



National Report on the State of the Judiciary
in the Kingdom of Morocco

Workshop

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The Judiciary in the Kingdom of Morocco

Introduction:

The Moroccan judicial system is based on the principle of independence of the judiciary that was enshrined by the Moroccan constitution and other applicable laws of the kingdom, such as the civil law, civil procedure code, commercial code, penal code, etc.

We will provide a description of the state of the judiciary in the Kingdom of Morocco according to the following outline:

SECTION ONE: ORGANIZATION OF THE JUDICIARY IN THE KINGDOM

This organization was ratified in accordance with Royal Edict-Law No. 1.74.338 dated 24 Jumada Al-Thani 1394 (15 July 1974). As stated in Article 1 thereof: "The judicial organization shall comprise the following courts:

- 1- Communal and District Courts whose organization, composition and jurisdiction shall be determined by edict-law.
- 2- Courts of First Instance.
- 3- Courts of Appeals
- 4- Supreme Council
- 5- Administrative Courts
- 6- Commercial Courts and Commercial Courts of Appeals
- 7- Financial Courts
- 8- Exceptional Courts

Additionally, there are the Special Court of Justice and Financial Courts, which are established pursuant to special provisions of law that will be discussed below.

The following are the most important legal provisions in force and effect with respect to the above courts.

I. Communal and District Courts

Communal and District Courts were created and organized in accordance with Royal Edict-Law No. 1.74.339 dated 24 Jumada Al-Thani 1394 (15 July 1974). It states in Article 1 thereof the following: "Communal Courts shall be created in rural communities and District Courts in urban communities".

These courts consist of a magistrate, assistant court reporters, court reporters or clerks, and convene in session with a single magistrate and a clerk. Magistrates are appointed from among judges in accordance with the organic law concerning judges, or from among individuals who are not part of the judiciary body in accordance with special rules whereby they are chosen by an election committee of one hundred members from among the members thereof and are appointed for three years by virtue of Royal Edict. The appointment and management of the election committee are determined by decree.

Magistrates take the legal oath and perform their functions free of charge; however, they are compensated for work expenses. The amount and conditions of such compensation are determined by decree. They are under the supervision of the Minister of Justice who has the authority to take the necessary measures if it was shown that a magistrate or deputy magistrate lacks competence or is in breach of his job duties. Moreover, he can issue a decision to suspend any magistrate who commits acts that are considered “dangerous”.

In civil cases, magistrates have jurisdiction to hear “all personal and assigned cases brought against individuals residing within their jurisdiction, if the value in dispute does not exceed one thousand dirhams”. As for criminal matters, they hear cases involving crimes provided for by law and impose appropriate fines on the perpetrators, which vary in value from 10 to 800 dirhams.

II. Courts of First Instance

The Court of First Instance is composed of a president, deputy judges and an office of public prosecution, which consists of the King’s Prosecutor, an assistant or several assistants, a court reporter and a public prosecution clerk. Depending on the types of cases, the court can be divided into a civil chamber, a personal status and inheritance chamber, and real estate, social and correctional chambers. However, it is possible for each chamber to hear and decide all cases brought before the court whatever they may be. In addition, one or more judges of these courts may be assigned to perform their functions on a permanent basis in places within their area of jurisdiction to be determined by virtue of a decision by the Minister of Justice.

Hearings are held with a panel of three judges, which includes the court’s president, and a court reporter; and, in certain cases, it could convene with a single judge. A representative of the public prosecution is required to be present in criminal cases, subject to mistrial and vacation of judgment, and may or may not be present in other cases. The court hears all cases initially and finally, or initially with reservation of the right to appeal, as prescribed by the civil procedure code, criminal procedure code or special provisions as necessary. Furthermore, the court by force of law has jurisdiction to hear every matter that comes within the jurisdiction of the regional court as set forth by special provision of law.

The number of Courts of First Instance was increased to sixty-seven (67) pursuant to an implementing decree.

III. Courts of Appeals

The Courts of Appeals, under the authority of their first presidents and based on importance, include a number of specialized chambers. Among them is an appellate chamber for personal status matters, real estate and criminal matters. However, it is possible for each chamber to hear and decide all cases brought before the court whatever they may be.

They also include an Office of Public Prosecution that consists of the King’s Prosecutor-General and his assistant public prosecutors, one or more investigating judges, one or more judges for juveniles, a court reporter and a public prosecution clerk.

The courts convene in session for all cases; and, under penalty of being declared invalid, their decisions must be issued by a panel of three judges with the assistance of a court reporter unless otherwise provided for by law. The presence of the public prosecution is compulsory in

all criminal proceedings which otherwise would be declared invalid, and is optional in other cases unless otherwise stated in the civil procedure code, especially if the public prosecution is a principal party thereto, and in all other cases stipulated by a special provision of law.

The Court of Appeals has jurisdiction to review judgments rendered originally by the courts of first instance, and all other cases over which it has jurisdiction to review pursuant to the civil procedure code, criminal procedure code or other special provisions of law as necessary.

The number of Courts of Appeals was increased to twenty-one (21) by an implementing decree.

Finally, it is to be noted that the internal affairs of the courts of appeals and courts of first instance are organized by its general assembly, which consists of all the judges of these courts whether they be court judges or public prosecution. This assembly convenes in session during the first fifteen days of December. It determines the number and configuration of the chambers, the days and hours of the sessions, and the distribution of cases among the different chambers. Other meetings are held as necessary.

IV. Supreme Council

The Supreme Council is presided over by its First President; and the public prosecution thereat is represented by the King's Prosecutor-General assisted by solicitors-general. The council consists of chamber presidents, counsellors, a court reporter and a public prosecution clerk.

The Supreme Council is divided into six chambers: a civil chamber called the first chamber, a personal status and inheritance chamber, administrative chamber, social chamber and criminal chamber. Each chamber is presided over by the chamber president, and can be divided into divisions. Each chamber can review and decide all cases brought before the council whatever they may be.

The Council convenes its sessions and issues its decisions in a panel of five judges with the assistance of a court reporter unless otherwise stated by law. The presence of the Public Prosecution is considered mandatory in all sessions.

The jurisdiction of the Supreme Council is determined pursuant to the civil procedure code, criminal procedure code, military justice law, and the requirements set forth in special provisions of law as necessary. The civil procedure code has specified the jurisdiction of the Supreme Council as follows (Article 353):

“Unless otherwise provided for by law, the Supreme Council shall decide the following:

- 1- Appeals for cassation against final judgments issued by all the courts of the kingdom.
- 2- Appeals to rescind resolutions issued by the administrative authorities for excesses in the exercise of authority.
- 3- Appeals brought against acts and decisions in which judges overstepped their authority.
- 4- Referrals to raise legitimate suspicion.
- 5- Dispute between judges and courts other than the Supreme Council.
- 6- Decide jurisdictional disputes between courts whenever there is no higher-level court involved therewith other than the Supreme Council.
- 7- Transfer from one court to another for public security or for the benefit of justice.

It should be noted that the internal affairs of the Supreme Council are the responsibility of its Office which is composed as follows (as set forth in the implementing decree):

- 1- First president
- 2- President of each chamber and the most senior counsellor thereat
- 3- The King's Prosecutor-General
- 4- The head of the solicitors-general. The head of the clerk's office also attends the Office meetings.

V. Specialized Courts

1- Administrative Courts

The administrative courts were created by Law No. 41.90, dated 22 Rabie Al-Awal 1414 (10 September 1993), ratified by Royal Edict 225-91-1.

Structure

There are 7 administrative courts distributed among the main districts of the kingdom.

The judges of these courts are governed by the special statute for judges; however, they are appointed and trained in a manner consistent with their job duties. The work procedure at these courts is determined by their general assemblies.

Administrative courts follow the principle of the multi-panel judiciary, where they convene and issue decisions with a panel of three judges. A court may be divided into specialized divisions according to the dockets and types of case thereat.

The president of the administrative court appoints one or more royal commissioners from among the judges for a period of two years to defend the law and right, upon the recommendation of the court's general assembly. The royal commissioners are required to present their conclusions with respect to every case during sessions and with total freedom. The purpose of their participation is to enlighten the court with regard to the law that must be applied. They are required to present suggested solutions. They do not take part in the rendering of judgments, and are not responsible for defending the administration, but rather to present an objective and balanced analysis of the elements of a case, thus contributing to assisting the court in making a fair and correct decision from the legal viewpoint.

Jurisdiction

Administrative courts have jurisdiction to hear the following cases as courts of original jurisdiction:

- Appeal for revocation due to excessive exercise of authority in opposing the administrative authority's resolutions;
- Disputes regarding administrative contracts;
- Acts connected with the reparation of damages resulting from actions and activities of common law individuals;

- Disputes arising out of the application of legislative and regulatory provisions regarding pensions and grants paid to deceased officials of the State, local communities, public institutions and employees of the administration of Parliament and the Consultative Council;
- Tax disputes;
- Expropriating private property for public use;
- Examining the legitimacy of administrative decisions.

Contrary to basic rules of jurisdiction, the administrative court in Rabat reviews two types of cases:

- Disputes related to the personal status of senior administrative officials appointed by a royal edict or a decree;
- Disputes that arise abroad or at sea, and, in general, in all places where disputes arise outside the jurisdiction of all the courts;

Judgments issued by administrative courts are appealed before the administrative chamber of the Supreme Council. This situation is temporary because the creation of administrative courts of appeals is a draft law pending completion which is on the horizon with the establishment of the Council of State.

2- Commercial Courts

Commercial courts were established by Law No. 53.95, dated 6 January 1997 as ratified by Royal Edict No.1.97.65, dated 2 February 1997. These courts have begun operation in 1998.

