



المجلس الوطني لحقوق الإنسان  
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Conseil national des droits de l'Homme

# The Organic Law Relating to the High Council of the Judicial Power

Memorandum









# **The Organic Law Relating to the High Council of the Judicial Power**

**Memorandum**



# MEMORANDUM ON THE HIGH COUNCIL OF THE JUDICIAL POWER

## EXPLANATORY STATEMENT

### 1. Legal basis of the memorandum

Under the second paragraph of Article 25 of Dahir (Royal Decree) No. 1-11-19 of 25 Rabia I 1432 A.H. (1 March 2011) on the creation of the National Human Rights Council (CNDH), the latter contributes to “strengthening the building of democracy by fostering broad-based social dialogue and developing any relevant tools and mechanisms to that end”.

The CNDH, pursuant to Article 13 of its founding law, shall also “examine the compatibility of laws and regulations in force with the international treaties relating to human rights and the international humanitarian law which the Kingdom has ratified or acceded to, as well as with the concluding observations and recommendations made by UN bodies on the reports submitted thereto by the Government»

### 2. Context

As the National Dialogue on Justice Reform is an historic opportunity to build, on a collaborative basis, the fundamental principles of public policies for the reform of this strategic sector; the National Human Rights Council, a national institution sitting in the High Committee for the National Dialogue on Justice Reform, seeks to contribute to public debate on this reform through this memorandum concerning the Organic Law on the High Council of the Judicial Power.

### 3. Frame of reference

The proposals put forward in this memorandum draw on different national and international reference standards and declarations. The National Human Rights Council also carried out a comparative study of laws governing the supreme judicial councils of several democratic countries to bring its proposals into closer alignment with good practice in these countries.

The reference standards and declarations the CNDH considered in drafting this memorandum are as follows :

- The Constitution, in particular Articles 19, 56, 57, 86, 107, 109, 111, 113, 114, 115 and 116;
- Article 14 of the International Covenant on Civil and Political Rights, as interpreted by the Human Rights Committee in its General Comment No. 32<sup>1</sup>, in particular paragraphs 19 and 20<sup>2</sup>;

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- The Basic Principles on the Independence of the Judiciary, adopted by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular points 8-20;
- Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, in particular points 6, 7, 8, 9, 13, 21 and 22;
- The Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity on 26 November 2002;
- The relevant recommendations of the Equity and Reconciliation Commission, in particular recommendation No. 10<sup>3</sup> under the first axis concerned with consolidating the constitutional protection of human rights, as well as recommendation No. 2<sup>4</sup> included in axis No. 6 concerned with rehabilitating justice and strengthening its independence;
- The European Charter on the Statute for Judges, adopted by the Council of Europe on 10 July 1998;
- Memoranda of Moroccan and international NGOs on the reform of justice.

## 4. Comparative experiences

The CNDH also conducted a comparative study of the laws governing the supreme judicial councils of several democratic countries, namely :

- The Organic Law on the High Council of the Judiciary (France);
- The provisions of the Judicial Code relating to the missions of the High Council of Justice (Belgium);
- The Organic Law on the Judiciary (Spain);
- The Law on the High Council of the Judiciary (Romania);
- The Regulation on the Organization of the Work of the Supreme Judicial Council and Its Administration (Bulgaria).

## 5. Arguments

The CNDH proposals regarding the Organic Law on the High Council of the Judicial Power are supported by the following arguments :

- Argument 1: It is necessary to enshrine in the Organic Law a set of rules to ensure the financial and administrative autonomy of the High Council of the Judicial Power.
- Argument 2: The proposed arrangements for the election by judges of their representatives to the Council aim to meet the requirements of transparency and simplicity, while ensuring equitable representation of women judges. The CNDH is of the opinion that these objectives cannot be achieved unless the High Council of the Judicial Power, through its Executive President, consolidates its position in the regulation of elections. Similarly, the proposed voting system is intended to guarantee the unity of the judiciary and promote diversified representation of judges.

