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# MOROCCO RULE OF LAW ASSESSMENT

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# MOROCCO RULE OF LAW ASSESSMENT

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## ACRONYMS

ABA-ROLI	American Bar Association Rule of Law Initiative
ADR	Alternative Dispute Resolution
AECID	Spanish Agency for International Development Cooperation
CLE	Continuing Legal Education
CSM	Conseil Supérieur de la Magistrature
CSO	Civil Society Organization
EU	European Union
GOM	Government of Morocco
ISM	Institut Supérieur de la Magistrature
MOI	Ministry of Interior
MOJ	Ministry of Justice
NGO	Nongovernmental Organization
OIG	Office of Inspector General
ROL	Rule of Law
SG	Secretary General
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USG	United States Government
WB	World Bank

## EXECUTIVE SUMMARY

Rule of law reform in Morocco over the past decade has primarily involved creation of the administrative and commercial courts, creation of an independent judicial training institution that provides initial and continuing legal education for judges, and passage of laws enhancing human rights protections. While some improvements have occurred, including the adoption of a new family law in 2004, reforms have been limited. Recently, the pace of introduction of modernization efforts has slowed and while the King continues to be viewed with affection, many institutions of government are not popular. The judiciary is perceived to be ineffective by many Moroccans. More generally, there is a widely held perception that corruption is tolerated, that a political and security elite act with impunity, and that strong actions are taken against those who would challenge power as evidenced by the recent arrest and imprisonment of members of the press.

The diversity within Morocco's 34 million inhabitants in economic levels, backgrounds, beliefs, and educational attainment and the presence of radical factions impede the pace of democratic reform. The terrorist bombings in Casablanca in 2003 and 2007 served as a reminder of these challenges. The potential for social unrest influences governmental decision, sometimes tipping the balance in the direction of autocratic approaches. Based on this political and economic background, USAID has undertaken a rule of law assessment to inform the development of a programming strategy.

The assessment took place in two phases with an initial assessment in October 2008, followed by an additional in-country visit in November 2009. The assessment teams conducted documentary reviews; interviews with governmental officials, private sector and civil society representatives, and other international donors; and targeted group meetings. Based on an analysis of this information the teams developed an assessment of the status of rule of law in Morocco and provided recommendations for a strategic approach to future rule of law programming.

Some of the specific findings include the following:

- **Judicial independence is lacking** due to a number of factors, including deficiencies in both law and practice. The roles of the Ministry of Justice (MOJ) and the King further complicate this issue.
- **Training methodologies and curricula** at the Magistrates School, which trains judges and clerks, **need to be updated and expanded**. Current capacity and continuing legal education programs are not sufficient to provide the appropriate level of training.
- There is a **lack of adequate policies and standards for procedural application of the law**, resulting in significant case delays and lack of enforcement of judgments
- **Access to justice is limited by lack of access to legal services**, particularly for indigent and marginalized groups including women and children.
- There is a **lack of judges who are specialized** especially in family and juvenile law in the rural areas.
- Even though the juvenile law provides that prison should be a last resort for minors who commit crimes, in practice **detention rates remain high**. There is little focus on rehabilitation, and juvenile services are extremely limited. The number of disaffected and at-

- **Corruption is one of the most significant challenges** confronting Morocco. The most recent Transparency International Corruption Perception Index (CPI) for Morocco was 3.3/10. The CPI has ranged from 3.2 to 3.7 over the past eight years.<sup>1</sup>

Programmatic interventions will need to be mindful of the political will to effect change, particularly the support for, as well as the limits imposed by, the governmental structures. There are some recent, positive indications of high level political support for justice system reform. In a speech in August 2009, marking the 56th anniversary of the 1953 Revolution, King Mohammed VI laid out a multi-part strategy for judicial reform. The elements of his strategy for reform include: strengthening guarantees of judicial independence, modernizing the regulatory framework, overhauling institutional structures and staffing, increasing efficiency, and implementing measures to prevent corruption and abuse of office. The MOJ is currently preparing a national justice reform strategy that will outline specific measures to implement the King's broader strategy.

Over the past decade, a number of new avenues for reform have been opened; nonetheless, there has been backsliding in some areas. Transparency and inclusion are overarching themes with particular importance in fighting corruption and developing civic education programs. To deepen program impact, given limited and unpredictable funding for this sector, it is important that any ROL activity coordinate and integrate themes that strategically link ROL activities to other relevant Mission sector activities and USG ROL efforts. Integrating ROL into all sector activities is essential for long-term development to provide security for foreign and domestic investment, property and contract rights, international trade, and other vehicles for advancing social and economic growth. The following paragraphs summarize the most critical programming recommendations for USAID, divided between short-term (Years 1 to 3) and longer term needs (Years 4 to 10). These recommendations identify areas in which the assessment team felt USAID was best placed to engage and could have the greatest impact. Section V of the report provides broader and more detailed recommendations areas for programmatic assistance over the next 3 years and also areas for more long term assistance over the 4 to 10 year timeframe for the entire justice sector. The recommendations are divided under the five elements of the USAID rule of law strategic framework and are for any partner that is interested in supporting the justice sector in Morocco.

With respect to the next 1 to 3 years, the MOJ has indicated that it would welcome USAID support to strengthen juvenile justice in Morocco. To achieve this, a juvenile justice strategy needs to be developed to guide the process, more focus should be given to alternative sentencing options, and a pilot program should be developed to provide comprehensive juvenile services. If the MOJ supports the concept, USAID may want to explore piloting alternative sentencing and pre-trial diversion approaches in a particular jurisdiction. This would create the opportunity to test approaches proposed from the U.S. Embassy's Prison Management and Alternative Sentencing Program and allow for further adaption to the Moroccan context and lay the foundation for broader generalization.

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<sup>1</sup>	2002	2003	2004	2005	2006	2007	2008	2009
Morocco CPI	3.7	3.3	3.2	3.2	3.2	3.5	3.5	3.3

The Corruption Perceptions Index (CPI) measures the perceived level of public-sector corruption in 180 countries and territories around the world. Morocco ranked 89<sup>th</sup> out of 180 countries in the 2009 CPI. The CPI is a "survey of surveys", based on 13 different expert and business surveys.

Another focus area should include training and professionalization of the justice sector. The MOJ has indicated openness to USAID support in this area, and it is one of the priorities of the GOM and the Magistrate's School (ISM). While the scope and scale will depend on the direction of the justice reform strategy being developed by the MOJ and the openings it creates, the ISM has suggested it would welcome an in-depth needs assessment of the current curriculum and training program. This assessment could determine if the ISM's curriculum addresses justice sector priorities and propose suggested changes, including new and modified courses and new training methodologies. This would then be reinforced by a training of trainers to ensure that new training methodologies and approaches are embraced and institutionalized. An important objective is to explore how to build judges' subject matter expertise in an effort to move the existing continuing legal education efforts from *ad hoc* to systematic and expand the scale and availability of continuing legal education. In addition, USAID could explore the GOM's willingness to require continuing legal education for legal professionals and then, support elements to develop a program to provide it. Cross-cutting themes such as gender, ethics, human rights, and corruption should be integrated into the curriculum for both judges and lawyers. The curriculum should also be updated to reflect the most recent laws and areas of specialization.

For the longer term (4-10 years), the following assistance is recommended to further develop the rule of law in Morocco. The specific assistance should depend on the direction of Morocco's new justice reform strategy, once completed. Recommendations include:

- Support further compliance with **charters of ethics and development of codes of ethics**, established by the judiciary or professional associations, to provide uniform standards and guidance for professional conduct.
- Support development of **human resource management systems** that consist of clearly defined organizational structure, job descriptions and requirements, transparent promotion and assignment procedures, and employee manuals.
- Strengthen **mentoring programs** pairing new judges, prosecutors, and others with more experienced professionals to support daily performance of their duties. This approach may result in useful inputs to the ISM's basic training internship program.
- Support updating and further development of **manuals of inspection** that outline steps that should be taken in auditing and inspecting courts. Such a manual then can serve as a basis for practical training and mentoring programs.
- Support efforts to provide legal aid either by establishing **pro bono programs** of volunteer lawyers and/or creation of **a nationwide public legal aid program** within the judicial branch or as a separate government entity.
- Provide technical assistance to **enhance procedural operations** and **improve the capacities** of the court system.

While increasing the rule of law in Morocco presents a number of challenges, there is reason to hope that a series of targeted interventions can have impact, even in the near term. Reforms that can adequately address institutional deficiencies and corruption will be a longer term process. The rule of law is continually developing and results are more sustainable where there is a participatory process adapted to local cultures and expectations. There is a current willingness to seek judicial reform, both within and outside of the government, particularly in light of the ongoing development of a judicial reform strategy through the MOJ. Prior to MOJ's completion of the strategy, USAID should take advantage of this opportunity, advocating for integration into that strategy of key activities that can lay the groundwork for a successful rule of law program.

## I. INTRODUCTION

This assessment examines the current status of the rule of law in Morocco, including the structures and functions of the institutions of governance, and takes into account the perspective of those governed. Today, as a result of the implementation of democratic principles of governance – including increased power-sharing, constitutional reforms, elections, signing international conventions on human rights and anti-corruption, and establishing corruption prevention methods – Morocco stands as a positive example in the region. Yet the diverse backgrounds, beliefs, and educational levels of the country's 34 million inhabitants and the existence of radical Islamic movements combine to challenge the transition to democracy and rule of law. The terrorist bombings that took place in Casablanca in 2003 and 2007 serve as a reminder of the risks faced by Moroccans. The resulting governance and power structures of Morocco simultaneously reflect efforts to balance autocratic and inclusionary approaches.

Rule of law reform in Morocco over the past decade has primarily involved creation of the administrative and commercial courts, creation of an independent judicial training institution that provides initial and continuing legal education for judges, and passage of laws enhancing human rights protections and requiring magistrates and prosecutors to declare their assets. However, many Moroccans still describe the judiciary and associated justice sector institutions as weak, neither independent nor accountable, lacking capacity to provide for enforcement, and hindered by excessive delays in processes. To date, the work of USAID/Morocco in rule of law institutional development has focused on programs to assist the commercial courts. The USAID Improving the Business Climate Program has a component to help strengthen the capacity of commercial court judges and staff to resolve business-related disputes.

Over the last decade, Morocco has made important strides in the justice sector through the Government's Ministry of Justice (MOJ) justice reform and modernization program. Since ascending to the throne in 1999, King Mohamed VI has made the rule of law (ROL) a priority of his reign. The King is the supreme representative of the nation, and as "commander of the faithful," the King serves as the highest religious authority and as guarantor of the State. This combination of roles means that only the King, *amir al-mu'minin*, can authorize any reforms. The King's speech in August 2009 on the 56<sup>th</sup> anniversary of the Revolution of the King and the People was unprecedented because it was solely dedicated to judicial reform. The speech laid out a reform strategy that included strengthening guarantees of judicial independence, increasing efficiency, and enforcing rules to prevent corruption, among other areas.

Building on the King's August 2009 speech, the team tried to explore how far the GOM was willing to go under each of the key areas identified. In the absence of a justice sector reform strategy, it is difficult to determine with any precision. At the time of the assessment's second phase, the MOJ was consumed with developing recommendations for the new reform strategy, and the MOJ was not ready to share the details as they had not been fully vetted. Early in 2010, a "package" of draft laws was presented by the MOJ to the Secretariat of the Government (SGG), which is required before submission to the parliament. The SGG is currently headed by the former Chief Justice, Driss Dahak, who is considered to be an excellent jurist. However, the SGG has returned the drafts for modifications, though some observers believe the package was rejected by the SGG for lack of consistency.



On January 4, 2010, allegedly in a move to accelerate Moroccan development projects and institutional reforms, the King appointed five new ministers. The King replaced the former Minister of Justice Abdelouahid Radi, head of the Socialist Union of Popular Forces (USFP), with Mohamed Taib Naciri, former chairman of the Casablanca Bar and a Constitutional Council member with close relations to the King. Naciri pledged to "ensure that the public and foreign investors can have confidence in the justice system."<sup>2</sup> It is unclear how this change in Minister will affect the justice reform process and the development of the new justice sector reform strategy. This cabinet reshuffle came a day after the monarch appointed the Advisory Committee on Regionalization, which is tasked with developing a plan to strengthen regional governance across the Kingdom.

The King holds substantial power under the constitution, and through his Government has stated that justice is the foundation and ultimate doctrine of power and has made judicial reform one of its key objectives.<sup>3</sup> The rule of law has come to be recognized as a critical factor for Morocco's economic, social, and democratic progress, and Morocco is making strides toward building a state founded upon it. However, many daunting challenges to the pursuit of this goal remain. Proponents of reform will need to overcome a growing legacy of apathy attributed to corruption, social exclusion, illiteracy, and widespread poverty. This state of affairs has led to a significant gap between the political elites who dominate civil society and the general population. Consequently, the political elites will need to take steps through outreach and civic education to close this gap and to foster support for reform at the grassroots level. Many believe that reform will require a constitutional reordering that would redefine the relationship of the Monarchy to the state before significant progress can be made in judicial reform in general and in establishing judicial independence in particular. There has been significant progress in the commercial sector in recent years. However, in order to entrench the rule of law, pressing needs for reform of the judicial sector must be addressed.

Key fundamental issues related to the constitution and judicial independence will take time. Reform efforts must overcome resistance from vested interests and will need to be implemented gradually. However, the Monarchy's interest in reforming the justice sector is a positive sign that, overall, Morocco will continue in its path towards democracy. The MOJ has expressed its support for continued judicial reform and welcomes U.S. involvement in sharing best practices on certain key issues, with the MOJ Secretary General recently referring to an "excellent partnership with USAID" on the USAID-funded Commercial Court Reform Project. As of this report, the MOJ was engaged in charting a course to address the King's call. In this respect, USAID involvement in the coming years would be timely.

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<sup>2</sup> Source: [http://www.magharebia.com/cocoon/awi/xhtml1/en\\_GB/features/awi/features/2010/01/07/feature-01](http://www.magharebia.com/cocoon/awi/xhtml1/en_GB/features/awi/features/2010/01/07/feature-01)

<sup>3</sup> First Royal Speech, Casablanca, October 12, 1999 (see MOJ Website at [www.justice.gov.ma](http://www.justice.gov.ma)).

## II. METHODOLOGY

The USAID/Washington Office of Democracy and Governance of the Bureau for Democracy, Conflict, and Humanitarian Assistance (DCHA/DG/ROL) has developed a new rule of law strategic framework to guide country analysis and USAID program development. The Agency has invited field missions throughout the world to consider rule of law assessments based on this strategic framework to help make informed programming decisions. USAID/Morocco requested an assessment based on that framework and focused on how best to preserve and build on the achievements of past rule of law cooperation, sustain mutually beneficial relationships that have developed, and fashion suitable approaches for the coming years. The assessment teams also considered key objectives from the new USAID Country Assistance Strategy for Morocco, strategic and shared interests of the actors involved in development and implementation of that Strategy, comparative advantages, and opportunities to work to the strengths of USAID and other USG players in the sector. This report organizes the results into the categories outlined by the USAID rule of law strategic framework, with recommended programmatic interventions provided in Section V of this report.

The assessment was conducted in two phases. The first phase was completed by team leader Jan Stromsem, a consultant from DPK Consulting – a Division of ARD, Inc. (DPK); Gloria Jean Garland, a Senior Rule of Law/Human Rights Expert at the Office of Democracy and Governance at USAID/Washington; and Abdelaziz Nouaydi, a Moroccan attorney and expert consultant contracted by DPK. The first phase team completed the in-country assignment from October 13-31, 2008, conducting interviews in Rabat, Marrakech, Casablanca, Tangiers, and Tétouan. The second phase assessment team was composed of Professor Louis Aucoin (team leader); Ahmed Chaqri, a Moroccan legal consultant; and Maren Christensen, all representing DPK; and Achieng Akumu, Senior ROL Advisor from the Democracy and Governance Office of USAID/Washington. This team conducted intensive in-country interviews and targeted meetings in Morocco from October 31 through November 7, 2009, including consultations with USAID, MOJ officials and over 15 key legal practitioners, international donors, and civil society actors in Rabat, Casablanca, and Temara.

The scopes of work for both phases are attached as Annexes 1 and 2, respectively. The assessment included an extensive review of literature on the Moroccan justice system, reflected in the bibliography at Annex 3. The list of interviewees is attached as Annex 4. During the in-country portion of the assessment, the team also received considerable support and participation from the Mission's Democracy and Governance staff. Mr. Idriss Touijer and Mr. Tahar Berrada, Development Assistance Specialists, frequently travelled with the team, and Mr. Ted Lawrence, Mission Democracy and Governance team leader, attended a number of the Rabat-based meetings and provided overall guidance.

The first phase of the assessment analyzed the rule of law programs utilizing the USAID/DCHA rule of law framework approach mentioned above. The approach was holistic and inclusive, considering both the legal framework and the institutional components of the formal justice sector, [i.e. relevant Ministries, the courts, prosecutors, and police; other state actors, e.g., the monarchy or the *Makhzen*; the legislature; traditional leaders (who are still very much a part of rural life in Morocco); a broad cross-section of civil society actors, associations, and educational institutions; and the external donors working in the sector. The purpose of such a comprehensive approach was to determine where the various existing and potential programs can connect for greater impact in support of

positive change, while also defining the appropriate pace at which such support can be most effective.

The second phase was targeted at exploring the political will for judicial reform, the question of judicial independence, the need for training and professionalization of the judiciary, corruption, and specific implementation issues related to family law and juvenile justice. In addition, it identified key players and interests, reported on the contributions of international donors, and proposed a strategic response by USAID to the principle rule of law challenges identified.

