

مرصد العدالة بالمغرب



المرصد الوطني لاستقلال السلطة القضائية
L'Observatoire National de l'Indépendance de l'Ordre Judiciaire



مجلس القضاة
JUSTICE
من أجل الحق في محاكمة عادلة



Memorandum

Civil collective defense of the judiciary

On the superior council of the judiciary and status of judges

18 September 2014

in collaboration with:



Introduction

This memorandum was drafted as part of an initiative launched by the Adala Association for the Right to a Fair Trial and urged by several professional judicial entities and civil bodies. The initiative coincides with the workshops on comprehensive reform of the justice system, the aim of which is to improve the conditions of the justice sector with decisiveness and responsibility in order to protect and safeguard justice, so that the system can play its assigned roles in protecting rights and freedoms. The consultative meeting, held on January 10, 2014, in the Ibis Hotel in Rabat, was attended by:

- Adala Association for the Right to a Fair Trial
- The Hassani Association of Judges
- Judges Club of Morocco
- Justice Observatory, Morocco
- National Observatory for Judicial Independence
- Democratic Syndicate for Justice
- Judicial Deputies Club, Morocco
- Forum of Research Judges
- National Syndicate of Judicial Clerks (Adoul), Morocco
- Federation of Youth Lawyers, Morocco

The meeting followed the official release of the Charter for the Reform of the Justice System, which included the recommendations of the Supreme Body for Comprehensive National Dialogue on Justice System Reform. This was followed by the release of two draft laws on:

- The Supreme Judicial Council
- Bylaws for judges

The meeting was devoted to a detailed, critical discussion of the recommendations issued by the Comprehensive National Dialogue with the aim of formulating proposals and recommendations on judicial independence in Morocco that can help lay the foundation for the rule of law and justice based on the 2011 constitution and based on international frames of reference, including international conventions such as the Covenant on Civil and Political Rights, the UN Basic Principles on the Independence of the Judiciary (adopted by the seventh UN congress on the prevention of crime and the treatment of offenders), the Global Charter for Judges, and the Bangalore Principles of Judicial Conduct. They also rely on and refer to the recommendations on the judiciary by the Justice and Reconciliation Commission, the memorandum on the Moroccan judiciary from the National Council for Human Rights, and royal speeches and directives that support genuine judicial independence.

Overall approaches

- To strengthen judicial independence and promote the role of the Supreme Judicial Council as a constitutional regulatory body with full jurisdiction over judicial affairs and oversight of the judicial administration of the courts.
- To create and entrench the highest judicial administrative body in the kingdom.
- To support the principles of transparency, equality, and justice in regulating the individual status of judges.
- To entrench judges' right to individual and collective expression and the right to join associations.
- To promote non-discrimination between judges on the bench and Public Prosecution judges.

Detailed approaches

1. Regarding the Supreme Judicial Council
2. Regarding bylaws for judges

1. Regarding the Supreme Judicial Council

- Show due regard for gender to guarantee fair representation for female judges in the regulation of the election of judges' representatives pursuant to Section 115 of the constitution on the need for female representation commensurate with the proportion of women in the judicial corps.
- Affirm that the Supreme Judicial Council, under the supervision of its chosen president, is responsible for elections to the council from beginning to end.
- Affirm that members of the Supreme Judicial Council should be dedicated exclusively to the council to ensure its smooth operation and to facilitate communication between members of the council and other judges.
- Set forth the duties of the members of the Supreme Judicial Council in their official capacity.
- Ensure that the council and its members are open to professional judicial associations by permitting representatives of these associations to attend its meetings as observers and regulating the legal status of observers while affirming their consultative capacity.
- The Supreme Judicial Council should enjoy legal personhood and financial and administrative autonomy; the ministry's administrative oversight of the courts and judicial officials should be annulled.
- The secretary-general should be a judge because he will adjudicate issues concerning the individual status of judges, such as of suitability for promotion (liste d'aptitude). The

secretary-general should also have expertise and experience in the judicial service and it is thus proposed that be of exceptional career grade. The term of office should not be renewable, similar to the elected members. The task of the general-secretariat is to undertake all administrative work that helps the council to organize its operations.

