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**EAAF (Equipo Argentino de Antropología Forense)** is an Argentine nonprofit, non-governmental organization that applies forensic sciences to cases of human rights violations by providing independent forensic investigations to help victims' families access their rights to justice and truth and potentially recover the remains of their missing relatives. Since its founding in 1984, just months after the fall of the last Argentine dictatorship, EAAF has pioneered the application of forensic sciences to human rights investigations in over 60 countries, primarily focusing on enforced disappearances. The Team has made thousands of identifications of victims of human rights violations and provided answers to their families; supplied evidence to justice proceedings that have imprisoned dictators and senior military officers in nine countries; trained thousands of victims' families, government forensic practitioners, judges, police, human rights defenders, and journalists; and contributed to the improvement of numerous internationally accepted forensic protocols, including those regarding the investigation of femicides and the deaths of missing migrants. EAAF's investigation of disappearances under democracy dates to its first days as a team.

**University of Chicago Law School Global Human Rights (GHRC)** works alongside partners and communities to advance justice and address the inequalities and structural disparities that lead to human rights violations worldwide. The GHRC uses diverse tactics and interdisciplinary methods to tackle pressing and under-addressed human rights issues. The work of the GHRC varies but includes investigating and advancing accountability for mass atrocities and armed conflict, addressing the impacts of colonialism, advocating for equality and non-discrimination, and advancing socio-economic rights.

**The University of Chicago Law School Immigrants' Rights Clinic** is a U.S.-based university legal clinic that provides legal representation to immigrant communities in Chicago and around the country, including individual representation of immigrants in removal proceedings, immigration-related complex federal litigation, and policy and community education projects on behalf of community-based organizations.



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## I. OVERVIEW OF THE MOROCCAN LEGAL SYSTEM

The Moroccan legal system is based on a combination of Islamic legal traditions, customary law, and modern principles inspired by the Romano-Germanic legal system. The 2011 Constitution forms the foundation of this framework, guaranteeing fundamental rights such as gender equality, the protection of individual freedoms, and the separation of powers.

The constitutional monarchy lies at the heart of the institutional structure, with the King exercising executive, legislative, and symbolic functions, while ensuring institutional balance. The system is organized around a clear separation of powers between the parliament, the government, and an independent judiciary, which plays a key role in protecting rights and freedoms.

In criminal law, the Moroccan Penal Code criminalizes classic offenses while integrating elements related to national security and human rights. Criminal law also applies to migration management, as evidenced by Law 02-03 on the entry and residence of foreigners, which introduces criminal measures concerning deportation and expulsion, while setting procedural safeguards.

Moreover, regarding international law, Morocco adopts a monist system that automatically incorporates ratified international treaties. However, these treaties remain subject to constitutional provisions and domestic laws, sometimes limiting their effective application before courts. Despite progress, challenges remain, particularly in implementing the rights enshrined in international conventions, such as the International Convention for the Protection of All Persons from Enforced Disappearance.

## II. The Moroccan Legal Framework on Disappearances in the Mediterranean and the Rights of Missing Migrants and Their Relatives

The Moroccan legal framework concerning foreigners and migrants is primarily based on Dahir No. 1-03-196, promulgating Law No. 02-03 of November 11, 2003. This legislation, adopted in the context of heightened security concerns following the 2003 Casablanca bombing, takes a repressive approach to immigration management and irregular migration. The law imposes harsh penalties for irregular entry, stay, and illegal emigration<sup>1</sup>, while also criminalizing assistance provided to individuals in an irregular situation, as stipulated in Article 52<sup>2</sup>, which addresses human trafficking. This legal framework emphasizes border security and the fight against migrant smuggling.

Additional legislation, notably Law No. 27-14 on combating human trafficking, reinforces the measures established by Law 02-03. This text specifically targets human trafficking networks. The 2011 Moroccan Constitution marks a major turning point by incorporating principles for the protection against enforced disappearances. Article 23 recognizes enforced disappearance as a serious crime punishable by the most severe penalties. This article reinforces the consideration of human rights violations, particularly those involving kidnapping or unlawful detention. Article 20 protects the right to life, further strengthening legal safeguards against disappearances, while Article 22-3 strictly prohibits all forms of torture.

