

**THE MEDIATOR FOR DEMOCRACY AND HUMAN RIGHTS  
PARALLEL REPORT TO UPR OF MOROCCO**



الوسيط من أجل الديمقراطية وحقوق الإنسان  
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Le Médiateur pour la Démocratie et les Droits de l'Homme

**Morocco**

**41<sup>st</sup> Session of the Working Group on the Universal Periodic Review  
UN Human Rights Council**

**Individual submission elaborated by:  
the Mediator for Democracy and Human rights**

**March 2022**

The Mediator for Democracy and Human Rights is an independent non-governmental organization, established in December 2007, it strives to defend and promote rights and freedoms through working on the intersection between democracy and human rights issues. It acts as a watchdog NGO through focusing on monitoring, evaluation and advocacy of public policies related to human rights and democracy.

1. The Mediator for Democracy and Human rights (hereafter the Mediator) submits an individual parallel report to the Universal Periodic Review of Morocco, during the 41<sup>st</sup> session of the Working Group on the UPR, which is planned to be held between 7 and 18 November 2022.
2. This report was elaborated based on the monitoring of the human rights situation in Morocco, data collection, and analysis, since the publication of Morocco's UPR recommendations of the third cycle in 2017. It covers four priority areas of particular relevance to the promotion of human rights in Morocco, which directly intersect with the Mediator strategic orientations, and were not extensively tackled in the joint parallel report of CSOs. In this regard, the MDDH has prioritized recommendations according to the following thematic issues:
  - Morocco's treaties practise and interaction with UN mechanisms of HR;
  - Strengthening the Parliament interaction with the UN mechanisms of Human rights;
  - Right to life;
  - Freedom of association.

### **Morocco's treaties practise and interaction with UN mechanisms of human rights**

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3. Despite Morocco's ratification of the core human rights' treaties, and its efforts at the level of harmonization of legislations with UN treaties' provisions, implementing its commitments during the process of laws making and through the elaboration of public policies remain challenging. This hinders the effective enjoyment of rights and freedom at the facto level.
4. The challenge remains at the level of harmonization of laws with the Constitution and with Morocco's obligations and commitments related to the human rights treaties, as is the case with the Code of Public Freedoms, the Criminal Code, the Criminal Procedure and the Family Code. In this sense, Morocco has failed to make progress in implementing the previous UPR recommendations (31, 85, 86, 101, 112, 114, 112, 116, 120, 121, 122, 128, 185), which makes these recommendations a renewed demand.
5. The withdrawal of reservations and declarations related to human rights treaties remaining one of the important demands of human rights defenders and CSOs in Morocco, knowing that Morocco has not yet withdrawn its declaration regarding Article 2 and paragraph 4 of Article 15 of CEDAW, its reservation on Article 29 and its declaration on the first paragraph of Article 14 of the Convention on the Rights of the Child. Thus, the Mediator notes that these reservations and declarations contradict with the principle of the indivisibility of rights.
6. Although Morocco has accepted the following recommendations 1, 4, 6, 7, 9, 10 related to the ratification of optional protocols to the nine core UN treaties, it has not yet considered the ratification process of the following protocols: The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty and the optional protocols that allow individual communications (the First OP-ICCPR, the Second OP- CESC, OP-CEDAW and the third OP-CRC).

7. It is noted that Morocco has strengthened the interaction with UN human rights mechanisms, especially during the period from 2011 to 2017, as it has overcome the delay in submitting a set of delayed periodic reports to treaty bodies, as well as have received a group of special procedures. However, this process of interaction and engagement has slowdown during the last four years, thus we deem it necessary that Morocco should fulfil its commitment through submitting the following periodic reports:
  - The 5<sup>th</sup> periodic report to the Committee against Torture.
  - The 7<sup>th</sup> periodic report to the Human Rights Committee.
  - The 5<sup>th</sup> periodic report to the Committee on Economic, Social and Cultural Rights.
  - The 5<sup>th</sup> & 6<sup>th</sup> periodic report to the Committee on the Rights of the Child.
8. On a positive note, Morocco has pushed forward submitting four periodic reports during 2020 and 2021 which are not yet planned for the interactive dialogue. These reports are as follows:
  - The 5<sup>th</sup> and 6<sup>th</sup> periodic reports to Committee on the Elimination of Discrimination against Women (January 16, 2020)
  - The initial report to the committee on Enforced Disappearances (September 1, 2021).
  - The combined report of the 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> periodic reports to the Committee on the Elimination of Racial Discrimination (December 28, 2020).

