

LEGAL SOCIETY SERVICE OF PRO-BONO ON MIGRANT IN MOROCCO IN LAW PERSPECTIVE

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ABSTRACT

Morocco is a constitutional, democratic and social monarchy. The King is the Supreme Representative of the Nation and the Symbol of the unity thereof. He is the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, he ensures the respect for the Constitution. He is the Protector of the rights and liberties of the citizens, social groups and organizations. System Barriers to Pro Bono work result from the social environment of the judiciary and, more specifically, from the current practice of law in Morocco. The population generally has a low regard for the legal and judicial sector, and expects corruption in the judiciary. In Morocco, legal information is also not adequately disseminated to the public. In addition, the low literacy rate 52.3% for the total population (39.6% for women, 65.7% for men) renders access to justice all the more difficult. A substantial proportion of the population is therefore vulnerable and may fall prey to unethical behavior. The Bar Association has great difficulty in supervising "homeless" lawyers, who are lawyers with no fixed business address and operate with a cellular telephone from undisclosed premises. Up to 800 of the 3,000 lawyers registered with the Casablanca Bar Association are reportedly "homeless" lawyers, who prey on the uninformed and often maintain frivolous suits in order to collect higher fees.

A. INTRODUCTION

Morocco is a constitutional, democratic and social monarchy. The King is the Supreme Representative of the Nation and the Symbol of the unity thereof. He is the guarantor of the perpetuation and the continuity of the State. As Defender of the Faith, he ensures the respect for the Constitution. He is the Protector of the rights and liberties of the citizens, social groups and organizations¹.

Morocco is bounded to the west by the Atlantic Ocean (2 934 km of coasts), in the north by the Straits of Gibraltar and the Mediterranean (512 km of coasts) and is separated from the European continent by only 14 km of sea. It has common terrestrial borders with Algeria (1,350 km), Mauritania (650 km) and Spain (12 km) (Ceuta and Melilla).

The native people of Morocco are the Berbers, an ancient race who, throughout history, have seen their country invaded by a succession of foreign

1 <https://www.nyulawglobal.org/globalex/Morocco.html> accessed on January 17, 2021 at 11:56 WIB

powers (Phoenicians, Carthaginians, Vandals, Byzantium, Portuguese, Spanish, and French). After 44 years as a French protectorate, Independence was acquired in 1956. Moroccan law is based on French Civil Law and a combination of Muslim and Jewish traditions.

B. RESULT AND DISCUSSION

1. The Executive Power: the Government

The Government is composed of the Prime Minister and Ministers. The Government is accountable to the King and the Parliament.

a. The Prime Minister

After the appointment of the Cabinet members by the King, the Prime Minister submits the program (about national activity, namely in economic, social, cultural and foreign affairs) to each one of the two Houses of Parliament. At the House of Representatives, the program must be put to the vote.

Under the Prime Minister's responsibility, the Government ensures the execution of the laws. All public facilities are placed at the Government's disposal.

The Prime Minister has the right to introduce bills, exercise the administrative powers and delegate some of his powers to the Ministers.

The Prime Minister is responsible for the co-ordination of ministerial activities. Before any relevant decision is taken, the Cabinet is notified of the following:

- 1) matters related to general policies of the State;
- 2) declaration of martial law
- 3) declaration of war;
- 4) requesting confidence from the House of representatives to allow the Government to carry out their responsibilities further;
- 5) draft bills, before they are brought to one of the two Houses;
- 6) statutory decrees
- 7) draft plan
- 8) projects for revising this Constitution

b. Ministers

- 1) Premier Ministre
- 2) Ministère de l'Aménagement du Territoire, de l'Eau et de l'Environnement
- 3) Ministère des Finances et de la Privatisation
- 4) Ministère de l'Agriculture et du Développement rural et des Pêches Maritimes
- 5) Ministère de l'Emploi et la Formation Professionnelle
- 6) Ministère de l'Éducation Nationale, de l'enseignement supérieur, de la formation des cadres et de la recherche scientifique