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- Argument 3: Noting the relatively satisfactory codification of the rights and duties of judges in legislation prior to the current Constitution, and taking into account the new constitutional statutory safeguards afforded to judges, the CNDH proposes enshrining the fundamental principles defining the rights and duties of judges in the Organic Law on the High Council of the Judicial Power. More detailed provisions on the status of judges can be included in this Organic Law or in a code of ethics to be drawn up, approved and published by the future Council.
- Argument 4: Regarding the powers of the High Council of the Judicial Power; after a comparative study of several experiences and given the new responsibilities assigned to the Council by the Constitution, the CNDH proposes to structure the Council's duties around major thematic areas and to redistribute some powers now exercised by the Ministry of Justice.
- Argument 5: Considering that the detailed provisions relating to career management and the disciplinary system for judges will be included in the Organic Law on the Status of Judges, the CNDH proposes to lay down some basic principles relating to these two aspects in the Organic Law in order to strengthen the statutory guarantees for judges.
- Argument 6: The CNDH proposal concerning the training of judges, court clerks, lawyers and other legal professionals is part of a strategy to redesign the training programme for legal professionals to meet the social demand for access to local high-quality justice.

The CNDH proposals relating to the Organic Law on the High Council of the Judicial Power are presented below.

## **6. Principles relating to the administrative and financial autonomy of the High Council of the Judicial Power**

To ensure the Council's administrative and financial autonomy, it is proposed that the Organic Law enshrine the following rules :

1. The general budget allocation of the Council shall be listed under the chapter "High Council of the Judicial Power";
2. The Executive President shall be the authorising officer for the appropriations entered in the Council's budget;
3. An accountant, seconded to the Council by the government authority responsible for finance, shall, under the authority of the Council's Executive President, exercise all the powers conferred upon public accountants by the laws and regulations in force;
4. The Executive President may appoint staff members of the Council, either through recruitment or secondment in accordance with laws and regulations in force.

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## 7. Composition and procedure for the election of judges to the Council

### *Composition*

In accordance with Article 115 of the Constitution, the High Council of the Judicial Power is presided over by the King and consists of :

- The First President of the Court of Cassation as Executive President;
- The General Prosecutor of the Court of Cassation;
- The President of the First Chamber of the Court of Cassation;
- Four representatives elected by and from among judges of the courts of appeal;;
- Six representatives elected by and from among judges of courts of first instance;
- The Ombudsman;
- The President of the National Human Rights Council;
- Five persons appointed by the King, known for their competence, impartiality and probity, as well as for their outstanding contribution to the independence of the judiciary and to the rule of law. One of them shall be proposed by the Secretary General of the Higher Ulama Council.

### *Proposals for the procedure for the election of judges to the Council*

Concerning the electoral colleges, the National Human Rights Council proposes that the representatives of judges to the High Council of the Judicial Power be elected by their colleagues, in active employment or on secondment, divided into two colleges comprising :

1. The judges of courts of appeal;
2. The judges of courts of first instance.

Each of the aforementioned electoral colleges elects its representatives to the Council. To make effective the provisions of Article 115 of the Constitution, the CNDH suggests a number (N) of seats for women in proportion to their presence in the judicial corps.

With regard to the electorate, and in a drive to strengthen the guarantees for the independence of the judiciary, the CNDH proposes that certain provisions currently under the domain of the regulatory authority be included in the Organic Law<sup>5</sup>. In this context, it is proposed that judges who are on leave of absence without pay or suspended from their duties should not be eligible to vote during the time they are in one of these situations, and that judges on secondment vote in the college to which they belong during their secondment.

As to eligibility, and to ensure adequate representation of judges, the CNDH suggests that only judges who, at the time of election, are on the voters' list and have five-year seniority as judges in the courts of appeal or of first instance could stand as candidates at elections to the Council under a specific college.

