



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

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Morocco under article 29 (1) of the Convention\*

#### I. General information

1. Please provide information about the mechanisms in place for dealing with requests for urgent action and for interim and protection measures transmitted by the Committee in that context under article 30 of the Convention and for giving effect to the Committee's recommendations (art. 30).
2. Please indicate whether the provisions of the Convention may be directly invoked before and applied by courts or other relevant authorities. Please provide examples of case law, if any, in which the provisions of the Convention have been invoked before or applied by courts or other relevant authorities.
3. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31–32).
4. Please state whether the State party has followed up on the recommendation of the Global Alliance of National Human Rights Institutions to establish a transparent and participatory process for the selection, appointment and dismissal of members and, if so, what follow-up has been given. Please provide information, including specific examples, on the powers of the National Human Rights Council with respect to cases of enforced disappearance and on the activities of the Council as they relate to the Convention. Please give details on the investigations carried out by the follow-up committee responsible for implementing the recommendations issued by the Equity and Reconciliation Commission into the cases of enforced disappearance between 1956 and 1999. Please indicate whether the Council has received any complaints concerning enforced disappearances that took place after 1999, what measures were adopted in response to these complaints and what their outcomes were.
5. With reference to paragraph 4 of the State party's report,<sup>1</sup> please provide information on the preparation of the report, in particular regarding consultations held with civil society representatives.

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

6. Please describe the databases on disappeared persons that currently exist and indicate the type of information that is entered into them. Please specify whether this information overlaps with that appearing in other databases, such as the registers of persons deprived of

\* Adopted by the Committee at its twentieth session (12–23 September 2022).

<sup>1</sup> CED/C/MAR/1.



liberty, and whether these databases are accessible to all interested persons. Please describe the methodology used to keep the existing databases up to date (arts. 1–3, 12 and 24).

7. Please provide up-to-date statistical information, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation of the victim, on (a) the number of disappeared persons in the State party, specifying the date and place of disappearance and the number of those persons who have been located; (b) the number of those persons who may have been subjected to enforced disappearance within the meaning of article 2 of the Convention; and (c) the number of persons who may have been subjected to acts as described in article 3 of the Convention (arts. 1–3, 12 and 24).

8. Please indicate in which database and as which criminal offences the alleged acts of disappearance have been recorded. Please also specify the database used to record cases of disappearance that occurred after the period covered by the mandate of the Equity and Reconciliation Commission, and provide up-to-date statistical data on disappeared persons, disaggregated by sex, gender identity, sexual orientation, age, nationality, ethnic origin, religious affiliation and occupation, including the date and place of disappearance and the number of persons who have been found (arts. 1–3).

9. With regard to paragraph 28 of the State party's report, please describe the measures taken or envisaged to establish enforced disappearance as a separate offence under national law, in line with article 2 of the Convention (arts. 2 and 4–5).

10. Please indicate the number of alleged cases of enforced disappearance that have resulted in prosecutions under articles 436–440 of the Criminal Code and the sentences handed down in the cases where enforced disappearance was found to have occurred (arts. 2, 4–5, 7 and 24).

11. Please indicate whether any complaints have been lodged regarding disappearances occurring in connection with acts of trafficking in persons or during migratory movements. If they have, please specify the measures that have been taken to investigate, punish those responsible and provide the victims with appropriate protection, reparation and rehabilitation (arts. 2–3, 12 and 24).

12. With reference to paragraphs 25 and 26 of the State party's report, please explain how article 59 of the Constitution ensures that no exceptional circumstances may be invoked as a justification for enforced disappearance. Please also provide information on the rights that may not be derogated from in a state of alert and the relevant legislation. In addition, please specify whether any measures taken by the State party concerning emergency situations, such as those relating to the coronavirus disease (COVID-19) pandemic, have had any impact on the effective implementation of the Convention (art. 1).

13. In the light of paragraphs 28 to 30 of the State party's report, please clarify which provisions of national legislation are invoked to address cases of enforced disappearance as defined in article 2 of the Convention (art. 2).