- 7) Ministère de la culture
- 8) Ministère de l'Équipement et du Transport
- 9) Ministère Chargé de la Modernisation des Secteurs Publics
- 10) Ministère de l'Industrie, du Commerce et de la Mise à Niveau de l'Économie
- 11) Ministère du Tourisme, de l'Artisanat et de l'Économie Sociale
- 12) Ministère de la Santé
- 13) Ministère des Relations avec le Parlement
- 14) Ministère de l'Energie et des Mines
- 15) Ministère de la Communication
- 16) Ministère du Commerce Extérieure
- 17) Ministère des Affaires Économiques et Générales
- 18) Ministère délégué auprès du Ministre des Affaires Étrangères et de la Coopération chargé de la Communauté Marocaine Résidant à l'Étranger
- 19) Ministère délégué auprès du Premier Ministre Chargé du Logement et de l'habitat
- 20) Secrétaire d'Etat auprès du Ministre du Développement Social, de la Famille et de la Solidarité, chargée de la Famille, de l'Enfance et des Personnes Handicapées
- 21) Secrétariat d'Etat auprès du Premier Ministre, chargé de la Jeunesse

2. The Legislative Power: Parliament

The Parliament is composed of two Houses: the House of Representatives and the House of Counselors.

The King presides over the opening of parliament sessions which hold its meetings during two sessions every year. The first session begin on the second Friday in October, the second session begin on the second Friday in April.

The Parliament may be convened in special session by two ways:

- a. by the request of the absolute majority of the members of one of the two Houses
- b. by decree.

During parliamentary sessions, no Member of Parliament can be subject to prosecution or arrest for criminal charges or felonies without permission from the House. Outside parliamentary sessions, no Member of Parliament can be subject to arrest without permission from the Board of the House. The imprisonment or prosecution of a Member of Parliament can be suspended if so required by the House, except in cases of:

- a. flagrant offence
- b. authorized prosecution
- c. final judgment

a. House of Representatives

Members of the House of Representatives are elected for a six-year term by direct universal suffrage. The legal legislative period finishes at the opening of the October session in the fifth year following the election of the House. An organic law sets out the rules of:

- 1) The number of representatives
- 2) the voting system
- 3) eligibility requirements
- 4) incompatibility cases
- 5) legal contentions concerning elections.

The President is elected first at the beginning of the legislative period, then at the April session in the third year of the said period and for the remaining portion thereof.

No Member of Parliament can be prosecuted, arrested, put into custody or brought to trial as a result of expressing opinions or casting a vote while exercising office functions, except when the opinions expressed are injurious to the monarchical system and the religion of Islam or derogatory to the respect owed to the king.

b. The House of Counselors

For 3/5 of its membership, the House of Counselors consists of members elected in each region by electoral colleges made up of elected members of trade chambers as well as members elected at the national level by an electoral college consisting of wage-earners' representatives. Members of the House of Counselors are elected for a nine-year term. One third of the House is renewed every three years. In the first and second renewal operations, seats are drawn by lot.

The President of the House of Counselors and members of the Board are elected at the October session during each renewal operation in the House. Members of the Board are elected in proportion to the size of their respective groups. Upon the setting up of the first House of Counselors or upon its election following the dissolution of the preceding House, the President and the members of the Board are elected at the beginning of the session which follows the election; they seek renewal of their term of office at the beginning of the October session during each renewal operation in the House. An organic law sets out:

- 1) The number of counselors
- 2) the voting system
- 3) the number of members to be elected by each electoral college
- 4) the distribution of seats according to regions
- 5) eligibility requirements
- 6) incompatibility cases
- 7) allotting procedures mentioned above
- 8) legal contentions concerning elections

3. The Judicial Power

Morocco's constitution proclaims that "the judicial authority is independent from the legislative power and the executive power". Magistrates are appointed by Dahir on the proposal of the High Council of the Magistracy. The different courts are:

a. Jurisdictions of the 1st degree

1) First Instance Courts

They are competent for:

- a) all civil affairs relevant to the personal or inheritance
- b) commercial or social statute,
- c) in a first or last instance or in appeal.