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The same logic justifies the CNDH's proposals concerning ineligibility. These proposals aim to include some provisions, currently enacted by decree, in the Organic Law while taking into consideration the provisions of Article 114 of the Constitution. Therefore, it is proposed that judges on long-term sick leave and those who have been subjected to a disciplinary sanction other than a warning or reprimand should not stand for election to the Council, unless they have benefited from an amnesty or the penalty decision against them has been cancelled following an appeal before the highest administrative jurisdiction in the Kingdom on the grounds of abuse of power.

The National Human Rights Council proposes that representatives of judges be elected for a five-year non-renewable period, starting from the date of announcement of election results.

After analyzing several comparative experiences, and considering the current state of the judiciary's organization, the CNDH suggests that the electors of each college elect their representatives by secret single-member proportional representation.

To strengthen the role of the High Council of the Judicial Power in enacting rules on the election of judges' representatives, the CNDH proposes to devolve to the Council the powers currently exercised by the Ministry of Justice concerning the organization of elections. Thus, the election date would be set by order of the Council's Executive President at least one month before the mandate of the active representatives expires. For the same purpose, the CNDH proposes that the Executive President set by order :

- a) The procedures for preparing, displaying and checking voters' lists for each college, as well as claims relating to these lists;
- b) The number of seats reserved for women;
- c) The procedure for declaring candidacy;
- d) The opening and closing dates of the election campaigns;
- e) Rules for the composition of polling stations and counting commissions;
- f) The voting procedures;
- g) The rules governing polling station reports, vote counting and result announcement;
- h) The procedure for replacing elected representatives and the organization of by-elections.

For the sake of consistency, the CNDH proposes that the Executive President set the voters' lists of each college based on data provided by the Minister of Justice.

However, in order to avoid the emergence of an excessively presidential mode of governance and to enhance deliberative governance in the High Council of the Judicial Power, the CNDH proposes that these orders be taken by decision of the General Assembly.

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## 8. Rights and duties of the Council members

In addition to the statutory rights and duties stipulated by the laws to which they are subject, it is proposed that the Organic Law enshrine certain fundamental rights and duties of the Council members. The Organic Law may provide that the Council members should perform their duties in accordance with the requirements of independence, impartiality and integrity. It may also require the Council members and staff to observe professional secrecy.

Furthermore, the Organic Law may require members to declare any conflict of interest that may influence the decisions of the Council. Once this principle is enshrined in the Organic Law, the procedures for the disclosure of conflicts of interests may be defined in the Council's Rules of Procedure. In the same logic, the Organic Law may forbid members to abuse their status in the Council for personal benefit, in whatever form.

Recognizing the importance of preserving the rights of judicial members of the Council to promotion and improvement of their professional situation, the CNDH stresses the need for an effective guarantee of the independence, impartiality and integrity of the Council members, especially when considering proposals for advancement, a key moment in the career development of judges. In the Council's opinion, this guarantee involves the establishment of mechanisms to ensure that the Council members do not compete with their peers.

In most of the comparative experiences examined by the CNDH, the judicial members of the high councils of the judiciary or the judicial power (as names vary) can neither be promoted nor appointed to another position during their term of office. Taking into account the national context and the above-mentioned constraints, the CNDH puts forward a scenario designed to prevent members of the High Council of the Judicial Power from competing with their peers. This scenario assumes that the judicial members eligible for promotion should be included in the advancement eligibility list in accordance with the rules of the Organic Law on the Status of Judges, but will be promoted only after the expiry of their term with retrospective effect. The feasibility of this proposal requires putting representatives of judges to the Council on secondment.

Finally, the Organic Law may establish the principle of compensation of members for the missions entrusted to them by the Council. The terms and conditions governing this compensation and the amounts payable would be set by order of the Executive President, approved by the General Assembly.

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## 9. Powers

The CNDH proposes to structure the responsibilities of the High Council of the Judicial Power around five functions, which are as follows.

### *I. Management of judges' career development*

The High Council of the Judicial Power shall ensure the implementation of the guarantees afforded to judges, especially with respect to their independence, appointment, promotion, retirement and discipline.

