

Overall Score:

48 - Very Weak

Legal Framework Score:

58 - Very Weak

Actual Implementation Score:

35 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ³⁹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

The Moroccan law guarantees the freedom to form CSOs and gives them the right to oppose corruption and to support good governance. It prohibits CSOs whose activities are secret, violent, military or hostile to the regime & religion (monarchy, Islam). In fact, the administration provides a receipt (a true recognition of this right.) CSOs which did not have this receipt can be tolerated but encounter serious difficulties to act as a legal personality, to access to an estate, rent a premises and in particular be funded.

References:

The Moroccan Constitution:

Article 9

The Constitution guarantees all citizens freedom of movement (&) freedom of opinion, freedom of expression (&) freedom of assembly (& and) freedom of association (&).

Law concerning NGOs:

Dahir no.1.58.376 of Nov. 15, 1958, modified by Dahirs No. 1.73.283 from April 10, 1973; 1.02.206 of July 23, 2002 (see. Official Bulletin Arabic Version BOAV) and No 5046 of Oct. 16, 2002.

Application Decree No. 2.04.969 from Jan. 10, 2005 BOAV No.5339 from Aug. 1, 2005.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

The associations are free to use local or foreign funding but certain discrimination is enforced, between the associations recognized of public utility by the Secretariat General of Government and the associations which did not have this recognition. In addition, the Ministry of Social Solidarity is in the process of certifying associations to introduce a new discrimination criterion.

References:

The Dahir No. 75-00 amending and supplementing the Dahir No. 1-58-376 of Nov. 15, 1958 regulating the right of association (BO No. 5048 of Oct. 17, 2002) and Dahir No. 02-200 of July 23, 2002) provides local and foreign sources of financing

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Despite the law, the Ministry of Foreign Affairs issued a circular on May 16, 2006, limiting the use of external financing only for the public utility recognized associations. The circular was addressed to embassies and International organizations in Rabat to ask them not give funds to NGOs not recognized of Public Utility.

References:

Article 6 of Law 75-00 allows associations reported to receive aid from foreign associations and international organizations. Two mandatory conditions are provided for in Articles 17 and 32:
– the aid must not come from associations of a political nature;
– the amount and source of aid must be reported to the General Secretary of the Government within 30 days from the date of obtaining aid, under penalty of dissolution of the association.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

33

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | **50** | 25 | 0

Comments:

Despite the fact that the government creates no legal barriers to the organization of new anti-corruption/good governance CSOs, several administrations limit or shut down CSOs activities and demonstrations by administrative decisions.

References:

Examples:

The general meeting of the constituent union Authority PhDs was banned on May 18, 2008.

The National Instance for Public Goods Protection in Morocco (NPPBM) did not have its receipt for the third year. It is tolerated but encounters serious difficulties to act.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

CSOs are involved in everything that is theoretical and can be called upon to formulate their points of view, but they do not participate in the decision-making process. A Central Agency for Corruption Prevention was established in May 2007. CSOs proposed representatives within the Forum but this has yet to happen.

Despite the effective role played by CSOs in spreading awareness, publishing principles of good governance, human rights, political participation and participating in decision-making, there are many legal and practical obstacles against obtaining a response from the ruling regime.

References:

Assahifa n° 152, Lahbib Hajji, May 3, 2007: Corruption Largely Developed in State, Parties and CSOs

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES

NO

Comments:

In practice the government does not lack means to muzzle CSOs:

- unfair trials in front of a dependent justice (newspapers, lawyers and journalists, proceedings against Al Watan al An, for which Mustapha Hormatallah was behind bars, Nichane, Telquel and Al Massae);
- prohibition of activities, demonstrations, seminars (Arrissala seminar in Tangier to support Al Massae; Tansikiat in the fight against the rise of prices, PJD (Development and Justice party) at Kalaat Sraghna, all conferences of Professor Mehdi Al Manjra)
- judicial prosecution of witnesses (Rkia Abu Ali in Meknes, lawyers of Tetouan);
- kidnapping of Ms. Khadija Ziane, following her attendance at the press conference of CMDH on July 26, 2008 in Rabat and because of her active role in supporting the unemployed in Sidi Ifni;
- arrests of groups and activists (two members of the AMDH at Tan Tan for participating in a demonstration, ANDCM throughout the year, Ms. Khadija Ghoda (58 years) and her two daughters for having protested against the dispossession of their lands (dispossession of collective land is a current practice by real estate speculators during the last three years.)

References:

2008 Reports of:

Moroccan Observatory on Civil Liberties
Moroccan Association of Human Rights (AMDH)
Amnesty international
Moroccan Center for Human Rights (CMDH)
National Association of Unemployed Graduates (ANDCM)

Press releases of

AMDH: June 24, 2008; July 2, 2008, and July 14, 2008.

CMDH: July 28, 2008

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

33

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | **NO**

Comments:

Last year, a DDH activist from the Protection of Public Goods (town of ITZAR south of Meknes) was imprisoned when he testified on dilapidations operated by the municipal council of ITZAR.

The sniper in the city of Targuist has been researched by the Royal Gendarmerie. In this context, several arrests and/or interrogations were carried out against internet activists and bloggers for mere suspicion or with the distinct purpose of intimidation. They were released after a new video was posted on Youtube signed by the same sniper (about the same city of Targuist and other northern areas in Morocco.)

Rkia Abu Ali which revealed cases of corruption in the judicial sector was arrested, tried and imprisoned on unfounded charges. His brother was imprisoned too. They were acquitted and released by the Appellate Court a few months later.

References:

- Youtube video titled The Sniper of Targuist,
- Press releases and press conference of CMDH,
- News on the site of AMDH,
- Rkia Abu Ali, The Story of A Woman in Tighassaline between Love, Sex And Power
- A series of articles in the newspaper Assabah from July 2, 2008 to July 29, 2008, page 6.
- Mr Mimmi (town of Tit Mellil) was arrested after his testimony: http://www.assif.info/index.php?file=News&op=index_comment&news_id=4482
- See the same site for additional examples: <http://www.assif.info/index.php?file=Recherche>

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

Comments:

Several civil society activists have been physically harmed during the last year.

The Unemployed Graduates are beaten all the time when they gather or demonstrate. They are often wounded and arbitrarily arrested when they protest.

Examples:

The repression and the prohibition of a protest on Jan. 6, 2008 in Al Houceima and Rabat.

The most severe punishment took place in the town of Sidi Ifni on May, 30, 2008. The Unemployed Graduates blocked the port to prevent the fishing activities carried out by the privileged few (who are not even from this town, but are generally politicians or public servants who receive the necessary permits, while the young men in the city are unemployed). A strong repression was initiated against Sidi Ifni.

After denying the existence of social movements and enforcing muscular police interventions, the government finally acknowledged the existence of disorder and unrest in controlled calmness. However, various reports of human rights associations have noted the excessive reaction of law enforcement and blindness in the arrest and torture cases. A parliamentary inquiry committee was formed, but it has not yet issued its report (after five months, while all the associations have already published their reports).

References:

Youtube: Unemployed Graduates of Morocco.
blog AMDH flap,
Site Assif;

First report of the Moroccan Observatory of Civil Liberties on the exercise of freedom of associations, public assemblies and the press.
Rabat, November 2007
Pages 8 to 19

Jan. 6, 2008

Unemployed Graduates Repression Al Houceima cf. Youtube video in:

<http://fr.youtube.com/watch?v=2QcQrelWocU>

Repression of the Unemployed Graduates in Rabat cf. video in Dailymotion:

<http://www.dailymotion.com/relevance/search/dipl> 25C3%% 25B4m% 25C3% 25A9s% 2Bchomeurs% 2BMaroc/video/x3ys0s_maroc-repression-policieres-contre_news

Arrests in Sidi Ifni Aug. 19, 2008 and May 30, 2008

<http://fr.youtube.com/watch?v=UzUeqieegbo>

http://www.cadtm.org/spip.php?article3597&var_recherche=sidi%20ifni%20video

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

No activist has been killed.

References:

No case have been reported.

The Parliamentary Inquiry Commission on the Sidi ifni events didn't find any such case.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The law gives citizens the right to organize into trade unions.

The unions engaged in a legal regime freer than the legal regime of associations (legal personality, the right to sue, participation in several negotiation process and consultative bodies, including representations in the House of Councilors, etc.) However, the right to strike is not more liberal, and such pursuits often leads to police violence and arrests.

References:

Law: Dahir of July 16, 1957 amended by the decree of Feb. 5, 1975.

The decree recognizes the right to form syndicates for officials, with the exception of those in charge of security functions.

1996 Constitution: Article 3

Labor Code: Art. 396 to 474.

Article 396

Trade Unions are designed for defense, study and promotion of economic, social, moral and professional, individual and collective categories that surround and improve the educational level of their members. They also participate in the development of national policy in the economic and social fields. They are consulted on all disputes and issues related to their field of competence.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

Comments:

In practice, citizens can organize themselves into trade unions or professional or trade associations, which are much more tolerated and integrated than in the past.

However, significant limitations are also noteworthy. Despite this freedom, the unionization rate is low. Workers are threatened

and harassed by employers supported by the state, particularly in the event of strikes, in which arrests and police violence are commonplace.

References:

Annual reports on violations of trade union freedoms and labor law: (2008 AMDH, OMDH, UMT CMDH ..)
Some professional associations (e.g. doctors) are under government control through appointments, despite protests.
The general meeting of the constituent union Authority PhDs was banned on May 18, 2008

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

0

5a. In law, freedom of the media is guaranteed.

YES | **NO**

Comments:

The Moroccan Constitution says in its preamble that Morocco's commitment to human rights is universally recognized.

Law n° 77-00 marked progress in reducing the powers of the government to suspend and prohibit media outlets but maintained many prison sentences and ignored the civil society and Moroccan intellectuals claims (which had been unanimously adopted within various NGOs and led to a consensus with the state).

The monarchical regime and the Islamic religion are sacred. The words of the King remain sacred and cannot give rise to any comments. A lot of publications are banned based on other views, such as Christian, republican, Shia Islamic, gay.

Very strict conditions and clauses governs the exercise of freedom of the press and expression. Similarly, no details of the concept of "freedom of the press nor the words violating public order" are mentioned in the law.

References:

Constitution Articles: 1, 6, 9, and 19

Art. 6 -The constitution guarantees all citizens freedom of movement, opinion, expression, assembly and association.

Dahir No. 1-02-207 of Oct. 3, 2002, promulgating the Law 77-00 (-BOVA No. 5075 of Jan. 20, 2003 for the French translation BOVF No. 080, June 21,2003);

Publications of Al Adl wal Ihsane association are constantly prohibited.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | **NO**

Comments:

Freedom of individual speech is guaranteed. Each citizen has the right to express his/her points of view and publish them in all available forms.

However, In the absence of precise concepts of freedom of the press," "violations of law and order", "sanctity of the monarchy, the religion, the Nation", there are a group of articles of laws that restrict this freedom in accordance with a wide interpretation of the law and the safety of the national system. The form of the monarchical regime, the Islamic religion are sacred. The words of King remain sacred and cannot give rise to any comments. A lot of publications are banned, based on other views, such as Christian, republican, Shia Islamic, gay.

References:

Constitution Articles: 1, 6, 9, and 19

Dahir No. 1-02-207 of Oct. 3, 2002 promulgating the Law 77-00 (-BOVA No. 5075 of Jan. 20, 2003 for the French translation BOVF No. 080, June 21, 2003)

SNPM 'Trade Union of Moroccan Press report, May 3, 2008

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

81

6a. In practice, the government does not create barriers to form a print media entity.

Comments:

In practice, the government does not create barriers to forming print media entities (Art.3 of the law), but the conditions (formalities, declarations and deposits are difficult and discouraging for investors).

Thus, article 5, paragraph 8 of the law requires (for persons associated in the project):
the name of commercial, industrial or financial companies; the names of the officers, directors or managers.”

Article 12 requires that all associated persons must be Moroccan, which poses further limits on the liberalization of the sector. External financing is banned and punishable by both fine and imprisonment.

Finally, when the capital is owned by one person, he/she is forced to be the director of the publication (art.15).

In addition, for reasons of repression and controlling the freedom of press and expression, a new penalty was introduced in 2005: the ban to publish periodicals.

References:

Art.1, 3, 5, 6, 8, 11 & 12 of Dahir No. 1-02-207 of Oct. 3, 2002, promulgating the Law 77-00 (-BOVA No. 5075 of Jan. 20, 2003 for translation French BOVF No. 080, June 21, 2003);

See Ali Lmrabet case, widely commented in the press and by Reporter Without Borders;

Report of the SNPM, May 3, 2006

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The law allows for a formal appeals process through the courts in case a print media license was denied.

References:

Art. 7, Dahir n°1-02-207 du 03 octobre 2002 portant promulgation de la loi 77-00 (-BOVA n° 5075 du 20.01.2003 pour la traduction française BOVF n° 080 du 21-06-2003)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can obtain a print media license within a reasonable time period (in law it is 30 days.)

References:

Art. 6 Dahir n°1-02-207 du 03 octobre 2002 portant promulgation de la loi 77-00 (-BOVA n° 5075 du 20.01.2003 pour la traduction française BOVF n° 080 du 21-06-2003) ;
SNPM Trade Union of Moroccan Press” report , May 3, 2008

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens can obtain a print media license at a reasonable cost. Nevertheless, if the direct cost is not a constraint, the preconditions are a heavy indirect cost (1/ the owner of the capital is required to be the editor, 2/ all associated must declare their commercial, industrial and financial companies etc.).

References:

Dahir n°1-02-207 du 03 octobre 2002 portant promulgation de la loi 77-00 (-BOVA n° 5075 du 20.01.2003 pour la traduction française BOVF n° 080 du 21-06-2003) ;
SNPM ” Moroccan Press Trade Union” report, May 3, 2008

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

The liberalization of this sector was initiated in 2002. But in practice we have to note:

- the nomination of persons close to the regime at the head and in the executive committee of the High Authority of the Audio visual Communication (HACA), is, in fact, an instrument of control in the hands of power. Thus HACA is not an independent public entity.
- the Trade Union SNPM noted in its 2008 report on Press Situation the non-compliance and/or non-adoption of objective standards in granting licenses, and underlined the ignorance of the causes of rejections.

References:

Dahir No. 1.02.212 of Aug. 31, 2002 on the establishment of the High Authority of audio visual Communication. (BOVF No. 5036 of Sept. 5, 2002);

Dahir No. 1-04-257 of Jan. 7, 2005 promulgating the law 77-03 on Audiovisual Communication (BOVF No. 5288 of Feb. 3, 2005);

SNPM report of May 3, 2008;

Law 77-03 Art.18.

To be a candidate for a license, the applicant must:

§ be a Moroccan law limited company, whose shares representing the capital must be registered;

§ include among its shareholders at least one qualified operator, natural or legal person with professional experience as evidence in the field of audiovisual communication, which should hold or commit to hold at least 10 percent of the share capital and voting rights of society.

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

According to law no. 77-03, a formal process to appeal a denied broadcast media license is permitted.

The Administrative Court in Rabat has exclusive jurisdiction to hear first the contentious actions arising from the implementation of this Act and the texts adopted for its implementation (law 77-03 Article 70).

References:

Dahir No. 1-04-257 of Jan. 7, 2005 promulgating the law 77-03 on Audiovisual Communication (BOVF No. 5288 of Feb. 3, 2005)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time period varies depending on the launching of tenders and the number of applicants by region or hearing basin

(NB: number of applications exceeds the number of frequencies available)

Two waves were granted since the creation of the High Authority in 2002:

- the first license was granted at the end of March 2006;
- the second wave had its bidding call on Aug. 11, 2008.

References:

Dahir No. 1-04-257 of Jan. 7, 2005 promulgating the law 77-03 on Audiovisual Communication (BOVF No. 5288 of Feb. 3, 2005)

Article 23: The High Authority may initiate, at the request of governmental authority in charge of communication, calls for expressions of interest for the establishment of radio and television stations closed.

Article 24: The license is granted by the High Authority to any entity that satisfies the conditions of the invitation for expressions of interest or who made the request in accordance with the provisions of this Act.

However, in cases of multiple expressions of interest in the same services or in the same geographical area, the High Authority must use a competitive bidding.

No Credibility on Democracy without Liberalization of The Audiovisual. Interview with A. Akhchichine DG of HACA in Al Ittihad ichtiraqui , Oct. 14, 2006;

La Vie Economique, March 10, 2006 «La HACA lance bientôt ses appels à la concurrence»: <http://www.lavieeco.com>

LA VIE ECONOMIQUE, Sept. 16, 2005Audiovisuel. TV et radio privés, premières autorisations début

2006, <http://www.lavieeco.com>

Al Bayane June 12, 2008 «Lancement de la deuxième vague de licences radio et télévision: Appel à concurrence le 11 août»

<http://www.albayane.ma>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost is reasonable. During the licensing of the first wave (2006), the cost of most projects ranged between 2 and 4 million dirham (US\$231,000-462,000).

References:

No Credibility on Democracy without Liberalization of The Audiovisual. Interview with A. Akhchichine DG of HACA in Al Ittihad ichtiraqui , Oct. 14, 2006;
SNPM Report, May 3, 2008

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

50

8a. In practice, the government does not prevent citizens from accessing content published on-line.

Comments:

Without legal basis, the government prevents citizens from accessing the content or sites that it wants to hide from them. But it's not a systematic practice.

§ The SNPM has watched cases of censorship against sites on the web;

§ The arrest of Mortada, an Internet activist (jailed for 3 years) proved that the control was also exercised by the network provider (a semipublic society) for the police;

§ The provider is also responsible for the closure of access to the Youtube site to its subscribers.

§ The same prohibition occurs for Google earth and live journal

References:

Marianne Jeudi 31 Mai 2007 Johanna Nezri – Marianne : GoogleEarth, You tube et d'autres sites marocains sont régulièrement censurés au Maroc.

Tel quel No. 201 Karim Boukhari Sahara. Propaganda against propaganda <http://www.telquel-online.com/201/sujet1.shtml>

SNPM, Moroccan Trade Union Press report, May 3, 2008

Amnesty International report 2008

AMDH reports and press releases 2008

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

Comments:

The government censors citizens' access to the internet. It established a police unit for Fighting The Crimes Pertaining To Computers and World Wide Web. The government is also helped by the ISP.

Mortada was jailed for taking the name of a prince on Facebook. The arrest of this Internet user proved that the control is exercised by the network provider (a semi public society) for the police.

References:

Marianne Jeudi 31 Mai 2007 Johanna Nezri – Marianne : GoogleEarth, You tube et d'autres sites marocains sont régulièrement censurés au Maroc.

Tel quel No. 201 Karim Boukhari Sahara. Propaganda against propaganda <http://www.telquel-online.com/201/sujet1.shtml>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

The constitution and press law address freedom of expression and press in general terms. There are no laws or regulations that permit or prohibit the press to report on corruption, even if it damages the reputation of a public figure.

However, it must be emphasized:

- on corruption, the law speaks of proof, which it is often difficult to provide;
- in the absence of a law on access to information, there are a few cases where we can have accurate information and evidence;
- journalists can be prosecuted for use or disclosure of confidential document. (Case of trial against Arriri and Hormatallah);
- the absence of legislation on the protection of witnesses of corruption;

Thus, one can easily invoke defamation.

References:

SNPM Report, May 3, 2008:

<http://www.snpm.ma/def.asp?codelangue=27&po=2>

Trial against Hormatallah:

<http://www.snpm.ma/affdetail.asp?codelangue=24&info=1131>

<http://www.snpm.ma/affdetail.asp?codelangue=24&info=979>

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | **25** | 0

Comments:

Usually, the corruption facts reported do not lead to any results, either in investigating or prosecuting those who disclosed the information. When the case is considered sensitive or when the political climate is not favorable or when the opportunity arises to take revenge or to silence people or newspapers, laws and interpretations of laws are used (art.18: the status of the Civil Service, Article 44 concerning defamation, the secret administration documents , etc.) Similarly, witnesses are often arrested.

It must be emphasized:

- on corruption, the law speaks of proof, which it is often difficult to provide;
 - in the absence of a law on access to information, there are a few cases where we can have accurate information and evidence;
 - journalists can be prosecuted for use or disclosure of confidential document. (Case of trial against Arriri and Hormatallah);
 - the absence of legislation on the protection of witnesses of corruption;
- Thus, one can easily invoke defamation.

References:

Report of the SNPM, May 3, 2008 summarizes many cases and trials.

The case of Rkia Abu Ali

Cases of Tetouan Lawyers

Transparency News N°3, the review of Transparency Maroc's observatory:

http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=67&Itemid=88888975

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

If the government never prevents publication of controversial corruption-related materials, self-censoring exist for several

reasons:

- there is no right to access information;
- the law prohibits officials from disclosing the realities of the administration under pain of punishment;
- to speak about corruption, journalist must submit proof, (it is something difficult even for the police to submit cases in flagrante delicto).

Thus, at their own risk, journalists denounce cases of corruption.

The reminder of ethics and the threat of a trial for defamation have become a sword of Damocles hanging permanently above journalists' heads.

References:

Report of the SNPM, May 3, 2008, summarizes many cases and trials.

The case of Rkia Abu Ali

Cases of Tetouan Lawyers

Transparency News N°1: http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975

Transparency News N°2 : http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=67&Itemid=88888975

Transparency News N°3: http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=71&Itemid=88888975

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Print media companies are required by law to publicly disclose all owners of the company.

References:

Dahir No. 1-58-378 of Nov.15, 1958 as amended by Dahir No. 1-02-207 of Oct. 3, 2002; art.8 paragraph 8

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

Broadcast media companies are required by law to publicly disclose all owners of the company.

