health emergency measures that were taken were limited to controlling the spread of the pandemic. They ensured complete respect for individual dignity, human rights and fundamental freedoms.

H. Reply concerning paragraph 13 of the list of issues

28. While the Criminal Code does not provide a definition of enforced disappearance that reflects the one established in article 2 of the Convention, the Government has developed a series of provisions, namely articles 436–440 of the Code, aimed at protecting individuals from abduction, detention and [unlawful] imprisonment. These provisions are enforceable by the national courts.

I. Reply concerning paragraph 14 of the list of issues

29. The Government of Morocco should like to draw attention to the information provided in paragraphs 28–32 and 53–57 of its initial report and earlier in the present document.

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

A. Reply concerning paragraph 15 of the list of issues

30. The Government of Morocco should like to draw attention to paragraphs 62 and 63 of the initial report, which cite the final paragraph of article 5 of the Code of Criminal Procedure: “There is no statute of limitations on public prosecutions arising from offences for which the law or an international treaty ratified by the Kingdom of Morocco and published in the Official Gazette stipulates that there is to be no statute of limitations.”

31. In line with article 24 (4) of the Convention, Moroccan law grants victims the right to a remedy in the form of full compensation commensurate with the harm suffered, whether the victim is a natural person or legal entity and whatever the nature and source of that harm. This applies to persons who have been subjected to the crime of enforced disappearance, as stated in article 2 of the Code of Criminal Procedure: “Every crime committed entails the right to institute criminal proceedings for the infliction of penalties and the right to institute civil proceedings to claim compensation for damages.”

32. The right to compensation, as defined in article 7 of the Code of Criminal Procedure, includes compensation for the infliction of bodily, material and psychological harm. Under

Moroccan law, victims can pursue several legal avenues to assert their right to compensation as expeditiously as possible. Victims can file for compensation while proceedings are taking place in the criminal court, and they can file a separate case with the competent civil court. There is no time limit on the exercise of this right in Moroccan law. If, for any reason, the criminal proceedings are suspended, the compensation claim cannot be suspended. Similarly, a statute of limitations on criminal proceedings does not entail a statute of limitations on the victim's right to claim compensation before the competent civil court.

B. Reply concerning paragraph 16 of the list of issues

33. The crimes of abduction and unlawful detention remain subject to national jurisdiction whenever they are committed on national territory, regardless of the perpetrator's nationality. This is made clear in article 10 of the Criminal Code: "Moroccan criminal law shall apply to any citizen, foreign national or stateless person in Moroccan territory, save for the exceptions envisaged under domestic and international law." According to article 11 of the Code, "Moroccan territory includes Moroccan ships or aircraft, wherever they may be, except in cases where, under international law, they are subject to foreign legislation." According to article 12 of the Code: "Moroccan criminal law shall apply to offences committed abroad, if they fall within the jurisdiction of Moroccan criminal courts (Code of Criminal Procedure, arts. 751–756)."

34. In addition, the draft Code of Criminal Procedure allows for the possibility of prosecuting and sentencing all persons in Moroccan territory before the Moroccan courts, if they have committed an act outside Morocco that is a crime under the international treaties that Morocco has ratified and that have been published in the Official Gazette.

C. Reply concerning paragraph 17 of the list of issues

35. The Government of Morocco should like to draw attention to the information provided in paragraphs 76–82 of the initial report, regarding foreign nationals involved in criminal acts. As regards legal guarantees for persons placed under arrest, these persons have the right to contact the consular authorities of their country without delay. The Code of Criminal Procedure ensures that foreign nationals enjoy the same rights and guarantees as Moroccan citizens, as well as the right to contact their own country's consular offices at every stage of an investigation.

36. Under articles 67 and 82 of the Code of Criminal Procedure, police officers are required to take several measures to provide legal safeguards for foreign nationals who are placed in custody. This includes immediately informing their families that they are in custody. Article 36 of Act No. 02.03, on the entry and residence of foreigners in Morocco and unlawful migration, clearly states that foreign nationals retain the right to contact their country's consular offices or another person of their choice.