### III. THE RULE OF LAW IN MOROCCO

The USAID Strategic Framework identifies five elements which “must be present for the rule of law to prevail.” These elements – order and security, legitimacy, checks and balances, fairness, and effective application – are interrelated. Neither separately nor together do they determine whether a rule of law program should proceed or the precise content of such a program. Of course, any assessment team’s judgments about the five essential elements are necessarily based on imperfect knowledge. Yet, taking these elements into account can help to ensure that donor programming decisions are grounded in the prevailing conditions for rule of law development in the country concerned. The assessment teams’ judgments formed in Morocco lead us to the following conclusions in this report about the presence of the five elements. Specific recommendations with respect to each element are presented in Section V of this report.

#### A. ORDER AND SECURITY

The Ministry of the Interior (MOI) controls two principal components of the Moroccan security structure: the *Direction Générale de la Sureté Nationale* (DGSN), comprised of the uniformed police (regular street police in the cities) and the *Police Judiciaire*, and the *Direction des Affaires Politiques et Intérieures* (Directorate of Political and Domestic Affairs). The MOI system links the governors of regions and provinces and local authorities – *Pachas*, *Quaids*, and *Moqaddams* – directly with the MOI to conduct daily police operations and intelligence gathering throughout the country. Other entities performing policing functions include: the *Forces Auxiliaires* (responsible for responding to public disturbances, riots, and other public order crises); the *Gendarmerie Royale* (responsible for performing functions similar to the judiciary police and to the uniformed division of the DGSN, but in rural areas); the *Forces Armées Royales* (responsible for defense of the country from external threats); the *Direction Générale des Etudes du Documentation* (responsible for strategic analyses and international intelligence); and the *Direction de la Surveillance du Territoire* (DST) (the domestic intelligence agency). There are seven different institutions that play a role in law enforcement and public security, two of which report to the MOI. The remaining security institutions are headed by direct appointees of the King. While it is the job of the DGSN to provide for the bulk of law enforcement and public security needs in the urban areas of the country, similar functions are assigned to the *Gendarmerie Royale* in rural areas.

Maintenance of public security is not restricted to the formal institutions of government. There is an elaborate sub-structure covering municipalities and neighborhoods, consisting of the *Governors*, the *Quaid*, and the *Moquadalem*, hierarchically structured and falling under the general jurisdiction of the MOI.

The public prosecutor is charged with ensuring application of the law in criminal matters, oversight of the criminal investigative work of the *Police Judiciaire* (detective corps who work with the prosecutors under their instruction), and coordination of criminal cases through the courts. When a crime is committed, the responding police authorities must notify the *Parquet* (prosecutor’s office) regardless of the nature of the crime involved, although the severity of the specific criminal act will determine whether the case falls under the jurisdiction of the *Cour d’Appel* or *Cour de Première Instance*. The role of the *parquet* is that of a neutral party trying to establish the true facts.

In the key areas of evidence gathering, chain of custody, and presentation in court, there is a need to improve police investigative skills and professionalism, especially in view of increased technology-

based crimes, as well as terrorism and money laundering. Investigations and courtroom evidence rely principally on witness testimony rather than physical evidence, and the availability and use of forensic evidence is limited. USG law enforcement agencies have provided technical assistance and training to the Moroccan security sector. Specifically, the USG supported the implementation of an automated fingerprint identification system (AFIS) that now houses millions of automated fingerprint records and has led to successful identification of a significant number of wanted persons. Morocco is a trans-shipment point in the trafficking of narcotics. Principal crime problems are contraband, immigration, fraud, and falsifications (perpetrated principally by international criminals).

The prison system faces significant challenges in virtually all areas, making systemic reforms a necessity. Facilities are inadequate, in poor repair, and vastly overcrowded. There are 60 prisons in Morocco, housing approximately 58,000 detainees, 40 percent of which are in pre-trial detention. Many of these wait for two to three years for their cases to be heard. Prisoners are generally housed together in large cells with no privacy, fresh air, or free space. About 60 percent of detainees receive food from their families to supplement the meager meals offered by the prison. If a prisoner has the financial resources and is willing to pay, they may receive special treatment, better privacy, or more space. There are few programs to facilitate reintegration, stemming from a general attitude that prisoners should not be helped.

The period of time a person is in pre-trial detention depends on the court system's backlog, but invariably can be up to several months or years. It is estimated that youth up to the age of 19 make up approximately 50 percent of the detainees in pre-trial detention, mixing with adults, and sometimes being held until they are of age to be brought to trial as adults. Generally, youth are held in pre-trial detention for a period that exceeds those for the broader prison population. It is assumed that some judges tend to hold youth in pre-trial detention longer as they were awaiting the youth to come of age before passing judgment. This adds a further complication because prisoners in pre-trial detention are usually not offered the same menu of education and training opportunities as those who have already been sentenced.

There are three juvenile delinquency centers (*Centres de réforme*), located in Casablanca, Salé, and Settat, but they cannot meet the needs for all youth offenders. Minors sentenced in areas far from these reform centers tend to be placed directly into "youth pavilions" housed within main prisons. Additionally, the Ministry of Youth and Sports manages 19 *Centres de Sauvegarde* which provide services to dropouts, orphans, and other minors who fall through society's cracks. Youth convicted of minor offenses can be assigned to these centers. The capacity of these *centres* ranges from 30-120 and they house minors aged 14-18. The Mohammed VI Foundation has training programs targeting 10 of these 19 centers.

On holidays, the King may call for an amnesty of prisoners in a show of good will and release thousands of detainees into society the next day. For example, in June 2009, the King released 24,000 detainees. Many of these former prisoners do not have a home or any employment opportunities or training to find jobs, and fall into the grip of former groups and acquaintances leading them back into criminal behavior and jail. This is a potential window of vulnerability for young former detainees to be driven into recidivism. The overall rate of recidivism has been estimated to be as high as 67 percent for all detainees.<sup>4</sup>

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<sup>4</sup> Estimates indicate that as many as two-thirds of the prison population re-offend. This was described as a "catastrophic figure" for Morocco, further underlining the problem that imprisonment creates better criminals, especially since those who return to prison tend to do so under more serious charges.

There is also a social stigma against those who have spent time in prison. This stigma extends to those youth who may have only spent a few months in pre-trial detention but are then marked for life. Employment in the public sector is nearly impossible after imprisonment and the private sector is highly reluctant to take on an ex-convict. Moreover, families and communities remain distrustful of former inmates. Schools also are fearful of letting minors back into the classroom after having been incarcerated, believing they can have a negative impact on their peers. The combination of these factors reinforces a young person's self-doubt and humiliation and helps push them towards making riskier and riskier choices.

## B. LEGITIMACY

Rule of law development in Morocco has been an evolutionary process towards democratic governance in the country. While the main conditions essential for democracy exist, institutions and processes are still developing. There is a constitution and framework of laws, elections are held, and a parliament, government ministries, and courts are in operation. Yet, lawmaking is still not an inclusive process, and there is a perception of inequality in the application of the law. The monarchy is conceived as an “executive monarchy” that governs and reigns and also takes charge of the principal political decisions both domestically and externally. According to Article 19 of the Constitution, the King is not only the supreme leader, but also the *Commander of the Faithful*, who is charged with protecting the rights and liberties of citizens and is the guarantor of the nation's independence.

The King is not merely a symbolic figure and his role in the reform process should not be underestimated. In a speech in August 2009 (marking the 56th anniversary of the 1953 Revolution), King Mohammed VI laid out a six-part strategy for judicial reform, focusing on strengthening guarantees of judicial independence, modernizing the regulatory framework, overhauling structure and staffing, increasing efficiency, enforcing rules to prevent corruption and abuse of office, and ensuring optimal implementation of reforms. The King called for the creation of a “standing, diversified highly representative advisory body that will enable the judiciary to open up to the surrounding environment.” The King said this platform would serve as an “institutional forum for reflection and expertise-sharing on matters relating to justice, without encroaching on the powers of constitutional institutions and public authorities or on the independence of the judiciary.” He went further to add that “the judiciary is not only an essential prerequisite to ensure citizens are equal before the law, but it is also a mainstay of justice and of social stability. In fact, the legitimacy of the state itself and the inviolability of its institutions derive their strength from the power of justice, which is the cornerstone of governance systems.”

### Article 19 of the Constitution

*The King, "Amir Al-Muminin" (Commander of the Faithful), shall be the Supreme Representative of the Nation and the Symbol of the unity thereof. He shall be the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, He shall ensure the respect for the Constitution. He shall be the Protector of the rights and liberties of the citizens, social groups and organizations. The King shall be the guarantor of the independence of the Nation and the territorial integrity of the Kingdom within all its rightful boundaries.*

The King emphasized “the immutable values of the nation, mainly the notion that justice is part and parcel of the duties lying with the *Imarat Al Muminin* (Commandership of the Faithful), and that it is

the Monarch who is responsible for upholding the independence of the judiciary.” He also stressed the importance of women within the Council so “that it will adequately reflect the place of female judges in our judicial system.” The King called on the government to conduct sweeping reforms to build public confidence in a fair judicial system. The King also spearheads a series of foundations, one of which -- *Fondation Mohammed VI Pour La Réinsertion des Detenus* -- is particularly concerned with juveniles in conflict with the law and has a special committee devoted to finding solutions for children in detention centers. The *Fondation* is well-perceived for the work it is doing and the role it plays in Moroccan society.

Early in the King’s reign, he authorized a Truth and Reconciliation Commission (*Instance d’Equité et Reconciliation*) which made concrete recommendations for judicial and other reforms, although the majority of the reforms have not yet been implemented. Morocco has ratified a number of international conventions, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), among others. (See Annex 5 for a list of these conventions and date of ratification.)

In December 2008, the King appointed the members of the Corruption Prevention Instance, in part to comply with the UN Convention against Corruption which entered into force for Morocco in 2007, but also in reaction to Morocco’s low score on several key corruption indices, such as that of Transparency International. The mission of the Instance is the prevention of corruption although it has neither powers of investigation nor prosecution. It is currently engaged in developing a policy, vision, strategy, and action plan to guide its activities. According to the president, a significant aspect of the Instance’s work pertains to increasing public awareness and understanding about corruption, as well as receiving information and complaints. He also acknowledged that comprehensive oversight and accountability mechanisms need to incorporate an array of organizational and infrastructural components that are not currently in place. These include: uniform operating procedures for all governmental agencies, codes of ethics, internal and external controls, training, and uniform protocols for sanctions and discipline.

Additional anti-corruption measures include the establishment by the executive branch of an Office of Inspector General (OIG) within each ministry. These offices conduct inspections of subordinate bureaus under the jurisdiction of the individual ministry. In general, the OIGs have not developed standard procedures to guide their work. Inspections tend to be more reactive than proactive (i.e. scheduled compliance reviews), and there are frequent allegations of politically motivated inspections. OIG findings are reported to ministers who exercise discretion about handling the cases. OIG inspections carried out under the MOJ include inspections of court operations, reportedly on an annual basis. They tend to be based on complaints, including those received anonymously. The World Bank assessment report describes the work of the OIG in the following terms: “...inspection reports are primarily designed to identify judicial needs and court malfunctions, to inform and direct judicial personnel towards better practices, and to suggest training sessions...”<sup>5</sup> However, in practice this system is not as inclusive and courts do not always receive the inspection results and are, therefore, unable to positively benefit from the findings.

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<sup>5</sup> Morocco Legal and Judicial Sector Assessment, World Bank (World Bank Justice Assessment 2003), June 2003, page 33.

Current capacity and competency levels of OIGs do not appear to be high. Those appointed are not always the best qualified. However, there has been some progress in strengthening OIGs, principally with the development of a College of Inspectors General, which is undertaking some very positive work to better define the operating procedures followed by OIGs.

A recent Freedom House report listed Morocco on a downward trend due to the increased concentration of power in the hands of political elites aligned with the monarchy. In the June 2009 local elections, the Modernity and Authenticity Party, recently founded by a friend of King Mohamed VI, placed first, evidencing an increased concentration of political power in the hands of the King and his allies. There were reports of manipulation in the election, including vote buying. The report also noted, as a cause for the downward trend analysis, the fact that the GOM and courts continued to batter the independent press with arrests, fines, and jail sentences.<sup>6</sup>

### C. CHECKS AND BALANCES

A clear understanding of the rule of law in Morocco requires due consideration of the hands-on role that the King plays, including his appointment of key ministers (rather than the elected government appointing them). The King has a major role in justice sector policymaking and oversight. He oversees a complex bureaucracy and supervises the work of the cabinet, the legislature, and the judiciary. As head of the *makhzen*<sup>7</sup>, which is rooted in Morocco's pre-colonial history, he controls the informal and much less visible network of individuals and families that have been instrumental in ensuring the survival of the monarchy for centuries. The *makhzen* performs essential political and security functions, such as information gathering, conflict regulation, and policy implementation. It represents the interests of the palace and those persons comprising the *makhzen*, even while some of those persons also work within formal governmental structures. One of the King's fundamental roles is to manage the competition among the contending elites, those that operate primarily through the *makhzen* as well as those representing the more modern and democratic mechanisms of participation and representation.

Apart from the King, the executive branch in Morocco is comprised of sovereign ministries, designed with limited discretion to take authoritative actions independently. The powerful Ministries of Interior, Justice, Foreign Affairs, Religious Affairs, and the Secretary General of the GOM remain the province of the King rather than the Prime Minister, answering directly to the monarch and Royal Cabinet. At the very least, their lack of accountability to parliament skews the system of checks and balances on executive powers. The MOI has played a particularly strong role as gatekeeper for the political sphere that is accessible via democratic mechanisms. It is perhaps the overarching strength and authority of this particular Ministry that engenders public perceptions of politically influenced actions and heavy-handed tactics.

The GOM has sought to remedy the inefficiencies of centralized government through a two-pronged approach. First, it has opened up greater political space from the bottom up, through elected councils,

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<sup>6</sup> Source: <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7881>

<sup>7</sup> This term is used to describe the royal governing apparatus. It is comprised of an extra-constitutional council of royal advisors (essentially a "shadow" government), the "Royal Ministries" (Prime Minister, Interior, Foreign Affairs, Justice, and Islamic Affairs), the internal security and defense forces (the King is the commander in chief), the constitutional council, and key economic players. *Makhzen* royal interests at the regional and provincial levels are also managed through the "*tutelle*" (guardian/supervision) structure of Walis and Governors who are direct royal appointees, as well as Pashas, Supercaids, and Caidis who are appointed through the Ministry of Interior.



although the powers accorded to these representative bodies have been limited and what responsibilities they are given are stringently overseen. Second, there has been a movement away from direct ministerial control through the creation of more intermediate territorial entities at a regional level. It is also noteworthy that the country's domestic intelligence service, the DST, an auxiliary to the *makhzen* that has been in ascendance over the last several years, has gained a certain independence from the MOI since the Ministry was stripped of its intelligence network along with its sole responsibility for Western Sahara.

As a result of changes contained in the Constitution of 1996, the parliament evolved from a single chamber into a bicameral institution. While showing considerable improvement over the past four years, with substantial support from external donor programs,<sup>8</sup> the parliament remains an institution that does not serve as a fully effective check on the executive branch. Recent improvements include the adoption of money laundering legislation, the development of a code of ethics, and the ability of parliament to produce verbatim transcripts of proceedings within 48 hours (as opposed to the three years previously required). The new law on assets declaration of politicians, judges, and civil servants is awaiting application decrees to enter into effect.

Polls taken in 2002 reflected a general disenchantment with electoral politics. In the 2007 elections, voter turnout was 37 percent. The King has tended to appoint non-partisan technocrats to key positions. A system of proportional representation combined with the large number of parties has led to difficulty in forming effective coalitions able to implement a reform program. The current state of affairs is characterized by wide acceptance of the King's authority, albeit with some open challenges, but lack of public confidence in public institutions and political disenchantment with elections are reflected by low voter turnout.

Parliamentarians are calling for more interaction with executive branch ministries and are increasingly requesting that ministers respond to their questions. In fact, the MOJ budget for the fiscal year 2007/2008 was not initially adopted and the former Minister was required to make adjustments and lobby for its endorsement by the Ministry of Finance and the Parliament. The Parliament has the potential to serve as an agent for change, promoting new legislation and reform strategies. However, the parliamentarians need training in legislative processes, need to establish their own ethics rules, and need to improve and streamline internal procedures. As a body, the Parliament remains politically factionalized and there is a need for members to improve their ability to work together more efficiently.

Although the committee structure has improved, the Parliament's ability to present amendments and build consensus among the disparate political parties still needs considerable improvement. Parliament provides very limited oversight over the implementation of laws. The executive branch retains substantial authority over initiating new laws or proposing changes to existing laws. Most laws are drafted by executive branch ministries and then forwarded to the legislative branch. Laws tend to be amended or enacted with little to no consultation from the public. The system for publication of laws takes place through a subscription-based Official Gazette that is not widely available. Another problematic aspect is the legacy of the colonial body of laws that were inherited, together with the continuing practice of adopting foreign laws, sometimes with few modifications. This is particularly true with the commercial codes, where frequently the text of French laws is

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<sup>8</sup> This support includes USAID-funded programs implemented by SUNY and NDI. For example, the SUNY program has focused on improving capacity to conduct budget analyses, strengthening the committee structures, and improving skills for building coalitions, advocacy, and watchdog functions.

simply transferred into the Moroccan system – a practice that has caused difficulty, notably with respect to the law on bankruptcy.