2) Trade Courts

They rule the following:

- a) Cases between tradesmen, involving commercial activities ;
- b) Disputes between associates of a trade company ;
- c) Cases related to trade effects ;
- d) Disputes related to business
- e) Trade courts are competent to judge, on first and last instances, cases that do not exceed 9,000 Dirham (0,09 \$), in value and in the first instance all requests that exceed this value.

3) Communal and District Courts

Communal and District judges are competent to adjudicate all personal estate actions brought against individuals who reside under their jurisdiction. The value of claims must be less than 1000 Dirham (0,09 \$).

b. Jurisdictions of the 2nd degree: the courts of appeals

They try criminal cases, appeals against judgments passed by Tribunals of Original Jurisdiction and appeals against rulings made by the latter's presiding judges.

4. Supreme Court

The Supreme Court is competent for:

- a. Appeals for cassation of sentences without appeal decided by anyone of the kingdom's courts.
- b. Appeals for cancellation of the Prime Minister's decisions.
- c. Jurisdiction disputes arising among courts above which there is no high court other than the Supreme Court.
- d. Suits for bias filed against magistrates and courts with the exception of the Supreme Court.
- e. Proceedings aimed at judge disqualifying because of likelihood of bias.
- f. Disqualifying for reasons of public security or for the sake of a good administration of justice.

5. Administrative courts and Other jurisdictions

Administrative courts are competent to make initial rulings on:

- a. claims for cancellation of acts filed against administrative authorities,
- b. disputes related to administrative contracts
- c. claims for compensation of prejudice caused by public entities' acts or activities.
- d. to set up the consistency of administrative acts with legal provisions.

a. Special Court of Justice

It is competent for cases (corruption, embezzlement....) in which magistrates or Government employees are involved.

b. High Court

It is competent for offences or crimes committed by government members during the discharge of their functions. They may be indicted by the two Houses of Parliament and referred to the High Court of Justice for trial.

c. The Standing Tribunal of the Royal Armed Forces:

It is competent for cases for:

- 1) unauthorized carrying of firearms
- 2) offences committed by soldiers.

d. The Audit Court

The Audit Court is responsible for conducting overall supervision of the implementation of the budget. It ensures the sound conduct of receipt and expenditure operations and evaluate the management of agencies placed under its control by law. When necessary, The Audit Courts take action against violation of the rules governing such operations. The Audit Courts provide assistance to Parliament and the government in its fields of competence

6. Other authorities

a. The Constitutional Council

The Constitutional Council is made up of six members appointed by the King for a nine -year period, six other members are appointed for the same period, half of them by the President of the House of Representatives and the other half by the President of the House of Counselors. A third of each category of members is renewed every three years. Before their promulgation, organic laws and the Rules of Procedure of each House are submitted to the Constitutional Council.

The King, the Prime Minister, the President of the House of Representatives, the President of the House of Counselors or one-fourth of the members making up one House or the other can referred to the Constitutional Council before promulgation of the law. Also, the Constitutional council decides on the validity of the election of the Members of Parliament and that of referendum operations.