37. The Office of the Public Prosecutor seeks to ensure the enjoyment of this right through the application of the country's laws and the provisions of article 36 of the Vienna Convention on Consular Relations concluded on 24 April 1963. This means that the relevant consular authorities are notified as soon as a foreign national from their country is arrested. The person under arrest can ask for the assistance of a translator, doctor or lawyer and, if so desired, contact the consular offices of his or her country or another person of his or her choice. The person will be informed of these options when a decision is taken to detain him or her. In Circular No. 39 S/RNA, published on 26 September 2019, the Office of the Public Prosecutor states that "notification of all cases of arrest or prosecutions of foreign nationals in Morocco shall be given using the standard operating procedure. Police officers shall be trained to notify the relevant consular authorities as soon as one of their nationals is arrested and placed in custody."

D. Reply concerning paragraph 18 of the list of issues

38. The ordinary courts have jurisdiction over the crimes of abduction and unlawful detention. They are considered under the Constitution and the law to have competence to hear all crimes. The military courts are not competent to hear crimes of disappearance committed by members of the armed forces, under articles 3 and 4 of Act No. 108.13 on military jurisdiction.

E. Reply concerning paragraph 19 of the list of issues

39. In addition to the information provided by the Government of Morocco in paragraphs 83 and 84 of its initial report, it must be clarified that enquiries and investigations into crimes generally do not require a complaint to be lodged by the aggrieved parties or victims first. Prosecutions of crimes are only dependent on a complaint being lodged in the cases stipulated by the law, which does not include the crimes of abduction and detention. Police officers carry out preliminary investigations on the basis of both complaints and reports received in order to establish whether the crimes have occurred, to collect evidence and to search for the perpetrators. They do this immediately and independently. Under articles 38 and 49 of the Code of Criminal Procedure, the Crown Prosecutor or the Prosecutor-General of the King, in their personal capacity or through their deputies, institute criminal proceedings on their own motion or based on a complaint from an aggrieved person.

40. If a public official is suspected of being involved in a crime involving abduction or detention, the competent legal authority has full constitutional and legal power to take the necessary measures to ensure that an investigation is duly conducted. Any public official, employee or assistant who would seem, based on the evidence, to be implicated in the crime, will be excluded from involvement in the investigation. This is done to guarantee the objectivity and integrity required to respect the fair trial principle and uphold individual rights and freedoms without discrimination. In addition, the employee under suspicion will be temporarily suspended under the conditions defined in the Public Service Act.

F. Reply concerning paragraph 20 of the list of issues

41. Under Moroccan law, anyone whose rights have been violated, including in cases of alleged abduction or detention, can appeal to the judicial authorities and file a complaint with the public prosecutor or directly with an investigating judge or a court. The law provides a set of measures and procedures to protect victims, witnesses, experts and informants. Article 82 (5) of the Code of Criminal Procedure states that the Crown Prosecutor, the Prosecutor-General of the King or the investigating judge, each within their own jurisdiction, must take measures to protect and safeguard the well-being of victims, members of their family and relatives, and their property from any harm to which they might be exposed as a consequence of filing a complaint. To that end, the following may be placed at the disposal of the victim:

- A telephone number to call at any time for protection to be provided by the police or the security services
- Physical protection as provided by the public security services for victims, members of their family or relatives
- A change of residence and the non-disclosure of identity

42. In these situations, victims may be examined by a specialist doctor and, if necessary, provided with social care. If the aforementioned protection measures are insufficient, subject to a reasoned decision, any other measure may be taken that is capable of providing the necessary degree of protection to the person concerned. Furthermore, according to article 82 (6) of the Code of Criminal Procedure, where there are solid grounds for believing that if a witness or expert were to give testimony or make a statement, his/her life, physical integrity and fundamental interests or those of members of his/her family and relatives would be at risk of material or moral harm, the witness or expert may request the Crown Prosecutor, the

Prosecutor-General of the King or the investigating judge, as appropriate, to undertake one of the procedures outlined in paragraphs 6, 7 and 8 of article 82 (7) of the Code, stating the circumstances. The following measures apply in such cases:

- The witnesses or experts who have given testimony or a statement must be provided with the telephone number of the police to be able to promptly alert them should anything happen that threatens their safety or that of their family or relatives.
- The telephones used by the witnesses or experts must be put under surveillance by the relevant authorities, with the written consent of the persons concerned, in order to ensure their protection.
- Physical protection must be provided to the witnesses or experts by the police services in such a way as to protect them, their family members and/or their relatives from danger.

