



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

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**Committee on Enforced Disappearances**

**Report submitted by Morocco under article 29 (1)  
of the Convention, due in 2015\***

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



## I. Introduction

1. The Kingdom of Morocco completed the procedure for ratification of the International Convention for the Protection of All Persons from Enforced Disappearance on 14 May 2013,<sup>1</sup> having signed the Convention on 6 February 2007, less than two months after its adoption.

2. The Kingdom of Morocco was eager to submit its initial report, but the process was delayed to some extent by its desire to align the production of the report with efforts to complete the transitional justice process in Morocco. This was largely achieved by late 2018, with the settlement of most cases of disappearance by the National Human Rights Council, an institution which has been aligned with the Paris Principles and which is tasked with monitoring the implementation of the recommendations of the Equity and Reconciliation Commission. In addition, workshops on judicial reform were held in order to meet the requirements of the 2011 Constitution, including a reform of the criminal justice system through amendments to the Code of Criminal Procedure and the Criminal Code. The recommendations of the Equity and Reconciliation Commission and the provisions of the Constitution include explicit requirements regarding the criminalization of enforced disappearance and amendments to other recent legislation with a view to constructing a State based on truth and law. The establishment of a national mechanism for the prevention of torture is a key requirement.

3. The continuous efforts of the Kingdom of Morocco to promote and protect human rights culminated in the adoption in December 2017 of the National Action Plan on Democracy and Human Rights as a strategic reference document, which includes legislative and institutional measures aimed at preventing any serious violation of human rights.<sup>2</sup> The Kingdom also interacts continuously with the United Nations human rights system, particularly the special procedures mechanism pertaining to enforced disappearances. It received a visit by the Working Group on Enforced or Involuntary Disappearances in 2009 and hosted the Group's 108th session in 2016. The public authorities have had direct meetings with the Working Group, the last four having been held in 2018 and 2019. Morocco also communicates continuously with the Working Group, in coordination with the National Human Rights Council, and provides information and data concerning cases of alleged disappearance that have already been addressed in the context of the transitional justice process. It also received visits by the Special Rapporteur on torture in 2012, the Working Group on Arbitrary Detention in 2013 and the Subcommittee on Prevention of Torture in 2017.

4. The present report was prepared by the Ministry for Human Rights and Relations with Parliament (the Ministerial Delegation for Human Rights), in accordance with the guidelines on the form and content of reports under article 29 of the Convention (CED/C/2) and based on a participatory approach comprising all components of the public authorities, including governmental sectors and national institutions and agencies, particularly the National Human Rights Council, which submitted the latest data in its possession in March 2020.<sup>3</sup> In addition, Parliament and relevant civil society organizations,<sup>4</sup> including organizations representing families of victims, that have been actively involved in the transitional justice process for more than a decade and a half, contributed to the preparation of the report.

5. The Kingdom of Morocco, in submitting the present report on measures taken to implement the Convention, underscores that it has succeeded in terminating serious human rights violations, including the crime of enforced disappearance, by virtue of the State's high level of political determination and the country's achievements in the area of transitional justice, as a result of the activities of the Equity and Reconciliation Commission and the

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<sup>1</sup> The Convention was published in Official Gazette No. 6229 on 10 February 2014.

<sup>2</sup> See annex 1.

<sup>3</sup> The 2019 annual report of the National Human Rights Council on the human rights situation in Morocco, "The human rights situation within an emerging model of freedoms", p. 73.

<sup>4</sup> In June 2021, the Ministry for Human Rights and Relations with Parliament organized a consultative meeting with 28 civil society organizations, followed by two consultative meetings with the Committees on Justice, Legislation and Human Rights of the House of Representatives and the House of Counsellors.

human rights principles enshrined in the 2011 Constitution. It may be stated, in the context of the State's fulfilment of its obligations under the Convention and more than a quarter of a century since the release of the surviving forcibly disappeared persons, that the level of awareness and vigilance regarding every allegation of enforced disappearance has increased among political parties, civil society organizations, the media and university institutions. This is perhaps the country's most significant achievement within its political and constitutional system and is attributable to the gradual process of reconciliation aimed at establishing, in a cumulative manner, the foundations of a State that is based on the rule of law and that guarantees human rights.

6. The definitive eradication of the crime of enforced disappearance in the practices of State agencies and law enforcement officials entered a new phase several years ago. The aim is to establish a State based on the rule of law and security governance within the framework of structured reform procedures that are in line with the country's constitutional, political, legal, regulatory, educational, cultural, preventive and diplomatic commitments aimed at ensuring full cooperation with international human rights mechanisms in the context of treaty obligations.

## **II. The general legal framework**

### **A. The constitutional and legislative framework**

7. The 2011 Constitution, adopted pursuant to the outcomes of the Moroccan transitional justice process, lays the foundations for protection against enforced disappearances. Article 23 stipulates that "arbitrary or secret detention and enforced disappearance are crimes of the utmost gravity" and that "no one may be arrested, detained, prosecuted or convicted except in cases and in accordance with the procedures laid down by law".

8. This serious violation was constitutionally defined in terms of three determinants, the status and nature of which are in line with provisions relating to public order. The offence of enforced disappearance is described as a crime of the utmost gravity entailing the most severe penalties. It is also described as secret, since it meets the description adopted during the transitional justice process that addressed enforced disappearances.<sup>5</sup>

9. The criminalization of enforced disappearance falls within a consistent constitutional framework designed to protect human rights and address grave violations. Article 23 (3) of the Constitution stipulates that: "All arrested persons shall have the right to be informed promptly, in a comprehensible manner, of the grounds for their arrest and of their rights, including the right to remain silent. They shall also be entitled to benefit, as soon as possible, from legal aid and to communicate with their relatives, in accordance with the law."

10. The criminalization of enforced disappearance falls within the constitutional framework of the same article, which stipulates in its final paragraph that: "The crime of genocide, all other crimes against humanity, war crimes, and all gross and systematic violations of human rights shall be punishable by law." Accordingly, the constitutionally criminalized offence of enforced disappearance, which is described as a crime of the utmost gravity, is legally and jurisprudentially equivalent to crimes against humanity and war crimes in terms of its gravity and impact.

11. Constitutional protection against enforced disappearance is reinforced, in addition to the provisions quoted in the previous two paragraphs, by provisions set forth in the preamble to the Constitution, for instance by the statement that "international treaties shall have primacy over domestic law as soon as they are promulgated". In addition, article 6 (1) stipulates that "the law is the supreme expression of the will of the nation" and article 6 (3) stipulates that "the constitutionality of legal norms, their hierarchy and the obligation to promulgate them are deemed to be binding principles".

<sup>5</sup> More details are provided in the section concerning article 2.

12. With a view to guaranteeing full protection, article 20 of the Constitution stipulates that: “The right to life is a fundamental right of all human beings and is a right protected by law.” In addition, article 22 (3) stipulates that: “The practice of any form of torture by any person is a crime punishable by law.” With a view to guaranteeing full compliance with these provisions, article 110 of the Constitution stipulates that: “Magistrates of the Office of the Public Prosecution shall apply the law and shall abide by the written legal instructions issued by the authority to which they belong.” Article 117 stipulates that: “Judges shall protect the freedoms and the judicial security of persons and groups, and shall guarantee the application of the law.”

13. In addition to the measures that the Kingdom of Morocco has been taking to protect all persons from enforced disappearance through the National Human Rights Council, which was established in 1990, the country’s criminal legislation adopts a composite approach to the crime of enforced disappearance. This approach is reflected in the draft criminal code, which is currently before Parliament, and in the draft code of criminal procedure, which endeavour to align criminal law and procedures with international norms.<sup>6</sup>

## **B. Ratified treaties and their status in the Constitution and in legislation**

14. In addition to the International Convention for the Protection of All Persons from Enforced Disappearance, which it has ratified and concerning which the present report is being submitted, the Kingdom of Morocco has acted early and gradually to accede to international treaties on human rights and humanitarian law, the most important of which are listed below:

- The International Convention on the Elimination of All Forms of Racial Discrimination was ratified on 18 December 1970, and 18 reports have been submitted and discussed;
- The International Covenant on Economic, Social and Cultural Rights was ratified on 3 May 1979, and four reports have been submitted and discussed;
- The International Covenant on Civil and Political Rights was ratified on 3 May 1979, and six reports have been submitted and examined;
- The International Convention on the Elimination of All Forms of Discrimination against Women was ratified on 21 June 1993, and four reports have been submitted and discussed;
- The International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on 21 June 1993, and four reports have been submitted and discussed;
- The Convention on the Rights of the Child was ratified on 21 June 1993, and four reports have been submitted and discussed;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was ratified on 21 June 1993, and the initial report has been submitted and discussed;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified on 2 October 2001. Two reports have been submitted and discussed, and they were incorporated into the third and fourth reports on the Convention;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified on 22 May 2002, and the initial report has been submitted and discussed;

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<sup>6</sup> Detailed information relating to articles 1, 2, 4, 5, 6, 7 and 8 and other information of practical interest concerning national achievements in the area of transitional justice will be provided in connection with articles 2, 12 and 24.

- The International Covenant on the Rights of Persons with Disabilities was ratified on 18 April 2009, and the initial report has been submitted and discussed;
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities concerning individual communications was ratified on 8 April 2009;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified on 24 November 2014.

15. Recommendations concerning transitional justice in Morocco have aimed at encouraging the country's adherence to international human rights law, in the light of the human rights-related provisions of the Constitution. In fact, the recommendations of the Equity and Reconciliation Commission serve as a key pillar of constitutional reform and were mentioned by the Head of State, His Majesty the King, in a speech delivered on 9 March 2011.

16. The preamble to the Constitution – which is an integral part thereof and provides basic guidance in terms of principles and regulations – stipulates that the Kingdom of Morocco “shall ensure that international treaties ratified by Morocco, in accordance with its Constitution, the laws of the Kingdom and its basic national identity, are given primacy, upon promulgation, over national legislation, and it shall align its legislation with the requirements stemming from their ratification”. This provision enshrines the principle of the supremacy of international treaties and requires Morocco to ensure that its national legislation is compatible with the international treaties that it has ratified, in accordance with the Constitution.

17. In line with this requirement, the following paragraph was added to article 5 of the Code of Criminal Procedure: “A statute of limitations shall not be applicable to criminal proceedings concerning crimes in respect of which domestic law or an international agreement ratified by Morocco and promulgated in the Official Gazette does not provide for a statute of limitations.”<sup>7</sup> Furthermore, judges can use the provisions of an international agreement ratified by Morocco when interpreting facts, explaining the legal basis for judgments and rulings and aligning or realigning them with the law, as necessary. Several rulings have been handed down on the basis of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

### C. Cases of enforced disappearance brought before the courts

18. No case of enforced disappearance based on the definition contained in the Convention has been recorded since Morocco ratified the International Convention for the Protection of All Persons from Enforced Disappearance. This is confirmation that Morocco has finally prohibited grave violations of this kind in law and in practice.

### D. Authorities and institutions responsible for implementing the Convention

19. The matters dealt with in the Convention and the obligations arising therefrom fall within the jurisdiction of bodies responsible for addressing the crime of enforced disappearance at the following levels:

- **The Office of the Public Prosecution** is required to supervise the work of public prosecutors in the various courts, to monitor the exercise of their authority during the course of public legal proceedings, and to supervise court cases in which the Office of the Public Prosecution is a party.
- **Trial judges** serve as a second party responsible for addressing enforced disappearance and implementing the Convention, in accordance with the powers entrusted to them by the Constitution and the law and the requirement to guarantee due process.

<sup>7</sup> Act No. 35.11 amending and supplementing Act No. 22.01 on The Code of Criminal Procedure promulgated on 27 October 2011.

- **Other administrative and judicial authorities** are required, within their areas of jurisdiction, to provide the Office of the Public Prosecution with the data, information and reports in their possession, and to assume responsibility for the implementation of the law by their staff. The Ministry of the Interior, the General Directorate for National Security, the Inspectorate General of Auxiliary Forces, the National Judicial Police, the Royal Gendarmerie and the General Delegation for Prison Administration and Reintegration are required, each within its area of competence, to ensure the implementation of the Convention.
- **Judicial police officers**, under the supervision of the Office of the Public Prosecution, also undertake investigations and inquiries on all matters relating to allegations or instances of enforced disappearance.
- The governmental authority responsible for judicial affairs oversees bilateral judicial cooperation on criminal matters. All other governmental authorities responsible for foreign affairs, international cooperation, health, the family, childhood and migration are tasked with implementing the human rights associated with the Convention and with preparing the report.
- **The Ministry for Human Rights** is responsible for promoting and protecting human rights in general, for coordinating with national authorities, bodies and institutions, and for cooperating with civil society organizations in the preparation of the present report. It also engages with the Committee on Enforced Disappearances and interacts with the Working Group on Enforced or Involuntary Disappearances regarding allegations that it has received.

20. The **National Human Rights Council** is a multilateral and independent national institution which, pursuant to article 161 of the Constitution, is tasked with addressing all issues relating to the defence and protection of human rights and freedoms, with guaranteeing and promoting their full exercise, and with preserving the dignity of citizens and their individual and collective rights and freedoms.

21. In the same context, the Kingdom of Morocco conducted an unprecedented national dialogue on reform of the judicial system in 2012 and 2013, which led to the adoption of the “Charter on the Reform of the Judicial System”, which is a national reference document on the legal and institutional framework that protects human rights against serious violations. The Charter includes, inter alia, the following:

- It rationalizes the way in which legal measures that have an impact on freedom are used, ensuring that they are applied solely where the law so requires, particularly arrest, detention, border closure, withdrawal of passports and other measures affecting the private lives of individuals, the sanctity of homes and the confidentiality of correspondence;
- It envisages action to address human rights violations;
- It includes provision for preventive measures to ensure that such violations are addressed in a determined and rigorous manner;
- It envisages vigorous action to combat torture, arbitrary detention and enforced disappearance;
- It protects the rights of prisoners by ensuring compliance with the legal requirements governing inspections, and by improving detention conditions.

## **E. Cases of enforced disappearance addressed by the Equity and Reconciliation Commission**

22. The Equity and Reconciliation Commission concluded its work with a final report containing a comprehensive inventory of the serious human rights violations committed in the country during the period from 1956 to 1999. The report also contained the results of the investigations conducted by the Commission, which ascertained the fate of a significant number of disappeared and missing persons. The Commission recommended completing

investigations into cases of enforced disappearance, missing persons and victims of social riots concerning which no result has been reached.

23. A total of 805 cases of enforced disappearance were addressed and clarified by the Equity and Reconciliation Commission and by a Follow-up Committee under the National Human Rights Council responsible for implementing the Commission's recommendations. It should be noted that this number exceeded the number of requests submitted by victims' families to the Commission and the number submitted by national and international non-governmental organizations (NGOs). The cases have been categorized as follows:

- 702 cases have been clarified by the Equity and Reconciliation Commission and by the Follow-up Committee responsible for implementing its recommendations;
- 101 cases have been clarified pending receipt of the necessary legal documents to identify the rights holders;
- In two cases the necessary investigations failed to ascertain the degree of involvement of a State body in the disappearance or its responsibility for the disappearance.

24. The Equity and Reconciliation Commission failed to resolve 66 cases and recommended that investigations should continue. The Follow-up Committee launched investigations aimed at clarifying the remaining cases, acquired data on most of them and published the names and other data in a report issued in 2010. Only nine cases remained pending. After publishing its report, the Follow-up Committee continued its investigations and established the following facts:

- There is strong evidence of decease in six cases;<sup>8</sup>
- One case bears no relationship to enforced disappearance;<sup>9</sup>
- The investigations in two cases were unable to produce firm facts, accurate data or reliable assurances of decease.<sup>10</sup>

### **III. Information on the implementation of the articles of the Convention**

#### **Article 1**

#### **Exceptional circumstances and enforced disappearance**

25. Article 59 of the Constitution stipulates that Parliament may not be dissolved during the exercise of exceptional powers. This provision is clearly not limited to the international concept, which is applicable solely to exceptional states of emergency, in accordance with the provisions of article 4 of the International Covenant on Civil and Political Rights. The "exercise of exceptional powers" means that Parliament continues to exercise constitutional supervision over the governmental authority in its management of exceptional circumstances.

26. Accordingly, the Constitution ensures that basic freedoms and rights continue to be safeguarded and guaranteed in practice, and that restrictions imposed in exceptional circumstances are removed once the grounds for such restrictions no longer exist. The non-dissolution of Parliament remains, in any case, the most effective safeguard against enforced disappearance and other gross human rights violations, since the Government is held accountable by means of urgent questioning, assignment of exploratory missions and the establishment of fact-finding teams. The role of Parliament is supplemented by the prerogatives of the judiciary and the role assigned to the National Human Rights Council in guaranteeing a direct response to serious violations.

<sup>8</sup> This relates to the following cases: Atkou Ahmed Ben Ali, Akoudar El-Yazid, Al-Salihi Al-Madani, Mehdi Ben Barka, Hussein el-Manouzi, Abdelhak al-Rouissi.

<sup>9</sup> The case of Omar el-Wasouli.

<sup>10</sup> The cases of Mohammed Islami and Abdul Rahman Darwish.

27. Following the terrorist incidents that occurred in Morocco in May 2003, the legislature adopted Act No. 03.03 on combating terrorism, which was promulgated in preparation for the launching of the transitional justice process. The Act's procedural rules guaranteeing a fair trial were incorporated into the Code of Criminal Procedure. In view of the seriousness and complexity of terrorist crimes and the careful investigations that they require, the legislature included a special in the Act whereby suspects can be held in custody for up to 96 hours. This period can be extended twice by a written order from the Office of the Public Prosecution, after suspects have been heard and their condition has been assessed (article 80 of the Code of Criminal Procedure). The rights of suspects in such circumstances are subject to the rules of the aforementioned Act.

## **Article 2**

### **Definition of enforced disappearance**

28. Although the Moroccan Criminal Code does not define enforced disappearance in the terms set forth in the Convention, articles 436 to 440 contain a body of provisions intended to protect persons against abduction, wrongful arrest and imprisonment. Article 436 addresses this issue under four categories: abduction, arrest, detention and confinement without a warrant from the competent authorities. The article also addresses the characteristics – in terms of appearance or behaviour – of the perpetrators of abduction or arrest: for example, whether they wear uniform or carry an official insignia and/or use a false name or present a forged warrant from the public authorities, or if they use some form of motorized transport.

29. As a way of reinforcing these provisions, article 436 refers to article 384, under which it is a criminal offence to wear clothing that resembles official uniform. The reference here helps identify the public official who might commit an offence of abduction, arrest or detention without a warrant from the competent authority. In fact, article 384 identifies the clothing that, by resembling official uniform, might mislead the public. This includes the Royal Moroccan Armed Forces, the Royal Gendarmerie, the regular police, the customs or any official holding the authority of the judicial police or of auxiliary forces.

30. Article 436 includes a further provision to protect victims, including those of offences committed for personal motives or to satisfy personal whims. Article 437 provides greater protection for victims of unwarranted abduction, arrest, detention and imprisonment if the offence is being perpetrated for the purposes of taking hostages, either to prepare or expedite the commission of a crime or misdemeanour or to facilitate the escape or impunity of the perpetrators. The same provisions apply if the actions undertaken serve to carry out an order or fulfil a condition, notably that of demanding a ransom. In the same context, article 438 addresses the issue of physical threats against victims and article 440 the treatment accorded to a victim of abduction.<sup>11</sup>

31. It should be noted that legislators have not defined “public official” very narrowly. Indeed, under article 224 of the Criminal Code, that term includes anyone who undertakes a task in the interests of the State, the public administration, municipal offices or any other institution that operates economically or socially on behalf of the State. This element constitutes a further safeguard to be applied when identifying a person who may be acting with the authorization, support or acquiescence of the State.

32. While current domestic law contains a composite definition of violations, the draft criminal code, which is currently before Parliament, includes a definition of the offence of enforced disappearance that is consistent with the definition contained in the Convention and envisages incremental penalties commensurate with the gravity of the offence (art. 231 (9) to (15) of the draft criminal code). This will be discussed under article 4 below.

33. As concerns the experience of transitional justice in Morocco, during the term of its mandate, which lasted from 2004 to 2005, the country's Equity and Reconciliation Commission adopted the internationally recognized definition of transitional justice. Acting within its temporal jurisdiction of 1956 to 1999 and its jurisdiction *ratione materiae*, which

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<sup>11</sup> Information about penalties is to be found in the present report, under article 7.



primarily concerned enforced disappearance and other serious human rights violations, the Commission was able to make the concept of enforced disappearance, as globally understood, a basic element of its work as it sought to uncover the truth; to identify political, legal and moral responsibilities for past occurrences; to provide redress to victims; and to establish guarantees of non-recurrence.

34. The Moroccan transitional justice system addressed the question of enforced disappearance over two stages. Firstly, during the mandate of the Independent Arbitration Commission for Compensation (2000–2003) which focused on the material and moral harm endured by victims and rights holders who suffered enforced disappearance and arbitrary detention, the following definition was formulated: “Action on the part of State agencies consisting in unlawfully taking specific persons, depriving them of freedom, detaining them incommunicado in a secret location. Thus, it is not known whether the persons concerned remain alive, nothing is known about their fate and they are placed outside the protection of the law.” This definition of enforced disappearance went beyond the legal definition enshrined in the Criminal Code; indeed – by emphasizing the deprivation of liberty, the secrecy of the place of detention and the fact that the person concerned remains incommunicado and outside the protection of the law – it came close to the globally recognized definition.

35. In formulating this definition, the Independent Arbitration Commission for Compensation started from the following a frame of reference: “Before the Arbitration Commission proceeds to issue its rulings it is to begin by identifying the various cases of enforced disappearance and arbitrary detention, in a manner consistent with domestic legislation and globally recognized standards. In addition, it is to classify all applications and subject them to a preliminary examination. At a second stage, it is to examine information published about secret detention facilities and look into comparable experiences in countries of South America and in the Republic of South Africa. It is also to collect information via a scrupulous reading of sentences handed down in major political trials, which helps to address cases and identify facts accurately, and it is to consider examples of jurisprudence from the European Court of Human Rights (ECHR).” This frame of reference for the definition of the most serious violations became the basis for awarding compensation and for identifying other cases of gross violation of human rights.