Structure

Commercial courts include commercial courts on the one hand and commercial courts of appeals on the other hand.

The current number of commercial courts is eight (Rabat, Casablanca, Fes, Tangier, Marrakech, Agadir, Meknes and Oujda) and the commercial courts of appeals are three in number (Casablanca, Fes and Marrakech).

The creation of new commercial courts is on the agenda for the future, bearing in mind that the commercial courts in Oujda and Meknes will be inaugurated soon.

The judges and the public prosecution in commercial courts are considered professional judges subject to the provisions of the special statute for judges (Edict 11 November 1974).

Commercial Courts

Every commercial court consists of the following:

- A president, vice presidents and judges;
- A public prosecution comprised of a King's prosecutor and one or more assistants;
- A court reporter and a public prosecution clerk.

Commercial courts hold hearings and issue judgments by a panel of three counsellors, among whom is a president assisted by a court reporter.

Commercial Courts of Appeals

Commercial courts of appeals consist of a first president, chamber presidents and counsellors.

The public prosecution consists of the King's Prosecutor-General and assistants therefor.

A court reporter and a public prosecution clerk.

Commercial courts of appeals, similar to commercial courts, can be divided into chambers, and each of these chambers can decide the cases brought before the court.

Commercial courts of appeals hold hearings and issue judgments by a panel of three judges, among whom is a president assisted by a court reporter.

Jurisdiction

Commercial courts have jurisdiction to hear all commercial disputes. Local jurisdiction falls to the court of the actual or chosen residence of the defendant, and if the latter does not have a residence in Morocco but has another place of residence, the jurisdiction falls to the court where that residence is located.

The jurisdiction of the commercial courts covers the following:

- Cases related to commercial contracts;
- Cases that originate among merchants in relation to their commercial activities;
- Cases related to commercial documents;
- Disputes arising between partners in a commercial company;
- Disputes related to commercial assets.

In general, commercial courts have jurisdiction to decide disputes between merchants in the course of their trading activities, and all commercial disputes in which there is a civil party.

Commercial courts have jurisdiction to decide claims in which the amount does not exceed nine thousand dirhams (9,000 dirhams), as courts of original and final jurisdiction.

As an original jurisdiction court, it has jurisdiction to decide claims that exceed said amount. Any appeals are brought before the commercial courts of appeals.

As part of the jurisdiction of the presidents of commercial courts, they supervise the formalities of the commercial registry, and for that purpose they can appoint a judge every year for purposes of this supervisory work.

Judicial Map

1. Courts of Appeals:

1- Tangier 2- Tetouan 3- Al Hoceima 4- Al Nador 5- Al Kenitra 6- Fes 7- Taza 8- Oujda
9- Rabat 10- Casablanca 11- Meknes 12- Al Jadida 13- Sattat 14- Khouribga 15- Beni
Mellal 16- Safi 17 -Marrakech 18- Errachidia 19- Ouarzazate 20- Agadir 21- Laayoune

2. Administrative Courts: Marrakech, Casablanca, Rabat, Fes, Oujda, Meknes, Agadir

3. Commercial Courts: Tangier, Marrakech, Casablanca, Rabat, Fes, Oujda, Meknes, Agadir

3- Financial Courts

Prior to the establishment of modern financial courts in Morocco, a “national audit committee” had been established in accordance with Royal Edict No. 59-270, issued on 14 April 1960. Then a “Supreme Audit Council” was established by virtue of Law No.12-79 as implemented by Royal Edict No.1-79-175, dated 22 Shawal 1399 (14 September 1979) which effectively provided for the annulment of the national audit committee.

Finally, the current new Law No. 62-99 was enacted on 15/8/2002 (7/6/1423 A.H.), entitled “Code of Financial Courts”, which was mentioned in the book entitled “Reform of the Judiciary”, issued by the Moroccan Ministry of Justice: “The ratification by Parliament of Law No. 62-99 concerning financial courts was enacted to fulfill the constitutional requirements for the aforementioned courts, and guarantee oversight and good use of public monies (penalty for negligence on the part of accountants in applying the rules of general accounting, notes and criticism on the conduct of administrations). This is in addition to creating district audit councils.”

A- Supreme Audit Council

Its main functions were set forth in Articles 2 and 3 of the law as follows:

The supreme audit council shall be responsible for high-level oversight to ensure the enforcement of financial laws and verify the soundness of operations concerning revenues and expenditures of the agencies that are subject thereto as stipulated by law, as well as assess the manner in which they manage their affairs, and, as the case may be, impose sanctions for every breach of the applicable rules governing the aforementioned operations.

It shall assist Parliament and government in the areas of its specialization in accordance with the law, and shall submit to His Majesty the King a report of all of its activities.

The council shall audit and verify all financial statements presented to it by public accountants, with due consideration to the jurisdiction granted the district councils pursuant to this law.

Additionally, it shall assume a judicial function in the area of disciplinary actions with regard to the budget and financial matters in accordance with the terms and conditions set forth in this volume.

Furthermore, it shall assume the task of managing the above agencies provided for in this volume, and shall rule on motions for appeals brought against final judgments rendered by the district councils, and shall continuously perform the function of coordination and inspection with regard thereto.

Structure of the Council

The council is composed of judges who are subject to the special statute set forth in the third volume of this law. They are as follows: the first president, the King's Prosecutor-General, and counsellors. It also has a secretariat-general and a clerk's office.

First President

The First President is responsible for the general supervision of the council, the organization of its activities and the administrative management thereof. He shall by virtue of a decision determine the organization of the offices of the financial courts and oversee the work and activities of the financial court judges, excluding judges who are appointed to the offices of public prosecution at these courts. Moreover, he manages the administrative affairs of the judges and all other administrative employees of the administrative courts, and approves the annual program of the council's activities, which is prepared and updated by the programs and reports committee in coordination with the King's Prosecutor-General in regard to matters related to the judicial competences of the council. He also coordinates the activities of the district councils.

The King's Prosecutor-General

He performs the function of the public prosecution and is assisted by solicitors-general, and, in the event of his absence, one of the solicitors-general who is appointed by him for this purpose will act on his behalf. He performs his functions by filing conclusions and petitions, and does not perform the function of public prosecution except in judicial matters over which the council has jurisdiction to review.

All reports concerning judicial competences of the council are submitted to him; and he refers to the council the operations that could constitute a *de facto* manipulation. He attends the sessions of council committees at which time he can present new observations. Moreover, he may appoint a solicitor-general to represent him in these sessions. He coordinates and supervises the work of the public prosecution at the district councils.

A- Committees of the Council

The council consists of the following committees:

- Official Session – Combined Chambers Committee – Joint Chambers Committee – Consultation Chamber – Chambers – Chamber Branches – Programs and Reports Committee.

The law has determined the various compositions of these committees, the powers exercised by each, and the proper procedures for issuing decisions.

Final decisions that are issued initially by the chambers and the chamber branches with respect to financial accounts, as well as the council's disciplinary decisions regarding the budget and financial matters, are subject to appeal before the Joint Chambers Committee. Final decisions, which are issued by the council on appeal, are subject to appeal before the Supreme Council.

B- District Audit Councils

Article 116 of the new law states that "a district audit council shall be established in every one of the districts of the kingdom".

District councils shall "audit the accounts of local communities therein, as well as their organizations and the manner in which they manage their affairs".

The competences of the district councils and rules of procedure thereat are similar to those of the Supreme Audit Council.

District councils consist of judges who are subject to the special statute provided for in the third volume of this law. They are as follows: president of the district council, the King's prosecutor and the solicitors-general. The councils also have a secretariat-general and a clerk's office.

Final judgments issued by the district council are appealable before the Supreme Audit Council.

C. Special Statute Concerning Financial Court Judges

Financial court judges constitute one unified body. They are neither removable nor transferable except in accordance with the law. The Judiciary Council of the Financial Courts, provided for in Article 235, works to ensure application of the special statute concerning financial court judges.

Judges are appointed in accordance with the requirements of Article 30 of the Constitution. They are ranked in order of grades as follows:

Above Grade: First President of the Council and King's Prosecutor-General at the Council

Exceptional Grade: Counsellor Supervisor

First Grade: First Counsellor

Second Grade: Second Counsellor

The ranking of different grades, the order of their identification numbers as well as the compensation system for the judges of the financial courts, are determined by virtue of a decree. With respect to the administrative status of the first president and the King's Prosecutor-General, it is determined by their two appointment edicts.

Judges of the financial courts are appointed from among judicial attachés in accordance with the provisions set forth in this volume; however, some employees may be appointed directly in

the exceptional and first grades upon the recommendation of the Judiciary Council of [Financial] Courts, provided that they do not exceed one-fifth (1/5) of the vacancies in financial positions.

Financial court judges are obligated under any and all circumstances to fulfill the duty of reservation and maintaining the qualities of sobriety, integrity and dignity as necessitated by the nature of their functions. They are prohibited from pursuing any work or taking any positions that could halt or obstruct the conduct of work of the financial courts.

Judges may not establish professional associations or be affiliated therewith regardless of their status in the financial court institution, and they are prohibited from pursuing any activity of a political nature.

Judges who are part of the financial court system are prohibited from pursuing professionally any private activity that yields profit, whatever such activity may be, and are prohibited from pursuing any work of a subordinate status.

Prior to appointment, every judge must, in writing and on his honor, declare everything he owns in property and movables including that owned by his spouse and minor children.

D. Disciplining

Every breach by a judge of his professional duties, honor, equanimity, dignity, the rules of professional confidentiality or non-compliance with commitments could subject such judge to disciplinary sanction.