43. The State should like to stress that there is no truth to the allegation of reprisals being taken against the relatives of the named individuals (L.A. and O.E.) following their notification of the disappearance of the two individuals. The Kingdom of Morocco refers to the detailed information previously submitted to the Committee on Enforced Disappearances in the case of the former (1537/2022) and to the Working Group on Enforced or Involuntary Disappearances in the case of the latter (10003140/2011).

44. It should be noted that, since 1990, the national human rights institution has been compiling lists of victims of enforced disappearance, studying their cases and disclosing information about what happened to them. This work continued following the establishment of the Equity and Reconciliation Commission as a national mechanism for transitional justice whose tasks included researching and investigating all cases of disappearance between 1956 and 1999. During its mandate, the Commission received thousands of petitioners – victims and their families – and went to the places where they lived in various regions of Morocco in order to listen to them, provide them with legal and humanitarian assistance, and look into their demands.

G. Reply concerning paragraph 21 of the list of issues

45. There are no provisions in national legislation that would prevent the extradition of perpetrators of the offences of abduction and detention as defined in articles 436, 436 (1) and 437–440 of the Criminal Code. These provisions may therefore be invoked to accept an extradition request for these offences, provided that all the legal conditions for extradition are met.

H. Reply concerning paragraph 22 of the list of issues

46. In addition to the information presented in paragraphs 125, 131 and 132 of its initial report, and other paragraphs relating to extradition, the Government should like to make it clear that no cases of extradition relating to enforced disappearance have been registered in the framework of bilateral judicial cooperation agreements concluded by the Kingdom of Morocco. With regard to the legislation applicable in the event of a request for assistance from a State that is not a party to the Convention, under article 724 of the Code of Criminal Procedure, extradition may be granted both to States with which the Kingdom of Morocco has a bilateral cooperation agreement and States with which it does not have such an agreement, with priority being granted to the former in the event of multiple requests.

47. The State affirms that there are no restrictions or conditions in national law that would prevent mutual assistance and cooperation in relation to extradition, except for those stipulated in the Code of Criminal Procedure and detailed in paragraphs 118 et seq. of the initial report.

48. Furthermore, the Government has not received any requests to provide assistance to victims of enforced disappearance, to search for, locate and release disappeared persons or, in the event of death, to exhume, identify and return their remains. The Government remains

open to any requests of this kind, in line with its Constitution and its international obligations under the Convention.

IV. Measures to prevent enforced disappearances (arts. 16–23)

A. Reply concerning paragraph 23 of the list of issues

49. Further to the detailed information presented in paragraphs 133–135 of its initial report, concerning the legal provisions relating to accompaniment to the border, expulsion and non-refoulement, the Government recalls that article 29 of Act No. 02.03, concerning the entry and residence of foreigners in Morocco and unlawful migration, states: “No pregnant woman or foreign minor may be deported, nor may any other foreign national be deported to a country where his or her life or freedom is proven to be threatened or in which he or she risks being subjected to inhuman, cruel or degrading treatment.” This prohibition extends to all violations related to the infringement of the freedom of persons, including enforced disappearance.

50. In terms of the possibility to appeal against a decision authorizing expulsion, the same Act provides for a set of safeguards, established in the interests of migrants in an irregular situation. Under article 23 of the Act, a foreign national against whom an order of accompaniment to the border has been issued has the right to appeal the decision before the president of the Administrative Tribunal in his or her capacity as a judge for urgent matters. The latter must decide on the request within four full days of the matter being referred to him or her. The foreign national may also request the president of the Administrative Tribunal or his or her representative to engage an interpreter and examine the file containing the documents on which the appealed decision is based. Should the foreign national have no legal representation, he or she may ask the president to immediately appoint a lawyer for him or her.

51. Under article 24 of the same Act, the individual also has the right, on being informed of the order of accompaniment to the border, to notify a lawyer, the consulate of his or her country, or any person of his or her choosing. If an order of accompaniment to the border is annulled by the president of the Administrative Tribunal, the detention procedures provided for in article 34 of the Act must be immediately suspended and a temporary residence permit must be issued to the foreign national until the administration issues a new decision concerning the individual’s status. Such a decision is to be taken by the president of the Administrative Tribunal and may be appealed within one month of the individual being notified.