36. The second stage of the transitional justice system – i.e., the work of the Equity and Reconciliation Commission over 23 months (January 2004 to November 2005) – was based on the following normative definition of enforced disappearance: “Enforced disappearance, which is a composite offence that affects a large number of internationally protected fundamental rights, is one of the serious violations that falls within the mandate of the Equity and Reconciliation Commission. It is all the more serious as the harm resulting therefrom goes beyond the immediate victim and affects their family, friends and, indeed, the whole of society. In fact, by threatening the right to life, the purpose of such a practice is to instil fear and terror among the population.”<sup>12</sup>

37. The Equity and Reconciliation Commission has formed its own view of the elements that go to make up enforced disappearance, which are as follows:

- Enforced disappearance is contrary to human rights obligations, as internationally recognized and as adopted in the preamble to the country’s 1996 Constitution;
- Enforced disappearance is contrary to the obligations of Morocco under international human rights law;
- Enforced disappearance involves failing to acknowledge or reveal the fate of victims;
- Enforced disappearance is preceded by unlawful arbitrary detention;
- Enforced disappearance is not monitored by the courts;

<sup>12</sup> Final report of the Equity and Reconciliation Commission: Volume II Truth and Responsibility for Violations, p. 11.

- Enforced disappearance involves abducting, arresting or detaining persons in a secret location and against their will, depriving them of liberty and placing them outside the protection of the law;
- Enforced disappearance takes place in irregular detention facilities;
- The violation is perpetrated unlawfully by State officials, or by individuals or groups acting on behalf of the State.

38. According to the statutes of the Equity and Reconciliation Commission: “Enforced disappearance involves the abduction, arrest or detention of persons in a secret location and against their will, and their unlawful deprivation of liberty, by State officials, or by individuals or groups acting on behalf of the State, then failing to acknowledge or reveal the fate of victims, thereby placing them outside the protection of the law.”<sup>13</sup>

39. The task forces of the Equity and Reconciliation Commission – i.e., the investigative team, the reparations team and the research and study team – have been careful to apply this definition in all their areas of operation. It was applied, for instance, by the reparations team when dealing with cases of enforcedly disappeared persons who had been released, or with their rights holders. As concerns individual reparations, under the quasi-judicial operation of transitional justice in Morocco, when the Equity and Reconciliation Commission examined the relevant documentation and found that the case of Mr. ... was one of enforced disappearance under domestic legislation and under the international human rights norms and treaties ratified by Morocco and incorporated into the preamble of its Constitution; and when it found that the disappearance was preceded by unlawful detention, that it was not ordered by the courts, that it took place without trial and in an irregular detention facility, that serious harm was caused to the person’s family and relatives and that there was a complete lack of legal foundation, then it determined that rights holders were deserving of compensation for the material and moral harm suffered.

40. Another example worth recalling is that when the Equity and Reconciliation Commission examined the relevant documentation and found that the case of Mr. ... was one of enforced disappearance – which involves the abduction, arrest or detention of persons in a secret location and against their will, and their unlawful deprivation of liberty by State officials, or by individuals or groups acting on behalf of the State, then failing to acknowledge or reveal the fate of victims, thereby placing them outside the protection of the law – then it determined that that represented a violation of domestic legislation and of international human rights treaties.

41. This definition, then, has served as the basis for the issuance of hundreds of arbitration rulings for individual redress; i.e., quasi-judicial compensation rulings that were part of the operation of the national system of transitional justice, and that included a number of the aforementioned resolved cases of missing persons. Thus, thanks to the exceptional results of transitional justice, the definition of enforced disappearance has taken root in legal culture and public law in Morocco, and society, government, Parliament and the judiciary have become familiar with the concept of forced disappearance to describe certain allegations of arrest or detention.

### **Article 3**

#### **Other acts similar to enforced disappearance**

42. According to article 218 (1) of the Criminal Code, acts similar to enforced disappearance such as arrest, detention, abduction or any form of deprivation of liberty, which may be committed by individuals or groups without the authorization, support or acquiescence of the State, are acts of terrorism, and inquiries and investigations are conducted under the relevant provisions of the Code of Criminal Procedure.<sup>14</sup>

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<sup>13</sup> Article 5 of Royal Decree No. 1.04.42 of 25 Safar A.H. 1425 (10 April A.D. 2004) ratifying the statutes of the Equity and Reconciliation Commission.

<sup>14</sup> Information given below under articles 9, 10, 11, 12 and 15 deals with the norms and safeguards surrounding inquiries and investigations into acts involving some form of deprivation of liberty.

43. Under domestic law, any person whose rights have been violated, by anyone and in any way, including through enforced disappearance, have the right to submit a complaint before the competent judicial authority; i.e., directly to an investigating judge or a court. In that context, the head of the Office of the Public Prosecution, which has a human rights unit as part of its structure, has issued the following practical guidance<sup>15</sup> for judicial officials:

- They are urged to dedicate particular attention to complaints from citizens concerning alleged violations of human rights. Such complaints are to be dealt with positively by examining them without delay, expediting inquiries, issuing appropriate legal decisions within the shortest possible time, then using all possible means to inform the parties concerned of the outcome;
- They are urged to be resolute in addressing violations of rights and freedoms, to order inquiries and investigations without delay and not to hesitate to use the authority vested in them by law, particularly in cases involving allegations of torture or arbitrary detention;
- Emphasis is given to the importance of judicial oversight to verify the validity of the conditions in which people are placed in mental hospitals;
- They are urged to make regular visits to check prison conditions and compile reports thereon, to verify the legality of detention and to check the extent to which legally prescribed rights are being respected;
- Emphasis is given to positive interaction with the national protection mechanisms that are part of the National Human Rights Council;
- In the same context, in 2019 the head of the Office of the Public Prosecution issued a guide for judges regarding the prevention of torture and other cruel, inhuman or degrading treatment or punishment. The provisions contained in the guide serve as instructions for officials in the Office of the Public Prosecution.<sup>16</sup>

#### **Article 4**

##### **Enforced disappearance in the draft criminal code**

44. Quantitative and qualitative advances in the field of human rights made it possible to include the outcomes of the process of transitional justice into the country's 2011 Constitution. The draft criminal code remains consistent with that development, with the offence of enforced disappearance being addressed in specific provisions contained in chapter II section V entitled "Crimes and misdemeanours affecting persons' rights and freedoms". In that chapter, the provisions criminalizing enforced disappearance are placed after those concerning abuse of authority on the part of public officials and directly before those concerning torture.

45. In the draft, enforced disappearance means "any arrest, detention, abduction or any form of deprivation of liberty by State officials or persons acting with the authorization, support or acquiescence of the State, which is followed by a refusal to acknowledge that the person has been deprived of liberty or by a concealment of the person's fate or whereabouts, thereby placing that person outside the protection of the law. The offence is punishable by a

<sup>15</sup> Between 2017 and 2019, the head of the Office of the Public Prosecution issued a number of circulars and leaflets aimed at ensuring a more effective implementation of criminal policy, including accountability for human rights violations:

- Circular No. 5 S/RNA, 12 January 2018
- Leaflet No. 1, 7 October 2017
- Circular No. 4 S/RNA, 2 November 2017
- Circular No. 21 S/RNA, 14 May 2018
- Circular No. 6 S/RNA, 15 November 2017
- Circulars Nos. 40 and 44 S/RNA, 1 and 16 October 2019.

<sup>16</sup> Circular No. 6 S/RNA, 28 January 2020.

term of imprisonment of between 10 and 20 years and a fine of between 10,000 and 100,000 Moroccan dirhams (DH).” (art. 231 (9)).

46. According to article 231 (10): “A term of imprisonment of between 15 and 20 years and a fine of between DH 20,000 and 200,000 is to be imposed, if the enforced disappearance is committed:

- (a) Against a public official while in the course of exercising his or her duties or by reason thereof;
- (b) Against a witness, victim or civil party in order to prevent them from making a statement, filing a complaint or bringing legal action;
- (c) By a group of persons acting as perpetrators or accomplices;
- (d) Against a group of persons at the same time;
- (e) With the premeditated use of weapons or threat of their use;
- (f) In order to threaten the perpetration of a crime against persons or property;
- (g) While wearing uniform or carrying an official insignia – or that resemble such – as set forth in article 384 of the Criminal Code and/or using a false name or presenting a warrant from the public authorities that has either been cancelled or forged;
- (h) If some form of motorized transport is used.”

47. “A term of imprisonment of between 20 and 30 years and a fine of between DH 50,000 and 500,000 is to be imposed if the enforced disappearance is committed against a minor under the age of 18; against a person who experiences difficulties due to advanced age, illness, disability or some physical or mental impairment, if those difficulties are apparent or the perpetrator is aware of them; or against a pregnant woman, if the pregnancy is evident or the perpetrator is aware of it. The same penalty is applicable to anyone who seizes a child who is a victim of forced disappearance or a child one or both of whose parents are victims of enforced disappearance, and to anyone who forges, conceals or destroys documentation regarding the identity of such minors. The penalty is likewise applicable if the enforced disappearance was preceded, accompanied or followed by torture or sexual assault; if it unintentionally resulted in the death of the victim or in the case of repeat offences of enforced disappearance” (art. 231 (11)).

48. “A term of imprisonment of between 1 and 5 years and a fine of between DH 5,000 and 50,000 is to be imposed on anyone who, aware that a crime of enforced disappearance has been committed or attempted, fails to inform the judicial or administrative authorities. This provision is not applicable to the perpetrator’s relatives or relatives by marriage, up to the fourth degree, unless the victim of the offence is a minor under the age of 18, a pregnant woman or a person with a disability or who is known to have reduced mental capacity” (art. 231 (12)). Moreover: “The same penalty is applicable to anyone who knowingly provides premises, equipment or other means to arrest, detain, abduct or transport the victim” (art. 231 (14)).

49. However, mitigating circumstances may be recognized for anyone who, of their own accord, puts an end to the forced disappearance, as per the provisions set forth in article 231 (13), such as by releasing the victim in good health, with the penalty being reduced according to how much time has passed since the day of the arrest, detention or abduction of the victim.

## **Article 5**

### **Enforced disappearance and crimes against humanity**

50. Article 23 of the Constitution stipulates: “Genocide and other crimes against humanity, war crimes and all grave and systematic violations of human rights are punishable by law.” This reference to the most serious infringements of international human rights law and international humanitarian law could not but be included in the nation’s supreme charter, also in the light of the political will of the State, the increasing involvement of Morocco in the

international human rights system and the outcome of the work of the Equity and Reconciliation Commission.

51. Under the Constitution, enforced disappearance constitutes a grave violation akin to that described in article 5 of the Convention. In fact, chapter II of the draft criminal code (“Crimes and misdemeanours affecting persons’ rights and freedoms”) includes strict definitions and envisages severe penalties for offences such as abuse of authority on the part of public officials, torture, migrant smuggling, organ trafficking and human trafficking.

52. In addition to the information provided under article 4, above, it should be noted that the draft criminal code considers enforced disappearance to be one of the five most serious acts constituting crimes against humanity. And it is punishable by life imprisonment when knowingly committed as part of a widescale group attack against civilians who are arrested, detained or abducted with the intention of refusing to acknowledge that they have been deprived of liberty or to provide information about their fate or whereabouts, thus placing them outside the protection of the law for an extended period of time (art. 448 (4)).

## **Article 6**

### **Criminal responsibility**

53. The Criminal Code, which contains general rules governing criminal liability, is applicable to the offence of enforced disappearance. Under article 132 of the Code, all persons of sound mind and capable of discernment are personally responsible for any crimes they might commit and for any participation in or attempt to commit crimes or misdemeanours.

54. Articles 128 to 131 of the Criminal Code clearly and unequivocally explain the various forms involvement and participation in offences can take. On the basis of those provisions, persons are considered to be co-offenders in enforced disappearance if they personally commit any of the acts leading to the physical realization of the offence, while they are considered accomplices if they were not involved in the execution of the offence but undertook one of the following actions:

- Ordered or instigated the deed by gift, promise, threat, abuse of authority or jurisdiction, or criminous fraud or deception;
- Provided weapons, equipment or any other means used in the commission of the offence, knowing that such articles would be used for that purpose;
- Knowingly aided or assisted the perpetrators in acts that prepared or facilitated the offence;
- Aware of their criminal conduct, habitually provided lodging, shelter or a meeting place to one or more malefactors who engage in banditry or violence against State and public security and against persons and property.

The Code envisages equivalent penalties both for the main perpetrator of an offence and for accomplices.

55. As concerns the criminal responsibility of subordinates and superiors for acts of enforced disappearance, there is no provision in Moroccan domestic law that admits impunity on grounds of carrying out superior orders. In this connection, enforced disappearance is subject to the same legal provisions as those applied in cases of torture, vis-à-vis the characterization of the public official who commits an offence against the well-being and freedom of the individual. Those provisions – which are contained in articles 224–232 and had previously been incorporated into the Code in preparation for the process of transitional justice – are strictly applied given that the two offences have the same subject and form. Torture, in fact, is a grave violation that is akin to enforced disappearance in that it affects the right to life, physical integrity and personal security. This was the conclusion established by the Equity and Reconciliation Commission in the course of transitional justice in Morocco, in line with relevant international standards.

56. Under the aforementioned articles, elements and characterizations that relate to the crime of torture but are also applicable to enforced disappearances include:

- In the application of criminal legislation, a public official is a person – however denominated – who is invested with a public function or task, even if on a temporary basis or without pay, in which function or task the person concerned contributes to the service of the State, the public administration, municipal offices, public institutions or bodies that serve the public interest (art. 224 (1));
- Account will be taken of a person’s status as a public official at the time of the commission of an offence; that status will be considered to subsist, even if the person’s service as a public official has come to an end, if it facilitated or enabled the commission of the offence (art. 224 (2));
- Any judge, public official, or person invested with authority or public powers who orders or personally undertakes an arbitrary act that violates the personal freedom or the civil rights of one or more citizens is liable to be stripped of his own civil rights;
- However, if it is shown that the person concerned acted on the basis of orders received from his superiors regarding a matter that falls within their jurisdiction and on which he is required to obey, then the person concerned has grounds for exemption from punishment which, in such a case, is applied to only the superior who issued the order;
- If the arbitrary act or the violation of individual freedom was committed or ordered for personal motives or to satisfy personal whims, the penalties imposed are to be those prescribed in articles 436 to 440 (art. 225);
- The offences punishable under article 225 entail personal civil liability for the perpetrator. They also entail responsibility for the State, which, however, retains the right to have recourse to the offender (art. 226);
- Any public official, person holding public powers or person invested with public authority who is acting as a judicial or administrative police officer and who refuses or neglects to respond to a request the purpose of which is to verify a case of illegal arbitrary detention – whether in places designated for detention or in any other location – and who cannot show that he has duly communicated the matter to a higher authority, is liable to be stripped of his civil rights (art. 227);
- Any prison supervisor or guard of a prison or detention centre who admits a detainee without legal documentation justifying such admittance, as per article 653 of the Code of Criminal Procedure; or who refuses to produce a detainee for authorities or persons who have the right to see that detainee, as per articles 600 to 622 of the Code of Criminal Procedure, in the absence of an order from an investigating judge to the effect that the detainee in question must be kept incommunicado; or who refuses to produce the prison registers to persons who have the right to examine them, is considered to be culpable of the offence of arbitrary detention and is liable to a term of imprisonment of between 6 months and 2 years and a fine of between DH 200 and 500 (art. 228).

57. In addition to the foregoing, Moroccan legislators have imposed upon all persons who learn that an offence has taken place – be they superiors or subordinates – an obligation, on pain of criminal liability, to notify the competent authorities. Article 42 of the Code of Criminal Procedure reads: “All extant authorities and all public officials who, in the course of their duties, learn that an offence has been committed must immediately inform the Crown Prosecutor or the Prosecutor-General of the King, providing all information, records and documents relevant to the offence.” According to article 43 of the Code: “Anyone who witnesses an offence that affects public order or the life or assets of an individual must inform the Crown Prosecutor, the Prosecutor-General of the King or the judicial police. If the victim is a minor or a person with a mental disability, the report may be made to any competent judicial or administrative authority.” Under article 299 of the Criminal Code: “Anyone who, aware that a crime has been committed or attempted, fails to inform the competent authorities, is liable to a term of imprisonment of between 1 month and 2 years and/or a fine of between DH 200 and 1,000.”

## Article 7

### Penalties envisaged for abduction and detention

58. Legislators in Morocco have outlawed abduction, imprisonment and detention, acts that were clearly described in the information given under article 3 above. The relevant provisions are contained in articles 218 (1) and articles 436 to 440 of the Criminal Code, which envisage penalties commensurate with the gravity of the offence. Under article 436: “A term of imprisonment of between 5 and 10 years is to be imposed on anyone who, without a warrant from the competent authority and in conditions other than those permitted by law, abducts, arrests, imprisons or detains another person, or orders such acts. If the imprisonment or detention lasts for 30 or more days, the penalty is a term of imprisonment of between 10 and 20 years.

“If the arrest or abduction are perpetrated while wearing uniform or carrying an official insignia – or that resemble such – as set forth in article 384 of the Criminal Code and/or using a false name or presenting a forged warrant from the public authorities; or if some form of motorized transport is used; or if threats are made to perpetrate a crime against persons or property, the penalty is a term of imprisonment of between 20 and 30 years.

“The penalty envisaged in paragraph 3 above is to be applied if the perpetrator is a person who exercises public authority or one of the persons envisaged in article 225 of the present Code, or if the act was committed for personal motives or to satisfy personal whims.”

59. In addition to the penalties envisaged under article 225, as explained in the reply to article 6 above, and in article 436, aggravated penalties are set forth in articles 436 (1), 437 and 438 of the Criminal Code. Article 436 (1) states: “If the abduction or detention is perpetrated by a spouse, a divorced spouse, a betrothed, an antecedent or descendant, a sibling, a guardian or a person who has jurisdiction or authority over the victim or who is charged with the victim’s care, or if the victim is subjected to violence in whatever form, the penalty of deprivation of liberty increases as follows:

- (a) A term of imprisonment of between 10 and 20 years for the cases envisaged in article 436 (1) of the present Code;
- (b) A term of imprisonment of between 20 and 30 years for the cases envisaged in article 436 (2) of the present Code.”

Article 437 reads: “If the purpose of the abduction, arrest, detention and imprisonment is to enable the perpetrator is to take hostages, either to prepare or expedite the commission of a crime or misdemeanour or to facilitate the escape or impunity of the perpetrators, the penalty is life imprisonment. The same provisions apply if the actions undertaken serve to carry out an order or fulfil a condition, notably that of demanding a ransom.” According to article 438: “If the person who has been abducted, arrested, detained or imprisoned is subjected to torture, the perpetrators shall be liable to the death penalty in all the cases envisaged in the previous article.”

The penalties set forth in articles 436, 437 and 438 are also applicable to anyone who knowingly provides premises, equipment or other means to imprison or detain the victim or a means with which to transport the victim (art. 439).

60. The Criminal Code includes special provisions for cases where an act of abduction or detention is committed against a minor. Article 471 stipulates: “Persons who, directly or through a third party, use violence, threats or deceit to abduct, lure, attract or transport a minor under the age of 18 from a place where the minor has been placed by his or her guardians or supervisors, are liable to a term of imprisonment of between 5 and 10 years.” Article 472 states: “If the minor who suffers the offence set forth in the previous article is under the age of 12, perpetrators are liable to a term of imprisonment of between 10 and 20 years. However, if the minor is found alive before a sentence is handed down against the perpetrator, the penalty is a term of imprisonment of between 5 and 10 years.”

61. As concerns reduced sentences, article 440 of the Code reads: “Malefactors who, of their own accord, put an end to the imprisonment or detention can benefit from mitigating circumstances, as per provisions contained in article 143, in the following ways:

(a) In cases envisaged in articles 437 and 439, if the person who has been abducted, arrested, detained or imprisoned as hostage is released in good health within five days of the day of the abduction, arrest, detention or imprisonment, the penalty is reduced to a term of imprisonment of between 5 and 10 years. The same provisions apply if the criminous actions served to carry out an order or fulfil a condition, and the person concerned was released without the order being carried out or the condition fulfilled;

(b) In cases envisaged in articles 436 and 439:

- If the person who has been imprisoned or detained is released in good health within less than 10 days of the day of the arrest, abduction, imprisonment or detention, the penalty is a term of imprisonment of between 1 and 5 years;
- If the person is released between the tenth day and before the thirtieth day following the day of the arrest, abduction, imprisonment or detention, the penalty is a term of imprisonment of between 5 and 10 years;

(c) In the case envisaged in article 440, if the criminals, of their own accord, release the person concerned and that person turns out to have suffered ill-treatment in the terms set forth in article 438, the penalty is a term of imprisonment of between 10 and 20 years.”

## **Article 8**

### **Statute of limitations for the offence of enforced disappearance**

62. In line with their country’s international human rights obligations, Moroccan legislators were careful to include a clear norm in 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.” Article 653 (1) of the Code reads: “There is no statute of limitations on penalties handed down for 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.”

63. As is known in the field of criminal law, statutes of limitations are imperative and binding, as are the rules governing them, positively or negatively. Thus, this norm is an expression of the supremacy of international human rights law over domestic law and is one way in which Morocco fulfils its international obligations. In fact, legislators acted to ensure that the norm was consistent with the Constitution and the International Convention for the Protection of All Persons from Enforced Disappearance.

64. The process of transitional justice in Morocco, as embodied in the work of the Equity and Reconciliation Commission, focused on five areas: the State’s ethical, political and legal responsibility; uncovering human rights violations in which enforced disappearance was a basic element in order to identify other serious violations, because enforced disappearance is composite and involves more than one violation; individual and collective redress; proposing guarantees of non-recurrence; and helping to consolidate the various elements of reconciliation.