The third branch of government, the judiciary, also lacks sufficient capacity to fully perform its functions and, in particular, does not enjoy judicial independence from other branches. Judicial independence is a guarantee of the separation of powers which is in turn a *sine qua non* of the rule of law. The judiciary is responsible for ensuring that the benefits and sanctions established by the other branches of government are implemented equally. Equality is the cornerstone of the rule of law. If there is no equality, benefits and sanctions are implemented with reference to power as opposed to the common good. The judiciary must be independent so that judges can remain impartial in their decisions, guaranteeing the equal application of the law. This is why the impartiality of judges is an essential ingredient of the rule of law and a guaranteed human right in international law.<sup>9</sup>

#### Judicial Independence

*Judicial independence is a concept that expresses the ideal state of the judicial branch of government. The concept encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence. Scholars have broken down the general idea of judicial independence into two distinct concepts: decisional independence and institutional, or branch, independence. Decisional independence refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law. Institutional independence describes the separation of the judicial branch from the executive and legislative branches of government. American Judicature Society*

Organization of the judiciary is regulated under Law No. 1-74-338, passed on July 15, 1974. It includes general jurisdiction courts, specialized jurisdiction courts, and special courts. The general jurisdiction courts include the following: communal and district level jurisdictions, first instance courts (68), appeals courts, and the Supreme Court. Specialized jurisdiction courts include administrative courts (seven courts and two appellate-level courts) and commercial courts (eight courts and three appellate-level courts). Currently, there are approximately 3,200 judges in Morocco. (See Annex 6 for a description of the organizational structure of the judiciary in Morocco.)

There are seven administrative courts in Morocco, organized in each of the Kingdom's regions. Usually, a three-magistrate panel trained in administrative law holds hearings and renders judgments. The administrative courts have jurisdiction over administrative contracts, conflicts that arise between citizens and the administrative agencies of the state, fiscal disputes, and elections. Administrative courts address allegations of violations of law or damages to citizen rights and handle challenges to the authority of the government. The most frequent cases with which they deal are those involving abuses of power committed by the state. For example, one court president indicated that they intervened successfully in preventing a politically motivated transfer of a judge. They monitor spending of public funds and can find the state negligent if it fails to respond promptly to questions from the administrative court. Administrative courts are competent to make initial rulings on claims for cancellation of acts filed against administrative authorities, disputes related to administrative contracts, and claims for compensation of prejudice caused by public entities' acts or activities.

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<sup>9</sup> See, e.g., UN Basic Principles on Independence of the Judiciary (1985); Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14.

In general, justice in Morocco is perceived by the public to be more of a matter of access to power rather than the function of an independent and impartial rule of law system. The 2005 Public Perception of the Moroccan Judiciary described the system as "...a mix of complex, disabling and crippling proceedings that set the system against the citizen" and as "an intimidating jungle."<sup>10</sup> While some important strides have been made through the establishment, in the mid-1990s, of the Administrative and the Commercial Courts, the judiciary still suffers from persistent complaints that it is plagued with corruption, is not independent or accountable, does not have effective mechanisms for enforcement, and is encumbered by delays. The public in general lack confidence in and respect for the judicial system.

The current judicial system is permeable to political influence, and the mechanisms through which judges are appointed, promoted, sanctioned, and dismissed leave them vulnerable to political retribution.<sup>11</sup> The judiciary is under the administrative control of the MOJ, with managerial and financial infrastructures integrated into the Ministry. Although under the 1996 Constitution, the independence of the judiciary is guaranteed,<sup>12</sup> the Constitution does not establish the judiciary as an autonomous entity. The lack of judicial independence is related to institutional deficiencies which can be found in both the law and in practice. For example, Article 80 of the Constitution states that the "judicial authority" is independent from the legislative and executive "powers," implying that the judiciary is an "authority" rather than a separate and independent branch of government. The use of this language, which is identical to that of the French Constitution of 1958, suggests that Morocco has adopted the French constitutional model, where the judiciary is placed under the protection of the executive. Many comparative legal scholars have criticized the French system for failing to provide for adequate protection for judicial independence, though there is an independent Council of State in France that provides a check against constitutional abuses of power.

Judicial independence is further complicated by the King's role. All judgments are rendered in the name of the King (Constitution, Article 81), and the King presides over the *Conseil Supérieur de la Magistrature* (High Judicial Council) (Article 84), which appoints,

**Constitution of Morocco  
Title VII: The Judiciary**

**Article 80 - Independent Power**

The judicial authority is independent of the legislative power and of the executive power.

**Article 81- Sentences**

Sentences are passed in the name of the King.

**Article 82 - Nomination**

The magistrates are nominated by decree on the proposal of the Superior Council of the Magistracy.

**Article 83 - Irremovability**

The magistrates are irremovable.

**Article 84 - Superior Council of the Magistracy**

The Superior Council of the Magistracy is presided over by the King. Furthermore, it is composed of: The Minister of Justice, as vice-president; the first president of the Supreme Court; the King's Prosecutor General at the Supreme Court; Four representatives of the first degree jurisdictions magistrates elected from among themselves.

**Article 85 - Functions**

The Superior Council of the Magistracy watches over the application of the guarantees granted to the magistrates concerning their advancement and discipline.

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<sup>10</sup> Public Perception of the Moroccan Judiciary, American Bar Association and People's Mirror Focus Group Center, July-August 2005, pages 9-10.

<sup>11</sup> USAID DG Assessment 2003, pages 24-25.

<sup>12</sup> The principle of judicial independence is set out in Article 82 of the Constitution which states that "the judicial authority is independent of the legislative power and of the executive power. It is unclear whether 'authority' attaches a lower degree of constitutional importance to the principle of independence." World Bank Justice Assessment 2003, page 22.

disciplines, and promotes judges. Islamic law requires judges to be impartial, and Article 19 (*see textbox, infra at p.6*) of the Constitution charges the King with protecting the principles of Islam. This leaves the judiciary little protection against the King's potential influence. The King can also exert indirect influence since he appoints the Minister of Justice, pursuant to Article 24 of the Constitution. In practice, and legally as a member of the High Judicial Council, the MOJ exerts considerable influence over the judiciary, one of most significant factors limiting judicial independence.

In addition, the MOJ exercises significant influence over the appointment, discipline, transfer, and promotion of judges. The exercise of these powers makes judges beholden to the MOJ not only for their initial appointment but for their continued job security as well, with obvious negative implications for judicial independence. The law on the appointment process is found in the Constitution, the 1974 law on the status of the judiciary, and the 2002 law on the ISM. Article 84 of the Constitution and Articles 4-8 of the 1974 law provide that judges in Morocco are appointed immediately following their graduation from the ISM. While the 1974 law on the judiciary mentions appointment, it does not provide any detail as to how the selection process actually works. This process is detailed in the Law of 3 October 2002, No. 09-01 for the ISM, in which Article 21 provides that candidates are selected on the basis of an open competition and on the needs of the various jurisdictions. In addition, Article 9 of the decree No. 2-03-40 of 17 September 2003 for the ISM provides that the list of necessary degrees and the conditions for pre-selection of those candidates who are allowed to participate in the selection are to be set out in an MOJ regulation. The MOJ often acts unilaterally with judges and even when it works through the High Judicial Council, the MOJ's dominance of that institution limits its effectiveness in this respect.<sup>13</sup>

The MOJ plays a dominant role in the appointment process, which is lacking in transparency, contributing to the MOJ's power over judicial candidates. It was suggested that judicial candidates from the ISM who are in the top ten percent of their class are given the right to choose the jurisdiction to which they will be appointed, while others are appointed by the MOJ, based on their performance at the ISM and the needs of the judiciary, as determined by the MOJ. Students begin lobbying the MOJ for placements a few months before they graduate, in a process that was described as decidedly opaque. This lack of transparency makes it difficult to determine the justification for assignments. Some interviewees recommended a system for appointing judges from among experienced legal practitioners, similar to common law countries, believing this would provide more resistance from MOJ influence. The previous Minister of Justice,

#### **The High Judicial Council (CSM)**

The CSM is an institution found in almost all countries which follow the French legal tradition. In general, the CSM is intended as a buffer between the executive and the judiciary so as to shield the latter from the executive in matters of appointment, discipline, transfer, and promotion of judges. Nevertheless, the CSM takes on many varied roles and functions in different countries of the Romano-Germanic tradition. Its composition may vary too. In some cases, it also deals with court administration, thus removing this responsibility from the MOJ. Typically, its membership is dominated by the members of the judiciary, although members of the executive, including the MOJ and the President, are often included. There is also a recent trend whereby members of civil society such as law professors and ombudsmen are included. In some cases, CSM members are appointed by the executive, and in other cases some members are appointed by the legislative branch.

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<sup>13</sup> Article 84 of the Constitution provides that magistrates are to be appointed by law upon a proposal by the CSM, and Article 87 provides that the CSM is charged with their promotion and discipline.

Abdelouahid Radi, experimented by appointing 40 clerks and lawyers with significant experience to the bench but that practice has not been continued.<sup>14</sup>

The MOJ also has legal authority to discipline judges, based on Article 10 of the 1974 law, but Article 84 of the Constitution assigns that role to the High Judicial Council, creating a conflicting system.<sup>15</sup> On a practical level the MOJ often acts in parallel with the High Judicial Council in matters of discipline. Even when the High Judicial Council handles judicial discipline, as required by the Constitution, the role which the MOJ plays within that institution places judicial independence at risk. In practice, when the Inspector General (IG) of the MOJ receives a complaint concerning the corruption of a judge, they transfer the case to the High Judicial Council. However, because of the dominant role of the MOJ within the High Judicial Council, these proceedings are not transparent. The High Judicial Council cannot effectively offer the kind of protection from executive power that it should provide. Consequently, there is a risk that the fate of the judge in question will depend more on their standing with the MOJ than on an impartial determination of the judge's alleged ethical violations. In other countries with the Romano-Germanic tradition, where the MOJ serves on the High Judicial Council, they do not participate when the High Judicial Council considers matters of discipline. Reportedly, this was the practice of the previous MOJ but not of the current one.

Similarly, in terms of transfers and promotions for judges, the 1974 law empowers the MOJ to act directly while Article 84 of the Constitution assigns these powers to the High Judicial Council. Article 23 of the 1974 law provides in general that judges are to be promoted on the basis of a "*liste d'aptitude*" which is to be compiled annually by the MOJ. That section further provides that the list shall be established taking into account the university degrees, qualifications, and aptitude of the candidates. The article is silent as to who establishes the list, and the last paragraph of that section provides that the modalities for establishing the list shall be set out in a decree. The team was not able to discover whether this decree exists or, if it does exist, whether it in fact sets out the modalities required. Article 26 of the law provides that a judge may be promoted to fill a vacancy, and Article 57 provides that a judge may be transferred to another jurisdiction when the MOJ deems it to be a matter of "necessity," although the law provides no detail as to the meaning of that term, leaving it open to misuse. There were reports of the MOJ transferring judges as a punitive measure. Allegedly, when the MOJ is unhappy with a judge's decisions, the MOJ transfers him or her to the least desirable jurisdiction. If this is occurring, not only is this a constitutional violation, but it also violates the law which provides for transfer only in exigent cases and only for a limited period of time.<sup>16</sup> The threat of transfer is another tool that could be manipulated to limit judicial independence.

As a potential window on the checks and balances of government, and the judiciary in particular, civil society organizations serve to monitor the process and advocate for reforms. Morocco has a vibrant civil society that includes human rights groups, women's rights NGOs, Transparency Morocco, and the Moroccan Bar Association. While many NGOs are urban-based and politicized,

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<sup>14</sup> It is interesting to note that in France, as a result of recent reforms, there is now a two-track judicial appointment system: some judges are appointed using the traditional method following successful performance in their studies at the *Ecole Nationale de la Magistrature* (France's magistrates' school), while others are appointed from among the general pool of experienced lawyers with good reputations.

<sup>15</sup> The law empowers the MOJ to act through a committee within the Ministry which includes the Minister of Justice, who serves as its President; the SG of the MOJ; the Director of Civil Affairs; the Director of Penal Affairs; and the Director of the ISM.

<sup>16</sup> The law provides that the transfer must not last longer than three months, although the three-month transfer may be renewed with the judge's consent. The MOJ may transfer a judge on a temporary basis only when such a transfer is a matter of necessity.

others are at the forefront in calling for judicial reforms, most notably the Moroccan Organization for Human Rights (OMDH) and the Moroccan Association of Human Rights (AMDH).

OMDH is a human rights organization, founded in 1988, which was initially banned by the GOM as extremist. The goals of the organization include increasing knowledge of individual and collective human rights at the civil, political, cultural, and socioeconomic levels; the protection of human rights; supporting individual rights in the judicial process; promoting an independent and impartial judiciary; promoting democracy and the rule of the law; and promoting international solidarity in the defense of human rights. The OMDH is a member of the International Federation for Human Rights, based in Paris; of the International Commission of Jurists, based in Geneva; of the World Organization against Torture, based in Geneva; and of the Arab Organization of Human Rights, based in Cairo. The organization periodically cooperates with international and regional organizations, such as the *Association Marocaine des Droits Humains*, the *Ligue Marocaine pour la Défense des Droits de l'Homme*, and the *Comité de Défense des Droits Humaines*. OMDH provides human rights training and workshops, prepares reports, and supports individuals in the support of their human rights. It held a National Congress on Moroccan Human Rights in Rabat in 2006 focused on deepening and accelerating the pace of reforms for democratic transition. The 2006 Congress also included a symposium on "the democratic transition and the realization of human rights" with a focus on civil and political rights, as well as economic, social and cultural rights. OMDH's most recent annual meeting was held in April 2010.

AMDH has more than 10,000 members and has been working since 1979 to ratify international laws on human rights and to support and defend human rights in Morocco. The Association works to preserve human dignity and promote respect for all human rights and the protection and defense of these rights. AMDH conducts awareness raising activities, promotes ratification by the GOM of all international human rights instruments including their integration into Moroccan law, monitors compliance, and supports victims' rights.

Some NGOs, particularly those promoting human rights and women's rights, are well-organized, have professional staff and a high level of competency, and are well-funded by donors. While there have been a few instances of NGOs successfully forming coalitions to advocate for specific issues, such as the reform of the Family Code, protecting press freedoms, and contributing to transitional justice through the Truth Commission (*Instance d'Équité et Réconciliation [IER]*), these instances are limited.

In the spring of 2009, a coalition of ten NGOs organized to respond to the MOJ plan for judicial reform. In April 2009, the then Minister of Justice, Abdelouahid Radi, met with the ministerial committee designated to draft the judicial reforms and reaffirmed his commitment to the process. He presented his vision, calling for new legislative and regulatory mechanisms and for court reforms and institutional reforms related to judicial independence and integrity. Following that initial meeting, this coalition of NGOs, including "Justice", issued a memorandum evaluating the current judiciary and voicing the organizations' concerns about the Moroccan judiciary. The memorandum was critical of the current judicial system, particularly the lack of constitutional guarantees to protect judicial independence, as well as of the 1974 law that prevents judges from forming unions. The coalition also called for a restructuring of the High Judicial Council, especially to make it independent of the MOJ. Additional demands included the reform of hierarchy and appointment of judges. Human rights issues are also a concern that NGOs want to see improvement of within the judicial system. In this instance, the judicial reform coalition's meeting with the MOJ yielded no visible results, and the

NGOs remained outside of the reform discussion taking place within the MOJ. This suggests that while NGO efforts have played an important role in pushing reform in a few specific areas highlighted in the previous paragraph, NGO participation in policy reform efforts is not the norm and their ability to drive policy reform remains weak.

The Association for Judicial Independence, also a signatory to the memorandum, is publicly advocating for judicial reforms. The head of the Association, Al Hatmi, noted in a newspaper article that, "The State's vision of reforms in the last ten years completely avoided any substantial reform, settling for only minor reforms." The association is demanding constitutional reform to ensure judicial independence, particularly to have a separate existence from the MOJ. The Association recommends that the First President of the Supreme Court, judges from the administrative, family and commercial courts, and the President and two Vice Presidents of the bar associations serve as members of High Judicial Council. They also want the High Judicial Council proceedings to be published to ensure better transparency.

The Rabat Bar Association recommends a significantly decreased role, if not the total exclusion, of the MOJ on the High Judicial Council. The Bar believes that the only appointed member should be the Supreme Court President and that all other members should be elected. In the Bar's view, only elected members should decide in judicial disciplinary matters. The Bar Association is also advocating for a minimum age requirement of 30 years, with judges recruited from among not only experienced lawyers, but also other respected jurists.

Civil society members feel that judicial reform will require modification of the Constitution. Their view is that the High Judicial Council is at the heart of most of the problems relating to judicial independence, and since the High Judicial Council derives its power from the constitution, it must be changed to achieve reform. However, constitutional reform would present a significant challenge and it is not apparent that there is political will for such a major shift. It may be possible to effect change through amendments of laws and regulations without the need for constitutional reform that would allow for increased judicial independence and a better system for managing judges, including appointments, transfers, and discipline.

Many of the above-described issues are rooted in a governing approach focused on preserving political stability. Approaches to reform must take into careful consideration their potential to upset the balance. The task is to move forward a program of democratically-based rule of law reform processes – both within and external to the GOM – while also enabling the monarchy to maintain necessary levels of authority and control to ensure the government's ability to maintain security, without spilling over into authoritarian governance. The complex political and economic relationships among elements of the formal governance structure, the traditional structure of the *makhzen*, and elite groups within the society cause many observers to conclude that the pace of democratic reform, including adherence to the rule of law, will depend upon the continued leadership of the King in managing the divergent interests of the various stakeholder groups.

## D. FAIRNESS

### 1. Equal Application of the Law

Inequities in application of the law fall principally into three separate, but related, categories. First, not all judges interpret legal provisions in the same way, especially in commercial court and family law cases. Second, there is a lack of standard procedures coupled with a lack of informational resources that results in unequal application of laws. Third, judges have broad decision-making authority and lack supervisory oversight and accountability resulting in divergent rulings, even on substantially similar cases. Fundamental issues of how laws are interpreted, applied, and enforced result in perceptions of impunity of the wealthy and elite tied to the *makhzen* system, in addition to inefficiency and ineffective processes of applying laws in Morocco.

