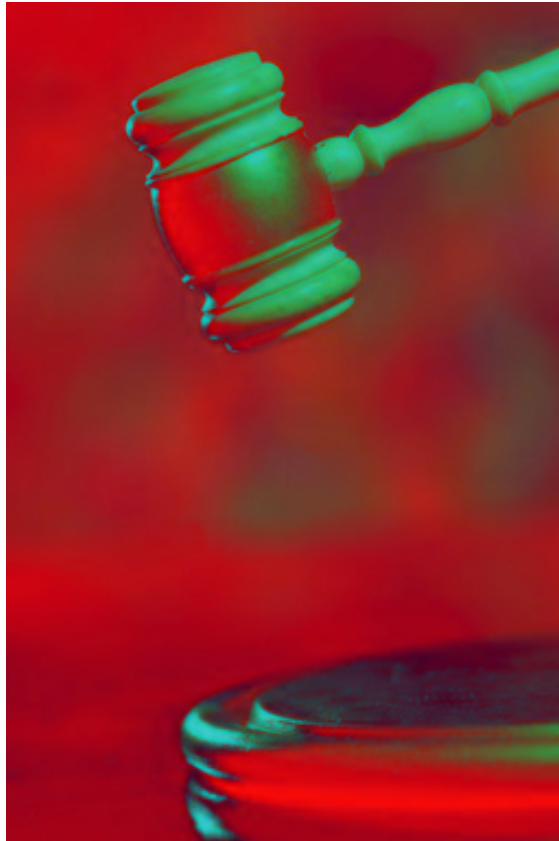




Legal Vice Presidency
The World Bank

MOROCCO

Legal and Judicial Sector Assessment



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ABBREVIATIONS

A.D.R.: Alternative means of Dispute Resolution

C.I.D.A.: Canadian International Development Agency

D.F.I.D.: Department For International Development

E.U.: European Union

G.D.P.: Gross Domestic Produce

H.M.: His Majesty

I.N.E.J.: *Institut National des Etudes Judiciaires*

I.S.M. : *Institut Supérieur de la Magistrature*

L.J.R. : Legal and Judicial Reform

M.E.D.A.: Mediterranean European Development Assistance

M.O.F.: Ministry of Finance

M.O.J.: Ministry of Justice

P.L.C.: Public Limited Company

U.N.D.P. : United Nations' Development Programme

U.S.A.I.D.: United States' Agency for International Development

EXECUTIVE SUMMARY

1. The Kingdom of Morocco is a constitutional monarchy with a population of 30 million. A developing country, Morocco has embraced a market-based economy, but growth remains slow and unemployment, particularly among those under 18, is severe. There have, nonetheless, been significant advances in the education and health sectors.
2. The Moroccan authorities have also supported judicial reform, with the Ministry of Justice playing a key role in launching a wide range of initiatives. The Ministry's efforts are seen by legal professionals as having improved the functioning of the sector. The public's perception of the legal and judicial sector, however, is generally poor and allegations of corruption are rife.
3. The overall legal framework is not a priority area for reform. The law-making process, however, is weak, resulting in poorly drafted laws, and legal dissemination is inadequate. Legal education relies upon an outdated curricula and is offered in competing languages, French and Arabic, the selection of which largely determines students' choices for future employment. The training of legal professionals is minimal and is poorly supervised. The general public has little access to legal information. Legal aid is embryonic and restricted to criminal matters.
4. The training of the judiciary is the responsibility of a professional college (I.N.E.J.), which has just begun to update its curriculum. Despite recent improvements, it is not yet producing the professional, high-quality judiciary to which the country aspires. The fundamental overhaul of the judicial training college, which has begun, should be continued, expanding to cover in-service training for judges and professional training for court administration staff.
5. There is inadequate oversight of the principal legal professions, encompassing lawyers, notaries, *aduls*,¹ bailiffs and experts, by their respective professional organizations. The judiciary has also played a role, failing to provide a convincing measure of supervision of their activities. The considerable rise in the number of lawyers in Morocco is obviously linked to a near doubling of the caseload of courts in the past ten years. The majority of work undertaken by lawyers is in litigation.
6. The court system is caught in contradictory structural trends, encompassing the creation of specialized commercial and administrative courts (commercial, administrative) and the establishment of specialized family divisions within the first-instance courts. After recently introducing proximity justice² with municipal courts and resident judges, there is now support for rationalizing and simplifying the Moroccan judicial map, which is comprised of some 1,109 courts.

¹ Traditional clerk.

² *Justice de proximité*, form of mediation where small disputes are resolved by non-judges, "neighborhood justice."

7. The institutional framework for the judiciary is encompassing, from the statutory provisions, to the recruitment and career processes, the role of supervisory institutions such as the General Inspectorate and the career management and disciplinary roles devolved to the High Council for the Judiciary. These institutions, however, appear unduly rigid, limiting their ability to respond appropriately to manage rising caseloads. A new balance must be struck between judicial accountability and independence.
8. Measurable progress has been made in challenging the pattern of a relatively passive and routine-driven judiciary. The goal of a pro-active and efficient judiciary, however, will require a great deal of additional reform. This goal should pervade each component of the judicial process, from initial training to procedural reform, and from court management to the supervision of enforcement. Court managers in particular have little leeway to take initiative to improve performance. Statistically, the courts appear to perform satisfactory, but there is little in the way of standard measurement techniques to provide realistic information on the evolution and flow of caseloads.
9. The Ministry of Justice has embarked, with the assistance of several donors, on an ambitious program of court computerization. Although not perfect, the performance is highly encouraging and the information technology software has been designed and installed by the Ministry's staff. This has ensured local ownership and adaptation to the specific needs of the Moroccan system. The next challenges are to expand computerization to the entire court system and to ensure regular upgrading. The Ministry of Justice should therefore endeavor to recruit and maintain the necessary technical staff.
10. The budget for the sector is still relatively small, limiting reform efforts. The Ministry of Justice's ambitious goals may actually be further undermined by the government practice of reducing public budget by the amount of donor contributions. Judicial salaries remain low and the judiciary is dependent on a series of Ministry-managed benefits.
11. A major program of renovation of infrastructure and equipment is under way at the initiative of the Ministry of Justice. The program should be expanded over the medium- to long-term.
12. Enforcement is a crucial problem, unanimously seen as a major obstacle to the efficient and fair functioning of the Moroccan justice system. Enforcement problems are caused by the unclear role and competence of enforcement personnel, lackadaisical attitudes to enforcement, outdated enforcement procedures, and corruption among enforcement officials. The lack of proper enforcement jeopardizes ongoing improvements in the judicial sector. Enforcement will, as such, need to benefit from significant progress in the immediate future.

13. Several donors are active in the field of legal and judicial reform in Morocco, although there is overlap among some donor activities. There is no established donor coordination mechanism.

INTRODUCTION

Development Background

14. The Kingdom of Morocco is located in the northwest corner of the African continent. Its boundaries are the Mediterranean in the north, the Atlantic Ocean to the west, Algeria to the east, and Mauritania in the south. Morocco holds an important geopolitical location along the Strait of Gibraltar.
15. Its strategic location has made Morocco home to a variety of civilizations, and Moroccans pride themselves on the country's culture of tolerance. Islam established itself in the seventh century of the Gregorian calendar. A succession of dynasties ruled the country, and the current Alaouite dynasty was founded in 1649. Following an agreement between Britain, France and Spain, the 1912 Treaty of Fez established a protectorate in Morocco, dividing it into three zones of influence. After several years of conflict initiated in 1944 by the *Istiqlal* (Independence) party and the strong support of King Mohamed V, Morocco regained full independence in 1956.
16. The population density in Morocco is 41 persons per square kilometer. In the mid-1990s the urban population surpassed the rural population and now stands at 56%. The birth rate dropped sharply between 1994 and 2001, from 3.3 to 2.1 children per woman, while life expectancy rose from 67.8 to 70 years. The population growth rate is 1.74% and 35% of the population is under the age of 15.
17. Education is free and compulsory through primary school. Nevertheless, many children still do not attend school. The illiteracy rate is approximately 50%, but may reach up to 90% for girls in rural areas.

Constitutional and Administrative Background

18. The Kingdom of Morocco is a constitutional monarchy. The last amendment to the Constitution was made October 6, 1996.
19. H.M. King Mohamed VI assumed the throne in July 1999, following the death of his father, H.M. the late King Hassan II. The King is the supreme representative of the nation. The King enforces respect for Islam and the Constitution and is the protector of civil rights.
20. Legislative power is exercised by the Parliament, which is composed of the Chamber of Representatives and the Chamber of Counselors. Representatives are elected by direct and universal suffrage. Counselors are chosen indirectly through locally elected authorities, professional bodies and representatives of salaried workers.

21. The Executive Branch of the government is made up of the Prime Minister and the Council of Ministers which is accountable to Parliament and the King. The Council of Ministers enforces laws and manages the State's administration. The Prime Minister has the power to enact regulations, and may delegate certain powers to ministers. The King presides over the Council of Ministers, and appoints the Prime Minister following legislative elections and also appoints all the members of the Government, upon the recommendation of the Prime Minister. The King may terminate any Minister, dissolve Parliament and call for new elections. He is the head of the military and the country's religious leader.
22. Morocco is divided into 10 regions (*Wilayas*) which are subdivided into 24 *préfectures*, and 31 additional provinces, each of which is composed of urban and rural municipalities. Municipal and provincial authorities are elected through proportional representation and include representatives of various professional bodies.
23. The judiciary is independent from both the legislative and executive according to Article 82 of the Constitution.

Economy

24. Although GDP rose by 20% between 1994 and 2001, the increase in real terms was only 5%. The minimum monthly wage is 1,900 Dirham (US\$ 200), and the poverty line for urban households is US\$ 35. Five and a half million people, approximately 18% of the population, live below the poverty line, up from 3.3 million in 1994. This is the result of an unemployment rate of approximately 20% for the population at large, while the Moroccan youth suffers from the highest rate of unemployment, at 84.5%. 73.3% of households own their principal residence, but only 53% have access to clean water networks and 65.9% to electricity. In rural households, the figures are much lower, 7.8% and 25.8%, respectively.
25. Since the early 1980s, Morocco has pursued sustainable economic growth through structural reforms, including restrictions on government spending, encouraging private sector growth, and trade liberalization. The national currency, the Dirham, is fully convertible.³ Among the challenges Morocco has to confront are improving the climate for investment, increasing job opportunities, particularly for youth, modernizing the economy sufficiently to enter the European Union free trade area, addressing the balance of trade deficit, and diversifying the economy, which is dependent on the agricultural sector.⁴ UNDP ranks Morocco 112th out of 174 countries in its human development index, below the average of other Arab countries. According to a USAID report, "Morocco's per capita income qualifies it as a

³ The current exchanges rates to the United States' Dollar are currently approximately the following: US \$1 = 9,45 MaD, and 1 MaD = US \$ 0,11.

⁴ Agriculture production is dependent on adequate rainfalls, explaining the wide variations in its share of GDP, from 13 to 20%, according to the variable and sometimes persistent effects of drought.

lower/middle-income country. Yet Morocco's social statistics are those of a much poorer, less-developed country."⁵

Government's Position on Legal and Judicial Reform

26. H.M. Mohamed VI has endorsed the development of the rule of law and has made it a priority of his reign:

"We are extremely devoted to constitutional monarchy...and to the building of the rule of law."⁶ "Our determination is great ...to work towards the consolidation of the rule of law in the area of economic development, the reform of justice, the increase in the number of commercial courts and the design of appropriate financial legislation."⁷

"Justice is evidently the prime safeguard for the security, the stability and social cohesion which form true citizenship. It is also an active agent in the moralization of society, the establishment of peace amongst its members, the guarantee of having the conditions for economic development and social progress, as well as in the opening of new avenues for an effective democratic life which will allow the fulfillment of the hopes We have for the Nation."⁸

27. In a speech for the new judicial *annum*, given in Agadir on January 23, 2003, H.M. Mohamed VI stated that "we have made justice the foundation and the ultimate goal of our doctrine of power." Progress in reform, the King stated, "is necessary to ensure the modernization and scaling up of the judicial system." A letter setting out a program to implement this vision was sent to the government, listing priorities as the modernization of the justice system, the rationalization of case management, simplifying proceedings, and expanding the use of information technology. It also recommends the use of alternative models of dispute resolution, with an emphasis on commercial arbitration, the creation of a fund for children of divorcees, and a review of the High Court of Justice and the humanization of correctional facilities.⁹

28. Consequently, the Government has made judicial reform one of its key objectives. The Prime Minister has stated that "the Government will act together with all the professions and components of the judicial sector in view of a national mobilization around a modernization program for our judicial system. Towards this end, it is resolved to increase the capacities of the judicial administration, to improve the relations between the central administrative organs and judicial institutions, to reinforce the judicial inspectorate, to improve the distribution of judicial services on

⁵ See <http://www.usaid.gov/pubs/cbj2002/ane/ma/>

⁶ First Royal Speech, July 30, 1999 (see MOJ website at www.justice.gov.ma).

⁷ Royal Speech, Casablanca, October 12, 1999, (see MOJ website at www.justice.gov.ma).

⁸ Royal speech for the inauguration of the High Council for the Judiciary, December 15, 1999, (see MOJ website at www.justice.gov.ma).

⁹ See <http://www.justice.gov.ma/fr/discour.htm>

the basis of a renovated judicial map, to attribute a greater importance to the training of judges and other legal professions, to create a system of enforcement judges both in the civil and criminal areas, to consolidate the experience of administrative and commercial courts.”¹⁰.

29. The duties of the Ministry of Justice were redefined by a decree dated June 23, 1998, which sets out three areas for reform in the legal and judicial sector. Institutions targeted in the judicial area includes the Directorates for Civil Affairs, Criminal Affairs and Pardons, Corrections and Rehabilitation, and the directorate with responsibility for the municipal and district courts. The operations area encompasses the Directorate for Human Resources and the Directorate for Budget and Equipments, both within the Ministry of Justice. The third area will use studies and evaluations to assess the justice system, to be carried out by the Directorate for Studies, Cooperation and Modernization and the Center for the Analysis of Petitions.¹¹
30. A law and justice reform program was developed by the Ministry of Justice and implemented over the past five years. The program has two major objectives: urgent rehabilitation and modernization. Rehabilitation involves redefining the role of the courts and of the ministry, ending executive interference into judicial affairs, expanding the supervisory role of the General Inspectorate, giving a greater role to the High Council for the Judiciary, and establishing a media plan to inform the public of the changes under way. The modernization component includes the rationalization of court and ministry management, revising the program of professional training of judges and prosecutors, improving access to justice, introducing administrative and commercial courts, and prison reform. The reform program also more aggressively pursues international cooperation emphasizing greater openness in combination with national ownership of projects. It is within this framework that the World Bank provided a loan for the development of the commercial courts.¹²
31. The Council for Judicial Reform was recently established, which is composed of officials from the Ministry of Justice, lawyers, notaries, and representatives from the banking sector. Its role in judicial reform has not yet been determined, and its support from legal professionals is still wavering.