Disciplinary sanctions are of two degrees according to the degree of seriousness:

- First degree: Warning, censure, delaying promotion in rank for a period not to exceed two years, deletion from the eligibility list, temporary suspension from work for a period not to exceed six months, with suspension of salary except for family allowances.
- Second degree: Demotion in grade with or without loss of all or part of seniority obtained in the previous grade, as well as the forced retirement of a judge which is equivalent to removal with or without suspension of pension rights.

Disciplinary sanctions of the second degree are issued by virtue of an edict on the recommendation of the Judiciary Council of Financial Courts; whereas first-degree sanctions are issued in accordance with an order by the first president upon approval by said Council.

E. Structure and Management of the Judiciary Council of Financial Courts

The Council is presided over by the first president, and in addition to the first president and the King's Prosecutor-General it consists of the following:

- General secretary of the council who is responsible for the clerk's office of the Council.
- Chamber president elected by the chamber presidents from among them.
- President of a district council elected by the presidents of district councils from among them.
- Two representatives of the judges who are carrying out their functions at the Council, to be elected from among them.

- Two representatives of the judges who are carrying out their functions at the district councils, to be elected by those judges from among them.

The method of electing representatives for the above judges is determined by decree.

The council convenes once a year and can convene at any time, as warranted by circumstances, upon the recommendation of the first president or the prosecutor-general, or at the request of half of its members. It issues its resolutions and recommendations by a majority vote of its members, and in the event of a tie vote, the side with which the president votes shall prevail.

VI. Exceptional Courts

1- Special Court of Justice

The Special Court of Justice is organized pursuant to Royal Edict-Law No. 1-72-157, dated 27 Shaban 1392 (6 October 1972) [*sic*] contrary to the provisions of the legal texts concerning the organization, jurisdiction and composition of the courts, and the provisions of the Criminal Procedure Code.

Structure

The Special Court of Justice is composed of a first president, judges, a prosecutor-general and his assistants, and a clerk's office.

The president is appointed by royal edict, and is selected from among judges at the rank of at least first grade.

Also, one or more vice-presidents are appointed by royal edict from among judges of the second and third grades as necessary. In addition, deputy counsellor judges are also appointed in accordance with the terms and conditions currently in effect for official counsellor judges.

The public prosecution at the Special Court of Justice exercises its functions under the direct authority of the Minister of Justice. Such functions are carried out by the King's Prosecutor-General, who is selected from among judges at the rank of at least first grade. He is appointed by royal edict, and assisted by solicitors-general appointed from among judges of the second and third grades by virtue of a decision by the Minister of Justice as necessary.

The Special Court of Justice convenes in Rabat; however, the Minister of Justice may by decision allow the Court to convene in one or several sessions in another location.

A public case is initiated and prosecuted by the public prosecution at the Special Court of Justice by written order of the Minister of Justice, and such case is immediately turned over to the investigating judge at the request of the public prosecution to conduct an investigation.

Jurisdiction

The Special Court of Justice assumes the responsibility of deterring the commission of certain crimes by employees or judges, of which the values in question are equal to or exceed 25,000 dirhams. Such matters involve:

- Embezzlement
- Bribery
- Taking advantage of authority
- Smuggling private or public funds.

Moreover, the Special Court of Justice sanctions any public employee who takes or receives any benefit from a contracting deal.

Page 40 of the book, "Reform of the Judiciary" in Morocco, issued by the Minister of Justice in 2002 regarding the Special Court of Justice, states the following:

"This court, which by its very existence has led to much discussion, was reinforced by the judiciary with the means necessary to enable it to effectively engage in fighting bribery, enhancing public life, addressing the issue of an increasing body of rules and procedures and the growing complexities of some financial and criminal matters. This reinforcement had positive effects on the work of this court, whether quantitatively or qualitatively".

"Quantitatively, more than 300 cases were filed between 1998 and 2002, which is an average of over 60 cases annually as opposed to 40 cases per year between 1995 and 1997".

"And qualitatively, very important cases were referred to the court, particularly those related to school restaurants, the national fund for farm loans... the social security fund and the people's bank... in addition to many cases related to financial embezzlements or manipulation of communal voters. The decisions issued by this court were living proof that fighting corruption does not target only small-time delinquents".

"As we await the amendment of the legal provisions concerning the Special Court of Justice, which aims at deleting anything inconsistent with the criminal procedure code, an actual 'normalization' thereof occurred".

2- The Permanent Military Court for the Royal Armed Forces

Royal Edict-Law No. 270-96-1, dated 6 Rabie Al-Thani 1956 [sic] (10 November 1956), concerning military justice, as amended by Law No. 71-2, dated 3 Jumada Al-Thani 1391, 26 July 1971, provides for the creation of the Permanent Military Court for the Royal Armed Forces.

Distinction must be made between:

- The Permanent Military Court for the Royal Armed Forces during peacetime;
- The military courts during wartime.

The permanent military court holds its hearings in Rabat, and may hold them at any other location upon a resolution passed by the competent authority. The permanent military court is a multi-member judicial institution presided over by a civilian judge accompanied by two military counsellor members. In the appointment of the two military counsellor members, the rank of the defendant and the seriousness of the violation are to be taken into consideration.

Exceptions:

- With regard to misdemeanors and violations, the court is composed as follows:

- A judge from the court of appeals within whose circuit the military court convenes;
- Military counsellors.

- With regard to felonies, it consists of:

- A judge from the court of appeals within whose circuit the military court convenes, as president.
- Four military counsellor members.

The permanent military court has jurisdiction to review all violations committed by military personnel and cadres of the army: special violations (absent without leave, insubordination...) and common law violations (murder, theft...)

The jurisdiction of the permanent military court extends to civilians who have committed the following:

- A crime against a member of the royal armed forces.
- A crime that is aimed at compromising the external security of the state (espionage, treason...).

In wartime, the military court is presided over by a military officer, and not a civilian judge. However, if this difference in configuration should detract from the rights of the defense, it is justified by the necessarily exceptional circumstances of a state of war.

The military court decides military cases involving ranks from lieutenant to colonel, including the latter.

SECTION TWO: ADMINISTRATION OF JUSTICE

1- Ministry of Justice

The Office of the Minister

The Office of the Minister is under the direct authority of the Minister pursuant to the provisions of Royal Edict No. 331-74-1, dated 11 Rabie Al-Thani 1395 (23 April 1975), as amended and supplemented by Royal Edict No.1-95-162, dated 14 Jumada Al-Thani 1416 (10 October 1995).

The Office of the Minister consists of the following:

- The office president: ensures the operation and coordination of the general activities of the office members.
- A counsellor in charge of criminal policy.
- A counsellor in charge of legal studies.

- A counsellor in charge of relations with Parliament and preparing the government council's meetings.
- A counsellor in charge of communications.
- A counsellor in charge of public relations.
- Head of the special clerk's office.

The Office of the Minister is responsible for the following:

- Conduct general orientation studies.
- Follow up on matters of a special or political nature that are not within the authority of other organizations of the Ministry.
- Work on organizing events over which the minister presides.

Publishing information related to the Minister's activities

2- Supreme Judicial Council

The Supreme Judicial Council was created by the first Moroccan constitution in 1962, to ensure the application of the safeguards granted to judges, and the promotion and disciplining thereof. Article 86 of the Constitution – as revised in 1996 – determines the structure thereof.

The organization and management of the Council are subject to Articles 68 to 71 of Royal Edict-Law No. 1-74-467, dated 11 November 1974, creating the special statute for judges and Decree No. 882-75-2, dated 23 December 1975, as amended and supplemented by Decree No. 2-94-684, dated 7 December 1994, regarding the election of representatives of judges on the Supreme Judicial Council.

The Supreme Judicial Council is presided over by His Majesty the King. It is composed as follows:

- The Minister of Justice as vice president;
- The First President of the Supreme Council;
- The King's Prosecutor-General at the Supreme Council;
- The President of the First Chamber at the Supreme Council;
- Elected representatives from among judges of the courts of appeals;
- Four elected representatives from among judges of first-tier courts.

The Supreme Judicial Council convenes at the Ministry of Justice in Rabat once every three months or more if necessitated by the number or importance of the cases brought before it. The Minister sets the dates and agenda of the meetings. In case of a tie vote during deliberations, the president's vote will prevail.

The Minister presents the proposals of the Supreme Judicial Council to the King, and final decisions are issued by royal edict. During their terms of service, judges who are elected as members of the Supreme Judicial Council may not be promoted in grade, transferred or seconded.

Moreover, a member of the Supreme Judicial Council may not review cases involving himself or a judge of a higher grade.

Clerk's Office of the Supreme Judicial Council

The Clerk's Office of the Supreme Judicial Council is organized pursuant to the provisions of Royal Edict-Law No. 467-74-1, issued on 11 November 1974, pertinent to the special statute for judges.

The Clerk's Office of the Supreme Judicial Council is under the responsibility of a judge not lower than second grade appointed by virtue of a royal edict upon the recommendation of the Minister of Justice. In the event of a vacancy, the duties of the Clerk's Office are performed by a judge from the central administration, who is appointed by a decision of the Minister of Justice.

The functions of the Clerk's Office of the Council are administrative, not judicial, in nature:

- Prepare the files of every session of the Supreme Judicial Council.
- Manage the administrative affairs of judges by writing and implementing the various decisions that concern them.

Follow up on the activities of the courts, and ensure balance in the distribution of judges among the judicial institutions.

3- Inspectorate general

Judicial inspection is a comprehensive authority of investigation and monitoring, which makes it possible to assess the conduct of work at the courts and the style of performance and practices thereat, standardize their work approaches, identify the problems and difficulties that impede them from discovering breaches of duty, work toward rectifying the problems, and propose methods that would guarantee improved judicial performance. This is in addition to investigating specific incidents.