The Constitutional Council have one month to decide upon the special instances. In case of emergency, the deadline is reduced to eight days if so requested by the Government. Decisions of the Constitutional Council are imposed upon all public authorities, administrative and judicial sectors. No unconstitutional provisions are promulgated or implemented.

b. The economic and social council

The Economic and Social Council may be consulted by the Government, as well as the House of Representatives and the House of Counselors on all matters of economic or social nature. It shall give its opinion on the general guidelines pertaining to the national economy and training programmes.

c. Administrative Set-up

The administration in the Kingdom is organized by two assemblies: local communities and local assemblies. The assemblies have the following competence:

- 1) Determination of modes and mechanisms for the collection of duties and taxes destined for the prefecture or the province Regional development programs:
- 2) Industrial decentralization projects.
- 3) Rules of establishment for provincial and prefectural public services.
- 4) The classification, maintenance and extension of roads.

d. Other (Semi) Governmental Institutions

- 1) Customs Administration
- 2) National Agency of Telecommunications Regulation (ANRT)
- 3) Foreign exchange bureau
- 4) Office Of Exploitation of Ports (ODEP)
- 5) National office Of the Airports

7. The Right to Legal Assistance

Article 118 of the Constitution codifies the principle that each person has guaranteed access to justice for the defence of their rights and interests protected by the law. Moreover, pursuant to Article 121 of the Moroccan Constitution, when provided by the law, justice is free for those who do not have the resources sufficient to bring a claim before a court.

In Morocco², legal representation is compulsory before any court, with the exception of cases involving alimony, social matters or small cases³. However, as aforementioned, the number of lawyers in Morocco remains disproportionate to the population's needs⁴. In addition, lawyers'

2 <https://www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-morocco.pdf>, accessed on January 12, 2021

3 Morocco: Legal and Judicial Assessment, supra n. 13; Article 310 of the Criminal Code of Morocco

4 Benzakour Law Firm's Source

fees are neither regulated by law nor regulated by the Bar, but are freely negotiable.⁵ The average lawyer's fee ranges from 1,000 to 2,000 dirham (approximately USD114 to USD228), which is equal to two to four weeks of the minimum wage in Morocco. Therefore, the majority of the population cannot afford legal services. Legal aid is thus an important mechanism to ensure equal access to justice, as provided for under the Constitution of Morocco⁶.

The pursuant to the Dahir dated November 16, 1966, which established the Act No. 514-65 on judicial assistance, legal aid in Morocco covers "judicial assistance." This is defined as the assistance provided by a State to individuals who do not have sufficient financial means to defend themselves before a court. This excludes legal counselling, i.e. consultation with legal professionals. Legal aid is granted for the whole litigation process from the legal representation of an individual before the court up to the stage of execution of a decision by the court. Such legal aid encompasses all the legal costs an individual may incur (e.g. appointment of a lawyer, experts, translators and execution costs) and excuses the individual from paying any taxes due in connection with the commencement of the proceedings. Legal aid applies to all cases, whether criminal or otherwise. The criteria under which legal aid is granted includes the following:

- a. Applicant's nationality: Under Article 1 of the Act No. 514-65 on judicial assistance (save specific provisions in international treaties allowing foreigners to benefit from such aid) judicial assistance is granted to Moroccan citizens, public-benefit institutions, and private associations with a mission of assistance and legal personality. Such aid also benefits Moroccans living outside Morocco.⁷
- b. Applicant's resources: In the assessment of resources, there are no standard ceilings, nor tables or models with an order of priority. Decisions are taken on a case-by-case basis. The financial situation of the applicant is assessed by a local institution, which issues a "certificate of poverty" to be submitted to the judge.
- c. Grounds upon which legal aid is requested: In non-criminal cases, legal aid may also be refused if there are no good grounds for the case (e.g. abuse of the process).

The Legal Aid Bureau is responsible for determining the allocation of legal aid to an individual. The composition of the Bureau depends on the court responsible for the case. However as a general rule, it is composed of one prosecutor (also the President of the Bureau), one representative from the tax department and a lawyer. The Bureau collects all information

5 Act No. 1-93-162 of September 10, 1993 organizing the practice of the profession of attorney.

6 Latham & Watkins LLP for the Pro Bono Institute, accessed on January 13, 2021

7 Ministère Chargé des Marocains Résidant à L'Étranger, <http://www.marocainsdumonde.gov.ma> (last visited on September 4, 2015).

necessary to assess the applicant's resources and may invite the applicant to present his or her situation in person. The Bureau may also hear both litigants of the dispute for which legal aid is sought and in such cases, the Bureau will attempt to reach an amicable settlement. Applicants may appeal a decision of the Legal Aid Bureau within 15 days. Legal aid may be withdrawn in the event the aided party recovers sufficient resources from the proceedings (i.e. from a successful judgment), the parties settle, the case is withdrawn or the applicant's inaction indicates a disinterest in pursuing the case.