References:

Dahir n°1-04-257 du 7 janvier 2005 portant promulgation de la loi n° 77-03 relative à la communication audiovisuelle Bulletin Officiel n° 5288 du 03 février 2005.

Articles 18, 19, 20, 21.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

There is no legislation on this subject in Morocco.

The National Trade Union of the Moroccan press, the Collective publishers, civil society organizations (OMDH, LMDH, CDDH, AMDH, Transparency Morocco, Association of the Bar of Morocco, Union Writers of Morocco) and personalities have created the Independent National Organ for the ethics of the press and freedom of expression — a sort of Observatory of ethics or Quadripartite Press Council.

This Organ had to ensure the implementation of the charter of ethics and freedom of expression, follow the practice of the profession, preserve the right of the public to information, protect journalists in their mission and defend the freedoms of the press, opinion and expression. Its functional structure is not yet operational.

References:

Charter and status of the Independent National Organ for the ethics of the press and freedom of expression. See on the SNPM website: <http://www.snpm.ma/affdetail.asp?codeLangue=23&info=867>

Tel Quel No. 270 of 22 to 27 April 2007: 3 questions for Younes Moujahid [Secretary-General of the National Trade Union of the Moroccan Press (SNPM)] www.tequel-online.com

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

Public media coverage in the elections of 2002 depended on the importance of each party. Opposition parties and movements that boycotted the elections were not entitled to coverage. A tendency to favor the system of local notables and pro-government candidates is perceptible.

The independent press have provide a more equitable coverage, with a clear trend to track the non-transparency cases regardless of the party concerned.

References:

National Trade Union of Moroccan Press report, May 3, 2008

Moroccan Center of Human Rights report on Legislative Elections of sept 2007

National Democratic Institute Final report on Legislative Elections, Sept. 7, 2007

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | **50** | 25 | 0

Comments:

Parties were granted a defined time to present their programs in the electronic media of the State. The time was divided according to their representation in Parliament.

According to the Moroccan system, the eight political parties with parliamentary representation during the previous session collectively received 40 percent of the total broadcasting time granted by the State.

References:

National Trade Union of Moroccan Press report, May 3, 2008
Moroccan Center of Human Rights report on Legislative Elections of sept 2007
National Democratic Institute Final report on Legislative Elections, Sept. 7, 2007

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

In the past two to three years, no journalists investigating corruption have been imprisoned. But we found that they are followed, harassed, arrested for various reasons and tried in unfair trials. It was also found that mainly in 2008 they have been often attacked, Their attackers are never identified or arrested.

However, the story of the arrest of Mohamed RAJI shows that repression is blind, justice is not independent, and that the contradictions of the judiciary are appalling: instructions against instructions. Black becomes white and white is black.

Make up your mind:

6 / 7 September (Weekend):

The blogger RAJI Mohamed was questioned and arrested
Sept. 9, 2008:

Raji was sentenced to two years in prison and a fine of DH 5000 (US\$575) for contempt of His Majesty the King and royal family. The trial lasted for 10 minutes without any defense.

This was followed by a very strong mobilization of the Moroccan civil society, Reporters Without Borders and other bloggers, For example, the following message was posted on the Internet:

If the blogger is not released, it would be the start of an international mobilization that will last as long as it takes and I am sure that nobody comes out grows. Not because a blogger is above the law but because nothing in Mohamed Erraji's writing justifies this arrest."

<http://globalvoicesonline.org/2008/09/08/morocco-the-post-that-led-mohammah-erraji-to-jail/>

Sept. 11, 2008:

The appellate court approves bail.

Reason: failure to meet basic elements of the procedure by the court of first instance.

Sept, 18, 2008:
Mohemed RAJI is cleared.

Ahdath Maghribia newspaper, Sept. 26, 2008:
This trial and its meandering raises the urgency of the reform of the judiciary, its independence from other powers and the issue of fair trial.

References:

NeederLand Radio

<http://arabic.nw.nl/mideastafrica/18090802>

Mohemed Raji free. Ahdath maghribia (news paper) of Sept. 26, 2008

<http://globalvoicesonline.org/2008/09/08/morocco-the-post-that-led-mohammah-erraji-to-jail/>

Press releases of Human Rights Associations (OMDH, AMDH, CMDH) and the National Trade of the Moroccan Press:

<http://www.snpm.ma/affdetail.asp?codelangue=23&info=1084>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

At their own risk journalists denounce cases of corruption.

The reminder of ethics and the threat of a trial for defamation have become a sword of Damocles hanging permanently above journalists.

The cases of aggression against journalists are numerous. After complaint no action shall be taken, whatever the type of aggression:

-the unknowns are never identified;

-when it is perpetrated by the police, a laxity in the prosecution is noted.

References:

Report of the SNPM, May 3, 2008 summarizes many cases and trials.

The case of Rkia Abu Ali

Cases of Tetouan Lawyers

Transparency News N°1: http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975

Transparency News N°2 : http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=67&Itemid=88888975

Transparency News N°3: http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=71&Itemid=88888975

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There is no documented case.

References:

SNPM report, May 3, 2008

Reporters Without Borders' Report Morocco 2008

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

56

I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

0

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);

Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006);

CMF-MENA Centre of Media Freedom Advocacy for the Right to Information (in French and Arabic, Nov. 2005)

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);
Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006);
CMF-MENA Centre of Media Freedom Advocacy for the Right to Information (in French and Arabic, Nov. 2005)

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);
Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006);
CMF-MENA Centre of Media Freedom Advocacy for the Right to Information (in French and Arabic, Nov. 2005)

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);
Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006)

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);
Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);
Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006)

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no law about the right to access information.

References:

TM Transparency Maroc: Right To Access Information (Book in French including a proposal for a law, 2006);
Socialist Union of Popular Forces (USFP) – Parliamentary group: proposal for a law (May 5, 2006)

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | **25** | 0

Comments:

The administration should, in principle, give reasons for its decisions, particularly the negative ones. Citizens can address an appeal to the court or Diwan al Madhalim. But in practice this law is poorly enforced.

References:

Dahir No. 1-02-202 of July 23, 2003 under Act 01-03. Official Bulletin (Arabic version) No.5029 of Aug. 12, 2003
BO No. 5030 (English version), 6 Jumada II 1423 (15-08-2002)

Maghreb Press Agency: Initiatives To Ensure Law Enforcement on The Grounds of Administrative Decisions.
In aujourd'hui le Maroc news paper, June 23, 2005.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁴⁸Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Law No. 9-97

Art.3. — Eligible Moroccan voters are of both sexes, at least 18 years old, and not part of any disability category covered by the law.

Cases that can not be registered on the electoral lists cited in Art. 5:

1. soldiers of all ranks in active service, law enforcement officers (gendarmarie, police and auxiliary forces) and some officials,
2. Moroccans naturalized during the five years following the acquisition of Moroccan nationality,
3. individuals convicted irrevocably under the following categories:
 - A. a criminal penalty;
 - B. either a sentence of imprisonment, whatever the duration or a suspended sentence of longer than three months for qualified crime or for one of the following offenses: theft, fraud, breach of trust, bankruptcy, perjury, falsification of private, business or bank, in administrative documents or certificates, manufacture of seals, stamps or stamps of the State, corruption, influence peddling, squandering goods, misuse of public money, blackmail, extortion, public drunkenness, attack on morals, pimping, prostitution, kidnapping and corruption of minors, corruption of youth, drug trafficking;
 - C. a penalty of imprisonment for a period exceeding six months for the following offenses: illegal price increase, illegal storage of products or goods, fraud in the sale of goods and adulteration of food, agricultural products or products; Sea;
 - D. more than three months' imprisonment without a sentence or a sentence of imprisonment for a period exceeding six months sentence for all offenses other than those referred to in paragraphs B. and C. above, except offenses involuntary not accompanied by hit and run;
4. persons deprived of voting rights by judicial decision;
5. individuals in a state of absentia;
6. legal prohibitions;
7. those who were the subject of a liquidation;
8. those convicted of national degradation.

Art. 6. — Those sentenced to one of the penalties provided for in paragraphs B); C) and D) of Section 5, can not be registered on electoral lists at the expiration of five years from the date on which the sentence has been served or prescribed .

References:

Moroccan Constitution : Dahir n° 1-96-157 du 7 octobre 1996 BO VF4420bis -10 octobre 1996)

Law No. 9-97 on Electoral Code, as it was amended and supplemented until March 23, 2007

ARTICLE 37

Members of the House of Representatives are elected for five years by direct universal suffrage.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

Elections were held within the time frame stipulated by law.

References:

Moroccan Constitution : Dahir n° 1-96-157 du 7 octobre 1996 BO VF4420bis -10 octobre 1996)
Law No. 9-97 on Electoral Code, as it was amended and supplemented until March 23, 2007

ARTICLE 37

Members of the House of Representatives are elected for five years by direct universal suffrage. The legislature ends on the opening of the October session of the fifth year following the election of the House.

ARTICLE 38

Members of the House of Councilors are elected for nine years. The House of Councilors is renewable every three years.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

The actual context is for the general encouragement to vote, because the high abstention rates undermine the credibility of the process.

The inability to vote can only be a fraudulent practice on the part of some candidates or local authorities especially when other means of cheating are not relevant. Indeed, there have been numerous cases of voters who have not found their cards on the eve of the elections. However, according to official sources, for the September 2007 elections 80 percent of registered voters have their cards withdrawn.

Other cases encountered in practice are usually administrative errors. When fraudulent manipulations are detected, they are liable to prosecution in court. Nevertheless, the AMDH had issued a notice dated Sept. 11, 2007, in which it reported that 700 complaints were ignored by the administration!

References:

Reports of national observers for monitoring the parliamentary elections, 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- March 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007, September 2007
OMDH (Moroccan Organization of Human Rights) Report on Elections of September 2007, September 2007
TM & DRI (Transparency Morocco & Democracy Reporting International) 1/Assessment of the Electoral Framework of Morocco, January 2007; 2/ Evaluation framework for the organization of elections, September 2007.
FCDM (Moroccan Democratic and Civil Forum) & CERSS (Social Sciences Studies and Research Center). Report on Elections of September 2007, September 2007
NDI (National Democratic Institute) Report on Elections of September 2007

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | **50** | 25 | 0

Comments:

In general ballots are secret, and there is a functional equivalent protection in all cases. However, in some constituencies cases of fraud or corruption were reported by the candidates, voters or observers (e.g, case of Ifrane constituencies).

The frauds (ballots which were not secret or protected) were often perpetrated by candidates who resort to bribery of voters. The new phenomenon is the negative neutrality” of the State or Public local authorities (a kind of live and let live.)

The inability to vote can only be a fraudulent practice on the part of some candidates or local authorities especially when other means of cheating are not relevant. Indeed, there have been numerous cases of voters who have not found their cards on the eve of the vote. However, according to official sources, in the September 2007 elections 80 percent of the registered voters had their cards withdrawn.

Other cases encountered in practice are usually administrative errors. When fraudulent manipulations are detected, they are liable to prosecution in court. Nevertheless, the AMDH had issued a notice dated Sept. 11, 2007, in which it reported that 700 complaints ignored by the administration!

References:

Reports of national observers for monitoring the parliamentary elections, 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- March 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007, September 2007
OMDH (Moroccan Organization of Human Rights) Report on Elections of September 2007, September 2007
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FCDM (Moroccan Democratic and Civil Forum) & CERSS (Social Sciences Studies and Research Center). Report on Elections of September 2007, September 2007
NDI (National Democratic Institute) Report on Elections of September 2007

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

In 2006 and 2007 elections were always held according to a regular schedule.

References:

Reports of national observers for monitoring the parliamentary elections, 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- March 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007, September 2007
OMDH (Moroccan Organization of Human Rights) Report on Elections of September 2007, September 2007
TM & DRI (Transparency Morocco & Democracy Reporting International) 1/Assessment of the Electoral Framework of Morocco, January 2007; 2/ Evaluation framework for the organization of elections, September 2007.
FCDM (Moroccan Democratic and Civil Forum) & CERSS (Social Sciences Studies and Research Center). Report on Elections of September 2007, September 2007
NDI (National Democratic Institute) Report on Elections of September 2007

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

40

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

In law, all citizens have the right to form political parties, unless they are stripped of the right to undertake their political rights. Until after the 2002 elections, the Moroccan partisan life was regulated by Dahir of 1958 on associations. Political life (partisan practice and state regulation) and electoral processes have shaped the political landscape of Morocco, which gave rise to a bloated multi-party system (6 parties in 1962, 26 in 2002, 33 in 2007) and a galloping disrepute. In response, the State concocted a new law which can only block the formation of new political parties by the very difficult requirements it poses to their creation. An authorization from the Interior Ministry is necessary, and given the number of documents requested, it is virtually impossible to obtain.

This same ministry largely was responsible for all the manipulations of elections, particularly during the years of tyranny. I

Officially, the Interior Minister said that this bill aims at

- organizing the partisan landscape,
- making the organization of political parties and their management and financing more transparent
- giving more rationality and objectivity in the creation and enjoyment of these formations” (release of the MAP of July 14, 2005).

References:

Dahir No. 1-06-18, Feb. 14, 2006 on the promulgation of Law No. 36-04 on political parties.

Decree No. 2-06-176 of April 21, 2006 on the annual support grants I 'state political parties and unions to political parties (Official Gazette No. 5400 of March 2, 2006).

Law n° 23 – 06 promulgated spoke Dahir No. 1.07.07 of March 23, 2007, amending and supplementing the far ° 9-97 on the Electoral Code.

Mohamed MADANI: The political landscape of Morocco. Dar Al Qalam, Rabat 2006

Omar Bendourou: Human Rights And The Basic Liberties, 2007 Friedrich Ebert Stiftung

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

The new law on political parties reveals a reductionist conception of their role in the political life. Indeed, they become management party under the Ministry of Interior, with the mandate to provide civic education to citizens and select the elite called to participate in the management of common affairs.”

Therefore the objective of gaining power is no longer their role and the opposition on religious, linguistic etc. issues is no longer recognized (see page 42 Madani).

With the new law, many more people lose the right to hold political office.

Law No. 36-04 on political parties Article 4:

It is null and void, the formation of any political party

-based on a cause or for a purpose contrary to the constitution and the laws

-intended to affect the Islamic religion, the monarchy or integrity of the Kingdom.

-based on religious, linguistic, ethnic or regional, or generally on any discriminatory basis, or contrary to human rights.

Article 6: The parties may not be open to:

-the military of all ranks in active service and law enforcement officials;

-magistrates, judges of the Court and judges of regional courts of accounts, the municipal judges and district and their alternates;

-agents of authority and ancillary authority;

– persons other than those mentioned above, which do not have the right to organize Trade Unions under the provisions of Decree No. 2-57-1465 of Feb. 5, 1958.

References:

Dahir No. 1-06-18, Feb. 14, 2006 on the promulgation of Law No. 36-04 on political parties.

Decree No. 2-06-176 of April 21, 2006 on the annual support grants I 'state political parties and unions to political parties (Official Gazette No. 5400 of March 2, 2006).

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YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | **50** | 25 | 0

Comments:

Only strong groups and/or those supported by public authorities can easily meet the conditions for the creation of political parties. Indeed that is what has been found since the promulgation of the new law.

Article 8 poses very difficult circumstances to creating parties:

1. legalized signatures of three of the founding members and stating;
2. triplicate projects statutes and program;
3. written undertaking in the form of individual statements, at least 300 founding members to hold the constituent congress of the party in time fixed at Part 11.

Each individual declaration, duly signed by its author, indicates his first name, name, nationality, date and place of birth, profession and address.”

” It will be accompanied by a copy of the national identity card, and the certificate of voter registration general.”

The 300 members (referred in paragraph 3) shall be divided according to their actual residence in at least half the regions of the Kingdom, although their numbers by region is below a 5 percent of the minimum founding members required by law.

Article 13 decrees even more complicated conditions:

To be validly convened, the constituent congress of the political party must include at least 500 delegates including at least three-quarters of the founding members referred to in Article 8-3 ° of this law, leaving in light of their actual residence in the least half the regions of the Kingdom, although their numbers by region is below a 5 percent of the minimum required of the founding members.

Article 35: State Financing in favor of great and ex. parties

The breakdown of the amount of state participation under the annual support among political parties is calculated on the basis of:

1. the number of seats (in Parliament),
2. the number of votes obtained in the general election.

Article 50

When the activities of a political party has infringed on the law and order, the minister of the Interior requires the chairman of the administrative court in Rabat, acting as judge, to order the suspension of the party and the temporary closure of its premises.

After the publication of the new law, only two new parties were created. The Amazigh Democratic Party was banned on grounds of basic segregation.

The Authenticity and Modernity Party (PAM) was created by former Secretary of State for Internal Affairs and it appears to enjoy support within the administration. One of the parties who has tried to merge with PAM filed a complaint before the administrative court in Rabat on grounds of illegal constitution.

The effects of the new law will be felt on the old parties in a year or two (2009/2010).

This is another example of the difficulties faced by political parties following the implementation of the new law.

The Leader of the National Democratic Party (a former party in the government) has begun the process of merging with the new party in power, but was met with a refusal. The Interior Ministry declared a unilateral dissolution of the party, while it did not meet its statutory bodies to endorse or reject the merger decision. Party leader Kadir, a former army colonel, filed a complaint before the Administrative Court and requested Royal arbitration.

References:

Dahir No. 1-06-18, Feb. 14, 2006 on the promulgation of Law No. 36-04 on political parties.

Decree No. 2-06-176 of April 21, 2006 on the annual support grants I 'state political parties and unions to political parties (Official

Gazette No. 5400 of March 2, 2006).

Law n° 23 – 06 promulgated spoke Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the far ° 9-97 forming electoral code.

Mohamed MADANI: The political landscape of Morocco. Dar Al Qalam, Rabat 2006

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | **25** | 0

Comments:

The King can appoint the prime minister even outside the majority party in the elections. Clerks of the State shall be appointed, and no rule, standard or competition is expected.

In addition, social promotion and tradition of arbitrary appointments to high public office or partisan office (political, economic, administrative and social) are outside any public accountability. This reinforces a general system based on cronyism and family ties and excludes routes legitimating competence, merit and integrity.

The new law on political parties reveals a reductionist conception of their role in the political life. Indeed, they become «management parties under the Ministry of Interior, with a mandate to provide civic education for citizens and select an elite called to participate in the management of common affairs.

Therefore the objective of gaining power is no longer their role.

With the new law a lot more people lose the right to hold political office.

References:

Dahir No. 1-06-18, Feb. 14, 2006 on the promulgation of Law No. 36-04 on political parties.

Decree No. 2-06-176 of April 21, 2006 on the annual support grants I 'state political parties and unions to political parties (Official Gazette No. 5400 of March 2, 2006).

Law n° 23 – 06 promulgated spoke Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the far ° 9-97 forming electoral code.

Mohamed MADANI: The political landscape of Morocco. Dar Al Qalam, Rabat 2006

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing do may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective

campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The results show the assumption of members of opposition parties in Parliament.

Opposition parties were repressed (lack of freedom of the press, freedom of expression, unfair trials and expeditious, kidnappings, torture, for nearly 40 years (1961-1997). The absolute power of Hassan II lasted from 1965 to 1998, when a consensual alternation in government was formed and process of rehabilitation of former political detainees implemented. Meanwhile, a practice of vote-buying was widespread, leading mafia groups to dominate the elections. Significant support was provided to the Islamists grouped around a leader close to the King. Radical Islamists, members of the extreme left and independent citizens did not participate in elections and called for a boycott. The short experience of consensual power alternating (1998-2002) did not allow the new government to overcome the blockages of monarchical power present in the executive and legislative projects in all political, economic, religious subjects & and so on.

Since 2003, a new management model adopted by the political power appears to be emerging. With the constraints and dangers of the rise of Islamists, the Palace goes back to the old practice of supporting and establishing administration parties. The political power is pushing various small parties to regroup by merging with the new party (created by a close friend of the King and former Secretary of State for Internal Affairs.) The opposition noted the use of the term Sidna (King) to the point that the King himself said in a speech on Oct 10, 2008, that this was not his party. The people (mostly the intellectuals and the poor who do not sell their votes) no longer believed in the ability of the government or Parliament to carry out significant changes and they did not vote (the abstention rate was 70 percent in September 2007 and 80 percent in the partial legislative elections of September 2008).

References:

Elections official results

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

0

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

Moroccan law does not provide for an agency to monitor elections. It also does not speak of national and foreign observers. It allows, however, for the presence of representatives of parties and candidates at every level of voting, counting and census results.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007. September 2007
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Decree No. 2-06-176 of April 21, 2006, on the State annual support grants for political parties and unions of political parties. BO (Official Gazette) No. 5400 of March 2, 2006.
Law n° 23 – 06 promulgated by Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the law ° 9-97 on the Electoral Code.
Mohamed MADANI: The Political Landscape of Morocco. Dar Al Qalam, Rabat 2006
Omar Bendourou: Human Rights and The Basic Liberties, 2007 Friedrich Ebert Stiftung

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Moroccan law does not provide for an agency to monitor elections. It also does not speak of national and foreign observers. It allows, however, for the presence of representatives of parties and candidates at every level of voting, counting and census results.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
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Mohamed MADANI: The Political Landscape of Morocco. Dar Al Qalam, Rabat 2006

Omar Bendourou: Human Rights and The Basic Liberties, 2007 Friedrich Ebert Stiftung

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Moroccan law does not provide for an agency to monitor elections. It also does not speak of national and foreign observers. It allows, however, for the presence of representatives of parties and candidates at every level of voting, counting and census results.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:

The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.