¹⁰ Overall policy declaration of the Government before Parliament, April 1998, (see MOJ website at www.justice.gov.ma).

¹¹ The detailed description of each of the Ministry’s units’ role can be found in the recent publication entitled “*le Ministère de la Justice*”, pp. 27-37.

¹² A presentation of the program currently under way is attached to the report as Annex 2. (Morocco: Legal and Judicial Development, 2000)

Sector Assessment

32. Legal and judicial reform is a long-term process, and for the process to be sustainable, it requires a corresponding long-term commitment from the country. Law and justice sector activities must be approached strategically, bringing together elements that promote the rule of law through holistic and comprehensive reform programs. Sector assessments are often the first critical step in the process to reform the legal and judicial sector. This not only provides baseline knowledge of the country's laws and legal system and institutions, but also can facilitate a constructive dialogue with stakeholders and donors in that country. The findings from this Assessment are aimed at assisting in the identification of legal and judicial reform priorities and areas where further diagnosis may be warranted. It is hoped that this Assessment will be used as input into the Government's comprehensive plan for reform which should take into account Morocco's legal, economic, social, and political environment, as well as resources and capacity constraints.¹³

¹³ "Legal and Judicial Sector Assessment Manual," Legal Vice Presidency, The World Bank (2002).

LEGAL SECTOR

Basic Legal framework

The basic laws

33. The Kingdom of Morocco has civil, criminal, and commercial codes, and corresponding procedural codes. A number of these codes have been recently updated, including the criminal law and procedure codes and the commercial code. The Civil Procedure Code of 1974 is in the process of being updated. The revision will expand the case preparation powers of judges and reduce the scope for procedural objections. A law introducing the admissibility of electronic signatures is due at the end of the year.
34. Revision of the Criminal Procedure Code represents the most substantial reforms currently being implemented. The position of investigating judge has been reintroduced into the Moroccan criminal justice system and the juvenile courts have been reestablished. Single judge jurisdiction has been expanded, the position of a specialized penal enforcement judge has been created, and the prosecution may now pursue alternatives to a criminal trial, including conciliation or mediation.
35. The Code of Personal Status¹⁴ was revised in 1993 in order to amend the legal status of women. The revisions addressed the following subjects: consent to marriage, the role of the family council, legal tutelage, and living allowances for children. Polygamy was not addressed. Family law is of great importance because of its social, religious and political implications. The Ministry of Justice is also responsible for the incorporation into domestic law of international conventions signed by the Kingdom of Morocco, such as the 1996 Agreement on Abducted Children.
36. Several laws were recently enacted to improve conditions for business activities, including the Companies' Code, the Customs Code, a competition law, and a law on intellectual property rights. The revisions, though, are seen by some as too technical given both Morocco's economic structures and the proficiency of the legal profession.
37. An arbitration code has been drafted with the assistance of the World Bank and is being implemented. The Commercial Leases Code is being reviewed by the legislature, specifically in an effort to address the provisions affecting commercial rental property. There is concern, however, regarding the absence of a consumer law and the poor drafting of the recent law on PLCs.

¹⁴ *Muddawana*.

38. **Recommendation**

The current pace of modernization of the legislative framework must be maintained, with enhanced research into the actual needs of Moroccan society.

Case law

39. Case law is a major source of Moroccan law, despite the absence of formal binding precedent. The substantive rulings of the Supreme Court are, *de facto*, binding upon lower courts. The judiciary does not have the power under the Constitution to review legislation. The major problem, however, is the lack of dissemination. A biannual journal contains major decisions by the Supreme Court, but its circulation is limited. Therefore, it is important to ensure that judges have access to such cases.

40. **Recommendation**

Support should be given for the dissemination of decisions made by the superior courts.

Shari'a (Islamic) law

41. *Shari'a* (Islamic) law is a rich legal tradition upon which the Moroccan legal system is also based.¹⁵ As such, Morocco enjoys a dual legal system, creating alternative legal solutions in specific substantive areas. Laws are applied by professional judges acting in a specialized capacity within the courts of general jurisdiction.¹⁶ Islamic law is applied in the first-instance court by a *Taoutiq* judge, with assistance from *aduls*, or traditional clerks.¹⁷ In these cases, however, judges will be full-time professionals who may move on to other positions later in their career. A dichotomy has ensued, with Islamic law governing personal, family and succession issues,¹⁸ and civil legislation covering contract law, commercial law, administrative law, civil procedure, and criminal law.

Law making

42. Law-making is largely the responsibility of the Executive, which promulgates royal guidelines. Parliament's role in the law-making process has been enhanced, but it lacks the in-house capacity to challenge the draft legislation it reviews. In

¹⁵ Islam is explicitly mentioned as the religion of the State in Article 6 of the Constitution. The King is assigned the personal responsibility of maintaining the Moslem faith by Article 19.

¹⁶ The principle was set out in 1965 in the "Act of Unification," which provided that "all *Shari'a* and Jewish law, as well as the civil and criminal laws in force, will remain applicable by the unified courts until such texts are revised."

¹⁷ The Jewish community may require the application of rabbinic law by a Jewish judge.

¹⁸ Subject to limited circumstances in which the parties may rely on civil laws.

particular, it appears that members of Parliament need research support and training in legislative drafting.

43. The two parliamentary assemblies, the Chamber of Representatives and the Chamber of Counselors, have been slow to pass legislation. Ordinary laws may require two or more years in the legislative process. Legislation setting the official fees for bailiffs took nine years to be issued.

44. The Constitutional Council, established by the Constitution, is composed of twelve members, six of whom are appointed by the King, and three each by the presidents of the two parliamentary assemblies. Its task is to ensure the constitutionality of draft legislation referred to it by the King, the presidents of the two parliamentary assemblies, the prime minister, or one-quarter of the members of either assembly.

45. **Recommendation**

Reformers should focus on capacity-building in the area of law-making in each of the institutions involved in drafting legislation.

Legal information

46. All laws and regulations are published in the Official Journal, which is distributed to courts, but not to judges individually. There is an insufficient supply of legal information flowing to judges. Some judges purchase legal codes with their own money if the court's budget is insufficient. As a result, revised legislation may not reach judges for some time, at best generating unnecessary appeals and, at worst, undermining the efficient and fair operation of the courts. Given this, the impact of revised laws is likely to be substantially delayed until they actually penetrate the legal community.

47. The Directorate of Studies, Cooperation and Modernization does, on an *ad hoc* basis, inform judges of new provisions in the law of which it is aware, but the effort is short of a comprehensive official bulletin, which would systematically publish all the norms.

48. There are a number of publications issued through the universities, and journals are published by the Ministry of Justice, the Supreme Court and the judicial training college (I.N.E.J.). Nevertheless, the number and the dissemination of these documents is quite limited. There is no publication of appellate court decisions, undermining regional consistency between first instance courts under the same court of appeal. Judgments are, as a rule, not published, and only accessible to the parties to the dispute, which undermines transparency.

49. The majority of lawyers do not have access to case law, particularly that of the courts in which they practice. A fee-based Internet service, *Artemis*, which provides access to selected cases, has recently started. Its availability and content appear at this stage to be quite limited.

50. **Recommendations**

A major effort should be made to support the development of law publications. Judges should be given a standard minimum “legal toolkit” of basic codes and other documents pertaining to their activities. This toolkit should be developed and updated as needed.

Legal education

Legal education of students

51. Legal education is offered almost exclusively through the law faculties of the 14 public universities.¹⁹ Morocco has about 300,000 students enrolled in its universities. The oldest and best known university is the Mohamed V Faculty of Law in Rabat. Legal education is divided into two streams: Arabic-speaking and French-speaking. As primary and secondary curricula integrated Arabic language instruction, the numbers of students in the French system at the university level decreased. Today, this trend is being reversed. Universities such as Casablanca are responding to the demand from business executives and senior civil servants for French speaking professionals. Students trained in Arabic find fewer positions open to them outside the judiciary and the bar. The teaching methodologies associated with each are also distinct. French instruction tends to be more demanding and has greater interaction with the international community. The result has been that the smaller number of graduates produced in the French-speaking system find immediate and lucrative employment in the private sector or in the larger law firms.

52. Given that the curriculum for legal studies dates back to the 1960s, it is in need of an update. The quality of graduates does not meet the demands of the economy. In addition, approximately 60% of students do not complete their LL.B studies. The Ministry of Justice is aware of the criticisms of the education curricula and is considering the introduction of specialized training courses as early as the third year of legal studies. The courses would be aimed at practical skills. Courses would also be geared toward the needs associated with entering each profession, whether as a notary, bailiff, lawyer or judge. There are debates, however, regarding specialization, with universities suggesting a more flexible process modeled after the European system of LL.B, LL.M and LL.D degrees. Specialized courses would then be progressively integrated into the curriculum as the student advances. To support such changes, law libraries will need more legal documents and the appropriate computer

¹⁹ There is one private, English-language, American-style university, *Al-Akhawayn*, founded in 1993 by King Hassan II. There are approximately 1,000 students.

and Internet facilities. Support for the production and dissemination of Moroccan doctrinal research is insufficient.

53. Recommendation

Law studies are in need of a substantial redesign which would involve the progressive introduction of courses aimed at the needs of each profession.

Training of the legal profession

54. Lawyers, notaries and bailiffs are required to have a bachelor's degree (*licence*) in law and pass a professional examination. Following the exam, they are then required to work as interns with a member of their profession, generally on the basis of an individual agreement between the trainee and the trainer. The investment of time and commitment by trainers varies widely because there is no proper monitoring of professional skill development of the lawyers in training, nor agreement as to the skills they should possess by the end of their internship.

55. Professional training of aspiring lawyers is limited. The bar offers conferences infrequently and the contents are rarely focused on practical skills. A law passed in 1993 provided for four regional training centers for lawyers, but they have not been established to date. A new possibility for lawyer trainees is to follow specially tailored courses at the judicial training college. The judicial training college, the *Institut National des Etudes Judiciaires* (I.N.E.J.), offers preparation for the professional diploma for notaries ("*certificat d'aptitude aux fonctions notariales*"), and offers a three-month training course for bailiffs before they start their practical internship.

56. Recommendations

The training curricula of the various legal professions should be reviewed in order to ensure that professional skills are acquired. Training programs should include examination procedures to ensure the quality of legal professionals. Professional bodies representing the legal professions should more closely supervise training programs and exercise greater disciplinary oversight.

Legal professions

Lawyers

57. The legal profession is regulated under Law No. 1-93-162 of September 10, 1993. Lawyers are required to have an LL.B, pass a professional examination, and intern with a practicing lawyer before they can become fully qualified lawyers. There is no cooperation between the bar and universities for the professional training of lawyers. Lawyers are an independent profession and legal representation is required in all

courts in Morocco.²⁰ They act as legal counselors and may draft any legal, non-authenticated document.

58. As of 2002 there were more than 7,000 lawyers in Morocco. There are an additional 1,300 in training. Lawyers are individually registered with one of the 17 bar associations. Each bar is managed by an elected council which is headed by the bar president. Individual bar associations are federated within a national association. A partnership agreement was signed between the Ministry of Justice and the national association of lawyers, which led to the creation of joint commissions on the reform of the legal profession, legislative follow-up, and other issues of professional interest to lawyers. Bar associations have also committed themselves to properly investigating and, where appropriate, punishing misconduct.

Notaries and Aduls

59. There are more than 300 notaries in Morocco, whose role is similar to that under the Latin law system. Their main function is to draw authenticated legal documents such as contracts of sale of immovable properties, marriage contracts, wills, loans and similar instruments. In comparison to other Latin law countries, the number of notaries appears relatively low. However, *aduls*, the traditional clerks, carry out some notarial activities. There were approximately 3,500 *aduls* as of 2001.

60. Notaries are regulated by laws which were last modified in 1934, although a set of new regulations drawn up with the assistance of the National Association of Notaries is currently under review. Notaries are supervised by the National Council for Notaries. They form an independent profession, recruited on the basis of a professional examination open to graduates with a LL.B, for which the I.N.E.J. offers a specific preparation course. Notaries are trained through practice oriented internships. A number of Moroccan notaries have also benefited from professional training offered by the French notary training institutions.

61. *Aduls* are attached to the *Taoutiq*, the judge in charge of traditional family law disputes in each first-instance court. They act as both official witnesses and notary publics, and always operate in pairs. They are appointed by the Minister of Justice and supervised by the Court of Appeal. *Aduls* are not paid by the Ministry of Justice, but are entitled to a percentage on the amount of the transaction they transcribe, as well as to drafting fees set out by decree. They do not have an official organization to ensure that members observe laws and ethical norms. Their representatives are also petitioning for the modernization of their professional training. *Aduls* are assisted by copiers, who are appointed by the Minister of Justice and paid according to an established fee schedule.

²⁰ With the exception of alimony cases where parties may appear in court *pro se*.

Bailiffs

62. Bailiffs are an independently regulated profession,²¹ whose income is based on a fee schedule.²² Bailiffs must satisfy a number of recruitment criteria before taking a professional examination. After passing this exam, bailiffs are assigned to a posting by the Ministry of Justice. They must participate in a three-month training session at the I.N.E.J. and a three-month practical internship. Bailiffs' main responsibilities include serving legal documents necessary for the advancement of proceedings, drafting any instrument required for the enforcement of judicial decisions, and enforcing judicial decisions, particularly the payment of outstanding claims. They may also serve writs and summons, collect debts or write up factual findings at the request of the judge or of individual parties.
63. Bailiffs are the principal but not the only enforcement agents. Courts retain a number of employees who act as enforcement agents for the service of documents, the sale of goods, or evictions. Court enforcement agents are also entrusted by commercial courts with the liquidation of bankrupt companies. Because the agents have neither the time nor the economic expertise to do so, they are generally assisted by an accountant acting as a court expert.

Translators and experts

64. Translators and judicial experts are independent professionals who provide technical assistance to the courts on the basis of their expertise or training. They are selected on a case-by-case basis to assist the judges. There were approximately 375 translators and 2,000 judicial experts as of 2001. The competence and independence of experts is frequently in question, and it appears that the courts do not exercise adequate supervision over the experts.

65. Recommendation

The supervision of all ancillary legal professionals should be part of the responsibility of the professional judiciary, and they should be specifically trained to provide such supervision.

Legal services

Legal advice

66. Legal advice is provided by lawyers. The number of lawyers in Morocco in relation to the proportion of the population capable of paying for legal services is significant. At the present rate of growth, the number of lawyers will double over the next ten years. The number of cases filed between 1994 and 2002 has increased by

²¹ Law #41-80 of December 25, 1980.

²² Law #1145-89 of July 26 1989.