52. Under article 35 of the Act, when 24 hours have elapsed since the decision to detain a foreign national was issued, the authorities must refer the matter to the president of the court of first instance, in his or her capacity as judge for urgent matters, or to his or her deputy, to decide on the guarding and supervision arrangements to be put in place for the individual to leave Moroccan territory. The decision must be taken in the presence of a representative of the Office of the Public Prosecutor after hearing a representative of the administration who has been summoned to appear in accordance with the law and hearing the individual concerned in the presence of, or after legally notifying, his or her lawyer, if he or she has one. Under article 36 of the Act, the crown prosecutor must go to the place of detention while the foreign national is being held there.

B. Reply concerning paragraph 24 of the list of issues

53. Further to the information contained in its initial report, concerning fundamental legal safeguards for persons deprived of liberty (paras. 140–142), the Government reaffirms its commitment to providing legal protection in line with the following guarantees:

- **The presumption of innocence:** enshrined in article 1 of the Code of Criminal Procedure, it means that any person accused or suspected of committing a crime is presumed innocent until proven guilty according to law, on the basis of a final court

judgment issued following a fair trial in which full legal safeguards have been provided. This principle is now a constitutional rule, as enshrined in articles 23 and 119 of the Constitution.

- **The exceptional nature of deprivation of liberty:** pretrial detention and judicial supervision are exceptional measures under article 159 of the Code of Criminal Procedure, and police custody may only be resorted to if required for the purposes of an investigation, as stated in articles 66 and 80 of the same Code.
- **Specific and precise limits on the duration of deprivation of liberty:** the duration of police custody must not exceed 48 hours and may only be extended by 24 hours. Other time limits may apply in cases of serious crimes such as those relating to State security and terrorism. The duration of pretrial detention may not exceed one month for lesser offences, renewable twice, or two months for serious offences, renewable up to five times. This is in accordance with articles 176 and 177 of the Code.
- **Enhanced judicial surveillance of places of deprivation of liberty:** this applies, for example, to police custody facilities, penitentiaries and mental hospitals. Judges from the Office of the Public Prosecutor are legally required to make a specified number of unannounced visits to these places: at least twice a month for police custody facilities (article 45 of the Code), once a month for penitentiaries (article 616 of the Code) and once every three months for mental institutions (Decree of 1959 on the prevention and treatment of mental illnesses and the protection of patients, art. 25).
- **Informing persons under arrest of their rights in a language they understand and notifying the families:** in accordance with article 66 of the Code of Criminal Procedure, accused persons must be immediately informed of the nature of the charges against them in a language they understand, while, under article 67 of the Code, persons who are placed under arrest have the right to have their family notified of what has happened, whether by a police officer or by any other means, as soon as they are placed in police custody. In practice, these rights are consistently upheld, as reflected in the reports drafted by police officers, which are subject to scrutiny by the relevant public prosecutor's office.
- **The right to a defence and to legal assistance:** article 66 of the Code of Criminal Procedure establishes that persons under arrest have the right to a defence, legal assistance and contact with a relative. They also have the right to appoint a lawyer or to have one appointed to provide them with legal assistance from the outset of detention.
- **The right to physical integrity and the prevention of torture: the judicial authority enforces the legal provisions that pertain to the:** right to physical integrity of all detainees; compliance with guarantees relating to medical examinations for persons in police custody (Code of Criminal Procedure, arts. 73, 74 and 134); and the inadmissibility of confessions obtained using violence or coercion (article 293 of the Code).

C. Reply concerning paragraph 25 of the list of issues

54. Under national law, the recording of information about persons placed in police custody is one of the formal procedures that helps to safeguard the rights of persons placed under arrest. In addition to the police custody registers provided for in article 66 of the Code of Criminal Procedure, other registers are kept on juveniles in custody, the notification of families of persons and juveniles in custody, visits by lawyers, meals provided to persons and juveniles in custody, the state of health of persons in custody, and confiscated property. These registers are numbered and signed. In addition, the draft revised text of the Code of Criminal Procedure provides for the possibility of immediately transferring the contents of the police custody register to a digital, national or regional police custody register, allowing for the centralization of data on persons in police custody at the national or regional levels.