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NDI (National Democratic Institute) Final report on the Moroccan parliamentary elections, Sept.7, 2007

Dahir No. 1-06-18, Feb. 14, 2006, on the promulgation of Law No. 36-04 on political parties.

Decree No. 2-06-176 of April 21, 2006, on the State annual support grants for political parties and unions of political parties. BO (Official Gazette) No. 5400 of March 2, 2006.

Law n° 23 – 06 promulgated by Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the law ° 9-97 on the Electoral Code.

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100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

Moroccan law does not provide for an agency to monitor elections. It also does not speak of national and foreign observers. It allows, however, for the presence of representatives of parties and candidates at every level of voting, counting and census results.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
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100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Moroccan law does not provide for an agency to monitor elections. It also does not speak of national and foreign observers. It allows, however, for the presence of representatives of parties and candidates at every level of voting, counting and census results.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
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Law n° 23 – 06 promulgated by Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the law ° 9-97 on the Electoral Code.
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100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

63

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

Comments:

In practice, the use of old lists permits several shortcomings and mistakes; among these mistakes are:
-the similar names in the voter registration tables,
-repeated names in the same records,
-names of people who died,
– names of people live who in another governorate,
-one person may obtains more than one electoral card

The cases are numerous, one can found details in the observation reports, but we can cite a few examples for illustration.

1/ In its first report observing elections in September 2007, CMDH records 127 violations:

- 11 interventions during the operation vote
- 7 cases of non-distribution of voting cards
- 1 case prohibiting a citizen to vote.

2/ The OMDH report describes elections in two districts (Casablanca Ain Sebaa and Tiflet Rommani).

At the Tiflet Rommani chapter, it said:

- Destruction of voter cards (page 8),
- Discount cards to close" instead of handing them over to concerned (page 9)
- No publication of voter lists in all municipalities (page 8),

In the district of Casablanca Ain Sebaa, the report said:

The difficulty of finding the appropriate polling point for voters who could not withdraw their cards. At the level of Morocco it was stated that 25 percent of the voters have not withdrawn their voting cards. (page 12)

3/ The report of the Moroccan Democratic Civil Forum also notes:

- No appointment of a withdrawal of voter cards (page 7)
- Bewilderment of voters seeking their cards on the voting day (page 7)
- Existence of several names of deceased voters on the electoral roll (page 8),
- No names on voter registers and computers (page 8),

4/ In the town of Oujda

- Distribution of voting cards by the Mokaddem (authority agent responsible for one or more neighborhoods, acting for the Ministry of the Interior. These agents have a long tradition of influence by threats of administrative reprisals). (Case No. 49)
- Refusal to issue cards to voters without commitment to vote for a candidate (Case No. 50)
- Discount cards for voters to candidates (Case No. 117)

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:

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Decree No. 2-06-176 of April 21, 2006, on the State annual support grants for political parties and unions of political parties. BO (Official Gazette) No. 5400 of March 2, 2006.

Law n° 23 – 06 promulgated by Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the law ° 9-97 on the Electoral Code.

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100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007. September 2007
OMDH (Moroccan Organization of Human Rights) Report on Elections of September 2007. September 2007
TM & DRI (Transparency Morocco & Democracy Reporting International) 1/Assessment of the Electoral Framework of Morocco, January 2007; 2/ Qualitative assessment of the election to the House of Representatives, Sept. 7, 2007
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Electoral law:

Law No. 9-97 on the Electoral Code as it was amended and supplemented until March 23, 2007

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The process is slow, to the point of being ineffective when the verdict is given at the end of the mandate.
Another phenomenon that is not well studied and that evokes Professor Mohamed MADANI is the use of justice as another battlefield of the duel of notables.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007. September 2007
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100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Officials of the Ministry of Interior who support certain candidates interfere with other candidates or do not intervene to enforce the law. However, during the 2007 elections many observers noted the neutrality of the state apparatus for the first time. Nevertheless, most of them stressed that it is a negative neutrality that lets fraudsters. You can call it "privatization" of the handling of ballots.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007. September 2007
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100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | **NO**

Comments:

For the first time national and international observers were allowed to observe the elections in 2007, but there is still no law regulating the conduct of election observation.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
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YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | **75** | 50 | 25 | 0

Comments:

For the first time national and international observers were allowed to observe the elections in 2007, but there is still no law regulating the conduct of the election observation. It should be noted that the observers received accreditation only a day before the elections.

The multiplicity of office positions up for election and the vastness of constituencies limit the presence of observers. Parties and candidates, even in coalitions, fail to cover a satisfactory percentage of offices votes. As for independent observers, they have often resorted to samples, mostly cases in accessible areas.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
CMDH (Moroccan Centre of Human Rights) Report on Elections of September 2007. September 2007
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100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

0

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES

NO

Comments:

Moroccan law does not provide for an agency to monitor elections. It also does not speak of national and foreign observers. It allows, however, for the presence of representatives of parties and candidates at every level of voting, counting and census results.

References:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:
The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.
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Law n° 23 – 06 promulgated by Dahir No. 1.07.07 from March 23, 2007 amending and supplementing the law ° 9-97 on the Electoral Code.

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YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

21 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The new Political Parties Act (2006) has strengthened the financial requirements. It recalled the distinction between public and private funding and prohibitions, including financing by local and public or semi-public government entities and external funding.

References:

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

" Decree No. 2-02-188 of 6 jourmada I- 1423 (July 17, 2002) on the participation of the State in the financing of election campaigns conducted by political parties to the occasion of general elections and municipal legislation.

" Dahir No. 1-02-213 of 21 I jourmada 1423 (Aug. 1, 2002) promulgating the Organic law No. 29-02 amending and supplementing the Organic Law No. 31-97 on the House of Representatives, as amended and supplemented by the Organic Law No. 06 -02.

" Dahir No. 1-97-83, 23 kaada 1417 (April 2, 1997) promulgating the Law No. 9-97 on the Electoral Code.

" Dahir No. 1-97-185- 1st jourmada I- 1418 (Sept. 4, 1997) promulgating the Organic Law No. 31-97 on the House of Representatives.

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YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

The contributions are limited to 100,000 dirhams (US\$11,515) per year per donor (both in cash or in kind).

References:

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

" Decree No. 2-02-188 of 6 jomada I- 1423 (July 17, 2002) on the participation of the State in the financing of election campaigns conducted by political parties to the occasion of general elections and municipal legislation.

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YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

The contributions are limited to 100,000 dirhams (US\$11,515) per year per donor (both in cash or in kind).

References:

Dahir No. 1-06-18, Feb. 14, 2006, promulgating the law 36-04 on political parties. Title IV Articles 28, 32 and 36

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

" Decree No. 2-02-188 of 6 jomada I- 1423 (July 17, 2002) on the participation of the State in the financing of election campaigns conducted by political parties to the occasion of general elections and municipal legislation.

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" Dahir No. 1-97-83, 23 kaada 1417 (April 2, 1997) promulgating the Law No. 9-97 on the Electoral Code.

" Dahir No. 1-97-185- 1st jomada I- 1418 (Sept. 4, 1997) promulgating the Organic Law No. 31-97 on the House of Representatives.

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YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES

NO

Comments:

The law speaks of justification of expenses. It requires the use of checks for any donation of more than 5,000 dirham (US\$575) and any expenditure in excess of 10,000 dirham (US\$1,151).

References:

Dahir No. 1-06-18, Feb. 14, 2006, promulgating the law 36-04 on political parties. Title IV Articles 28, 32 and 36

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

" Decree No. 2-02-188 of 6 jomada I- 1423 (July 17, 2002) on the participation of the State in the financing of election campaigns conducted by political parties to the occasion of general elections and municipal legislation.

" Dahir No. 1-02-213 of 21 I jomada 1423 (Aug. 1, 2002) promulgating the Organic law No. 29-02 amending and supplementing the Organic Law No. 31-97 on the House of Representatives, as amended and supplemented by the Organic Law No. 06 -02.

" Dahir No. 1-97-83, 23 kaada 1417 (April 2, 1997) promulgating the Law No. 9-97 on the Electoral Code.

" Dahir No. 1-97-185- 1st jomada I- 1418 (Sept. 4, 1997) promulgating the Organic Law No. 31-97 on the House of Representatives.

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YES: A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

Comments:

The parties must
open specific bank accounts;
certify their accounts and;
place them together with evidence to the Court of Auditors by March 31 of each year.

References:

DRI/TM: Evaluation qualitative de l'élection à la chambre des représentants, 7 septembre 2007" Berlin/ Rabat Novembre 2007-
DRI / TM: "Qualitative Assessment of The Election to The House of Representatives, Sept. 7, 2007" Berlin / Rabat in November 2007

Dahir No. 1-06-18, Feb. 14, 2006, promulgating the law 36-04 on political parties. Title IV Articles 33, 34, 36 and 37

I-Laws

" Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.
" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.
" Decree No. 2-02-188 of 6 jomada I- 1423 (July 17, 2002) on the participation of the State in the financing of election campaigns conducted by political parties to the occasion of general elections and municipal legislation.
" Dahir No. 1-02-213 of 21 I jomada 1423 (Aug. 1, 2002) promulgating the Organic law No. 29-02 amending and supplementing the Organic Law No. 31-97 on the House of Representatives, as amended and supplemented by the Organic Law No. 06 -02.
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YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

Article 34 of Law 36-04 states:

The accounts of political parties are determined annually. They are certified by a chartered accountant registered with the Order of Chartered Accountants.

References:

Dahir No. 1-06-18, Feb. 14, 2006, promulgating the law 36-04 on political parties. Title IV articles 34.

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

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YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

The Court of Auditors is in charge of controlling political parties' funds and financing.

The Court of Auditors (in French : La Cour des Comptes) is responsible for monitoring and control of electoral finance political parties.

To implement the provisions of the law on political parties, a recent government counsel (19 November 2008) approved a decree authorizing the ministers of Interior and Finances to draft a special accounts (Plan Comptable) for political parties.

References:

Dahir No. 1-06-18, Feb. 14, 2006, promulgating the law 36-04 on political parties. Title IV Articles 33, 34, 36 and 37

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

" Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

" Decree No. 2-02-188 of 6 jomada I- 1423 (July 17, 2002) on the participation of the State in the financing of election campaigns conducted by political parties to the occasion of general elections and municipal legislation.

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The Gazette No. 556 – Dec. 22, 2007

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is

ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Despite existing laws, the legal framework for elections has serious limitations in fairness and transparency. Several researchers and observers have concluded that the new Moroccan electoral landscape is dominated by money. The mode of voting, the vast extent of large constituencies especially in the rural areas and funding limits contribute to inability of the State to enforce the law.

Mohamed Madani (op. cit page 86) considers that the democratic competition becomes increasingly a financial struggle rather than a traditional political struggle.”

References:

I-Laws

Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

” Dahir No. 1-03-83, 20 moharrem 1424 (March 24, 2003) promulgating the law No. 64-02 amending and supplementing the Law No. 9-97 on the Electoral Code.

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YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

NO: A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

A ceiling of 250,000 dirhams (US\$28,780) is determined by the Electoral Code, but the problem is at two levels:
-the ability of monitoring compliance with this limit for expenditure declared;
-financing exceedingly important, unreported and irregular practices such as corruption and vote-buying.

Article 289 of the Electoral Code stipulates that:

Candidates for general municipal and legislative elections are required to comply with the ceiling on election expenses set by the decree.

References:

DRI/TM: Evaluation qualitative de l'élection à la chambre des représentants, 7 septembre 2007" Berlin/ Rabat Novembre 2007-
DRI / TM: "Qualitative Assessment of The Election to The House of Representatives, Sept. 7, 2007" Berlin / Rabat in November 2007

Dahir No. 1-06-18, Feb. 14, 2006, promulgating the law 36-04 on political parties. Title IV Articles 33, 34, 36 and 37

I-Laws

" Dahir No. 1-06-18, 15 moharrem 1427 (Feb. 14, 2006) promulgating the law No. 36-04 on political parties.

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YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES

NO

Comments:

Comment:

A ceiling of 250,000 dirhams (US\$28,770) is determined by the Electoral Code, but the problem arises at two levels:

- the ability of monitoring compliance with this limit for expenditure declared;
- financing exceedingly important, unreported and irregular practices such as corruption and vote-buying.

Article 289 of the Electoral Code stipulates that: candidates for general municipal and legislative elections are required to comply with the ceiling on election expenses set by decree.

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YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES

NO

Comments:

Article 290 of the Electoral Code stipulates that each candidate shall prepare a statement of expenditure incurred by him during his election campaign together with evidence supporting such expenses.

Article 291 of the Electoral Code stipulates that candidates in the legislative elections must submit, within one month after the proclamation of results, an audit of election expenses, state spending and supporting documents.

The Cour des Comptes report on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two years and a half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws about the right of access to information it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) that nearly 40 percent of the candidates did not file the expenditure documents. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

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YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES

NO

Comments:

The Cour des Comptes report on the parliamentary elections of 2002 reveals numerous shortcomings in the management of

party finances and cases of non-filing of documents (almost three years after the elections or two years and a half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws about the right of access to information it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) that nearly 40 percent of the candidates did not file the expenditure documents. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

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YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

Comments:

Article 292 of the Electoral Code stipulates that a commission is established to examine the status and documents relating to expenses incurred by candidates in the legislative elections during election campaigns.

The Cour des Comptes report on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two years and a half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws about the right of access to information it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) that nearly 40 percent of the candidates did not file the expenditure documents. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

The commission established under the terms of Article 291 is called Control Committee of Election Expenses. It includes:
a judge of the Court of Auditors, chairman;
a Supreme Court judge, appointed by the minister of Justice;
a representative of the minister of the Interior;
a finance inspector appointed by the minister of Finance.

The Committee records the results in a report.

Article 291 states that candidates in parliamentary elections must submit, within one month after the proclamation of results, a verification of election expenses, the state expenditure and the evidence provided in the Article 290 above.

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YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22. Are the regulations governing the political financing of parties effective?

29

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

Comments:

Despite the progress of the law, practice on the ground in 2007 showed that legal limits are largely ineffective. The use of the money raised even higher bar entry to the electoral market.

The reading of reports of observation allows cataloging a large number of illegal practices. The failures, fraud and weaknesses can be explained by a combination of several elements:

In legal terms,

Exceeding the expenditure limit is not specified in the organic law of the House of Representatives, it is not considered a grievance and the Constitutional Court has always rejected it.

For DRI /TM report the existing legislation on surveillance campaign financing and election spending is far below the basic standards to ensure the transparency of accounts.” (see page 46.)

Even if they are governed by the law 36-04, criteria and modalities of the new way of managing money political parties are not yet expanded. It lacks several pieces of application, including the chart of accounts of political parties. This text just adopted last March in the plenary session of the National Accounts. It will allow political parties to have management tools necessary to good governance.

That is why the report of FCDM concluded (Page 7) that “We can refer to a form of disability objective of the State in the sense that it could not regulate nor the actions of all candidates, where they are, or even its own agents. ”

Practice of fraud still ahead

All reports of electoral observation and most newspapers have lots of electoral grievances and fraudulent practices. A synthesis or a joint effort of all players would have given a more condensed and more revealing picture. The dispersal of interventions seems to suggest narrow samples. But it is not, because of the recurring nature of certain practices.

Thus, for example, why the FCDM (Page 8) states that “Given the severity of the state, new ways of fraud were designed by many candidates (see list annex. final document)

Similarly, the review of the OMDH states that: “the decline in offenses related to the direct use of money. The old methods have been replaced by new practices. The money was distributed through election intermediaries.”

For CMDH, attempted bribery of voters come out on top, with 34 cases. 15 attacks on candidates were also reported. The attacks come as a second position and represent 12 percent of all offenses. Successful prosecutions of perpetrators are rare because of the negative neutrality noted by all observers.

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100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Despite the progress of the law, practice on the ground in 2007 showed that legal limits are largely ineffective. The use of the money raised even higher bar entry to the electoral market.

The reading of reports of observation allows cataloging a large number of illegal practices. The failures, fraud and weaknesses can be explained by a combination of several elements:

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100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | **25** | 0

Comments:

Despite the progress of the law, practice on the ground in 2007 showed that legal limits are largely ineffective. The use of the money raised even higher bar entry to the electoral market.

The reading of reports of observation allows cataloging a large number of illegal practices. The failures, fraud and weaknesses can be explained by a combination of several elements:

In legal terms,

Exceeding the expenditure limit is not specified in the organic law of the House of Representatives, it is not considered a grievance and the Constitutional Court has always rejected it.

For DRI /TM report the existing legislation on surveillance campaign financing and election spending is far below the basic standards to ensure the transparency of accounts.” (see page 46.)

Even if they are governed by the law 36-04, criteria and modalities of the new way of managing money political parties are not yet expanded. It lacks several pieces of application, including the chart of accounts of political parties. This text just adopted last

March in the plenary session of the National Accounts. It will allow political parties to have management tools necessary to good governance.

That is why the report of FCDM concluded (Page 7) that “We can refer to a form of disability objective of the State in the sense that it could not regulate nor the actions of all candidates, where they are, or even its own agents.”

Practice of fraud still ahead

All reports of electoral observation and most newspapers have lots of electoral grievances and fraudulent practices. A synthesis or a joint effort of all players would have given a more condensed and more revealing picture. The dispersal of interventions seems to suggest narrow samples. But it is not, because of the recurring nature of certain practices.

Thus, for example, why the FCDM (Page 8) states that “Given the severity of the state, new ways of fraud were designed by many candidates (see list annex. final document)

Similarly, the review of the OMDH states that: “the decline in offenses related to the direct use of money. The old methods have been replaced by new practices. The money was distributed through election intermediaries.”

For CMDH, attempted bribery of voters come out on top, with 34 cases. 15 attacks on candidates were also reported. The attacks come as a second position and represent 12 percent of all offenses. Successful prosecutions of perpetrators are rare because of the negative neutrality noted by all observers.

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100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

Comments:

The law establishes for the Cour des Comptes (Court of Auditors) an obligation to intervene ex post. It examines the financial reports submitted by the parties.

The concurrent intervention, during the campaign or the day of the vote, remains a matter of administrative and judicial authorities. These are cases reported of flagrante delicto. Some cases were submitted to justice, but remained unanswered.

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100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

Comments:

The reports of the Court of Auditors did not lead to sanctions in 2002 or 2007, despite official statements alleging rigor and the end of impunity that has encouraged fraudsters.

The Cour des Comptes report on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline date). However, this 300-page report has remained as a dead letter and in the absence of laws on the right of access to information it is not known to the public (see Attajdid June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the

newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that many of them (nearly 40 percent of candidates) have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007)

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100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | **50** | 25 | 0

Comments:

Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

The Cour des Comptes report on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline date). However, this 300-page report has remained as a dead letter and in the absence of laws on the right of access to information it is not known to the public (see Attajdid June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that many of them (nearly 40 percent of candidates) have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007)

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100: Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

25

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | **25** | 0

Comments:

Comments:

1-The general mechanisms evacuating equity:

-The adopted voting system encourages parties to use rich candidates" as heads of lists, who are able to pay for the campaign cost, especially with regard to large constituencies and components, especially in the countryside. In doing so, the voting system promotes citizens to customers. FCDM

-Because of a trend of the state not to intervene directly in the electoral activity, elections have turned into a bilateral relationship between the candidate and the electorate, where even the parties which are affiliated candidates do not meddle. FCDM

-Prosecutions have been initiated but without result on the judicial level. These proceedings remained open, without suites. They has encouraged candidates to continue to develop a deviant electoral behavior and violate regulatory procedures in this area, while mobilizing their political offices to protest and threaten to boycott elections. FCDM

-There are also non-regulations of the upcoming campaign. Large part of dubious and/or illegal electoral practices were transferred from the campaign period (period considered at risk) to the pre-campaign period, regarded as a "period of tolerance". OMDH

– the rising cost of election campaigns requires a particular profile of the candidate: capability of self-financing and of raising funds is taken into account by political parties (...) where the current composition of the two assemblies where the landless, smallholders and the unemployed are absent. (cf. Mohamed Madani, page 86)

2-Mechanisms of whiskers :

- Role handicapped by the very nature of the Court of Auditors: in a statement to the Gazette du Maroc (No. 556 – Dec. 22, 2007), politician Benyounes Marzouki advanced: “Article 52 of the Court of Auditors states that members of government and members of both Houses of Parliament, are not affected by the sanctions of the Court of Auditors when exercising their functions “.
- The report of the Collectif Associatif d’Observation des Elections noted several anomalies:
“If the territorial administration did not interfere with the conduct of the election campaign and vote, officials and agents under this administration have spoken in favor of candidates without being punished,”
“Exploitation of mosques and Friday prayers to put pressure on voters.”

In the report of CMDH (Moroccan Centre For Human rights), you can find identified:

- Eight cases of hotel use
- Illegal election campaigns and non-regulatory displays
- Distribution of voter cards marked by the involvement of assistants to benefit certain candidates
- Usage of municipal works to support the election campaign.

In the report of FCDM (Civil & Democratic Moroccan forum), you can find:

- Cases when candidates who used financial and public resources
- Cases of organizing leisure travel by candidates for the benefit of voters, as vote-buying pay offs.

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100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company’s ability to financially support a candidate.

Comments:

Comments:

1-The general mechanisms evacuating equity:

-The adopted voting system encourages parties to use rich candidates” as heads of lists, who are able to pay for the campaign cost, especially with regard to large constituencies and components, especially in the countryside. In doing so, the voting system promotes citizens to customers. FCDM

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– the rising cost of election campaigns requires a particular profile of the candidate: capability of self-financing and of raising funds is taken into account by political parties (...) where the current composition of the two assemblies where the landless, smallholders and the unemployed are absent. (cf. Mohamed Madani, page 86)

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0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

The law establishes for the Cour des Comptes (Court of Auditors) an obligation to intervene ex post. It examines the financial reports submitted by the parties.