Legal aid is in practice restricted to criminal matters. The reason for this is that the appointment of lawyers by criminal courts can take a lot of time and rather than adjourn the proceedings, the judge frequently ends up asking lawyers who are present in the court to volunteer to defend the accused. In civil matters, there are no provisions for legal aid besides the general principles expressed in the law on judicial assistance dated 1966.

Lawyers are required to accept matters assigned to them by the applicable legal aid scheme and are also subject to disciplinary measures if they refuse the assignment without a valid justification. In 2008, a new law expressly asserted the right of lawyers to receive financial compensation for legal aid assistance and referred to a future decree to set out the procedures for the determination of this compensation.⁸ The decree did not however, bring the expected clarifications. It only provided that legal fees with respect to legal aid should be borne by the budget of the Secretary of Justice and that the Bar Associations should agree on the allocation of such budget amongst themselves. Recently, a new law has stated the principle that lawyers' assistance to an aided party shall be remunerated on a flat rate basis by decree and reviewed when necessary. By a decree dated February 26, 2013, the current applicable flat rates (approximately in €) are as follows:

- a. €110 for proceedings before the Courts of first instance; €140 for proceedings before the Court of Appeals; and
- b. €190 for proceedings before the Supreme Court.

Since 2011, an Ombudsman has also been established in Morocco. The Ombudsman is a constitutional authority, in charge of matters, complaints, conflicts arising between individuals, private entities or companies and the Government or administration. The Ombudsman does not intervene in disputes among private individuals. Although legal aid is not available for disputes before the Ombudsman, there are no costs for the filing of a claim with the Ombudsman.

Despite early and generous legislation, the current legal aid system in Morocco is deficient. Since there is no specific application form for

⁸ Dahir No. 1.08.101 of October 10, 2008, enacted the Act No. 28.08, which modified the Law regulating the legal profession.

requesting legal aid, legal aid procedures are fragmented, and ultimately become complex and ambiguous. The criteria for assessing a person's eligibility for legal aid is not centralized, which means that the process can be opaque and discretionary. These deficiencies, in addition to the relatively low number of lawyers compared with the Moroccan population, mean that the current legal aid scheme does not sufficiently meet the needs of the Moroccan people and enable adequate access to justice for all.

8. Pro Bono Services

The Pro bono associations currently operating in Morocco are involved mainly in reception and attendance centers for refugees, and for women and minors who are victims of violence.⁹ They also provide some support with legal proceedings and assist in distributing legal information. The development of these associations is recent and there is no national federation of associations. However certain associations, which are more structured with more members, have more weight, which allows them to be heard when there is government consultation with civic society (e.g. in areas such as consumption and health). However, these associations are not a sufficient alternative to legal aid or the assistance of lawyers. They may assist in initial legal guidance for victims and provide them with financial aid, but such associations cannot provide individuals with legal representation in court.

System Barriers to Pro Bono work result from the social environment of the judiciary and, more specifically, from the current practice of law in Morocco. The population generally has a low regard for the legal and judicial sector, and expects corruption in the judiciary.