64%, explaining the increasing number of lawyers. Lawyers primarily litigate, with the exception of the corporate lawyers that cater to the business community. It is common for lawyers to work as sole practitioners. Lawyers are sought as a remedy of last resort, when the dispute is already well along. There is little use for negotiation or out-of-court settlements. More importantly, the remuneration of lawyers is based on the case. Since the great majority of lawyers are generalists, specialist legal advice is seen as deficient.

67. Despite their numbers, Moroccan lawyers remain predominantly sole practitioners. There are no specific laws regarding the establishment of law firms, and the firms that do exist are few in number. The issue of dual languages emerges in this context, with French-speaking graduates recruited by the best law firms. There are very few students from the Arabic-speaking schools in the law firms. French-speaking lawyers generally work with the business sector. These lawyers, though, have difficulty with the Arabic-speaking judiciary, which requires that all procedural steps be undertaken in Arabic. Arabic-speaking lawyers are able to function well in the courts, but have few links with the business world. The result is that business disputes almost systematically rely on the use of translators, causing delays.

68. There is a growing concern with professional ethics in the legal and judicial communities, specifically with their enforcement. Up to 800 of the 3,000 lawyers registered with the Casablanca Bar Association, serving a population of 3 million persons, are “homeless.”²³ They have no fixed business address and operate with a cellular telephone from undisclosed premises. These lawyers tend to have poor reputations. The bar association has great difficulty in supervising these “homeless” lawyers, who are said to prey on the uninformed and often maintain frivolous suits in order to collect higher fees. There is also an unregulated group of legal advisors who are not lawyers and are not registered with the bar, and who technical skills which are difficult to find among practicing lawyers. The Ministry of Justice’s statistics for disciplinary prosecutions show that between 1998 and the first semester of 2002, there has been a tenfold increase in the number of disciplinary proceedings against lawyers, reaching 400 cases. There is a similar trend for criminal prosecutions of lawyers. It is thought, however, that disciplining unethical behavior lags well behind the need. In cases where sanctions are imposed, they are often reduced on appeal. There is an obvious role for the Moroccan bar association to fulfill, to better monitor and discipline the profession, to require quality legal advice, and look for ways to settle the cases.

69. **Recommendations**

Entry to the legal profession should require a more selective entrance examination, professional training, evidence of practical skills, and training in professional conduct and ethics. Applicants should be evaluated by an independent professional body. The activities of lawyers should be redirected towards legal advice and efforts should be made to prevent frivolous litigation. The authority of professional bodies should

²³ In French , «sans domicile fixe» (sic).

be reinforced in order to better train, protect and discipline the members of the bar. Legal provisions should be introduced to facilitate the establishment of lawyers' firms.

Legal drafting

70. A number of legal professionals draft legal documents. Lawyers may draw up any legal document, which is considered valid with the signatures of the parties involved. There are also a number of independent experts or jurists who may have the same technical ability.
71. Notaries still draft the majority of documents, thereby rendering them authentic and recorded evidence of a legal transaction. Such documents have the most reliable legal standing in court as to contents and date. They not only offer a greater level of security, but also minimize potential litigation because the legal instrument itself is unlikely to be a source of dispute. The number of notaries remains low, although it appears to be rising. The ratio of notaries to the population is 1:100,000. As such, the quality of service offered by notaries is only available to a few clients, most likely the ones able to pay their fees. The bulk of the population relies on the *aduls*.
72. Bailiffs may also draft certain procedural documents, such as summons to pay or descriptions of rented premises.
73. **Recommendation**

In order to improve access to quality legal instruments, the number of notaries should be expanded.

THE JUDICIAL SECTOR

The Constitution

74. 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.

The Organization of the court system

75. The organization of the judiciary in Morocco is based on a 1974 law which was amended in 1991 to create administrative courts, and in 1997 to establish commercial courts. The judiciary is divided into three principal types of courts, general jurisdiction courts,²⁴ specialized jurisdiction courts,²⁵ and special courts.²⁶ Ultimate power of review lies with the Supreme Court.

General jurisdiction courts

76. There are 837 municipal and district courts²⁷ with a single, non-professional judge. Municipal and district courts were established in 1974 to make justice more accessible to people. The judges belong either to the career judiciary or are elected by a commission headed by the local political authority. Elected judges are assisted by two elected advisors. These courts rule on minor criminal offences and on civil cases where the amount in dispute is less than \$US 110.²⁸ Cases involving up to \$US 220²⁹ can be heard in the same court if the parties consent. These courts do not have jurisdiction over personal status cases and real property.
77. The Ministry of Justice has recently filed a draft law to replace non-professional judges with career judges because there is criticism as to the integrity and independence of non-professional judges, though this remains a debated issue.
78. The 68 first instance courts exercise general jurisdiction over civil, social and commercial matters, and hear personal status and real property cases. These courts hear criminal cases involving petty offences and misdemeanors, and offenses which are punishable by a sentence of more than one month in prison and a fine of more than 1,200 Dirhams.³⁰ These were single judge courts until 1993, but are now three

²⁴ In French, “*juridictions de droit commun.*”

²⁵ In French, “*juridictions spécialisées.*”

²⁶ In French, “*juridictions d’exception.*”

²⁷ *Jama ‘at wamuqati’at.*

²⁸ 1,000 dirhams.

²⁹ 2,000 dirhams, which is equivalent to one month’s minimum wages.

³⁰ Approximately US\$ 125.

judge panels. Single judges' jurisdiction has been reintroduced for social law matters.³¹ The presiding judge of the first instance court has personal jurisdiction in summary and urgent matters, as well as for *ex parte* orders. Serious offences are investigated by an investigating judge, who also has the power to put a suspect in pre-trial custody.

79. The 21 courts of appeal hear appeals filed from first instance courts. An appeal court includes a criminal division which hears crimes punishable by death, imprisonment, temporary confinement, assigned residence, or the loss of civic rights. The criminal division is composed of five judges. It also includes a misdemeanor division which rules on the appeals from first instance courts, and orders issued by the investigating judge.

Specialized jurisdiction courts

80. There are 7 administrative tribunals established by a 1991 law. The judges were specifically recruited and completed a special training curriculum at the I.N.E.J. Administrative courts rule on decisions of administrative authorities related to contracts, public pensions, fiscal cases, expropriations, electoral disputes, and liability for damages caused by public bodies. The capitol's administrative court has national jurisdiction.
81. Administrative courts are widely held respected. There are plans to establish administrative appeal courts. Appeals are currently filed with the administrative division of the Supreme Court.
82. There is an independent system of audit courts at the central and regional levels. They are considered so important in the institutional structure of the judiciary that an entire title of the Constitution is devoted to them.³²
83. There are eight commercial courts and three commercial appeals courts which were created in 1997.³³ These courts hear commercial cases where the amount in controversy is in excess of 20,000 Dirhams³⁴ and the dispute concerns commercial contracts, commercial paper or commercial goods.
84. Commercial courts supervise the operations of the commercial registry, which is composed of local registries attached to local courts and a central registry under the authority of the Ministry of Trade. Their objective is to register all persons engaging in trade. The central registry centralizes the information collected locally and protects trademarks. Commercial registries make available official information on traders to the public for a nominal fee. A coordination committee in the Ministry of

³¹ Recent legislation has allowed single judge benches to rule on workman's compensation and disputes regarding illnesses (Art. 270, 279, 289 of the civil procedure code).

³² Title X, Articles 96.

³³ Law # 53-95 of February 12, 1997.

³⁴ Approx. US\$ 2,200.

Justice ensures the coordination of all registration activities, as well as the implementation of all relevant regulations.

85. Despite the respect for the administrative and commercial courts, there is discussion about the necessity for specialization. First instance courts of general jurisdiction now have jurisdiction over smaller commercial claims. In addition, no new courts are being considered except for administrative appeal courts. This implies that there is a policy not to create additional specialized courts, preferring to establish special divisions within existing courts as the need arises. This choice has important procedural and statutory consequences, inasmuch as it means that commercial proceedings must be homogenous, whether the case is filed in commercial or general jurisdiction courts. In addition, that there is little chance of seeing a body of specialized judges emerge for the commercial courts. Training courses at the I.N.E.J. should reflect this policy by offering courses relevant for all judges, at least during the first part of the training curriculum. The pilot experiences in seven courts of general jurisdiction, where specialized family divisions were set up, support the view within the Ministry of Justice that specialization should be internalized, rather than take the form of separate courts. This approach does offer both specialization and a greater measure of flexibility in the use of court personnel. The family division, for example, may be reinforced as needed by other judges.

86. **Recommendation**

The internal operations of the courts should be studied and redesigned to maximize available resources, improve court management techniques, and to accommodate varying degrees of specialization given the size and caseload of the court.

Special courts

87. The High Court was established in 1965 by Article 88 of the Constitution to hear cases involving corruption by judges, prosecutors and civil servants, where the amount in dispute is in excess of 25,000 Dirhams.³⁵

88. The Special Court of Justice has jurisdiction over cases involving civil servants accused of corruption and similar offences. It is currently undergoing an in-depth review of its jurisdiction³⁶ as a result of serious criticism. Its revised role will include hearing all financial crime cases, functioning as a key component in the fight against public corruption.

89. The Permanent Armed Forces Tribunal hears cases involving military personnel and offences involving the exterior security of the State.

³⁵ Approx. US\$ 2,800.

³⁶ As announced in a speech made on January 23, 2003, by H.M. the King.

The Supreme Court

90. The Supreme Court³⁷ is the highest appellate court in Morocco. The Court has six specialized divisions, which are each divided into sections. A panel of at least five justices hears cases. For important cases it may sit *en banc*. The Supreme Court is a court of cassation, which means it hears appeals only on issues of law. When a petition is granted and ruled on, the case is referred back to an appeal court to decide on questions of both fact and law. The Court also reviews cases of abuse of discretionary power in decision-making by regulatory or administrative tribunals, the Prime Minister, or other administrative authorities where such decisions concern more than one administrative court's territorial jurisdiction. The Supreme Court decides approximately 40,000 cases a year.

Judges

The High Council for the Judiciary

91. The High Council for the Judiciary, under Article 86 of the Constitution, is presided over by the King. The Minister of Justice acts as vice-president. The council is composed of nine judges and prosecutors. The president and prosecutor general of the Supreme Court, and the president of the first division of the Supreme Court are *ex officio* members. Six judges are elected by their peers, two of whom are from appeals courts and four from courts of first instance. Such significant participation is not common in the Arab world, though it is not unknown.³⁸

92. The Council meets quarterly with an agenda set by the Minister of Justice. Its powers include the management of judicial careers, as well as disciplinary authority over judges and prosecutors. In the event of a tie vote, the Minister of Justice holds the deciding vote. The Minister sends the Council's recommendations to the King, who in turn makes a final decision by issuing a Royal Decree. The council is assisted by a secretary general, who is a judge appointed by decree and upon proposal by the Minister of Justice. The secretary general's role is to prepare the information necessary for the decision-making by the council and to implement the decisions. He/she monitors court performance and the distribution of judicial human resources. The secretary general also attends the meetings of the High Council in order to assist the Minister of Justice, but does not vote.

93. The elected members of the High Council are a majority (6 to 5), and the members of the judiciary outnumber the non-judicial members 9 to 11. The elected members cannot be promoted, reassigned or delegated during their term of office to ensure independent decision-making. The Minister of Justice's position is a member through a direct constitutional provision³⁹ and is the *ex officio* vice-president of the

³⁷ *Al-majlis al-a'la*.

³⁸ See *Arab judicial structures*, by N. J. Brown, at www.undp.pogar.org/publications/judiciary/nbrown.

³⁹ Art. 86 of the Constitution.

council. These elements combine to ensure a level of independence in the management of judicial careers and discipline.

94. The Council includes the two most senior judges in the country, as well as presidents of appeal and first instance courts.

95. **Recommendation**

There should be better representation on the High Council of the lower ranks of the judiciary for the Judiciary to ensure participation and greater judicial independence.

Training of the Judiciary

96. The training of judges has been carried out by the National Institute of Judicial Studies (I.N.E.J.⁴⁰) for nearly 40 years.⁴¹ Its performance has, until recently, been the subject of severe criticism. A ministerial publication, for example, blamed the low level of judicial competence on the quality of training offered by the institute, its lack of staff and resources, shortcomings in the structure of court internships, and others issues.⁴² Recent steps have been taken to improve judicial training. Classes are composed of a maximum of 28 trainees. Recent reforms of the institute's pedagogy have introduced more interactive education and mock trials. Computer training is now standard. Trainees are also taken for a number of study tours of various public, economic and social institutions.

97. It seems, however, that courses are still lecture driven and classes are sometimes larger than 28 trainees. An important effort is being initiated with the assistance of the French *Ecole Nationale de la Magistrature* to reorient courses towards a more proactive style of teaching, with smaller groups of trainees, in a process more attuned to the professional training of adults. Emphasis is placed on enhancing practical skills. Systemic application of these changes would be beneficial.

98. The primary role of the I.N.E.J is to provide the initial training for the judges. Trainees, called *judicial attaches*, attend a two-year mandatory training. Pre-selection of candidates is made on the basis of university performance. Typically, pre-selection narrows the number of candidates for the entrance examination to five times the number of positions open. The examination panel is independent of the I.N.E.J. The examination is designed to assess academic excellence as well as the capacity of the candidates to be judges.

99. Typically, the age of trainees is between 21 and 30, one quarter of whom are women. Half the trainees have an LL.B., with the remainder holding higher qualifications. Eighty percent have had no previous professional experience, and 90% of the trainees

⁴⁰ *Institut National des Etudes Judiciaires*.

⁴¹ This is a type of structure quite common across the Arab countries, except in the Sudan, Syria and the United Arab Emirates.

⁴² See p. 45 of *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche*.

are from the city, in a country where 45% of the population is rural. There is no policy to ensure geographic representation. Critics of this system stress that it relies too heavily on university academic performance, where some universities maintain substantially more lenient grading systems.⁴³

100. Although certain examination topics are offered in French, there is concern that the process offers advantages to those who pursued their legal studies in Arabic, since it is the language of instruction at the I.N.E.J. Because of the high demand for French-speaking students in the private sector and for senior civil service positions, a small proportion of the French-trained students enter the judiciary.⁴⁴ This results in frequent cultural and legal disconnects between judges and litigants, particularly in commercial cases.
101. The capacity of the I.N.E.J is approximately 200 trainees. The number of positions available is approximately 160. The number varies according to the willingness of the Ministry of Finance to support new trainee positions. This structure would benefit from the Ministry of Justice's capacity to project the number of trainees needed given retirement by judges, expansion of the courts and the constant increase in caseloads.
102. The first year of training consists of courses given at the I.N.E.J. The curriculum addresses a variety of topics, with an emphasis on human rights and procedural safeguards. Commercial and labor law are also priorities and thirteen new training modules have been designed in the field of international and business law.⁴⁵ The curriculum includes visits and internships planned by the Minister of Justice based on proposals from a committee composed of representatives of the Ministries of Justice, Finance, Civil Service, as well as from the Universities, the head of the institute, two non-judicial trainers, and four judges. The committee would benefit from the inclusion of more representatives from the judiciary.
103. The curriculum is designed to cover a large number of academic topics.⁴⁶ Consideration should be given to reducing the number of academic courses in the institute as they tend to duplicate courses provided by law faculties. A study is currently under way at the I.N.E.J., but the Ministry of Justice and the institute have decided to proceed immediately with a revision of the curriculum, without waiting for the results of the study.
104. The I.N.E.J. has a core team of five permanent trainers and two managers. Judges and prosecutors give courses on an *ad hoc* basis. There are also four or five non-judicial trainers who give specialized courses in such topics as human rights or

⁴³ The 2001 trainees included 77 trainees from Casablanca with a population of 2,8 million, and 75 from Oujda, a town ten times smaller. Only one of the Oujda candidates succeeded out of 75, while 12 were accepted from Casablanca.