The concurrent intervention, during the campaign or on the day of the vote, remains a matter of administrative and judicial authorities. These are cases reported of flagrante delicto. Some cases were submitted to justice, but remained unanswered.

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0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

The reports of the Court of Auditors did not lead to sanctions in 2002 or 2007 despite official statements alleging rigour and the end of impunity that has encouraged fraudsters.

The Cour des Comptes report (Audit Court) on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws on the right of access to information, it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that nearly 40 percent of the candidates have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

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0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

Comments:

The State control is limited at two levels:

- the ability of monitoring compliance with the limit for expenditure declared
- financing exceedingly important, unreported and irregular practices, such as corruption and vote-buying.

The Cour des Comptes report (Audit Court) on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws on the right of access to information, it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that nearly 40 percent of the candidates have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

In the observation report of two NGOs, the FCDM & CERSS one can read:

We can speak of objective inability of the State in the sense that it could not regulate either the actions of the candidates, wherever they are, or even its own agents.”

The various reports of election observation revealed irregularities (use by candidates of financial resources and public property, vote-buying, organization of leisure travel for the benefit of voters, buying voter cards in order to destroy them, etc. ..). However, given that prosecutions remained without suites, candidates were encouraged to greater instances of non-compliance.

Even if they are governed by the law 36-04, criteria and modalities of the new way of managing money, political parties are not yet expanded. The law lacks several pieces of application, including the chart of accounts of political parties. This text was just adopted last March in the plenary session of the National Accounts. It will allow political parties to have management tools necessary to good governance.

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50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Cour des Comptes report (Audit Court) on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws on the right of access to information, it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that nearly 40 percent of the candidates have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

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Attajdid of June 8, 2005: The Parties Engaged in The Dock
The Gazette No. 556 – Dec. 22, 2007

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Commentaires :

Deux handicaps (matériels et moraux) se dressent contre l'accès aux rapports financiers des candidats ou des partis. Si les premiers sont simples les seconds sont complexes et limitent sérieusement l'accès:

Handicaps matériels

L'art 37 loi 36-04 relative aux partis politiques: « & toute personne intéressée peut consulter les documents précités à la Cour des Comptes ou en obtenir copie à ses frais ».

Donc il faut un déplacement et la copie des documents. Or il aurait été plus simple de les publier sur le site web de la Cour des Comptes pour faciliter l'accès physique (temps et déplacements).

Handicaps généraux

Il est difficile pour le citoyen d'accéder aux documents financiers à cause des nombreux dysfonctionnements :

The Cour des Comptes report (Audit Court) on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws on the right of access to information, it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that nearly 40 percent of the candidates have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

Malheureusement, citoyens et organes l'observation des élections n'ont jamais couvert les élections partielles, le contentieux électoral et le contenu des jugements. Il faut souligner aussi la lenteur du processus du contentieux électoral au point d'être inopérant lorsque le verdict est donné à la fin du mandat. Or, il s'agit d'un nouveau phénomène de la vie électorale marocaine, qui n'est pas encore bien étudié (évoqué le professeur Mohamed MADANI). Il transforma le recours à la justice comme autre champs de bataille du duel des notabilités.

References:

I-The reports of the national observatories for monitoring the parliamentary elections in 2005, edited by several organs as:

The reports of the national observers of the parliamentary elections from 2005, edited by several organs as:

The Collectif Associatif (more than 600 associations) Report on Elections of September 2007- Mars 2008.

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OMDH (Moroccan Organization of Human Rights) Report on Elections of September 2007. September 2007

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FCDM (Moroccan Democratic and Civil Forum) & CERSS (Social Sciences Studies and Research Center). Report on Elections of September 2007. September 2007

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100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

Comments:

Commentaires :

Deux handicaps (matériels et moraux) se dressent contre l'accès aux rapports financiers des candidats ou des partis. Si les premiers sont simples les seconds sont complexes et limitent sérieusement l'accès:

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75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25. Can citizens access records related to the financing of individual candidates' campaigns?

25

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The Cour des Comptes report (Audit Court) on the parliamentary elections of 2002 reveals numerous shortcomings in the management of party finances and cases of non-filing of documents (almost three years after the elections or two-years-and-a-half after the deadline). However, this 300-page report has remained as a dead letter, and in the absence of laws on the right of access to information, it is not known to the public (see Attajdid, June 8, 2005: Parties Engaged in The Dock). For the 2007 elections, the newspaper La Gazette du Maroc noted two months after the closing date (Nov. 9, 2007) granted to applicants that nearly 40 percent of the candidates have not filed the documents relating the expenditure. (cf. La Gazette du Maroc No. 556 – Dec. 22, 2007.)

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25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Commentaires :

Deux handicaps (matériels et moraux) se dressent contre l'accès aux rapports financiers des candidats ou des partis. Si les premiers sont simples les seconds sont complexes et limitent sérieusement l'accès:

Handicaps matériels

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25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

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Category III. Government Accountability

III-1. ²⁶Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

19

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | **25** | 0

Comments:

In law and in practice the king is sacred. According to Article 28 of the constitution, The King can send messages to the nation and parliament. The messages are read before both House and can not be debated. ”

For its part, the prime minister is accountable only to the king or parliament (article 60 of the constitution).

The king does not give reasons for his policy decisions unless required by the constitution in articles that give the king and the legislature the authority to question the prime minister, and his ministers. In response to press reports, journalists or an opposition party chief executive may or may not give reasons or formal explanations for policy matters.

References:

Morocco Constitution of 1996 articles 5,9,10,11

Omar BENDOUROU: Civil rights and the rule of law in Morocco. Book published by Friedrich Ebert Stiftung FES Morocco.

AMDH: Annual reports on the human rights situation; 2005 (June 2006) 2006 (April 2007) and 2007 (May 2008)

OMDH: parallel report 2004 (Covenant on Civil and Political Rights. Consideration of the 5th report of the Moroccan Government. Committee on Human Rights session in October 2004, Geneva

CMDH: Information C.M.D.H On the situation of human rights in Morocco (report 2007)

Ligue Amazigh des Droits Humains: parallel report (2007) cf. web site O BENDOUROU : Une réforme doit concerner la nature du régime interview in Le Journal Hebdo 30/12/2005.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Constitutional Council is ruled by the king, the prime minister, one of two chairmen of the parliamentary chambers or fourth representatives or advisers.

However, it is not playing its role in monitoring the existing laws that are not yet in compliance with the constitutional declarations on civil rights and policies.

In addition, the constitution grants the Constitutional Council the ability to control laws adopted by parliament. However, in some cases the king and the government can legislate by decree and by Dahir, a simple or legislative decree which are not likely to be appealed to the Constitutional Council.

The appeal for abuse of power allows citizens to ask the judges to cancel acts contrary to law before the administrative tribunals. Because of the difficulty to distinguish political decisions from administrative decisions, citizens can not sue the government for all its decisions.

References:

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link: http://www.amazighworld.org/human_rights/morocco/index_show.php?id=1340

BENDOUROU : Une réforme doit concerner la nature du régime interview in Le Journal Hebdo 30/12/2005.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The Constitutional Council is ruled by the king, the prime minister, one of two chairmen of the parliamentary chambers or fourth representatives or advisers.

However, it is not playing its role in monitoring the existing laws that are not yet in compliance with the constitutional declarations on civil rights and policies.

In addition, the constitution grants the Constitutional Council the ability to control laws adopted by parliament. However, in some cases the king and the government can legislate by decree and by Dahir, a simple or legislative decree which are not likely to be appealed to the Constitutional Council.

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Abdellah BOUDAHAIN : Eléments de droit public marocain. 1994 – Public law – 356 pages

“Tel Quel N° 173 Par Driss Ksikes et Ahmed R. Benchemsi

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

A constitutional reform appears indispensable now in Morocco because of the nature of the political regime and the weak guarantees given to exercising citizens' rights and freedoms.

The current constitution does not establish a true separation of powers nor a balance between the powers. The king has a concentrated control of state power. He is the holder of executive power and a government designed to implement royal directives. The ministers are kept based on their degree of loyalty in carrying out the royal policy and not necessarily on the basis of their competence.

Parliament does not have the skills to create a modern and independent institution. Its powers are limited by government, especially by the king, who has all the means to defeat initiatives. As for justice, it is not considered in the constitutional text as a power, but as a single authority.

The king reigns and governs and, therefore, directs and guides management of state affairs that are above all royal initiative. Both the prime minister and other members of the government remain, like other public officials, as the king's servants.

References:

BiblioMonde : Maroc , The Political regime cf. <http://www.bibliomonde.com>
 D.Ksikes et A.R. Benchemsi : la révision constitutionnelle au Maroc in Tel quel n° 173
 Régression du rendement du Parlement sous l'actuel gouvernement (en arabe) Al Ahdath al maghribia du 28-07-2008
 Les failles du parlement ne lui permettent pas de rehausser de sa crédibilité après sa chute lors des élections législatives du 7 septembre 2007 Al Ahdath al maghribia du 28-07-2008
 O. Bendourou:« Tous les pouvoirs sont entre les mains du Roi
 Abdellah BOUDAHAIN : Eléments de droit public marocain. 1994 – Public law – 356 pages
 Tel Quel N° 173 Par Driss Ksikes et Ahmed R. Benchemsi

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

0

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

In Morocco the king can not be prosecuted. Acts of the king are not likely to be appealed to the courts. The king has ruling status

by constitutional articles. Judicial articles 264 to 268 of the Code of Criminal Procedure stipulates that many officials are not subject to the ordinary courts.

References:

Moroccan Constitution (1996)

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Omar BENDOUROU: Civil rights and the rule of law in Morocco. Book published by Friedrich Ebert Stiftung FES Morocco.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES

NO

Comments:

Judicial articles 264 to 268 of the Code of Criminal Procedure stipulates that many officials are not subject to the ordinary courts.

The Moroccan the constitution since 1962 says that ministers can be held accountable/prosecuted and found guilty of abuse in the course of their duties before the High Court", but this court has never been established

The constitution of 1996 has devoted Articles 88 to 92 to this. The latest draft on the establishment of this court was passed by the House of Representatives on Jan. 12, 2008. However the law is not yet published and judges have not been appointed.

To initiate a proceeding against a minister, it must be approved by two-thirds of both chambers, as well as trigger a revision of the Constitution.

"We believe that this is not reasonable," said Slimane El Omrani, PJD MP and member of the Committee on Justice of the House of Representatives.

Indeed, the bill 24-07 requires that the mere consideration of a case, it must have a vote of no less than 397 deputies out of a total of 595, divided between the two chambers.

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YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | **NO**

Comments:

For the head of state, the king is not held accountable.

For other senior officials and members of government, new legislation on the declaration of assets that have just been adopted do not affect them. The country is still waiting for the promised bill on this issue.

References:

Assahifa No. 126, 03-04-2007

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | **NO**

Comments:

For the head of state, the king is not held accountable.

For other senior officials and members of government, new legislation on the declaration of assets that have just been adopted do not affect them. The country is still waiting for the promised bill on this issue.

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Assahifa No. 126, 03-04-2007

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

Comments:

There are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch.

References:

Assahifa No. 126, 03-04-2007

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

Comments:

There is no law, but a bill for ministers.

References:

Assahifa No. 126, 03-04-2007

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

No such restrictions exist. There are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch.

References:

Assahifa No. 126, 03-04-2007

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | **25** | 0

Comments:

Theoretically or in law, the score should be 0. In the absence of a law on conflict of interest, people are tempted to interfere or influence political and administrative affairs. But the reality and observed practice to give a score is a difficult problem in a country characterized by little investigative journalism, no right to information and the media's inability to freely express thoughts and ideas.

The relationship between the former leaders of integrity who avoid conflict of interest and those who practice it is unknown.

References:

1- Tel Quel No 161

http://www.telquel-online.com/161/couverture_161_1.shtml

Investigation. The lords of the Sahara By Driss Bennani (Laâyoune) and Driss Ksikes (Rabat)

2- "We are ready for privatization" Review: Aujourd'hui le Maroc (Morocco to day) of 17 November 2006

3- Miloud Chaâbi back to war against privatization

Chaâbi demand justice

Weekly Review: Maroc Hebdo International number 469

Week of 15 to 21 June 2001

4- Maroc Hebdo International – No. 471 – June 29 to July 5 2001

Miloud Chaâbi exhumes his conflict with Abderrahmane Saidi: On behalf of the truth

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such restrictions exist. There are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch.

References:

Transparency News, Moroccan magazine of Transparency Morocco No. 3 available on the website

http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=71&Itemid=88888975

Izzou: Condamné mais libre ; l'économiste du 24/3/2008 (Izzou: Sentenced but free)

Justice : Izzou et Kherraz chez Serhane (Justice: Izzou and Kherraz at the Judge Serhane)in Aujourd'hui la Maroc du 18-9-2006

; <http://www.aujourd'hui.ma/aufildesjours-details49140.html>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no law, but a bill for ministers.

References:

x

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

There is no asset disclosure for either the head of state or government.

References:

Transparency Maroc : Right to access information, Book published with financing of Friedrich ebert Stiftung

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no asset disclosure for either the head of state or government.

References:

Transparency Maroc : Right to access information, Book published with financing of Friedrich Ebert Stiftung

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no asset disclosure for either the head of state or government.

References:

Transparency Maroc : Right to access information, Book published with financing of Friedrich ebert Stiftung

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. Can citizens sue the government for infringement of their civil rights?

0

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Morocco has become a party in the first optional protocol, annex of the Convention on International Civil and Political Rights. It has withdrawn its concerns regarding articles 20 and 22 of the anti-torture convention. A new law prohibiting torture was formally made public.

The constitutional preamble proclaims the guarantee of Human Rights. But what is the value of a preamble? The constitution guarantees these rights, but it reserves the law jurisdiction to regulate their exercise.

The constitution grants the constitutional council the competence to control laws adopted by parliament. However, in some cases the king and the government can legislate by decree and by Dahir, a simple or legislative decree, which is not subject to appeal

before the constitutional council,” according to O. Bendourou.

The appeal for abuse of power allows citizens to ask the judge to cancel acts that are contrary to law. However, because of the difficulty of distinguishing political decisions from administrative decisions, citizens can not sue the government for all its decisions.

It must be remembered that the king reigns and governs, and hence, the guidelines or main management directives of state affairs belongs to him. Similarly, acts of the king are not likely to appeal to justice and position themselves as “extra-constitutional” powers of the king himself.

The exception judicial article 264 to 268 of the Code of Criminal Procedure stipulates that many officials are not subject to the ordinary courts.

The Moroccan constitution does not stipulate the freedom of thought, conscience and religion. It contains only the freedom of religion for those of Jewish or Christian faith. It is forbidden to preach another religion, and Moroccans can not change religion.

References:

Morocco Constitution of 1996 Articles 5,9,10,11

Omar Benourou: Civil rights and the rule of law in Morocco. Book published by Friedrich Ebert Stiftung FES Morocco.

AMDH: Annual reports on the human rights situation; 2005 (June 2006) 2006 (April 2007) and 2007 (May 2008)

OMDH: parallel report 2004 (Covenant on Civil and Political Rights. Consideration of the 5th report of the Moroccan Government. Committee on Human Rights session in October 2004, Geneva

CMDH: Information C.M.D.H On the situation of human rights in Morocco (report 2007)

Ligue Amazigh des Droits Humains: parallel report (2007) cf. web site.

O BENDOUROU : Une réforme doit concerner la nature du régime interview in Le Journal Hebdo 30/12/2005.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

25

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Privileges such as cronyism and favouritism exercised by influential persons in the apparatus of the state or the executive are sometimes the subject of protests.

However, there is no party in power in Morocco, because the political system and elections always lead to a balkanization of the political landscape and there is no comfortable majority. The government has always been diverse and resulting of several parties in government coalition.

References:

References:

Transparency News, Moroccan magazine of Transparency Morocco No. 3 available on the website http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=71&Itemid=88888975

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

83

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The control of the constitutionality of laws was submitted to the Constitutional Chamber of the Supreme Court up until the constitutional reform of 1992, which established the Constitutional Council. The current constitution (1996) makes mandatory the consideration of any law before its publication.

The Constitutional Council shall ensure a) regularity of the electoral operations, b) regularity of operations referendum, and c) it settles electoral disputes.

The control of basic constitutionality of acts is either mandatory (prescribed in cases of laws and rules of procedure of parliament) or optional (deployed in the process of enactment of ordinary laws).

References:

Moroccan Constitution of 1996 art. 53 and 81

Constitutional Council: Dahir No. 124-94-1, 14 Ramadan 1414 (25-02-1994) promulgating the Organic Law 93-29 on the Constitutional Council

The experience of the Constitutional Council of Morocco. by. Abdellatif MENOUNI. [www.cedroma.usj.edu.lb / pdf / cpayar / menoun.pdf](http://www.cedroma.usj.edu.lb/pdf/cpayer/menoun.pdf)

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | **50** | 25 | 0

Comments:

In 2004, Mr. Bendourou gave the following observation.

Since its establishment in 1994, The Constitutional Council has been seized over ordinary laws five times, three times by parliamentarians and twice by the Prime Minister.”

References:

The Constitutional Council O. Bendourou FC.

http://www.pcb.ub.es/idp/docs/marroc/doc_bendourou_cons_fra.pdf.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

According to Law No. 17-01, the prosecutor is competent to conduct a preliminary or procures all the procedures necessary to verify the allegations against the parliamentary question. Eventually, the prosecutor is in charge and can hear the question which can not evade a deposition or a hearing.

Once the file is finished, it is forwarded to the Attorney General of the king, who is in charge of formulating the request for authorization. The latter is submitted to the Minister of Justice, who transmits it to the Speaker of the House.

But Article 39 of the Constitution provides for the possibility for the detention or prosecution of a member of parliament being suspended by the House when it is required.”

In fact, "The committee for justice, law and human rights in the House of Councillors decided unanimously on July 2, the suspension of legal proceedings underway against Councilor Youssef Tazi, sued under the Criminal Division, (1st degree), at the Court of Appeal in Casablanca for complicity in the squandering of public money. "

References:

Moroccan Constitution (1996), article 39

Law No. 17-01 (made for the implementation of Article 39 of the Constitution)

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

There is a new law, but it is not promulgated yet.

References:

Moroccan Constitution (1996)

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council

Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors

Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

There is no law about this aspect of the question.

References:

Moroccan Constitution (1996)

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council

Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors

Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

There is no law on this.

References:

Moroccan Constitution (1996)

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council

Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors

Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

There is a new law, but it is not promulgated yet.

References:

Moroccan Constitution (1996)

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council

Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors

Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such restrictions exist. There are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch.

References:

Transparency News, Moroccan magazine of Transparency Morocco No. 3 available on the website

http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=71&Itemid=88888975

The Major Colonel Omar Akaaboun subject to investigation and property expropriated in Ahdath Maghribia,

13.09.2008 http://www.ahdath.info/article.php3?id_article=35961

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

No such restrictions exist. There are no guidelines or regulations with respect to gifts and hospitality offered to members of the

executive branch.

References:

High-level survey (ordained by the king) on projects adopted around the city of Tetouan in Ahdath Maghribia, 14.09.2008
http://www.ahdath.info/article.php3?id_article=35962

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law was adopted in late 2007. It has not yet been published in Official Gazette.

References:

Moroccan Constitution (1996)
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council
Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors
Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

The law does not mention the right of access for citizens. In addition, there is no law on the right to access information.

References:

Moroccan Constitution (1996)
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council
Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors
Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts
The Right to access information Transparency Maroc. Published by Friedrich Ebert 2007

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

The law does not mention the right of access for citizens. In addition, there is no law on the right to information.

References:

Moroccan Constitution (1996)
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council
Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors
Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts
The Right to access information Transparency Maroc. Published by Friedrich Ebert 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The law does not mention the right of access for citizens. In addition, there is no law on the right to access information.

References:

Moroccan Constitution (1996)

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the Constitutional Council

Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives

Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors

Organic Law No. 51.06 amending and supplementing the Organic Law No. 32.97 on the financial courts

The Right to access information Transparency Maroc. Published by Friedrich Ebert 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

35. Can citizens access legislative processes and documents?

67

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The debates are published in the Official Bulletin. The PV are published on the website of the House of Representatives. It is planned at the House of Councillors.

The radio airs each Wednesday's meeting of oral questions and answers from the Government Members.

References:

Organic Law No. 50.06 amending and supplementing the Organic Law No. 31.97 on the House of Representatives
Organic Law No. 49.06 amending and supplementing the Organic Law No. 29.93 on the House of Councillors

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The radio airs every Wednesday's meeting of oral questions and answers from the Government Members.

The parliament has two websites, one for each chamber. Several departments and some parliamentarians have their own websites.

When laws are published, the SGG (Government secretary) publish them on its website. The press is able to access this information. However, for the average citizen, he or she has more difficulty, because of limited access to the Intranet or because of illiteracy. There is no consideration taken for Berber-speaking groups or individuals with special needs, such as those who may be deaf, mute or disabled.

Audio visual communication is very important in a country where illiteracy is high.

References:

The radio airs every Wednesday's meeting of oral questions and answers from the Government Members.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The radio airs every Wednesday's meeting of oral questions and answers from the Government Members.

References:

The radio airs every Wednesday's meeting of oral questions and answers from the Government Members.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

45
III-3. Judicial Accountability

36. Are judges appointed fairly?

83

36a. In law, there is a transparent procedure for selecting national-level judges.