14. Please indicate how the State party ensures that anyone who commits, orders, solicits or induces the commission of an enforced disappearance is held criminally responsible or describe the measures that are planned to bring domestic laws into line with article 6 of the Convention. Please explain how national law ensures that no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

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

15. Please indicate whether a statute of limitations is applied in respect of cases of enforced disappearance and, if so, please indicate whether the term of limitation for criminal proceedings (a) is of long duration and is proportionate to the extreme seriousness of the offence; and (b) commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature. Please also provide information about the

measures taken to guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation (art. 8).

16. Regarding paragraph 71 of the State party's report, please explain how articles 10–12 of the Criminal Code, which ensure that the State party has jurisdiction over offences irrespective of the nationality of the perpetrator and the place where the offence was committed, are applicable to cases of enforced disappearance, given that enforced disappearance has not been expressly defined as an offence in national law (art. 9).

17. In view of paragraph 76 of the State party's report, please specify the existing legal, administrative and judicial measures for carrying out a preliminary inquiry or investigation to establish the facts in cases where the State party has taken the measures referred to in article 10 (1) of the Convention. Please explain how the State party guarantees that any person in custody in such circumstances can communicate immediately with the consular authorities of his or her country (art. 10).

18. Please describe the circumstances in which the national military authorities may be competent under domestic law to investigate or prosecute persons accused of enforced disappearance and, if such circumstances exist, please provide information about the applicable legislation (art. 11).

19. With reference to paragraphs 83 and 84 of the State party's report, please explain how it is ensured in practice that all reported cases of enforced disappearance are investigated, even if there has been no formal complaint. Please describe the measures taken to ensure that a search is immediately initiated when the authorities become aware of a case of enforced disappearance (art. 12). Please indicate whether there is any mechanism in place to exclude from investigations into alleged cases of enforced disappearance any State officials who are suspected of having committed the offence or having been involved in its commission. Please also indicate whether national law establishes that a State official suspected of involvement in the commission of an offence of enforced disappearance should be suspended from duty from the outset of the investigation and throughout its duration; if it does, please provide information on the applicable provisions (art. 12).

20. Please describe the steps taken to prevent any ill-treatment or intimidation resulting from complaints lodged or action taken to find a disappeared person and the measures in place to protect family members against reprisals and persecution of the kind experienced by the relatives of Lahbib Aghrichi and Omar El Ouassouli (arts. 12 and 24).

21. With reference to paragraph 120 of the State party's report and given that enforced disappearance is not established as an offence in the Criminal Code, please report on the measures taken to ensure that enforced disappearance is included as an extraditable crime in all treaties concluded with other States, whether or not they are parties to the Convention. Please also describe any potential obstacles to extradition under national legislation, extradition treaties or agreements with third countries with regard to enforced disappearance (art. 13).

22. Please indicate whether the extradition treaties mentioned in paragraphs 125, 131 and 132 of the State party's report have been applied in cases of enforced disappearance and, if so, please specify the outcome of the requests made. Please also indicate the laws that are applicable when a request for mutual assistance is issued by a State that is not a party to the Convention. With respect to paragraphs 118 and 119 of the report, please provide information on any limitations or conditions that may be set on requests for mutual assistance and cooperation. In the light of paragraph 136 of the report, please describe the mutual assistance measures adopted by the State party with a view to assisting all 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 (arts. 14–15).

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

23. With respect to paragraphs 133–135 of the State party's report, please provide detailed information on the measures taken to ensure the strict observance, in law and in practice, of the principle of non-refoulement enshrined in article 16 of the Convention. In particular, in

respect of Act No. 02-03 of 11 November 2003 on the entry and residence of foreign nationals in Morocco and illegal emigration and immigration, please (a) describe the provisions prohibiting the expulsion, return, surrender or extradition of a person where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance and the mechanisms and criteria used in determining whether such a risk exists and in assessing it; (b) indicate whether it is possible to appeal against a decision authorizing an expulsion, return, surrender or extradition and, if so, who is permitted to file the appeal, before which authority and under which procedure, and whether the appeal has suspensive effect; (c) provide information on mechanisms to ensure that each case is assessed individually before an extradition, return, surrender or expulsion is carried out; and (d) indicate whether the State party accepts diplomatic assurances when there are substantial grounds for believing that the person concerned would be in danger of being subjected to enforced disappearance (art. 16).