Although the Moroccan Penal Code does not explicitly define enforced disappearance, it does provide penalties for kidnapping and unlawful detention, which may encompass cases of enforced disappearance. Articles 436 to 440 impose heavy penalties on those who unlawfully abduct, detain, or sequester individuals, including aggravated penalties where false orders or uniforms are used to justify such acts.

<sup>1</sup> Article 43 of Law 02-03: Any foreigner residing in Morocco without holding the registration card or the residence card provided for by this law shall be punished by a fine ranging from 5,000 to 30,000 dirhams and by imprisonment from one month to one year, or by only one of these two penalties. In the event of a repeat offense, the penalty shall be doubled.

<sup>2</sup> Article 52 of Law 02-03: Anyone who organizes or facilitates the clandestine entry or exit of nationals or foreigners from Moroccan territory, by any of the means referred to in the two preceding articles—particularly by transporting them, whether for free or for payment—shall be punished by imprisonment of six months to three years and a fine ranging from 50,000 to 500,000 dirhams. The offender shall be punished by imprisonment of ten to fifteen years and a fine ranging from 500,000 to 1,000,000 dirhams if the acts described in the first paragraph of this article are committed habitually.

Meanwhile, **although Morocco has ratified the International Convention for the Protection of All Persons from Enforced Disappearance, it has yet to implement the necessary mechanisms to fully enforce its provisions—especially those related to recognizing the competence of the Committee to examine individual complaints.**<sup>3</sup> This omission limits the recourse available to victims of enforced disappearances, including migrants who have gone missing in the Mediterranean Sea.

Thus, despite progress—particularly the adoption of the 2011 Constitution—gaps remain in the implementation of international instruments like the aforementioned Convention. **These shortcomings hinder access to effective remedies for victims, especially missing migrants. Moroccan legislation treats disappearances in general terms, without sufficiently addressing the specific context of migrant disappearances during migration journeys. It is therefore essential to adopt more suitable legal texts and provisions that reflect the specific nature of these disappearances, to ensure effective legal protection in line with international standards.**

<sup>3</sup> Articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance.

### III. Legal Framework on Disappearances and Administrative Formalities for Missing Persons

Regarding the reporting of missing persons, Moroccan legislation does not provide specific or detailed procedures for declaring a person as missing. In practice, relatives of a missing person may go either to the judicial police station or the Royal Gendarmerie unit, depending on the location of the missing person's residence. In urban areas, the national police are responsible, while in rural areas, it is the Royal Gendarmerie that handles the report. When filing the report, family members must provide as much information as possible about the missing person. These details will allow the police or gendarmerie to initiate searches based on the information provided. However, the search process varies by region and is strongly influenced by the nature of the disappearance and the resources available locally.

In the case of persons who go missing in a migratory context, the situation is particularly complex for families. In most cases, the missing person is located in Moroccan territory, while their relatives reside in their country of origin. This geographical separation greatly complicates the ability of families to obtain information about their loved one's fate. Unless another migrant who shared the same journey can provide news, families are often left without reliable information about the disappearance. The situation becomes even more difficult when the person is reported missing without a trace or without the Moroccan authorities having any knowledge of their whereabouts. Furthermore, access to information about the disappearance becomes a major challenge for relatives. In the absence of clear and coordinated national or international systems to report a missing person, families often turn to associations or international NGOs that work on the issue of disappearances in the Mediterranean from Morocco. These organizations play a central role in helping families in their search for information, but their resources remain limited. Relatives may also contact their country's consular representations, which in turn reach out to the Moroccan authorities in an attempt to gather information on the missing person's fate.

However, even with the help of NGOs or consular services, the search process remains largely uncertain and faces many obstacles. **The lack of formal and harmonized procedures between Moroccan authorities and consulates makes investigations inconsistent and inefficient. This lack of structure not only complicates the search process but also hampers communication among the different stakeholders involved, exacerbating the frustration of families seeking answers.**

Regarding administrative steps, the relatives of a missing person can request a certificate of absence—a document that officially records the disappearance of an individual. However, this certificate has limited legal effect, as its impact varies depending on the legal systems of the requesting parties' countries of origin. In particular, when it comes to settling matters of inheritance or succession, heirs must obtain a certificate confirming the death of the person, not merely their disappearance. Under Moroccan law, such a certificate<sup>4</sup> can only be issued one year after the person's disappearance and once all hope of finding the person has been lost. This situation highlights the legal and administrative complexity that families face when dealing with the disappearance of a loved one, especially in a transnational context where legal systems and procedures differ from one country to another.