⁴⁴ For instance, in 2001, 20 trainees out of 79 had followed the French-speaking stream.

⁴⁵ The development of the training curriculum has been supported by the World Bank funded program.

⁴⁶ See Annex 3.

medical forensics. Compensation for the part-time trainers is so small as to make it *pro bono*, barely covering travel expenses, forcing the institute to draw on the skills of judges from nearby courts. Personal contacts are often required to ensure that trainers provide classes. The limited availability of training staff makes curriculum planning extremely complicated. Nevertheless, it does appear that trainers are selected for their skills and reputation, and are drawn from the ranks of the senior judiciary or from the Ministry of Justice.

105. The second year of training is spent interning with the courts. Trainees are distributed in regional groups, and spend a number of weeks in the various divisions of the court to which they are assigned.⁴⁷ Trainees work with judges, helping to draft judgments and other judicial decisions. The I.N.E.J. requires weekly reports on the progress of the internship and undertakes unannounced visits to the courts to ensure trainees are receiving training. Critics suggest, however, that there are shortcomings in the supervision, stemming from a lack of monitoring and a lack competence among observers.
106. The institute has established specialized training courses for trainees who will be part of the administrative courts. A similar training program will be established for the commercial courts. The courses demonstrate the capacity and flexibility of the I.N.E.J. to adapt to changes in the judicial system.
107. There are questions as to the need for specialization so early in one's judicial career, which risks creating a cadre of judges unable to transfer between subject matter jurisdictions during their careers. A more operational approach would have all the trainees follow a common set of courses to ensure basic knowledge and allow flexibility in postings. Specialization can be introduced at a later stage of training, without the risk of creating a "silo" mentality.
108. At the end of their training period, trainees are assigned to the bench by the High Council for the Judiciary. This mechanism, however, limits flexibility in judicial assignments. Complementing the structure recommended above, the High Council should review postings earlier in the process, preferably at the end of the common training period and prior to specialized training.
109. I.N.E.J. plays an important role in international judicial cooperation, regularly accepting approximately fifteen trainees from countries with the same cultural, legal and judicial background as Morocco, including Chad, Mauritania, Yemen, United Arab Emirates, Qatar and the Comoros.
110. The Ministry of Justice has published a number of guidelines for the use of judges already appointed to the bench. Recent examples include a manual for the management of courts, a guide for the *taoutiq* judge, and a guide on bankruptcy procedures for commercial court judges. Additional documents are planned, as well as case law available on CDs. In-service training sessions have been organized at the

⁴⁷ See Annex 4.

appeal court level, and efforts have been made to introduce Moroccan judges to other legal systems.

111. The premises are adequate for current training needs. If, however, the revised curriculum is geared towards smaller, interactive groups of trainees, substantial redesign will be called for.⁴⁸ The library of the I.N.E.J has relatively few books and documents; subscriptions are too costly to maintain and there are no facilities for Internet.⁴⁹ Despite these difficulties, the institute publishes a journal.
112. Members of the judiciary and other legal professionals believe that the quality of those graduating from I.N.E.J. is satisfactory and has improved in recent years.
113. The institute offers continuing education for all judicial personnel, but it is limited to training for each judge once every five years. The institute's objective is to increase the number and the diversity of cases so that judges can receive training every other year.
114. The INEJ is due to become the *Institut Supérieur de la Magistrature*, which will reflect its new status as an independent public body with separate administration and finances. The new structure will be organically independent of the ministry.

115. **Recommendations**

The role of the institute should be revisited as it is critical for the future of the judiciary in Morocco. Its curriculum should be coordinated with the revision of the universities' teaching programs, and consistent with the long-term needs of the judiciary.

The institute should professionalize – rather than specialize – training in order to offer trainees practical skills which are immediately operational. A key objective should be to instill a confident, pro-active attitude among the judges. To do this, the institute needs a minimum of 20 full-time trainers, preferably on temporary secondment from the courts. Continuing education for judges should be held once a year.

Recruitment and appointment process

116. Candidates for judicial positions are Moroccan nationals who must possess appropriate academic credentials and pass a civil service examination conducted by an independent panel before entering the I.N.E.J. They are appraised during the training period, and must pass a final examination before graduating.

⁴⁸ The I.N.E.J. has a computer room for training purposes, but may be inadequate for the advanced training proposed.

⁴⁹ Project component 4 of the World Bank project which is currently being implemented has set aside funds for the creation of a “mediathèque,” which should address this concern. The design and equipment of the “mediathèque” might however depend on whether the decision is taken to relocate the judicial training college to new premises.

117. Judges are appointed by a Royal Decision based on a proposal made by the High Council for the Judiciary.⁵⁰ This rule is valid both for the initial posting of graduates from the I.N.EJ. and for the appointments made in the course of the judges' and prosecutors' careers. The newly appointed judges and prosecutors do not choose their first assignment. The decision belongs to the High Council for the Judiciary. The Moroccan constitution gives the final authority for the appointment of judges to the King, who is the ultimate authority for the delivery of justice to the people. The bar has no institutional role in the selection of judges.

118. **Recommendations**

Trainee judges should be required to have an adequate proficiency in the legal aspects of at least two different languages. This proficiency should be listed among the criteria for recruitment and promotion.⁵¹

Judicial Careers and Prosecutors

119. Judicial careers are subject to the specific statutory provisions governing the judiciary which are similar to, but distinct from those governing the civil service. Morocco uses a *niyaba* system in which the prosecution is a quasi-judicial function, common in Arab-Islamic law countries. All judges and prosecutors are governed by the same statute, although their roles and professional safeguards are not the same. Judges are irremovable, which means that they can only be impeached, suspended or transferred in accordance with the law. Prosecutors are organized in a hierarchy and do not have the same statutory protections. Judges and prosecutors may switch professions in the course of their career. They are organized into 5 different ranks. A recent revision has separated rank from position, however, which enables senior ranking judges to hold first-instance positions.

120. As of 2001, there were 2,114 judges and 611 prosecutors. The total number increased to 2,952 in 2002, up from 2,165 in 1994. The proportion of female judges is 18% and is rising. There are 4,232 elected municipal and district court judges. The increase in the number of judges, however, is less than the increase in the number of cases filed before the courts. Between 1994 and 1998, the population of the Kingdom rose by 12%. The number of judges rose by 26% over the same period, but the number of cases filed before the courts increased by 63%.

121. Despite relatively modest salaries, judges and prosecutors do tend to stay in the judiciary for their entire careers. The students which eventually become judges could easily pursue fruitful careers as private lawyers. It appears that there prestige associated with the position of a judge. This is a positive element which enables the judiciary to count on a steady intake of qualified trainees.

⁵⁰ Art. 84 of the Constitution.

⁵¹ A similar requirement exists already for the Algerian judicial training college.

122. As a result of the differences between French and Arabic legal instruction, the judiciary is overwhelmingly trained in Arabic and experiences difficulties in cases involving business law or technical issues while French law graduates pursue careers in larger international law firms. The issue here is not to challenge the use of the national language throughout the judicial system, but to take into account the existing use of another language in areas of importance for economic development. It would be helpful to amend initial and in-service training opportunities to provide better language training for judges. Businesses will operate more frequently in a foreign language, and increasingly in English, less so in Arabic.

123. The High Council for the Judiciary has adopted its own internal regulations in order to ensure a consistent and impartial management of judicial careers.⁵²

124. **Recommendations**

Transparency in the initial appointment and subsequent assignment of judges could be achieved by publishing an annual internal list of judicial vacancies and a corresponding list of candidates. The judiciary should take part in managing judicial careers through the participation of representatives from the association of the judiciary.

Independence and impartiality

125. Article 85 of the Constitution provides that judges are irremovable. Judges hold a life appointment. There are no rules regarding a minimum or maximum time of service in any given position, allowing the possibility of exercising pressure on a judge's independence, including withdrawing a judge from a case by assignment to another court. Some level of guaranteed tenure is usually recommended in order to preserve judicial independence.⁵³ On the other hand, there is also a concern that judges are too static, spending too long in the same position. The result, it is suggested, is susceptibility to corruption. Solutions might include the approach used in Belgium and in other countries, where judges are transferred after a statutorily defined period.

126. Unions of judges or prosecutors are not allowed. There is, however, an important judicial association, the "*Amicale Hassania des Magistrats*." The association works closely with the Ministry of Justice on matters of relating to the welfare of its members.

⁵² See p. 15 of *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche*.

⁵³ See for instance Art. 3.4 of the European Charter on the Statute for Judges "*A judge holding office at a court may not in principle be appointed to another judicial office or be assigned elsewhere, even by way of promotion, without having freely consented thereto,*" or art. 12 and 13 of the U.N. Basic principle of the Independence of the Judiciary.

127. **Recommendation**

The principle of prohibiting the transfer of a judge without his or her express consent should be strictly enforced, subject to statutory rules which would impose a maximum number of years in a given judicial position.

Corruption

128. Corruption in the judiciary is seen as prevalent by the private sector, but simultaneously there is agreement that progress is being made in combating corruption, though more is needed. One area of progress is the increased level of supervision exercised by various authorities.⁵⁴ The public has an expectation of corruption in the judiciary, a view that seems to be influenced by the frequent corruption accusations against non-professional municipal judges or court staff, and the perception of lack of competency of some judges. The low esteem in which non-professional judges are held is one reason that the Ministry of Justice is considering abolishing that position.

129. Statistics also demonstrate the progress in the fight against judicial corruption. Only 10% of disciplinary cases involved corruption between 1998 and 2002 (17 out of 163 cases). A Ministry of Justice publication summarizing the 1997-2002 period devotes half of its 20 annexes to listing disciplinary and criminal prosecutions of legal and judicial professionals, an indication of a clear determination to improve professional ethics and fight corruption wherever it appears.

130. Salary levels are also a factor in creating an environment with less corruption. Salaries of judges and court staff remain extremely low, creating an environment conducive to corruption.

131. The General Inspectorate monitors the financial situation of judges and their immediate family. The inspectorate review a judge's assets on demand, with the approval of the High Council for the Judiciary. Judges are obliged to reveal the extent of their assets at regular intervals. Such disclosure does create a deterrent in that lifestyles and income sources have to be explained. The inspectorate has investigation powers and may audit any person to obtain the disclosure of any document. Judicial assets are, however, not disclosed publicly. Publicity of these issues raises concerns regarding a breach of privacy, but it could reveal to the public the low level of judicial salaries and set an example for other public officials. These powers are explicitly designed to combat judicial corruption.

⁵⁴ See below the section on accountability and especially the role of the General Inspectorate. For an illustration of this opinion, see the Minister of Justice's comments at: <http://www.justice.gov.ma/fr/actualites/21-2-2003.htm>.

132. Recommendations

The budget resources of the judiciary should be made public on the Ministry of Justice's website. Corrupt practices within the judiciary should continue to be vigorously prosecuted. Disciplinary or criminal processes related to judicial corruption, including their outcome, should be made public. Judicial salaries should be reviewed and kept in line with the highest remunerations available in the public sector.

Accountability

133. The supervision and inspection of judicial activities is exercised by the General Inspectorate for judicial affairs. This inspectorate reports directly to the Minister of Justice, and does not answer to any other ministerial structure. It is staffed with judges seconded from the Supreme Court or Appeal courts. Its head is the Inspector General, who is appointed by royal decree, and it has 11 other inspectors.
134. The inspectors enjoy a general oversight authority which allows them to investigate and control any service under the central administration of the Ministry of Justice, the courts, the judges or prosecutors and other judicial staff.⁵⁵ The general inspectorate may examine any court in Morocco with the exception of the Supreme Court. If a judge is investigated, the Inspector in charge must be of at least the same level judge. Inspectors file reports, outlining their analysis and suggestions, to the Minister of Justice as Vice President of the High Judicial Council. The Minister alone determines the appropriate follow-up for such reports; this includes choosing to ignore the report, initiate disciplinary proceedings, or prosecuting criminal behavior.
135. The General Inspectorate has drafted its own rules of conduct for its operations, stressing the unit's overall objective of optimizing judicial efficiency through an appraisal of judicial operations, the unification of working procedures, the identification of deficiencies, and the recommendation of remedies. The rules of conduct focus on such issues as the diligence of judges, prosecutors and judicial personnel, the way in which hearings are conducted and decisions prepared. More specifically, the inspectors analyze the way in which the presiding judge discharges his administrative and judicial duties, reads sample decisions and sits for randomly selected hearings, with a focus on delayed decisions. They also inspect the operations of the court administration, ensure the observance of procedural rules, and ascertain the efficient enforcement of judicial decisions. The same rules are followed for the inspection of the prosecutor's office attached to the court. Therefore, 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.

⁵⁵ Art. 13 of law # 1.74.338 of July 15, 1974, on the judicial organization of the Kingdom, Art. 12 of decree # 2.98.385 of June 23 1998, on the attributions and organization of the Ministry of Justice, and Art. 17 of law # 1.74.467 of November 11, 1974, on the statutory position of judges.