The Moroccan judicial system hears a large number of cases every year; in 2007 a total of 2.57 million cases were filed and 3.25 million cases were ongoing.<sup>17</sup> Significant problems noted include delays in processing cases, lack of timeliness of hearings, inefficient notification system, lack of competent subject matter experts<sup>18</sup>, lack of enforcement of judgments, and lack of implementing regulations. Judges acknowledge that lack of, or delayed, enforcement of judgments results in large part from court reliance on auxiliary services, including translators, private lawyers, and *huissiers* (bailiffs) – those areas of judicial responsibility that do not fall under the direct jurisdiction or control of the courts. Delays also result from insufficient training (more problematic in commercial court with highly complex issues), as well as insufficient numbers of judges, *greffiers*, and other court staff.

As a response to these inequalities in the formal justice sector, Moroccans have historically used various alternative dispute resolution (ADR) methods, including traditional forms of reconciliation performed by tribal chiefs, arbitration carried out by arbiters selected by parties to the dispute (called *amghar* or *anachram*), and the use of Muslim religious leaders (*imams*) in civil or family disputes. Another form of traditional mediation, largely associated with businesses, involves specially designated individuals from the business community (*amine*). These forms of ADR preceded the current judicial system, and even though dispute referrals to the courts have become more frequent, traditional and local customary forms of resolution still play a role. ADR is provided for in the law and while some efforts are being made to try to explore what role it can play, it is being underutilized.

USAID/Morocco's Improving Business Climate Program, implemented recently by DAI, and Search for Common Ground have supported development of mediation and private ADR skills to resolve business disputes. They have supported creation of a public/private venture, with a regulatory framework, that provides training for mediators and establishes privately funded mediation centers. While this process is not court-annexed or managed, it does have a direct impact on the commercial courts by reducing the potential case load. Parties can voluntarily agree to the use of mediation when they draft contracts, in which case they are financially responsible for the costs of mediation. If mediation is included in the contract, it is required before filing suit. Other than in family and business cases, ADR remains underutilized in civil cases and totally lacking in criminal disputes.

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<sup>17</sup> DAI Report on Improving the Business Climate, Sept. 2009, citing data obtained from Ministry of Justice, 2008.

<sup>18</sup> In the World Bank Justice Assessment 2003, page 40, experts are described as: "...technically incompetent, slow, closely, and worse still, corrupt."



Better utilization of ADR could reduce significant backlog in civil and minor criminal cases. The National Mediation Center is a group of young lawyers currently providing free mediation in civil cases.

## 2. Procedural Fairness

Corruption in Morocco – both financial and misuse of authority and power – is one of the most significant challenges confronting the transition to democracy and results in lack of procedural fairness for citizens. While there have been some campaigns against corruption and impunity, they are short-lived and perceived by the community as a show for the outside world. Few people have been prosecuted, perhaps due to a fear that those arrested will implicate others.<sup>19</sup> Within society there is a strong perception that the lack of an independent judiciary and political interference in justice-related affairs perpetuate the problem of political influence and “telephone justice.” The result is continued lack of public trust and confidence. The absence of transparent processes and procedures, together with inadequate oversight mechanisms to serve as deterrents to corruption, make it difficult for those involved in corruption to be identified and brought to justice.<sup>20</sup>

Corruption is not limited to the judiciary; it is also a significant factor constraining economic investment and growth, thereby limiting access to fair and equal opportunities and justice for ordinary Moroccans. The 2008 USAID/Morocco Corruption Assessment provides further information and insight in the areas of education, public procurement, local governance, and youth.<sup>21</sup> In 2009, Morocco had a score of 3.3/10 in Transparency International’s Corruption Perceptions Index (CPI).<sup>22</sup> This index represents the perceptions of business leaders and other experts on the integrity of the public sector. The index number for Morocco has ranged from 3.7 in 2002 to 3.2 in 2004, 2005, and 2006. (See table on p. iii.)

A 2007 report by IFES and the Arab Center for Development of Rule of Law and Integrity found that Moroccans felt efficiency should be given the highest priority, followed by integrity, independence, and competency.<sup>23</sup> If efficiency is a higher priority than integrity, people are more willing to pay a bribe for a timely and favorable ruling. People have clearly become frustrated with the large case backlog and length of time required to pursue a case. The 2008 USAID/Morocco Corruption Assessment reported that bribery and extortion are highly pervasive in the judicial arena, including employees as well as judges. Attorneys and human rights activists reported that judges have been known to phone parties before their hearing in order to explain that the hearing could be

### Corruption in Morocco

*“Morocco cannot and will not make it with this high level of corruption and favoritism...”*

*“... the administration and ministries consist of individuals who lack morals, with such failings leading to a system of corruption and patronage, as well as inefficient services and an inability to implement recent necessary reforms.”*

**Excerpts from Public Perception of the Moroccan Judiciary, page 7**

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<sup>19</sup> For example, in 2007 there was a drug trafficking case and trial that implicated some members of the King’s security detail – and some of these did talk openly about others involved.

<sup>20</sup> According to one interviewee, “...the Anti-corruption Instance was established purposely with almost no powers. It’s supposed to “prevent” corruption, not deal with what exists.”

<sup>21</sup> USAID, *Morocco Corruption Assessment*, October 16, 2008.

<sup>22</sup> Source: [http://transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table).

<sup>23</sup> Shalhoub, Ilia and Keith Henderson. *Comparative Report on the State of the Judiciary in Egypt, Jordan, Lebanon and Morocco*, IFES and the Arab Center for the Development of Rule of Law and Integrity. May 2007.

cancelled if they pay a fee. It was reported that lawyers sometimes extort money from their clients, under the false pretense that the judge has demanded a fee. There are allegations that clerks extort fees from parties for faster case processing. It is also widely believed that wealthy and influential families use their relationships with judges to obtain favorable rulings.

Although low salaries are not necessarily a cause of corruption, it can be a contributing factor. Transparency International's 2007 analysis of judicial corruption notes that "Judicial salaries that are too low to attract qualified legal personnel or retain them, and that do not enable judges and court staff to support their families in a secure environment, prompt judges and court staff to supplement their incomes with bribes."<sup>24</sup> Just as the public is highly concerned with efficiency, it is likely that overwhelming caseloads<sup>25</sup> for judges contribute to their desire to work quickly through bribery. Perhaps a better resolution for reducing corruption and increasing efficiency is an increase in judicial salaries coupled with the option of plea-bargaining in the penal system.

Better awareness and enforcement of the rules governing professional standards is needed to combat corruption and increase procedural fairness. There have been only limited initiatives to address the problem, including the ABA-ROLI assistance to the *Hassania*, the Moroccan judges' association in the development of a Charter of Ethics for Judges based on international standards, which was formally adopted by the MOJ in March 2009. The challenge ahead will be to gain compliance with the guidelines of the Charter. The Embassy of The Netherlands and ABA-ROLI have supported roundtables for more than 800 judges, prosecutors, lawyers, and other legal stakeholders to raise awareness of the rules and help ensure compliance. While the MOJ has recently enacted a law to demand disclosure, MOJ representatives have called for increased "moralization" and standardization of administrative procedures.<sup>26</sup> Given the lack of judicial branch independence in matters of judicial discipline, the MOJ is seen as only selectively enforcing prohibitions of corruption. A comprehensive anti-corruption strategy for the judiciary should focus on training, promoting the Charters with a goal of developing codes of ethics, and truly independent judicial investigation techniques.

In the application of the Family Law, procedural fairness is a major obstacle, with the 30-day timeframe for decisions about the payment of support costs rarely respected. In the absence of clear criteria, judges have broad latitude to determine the amount of support payments (*la nafaqua*) and to grant permission for girls under the legal age of 18 to marry. Implementation of child support provisions also remains problematic. The family code requires a state fund to cover these obligations when parties are unable to meet them but the fund is not operational. There is inconsistent application of Article 49, which deals with sharing property and dividing assets. The wife is required to produce documentary evidence (such as receipts, titles, and bank statements) of her contribution to the family assets and this can be difficult to do.

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<sup>24</sup> Transparency International. *Global Corruption Report 2007: Corruption and Judicial Systems*

<sup>25</sup> Caseload statistics are extremely difficult to obtain from the MOJ. The USAID-funded project in the commercial courts, *Improving the Business Climate in Morocco*, learned through the MOJ that, in 2007, "a total of 2.57 million cases were filed, and 3.25 million cases were ongoing. This total includes all types of civil, criminal, and administrative cases and expedited procedures." Page 17.

<sup>26</sup> Under the Assets Declaration Law of 2008, a committee comprised of the Minister of Justice and the non-elected members of the High Judicial Council receive and control the asset declarations of judges. The OIG has the authority "... to monitor the financial situation of judges and their immediate family, and can review a judge's assets on demand." World Bank Justice Assessment 2003, page 32.

Similarly, a myriad of factors contributes to the lack of proper application of juvenile laws and procedures. Judges lack specialization in the topic especially in rural areas, court hearings are delayed often due to lack of transportation from the detention centers, and court proceedings are postponed because the minor is not accompanied by a parent or guardian, as required by the law. In practice, criminal cases involving minors are sometimes held at the end of the day after all the criminal cases involving adults have been dealt with. Witnesses, and sometimes even parents, have left the court or cannot be found and the judge remands the minor to pre-trial detention for trial at a later date.

There are no judges dedicated solely to juvenile cases. In practice there is a special chamber within each court but the judge hears both adult and juvenile matters. This leaves open the possibility that judges are more inclined to treat juveniles as adults and apply adult sentences. There are no specialized juvenile prosecutors, who could serve as a source for plea bargaining and alternative sentencing to ensure proper treatment of juvenile offenders. The specialized police corps for youth offenders, also required by the law, does not function in practice. Police capabilities, even for adults, appear to be low. In particular, investigative reports in juvenile cases typically do not explore the social or psychological issues that could support effective treatment for the minor. The important role of social workers in juvenile cases is also limited and should be expanded. While they do present reports to judges in criminal cases involving minors, these reports do not propose best practice solutions that support optimal outcomes, such as alternative sentencing. A specialized juvenile center, funded by the state, with appropriate psycho-social staffing, could offer alternative sentencing and reintegration services for minors to more effectively implement the law.

### 3. Protection of Human Rights and Civil Liberties

In general, Morocco is a peaceful society, but major aspects of social order remain problematic—principal among them freedom of association (strict limits and cumbersome regulations are placed on associations), free speech (as reflected through governmental crackdowns on the independent media), equal application of laws, and fair competition in business. The state has substantial control of the use of force. At times, there have been questionable uses of force by those in authority, as evidenced through methods used to quell public demonstrations or to react to public criticism.<sup>27</sup> The 1992 constitutional reforms were designed to achieve greater stability through power-sharing and integration of political opposition within government. These reforms marked the beginning of reparation for political prisoners, and included creation of the Consultative Council on Human Rights (CCDH). The 1996 revision reversed some of the reforms from 1992 but also strengthened the constitutional council.

Since that time, change has been somewhat uneven after an initial period of liberalization that began in 1999 with the ascendancy of King Mohammed VI. There was a crackdown in 2001 on numerous independent media outlets, with newspaper editions confiscated, managers at television stations fired, and other press agencies censored for libel, national security violations, or offensive reporting. Attacks on the independent media have continued with punitive measures against outspoken media members. In December 2009, a blogger and internet café owner were jailed and sentenced for spreading false information after criticizing the use of force by local police. In November 2009, two journalists from the independent Arabic-language daily newspaper *Al Masae* were sentenced to

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<sup>27</sup> For example, in Rabat, the assessment team encountered a public demonstration of unemployed university laureates, where the police used confrontational methods involving officers with raised batons running at the crowd.

prison by a Casablanca court on charges of publishing false information about drug trafficking. Since its beginning in 1997, *Le Journal*, the Casablanca-based publication, has been a fierce critic of the GOM and the ruling monarchy. In early 2010, *Le Journal* was accused of owing more than half a million dollars in unpaid debts and back taxes and a judge ordered the seizure of the publication's assets. In 2000, authorities seized the entire print run of one issue at the airport which contained a story on the annexation of Western Sahara and the Polisario Front's fight for the desert territory's independence. The magazine lost a defamation case in 2006, when a Moroccan court ordered *Le Journal* to pay \$350,000 in damages to Claude Moniquet, a Frenchman who claimed the magazine had defamed him in an article questioning the independence of his Brussels think tank, the European Strategic Intelligence and Security Center.<sup>28</sup>

In 2004, Morocco adopted the *Moudouwana*, a new family code that significantly increased the rights of women, raising the age of marriage and ensuring property ownership and inheritance. Since that time, access to justice for women has improved through the new family court. The new family code was the result of many years of development and debate, marked by considerable controversy and protest over the course of the code's development. The advocacy for and adoption of this law illustrates the strength and coordination of women's NGOs.<sup>29</sup> In the early 2000s, a national commission to address women's rights was formed by the King. There was a considerable split between the approaches endorsed by conservatives and progressives.<sup>30</sup> On the conservative side, there were significant efforts to stifle the movement to broaden women's rights, but with a petition signed by more than two million women, the issue could no longer be ignored. In 2003, women's associations organized a protest march in Rabat with over 100,000 women participating. This was matched by a counter-rally organized by Islamist groups in Casablanca in which more than 100,000 protesters took part. The King, a supporter of the reform, invoked his role as *al-muminin* in a speech before Parliament, outlining a progressive interpretation of *Shari'a* that supported the reforms being proposed. The King's speech played a significant role in moving the law, presenting a powerful argument on how the proposed reforms respected the principles of Islam. The law was passed shortly after the Casablanca bombing in 2003 when popular support for the Islamist groups was at its lowest.

This new family law removed women from full control by men on issues involving the status of women and children, divorce, polygamy, custody and support payments, and property rights. Women are now legally permitted to appear before the courts, and centers to protect women were created. However, access to justice for women remains a challenge to be addressed. Family court facilities remain inadequate, few judges are assigned to hear family court cases, and judges lack appropriate training about the new law and gender rights. Some judges and citizens view the law as inconsistent

Lack of specialization by judges and the ease with which they are transferred creates issues with protection of rights and effective implementation of laws. Judges, lacking in proper training on issues such as family and juvenile law, are not able to adequately serve the needs of women and children. Also, separate courtroom facilities are not readily available for family law and juvenile cases, making it difficult to maintain confidentiality and protect the identity of minors. Due to the lack of separate juvenile courts, juvenile offenders generally must wait until all adult cases are heard, often creating long delays.

with Islamic principles or cultural practice, making application of the law problematic. Some obstacles in application of the law relate to attitudes of the Moroccan people, both men and women,

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<sup>28</sup> German, Erik: *Global Post*, March 14, 2010.

<sup>29</sup> The team met with two such NGOs: *Fonds d'Appui a l'Egalité entre les Sexes* and *La Ligue Démocratique pour les Droits des Femmes*.

<sup>30</sup> The key differences were over interpretations of *Shari'a* law, with conservatives favoring a more closed interpretation and the progressives a more equality-based, open interpretation.

as well as ways in which formal institutions deal with women and women's issues. Citizens are generally not well informed of the provisions of the law or the mechanism for accessing their rights. This problem is greatest in the rural areas that are more conservative and where literacy rates are lower.

Daily life for Moroccan women is improving, but violence against women continues to be a significant problem, especially among the most vulnerable populations. According to a study conducted in 2007 by the Moroccan Secretariat for the Family, in collaboration with the United Nations Population Fund, battered women face an alarming situation. The report found between December 26<sup>th</sup>, 2005 and October 13<sup>th</sup>, 2006 nearly 28,000 acts of violence were called into a free hotline set up to give legal help and counseling to women; just over 75 percent of reported assaults were committed by husbands. Social pressures to resist change are greater in rural areas.<sup>31</sup> Effective institutional mechanisms

are needed to ensure proper application of the law and protection of women's rights. All too often women reporting violence to police are met with indifference, arrogance, even criticisms and accusations. In 2008 the GOM launched an initiative to crack down on violence against women that included setting up more battered women's shelters and revising the Penal Code to criminalize gender-based violence. The Minister of Social Development developed the action plan to establish 16 new centers for women who have been the victims of violence, to conduct a national survey to determine the prevalence of gender-based violence, and to establish a pilot rehabilitation center, aimed at helping men control violent behavior caused by psychiatric problems. While these are important steps, there remains a critical need for social workers who are properly trained in family law issues to support women and the courts. Another obstacle for indigent women is that legal services are only available on an *ad hoc* basis through the bar associations or individuals lawyers.

Similarly, rights for juvenile offenders, while available in law, are not exercised in practice. Article 476 of the Code of Criminal Procedure provides that minors should only be imprisoned provisionally and when absolutely necessary. This section of the law also requires that minors be held in separate facilities from the adult prison population and requires judges to visit incarcerated minors at least once a month. Section 471 of that Code empowers the judge to entrust a minor to the care of a variety of public or private centers and to engage an NGO to assist in the provision of health and educational services. Furthermore, Article 41 of the Code encourages mediation in these cases. The law clearly provides for alternative sentencing, such as remanding the child to the custody of his or her parents or entrusting them to the care of an alternative organization for education and rehabilitation. Through a combination of Articles 41 and 461 of the Code, a prosecutor can simply drop the charges where a settlement is reached. Plea-bargaining does not exist in the Moroccan system. The juvenile law

The **Bayti Association** in Morocco has developed a positive four-stage methodology for dealing with juveniles, which includes a parallel program aimed at families in all stages. The stages are:

- First stage: Street-based contact and overall analysis of the situation (key stage for the whole integration process).
- Second stage: Rehabilitation, socialization: skills building, guidance, psychosocial approach, and referral.
- Third stage: Genuine social integration, empowerment of the young person.
- Fourth stage: Follow-up: consolidation of the integration and prevention of any setbacks .

This NGO also operates transitional accommodations for adolescents, a carpentry workshop, as well as a training and production center.