#### **9. Recommendations:**

- 9.1 Consider ratification of the optional protocols regarding individual communication procedures (OP-ICCPR, OP- CESCR OP-CEDAW and OP-CRC)**
- 9.2 Consider accession to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.**
- 9.3 Strengthen the effective interaction with UN treaty bodies through respecting the deadlines of reporting, updating the basic common core document according to the required harmonized Guidelines on Reporting and consider adopting the simplified reporting procedure.**
- 9.4 Activate Morocco's commitments related to human rights by invoking them during the preparation of Financial Law, public policies, and sectoral policies.**

#### **Strengthening the role of Parliament in interacting with the UN mechanisms of Human rights**

10. Given that the Parliament institution is a key actor in the field of human rights, as it undertakes the task of promoting, protecting, and monitoring of human rights through its oversight roles in relation to legislation and public policies, and by its participation and interaction with the United Nations mechanisms of human rights. Thus, the mediator records the positive interaction of the Parliament of Morocco with The UPR during its various phases of the third cycle, and particularly we mention the best practice at the level of government involvement of the Parliament during drafting the mid-term UPR report of 2019.
11. Accordingly, we draw attention to the need to strengthen the role of Parliament at the level of interaction with international human rights bodies, through participating in the

stage of preparing periodic national reports, contributing to the interactive dialogues, of and particularly the phase monitoring the implementation of recommendations and concluding observations through drafting laws, elaboration of financial laws and public policies.

12. The parliament role in advancing human rights at the level of law and practise should be done through the amendment of the bylaws of the upper and lower houses, to stipulate the role of Parliament in implementing the recommendations of UN mechanisms of human rights. The Mediator urges the parliament of Morocco to consider creating a parliamentary committee with a special mandate on human rights issues that aligns with international standards set by the Human Rights Council in cooperation with the International Parliamentary Union.

### **13. Recommendations:**

- 13.1 Amend the rules of procedure of the two Houses of Parliament to include stipulating its functions related to participation and interaction with UN treaty-based bodies and charter-based bodies.**
- 13.2 Invite the parliament to consider creating a parliamentary committee with a special mandate on human rights issues that aligns with international standards set by the UN Human Rights Council in cooperation with the International Parliamentary Union.**

## **Right to life**

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14. The Mediator draws attention to the fact dealing with the right to life should be based on recent relevant UN jurisprudence and recommendations. Particularly, the recent General Comment No. 36 of the Human Rights Committee, which focused on the violations that can affect right to life and causing premature death, not only by legislations but also as result of the inequitable policies, the weakness of public services that are not adequate with the needs of citizens, the increasing social, economic, and psychological vulnerability, and the consequence of the government failure to fulfil its responsibility in protecting the right to life.
15. Although Morocco would have achieved the status of de facto abolitionist, as it had not carried out any executions since 1993, the national legislation still maintains capital punishment. The death penalty sentences with suspended execution are 79 cases until the year of 2021, noting that the Criminal court of first instance in Salé, issued a ruling against persons accused of premeditated murders of three sentences of the death penalty in 2019, and during the Court of Appeal, the three sentences of the death penalty were confirmed and another one was added through converting a life sentence to the death penalty.
16. On a positive note, Morocco has commute death sentences through the draft law No. 16.10 to amend and supplement the Criminal Code, which includes provisions aimed at reducing the number of crimes sentenced by death from 31 to 11 crimes, as well as the requirement for this sentence to be issued unanimously by the ruling body, before pronouncing the opinion of each of the commission's members which will be recorded in a documented report. As well as the death penalty sentences was reduced in relation to the

Military Justice Law from 16 to 5 crimes, However, the Anti-Terrorism Law remained unchanged since it expanded the scope of this punishment.