- Ensure transparent operations and the right to information, by releasing agendas for the council's regular and extraordinary sessions and the results of their meetings, with the goal of informing judges and the public and using all possible means; the agendas and all meeting outcomes should also be published in the Official Gazette.
- Refrain from publishing disciplinary sanctions pending finalization with the completion of the judicial appeal process.
- Exclude any grounds for the extension of the retirement age and annul all possibilities for [post-retirement] judicial assignment, to ensure the soundness of the judicial corps.
- Uphold the principle of civil liability for frivolous complaints by affirming the judge's right to sue a complainant who files a malicious complaint with the Supreme Judicial Council.
- Make explicit the Supreme Judicial Council's guarantees for the independence of judges at all stages of their careers, especially in regard to appointments, transfers, promotions, disciplinary actions, and retirement, while showing due regard for the constitutional guarantees given judges by the constitution of 1 July 2011.
- Expand immunity against transfers by setting forth as a principle the specialization of judges in specialized courts and prohibit their transfer to ordinary courts except at their request.
- In case of any infringement of judicial independence, require the mandatory referral of the file to the competent Public Prosecutor for investigation.
- The principle of judicial independence must be preserved in the judiciary's relations with the government authority charged with justice, by limiting coordination between the council and the government justice body to solely administrative matters, in accordance with recommendation 21 of the Charter for the Reform of the Justice System.
- Affirm the need to adjudicate disciplinary procedures for judges within a reasonable timeframe.
- Affirm that the professional status of judges or trainee judges shall not be infringed until the completion of a transparent disciplinary process that guarantees the principles of a fair trial.
- Ensure equal standards for Public Prosecution judges and bench judges in resolving transfer requests, while considering judges' desires for transfer, their marital status, and the courts' needs and stating cause for all the council's decisions in this regard.

- The council should resolve all resignation tenders by either accepting or rejecting them while stating cause; refusal to resolve should not be considered a rejection because this makes the judge responsible for the mistakes of the council.
- Judges must be empowered to appeal all decisions issued by the Supreme Judicial Council pertaining to the individual status of judges and this before an administrative judicial body; the decision should be suspended with the submission of an appeal.
- It is proposed that the supreme administrative body in the kingdom adjudicate appeals pertaining to the individual status of judges, in accordance with constitutional developments and an approach based on recusal when the body performs its tasks, and in a way that guarantees neutrality pursuant to international conventions.
- As a transitional measure, appeals of the decisions of the administrative chamber of the Court of Cassation could be made before all chambers of the Court of Cassation, provided the court's general assembly determines the shape of the procedures.
- An inspection body should be created comprised of elected judges that meet the conditions of neutrality, professionalism, competence, experience, and specialization; the body should be headed by an inspector-general appointed by the council, who performs his tasks for a non-renewable, fixed term, like the elected members and secretary-general of the council, as this guarantees and supports judicial autonomy.
- The government body tasked with preparing the budget should consult the council when preparing the judicial budget, since the draft budget for the justice sector and judiciary is tantamount to an annual program for this sector and thus requires the opinion of the council. The council's opinion must also be solicited on draft laws and regulations pertaining to the status of the judiciary, the justice system, strategies and programs for justice system reform referred to it by the government, and measures that contribute to improving the quality and outcomes of the justice system.
- The council should prepare periodic reports, offer detailed opinions on the course of justice in the kingdom, and submit recommendations it deems appropriate. All competent directorates and bodies must provide it with information that helps it to produce these reports, while also observing the principle of civic participation.
- The Supreme Judicial Council should oversee the High Judicial Institute and the Judicial Directorate of the Courts.
- It is proposed that the Supreme Judicial Council undertake the drafting of a code of ethics, to be considered the frame of reference to support ethics for members of the judiciary; it should also draft professional standards to ensure compliance with judicial values.
- Review the disciplinary procedures for judges while making disciplinary matters the

exclusive purview of the Supreme Judicial Council.

- Appoint judicial officials in accordance with a contractual program based on a time-bound competition.
- Review the procedures for limiting appointment in position of responsibility before the end of the legally mandated term.