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<sup>31</sup> *La Ligue Démocratique pour les Droits des Femmes* has documented that application of the Code is much more difficult in remote and rural regions by routinely reviewing decisions rendered in those locations and publishing the results.

provides that prison should be a last resort for dealing with minors who commit crimes and that the focus of the criminal justice system should be on rehabilitation. In practice, there is little focus on rehabilitation and reintegration into society for minors who have committed crimes; practically the only solution is prison or detention in the “*centres de sauvegardes*”.<sup>32</sup>

Many young people lack education or job opportunities, putting them at-risk for crime and possible involvement in religious extremism, similar to the recent experience of other Islamic countries. Crimes committed by minors have risen and include drug-related crimes, family violence, and in some cases even murder. One youth advocate reported a recent case where a minor murdered a policeman by slitting his throat, drawing significant attention to the problem of juvenile crime in Moroccan society.

#### 4. Access to Justice

There is a clear lack of competent free legal services, particularly for adults and children charged with crimes. To the extent that free legal services are available for indigent citizens, they are provided on a *pro bono* basis by individual lawyers or through the bar association. However, there are not enough services available to meet the demand, creating a serious access to justice issue. Bar associations are required by law to provide *pro bono* legal services, but it is generally done on an *ad hoc* basis, and there can be real discrepancies from region to region. The quality of these services is also questionable since the lawyers cannot devote sufficient time and resources to these cases without compensation. Currently, the state does not provide funding for indigent counsel. While legal representation is required in criminal cases and in cases involving minors, judges are supposed to refer these cases to the regional bar association to have legal counsel assigned. In practice, judges frequently assign a lawyer present in the courtroom or allow the case to proceed without any counsel in order to expedite the process. In these cases, the newly appointed counsel is required to handle the case immediately. According to ABA-ROLI, only 33 legal aid cases were recorded in Casablanca in 2008.

Members of the legal community recognize the need for *pro bono* legal services on a nationwide basis. Whether the services will be provided by a nationally-funded public defender’s office or by relying on bar associations and individual lawyers has not yet been determined. Providing legal services in a sustainable manner will require a significant financial commitment by the GOM. Sufficient funding will be needed to compensate lawyers for their time as well as to provide ancillary services such as psychologists, forensics experts, and private investigators, where appropriate. Only by providing the resources to prepare an adequate defense can a defendant be assured of a fair trial.

ABA-ROLI is currently working with a group of young lawyers on a draft law that would create a national commission for public defense, engaging the bar associations and providing a better solution for the courts and the public. Lawyers involved in drafting this law participated in a study tour to Belgium, Bulgaria, and the Netherlands to observe their respective legal aid systems. They developed a draft that includes a commission based on elements of Belgian, Bulgarian, and Dutch models. The US Department of State, Bureau of Democracy, Human Rights, and Labor funded a pilot project in Mohamedia that was originally designed to provide indigent legal services through a law school-

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<sup>32</sup> The law refers to these as “*centres de protection de l’enfance*” (centers for the protection of youth) although they are more commonly referred to as *centres de sauvegarde*, literally safeguard centers.

based clinic or practicum. However, the clinic actually provided only training to local judges and lawyers and was handed over to the university.

There are 17 separate regional bar associations. Each association is independent and determines its own criteria for who shall be a member. They are headed by local presidents (*batôniers*), elected by the membership and housed in the Court of Appeals in their region. Bar associations play the role of registering and managing the professional careers of lawyers, supervising internships and training of new lawyers, acting as the disciplinary body for lawyers, managing lawyers' community support projects, and designating *pro bono* attorneys to provide public defense for those who cannot afford private attorneys. There is a Federation of Bar Associations that acts as an umbrella organization representing the 17 bar associations nationwide. However, it is a federation in name only and does not conduct any practical work. Consequently, the majority of the bar associations are highly politicized and factionalized. The Casablanca Bar Association stands out as it has almost 2,000 lawyer members and sponsors a university-based training school or practicum for advocates. The clinic is only two years old and is connected to similar schools in Italy and France.

There is also a national-level Moroccan Bar Association that elects a president and convenes a national conference every three years. It has been a positive force for rule of law reform. It serves as the main interlocutor of the MOJ in professional legal matters. The Bar worked with the MOJ to draft a new law for the legal profession, submitted to Parliament in 2007 and adopted and published in November 2008. The Rabat Bar Association is located within the office of the Court of Appeal, signifying that it plays a formal role within the justice sector. They provide most of the representation for indigent defendants in criminal cases. While the bar association is involved in judicial reform, they are not taking a lead role.

## E. EFFECTIVE APPLICATION OF THE LAW

The interpretation and proper application of laws is an issue throughout the Moroccan courts. Some laws were drafted by foreign experts, without adequate local collaboration, resulting in new laws or amendments with contradictory provisions, gaps in coverage, or lack of clarity of intent. These challenges result in delays and increased numbers of appeals. In particular, interpretation of recently enacted business-related laws is complicated by the highly technical international business and trade issues such as trademarks, intellectual property, and topics not frequently encountered by judges. The lack of sufficient training, particularly on new legislation and regulations, leads to an ineffective application of laws. Noted areas for improvement include writing judicial decisions and increasing knowledge of new laws, particularly related to family law and juvenile justice.

As in many other countries of the Romano-Germanic tradition, Morocco has a special institution of higher learning for the education and training of judges. The school was previously organized under the MOJ and called the *Institut National d'Etudes Judiciaires* (INEJ). It was reorganized as the *Institut Supérieur de la Magistrature* (ISM) and established as an autonomous institution in 2003-2004 to provide basic training for new judges and prosecutors. The ISM has recently initiated a number of continuing legal education programs for judges; however, they have been *ad hoc* and many of them have depended on donor support. There are slightly more than 3,000 judges, 12,671 clerks, and approximately 3 million cases per year in Moroccan courts. ISM's training plan is for approximately 400 judges per year, which is insufficient to meet the needs of such a high case load. A series of continuing legal education programs was completed in collaboration with the MOJ with specialized trainings in money laundering, terrorism, organized crime (provided by ABA-ROLI), and

the international use of the *commission rogatoire* (which is a delegation of investigative power by the investigating magistrate). There have also been educational exchanges with France, Belgium, and Spain dealing primarily with money laundering and extradition. The *ad hoc* nature of these trainings, particularly exposing potential overlap and/or gaps between MOJ and ISM programs, only exacerbates the problem.

The ISM conducts an 18-month training program for judges, which includes an initial phase of classroom training followed by practical internship. To enter the training program, a candidate must have a law degree or a degree from the *Shari'a* faculty and undergo a preliminary selection process which includes an interview before a jury. The ISM administers an exam to determine selection of the candidates for judicial appointment. The ISM law is set out in the “*Textes de Lois régissant l’Institut supérieur de la magistrature*” (Legal Texts Governing the ISM).<sup>20</sup> Article 2 of the law of 3 October 2002, No. 09-01 provides that the ISM is charged with the initial training of the “*attachés de justice*”, those students in the 18-month program who will become candidates for judicial appointment, with continuing legal education (CLE) and the specialized training of practicing judges. That article also provides for the initial training and continuing legal education of court clerks. The MOJ also provides some continuing legal education programs for judges on an *ad hoc* basis.

Article 5 establishes the composition of the ISM’s administrative board (*conseil d’administration*), which is empowered to make all major decisions concerning the functioning of the school. That board is composed of: the MOJ, who presides; the President of the First Chamber of the Supreme Court; the first “*avocat général*” (prosecutor) attached to the Supreme Court; the Secretary of the High Judicial Council; the First President of the Court of Appeal; the *procureur général du Roi* (the first prosecutor of the King) attached to the Court of Appeal; the *bâtonnier* (head) of the bar association; the dean of the law faculty; the dean of the *Sharia* faculty; three students from the among the *attaches de justice* at the ISM; three students from the clerk’s program at the ISM; and one clerk representative and one *attachés de justice* representative from each graduating class, chosen from among their classmates. The list of members has also been supplemented to include, among others, a representative from the governmental authority dealing with the *habous* (a family endowment for charitable purposes), as well as representatives from the Ministries of Islamic Affairs, Education, and Finance. Article 3 of that decree further provides that the members cited in the law shall be appointed, and where choice is required, chosen by the MOJ.

The ISM’s internal bylaws provide that the ISM must offer a CLE program for the *attachés de justice* and for the practicing judges. They also provide that a “scientific committee” at the ISM must decide the curriculum on an annual basis and must submit its findings to the ISM Directorate General by December 15 of each year. The training of the *attaches de justice* must include a practical “*stage*” in the first instance courts, the prosecutors’ offices, the courts of appeal, and in the commercial and administrative courts, as well as training on national and international legislation and case law and on social and economic developments. Article 46 provides that continuing legal education for clerks must include civil and criminal procedure, as well as procedures for service and execution, accounting, and search and seizure.

The ISM curriculum utilizes only lecture format, and all trainers are sitting judges. The ISM and the ENAM in Bordeaux, France have a bilateral agreement to work together but this collaboration has not yielded any significant improvement in either the curriculum or the quality of the trainers. Almost universally, judges are sensitive to being trained by non-judges. However, there are opportunities to include specialists in other areas particularly for family law and juvenile justice



training, where psychologists and sociologists can provide excellent input. Given that there are four languages in Morocco (Berber, Arabic, French, and Moroccan Arabic) it is important for the ISM to either provide translation or offer programs in a variety of languages. There are no regional centers linked to the ISM making it difficult for judges outside of larger cities to attend training.

Judges need regular updates on new developments in the law and a continuing program of ethics training, both of which are currently lacking at the ISM. There is a significant lack of accessibility to published laws and legal decisions for judges, attorneys, and the general public, hampering professionalization of the justice sector. Judgments are published on an *ad hoc* posting at the Supreme Court's website. Otherwise, there are no law journals, no regular bar association publications, and no annotations to decisions, impacting the ability of judges and lawyers to properly do their job and thereby limiting access to justice for the public. The lack of a more effective program for the professionalization of the justice sector contributes to the overall weakness of the judiciary, making it less able to effectively apply the laws of the country.

As part of a USAID-funded law reform project, the commercial courts made significant improvements and have developed a computerized database. This database is accessible at court kiosks for the general public, where citizens can access information on the status of a pending case at that court. With assistance from the European Union, computerization for all courts is also underway, though implementation problems have prevented finalization of this project. Since 2000 the European Commission has supported a program of reform and modernization of the justice system. The reform involves a series of measures, including rationalization of the management of the central administration and the courts, evaluation of the training given to judges and court staff, better access to justice, integration of family courts into the legal system, more humane conditions in prisons, the reform of legislation and regulations, and the simplification of the processing of judicial proceedings currently under way.

## IV. CURRENT PROGRAMS OF INTERNATIONAL COOPERATION

### A. U.S. GOVERNMENT

#### 1. USAID

As noted in the USAID/Morocco country assistance strategy, “the central U.S. foreign policy objective in Morocco is to have a strong ally and partner in order to effectively address global challenges.” The Mission identified three U.S. foreign policy goals including countering terrorism, promoting economic growth, and promoting democratic reforms. The four priority assistance goals include:

- Goal 1- Mitigate drivers of youth disaffection and marginalization
- Goal 2 - Reduce poverty and increase economic growth
- Goal 3 - Improve effectiveness of democratic governance
- Goal 4 - Reinforce security and stability

The USAID Democracy and Governance (DG) strategy is built around citizen participation in civil society, especially youth, governance, and political parties. The new Strategy for 2009-2013 is informed by lessons learned from past USAID programs in local governance, parliamentary support, and political party strengthening. The new Strategy for the first time anticipates funding for a limited ROL activity, as the Mission has strategically identified ROL as a critical arena for intervention to supplement other DG activities. It is important to note that other important sectors under the Mission’s strategy have relevant openings for cross-cutting legal/justice reform activities including education, civil society, and economic growth.

As part of an interagency program addressing marginalized youth, USAID is developing the **Program for Rehabilitation and Reintegration (R&R)** aimed at addressing the needs of youth at risk of going to prison, those in prison, and those recently released from prison. The R&R program will target disenfranchised youth through the provision of supportive services leading to the skills and abilities necessary to be productive and employable citizens, as well as providing social services with a view to redirecting these youth from risky behavior. USAID/Morocco envisions that upon the completion of the activities under the Rehabilitation and Reintegration Program: a) an initial infrastructure will be developed for providing services to youth in prison, youth recently released from prison, and at-risk youth in the region of Tangier and Tetouan; b) relevant governmental institutions as well as civil society organizations will be supported in order to sustain and replicate the program; and c) monitoring mechanisms for the targeted population will be developed.

#### 2. Other USG Programs

As mentioned above, the U.S. Embassy has launched an interagency program aimed at marginalized youth and the justice system. The program will be implemented jointly by USAID and the U.S. Department of State/ Bureau of International Narcotics and Law Enforcement Affairs (INL) and is part of a two-pronged development and law enforcement approach. One element of the approach, “**Prison Management and Alternative Sentencing Program,**” managed by the U.S. Embassy, will focus on enforcement and criminal justice based initiatives. Activities will emphasize training and support materials for prison facilities to better address the needs of at-risk youth as well as addressing

the lack of consistent alternative sentencing or pre-trial diversion programs. A change in policy (or new approaches to implementation of existing regulations) would allow young people who have been apprehended for petty criminal behavior, criminal activity that is non-violent, or present a low risk to the community, to avoid incarceration. This program may include a DOJ Resident Legal Advisor for a year, who will work with the Moroccan MOJ to develop programs on alternative sentencing and pre-trial diversion.

The **U.S. Department of State/MEPI** Legal and Judicial Development Program ran from 2005 to 2009 and assisted the MOJ with legal and judicial development in a variety of programs such as: technical assistance to the *Hassania* (the official judges' association); the drafting of a judicial ethics charter (adopted in March 2009); and training on management skills, strategic action planning, and effective communications.

Between February 2008 and April 2009, with funding provided by the U.S. Department of State/MEPI, ABA-ROLI implemented the "Enhancing Judicial Education on Women's Rights in Morocco and Algeria" program. This program built on a previous MEPI-funded program and worked to advance women's rights in Morocco and Algeria by developing and revising e-learning modules for judges, developing e-learning modules for court clerks, strengthening the capacity of the Moroccan and Algerian judicial training institutes to use e-learning in their work, conducting outreach activities to spread awareness of the modules, and developing a DVD to document the evolution of the program. In Morocco, ABA-ROLI worked with CSOs and the ISM on the Family Law, creating new e-courses aligned with provisions of the law (to mitigate misinterpretations as sources of conflict) covering topics such as divorce, marriage, the role of prosecutors in domestic violence cases, property division, and proving paternity. This program ended in April 2009.

The **U.S. Department of State/INL** funded ABA-ROLI to work closely with the MOJ to develop training courses and e-courses in a number of key areas including anti-corruption, enforcement of judgments and sentences, conflict resolution, and ADR. The program also offers training for investigative judges and prosecutors on economic crimes and police and plans to support the preparation of ethics codes for court clerks.

With **U.S. Department of State/DRL** funding, ABA-ROLI has worked with a law faculty to develop a legal clinic focusing on labor law and human rights.

Contingent on funding, ABA-ROLI plans to expand its training program into several other areas, including human rights, access to justice, public outreach, freedom of press and association, safeguarding privacy in the electronic age, and juvenile justice. As mentioned earlier, the Dutch are supporting ABA-ROLI efforts to develop new approaches to legal aid for Morocco.

## B. OTHER DONORS

The USAID/Morocco Mission recently organized and hosted a donor roundtable at which seven donors, some active in the ROL arena, participated. Some of the largest supporters in judicial reforms, including the EU and the World Bank, are awaiting the development of the MOJ national reform strategy before making further commitments in this sector. World Bank and EU donors have faced significant challenges in their rule of law efforts, due to the lack of a supportive political environment in Morocco. Implementation has been uneven but there is a renewed hope based on the King's recent pronouncements, particularly the MOJ strategy. However, there is no specific

timeframe for the MOJ to produce a judicial reform strategy. The World Bank has been involved in dialogue with the MOJ for the past ten years on the need for a ROL strategy and how to operationalize it, working to improve management, human resources, budget, and strategy development.

The **Spanish Agency for International Cooperation** (AECID) indicated a willingness to support justice sector activities once the GOM has developed a justice reform strategy. The Spanish program, concluded at the time of this writing, was undergoing an evaluation by its government. They have supported comparative studies on public defenders and the development of a judicial network of judges, prosecutors, public defenders, and legal aid. The Government of **The Netherlands** has supported several ABA-ROLI programs that develop legal aid at the local level and a Judges' Association, but they do not have any plans for the future. **GTZ** will focus its support primarily with the Ministry of Social Development on gender equity issues around the implementation of the family code.

The **EU** is currently supporting ROL activities through five projects with Moroccan NGOs: two trial monitoring programs; prison observation; an association/information source/website advocacy for judicial independence (ADALA); and the development of a specialized database for regional archives. A 12-million Euro, four-year project on computerization and modernization of the MOJ has experienced extensive delays. As a result of continued delays based on the lack of a justice reform strategy, the EU has shifted a 20 million Euro project that was slated for support to the penitentiary system to agriculture.

While **Canada** is not working directly in the justice sector, they have provided \$4 million to the **UNDP** for technical assistance to prosecutors and a comparative study on "Strengthening the Rule of Law in Arab States –Modernization of Prosecutors Offices." This four-year UNDP project has one year remaining and has supported regional conferences on new legal issues and crimes, national workshops on procedural processes, human rights, and investigative and training techniques, and international exchanges through conferences on judicial independence, strengthening regional cooperation, and other relevant subjects. The project also held focus groups on enhancing cooperation between public prosecutors and CSOs.

## V. RECOMMENDATIONS

This section summarizes the assessment teams' recommendations related to each of the five elements of the USAID rule of law strategic framework to guide country analysis and program development. These recommendations are those for any partner in Morocco that is interested in supporting the justice sector. A sub-set of recommendations specific to USAID are provided in the executive summary.

### 1. RECOMMENDATIONS FOR IMPROVING ORDER AND SECURITY

Reforms to improve order and security can yield positive benefits for the efficiency of the judicial system, reducing overcrowding in the prisons, and breaking the cycle of crime for youth who enter the criminal justice system. USAID programming can assist in improving the investigation and pre-trial detention process, thereby reducing the time that defendants are in pre-trial detention.