YES

NO

Comments:

Considering the constitution and, in particular, Article 102 , the status of the judiciary is a law which sets the conditions for accessing the office of judge. It also lays down conditions for training at the Institute of Judiciaries Studies and recruitment of new judges

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974)

forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

Article 7

Judges are appointed by Dahir on the proposal of the Superior Council of Magistracy, at the first step of the third grade.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | **50** | 25 | 0

Comments:

The status of the judiciary contains two kinds of recruitment: direct recruitment, which is rare, and review, a larger method.

This latter recruitment is based on an exam and is characterized by a significant domination of the Ministry of Justice since the competition is judged by the National Institute of Judicial Studies. The ministry is also dominant in marginalizing the Supreme Council of Magistracy.

The commune and district judges (which are not necessarily magistrates), are normally elected but there is a domination and a long tradition of intervention by the Interior Ministry in the process of selection of these judges.

It is difficult to give a balanced view on compliance procedures in the absence of publication and access to this kind of information. Since there is no access to information, it implies exactly the opposite effect.

In a general climate of discontent and dissatisfaction with the quality and integrity of the judicial system, great importance and unlimited credibility are granted to scandals that erupt from time to time. The story on the front page of the newspaper Al Alam on March 14, 2002, is still recalled. It outlined the prison sentence of a Higher Judicial Council official. Several judges accused were heard by the Court of Appeal in Rabat.

Another report mentions promotions of 120 judges and dissatisfaction of requests for change. This has been the source of great dissatisfaction among those who said that decisions were not fair and were characterized by cronyism.

Thus, Judge Mr. J. S. often known to be the favorite of the government for ruling in major trials, has benefited in being promoted to first class and the promotion with exceptional charge.

References:

The circle of judges disgruntled s'élargi. In Assabah, October 13-14, 2007.

ADALA Association: Proceedings of the International Conference on the Independence of the Judiciary in Morocco in light of international standards and experience in the Mediterranean. Under the leadership of Mr. A. Nouaydi. Editions Annajah Al Jadidah Casablanca 2006. page 97, pages 92-93

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Considering the constitution and in particular Article 102, the status of the judiciary is outlined in a law, which sets the conditions for access to the office of judge. It also lays down conditions for training at the Institute of Judiciaries Studies and recruitment of new judges.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

37. Can members of the judiciary be held accountable for their actions?

38

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Justices are not required to explain decisions in a formal and mandatory process.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Judges are compelled to give substantial reasons for their decisions, but some exceptions exist.

The quality of justice always takes an important place in discussions on the legal and judicial system in Morocco and remains on the agenda of reform. Among the many aspects of quality are: justice exception, the independence of justice, structural and organizational deficiencies of legal and judicial system and problems related to the human factor.

Indeed, the issue of quality of the judge's rulings and the wide powers of interpretation are also raised by practitioners. We can say that despite the existence of competent and honest judges, the system allows for faulty practices that affect the quality and motivation of the decision of judges. The quality of decisions is determined by the number of records, for example some 3 320 judges handle more than three million cases per year.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

Renewed debate on the reform of Justice in Morocco

<http://www.magharebia.com/cocoon/awi/xhtml1/fr/features/awi/features/2008/02/07/feature-02> 2008-02-07

Several articles written by Abderrahim Berrada. Among them a rich and documented article "corruption in justice" in Temps Présent No. 31 and 32 of 20 and 27 March 1998.

Justice and democratic transition: Political parties fall into the debate in the Gazette Maroc No. 526 – May 28 2007 http://www.lagazettedumaroc.com/articles.php?r=2&sr=830&n=526&id_artl=13560

The Justice machine: our enquiry In "Tel Quel" review No. 198, November 5 to 11, 2005.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

There is a commission in the ministry of justice.

Under Article 86 of the constitution, the Supreme Council of Magistrates is presided over by the king. The vice president position shall be held by the Minister of Justice. Its functions relate to the career management of the judiciary and discipline of judges and prosecutors. In the event of a tie the voice of Justice Minister dominates.

The World Bank in its study on justice in Morocco, recommended greater representation of lower courts on the board so that there is more participation and more consolidation of the independence of justice. It also recommended that the status of the judiciary should be revised to provide better guarantees in order to strengthen the independence and impartiality of judges.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

Article 61

The Minister of Justice appealed to the Superior Council of Magistrates for allegations against the judge. After consultation with the members of the council, he appoints a reporter of the council.

Article 60

Sanctions were imposed after notice of the Superior Council of Magistrates.

Article 62

In the case of criminal or serious misconduct, the magistrate may be immediately suspended from duty by order of the minister of justice.

Articles 58 to 63 on disciplinary proceedings

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Political interference has always part of civil society, political parties and elected officials. Observers warned that the independence of justice in Morocco is not effective. The system of delegation (temporary assignment for three months renewable), for example, is one means of pressure on judges.

References:

Study: Report of the World Bank on Reform of Justice in Morocco. October 2003

Press: The upper echelons of the State ordered the cancellation of delegations of judges decided by the Minister of Justice. In Assabah, June 26, 2007

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

From 1998 to 2007, 43 judges were removed from the body on grounds of corruption, and dozens of others were suspended from their duties for a period of six months.

According to Article 61 of the Statute of Magistrates, the Minister of Justice appreciates the opportunity to implement or not implement disciplinary action. He also describes that the fault of the judge (the law refers to relevant criminal lack of and serious misconduct without defining). In this context, the Superior Council of Magistracy (SCM) will address the issue. In case of prosecution, the magistrate's administrative career is finally settled after the judiciary decision became irrevocable.

The threat of sanctions is described in a folder on justice published by the journal *Tel Quel*” A few excerpts:

– The Minister “Mohamed Bouzoubaa endorses himself, in effect, in promotions, suspensions, revocations or changes of judges. Only after, he meets members of the SCM to put before a fait accompli.

– The result of this control over the judiciary, reflects a judge, the minister had formed, with the help of his omnipotent chief of staff Moulay Hachem Alaoui, a network of judges subservient, corrupt, but always docile and zealous. The power of the minister is even more afraid that all decisions of SCM, whether to reward a judge's orders, to force a recalcitrant judge to retire, or punish a strong character, or to bring in a royal ruling, which finally makes it indisputable.

– The balance sheet prepared by a senior official of the Ministry of Justice three years after the arrival of Bouzoubaa said, “Thirty-three issues have been registered for various reasons, but with the ultimate goal of changing the mapping of the Moroccan justice system. Not to mention those that the minister has pushed into early retirement or frankly to retire with immediate collapse of their salaries. Sanctions may be administrative, financial, or both. “

References:

43 corrupt judges have been removed. Interviewed by Aissa Amourag. ” Maroc Hebdo International: Three years have elapsed after the implementation. http://www.maroc-hebdo.press.ma/MHinternet/Archives_767/html_767/43juges.html

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary amended by Law No. 5-98, No. 35-01 and Law No. 17-06.

ADALA Association: Proceedings of the International Conference on the Independence of the Judiciary in Morocco in the light of international standards and experience in the Mediterranean. Under the leadership of Mr. A. Nouaydi. Editions Annajah Al Jadidah Casablanca 2006. page 97

Article 59

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

From 1998 to 2007, a laying-off 43 judges on grounds of corruption, and dozens of others were suspended from their duties for a period of six months.

In his report on Moroccan Justice (2004), the World Bank related statistics from the ministry that showed for the period of 1998 to 2002, 10 percent of disciplinary cases in the Moroccan judiciary involved criminal acts of corruption (17 cases out of 163).

Sometimes the measures taken against judges are cancelled by interventions by the upper echelons of the government; sometimes the penalties are unfair or are reprisals against independent judges.

A newspaper in 2007 reported that following instructions from the upper echelons of government, it was proceeded to freeze the process of delegation of judges for reasons of general interest. Indeed, 22 judges were threatened with a temporary transfer outside their city. This procedure (which involves a transfer of a judge temporarily out of his home for a period of at least three months), was abused and used to subject judges to the pressure of the minister and his team. In addition, this procedure was practiced in the sessions of the Supreme Council of Justice.

References:

Interview with Abdullah Boujida, President of the Court of First Instance in Casablanca

Laying off 43 corrupt judges” Interviewed by Aissa Amourag

Maroc Hebdo International: Three years have elapsed after the plementation. http://www.maroc-hebdo.press.ma/MHinternet/Archives_767/html_767/43juges.html

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

21

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

Article 15 says that a prohibition is made to magistrates in carrying out their functions, even as occasionally, a paid or unpaid, of any nature whatsoever. Individual Exemptions can be made to this rule by a decision of the Minister of Justice in the interest of education or legal documentation

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

There are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. The law speaks about integrity and the need to respect the image of the position, but does not specify criteria.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

Under the new law on declaration of assets of certain categories of public servants, Article 16 of the judiciary has undergone

changes and amendments to insert the provisions of statement of assets and control exercised this effect.

The commission that will consider the statements is chaired by the Minister of Justice and includes members of the Superior Council of Magistrates. It is, therefore, under the authority of the executive.

The law on declaration of assets of 1992 was of poor quality and without implementing legislation. It did not identify the party that will receive and consider the statement by the official discount. It was passed and promulgated, but was never implemented. Currently, neither the old law of 1992 nor the new law, are applied.

Recent changes at the head of the Secretariat General of Government and at the Constitutional Council will be bringing a larger effort in communications and rapid processing of cases.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

No such restrictions exist.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

Comments:

No such restrictions exist in the law. Several ministers of justice have regained their firm or their counsel and private affairs positions immediately after leaving the government.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the Judiciary [consolidated version containing the changes brought by Law No. 5-98, Law No. 35-01 and Law No. 17-06]

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

Interviews with two lawyers and an activist law professor in an association of civil society. 15-09-2008

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

Comments:

According to the survey published by Transparency Morocco, the justice sector has a high rate of corruption. At the level of perception of corruption by sector, companies polled responded to the tune of 95 percent that the judiciary has a current corruption problem. Sixty-nine percent of replies of households estimate that it is common and 5 percent said that it is non-existent. In terms of reality, 4 percent of the sample reported having paid clerks, magistrates or judges.

References:

La Gazette du Maroc No. 507 – January 15, 2007

Transparency Morocco: Morocco corruption, summary results of investigations integrity. Edition 2005.

Interview with Mr. Mohamed Bouzoubâa carried out by Morocco Hebdo International 11-11-2005

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law is recent, it was passed but has not yet been promulgated or published in the official gazette.

References:

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

The form is filed, but not available to the public. The Accounts Court does not publish detailed reports or statements.

References:

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The form is filed, but not available to the public. The Accounts Court does not publish detailed reports or statements.

References:

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The form is filed, but not available to the public. The Accounts Court does not publish detailed reports or statements.

References:

Law No. 53-06 amending and supplementing Article 16 of Dahir Act No. 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

17

40a. In law, the legislature can amend the budget.

YES | **NO**

Comments:

Parliament can only introduce amendments that are limited under the balance and structure prepared by the government. Article 51 of the Constitution stipulates that proposals to parliament's amendments are not admissible if they result in a) a reduction of public resources, b) the creation of new charges, c) the aggravation of an existing public charge.

References:

Moroccan Constitution Article 51

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | **25** | 0

Comments:

Apart from the vote on the budget, there are budget rectification situations.

In 2008, despite the importance of the budget that government will move from one position to another, the executive has chosen the path of expediency and administrative decree.

While the fiscal reforms of the 1980s and 1990s have paved the way for this procedure, it was in another political context in which government sought to avoid political debate, particularly in the turbulent climate years marked by the structural adjustment program of MIF and World Bank, excessive public debt and the uprisings because of increases in commodity prices.

USFP, the main party aligned with the majority party to form the government, issued a statement of the political bureau in July 2008 calling for respect of parliament and public opinion and the need for the government to pass a finance bill amendment and submit it for discussion and approval of the members of parliament.

References:

Moroccan Constitution article 50.

Statement by the political bureau of the USFP in Al Ittihad ichtiraoui of 14-07-2008

Ngadi Abdellatif: The opening budget, citizen participation and the test of vicissitudes of Moroccan 2008 Budget. (Additional analysis of the news for International Budget Project. July 2008)

Nadia Salah: In the Democats economist 21/7/2008

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | **25** | 0

Comments:

It is a structural weakness of parliament. Balkanization of the political landscape does not allow the existence of strong and influential majority. There is an issue with absenteeism of members of parliament when it is time to vote on the budget. Lack of adequate human and material resources to process information and make proposals is also an issue.

References:

Ngadi Abdellatif: The opening budget, citizen participation and the test of vicissitudes of Moroccan 2008 Budget. (Additional analysis of the news for International Budget Project. July 2008)

The Finance Act 2008 passed by 96 deputies on the 325 account that the House of Representatives In Aujourd'hui le Maroc, news paper (3-12-2007)

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

33

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

The radio and television air the vote and debates of the public meeting, but the earlier work of examination and commissions are not open to the public. The website of the Ministry of Finances gives information about the main texts and information on the budget.

References:

Article 50

Ngadi Abdellatif: The opening budget, citizen participation and the test of vicissitudes of Moroccan 2008 Budget. (Additional analysis of the news for International Budget Project. July 2008)

Nadia Salah: In the Democrats economist 21/7/2008 <http://www.finances.gov.ma>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

No participation of citizens is provided by law, even when they are organized in an association.

References:

Right of access to information. Transparency Morocco Arabic edition in October 2006 seminar on the right of access to information. Association ADALA <http://www.justicemaroc.org/doclrexfr.pdf>

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Access to complete and precise information remains very difficult.

References:

Right of access to information. Transparency Morocco Arabic edition in October 2006 seminar on the right of access to information. Association ADALA <http://www.justicemaroc.org/doclrexfr.pdf>

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

17

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Finance through the work of the Budget Directorate presents the necessary documents to vote and the law of finance regulation.

The parliament monitors and controls the budget through three mechanisms: written and oral questions, complaints about sector committees, and the ad hoc parliamentary commissions of inquiry.

There is no inspection committee of the budget.

References:

Moroccan Constitution of 1996

Organic Law of Finance (LOF) No. 7-98 promulgated by Dahir No. 1-.98.138 of 7 Chaabane 1419 (26-11-1998)

Organic Law of Finance No. 14.00 promulgated by Dahir No. 1.00.195 of 14 Moharram 1421 (19-04-2004) amending and supplementing the LOF No 7.98

The Budget of the State Ministry of Finance and Privatization 1st edition 2004, 270 pages.

Budgetary Reform Guide: Minister of Finance and Privatization 2005 pp.61-68

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The Ministry of Finance through the work of the Budget Directorate presents the necessary documents to vote and the law of finance regulation.

The parliament monitors and controls the budget through three mechanisms: written and oral questions, complaints about sector committees, and the ad hoc parliamentary commissions of inquiry.

There is no inspection committee of the budget. When a parliamentary committee of inquiry is set up, partisan balance is generally respected.

References:

Moroccan Constitution of 1996

Organic Law of Finance (LOF) No. 7-98 promulgated by Dahir No. 1-.98.138 of 7 Chaabane 1419 (26-11-1998)

Organic Law of Finance No. 14.00 promulgated by Dahir No. 1.00.195 of 14 Moharram 1421 (19-04-2004) amending and supplementing the LOF No 7.98

The Budget of the State Ministry of Finance and Privatization 1st edition 2004, 270 pages.

Budgetary Reform Guide: Minister of Finance and Privatization 2005 pp. 61-68

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | **25** | 0

Comments:

There is no inspection committee for the budget. In 2000, the two houses of parliament established two parliamentary committees of inquiry. These related to the case of Mortgaging and Hotel (CIH) and the Social Security National Fund (CNSS).

The case of CIH resulted in a trial that has raised much criticism because of the lack of prosecution of those individuals called into question. In the case of the CNSS no concrete result has been reported.

References:

Moroccan Constitution of 1996

Organic Law of Finance (LOF) No. 7-98 promulgated by Dahir No. 1-.98.138 of 7 Chaabane 1419 (26-11-1998)

Organic Law of Finance No. 14.00 promulgated by Dahir No. 1.00.195 of 14 Moharram 1421 (19-04-2004) amending and supplementing the LOF No 7.98

The Budget of the State Ministry of Finance and Privatization 1st edition 2004, 270 pages.

Guide budgetary reform: Minister of Finance and Privatization 2005, pp.61-68

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. Is there a separate legislative committee which provides oversight of public funds?

0

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | **NO**

Comments:

The Ministry of Finance through the work of the Budget Directorate presents the necessary documents to vote and the law of finance regulation.

The parliament monitors and controls the budget through three mechanisms: written and oral questions, complaints about sector committees, and the ad hoc parliamentary commissions of inquiry.

There is no inspection committee of the budget.

References:

Moroccan Constitution of 1996

Organic Law of Finance (LOF) No. 7-98 promulgated by Dahir No. 1-.98.138 of 7 Chaabane 1419 (26-11-1998)

Organic Law of Finance No. 14.00 promulgated by Dahir No. 1.00.195 of 14 Moharram 1421 (19-04-2004) amending and supplementing the LOF No 7.98

The Budget of the State Ministry of Finance and Privatization 1st edition 2004, 270 pages.

Budgetary Reform Guide: Minister of Finance and Privatization 2005, pp.61-68

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁴⁵Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The first article of the Civil Service Statute recalls the principle of equal access to jobs stated in Article 12 of the constitution and summarized as follows: All Moroccans have a right of access under equal conditions to public jobs and no distinction is made between the sexes in the application of this statute.

The Criminal Code also contains a definition for civil servants and sections on deflecting duties by public officials and corruption and influence peddling. Officials considered special forces have specific statutes.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil Service promulgated by Dahir No. 1.00.341 of 29 Ramadan 1421 (26.12.2000)

The Covenant of Good Governance. Government of Morocco

Penal Code: Dahir No. 1.59.415 of 28 Jumada II 1382 (26.11.1962) approving the text of the Penal Code

The Prime Minister's Circular No. 4-99, 17 February 1999 requiring officials to enforce judgments rendered final administrative proceedings against persons of public law

Act 0301 of 21 July 2002 requiring the government to justify their administrative decisions when those decisions are detrimental to the citizen

Diplomatic and Consular Corps: (Decree No. 1182.66, 27 dou al kiadás (4.03.1967)

Faculty researchers (Decree No. 2.75.665 of 11 Chouali 1395 (17.10.1975);

Officials of the General Directorate of National Safety: Decree No. 1180.66, 22 Chouali 1383 (02.02.1967).

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Articles 21 and 22 lay down the conditions for recruitment. Article 7 prohibits the recruitment and promotion if there is no corresponding vacancy.

Article 10 establishes a supreme council of public service as an advisory body comprised of different partners.

Since the 1960s when the aftermath of the adoption of public service, studies, cases of violation of the principles and diagnostics follow and lead to the conclusion that these laws are theoretical and not operational and recommend administration reform.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil Service promulgated by Dahir No. 1.00.341 of 29 Ramadan 1421 (26.12.2000)

The Covenant of Good Governance. Government of Morocco

Administration: Pending reform, the diagnosis of malfunctions. Liberation of 10/05/2002

<http://www.avmaroc.com/actualite/administration-a12268.html>

Royal Decree No. 988-68 of 19 Safar 1388 (17.05.1968) establishing the procedure and progress in step and grade of government officials.

Decree No. 2.05.1367 on 02.12.2005 setting a new procedure for the promotion of government officials whose communities.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Officials and citizens can go to administrative court to prevent any act deemed abusive.

Appeals against the decisions of administrative courts are brought before two administrative courts of appeal that were created in 2006. One court is located in Rabat, the other in Marrakesh.

The Supreme Court is also the last resort to rule on appeals relating to the abuse of power, other individual acts, or individual acts by the prime minister and administrative authorities, whose authority is beyond the jurisdiction of an administrative court.

References:

Law No. 41-90 Establishing Administrative Courts (Dahir No. 1-91-225 of 10 September 1993 (22 Rabi I 1414))

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can

still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

If convicted, the sentence is more than three months in prison.

Article 21 of the statute of public service requires individuals with good morals. This condition implies that a new employee would have to provide a criminal background check. For some administrations — finance for example — a future public servant must be investigated by police before starting work. In addition, officials arrested and tried are automatically reported to their administrations.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil Service promulgated by Dahir No. 1.00.341 of 29 Ramadan 1421 (26.12.2000)

Penal Code: Dahir No. 1.59.415 of 28 Jumada II 1382 (26.11.1962) approving the text of the Penal Code.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

56

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Officials are generally independent, but are sometimes influenced by negative or positive political judgments or personal incentives

Political interference often takes the form of favoritism towards each other. What is common is the persecution of officials who denounce corrupt practices within their departments. Several civilian and military officials were dismissed and/or convicted by courts in unfair trials.

References:

Governance and modernization of the administration Abdelouahad OURZIK <http://www.rdh50.ma/fr/pdf/contributions/GT10-4.pdf>

The state of public administration in Morocco By Lizette Michael and Gianluca Misuraca In April 2004 Seminar: Innovation in Public Administration in the Euro-Mediterranean region. Organized jointly by the African Center for Training and Administrative Research for Development and the United Nations Department of Economic and Social Affairs. http://www.caimed.org/docs/conf_200405_morocco.pdf.

Speech by Mr. Moatassime Leader in Trade Union UNMT before the Board of Advisors <http://www.untm-fes.com/doc/intervention-UNTM-parlememnt.doc>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Patronage is often decried by officials and trade unions.

The criteria for appointing public servants are not sufficiently precise and rely more on a personal appreciation of supervisors. Thus public officials are plagued by problems of favoritism, cronyism, and lack of professionalism in the decisions of rating and advancement.