65. The Equity and Reconciliation Commission deliberately chose not to pursue criminal proceedings, either by recommendation or referral. However, it did place at the disposal of victims a mechanism for discovering the truth behind enforced disappearances and other grave violations. By way of redress, all victims or rights holders received an official document – similar in form to a judicial sentence or ruling – containing a brief account of the enforced disappearance, the harm suffered by the victim, its legal characterization under international and domestic law and an acknowledgment of the responsibility of the State, followed by measures related to reparation.

66. The Equity and Reconciliation Commission organized public hearings, which became one of the most powerful means to break through the taboo, silence and obliviousness that surrounded cases of enforced disappearance of the past, and provided victims with evidence about the real nature of the offence of enforced disappearance. The approach of the



Commission was “that public hearings in our country should give priority to rehabilitating and restoring dignity to victims whose rights have been violated; to preserving collective memory; and to sharing pain and sorrow so as to alleviate the mental repercussions of the suffering caused by the violations. In addition, they play an educational and pedagogical role for officials, public opinion, society and the rising generations. Thus, the hearings constitute a moment of great importance in the process of equity and reconciliation. Moreover, since the end of the 1990s, many books and other publications have come out in Morocco dealing with the suffering of victims of violations. These have contributed significantly to revealing the facts related to the violations and to how and when they took place, and have become important reference works with which to establish the truth of what happened.”

67. “The Commission organized seven public hearings in five regions of Morocco, dedicated to hearing oral testimony about the gross human rights violations that took place in the country between 1956 and 1999. The testimony was given publicly by the victims of the violations, before the members of the Commission and in the presence of human rights, cultural and political bodies, trade unions, elected authorities, written and audiovisual media, male and female journalists and foreign and local guests.”

68. “The hearings also had an educational and pedagogical role, which it was intended should lead to greater readiness and acceptance in society and the State and help to convince people of the importance of adhering to, defending and upholding human rights principles and of working to turn the final page on the grave violations of the past, and prevent their recurrence. This was to be achieved by formally and publicly defining and acknowledging the magnitude of the violations in our country, the pain they caused to victims and to victims’ families, relatives and acquaintances, and the psychological, moral and material effects at the local and national levels.”

69. “Among those participating in the hearings were victims who were able to testify and who wished to give public voice to their suffering, in whatever way and using whatever language they wished. Participating victims were selected on the basis of an approximate classification in which historical periods were overlaid with events and major trials. The hearings were held in the form of a series of separate sessions in each of which a single victim would testify individually accompanied only by a person of his or her choice.”

70. “Statistics concerning the hearings – which were held between 21 December 2004 and 3 May 2005 in Rabat, Fighig, Errachidia, Marrakech, Khenifra and Al-Hoceima – are given below:

- Male/female distribution: 27 per cent female, 73 per cent male;
- Age distribution: 13 per cent under 45, 82 per cent over 45;
- Distribution of direct and indirect testimony: 15 per cent indirect victims, 85 per cent direct victims;
- Type of violation suffered by witnesses or their relatives: 11 per cent enforced disappearance, 6 per cent mass eviction, 5 per cent death during the course of the violation, 2 per cent collective harm, 76 per cent arbitrary detention;
- Detention centres where witnesses or their relatives were held for extended periods: 18 per cent police stations, 7 per cent gendarmerie barracks, 3 per cent military barracks, 70 per cent secret detention;
- Events associated with the violation and raised during the public hearings: 5 per cent events in rural areas, 47 per cent federal opposition, 3 per cent the events of Skhirat, 12 per cent post-independence political conflicts, 12 per cent Islamist movement, 15 per cent protest movement, 13 per cent Marxist left.”<sup>17</sup>

<sup>17</sup> Same source, pp. 49 and 50.

## Article 9

### Jurisdiction of the courts *ratione loci* and *ratione materiae*<sup>18</sup>

71. The courts in Morocco have jurisdiction to consider cases of enforced disappearance, under both the Constitution, which considers such an act to constitute a very serious offence, and the Criminal Code, which envisages severe penalties therefor. According to articles 10, 11 and 12 of the Code: “Moroccan criminal legislation is applicable to any citizen, foreigner or stateless person on Moroccan soil, save for the exceptions envisaged in domestic and international law. Moroccan soil includes Moroccan ships or aircraft wherever they may be, except in cases where, under international law, they are subject to foreign legislation. Moroccan criminal legislation is applicable to offences committed outside the country if they fall within the jurisdiction of Moroccan criminal courts.”

72. Under the draft criminal code, enforced disappearance is characterized as a grave offence that violates the rights and freedoms of individuals. The domestic courts are competent to consider any crime committed on Moroccan territory, regardless of the nationality of the perpetrator.

73. Under article 705 of the Code of Criminal Procedure, Moroccan courts are competent to consider crimes and misdemeanours committed on Moroccan-flagged vessels on the high seas, irrespective of the nationality of the perpetrators, as well as offences committed on a foreign merchant vessel inside a Moroccan seaport. The competent court is the one whose jurisdiction includes the first Moroccan port in which the vessel docks or the one whose jurisdiction covers the location where the perpetrators are arrested, if they are subsequently arrested in Morocco.

74. Under article 706 of the Code of Criminal Procedure, Moroccan courts are competent to consider offences committed on Moroccan aircraft, irrespective of the nationality of the perpetrators, as well as offences committed on foreign aircraft if the perpetrators or victims of the offence hold Moroccan nationality or if the aircraft lands in Morocco after the offence has been committed. The competent court is the one whose jurisdiction includes the location where the aircraft lands, if the perpetrators are arrested while the aircraft is on the ground, or the court whose jurisdiction covers the location where the perpetrators are arrested, if they are subsequently arrested in Morocco. Articles 707 to 712 of the Code set forth provisions for the trial of persons who are on Moroccan soil and who have committed acts outside the country that are considered as crimes under Moroccan legislation.

75. For the purpose of reducing impunity, the draft code of criminal procedure envisages a restricted form of universal jurisdiction which admits the possibility of prosecuting and sentencing persons before Moroccan courts if those persons are on Moroccan soil and, outside Morocco, have committed genocide, crimes against humanity, war crimes or any acts criminalized under international treaties that Morocco has ratified or acceded to and have been published in the Official Gazette.

In addition, foreigners against whom a request for extradition has been issued and who have been sentenced by a Moroccan court can be prosecuted if, outside Morocco, they committed a crime or misdemeanour that is penalized under Moroccan domestic law and they cannot be extradited to the requesting State for one of the reasons set forth in the code itself.

## Article 10

### Trial of foreigners

76. Domestic law admits the arrest, detention and prosecution of all persons on Moroccan soil who have committed any action that constitutes an offence under the law. This matter is regulated under article 704 of the Code of Criminal Procedure, which states:

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<sup>18</sup> In addition to the information concerning the implementation of this article, subsequent sections of the present report – under articles 13, 14, 15 and 16 – will focus on extradition, bilateral judicial cooperation and safeguards for persons whose extradition is requested. Examples will be given of bilateral judicial cooperation in the area of criminal law.

- The courts of the Kingdom of Morocco are competent to consider any crime committed on Moroccan territory, regardless of the nationality of the perpetrator;
- Any crimes some element of which was committed inside Morocco are considered to have been committed on Moroccan territory;
- The jurisdiction of Moroccan courts to rule on the principal act extends to all associated acts of complicity or concealment, even if they were committed outside the country and by foreigners.

Foreigners have equal entitlement to enjoy all the rights and safeguards enshrined in the Code of Criminal Procedure and to contact their own country's consular offices at every stage of the investigation, whether before the police, the Office of the Public Prosecution or the investigating judge.<sup>19</sup>

## **Article 11**

### **Suspects' rights and fair trial guarantees**

77. As explained above, jurisdiction to consider and rule on acts of enforced disappearance lies with the judiciary, which is the competent body in that regard under the Constitution and the law. Standards of proof in criminal trials and sentences are based on rules of freedom of evidence, which constitute one aspect of the "theory of evidence" in criminal matters. According to article 286 of the Code of Criminal Procedure: "Evidence of offences may take any form, except in cases where the law stipulates otherwise, and judges then hand down their ruling on the basis of the intimate conviction they have formed. The ruling must explain the reasons for the judges' conviction. ... If the court forms the view that the evidence is insufficient, it must acquit the accused person."

78. Provisions concerning the right to a fair trial, as contained in articles 14 and 15 of the International Covenant on Civil and Political Rights, are enshrined in articles 117–127 and 133 of the Constitution, which cover the following:

- The role of the courts in applying the law and in protecting the rights and freedoms of persons and groups and their security before the law;
- The right of recourse to law guaranteed for all persons in order to defend their legally protected rights;
- The right of recourse to the administrative courts;
- The presumption of innocence and the importance of all stages of trial proceedings;
- Access to justice free of charge for persons with insufficient resources;
- The right to compensation for judicial errors;
- Public trials;
- Reasoned sentences;
- Definitive sentences that become universally binding;
- Creation of ordinary and specialized courts;
- No exceptional courts.

79. The right of to plead the unconstitutionality of a law before the Constitutional Court is enshrined in article 133 of the Constitution and is applicable in disputes affecting constitutionally guaranteed rights and freedoms. Thus, the Constitution has set the right a fair trial and to fair trial guarantees as a human rights standard and has envisaged constitutional safeguards to ensure it can be exercised to optimum effect. A directive has been drafted concerning the conditions and procedures for impugning a law on the basis of unconstitutionality under article 133 of the Constitution. It envisages an oversight mechanism that provides citizens with additional guarantees for the full enjoyment of their rights and

<sup>19</sup> Information on this subject will be provided below, under articles 11 and 12.

freedoms and enables them, during the course of a case, to bring a motion before the courts that the law being applied in the dispute in question in fact violates rights and freedoms guaranteed under the Constitution.

80. The Code of Criminal Procedure embraces a body of principles, which are set forth in its preamble:

- Criminal proceedings are to be fair, to take place in the presence of the parties concerned and to preserve balance between them; moreover, there is to be a separation between the authorities that pursue the public prosecution and the investigation, and the governing authorities;
- Trials in the presence of the persons concerned are to be conducted under the same conditions and persons prosecuted for the same offences are to be tried under the same rules;
- All suspects and persons being prosecuted are to be presumed innocent until pronounced guilty under a definitive verdict; any violation of the presumption of innocence is prohibited and punishable by law;
- The benefit of the doubt is always given to the accused;
- All persons have the right to know the evidence against them, to challenge that evidence and to avail themselves of the services of a lawyer;
- A ruling on the charges against a person is to be delivered within a reasonable time;
- All convicted persons have the right to request a re-examination of the charges on which they were convicted before another court, using the appeals procedures specified by law.

81. The Code of Criminal Procedure requires judicial police officers to take several legally mandated measures for the benefit of persons who have been arrested or who are being held in police custody. These include immediately informing the family that the person is being held, as per articles 67 and 82 of the Code, and immediately informing the persons who have been arrested or are being held in custody, in a manner they are able to understand, of their rights under article 66; in particular, the reasons for their detention, the right to remain silent, the right to communicate with relatives, the right to legal assistance and the right to appoint a lawyer or to have one appointed on their behalf.

- **Presumption of innocence**

- All persons accused or suspected of having committed an offence are presumed innocent until pronounced guilty under a definitive verdict handed down following a fair trial during which all legal safeguards were made available;
- “Doubt is to be interpreted for the benefit of the accused” (art. 1 of the Code of Criminal Procedure).

- **Police report**

- The police report is a written document drafted by judicial police officers in the course of their duties; it includes what they have seen for themselves, statements they have been given and actions they have taken in the exercise of their functions;
- In particular, the report is to include the name, rank, workplace and signature of the person who compiled it; the report is also to indicate the date and time the procedures were conducted and, if different, the time the report was written;
- The interview report must contain the name of the persons being interviewed and, if necessary, their identity number, as well as their statements and their replies to the questions put by judicial police officers (art. 24 of the Code of Criminal Procedure).

- **Rights and safeguards for persons giving statements in reports**
  - If the matter concerns suspected persons, the judicial police officer must inform them of the offences they are suspected of having committed;
  - A person who has made a statement is to read it or to have it read to him; this is to be indicated in the report, after which the judicial police officer is to note down any additions, changes or comments made by the person who gave the statement, or to indicate that none were made;
  - Alongside the judicial police officer, the person who gave the statement is to sign the report below the statement and any addition thereto, and to write out his name in his own handwriting; if the person is unable to write or to sign he is to leave his fingerprint and this is to be indicated in the report;
  - The judicial police officer and the person who gave the statement are to initial any crossings-out or references;
  - The report is also to indicate any refusal or inability to sign or to leave a fingerprint, and the associated reasons (art. 24 of the Code of Criminal Procedure).
- **The use of interpreters by the police**
  - The judicial police are required to avail themselves of the services of an interpreter if the person whose statement is being taken speaks in a language or dialect that the officer does not know well; likewise, if the party making the statement is a person who is deaf or mute, the police are required to use the services of someone capable of communicating easily with that person. The identity of the interpreter or person called in to assist is to be indicated and they are required to sign the report (art. 21).
- **Rights of accused persons during trials (access to a lawyer)**
  - All accused persons or their legal representatives have the right to avail themselves of the services of a lawyer at every stage of the proceedings (art. 315 of the Code of Criminal Procedure);
  - The presence of a lawyer is mandatory in cases involving serious offences that come before the criminal courts;
  - A lawyer's presence is likewise mandatory in cases involving misdemeanours, under the following circumstances:
    - (a) If the accused person is a juvenile under the age of 18, is deaf or blind or has any other infirmity which would affect the exercise of his right to defend himself;
    - (b) If the accused person is liable to be sentenced to deportation (art. 316 of the Code of Criminal Procedure);
    - (c) If the state of health of the accused person is such as to prevent him attending the trial (art. 312 of the Code).
- **Interpretation during the trial**
  - The president of the court orders the accused person to be brought in;
  - If latter speaks a language, accent or dialect that is difficult for the judges, the parties or the witnesses to understand, or if the need arises to translate a document that is referred to in the course of the proceedings, the president is to appoint an interpreter. Failure to do so means that the proceedings become null and void (art. 318 of the Code of Criminal Procedure).
- **Rights of the accused person while being questioned by the court**
  - The president of the court is to ask the accused person his identity and to inform him of the charges against him (art. 319 of the Code of Criminal Procedure);

- The president orders witnesses to be called, as necessary, then invites them to leave the courtroom before questioning the accused about the merits of the case (art. 320 of the Code);
  - The president can order that the following be read out: inspection reports, search and seizure reports, reports of experts and all documents that might help to uncover the truth;
  - Furthermore, when questioning the accused person, the president can order that the record of interrogations that took place during the investigation be read out, even if they concern offences linked to the offence being tried;
  - The court is to decide on any dispute that arises (art. 321 of the Code).
  - The Office of the Public Prosecution and the parties to the case or their lawyers may direct questions to the accused person, either via the president or with the latter's permission; the same applies to judges sitting collectively;
  - If the president declines to ask a question and this gives rise to a dispute, the court is to decide thereon (art. 322 of the Code).
- **Rights of the accused person to present an initial defence**
- Under pain of nullity, applications for deferral on grounds of non-jurisdiction – unless this concerns the type of offence – must be presented before entering into any defence concerning the merits of the case. Such applications have to be made all together and must specify the type of plea being made, whether on grounds of invalidity of the summons or procedural invalidity. The same applies to other issues that need to be decided in advance;
  - The court must rule on those applications immediately although it can, exceptionally, issue a reasoned decision in which it decides to postpone consideration until such time as it has ruled on the merits of the case;
  - The court continues its deliberations although the right of appeal remains and can be used at the same time as an appeal against the verdict on the merits of the case (art. 323 of the Code).

82. More robust safeguards have been integrated into the draft code of criminal procedure:

- The right of persons in police custody to communicate with a lawyer has been strengthened by giving suspects the right to contact their lawyer from the first hour of their arrest;
- The obligation for judicial police officers to indicate in their reports the forename, family name and status of the person notified, the means of notification used and the date and time the notification was given;
- Provision for nationwide and regional electronic police-custody registers to create a centralized database concerning persons in police custody; the registers are to be placed at the disposal of the Office of the Public Prosecution and other legally mandated authorities.

The draft code includes a body of measures aimed at preventing torture and enhancing the credibility of investigations. These include:

- The obligation for judicial police officers, having notified the Office of the Public Prosecution, to ensure that persons in police custody undergo a medical examination if they show signs of illness or other signs that warrant such an examination;
- The obligation for the Office of the Public Prosecution to ensure that suspects undergo a medical examination, if requested by the suspect or if there are evident traces that would warrant such an examination; the validity of any confession is subject to this having been done;
- The statement of the accused person as redacted in the judicial police report is null and void if the accused or his defence counsel request a medical examination and that request is refused;

- All actions in regard of persons in police custody are considered null and void if they are effected after the legal time limit of such custody or after any legally permitted extensions to that time limit, although actions taken during the period of police custody retain their validity;
- The Crown Prosecutor or one of his deputies is to visit police custody facilities if they receive a report that arbitrary detention is being practised.

## **Article 12**

### **Reporting cases of enforced disappearance and investigations and inquiries into such cases**

83. The Kingdom of Morocco acts to ensure that its courts and other competent institutions are able to conduct prompt and impartial investigations whenever a report is received that criminous acts have been committed on any territory under its jurisdiction. These include judicial investigations, inquiries by the National Human Rights Council and investigations conducted in the context of the process of transitional justice.

84. The Code of Criminal Procedure envisages legal protection for victims who, in fact, can submit complaints to the Office of the Public Prosecution, the investigating judge or the court. Those judicial bodies are then under an obligation to launch an investigation. The Code also envisages protection for complainants and their representatives, witnesses and other persons involved in investigations or prosecutions, in the form of measures and procedures enforceable by the police. Article 82 (5) of the Code reads: “The Crown Prosecutor, the Prosecutor-General of the King or the investigating judge, each within their own jurisdiction, are to take measures to protect and safeguard the well-being of victims, members of their family or 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 for protection at any time from the judicial police or the security services;
- Physical protection by the public security services for victims, members of their family or relatives;
- A change of residence and the non-disclosure of identity.

If necessary, victims can be examined by a doctor and provided with social care.

If the aforementioned protection measures are insufficient, a reasoned decision can be issued for the provision of any other measure capable of providing the necessary degree of protection to the person concerned.

Depending upon the circumstances, both witnesses and informants enjoy the protection measures provided for in article 82 (6) and (7).

85. The Office of the Public Prosecution oversees the work of the judicial police.

According to article 45 of the Code of Criminal Procedure:

- Within the area of jurisdiction of his court, the Crown Prosecutor is to direct the work of judicial police officers, then to evaluate them at the end of each year;
- The Prosecutor-General of the King at the Court of Appeal evaluates the officers of the national or regional judicial-police team under his jurisdiction;
- The Crown Prosecutor is to ensure that the procedures and time limits governing police custody are duly respected; to ensure that the period of custody is spent in places designated for that purpose within his area of jurisdiction; and to ensure that measures are taken to guarantee humane conditions of detention;

- The Crown Prosecutor may visit such places at any time, as required but no less than twice a month, and may examine the police-custody register;
- The Crown Prosecutor is to write a report on the occasion of each visit, and his comments and any violations he observes are to be communicated to the Prosecutor-General of the King;
- The Prosecutor-General of the King is to take steps to put an end to the violations then to submit a report in that regard to the Minister of Justice.

86. Oversight by the courts on the work of the judicial police.

Articles 29 to 33 of the Code of Criminal Procedure stipulate:

- The criminal chamber of the Court of Appeal oversees actions undertaken by judicial police officers in the course of their duties;
- The Prosecutor-General of the King at the Court of Appeal is to refer any violations committed by judicial police officers in the course of their duties to the criminal chamber of the Court;
- Once the case has been referred and once the Prosecutor-General of the King has made his written submissions, the criminal chamber of the Court of Appeal orders an investigation and hears the statement of the judicial police officer accused of having committed the violation.

The officer must be summoned to examine his case file at the Office of the Public Prosecution at the Court of Appeal.

The officer can call upon the assistance of a lawyer.

The criminal chamber of the Court of Appeal, regardless of any disciplinary penalties that may be applied against his administrative superiors, may hand down one of the following penalties against the judicial police officer:

- Disciplinary recommendations;
- Temporary suspension from exercising judicial-police duties, for a maximum period of 1 year;
- Definitive divestiture of judicial-police functions.

The decisions of the criminal chamber are open to appeal in cassation, in line with ordinary modalities and procedures.

- If the criminal chamber forms the opinion that the judicial police officer concerned has committed an offence then, in addition to the aforementioned measures, it orders the referral of the case file to the Prosecutor-General of the King.

- **Fundamental safeguards in the work of investigating judges**

According to articles 87 and 88 of the Code of Criminal Procedure:

- The investigating judge is to make inquiries about the personality and the family and social background of the accused person; such inquiries are mandatory in cases involving crimes and optional in cases involving misdemeanours;
- The investigating judge is also to inquire into measures apt to facilitate the reintegration of the accused person into society, if the accused is under 20, the penalty envisaged does not exceed 5 years and the judge considers that the accused should be placed in pretrial detention;
- The judge can assign the conduct of such inquiries to judicial police officers or to any competent individual or institution;
- The outcome of the inquiries is to be included in a special file that is to be added to the case file;



- The investigating judge can, at any time, order any expedient measure; the judge may also order a medical examination or assign a doctor to conduct a psychiatric examination;
- Having canvassed the views of the Office of the Public Prosecution, the judge can order that the accused person undergo detoxication treatment if it is evident that he is suffering chronic intoxication due to the use of alcohol, drugs or psychotropic substances;
- This treatment is to be carried out either in the institution where the accused is being detained or in a specialized institution, in accordance with conditions set forth in the law. The investigation is suspended while the treatment lasts although the detention warrant retains its effect;
- If an accused person or his lawyer requests an examination or treatment, this cannot be refused save by a reasoned order.