In Morocco, legal information is also not adequately disseminated to the public.¹⁰ In addition, the low literacy rate 52.3% for the total population (39.6% for women, 65.7% for men) renders access to justice all the more difficult. A substantial proportion of the population is therefore vulnerable and may fall prey to unethical behavior.¹¹ The Bar Association has great difficulty in supervising "homeless" lawyers, who are lawyers with no fixed business address and operate with a cellular telephone from undisclosed premises. Up to 800 of the 3,000 lawyers registered with the Casablanca Bar Association are reportedly "homeless" lawyers, who prey on

9 Reda Oulamine, "L'assistance juridique ne fonctionne pas car l'avocat désigné n'est pas payé", *Aujourd'Hui Le Maroc* (May 21, 2012); "Elaboration d'un nouveau projet de loi sur l'assistance juridique et judiciaire", *Aujourd'Hui Le Maroc* (May 21, 2012).

10 US Department of State, 2004 census <<http://www.state.gov/r/pa/ei/bgn/5431.htm>> (last visited on September 4, 2015). The definition of a literate woman or man is a person aged 15 years or over who can read and write.

11 Morocco: Legal and Judicial Assessment

the uninformed and often maintain frivolous suits in order to collect higher fees.

Moroccan lawyers are predominantly generalists and sole practitioners. They focus on litigation and provide little pre-litigation counselling. Consequently, they may not have the leverage necessary to provide pro bono services. In addition, the legal community in Morocco does not have a tradition or culture of providing pro bono services¹². Some of the more active entities offering pro bono services are as follows:

In August 2013, with the support of the Euro-Mediterranean Foundation of Support to Human Rights Defenders, the British Embassy in Morocco and the Arab Human Rights Fund, the association *Droit et Justice* launched a program of legal aid for asylum seekers in Morocco.

Migrants in Morocco mainly come from sub-Saharan Africa. Some of them have had to flee their country after being persecuted because of their race, religion, nationality or political opinion or because they are members of a particular social group. They are therefore eligible for asylum but do not have access to information on the procedures for granting refugee status in Morocco. Those who apply for asylum are often not assisted by a lawyer.

The goal of this association is to train a team of lawyers and jurists willing to invest voluntarily in legal aid for asylum seekers by being assigned one case per year under the supervision of the *Droit et Justice*. In this way, lawyers use their skills to assist migrants in their application for asylum in Morocco. The association also provides permanent legal support as well as ongoing training to the volunteer lawyers and jurists. These issues have gained so much importance recently that the Moroccan authorities have decided to establish a national refugee status determination system. Until recently, the United Nations High Commissioner for Refugees ("UNHCR") was the decision-making body in this area.

The Beni Znassen association for Culture, Development and Solidarity ("ABCDS") is an association governed by Moroccan law and was established on June 12, 2005 by a group of young activists. Among other programs, ABCDS leads a program of humanitarian and legal support to migrants, refugees and asylum seekers in distress in the zone of Oujda and its neighborhood. ABCDS is engaged, alongside other associations, in the denunciation of the pitiful living conditions of migrants in transit in Morocco, and the infringements of their rights and physical integrity from which they are victims in Morocco and during their crossing attempts towards Europe¹³.

12 *Droit et Justice* (www.droitetjustice.org, accessed on 11 January, 2021)

13 ABCDS - Association Beni Znassen pour la Culture, le Développement et la Solidarité (www.abcds-maroc.org)

C. CONCLUSION

Many the legal problems in Morocco, especially in Migrant Society and Pro Bono Aspect. The goal of this association is to train a team of lawyers and jurists willing to invest voluntarily in legal aid for asylum seekers by being assigned one case per year under the supervision of the *Droit et Justice*. In this way, lawyers use their skills to assist migrants in their application for asylum in Morocco. The association also provides permanent legal support as well as ongoing training to the volunteer lawyers and jurists. These issues have gained so much importance recently that the Moroccan authorities have decided to establish a national refugee status determination system. Until recently, the United Nations High Commissioner for Refugees ("UNHCR") was the decision-making body in this area.

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WEBSITE

ABCDS - Association Beni Znassen pour la Culture, le Développement et la Solidarité ([w1ww.abcds-maroc.org](http://www.abcds-maroc.org))

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