References:

Governance and modernization of the administration Abdelouahad OURZIK <http://www.rdh50.ma/fr/pdf/contributions/GT10-4.pdf>

The state of public administration in Morocco By Lizette Michael and Gianluca Misuraca In April 2004 Seminar: Innovation in Public Administration in the Euro-Mediterranean region. Organized jointly by the African Center for Training and Administrative Research for Development and the United Nations Department of Economic and Social Affairs. http://www.caimed.org/docs/conf_200405_morocco.pdf.

Speech by Mr. Moatassime Leader in Trade Union UNMT before the Board of Advisors <http://www.untm-fes.com/doc/intervention-UNTM-parlememnt.doc>

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | **25** | 0

Comments:

Patronage is often decried by officials and trade unions.

The criteria for appointing public servants are not sufficiently precise and rely more on a personal appreciation of supervisors. Thus public officials are plagued by problems of favoritism, cronyism, and lack of professionalism in the decisions of rating and advancement.

The minister of public sector modernization said in speaking of the new reform that flexible recruitment will be taken to deal with constraints in the procedure of hiring requirements for each candidate.”

Most of the special status of some jurisdictions including that of the public enterprise administration, which recruits people without going through a competition. Meanwhile officials who are more qualified and have been recruited through the normal channels that are longer and harder, suffer more.

References:

Speech by Mr. Moatassime Leader of Trade Union UNMT, before the Board of Advisors <http://www.untm-fes.com/doc/intervention-UNTm-parlememnt.doc>

Indictments of banks: Crédit Agricole, Crédit Immobilier et Hotelier

Reports of the parliamentary committee of inquiry into the National Social Security Fund

Governance and modernization of the administration Abdelouahad OURZIK <http://www.rdh50.ma/fr/pdf/contributions/GT10-4.pdf>

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100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

The situation varies from one position to another and from one public sector department to another.

In general, the social and employment policy in the public sector and the non-transparency and non-accountability issues are often highlighted.

References:

Speech by Mr. Moatassime Leader of Trade Union ,UNMT, before the Board of Advisors [http://www.untm-fes.com/doc/intervention- UNTM-parlememnt.doc](http://www.untm-fes.com/doc/intervention-UNTm-parlememnt.doc)

Indictments of banks: Crédit Agricole, Crédit Immobilier et Hotelier

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The state of public administration in Morocco By Lizette Michael and Gianluca Misuraca In April 2004 Seminar: Innovation in Public Administration in the Euro-Mediterranean region. Organized jointly by the African Center for Training and Administrative Research for Development and the United Nations Department of Economic and Social Affairs. http://www.caimed.org/_docs/conf_200405_morocco.pdf

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

The situation varies.

Overall, administrations that are financially rich, such as the finance ministry and ministry of commerce rely largely on the preponderance of premium income.

References:

Ministerial decrees on salaries of Finances and Trade ministries
Public Enterprises Statutes

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | **50** | 25 | 0

Comments:

The Finance Act publishes the overall number of posts, but it is not detailed.

References:

Finance Act of 2008

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The administrative courts have shown great efficiency, but the problem is with the enforcement of judgements.

There was a case of a young man who wanted to be hired by police without competing simply because he was recommended by the prince. The Administrative Court issued a ruling in favour of young man, but the police have appealed to the High Court. And they were able to win and reaffirm the principle of equality before the Moroccan employment.

References:

Une bonne et une mauvaise nouvelle PAR MICHEL ROUSSET 11 Octobre 2004 http://www.lagazettedumaroc.com/articles.php?r=2&sr=901&n=389&id_artl=5076

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

In Morocco, this problem was never raised for civil servants.

References:

This problem was never raised for civil servants.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

The status of the civil service requires that the applicant has good morals (Article 21). In practice, generally this condition is respected.

Given that accountability almost non-existent, only exceptional cases with sufficient evidence go to court for prosecution. At trial the individuals would be convicted and sentenced.

References:

The status of the civil service requires that the applicant is of good morals (Article 21).

In practice, generally this condition is respected.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

28

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

The law on declaration of assets of senior officials is still in draft.

References:

The project on declaration of assets of senior officials

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Articles 15 and 16 describe cases of conflict of interest for officials.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil Service promulgated by Dahir No. 1.00.341 of 29 Ramadan 1421 (26.12.2000)

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

No such restrictions exist in the law.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil Service promulgated by Dahir No. 1.00.341 of 29 Ramadan 1421 (26.12.2000)

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

Articles 15 and 16 describe cases of conflict of interest for officials.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil Service promulgated by Dahir No. 1.00.341 of 29 Ramadan 1421 (26.12.2000)

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

The law on declaration of assets of senior officials is still in draft.

References:

Project on law on declaration of assets of senior officials.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Post-government jobs are not outlined in law.

References:

Law 75-99 amending and supplementing Dahir No. 1.58.008 of 4 Chaabane 1377 (24.02.1958) forming General Statute of Civil

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | **25** | 0

Comments:

Neptism and patronage play a role, perhaps less important than in the past, but are perceived by the national press and the public as things that could accelerate the career of officials.

References:

Speech by Mr. Moatassime Leader of Trade Union UNMT, before the Board of Advisors <http://www.untm-fes.com/doc/intervention-UNTm-parlememnt.doc>

Indictments of banks: Crédit Agricole, Crédit Immobilier et Hotelier

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100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their

decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism and patronage plays a role, perhaps less important than in the past, but they are perceived by the national press and the public as way to accelerate the career of officials

References:

Speech by Mr. Moatassime Leader of Trade Union UNMT, before the Board of Advisors <http://www.untm-fes.com/doc/intervention-UNTm-parlememnt.doc>

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100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law on declaration of assets of senior officials is still in draft.

References:

The project of law on declaration of assets of senior officials.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Citizens are not informed or in the case of laws or bills.

References:

Draft amending Dahir Dahir No. 1.74.331 of 11 I Rabii 1395 (23.04.1975) on the situation of the government and the composition of their offices.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Citizens are generally not informed.

References:

Abdelouahad OURZIK: Governance and modernization of the administration
p.119 <http://www.rdh50.ma/fr/pdf/contributions/GT10-4.pdf>

Draft amending Dahir Dahir No. 1.74.331 of 11 I Rabii 1395 (23.04.1975) on the situation of the government and the composition of their offices.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens are generally not informed.

References:

Abdelouahad OURZIK: Governance and modernization of the administration
p.119 <http://www.rdh50.ma/fr/pdf/contributions/GT10-4.pdf>

Draft amending Dahir Dahir No. 1.74.331 of 11 I Rabii 1395 (23.04.1975) on the situation of the government and the composition of their offices

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no law on the protection of whistleblowers against corruption despite repeated recommendations of parties and civil society.

A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done.

References:

Transparency News, No. 1, 2 and 3

In Morocco, it is expensive to be honest http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

There is no law on the protection of whistleblowers reporting corruption despite repeated recommendations of parties and civil society. A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done.

Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

References:

Transparency News, No. 1, 2 and 3

In Morocco, it is expensive to be honest http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There are no legal protections for private-sector whistleblowers.

There are no laws on the protection of witnesses or informers despite repeated recommendations of parties and civil society. As citizens, they were subjected to blackmail, when they admit that, they are treated as accomplices.

References:

Transparency News, No. 1, 2 and 3

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

When influential people report cases of corruption, it is really an exception that they are prosecuted.

The action may also hide conflicts and manipulation or political foundations. Thus, Mr. Boufettas declared to have paid 2 billion dirhams in a corruption deal at a private bank on a loan of 17 billion dirhams, but no action has been taken on these statements. The beneficiary of corruption is a former CEO of the bank who was removed a long time before this event.

References:

Transparency News, No. 1, 2 and 3

Al Massaë No. 620 of 15.09.2008.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism (or equivalent series of mechanisms) exists. A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done.

References:

In Morocco, it is expensive to be honest http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975

Al Massaër No. 620 of 15.09.2008.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism (or equivalent series of mechanisms) exists. A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done.

References:

In Morocco, it is expensive to be honest [http://www.transparencymaroc.ma/index.php?option=com_content & task = view & id = 66 & Itemid = 88888975](http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975)

Al Massaër No. 620 of 15.09.2008.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism (or equivalent series of mechanisms) exists. A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done.

References:

In Morocco, it is expensive to be honest [http://www.transparencymaroc.ma/index.php?option=com_content & task = view & id = 66 & Itemid = 88888975](http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975)

Al Massaër No. 620 of 15.09.2008.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism (or equivalent series of mechanisms) exists. A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done.

References:

In Morocco, it is expensive to be honest [http://www.transparencymaroc.ma/index.php?option=com_content & task = view & id = 66 & Itemid = 88888975](http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975)

Al Massaër No. 620 of 15.09.2008.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

No such mechanism (or equivalent series of mechanisms) exists.

A draft hotline for victims of corruption was included in the government's action plan of 2005, but nothing concrete has yet been done

References:

In Morocco, it is expensive to be honest http://www.transparencymaroc.ma/index.php?option=com_content&task=view&id=66&Itemid=88888975

Al Massaë No. 620 of 15.09.2008.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

0 IV-3. Procurement

51. Is the public procurement process effective?

55

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The decree of Feb. 5 2007 is the third reform of the Public Procurement Act (1965 to 1976 and 1998). This new decree repeals the one of Dec. 30, 1998, and is currently the general framework of public procurement and its monitoring and management. It was enacted on Oct. 19, 2007. In addition to the general framework of the decree, there are several other pieces of legislation that address public procurement.

The procedure for open bidding is a general rule. The use of contracts that deal with trading and restricting tendering is limited to certain cases and must be substantiated by the contracting authority.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

Comments:

There is no law on mandatory training of officials for public procurement. Because there is lack of training or control procedures, public procurement by local governments is dysfunctional.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | **25** | 0

Comments:

Public procurement is a very important issue. It makes up 15 percent of the GDP. The Construction Sector and Public Works department alone produces 70 percent of its work turnover with procurement.

The 2007 reform aims to overcome the shortcomings of the 1998 act with regard to encouraging competition and allowing greater transparency in the procurement process. Issues that received the most criticism were the lack of effectiveness of the law and the lack of guarantees and protection of the rights of businesses.

People also complained about not having simple and clear procedures. And one of the other failures of procedures being easy is government authorities own lack of knowledge and not having control procedures in place.

Some departments complement the law by internal measures. There are plans of a joint commission to be involved in monitoring operations. This is an important provision taken by the ministry," said Youssef Benjelloun, a member of the Order involved.

References:

Procurement: Small are protected. <http://www.aujourd'hui.ma/economie-details43051.html>

Corruption in public procurement in Morocco in l'Economiste " of April 8, 2008

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

Comments:

The declaration of assets system is still planned for senior officials. For other officials, a local law has been adopted since May 2008, but it is not in force yet.

References:

Bill No. 54.06 establishing a declaration of assets of some elected local councils and certain categories of civil servants or public officials.

Draft law on the declaration of assets of senior officials (not yet available)

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | **NO**

Comments:

Three main procurement procedures are outlined in the law. They are 1) the call for tenders, 2) the support, and 3) the negotiated procedure.

However, the procedure of purchase orders can be used for small markets, such as those at or below 200.000 Moroccan Dirhams (US\$23,944)

Going to tender is the general rule on public procurement, in about 80 to 90 percent of cases.. It may be open, restricted or screened. The ongoing tendering procedure is not related to the contract price.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control
Chapter III Facilities markets and how they award Articles 15 and 16.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control

Chapter IV-procurement procedures Articles 15 to 79, including 71, 72, 75 and 76 articles.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

A procedure is established to allow any competitor to file in writing concerns against the client if there is a non-compliance with any rule of procedure of the market. A reasoned response is provided in Article 47.

If an ousted competitor challenges the reasons given by the tender, he can ask for remedies by submitting a detailed request to the Secretary General of Government.

The committee on markets, under the jurisdiction of the General Secretariat of Government, is empowered under Article 7.5 to hear concerns relating to the procedure and results of the auctions, tenders and competitions.

References:

Decree No. 2.75.840 of 27 hija 1395 (30.12.1975) reforming the Committee on Contracts (BO No. 3297 of 07.01.1976)

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of the State and certain rules regarding their management and checking

Chapter VIII-Use Committee on the markets. Article 95 for the amicable settlement of disputes.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

In terms of Law No. 41-90 establishing administrative tribunals, bidders can submit an application for annulment against administrative decisions abusive, or any dispute relating to Administrative contracts

References:

Law No. 41-90 establishing administrative courts.

Dahir No. 1-91-225 of 22 rebia I 1414 (10 September 1993) promulgating the Law No. 41-90 BO in 4227 from 03 November 1993 p. 595 et seq.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

When fraudulent acts, repeated violations of working conditions or serious commitments were increased at the expense of the holder, the minister concerned can temporarily or permanently be excluded from participation in markets for its administration.

This measure of exclusion can be extended to procurement by the government decision by the prime minister. This decision is published in the portal market of the state.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | **25** | 0

Comments:

The Ministry of Equipment can punish a company guilty of fraud by withdrawing certification. A decree can also make sanctions against a company, and the company can temporarily or permanently be excluded from the participation.

There are examples of companies being excluded for fraud on the statement of honor or falsification of documents. There are no cases of exclusion due to corruption. Companies that have been involved in high-profile investigations of scandal (Crédit agricole; Crédit Immobilier et Hôtelier) are not listed on any exclusion list.

References:

Procurement Portale <http://www.marchespublics.gov.ma/>

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The new law is part of an effort to disseminate information. Currently, the procurement portal allows access to more regulation

information.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control. Section V-Dematerialisation procedures

Article 76 Portal markets of the state

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

An information portal is required by law to include information on programs for procurement, the results of tenders, extracts of minutes of meetings to review offers, and reports of the execution of contracts. Only the administration of National Defence is required to display these documents.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control. Section V-Dematerialisation procedures
Article 76 Portal markets of the state <http://www.marchespublics.gov.ma/>

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The new law is part of an effort to disseminate information. Currently, the government information portal allows access to more information regulations.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of

procurement of state and some rules for their management and their control. Section V-Dematerialisation procedures Article 76 Portal markets of the state <http://www.marchespublics.gov.ma/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The new law is part of an effort to disseminate information. Currently, the government information portal allows access to more information regulations.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control. Section V-Dematerialisation procedures Article 76 Portal markets of the state <http://www.marchespublics.gov.ma/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

This includes a government website, newspaper advertising, and other official announcements.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control. Section V-Dematerialisation procedures Article 76 Portal markets of the state <http://www.marchespublics.gov.ma/>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

This includes a government website, newspaper advertising, and other official announcements.

References:

Decree 2-06-388 of 16 moharrem 1428 (5 February 2007-BO No. 5518 of 19-04-2007) laying down conditions and forms of procurement of state and some rules for their management and their control. Section V-Dematerialisation procedures Article 76 Portal markets of the state <http://www.marchespublics.gov.ma/>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

42

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

First, it must be remembered that under Article 45 of the constitution, the transfer of public enterprises to the private sector falls within the legislature.

The law has identified three modes of transfer and no business list to exclude has been arrested. These modes are: 1) the tender used for the transfer of part or all of the shares or an enterprise, 2) The direct award used after unsuccessful tender, for the right of first refusal between shareholders, for reasons of regional development or job retention, and 3) The financial market used for an initial public offering in Casablanca Securities by a public offering at a fixed price.

The objectives on how to transfer assets to businesses is listed in Article 5 paragraph 2. It says the objectives are 1) access of new social categories to the ownership of companies and fight against the hoarding; 2) development and strengthening of regional economies; and 3) safeguarding employment.

References:

Law No. 39-89, promulgated by Dahir No. 1-90-01 of 15 Ramadan 1410 (11 April 1990), authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Decrees of the Law No. 39-89 authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Law No. 31-04, promulgated by Dahir No. 1-04-220 of 21 Ramadan 1425 (4 November 2004).

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

There are no such formal regulations.

References:

Law No. 39-89, promulgated by Dahir No. 1-90-01 of 15 Ramadan 1410 (11 April 1990), authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Decrees of the Law No. 39-89 authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Law No. 31-04, promulgated by Dahir No. 1-04-220 of 21 Ramadan 1425 (4 November 2004).

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | **25** | 0

Comments:

Several protests and criticisms about the lack of transparency in privatization operations have been expressed by journalists, observers and businessmen. Parliamentarians have even tried to establish a commission of inquiry but failed to gather a quorum.

The privatization of the public SAMIR oil refinery and its transfer to Saudi business CORAL raised much criticism. After the transaction, the minister of privatization in charge of the transfer became the company's CEO.

This lead businessman Miloud CHAABI to say in a press interview, This is a person who has privatized a public institution and, curiously, would find himself at the head of this institution...Indeed, there is a precedent in this area. Abderrahmane Saidi had he not transferred even without taking the trouble to launch a tender of Casablanca Hayatt Regency Hotel against 70 million Moroccan dirhams (US\$8.3 million) a price below its value?"

SAMIR oil was sold for a price equivalent to US\$400 million, while its real price is worth \$1 billion dollars.

References:

Miloud Chaâbi exhumes his conflict with Abderrahmane Saidi: On behalf of the truth, In Maroc Hebdo International – No. 471 – June 29 to July 5 2001

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

54a. In law, citizens can access privatization regulations.

YES | NO

Comments:

The decrees of application talk about communication to the public. The ministry has a website and issues press releases.

The last privatization sale of a stake in Maroc Telecom was preceded by a broad information campaign. It allowed the participation of employees and a large number of people.

References:

Law No. 39-89, promulgated by Dahir No. 1-90-01 of 15 Ramadan 1410 (11 April 1990), authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Decrees of the Law No. 39-89 authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Law No. 31-04, promulgated by Dahir No. 1-04-220 of 21 Ramadan 1425 (4 November 2004).

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The ministry has a website and issues press releases.

The last privatization sale of a stake in Maroc Telecom was preceded by a broad information campaign. It allowed the participation of employees and a large number of people.

References:

http://www.finances.gov.ma/portal/page?_pageid=33,13958299&_dad=portal&_schema=PORTAL

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

Afterwards, the results are announced.

References:

Law No. 39-89, promulgated by Dahir No. 1-90-01 of 15 Ramadan 1410 (11 April 1990), authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Decrees of the Law No. 39-89 authorizing the transfer of public enterprises to the private sector as amended and supplemented.

Law No. 31-04, promulgated by Dahir No. 1-04-220 of 21 Ramadan 1425 (4 November 2004).

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The last privatization sale of a stake in Maroc Telecom was preceded by a broad information campaign. It allowed the participation of employees and a large number of people.

References:

The ministry has a website and issues press releases.

http://www.finances.gov.ma/portal/page?_pageid=33,13958299&_dad=portal&_schema=PORTAL

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The last privatization sale of a stake in Maroc Telecom was preceded by a broad information campaign. It allowed the participation of employees and a large number of people.

References:

http://www.finances.gov.ma/portal/page?_pageid=33.13958299&_dad=portal&_schema=PORTAL

The ministry has a website launches and issues releases.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁶⁹ National Ombudsman

56. Is the national ombudsman effective?

57

56a. In law, the ombudsman is protected from political interference.

YES

NO

Comments:

The ombudsman, or Diwan Al Madhalim, is regarded as an institution belonging to the Royal Court. The ombudsman's president Wali Al Madhalim" is appointed by the king for a period of six years.

Delegates who work alongside the president are appointed by the Wali with permission of the king. The operating funds and equipment allocated to the "Diwan Al Madhalim" are budgeted by the Royal Court. (Article 16).

The dependence on the court may constitute a guarantee of efficiency and authority. As pointed out by Omar Bendourou: "The authority of the Diwan al Madhalim undoubtedly comes to the place where the king provides. Its reports and recommendations will be made on cases which are entrusted and have not been implemented by the government departments in question."

References:

Dahir No. 1.01.298 establishing the institution Diwan Al Madhalim promulgated on 23 Ramadan 1422 (9 December 2001) RB No. 4966 of 03.01.2002. Its rules were promulgated on 04/12/2004. www.diwan-almadhalim.ma

Omar Bandourou: Civil rights and the rule of law in Morocco. Edition Friedrich Ebert Stiftung. Rabat 2004

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100

75

50

25

0

Comments:

In response to a question about the pressure of the Diwan Al Madhalim to enforce its recommendations, Wali says, In cases where an administration refused to respond positively to suggestions and refused to implement the recommendations, Diwan Al Madhalim appealed to the prime minister in writing.

"We submit periodic reports in which we advise them of the situation. In addition, each year we give to His Majesty the King, who is the supreme authority, a report on the results of the work of the institution. In these reports we establish the case of refusal of the authorities. It is obvious that no department would want to be among the latter category. "

References:

Diwan Al Madhalim pin Justice: Interview with Wali Al Madhalim In the Aujourd'hui le Maroc 14-11-2006

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Diwan Al Madhalim is regarded as an institution belonging to the Royal Court. Its president Wali Al Madhalim” is appointed by the king for a period of six years. Delegates who work alongside him are appointed by the Wali with permission of the king. The operating funds and equipment allocated to the “Diwan Al Madhalim” are budgeted by the Royal Court. (Article 16)

The dependence of the Court may constitute a guarantee of efficiency and authority. As pointed out by Omar Bendourou: “The authority of the Diwan al Madhalim undoubtedly comes to the place where King provides. Its reports and recommendations will be made on cases which are entrusted and have not been implemented by the government departments in question.”