<sup>4</sup> Article 327 of Law 70-03 of the Family Code states: "When a person has disappeared in exceptional circumstances that make their death likely, a declaratory judgment of death shall be issued after a period of one year from the day all hope has been lost of determining whether the person is alive or deceased. In all other cases, it is up to the court to determine the period after which the declaratory judgment of death may be issued, following an investigation and inquiry by all possible means from the competent authorities responsible for locating missing persons."

## IV. Legal Framework and Procedures Regarding the Management of Unidentified Bodies

Moroccan legislation remains insufficient in terms of managing the bodies of people who go missing during migration journeys. In fact, the only legal reference is found in the Code of Criminal Procedure, which in Article 77 states:

"In the event of the discovery of a body, whether the death was violent or not, but where the cause is unknown or suspicious, the judicial police officer who is informed must immediately notify the public prosecutor, go to the scene without delay, and carry out initial observations. The public prosecutor shall go to the scene if deemed necessary and shall be assisted by persons capable of assessing the nature of the death circumstances. The prosecutor may also delegate this task to a judicial police officer of their choice. The persons involved shall take an oath to express their opinion with honor and conscience. The public prosecutor may also order an inquiry to determine the cause of death."

While this provision is fundamental, it does not address the specificities involved in managing the bodies of migrants who go missing along migration routes. As such, it remains disconnected from the reality on the ground. **In the absence of a more detailed and adapted legal framework, the handling of migrant bodies found at sea remains largely arbitrary.**

Moreover, in many maritime zones, where territorial jurisdiction presents limitations, judicial police officers are often absent and replaced by Royal Gendarmerie units. This lack of specialized personnel further complicates the identification and processing of the bodies.

When a body is discovered at sea by the Royal Navy or onshore by judicial police officers, they are legally required to collect all elements that may assist in identifying the deceased or in determining the cause of death. This process is conducted under the supervision of the Public Prosecutor before the body is transferred to the nearest morgue or the one within the competent territorial jurisdiction. If information can be gathered—either from documents found on the body or from testimonies by individuals who directly or indirectly knew the deceased—these are passed on to the consular representation of the person's country of origin. This step aims to inform the family and facilitate related administrative procedures.

Nevertheless, in most cases, identification proves to be impossible due to a lack of ID documents or witnesses. When identification fails—which is a recurring situation according to field observations—the body is kept in a morgue for a period ranging between three and six months, depending on the institution. During this time, municipal services document all available details, including the date and location of discovery and any items found with the body.

After this period, if the body remains unidentified, it is buried in a public cemetery in accordance with applicable regulations.

In some cases, the presumed religion of the deceased may be considered for burial. If it is established that the deceased was Christian or Jewish, burial may take place in a cemetery aligned with that religious practice. However, the application of this measure varies depending on geographic areas and local customs.

It is important to highlight the inconsistency in practices across cemeteries. Some graves lack any identification, and in certain cases, the municipal registry number is not even mentioned. When documentation does exist, it is often limited to basic details such as the victim's gender, burial date, and grave number recorded in the municipal register.

**This lack of standardization in documentation and burial practices raises significant issues related to traceability and the management of the remains of missing migrants.** These shortcomings reveal major deficiencies in the legal and administrative framework, particularly concerning the respect for the dignity of the deceased and the rights of their families.

## V. Legal framework and procedures applicable to death registration and repatriation of the remains of non-nationals

Moroccan legislation does not provide a specific legal framework to regulate procedures related to the death of a foreign person on its territory but applies administrative procedures that vary depending on diplomatic conventions or consular practices. When a death occurs, the relatives of the deceased may obtain a death certificate from the competent Moroccan municipal services. This official document, essential for all subsequent procedures, is issued following a formal declaration of death, often made by a relative or by the competent authority that recorded the death. **The death certificate serves as the key document enabling the initiation of necessary administrative steps with the consular services of the deceased person's country of origin.**

These specific steps vary according to the laws of the countries of origin but generally rely on common principles. As a general rule, the family members of the deceased must prove their relationship with the deceased by presenting official documents such as a birth certificate, family record book, or marriage certificate, along with the death certificate issued by the competent Moroccan authorities.