- **Interrogation of accused persons and their confrontation with others**

According to article 134 of the Code of Criminal Procedure:

- The investigating judge, when the accused person is brought before him for the first time, is to ask his family and given names, family lineage, date and place of birth, civil status, profession, place of residence and any previous convictions. In case of need, the judge can order inquiries to verify the identity of the accused person, including via the legal identification office or a medical examination;
- The judge is immediately to inform the accused person of his right to choose a lawyer; if the accused does not exercise that right, the investigating judge, at the request of the accused, is to appoint a lawyer on his behalf. This is to be set down in the record;
- The lawyer has the right to attend the interrogation to verify the identity of the accused person;
- The investigating judge is to inform the accused of the acts he is alleged to have committed and of his right to remain silent. This is to be set down in the record;
- The investigating judge must respond to a request made by an accused person in police custody, or by his defence counsel, to undergo a medical examination; moreover, the judge must order such an examination for himself if he sees marks on the accused person that would warrant such a step. To that end, the judge is to appoint a medical expert.
- In addition, the judge must inform the accused person of the obligation to notify any change of address, while the accused may select a correspondence address within the area of jurisdiction of the court;
- If, in its submission for an investigation to be launched, the Office of the Public Prosecution requests an order for the placement of the accused person in prison, and if the investigating judge sees no cause to respond to that request, the judge must issue an order to that effect within 24 hours and immediately inform the Office of the Public Prosecution.

- **Guarantee of supplementary investigations before the court**

Such guarantees are regulated by article 238 of the Code of Criminal Procedure, which stipulates:

- The criminal chamber – at the request of the Prosecutor-General of the King or of one of the parties to the case, or of its own accord – can order any supplementary investigation it considers might be useful. The investigation is conducted by a member of the chamber or by an investigating judge delegated for that purpose;

- The judge charged with the supplementary investigation can issue all necessary orders, but the chamber remains competent to decide on provisional release;
- If the chamber decrees an end to the detention, the accused person is to be released immediately, unless detained for another reason.

87. Investigations in the context of transitional justice.

The Equity and Reconciliation Commission faced serious difficulties in conducting its inquiries and investigations into enforced disappearances. These consisted in the length of the historical period in which they took place (1956–1999), the consequent loss and paucity of evidence and the demise of many of the victims, as well as other difficulties that have also arisen internationally and in national experiences of transitional justice. The Equity and Reconciliation Commission set up a number of task forces, including the investigative team, which adopted a diversified operational model that included procedures, programmes and techniques for monitoring and investigating. These are set forth in the following paragraphs.

88. In each victim's file, the Commission recorded the information contained in the application it had received, either from victims themselves, if still alive, or from concerned parties. In order to garner more precise data and information, a hearing would then be held, either with the victim if still alive, or with the victim's family and relatives who might hold additional information that could help to throw light on the case.

89. In order to supplement and elucidate the information received, gradual recourse was made to the following:

- Official sources, such as reports and lists compiled by the Ministry of Human Rights and the Advisory Council on Human Rights, decisions of the Independent Arbitration Commission for Compensation awarding compensation to victims of enforced disappearances and arbitrary detention and information held by other official bodies, notably the Ministry of the Interior;
- Lists and reports compiled by national human rights organizations and associations, notably the Moroccan Association for Human Rights, the Moroccan Organization for Human Rights, the Truth and Justice Forum (Layoune branch);
- Lists and reports concerning senior human rights defenders and coordination networks that operated in political exile, particularly in France and Western Europe;
- Lists and information concerning the families of missing persons;
- Information from judicial documents concerning disputes of a political and social nature, reports of the police and the gendarmerie, records of the preparatory investigations, indictments, transcripts of trials, sentences and judicial rulings of various levels and memorandums and reports compiled by leading human rights lawyers;
- Personal information and entries concerning victims, as contained in reports of the United Nations Working Group on Enforced or Involuntary Disappearances, and reports and lists compiled by the International Committee of the Red Cross (ICRC);
- Reports and lists compiled by Amnesty International and other international NGOs;
- Background information published by newspapers known to have followed past violations of human rights.

90. Having collected as much information as possible on the case, the assigned task force expanded its field of inquiry, as follows:

- It held hearings with surviving victims whose destinies had crossed those of the individuals whose cases are being investigated, either prior to detention or in a detention centre;
- It took statements from former public officials who were directly or indirectly involved in past human rights violations;

- It examined records and documents held by the administrative departments of certain detention centres;
- It examined records and documents held by institutions through which the victim may have passed while alive or where he may have died, such as hospitals, mortuaries, undertakers and administrative departments of cemeteries;
- It undertook field visits to detention centres and other places where serious human rights violations were committed, in order to take statements and testimonies that might help uncover the truth;
- It heard from human rights defence lawyers and from victims in numerous trials;
- It heard from political and trade union figures, journalists and intellectuals who were at the heart of or close to the events.

91. The oral and written data having been gathered, the various records and documents having been examined and the relevant conclusions having been drawn, all the information was entered into a database where it became the focus of attention of the Equity and Reconciliation Commission. Each victim and each request received was attributed an individual file containing the relevant facts and all the information gathered on the case in question. The Commission classified enforced disappearances depending upon their circumstances, the evidence available and the historical context in which they were carried out. In that connection, it was able to establish the following system of classification:

- Cases with no strong evidence of enforced disappearance;
- Cases with strong evidence of enforced disappearance;
- Cases with strong evidence of death, either during detention or abduction, or during social riots or military confrontations;
- Cases with strong evidence of death, where information is available as to the place of burial;
- Cases in which the death penalty was carried out and the body was handed over to the family for burial;
- Cases in which the death penalty was carried out and the body was not handed over to the family but buried by the authorities.

92. The investigative team was able to identify grave sites, which were then inspected to verify the presence of bodies. As necessary, bone samples were taken from victims' remains for DNA analysis then the bodies were reinterred in line with religious customs and traditions.<sup>20</sup> Once the Equity and Reconciliation Commission had completed its work, a committee for follow-up on the Commission's recommendations continued to operate in the Advisory Council on Human Rights. The Council issued a report in 2009 setting forth the procedures that had been followed during the investigations and the findings that had been produced, as the following examples show.

93. As concerns persons whose fate remains unknown:

- Investigations to determine the fate of such persons are ongoing;
- Families are contacted and informed of findings;
- Arbitration decisions are issued containing the findings regarding the fate of missing persons, as well as recommendations on the procedures to be followed to resolve the legal problems associated with a person's death;
- Assistance is made available to help organize religious rituals and ceremonies in the event of a death.

<sup>20</sup> Decree No. 986-68 of 31 October 1969 concerning norms for the burial, exhumation and transportation of human remains, Official Gazette No. 2981 of 17 December 1969, as amended by Decree No. 2.02.700 of 22 May 2003, Official Gazette No. 5114 of 5 June 2003, and Decree No. 2.80.522 of 16 December 1980, Official Gazette No. 3560 of 21 January 1981.

94. As a supplement to the investigations of the Equity and Reconciliation Commission, after the relevant case files had been referred to the Follow-up Committee as per the programme specified by the coordinating committee, the Advisory Council on Human Rights proceeded to conduct the following tasks:

- It re-examined and reclassified the investigation files in the light of the replies the public authorities had provided to the Equity and Reconciliation Commission one day before the end of its mandate, which concerned a significant number of pending cases that the Commission had already included in its final report (66 cases);
- It analysed and classified requests to learn the fate of missing persons, which had reached the Council following the conclusion of the mandate of the Equity and Reconciliation Commission;
- It drafted brief individual reports on inquiries into cases that met the requisite standards for investigation;
- It entered the findings, conclusions and decision taken in each case into a database;
- In cases that fell under the mandate of the Equity and Reconciliation Commission but wherein the Commission had not decided on claims relating to reparation for outstanding damages, it referred the matter to the competent committee.

95. Significant results have been achieved by continuing to use the methodology followed by the Equity and Reconciliation Commission: ongoing visits to cemeteries and to places of secret detention, communication with the public authorities, hearing from witnesses, identifying and marking the graves of victims and visiting families.

96. The Follow-up Committee has approached the Office of the Public Prosecution for orders to be issued to the competent authorities, each within its own jurisdiction, for the exhumation of remains in burial areas discovered thanks to the inquiries of the Equity and Reconciliation Commission and of the Follow-up Committee. The purpose is to identify the remains and confirm or refute information received by studying, recording and matching the anthropological data of the bodies with data about the victims prior to their decease, or by conducting DNA analyses.

97. The involvement of the Office of the Public Prosecution in the process of identifying the occupants of the graves facilitated the extraction of remains and the access to forensic medical expertise and genetic analysis. Moreover, doctors from the department of forensic medicine at the Ibn Rochd University Hospital in Casablanca as well as experts from the laboratories of the Royal Gendarmerie and of the forensic science branch of the police offered their valuable professional assistance and contributed to achieving important results. In certain particularly complex cases in which it was necessary to further develop its own methodology, the committee accompanied families to the detention and burial sites and it summoned the persons who had effected the burials to come and testify. Brief individual reports were drafted on inquiries into cases generally classified as being of enforced disappearance and missing persons.

98. All of this has enabled significant results to be achieved, results that have exceeded the set targets and attained additional objectives, such as building families' confidence in the efforts being made to uncover the truth, and raising awareness among younger officials in government departments during the course of the exhumations. Moreover, the involvement of Moroccan experts in forensic and genetic analysis has demonstrated the importance of adopting and developing these two elements as part of the search for the truth.

99. The committee maintained constant and regular contacts with the public authorities, particularly the Ministry of Justice and representatives of security agencies, thanks to which it was able to:

- Hear or rehear testimony from officials, former guards in places of secret detention, cemetery custodians, gravediggers and others;
- Obtain precise information about the burial sites of victims confirmed to have died during arbitrary detention in locations most of which were identified by the

Commission; in some cases the date of death was known although, in most instances, not the exact burial plot;

- Hear testimony from former guards at the Tazmamart detention centre in order to understand the methodology employed when burying victims in the square next to the centre;
- Query some of the replies given by the authorities concerning pending cases that were classified among the 66 missing person cases in the final report of the Equity and Reconciliation Commission.

100. Involvement of the families and representatives of victims.

- Immediately following its creation, the Follow-up Committee set up an administrative structure to receive families of missing persons and families of persons who were confirmed to have died either during social riots or during detention. The families were duly informed of the outcomes and conclusions of the investigations that had been conducted; they were consulted in a transparent manner, allowed to participate in the formulation of decisions and notified of the steps to be taken before a case could be closed. In addition, the committee visited a number of families in their own homes and it organized meetings with the families or with the associations representing them at the headquarters of the Advisory Council on Human Rights to discuss the steps and suggestions being proposed by the families. Meetings between the Council and the families or their representatives include the following.
- An information-gathering meeting with representatives of families of missing persons at the headquarters of the Council, in the presence of the head and members of the committee. The meeting provided an opportunity to present the work of the Equity and Reconciliation Commission, its operational methodology, the difficulties it faced and its remaining tasks.
- Receiving the families connected with the 66 pending missing person cases, issuing arbitration decisions in favour of families who have declared themselves satisfied with the outcomes achieved and who have not previously been the subject of an arbitration decision.
- Making home visits to families of the victims of the events of June 1981 and organizing meetings with them at the headquarters of the Advisory Council on Human Rights in Rabat and Casablanca in order to inform them of developments in the exhumation of remains from the Civil Defence barracks, issuing death certificates from the Ministry of Justice and consulting with the families regarding the construction of a cemetery for the reburial of victims.
- Regular meetings have been organized with the committee representing families of victims of the events of June 1981, the aim being to find solutions to issues of concern such as social integration, professional training and health-care coverage. A further purpose is to correct, for a limited number of families, certain material errors contained in previous compensation decisions.
- As new data has emerged regarding burial sites, numerous home visits have been made to families involved in the events at Nador and to civil society associations. They have also been involved in the gathering of anthropological data about the victims before their death, data which was then taken to the department of forensic medicine at the Ibn Rochd University Hospital in Casablanca to be confronted with the data extracted the human remains.
- A meeting with the Tazmamart Association was held at the headquarters of Council regarding the outcome of inquiries into the burial place of persons who died in that facility.
- Contact was made with the sister of M'Hamed bin Ahmad Abbas al-Marrakushi (Abu Fadi) who died in detention at the Al-Mansour Eddahbi dam, and letters were written to the Ministry of Foreign Affairs in order to determine the victim's nationality which – according to survivors of the Agdez and M'Gouna facility – was believed to be Lebanese or Palestinian.

## 101. Visits to cemeteries.

The committee has organized regular visits to confirmed or potential burial sites where the Equity and Reconciliation Commission conducted its operations, either to confirm the Commission's findings or to verify the burial of persons there in cases where the authorities have established that the bodies were removed to an unknown location, or preserved but not handed over to relatives. These visits include the following:

- To Yacoub al-Mansour cemetery in Rabat, the possible burial site of the victim Abdul Latif Zeroual, after the committee had received evidence and information pointing in that direction;
- To Abu Bakr bin Arabi and Bab al-Kisa cemeteries in Fez to inspect the state of the headstones of the victims of the events of 14 December 1990, verify the number of persons who lost their lives and compile definitive lists of the dead;
- To the former barracks in Tazmamart Palace, in order to look into how the barracks was evacuated and ascertain the methodology used in the burial of victims.

## 102. Exhuming the remains and taking bone samples.

- Under the mandate it was given, the Equity and Reconciliation Commission identified the burial sites of victims whom inquiries showed to have died. The Follow-up Committee has since continued to pursue investigations into cases where the site of graves or the identity of the occupants have not yet been established;
- In the course of its inquiries, the committee found itself faced with a series of graves where it was difficult to distinguish the individual human remains from one another, despite the fact that the number and identity of the bodies, as well as their association with the same burial site, had been established. Thus, it became necessary to take samples, conduct DNA analyses and compare the results with genetic material taken from relatives. This required that the bodies be exhumed then reburied once the standard samples had been retrieved. At the insistence of some families, the committee used scientific methods to verify its findings when the identity of a body had already been established through inquiries;
- The committee has been careful to include families in decision-making, the conduct of exhumations, the taking of samples, reburial, maintaining the sanctity of cemeteries and of the dead and ensuring respect for the relevant Islamic religious rites. In this context, the Follow-up Committee asked the Office of the Public Prosecution for orders to be issued to departments of forensic medicine to conduct exhumations of the dead in order to retrieve anthropological data and bone samples for comparison with data about the victims prior to their decease or, if necessary, to carry out DNA analyses;
- In accordance with legal and procedural requirements, these processes have been carried out in the presence of representatives from regional and local authorities, security officials, the gendarmerie, officials from the Ministry of Endowments and Islamic Affairs and from Civil Defence. The cases involved include the following:
  - Victims of social riots who are buried in communal graves;
  - The exhumation of remains belonging to victims of the events of 20 June 1981 who were buried together in two separate graves inside the Civil Defence headquarters in Casablanca.

103. On the basis of corroborated and credible information gathered by the Equity and Reconciliation Commission indicating that a number of the victims of the incidents that took place in Casablanca on 20 June 1981 are buried in a mass grave inside the Casablanca Civil Defence headquarters, the Office of the Public Prosecution at the Casablanca Court of Appeal, on Thursday 9 December 2005, supervised an operation to exhume the bodies, take samples then reinter them in individual graves.

A delegation from the Advisory Council on Human Rights closely monitored the progress of the operation and informed the families of the victims. In the presence of representatives of the competent authorities, exhumations were also carried out in a football

field located inside the Civil Defence compound and behind its central barracks building, in the Roches Noires neighbourhood of Casablanca.

In practical terms, the process of exhumation and sample-taking was conducted by a forensic medical team made up of 13 doctors, with 3 senior officers from the forensic science branch of the police and two Civil Defence search teams.

The samples were taken and numbered and, with the approval of the regional delegate for Endowments and Islamic Affairs, the remains were reburied in separate and numbered graves in the main square of the Civil Defence compound, which has the advantage of being separate from the barracks and is adjacent to a public road.

104. Remains of victims of the social riots in Nador were disinterred from the collective graves in which they had been buried inside the Nador Civil Defence headquarters. The final report of the Equity and Reconciliation Commission had included findings on the victims of the social riots in Nador whose place of burial remained unknown, and the Follow-up Committee had continued to interact with the central authorities with a view to locating the victims' burial site. In addition, the Equity and Reconciliation Commission's arbitration decisions included recommendations addressed to the Government to keep families informed of developments in this area.

105. No sooner were the local authorities in the city of Nador notified, on the evening of 28 April 2008, that human remains had been discovered in the Nador Civil Defence barracks, and the Office of the Public Prosecution had, as is customary in such cases, given permission for the exhumation, than, on 29 April, a delegation headed by the director of the Advisory Council on Human Rights and accompanied by a forensic doctor from the Ibn Rochd University Hospital in Casablanca went to Nador to begin the exhumation process.

At the time, the Office of the Public Prosecution issued a statement informing the public about the discovery and the steps being taken. For its part, the Advisory Council on Human Rights, in its capacity as the body assigned to follow up on the implementation of recommendations made by the Equity and Reconciliation Commission, and particularly those with a bearing on the continuation of inquiries, issued two successive communiqués announcing the most recent developments.

106. As concerns the verification of the identities of the deceased, preliminary data indicated that the exhumed remains belonged to victims of the tragic events of 1984. On the basis of the strong evidence linking the remains with those events, the Advisory Council on Human Rights, in coordination with the forensic team and the Prosecutor-General of the King, worked to verify the corpse's identities. The Council also made contact with families of the victims and with civil society representatives to inform them of the findings. A forensic team from the Ibn Rochd University Hospital in Casablanca then used authorized scientific methods to disinter the remains and take samples, which were sent to the laboratory for comparison with saliva samples taken from the families, leading to the identification of most of the remains.

107. Examples of in-depth inquiries.

- Despite the fact that inquiries into the identities and place of burial of persons who died at the Tazmamart secret detention facility – as conducted by the investigative team and the Follow-up Committee – enabled most of the dead to be identified, thanks to markers found on each grave, the Follow-up Committee nonetheless decided to satisfy families' requests by carrying out in-depth scientific analyses to confirm the identities;
- Thus, the Advisory Council asked the Office of the Public Prosecution to issue orders for the exhumation of all the remains of all the dead in order to record and examine their anthropological data. This took place on 12 and 13 November 2006, with forensic doctors working under orders from the Office of the Public Prosecution, in the presence of the competent local authorities.

108. Examples of continuing inquiries in complex cases.

- At the request of the Advisory Council on Human Rights and under the direct supervision the Office of the Public Prosecution, on 19, 20 and 21 September 2006, a

committee chaired by the Crown Prosecutor at the Court of First Instance and composed of representatives from local authorities proceeded to exhume human remains in the secret detention facilities of Agdez and M’Gouna. Anthropological bone data was recorded and examined and, as required, samples were taken for DNA analysis;

- The process was conducted by four forensic doctors under the scrutiny of members of the committee. Earlier, Civil Defence personnel had undertaken to excavate the graves and to remove the remains, which were subsequently wrapped in winding sheets, placed in wooden coffins and reinterred in the same graves;
- It should be noted that the family of the Wazzan Belkacem insisted that a DNA analysis be conducted on his remains as a condition for closing his case file. Thus, on 27 May 2006, Belkacem’s family and the head of the Truth and Justice Forum were taken to the graveyard in the Agdez facility in order to exhume the remains, and a sample was taken for the purposes of DNA testing to determine genetic identity;
- Human remains were exhumed in the Gourrama district and removed to an official cemetery following the usual legal procedures for the exhumation and transfer of human remains. In that connection, the body of the late Nafi Boudisi, who had been buried in an old warehouse behind the Gourrama district headquarters were removed to the Muslim cemetery in the centre of Gourrama;
- The remains of a deceased person were exhumed from the Al-Mansour Eddahbi dam facility and taken to the cemetery of Gourrama. Despite the fact that the Equity and Reconciliation Commission had not received any request from the family of the late M’Hamed bin Ahmad Abbas al-Marrakushi (known as Abu Fadi, according to statements from surviving victims who had been detained with him in the Agdez and M’Gouna complex), data retrieved from the prisoner registers revealed the address of his family in Lebanon. The Ministry of Foreign Affairs, at the request of the Advisory Council on Human Rights, was then able to identify and contact members of his family. This then led to :
  - A joint preparatory visit by the committee and the family of the deceased to the Al-Mansour Eddahbi dam facility on 13, 14 and 16 April 2006. During that time, meetings were held with the local authorities, the family was given the information in the committee’s possession, one of the guards of the facility gave a statement, the burial site was visited and arrangements were made for the exhumation and transfer of the remains;
  - On 28 April 2006, the remains of the late M’Hamed bin Ahmad Abbas al-Marrakushi (known as Abu Fadi) were exhumed, placed in a coffin and taken, at his family’s request, to M’Gouna ceremony where he was buried;
  - Also at the family’s request, bone samples were taken for genetic analysis.

109. In other cases remains were also exhumed for genetic analysis, due to the following considerations.

- In the case of Abdel Haqq Rouissi, the difficulty of establishing identity through inquiries alone due to the absence of any witness to corroborate entries in official registers;
- In the cases of Abdel Salam Al-Tawad, Ibrahim al-Wazzani, Moulaye Suleiman al-Alawi and Mohamed Bennouna, the difficulty of establishing identity through inquiries alone due to lack of testimony;
- The exhumation of remains has constituted a qualitative advance in the search for the truth and has strengthened scientific capabilities among the departments working in that area. This has come about thanks to a participatory approach with the other parties involved in seeking to uncover the truth, and thanks to a methodology aimed at acknowledging the results obtained while, at the same time, recognizing the difficulties and constraints involved in identifying persons in some cases or in accepting evidence, however strong it may be. The Advisory Council was been able



to exhume 182 deceased persons, either to transfer their remains or to ascertain their identity;

- The Follow-up Committee faced difficulties from the outset, particularly in the limited logistical capacity and human resources to complete DNA analyses of all the samples.

110. As a way of overcoming those difficulties, the Advisory Council on Human Rights arranged a study day with a team of forensic experts from Argentina, which was held on 29 June 2006. The purpose of the initiative was to benefit from the Argentinian experience of inquiries to establish the identity the bodies of victims of serious human rights violations by using anthropological data extracted from the remains. The Council has also facilitated matters to allow genetic laboratory staff of the Royal Gendarmerie to travel abroad for training on DNA analysis and capacity building.