An exceptional article should be added at the end of this law stating that “all authorities possessed by the minister of justice shall be transferred by special laws to the chosen head of the Supreme Judicial Council and the crown public prosecutor each in their respective fields.”

2. Regarding bylaws for judges

- Avoid repeating the legal provisions and the regulation of some areas that should be regulated by the draft law on the Supreme Judicial Council.
- Reconsider guidelines for the right to establish professional associations and collective action.
- Do not restrict the academic activities of judges and participation in academic forums and seminars with general restrictions open to interpretation; instead, clearly specify cases in which participation is prohibited.
- All judges in the kingdom, including judicial officials, should be appointed by the Supreme Judicial Council with the approval of the king, in accordance with the provisions of Section 57 of the constitution, which states that the king should approve judges appointed by the Supreme Judicial Council.
- A competitive promotion regime is one of the most significant guarantees for genuine judicial independence.
- Limit the transfer of judges to those requesting transfer after the announcement of court vacancies.
- Specify how the rules for seniority should be applied to the Public Prosecution.
- Simplify the procedures of the rehabilitation and reinstatement of judges subject to disciplinary sanctions.
- Regulate grave disciplinary errors for judicial officials.
- Prohibit retirement age extensions for all judges without exception.
- Regulate all matters related to the judges’ retirement in statutory law, refrain from referring to existing regulations, and stipulate that female judges’ heirs are entitled to their pension benefits in case of death.
- Adopt a system to evaluate judges that guarantees their independence in an objective,

transparent framework, while relying on academic qualifications and acquired skills in the evaluation reports.

- Adopt a second degree of evaluation vested in a committee elected by the general assemblies of appellate courts to evaluate judges with primary courts and a committee elected by the general assembly of judges with the Court of Cassation to evaluate appellate judges; the indicators for assessment should be discussed by the body that prepares them with the judges subject to them.
- The general assemblies of courts and the authority of the central and hierarchical inspection body should be regulated by statute, which is tantamount to bylaws for judges.
- Provide for the review and appropriateness of periodic compensation and incentives for judges and establish appropriate compensation for judges.
- Specify the academic specialties required in the academic qualifications of practicing judges as commensurate with the judicial specialization.
- Specify that promotion proceeds from one career degree to the next automatically regardless of numerical or financial allocations; promotion should be counted from the date of registry in list of suitability for promotion (*liste d'aptitude*).
- Designate a proportion of positions for professionals and civil servants in the competition for judicial attaché positions, similar to several comparable experiments, rather than leaving it open; or designate a competition for each individual class. In this respect, we believe that recommendation no. 145 of the charter should be applied, which requires that they be announced together annually. There is no sense in opening up for the most qualified candidates if the competition is opened to professionals and civil servants seasonally or at the whim of the authority charged with announcing the competition for judicial positions without any rules.
- Specify the number of positions allocated to professionals and civil servants, while distinguishing civil servants from the professional classes, insofar as incorporating civil servants into the judicial service does not require the creation of a new financial position since they perform their tasks in the framework of the civil service.
- Annul the appointment of an administrative facilitator under the supervision of a judicial official—Article 52—because it will lead to competing authorities since the courts include judicial officials. As such, it is preferable to create a coordinating mechanism as set forth in Article 51 of the draft and further clarify Article 52 as follows: “The government body tasked with justice shall oversee the administrative and financial supervision of the courts insofar as it does not contravene the principle of judicial independence. An administrative facilitator shall be appointed to assume the tasks of the administrative management of the court. In every court, an administrative council shall

be formed to manage administrative operations, comprised of the judicial official and the administrative facilitator. The contentious mechanism is thus upgraded to the coordinating mechanism set forth in the previous article.”

- Create a single interlocutor for the clerk’s office (judicial administration), in the person of the administrative facilitator, to avoid the duplication of interlocutors as is the case now in all courts, such that the work of judicial administration is divided into a judicial clerk’s office and a Public Prosecution clerk’s office.
- Create a board of administration comprised of the judicial officer and the administrative facilitator.