The request for repatriation or recognition of death is then submitted to the diplomatic or consular representation of the country of origin, which may in its turn require additional documents. These requirements include, among others, certified translations of documents, specific attestations in line with applicable international conventions, and guarantees related to the payment of repatriation costs and related insurance.

In practice, repatriation of the body poses a major challenge due to the high costs it entails. This operation involves expenses related to the preparation of the body (notably embalming, which is mandatory for international transport), the purchase of an approved coffin for air transport, and the air transport fees themselves. These costs, often unaffordable for families in precarious situations, lead them to consider more accessible alternatives. Many families thus choose to bury their loved ones in Morocco, despite their initial wish to repatriate them to their country of origin in accordance with cultural or religious traditions.

However, certain foreign communities manage to mobilize the resources of their consulates or embassies to ensure the repatriation of the body. These initiatives often depend on the level of involvement of diplomatic representations, which may intervene by covering all or part of the costs related to the transfer. In some cases, these efforts are also supported by the diaspora or community associations that raise funds to support grieving families. These interventions ensure that the deceased is buried in their country of origin, in accordance with the family's wishes and traditions.

In the absence of a harmonized legal framework or formal coordination mechanisms between Moroccan authorities and diplomatic representations, these procedures remain complex and inconsistently applied. **Coordination between Moroccan municipal services, grieving families, and consulates largely depends on the specific circumstances of each case, sometimes making the process long and emotionally exhausting for the deceased's relatives.** This reality highlights the importance of better organization and stronger international cooperation to facilitate these procedures, while respecting the human and cultural dimensions associated with such situations.

## VI. Legal framework and procedures for the identification of unidentified deceased persons

The process of identifying bodies is governed by the protocols regulating the missions of the judicial police, particularly the forensic police, as well as by forensic procedures carried out by medical examiners. Upon the discovery of a corpse, officers of the judicial police are legally required to collect all clues that may help identify the deceased or determine the cause of death. These preliminary investigations precede the transfer of the body to the morgue for a forensic autopsy, which plays a central role in revealing the exact circumstances of death.

However, the lack of resources in the field of forensic medicine is a major obstacle to the optimal execution of these procedures. **Morocco has fewer than 60 active forensic doctors across the country.** This shortage sometimes forces general practitioners or specialists—who are not legally authorized—to carry out autopsies. Although these practitioners often have significant experience, their conclusions can sometimes be imprecise or inconclusive, which negatively impacts the course of judicial investigations.

Currently, the Moroccan legal framework does not include any specific provision governing the use of genetic testing, especially in the forensic field. Despite the absence of dedicated legislation, such analyses are conducted in medical contexts within specialized laboratories, notably those affiliated with the Royal Gendarmerie and the Forensic Police, and are carried out under judicial order. Nevertheless, the use of genetic testing in forensic cases remains marginal due to the lack of a clear legal framework and the limited technical and human resources required for implementation.

Furthermore, forensic identification of bodies often faces technical and operational challenges. When the deceased is not listed in national or European databases, fingerprinting proves ineffective. Likewise, although scientifically reliable, DNA samples are rarely collected due to the unavailability of ante-mortem biological samples or samples from relatives for comparison. In the absence of these elements, forensic assessment is often limited to basic analyses, such as age estimation, without the possibility of formal identification.

However, genetic tests are applied in other judicial contexts, particularly for establishing parentage or analyzing samples from crime scenes. These analyses, ordered by the public prosecutor<sup>5</sup> or competent courts, are carried out by the laboratories of the Forensic Police and the Royal Gendarmerie. In cases involving the identification of missing persons' bodies, the Public Prosecutor may instruct the Judicial Police to resort to such expertise.

Nevertheless, coordination between hospital administrations that have morgues and the families of the deceased remains problematic. Relatives of missing persons must provide biological samples to enable DNA comparison, which constitutes an additional obstacle in the absence of a structured institutional mechanism to facilitate this process. These institutional shortcomings significantly slow down identification procedures and highlight the need for an appropriate legal and administrative framework.

<sup>5</sup> Article 17 of Law 77-17 on the organization of the practice of forensic medicine.