Recommended activities include:

#### **Years 1 to 3**

- Support the prison commissioner to conduct an assessment of the current prison population to establish a baseline of information to define the magnitude of the problem and the categories of activities requiring focus.
- Provide technical assistance to improve the use of pre-trial release, alternative sentencing, and other mechanisms to reduce the population in prisons that have not been convicted of a crime or who have committed minor non-violent offenses. Potential changes to be made in this sphere include:
  - a) Develop standards for timely disposition (speedy trial) and a reporting system to keep track of the length of pretrial detention, especially for juveniles
  - b) Focus attention on triaging of cases at moment of intake in the prosecutors' offices (i.e. ensuring proper investigations and utilizing neighborhood mediation programs for minor offenses)
  - c) Instill special focus on women and juveniles so that they are put on appropriate pre-trial or hearing tracks
  - d) Develop tickler systems to ensure that defendants held without a conviction are brought before a judge as required by law and do not get "lost" in the system. Work should be tied to developing national standards and procedures for record management and calendaring control
  - e) Develop differentiated case management in courts to ensure fast tracking of high profile and serious cases and ones with a defendant(s) identified and in custody so there is probability of being able to take the case to trial
  - f) Coordinate programs with bar and law schools for *pro bono* and law clinic representation to ensure that proper representation is available

#### **Years 4 to 10**

- Provide assistance to develop the use of evidence-based approaches in criminal case management and corrections:
  - a) Improve process and procedures for release from custody on bail or other condition and determine what information is needed to make more informed decisions
  - b) Consider holding bail and other release hearings in detention facilities and/or creating reception courts for such hearings to speed this process
  - c) Recommend use of early case resolution measures such as community diversion programs as a means to reduce pretrial detention

## 2. RECOMMENDATIONS FOR IMPROVING LEGITIMACY

In supporting improved legitimacy of the Moroccan justice system, it will be critical to develop institutional capacities that ensure that the Moroccan judiciary is able to participate actively in decisions about its own affairs, such as determining the appropriate number of judges and support staff; allocation of courts, judges, and staff throughout the country; the appropriate level of specialization among judges in the judiciary (civil, criminal, administrative, commercial, family); and whether a separate judicial personnel system should be established.

### **Years 1 to 3**

Key assistance focus areas for developing effective judicial system management capacity include:

- Budget and financial management (program budgeting, performance-based budgeting, cost benefit analysis, and needs-based budgeting).
- Personnel management (recruitment, classification, training, evaluation, promotion, career development, discipline).
- Planning and analysis (short- and long-term plans, delay reduction programs).
- Technology management (case flow management systems (CMS), e-government (filing, notification), document management systems).
- Performance measurement (judicial performance standards).
- Facilities management and design.

Another area for focused assistance is to expand use of automation and technology in the judicial system, while ensuring that with increased use of automation requisite types of operational efficiencies and streamlining are applied. Annex 8 provides a summary of two recommendations for commercial courts drafted by an evaluation team funded by USAID in 2008, both of which, because they pertain to case processing functions, are equally applicable to non-commercial courts. Any support in this area should build on the ongoing efforts of the EU in court automation.

Other priority activities to enhance transparency and accountability include:

- Support the development of human resource management systems that consist of clearly defined organizational structure, job descriptions and requirements, transparent promotion and assignment procedures, and employee manuals.
- Legitimacy also derives from increased justice system transparency and accountability. In this regard, the assessment team recommends supporting the MOJ and judiciary to develop an institutional integrity model that uses a ground-up approach in which ethical conduct and procedures for improving integrity are defined by institutional members. The approach is a positive tool, owned by the participants, and often achieves better results than interventions directed at enhancing external accountability (e.g., corruption investigation and prosecution, or anti-corruption agencies). Experience with implementation in other contexts reveals that a key to the success of such initiatives is to encourage justice sector leaders within each institution to become champions of the model, e.g., through leadership workshops and holding public events to acknowledge achievements by staff members and recognize staff members who remain in public service and uphold ethical values.

### **Years 4 to 10**

Recommended areas for longer term assistance include:

- Support further development of ethics charters and explore development of codes of ethics, established by professional associations or institutions, to provide uniform standards and guidance for professional conduct.
- Continue and increase support for periodic joint judiciary-bar conferences and judiciary-media conferences to discuss the judiciary's relationships with the bar and media and foster increased public accountability.
- Assist in the development of advisory committees to render opinions to colleagues on ethical questions and appointed ethics coordinators, available to receive inquiries from justice sector personnel who are facing ethical questions or have observed unethical behavior, and support publication of rendered opinions for others to consult and learn from.
- Support integration of mentoring programs into judicial training programs, pairing new judges, prosecutors, and others with more experienced professionals for the purpose of guiding them on questions that arise in the daily performance of their duties. This approach may result in useful inputs to the ISM's basic training internship program.

### **3. RECOMMENDATIONS FOR IMPROVING CHECKS AND BALANCES**

Improved oversight is important to deter and correct inappropriate justice sector performance and ensure accountability and transparency. Emphasis needs to be given to the difference between using monitoring and oversight as a punitive activity versus using this process to identify needed system and individual improvement areas. If monitoring is perceived by justice sector officials to be solely a means to punish, without corresponding assistance to improve performance, then resistance will surely occur. However, political will to implement these changes is vital to success. Recommendations for assistance include:

### Years 1 to 3

- Determine the appropriate mandates for OIGs in the justice sector, e.g., conduct periodic inspections of the activities of the courts, respond to citizens' complaints of judicial misconduct, review judicial performance exclusively or review judicial and non-judicial performance.
- Provide technical assistance to a broad-based working group to define operationally how internal control units should operate including:
  - a) Profile of the OIGs, e.g., organization, job classifications, and experience required for inspectors, size of staff, location of office(s), etc.
  - b) How often judicial inspectors will visit courts (e.g., every year, every several years, or based on the number of complaints received).
  - c) Determining whether the findings of the inspectorate are public or confidential.
  - d) Types of actions to be taken as a result of the work of the Inspectorate and appeal rights and processes.
  - e) Performance standards and measures, and type of statistics and data needed for accurate measurement of performance to use in inspections.

### Years 4 to 10

- Provide technical assistance for implementation of the adopted internal control unit model
- Incorporate international best practices through the use of white papers, study tours, and international exchanges with successful OIGs.
- Support updating and further development of manuals of inspection that outline steps that should be taken in auditing and inspecting courts. Such a manual then can serve as a basis for practical training and mentoring programs.

## 4. RECOMMENDATIONS FOR IMPROVING PROCEDURAL FAIRNESS

### A. Equal Application of the Law

The assessment revealed weaknesses in the operational efficiency of the Moroccan court system, leading to significant delays and backlogs. Technical assistance should be targeted to strengthen administrative and management capacity and address backlog of cases. Recommendations for activities include:

### Years 1 to 3

- Support development of performance standards for courts and court personnel as a part of the process to build in accountability for performance. Delay reduction plans and case management training are other proven approaches to improve productivity and reduce delays.
- Support the development of *Centers of Excellence* or *Innovation Courts* that can demonstrate how an efficient and effective court can and should operate within the current code and



regulatory framework. The administrative courts may be ideal for such work, given their important role in reviewing decisions of public agencies. The centers can utilize efficiency studies and focus on how cases are processed, standardizing processes from court to court, and reducing delay with focus on key issues such as case filing procedures, assignment to magistrate, and scheduling of hearings. Enhancements adopted within the centers would provide the foundation for replication throughout the court system. Such assistance might include provision of some equipment (computers, printers, scanners) to demonstrate the advantages of modern technology. Work also should be carried out with the ISM to integrate new practices and procedures into both basic and ongoing training courses.

### **Years 4 to 10**

- As a longer-term objective and dependent on political will, support the development of a uniform body of regulations and internal policies and procedures relating to the work of court staff (judges, clerks, and administrative support staff) and means to control the pace of litigation and reduce unnecessary delays (e.g., by reducing the number of auxiliary services). Development of standard operating procedures and related forms, handbooks, and other materials will also improve accountability of all court staff.

### **B. Juvenile Justice Strategy**

Juvenile justice in Morocco faces significant challenges requiring a series of interventions designed to improve the justice system for minors and provide prevention mechanisms. Youth with little education and poor job opportunities too often turn to crime or religious extremism, creating security issues both at home and abroad. Working with juveniles can yield significant benefits by developing future leaders who expect and will demand transparent and accountable institutions. It is clear that the juvenile justice system is inadequate to meet the current needs and requires significant reform. While legal provisions are in place to protect juveniles, they are not being implemented in practice.

To ensure that a comprehensive approach is developed to juvenile justice, an extensive assessment of the needs and resources should be conducted. While the second phase of the assessment team was able to gather significant details of the processes or lack thereof, a more in-depth assessment should be conducted to pinpoint the areas for immediate intervention and to determine the resources within the community to support change. Given other programming initiatives funded by the USG and other donors, coordination is imperative so that USAID programming can identify and fill in the gaps.

There is considerable political and social will on behalf of the GOM and civil society to engage youth at risk of disaffection by reforming the system and providing opportunities to youth. Any efforts which can demonstrate impact need to partner with and build the capacity of institutional and social partners to carry on the work beyond the life of the program.

Support efforts should focus on establishing juvenile courts and providing technical assistance in developing and implementing alternative methods for addressing youth offenders.

### **Years 1 to 3**

The following activities are recommended for development in 1-3 years, with a goal of further developing juvenile court systems and integrating pilot approaches by the GOM over a longer term:

- Support the MOJ to develop a comprehensive juvenile justice strategy which should include the following elements:
  - a) Specialized juvenile courts and judges
  - b) Provision of legal aid for juveniles
  - c) Development of sufficient detention facilities (with an immediate end to co-housing with adults)
  - d) Provision of psycho-social services
  - e) Plans for reintegration and follow-up services for offenders
- Utilize alternative sentencing options. Assist the MOJ in utilizing provisions for alternative sentencing that are already available in the current law. Technical assistance should coordinate closely with the USG's DOJ-implemented youth program to provide best practices on alternative sentencing in the US and other countries. The solutions should be tailored to fit the local culture and resources.
- Initiate a pilot program in one or more strategic locations that will provide essential services as a structure that can operate effectively as an alternative to detention. This program should include a shelter staffed by social workers, doctors, and psychiatrists who are adequately paid. We recommend piloting with an NGO to serve as a model for the GOM, which could institutionalize successful approaches. This program should be led by an expert in juvenile justice who can provide technical expertise, ensure capacity building, and coordinate with other USG efforts directed at youth.

#### **Years 4 to 10**

In the longer term, programming assistance should support the roll out of the juvenile justice pilot programs nationwide, adjusting for any lessons learned through monitoring and evaluation of the programs.

### **C. Improving Human Rights and Civil Liberties: Supporting Women's Legal Rights**

The creation of family courts has been an important step in improving the lives of women and enhancing equal access to justice for a historically disadvantaged group. There remain several issues related to the operation of family courts and adjudicating family law cases that could be the focus of USAID programming assistance, either through direct support for the courts or through a grants program to NGOs that work on family court-related matters. Recommendations for assistance include:

#### **Years 1 to 3**

- Strengthen judicial training programs, offered through the ABA and other donors, to focus on gender issues, combating violence against women, and family law.
- Incorporate family law issues into judicial training program for judicial candidates, as well as providing this specialized training and mentoring for current family law judges.

## Years 4 to 10

- Provide technical assistance to enhance procedural operations and improve the capacities of adjudicators in the family court sections. The one-month timeframe to resolve matters pertaining to support payments is rarely respected, in part due to the insufficient number of judges assigned to these sections, as well as the relative inexperience and training of some of the assigned judges. This may explain why numerous decisions rendered are not compliant with the philosophy of the new family law.
- Provide material support to the family courts to develop appropriate and confidential hearing rooms where families can be free of intimidation.

### D. Improving Access to Justice: Develop Legal Defense Systems

The current justice system in Morocco lacks sufficient capacity to provide for adequate defense of those arrested, particularly defendants who are unable to afford the services of a private attorney. Technical assistance and support is needed to create a public defender system and encouraging CSOs to become more directly engaged in the justice sector. Recommended activities include:

## Years 1 to 3

- Develop stronger defense systems through increased public information and education programs to make the public aware of their rights to counsel and the availability of counsel through the programs established.

## Years 4 to 10

- Assist bar associations and/or NGOs to establish *pro bono* programs of volunteer lawyers to provide defense and even the creation of a nationwide public defender office within the judicial branch or as a separate government entity. The public defender office will require a serious government commitment of financial resources to ensure long-term sustainability. USAID assistance could include defining the costs of such a program as well as technical support in designing the program and training assigned staff.<sup>33</sup>

### E. Improving Effective Application of Laws: Support Training and Professionalization of the Justice Sector

While increased professionalism occurs over time, improvements can be seen through the use of short-term interventions including appropriate training and mentoring. The vehicle to provide justice sector training is readily available through the ISM. Through a series of interventions, the training capacity and scope of courses available could be increased to professionalize justice sector personnel and ensure effective application of laws.

## Years 1 to 3

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<sup>33</sup> Cost efficiencies from reducing the prison population could be reprogrammed and used to defray some costs associated with operating a governmental public defense office.

Recommended assistance in the short term includes:

- Conduct a rapid needs assessment in coordination with the ISM, to determine gaps in curriculum, personnel and judges to be trained, and topics for specialized training.
- Coordinate with the ISM to develop a training plan.
- Conduct training of trainers to build a cadre of trainers who can utilize interactive methodology.
- Support the ISM to develop a series of specialized trainings in areas such as family law, juvenile justice, money laundering, organized crime, and terrorism. These programs should be coordinated with other donors who have technical experts to conduct these trainings and train locals for sustainability.

#### **Years 4 to 10**

Longer term assistance should include:

- Monitor training, utilizing pre- and post-test assessments for development of future training activities.
- Provide ongoing support for development of trainings in emerging legal areas.

## VI. CONCLUSIONS

The assessment has identified the salient challenges that exist in Morocco to the development and strengthening of the rule of law. The assessment revealed a number of areas for improving rule of law in Morocco. The principal challenges to ensuring a fair, efficient, and democratically based justice system include: efficiency and effectiveness of justice sector institutions; accountability and transparency both within and external to government institutions, including public perception of wide-spread impunity; a lack of access to justice; and unequal application of laws, including inadequacies in enforcing laws and judicial decisions.

Programmatic interventions will need to be mindful of the political will to effect change, particularly the support for, as well as the limits imposed by, the governmental structures. While this King's reign has opened new avenues for reform there have also been recent indications of backsliding. Transparency and inclusion are overarching themes with particular importance in fighting corruption and developing civic education programs. We recommend focusing on practical objectives to maximize local ownership and on providing sustainable capacity development and appropriate institutional strengthening for key Moroccan institutions, in order to consolidate gains made in this sector under previous ROL programs. Given the importance that the MOJ has played in law reform to date, it will undoubtedly be a key player. Coordination with the current development of the MOJ reform strategy is a key element in ensuring effective cooperation and maintaining a focus for sustainable results. Activities should support the reform strategy objectives, once finalized, to ensure local buy-in and success of interventions.

To deepen program impact, given limited and unpredictable funding for this sector, it is important that any ROL activity coordinate and integrate themes that strategically link ROL activities to other relevant Mission sector activities and USG ROL efforts. Integrating ROL into all sector activities is essential for long-term development to provide security for foreign and domestic investment, property and contract rights, international trade, and other vehicles for advancing social and economic growth. We propose an integrated strategy that features other development activities that are not inherently law-oriented in nature or do not narrowly focus solely on the justice sector. Examples that will add value to the proposed ROL program are: 1) interagency efforts working with marginalized youth and the justice system, 2) the Mission's education program targeting in-school and out-of-school youth, 3) the Civil Society Advocacy program, and 4) elements of the Local Governance Program that seek to increase youth's engagement in local governance.

As a broader strategy for rule of law development, improving judicial self governance is an important aspect, one that should be led by the GOM to ensure ownership and effective implementation. Once a justice sector reform strategy has been developed, the larger donor community can determine windows of opportunity to support reforms. While there are varying models from around the world to make the judiciary a fully independent branch of government with its own governance structure, Moroccan leadership should make the determination as to the best model for them. Whichever model is chosen, Morocco's judiciary must be able to effectively generate its own budgets, allocate human and other resources to increase performance and access to justice, and perform other competencies essential to an effective judiciary. The ultimate goal for the GOM is to ensure that the Moroccan judiciary has the capacity to participate actively in decisions about its own affairs, such as determining the appropriate number of judges and support staff; allocation of courts, judges, and staff throughout the country; the appropriate level of specialization among judges in the judiciary (civil,

criminal, administrative, commercial, family); and whether a separate judicial personnel system should be established.

In coordination with other donors, and building on assessment work to date, further improvements are needed to expand use of automation and technology in the judicial system, and to ensure that with increased use of automation requisite types of operational efficiencies and streamlining are applied.

The assessment team confidently believes that a focused program based on the objectives, guidance, and suggested activities proposed in this report will have a strong likelihood of advancing respect for the rule of law and helping Morocco's justice institutions to be worthy of respect. The program's success will contribute significantly to the success of Morocco's multi-faceted transition to a more stable, safe, just, and prosperous society.

## ANNEX 1: USAID RULE OF LAW MOROCCO FOLLOW-UP ASSESSMENT SCOPE OF WORK (2009)

### I. Objectives

This assessment follows up on a ROL Assessment conducted by DPK Consulting in October 2008. The purpose of this follow-up assessment will be to: 1) provide additional detail to fill in missing elements of the original assessment conducted in October, 2008, 2) update the assessment in light of recent political developments, and 3) propose a strategy for programming, including prioritized areas of intervention and program recommendations. Further detail on each of these areas is provided below.