111. The Council's efforts in that regard culminated on 12 February 2008 with the signing of a protocol of cooperation with the Ministry of Justice (directorate for criminal affairs and amnesty), the Ministry of the Interior (police forensic science laboratory) and the High Command of the Royal Gendarmerie (genetic laboratory of the Royal Gendarmerie). Once the protocol had been signed, the genetic laboratory of the Royal Gendarmerie began analysis on seven priority cases identified by the Council. In analysing the extracted remains, the laboratory used mitochondrial DNA analysis techniques in which its staff had been duly trained.

- An oversight committee made up of representatives from the two aforementioned laboratories, the Ministry of Justice and the Advisory Council on Human Rights conducted an objective scientific assessment of the findings in the seven cases in question. The committee then reclassified the samples extracted so as to ensure that results could be obtained within a reasonable time frame and thus meet the expectations of families and strengthen scientific capabilities among the relevant departments. The process was conducted as shown in the table below:

<i>Case</i>	<i>In-depth inquiries to identify remains</i>		<i>Extraction of anthropological data</i>		<i>Feasibility of genetic analysis</i>	
	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>	<i>Yes</i>	<i>No</i>
Persons deceased in Tazmamart	×		×			×
Persons deceased in Tagounite	×		×			×
Persons deceased in M'Gouna	×		×			×
Persons deceased in Gourrama	×		×			×
Persons deceased during the events of 20 June 1981 in Casablanca		×		×		×
Persons deceased during the events of January 1984 in Nador		×	×		×	
Individual cases		×	×		×	

- On the basis of this data and of the new classifications, the Advisory Council drew up a definitive list of cases – among all the cases in which human remains have been exhumed – in which identity had to be established by DNA analysis. In doing so, it followed a new operational methodology:
  - Through the laboratory of the Royal Gendarmerie and the police forensic science laboratory, it cooperated closely with an international laboratory that has long experience in DNA extraction. This process terminated on 17 February 2009 with the signing of a supplement to the original protocol between the Advisory Council and a French genetic laboratory;
  - The samples it had been decided should be analysed were sent abroad in two batches, one on 20 April 2009 and one on 5 July 2009.

112. In concluding these examples, it should be stated that, thanks to the in-depth investigations conducted by the committee, the number of victims who died during social riots and whose identify has been established has risen from 27 to 46 as concerns the events of 1965 in Casablanca, from 26 to 79 as regards the events of 1981 in Casablanca and from 11 to 16 as concerns the events of 1984 in Nador.

113. Investigations that fall within the purview of the National Human Rights Council.

Act No. 76.15 on the reorganization of the National Human Rights Council<sup>21</sup> – which was issued, in line with article 171 of the Constitution – serves to strengthen the Council’s human rights protection mandate and grants it the authority to conduct investigations, notably by establishing the following three national mechanisms:

(a) The national torture prevention mechanism was established with a view to fulfilling the obligations Morocco incurred when it acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It carries out regular visits to places of deprivation of liberty and makes recommendations aimed at protecting persons in detention, ensuring humane detention conditions and preventing torture and ill-treatment;

(b) The national grievance mechanism for child victims of violations, which was created in line with the Convention on the Rights of the Child. It receives and examines complaints then conducts inquiries and issues decisions. It also organizes hearings to address any violations that might affect children’s rights;

(c) The national mechanism for the protection of persons with disabilities, which was established in line with the Convention on the Rights of Persons with Disabilities. It receives and examines complaints then conducts inquiries and issues decisions. It also organizes hearings to address any violations that might affect the rights of persons with disabilities.

114. Under article 5 of the aforementioned Act, the Council, as part of its mandate to protect, monitors human rights violations in all parts of the country, in which regard it can conduct the necessary investigations and inquiries. It also compiles reports containing summaries of its activities, which it then sends them to the competent authorities along with its recommendations. The Council also informs the parties concerned in the violations it is investigating and provides them with the necessary clarifications.

115. As concerns cooperation on the part of the authorities, under the same article of the Act, any hindrance to the Council’s work or any obstacle placed in the way of its investigations by an official, a functionary or any other person in public service, without regard to the requirements of sharia or statutory law, can be included by the Council in the report it submits to the competent authorities. Those authorities can then take the necessary steps and duly inform the Council. The Council is competent to examine all human rights violations, either acting autonomously or on the basis of a complaint submitted by the persons concerned or their representatives.

116. As part of its duty to protect human rights, the Council – under article 11 of the same Act – undertakes visits to places of detention and prison facilities where it monitors prisoners’ conditions and the treatment they receive. It also inspects child protection and reintegration centres, social welfare institutions, mental health hospitals and facilities for the detention of foreigners in an irregular situation.

117. Under article 13 of the same Act, the national torture prevention mechanism is responsible for examining the situation and treatment of persons deprived of liberty. To that end:

- It makes regular visits, whenever the Council so requests, to places where persons who are deprived of liberty are being held (or might be being held) in order to

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<sup>21</sup> Decree No. 18.17 promulgating Act No. 76.15 on the reorganization of the National Human Rights Council, Official Gazette No. 6652 of 1 March 2018.

strengthen protection against torture and cruel, inhuman or degrading treatment or punishment;

- It makes recommendations intended to improve treatment and conditions for persons deprived of their liberty, and to prevent torture;
- It makes suggestions and comments on existing or proposed legislation and submits its own legal proposals aimed at preventing torture.

### **Articles 13, 14 and 16**

#### **Extradition, expulsion and deportation – bilateral cooperation in criminal matters<sup>22</sup>**

118. The present report will address articles 13, 14 and 16 jointly, combining related topics such as extradition and judicial cooperation in criminal matters. Legal information will be provided as well as three examples of bilateral cooperation agreements into which Morocco has entered, in parallel with its increasing engagement with international human rights law.

119. Neither in principle, nor under the Constitution or the law, nor in practice, nor in the course of transitional justice in Morocco is enforced disappearance deemed to be a political offence or an offence that is politically related. This has been made amply clear in the replies under articles 3, 4 and 5 above. In fact, in line with article 13 (2) and (3) of the Convention, enforced disappearance is deemed to be included as an extraditable offence in any extradition treaty existing between States parties before the entry into force of the Convention. In Morocco, the extradition of offenders is regulated under chapter IV of the Code of Criminal Procedure.

120. Extradition procedures.

- Under the procedure for the extradition of offenders to a foreign State, Morocco can extradite a non-Moroccan accused or convicted person who is present on national territory and who is either being sought for prosecution by the requesting State or has been convicted by an ordinary court in that State. Extradition is admissible only if the offence concerned was committed:
  - On the territory of the requesting State by one of its own citizens or by a foreigner;
  - Outside that territory by a citizen of the requesting State;
  - Outside that territory by a non-Moroccan foreigner if the crime concerned is also penalized under Moroccan legislation, even if committed by a foreigner abroad (art. 718 of the Code of Criminal Procedure);
- No person may be extradited to a foreign state if not being sought for prosecution or convicted for acts envisaged in the present Code (art. 719 of the Code).

121. Acts for which extradition is envisaged.

- The following actions may be the subject of extradition requests or approvals:
  - (a) All actions that attract criminal penalties under the law of the requesting State;
  - (b) All actions that, as misdemeanours, attract penalties of deprivation of liberty under the law of the requesting State, if the maximum penalty envisaged is not less than 1 year's imprisonment or, if the case concerns a person convicted by a court in the requesting State, to a sentence of 4 months' imprisonment or more.
- Extradition is never admissible if the action concerned is not penalized as a crime or a misdemeanour under Moroccan domestic law.

<sup>22</sup> The three issues have been grouped together.

- The above norms also apply to actions that constitute attempts or complicity if these are penalized under the law of the requesting State and under Moroccan law.
- If the extradition request concerns a number of separate actions, each attracting a custodial sentence under the law of the requesting State and under Moroccan law, and some of the actions attract a penalty of less than 1 year's imprisonment, extradition can nonetheless be admitted if, under the law of the requesting State, the body of offences together attract a minimum sentence of at least 2 years' imprisonment.
- If the person whose extradition is being requested has already been sentenced in another country to a sentence of 4 months' imprisonment or more for committing an ordinary offence, and if the extradition is admissible under the above norms – i.e., only for crimes or misdemeanours – no account is taken of the length of the penalty envisaged or handed down for the new offence.
- The foregoing provisions are applicable to offences committed by military personnel, mariners and others of like status if the offence for which extradition is being requested does not constitute a breach of military duty but is penalized as an ordinary offence under Moroccan law. In this connection, account is also to be taken of provisions governing the extradition of fugitive mariners (art. 720 of the Code of Criminal Procedure).

122. Extradition is not admissible:

(a) If the person being sought is a Moroccan citizen, in which case account is taken of the time when the offence for which extradition is being requested was committed;

(b) If the offence for which extradition is being requested constitutes a political offence or an offence that is politically related.

- This rule applies when Morocco has substantial grounds for believing that an extradition request apparently related to an ordinary offence has in fact been made for the purpose of prosecuting or punishing a person on grounds of race, religion, nationality or political opinion, or may aggravate this person's situation for any of these reasons.
- However, the restrictions referred to in the previous two paragraphs do not apply to attempts against the life of the Head of State or a member of his family, or against a member of the Government.
- Nor do the restrictions apply to actions committed during rebellion or riot that affect public security if such actions are characterized by great brutality; nor are they applicable to acts of sabotage or genocide, as prohibited under international treaties.

(c) If the crimes or misdemeanours were committed on the territory of the Kingdom of Morocco.

(d) If the crimes or misdemeanours, even if committed outside Moroccan territory, have been prosecuted inside Morocco and a definitive sentence handed down.

(e) If the public prosecution or the penalty have expired under the statute of limitations before the date of the extradition request, either under Moroccan legislation or the legislation of the requesting State and, in general, whenever a public prosecution on the part of the requesting State expires or lapses.

123. Submitting an extradition request.

- An extradition request is to be submitted to the Moroccan authorities in writing via diplomatic channels.

The following documents are to be attached to the request:

(a) The original or a copy of an enforceable sentence, an arrest warrant or any other enforceable procedural document issued by the courts according to the established modalities of the requesting State;

(b) A summary of the acts for which extradition is being requested, the date and place those acts were committed and their legal characterization accompanied by a copy of the legal texts applicable to the criminal act in question.

(c) An accurate as possible description of the features of the person being sought for extradition as well as all other information that might help to identify the person and his nationality;

(d) A pledge to abide by the provisions of article 723, above (art. 727 of the Code of Criminal Procedure).

124. Forwarding the request to the Ministry of Justice – intervention by the courts.

- Having reviewed the relevant documentation, the Minister for Foreign Affairs is to submit the extradition request, accompanied by the case file, to the Minister of Justice, who is to verify the validity of the request and take the necessary legal steps (art. 728 of the Code of Criminal Procedure).
- In urgent cases, the Crown Prosecutor at the Court of First Instance or his deputy may – at the direct instance of the courts of the requesting State or in response to a notice issued by the International Criminal Police Organization (INTERPOL) – order the temporary detention of the foreigner as soon as the relevant notification is received via post or via any other more rapid means of communication, on condition that such notification provides written or material evidence of the existence of one of the documents referred to in article 726 (1), above.
- At the same time, a formal request is to be sent via diplomatic channels to the Minister for Foreign Affairs.
- The Crown Prosecutor must immediately inform the Minister of Justice and the Prosecutor-General of the King at the Supreme Council that the detention has been effected (art. 729 of the Code of Criminal Procedure).
- When the person whose extradition is being sought appears before the criminal chamber of the Court of Cassation, two cases can arise:

(a) If the person whose extradition is being sought expressly agrees to be extradited to the requesting State and explicitly waives recourse to procedures regulating the extradition of offenders, the Court of Cassation is to attest to that statement. The Prosecutor-General of the King at the Court of Cassation then sends a copy of the court ruling to the Minister of Justice so that the necessary administrative procedures can be completed;

(b) If the person whose extradition is being sought does not wish to waive recourse to judicial procedures, the criminal chamber is to decide on the extradition. It can rule not to approve the request if it is of the view that the legal conditions have not been fulfilled or that there is some evident error. Such a ruling is definitive and leads to the release of the detained foreigner unless he is also being detained for some other reason. The case file is to be sent to the Minister of Justice within eight days and the authorities of the requesting State are to be duly informed via diplomatic channels.

Alternatively, the criminal chamber can rule to approve the request, in which case it is to be sent within eight days by the Crown Prosecutor at the Court of Cassation to the Minister of Justice who, as required, makes a proposal to the Prime Minister to sign a decree authorizing the extradition. The decree is then sent to the Minister for Foreign Affairs for him to inform the requesting State's accredited diplomatic representative in Morocco. It is also sent to the Minister of the Interior for him to inform the person concerned of the decree and of the deadline for its enforcement.

Within one month of the date its diplomatic representative in Morocco was informed of the decree, the requesting State must, via its agents, complete all the necessary procedures to receive the person whose extradition it is seeking. If it fails to do so and provides no justification for the delay, the person concerned is to be released and cannot subsequently be sought for extradition on the same grounds (art. 735 and 736 of the Code of Criminal Procedure).

## 125. Treaty between Morocco and France

The Kingdom of Morocco and the French Republic signed an extradition agreement on 18 April 2011<sup>23</sup> which envisages the following as one case in which extradition can be refused: “If an extradition request apparently related to an ordinary offence has in fact been made for the purpose of prosecuting or punishing a person on grounds of race, religion, nationality or political opinion, or may aggravate this person’s situation for any of these reasons”. This provision is also contained in article 721 of the Code of Criminal Procedure.

126. The extradition agreement between Morocco and France also details other cases where extradition is not admitted. These include trial before an exceptional court; if the offence in question is considered by the State receiving the request to be a purely military offence; if the person to be extradited has been definitively sentenced – whether convicted, amnestied or acquitted – by the State receiving the request for the same offence or offences as those upon which the extradition request is based; if the public prosecution or the penalty have expired under the statute of limitations; or if the extradition request concerns the enforcement of a sentence imposed under a court ruling issued in absentia and not accepted by the person concerned, and that person’s right to challenge the ruling following extradition cannot be guaranteed.

127. The agreement also envisages cases in which extradition may be refused:

- If the person being sought for extradition is being prosecuted by the State that receives the request for the same offence or offences as those upon which the extradition request is based, or if the courts in that State decide not to prosecute or to terminate the prosecution for the same offences;
- If the offence for which extradition is being sought falls under the jurisdiction of the courts of the State that receives the request, in accordance with that State’s domestic legislation;
- If the person being sought for extradition has been definitively sentenced – whether convicted, amnestied or acquitted – by a third State for the same offence or offences as those upon which the extradition request is based;
- If the offence for which extradition is being sought was committed outside the territory of the requesting State and the legislation of the State receiving the request does not admit prosecution for such offences when committed outside its national territory;
- For humanitarian reasons, if extraditing the person concerned could have serious consequences in consideration of his age or state of health.

128. The agreement goes into some detail about extradition conditions and procedures, and the documents that need to be annexed to a request, which include: “A presentation of the acts for which extradition is being requested, the date and place those acts were committed, their legal characterization and an indication of the applicable legal provisions, all as accurately as possible” (article 6 (2) (c) concerning extradition procedures and the documents to attach to the request).

129. The same subparagraph also stipulates the need to mention the legal provisions that are applicable to the offence for which extradition is being sought, the penalty envisaged and the duration of the statute of limitations. Moreover, if the case concerns an offence committed outside the territory of the requesting State, mention should be made of the law- or treaty-based provisions whereby jurisdiction lies with the requesting State.

130. The remaining provisions of the agreement address such matters as the principle of privacy, extradition to a third State, multiple extradition requests, temporary or deferred extradition, transit and languages used, as well as other related procedures. As concerns intersection with other treaties, article 18 of the agreement states: “The present agreement

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<sup>23</sup> Decree No. 1.09.258 issued on 2 August 2011 promulgating the agreement on judicial cooperation in criminal matters signed in Rabat on 18 April 2008 between the Government of the Kingdom of Morocco and the Government of the French Republic, Official Gazette No. 6003 of 12 December 2011.

does not affect any rights or obligations the parties may have under any other treaty or agreement.” For its part, article 19 of the agreement stipulates: “The two sides are to use diplomatic channels to consult on the interpretation and application of the present treaty.”

131. Treaty between Morocco and the United Kingdom of Great Britain and Northern Ireland.

The Kingdom of Morocco and the United Kingdom of Great Britain and Northern Ireland signed an extradition treaty on 15 April 2013,<sup>24</sup> which precisely delineates extradition procedures and the documentation required. Article 6 of the agreement reads: “In addition to the requirements in paragraph 2 of this article, a request for extradition relating to a person who has been convicted of any offence for which extradition is sought shall be supported by:

- Information that the person sought is the person to whom the finding of guilt refers;
- A copy of the judgment or memorandum of conviction or, if a copy is not available, a statement by a judicial authority that the person has been convicted;
- A copy of the sentence imposed, if the person sought has been sentenced, and a statement establishing to what extent the sentence has been carried out;
- In the case of a person who has been convicted in absentia, the assurances or information as to the conditions specified in article 3 (1) (g).
- The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if they are certified by the principal diplomatic or consular officer of the requesting State resident in the requested State; or they are certified or authenticated in any other manner accepted by the law of the requested State.”

132. Treaty between Morocco and Portugal.

The treaty between the Kingdom of Morocco and the Portuguese Republic is considered as a model among conventions dealing with criminal matters in that it draws on international human rights and humanitarian law.<sup>25</sup>

Definition of political offences:

- Offences that are not considered to be political in nature are defined in a subparagraph of article 3 of the treaty: “Extradition is not admissible ... if, under the domestic law of the requested State, the offence constitutes a political offence or an offence that is politically related. For the purposes of implementing the present provisions, the following are not considered to be political offences:
  - Genocide, crimes against humanity, war crimes and crimes under the 1949 Geneva Conventions, which relate to international humanitarian law;
  - Acts referred to in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 17 December 1984;
  - Offences under multilateral treaties for the prevention and suppression of terrorism that one of the two parties has acceded or will accede to, as well as under any other relevant instrument, particularly the Declaration on Measures to Eliminate International Terrorism.

133. Accompaniment to the border.

<sup>24</sup> Decree No. 1.14.27 issued on 6 March 2014 promulgating Act No. 55.13 under which approval is granted to the agreement on the extradition of wanted persons signed in London on 15 April 2013 between the Kingdom of Morocco and the United Kingdom of Great Britain and Northern Ireland, Official Gazette No. 6242 of 27 March 2014.

<sup>25</sup> Decree No. 1.09.260 issued on 2 August 2011 promulgating the agreement on the extradition of offenders signed in Rabat on 17 April 2007 between the Kingdom of Morocco and the Portuguese Republic, Official Gazette No. 6017 of 30 January 2012.

This matter is regulated by Act No. 02.03 concerning the entry and residence of foreigners in Morocco and unlawful migration. Article 21 of the Act states:

- The State can issue a reasoned order of accompaniment to the border in the following cases:
  - (a) If a foreigner cannot provide justification that his entry into Moroccan territory was lawful, unless his status has subsequently been regularized;
  - (b) If a foreigner remains inside Moroccan territory beyond the date of validity of his visa or, if not subject to visa obligations, after three months have passed since the date of entry and he does not hold a regular registration card;
  - (c) If a foreigner who has been refused a residence permit or the renewal of a residence permit, or has had the permit withdrawn, remains on Moroccan territory for more than 15 days from the date of notification of the rejection or withdrawal;
  - (d) If a foreigner does not request the renewal of a residence permit and remains on Moroccan territory for more than 15 days from the date of the expiry of the original permit;
  - (e) If a definitive judgment has been handed down against a foreigner for forgery, residence under a name other than his real name or failure to possess a residence permit;
  - (f) If a receipt of application for a registration card has been delivered to a foreigner but is subsequently withdrawn;
  - (g) If a foreigner has his residence permit or registration card withdrawn or if the issuance or renewal of one of those two documents is refused, and if – under current legislation and regulations – such withdrawal or refusal is occasioned by a threat to public order.

134. Expulsion.

Expulsion is regulated under article 25 of the same Act, which reads:

- An expulsion decree may be issued by the State if the presence of a foreigner on Moroccan territory poses a serious threat to public order, while taking due account of the provisions of article 26 below;
- The expulsion decree can be abrogated or reviewed at any time.

135. Cases in which expulsion is not admitted.

No decree of expulsion may be issued against:

- (a) A foreigner who, using any means, is able to show that he has been regularly residing on Moroccan territory since the age of six;
  - (b) A foreigner who, using any means, is able to show that he has been regularly residing on Moroccan territory for more than 15 years;
  - (c) A foreigner who has been legally resident on Moroccan territory for 10 years, unless he was a student during that period;
  - (d) The foreigner married to a Moroccan national for at least one year;
  - (e) A foreigner who is the father or mother of a child who resides on Moroccan territory and acquires Moroccan nationality by law under article 9 of Decree No. 1.58.250 issued on 21 Safar A.H. 1378 (6 September A.D. 1958), on condition that the foreigner has legal custody of the child and effectively meets all the associated costs;
  - (f) A foreigner who resides legally on Moroccan territory under a residence permit or permits envisaged under the present Act or under international treaties and who has not been the subject of a definitive sentence of imprisonment of at least 1 year;
  - (g) A foreign pregnant woman;
  - (h) A foreign child.
- There are no restrictions on expulsion if the case involves a conviction for an offence related to terrorism, public decency or drugs (art. 26).



## Article 15

### Cooperation with a view to assisting victims of enforced disappearance

136. No data is available concerning the cooperation of Morocco with other States parties to the Convention in assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

137. Under the Geneva Conventions of 1949 and their Additional Protocols, ICRC is responsible for following up on cases of Moroccans missing on the territory of Morocco and Algeria. Moreover, since the creation of the Equity and Reconciliation Commission, the National Human Rights Council has, in coordination with authorities, continued to cooperate with ICRC to provide replies and documents regarding cases of disappearance linked to the armed struggle in the southern provinces. This material is then referred to the Moroccan authorities. In that connection, the National Human Rights Council has held 23 meetings with ICRC, during which 427 conflict-related disappearances were examined. This process led to the following results:

- Of the 427 cases, 13 were deleted as being duplicates;
- In 4 cases, the persons concerned were considered to be still alive;
- A total of 121 civilians had died while in detention;
- A total of 123 soldiers had died during armed clashes;
- In 165 cases, the source had not provided sufficient data to determine the identities of the persons involved.