17. On December 2020, Morocco abstained from voting for the eighth time in a row, on the biennial United Nations General Assembly (UNGA) resolution calling for a moratorium on the use of the death penalty. Thus, the position of Morocco is still unclear at this level, as it fluctuates between the suspension of the death penalty in practice since 1993, and the abstention from voting in favour of the moratorium, without implementing the recommendation of National Action Plan in the field of Democracy and Human Rights (2018-2021) concerning launching public debate on the abolition of the death penalty.

**18. Recommendations:**

- 18.1 Reform and review legislations and various unfair public policies, which continue to violate the right to life.**
- 18.2 Invite Morocco to vote in favour of the United Nations General Assembly (UNGA) resolution calling for a moratorium on the use of the death penalty.**
- 18.3 Consider the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

**Freedom of Association**

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19. Despite the quantitative data that indicate an increase in the activity of associations in Morocco, the challenge is remaining at the level of harmonization of the legal framework regulating freedom of association and the work of human rights defenders with the Constitution and relevant international standards, especially Article 22 of the ICCPR and the Declaration on Human Rights Human rights defenders. Thus, freedom of association is still encountered by some challenges that hinder providing an open and accessible civic space.
20. With regard to freedom of association at the level of practice, the mediator would present its reading of the judicial ruling regarding the dissolution of the association “Racines”, which he considers as the most prominent event during the last four years. As this dissolution constitutes a “qualitative” shift in dealing with freedom Associations in Morocco, and would probably have effects on the process of reform of the legal framework that the government has been promising since years. In This case, the Mediator considered that the justice has been seized to obtain a judgment of dissolution of the association that lacks legal foundations : As the targeted association has, on the one hand, denied any link with the activity invoked by the Public Prosecutor's Office to request the dissolution and, on the other hand, the Public Prosecutor's Office has not been able to present irrefutable evidence of the link of Racines with the activity. Hence, this judgment is unjust and unfair and does not comply with the constitutional guarantees stipulated in articles 12 and 29.
21. The banning cases and decision that hinder freedom of association, which which took several forms and marked the intervention of representatives of the administrative authorities for several years, and continued and continued in the last four years are as follows:
  - 22.1 Refusal to receive documents from associations or their sections, in violation of the provisions of Article 5 of the Dahir of 15 November 1958;

- 22.2 Receipt of documents but refusal to issue the provisional receipt in violation of the provisions of the same article;
- 22.3 Request for documents not required in the aforementioned article;
- 22.4 Delivery of the temporary receipt and refraining from delivering the final receipt within the legally specified deadline within 60 days, or after the expiry of this deadline and leaving the associations in a “suspended” position, especially after Bank Al-Maghrib instructed banks not to carry out any banking operation for the benefit of associations, unless they have final deposit receipt, which disrupts the activities of associations and affects their obligations.
- 22.5 Limited access to the various spaces and premises to organize activities including general assemblies and congresses of renewal of the bodies, in violation of the provisions of the circular No. 99/28, which the National Council of Human Rights recommended to transform into a decree;14.6 Putting obstacles in the way of some associations' access to financial support without legal or objective justifications.
- 22.6 The exclusion of associations during consultations and debates on public policies as stakeholders; and when they are consulted, their presence is there just to meet the demands of international partners or because their participation is required during the elaboration of national reports to the UN mechanisms of human rights. This formal participation of the associations explains why their proposals are not taken into account in the elaboration of public policies related to human rights;

## **22. Recommendations:**

- 22.1 Proceed with the revision of Dahir No. 1.58.376 in accordance with the constitution, treaty practice, international commitments and the recommendations of the National Human Rights Council (included in its memorandum on freedom of associations) in relation to freedom of association, and act for:**
  - ✓ **The abolition of custodial sentences in legislation concerning freedom of association;**
  - ✓ **To put an end to the transformation of the principle of declaration of the constitution of associations into a system of authorization**
- 22.2 Guarantee the right of access and use of all associations of different spaces and premises for their activities;**
- 22.3 Ensure that the administrative authorities apply judicial rulings without delay when they are for the benefit of associations**