55. In accordance with article 612 of the Code of Criminal Procedure and article 13 of Act No. 23.98, on the organization and management of penitentiaries, penitentiaries keep

detention logs and other types of registers that are numbered, signed and stamped by the judicial and administrative authorities and contain the times and dates of entry into and exit from the institution, the detention order, the detention number and the scheduled release date.

56. All of these registers are subject to monitoring by the judicial and administrative authorities and the national mechanism for the prevention of torture.

57. Under article 23 of Decree No. 1.58.259, on the prevention and treatment of mental illnesses and the protection of patients, every public or private hospital that admits patients with mental illnesses is also required by law to keep a numbered logbook with information on hospital stays. The logbook includes details of patients' civil status and address, dates and other data, all of which are subject to scrutiny by the judicial and administrative authorities.

D. Reply concerning paragraph 26 of the list of issues

58. In addition to the oversight powers mentioned above, under articles 620 and 621 of the Code of Criminal Procedure, there is an oversight committee in each *wilaya* (governorate), prefecture or region composed of representatives of the local, judicial and administrative authorities and of civil society associations. These committees are responsible for monitoring conditions relating to prisoners' health, security, protection from disease, dietary provision, and day-to-day living conditions. They also contribute to their moral re-education and social integration following release. The committees are authorized to visit prisons and are entrusted with visiting juvenile offender institutions. In all cases, the committees submit reports to the Minister of Justice in which they make observations and suggestions.

59. The recently established national mechanism for the prevention of torture within the National Human Rights Council, which enjoys functional autonomy, reviews the treatment afforded in practice to persons deprived of their liberty, conducting regular visits to places of deprivation of liberty. It makes recommendations and proposals with a view to improving the treatment of persons deprived of their liberty and preventing torture.

E. Reply concerning paragraph 27 of the list of issues

60. The right to have access to information in general is guaranteed under article 27 of the Constitution of the Kingdom of Morocco, according to which citizens have the right to information held by the public administration, elected institutions and bodies responsible for overseeing public entities. Act No. 31.13, on the right to information, defines the scope of the right of access to information held by the public administration, elected institutions and public entities.

61. According to article 66 of the Code of Criminal Procedure, a person who has been arrested or placed in police custody has the right to legal assistance and contact with a relative and the right to appoint a lawyer or to request that a lawyer be appointed for him or her in the framework of judicial assistance. The appointed lawyer must be notified of the situation along with the President of the Bar Association. Police officers, as required under article 67 of the Code, must use any means possible to notify the family of the person placed in custody, as soon as the custody decision is taken, and must make a note of the action taken in the police report.

62. According to article 27 of the Act, on the organization and management of penitentiaries, a summary of the custody record must be provided either to the individual concerned or to a person with a direct interest in the case. In addition, information concerning the status of a detainee may be submitted to the judicial and administrative authorities that are authorized to review such information.

F. Reply concerning paragraph 28 of the list of issues

63. In carrying out their work, law enforcement authorities must comply with legal standards. In particular, they must record information about persons deprived of liberty in official registers. The registers held by law enforcement authorities must in turn be validated

by the competent judicial authorities when they are reviewed and stamped. They must also be accessible for review by the national mechanism for the prevention of torture. They must be maintained in accordance with the requirements of the Code of Criminal Procedure, as described above and in paragraphs 140, 141 and 152 of the initial report.

G. Reply concerning paragraph 29 of the list of issues

64. With regard to the question of whether there is a database consisting of genetic data on disappeared persons that relatives can use to track their status and identify their remains in the event of death, the Kingdom of Morocco has worked within the framework of the transitional justice process to address past cases of enforced disappearance (that occurred between 1956 and 1999) through the Equity and Reconciliation Commission and the follow-up committee of the National Human Rights Council. Of the cases in which remains were exhumed, the final list of cases requiring DNA identification was compiled, and measures were taken to uncover the truth about what had happened to the persons involved. These measures involved taking samples from the exhumed remains and the families of past disappeared persons and sending them for examination to scientific experts working in specialized national and international laboratories. The results were used to identify some of the disappeared persons and were published by the Equity and Reconciliation Commission and the follow-up committee tasked with implementing its recommendations, as was explained in the initial report and in the relevant paragraphs here above.