References:

Dahir No. 1.01.298 establishing the institution Diwan Al Madhalim promulgated on 23 Ramadan 1422 (9 December 2001) RB No. 4966 of 03.01.2002. Its rules were promulgated on 04/12/2004. www.diwan-almadhalim.ma

Omar Bandourou: Civil rights and the rule of law in Morocco. Edition Friedrich Ebert Stiftung. Rabat 2004

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The choice of staff is usually from the best managers acting as government officials, judges, university professors, engineers, technicians

and agents. The qualified and experienced staff have been hired by contract, posting or making provisions within the limits of quantitative requirements.

References:

Diwan Al Madhalim Report Years 2005-2006 page 22 www.diwan-almadhalim.ma

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

Despite the patronage system in appointing staff to institutions and to national advisories such as Diwan Al Madhalim, the subject of arbitration and mediation with the government is not a problem of dependency.

Administrative courts make major judgments that cancel administrative decisions. Indeed, the law does not give the Diwan Al Madhalim a higher authority than government. This does not allow it to compel governments to comply with its proposals, but allows it to use the prime minister to enforce them," said O. Bendourou.

References:

Dahir No. 1.01.298 establishing the institution Diwan Al Madhalim promulgated on 23 Ramadan 1422 (9 December 2001) RB No. 4966 of 03.01.2002. Its rules were promulgated on 04/12/2004. www.diwan-almadhalim.ma

Omar Bandourou: Civil rights and the rule of law in Morocco. Edition Friedrich Ebert Stiftung. Rabat 2004

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The operating funds and equipment allocated to the Diwan Al Madhalim” are budgeted for the Royal Court. (Article 16)

References:

Dahir No. 1.01.298 establishing the institution Diwan Al Madhalim promulgated on 23 Ramadan 1422 (9 December 2001) RB No. 4966 of 03.01.2002. Its rules were promulgated on 04/12/2004. <http://www.diwan-almadhalim.ma>

Omar Bandourou: Civil rights and the rule of law in Morocco. Edition Friedrich Ebert Stiftung. Rabat 2004

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

It regularly publishes periodic reports. With the start of the 2005 and 2006, reports were published together in one document.

The validation provided by the king before publication takes some time. Start up difficulties have delayed the publication of the report for the first year. The publication of the 2007 report is not yet available to the public as of September 2008.

References:

Diwan Al Madhalim Report Years 2005-2006 page 22 <http://www.diwan-almadhalim.ma>

Diwan Al Madhalim pin Justice: Interview with Wali Al Madhalim In the Aujourd’hui le Maroc 14-11-2006

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

Pursuant to the provisions of Articles 5 and 14 of the Dahir, the creation of the institution and Article 57 of its rules of procedure, Wali Al Madhalim submits to the high attention of the king, special reports on studies and investigations undertaken by royal order about cases.

References:

Diwan Al Madhalim pin Justice: Interview with Wali Al Madhalim In the Aujourd'hui le Maroc 14-11-2006 <http://www.diwan-almadhalim.ma>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | **0**

Comments:

The legislature wanted to make this institution: 1) an efficient instrument of development for the administration, promotion of intermediation between citizens and administration; 2) a conciliation flexible and simplified to address complaints and grievances of citizens; and 3) an effective remedy for those who feel aggrieved by a decision or an act deemed unfair or contrary to law by a government or body to exercise the powers of the public.

References:

Dahir No. 1.01.298 establishing the institution Diwan Al Madhalim promulgated on 23 Ramadan 1422 (9 December 2001) BO No. 4966 of 03.01.2002. Its rules were promulgated on 04/12/2004. <http://www.diwan-almadhalim.ma>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

The recommendations of Diwan Al Madhalim are not enforceable. Responses from government departments or the prime minister vary depending on whether monitoring specific cases treaties or general suggestions.

In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

The legislator wanted to make this institution: 1) an efficient instrument of development for the administration, promotion of intermediation between citizens and administration; 2) a conciliation flexible and simplified to address complaints and grievances of citizens; and 3) an effective remedy for those who feel aggrieved by a decision or an act deemed unfair or contrary to law by a government or body to exercise the powers of the public.

According to the president of Diwan Al Madhalim, We have two tools to put pressure on the administration concerned by the complaint.

In the case where a department refused to respond positively to suggestions and implement the recommendations, Diwan Al Madhalim appealed to the prime minister in writing. We submit periodic reports in which we advise them of the situation. In addition, each year we give to His Majesty the King, who is the supreme authority, a report on the results of the work of the institution in which we establish the case of refusal of the authorities. It is obvious that no administration would want to be among the latter category."

References:

Diwan Al Madhalim pin Justice: Interview with Wali Al Madhalim In the Aujourd'hui le Maroc 14-11-2006
Diwan Al Madhalim Report Years 2005-2006 page 22

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The president of Diwan Al Madhalim, said, I am not satisfied with the balance of these two years of the institution because the DAM procedure activities adopted early initiation did not lead to expected results. That is why, for more efficiency, we have established a new approach based on direct contact with the heads of administrations through the establishment of joint commissions. The latter are already at work. This new approach allows the development of communication with the administration and encourages it to implement the recommendations of Diwan Al Madhalim. I promise you that the results will be better. “

References:

Diwan Al Madhalim pin Justice: Interview with Wali Al Madhalim In the Aujourd'hui le Maroc 14-11-2006
Diwan Al Madhalim Report Years 2005-2006 page 22

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

67

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Annual reports are available on the website of Al Diwan Madhalim.

References:

<http://www.diwana-almadhalim.ma>

Diwan Al Madhalim Report Years 2005-2006 page 22

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports are available on the website of Al Diwan Madhalim.

The validation provided by the king before the reports' publication takes some time. Start up difficulties have delayed the publication of the report of the first year. The publication of the 2007 report was not available to the public as of September 2008.

References:

<http://www.diwana-almadhalim.ma>

Diwan Al Madhalim Report Years 2005-2006 page 22

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Annual reports are available on the website of Al Diwan Madhalim.

References:

<http://www.diwana-almadhalim.ma>

Diwan Al Madhalim Report Years 2005-2006 page 22

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

The ombudsman is known in Morocco as Diwan Al Madhalim". The ombudsman is responsible under the terms of Article I of Law No. 1.01.298 for promoting intermeditation between citizens or groups of citizens and the government or any agency with public powers. The ombudsman encourages them to observe the rules of the rule of law and equity. The position falls under the rule of the Royal Court.

References:

Dahir No. 1.01.298 establishing the institution Diwan Al Madhalim promulgated on 23 Ramadan 1422 (9 December 2001) BO No. 4966 of 03.01.2002.

Its rules were promulgated on 04/12/2004. www.diwan-almadhalim.ma

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

59. Is the supreme audit institution effective?

78

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Court of Accounts is a constitutional body independent from the legislative and executive branches. The president of the court is appointed by the king, which gives it real independence from the government.

But the king reigns and rules. As such, he is part of the executive. The Court's budget is independent. It was part of the first budget minister's portfolio before the 2002 reform.

References:

Dahir No. 1.02.124 1 Rebia II 1423 (13.06.2002) promulgating the Law 62-99 of 13 June 2002 Code of forming financial jurisdictions. RB No. 5030 of 6 Jumada II.1423 (15.08.2002).

Constitution of the Kingdom of Morocco in 1996, Articles 26 58, 96 and 97.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Theoretically, the first president and the chairmen of regional courts are appointed for one term.

This provision was respected. Since his appointment in February 2003, the first president of the court has always been at the head of the institution.

References:

Dahir No. 1.02.124 1 Rebia II 1423 (13.06.2002) promulgating the Law 62-99 of 13 June 2002 Code of forming financial jurisdictions. RB No. 5030 of 6 Jumada II.1423 (15.08.2002). Constitution of the Kingdom of Morocco in 1996, Articles 26 58, 96 and 97

Ahmed Midaoui: Role of the Court of Auditors in the reform of public management <http://www.finances.gov.ma> / docs_internet / news / docs

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

The court has great advantages in terms of its human resources.

Its procedures are more closely aligned with international standards, which guarantee independence and quality of investigations. The court members are judges who enjoy security of tenure. Investigations are filed secretly and decision making is collegial. The procedure is enshrined in the submission of audited reports to the public.

Moreover, the selection of candidates has not raised any objections and this does not seem important. Only one criticism of bias has arisen following reports of the Court of Auditors and incrimination of community management in some major cities.

The Court has a substantial and permanent increase of staff, having reached 393 executives. However given the powers and the growing volume of work, the 2005 report estimated that this number falls short of needs.

References:

Ahmed Midaoui: Role of the Court of Auditors in the reform of public management http://www.finances.gov.ma/docs_internet/news/docs/2008/daag/roledelacourdescomptes_78.pps

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

Comments:

The first criticism of bias has only arisen following reports of the Court of Auditors incrimination community management of some major cities.

The court has great advantages in terms of its human resources.

Its procedures are more closely aligned with international standards, which guarantee independence and quality of investigations. The court members are judges who enjoy security of tenure. Investigations are filed secretly and decision making is collegial. The procedure is enshrined in the submission of audited reports to the public.

Moreover, the selection of candidates has not raised any objections and this does not seem important. Only one criticism of bias has arisen following reports of the Court of Auditors and incrimination of community management in some major cities.

References:

Ahmed Midaoui: Role of the Court of Auditors in the reform of public management http://www.finances.gov.ma/docs_internet/news/docs/2008/daag/roledelacourdescomptes_78.pps

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

Comments:

The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining the financing of the agency. It is in the normal course of law finance.

References:

The Law of Finance (2008)
Court of Auditors Report 2003/2004, 2005 and 2006 on its website <http://www.courtdescomptes.ma>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Independent of the executive and legislative powers, the court has the freedom to initiate investigations independent of the government and parliament. This translates into freedom, from free programming of its investigative missions and control to its free access to information and publication and dissemination of reports.

For example the management of water and electricity to the city of Casablanca delegated to the private company LYDEC attracted the attention of the entire Moroccan population following protests and accusations of embezzlement and failure notebook charges made by local politicians.

The court has scheduled a mission to clarify the record below the Lydec with officials of the council of the city of Casablanca, unlike the IGF (Inspectorate General of Finance), which is activated only the request of the government.

The court still needs human resources to reach its cruising speed, evidenced by the important recruitment and training programs that it continues to do.

References:

Court of Auditors Report 2003/2004, 2005 and 2006 on its website <http://www.courtdescomptes.ma>

The report on the financial accounts of Commons will be made public next June
By Abderrahman Ichi In Le Matin newspaper of Oct. 3, 2008 <http://www.lematin.ma>

Ahmed Midaoui: Role of the Court of Auditors in the reform of public management
http://www.finances.gov.ma/docs_internet/news/docs/2008/daag/roledelacourdescomptes_78.pps

The Court of Auditors Opens hunting cf. Review: Economics Company
August 2008 <http://www.economie-entreprises.com/adr.php?n=39>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The prime minister has called for ministers paying more attention to reports of the Court of Auditors.

References:

Call of 11 March 2008

Prime Minister calls on the government to pay more interest to the reports of the Court of Auditors. <http://www.pm.gov.ma/ar/detail.aspx?id=1321&cat=6&Lg=Ar>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

Independent of the executive and legislative powers, the court has the freedom to initiate investigations independent of the government and parliament. This translates into freedom, from free programming of its investigative missions and control to its free access to information and publication and dissemination of reports.

For example the management of water and electricity to the city of Casablanca delegated to the private company LYDEC attracted the attention of the entire Moroccan population following protests and accusations of embezzlement and failure notebook charges made by local politicians.

The court has scheduled a mission to clarify the record below the Lydec with officials of the council of the city of Casablanca, unlike the IGF (Inspectorate General of Finance), which is activated only the request of the government.

The court still needs human resources to reach its cruising speed, evidenced by the important recruitment and training programs that it continues to do.

References:

Ahmed Midaoui: Role of the Court of Auditors in the reform of public management http://www.finances.gov.ma/docs_internet/news/docs/2008/daag/roledelacourdescomptes_78.pps

The Court of Auditors Opens hunting cf. Review: Economics Company, August 2008 <http://www.economie-entreprises.com/adr.php?n=39>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

75

60a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

Citizens can download the court reports of activities and various laws and procedures, but complete monitoring reports and audits are not available.

References:

Court of Auditors Report 2003/2004, 2005 and 2006 on its website <http://www.courtdescomptes.ma>

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can download the court reports of activities and various laws and procedures, but complete monitoring reports and audits are not available.

Citizens are still awaiting the disclosure report for 2007, which was presented to king in June 2008.

References:

Court of Auditors Report 2003/2004, 2005 and 2006 on its website <http://www.courtdescomptes.ma>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can download the court report of activities and various laws and procedures, but complete monitoring reports and audits are not available.

References:

Court of Auditors Report 2003/2004, 2005 and 2006 on its website <http://www.courtdescomptes.ma>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Court of Accounts, shall ensure the regular operations of income and expenditure of agencies under its control under the law. The Court of Accounts takes into account the management and sanctions, if any, breaches of the rules that govern such operations." This is according to Article 2.

It assists the parliament and government and reports to the king.

References:

Dahir No. 1.02.124 1 Rebia II 1423 (13.06.2002) promulgating the Law 62-99 of 13 June 2002 Code of forming financial jurisdictions. RB No. 5030 of 6 Jumada II.1423 (15.08.2002).

Constitution of the Kingdom of Morocco in 1996, Articles 26 58, 96 and 97.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

84 V-3. Taxes and Customs

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

la Trésorerie Générale est installée à la capitale Rabat. Elle emploie 6 000 collaborateurs sur tout le territoire marocain. Elle dispose d un vaste réseau de comptables publics, qui lui permet d assurer la perception des recettes fiscales et non fiscales. Ainsi, elle se trouve au centre d un maillage institutionnel constitué d administrations publiques, d établissements publics, de collectivités locales et d autres grandes institutions financières tous concernés par la gestion des deniers publics.

La Trésorerie générale du Royaume est chargée de la gestion des finances de 1659 collectivités locales, de 86 groupements et de 41 arrondissements, à travers un réseau constitué de 16 Trésoreries Régionales, 4 Trésoreries Préfectorales, 29 Trésoreries Provinciales dont 3 Trésoreries provinciales-recettes communales, 8 Trésoreries Communales, 21 Recettes Communales et 115 Perceptions-Recettes Communales.

References:

Decree 2.78.839 of 21 Hijja 1398 (22.11.1978) on the functions and organization of the Ministry of Finance and Privatization as modified by decree No. 2. 07.1290, 4 Kaada 1428 (15.11.2007) on the functions of the Ministry of Finance and Economy. BO n0 5584 of 6.12.2007

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The General Treasury of the Kingdom of Morocco (TGR), is a Directorate of the Ministry of Finance and Privatization. As such its budget is under forecasts and programs prepared by the different directions of the same ministry. It is therefore like all public budgets and is stable.

References:

Organic Law of the Finance Act

Dahir 1.00.195 14 Moharram 1421 (19 April 2000) on the implementation of the Organic Law No. 14.00 to amend and supplement the Finance Act No. 7.98 BO N) 4788 of 20 April 2000 (Arabic version)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

63

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has many human and material resources. Staff have modern computerization and standard procedures. However, border areas are numerous and widespread and therefore difficult to control. Corruption is a scourge.

References:

Code of Customs and Indirect Taxes approved by Dahir Act No. 1-77-339 25 Chaoual 1397 (9 October 1977) as amended and supplemented by Law No. 02-99, promulgated by Dahir No. 1-00-222 2 Rabii I in 1421 (June 5, 2000) <http://www.douane.gov.ma/>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency has many human and material resources. Staff have modern computerization and standard procedures. However, border areas are numerous and widespread and therefore difficult to control. Corruption is a scourge.

References:

Code of Customs and Indirect Taxes approved by Dahir Act No. 1-77-339 25 Chaoual 1397 (9 October 1977) as amended and supplemented by Law No. 02-99, promulgated by Dahir No. 1-00-222 2 Rabii I in 1421 (June 5, 2000) <http://www.douane.gov.ma/>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. Is there a national tax collection agency?

61. In law, is there a national tax collection agency?

YES | NO

Comments:

The General Treasury of Morocco (TGR), is a department under the Ministry of Finance and Economy. It manages the flow of financial and accounting information of the Moroccan state and local governments.

It is one of the most important administrations of the Finance Department, which channels all financial and accounting information of state and local governments. Through its extensive network of public accounting, it provides tax and non-tax revenue.

In addition to the collection of non-tax revenue (fines, convictions cash), the recovery by the network of public accounting of the TGR focuses on the patent tax", the "city tax", and the tax of municipal administration and tax revenue.

References:

Decree 2.78.839 of 21 Hijja 1398 (22.11.1978) on the functions and organization of the Ministry of Finance and Privatization as modified by decree No. 2. 07.1290, 4 Kaada 1428 (15.11.2007) on the functions of the Ministry of Finance and Economy. BO n° 5584 of 6.12.2007

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. Are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There is a unified national tax collection that was established by law. The tax law is the same for everyone. For two years, the general tax code enacted by law No. 43.06 and by Decree No. 2.06.574 fixed taxes according to objective criteria used internationally.

While more than 100 officials were brought to justice in recent years, the fight against corruption and integrity has been furthered by the reorganizing work processes and computerization, which allows for more transparency in work.

The issue of tax exemptions, however, remains problematic. In August, the government cancelled fees and interest delays benefiting the tourism sector. It was retroactive, taking into account the years of 2003 to 2008.

References:

Law of Finances 2008

The moralization of public life in Morocco

The Administration of Customs and Excise: Poor, corruption increases the cost of public health by 38 percent

<http://www.unpan1.un.org/intradoc/groups/public/documents/CAFRAD/UNPAN003420.pdf>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES

NO

Comments:

The Administration of Customs and Excise (ADIYA), which deals with taxes, is part of the Ministry of Finance and Privatization.

Shared customs revenues has an important place in the government income; it makes up about 40 percent of income in recent years. In past years, it acted as primarily a fundraising arm for the Public Treasury.

Article 92 – 1 says customs duties and other duties and taxes required on imports or exports are assessed under tax issued by the officer.

References:

The main law that governs the code is the Customs and Excise law.

Code of Customs and Indirect Taxes approved by Dahir Act No. 1-77-339 25 Chaoual 1397 (9 October 1977) as amended and supplemented by Law No. 02-99, promulgated by Dahir No. 1-00-222 2 Rabii I in 1421 (June 5, 2000)

<http://www.douane.gov.ma/>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. Are customs and excise laws enforced uniformly and without discrimination?

100

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The Administration of Customs and Excise (ADIYA) is part of the Ministry of Finance and Privatization. As such, its budget and programs are decided by the Ministry of Finance and Privatization. That means its budget is fairly stable.

References:

Law of Finances 2008 Code of Customs and Indirect Taxes approved by Dahir Act No. 1-77-339 25 Chaoual 1397 (9 October 1977) as amended and supplemented by Law No. 02-99, promulgated by Dahir No. 1-00-222 2 Rabii I in 1421 (June 5, 2000)
<http://www.douane.gov.ma/>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The Directorate of Public Enterprise and Privatization (DEPP) is part of the Ministry of Finance and follows government policy. This direction was made before the rise of privatization.

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

Decree No. 2-06-175 of 27 Safar 1427 (28 March 2006) establishing the list of public institutions under control
<http://www.finances.gov.ma/MINISTERE/DIRECTION/depp.htm>

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Directorate of Public Enterprise and Privatization has a staff of 391 people. The Directorate of Public Enterprise and Privatization (DEPP) is responsible for 1) the exercise of the state financial control on public establishments (EEP), 2) monitoring the public portfolio, 3) participation in streamlining and restructuring of EEP, 4) The steering external audit of EEP. 5) The accounting standard setters, 6)The transfer of public enterprises to the private sector.

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Directorate of Public Enterprise and Privatization (DEPP), is part of the Ministry of Finance and Economy. Its budget is part of forecasts and programs prepared by the different directorates of the ministry in the context of the overall department.

An important part of the budget is stable, because it is linked to the structures of the department. Under normal operation, the DEPP benefits like all departmental budgets of stability.

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

Decree No. 2-06-175 of 27 Safar 1427 (28 March 2006) establishing the list of public institutions under control <http://www.finances.gov.ma/> MINISTERE /DIRECTION/depp.htm

Abdellatif NGADI: legal and institutional structure to control and fight against corruption <http://info.worldbank.org/etools/docs/library/242912/morocco-final.doc>

Abdellatif NGADI: The Court of Auditors must have the necessary authority and real power in the Bayan Al yaoume http://www.bayanealyaoume.ma/def.asp?codelangue=25-05-2008=23=3234&id_info

Abdellatif NGADI: Audit of the public sector can be effective only if it fits into a political and institutional environment healthy. Al Adala Wa Tammia from 15 to 17 February 2008 Page 9

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

The Directorate of Public Enterprise and Privatization (DEPP) does not perform inspections. It does not program audit or conduct investigations like the General Inspectorate of Finance who must do that work.

Its mission is limited to the exercise of the state financial control on public establishments made by the (DEPP) as a follow-up and standby for monitoring the portfolio and public participation in actions Public Enterprises (EEP) before restructuring and privatization. It gives also financial information, accounting and statistics.”

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

Decree No. 2-06-175 of 27 Safar 1427 (28 March 2006) establishing the list of public institutions under control
<http://www.finances.gov.ma/MINISTERE/DIRECTION/depp.htm>

Abdellatif NGADI: legal and institutional structure to control and fight against corruption
<http://info.worldbank.org/etools/docs/library/242912/morocco-final.doc>

Abdellatif NGADI: The Court of Auditors must have the necessary authority and real power in the Bayan Al yaoume http://www.bayanealyaoume.ma/def.asp?codelangue=25-05-2008=23=3234&id_info

Abdellatif NGADI: Audit of the public sector can be effective only if it fits into a political and institutional environment healthy. Al Adala Wa Tammia from 15 to 17 February 2008 Page 9

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The DEPP has no power to sanction and can decide on no penalty.