24. With regard to paragraphs 140 and 141 of the State party's report, please provide information on the legal provisions and measures which guarantee that all persons subject to any form of deprivation of liberty are afforded fundamental legal safeguards from the very outset of the deprivation of liberty, including the right to communicate with and be visited by counsel, their family or any other person of their choice, and, in the case of foreigners, the right to communicate with their consular authorities, regardless of the type or place of deprivation of liberty, including in border control areas, immigration detention centres, psychiatric hospitals and social care homes (art. 17).

25. In the light of paragraph 140 of the State party's report, please provide information on the existence of any other official registers of persons deprived of liberty, irrespective of the type and place of deprivation of liberty, and describe the measures taken to ensure that these registers contain all the information set out in article 17 (3) of the Convention and that they are filled in, kept up to date and monitored. In that regard, please provide information on the measures in place, including applicable legislation, to prevent and punish the conduct described in article 22 (b) and (c) of the Convention (arts. 17 and 22).

26. With reference to paragraphs 141 and 142 of the State party's report, please provide information on any other independent bodies or administrative mechanisms that inspect places of deprivation of liberty, including border control areas, immigration detention centres, psychiatric hospitals and social care homes, and the measures in place to guarantee their independence and their unrestricted access to all places of deprivation of liberty (art. 17).

27. Please provide information on the measures and procedures for ensuring that any person with a legitimate interest, whether of a legal nature or any other nature, can obtain access to all the information set out in article 18 (1) of the Convention.

28. With regard to paragraph 140 (vi) of the State party's report, please clarify whether all police custody registers contain information on the release of persons from custody. If that is not the case, please provide additional information on the legislation adopted, the other measures taken to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released and to ensure their physical integrity and their ability to exercise fully their rights at the time of release, and information on the authorities in charge of monitoring their release (arts. 17 and 21).

29. Please indicate whether a database consisting of genetic data on disappeared persons and their relatives has been set up for the purpose of searching for disappeared persons and identifying remains in the event of death (art. 19).

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

30. Please provide information on the definition of "victim" in national legislation and explain how it conforms to the definition contained in article 24 (1) of the Convention. Please indicate whether a victim of enforced disappearance is obliged to initiate criminal proceedings to be considered a victim (art. 24).

31. In order to realize the right of victims' to know the truth, please describe the measures taken to (a) facilitate access to archives that may contain information needed to resolve cases of enforced disappearance; (b) excavate mass graves and exhume and identify human remains; and (c) investigate the pending cases identified by the Advisory Council on Human Rights, which was succeeded by the National Human Rights Council.

32. Please indicate whether there is a mechanism for launching an immediate search when a disappearance is reported and provide information on the protocols and procedures for searching for, locating and releasing disappeared persons and the applicable time frames. Please describe the existing mechanisms for ensuring effective and efficient coordination between the authorities in charge of the search for the disappeared person and those in charge of the investigation of the disappearance (art. 24).

33. Please indicate the measures taken to guarantee full reparation for all victims. Please provide information on claims that compensation was provided by the Equity and Reconciliation Commission on the condition that the case was closed, even if the fate of the disappeared person and the circumstances of the disappearance had not been clarified. In view of paragraph 175 of the State party's report, please provide detailed information on the regions that have received collective reparation and the amounts allocated to the various projects (art. 24).

34. Please describe the laws that govern the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights. In this regard, please provide additional information on the measures taken to ensure that the gender perspective and the needs of women and child relatives of disappeared persons are consistently taken into account (art. 24).

## **VI. Measures to protect children against enforced disappearance (art. 25)**

35. Please provide detailed information on the laws applicable to the acts described in article 25 (1) of the Convention and indicate whether there are plans to establish these acts as specific offences in the Criminal Code. Please also provide information on the procedures in place for reviewing and, if necessary, annulling any adoption, placement or guardianship that originated in an act of enforced disappearance and on measures for restoring a child's identity, including his or her nationality, name and family relations, while protecting the best interests of the child, as well as any limitations that may apply (art. 25).