The Legal Authority

The legal authority for judicial inspection is contained in Articles 13 and 14 of the Royal Edict concerning the organization of the judiciary, dated 15 July 1974, and Article 17 of Royal Edict - Law No. 1.74.467, dated 26 Shawal 1394 (11 November 1974), creating the special statute for judges, and Article 12 of the Decree issued on 23 June 1998 determining the jurisdiction and organization of the Ministry of Justice.

In the absence of a framework that defines the competences of inspectors, the inspectorate general worked on drafting rules to regulate the judicial inspection process, with the purpose of determining the scope of general inspection, hierarchical inspection and special inspection, and the goals of each, as well as the cases that are subject to every one of the above inspections.¹

Upon reading the aforementioned Article 13 and in the absence of an explicit provision that defines the capacity of the Minister of Justice with regard to initiating judicial inspections, the likely approach, which would eliminate any and all interpretations that could as a consequence infringe upon the principle of judicial stability, is that the Minister of Justice initiates judicial inspections by his authority as vice president of the Supreme Judicial Council. It is a constitutional capacity granted to him by the Constitution of the kingdom, in Article 86 thereof

¹ Please review the following site in this regard www.justice.gov.ma/InspG

which states: “The King shall preside over the Supreme Judicial Council, which, in addition to its president, shall be composed of the Minister of Justice in his capacity as vice president...”

Tasks of Judicial Inspection

Judicial inspection is an essential component in the advancement of the justice sector within a framework of strict adherence to respect for the law and a strong commitment to reinforcing the independence of the judiciary. Among the goals of judicial inspection is to achieve integration among judicial institutions in order that these ideals may be put into practice. Moreover, its function is to raise the level of self-confidence in judges to instill in them the belief that the job of inspection is not limited to looking for error, finding the evidence to corroborate it, and working hard to prove such evidence; but rather, it is to identify honorable, virtuous judges and propose the means to motivate and encourage them. Moreover, among the functions of judicial inspection is to contribute to the design and development of appropriate methods for preparing and training judges and court clerks, and to recommend to the Higher Institute for Judicial Studies the topics to be discussed at seminars and training courses. Furthermore, judicial inspection plays an essential and important role, which is to be fully prepared in total resoluteness and strictness, without any lenience, to keep track of any professional breaches, moral corruption and negative attitudes that infringe upon the reputation of judges.

Mechanisms of Judicial Inspection and the Components Thereof

The inspectorate general consists of an inspector general appointed by edict, and two inspectors appointed by the Minister. In the event of an investigation of a judge, the inspector must be a judge whose administrative grade is equivalent to or higher than the judge under investigation. Moreover, it is assumed that the inspector judge will not be of lesser education, experience and technical knowledge than the judge under investigation, nor investigate facts attributed to him. This necessarily assumes that objective controls are in place for the selection of inspectors, and that work is being done to recruit well-qualified elements to benefit from their experiences.

Areas of Inspection

A- General Inspection:

A program is prepared at the beginning of every year specifying the judicial institutions that will be the subject of inspection. General inspections are performed in stages as follows:

- Notify the officials of the inspection date.
- Issue a form or questionnaire, including a set of information that must be filled in and returned prior to the inspection date, in order to diagnose the weaknesses and vulnerabilities that require in-depth investigation during the inspection
- Meet with judicial officials for the purpose of hearing their views, observations and proposals on the conduct of work and the behavior of staff at the courts, and meet with the other organizations working in the judicial field.
- Meet with the defense team because of its role in contributing to judicial performance being an essential indispensable component in the administration of justice.

Thereafter, the general inspection concentrates on the following areas:

- I. Entrance and reception procedures.
- II. The condition of the court building and its facilities, i.e. the condition of the building in terms of its capacity and capability to accommodate judges and employees, and whether or not it is in need of expansion or restoration.
- III. Look into the situation of human resources:
 - The sufficiency of judges and employees in proportion to cases filed with the court.
 - The situation of financial resources and facilities.
- IV. Administration of Justice
 - Assess the work and personality of judicial officers, whether the president of a court or a member of the public prosecution.
 - Their ability to assume responsibility.
 - Their ability to lead and take initiative.
 - Their ability to control and supervise.
 - Their dedication to keeping pace with, and following up on, the work of justice administration.
 - Their relationships with other judges and employees.
 - Their professional qualifications
 - Their administrative qualifications.
- V. Observe the judicial workflow at the level of the presidency and the public prosecution or investigating judges. This focuses on statistics and management of court hearings.
 - Look into the judicial and procedural aspect, which entails the following: examining judicial decisions (rulings), identifying the methodology that is in use and the level of legal grounding of such rulings, assessing the judge's competence and the manner in which he performs his duties, and identifying all aspects of his behavioral conduct, provided that the inspection in no way whatsoever extends so much as to intrude into areas that would be considered an infringement on the principle of judicial independence.
 - Look into the situation of court records and file-preparation methods, with an assessment or diagnosis of the administration in charge of the court's work (court reporting office, court clerk's office, or the administrative office of the court), an evaluation of the administrative agencies responsible for the activities of the court and all the judicial assistants thereat, and an evaluation of the administration of the public prosecution's work within the scope of the authorities granted to it by law.
 - Evaluate the administration of the activities of investigating judges within the scope of the authorities granted to it by law.
- VI. The human component aspect:
 - Diagnose the situation of the human component at the court.
 - Survey information and data available in terms of behavior.
 - Identify the category of people that has a negative effect on the operation and reputation of the judicial institution, which warrants recommended motivational support.

VII. Implementing inspection results

- Hold specialized meetings with judges and counsellors, each in his area of specialization, where the inspection committee can inform them of its observations, give them guidance as to how to avoid them, and afford them the opportunity to express their views on those observations within the context of an unbiased educated discussion.
- Hold a general meeting, attended by officials, president judges and the prosecution, at which a general guidance speech is delivered focusing on the need to preserve the traditions of the judicial profession and perform the duty in all sincerity.

VIII. Prepare a report that includes a diagnosis and assessment of the areas examined by the inspection committee, while highlighting its theory and conclusions, and a list of the positives, negatives, and obstacles that preclude the administration of justice or cause delays therein. The report is supported by the inspection committee's proposals as it deems sufficient to overcome obstacles, solve problems and address the negative aspects, as well as encourage those elements that are distinguished by their work, competency and conduct. In the final stage, a summary of the report is forwarded to the court that was the subject of inspection.

B. Special Inspection:

It is an inspection performed by the inspectorate general pursuant to an order by the Ministry of Justice, in accordance with the provisions of the aforementioned Article 13, based on a complaint or information charging a judge or an employee of the clerk's office with serious conduct that infringes upon the reputation, esteem and dignity of the judiciary, whether such matter concerns professional or moral conduct or a serious breach of a legal rule established in a judicial decision.

In the area of special inspection, the inspection committee has general authority to investigate and inquire about all information, and hear the statements of whomever it deems beneficial to revealing the truth, including hearing the judge on the charges levied against him.

Before initiating an inquiry, an information card is requested from the First President or the King's Prosecutor-General, depending on the stature of the party against whom the complaint is lodged, which card will include that official's theory on the behavior and reputation of the concerned party and his job performance.

Upon conclusion of the inquiry, a report is issued on the matter which includes a summary of the facts and the procedures that were taken, along with the inspection committee's theory and recommendations. It is presented to the Minister, accompanied by a synthesis memorandum summarizing the contents of the report (*NOTE DE SYNTHÈSE*), for his perusal and opinion in regard thereto. When the report is returned from the Office of the Minister, the inspectorate general sends a copy thereof to the clerk's office at the Supreme Judicial Council or the directorate of human resources if the matter concerns an employee of the clerk's office of the court.

The Relationship Between the Inspectorate General and Other Components of the Central Administration

Inspection plays an effective role in diagnosing the situation of the judicial institution. Through the inspection process, all components or mechanisms of justice administration are enhanced, such as buildings, facilities, human resources, continuing education, professional competency or orientation, or in terms of assessing and enhancing the workflow at the courts in coordination with the Directorate of Studies, Cooperation and Modernization.

Perhaps the most important institution inextricably linked with the inspection process is the Supreme Judicial Council, which considers inspection reports the most important reference for its work and the decisions it issues, whether with respect to the promotion or disciplining of judges or evaluating judicial officials in terms of their knowledge, professional qualifications and their ability to lead and manage.

Inspection is the bridge that sustains the institution of the Supreme Judicial Council. It is the body that investigates and seeks out both the good and not so good judicial elements through the functions they are assigned to perform for the purpose of identifying breaches of duty, as required by those entrusted with this serious responsibility within the context of an approach that makes it possible to classify and evaluate those responsible for administering justice among people. To the extent possible, they, i.e. the members of the inspection agency, carry out their duties with utmost precision, impartiality and objectivity, and with honesty, probity and a clear conscience.

4- National Institute for Judicial Studies

The National Institute for Judicial Studies, which was created by Decree No. 2-69-587, dated 29 January 1970, performs three essential functions:

- Provide basic education to future judges who are called “judicial attachés” through theoretical and practical education.
- Help broaden the experience of official incumbent judges
- Prepare the candidates for competency certificates for pursuing the public notary profession

Every class at the National Institute for Judicial Studies includes 100 to 200 judicial attachés. For example, the 1999-2000 class consisted of 130 judicial attachés. Judicial attachés must have Moroccan nationality, although the institute admits foreigners as an independent audience. For example, class 28 (1999-2000) included 18 foreign judicial attachés, i.e. 14% of the total. The National Institute for Judicial Studies is under the direct authority of the Minister of Justice, does not have an independent organizational structure, and therefore does not have its own budget. Thus, the institute’s financial operations are controlled by the central departments of the Ministry of Justice. Moreover, the decision by the Ministry of Administrative Affairs dated 4 January 1977 likens the National Institute for Judicial Studies to “institutions for training high-level cadres”, which allows it to pay significant fees to visiting professors and opens up the possibility of employing full-time teachers.