Regarding the administrative disciplinary guarantees for judges, we propose:

- Specify judicial disciplinary infractions pursuant to the principle of the legality of the offense.
- Specify the judicial disciplinary infractions that require a temporary work suspension.
- Wages should not be suspended during temporary suspensions.
- Disciplinary measures should not extend to legal and judicial errors, as the proper sphere of rectification is the appeals process, not disciplinary action.

1. Disciplinary guarantees prior to referral to the disciplinary council

- A written complaint or report must be submitted to launch any disciplinary procedure, with the exception of cases of apprehension during the act.
- Judges are entitled to sue bad-faith complainants.
- Judges should be notified in the summons of the subject of the complaint.
- Judges shall be given adequate time to prepare a response, at least one week.
- Judges have the right to support from judges and lawyers during the phase of preliminary discussion.
- Judges have the right to remain silent until viewing the subject of the complaint and the evidence for it.
- Enable judges to respond in writing to all questions.
- No investigation or discussion should be opened in regard to a judicial matter that is still pending before the court or which has not been adjudicated.
- Judges should not be subject to disciplinary action in the event of an injunctive action awaiting a final judgment that is not subject to review.

2. Disciplinary guarantees before the disciplinary council

- Judges brought before the council are entitled to aid from lawyers and judges.
- Judges brought before the council or their deputies should have the right to view all documents pertinent to the disciplinary action and make copies of them ten days prior to the disciplinary hearing.
- The judge has the right to hear witness statements and take other investigative measures.
- The rapporteur should be present as well as the judge in disciplinary trials in accordance with the right to face one's accuser.
- The complainant should have the right to appear before the council and must attend if the judge asks to examine him.
- The judge should have the optional right to attend to hear the disciplinary rapporteur.
- Disciplinary decisions shall be made by a majority vote, provided decisions to dismiss receive the unanimous vote of all those present.
- Disciplinary decisions must state cause and must ensure that the penalty is proportionate to the infraction.
- The Judicial Inspection Directorate should be authorized to examine the facts and conduct the necessary investigations into complaints.
- A group inspection body should be appointed to write the report, selected from among judges with a record of competence and fairness, for every disciplinary file or to undertake questioning if necessary.
- Before summoning the judge, the inspection body should be empowered to refer the file to the disciplinary body or close the file.
- As a rule the council's sessions should be public.
- A judge's suspension should be conditional on the severity of the acts ascribed to him and demand dismissal.
- Prohibit multiple disciplinary penalties by annulling automatic transfer with every disciplinary penalty.
- Prohibit the transfer of the judge from his place of work after his acquittal except at his request.
- Set a deadline by which the council must notify the judge.
- Establish a statute of limitations of three years for infractions.
- Withdraw all documents and information related to the inspection or disciplinary action if it is decided to close or not pursue the case.
- Publish all the council's decisions on the website and the council's bulletin in the Official Gazette; disciplinary decisions should only be published upon becoming final.
- The fairness of the disciplinary system is dependent on promoting the work of the highest

administrative judicial body in a way that guarantees its neutrality.

- The Court of Cassation must be fully independent of the Supreme Judicial Council. It is inconceivable that the Court of Cassation will monitor itself regarding the decisions of its chief justice, who is the presumed head of the Supreme Judicial Council, and this to guarantee legitimate, appropriate oversight of disciplinary decisions in a serious, salutary way.
- Judicial independence has no meaning if judges are subject to disciplinary action at any time without legal and judicial safeguards to prevent arbitrary action and injustice.
- Some provisions on which there are reservations may be accepted because the administrative judge can imbue these with a spirit of justice through his creative and interpretive efforts, but merely formal, cosmetic judicial oversight is unacceptable.
- Unify training procedures for trainee judges and judges.
- The two drafts in all their versions do not realize any means to protect judges from the abuse of authority in the disciplinary regime. Ordinary safeguards for civil servants are better and preferable in terms of legal and regulatory provisions for administrative judicial work.

Signatories to the memorandum:

- Adala Association for the Right to a Fair Trial
- Bar Association Lawyer in Morocco(ABAM)
- Judges Club of Morocco
- Justice Observatory, Morocco
- National Observatory for Judicial Independence
- Democratic Syndicate for Justice
- Judicial Deputies Club, Morocco
- National Syndicate of Judicial Clerks (Adoul), Morocco