To this end, the Council shall :

- appoint judges<sup>6</sup> and manage their career development (appointment, promotion, positions, transfer, delegation and termination of employment);
- contribute to managing the recruitment and training of trainee judges in cooperation with the Ministry of Justice<sup>7</sup>;
- ensure the enforcement of provisions relating to the rights and duties of judges;
- issue disciplinary decisions in respect of judges, which may be challenged on grounds of abuse of power.

### *II. The advisory function*

The High Council of the Judicial Power shall, at the request of the King, the Government or the Parliament, give a detailed opinion on any matter relating to justice, subject to observing the principle of separation of powers.

The Government, the House of Representatives and the House of Councillors may submit to the Council bills and proposals relating to justice.

The Council is required to give its opinion on the issues submitted to it within a period not exceeding one month from the date of referral.

This period shall be reduced to fifteen days if the emergency and the reasons therefor are indicated in the referral letter sent by the King, the Government or one of the two Houses of Parliament.

Referral to the High Council of the Judicial Power of any request for an opinion shall be made on behalf of the Government by the Head of Government and on behalf of both Houses of Parliament by their respective speakers.

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### *III. The research function*

On its initiative, the High Council of the Judicial Power shall prepare reports on the state of the judiciary and the judicial system, and present appropriate recommendations in this regard.

These reports shall mainly focus on the strategic guidelines of public policies relating to justice, and analyze the implementation of these policies. The Council shall present its appropriate recommendations in this regard.

The Council may conduct studies and research in the areas falling within its remit.

The Government, the Parliament, the administration and the various institutions, bodies, councils or commissions engaged in activities related to the functions assigned to the High Council of the Judicial Power are required to provide it with the information, data and documents it requests.

The Council shall also prepare an annual activity report.

### *IV. The Control, audit and inspection function*

The High Council of the Judicial Power may assign one or more of its members to conduct a fact-finding mission to the Court of Cassation, courts of appeal, courts of first instance and the Higher Institute of the Judiciary.

The National Human Rights Council proposes to empower the Executive President of the Council to appoint inspection judges, on the recommendation of an ad-hoc committee created for this purpose. Inspection judges shall have general powers to investigate, audit and control. They may summon and interview the judges concerned and obtain all relevant documents.

In the same vein, the CNDH proposes a new distribution of the inspection function, whereby the High Council of the Judicial Power shall be vested with the power to audit courts and tribunals. In this respect, the Office of the Inspector General shall ensure continuous inspection of courts and tribunals, under the authority of the Council's Executive President.

Inspection of services falling under the Ministry of Justice shall remain within the purview of the Ministry<sup>8</sup>.

Since the above proposals are part of a logic that aims to strengthen the statutory guarantees afforded to judges, an essential precondition for their effective independence, the CNDH proposes to maintain the current wealth declaration system provided for under Law No. 53-06 repealing and replacing Article 16 of Royal Decree No. 1-74-467 of 26 Shawwal 1394 (11 November 1974) on the status of judges. However, and to reflect

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the new composition of the Council under Article 115 of the Constitution, the CNDH proposes to amend the provisions of the aforementioned Article 16 to empower the Executive President of the Council to chair the committee responsible for the regular review of changes in the wealth declarations of judges.

Finally, the CNDH considers it necessary that the Organic Law on the High Council of the Judicial Power enshrine the new guarantee provided for in the second paragraph of Article 109 of the Constitution in order to enable a judge, whenever he deems his independence threatened, to report thereon to the High Council of the Judicial Power. The Organic Law may empower the Executive President to order the Inspectorate General to conduct the necessary investigations. The Council's Rules of Procedure may specify the procedure for this particular type of referral.

## *V. The function of developing a code of ethics and disseminating case law*

The National Human Rights Council proposes that the Organic Law on the High Council of the Judicial Power entrust the Council with the tasks of developing a code of ethics applicable to judges and disseminating case law.