Administrative Structure

The institute is managed by a director appointed by royal edict, who is responsible for the financial organization and administrative management, and ensuring compliance with the institute's internal by-laws. He is assisted in his functions by an assistant director appointed by virtue of a decision by the Minister of Justice. Currently there are about 60 individuals working at the National Institute for Judicial Studies.

Pedagogical Structure

The Minister of Justice determines the course curricula, lectures, and practical exercises upon the recommendation of the studies and continuing education committee. This committee consists of:

- A representative of the Minister of Justice, as president;
- A representative from the Ministry of Finance;
- A representative from the ministry responsible for civil service;
- A representative from the ministry responsible for higher education and cadre training;
- The director of the institute;
- Two selected members of the faculty who are not part of the judicial corps;
- Four judges.

The Minister of Justice appoints members of this committee for a period of three years renewable. He also appoints the representatives of all the concerned branches in accordance with the same terms and conditions upon a similar recommendation from their minister. They also must be at a grade level of at least assistant director at the central administration.

The institute does not have special full-time faculty or researchers. Professors and activities supervisors are appointed by virtue of a decision by the Minister of Justice as visitors. They are chosen from among professors, senior professors, those assigned to higher education teaching positions, practicing or retired judges, or from among other figures with the necessary qualifications.

The director of the institute may, with the permission of the Minister of Justice and on a contingency basis, invite lecturing professors with regard to special education.

5- Central Administration

The Central Administration of the Ministry is organized pursuant to the Decree of 23 June 1998 concerning the authorities and organization of the Ministry of Justice, founded on three main pillars: the judicial pillar – the employment pillar – the instructive pillar.

The Judicial Pillar

It consists of the Directorate of Civil Affairs, Directorate of Criminal Affairs and Clemency, Directorate of Prisons and Reintegration, and the Communal and District Courts Section. This pillar is entrusted with exercising the Ministry's authority in the judicial areas and the prisons

sector. And to maintain the spirit of harmony, effectiveness and adaptation to the transformations of the judicial system of the kingdom, the new organizational structure preserved the existing judicial structures while introducing modifications and reform to its component organizations.

The judicial pillar consists of the following:

- Directorate of Civil Affairs
- Directorate of Criminal Affairs and Clemency
- Directorate of Prison Administration and Reintegration
- Communal and District Courts Section

The Organizational Pillar

It consists of the Directorate of Human Resources and Directorate of Budget and Supply. The purpose in dividing the Directorate of Public Administration and the employees into currently two directorates was to reduce backlog which impairs the rational management of budget and human resources. The creation of the Directorate of Budget and Supply allows for a rationalized system of budget and property management, with increased effectiveness and transparency. Additionally, the creation of the Directorate of Human Resources makes it possible to give well- deserved attention to employee training and bolster human capital.

The organizational pillar consists of the following:

- Directorate of Human Resources
- Directorate of Budget and Supply

The Instructive Pillar

It includes the Directorate of Studies, Cooperation and Modernization, as well as the Center for Analysis and Follow-up of Complaints.

This pillar strives to be a permanent observatory for the activities of the Ministry and the courts. It conducts studies and proposes the necessary measures that should be implemented to modernize and rehabilitate the justice system.

The responsibilities of the Directorate of Studies, Cooperation and Modernization are to conduct legal studies, publish information, encourage continuity and recommend whatever measures are needed to improve the performance level of the administrative departments as well as the courts, while working toward the implementation thereof.

Additionally, its role is to ensure the homogeneous, effective and ideal utilization of information technology. Moreover, its work includes the assessment and follow-up of the activities of the remaining agencies of the Ministry, and proposing the necessary reforms to improve its performance level.

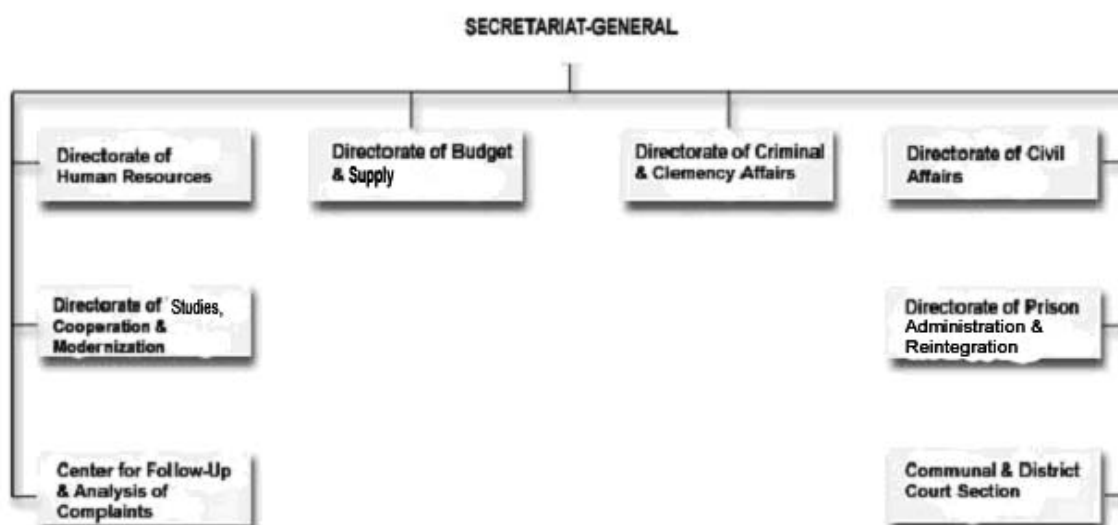
The Center for Analysis and Follow-up of Complaints is concerned with arriving at its own conclusions with regard to the general tenor of the complaints (or grievances) that are directed to the Minister, and taking the necessary measures to respond to them.

This pillar plays an instructive role as a scientific observatory and laboratory to modernize the justice system. Its instructive studies represent a system for self-assessment, continuity and modernization. The instructive pillar consists of the following:

- The Directorate of Studies, Cooperation and Modernization
- The Center for Analysis and Follow-up of Complaints

The central administration is under the authority of the Minister and the secretary-general.

Secretariat-General of the Ministry of Justice



Sub-directorates

Sub-directorates were created by virtue of a decision by the Minister of Justice, Decision No. 516, dated 12 Jumada Al-Thani (12 December 1989). Despite the fact that the provisions of this decree need to be amended, as a result of the issuance of Edict No. 385-98-2 of 23 June 1998 concerning the authorities and organization of the Ministry of Justice, it still remains in force and effect.

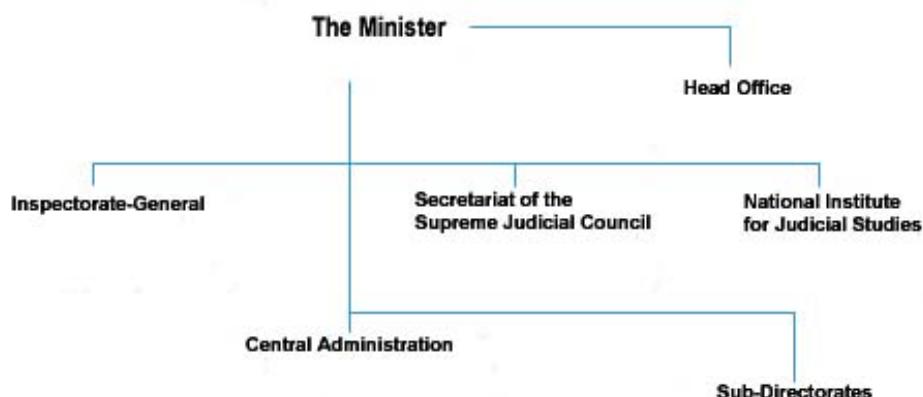
The number of sub-directorates is 21, i.e. one department for every judicial circuit, and accordingly they are under the authority of the first president of every court of appeals.

These directorates play a logistical role and act in lieu of the central administration at the local level. They are given empowerments, annually and on an exceptional basis, which enable them to manage the funds allocated to them by the Ministry based on the stated expectations of these sub-directorates in terms of the work required to meet the supply and maintenance needs of the courts located within their circuits.

Finally, the list of sub-directorates is linked to the list of courts of appeals.

Organizational Structure of the Ministry

In addition to the Office of the Minister, the secretariat of the Supreme Judicial Council, Inspectorate General and the National Institute for Judicial Studies, which are all under the direct authority of the Minister, the Ministry of Justice includes the central administration and the district sub-directorates.



SECTION THREE: JUDICIAL PROFESSIONALS

1- Judges

The special statute for judges is governed by the provisions of Royal Edict-Law No. 467-74-1, dated 11 November 1974, creating the special statute for judges, as amended and supplemented.

Judges are appointed by a royal edict upon the recommendation of the Supreme Judicial Council.

Judges constitute one unified body irrespective of the court in which they work. Thus, any judge can exercise the functions of an adjudicating judge and public prosecutor alternately.

However, there are differences in these two functions between both adjudicating judges and public prosecution judges.

Adjudicating Judges

Adjudicating judges hear cases which are brought before them for adjudication. Moreover, they may not be removed, suspended or transferred except in accordance with the stipulations set

forth in the law. This rule, which is upheld by the Constitution, guarantees their independence, and protects them from any pressures to which they may be exposed.

Public Prosecution Judges

Public prosecution judges do not issue rulings, and accordingly they do not enjoy the rule of non-transferability. They form a hierarchical structure, where each member is subordinate to his higher superior, and the Minister of Justice is in actuality the president of the public prosecution.