136. As part of the permanent administrative duties, each court's presiding judge has the responsibility of supervising the other judges in the court, the registrars,⁵⁶ as well as all judicial personnel. An annual evaluation report of the judge's performance includes a review of the his/her administrative supervisory capabilities. Judges are evaluated annually by the court's presiding judge, but this evaluation is not systematically conducted nor fully disclosed to the judge under review. However, promotion criteria are disclosed to the judiciary, and include ethics, quality of drafting, management capacity, legal proficiency, and behavior. Judge's performance reviews are now computerized, and are based on standard questionnaires and on an objective assessment of their work, rather than the previous evaluation methods which appeared far too subjective. The maintenance of such individual files is the key element upon which the promotion process rests.
137. Since 2000, a new team of specialized inspectors has been set up to supervise the operations of the *Taoutiq* courts. The team has inspected some 166 *Taoutiq* divisions in the first two years, and has a positive impact by encouraging a certain measure of uniformity in working methodology and an improvement of the notarial service rendered by the *aduls*. Special visits to 131 courts to check the operations of the fee-collecting services have led to a number of disciplinary and criminal sanctions. Finally, the accountability of judges and prosecutors is also ensured through the general inspection powers devolved to the president and prosecutor general of the local appeal court.
138. The General Inspectorate has led a total of 98 inspections between 1998 and the first semester of 2002, covering all the appeal courts, first instance commercial courts, and most of the first instance general jurisdiction courts. The inspections carried out by the heads of the appeal courts have covered, on average, half of the first instance general jurisdiction courts every year, but only one-fifth of the small claims courts.⁵⁷
139. This accountability structure closely resembles that of a number of Arab-Islamic law countries.⁵⁸ The structure not only results in a variety of inspections of judicial members in the course of their activities, but also in the supervision of their patrimonial assets. Although justified as a guarantee of judicial efficiency and integrity, the structure also risks judicial independence. The effectiveness of the structure of accountability, therefore, turns on the way in which the supervision of judicial work is implemented on the ground.
140. To appreciate this, several elements must be noted. The Moroccan Judicial Inspectorate's own rules of operation are clearly designed with a positive approach in mind; the objective, as mentioned above, is to improve judicial performance in the interest of the public. The disciplinary aspects of the work appear secondary. The

⁵⁶ Registrars are the court administration personnel who are the direct assistants of judges. See section on *Registrars* that follows.

⁵⁷ See *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche, Annex 5*.

⁵⁸ See *Arab judicial structures*, by N. J. Brown, at www.undp.pogar.org/publications/judiciary/nbrown.

rules followed always refer to the overriding requirement of respect for independent adjudicatory powers. Finally, the inspection processes are quite intensive - virtually all Moroccan courts have been inspected at least once over the past four years. On the other hand, the general impression is that the accountability proceedings do certainly generate the possibility of exercising pressures on non-compliant judges.

141. The risk to judicial independence appears to be moderate under current conditions. The most recent numbers suggest that disciplinary proceedings are not excessive in numbers, nor are the sanctions imposed that severe.⁵⁹ For example, an average of 25 cases were prosecuted annually between 1988 and 2002 for a total of 3,000 judges and prosecutors and an acquittal rate of one-third. Conversely, public opinion of the judiciary is low, as judges themselves assert, and its integrity is commonly challenged. The primary disciplinary misconduct identified is professional negligence, while corruption is only identified in 9% of cases.

142. The general approach towards performance enhancement is a positive one. However, the actual performance of Moroccan courts is not optimal. The rules set out by the General Inspectorate are very useful, but remain at a relatively simple and quantitative level, and the linkage to training within the I.N.E.J. appears insufficient. Statistical data as a case management tool is not maximized effectively in all courts, nor are in-depth guidelines prescribed to define the quality of work. The Inspectorate could eventually be encouraged detail best practice policies and consider quality enhancement techniques. Together with the judicial training institute, it could progress towards more integrated supervision of operations.

143. **Recommendations**

The transparency of the inspection process should be improved even further, for instance, by publishing the reports of the General Inspectorate and by encouraging discussions with the legal profession and the general public as to the criteria for best practices. The General Inspectorate could publish its guidelines for best practices and define detailed standards for judicial activities, such as speed, volume of cases, quality of decisions, limitation of costs. Such guidelines would then set clear standards for the regular assessment of judicial performance by senior judges.

Discipline

144. No explicit code of judicial ethics exists in Morocco. The definition of “good behavior” derives from customary practice and the requirements of Islam. However, disciplinary sanctions are defined in the professional statutes as the following, in growing order of severity:

- warning;
- reprimand;

⁵⁹ See *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche, Annex 4.*

- transfer;
- removal from promotion list;
- reduction in echelon;
- reduction in rank;
- compulsory leave of absence;
- compulsory retirement;
- impeachment without suspension of pension rights;
- impeachment with suspension of pension rights.

Disciplinary sanctions do not prevent the criminal prosecution of judges, for instance, before the Special Court of Justice for corruption or similar offenses. Judges enjoy a personal immunity for their rulings.

145. Disciplinary proceedings may be initiated by a superior judge, or by the Minister of Justice. Individuals may file a complaint against a judge with a specific division within the Ministry of Justice, the Center for the Follow-up and Analysis of Petitions. This division acts as a filter against unreasonable or malicious complaints.

146. The General Inspectorate investigates any allegation of judicial misconduct referred by the Minister of Justice and receives the complaints filed with the Center for the Follow-up and Analysis of Petitions. This constitutes one of the major sources of information by which the Inspectorate identifies judicial misbehavior. The first step in the disciplinary process is to request an information note from the relevant presiding judge or senior prosecutor. The investigation is then led by an inspector, unless it is delegated to a local judicial authority. Any complaint deemed unwarranted is rejected by a written notification sent to the complainant. Anonymous complaints are not taken into account unless precise facts are provided. If the allegations are founded or warranted, the Minister refers the case to the High Council for the Judiciary, which is the organ wielding disciplinary authority. Disciplinary proceedings are conducted by the High Council for the Judiciary. A disciplinary sanction imposed by the High Council for the Judiciary may not be appealed. The number and type of sanctions are made public on the Ministry's website. The disciplinary hearing is not public, however, the substance of the decisions of the High Council for the Judiciary is made public in order to improve the transparency of judicial actions. The process could be extended to the full and detailed notification of the Council's activities, after they have been approved by H.M. the King.

147. Between 1998 and 2002, 163 disciplinary cases have been brought before the High Council for the Judiciary which addressed 79 cases of professional misconduct, 9 cases of professional negligence and absenteeism, 59 cases of serious breach of judicial ethics, and 16 accusations of corruption. The rate of acquittal was approximately one-third of the cases. The number of disciplinary cases decreased

from 60 in 1998, to 27 in 2002. This trend might be explained by an enhanced consciousness of judicial ethics and disciplinary rigor.

148. **Recommendations**

The recommendation at this stage would be to ensure that due process is observed in all disciplinary proceedings initiated against members of the judiciary, with such guarantees as full access to their personal files and the investigation record, the assistance of counsel, an adversarial debate, a public hearing, and, finally, an appeal process.

A code of judicial ethics could be drafted by the judges with participation from the concerned legal professionals as well as representatives of the general public.

The transparency of the disciplinary process could be enhanced by increasing the procedural safeguards offered to judges.

The Ministry of Justice's freedom to initiate or terminate disciplinary procedures should either be curtailed or the decisions subject to appeal.

Court administration

Training for non-judicial personnel

149. For the first time, court administrative staff recently received a two-week induction course at the initiative of the Directorate of Personnel of the I.N.E.J. This kind of training is urgently needed. Registrars and court administrative staff provide essential support to judges. Court administrative personnel may also fulfill a wide variety of roles, including working in information booths, managing equipment or personnel, and supervising the archives or other important pieces of evidence.

150. The power of court staff over parties to a dispute is not negligible, as they may abuse their position to advance or delay proceedings, or tamper with evidence. Judicial corruption is often a result of administrative staff misusing their authority to increase their income. In Morocco, as in other countries, low salaries create an environment in which corruption opportunities arise.

151. **Recommendation**

It is recommended that court administrative staff be professionally trained by a special training college. The establishment of a dedicated professional college for court administrative staff is being discussed by the Ministry of Justice, and is linked to the possibility of utilizing premises at the I.N.E.J when it relocates.

Management

152. The Ministry of Justice is responsible for the overall administration of courts.⁶⁰ The Ministry plays a pivotal role in the operations of the judiciary, as courts have very little management capacity, and has recently decentralized a number of its administrative services at the level of the regional courts of appeal. This has brought the administrative units much closer to the end users. However, it does not translate into greater management responsibilities by the appeals courts. Such responsibilities are exercised locally by technical staff directly under to and supervised by the central structure of the Ministry of Justice.

153. **Recommendations**

Court management capacities should be developed and brought closer to the end users. Greater scope of action should be granted to the presiding judges both at appeal and first-instance court levels to define investment policies and use the resources available accordingly.

Personnel management

154. There are 2,952 judges in the Moroccan courts.⁶¹ As is frequently the case in continental systems, this definition includes both judges and prosecutors, whose numbers were 2,270 and 682, respectively. Women represent 17% of the judiciary.

155. Between 1994 and 2002, the Moroccan population increased almost 15% from 26 million to almost 30 million. Over the same eight-year period, judicial personnel increased by one-third (34%),⁶² and the number of cases rose approximately 64%.⁶³ Some 1,200 members of the judiciary will retire over the next 15 years, but the current rates of recruitment into the I.N.E.J. will barely correspond to the number of positions made vacant by retirees. The cases are growing twice as fast as the number of judges. This shows a dramatic increase in the public demand for judicial services, an increase which could be attributed to a number of factors, such as an expanding urban population, a relative decline of informal mechanisms of settlement, a growing class of private lawyers, and/or an enhanced trust in the judiciary.

156. Faced with rising caseloads, the Ministry of Justice is considering a continuation of the use of single judges over collegiate panels. However, this system must be accompanied by a number of safeguards, such as prohibiting appointments to a single judge position before a certain minimum amount of time, or restricting such positions to smaller disputes.

⁶⁰ The divisions and jurisdiction of the Ministry of Justice were described in the introduction.

⁶¹ This number is of December 31, 2002.

⁶² Judges and prosecutors were 2,165 in 1994.

⁶³ See *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche, Annex 3*, for all these numbers. The number of cases rose from 1,323,321 to 2,169,813.

157. Another mechanism to allow for flexibility is the recent distinction between rank and position. In other words, a senior judge does not have to forgo rank even if that judge moves to a more junior position. This allows for a much greater measure of flexibility in the posting of judges. Furthermore, it buttresses judicial independence by limiting the tendency to compete or to conform in order for judges to be promoted.
158. Procedural codes should offer the judge a wide variety of possibilities to accelerate proceedings and to direct them towards satisfactory conclusions. Moroccan civil and commercial codes provide a number of examples of a long list of tested techniques: summary and urgent proceedings, paper procedures, case management techniques, interim injunctions, provisional indemnities, valuation of costs, and court-ordered A.D.R..⁶⁴ However, it is vital that judges are trained to actively employ such procedures and move from a relatively passive role to a proactive one, in line with international experience.⁶⁵

159. **Recommendations**

The Ministry of Justice should tailor develop the ability to ensure adequate strategic planning so that recruitment policies respond to long-term changes in judicial demographics and court caseloads. Procedural reform and proactive judges should be a priority to accommodate the increasing number of cases filed with the courts.

Registrars

160. Registrars⁶⁶ are the court administration personnel who are the direct assistants of judges.
161. As mentioned above, the court administrative personnel does not have the benefit of professional training. The Ministry's personnel division initiated a two-week introductory course; however, it is not sufficient to cover the breadth of skills needed by the registrars. Registrars need more training, and some judges suggest it should be a three to six month training program in a specialized institute.
162. Registrars are governed by specific regulations under the general rules organizing the civil service, but do not enjoy the protection from a specialized statute. This problem is currently under review by the Ministry of Justice which intends to draft a special statute to ensure an increase in salary and enhanced social benefits. The statute should enhance the position of the registrars within the court organizational

⁶⁴ See, for example, the possibility opened by the law creating commercial courts to use such procedural accelerators as provisional indemnities (Art. 6), rulings on the absence of jurisdiction (Art. 7), urgent decisions (Art. 21), preservation measures (Art 21), or payment orders.

⁶⁵ This is the essence of modern civil procedures codes, and a striking point of convergence between the French and English civil justice systems, for instance.

⁶⁶ In French, "*commissaire judiciaire*" or "*greffier*".

structure, which in turn, should lead to a reaffirmation of their professional relationship with the judges.

163. The liquidation processes for bankrupt corporations is supervised by court registrars who lack specific training in this area. Although the registrars are assisted by administrators chosen from a pool of judicial experts, they are not realistically able to follow the intricacies of bankruptcy proceedings which leads to unfavorable economic consequences. Bankruptcies tend to take time which adversely affects creditors, and thereby increases the risk of a domino effect whereby a failed company may bring down a fragile creditor. Consequently, these bankruptcy registrars are not in a position to effectively assist the presiding judge.

164. **Recommendations**

Special statutory rules should be enacted to acknowledge the profession of the registrar, its competencies, and duties. A specific training institute should be set up for the initial and ongoing training of registrars. A specialized body of registrars or independent profession should be organized in order to manage bankruptcy procedures efficiently.

Experts

165. Although the system for the recruitment of judicial experts has proven beneficial elsewhere, the situation in Morocco is quite different. Experts are described as technically incompetent, slow, costly, and worse still, corrupt.

166. There are criticisms that there is a lack of serious and sustained supervision of judicial experts by the judges. The judge should supervise and control all stages of the experts participation in a case: the initial recruitment, the decision of appointing an expert, the technical investigation, and finally the technical opinion produced. Courts should be able to draft and enforce selection criteria on judicial experts, and judges should limit their own requests for technical opinions as well as those of contending parties, to those of absolute necessity. Judges should be trained in a decision-making culture to dispose of the greatest number of disputes without the assistance of experts. The judges should also closely monitor the progress of the expert's investigation and not hesitate to sanction the slightest violation of professional ethics.

167. **Recommendations**

The regulations governing judicial experts should be reviewed and enforced, possibly with the assistance of an organized professional body. Judges should be trained to be selective in their decision to utilize expert opinions. When an expert is necessary, they should exercise a proactive supervision over the discharge of the expert's duties.

Budget and salaries

168. The capital budget of the Ministry of Justice is approximately 1.3% of the overall capital budget of the State, and in 2002 approximately US\$30 million.⁶⁷ This value is far from negligible by comparison to similar countries, but should be put into perspective with the needs of reform. A common concern is that the funds contributed by various international donors are in fact deducted from the amounts granted by the Ministry of Finance, and therefore, do not amount to an increase of the Ministry of Justice's resources.
169. The Ministry of Justice, and not the individual courts, manages and controls judicial budgets. Recent reforms have created an intermediate administrative body at the level of the courts of appeal, which has been delegated a measure of budgetary power. Further decentralization of resources is being considered; however, the presiding judge of the appeal court does not have authority over the administrator who reports directly to the Ministry of Justice.
170. Courts collect a small amount of funding by supplying services, such as photocopies, to the public. In addition, portion of the criminal fines also become part of the overall court budgets. However, such practices could lead to opportunities for corruption, where staff impose an unofficial fee on parties or impose unjustified fines. Judicial independence would be better served if courts had greater management over their budgets, while at the same time, observing the rules of transparency of public expenditures. Greater independence and a lower risk of judicial corruption could derive from such a budgetary evolution.
171. Judicial salaries have improved, but they remain low. A trainee judge earns approximately US\$250 a month as s/he assumes office, and approximately US\$700 as s/he leaves office. Court staff are paid even less, and it appears that some 70% of them are paid the minimum statutory wages, which are considered quite insufficient,⁶⁸ and they provide incentives for corrupt behavior.
172. An important structure within the Ministry of Justice is the Association for the Social Services,⁶⁹ created in 1978 and presided over by the Minister of Justice. The role of the association is to bring a wide selection of facilities and benefits to judges, prosecutors and other Ministry personnel. Since 1995, it has enjoyed the status of a public utility association; for instance, it manages collective means of transport, community shopping facilities, vacation homes, vacation camps for children, travel, pension benefits, death allowances, emergency loans and medical assistance. It also supports the professional association of the judiciary, the *Amicale Hassania*, the registrars' association, and various sporting associations. Therefore, the Association for the Social Services of the Ministry of Justice brings a substantial variety of benefits to the judiciary.