## **10. Criteria for the management of judges' career development**

It is proposed that the Organic Law should establish the principle of the performance evaluation of judges while specifying that the assessment shall not have the purpose or the effect of undermining the independence or impartiality of the judge concerned.

As it is desired to provide strong guarantees against any attempt to jeopardize the independence of judges during their evaluation, it is proposed that the latter should focus on quantifiable and objectively measurable criteria. This choice has twin benefits: it preserves the independence of judges while facilitating the development of measurable indicators, a necessary methodological condition to improve the quality of services provided to individuals.

The Organic Law on the High Council of the Judicial Power may enshrine several assessment criteria as principles for the evaluation of judges' performance, which may be detailed in the Organic Law on the Status of Judges. The assessment could be based on a set of basic skills necessary for the proper discharge of the judicial office, such as :

1. The ability to manage case outflow compared to case inflow and cases pending;
2. The ability to decide cases within a reasonable time;
3. Organizational skills;
4. Knowledge of law and procedure;
5. Fair and equal treatment of cases;
6. Communication skills;

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7. Management of hearings;
8. Management of evidence;
9. Decision making;
10. Management of pending cases<sup>9</sup>;
11. Quality of judgements<sup>10</sup>.

These criteria can be combined with the seniority criterion which retains its importance. Some provisions of Article 23 of the Status of Judges can be transferred to the Organic Law, including the principle of the continuous advancement of judges in grades and steps. As part of the same logic, it is proposed that the Organic Law should also include the impossibility of promoting a judge to a higher grade unless he/she is on the advancement eligibility list, as well as the principle of taking into account, when establishing the said list, the candidate's university degrees, qualification and ability to perform the duties corresponding to the higher grade.

It is further proposed to create, within the Council, a Promotion Committee composed exclusively of the judicial members.<sup>11</sup>

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To strengthen the statutory guarantees afforded to judges, it is proposed that any judge who challenges the assessment of his professional performance may refer the case to the Promotion Committee. After hearing the observations of the judge concerned and those of the assessing authority, the Promotion Committee shall deliver a reasoned opinion to be placed in the file of the judge concerned. In the same vein, it is proposed to grant judges the possibility of self-assessing their performance as part of a more comprehensive approach to evaluation.

Regarding public prosecutors, the CNDH considers that the Organic Law on the High Council of the Judicial Power should enshrine the principle that the Council shall take into consideration the evaluation reports prepared by the higher authority to which they report.

## **11. Disciplinary procedure rules**

It is proposed that the Organic Law enshrine three constitutional provisions: the participation of inspecting judges in disciplinary matters, the qualification as gross professional misconduct of any failure by a judge to fulfil his obligations with respect to independence and impartiality, as well as the possibility of challenging on grounds of abuse of power individual decisions issued by the High Council of the Judicial Power before the highest administrative jurisdiction of the Kingdom.

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In the Royal Decree No. 1-74-467 of 26 Shawwal 1394 A.H. (11 November 1974) on the Status of Judges, the provisions of Chapter V relating to the disciplinary regime applicable to judges broadly afford judges with the necessary disciplinary guarantees. It is therefore proposed to transfer the provisions of Articles 59, 61, 62 and 63 of this law to the Organic Law on the High Council of the Judicial Power, while redrafting Article 58 to include the provisions of the third paragraph of Article 109 of the Constitution. In the same vein, it is proposed to grant the Council's Executive President the authority to impose penalties on judges following disciplinary proceedings conducted by the Council convened as a disciplinary board.

## **12. Organization and operation of the High Council of the Judicial Power**

It is proposed that the Council be composed of the following bodies.