138. Articles 714 and 715 of the Code of Criminal Procedure address the issue of requests for judicial assistance in criminal matters. These fall into two distinct categories: requests for international judicial assistance issued by Moroccan judges, and requests for international judicial assistance coming from abroad. Legislators have granted Moroccan judges the possibility of issuing requests for judicial assistance, which are to be acted on outside national territory. Such requests are to be addressed to the Minister of Justice who then forwards them through diplomatic channels, unless otherwise decreed under a treaty. In urgent cases, the request can be sent directly to the competent authority although a copy of the request and of any accompanying documentation is nonetheless to be addressed to the Minister of Justice for him to forward via diplomatic channels. Under domestic legislation, requests for international judicial assistance coming from abroad are dealt with in the same way as those originating in Moroccan territory, and the Minister of Justice can authorize representatives of the foreign State (investigating judges or the judicial police) to attend the implementation of the request as observers.

139. Requests for international judicial assistance from abroad are submitted through diplomatic channels although, in urgent cases, they can be addressed directly to the competent judges. In the latter circumstance, however, the requesting authority abroad is not to be informed of the outcome until a copy of the request has been duly submitted through diplomatic channels. In all cases, requests for judicial assistance are to be returned to the requesting party via diplomatic channels. In particular, such requests can include: determining the identity and location of persons; taking statements; having detained persons give testimony before foreign judicial authorities; relaying judicial documentation; seizing objects; searching persons and places; providing information and evidence; and offering original documents and records or authenticated copies.

## **Articles 17 and 18**

### **Legal provisions concerning deprivation of liberty and oversight of places of detention<sup>26</sup>**

140. Provisions concerning deprivation of liberty.

#### **A. Prohibition of secret detention**

Morocco laid down norms and rules governing deprivation of liberty in its Constitution. In fact, article 23 of the Constitution, as stated above under the general legal framework, stipulates: “No one may be arrested, detained, prosecuted or convicted except in cases and in accordance with the procedures laid down by law. Arbitrary or secret detention and enforced disappearance are crimes of the utmost gravity and perpetrators thereof are liable to the most severe penalties. All persons in detention are immediately to be informed, in a manner they are able to understand, of the reasons for their detention and of their rights, including the right to remain silent. They have the right to avail themselves, within the shortest possible time, of legal assistance and to communicate with relatives, in accordance with the law. The presumption of innocence and the right to fair trial are guaranteed. All detained persons are to enjoy fundamental rights and humane conditions of detention, and they must be allowed to benefit from training and reintegration programmes.”

Articles 608 to 611 of the Code of Criminal Procedure read as follows:

- Persons can be deprived of liberty only under a provisional detention warrant issued by the judicial authorities or under an order to enforce a definitive court sentence envisaging imprisonment, detention or physical restraint, while taking due account of the requirements of articles 66 and 80 of the Code, which concern police custody. Persons may be detained only in facilities run by the Ministry of Justice.
- Following placement in a prison institution under a judicial warrant or order as envisaged in article 608, a file is opened for each detainee irrespective of whether the person concerned was brought in by the public authorities or whether he voluntarily handed himself in.
- Persons enforcing a judicial detention order are required to comply with the procedures set out in article 15 (2) of Act No. 23.98 on the organization and functioning of prison institutions.
- No prison administration official may admit or detain a person except under a judicial warrant or order as envisaged in article 608, and after that document has been transcribed into the detention register envisaged in the aforementioned Act No. 23.98, otherwise the official will be considered to have committed the offence of arbitrary detention.

#### **B. Provisions governing police custody**

As concerns decisions to place a person in police custody, Moroccan legislators have distinguished between offences discovered in flagrante and offences not discovered in flagrante. In the case of the former, the person concerned is placed in custody by a police officer, who must then inform the competent section of the Office of the Public Prosecution. In the case of offences not discovered in flagrante, police officers can place persons in custody only with the authorization of the competent section of the Office of the Public Prosecution.

Thus, in accordance with article 66 of the Code of Criminal Procedure, if the investigation into an offence discovered in flagrante requires that the judicial police officer keep at his disposal the person or persons referred to in article 65, he can place them in police custody for up to 48 hours, calculated from the moment of their arrest, and is duly to inform the Office of the Public Prosecution.

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<sup>26</sup> The two issues have been grouped together.

The case of offences not discovered in flagrante is addressed under article 80 of the Code. If the initial investigation into a crime or a misdemeanour punishable by a term of imprisonment requires that the judicial police officer keep a person at his disposal, he can, with the authorization of the Office of the Public Prosecution, place that person in police custody for up to 48 hours, before the end of which period the person must be brought before the Crown Prosecutor or the Prosecutor-General of the King.

**C. Restrictions and rules regulating police custody<sup>27</sup>**

- Each judicial police officer must keep a written record of any person placed in police custody, including the date and time the person was arrested and the date and time the person was released or brought before the competent judge;
- This information is to be suffixed by the signature or mark of the person concerned or by an indication that the person refuses or is unable to sign or leave a mark and the reasons for such refusal or inability;
- This information is also to be registered in the record envisaged in the previous article;
- As soon as a decision is taken to place a person in police custody, the judicial police officer is to notify the family of the detainee using any possible means and to indicate as much in the record. On a daily basis, officers must provide the Office of the Public Prosecution with a list of the persons placed in police custody over the previous 24 hours.

**D. Safeguards for persons in police custody**

**(i) Right to remain silent**

- Judicial police officers must immediately inform persons who have been arrested or placed in police custody, in a manner they are able to understand, of the reasons for their detention and of their rights, including the right to remain silent;

**(ii) Contacting relatives and legal assistance**

- Persons who have been arrested or placed in police custody have the right to legal assistance and to contact their relatives; they also have the right to appoint a lawyer or to request that one be appointed on their behalf;

**(iii) Contact with a lawyer**

- The judicial police must immediately notify the appointed lawyer and inform the President of the Bar Association. If the person concerned requests the appointment of a lawyer in the context of legal assistance, the judicial police must immediately inform the President of the Bar Association who is to proceed to appoint a lawyer;
- The lawyer is to be contacted before half the period prescribed for police custody has elapsed. In cases involving a serious offence and if the investigation so requires, the prosecutor can, exceptionally, delay contact between lawyer and client, at the request of the judicial police. The delay must not exceed 12 hours after the end of half the period prescribed for police custody;
- However, if the matter involves a terrorist offence, as envisaged in article 108 of the present Code, contact with the lawyer is to take place before the end of the full period prescribed for police custody (art. 108 refers to murder by poisoning, abduction, hostage-taking, counterfeiting currency, etc.);
- Contact with the lawyer is to take place, with authorization from the Office of the Public Prosecution, for not more than 30 minutes, under the supervision of a judicial police officer and in conditions that ensure the confidentiality of the meeting;

<sup>27</sup> The question of oversight on the work of the judicial police is covered in the reply under article 12, above.

- However if, due to distance, it is not possible to obtain authorization from the Office of the Public Prosecution, the judicial police officer can exceptionally authorize the lawyer to contact the person in police custody then immediately submit a report in that regard to the Office of the Public Prosecution.

**(iv) Decision to delay contact with a lawyer**

- Prosecutors can, at the request of the judicial police, delay contact between lawyer and client if the investigation so requires and if the case involves a terrorist offence or one of the offences envisaged in article 108 of the present Code. Such a delay must not exceed 48 hours after the end of the period prescribed for police custody.

**(v) Submission of documents and comments by lawyer**

- A lawyer authorized to communicate with a person in police custody may, during the course of that custody, submit documents and written comments to the judicial police and the Office of the Public Prosecution for them to be added to the record.

**(vi) Police custody records and the rights of detained persons**

- A register with numbered pages and signed by the Crown Prosecutor is to be kept in all places where people can be detained in police custody;
- The identity of the person in police custody is to be recorded in this register as is the reason for placement in custody and the time at which the custody began and ended. The record is also to specify the duration of the interrogation and of periods of rest, the bodily condition and state of health of the detainee and the nutrition provided;
- When the period of custody is complete, the record is to be signed by the person in custody and by the judicial police officer; if the person refuses or is unable to sign or leave a mark, the reasons for such refusal or inability must be included in the record;
- At least once a month, the record must be shown to the Crown Prosecutor to be examined and signed;
- The Office of the Public Prosecution is to monitor police custody conditions and can at any time order that custody come to an end or that the detained person be brought before the Office.

141. Oversight of places of detention

Under the law, several authorities and institutions have been invested with the task of monitoring places of deprivation of liberty in order to verify the extent to which current legislation is being duly respected in practice. Such oversight, be it by administrative or judicial bodies or by independent national institutions, makes it possible to monitor any eventual violations in places of detention.

**A. Administrative oversight**

- Act No. 23.98 on the organization and functioning of prison institutions, of 25 August 1999, was a legal revolution in the wake of the colonial-era laws (of 1915, 1930 and 1945) that had regulated the prison system for decades.
- The jurisdiction of the General Delegation for Prison Administration and Reintegration is defined under Decree No. 722/9/2 of 21 May 2009. Apart from enforcing court rulings and implementing government policy on prisoners' welfare, sociocultural activities and matters related to structures and facilities, its functions include conducting studies and research into prisons and proposing legislative and regulatory changes that are consistent with emerging needs and with international instruments on human rights and prison administration. In addition, the administrative structure of the General Delegation includes an inspectorate that is answerable directly to the General Delegate for Prison Administration and Reintegration.

- The inspectorate runs centralized and decentralized offices and a staff training centre; it also examines all the applications it receives and issues instructions for the conduct of inspections, research and studies.
- Article 620 of the Code of Criminal Procedure stipulates: “An oversight committee is to be set up in each department, prefecture or province with responsibility for ensuring the health, security, protection against illness and adequate nutrition of persons in detention. The committee is also responsible for overseeing their ordinary living conditions as well as for ensuring their moral re-education and social reintegration and for finding them a suitable position following release. The committee is to be chaired by the head of the department or prefecture, or a person delegated by them, assisted by the president of the court of first instance, the Crown Prosecutor of that court, the judge for the enforcement of sentences, a representative of the public health authorities, the head of the council of the area where the institution is located and representatives from the national sectors of education, social affairs, youth, sports and vocational training. In addition, the committee is to include volunteer members appointed by the Minister of Justice who either belong to associations or are individually known to be concerned about prison conditions.”
- Article 621 of the Code states: “The committee envisaged in the previous article is entitled to visit prisons located in the territory of the department, prefecture or province. It can then provide the Minister of Justice with any comments or criticisms it wishes to make, indicate any abuses that need to cease and suggest any improvements that need to be made.
- The committee can draw the attention of the amnesty committee to any prisoners it deems eligible for amnesty. The committee has no authority to act for itself.
- The committee is also entitled to visit institutions for the care of juvenile offenders, as envisaged in articles 471 and 481 above. In such cases, its membership is to be augmented with the presence of a judge from the juvenile court of first instance and representatives from public-sector institutions concerned with children as well as volunteer members appointed by the Minister of Justice who either belong to associations or are individually known to be concerned about child welfare.
- In this case too, the committee is to provide the Minister of Justice with any comments or criticisms it wishes to make, as envisaged in first paragraph of the present article.”

## **B. Judicial oversight**

Moroccan legislators have given the courts the task of inspecting places of deprivation of liberty and of ensuring that persons in detention are able to enjoy all the legal safeguards envisaged in current legislation and regulations. These places include prison institutions, police custody facilities, mental health institutions and juvenile welfare centres. The law – which envisages such visits as an effective mechanism to monitor deprivation of liberty and ensure that it takes place in conditions that are humane and legally valid – sets minimum intervals for such visits and regulates how they are to be conducted, both periodically and on an unannounced basis.

- Police stations where people are held in custody are visited by the Office of Public Prosecution at least twice a month and at any time chosen by the Crown Prosecutor. The purpose of such visits is to ensure that the periods and procedures prescribed for police custody are being duly respected, to verify that conditions are humane and legally valid and to consult the relevant registers (art. 45 (4) and (5) of the Code of Criminal Procedure).
- As concerns prison institutions, article 249 of the Code states that the president of the criminal chamber, or his delegate, is to visit prison institutions under the authority of the Court of Appeal at least once every three months to verify conditions for persons being held in pretrial detention. According to article 616 of the Code, the judge for the enforcement of sentences and the Crown Prosecutor, or their delegate, are to

inspect prisoners at least once a month. Following each inspection, the judge is to compile a report and send it to the Minister of Justice.

- The courts attach great importance to the prison visiting mechanism, and written instructions concerning the conduct of visits in institutions of deprivation of liberty are distributed to judicial officials. Indicators on such visits point to a development over recent years, as the following table shows.

<i>Visit</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>
Visits to police custody facilities	18 253	19 249	22 540
Visits to prison institutions	249	844	937
Visits to mental health institutions	69	120	147

#### 142. Inspections by the National Human Rights Council

The National Human Rights Council, an institution that was created in accordance with the Paris Principles, plays an important role in monitoring and overseeing prison conditions. In 2013, the Council issued a report entitled: “The prison crisis is a shared responsibility: 100 recommendations to protect the rights of prisoners”. The Act restructuring the Council strengthened its prerogatives<sup>28</sup> vis-à-vis inspecting places of detention and prison institutions and monitoring the conditions and treatment of prisoners. Those prerogatives also extend to child protection and reintegration centres, social welfare centres, institutions for the treatment of mental illnesses and centres for the detention of foreigners in an irregular situation.

### Article 19 Protection of personal data

143. The Equity and Reconciliation Commission recommended that legal conditions be placed upon the preservation, referencing and use of its archive, and that due penalties be imposed for any infractions. It further recommended that the entire archive – including information concerning cases of enforced disappearance between 1956 and 1999 – be referred to the Advisory Council on Human Rights for it to administer and to define the conditions under which the documents could be accessed. The Equity and Reconciliation Commission was the first public institution to consider the question of the exhumation of human remains and the use of scientific expertise, forensic medicine and genetic analysis from a human rights perspective.

144. Article 24 (1) of the Constitution states: “All persons have the right to protection of their private life.” According to article 27 (2): “The right to information may be restricted only by law and in order to shield matters related to the defence of the nation, safeguard the internal and external security of the State, protect the private life of individuals, prevent any infringement of the fundamental freedoms and rights enshrined in the Constitution and protect sources of information and other areas, all of which are precisely defined in the law.”

145. In 2009 – in the light of the outcomes of the transitional justice process and the dynamism it introduced into the promotion of human rights – legislators issued the first Act of its kind intended to protect natural persons regarding the use of their personal data.<sup>29</sup> Article 1 of the Act includes the following definitions:

- “Personal data”: All information of any kind irrespective of the medium used to support it, including audio and video, and that concerns a known or identifiable person, hereafter called the person concerned;
- A person is identifiable if he or she can be recognized, either directly or indirectly, by reference to an identification number or to an element or several distinct elements of

<sup>28</sup> Legal information on this aspect was provided in the reply under article 12 above.

<sup>29</sup> Decree No. 1.09.15 issued on 18 February 2009 promulgating Act No. 09.08 to protect natural persons regarding the use of their personal data, Official Gazette No. 5711 of 23 February 2009.

their physical, physiological, genetic, psychological, economic, cultural or social identity;

- “Sensitive data”: Personal data that reveals the racial or ethnic origin, political opinions, religious or philosophical convictions or union affiliation of the person concerned, or data, including genetic data, related to that person’s health;
- “Data processor”: The natural or legal person, the public authority, the office or the institution that, either alone or in partnership with others, defines the purpose and means whereby personal data is processed. If the purpose and means of processing is defined in a legislative or regulatory text, then the regulatory law or statutes must make reference to the data processor in its handling of the relevant personal data;
- “Consent of the person concerned”: Any expression of free and informed consent whereby the person concerned accepts the processing of his or her personal data.

146. Article 4 of the Act stipulates the following with regard to processing and the consent of the persons concerned:

- Personal data may not be processed unless the person concerned has unequivocally expressed his or her consent to the process or the body of processes it is intended to carry out;
- Personal data that is being processed may not be divulged to third parties except to achieve purposes directly linked to the functions of the assigner and the assignee, taking due account of the prior consent of the person concerned.
- Nonetheless, consent is not required if data processing is necessary in the following cases:
  - To respect a legal obligation incumbent upon the person concerned or the data processor;
  - To fulfil a contract to which the person concerned is party or to implement precontractual measures taken at the request of that person;
  - To preserve the vital interests of the person concerned if that person is physically or legally unable to express consent;
  - To perform a task that falls within the public interest or within the exercise of the public authority vested in the data processor or one of the third parties to whom the data is divulged;
  - To achieve a legitimate interest of the processor or recipient of the data without overlooking the interests and the fundamental rights and freedoms of the person concerned.

147. Prior authorization for the processing of data is addressed in article 21 of the Act:

- The processing of sensitive data is subject to authorization, which is granted under the conditions set forth in the law. In the absence of such conditions, authorization is to be granted by the National Commission;
- Such authorization is granted at the express consent of the person concerned or when the processing of the data is necessary to ensure that the data processor can fulfil its legal or statutory functions;
- Apart from the legal requirements and the express consent of the person concerned or the legal or statutory obligations of the data processor, the National Commission can grant prior authorization in the following cases:
  - (a) If the processing is necessary in order to protect the vital interests of the person concerned or another person; or if the person concerned is physically or legally unable to express consent;
  - (b) If the processing involves data about which the person concerned has made public expressions in such a way that the person’s consent to the processing of that data may legitimately be inferred;

(c) If the processing is necessary for the recognition, exercise or defence of a right before the courts, and it is carried out exclusively for that purpose.

148. Articles 23 to 26 of the Act regulate the obligation of confidentiality, secure processing and professional secrecy; articles 43 and 44 the transfer of data abroad; and articles 51 to 62 the criminal penalties envisaged in law.

## **Articles 20 and 22**

### **Contact with the outside world during detention and enforcement of sentence**

149. The replies under articles 17 and 18 above included information about police custody and, specifically, the right to contact relatives and a lawyer, and the right of the lawyer to submit documents and written comments to the judicial police and the Office of the Public Prosecution for them to be added to the record. The following paragraphs focus on the judicial investigation and the enforcement of sentence.

150. Act No. 23.98 on the organization and functioning of prison institutions includes clear provisions to regulate detained persons' relations with the outside world, including visits, the administration of property and cultural rights. The Act addresses these issues as follows:

- **Relations with the outside world**

- In order to facilitate the reintegration of the detained person into his family environment upon release, particular care is to be taken to preserving and improving relations with his relatives, whenever this is deemed to be beneficial to the detainee and his family (art. 74).

- **Visits**

- Detainees have the right to receive members of their family and their guardians;
- The visit is to be organized by the director of the prison establishment, unless the detainee has been prohibited from communicating with the outside world, by order of the investigating judge;
- Any other person may be authorized to visit if such is beneficial to the detainee and as long as the security and smooth running of the establishment are not affected;
- The director of the prison establishment can determine the frequency of visits and the number of visitors for a particular detainee;
- The director of the prison establishment may, with guarantees of adequate security, allow visits to take place in special location, in the presence of the director or of a designated deputy (art. 75);
- Visits take place in the visitor centre and without a dividing partition; if this is not possible, they take place in a location where the distance between detainee and visitor can be monitored;
- The director of the prison establishment retains the authority to decide that visits should take place with a dividing partition, in the following cases:
  - (a) If there are serious reasons to fear that an incident might occur;
  - (b) If an incident does occur during the visit;
  - (c) At the request of the visitor or the detainee.
- Exceptionally, visits to detainees who are ill and unable to move can take place in the sanatorium (art. 76).



- **Visits from a lawyer**
  - Lawyers of persons in pretrial detention can meet their clients with permission from the judicial authority responsible for conducting the investigation or from the competent section of the Office of the Public Prosecution;
  - Lawyers can meet convicted persons with permission from the Crown Prosecutor in whose jurisdiction the prison establishment is located;
  - The meeting is to take place freely in a room designated for that purpose (art. 80);
  - No prohibition on communication imposed by the investigating judge to whom the case has been referred, and no disciplinary measure of any kind may reduce or remove a detainee's right to meet freely with his lawyer (art. 81).
- **Treatment of foreigners**
  - Foreigners awaiting extradition are treated on an equal footing with persons in pretrial detention and can meet their lawyers with permission from the Crown Prosecutor in whose jurisdiction the prison establishment is located (art. 82).
- **Filing complaints**
  - Detainees may lodge their complaints, orally or in writing, with the director of the prison establishment, the Director of Prison Administration and Reintegration, the judicial authorities or the provincial inspection committee envisaged in the Code of Criminal Procedure;
  - Detainees can apply to be heard by administrative or judicial authorities on the occasion of visits or inspections, and any meeting is to take place in the sight – but not in the hearing – of a member of staff of the prison establishment. The authorities involved can decide to dispense with the presence of the staff member;
  - Complaints are to be examined and the appropriate steps taken (art. 98).
- **Administering property**
  - Detainees reserve the right to manage their property outside the institution. They also have the right to dispose of any assets held in the account in their name, which can be transferred outside the institution, within the limits of their civil capacity and unless the assets have been confiscated or seized by the court;
  - In the case of pretrial detainees, the management of assets and their transfer outside the institution is subject to authorization from the court dealing with the case;
  - Detainees cannot use the account in their name to serve their personal purposes within the institution, except within the limits prescribed by the prison administration;
  - A detainee's assets outside the prison institution may be managed only by an agent who is unconnected with the prison administration (art. 102).
- **Cultural rights**
  - Article 121 of the Act guarantees the right of all detainees to artistic and intellectual creativity.
  - All detainees have the right to consult newspapers, magazines and books, at their own expense and after application of the controls in force (art. 122).

151. The sanctions and penalties applicable against public officials, prison supervisor or guards for any violation or abusive or arbitrary practice they might commit are described in the reply under article 6, above.