⁶⁷ 270,715,000 Dirhams.

⁶⁸ See <http://www.justice.gov.ma/fr/actualites/21-2-2003.htm>

⁶⁹ In French, *Association des Oeuvres Sociales du Ministère de la Justice*.

173. On the other hand, whether the fact that judges are dependent on association benefits to supplement their incomes may actually threaten judicial independence. Maintaining that independence depends on the safeguards built into the system for the distribution of such benefits. A simpler and more transparent system might be to calculate the actual benefits granted by the Association, and include such amounts in the judicial salaries.

174. Recommendations

Further decentralization of the management of judicial budgets and development of budget management capacity in the courts is recommended. The supplementary sources of income from photocopies or percentage of fines should be reviewed to see how they could reduce opportunities for corruption. The salaries of all categories of judicial staff should be increased to reflect the importance of the judiciary. The various benefits granted to the judiciary should be valued and integrated into their net salaries.

Court Statistics

175. The Ministry of Justice has published the following court statistics:

Year 1999	# of cases filed	# of cases disposed	# of cases pending
Supreme Court	35,963	43,466	46,013
Appeal courts	267,976	253,118	167,934
First-instance courts	1,693,770	1,630,213	612,679
Commercial courts	88,702	85,803	13,891
Commercial appeal courts	4,307	3,581	975
Administrative courts	16,422	19,448	3,948

Year 2000	# of cases filed	# of cases disposed	# of cases pending
Supreme Court	31,545	38,452	37,975
Appeal courts	219,584	191,009	161,502
First-instance courts	1,560,382	1,563,292	401,951
Commercial courts	82,686	78,339	17,485
Commercial appeal courts	5,285	4,812	1,743
Administrative courts	9,263	8,603	4,342

176. In the recent publication listing the achievements of the 1997-2002 period,⁷⁰ the increase in the overall caseload of courts was from approximately 1,300,000 in 1994 to 1,600,000 in 1998.

⁷⁰ See *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche, Annex 3.*

177. Approximately 2,500,000 cases were disposed of in 2002, while approximately 665,000 cases remained pending.
178. The situation seems relatively satisfactory despite a considerable increase in caseloads (63% between 1994 and 2001), as courts appear to be reducing their caseloads. The data is sent by the courts to the Ministry of Justice on a regular basis. Statistics in of the forthcoming computerization programs should offer a better insight into the evolution of caseloads. There is a need for standardized statistical information. This should be part of the curriculum for training registrars as well as judges.
179. While administrative courts dispose of their cases efficiently, their caseloads are rising (7,378 cases recorded in 2002). The average time to disposition in commercial courts, with the exception of bankruptcy cases, is six months. No information was collected on the average or median times for the disposition of general jurisdiction courts.
180. Representatives of the private sector, especially the banking sector, believe the judicial system has generally improved due to recent reforms with improved legislation, professional competence, especially in business law, of the performance of courts, the increase in personnel and the recent computerization program. There is general satisfaction in the judicial process.
181. However, from the perspective of other users of the justice system, there are a number of concerns. Some of these concerns, for example, are delays, inefficient bankruptcy proceedings, a lack of enforcement, and the lack of qualified experts to assist the judiciary in complex or business cases persists.

182. **Recommendation**

The standardized statistical data should be improved to support policy development and to fine-tune case management techniques.

Infrastructure

183. Given the caseloads of the courts and the human resources available, the distribution of courts in the Kingdom of Morocco should be reviewed on the basis of a rationalized judicial map. For instance, smaller commercial courts are sometimes criticized for not having much of a caseload, and certain appeal courts could be combined to ensure a better use of personnel. The number of small claims judges seems excessive, especially since these judges appear to engage in disproportionate levels of judicial misconduct. Today, Morocco numbers no less than 1,109 courts of all types for a population of 30 million. The purpose of a rationalized judicial map would be to reduce this number. An improved judicial map that would combine courts would allow for more efficient use of scarce human resources, offering savings

in construction of buildings, the maintenance of equipment, and most likely, a greater measure of standardization and predictability of decisions.

184. The operating costs of courts should also be considered, which in turn, suggests that a financial audit (cost-benefit analysis) should be conducted before new courts are created and to see where combination of courts can be advantageous. With respect to certain procedural options: what is the cost-benefit analysis of imposing a collegiate panel to rule on almost every case? More generally, a far-reaching vision would call for an analysis of the long-term demographic and social needs of the country, in order to tailor the position and size of courts accordingly.

185. A considerable construction program, currently underway by the Ministry of Justice seeks to renovate court buildings and correctional facilities which had seriously fallen into disrepair, and such an analysis should be done prior to this implementation.

186. **Recommendations**

The Ministry of Justice should aim to reevaluate and upgrade the judicial map, bearing in mind the different challenges associated with this type of reform. The revision of the judicial map should be seen as a comprehensive exercise which will include cost-benefit analyses and procedural reform issues.

Equipment

187. A substantial effort has been made within the overall reform process to introduce computerization to the Moroccan courts. The Ministry of Justice's objective is to fully computerize all Moroccan courts over the coming years, and has already secured funding to this end from the European Union.⁷¹ Up until now, the commercial courts have receiving computerization through World Bank financing.

188. Given this experience from the commercial courts the plan is expand it to the general jurisdiction courts. The seven administrative courts are expected to be fully computerized next, while several pilot projects are underway to test the transferability of the computer software developed by the Ministry of Justice to general jurisdiction courts.

189. The Ministry of Justice is taking responsibility for information technology, and has recruited information technology specialists to design software and to supervise the actual computerization process. In house design and maintenance capacities has avoided dependence on an outside supplier and will make it easier to extend the commercial courts software to the general jurisdiction courts. Not only are commercial courts well on their way to full computerization, but they now have a

⁷¹ The program designed with the European Union is in its early stages. It is due to computerize some 44 general jurisdiction courts between 2004 and 2006, at a cost of some 27 million Euro. See section below on the *contribution of donors to the sector* (in addition to World Bank financing for the commercial courts).

technician as part of their permanent on-site staff to offer immediate assistance as needed.

190. The information technology office of the Ministry of Justice has been successfully organized, however, the challenge is to maintain momentum, especially by maintaining the information technology specialists, who appear to be leaving, attracted, at least in part, by better remuneration in the private sector.
191. The computerization should be the result of a review of the paper process, however, the choice here to computerize the former paper-supported process. This option allowed for the technological transition of judges and staff alike. The drawback, according to certain critics, is that it will have to be revised to accommodate reforms in the case process. However, developments can be made precisely because the Ministry is the designer and proprietor of the software. Pilot programs are being tested in Agadir and Marrakech courts where registrars have supervision of case-processing from the first to the last step.
192. Information technology requires cultural change in the courts. For instance, courts can access more statistical information for planning and can demonstrate enhanced transparency of judicial processes to improve the public image of the judiciary. This could be shared with other developing countries of experience with the same economic and cultural background. The Moroccan judicial training college has already been training foreign judges for a number of years.
193. Finally, the recent considerable increase in caseloads clearly points to computerization as a key component of any judicial reform process to increase efficiency and improve decision-making processes. Only then can judicial reformers attempt to answer the growing demand for judicial services.

194. **Recommendations**

The construction and renovation should be planned and should be based on appropriate cost benefit analysis of the infrastructure.

Computerization of courts should be expanded to cover the computerization of the entire court system, and this means that the Ministry of Justice must be able to maintain the information technology staff which has designed and maintained the system.

Enforcement

195. There is a criticism of the current enforcement of judicial decisions. The Ministry of Justice, judges and bankers alike underline the difficulty that creditors have in recovering their claims. Enforcement of decisions occurs with delays, often not completely, and at a high cost. Enforcers have the reputation of requesting additional

fees to implement a courts decision, or to prevent enforcement, for instance, by pretending they could not find the debtor to serve the documents.

196. Difficulties in enforcement also arise because there is some resistance by debtors to pay debts; judges have heavy caseloads preventing them from supervising the work of bailiffs. This supervision is supposed to be exercised by prosecutors, but they also do not have the time, nor the technical skills, to carry out this responsibility. Furthermore, bailiffs are not required to disclose their assets to any outside authority, leaving them unaccountable. Because of an omission in the law creating the commercial courts, these courts have no authority over the bailiffs acting in commercial disputes, and so have to delegate supervision to the general jurisdiction courts which are not yet computerized
197. Problems may also arise because bailiffs are paid by an official tariff, which has not changed since 1989; for instance, criminal summons are to be served for a fee of 3 Dirham, roughly equivalent to 30 U.S. cents.⁷² Gasoline costs alone are said to be between 75 and 100 Dirham a day.⁷³ The maximum fee for an enforcement, however successful, is 800 Dirham,⁷⁴ as the pro-rata fees are not practiced. Given the low salary, some bailiffs prefer the job security of the civil service. Bailiffs also complain that debtors are able to stall proceedings. In fact, the profession pays so little that it is losing a number of its members, some of them preferring to return to the security of a civil service salary. Lawyers in some cases use their own support staff to chauffeur bailiffs for the service of documents or the implementation of attachments. This guarantees both efficient and corruption-free procedural work, but it is financially beyond the reach of the majority of litigants.
198. Certain enforcement proceedings are virtually impossible because they run counter to social values, such as the resistance against the eviction of insolvent tenants. Considerable delays occur with failed insurance companies.
199. The Ministry of Justice required 150,000 enforcements to be dealt within three months, unless there was clear reasons to prevent such enforcement. The cases include decisions made against a series of bankrupt insurance companies, rulings made against the State or public bodies and finally, cases between private parties. Courts are required to check on the actual progress of enforcement for these cases, and the required number has been met. However, it still appears that many of the files remain unaffected because the principal *de facto* defense is the insolvency of the debtor.
200. It remains to be seen whether judges can actually intervene in the event of a delayed enforcement, or even, whether they are in a position to prosecute an enforcement policy, but at least judges are forced to commit themselves to the

⁷² Approximately US\$ 0.3.

⁷³ Approximately between US\$ 8 and 10.

⁷⁴ Approximately US\$ 80.

supervision of the actual enforcement.⁷⁵ The Ministry of Justice made an effort between January 1999 and December 2001 to have some 950,000 judgments enforced, which amounted to over 80% of the caseload, and resulted in significant reduction in backlog. What is needed is a systematic effort to avoid such backlogs. At the heart of the problem is the management powers of the judges during of enforcement. Until this is solved, the risk is that problems of backlogs will persist.

201. One suggestion is to return the enforcement personnel to the courts as staff. Courts do, in fact, have some enforcement agents who are said to do their job to judges satisfaction, but this option has few chances of being implemented since Morocco seeks to reduce the number of civil servants. Others suggest that there is a need for a statutory governing body able to discipline its members, hold them joint and severable liable, and maintain a fee schedule. Furthermore, with only 732 bailiffs for a population of 30 million, the problem of delays may also be linked to the insufficient number of these officials.
202. Yet other analyses point to different reforms needed. In a seminar organized in May 2002 by the Ministry of Justice on the topic of judicial and banking practices, in collaboration of the I.N.E.J and of the banking profession, several recommendations where made. The included improving the training of court agents dealing with bankruptcies pending the creation of competent bodies to take charge of such proceedings; supporting uniform case-law with respect to enforcement of securities; and reviewing the procedural framework of attachment proceedings. In other words, the reform of enforcement proceedings should be holistic and include the training of judicial personnel, the establishment of special professions to deal with bankruptcies as well as procedural reform, and improved dissemination of case-law.
203. Finally, enforcement issues are an area of litigation which would greatly benefit from information technology, as many cases require simultaneous monitoring, at different stages of advancement, and often in different locations.

204. **Recommendations**

The entire enforcement system should be overhauled, with respect to both the personnel and the procedures involved. Enforcement proceedings should be reexamined closely in accordance with the needs and the values of Moroccan society, to determine the most cost-effective and acceptable choices for a performing enforcement of judicial decisions. The specialization of an enforcement judge within each first-instance or commercial court could accelerate enforcement processes. This judge would have the necessary skills, powers and responsibilities to obtain efficient enforcement measures. The profession of bailiff should be reinforced by imposing stricter recruitment and training requirements, the creation of a professional body with strong supervisory powers, the imposition of professional ethics and of a collective civil liability. The numbers of bailiffs should be increased in line with

⁷⁵ See p. 19 of *La réforme de la justice – bilan des réalisations 1997-2002, le changement en marche*.

judicial map priorities and their fees should be reconsidered. There should be specialized enforcement personnel created in order to accelerate bankruptcy proceedings.

ACCESS TO JUSTICE

Public opinion and access to the courts

205. Public opinion of the judicial system is low, and some say this is largely due to the lack of information associated with a population which is 50% illiterate. A legal dissemination program has been created within the Ministry of Justice with a multi-media public awareness campaign on basic rights and the means to implement those rights. A short, 3-5 minute, information program⁷⁶ has been broadcast on television to publicize citizen's rights and duties. The series, though, has been discontinued recently because of funding issues. In addition, the ministry also publishes a variety of informational brochures. In most courts there are information booths at the entrance to the building to facilitate access for the public. However, there is no written information available. In the Casablanca commercial court, a computerized booth offers immediate access to key information. With the registration number of a given case, any person can ascertain the stage of the proceedings. This information is updated in real time and an attendant is present to assist as needed. This experience serves as a model.⁷⁷

206. The Ministry of Justice has its own website (<http://www.justice.gouv.ma>), and ministry staff were recently provided with e-mail. There should be a commensurate improvement in the ministry's communication with the public and its ability to disseminate legal information. The forthcoming European Union MEDA program will help expand the website, providing information, for example, on the commercial courts.

207. The State Secretariat for Women coordinates with the Ministry of Justice on the legal protection for women. Overall, women are rarely aware of the full extent of their rights. Laws are publicized which impact their social, political and economic well-being, such as the right to repudiate a marriage contract. This is indicative of the larger necessity to increase the general public's awareness of the importance of the rule of law and how the judicial system functions.

