

## General Conclusions and Recommendations of the Symposium

### "The Independence of the Judiciary: What Safeguards?"

Following the consultation meetings held by the Civil Collective for the Defence of Judicial Independence, which resulted in the preparation of a draft advocacy memorandum on the amendment of the two draft regulatory laws relating to the Supreme Council of the Judiciary, and the Statute of Judges.

In order to materialize the recommendations of the aforementioned meetings and submit them to public debate and constructive criticism, and to launch a new dynamic that involves the various components of the Moroccan society concerned about justice, especially as the two above-mentioned bills will be submitted to Parliament soon, the organizations and institutions forming part of the Civil Collective for the Defence of Judicial Independence held a national symposium under the theme: "Independence of the Judiciary: What Safeguards?" on 16, 17 and 18 May 2014 at the Higher Institute of the Judiciary in Rabat, in collaboration with the International Federation for Human Rights, and with the participation of the Ministry of Justice, the National Council for Human Rights, the Euro-Mediterranean Human Rights Network, and the International Commission of Jurists, in addition to professional associations of judicial and legal practitioners, and Moroccan human rights organizations. This testifies to the keen interest shown for this major reform process by the various national and international partners.

This symposium was held within the context of the sustained efforts made by civil society actors - legal professionals and human rights activists - who work on the comprehensive reform process of the justice system, which aims to improve the conditions of the justice sector strongly and responsibly in order to immunize and protect justice, enabling it thus to play its roles in the protection of rights and freedoms in our country. The goal is also to enable the Civil Collective for the Defence of Judicial Independence to perform its role of criticism and as a source of proposals, regarding the two draft regulatory laws relating to the Supreme Council of the Judiciary and the Statute of Judges.

#### **The major problem areas emerging from the interventions of participants and the interactions of the attendees:**

The diagnosis of the reality of justice makes it possible to pinpoint the core issues as follows:

- 1- The problems of vesting the Ministry of Justice with the authority to supervise the judicial administration of courts and to evaluate the performance of judicial officials; and the limits to the issue of coordination between the said officials and the court clerk's office;
- 2- The core issue of the weak safeguards granted to judges with respect to the management by the Supreme Council of the Judiciary of their professional conditions, in the absence of practical provisions and measures to protect the independence of both the judge and justice;
- 3- Adopting the gender approach regarding gender parity in organizing the election mechanisms of representatives of judges and ensuring the representativeness of female judges, and in managing the latter's employment status with respect to appointment, promotion, mandates and responsibility;

- 4- Restrictions on freedom of association and on the right of individual and collective expression of judges;
- 5- Lack of any legal provision for establishing the State Council, entitled to monitor the legality and the validity of decisions made by the Supreme Council of the Judiciary;
- 6- The problematic of the practical mechanisms for supporting the law on the independence of the judiciary.

↳ **General recommendations emerging from the symposium, as a result of assessing the conclusions of interactive debates in the four workshops:**

First Workshop: Supreme Council of the Judiciary

- Adopting transparent criteria for the selection and election of the members of the Supreme Council of the Judiciary, and for determining their rights, duties and terms of office, with the non-renewal of their mandate, whether elected or appointed.
- Democratizing the method of selecting the President and the Attorney General of the King at the Court of Cassation.
- Specifying the conditions for ending the mandate of appointed and elected members.
- Providing for the right of professional associations to grant support and attend as observers in order to be consulted by the Council.
- Strengthening the deliberative and normative nature of the Supreme Council of the Judiciary.
- Setting up the State Council as the supreme judicial and administrative institution of the Kingdom.
- Abrogate the rely on the reports prepared by the governmental authority in charge of justice as a criterion for selecting or dismissing judicial officers.
- Define objective criteria for the selection of officials, based on competence and experience, by announcing competitive exams for positions of responsibility.
- Separating the authority of disciplinary proceedings from the authority of investigation and decision.
- Enacting provisions for convening the Supreme Council of the Judiciary and determining the quorum of its meetings.
- State funding of campaigns of candidates to the Council membership.
- Getting polling centres closer to judges.
- No seniority requirement to run for the Supreme Council of the Judiciary.
- Promoting the participatory approach of professional associations with the Council.

Second Workshop: Statute of Judges

- Regulating the role of public associations at courts and transferring to them the competencies of judicial officials, in addition to vesting them with the authority to propose the appointment list of the representatives of judicial officials and submitting it to the Supreme Council of the Judiciary.
- Controlling and organizing the transitional phase of promotion for settling the administrative status, and other unsettled situations for judges whose careers are lagging.
- Abrogating the third class.
- Controlling the disciplinary breaches of judicial officials in line with the nature of the attributions assigned to them, such as making false reports, overriding the decisions of the public associations, unlawful influence on judges, lack of working means and mechanisms.
- Putting into place practical guarantees for the protection of judges.

- Compulsory annual notification of the evaluation reports to judges at the Court where they work, within 15 days, and granting them the right of appeal before the State Council.
- Removing the link between promotion and transfer.
- Inadmissibility of transferring judges to courts of a lower degree, unless at their request.
- Periodic review of wages and compensations through a system of wage indexation.
- Granting judges the right to continue scientific research and facilitating their participation in national and international forums.
- Determining the essence the obligation of discretion.
- Supporting the freedom to join professional associations without any limits or conditions.
- Determining a reasonable term to rule on the cases after the parties have been notified legally.
- No ban on strike as one of the recognized constitutional rights.
- Including in the files of judges only the final disciplinary decisions issued by the Council.
- Providing for practical measures to protect the independence of judges and to prevent any influence on them.
- Granting female judges with maternity leaves equivalent to those of their counterparts in public service, in the case of birth or abortion.
- Supporting the right of judges to staff housing.

### Third Workshop: Public Prosecution and the independence of the judiciary

- Vesting the Attorney General of the King at the Court of Cassation, in his/her capacity as the head of Public Prosecution, with the authority to supervise and monitor the works of the Public Prosecution.
- Absolute independence of the Public Prosecution from the executive branch.
- Prerogative of the governmental authority in charge of justice to convey the general criminal policy to the Attorney General of the King at the Court of Cassation, provided this notification is in writing and is not related to specific cases.
- Transferring the full supervision of the judicial police to the public prosecutor, and making it a component of the judiciary.
- Creating the council of attorneys general of the king under the direct authority of the Attorney General of the King at the Court of Cassation, to be in charge of proposing criminal policy guidelines and ensuring their implementation.
- Entitling this Council to review the decisions of Public Prosecution relating to the dismissal of lawsuits, and all grievances against decisions relating thereto.
- Vesting the Council of attorneys general with the power to monitor the work of the Public Prosecution.
- Strengthening the independence of the Public Prosecution judge, in express views freely and independently in public sessions.
- Organizing the rule of subsidiarity and hierarchy, and its limits imposed to judges of Public Prosecution.
- Providing the judges of Public Prosecution with the same immunity against transfer and dismissal enjoyed by the other judges.

#### Fourth Workshop: the role of the judiciary components in establishing the principle of judicial independence

- Recognition of the components of the judicial body as an essential partner in the process of justice reform, and renaming auxiliaries of justice as components of the judicial body.
- Separation of administrative tasks from judicial functions of the judicial services and determining them.
- Accurate and clear definition of the functions and duties of the various administrative and judicial units of the judiciary service.
- Strengthening the system of training and on-job training for all the components of the judiciary.
- Strengthening the systems of accountability, responsibility and accountability of the components of the judiciary.
- Protecting the rights of consumers and users of justice services.
- Unifying the documentation system at both the organic and material levels.
- Enacting the compensation fund system for miscarriage of justice and professional misconducts.