Central Administration Judges

Judges who work in the central administration of the Ministry of Justice belong to the same unified organization for judges, and are appointed to the central administration of the ministry by a royal edict upon a recommendation by the Minister of Justice.

Ranking Grades of Judges

Judges are ranked serially in grades:

- Outside the Grade: First president of the council and the King's Prosecutor-General at the same council.
- Exceptional Grade: Presidents of chambers of the supreme council, the first solicitor general at the same council, the first president of each of the courts of appeals in Casablanca, Rabat, Fes, Marrakech and Meknes, the King's Prosecutor-General at each of these courts, first presidents of the commercial courts of appeals and the King's Prosecutor-General at these courts.
- First Grade: Counsellors of the supreme council, solicitors-general of the same council, first presidents of the courts of appeals, the King's prosecutors-general at the courts of appeals that are not ranked at the exceptional grade, presidents of administrative courts, presidents of commercial courts, the King's prosecutors at the commercial courts, presidents of the courts of appeals, headquartered outside the headquarters of the courts of appeals they belong to, assistants to the King's prosecutors-general appointed to work at these chambers, president of the court of first instance in each of Casablanca, Rabat, Fes, Marrakech and Meknes, the Kings Prosecutors at each of these courts, presidents of chambers of the courts of appeals in Casablanca, Rabat, Fes, Marrakech and Meknes, the first assistant of the general representative at each of these courts, presidents of chambers of the commercial courts of appeals, and the first assistant to the King's prosecutors-general at each of these courts.
- Second Grade: Presidents of chambers at the courts of appeals, except those who are ranked at the first grade, counsellors at the courts of appeals, assistants to the King's prosecutors-general at the courts of appeals, counsellors at the commercial courts of appeals, assistants to the King's prosecutors-general at the commercial courts of appeals, assistants to the president of the commercial court, first assistant to the King's prosecutors-general at the commercial court, counsellors at the administrative courts, presidents of courts of first instance, the King's prosecutors-general at the courts of first instance, vice presidents at each of the courts of first instance in Casablanca, Rabat, Fes, Marrakech and Meknes, and the first assistant to the King's prosecutors-general at each of those courts.

- Third Grade: Judges of the courts of first instance, assistants to the King's prosecutors-general at the courts of first instance, judges of administrative courts, judges of commercial courts and assistants to the King's prosecutors-general at the commercial courts.

2- Clerks and Judicial Assistants

There are clerks and judicial assistants. Their role is to assist the judiciary and to keep track of files through the procedures handled by clerks, including the serving of summonses and preparing the necessary documents therefor, as well as documents related to the implementation of decisions.

Clerks

Clerks are subject to the provisions of the general law for civil service and the legal provisions pertinent thereto, contained in the Royal Decree dated 2 February 1967, as amended by the two decrees dated 27 November 1971 and 20 August 1977. Clerks and court reporters are available at every court. Some work with judges during hearings and others are assigned to prepare the records.

Judicial Assistants

Judicial assistants are subject to the provisions of Edict-Law No. 80-41, dated 25 December 1980 regarding the creation and organization of the cadre of judicial assistants. Their duties are considered freelance professions, which were assigned previously to civil servants.

Candidates for these professions must fulfill the requirements set forth in the abovementioned edict and pass a professional exam after a required training period.

The essential duties of the judicial assistants are stated as follows:

- Serving the necessary notices to ensure the normal flow of [case] files.
- Preparation of the necessary documents to enforce judicial orders and decisions that have the force of *res adjudicata*.
- Serving the documents in which there was a difficulty in the service thereof.

Additionally, they could be assigned to serve appearance summonses, collect debts, and conduct some investigations at the request of courts and private entities.

3- Freelance Professions

The professionals of the justice sector are individuals who facilitate the work of judges and litigants.

There are two kinds of justice sector professionals:

- Immediate Professionals

- Clerks and court reporters
- Judicial assistants

- Non-Immediate Professionals

- Attorneys
- Contemporary notaries public
- Jurors
- Experts
- Translators/Interpreters
- Transcribers

SECTION FOUR: PROBLEMS AND OBSTACLES FACING THE JUDICIARY

1- Problems in general

Studies of the judiciaries in some Arab states (Kuwait – Emirates – Yemen – Egypt – Morocco) have shown the problems of the judicial work as follows:

In general, the most significant problems that impede judicial work in all countries can be listed under the following headings:

- Confidence in the judiciary
- Difficulty of access to justice (due to high fees, complicated procedures, etc.)
- Caseload congestion (case accumulation – slow judicial cycle; this sluggishness is due to litigation procedures on the one hand (service of notices, managing court proceedings, etc.) or on the other hand the unavailability of good, suitable work tools to help judges in drafting their rulings (legal references, legal data banks, etc.)
- Relativity of judicial independence (interference by the ministry of justice, the social environment, etc.)
- Poor infrastructure (whether in terms of offices or in terms of facilities, etc.)
- Inadequate incentives (declining salaries)
- Shortage in the number of judges due to an increase in non-judicial activities (education, secondments, etc.)

We see all these problems in the Arab states in general, but particularly in the States covered in the study (bearing in mind that the courts of Dubai are set apart from the others as they were able to resolve the caseload congestion issues and have provided the infrastructure suitable for improving work and judicial productivity).

We do not have clear and comprehensive information to support this viewpoint, except the bits and pieces of information that we mention exactly as they were received.

Moreover, in a study on the state of affairs of attorneys and the work tools available to them in the Arab states, the following remarks and recommendations were mentioned, which include statistical data and the percentages given to each one of the judicial problems in Morocco:

Statistical Results of a Study on the State of Affairs of Attorneys and the Work Tools Available to Them in the Arab States

Remarks and Recommendations to Promote the Independence and Effectiveness of the Judiciary and Accelerate the Judicial Process – Morocco

	Number of votes
Judicial Independence	50%
Establishing an agency, independent from the authority, to monitor and hold judges accountable	40%
Protecting judges materially and morally	30%
Adopting proper standards of testing judges	10%

2- Problems and Obstacles Impeding a Better Administration of Justice in Morocco

These problems and obstacles were mentioned in the book entitled “Justice in Morocco – The Visions of Reform” (by Ahmed Al-Ghazali and Khaled Al-Araishi). Following is an excerpt from the book entitled “The Diagnosis Accomplished in 1997-1998”:

“B- The Reform of Justice

There is a shortage at four levels:

- 1- Human resource qualifications level
- 2- Logistical management level
- 3- Literary level
- 4- Detention level”

With a detailing of said levels as follows:

- 1- Human resource qualifications level
 - At the judiciary level
 - At the level of clerks and technical cadres
 - Level of judicial freelance professions and judicial assistants (attorneys, notaries, experts)
- 2- Logistical management level
 - The absence of reception buildings, guidance and consultation, and a shortage of modern facilities.
 - Unsuitable buildings and main offices, overcrowding inside the courts, accumulation of [case] files and archives.
 - Absence of computers, i.e. rulings are most likely handwritten
 - Shortage of equipment and furniture, insufficient or unusable desks and chairs
 - Conclusion: The court records are neglected and complicated, and workflow is sluggish and delayed.

3- Literary level

There is a lagging behind and backwardness compared to the development in the economic and social areas

- Ineffective central administration, isolated and subjective
- Lack of clarity in relationships between the central administration and the courts
- Conduct in violation of professional courtesy, disappointment, suspicion and loss of credibility, and the emergence of opportunism

4- A prison environment that is very concerning

Lack of capabilities: finding the locations and financial means to meet the needs: nourishment, water, electricity, sanitary facilities, etc.

3- Problems Related to Commercial Courts

These problems are described in that same book as follows:

- 1- Commercial courts suffer from management problems and the inability to respond effectively to the expectations of economic actors, despite the fact that they were established recently (they were established in May 1998 and began actual operation in August 1998), and despite the positive results that they have achieved compared to the regular courts.
- 2- Human resource problems: the training of judges (legal areas beyond their scope of expertise, limited knowledge of contracting, monolingual); low number of judges in the commercial field; problems of unsuitable locations; lagging far behind in information technology; shortage of libraries; and difficulty of access to court judgments.
- 3- Legislative and regulatory provisions present some obstacles that lead to lengthy records and jurisdictional disputes between commercial courts and regular classic courts."

4- Problems Related to the National Institute for Judicial Studies

The same book included a detailed explanation of these problems that dictate reform as follows:

- 1- A disharmonious organization: no independence, no board of directors, no official structure.
 - No full-time professors: having to essentially use judges without the available resources to compensate them; rarely does it employ private visiting professors (experts) for the same reason;
 - Requirements for admission to the National Institute for Judicial Studies: judgment is based on candidate's knowledge and rarely on personality; and not opening the way to other qualities, particularly a degree in law or *Shari'a*.
- 2- Program is too excessive and incompatible with the expectations of society, not touching on certain branches of legal knowledge sufficiently; non-existence of specialized branches of knowledge; lack of full-rounded training to be able to resolve contracting problems (taxes, banks, financial, accounting, etc.)

- Not enough ongoing training, the topics, extremely classical approach;
 - No personal follow-up on the development of adjunct judges during their training;
 - No scientific research worthy of that name.
- 3- Tight and insufficient spaces;
- Library: the bank of reference documents is inadequate and there is a shortage of equipment (information technology and camera equipment)
 - Scarcity of audiovisual equipment: projector, VCR, TV, language lab”.