V. Measures to protect and ensure the rights of victims of enforced disappearance (art. 24)

A. Reply concerning paragraph 30 of the list of issues

65. As explained in paragraph 168 of the initial report, under article 7 of the Code of Criminal Procedure a person adversely affected by a crime has the right to institute a civil action for physical, material or moral harm caused directly by the crime. This applies to all crimes, including abduction and unlawful detention. Under other articles of the Code, victims have the right to legal and judicial protection and to access to justice in order to claim their rights in connection with a crime.

B. Reply concerning paragraph 31 of the list of issues

66. The Kingdom of Morocco reiterates the information that it provided in paragraphs 87 et seq. of the initial report on the work done by the Equity and Reconciliation Commission to bring the truth to light.

67. Regarding facilitated access to archives, the State wishes to highlight the fact that the right to information held by the administration is guaranteed under article 27 of the Constitution and regulated by Act No. 31.13 of 28 February 2018, on the right of access to information. Furthermore, in continuing to implement the recommendations of the Equity and Reconciliation Commission, the National Human Rights Council has designated a room at its central headquarters as a memorial and a space dedicated to transitional justice. The room contains various reports, publications and reference works on transitional justice. An institutional structure has been established to raise awareness of the Moroccan experience among countries wishing to learn about it, as well as universities and scientific research laboratories.

68. With regard to the excavation of graves and the exhumation and identification of remains, further to the initial report and paragraph 4 above, the Equity and Reconciliation Commission identified the burial places of the victims who were proven by investigators to have died, and the follow-up committee has continued its work to ascertain the presence of and identify remains in the places specified by the Commission. From 2006 to 2010, the remains of 184 persons were exhumed, 44 of which were subjected to genetic analysis in an

international laboratory. This process resulted in the extraction of DNA from 35 samples, which were subjected to genetic analysis. However, it was not possible to extract DNA from the remaining samples due to the DNA being degraded. As technological advances now allow the extraction of DNA from degraded bone samples, genetic testing has continued on the remaining samples from which DNA could not be extracted previously due to insufficient technical resources. The scientific committee responsible for this work decided to submit two of the remaining samples for DNA extraction, and preliminary data received by the National Human Rights Council at the end of July 2023 indicates that the results are positive and that the remains can be identified.

C. Reply concerning paragraph 32 of the list of issues

69. Under articles 40 and 49 of the Code of Criminal Procedure, as soon as it becomes aware of the occurrence of a crime, including any crime suspected of being linked to a disappearance, the Office of the Public Prosecutor must open an investigation and do everything possible to determine the whereabouts of the disappeared person, the circumstances of his or her disappearance, and the legal status of the case. To that end, the agencies involved carry out a series of measures under the supervision of the relevant public prosecutor's office. These measures include:

- Issuing a search notice with a photograph of the disappeared person and circulating it to all relevant security services.
- Establishing the circumstances of the disappearance and conducting all necessary investigations, for example, by taking statements from people, visiting the places in which the disappearance occurred and using technical methods of investigation.

D. Reply concerning paragraph 33 of the list of issues

70. The Government of Morocco reiterates the information provided in its initial report on reparations for victims of past grave violations, as addressed by the Equity and Reconciliation Commission. The Commission's approach was based on a holistic view of the concept of reparation that included redress for individual damage through payment of financial compensation, regularization of legal, administrative and employment status, restoration of physical and mental health, social reintegration, and collective reparations in areas where grave violations were committed or where secret detention centres were known to be located.

71. The number of beneficiaries under the various programmes set up to provide redress for individuals were as follows.

- A total of 20,339 victims and rights holders received 1,309,905,878.93 Moroccan dirhams (DH) in total.
- A total of 20,252 people benefited from the distribution of 9,022 health coverage cards. This cost the general State budget an estimated DH 219,328,000.00.
- A total of 1,502 victims and rights holders benefited from the social reintegration programme. Of these, 183 were integrated into the public and semi-public sectors. Ninety-nine of them were over the age of 40 at the time of their employment and therefore required additional integration efforts. Those integrated are covered by the supplementary pension programme for victims under an agreement signed on 4 May 2021 between the National Human Rights Council, the Government and the Deposit and Management Fund in charge of managing this pension fund.
- A total of 510 victims who had been dismissed from their jobs benefited from regularization of their administrative and financial status.