## VII. Legal framework concerning enforced disappearances and the detention of migrants

Law No. 02-03 on the entry and residence of foreigners, as well as on irregular emigration and immigration, constitutes the legal basis for measures related to the expulsion and removal of foreigners. Adopted in 2003 in a context marked by growing security concerns, this law establishes clear mechanisms while providing procedural safeguards. However, some of its provisions, particularly the criminal measures it includes, may infringe on the freedom of migrants by restricting their right to mobility and exposing certain individuals to serious risks.

It is important to distinguish between the two main removal measures provided by this law: deportation (*reconduite à la frontière*) and expulsion, which are governed by distinct yet complementary articles. Deportation, provided for in Article 21, is an administrative measure ordered by the competent authorities when a foreigner is in an irregular situation, notably following a refusal or withdrawal of a residence permit. This procedure is mainly used to regulate migration flows administratively, without involving a criminal decision. Expulsion, on the other hand, governed by Article 25, is a more severe measure decided when a foreigner poses a serious threat to public order.

Article 27 also provides an exception allowing immediate expulsion in case of a “compelling necessity for state security or public safety.” However, this measure is strictly framed by fundamental guarantees, including the prohibition of expelling an individual to a country where they risk suffering inhuman or degrading treatment, in accordance with Article 26. These guarantees reflect a necessary balance between state security and the protection of fundamental rights of migrants, although they raise questions about the effective implementation of such protections.

In the context of removing foreigners in irregular situations, Articles 34 to 37 define the terms of administrative detention and the conditions for executing removal. The administration may place the foreigner in a specialized detention center for a maximum period of 15 days, renewable once, in order to prepare for their departure. However, the principle of non-refoulement, stated in Article 29, prohibits any removal when the individual risks persecution, serious harm to fundamental rights, or inhuman treatment in the destination country.

In addition to these mechanisms, Article 40 authorizes the administration to cancel a visa if the holder causes disturbances to public order; this provision mainly applies to short-stay visas (less than three months). Moreover, criminal penalties are provided for individuals involved in assisting irregular immigration, pursuant to Article 52. This provision aims to combat human trafficking networks and deter any activity that facilitates illegal entry or stay in Moroccan territory.

Finally, although Morocco is party to international instruments such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the application of these conventions before national courts remains limited. The preamble of the 2011 Constitution stipulates that international treaties ratified by Morocco must be compatible with national legal provisions, which sometimes limits their practical scope in domestic law. These limitations highlight the need for better alignment between Morocco’s international commitments and their implementation at the national level, particularly in the area of migrant rights.

## VIII. Main practical challenges in accessing the above-mentioned legal systems, and gaps between law and practice

The practical challenges related to accessing legal systems for managing recovered bodies and searching for missing persons reveal significant gaps between the legislation in force and its actual implementation. One of the main obstacles lies in the lack of interstate cooperation, particularly regarding the management of missing migrants, especially those lost at sea. Although the Moroccan legal framework is clearly defined, its effective application remains problematic, mainly due to failures in communication between Moroccan authorities and the families of the missing.

In the context of searching for missing persons, the main challenge lies in the families' access to Moroccan authorities responsible for managing recovered bodies. The absence of proper cooperation between states, as well as slow and non-transparent administrative procedures, considerably complicates the steps that grieving families must take. Despite Morocco's international commitments, the absence of clear protocols for interstate cooperation hinders the efficiency of searches and identification of missing persons.

Before undertaking any legal or judicial procedure, families face significant administrative obstacles, the first being the acquisition of necessary visas to enter Moroccan territory and contact the competent authorities. The lack of coordinated mechanisms to facilitate the search for the missing worsens this situation, making it especially difficult for families to recover the bodies and pursue necessary identification procedures.

Moreover, families face a lack of reliable information about recovered bodies due to the absence of systematic registration and identification protocols. This failure in implementing legal standards renders administrative and judicial procedures uncertain and incomplete. In the absence of clear frameworks and transparent procedures, families are left in a state of doubt, which delays and complicates the entire process of identifying and recovering bodies.

Thus, while the Moroccan legal framework is supposed to guarantee the protection of the rights of missing migrants and their families, the gap between legislation and effective implementation raises major concerns. **The management of recovered bodies, the lack of reliable identification systems, and limited access to essential information highlight the existing shortcomings in the judicial and administrative system.** It becomes imperative to implement reforms aimed at ensuring true access to justice for the families of missing migrants and at guaranteeing the transparency and efficiency of identification and repatriation procedures.



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