## **Article 21**

### **Completion of sentence and conditional release**

152. Completion of sentence and conditional release are regulated under the Code of Criminal Procedure, while release is regulated under the Act on the organization and functioning of prison institutions.

- **Definitive release and departure from prison**

- The director of the prison establishment must liberate the pretrial detainees whose release has been ordered by the competent court as well as persons under detention or physical restraint who have completed their sentence, unless there is an order requiring their continuing detention;
- When persons in prison are released or definitively depart the prison for whatever reason, that information is to be noted in the detainee's prison file and in the prison register. The reason must be indicated in the detention warrant, while the date and time of departure from prison is to be recorded in the detainee's file and in the prison register (art. 614 of the Code of Criminal Procedure).

- **Conditional release**

- Persons sentenced to a custodial penalty for a crime or a misdemeanour and who have demonstrated sufficiently good conduct can benefit from conditional release if they:
  - Were convicted for a misdemeanour and have served at least half of their allotted sentence;
  - Were convicted for a crime, or for a misdemeanour the characteristics of which amount to a crime, or for a misdemeanour attracting a term of imprisonment in excess of 5 years, and have served at least two thirds of their allotted sentence;
- Were sentenced to banishment and the time they have effectively spent in detention is not less than 3 years from the day the banishment measure came into effect (art. 622 of the Code of Criminal Procedure).

- **Formulating an application**

- The director of the prison establishment where the convicted person is serving his sentence drafts a proposal for conditional release. This can be done at the director's own accord, at the request of the inmate concerned or his family, on instructions from the Minister of Justice or the Director of Prison Administration and Reintegration or at the initiative of the judge for the enforcement of sentences;
- The director of the prison establishment then sends the proposal, accompanied by his own duly reasoned view of the matter, to the Director of Prison Administration and Reintegration (art. 625 of the Code of Criminal Procedure);
- In the period between 2016–2020, the number of cases brought before the conditional-release committee registered a notable increase, reaching 2,404, of which 97 applications were accepted.

- **Handing over personal effects on the day of release**

- Upon release, each detainee receives the assets remaining following the closure of the account in his name and, if necessary, documentation attesting to the payment of any fines;
- Jewellery and personal items, clothing and effects are also handed over to the detainee. If the person concerned expressly refuses to take them, they are surrendered to the State treasury (art. 111 of Act No. 23.98 on the organization and functioning of prison institutions).

## Article 23

### Training programmes for law enforcement officials

153. In order to give effect to the outcomes of transitional justice, the provisions of the Constitution and the country's relevant obligations, human rights training for law enforcement officials is becoming an increasingly important part of the work of various institutions and sectors.

154. During its visit to Morocco in June 2009, the Working Group on Enforced or Involuntary Disappearances conducted field visits to the Royal Police Institute and to similar centres serving the Royal Gendarmerie where it examined new training models and forms of cooperation and partnership with the National Human Rights Council and the Interministerial Delegation for Human Rights. The Working Group was provided with information about the didactic and pedagogical modules on human rights.

155. For example, schools and training centres run by the Royal Gendarmerie, depending upon their level, have adopted a number of human rights modules, notably on women's rights, the rights of the child and the national torture prevention mechanism. There is also a module on international humanitarian law and the law of armed conflict, which include a standard framework and case study models. Between 2018 and 2019, 17,883 officers and non-commissioned officers benefited from these programmes.

156. A large-scale training programme on security and human rights was conducted during the period 2014–2016, thanks to partnership and cooperation between the Ministry of the Interior, the General Directorate for National Security, the National Human Rights Council, the Interministerial Delegation for Human Rights, and a specialized research centre within the Nakhil Study, Training and Mediation Centre. The programme was run in the southern regions of the country by two former members of the Equity and Reconciliation Commission.

157. The first stage of the initiative, which ran from March to June 2014 and involved preparation for the programme at the central level, was attended by high-ranking personnel from the General Directorate for National Security and teaching staff of the Royal Police Institute in Kenitra.

158. During the second stage, from July to September 2014, an initial draft of a textbook was prepared on the basis of individual research by persons who had participated in the first stage.

159. Subsequently, 530 participants were involved in the third phase which took place at the provincial level in the south of the country. The participants were of all ranks: deputy prefect, heads of security areas, brigadiers heads of department, officers, inspectors, lieutenants and constables, and the programme covered various areas including public information, maintenance of order, judicial police, municipal wardens, rapid intervention forces, the environmental department, etc.

160. Apart from the involvement of female personnel, which reached 90 per cent, the programme over this period – which ran from the beginning of January to the end of June 2015 – extended to cover all cities in the southern provinces: Smara, Layounne, Tan-Tan, Guelmim and Tata, then returning to Layounne, Boujdour and finally Dakhla. Particular attention should be drawn to the training session held in Layounne 15 April 2015 in the presence of a delegation from the Office of the United Nations High Commissioner for Human Rights (OHCHR). The fourth stage of the programme, which ran from March to July 2016, involved training for outstanding candidates selected from the groups that had participated in the third stage. They followed a special training programme that involved individual research and the selection of a team to deliver general training.

161. The remaining phases of the training programme involved practical workshops to analyse United Nations documents with a bearing on the work of security forces. These included reports by the Special Rapporteur on torture, the Working Group on Arbitrary Detention and the Special Rapporteur in the field of cultural rights, as well as documentation from the universal periodic review, the General Assembly and the Security Council.

162. The implementation of the programme was supported by a team made up of national members with expertise in the law and in human rights. This in turn led to the creation of a team for general training and the drafting of a 375-page textbook on security and human rights, 60 per cent of which was produced by the participants. The textbook is the first reference source of its kind in the history of the security establishment and in the history of human rights knowledge as it relates to security, and it has been adopted by the General Directorate for National Security as a human rights training document.

163. The progress of the training programme was accompanied by the General Directorate for National Security, which issued supporting memorandums, the most important of which were:

- Memorandum No. 8360 concerning precautionary measures during police custody or surveillance, which was issued on 27 October 2015 and which was later updated by Memorandum No. 21247 of 27 December 2018 concerning a register of the physical condition and state of health of detained persons;
- Memorandum No. 2895 of 24 April 2015 to strengthen mechanisms for the prevention of torture and other degrading treatment;
- Memorandum No. 1425 concerning care for victims and witnesses, which was issued on 5 March 2015 and which was later updated by Memorandum No. 7217 of 1 May 2018 on the protection of victims, witnesses, experts and informants.

164. A comprehensive strategic programme was launched in December 2019 aimed at building human rights capacities among judges in the Office of the Public Prosecution and trial judges, and improving their understanding of international human rights norms. The programme, which enjoyed the support of the Council of Europe and the European Union, was organized by more than 28 experts including 9 who were members of treaty bodies, as well as experts from the Council of Europe and the African Court on Human and Peoples' Rights and former members of special procedures mechanisms.

165. The programme was composed of two parts, the first of which aimed to define international human rights standards by reviewing international treaties as well as the tasks and mandates of treaty bodies and of other United Nations mechanisms, such as special procedures and the universal periodic review. The first part of the programme included two sessions on the subject of enforced disappearance, one on the International Convention for the Protection of All Persons from Enforced Disappearance, which defined the principles and obligations arising from the Convention and the mandate of the committee charged with overseeing its implementation. The other session focused on the Working Group on Enforced or Involuntary Disappearances, identifying the most significant rights violated by acts of enforced disappearance and the role of the judiciary in achieving internal redress; it also focused on the Working Group's jurisdiction, its operating mechanisms and its mandate to consider individual communications.

166. The second part of the programme had a more specialized focus and aimed at improving judges' knowledge of international human rights standards and at linking them to their daily duties and activities. Some of the main topics addressed were:

- Protecting the right to life and preventing enforced disappearance;
- Preventing torture and ill-treatment;
- The right to personal safety, protection against arbitrary detention and the norms protecting persons deprived of liberty;
- The right to a fair trial.

It also involved special training on protecting the right to life and preventing enforced disappearance, which included topics relating to international human rights standards and international, regional and national remedies.

167. As of July 2021, 672 participants had benefited from the programme, including 380 judges from the Office of the Public Prosecution, 93 trial judges, 110 staff members at the headquarters of the Office of the Public Prosecution, 13 staff members of the Supreme Council of the Judiciary, 11 staff members of the National Human Rights Council, 23 judicial

police and national security officers, 22 officers of the Royal Gendarmerie, 8 officials from the General Delegation for Prison Administration and Reintegration, 4 from the Ministry of Justice, 4 from the Mohammedan League of Scholars and 4 representatives from international organizations.

## **Article 24**

### **Civil action and reparation**

Information on reparations under article 24 is provided under two headings: that of the law (the Code of Criminal Procedure) and that of the system of redress and the work of the Equity and Reconciliation Commission.

168. Chapter IV of the Code of Criminal Procedure, which focuses on the topic of civil action, sets forth the conditions under which such action may be pursued. Article 7 of the Code stipulates: “Civil action for compensation for harm suffered as the consequence of a crime, misdemeanour or infraction may be pursued by anyone who has personally suffered physical, material or moral harm as a direct consequence of the offence.”

- Associations that claim to serve the public good can also constitute themselves as a civil party, on condition that they were legally founded at least four years before the offence was committed, in cases where a public prosecution is being brought by the Office of the Public Prosecution or by the civil party for an offence that affects the interests of the association as set forth in its statutes.
- However, associations of that nature which, under their statutes, are involved in combating violence against women may not constitute themselves as a civil party without obtaining written consent from the victim of the offence.

Articles 12, 13 and 14 of the Code concern the suspension of the prosecution or its discontinuance under the statute of limitations, as follows:

- If the criminal court is considering the criminal and the civil cases together, and reasons arise that lead to the suspension of the criminal proceedings, the civil case still stands and remains subject to the jurisdiction of the same court.
- The aggrieved party can abandon its case, reach a settlement or renounce its claim without this leading to a suspension or abrogation of the criminal proceedings, unless those proceedings are discontinued in accordance with article 4 (3) and taking due account of the provisions of article 372 below.
- Civil proceedings fall under the statute of limitations in accordance with current provisions of civil law;
- If the criminal proceedings fall under the statute of limitations, civil proceedings may be brought only before the civil courts.

169. The Equity and Reconciliation Commission addressed the issue of reparations in accordance with international norms and standards, and in the light of the outcomes of transitional justice processes across the world. The Commission took a holistic view of the concept of reparation, in which the discovery and official public acknowledgement of the truth was nowise separated from the reconsideration and preservation of memory. Moreover, the Commission did not consider that reparation should be limited to compensation for material and moral harm but that it should include redress for individual damages related to the regularization of legal, administrative and professional status; restoration of physical and mental health; and social reintegration. The Commission also addressed collective harm, including that suffered by regions where grave, intense and systematic violations were committed and where secret detention centres were located. The Commission adopted a gender-based approach and wide-reaching programmes of collective reparation, and it mediated to ensure that the regions that had suffered harm were covered by economic and social development programmes as a way of providing redress and rehabilitation.

170. The Commission adopted the following programmes concerning individual reparations:

- Revealing the truth to help erase the effects of violations;
- Financial compensation for material and moral damages;
- Restoration of physical and mental health;
- Social reintegration;
- Further education and vocational training;
- Regularization of legal status.

171. Financial compensation was one form of reparation adopted by the Commission, which considered it to represent a recognition of responsibility on the part of the State for the grave human rights violations victims had suffered. The Commission adopted the following criteria to assess the amount of compensation:

(i) Making deprivation of liberty a unified standard for all victims with a view to determining equal compensation, taking due account of the time spent in situations of enforced disappearance or arbitrary detention;

(ii) Considering the specificity of enforced disappearances as a composite offence that violates or constitutes a continuing threat to multiple fundamental rights, notably the right to life;

(iii) Considering certain detention conditions as liable to lead to other accompanying violations, such as torture, assault and cruel and degrading treatment;

(iv) Considering the particular circumstances of women and the specificity of the violations they suffered;

(v) Granting victims whose administrative and financial situation either had been or was capable of being regularized the same compensation as that calculated for the other victims, with the exception of compensation for income and for lost opportunities;

(vi) Determining, for the remaining victims, fixed-sum compensation for lost income or lost opportunities.

172. As concerns the participation of victims' families, the national transitional justice process involved the creation of a single civil society organization (the Moroccan Truth and Justice Forum) in 1999, into which groups representing victims of enforced disappearance were incorporated. The group brought together released victims, victims' families and victims of other grave human rights violations. The founder and president of the Forum, the late Driss Benzekri a former political detainee who had spent 17 years in prison, subsequently became the head of the Equity and Reconciliation Commission. His successor and second president of the Forum is Dr. Mohammed Al-Sabbar, likewise a former political detainee, who since 2011 has been the head of the secretariat of the National Human Rights Council. During his time in office, the Council has been monitoring the implementation of a large part of the recommendations made in the context of transitional justice. As stated in the introduction, the draft of the present report was shown to a number of associations and organizations, foremost among them the Moroccan Truth and Justice Forum.

173. The paragraphs below highlight the achievements of the transitional justice process in the areas of providing redress and preserving memory, up to December 2019. As concerns individual reparations, a total of 19,974 rights holders and victims of grave human rights violations of the past have benefited from individual reparations for a total sum of DH 988,269,128.80. Adding the outcomes of the work of the Equity and Reconciliation Commission to the work of the Independent Arbitration Commission for Compensation (7,780 beneficiaries with an estimated total amount of DH 960,000,000.00), the total number of beneficiaries comes to 27,754 for an overall sum of DH 1,948,269,128.80. In addition to material compensation 1,417 victims and rights holders benefited from social rehabilitation and 18,400 from health coverage. Moreover, in the cases of 564 victims of past violations, recommendations were made calling on the Government to regularize their administrative and financial situation.

174. As concerns preservation of memory, history and archives, two grave sites containing the remains of victims of social riots in Casablanca in 1981 and Nador in 1984 have been

restored, as have a further two sites in Agdez and M'Gouna, which contain the bodies of victims of enforced disappearance. Funds have been raised in cooperation with partners to build museums in Al-Hoceima and Dakhla, a royal institute for research into Moroccan history has been set up and a specialized master's programme in modern history has been instituted at the Faculty of Literature and Humanities in Rabat. A law on archives was enacted under which the Archives of Morocco were established as a public body charged with preserving national archival heritage. The Archives duly became the official home of the archives of the Independent Arbitration Commission for Compensation and of the Equity and Reconciliation Commission.

175. As concerns reparation for collective harm, the Equity and Reconciliation Commission recommended rehabilitation (in the general and collective sense of the term) with a view to rebuilding trust between the State and local populations and facilitating reconciliation. The recommendation was intended to cover a range of provinces and prefectures: Figuig, Errachidia, Ouarzazate, Zagora, Tan-Tan, Azilal, Khemisset, Al-Hoceima, Nador, Hay Mohammadi in Casablanca, Khenifra, Midelt and Tinghir. Via a consultative process and on the basis of territorial development plans, 149 projects were rolled out in affected areas with a view to building capacity among actors at the local level, to preserving memory, to raising living conditions (improving services, developing alternative forms of income and protecting the environment) and to ameliorating conditions for women and children. A total of DH 159,799,892.00 has been earmarked for the projects.

## **Article 25**

### **Legal framework for the protection of child victims and the principle of children's best interest**

176. The national human rights system has a number of protective mechanisms for children. This includes both official and national institutions and, notably, a national grievance mechanism for child victims of rights violations. Moreover, the legal framework for child protection is diverse, pluralistic and integrated in its approach. In addition to the information provided in the reply under article 7 above, intense legislative efforts have led to a high degree of harmonization with the provisions of the Convention on the Rights of the Child, particularly in the following texts:

- Act concerning the custody of abandoned children (2002), which regulates such custody and defines the procedures and mechanisms for children in care;
- Civil Status Act and its implementing decrees (2002), which addresses the problem of the civil status of children born out of wedlock and restores the right of such children to an identity;
- Labour Code (2003), which raises the minimum working age from 12 to 15, in line with the age of completion of compulsory education; the Code also envisages custodial penalties for repeat offenders who employ children under the age of 15;
- Code of Criminal Procedure (2003), which raises the age of criminal responsibility from 16 to 18, reintroduces juvenile justice and envisages procedures for children in situations of risk;
- Amendments to the Criminal Code (2003), which strengthen and broaden protection for children, criminalize discrimination across the board, outlaw the sale of children, child prostitution and child pornography – in which regard definitions are brought into line with the Optional Protocol to the Convention on the Rights of the Child – and waive the obligation of medical confidentiality in the case of crimes against children. Furthermore, and in addition to other measures, the amendments criminalize torture which, if practised against a child under 18, is considered to be an aggravating factor. For its part, the draft criminal code, which is currently before the legislature, no longer criminalizes child beggary;
- Act No. 02.03 concerning the entry and residence of foreigners in Morocco and unlawful migration (2003), which updates provisions regulating deportation with a view to protecting the acquired rights of certain groups of foreigners. It also includes

provision for minors and pregnant women and regulates the status of a father whose child is resident in Morocco and acquires Moroccan citizenship if the father has authority over and meets the needs of his offspring. The Act also envisages strict penalties for involvement in illegal immigration and human trafficking;

- Family Code (2004), which includes provisions intended to protect the rights of all family members. Legislators explicitly underline the principles of non-discrimination, children's best interests and their right to development and protection. Most significantly, these provisions involve:
  - Ensuring non-discrimination and gender equality vis-à-vis marriageable age (18), age of termination of custody (15) and the equal right of grandchildren to benefit from a grandfather's mandatory bequest, whether they descend from the daughter's or the son's side;
  - Foregrounding the best interests of the child in all measures related to custody, maintenance, guardianship, power of attorney, etc.;
  - Preserving the right to life, survival and development from pregnancy, birth and early childhood through to health care, education and training, with special measures for children with disabilities or illnesses and those unable to care for themselves, so that they continue to be maintained irrespective of their age;
  - Promoting the right to identity by allowing the lineage of a child born during the engagement period to be attributed to the betrothed man; in case of need, recourse may be made to experts to establish the child's identity genetically;
  - Improving custody requirements so as to protect the physical and mental well-being of the infant, identify the persons entitled to exercise custody, define how custody may be lost, defend children's right to protection against exploitation, violence and ill-treatment, and promote the role of the Office of the Public Prosecution in enforcing these provisions;
  - Ensuring the participation of children themselves by imposing a requirement to consult them, if they are of age, regarding the declaration of their lineage and allowing them, once they have reached the age of 15, to choose who can exercise custody.
- Amendment to the Nationality Act (2007), which puts an end to discrimination against women and children by granting – with retroactive effect – children born to a Moroccan mother and a foreign father the right to Moroccan citizenship, irrespective of place of birth;
- Act No. 65.15 concerning social care institutions (2018), which introduces new requirements to regulate the creation and administration of such institutions and improves the quality of care, particularly in the case of institutions that house children in situations of difficulty.



## Annexes

### Annex 1

## National Action Plan on Democracy and Human Rights

- The 435 measures envisaged in the Plan have been grouped into four main themes: (a) democracy and governance; (b) economic, social, cultural and environmental rights; (c) protection and promotion of group rights; (d) legal and institutional framework.
- Given below, by way of example, are the human rights protection measures that involve combating impunity, improving security governance and strengthening legal safeguards. (It should also be mentioned at this point that each thematic area has its own communication, awareness-raising and capacity-building measures).

### I. Security governance

General objective: To achieve a balance between the need to maintain security and public order, and the need to respect human rights. Specific objectives:

- To promote legal and institutional safeguards for the protection of citizens, both individually and in groups, and for the preservation of property;
- To improve the quantity and quality of security services;
- To build citizens' trust in security within a context of awareness of rights and responsibilities.

#### Legislative and institutional aspects

(a) Strengthening parliamentary responsibility for the maintenance of security and public order;

(b) Supporting security institutions with the necessary human, financial and technical resources;

(c) Taking account of the security aspect in urban development plans and the design of new residential neighbourhoods on the outskirts of cities, so as to ensure the safety of citizens;

(d) Foregrounding necessity and proportionality when using force to disperse public gatherings and peaceful demonstrations and rallies;

(e) Making audiovisual recordings of security operations to disperse public gatherings;

(f) Reviewing legal provisions to ensure the defence of detained persons from the moment they are placed in custody; ensuring that the legislative framework regulating preliminary investigation, police custody, searches and all other restrictive measures are in line with the relevant international standards;

(g) Strengthening accountability mechanisms via direct parliamentary oversight over responsibility to maintain security and public order; expanding parliamentary functions in that regard; promoting parliamentary institutional inquiries into human rights abuses; and placing security agencies under parliamentary supervision.

### II. Combating impunity

General objective: To fight impunity.

Specific objectives:

- To support the rule of law and respect for human rights;

- To promote the role of the judiciary in protecting freedoms and providing redress to victims;
- To ensure fair and equitable accountability.

**Legislative and institutional aspects**

- (a) Continuing to criminalize all acts that constitute serious violations of human rights under the Constitution;
- (b) Highlighting the principle of non-impunity in criminal policy and other public policies;
- (c) Providing legal aid during court proceedings to victims of human rights violations;
- (d) Strengthening legal provisions concerning redress for victims of human rights violations;
- (e) Protecting complainants, informants, witnesses and human rights defenders from any form of ill-treatment or intimidation arising from their testimony before the public authorities or the courts;
- (f) Developing an independent legislative and regulatory framework for forensic medicine;
- (g) Referring medical findings, in cases of alleged torture, to the Office of the Public Prosecution for verification;
- (h) Referring to the courts the findings of investigations conducted by the national torture prevention mechanism;
- (i) Encouraging, developing and supporting administrative and judicial grievance mechanisms, in order to protect the principle of non-impunity and to ensure that victims have access to appropriate remedies.

**III. Legal and judicial protection for human rights**

General objective: To promote legal and judicial protection for human rights.

Specific objectives:

- To promote engagement with international and regional human rights systems;
- To adopt a modern criminal policy founded on human rights principles;
- To support the role of the courts in protecting the rights, freedoms and the judicial protection of individuals and groups, and to apply the law within reasonable time frames.