SECTION FIVE: REFORM PLANS²

1- Frame of Reference

1.1- The Principles

Islam
The Constitution
The Royal Will
Government Commitment
National Consensus

1.2- The Adopted Approach

2- The Major Pivotal Points for Reform

2.1- Rehabilitation

Determine the rules and procedures that regulate the workflow of the central administration and the courts

Stop all interference

Increase and intensify inspection operations, and monitor the workflow at the courts

The contribution of the Supreme Judicial Council to restoring esteem and respect for justice

Announcing the reform plan

2.2- Modernization

Computerizing operations at the central administration and the courts

² See the book, “Justice in Morocco – The Visions of Reform” – Kingdom of Morocco – Ministry of Justice

A thorough review of judicial training

Improve access to justice

Successful integration of the administrative and commercial courts into the Moroccan judicial system

Humanizing prisons

Review of a number of legislative and regulatory texts

2.3- New Approach to International Cooperation

Founding principles

Goals

Adopted approach

Projects planned for the short term

The Broad Guidelines

2.1- Rehabilitation

A process of rehabilitation, correction and reshaping was implemented to regain the confidence of litigants by doing away with excesses, establishing the rule of law and the authority of the State.

This work focuses on:

Determining the rules and procedures that regulate the workflow of the central administration and the courts:

The functions of every agency were clearly specified with all due respect to the independence of the judiciary to avoid any interference or deficiency in management, or the existence of some gray areas. Quick identification of management deficiencies allowed for the best work distribution, rationalizing management techniques, development of cooperation and regular consultation.

- Stopping interference:

In order to reinforce the independence of the judiciary, tremendous efforts were exerted to curb every attempt at interference in, or influence on, judicial affairs. Reaching that goal can only happen by having absolute respect for administrative hierarchy, standardizing the administrative paperwork procedures between the central administration and the courts, and enhancing the authority and responsibility of the presidents of the courts and the public prosecution.

- Doubling and intensifying inspection operations, and monitoring the workflow at the courts:

The inspectorate general has been enhanced and strengthened by supplying the human resources and material means it needs to increase and intensify the court inspection operations.

Moreover, a special inspection system is put into operation automatically when there is any suspicion that a case before the courts is not moving in the normal pattern. Among the factors that reinforce and enhance the work of the inspectorate general are the inspection operations at the courts at either the hierarchical or district level, which occur regularly by first presidents of the courts of appeals within their domain, and inspections by the King's solicitors-general of the public prosecution members under their authority.

- The contribution of the Supreme Judicial Council to restoring esteem and respect for justice:

The Supreme Judicial Council contributes with increasing effectiveness to the program in place to reshape and rehabilitate the judiciary, and steer it on to the right path. On the one hand it punishes excesses, irregularities and misconduct, and all practices that infringe upon the reputation of the judiciary; while, on the other hand, the promotion of judges and the assignment of functions and responsibilities to them are subject to rules of efficiency and merit.

- The announcement of the reform plan:

Convinced of the urgency of regaining the citizens' confidence in the court system, the Ministry of Justice designed a program of information and news in the form of public discussions and information dissemination to create an awareness in all segments of society that judicial reform is everyone's responsibility and their contribution at any level is important to the success of reform.

2.2- Modernization

The justice sector is quite noticeably underdeveloped when measured against the current political, economic and social transformation. This is a situation that must be overcome in order that justice can be truly instrumental in the process of development and progress.

The modernization of justice will go through the following essential stages:

- A rational management of the central administration and the courts, and improvement of work conditions for judges and clerical staff
- A profound reexamination of the judicial training process
- Enhancing access to justice
- Integrating the successful experiment of specialized judiciary into the Moroccan judicial system.
- Humanizing prisons
- Amending some legislative and regulatory provisions
- Adopting a new form of cooperation to accompany and support this process

Adopt a rational style of management for the central administration and the courts:

This rational style of management requires first and foremost the introduction of information technology to the central administration (court activities and human resource management, as well as budget and prison management, will follow the same route), and its introduction to the courts (the clerk's office, the preparation, notification and enforcement of court judgments, and

file tracking). Currently, there are pilot programs underway at the Central Administration, Supreme Council, specialized courts and other courts.

The evaluation mechanisms that have been put in place and are based on standards such as cost, effectiveness, speed, performance, litigant satisfaction and enhancement of human and financial resources, will allow for evaluation of the progress that had been achieved.

- A thorough review of judicial education:

Since 12 January 1999, admission to the National Institute for Judicial Studies has become conditioned upon an initial selection of candidates, beginning from a review of the files to passing the entrance competition.

Accordingly, the Judicial Institute is open only to gifted students, as the selection process is not solely based on testing legal knowledge, but rather on assessing the candidates' abilities in analysis and deduction, as well as their mental and moral preparedness to practice the judicial profession and work under its constraints and compulsions.

Currently, the programs are being reexamined to enrich their content and to make them compatible with current changes on the one hand, and with the Moroccan law on the other hand.

The internationalization of law and the increasing complexities inherent therein require diversity and specialization in school curricula, by teaching foreign languages, comparative law, and other subjects such as labor law, international commercial law, competition law, consumer law, industrial and intellectual property law and international criminal law.

The method of teaching should also be developed by focusing more on the practical aspect, such as "case studies" and "diagnosis", in addition to using new technologies to establish an interactive pedagogy.

Having professor judges, academics and distinguished professionals teach at the National Institute for Judicial Studies would provide an opportunity for the Institute to benefit from the academic and national and international socio-economic arenas.

Parallel to this initial training, the National Institute for Judicial Studies will diversify its activities and provide practicing judges, judicial assistants, certified experts and, if necessary, attorneys, the opportunity to update their information and complete their training through regular continuing education, which will be mandatory for some.

In the same context, it would be better to review the rules that regulate direct entry into the judiciary by certain professionals in the legal field such as academics, attorneys, and notaries. In this manner, it would be possible to incorporate these well-established skilled elements at various judicial levels, so that they could gradually contribute to the process of renewing the form and methods of the judicial work.

- Enhancing access to justice

The purpose of the measures taken in this regard is to simplify procedure, reexamine judicial assistance, do away with frivolous procedures, reduce the time it takes to decide disputes and ensure the execution of judicial decisions.

The process of receiving litigants and listening to their concerns, as well as offering them advice and guidance, represents a short- and medium-term work program. Currently, the idea of finding means of alternative dispute resolution is under serious consideration, by means of activating and developing internal arbitration, especially in the area of business, and relieving the courts of some non-litigated cases, which could be dealt with by non-judicial methods.

- Successful integration of the administrative and commercial courts into the Moroccan judicial system

These courts work in two basic areas: monitoring the administration and regulating the business environment.

Within the framework of adopting the concept of authority, as identified by His Majesty, King Mohamed VI, the administrative courts will have an essential role, and the commercial courts will have the same role as they apply a code of strictness and ethics in the business environment, while keeping pace with an economic development compatible with the nation.

The success of these courts will represent a huge step forward in the area of rationalizing procedure and having more specialization among the branches of the courts.

- Humanizing prisons

Today, people at all levels are convinced that prisons should not only be detention centers, but also places for rehabilitation and social integration. This requires a tremendous effort on building, reforming and equipping prisons, and shaping prisoners in such a way so they can benefit from their detention conditions which guarantee them their rights and preserve their dignity.

Based on that approach, the legislator has precisely specified the different kinds of detention centers in the following manner:

A- Local Prisons: They independently take in detainees who are in protective custody or sentenced to short prison terms or physical constraint.

B- Central Houses: They take in convicts with long prison sentences, and expend significant effort on reintegrating detainees.

C- Rural Prisons: They are semi-open prisons which provide vocational training in the area of farming.

D- Reform and Education Centers: They are set up for convicted minors and youngsters with the purpose of their social reintegration.

These institutions are distributed around the kingdom and are considered a natural extension of the judicial system. There is a commitment to proceed in the direction of humanizing detention conditions as substantial reforms of the Moroccan prison system were included as part of the agenda, which focuses on humanizing detention conditions in general and reintegrating prisoners into their social environments. This reform focuses on what was formerly called prisoner's rights, and represents a true update to the concept of correctional policies which from now on will include reintegration as one of its principal goals.

Prisons are no longer merely centers of detention and loss of liberty, but places for re-education and preparation for reintegration where human dignity is preserved.

Within this framework and effective immediately, Law No. 23.98, which was ratified on 25 August 1999 and published on 16 September 1999, regarding the organization and management of prison institutions, allows every detainee to receive specific occupational training, continue his studies, and not be subject to any discrimination related to race, color, sex, nationality, language, religion, creed or social status. A detainee is allowed to manage his properties outside the prison, receive friends and family members, practice his religious rites freely and exercise his right of artistic and intellectual creativity. It is now mandatory to inform a prisoner's family of his place of detention.

- Review of a number of legislative and regulatory texts:

Moroccan legislation should adapt to new orientations and become an effective tool to serve the reform process. A number of legal texts have been ratified, such as:

- The decree determining the jurisdiction and organization of the Ministry of Justice.
- The law concerning prisons.
- The laws that integrate commercial courts into the judicial organization and the basic system in place for judges.

There are other open workshops related to:

- Modifying the basic system in place for judges.
- Reforming the National Institute for Judicial Studies.
- Codifying the rules of Islamic jurisprudence and the rules of ownership.
- Criminal law and the criminal procedure code.
- Civil procedure code.
- The edict concerning the organization of the judiciary.
- The law concerning contemporary notarization.
- The law concerning experts admitted before the courts.
- The law concerning transcription.
- The edict concerning judicial assistance.

2.3- New Approach to International Cooperation

In addition to the classic judicial cooperation, the Justice Reform Plan is centered on the benefits of cooperation domestically and internationally with regard to the kingdom in order to keep pace with and support the efforts spent to modernize this sector.

This new form of cooperation is built on basic principles, goals and the approach adopted for its implementation. It has begun to materialize on the ground.

