



**Input by the National Human Rights Council of the Kingdom of Morocco  
On the roles and responsibilities of non-state actors in the transitional justice process**

**January 2022**

1. The National Human Rights Council of the Kingdom of Morocco (CNDH) wishes to respond to the questionnaire relating to the roles and responsibilities of non-state actors in the transitional justice process, drawn up by the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-repetition and received by the CNDH from the United Nations High Commissioner for Human Rights on 6 December 2021.
2. The Equity and Reconciliation Commission (IER), set up on January 7, 2004, completed its mandate on November 30, 2005 and published its final report<sup>1</sup>. The IER examined cases of serious human rights violations over a period of 43 years (1956-1999). Morocco's national human rights institution has been appointed to monitor the implementation of IER recommendations. For this purpose, the CNDH established a Follow-up Committee.
3. The Statutes of IER<sup>2</sup> includes definitions of gross human rights violations, including enforced disappearances, which were defined in Article 5 as the act of kidnapping or arresting a person or persons and detaining them against their will and illegally in secret places by public officials, individuals or groups acting on behalf of the State.
4. Responding to your questionnaire, while analyzing and handling the various requests and complaints it received, the Moroccan truth Commission was confronted with diverse and highly complex cases, for which the responsibility was shared by actors that committed violations and the State who has the responsibility to protect the security and safety of its citizens. These cases are as follows:
  - a. Victims kidnapped during the early years of independence of Morocco in 1956 by non-state actors and detained on the national territory;
  - b. Victims kidnapped by an armed group on the Moroccan territory in the context of the armed conflict over the Sahara, but detained on the Algerian territory.
5. The Moroccan truth commission was faced with three **challenges** to meet the expectations of victims and their families. The **first challenge** corresponds to the lack of a thorough definition of enforced disappearance in the national legislation, during the tenure of the IER. The **second challenge** pertains to the fact that the cases of enforced disappearances and assassinations were old, as they date back to 1950s, and most actors in those incidents died. **The third challenge** relates to the ongoing regional conflict over the Sahara and refusal by the responsible party to acknowledge its responsibility for the committed violations.

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<sup>1</sup> <https://www.cndh.ma/an/rubriques/documentation/publications/report-equity-and-reconciliation-commission-ier>

<sup>2</sup> <https://adala.justice.gov.ma/production/html/Ar/86297.htm>

6. Regarding the **opportunities** that were made available to the Moroccan truth commission and with a view to addressing these challenges, the truth commission, in examining those cases, took as an international normative source the Declaration on the Protection of all Persons from Enforced Disappearance, as the International Convention for the Protection of All Persons from Enforced Disappearance was not adopted at that time.
7. Thus, the IER conducted investigations into the cases of disappearances and deaths that were perpetrated, shortly after the independence of Morocco in November 1956, by factions and groups representing the former members of the Liberation and Resistance Army. Victims included political activists, who had been kidnapped and detained in State's premises or premises under the supervision of these groups. Some of these victims had been assassinated in the public street.
8. To reach the truth about the incidents, the Commission was guided by the writings on such incidents and the hearings given to the persons having held senior positions in those premises (detention centers), as well as to senior witnesses who had lived through these incidents and former victims. Moreover, the Commission undertook field visits to the most notorious detention centers in the country (Dar Barricha, in the north and Tifndilt in the south).
9. Despite the difficulties that were faced by the truth Commission and the Follow-up Committee later on, especially the fact that incidents took place far back in the past, that most direct witnesses died, that archive materials are rare or inexistent and that most former supervisors of places of detention were hesitant to provide accurate information on the burial sites of the victims and only pointed to the context and circumstances of violence between political groups, the Commission successfully established a list of the victims who were detained, released later on or died in these places or those executed in the public street. The Commission counted 239 victims, including 50 victims died in various centers in the north (Dar Barricha), center (Police station known as "CTM") and the south (Tifndilt). The amount of compensation accorded to those victims reached almost USD 6.2 million.
10. Furthermore, the Commission identified the burial sites of two of these victims near Dar Slicher detention center in Ghafsai city. The remains of one of them was transferred to his home city, at the request of his family.
11. Regarding the complaints concerning civilian victims kidnapped on the Moroccan territory and detained on the Algerian territory by an armed group (Polisario), despite the fact that the responsibility is shared between the kidnapping and detaining non-state actor (Polisario armed group) and a state actor that has obscured these violations (State of Algeria), the Commission heard former detainees (victims), some of whom spent more than 20 years in detention. They provided information about places of their detention, officials in charge of these places and the victims who died in those centers. Likewise, the International Committee of the Red Cross provided the Commission with a preliminary list of the victims who died in those centers, whereas the Polisario, as a non-state actor responsible for kidnapping and detention did not provide any clarifications on the fate and detention circumstances of those victims.
12. Given the severe suffering that the victims were enduring in detention and taking into account that the non-state actor who kidnapped and detained the victims did not assume its full responsibility to disclose information on their fate and circumstances of their kidnapping, the Commission recommended the Moroccan Government to take all necessary measures to ensure that victims receive adequate reparations.
13. In this vein, the IER adopted the risk theory and invoked the responsibility of the State to protect the safety and security of its citizens. This was considered the merits of compensations to the victims and their rights holders who filed their requests within the deadlines. Accordingly, 370 individuals and rights holders received a total of USD 12.5 million.

14. The jurisprudence of the Commission and its Follow-up Committee consists of holding the State responsible for disclosing the fate of the victims of disappearances and assassinations perpetrated in the wake of the independence of Morocco by political factions and providing the victims and their families with due compensation. This is one good practice that the Commission has used. Indeed, those factions ceased to exist or cooperate and the victims and their families have only the State and its bodies as their sole interlocutor.
15. Moreover, compensating victims of the kidnappings that took place on the Moroccan territory and the detention that occurred in a neighboring country is a jurisprudence and a good practice that the Commission has used so as to ensure reparations for victims and recognize the severe injuries that they suffered. Such recognition does not deny the right of the victims' families to continue to claim the truth about the fate of their relatives.
16. The International Committee of the Red Cross (ICRC) was interested in the regional conflict over the Sahara and served as a mediator between the Moroccan authorities and the Polisario. The role of the ICRC was reinforced after the establishment of the Moroccan truth commission as a transitional justice mechanism mandated to reveal the fate of the victims of enforced disappearances. Since 2005, the Commission has made its database accessible to the ICRC team and identified the victims of enforced disappearances linked to the regional conflict over the Sahara.
17. The National Human Rights Council, as the institution officially tasked with monitoring the implementation of the IER's recommendations, held meetings, at its headquarters, with the ICRC teams during which it provided the findings of investigations conducted by the IER regarding the victims of disappearances in the context of the aforementioned regional conflict. The Moroccan Government submitted to the ICRC team a preliminary list of 212 disappearance cases that took place on the Algerian soil dating back to the period between 1976 and 1981. Nevertheless, the party responsible for the kidnapping and detention of those victims in the Tindouf camps neither cooperated with the ICRC nor provided information on them.