**Legislative and institutional aspects**

- (a) Continuing engagement and interaction with international and regional human rights mechanisms;
- (b) Continuing to participate in treaties of the Council of Europe that are open to non-member States (the European Convention on the Exercise of Children's Rights of 25 January 1996; the Council of Europe Convention on Contact concerning Children of 15 May 2003; and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007);
- (c) Continuing legal dialogue regarding the drafting of a code of administrative procedure and the creation of the Council of State;
- (d) Accelerating the adoption of the draft criminal code and the draft code of criminal procedure;
- (e) Creating a national criminal observatory and a national genetic database;

(f) Accelerating the issuance of legal provisions to regulate alternative penalties with a view to limiting the problems associated with preventive detention and reducing overcrowding in prisons;

(g) Establishing partnerships and cooperation with national and international human rights institutions in order to provide judges with conceptual, behavioural and practical training in human rights;

(h) Drafting a judicial efficiency protocol to ensure the smooth running of court hearings, the delivery of sentences on time, clear communication with citizens, engagement with the problems they face, etc.;

(i) Promoting the role of the administrative courts to consolidate rule of law and respect for human rights;

(j) Accelerating the development of an integrated system to address complaints related to consumer rights.

## Annex 2

### Data concerning the outcome of the transitional justice process

The final report of the Equity and Reconciliation Commission concluded, at the preliminary stage, with a set of results regarding missing persons:

- Persons who died in detention and whose burial places have been identified: 90 cases comprising 32 cases in Tazmamart, 32 cases in Agdez, 16 cases in Qal'at M'gouna, 8 cases in Tagounite, 1 case in Gourrama and 1 case in Al-Mansour Eddahbi dam;
- Persons who died as a result of armed confrontations and whose burial places have been identified: 9 cases, including 7 cases pertaining to the Berkatou Group and Moulay Chafii (1960) and 2 cases pertaining to the Sheikh al-Arab Group (1964);
- Persons who died as a result of social incidents: 325 cases, including 50 deaths in 1965, 114 deaths in 1981, 49 deaths in 1984 and 11 deaths in 1990;
- Persons who died as a result of arbitrary detention or enforced disappearance: 172 cases in Dar Bricha, Dar al-Maqarri, Derb Moulay Cherif, Tafnidilt and Anfa Airport in Casablanca;
- Persons who died during the armed clashes in the southern provinces: 144 cases comprising 40 persons who were killed on the battlefield and whose places of burial have been identified; 88 persons who died during separate clashes between 1975 and 1989; 12 persons who were not identified owing to the burning of their bodies; and 4 persons who were arrested and taken to hospital after sustaining injuries during the clashes and who died and were buried in ordinary cemeteries;
- Persons who survived: 66 persons were captured following armed clashes and handed over to ICRC, which conveyed them to Tindouf on 31 October 1996;
- Persons whose fate is unknown: 66 cases involving elements of enforced disappearance which require further investigation.

The Follow-up Committee entrusted with the task of implementing the recommendations of the Equity and Reconciliation Commission took further action and reported in various stages on the outcome of its work: Improvement of working methods, the adoption of a participatory approach aimed at involving families and informing them of the impediments to the revelation of the full truth, and the use of scientific expertise in identifying a number of victims helped to achieve significant results and to deal with old and complex files, some of which dated back to the 1960s. The results are as follows:

**Locating graves of persons whose burial places had been unknown:** the Follow-up Committee was able to locate the graves of a number of persons who were confirmed dead but whose burial sites remained unknown. These cases concern, in particular, the victims of social riots in Casablanca in 1965 and 1981 and in Nador in 1984, and persons who died during the incidents of 3 March 1973.

**Victims of the March 1965 riots buried in the Chouhada Cemetery in Casablanca:** The Equity and Reconciliation Commission had already determined the identity of 27 victims of the March 1965 riots in Casablanca and received only 8 requests from victims' families. The Follow-up Committee managed to obtain the addresses of the families of the deceased from the registers of the hospitals to which they were transported prior to their burial. It also searched for relatives of victims who had not submitted requests to the Commission, and assisted the families in processing their files, identifying the graves of their relatives and obtaining death certificates. The Committee also helped families to organize funerals in the presence of civil society associations and local authorities.

**Victims buried in the Chouhada Cemetery in Casablanca whose names were mentioned in the final report of the Equity and Reconciliation Commission:**

- Brahim Ben Hamo, 34 years old, square number 21, row 1, grave number 163;
- Ahmed al-Moussaoui, 19 years old, square number 21, row 1, grave number 22;

- Driss Abdelqahhar, about 15 years old, square number 21, row 4, grave number 183;
- Jilali Ben Bouchaib, age unspecified, square number 21, row 1, grave number 9;
- Elmostapha Jelloul Ben Abdelkader, 14 years old, square number 21, row 1, grave number 176;
- Mbark Zouaq Ben Abdellah, 42 years old, square number 21, row 1, grave number 155;
- Rehhal Sedki, 31 years old, square number 21, row 1, grave number 18;
- Slimane al-Kermoudi, 22 years old, square number 21, row 2, grave number 22;
- Abdellatif Mortada, 17 years old, square number 21, row 2, grave number 7;
- Abdellah Qatad, 18 years old, square number 21, row 1, grave number 13;
- Ali Ben Bella, 34 years old, square number 21, row 1, grave number 168;
- Ali Ben Said, 25 years old, square number 21, row 1, grave number 2;
- Lahcen Ben Ahmed, 37 years old, square number 21, row 1, grave number 172;
- Mohammed Ben Mohammed, 21 years old, square number 21, row 4, grave number 9;
- Fatna Bent Ahmed, 40 years old, square number 21, row 1, grave number 159;
- Fatna Bent Abbas, age unspecified, square number 21, row 2, grave number 3;
- Elmostapha Boumar Ben Abdelkader, 14 years old, square number 21, row 1, grave number 5;
- Hafid Bikri, 13 years old, square number 20, row 1, grave number 1;
- Rachida Ben Lhimer Zaid, 7 years old, square number 10, row 4, grave number 145;
- Labridi Mohammed, 26 years old, registered in the Casablanca Mortuary register;
- Bouhmal Mostapha, age unspecified, registered in the Casablanca Mortuary register;
- Karmoudi Mostapha, 12 years old, registered in the Casablanca Mortuary register.

**Victims buried in the Chouhada Cemetery in Casablanca whose names were mentioned for the first time by the Follow-up Committee:**

- Brahim Loujib, 26 years old, square number 20, row 1, grave number 52;
- Ahmed Akрати, 24 years old, square number 21, row 1, grave number 156;
- Ahmed Smahi, 12 years old, square number 21, row 4, grave number 187;
- Abdessalam Bensoussa, 33 years old, square number 21, row 2, grave number 13;
- Abdellah Ben Ahmed, 70 years old, square number 21, row 4, grave number 16;
- Ali Ben Abdellah Hama, 31 years old, square number 20, row 1, grave number 23;
- Mohammed Dellal, 33 years old, square number 21, row 3, grave number 131;
- Mohammed Lahlimi, 55 years old, square number 20, row 3, grave number 43;
- Mostapha Hammouchi, 30 years old, square number 21, row 4, grave number 18;
- Moussa Ben Ali, 25 years old, square number 21, row 1, grave number 160;
- Zahra Bent Mohammed, 27 years old, square number 20, row 1, grave number 44;
- Ahmed Zehhar, 37 years old, square number 21, row 3, grave number 196.

**Victims buried in the Sbata Northern Islamic Cemetery of Casablanca whose names were mentioned in the final report of the Equity and Reconciliation Commission:**

- Haj Mohammed Ben Tegmout, 50 years old, square number 14, plot number 14, grave number 411;

- Abderrahmane al-Absi, 28 years old, square number 14, plot number 14, grave number 411.

**Equity and Reconciliation Commission: Victims buried in the Sbata Northern Islamic Cemetery of Casablanca whose names were first mentioned by the Follow-up Committee:**

- Al-Mahjoub al-Asri, 45 years old, square number 14, plot number 14, grave number 383;
- Mohammed al-Hridi, 26 years old, square number 14, plot number 14, grave number 396;
- Rkia Bent Ahmed, 23 years old, square number 14, plot number 14, grave number 378.

**Victims listed in the final report of the Equity and Reconciliation Commission whose graves have not been identified:**

- Ayyadi Taloui, 40 years old, registered in Ibn Rochd Hospital under number 524;
- Fadla Bent Mohamed, 70 years old, registered in the intensive care unit of Ibn Rochd Hospital with no number and a note to the effect that she had suffered a gunshot wound;
- Fatna Bent Allal, 65 years old, registered in the intensive care unit of Ibn Rochd Hospital with no number and a note to the effect that she had suffered a gunshot wound.

**Victims listed for the first time by the Follow-up Committee whose graves have not been identified:**

- Abdelhaq Moumen, 19 years old; his name does not appear on any register;
- Abdelkrim Mbark, age unspecified, registered in Ibn Rochd Hospital under number 741;
- Mohammed Badaoui, 37 years old, no information concerning him and the circumstances of his disappearance;
- Ahmed al-Anouari, age unspecified, no information concerning him and the circumstances of his disappearance.

It should be noted that the graves mentioned below, which are located in the Sbata Northern Islamic Cemetery of Casablanca and where, according to strong and consistent evidence gathered by the Follow-up Committee, the victims of the incidents of 23 March 1965 are buried, bear no names either because the victims buried there were registered in the hospital or the health service as persons of unknown identity, or because the cemetery burial register fails to specify the authority that conveyed them to the cemetery.

**Victims of unknown identity buried in the Sbata Northern Islamic Cemetery of Casablanca:**

- L95, Mortuary Office, square number 20, plot number 1, grave number 51;
- L97, Mortuary Office, square number 20, plot number 1, grave number 53;
- L98, Mortuary Office, square number 21, plot number 3, grave number 175;
- L99, Mortuary Office, square number 21, plot number 3, grave number 179;
- L100, Mortuary Office, square number 21, plot number 3, grave number 183;
- L101, Mortuary Office, square number 21, plot number 3, grave number 196;
- L102, Mortuary Office, square number 21, plot number 4, grave number 175;
- L103, Mortuary Office, square number 21, plot number 4, grave number 179;
- L115, Mortuary Office, square number 21, plot number 4, grave number 191;
- L121, Mortuary Office, square number 21, plot number 4, grave number 1;

- 447, Ibn Rochd Hospital, square number 21, plot number 1, grave number 157;
- 453, Ibn Rochd Hospital, square number 20, plot number 1, grave number 63;
- 22, unspecified, square number 21, plot number 2, grave number 159;
- 24, unspecified, square number 21, plot number 1, grave number 162;
- 444, unspecified, square number 21, plot number 4, grave number 20;
- 447, unspecified, square number 21, plot number 3, grave number 87;
- 472, unspecified, square number 21, plot number 2, grave number 155;
- 479, unspecified, square number 21, plot number 1, grave number 161;
- 5892, unspecified, square number 21, plot number 4, grave number 13.

**Victims Buried in Mass Graves:** Victims of the 20 June 1981 social riots in Casablanca: When the Equity and Reconciliation Commission obtained accurate and consistent information to the effect that a number of victims who died during the events had been buried in a soccer field in the Civil Defence barracks of Casablanca, a delegation from the Advisory Council on Human Rights observed the exhumation process, the taking of samples and the reburial of bodies in individual graves, under the supervision of the Office of the Public Prosecution and in the presence of local authorities.

The Advisory Council reached an agreement with the families of victims, according to which the reburial site would be converted into a regular cemetery included in the programmes on community reparations and memory preservation. The Follow-up Committee was able, through cooperation with the Families Committee, to meet families that had never filed requests with the Equity and Reconciliation Commission. In addition, the Committee was able, after conducting in-depth investigations, to confirm the death by gunshot wounds of other victims whose fate was unknown.

**Final list of identified victims of the 1981 Casablanca riots, who were buried in the Civil Defence barracks in Casablanca and whose names were mentioned in the final report of the Equity and Reconciliation Commission (24 victims):** 1. Al-Hachemi Abdelaziz; 2. Mohammed Hammaoui; 3. Hassib Mostapha; 4. Bechar Mohsine; 5. Moussaid Driss; 6. Ali Belyazid Afkhar; 7. Akrouti Said Boujemaa; 8. Hilal Said; 9. Al-Meghri Mohammed; 10. Abderrahim Bourja; 11. Brahim Kindi; 12. Hnabou Abderrazak; 13. Boukbouche Mhammad Ben al-Arabi; 14. Rizki Rabia; 15. Alilou Mostapha; 16. Mahfoud Ben Lehen; 17. Makhfi Mostapha; 18. Mohammed Ben M'hamed; 19. Abderrahmane Ben Sissani; 20. Lazrak Redouane; 21. Khadim Abdellah; 22. Ben Elould al-Arabi; 23. Brahim Ben Ahmed; 24. Hassan Zeroual Ben Mohammed.

**Final list of identified victims of the 1981 Casablanca riots, who were buried in the Civil Defence barracks in Casablanca and whose names were mentioned by the Follow-up Committee (50 victims):** 1. Al-Khalil Miloud; 2. Bendrif Ahmed; 3. Dadi Mohammed; 4. Al-Ani Abdellatif; 5. Basli Hassan; 6. Bouchaib Bakri; 7. Abdellah Chorouk; 8. Fakh Abdelouahed; 9. Dadi Abdelhaq; 10. Fazza Mohammed; 11. Al-Saoudi Saleh; 12. Mohammed Hajib Al-Bouamiri; 13. Atif Rehhal Ben Bouchair; 14. Benmat Abdennebi; 15. Hantri Hassan; 16. Bouairin Boubida; 17. Mezour Mostapha; 18. Rochdi Ahmed; 19. Hani Jamal; 20. Mehtaj Abdellatif; 21. Himdi Fatima; 22. Bennar Fatima; 23. Jamal Medjou; 24. Said Souidi; 25. Belhar Ahmed; 26. Zghaidi Mostapha; 27. Jamal Sghir Laarbi; 28. Brahim Bourk; 29. Hamdaoui Youssef; 30. Jamali Abdellah; 31. Mardi al-Hussein; 32. Kadmi Mostapha; 33. Saghrouchni Youssoufi M'hamed; 34. Azouagh Hassan; 35. Saidi Ahmed; 36. Bouhli Abdelaziz; 37. Ben Maitallah Mahfoud; 38. Bnou Hajr Abdelhadi; 39. Sayyadi Bouchaib; 40. Assem Abderrahim; 41. Assem Mouh; 42. Al-Hassan Bouhssoun; 43. Mohammed Salem Sherraf; 44. Kaka Driss; 45. Zouhir Abdelouahed; 46. Meftouh Brahim; 47. Abderrahim Oubssidas; 48. Ramzi Abderrazak; 49. Mofakkir Abderrazak; 50. Abdelkader Boukhari.

**Victims of the 1981 Casablanca riots buried in individual graves:**

- Alexander James John was stoned to death by demonstrators. He is named in the final report of the Equity and Reconciliation Commission.

- Nadim Lehen died in a private clinic of gunshot wounds. His name was first mentioned by the Follow-up Committee.

**Victims of the January 1984 riots in Nador:** Following the submission of requests by families of victims who died during the tragic events that erupted in Nador and the neighbouring areas, and based on the investigations it conducted, the Equity and Reconciliation Commission was able to determine the identity of 10 persons who died during the riots from gunshot wounds, whereas their burial place remained undetermined. After the mass grave where the victims were buried was located in the Civil Defence barracks of Nador, the Follow-up Committee carried out a thorough investigation and managed to identify other persons who died during the same events and were buried in the same place.

The anthropological examination conducted by a team of forensic physicians, who supervised the recording of data concerning discovered remains, showed that the remains belonged to 16 bodies, the data concerning most of whom was compatible with the information delivered by families to the Follow-up Committee. With a view to obtaining further confirmation, it was decided to conduct a DNA analysis to identify each body. To that end, bone samples were sent to a French genetic laboratory, and the initial results confirmed the relationship between the remains and the riots.

**The final list of identified victims of the 1981 Nador riots, who were buried in the Nador Civil Defence barracks and whose names were mentioned in the final report of the Equity and Reconciliation Commission (10 victims):** 1. Aouja Mostapha from Beni Nsar; 2. Bouarourou Saleh from Nador; 3. Mimoune Lmjahdi from Zghenghen; 4. Al-Tarhib Hakim from Nador; 5. Fares Zouhir from Nador; 6. Mrabet Najim from Nador; 7. Abdelaziz al-Jirari from Nador; 8. Al-Fayda Yahya from Nador; 9. Abdelkhalek Houari from Nador; 10. Loukili Lkhlifa from Nador.

**The final list of identified victims of the 1981 Nador riots, who were buried in the Nador Civil Defence barracks and whose names were first mentioned by the Follow-up Committee (six victims):** 1. Abderrazak al-Masoudi from Zghenghen; 2. Azed Ahmed Najim from Nador; 3. Amer Abdelhamid from Zghenghen; 4. Boudouasser Abdellah from Nador; 5. Zaiou Karim Ratbi from Zaiou; 6. Abdesslama Mostapha from Nador.

**Victims who died in the aftermath of the March 1973 riots:** The Follow-up Committee continued its investigations of victims who died in the aftermath of the riots that erupted in the country in March 1973. Having heard many witnesses, including victims of the same events and employees from Errachidia Hospital, the Committee was able to confirm the burial of Mohammed Bennouna and Moulay Slimane Alaoui in the Muslim cemetery of Al-Massira district in Errachidia (known as Lehdeb). With a view to checking the burial location, the Follow-up Committee, under the supervision of the Office of the Public Prosecution and in the presence of the local authorities, observed the exhumation of the remains by a forensic physician. The bone samples were initially sent to the Royal Gendarmerie laboratory. It was then decided to take new samples and send them to the contracted French genetic laboratory.

**Unresolved cases in the final report of the Equity and Reconciliation Commission (66 cases):**

- The Equity and Reconciliation Commission concluded in its final report that the cases of enforced disappearance that it was unable to fully clarify totalled 66. It recommended that investigations should be undertaken to reveal the fate of those victims.
- The Advisory Council on Human Rights therefore continued its investigations and analysed the information in the final report of the Equity and Reconciliation Commission that it received from the authorities on the eve of the completion of its mandate. The information concerned 66 cases of enforced disappearance that the Commission had been unable to fully clarify, and it recommended that investigations should be undertaken to reveal the fate of the persons concerned.
- The Commission had decided not to consider the information owing to its late arrival.

**The Follow-up Committee drew on this information in examining and categorizing the cases.** It also sent correspondence to public authorities in order to obtain additional



information concerning some files. Based on this information, the Follow-up Committee categorized the cases as follows:

- Cases of disappearance which, according to the Follow-up Committee, occurred for political reasons. There are **49 cases**, including a person who is still alive, Mr. Abrouk el-Alami, who was forced to flee to Algeria and then to Yugoslavia. He disappeared in 1964 and his family received no information on his whereabouts throughout that period. A second case concerns Mr. Mohamed al-Baakili, born in 1931, who was arbitrarily held for one year in the Anfa Airport detention centre, known as Courbis, after the March 1973 events, before being transferred to the Casablanca Civil Prison. After his release, he continued to suffer from mental illness because of the torture to which he had been subjected. In 1980 he left his home at 5 a.m. and disappeared. His fate remained unknown until 1983, when he returned to his home in a poor health condition. Four months later, he disappeared again because of his mental illness.

The other 47 cases concern persons who died in different detention centres, including three girls and two women. They were:

- Girls: Al-Moussaoui al-Batoul; Ezzhou Rkia; Tsselem Sellami;
- Women: Khayra Talbi; Lhmadi Cheikh Ahmed Fatma;
- Men (42): Ahmed Ould Sidi Ould Abdelhadi; Mohamed Fadel Jed Ahhlou Essayed; Makhlof Mohamed Salem Ould Laabid Ould Hmma; Babit Sidi al-Mehjoub; Taleb Ben Mohamed Mouloud; Myyara al-Mehjoub Ibrahim; Mouloud L'hcen Essayda; Mohamed Salem Hamdi Abdellah; Sidi Ahmed Ibrahim Lmouahed; Al-Cadi al-Khalil M'hamed al-Moussaoui; Al-Hifd Ould Hmma Ould M'barek; Nahem Ould Ibrahim Ould Ahmed Salem; Radi Mohamed M'barek Ban Louled Ben Abdellah; Ibrahim Salem Ould Ahmed O H'mida; Ouhmman Nafae Ben Mmillid Hmma; Mohamed Lamine Ould Sidi Ould Laabid Ould Hmma; Mohssine Amrani; Jamil Mohamed al-Haj Amrou; Salem Abdellatif; Al-Jawhari Hammou; Ait Nacer Sidi Mohamed; Hebbaz Boujmaa; Oufkir Ali Ban Dehhan; Abdellah Ould Massoud Ould Abdelkader; Hassna Ould Bichri Ould Sidi; Abdeslam Herrafi; Omar Abdelouahed Ben Abdelkader; H'mmadi Ould Bichri Ould Sidi; Mohamed Salem Ould Ahmed Elabd Ould Yehdih; Widadi Ibrahim Saleh; Bennouna Ahmed Ben Abderrahmane; Chemlal Amrou; Al-Khalil Ben Diddi; Hassan Ammar Sknna Blaoue; Bounane L'hhib; Ezzhou Mohamed; Mohamed al-Kouri al-Moussaoui; Essa'di M'barek; Aba Mohamed Salem; Chouikh Ould Ali; Mohamed Ould Ali; Mohamed Boufousse.
- The annex concerning persons of unknown fate provides summary information on each case.

**Cases in which there was no political motivation behind the disappearance of the persons concerned:** There are nine cases, including two persons who died in drowning incidents, namely Mustapha Amrani and Ahl Sayyed Sid Ahmed. On analysing the information, the Follow-up Committee came to the conclusion that there was no political motivation behind the disappearance of the other seven persons, namely: Nejmi al-Mokhtar; Bouzraa Ahmed; Kejjari Hassan; Idrissi Moulay Hamid; Mouloud Boueh; Al-Fakir Abdelaziz; Derched L'hhib Ben Mahmoud.