#### **1) Provide additional detail to fill in missing elements of the original draft assessment:**

Rather than reviewing all of the essential elements, laws, institutions and actors in the justice system, the consultant will focus on a few areas that have been identified as relevant for attention by USAID. Priority areas include:

- a) **Checks and Balances:** The original assessment team reported that corruption and impunity were serious issues but few details were provided. The consultant will provide further detail on the independence of the judiciary, provide qualitative data to support claims about corruption and impunity, and report on the functioning, weaknesses and possible areas of engagement on specific laws or with institutions that support the judiciary, including the Judicial Council and the Magistrate's School. The consultant will also provide further detail on the administrative courts and their functioning to determine why they function better, what their contribution is to the rule of law, and whether or how they might be engaged to contribute to rule of law objectives.
- b) **Fairness:** The consultant will provide further data on access to justice, including caseload and backlog, how efficient and accessible the courts are, whether vulnerable populations are able to access the courts, what types of legal aid and other legal service are available, and other barrier or opportunities for access to justice. The consultant will review the status of women's rights, specifically in relation to the recently amended Family Code and the status of initiatives to implement this code.

The consultant will also focus on access to justice for youth. USAID/Morocco is designing a new peace and security program to target youth being released from prison and if possible facilitate work with these youth while still in prison through partner organizations to prevent recidivism and increase productive opportunities. This program will focus on those youth who have already taken on negative behavior, may or may not have been exposed to radical ideologies, but who run the risk of recidivism and being pushed or pulled out of society.

Juvenile justice in Morocco is inextricably tied to youth in prisons and can be considered a root cause of disaffection. Since many youth are held in pre-trial detention for minor, non-violent crimes, for example, they could benefit from piloting of alternative sentencing arrangements and other initiatives that could keep the youth from entering the prisons system all together. This would set a precedent that could contribute to reducing the number of

younger prisoners who may become “schooled” in criminality in prisons. Political will appears to be lining up to reform the justice sector, with the King leading the way. The USAID/Morocco peace and security program could begin to build relationships with actors who would be instrumental in forging work in juvenile justice reform.

The consultant will build on this work and address how the interventions they recommend might be linked to assistance to the justice system, through legal assistance, restorative justice, alternatives to incarceration, or other programs. Other donors, particularly the Spanish, have carried out some research on possible legal aid systems for Morocco.

- c) Cross-Cutting Issues: The draft assessment identified corruption and training as cross-cutting issues. The consultant will provide further data on the status of corruption, what the specific issues are, and whether any opportunities exist for addressing these issues. The consultant will address what the weaknesses in training are, what objectives training would support, and whether there are any opportunities for programming in this area.

The consultant will devote less attention to other areas such as order and security, legitimacy of the law, and effective application of the law. However if the consultant finds these issues to be significant priorities and finds new information not included in the report, the consultant should include that information in the revised report.

## **2) Update the assessment in light of recent political developments:**

The original assessment provided limited detail on the roles and interests of various actors and stakeholders, as required in the SOW. The consultant will identify all of the main actors in the justice sector, who could have influence, identify what their primary interests are, and elaborate where potential allies may be and how it might be possible to engage them.

In addition, the government has been developing a justice sector strategy. In a nationwide speech on the occasion of the 56<sup>th</sup> anniversary of the Revolution of the King and the People (August 20, 2009), the king said that he intends to create a representative advisory body “that will enable the judiciary to open up to the surrounding environment.” He said that this platform will serve as an “institutional forum for reflection and expertise-sharing on matters relating to justice, without encroaching on the powers of constitutional institutions and public authorities or on the independence of the judiciary.” This body is supposed to look at relevant national proposals, recommendations, and the constructive conclusions included in the document drafted by the Ministry of Justice, following the broad-based consultations initiated by the ministry. The objective is for the government to develop a “comprehensive, integrated plan.”

The King identified six priority areas: 1) consolidating guarantees of independence by granting the High Council for the Judiciary the status it deserves; 2) updating the legal system, especially where business, the investment environment and the conditions for fair trial are concerned; 3) upgrading the judicial and administrative structure by applying, within the Ministry of Justice as well as in the courts, new governance rules based on the principle of administrative devolution; 4) upgrading the human resources in terms of training, performance and evaluation, and working, at the same time, for the improvement of the material benefits granted to judges and judicial support staff; 5) increasing judicial efficiency, in an effort to address the hardships endured by the citizens as a result of the shaky, slow and complex administration of justice; 6) moralizing justice and shielding it from



corruption and abuse of authority, so that it may, in its turn, contribute to the moralization of public life, via legal means. The consultant will seek to determine how USAID assistance might support this strategy.

### **3) Propose a strategy for programming, including prioritized areas of intervention and program recommendations:**

The consultant will draw from the data collected during this follow up assessment and data in the original draft report to develop a strategy for programming. The strategy will include the key challenges to be addressed, primary objectives for programming, criteria for prioritizing programs, possible entry points and areas of greater or lesser opportunities, and prioritized options for programming. At the same time, the consultant must provide a preliminary assessment of the political will existing for proposed programming, identifying possible constraints and threats.

The strategy will also include specific illustrative activities under each of the program areas proposed. The consultant will test whether the recommendations are appropriate given the key challenges and criteria for prioritizing. This strategy should be rooted in the Moroccan reality and respond directly to challenges, needs and opportunities in Morocco. This would include situating possible USAID interventions within the context of efforts of other major donors, demonstrating how USAID efforts could complement and would not duplicate other efforts.

## **II. Tasks**

The primary tasks for the consultant(s) will include:

- 1) Preparation phase: review key documents including the draft assessment and other supporting documents. The consultant will also hold meetings with USAID staff in Washington prior to departure, either in person or by teleconference.
- 2) In-Country Phase: interview key stakeholders to gather more detailed information and prioritize programming interventions. Individuals to be interviewed will be identified by the mission and by DPK Consulting through its contacts and networks in Morocco. DPK will be responsible for setting up all meetings, except those with high level officials. DPK will also be responsible for its own transportation, communication, and for all logistical arrangements, unless otherwise arranged by USAID/Morocco. This will include providing a vehicle and telephone for the consultant's use. In addition, DPK will support an additional Moroccan Legal Expert to assist in providing a Moroccan context and in setting up meetings. The Moroccan expert will have two days in advance to do prep work and set up meetings and two days after to review and provide input into documents developed.
- 3) Report-writing phase: Produce an updated assessment report that builds on the draft report and includes more details in the areas described above. The report should propose a programming strategy that includes criteria for prioritizing, prioritized interventions, programming options and illustrative activities. The report should also address the comments and questions from USAID on the original draft report.

## ANNEX 2: USAID RULE OF LAW MOROCCO ASSESSMENT SCOPE OF WORK (2008)

### Purpose of Assessment

The purpose of this DCHA/DG/ROL Core Task Order for Rule of Law Services (DFD-1-00-04-00173-00) is to:

- assist USAID/Morocco to conduct a targeted analysis of the status of rule of law development in Morocco;
- review the work of USAID and other donors in this area; and
- assess the primary opportunities and constraints to the further development of rule of law activities under the new USG Country Assistance Strategy.

The team will inquire, given the current operating environment in Morocco as well as the work being done with funding by USAID, other USG agencies, other donors, and the Moroccan government itself, what justice sector issues warrant USAID/Morocco support. The assessment will contribute to the Country Assistance Strategy for Morocco and the development of activity design materials by assessing the state of rule of law and recommending priority areas for intervention by USAID and other USG agencies as well as ideas for future USAID rule of law programming. Consistent with the terms of the Task Order, the Morocco rule of law assessment, one of five which DCHA/DG/ROL plans to undertake with missions under this Task Order, will be applied through the prism of the *Rule of Law Strategic Framework*. The Task Order ultimately will help to fine-tune The *Rule of Law Strategic Framework* as a tool and strengthen the ability of DCHA/DG/ROL and regional bureaus to ensure coherence and a comprehensive approach to analyzing and addressing ROL issues worldwide.

### Background

Morocco, as a constitutional monarchy, provides different incentives for the delivery of justice services than countries with republican forms of government. The King plays an important role in assuring the quality of justice and the selection, promotion and discipline of judges. He selects the Minister of Justice, who has strong control over the Judiciary. The *Makhzen*, or Palace, is more powerful than the Parliament, Government and Judiciary. Judicial independence is a major problem, in the face of “telephone justice.” The criminal justice system, particularly prisons, provide no rehabilitation to youthful offenders and sometimes serve as breeding grounds for terrorism. Citizens lack confidence in the police and justice system.

Since he came to power in 2000, King Mohammed VI has recognized the weakness of the justice system and has supported reform efforts. He agreed to major changes in the family code, following decades of work by civil society groups. He also catalyzed transitional justice efforts by a Justice and Reconciliation Commission, which investigated human rights abuses under the reign of his father, King Hassan II (although prosecution of offenders was ruled out). He reiterated his commitment to justice reform in his Throne Day speech on July 30, 2008: “I must therefore stress again the need to put the overhauling of justice on top of the reform agenda. This is why I urge the government to work out a well-defined plan to revamp the judiciary. The scheme must be the product of constructive, open dialogue with all relevant players. In this connection, and as Guarantor of the independence of the judiciary, I insist that this plan should be carried out fully and with the utmost efficiency. Thus, justice will hopefully be administered in a more modern and effective way, and with a keen sense of integrity, impartiality and responsibility.”

The Ministry of Justice initiated a reform effort in 2000. Objectives included:

- modernizing legislation and institutions and assuring equitable justice;
- assuring that Morocco is in conformance with international human rights conventions;
- assuring execution of judgments;
- improving the capacity of penal institutions to provide education, rehabilitation and reinsertion;
- assuring ethical conduct of the judiciary and judicial staff;
- increasing the number of corruption cases;
- increasing judicial transparency;
- improving information technology;
- modernizing human resource management;
- modernizing administrative structures;
- building and refurbishing courts;
- improving internal and external communication.

Donors have supported many of these efforts. USAID has been working on commercial law and commercial courts since 2000. It automated commercial courts in Agadir and Marrakesh, reorganized systems, trained judges and staffs, improved bankruptcy and trademark law and facilitated the creation of the Ministry of Justice website. The current program focuses on commercial law reform, judicial capacity building, strengthening of commercial courts and alternative dispute resolution for business disputes. The World Bank also improved commercial court systems and the commercial register, refined commercial legislation, built the capacity of the judicial training center and improved the Ministry of Justice's communication skills. The European Union just completed a program that: improved case processing, information management, judicial administration and information sharing for 23 percent of courts of first instance and 90 percent of courts of appeal; established a website of Moroccan laws, dahirs and regulations; established databases, libraries and archives; and trained judicial staff. The International Center for Transitional Justice supported the Justice and Reconciliation Commission. The EU plans to work on juvenile justice, access to justice and facilitating the recommendations of the Justice and Reconciliation Commission. United Nations agencies have improved implementation of the family code. The American Bar Association has strengthened the judges association and women legal professionals, established a human rights clinical legal education and built civil society support for judicial independence, with support from the Department of State's Middle East Partnership Initiative and Bureau for Democracy, Human Rights and Labor.

USAID/Morocco's five-year Country Strategic Plan is ending in 2008. Commercial law activities were undertaken through the strategic objective (SO), "Moroccan economy successfully responding to new opportunities and challenges of free trade." Rule of law was important to but not a major focus of the strategic objective, "Improved Government responsiveness to citizens."

Morocco is a pilot country for the new Country Assistance Strategy (CAS) process. Under this process, USG agencies at post are collaborating with Washington-based agencies and headquarters to develop a five year USG assistance strategy, to be submitted by September 30, 2008. The goal is likely to be: "A well-governed, democratic and prosperous Morocco meeting the needs of its people, especially youth." It is likely to have four strategic objectives: economic growth; productive and engaged youth; democracy; and peace and security. The democracy strategic objective is likely to be "More democratic, just and participatory governance." Intermediate results are likely to include "More effective representation of citizen concerns," "More effective and accountable local

government,” and “Targeted legal reform and implementation to promote citizen equality.” The peace and security SO has not yet been defined, but is likely to follow the theme of the attached proposal for 1210 funding, “Disrupting the Cycle: Young Prisoners, Radicalization, and Terrorist Recruitment.” Anti-corruption and rule of law cut across the strategy. USAID has recently undertaken an anti-corruption assessment and now would like to assess rule of law in Morocco. This assessment would provide input into or elaborate on the CAS, depending upon the date it is finalized. It also will guide the design of new USAID rule of law activities.

## Statement of Work

The purpose of this assessment is to provide USAID/Morocco with an analysis of the primary challenges in advancing the rule of law in order to develop a strategy for programming. It includes two main tasks:

- 1) An analysis of the primary challenges and opportunities in advancing the rule of law, including a review of existing USAID and other donor activities, and an assessment of political will for constitutional and judicial reform;
- 2) A proposed strategy for programming, including prioritized areas of intervention and program recommendations, taking into account the CAS focus on youth, anti-corruption, constitutional reform, judicial independence, and the role of the criminal justice system, particularly prisons, in encouraging terrorism.

The contractor shall conduct a background review of key documents, as well as on-site research and interviews to develop a report that addresses these areas. The assessment will be based on the *Rule of Law Strategic Framework* and is designed to synchronize with the Country Assistance Strategy for Morocco, particularly the Democracy and Governance strategic objective. The assessment will focus only on the geographic area that goes as far south as Tan-Tan and Assa-Zag.

The report will include the following components:

*1) Analysis of primary challenges and opportunities in advancing the rule of law:*

This section of the report will analyze the current state of the justice sector as a basis for deriving strategic recommendations. Based on the *Rule of Law Strategic Framework*, the analysis will include the following five steps:

- First, the assessment will take into account the political and historic context, including current events. It will briefly outline the impact of the *Makhzen* and the political and governance structure of Morocco on the current state of the legal framework and justice sector institutions, and identify recent changes that help frame the rule of law problems to be addressed. This section is intended to succinctly situate the rule of law in the broader political economy of Morocco.
- The second step will be to evaluate the roles and interests of the major justice sector actors, and assess the political will for judicial reform. The purpose of this part of the analysis will be to identify who is likely to “win” and “lose” from the enactment of reforms to the rule of law system. The impact of the Ministry of Justice’s reform program on the commitment of justice institutions and political actors to reform should be examined. The political will for constitutional reform addressing judicial independence should be addressed. Specific attention should be devoted to those who are involved in “telephone justice” and other forms of corruption.

- Step three will examine program options beyond the justice sector that might have a bearing on the rule of law. Such considerations will include civil society advocacy, civic education, political party strengthening, inadequate inclusion of women and youth, and strengthening checks and balances among Morocco’s political institutions. This section will identify factors outside the justice system itself that may affect the potential for changes in the justice sector and which might be the subject or target of USAID or other USG support.
- Step four will assess the justice sector itself. This is the section of the five listed steps in the analysis that merits the greatest level of effort by the team. This will include examination of the five key elements that comprise the rule of law, namely: 1) order and security, 2) legitimacy, 3) checks and balances, 4) fairness, 5) effective application. Each of these five elements must be present for rule of law to prevail. This section will focus on how these elements are embodied and enacted within the Constitution, legal framework and justice sector institutions and actors. This section should outline the key features of the justice system, including the framework of laws and the justice sector institutions. The analysis should address deficiencies in the Constitution and legal frameworks, as well as corruption, judicial independence, and juvenile justice, particularly the role of the criminal justice system, especially prisons, in encouraging terrorism. The purpose of this section will be to identify potential points of intervention within the justice system itself that are in need of reform and amenable to change.
- Step five will review existing USG and other donor programs in the justice sector, including the 1210 proposal, to determine what progress has been made so far, and where opportunities and entry points might exist for future rule of law programming.

## *2) Programming Strategy:*

The most important step in the assessment will be the development of a strategy and programmatic options for rule of law interventions. This will be based on the findings from the preceding sections as well as the Country Assistance Strategy, USAID priorities and ongoing activities, USG relations with the Moroccan Government, availability of resources, and activities of other donors and USG agencies. It will be designed to focus rule of law activities around the primary challenges in promoting the rule of law in light of the current state of political will, opportunities and constraints for reform, and past successes. The strategy is intended to be a source of ideas and suggestions that can lay the basis for designing rule of law programming. Given the overwhelming role of the King within Morocco’s political system, as well as uncertainties concerning the future level of resources available to USAID and other USG agencies, USAID/Morocco will factor the recommendations of the assessment team’s report into its overall approach to program strategy design, but will not be bound by it.

The strategy should include the following components:

- Primary rule of law problem(s) framed in terms of the essential element(s) of the rule of law that are most critical to establishing the rule of law and those that are most amenable to tangible change via USAID intervention.
- Opportunities for intervention, including the specific institutions and laws for which opportunities exist for reform. Areas that may be worth specific attention include: 1) corruption within the Moroccan court system; 2) judicial independence; 3) juvenile justice; 4)

access to justice; 5) women's legal rights; 6) constitutional reform; and 7) civil society support for judicial reform.

- Opportunities and challenges that are already being addressed by ongoing and planned rule of law activities of USG agencies, other donors and the Government of Morocco.
- Program recommendations, including intended results, to address the primary rule of law problems. Recommendations should be prioritized in order of importance.

## Methodology

The contractor shall provide a three-person team to work directly with USAID staff to conduct the work in three stages.

Preparation phase: The first phase of the assessment will involve reviewing background materials and key documents; developing an assessment and evaluation methodology that includes primary research questions and interview protocols; and preparing a schedule of interviews for the subsequent field work stage. A pre-trip meeting with relevant USAID staff is required during the preparation phase to review documents, discuss background reviews and come to agreement on the primary research questions, interview protocols and assessment schedule. This meeting will take place preferably at the USAID offices in Washington, DC, but may be conducted via teleconference if necessary. Three working days per team-member are authorized for the preparation phase.

- Review of existing information and materials:

The team should gather and review all documents on the existing Rule of Law situation in the country.