208. Recommendations

The development of public information procedures should continue, especially through the dissemination of legal information by the mass media and the courts' "info-shops." The Ministry of Justice website should be expanded. Efforts should be made to train paralegals in civil society organizations to provide legal information

⁷⁶ "Ajme goulek" (transliterated from the Arabic), translates as "come, let me tell you."

⁷⁷ This pilot "info-shop" was part of the World Bank project component dedicated to improving the operations of all commercial courts. The information is not searchable by the names of the parties, and is in principle only accessible to persons involved in the dispute, but if one knows the registration number, the information can be accessed by anyone.

Legal aid

209. In criminal matters, the courts appoint defense lawyers to represent indigent defendants on a *pro bono* basis. In civil matters, there are no provisions for legal aid, as the volume of potential beneficiaries would be too great. There are no public defenders. Legal representation is compulsory before the bench, with the exception of cases involving alimony. However, the majority of the population cannot afford legal services. The average lawyer's fee is between 1,000 and 2,000 Dirham,⁷⁸ which is equal to two to four weeks of minimum wages.

210. Recommendations

Subject to the creation of a financially sustainable legal aid system, access by the general public to legal information should be made easier through greater dissemination of legal materials. Bar associations and legal clinics should be encouraged to offer free legal advice.

ADR

211. An Arbitration Code has been designed with the assistance of World Bank funding and is now in the process of being enacted. Many hope that this code, once in force, will result in a significant reduction in court caseloads.⁷⁹ However, the question remains whether a process of *exequatur* of the arbitral award as it exists today will remain in force. If so, the time gained might be restricted, as every award will have to be vetted by the competent court before it is declared enforceable, not to mention the difficulties of enforcement already discussed. Commercial arbitration has not had much success in Morocco to date. For example, although a Moroccan division of the International Chamber of Commerce exists, it has not dealt with an arbitration case in recent years, possibly the result of contracts assigning jurisdiction to foreign arbitral courts. Domestic firms rely more often on their informal networks and local commercial customs. These informal connections have established themselves as a great measure of mediation in Moroccan society. Tapping into this source of social cohesion may prove successful in saving public expenditures. The Employers Association has set up an *ad hoc* commission for the mediation of labor conflicts.

212. Recommendations

The arbitration code should be enacted promptly and the appropriate measures taken to make it effective. All other modes of alternative dispute resolution should be promoted, whether at the request of the court or at the request of the parties. Traditional modes of conflict resolution should be examined and appraised to

⁷⁸ Approximately between US\$ 110 to 220.

⁷⁹ It will replace and extend the current provisions which are listed under articles 306 to 327 of the present civil procedure code.

determine whether they can be successfully integrated to link the informal and formal dispute resolution systems.

CONCLUSION

213. This Assessment describes some of the main issues facing the legal and judicial sector in Morocco. By providing this analysis of the current situation in Morocco and sector unit recommendations, policy makers should be able to design programs to meet the particular needs of the country.
214. The presentation of the legal and judicial sector above has illustrated the central role of the Ministry of Justice in any reform effort. The past and present advances in the legal and judicial sector are indisputable and clearly demonstrate that the Ministry has been a major champion of reform. Indeed, many organizational patterns across the world allow for the strong presence of the Ministry of Justice. Furthermore, the constitutional rules of the Kingdom of Morocco are based on the authority of the monarch. This being said, the enhanced drive towards an independent judiciary, the institutional evolution of the judicial training college, the enhanced role of the High Council for the Judiciary, and the improvement of management skills within the judiciary itself most probably will lead to further evolutions in the distribution of roles between the Ministry, court managers and individual judges.
215. Generally speaking, the institutional structure of the legal and judicial sector is well designed. In recent years, this structure has shown itself capable of clear improvements. However, substantial progress depends on two issues. The first is the hierarchical operation of the Moroccan judiciary which requires a more flexible and real-time response from the judiciary to address increasing caseloads. Allowing individual judges to take a proactive role may prove to be the best management strategy. It is also necessary to consider an enhanced personal accountability, exercised through existing supervision organs, but with revised standards. The second issue is whether individual judges will indeed be capable of meeting the new challenge to be proactive in the procedural process. This requires a high level of professional training, and so the new High Institute for the Judiciary must be more professionally-oriented than the I.N.E.J. The key focus should be professionalization, rather than specialization; professionalization will lead to the creation of a judicial elite, trained to be the decision-makers that society requires. A professional judge can, of course, be trained at a second stage to specialize in a given area of law. Therefore, a cultural change must be introduced to transform judges from relatively passive arbitrators to proactive procedural leaders.
216. This new working culture will need the support of a new generation of court managers, who have specific case-management tools, standard statistical data, and probably greater responsibility in management of personnel and budgets. Court administration staff must be acknowledged for their professional skills. Lawyers will have to redirect their activities towards pre-litigation counseling, organize themselves into firms and enhance their specialization.
217. Legal and judicial reform is one mechanism to promote the rule of law in Morocco. The rule of law prevails where the government itself must be bound by the

law; every person in society must be treated equally under the law; the human dignity of each individual is recognized and protected by the law; and justice is accessible to all. In order to have economic growth and poverty reduction, the overall goals for reform are meaningful and enforceable laws, enforceable contracts, basic security and access to justice.⁸⁰ Laws must have some significant effect on everyday life, and they must be actively enforced by the police, courts and other government officials. Contracts and other basic elements of a robust commercial sector are essential to promote internal growth and industry, as well as to attract foreign business. Basic security, as well as a stable and reliable government, is necessary to ensure that the rest of the governmental structure operates and is able to perform its duties as was envisioned. Finally, the public must have access to these legal and judicial services, through infrastructure, legislation, knowledge sharing and other means.

218. By making legal and judicial reform a priority, and by encouraging dialogue and participation amongst stakeholders, the government of Morocco is acknowledging the importance of this sector for the country and its people.

⁸⁰ “Legal and Judicial Reform: Strategic Directions,” Legal Vice Presidency, The World Bank (2003).

SUMMARY OF RECOMMENDATIONS

The basic laws

The current pace of modernization of the legislative framework must be maintained, with enhanced research into the actual needs of Moroccan society.

Case law

Support should be given for the dissemination of decisions made by the superior courts.

Law making

Reformers should focus on capacity-building in the area of law-making in each of the institutions involved in drafting legislation.

Legal information

A major effort should be made to support the development of law publications. Judges should be given a standard minimum “legal toolkit” of basic codes and other documents pertaining to their activities. This toolkit should be developed and updated as needed.

Legal education of students

Law studies are in need of a substantial redesign which would involve the progressive introduction of courses aimed at the needs of each profession.

Training of the legal profession

The training curricula of the various legal professions should be reviewed in order to ensure that professional skills are acquired. Training programs should include examination procedures to ensure the quality of legal professionals. Professional bodies representing the legal professions should more closely supervise training programs and exercise greater disciplinary oversight.

Translators and experts

The supervision of all ancillary legal professionals should be part of the responsibility of the professional judiciary, and they should be specifically trained to provide such supervision.

Legal advice

Entry to the legal profession should require a more selective entrance examination, professional training, evidence of practical skills, and training in professional conduct and ethics. Applicants should be evaluated by an independent professional body. The activities of lawyers should be redirected towards legal advice and efforts should be made to prevent frivolous litigation. The authority of professional bodies should be reinforced in order to better train, protect and discipline the members of the bar. Legal provisions should be introduced to facilitate the establishment of lawyers' firms.

Legal drafting

In order to improve access to quality legal instruments, the number of notaries should be expanded.

Specialized jurisdiction courts

The internal operations of the courts should be studied and redesigned to maximize available resources, improve court management techniques, and to accommodate varying degrees of specialization given the size and caseload of the court.

The High Council for the Judiciary

There should be better representation on the High Council of the lower ranks of the judiciary for the Judiciary to ensure participation and greater judicial independence.

Training of the judiciary

The role of the institute should be revisited as it is critical for the future of the judiciary in Morocco. Its curriculum should be coordinated with the revision of the universities' teaching programs, and consistent with the long-term needs of the judiciary.

The institute should professionalize – rather than specialize – training in order to offer trainees practical skills which are immediately operational. A key objective should be to instill a confident, pro-active attitude among the judges. To do this, the institute needs a minimum of 20 full-time trainers, preferably on temporary secondment from the courts. Continuing education for judges should be held once a year.

Recruitment and appointment process

Trainee judges should be required to have an adequate proficiency in the legal aspects of at least two different languages. This proficiency should be listed among the criteria for recruitment and promotion.

Judicial careers and prosecutors

Transparency in the initial appointment and subsequent assignment of judges could be achieved by publishing an annual internal list of judicial vacancies and a corresponding list of candidates. The judiciary should take part in managing judicial careers through the participation of representatives from the association of the judiciary.

Independence and impartiality

The principle of prohibiting the transfer of a judge without his or her express consent should be strictly enforced, subject to statutory rules which would impose a maximum number of years in a given judicial position.

Corruption

The budget resources of the judiciary should be made public on the Ministry of Justice's website. Corrupt practices within the judiciary should continue to be vigorously prosecuted. Disciplinary or criminal processes related to judicial corruption, including their outcome, should be made public. Judicial salaries should be reviewed and kept in line with the highest remunerations available in the public sector.

Accountability

The transparency of the inspection process should be improved even further, for instance, by publishing the reports of the General Inspectorate and by encouraging discussions with the legal profession and the general public as to the criteria for best practices. The General Inspectorate could publish its guidelines for best practices and define detailed standards for judicial activities, such as speed, volume of cases, quality of decisions, limitation of costs. Such guidelines would then set clear standards for the regular assessment of judicial performance by senior judges.

Discipline

The recommendation at this stage would be to ensure that due process is observed in all disciplinary proceedings initiated against members of the judiciary, with such guarantees as full access to their personal files and the investigation record, the assistance of counsel, an adversarial debate, a public hearing, and, finally, an appeal process.

A code of judicial ethics could be drafted by the judges with participation from the concerned legal professionals as well as representatives of the general public.

The transparency of the disciplinary process could be enhanced by increasing the procedural safeguards offered to judges.

The Ministry of Justice's freedom to initiate or terminate disciplinary procedures should either be curtailed or the decisions subject to appeal.

Training for non-judicial personnel

It is recommended that court administrative staff be professionally trained by a special training college. The establishment of a dedicated professional college for court administrative staff is being discussed by the Ministry of Justice, and is linked to the possibility of utilizing premises at the I.N.E.J when it relocates.

Management

Court management capacities should be developed and brought closer to the end users. Greater scope of action should be granted to the presiding judges both at appeal and first-instance court levels to define investment policies and use the resources available accordingly.

Personnel management

The Ministry of Justice should tailor develop the ability to ensure adequate strategic planning so that recruitment policies respond to long-term changes in judicial demographics and court caseloads. Procedural reform and proactive judges should be a priority to accommodate the increasing number of cases filed with the courts.

Registrars

Special statutory rules should be enacted to acknowledge the profession of the registrar, its competencies, and duties. A specific training institute should be set up for the initial and ongoing training of registrars. A specialized body of registrars or independent profession should be organized in order to manage bankruptcy procedures efficiently.

Experts

The regulations governing judicial experts should be reviewed and enforced, possibly with the assistance of an organized professional body. Judges should be trained to be selective in their decision to utilize expert opinions. When an expert is necessary, they should exercise a proactive supervision over the discharge of the expert's duties.

Budget and salaries

Further decentralization of the management of judicial budgets and development of budget management capacity in the courts is recommended. The supplementary sources of income from photocopies or percentage of fines should be reviewed to see how they could reduce opportunities for corruption. The salaries of all categories of

judicial staff should be increased to reflect the importance of the judiciary. The various benefits granted to the judiciary should be valued and integrated into their net salaries.

Court statistics

The standardized statistical data should be improved to support policy development and to fine-tune case management techniques.

Infrastructure

The Ministry of Justice should aim to reevaluate and upgrade the judicial map, bearing in mind the different challenges associated with this type of reform. The revision of the judicial map should be seen as a comprehensive exercise which will include cost-benefit analyses and procedural reform issues.

Equipment

The construction and renovation should be planned and should be based on appropriate cost benefit analysis of the infrastructure.

Computerization of courts should be expanded to cover the computerization of the entire court system, and this means that the Ministry of Justice must be able to maintain the information technology staff which has designed and maintained the system.

Enforcement

The entire enforcement system should be overhauled, with respect to both the personnel and the procedures involved. Enforcement proceedings should be reexamined closely in accordance with the needs and the values of Moroccan society, to determine the most cost-effective and acceptable choices for a performing enforcement of judicial decisions. The specialization of an enforcement judge within each first-instance or commercial court could accelerate enforcement processes. This judge would have the necessary skills, powers and responsibilities to obtain efficient enforcement measures. The profession of bailiff should be reinforced by imposing stricter recruitment and training requirements, the creation of a professional body with strong supervisory powers, the imposition of professional ethics and of a collective civil liability. The numbers of bailiffs should be increased in line with judicial map priorities and their fees should be reconsidered. There should be specialized enforcement personnel created in order to accelerate bankruptcy proceedings.

Public opinion and access to the courts

The development of public information procedures should continue, especially through the dissemination of legal information by the mass media and the courts' "info-shops." The Ministry of Justice website should be expanded. Efforts should be made to train paralegals in civil society organizations to provide legal information

Legal aid

Subject to the creation of a financially sustainable legal aid system, access by the general public to legal information should be made easier through greater dissemination of legal materials. Bar associations and legal clinics should be encouraged to offer free legal advice.

ADR

The arbitration code should be enacted promptly and the appropriate measures taken to make it effective. All other modes of alternative dispute resolution should be promoted, whether at the request of the court or at the request of the parties. Traditional modes of conflict resolution should be examined and appraised to determine whether they can be successfully integrated to link the informal and formal dispute resolution systems.

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Courts

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Casablanca first instance general jurisdiction court
Mr. Mohamed JAFIR

Casablanca commercial first instance court
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Rabat appeals court

Mr. Mustapha TERRAB, President, and attendant justices

Rabat first instance general jurisdiction court

Ms. Laila LAMRINI, President

Rabat first instance commercial court

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Annex 2: Project Description

MOROCCO: LEGAL AND JUDICIAL DEVELOPMENT (PAD Report No. 20457-MOR, pp. 34 & ff)

The Project aims:

- to streamline court and registry processes and procedures;
- to improve access to the commercial courts and the local registries of commerce housed within them,
- to improve the judiciary's efficiency in handling business related cases,
- to provide the means, in terms of training and automation, for more efficient service from commercial court and registry staff to the public-at-large, and
- to provide all users and potential users with more complete and up-to-date basic legal information.

The result should be a significant increase in transparency and effectiveness in the handling commercial litigation and greater security in commercial transactions. The Loan will fund goods, services, including software development, training for commercial court and registries' staff and technical assistance for updating relevant legislation and regulations.