■ The General Assembly which is composed of all the Council members and has general authority to debate all matters concerned with the above proposed functions devolved on the Council. The General Assembly shall vote on the draft budget of the Council, the draft rules of procedure and the procedures for the election of judges' representatives by order of the Executive President;

■ The Bureau which comprises, besides the Executive President of the Council, three members elected by the General Assembly. It is proposed that the principle of proportionality should be respected also in the composition of the Bureau to ensure the representation of women judges in this important executive body. The Bureau shall be responsible for preparing the draft agenda of the General Assembly, implementing General Assembly decisions, preparing the draft action programme of the Council and assisting the Executive President in the preparation of the draft budget. The Executive President shall seek the opinion of the Bureau on all matters relating to the definition of the Council's functions and the organization of administrative services;

■ Standing committees (including the Promotion Committee) which shall prepare draft opinions and decisions of the General Assembly and carry out studies and research required from the Council. The standing committees may call on any qualified and experienced persons to assist them in the fulfilment of their duties, in a manner to be specified in the Rules of Procedure;

■ The Secretary General appointed by the Executive President from outside the members of the Council, after approval by the General Assembly. The Secretary General shall have a secretariat and run the administrative and financial services of the Council under the authority of the Executive President. He shall attend the meetings and deliberations of the General Assembly and the Council's Bureau, without the right to vote;

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■ The Judicial Inspection invested with the mission of auditing courts based on the distribution scenario proposed above.

The Council may establish, from among its members, temporary committees or special working groups to examine a specific subject within its remit.

Regarding the operation of the Council, the CNDH puts forward two proposals. The first is related to the number of sessions, suggesting that the Council should hold at least two sessions per year. The second relates to the Rules of Procedure of the Council, which should be established and voted by the General Assembly of the Council and submitted to the Constitutional Court to ensure compliance with the provisions of the Constitution and the Organic Law on the High Council of the Judicial Power.

### **13. Training of judges, court clerks, lawyers and other legal professionals**

The National Human Rights Council proposes an institutional overhaul of the training of judges, court clerks, lawyers and other legal professionals.

This revision takes into account the common and specific aspects of the above professions as well as the state of social demand for access to justice, the lack of staff in certain legal professions and the unequal distribution of these professionals on the national territory. All these factors justify, in the opinion of the CNDH, a reform and an expansion of the training programme for legal and judicial professionals.

With regard to the Higher Institute of the Judiciary, it is recommended to review the composition of its board to strengthen the presence of the High Council of the Judicial Power therein. Therefore, it is proposed to amend Article 5 of Royal Decree No. 1-02-240 of 25 Rajab 1423 A.H. (3 October 2002) promulgating Law No. 09-01 on the Higher Institute of the Judiciary to designate the Executive President of the Council as chairman of the Institute's board. The Minister of Justice should continue to serve on the board.

In the medium term, the CNDH puts forward two scenarios. The first is to strengthen the research function of the Institute in order to assist the Council in discharging its new responsibilities. The second scenario is to create a higher institute of judicial studies affiliated to the Council.

Given the specificity of court clerks' training, it is proposed to create a national school for court clerks to provide initial and continuing training of court clerks and staff in all their areas of work (law and procedure, administration, management, new information technologies, etc.).

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This proposal requires amending Law No. 09-01, particularly with regard to the functions of the Higher Institute of the Judiciary and the composition of its board.

To complete the range of training offered in the legal and judicial professions, the CNDH proposes to establish regional training institutes, in accordance with Article 6 of Law No. 28-08 amending the law on the practice of the profession of lawyers and the decree laying down the conditions governing their creation and operation. It is proposed that these regional institutes be managed by the bar associations, with the technical support of the High Council of the Judicial Power in partnership with the Bar Association of Morocco. The CNDH finally proposes to set up a justice training institute to provide training for all other categories of legal professionals, with a system for skill-validation and certification similar to that provided by Article 6 of Law No. 28-08 amending the law on the practice of the profession of lawyers.

## Notes

**1** - General Comment No. 32 was adopted during the 90th session of the Human Rights Committee (9-27 July 2007) CCPR/C/GC/32, 23 August 2007.