The following will be provided by USAID/Morocco:

Development Alternatives, Inc. *Alternative Dispute Resolution for Commercial Disputes in Morocco: assessment and Options for Technical Assistance* (draft), September 2006.

Guilain Denoeux and Rhys Payne, *Democracy and Governance Assessment of Morocco*, June 15, 2003.

Morocco Ministry of Justice, *Rapport National Pour L'Examen Periodique Universel*, February 2008.

People's Mirror Focus Group Center, *Public Perception of the Moroccan Judiciary*, November 7, 2005.

U.S. Department of Commerce Commercial Law Development Program, *The State of Moroccan Compliance with FTA Commitments*, June 2005.

World Bank, *Doing Business au Maroc*, 2007.

World Bank, *Implementation Completion Report for a Leal Judicial Development Project*, December 30, 2004.

World Bank, *Morocco Legal and Judicial Sector Assessment*, June 2003.

The team will also want to examine the following websites, at a minimum:

Ministry of Justice: <http://www.justice.gov.ma/fr/Ministere/presentation.aspx>

EU Legal Compendium <http://adala.justice.gov.ma/FR/login.aspx>

UNDP overview of the Moroccan judiciary: <http://www.arab-niaba.org/english/countries/country.asp?cid=12>

National Commission for Truth, Equity and Reconciliation: <http://www.ier.ma/?lang=fr>  
Legal and judicial reform component of USAID/Morocco's Improving Business Climate Activity: [http://www.businessclimate.ma/rubrique.php3?id\\_rubrique=27&lang=en](http://www.businessclimate.ma/rubrique.php3?id_rubrique=27&lang=en)

**Field-work phase:** The team will conduct 16 days of field research, including gathering and reviewing documents, and conducting structured interviews with key informants and beneficiaries, including the Judiciary, Ministry of Justice personnel, international and donor personnel, USAID partners, members of Parliament, lawyers, court administrators, mediators, civil society organizations, citizens groups, and other relevant stakeholders. The team will present a list of interviewees to USAID for approval prior to conducting interviews. The research should include site visits to USAID rule of law activities. The team will present a list of interviewees to USAID/Morocco for approval prior to conducting interviews. The contractor will be responsible for developing the list of interviewees and arranging meetings, as well as transportation to the meetings. USAID will provide two staff members to participate in the field-work phase of the assessment team, including one staff member from DCHA/DG/ROL and one staff member from USAID/Morocco [Idriss Touijer from the Mission].

**Report-writing Phase:** The Contractor will draft the assessment report, which will include all of the components outlined above. The draft report shall be submitted for formal USAID/Morocco review within 10 working days after departure of the Contractor from the country. The Mission and DCHA have ten working days to provide comments to the Contractor. The final report shall be submitted no more than ten calendar days thereafter. A total of eight working days per team member are authorized for the report-writing phase.

### **Deliverables**

The contractor shall provide the following deliverables to USAID/Morocco:

#### **1. Literature Review and Evaluation/Assessment Methodology**

Prior to beginning the interview process, the contractor shall prepare for the assessment by reviewing key documents on the justice sector; background material on the political situation; and applicable sections of USAID and project documentation. The contractor will also prepare a methodology plan including primary research questions, interview protocols to structure the interviews, and a list of proposed individuals to be interviewed. The methodology plan, interview schedules and interview protocol will be presented to USAID staff prior to departure for the field-research phase. The methodology plan, interview schedules and interview protocol will be presented to USAID/Morocco and DCHA/DG/ROL staff for approval prior to departure for the field-research phase.

#### **2. Oral Briefings (two)**

The contractor will provide two briefings for USAID staff, including an introductory briefing within two days of arrival in country, and an exit briefing presenting the team's findings and recommendations to USAID prior to departure.

**3. Draft Report.** The assessment team will present a draft report in English of its findings and recommendations to USAID/Morocco within ten working days from the time of departure. A copy shall be provided to DCHA/DG/ROL. The draft report will be no more than 40 pages. The report will include all of the components outlined above, although not necessarily in the order specified above.

The major emphasis of the report will be on analysis of the justice sector and recommended strategies and interventions.

4. Redacted Version: The contractor should be aware throughout the assessment and report writing process that issues of rule of law may be politically sensitive. The team should discuss this issue with USAID immediately upon arrival and seek guidance regarding sensitivities that will need to be taken into account during interviews and report writing. Additionally, the team may be requested to prepare a version of the report that can be shared with Government and other counterparts and submitted to the Development Experience Clearinghouse. Guidance can be found at <http://dec.usaid.gov/submit/contractors.pdf>.

4. Final Report. The Final Report will be provided to USAID in electronic format in MS Word and Adobe PDF, within 10 calendar days following receipt of comments from USAID. An electronic copy and 5 hard copies shall be provided to USAID/DCHA/DG. The report shall include all of the components outlined above, although not necessarily in the order specified above. The report shall also include an executive summary and not exceed 40 pages (excluding appendices). Appendices should at a minimum include the scope of work for the evaluation; a list of individuals interviewed; a complete description of the methodology used for the evaluation; and any questionnaires used.

The report shall follow USAID branding procedures. The contractor shall also submit an electronic copy of the redacted final report to M/CIO/KM at the website, <http://dec.usaid.gov/index.cfm?p=docSubmit.home>.

## **Team Composition and Qualifications**

The assessment will be carried out by a three person team, in addition to USAID personnel. The team shall include:

- A team leader (Expatriate) with a professional background in international development work, including rule of law development. This person shall be responsible for coordinating and directing the overall assessment effort, including preparation and submission of the draft and final assessment reports. He/she should have a minimum of 10 years experience in the design, implementation, and/or evaluation of foreign assistance programs including USAID-related rule of law programs. As assessment team leader, the incumbent should be thoroughly familiar with techniques of program impact appraisals and possess good organization and team-building skills. The team leader should have excellent written and oral communication skills in English and ability to read and communicate at a business level in French. Knowledge of the political and legal system of Morocco would be highly desirable.
- A team member ( Expatriate) with at least 5 years of relevant experience in rule of law development and/or democracy and governance assistance, possessing strong background knowledge of the region and experience in the design, implementation and/or evaluation of foreign assistance programs. Strong writing and word processing skills are a requirement. Previous experience in Morocco and knowledge of French at a business level are required.
- A Team Member (local): A lawyer, political scientist, public sector management specialist, or researcher. Minimum undergraduate degree in law or related field. Good understanding of political dynamics, rule of law actors and political actors is essential. At least three years'



work experience required. Fluency in French and knowledge of USAID and other donors is required.

At least one of the two expatriate members must have knowledge and experience relevant to court administration, judicial education, legal teaching, public interest law, or other relevant legal sector areas, including experience designing, managing, implementing or overseeing legal or judicial reform programs.

USAID will appoint one USAID/DCHA/DG staff member and one USAID/mission staff member to participate in the assessment, including drafting sections of the document and participating in meetings during the field research stage.

The Contractor will certify that there is no conflict of interest or potential conflict of interest with respect to the performance of this assessment on the part of the contractor and the contractor's team members. The Contractor will guarantee that substitutions will not be made for individuals proposed as team members without the approval of USAID/Morocco.

### **Period of Performance**

The work called for in this scope will start on or about October 1, 2008 and will be completed approximately 10 weeks later. The field work will start on October 6, 2008.

USAID/Morocco will respond to the content of the assessment with oral comments at the debriefing and will provide written comments within 3 weeks of receipt of the draft report.

### **Logistical Support**

All logistical support will be provided by the Contractor including travel, transportation, secretarial and office support, interpretation, report printing and communication, as appropriate.

### **Workweek**

A 6-day work week<sup>34</sup> is authorized in the field with no premium pay. Note that the official workweek in Morocco is Monday through Friday with Saturday and Sunday constituting the weekend. The team may be able to arrange some meetings on Saturdays in country.

### **Technical Direction**

Technical direction during the performance of this delivery order will be provided by USAID/Morocco, Idriss Touijer, Development Assistance Specialist, 202-216-6263 (from the US) and 037-212-37-63-2001 (within Morocco) [itouijer@usaid.gov](mailto:itouijer@usaid.gov) in consultation with USAID/DCHA/DG, Alex Berg, 202-712-5736 [lberg@usaid.gov](mailto:lberg@usaid.gov).

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<sup>34</sup> Work week for DPK consultants was changed to 5-day work week.

### ANNEX 3: BIBLIOGRAPHY

American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI), *Judicial Baseline Assessment for The Kingdom of Morocco* (May 2005)

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<http://www.arabniaba.org/english/countries/country.asp?cid=12>

National Commission for Truth, Equity and Reconciliation: <http://www.ier.ma/?lang=fr>

Legal and judicial reform component of USAID/Morocco's Improving Business Climate Activity:  
[http://www.businessclimate.ma/rubrique.php3?id\\_rubrique=27&lang=en](http://www.businessclimate.ma/rubrique.php3?id_rubrique=27&lang=en)

## ANNEX 4: PERSONS INTERVIEWED

### **United States Government**

John Groarke, Mission Director, USAID/Morocco

Ted Lawrence, Democracy and Governance Team Leader, USAID/Morocco

### **International Partners**

Dominique Bichara, Senior Counsel, Middle East, North Africa, Eastern Europe and Central Asia  
Legal Department, World Bank

Youssef El Falah, Deputy Director, American Bar Association Rule of Law Initiative – Morocco

### **Morocco Legal Community**

Mohamed Akdime, President of Rabat Bar Association

Fatima Zohra Boukaissi, Member of Rabat Bar Association

Abdelatif Ennouari, Member of Rabat Bar Association

Mostafa Fares, General Prosecutor of the Commercial Court of Appeals, President of Association  
Hassania

Abdeltif Hatimy, Member of Casablanca Bar Association, President of the Association for Judicial  
Independence

### **Morocco Civil Society**

Ali Ammar, Moroccan Human Rights Association (AMDH)

Malika Benradi, Moroccan Human Rights Organization (OMDH)

Said Elbikri, Moroccan Human Rights Organization (OMDH)

Mohammed Essabar, Forum Marocain Pour la Verite et la Justice

Informal visit to Spanish Catholic Daycare / Youth Center, Temara

Informal visit to the Centre de Sauvegarde, Temara

Yasmine Smires and Najat M'Jid, Batyi

## **Group Meetings**

Morocco Ministry of Justice: Mohammed Lididi, Secretary General; Abdelmajid Rhomija, Directeur de Etudes, de la Cooperation et de la Modernisation; Brahim Lisser, Director of Civil Affairs; Mohamed Abdennabaoui, Director of Penal Affairs and Reprives

National Mediation Center: Mohammed Chmaou, Secretary General; Yassir Semlali, Member of Rabat Bar Association

International Partners: Maria Jose Moreno Ruiz, GTZ; Paul Gareau and Michel Leblanc, Embassy of Canada; Mercedes Cornejo, AECID; Catherine Laurent, World Bank; Matthijs Schroeder, Dutch Embassy; Daniel Bernard, Belgian Liaison Magistrate; Louis Dey, European Commission

## ANNEX 5: MOROCCO INTERNATIONAL CONVENTIONS

<b>International Conventions</b>	
<b>Name</b>	<b>Date of Ratification or Signature</b>
International Covenant on Civil and Political Rights (ICCPR)	May 3, 1979
International Covenant on Economic, Social and Cultural Rights (CESCR)	May 3, 1979
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	June 21, 1993
Convention on the Elimination of All Forms of Racial Discrimination (CERD)	December 18, 1970
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	June 21, 1993
Convention on the Rights of the Child	June 21, 1993
Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	June 21, 1993
Convention on the Rights of Persons with Disabilities	April 8, 2009
Convention for the Protection of All Persons from Enforced Disappearance	Signed February 6, 2007

ANNEX 6: MOROCCO COURT SYSTEM

<b>Type and Number of Courts</b>	
Jurisdictions	Number
Supreme Court	1
Courts of Appeal	21
Courts of 1st Instance	66
Centers of Resident Judges	178
Communal Jurisdictions	411
District Jurisdictions	131
Commercial Courts of Appeal	3
Primary Courts of Commerce	8
Administrative Courts	7
Permanent Court of Royal Armed Forces	1

<b>Court Staffing as of 2005</b>	
Auxiliaries	Number
Adouls	3515
Lawyers	8203
Trainee lawyers	723
Experts	2324
Bailiffs	686
Interpreters- translators	338
Notaries	443
Total	16762

ANNEX 7: MOROCCO COURT BUDGETS: 2001-2005

<b>Operational Budget<sup>35</sup></b>			
<b>Year</b>	<b>Payroll</b>	<b>Material</b>	<b>TOTAL</b>
2001	1 229 202 000	346 925 000	1 576 127 000
2002	1 396 528 000	331 900 000	1 728 428 000
2003	1 348 158 000	351 900 000	1 700 058 000
2004	1 456 345 000	351 900 000	1 808 245 000
2005	1 754 058 000	361 900 000	2 115 958 000

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<sup>35</sup> Kingdom of Morocco Ministry of Justice (visited March 25, 2010)  
<[http://www.justice.gov.ma/an/Ministere/chiffres.aspx?\\_c=2&\\_n=4](http://www.justice.gov.ma/an/Ministere/chiffres.aspx?_c=2&_n=4)>.



## ANNEX 8: RELEVANT RECOMMENDATIONS OF JUNE 2008 EVALUATION TEAM REGARDING USAID-FUNDED COMMERCIAL COURTS PROGRAM

### Court Administration and Management

Operation of Commercial Courts (Tribinaux de Commerce – TC) differ rather significantly from court to court in terms of: internal operations (case assignments, case processing, scheduling of hearings, etc.); levels and types of responsibilities assigned to *greffiers* (court clerks); ready access to research and other information; training of magistrates and *greffiers*; and use of automation.

Regardless of where an individual court might fall along the continuum of higher or lower budgetary allocations, enhanced efficiencies could be accrued through improved training for magistrates and *greffiers*, increased knowledge and use of automation in the daily work of the courts, and development and implementation of improved methods of court administration and management. Specific examples of activities that could contribute to improvements include:

- *Reviewing current operating practices* to identify redundant, cumbersome, or unnecessary steps in processing cases could reduce delay points while also alleviating the workload of court staff.
- *Conducting job-task and cost-benefit analyses* of both magistrate and *greffier* assignments could result in more efficient distribution of tasks; and, both could pave the way for greater productive capacity without significant budgetary increases.
- *Creating internal subject-matter expertise* within all TCs (through the train-the-trainer courses with both magistrate and *greffier* corps) could decrease case processing times and reduce reliance on external experts, while also enabling court personnel to apply quality control measures to the opinions rendered by experts.
- As described in more detail below, *increased integration of automation* into the daily work of all court staff would further enhance production and timeliness. Such efficiencies are already being realized – to the extent permissible under current statutory provisions and interpretations – in the Casablanca TC. Lessons learned and best practices should be drawn from the Casablanca applications, and the results applied within other TCs.<sup>36</sup>

Combining efficiencies resulting from streamlining current procedures with those resulting from increased automation would enable courts to produce more results in less time and at less cost.

### Automation

Considerable differences exist currently between TCs in the degree of automation available and in their use of technology to support the work of commercial courts. Clearly, the Casablanca TC has been both financially and technically able to integrate use of computers into most of their operations, with other TCs ranging from relatively high to relatively low levels of internal automation. Court personnel were nearly unanimous in their wish to use technology to support their work, through automation of internal processes, as well as through improved methods of accessing external databases, and communications (both internally, and court-to-court). Before embarking on a strategy

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<sup>36</sup> The Team notes that through USAID-funded ROL programs, numerous court-related case management systems have been developed, and some partners have even developed generic forms of such systems that are available on-line. Prior to embarking on a significant expansion of automation, the successful elements of such systems should be reviewed for potential application to Morocco.

of expanding use of technology throughout the commercial court system, several issues should be considered, including:

*Legal aspects* - Examination of relevant laws to determine what can be automated under current provisions, to identify laws in which modifications may be required to support increased integration of automation into court processes, and to ensure consistency of language (to correct, for example, the disparity that currently exists in the 1997 decree<sup>37</sup>).

*Internal operations* - Conducting job-task and cost benefit analyses, as well as procedural streamlining reviews, to ensure that expanded use of computers takes advantage of latest techniques of case and data management. Review of existing system(s) currently used within TCs (and other Moroccan courts) to identify the most positive elements for retention in any new or modified computerized applications should be a standard part of this process.

*Implementation strategy* - Expansion and enhancements of the use of computers should be introduced using an incremental approach, following pilot testing and needed adjustments. Essential elements include: the importance of expanding computer literacy, as well as the need for training all staff; development of standard procedures; the availability of trained and experienced computer expertise within each court to serve as system administrator; and for equipment and maintenance plans in place prior to installation and operationalization of the system.

*Present and future inter-connectivity* – Since at functional levels, courts operate in much the same way regardless of their type, court automation should be designed to apply system-wide, not just to commercial courts. Some countries have taken the approach of using identical software for all justice sector institutions (courts, prosecutors, police, etc.), thus saving considerable time, effort, and money on initial implementation and on-going maintenance. System architecture should also be designed to support future needs to link to other components of the judiciary, as well as to other governmental systems. For example, problems associated with identifying addresses could be alleviated through interfaces to postal, telephone, or even tax records.

*Public information needs* - The need for members of the public to access court-related information through websites and publically available data bases has already been identified. The public terminals accessing the *Registre de Commerce* and those in the Casablanca court enabling verification of hearing schedules, etc., should be expanded and enhanced. Ultimately, a key aspect of this issue will relate to increased use of electronic means of interacting with courts (e-filing, etc.).

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<sup>37</sup> In one of the Articles of this 1997 Decree, the language implies the requirement of handwriting information into a register by the words, “...transcrites sur le register,” while in another Article of the same Decree, the words “...enregistres sur un register, ou selon un procede informatique,” clearly opening the way for use of automated systems to register information.