- Basic Principles:

The cooperation for the sake of modernizing justice is governed by two basic principles:

- A complete and integrated perception of the cooperation projects and Moroccan control over the planning of activities related thereto.

- Automatic protection of judicial independence when formulating the perception and when the cooperation programs are put into implementation.

- Goals:

The purpose of this new form of cooperation is to:

- Increase the efforts spent to developing the human resources working in the justice sector
- Modernize the facilities used in managing the central administration and the courts.
- Encourage exchange of information and useful experiences between the Moroccan judiciary and those of other friendly states.

- Adopted Approach:

Within the framework of program implementation, the Ministry of Justice is taking into consideration the following:

- Rely, as necessary, on skilled professionals from outside the sector to increase the chances of project success.
- Guarantee the transfer of knowledge for the benefit of central administration and court cadres and assistants.
- Archive the tangible results achieved in practice.
- Ensure constant follow-up and assessment of the different stages of project implementation in coordination with the partners.

- Projects planned for the short term:

Based on this general framework, some cooperation projects have fully materialized, while others are in the final stages:

- The project to modernize 16 courts of appeals and 9 courts of first instance, with a budget in the amount of 200 million dirhams, funded by the European Union within the framework of the Euro-Mediterranean Partnership (MEDA Programme, expected to be launched in 2001).
- A project funded by the World Bank with a budget of approximately 6 million dollars to modernize commercial courts and local commercial registers, rehabilitate the National Institute for Judicial Studies, set up an information system for the ministry, and prepare an alternative legal and statutory framework for disputes in commercial matters (expected to be launched in 2001).
- A project funded by the U.S. Agency for International Development for the benefit of the commercial courts of Sous-Massa and the central administration at a cost of 50 million dirhams (expected to be launched at the end of 2000).
- Administrative agreements of cooperation with friendly countries, e.g. France and Spain, for modernizing our justice system, followed by the signing of these agreements and commencing the implementation thereof (in application since 1998). Moreover, France has also joined the effort to reform our justice system via COPEP at a cost of 16 million dirhams over the next three years.

- Cooperation agreements with international non-governmental organizations such as:
 - International Penal Reform Organization (*Pénal Reform International PRI*)
 - International Foundation for Electoral Systems (*IFES*)

Note:

This report was prepared on the basis of the information that we were able to obtain from our correspondents or sources published in various media.

Therefore, we apologize if there is any incomplete or inaccurate information. We would hope that the reader can provide us with any piece of information that may complete or correct the content of this report or any part thereof.

Annex No. 1

Legal Texts Concerning the Judiciary

Title of Legal Text	Type of Text	Text No.	I
Moroccan Constitution	Constitution	1.96.157	10/7
Judicial Organization and Implementing Decree No. 2.74.498 dated (16 July 1974)	Royal Edict	1.74.338	15/7
Communal and District Courts and Implementing Decree No. 2.74.499 dated 16 July 1974	Royal Edict	1.74.339	15/7
Administrative Courts	Law	41.90	10/€
Commercial Courts	Law	53.95	6/1/
Special Statute concerning Judges	Royal Edict	1.74.467	11/1
Special Court of Justice	Royal Edict	1-72-157	6/1C
Military Justice Law as amended by Law No. 71-2 dated 3 Jumada Al-Thani 1391, 26 July 1971, creating the Permanent Military Court of the Royal Armed Forces	Royal Edict	270-96-1	10/1
Statute concerning Military Judges, Officer Court Clerks and Non-Commissioned Officer Stenographers at the Department of Military Justice	Royal Edict	1.77.56	12/7
Royal Edict No. 331-74-1 dated 11 April 1975, as amended and supplemented by Royal Edict No. 1-95-162 dated 14 Jumada Al-Thani 1416 (10 October 1995), concerning the organization of the Office of the Minister	Royal Edict	331-74-1	11/4
Election of Judges' Representatives at the Supreme Judicial Council, as amended and supplemented by Decree No. 2-94-684, dated 7 December 1994	Decree	882-75-2	23/€
Determining the authorities and organization of the Ministry of Justice	Decree	2.98.385	13/€
National Institute for Judicial Studies	Decree	2-69-587	29/1
General Civil Service Law, as amended by two decrees, dated 27 November 1971 and 20 August 1977	Royal Decree		2/2/

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Creation and Organization of the Association of Judicial Assistants	Law	80-41	25/€
Changing the Civil Procedure Code	Royal Edict	1.93.206	10/€
Ratification of Text of the Civil Procedure Code	Royal Edict	1.74.447	28/€
Judicial Assistance Law	Royal Decree	514.65	1/11
Implementation of Law No. 23.98, concerning the organization and management of prison institutions	Royal Edict	1.99.200	25/€
Determining the procedures and standards for the initial selection of candidates	Decision of the Minister of Justice	140.99	9/2/
Organization of the legal profession	Royal Edict	1.93.162	10/€
Code of Financial Courts	Law	99-62	15/€
General system for public audits	Royal Decree	66-330	19/4

Annex No. 3

Statistics Regarding the Execution of Judgments (from the book Reform of the Judiciary in Morocco)

	1999		2000		2001		2002	
	Total Number of Judgments Ready for Execution	Number of Judgments Executed	Total Number of Judgments Ready for Execution	Number of Judgments Executed	Total Number of Judgments Ready for Execution	Number of Judgments Executed	Total Number of Judgments Ready for Execution	Number of Judgments Executed
Against individuals	275906	115121	335159	335111	303000	285755	263849	84859
Against insurance companies in bankruptcy	50815	32065	1408	6505	1013	8063	6782	317
Against other insurance companies	78026	62538	55050	45878	57593	43948	56601	18942
Against public administrations and institutions	5973	652	2116	7437	1067	1641		
Total	410720	210376	393733	394931	362673	339407		

As shown from the above statistics, the ratio of judgments executed during the years 2000 and 2001 improved noticeably from that of 1999 in which the percentage of judgments executed was only 51%.

- The number of judgments executed in the year 2000 was more than the judgments ready for execution.
- The percentage of judgments executed in the year 2001 was 94%.

This means that the issue of judgment execution is not included with the problems and obstacles.

Annex Number 4

A Paper on Legislative Reform: The Most Important Ratified Legal Texts (from the book Reform of the Judiciary in Morocco)

- Law No. 98.23 concerning the organization and management of prison institutions
- Decree No. 485-00-2 determining the manner of application of Law No. 98.23 regarding the organization and management of prison institutions
- Law No. 00.45 regarding court experts
- Law No. 00.49 regarding the organization of the clerical profession
- Law No. 00.50 regarding interpreters/translators admitted by the courts
- Implementing Decree for Law No. 00.45 regarding court experts
- Implementing Decree for Law No. 00.49 regarding the organization of the clerical profession
- Implementing Decree for Law No. 00.50 regarding interpreters/translators admitted by the courts
- Law No. 00.15 amending and supplementing the Civil Procedure Code (expanding the jurisdiction of single judges to include cases related to work accidents and occupational illnesses – Articles 279, 270 and 289)
- Law No. 00.16 amending and supplementing Edict No. 1-14-338 regarding the judicial organization of the kingdom
- Law No. 00.85 amending Articles 59 to 66 of the Civil Procedure Code regarding court experts
- Law No. 01.48 supplementing Article 303 of the law defining the concept of arms, by which Article 303 *bis* was added concerning the crime of bearing an *arme blanche* [cutting-weapons]
- Law No. 99.11 amending Article 446 of the Criminal Law, for the purpose of defaming violence practiced against children
- Law No. 02.18 supplementing Law No. 53-95 regarding commercial courts
- Law No. 02.19 supplementing the Civil Procedure Code
- Law No. 98-5 amending and supplementing the special statute concerning members of the judiciary
- Law No. 98-6 amending and supplementing the special statute concerning members of the judiciary
- Law No. 99-63 amending and regulating Law No. 79- regarding the regulation of contractual relationships between landlords and tenants of places designed for residential or professional use
- Law No. 99-64 regarding collecting rent

- Law No. 98-16 regarding donation, extraction and implantation of human organs and tissues
- Law No. 99-62 regarding financial courts
- Law No. 01-09 regarding the Higher Institute for Judicial Studies
- Law No. 00-18 regarding joint ownership of constructed properties

A Paper on Legislative Reform: The Most Important Ratified Legal Texts (from the book Reform of the Judiciary in Morocco)

- Draft Regulatory Law No. 00-63 regarding the Supreme Court (submitted to Parliament)
- Draft Law No. 00-17 regarding application of Article 39 of the Constitution, and concerning parliamentary immunity (submitted to Parliament)
- Draft Law-Code of Rights *in rem*, regarding unguarded properties (at the final scrutiny stage after consultation with the concerned ministries)
- Requirements concerning criminal protection for children and women
- Draft decree aimed at establishing institutes for training attorneys
- Draft law regarding commercial arbitration
- Draft law on judicial assistance
- New reading of the Civil Procedure Law
- Draft law concerning the amendment of the justice plan law
- Draft law concerning the amendment the special statute concerning judicial assistants
- Law No. 00-44 regarding the sale of properties under construction
- Law No. 01-35 amending and supplementing Article 24 of the special statute concerning members of the judiciary
- Decree specifying the number of commercial courts
- Decree No. 967-98-2 dated 12/01/1999 determining the conditions for passing the judicial attaché test, examinations program, scoring, as well as how to pass the end of training examination
- Decision No. 99-1-46 of the Minister of Justice, dated 30/03/1999, determining the written and oral examinations program concerning the judicial attaché test
- Decree No. 385-98-2 dated 23/06/1998 regarding the organization and authorities of the Ministry of Justice