**2** - Paragraph 19: The requirement of competence, independence and impartiality of a tribunal in the sense of Article 14, paragraph 1, is an absolute right that is not subject to any exception. The requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the independence of the judiciary from political interference by the executive branch and legislature. States should take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal. It is necessary to protect judges against conflicts of interest and intimidation. In order to safeguard their independence, the status of judges, including their term of office, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

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Paragraph 20: Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary. The same is true, for instance, for the dismissal by the executive of judges alleged to be corrupt, without following any of the procedures provided for by the law.

Human Rights Committee, ninetieth session, Geneva, 9-27 July 2007, General Comment No. 32 "Article 14: Right to equality before courts and tribunals and to a fair trial", CCPR/C/GC/32, 23 August 2007, p. 5.

**3** - "Strengthening the constitutional guarantees relating to the independence of the High Council of the Judiciary. The Equity and Reconciliation Commission proposes that the Council's statutes be set by way of an organic law reviewing its composition and functions in order to ensure the significant representation of civil society and provide it with autonomy in its human and financial resources. The organic law should also grant the Council broad prerogatives to organize and regulate the profession, establish a code of ethics, assess the professional performance of judges and take disciplinary measures. The Council should also be tasked with preparing an annual report on the administration of justice". Equity and Reconciliation Commission, Final Report, Vol. I «Truth, Equity and Reconciliation», Chapter IV: Recommendations, p. 103.

**4** - The Equity and Reconciliation Commission recommended “establishing the High Council of the Judiciary at the headquarters of the Supreme Court in Rabat”, Equity and Reconciliation Commission, Final Report, Vol. I «Truth, Equity and Reconciliation”, Chapter IV: Recommendations, p. 105.

**5** - Decree No. 2-75-882 of 20 Dhu Al-Hijja 1395 A.H. (23 December 1975) on the election of representatives of judges to the High Council of the Judiciary, amended and supplemented by Decree No. 2-93-69 of Rabia I 1414 A.H. (25 August 1993), as well as Decree No. 2-94-684 of 4 Rajab 1415 A.H. (7 December 1994).

**6** - In accordance with the provisions of Article 57 of the Constitution.

**7** - The CNDH proposes joint supervision for a transitional period (during the first term of the Council) after which the Council should fully assume this function.

**8** - This proposal involves three steps:

a) Amending Article 12 of Decree No. 2-98-385 of 28 Safar 1419 A.H. (23 June 1998) on the functions and organization of the Ministry of Justice which provides that “the General Inspectorate shall ensure, under the direct authority of the Minister, the continuous inspection of courts, as provided by Royal Decree No. 1-74-338 of 24 Jumada II 1374 A.H. (15 July 1974), as amended and supplemented, on the judicial organization of the Kingdom, as well as the inspection of services reporting to the Ministry of Justice”;

b) Devolving to the High Council of the Judicial Power the tasks provided for in Title II (relating to the inspection of courts) of Royal Decree No. 1-74-338 of 24 Jumada II 1374 A.H. (15 July 1974), as amended and supplemented, on the judicial organization of the Kingdom;

c) Restructuring the functions of the Ministry of Justice’s General Inspectorate around the following areas:

- Inspecting all directorates and services of the Ministry of Justice;
- Inspecting the administrative and financial management of courts and tribunals (including court clerks’ offices);
- Inspecting court staff.

Regarding point (c), the CNDH proposes to draw on the French Decree No. 2010-1668 of 29 December 2010 on the Functions and Organization of the Inspector General of Judicial Services.

**9** - The criteria 4 to 10 are used in the evaluation system of the Administrative Appeals Tribunal in Australia.

**10** - See for example: Pascal Mbongo (studies compiled by): “The quality of judicial decisions”, Council of Europe, 2011.

**11** - It is proposed to include this provision in the Rules of Procedure of the High Council of the Judicial Power.

For the composition of promotion committees in comparative law, see the composition of the promotion committee for judges in France, Official Gazette No. 0245 dated 21 October 2010.







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