By Component:

Project Component 1 - US\$0.11 million

Improving the legislative and regulatory framework for commercial transactions and the resolution of commercial disputes

This Component consists of the drafting and enactment of: (i) important amendments to existing legislation and regulations so as to streamline processes and procedures and otherwise permit the successful implementation of Components 2 and 3 described below; and (ii) a modern Commercial Arbitration Code.

Modernizing the commercial courts and their registries of commerce and the training of their staff in the use of modern technologies cannot efficiently correct the existing deficiencies of these courts and registries without an appropriate legal and regulatory framework that allows for a considerably more streamlined, standardized and enforceable set of processes. There is, thus, an initial need to review the relevant existing legislation and regulations pertaining to commercial activities, including, but not limited to, the Code of Commerce, Company Law, and the Codes of Civil and Commercial Procedure, so as to simplify procedures, to allow for automation, and to do away with unnecessary, and sometimes contradictory, processes.

The Government also recognizes that Morocco's commercial arbitration legislation is not up to date and that potential business litigants are in need of a more secure framework for private commercial arbitration should they choose to avail themselves of this mechanism for the settlement of their commercial disputes. Not only can arbitration be potentially

quicker, less costly and more reliable than recourse to the formal judicial system, to the extent private arbitration of commercial disputes takes place there is a welcome reduction in the caseload of the commercial courts. The preparation and enactment of a modern Code of Commercial Arbitration with the wide participation of all major stakeholders, including the Bar Associations, the judiciary, and the business community-at-large is thus a priority.

The Project will finance technical assistance: (i) for the review of all legislation and regulations relevant to the operation of commercial courts and local registries of commerce, as well as for the drafting of amendments to such legislation and regulations, and (ii) for the review of all legislation relevant to commercial arbitration and the drafting of a modern Commercial Arbitration Code.

Project Component 2 - US\$1.15 million

Strengthening the judicial system's capacity to adjudicate business-related cases through the modernization of the commercial courts in terms of case management.

This Component first aims to improve the way the commercial courts manage each of their cases from the start to the completion of the litigation process. The case management systems which are now in place in the commercial tribunals and commercial courts of appeal will be overhauled with automated tools introduced for the management of all specific cases, thereby significantly promoting the efficiency, fairness, transparency and reliability of commercial litigation in Morocco. This will be done through the development (possibly locally) of targeted software and the provision of technical equipment and will include training for all commercial court judges and other court staff in the use of the equipment and software.

Secondly, this Component will assist in upgrading the working conditions of commercial court judges by providing them with direct, automated, access to legal and judicial information. As a result, these judges will be able to draft their formal judicial decisions and other related documents in a secure, efficient, electronic manner. Texts and other materials for commercial court law libraries, including essential legal manuals, will also be funded under this Component.

Project Component 3 - US\$ 2.01 million

Strengthening the capacity of the local Registries of Commerce in each Commercial Court

It is widely recognized that Morocco's Registries of Commerce provide poor services to registrants, operate with outdated registration and management tools and suffer significant backlogs in the handling of requests. This Component will thus introduce, and ensure the application of, appropriate automated systems for the registration and storage of essential company information which will also permit ready, reliable, access to this information by the public-at-large. Funding for all necessary hardware and software

and for training in its use will be provided. Although this Component will focus exclusively on those Registries of Commercial in the Commercial Courts, it is anticipated that the lessons learned as a result will be made applicable throughout the Commercial Registry system.

An essential objective of this Component is to make the local Registry of Commerce in each Commercial Court a more efficient and increasingly self-sustaining service provider. Over time, it is anticipated that each such Registry will obtain greater autonomy through the transformation of its legal status from a service under the direct administrative and budgetary authority of the Ministry of Justice, into a so-called SEGMA (Service Economique Géré de Manière Autonome). Once accomplished, such transformation will improve the sustainability of each of these Registries of Commerce in terms of budget and administrative organization and will define more clearly the responsibilities against which performance can, and will ultimately, be measured. The broad reform program envisioned for this Component includes: (i) organizational restructuring through improvement of the business processes for each of the Registries of Commerce in question; (ii) the provision of training in the use of modern management tools for new and current staff of these Registries; and (iii) the modernization and automation of the operation of these Registries. The Component will finance: (i) the automation of the local Registries housed in the commercial courts, so as to provide more timely and efficient service to users, improve the security of business transactions and free staff from the manual handling of files and requests; and (ii) the training of Registry staff in the use of the new technologies. Automation will allow for: the eventual inclusion of all existing files in the new management system; the updating of the status of all companies registered in terms of incorporation (including company name approval); the filing post-incorporation activities, such as company information updates (including company name changes); the registration of information concerning company directors and officers; the registration of mortgages, pledges, liens and other charges on the property of registered companies; the provision of access to public records and production of certified copies; document verification and authentication; and fee collection and reconciliation. The ready availability and accuracy of this information is of critical importance for potential equity investors in, and creditors of, Moroccan businesses.

Project Component 4 - US\$1.94 million

Providing better training to judges and court administrative staff through the strengthening of INEJ

This Component will focus attention on a range of improvements in the Institut National d'Etudes Judiciaires (INEJ), the sole institution responsible for training Moroccan judges.

Under this Component, goods, technical assistance and training will be financed pursuant to a time-bound action plan agreed between the Government and the Bank to permit:

(a) the reorganization of INEJ so as to provide it with greater financial and administrative autonomy, and with this the introduction of: (i) modern management systems to assist

INEJ in building increased managerial, administrative and budgeting capacity; (ii) an improved program for the training of trainers, judges and court administrators; (iii) a program of internal Moroccan and international cooperation on the part of INEJ; and (iv) a so-called "mediatheque" program;

(b) the upgrading and enlarging of the INEJ curriculum, with a significant increase in the number, range and quality of courses in subjects of particular relevance to commercial activity: including such subjects as economics, accounting, finance, business management, commercial law, company law, consumer law, intellectual property law, competition law, international commercial law, law of the European Community, maritime law, and the law of civil and commercial procedure with, in each case, the introduction of up-to-date and more relevant course materials; and

(c) the creation of a "mediathèque" with all appropriate hardware and software and corresponding improvements to the existing physical premises of the INEJ library.

Project Component 5 - US\$0.75 million

Strengthening the communication capacity within the justice system

This Component will permit the MOJ to better manage and disseminate legal, judicial and regulatory information and to promote a wide-ranging communications policy, including a public awareness campaign in respect of the Government's comprehensive justice system reform Program of which the Project is a part. It will finance efforts to obtain large public adhesion to, a clear media understanding of, and a broad Moroccan consensus supporting the Program and the Project. The dissemination of information to the public through a MOJ web page and hard-copy publications, the so-called "info-shops" and the building of capacity within the MOJ's Information Unit will be financed.

An internet site for MOJ will be created and will include the development of a legal information page that will benefit users, especially those in the business community. Also, an office will be created within the Ministry for the publication of brochures and other basic material, targeting the public-at-large. Some of these materials will be drafted in terms easily understood by all segments of the population.

Secondly, "info-shops" will be created in the Ministry of Justice and, on a pilot basis, in all commercial courts, for the purpose of disseminating legal information to the public by means of brochures and guides. These "info-shops" will also serve to direct information-seekers to appropriate sources of more detailed information.

And thirdly, the MOJ's Information Unit will establish and maintain adequate capacity to act as the focal point for Ministry communications with the public and the media regarding the reform Program and the Project. This Unit will also be in charge of conducting polls and surveys and assessing the impact of the Program generally, and the Project in particular, on users and the public-at-large.

This Component will also provide poorer segments of the population with at least some free legal services so as to increase their understanding of their rights and to enhance

their trust in the justice system. To that end, by December 31, 2001, MOJ will have entered into an agreement with the Moroccan Bar Association by the terms of which Association lawyers will be assigned to each commercial court and commercial court of appeal in order to provide free basic legal advice.

MOJ will finance the hiring of the necessary staff, the provision of its internal information and communication systems, as well as the costs involved in providing the requisite space and equipment to ensure the carrying out of the aforementioned agreement with the Bar Association.

Project Component 6 - US\$0.77 million

Supporting the Project Management Unit

Project management and implementation will be carried out by a Project Management Unit (PMU) located within the Ministry of Justice. The PMU will be comprised of a Project Director, a Deputy Project Director, a judicial system reform specialist, a procurement/disbursement specialist, a financial management specialist, an information technology specialist, a communications specialist and two assistants. In performing its functions, the PMU will:

- (a) ensure the co-ordination of all actions required for Project management and implementation;
- (b) provide assistance and support to all agencies involved in Project execution;
- (c) be responsible for procurement;
- (d) maintain Project accounts and Project financial management systems;
- (e) disseminate Project-related information;
- (f) conduct the Project's mid-term review and completion reviews;
- (g) be the Bank Project team's counterpart during Project implementation and evaluation;
- (h) report directly to the Steering Committee on a semi-annual basis; and
- (i) act as the Steering Committee secretariat.

The PMU will be provided with the resources necessary to hire short- and long-term specialized consultants to facilitate Project implementation and ensure appropriate Project monitoring. It will also have the responsibility, and be provided resources to plan, budget and manage all facets of Project management and implementation.

Annex 3: List of the topics taught to trainee judges

List of the topics taught to trainee judges during their first year with the I.N.E.J

- judicial ethics
- civil procedure
- civil law
- criminal law and criminal procedure
- forensics
- juvenile justice
- commercial law
- international trade
- maritime law
- airspace law
- islamic law
- non-registered real property
- registered real property
- family law of foreigners
- notarial law and protection of minors
- social law
- driving regulations
- civil status law
- collective land
- nationality law
- urban law

Annex 4: Internship program

Internship program for the 32nd batch of trainee judges with first-instance courts

January 2 to January 31, 2003: Criminal division

Four weeks distributed as follows:

- criminal general jurisdiction
- flagrant offences
- road accidents
- minors

February 2 to February 28, 2003: Social division

Four weeks distributed as follows:

- labour disputes
- labour accidents and professional illnesses

March 3 to April 4, 2003: Civil division

Eight weeks distributed as follows:

- civil disputes generally,
- tort
- land law
- personal status of foreigners
- civil status
- summary jurisdiction

May 1 to May 30, 2003: personal status, inheritance and minors' division

Four weeks

Half a day per week is devoted to the observation of the operations of the court administration from the initial filing of the case to final service and enforcement, including in criminal matters.

Annex 5: Donor assistance

<p>Canada</p>	<p>Recent contacts between the Ministry of Justice and the Canadian cooperation agency have been initiated in the judicial sector. The Moroccan party has stressed its efforts to assist foreign investments and enforce decisions, its focus on the enforcement of judgments, and the situation of correctional facilities.</p>
	<p>Over the past years, a Moroccan delegation has visited Canada to study the topic of divorce and domestic violence, and Moroccan judges were invited to a workshop on judicial management. Canada also contributes to the reorganization of the I.N.E.J..</p>
<p>European Union</p>	<p>The European Union includes the Kingdom of Morocco in its Euro-med partnership program. The financial instrument used is the MEDA II programmatic fund. The main areas of intervention are directly derived from the 1995 Barcelona Declaration, and lead to six-year strategic plans seeking to:</p> <ul style="list-style-type: none"> • reinforce political stability and democracy to create a common area of peace and security; • establish a zone of shared economic prosperity; • create a free-trade zone between the E.U. and its Mediterranean partners by 2010.
	<p>A bilateral association agreement entered into force in March 2000 between the E.U. and the Kingdom of Morocco. Among its goals, it targets the reform of public administrations and the improvement of the legal and judicial environment of business activities. As in the general area of civil service reform, the European Union wishes to coordinate with the World Bank in the implementation of its judicial reform assistance.</p>
	<p>In 2000, the E.U. launched a three-year program for the modernization of courts (Coded B7-4100), which has just begun to be implemented. It provides for a 27,7 million Euro program to improve the operations of the judicial system and support the modernization of judicial administration, as well as to reinforce the organizational and structural capacities of the Ministry of Justice. The Ministry will add a 6 million Euro contribution to the E.U. funding. The program will be supported by a team of six foreign specialists.</p>

	<p>The actions set out in the project are the following:</p> <ul style="list-style-type: none"> • to extend the computerization of general jurisdiction courts; • to equip five regional centers for judicial archives; • to set up complaint and information booths for the public and legal professionals alike; • to transfer professional expertise and technology skills to Ministry personnel.
	<p>The three-year program will benefit the executive staff of the Ministry of Justice and 44 courts at every level. It is explicitly designed to complement the World Bank-funded project, currently underway, for the modernization of commercial courts. In addition, it seeks to strengthen a regional cooperation between legal professions.</p>
France	<p>France is the largest bilateral partner of Morocco in the field of public sector modernization generally, and more specifically, in the area of institutional support. Since 2002, France has seconded a resident judge as liaison with the Ministry of Justice.</p>
	<p>The amount of the assistance is 600,000 per year for a two-year period. It specifically covers:</p> <ul style="list-style-type: none"> • a cooperation with the I.N.E.J. for the training of judges in criminal procedure, and courses on intellectual and industrial property, and bankruptcy procedures; exchanges of judges for specialized and ongoing training workshops; • support for the modernization of the Ministry of Justice in the areas of personnel management, judicial inspections, training of court administrators, internal and external communication, budget management; • support for the computerization of commercial courts through the training of judges and registrars; • setting up of juvenile courts; • twinning programs and exchanges of judges between the Supreme Court and the French Court of cassation, between the French judicial training college and the I.N.E.J., and between the appeal courts of Rabat and Paris
	<p>More generally, the French bilateral program brings daily technical assistance through the presence of the liaison judge, organizes a variety of sessions, and sets up individual study grants, as needed.</p>
Portugal	<p>Morocco and Portugal have recently reinforced their ties in the area of judicial cooperation through an agreement signed in 2001 relating to the exchange of information on laws, draft legislation, case law, organization, and operation of courts and other judicial institutions.</p>

United Kingdom	The United Kingdom funds a small program for the ongoing training of judges, in cooperation with the I.N.E.J. (Penal Reform International).
United States	<p>As a first step, USAID has developed a capacity-building program for the Agadir commercial court. It covers training for judges to master recent business-oriented legislation, information management techniques, and the establishment of a computer system using the software developed by the Ministry of Justice. Assistance is given to improve the analytical statistical tools. Linkages to the commercial registry are being developed.</p> <p>A second stage is being implemented whereby the Agadir program is extended to the Marrakech commercial court.</p> <p>Another program component contributes to the Internet website of the Ministry of Justice and aims to open a dedicated site for each commercial court.</p> <p>An index of the decisions issued by the commercial appeal courts is in preparation. In the fall of 2003, a training module will be launched for the retraining of judges in business law. Future developments will target capacity-building for the recent commercial legislations.</p> <p>The amount of the program implemented is US\$3 million through December 2005.</p>