72. As for the areas that benefited from collective reparations and the amounts allocated to various projects, the National Council for Human Rights, as the responsible body for following up on the recommendations related to collective reparations, has undertaken projects in several regions of Morocco (Figuig, Errachidia, Ouarzazate, Zagora, Tan-Tan,

Azilal, Khemisset, Hay Mohammadi, Ain Sebaa, Al-Hoceima, Nador and Khenifra). It has also mobilized partners to support these projects, concluding multiple agreements with governmental and semi-public institutions and international donors. The total expenditure incurred in relation to reparations for collective damages was DH 159,799,892. Of this figure, 60 per cent was allocated to facilitating access to collective rights and services, 3 per cent to promoting women's human rights, 9.5 per cent to improving income, 7.4 per cent to capacity building, 4.7 per cent to memorialization and 15.3 per cent to financing horizontal interventions and management costs. The projects received funding from various sources: the main contributor was the Office of the Head of Government, which bore 60 per cent of the total cost, followed by international support (from the European Union and the United Nations Development Fund for Women), which covered 25 per cent; the National Human Rights Council, covering 6.6 per cent; the Deposit and Management Fund, contributing 4.8 per cent; and civil society associations, which provided 3.7 per cent.

73. Regarding the allegation that compensation was provided to victims on the condition that cases were closed, no conditions to that effect were included in the statutes of the Equity and Reconciliation Commission, its working methods or the work of the committee responsible for following up on its recommendations, nor were there any restrictions on victims or rights holders resorting to other mechanisms to seek justice and redress.

E. Reply concerning paragraph 34 of the list of issues

74. With regard to legislation on the legal status of missing persons, articles 74, 75 and 76 of the Family Code list the grounds on which an individual declared to be missing ceases to have legal personality and the consequences thereof. Furthermore, articles 324, 325, 236 and 327 of the Code contain provisions on the death of a missing person, insofar as they grant heirs the right to divide the estate left behind. Through these provisions, the Moroccan legislature has determined the circumstances in which missing status can be confirmed and the period of time after which a person can credibly be declared to be missing. It has also clarified which parties have the right to request that a person be declared dead, who is authorized to issue a death notice, and the overall implications of issuing a declaration of missing status or the death of a missing person, as well as the implications of a missing person reappearing after being declared dead.

75. The party authorized to declare the death of a missing person is the judiciary, as stated in article 74 of the Code: "The courts shall rule on the death of a missing person in accordance with article 327 et seq." Therefore, a person who is legally declared dead is a missing person whom a court has declared to be dead because that person has disappeared and there has been no news of him or her. Before the judgment is issued, the missing person is still considered to be alive for the purposes of his or her property, which can therefore only be inherited or divided between the heirs once the person is declared dead. The possibility of the missing person being alive has a bearing on his or her rights, as well as the rights of others, so the benefit of the doubt applies until a decision is made.

76. With regard to measures to address the gender perspective and the needs of women and child relatives of past disappeared persons, the Equity and Reconciliation Commission recognized the universality of human rights and fundamental human rights principles, particularly the principle of equality and non-discrimination on the basis of sex. It adopted a gender perspective as the basis of its work. The results of the Commission's work benefited women, who represent 45 per cent of the beneficiaries of the various reparation programmes. A total of 15 per cent of the direct victims were women. Thus, the amount of compensation allocated to victims took into account gender-related violations and damage and untold suffering, and compensation in the event of a victim's death was distributed based on the principles of equality and fairness, so that it was distributed equally and fairly among male and female children.

VI. Measures to protect children from enforced disappearance (art. 25)

Reply concerning paragraph 35 of the list of issues

77. The Government of Morocco reiterates the information provided in its initial report on this subject and wishes to add that the acts covered under article 25 of the Convention are still defined as crimes and are punishable under articles 470–478 of the Criminal Code. These acts are the following:

- The intentional transport, concealment, removal or substitution of children for one another.
 - The use of violence, threats or deception to abduct, recruit, lure away or transport a minor.
 - The abduction or luring away or attempted abduction or luring away of a child, without the use of violence, threats or deception.
 - The intentional concealment of a minor who has been abducted, trafficked or lured away, or who has run away from his or her legal guardian, or the intentional lending of assistance to a child seeking to run away from those searching for that child.
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