These items come from the recommendation of the Information Minister, who has the latitude to choose the path of sanctions to be followed. The minister also can give the role of the department to other departments with a supporting budget.

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

Decree No. 2-06-175 of 27 Safar 1427 (28 March 2006) establishing the list of public institutions under control
<http://www.finances.gov.ma/MINISTERE/DIRECTION/depp.htm>

Abdellatif NGADI: legal and institutional structure to control and fight against corruption
<http://info.worldbank.org/etools/docs/library/242912/morocco-final.doc>

Abdellatif NGADI: The Court of Auditors must have the necessary authority and real power in the Bayan Al yaoume
http://www.bayanealyaoume.ma/def.asp?codelangue=25-05-2008=23=3234&id_info

Abdellatif NGADI: Audit of the public sector can be effective only if it fits into a political and institutional environment healthy. Al Adala Wa Tanmia from 15 to 17 February 2008 Page 9

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments

but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

30

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

Only general information is given to the public. This includes indicators, accountants and enterprise lists. This information is available on the ministry's website, but is not available for giving in other formats to citizens who ask.

Usually the information is presented by the Directorate of Budget at the opening of the parliamentary discussion on the Finance Annual Law (LDF) at the end of each year.

Information concerning the management and monitoring of audit reports is not given to the public. Audit reports are kept top secret.

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

Decree No. 2-06-175 of 27 Safar 1427 (28 March 2006) establishing the list of public institutions under control
<http://www.finances.gov.ma/MINISTERE/DIRECTION/depp.htm>

Abdellatif NGADI: legal and institutional structure to control and fight against corruption
<http://info.worldbank.org/etools/docs/library/242912/morocco-final.doc>

Abdellatif NGADI: The Court of Auditors must have the necessary authority and real power in the Bayan Al yaoume http://www.bayanealyaoume.ma/def.asp?codelangue=25-05-2008=23=3234&id_info

Abdellatif NGADI: Audit of the public sector can be effective only if it fits into a political and institutional environment healthy. Al Adala Wa Tanmia from 15 to 17 February 2008 Page 9

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

From a strictly administrative duty, annual monitoring and recommendations may lead to updates.

But in terms of strategy or regular business acumen, many observers say there are difficulties because even the operating boards of directors can not meet regularly or members are absent from meetings for several years.

References:

Abdellatif NGADI: legal and institutional structure to control and fight against corruption <http://info.worldbank.org/etools/docs/library/242912/morocco-final.doc>

Abdellatif NGADI: The Court of Auditors must have the necessary authority and real power in the Bayan Al yaoume http://www.bayanealyaoume.ma/def.asp?codelangue=25-05-2008=23=3234&id_info

Abdellatif NGADI: Audit of the public sector can be effective only if it fits into a political and institutional environment healthy. Al Adala Wa Tanmia from 15 to 17 February 2008 Page 9

Scandal of MGPAP: Amaoui, CDT and the mutual in la Gazette du Maroc" No. 567 of March 7, 2008 http://www.lagazettedumaroc.com/articles.php?r=2&sr=69&n=567&id_artl=16274

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The DEPP has the responsibility for operating and monitoring external audit reports conducted by private firms working on the basis of international standards.

References:

Documents and reports accompanying the Finance Act, the most important is the report on the Public Sector Institutions <http://www.finances.gov.ma/MINISTERE/DIRECTION/depp.htm>

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to audit reports or financial records of public enterprises.

References:

Transparency Maroc: the Right to access to information October 2006 edition Friedrich ebert Stiftung in arabic version http://www.transparencymaroc.ma/index.php?option=com_content&task=blogsection&id=88888894&Itemid=88888922

ADALA : The right of access to information: The laws, administration and justice http://www.justicemaroc.org/publications_fr.htm

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to audit reports or financial records of public enterprises.

References:

Transparency Maroc: the Right to access to information October 2006 edition Friedrich ebert Stiftung in arabic version
http://www.transparencymaroc.ma/index.php?option=com_content&task=blogsection&id=88888894&Itemid=88888922

ADALA : The right of access to information: The laws, administration and justice
http://www.justicemaroc.org/publications_fr.htm

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES

NO

Comments:

Financial control of public enterprise falls under the control of the Directorate of Public Enterprise and Privatization (DEPP – Ministry of Finance).
Its functions are scattered among different departments, which provide the technical supervision of companies.

References:

Status of each Public Enterprise

Law No. 69-00 relating to financial control of the State in public enterprises and other organizations, promulgated by Dahir No. 1-03-195 of 16 Ramadan 1424 (11 November 2003)

Decree No. 2-03-04 of 2 June 2003 amending and supplementing Decree No. 2-78-539 of 22 November 1978 on the functions and organization of the Ministry of Finance

Decree No. 2-02-121 of 24 chaoual 1424 (19 December 2003) on the controllers of state, government commissioners and treasurers from paying public enterprises and other organizations

Decree No. 2-06-175 of 27 Safar 1427 (28 March 2006) establishing the list of public institutions under control
<http://www.finances.gov.ma/MINISTERE/DIRECTION/depp.htm>

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several

government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

55 V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

38

70a. In law, anyone may apply for a business license.

YES | **NO**

Comments:

Several activities require permits or permissions that are granted conditionally. But other activities require permits, which are issued only to the privileged.

These are lucrative because of the profits that can be made and because of the location of the approval or authorization.

In the latter case, people who are wealthier advance at the expense of those who do not use bribes for an administrative paper". This is known in Morocco as "Economie de Rente" (Allowance economy).

The items it covers includes natural sand, the right to have a taxi in urban or interurban areas, transportation amenities, quotas purchasing rationed items, offshore and other fishing rights, to name a few.

References:

FALSE GRIEVANCES SUBJECT TO SOUVRAIN: Details of the case Youssef Chmirou La Gazette du Maroc No. 554 – 08 December 2007

Azeddine Akesbi Endemic corruption in Morocco stands in the Economie de rente (allowance economy)

In the AMSE Symposium: DEFIANCE, CORRUPTION, ANNUITIES: THE DILEMMAS OF DEVELOPMENT IN MOROCCO Rabat on 6 – 7 June 2008 Investigation.

The lords of the Sahara Tel Quel No 161 http://www.telquel-online.com/161/couverture_161_1.shtml

Transparency news No. 3 August 2008.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

When a business doesn't receive a license, the business can challenge the law. Whatever the reason for the rejection, there is action possible before the administrative courts.

However, those who receive approvals are more often depending on bribes or promises of cronyism with the government. So, there are no appeals related to this growing issue.

References:

FALSE GRIEVANCES SUBJECT TO SOUVRAIN: Details of the case Youssef Chmirou La Gazette du Maroc No. 554 – 08 December 2007

Azeddine Akesbi Endemic corruption in Morocco stands in the Economie de rente (allowance economy)

In the AMSE Symposium: DEFIANCE, CORRUPTION, ANNUITIES: THE DILEMMAS OF DEVELOPMENT IN MOROCCO Rabat on 6 – 7 June 2008 Investigation.

The lords of the Sahara Tel Quel No 161 http://www.telquel-online.com/161/couverture_161_1.shtml

Transparency news No. 3 August 2008.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The period may be long depending on the type of license from the authority concerned and even depending on the particular officials involved. The system of permits is not standardized.

References:

FALSE GRIEVANCES SUBJECT TO SOUVRAIN: Details of the case Youssef Chmirou La Gazette du Maroc No. 554 – 08 December 2007

Azeddine Akesbi Endemic corruption in Morocco stands in the Economie de rente (allowance economy)

In the AMSE Symposium: DEFIANCE, CORRUPTION, ANNUITIES: THE DILEMMAS OF DEVELOPMENT IN MOROCCO Rabat on 6 – 7 June 2008 Investigation.

The lords of the Sahara Tel Quel No 161 http://www.telquel-online.com/161/couverture_161_1.shtml

Transparency news No. 3 August 2008

World Bank: Study on land in Morocco

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The cost is related to the duration. It is, therefore, a high cost because a term may be long depending on the type of license from the authority concerned and even officials involved. A World Bank study found a shorter period in the city of Kenitra (36 km away from Rabat) versus an abnormally high wait time in the capital.

In general, the cost is considered high by investors because it requires a lot of paperwork and several small fees accompany the paperwork. This is not including taxes and notary fees.

References:

FALSE GRIEVANCES SUBJECT TO SOUVRAIN: Details of the case Youssef Chmirou La Gazette du Maroc No. 554 – 08 December 2007

Azeddine Akesbi Endemic corruption in Morocco stands in the Economie de rente (allowance economy)

In the AMSE Symposium: DEFIANCE, CORRUPTION, ANNUITIES: THE DILEMMAS OF DEVELOPMENT IN MOROCCO Rabat on 6 – 7 June 2008 Investigation.

The lords of the Sahara Tel Quel No 161 http://www.telquel-online.com/161/couverture_161_1.shtml

Transparency news No. 3 August 2008

World Bank: Study on land in Morocco

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

There is myriad of laws. Recently, a project for the creation of a center for food safety has been validated and introduced into the legal process of adoption.

References:

Dahir No. 1-88-179 (22 rebia I 1414) promulgating the Law No. 17-88 on the duration of validity on canned and assimilated and beverages for human consumption or animal

Dahir No. 1-59-380 of 26 rebia II in 1379 (29 October 1959) on combating crimes against the health of the nation.

Dahir 3 chaoual 1332 (25 August 1914) regulating institutions unhealthy, dangerous or obnoxious.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

There is a myriad of laws dealing with the environment.

References:

Dahir No. 1 – 03 – 59 of 10 Rabii I in 1424 (12 May 2003) promulgating the Law No. 11-03 relating to the protection and enhancement of the environment.

Dahir No. 1-03-60 of 10 Rabii I in 1424 (12 May 2003) promulgating the Law No. 12-03 on the impact on the environment.

Dahir No. 1-95-154 of 18 I Rabii 1416 (16 August 1995) promulgating the Law No. 10-95 on water

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

In all major cities there is a one-stop shop for entrepreneurs. The sites of these centers provide all information.

Similarly, the ministries of trade, finance, agriculture, and the portal of Morocco deliver information.

References:

Regional Investment Center <http://www.crimarrakech.ma/>
<http://www.meknesinvest.ma/fr/index.asp>

Law No. 15-95 forming the Commercial Code

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Government efforts are not visible. However, publicly there is no tolerance if there was a case of food poisoning involving the public or at hospitals, schools or hotels. Pollution of water by industries is intolerable, especially in view of studies on the pollution level of some rivers as Sebou.

The quality of meat is not controlled in cities like Casablanca or Rabat, because of the involvement of mafia and levels of corruption in the industry.

References:

Hydraulic Basin of Sebou <http://www.water.gov.ma/01presentation/05sebou.htm>

Fire. Trap fire in Casablanca in the weekly news paper: Tel Quel No. 321 (25-04-2008-02-05-2008)
http://www.telquel-online.com/322/couverture_322.shtml

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

Comments:

Government efforts are not visible. However, publicly there is no tolerance if there was a case of food poisoning involving the public or at hospitals, schools or hotels. Pollution of water by industries is intolerable, especially in view of studies on the pollution level of some rivers as Sebou.

The quality of meat is not controlled in cities like Casablanca or Rabat, because of the involvement of mafia and levels of corruption in the industry.

References:

Hydraulic Basin of Sebou <http://www.water.gov.ma/01presentation/05sebou.htm>

Fire. Trap fire in Casablanca in the weekly news paper: Tel Quel No. 321 (25-04-2008-02-05-2008)
http://www.telquel-online.com/322/couverture_322.shtml

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

Comments:

Government efforts are not visible. However, publicly there is no tolerance if there was a case of food poisoning involving the public or at hospitals, schools or hotels. Pollution of water by industries is intolerable, especially in view of studies on the pollution level of some rivers as Sebou.

The quality of meat is not controlled in cities like Casablanca or Rabat, because of the involvement of mafia and levels of corruption in the industry.

There has been an increase this year cases of gross negligence resulting in deaths and serious injuries involving government and local governments. Several accidents were recorded this year: building collapses, fires in factories, poisoning by gas leaks in workshops.

These cases have proved before the courts that there is a failure of the system of controls, permissions and licenses, and the weakness of local governance.

References:

Hydraulic Basin of Sebou <http://www.water.gov.ma/01presentation/05sebou.htm>

Fire. Trap fire in Casablanca in the weekly news paper: Tel Quel No. 321 (25-04-2008-02-05-2008)
http://www.telquel-online.com/322/couverture_322.shtml

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. ⁶⁰Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

Comments:

Articles 241 to 256 of the Criminal Code dealing with corruption and diversion of public funds. Article 248 penalizes the promise of corruption and attempted bribery.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at BO No. 2540 bis of 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in BO No. 5248 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

Articles 241 to 256 of the Criminal Code deal with corruption, diversion of public funds and attempted corruption. They are illegal. Article 248 penalizes the promise of corruption and attempted bribery.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at BO No. 2540 bis of 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in BO No. 5248 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Articles 241 to 256 of the Criminal Code deal with corruption and diversion of public funds. Article 248 penalizes offering and promising corruption and attempted bribery.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at RB No. 2540 bis 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in 5248 BO No. 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Articles 241 to 256 of the Criminal Code deal with corruption and diversion of public funds. Most of paragraphs penalize those receiving a bribe.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at RB No. 2540 bis 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in 5248 BO No. 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Articles 241 to 256 of the Penal Code do not specify the nationality of the parties, but only deal with corruption and bribery.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at RB No. 2540 bis 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in 5248 BO No. 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Section II of the Criminal Code contains articles 241 to 247. These articles penalize those using public resources for private gain and state that it is illegal.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at RB No. 2540 bis 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in 5248 BO No. 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Articles 248 to 250 of the Criminal Code deal with corruption and influence peddling in general terms.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at RB No. 2540 bis 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in 5248 BO No. 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

Comments:

There is a law against money laundering, which is part of the Penal Code .A feature of the new law is the designation of the court in Rabat as the only institution authorized to deal with money laundering.

References:

Dahir No. 1.07.79, 28 I. Rabi 1428 (17 April 2007) concern enactment of Law No. 43.05 relativa to the fight against money laundering. Published at RB No. 5522 of 15 Rabii II-1428 (03/05/2007) p.602

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Articles 241 to 256 of the Criminal Code deal with aspects of conspiracy and superiors orders to subordinates and threats within the framework of corruption and misuse of public funds.

References:

Dahir No. 1.59.415 of 28 Jumada II-1382 (26.11.1962) approving the text of the Penal Code. Published at RB No. 2540 bis 05.06.1963

Dahir 1.04.129 of 29 Rajab 1425 (15.09.2004) on the approval of Law No. 79.03 to amend and supplement the Criminal Code. Published in 5248 BO No. 1 Chaabane 1425 (16.09.2004) p.3372

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

75. Is the anti-corruption agency effective?

39

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

Comments:

The Central Agency for Prevention of Corruption was established under the prime minister. Its missions in the direction of government vary between dealing with proposals and making suggestions as well as monitoring and evaluating measures taken by the government and judicial authorities regarding information.

It is also responsible for collecting all information related to corruption and managing a database with this information. The operating funds and equipment allocated to the the agency come from the prime minister's budget.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The agency has not yet started its activities. Its chairman was appointed by the king in August 2008.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The agency has not yet started its activities. Its chairman was appointed by the king this year. Legally the chairman's term is six years.

The king has broad powers, but in practice such appointed agencies it is rare to find one that would have the leader removed from office.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

There are no pre-defined criteria for selecting members.

The agency members include a president appointed by the king for a term of six years, a board whose members have a four-year, renewable term. It includes the president of Diwan Al Madhalim (ombudsman), 16 members appointed by various governmental authorities, 10 members from professional bodies and trade unions, and 13 associate members appointed by the prime minister and chosen for their civilian activities, such as teaching or research related to the theme of corruption.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | **0**

Comments:

For the rest of 2008, it is clear that the agency has no staff.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Working in the area of prevention, and with the task of formulating proposals and opinions, the Central Agency of Prevention Corruption has not had problems with funding. However, not having its budget independent may mean it can not easily meet its goals.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 6, Central Agency of Prevention Corruption presents to the prime minister an annual report on the status of prevention of corruption from the results of its work and recommendations.

The members of the agency should disseminate the report to the minister of justice and can publish any studies, opinions or proposals relating to the prevention of corruption.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Under Article 14 the Central Agency of Prevention Corruption should have no problem collecting information.

The article says, The government departments and local governments are required to submit to Chair of the Central Agency at its request and within the proper timeframe any documents or information necessary to fulfill the mission of that department in accordance with the laws and regulations in force .”

But the absence of a law on access to information, means the definition of information may come into dispute.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007). Article 14

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Central Agency of Prevention Corruption has no mandate to conduct investigations or inquiries.

However, since it is responsible for collecting information and informing the court on facts relating to bribery cases, the agency must work closely with the investigators.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

0

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Central Agency of Prevention Corruption has done no work to this because of its recent formation.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

The Central Agency of Prevention Corruption has done no work to this because of its recent formation.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Instrument for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The Central Agency for Prevention of Corruption was established in April 2007. Its chairman was appointed by the king in August 2008. The members of this body have not yet been selected.

References:

Decree No. 2-05-1228 of 23 Safar 1428 establishing the Central Agency for the Prevention of Corruption (ICPC). (B.O. No. 5514 of 5 April 2007).

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

46
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

YES | NO

Comments:

The procedures allow for appeal of both civil and criminal cases. Morocco has Courts of Appeal and a Supreme Court, Administrative Courts of Appeal, and Trade Courts of Appeal.

All judgments, orders and final judgments may be subject to appeal. In accordance with the Code of Civil Procedure that requires that the process is rapid, is free to the defendant and allows for legal aid.

References:

Dahir Act No. 1-74-447 (11 Ramadan 1394) approving the text of the Code of Civil Procedure (BO September 30 1974).

Dahir No. 1-97-65 of 4 chaoual 1417 (12 February 1997) promulgating the Law No. 53-95 establishing courts of Commerce

Dahir No. 1-91-225 of 22 Rebia I 1414 (10 September 1993) promulgating the Law No. 41-90 establishing administrative courts.

Report on the description of the judicial system: Morocco http://training.itcilo.it/ils/old_flyer_used/2002/a5_5464/maroc.htm

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Generally, it takes a long time. Several studies have led to criticism of the administration of justice. The number of judges for a population of more than 30 million is too small. There are only 3,124 judges for the population.

References:

Diwan Al Madhalim pin justice. Interview with the Wali of Madhalim (Ombudsman) in Aujourd'hui le Maroc" of 14-11-2006

Local authorities and sectors of Education, Justice and Finance are at the top of the administrations concerned by these complaints.

World Bank: The evaluation of legal and judicial system in Morocco.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to justice depends of many factors. The most obvious is the physical proximity of the court.

The number of courts for a population of over 30 million is too small. There are 66 courts of first instance, eight commercial courts and seven administrative tribunals.

References:

Ministry of Justice statistic report see website

ADALA Association: independence of the judiciary in Morocco, in the light of international standards and experience in the Mediterranean.

Proceedings of the international conference. Printing Annajah Casablanca in 2006.

Briefing by Mr. Omar Azziman, Minister of Justice at the conference organized by the World Bank on the legal and judicial framework for an integrated society more just and equitable 21st Century Washington, from June 5 to 7, 2000

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

25

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | **25** | 0

Comments:

Political interference was very noticeable in 2008, particularly with regard to human rights defendants, lawyers and journalists.

References:

Lawyers solidarity with Wahbi against the widadya Al Massaër No. 548 of 23.06.2008

ADALA Association: independence of the judiciary in Morocco, in the light of international standards and experience in the Mediterranean.

Proceedings of the international conference. Printing Annajah Casablanca in 2006.

The judiciary was not independent in the trial of Rachdi. Youness Moujahid interview with Secretary General of the Syndicat National de la Presse Marocaine In Al Massaër No. 580 of 30.07.2008

Briefing by Mr. Omar Azziman, Minister of Justice at the conference organized by the World Bank on the legal and judicial framework for an integrated society more just and equitable 21st Century Washington, from June 5 to 7, 2000

Abderrahmane Benameur: Independence of Justice.

Organization-ACRLI Introduction paper / Organization of the Judiciary body for Morocco

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. Are judicial decisions enforced by the state?

25

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | **25** | 0

Comments:

Political interference was very noticeable during 2008 particularly with regard to human rights defendants, lawyers and journalists.

References:

Lawyers solidarity with Mr.Wahbi against the widadya Al Massaër No. 548 of 23.06.2008

ADALA Association: independence of the judiciary in Morocco, in the light of international standards and experience in the Mediterranean. Proceedings of the international conference. Printing Annajah Casablanca in 2006.

The judiciary was not independent in the trial of Rachdi. Youness Moujahid interview with Secretary General of the Syndicat National de la Presse Marocaine In Al Massaër No. 580 of 30.07.2008

Briefing by Mr. Omar Azziman, Minister of Justice at the conference organized by the World Bank on the legal and judicial framework for an integrated society more just and equitable 21st Century Washington, from June 5 to 7, 2000

Abderrahmane Benameur: Independence of Justice.

Organization-ACRLI Introduction paper / Organization of the Judiciary body for Morocco

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

38

80a. In law, the independence of the judiciary is guaranteed.

YES | **NO**

Comments:

There are a lot of reports indicating the judiciary is not independent.

References:

ADALA Association: independence of the judiciary in Morocco, in the light of international standards and experience in the Mediterranean. Proceedings of the international conference. Printing Annajah Casablanca in 2006.

The judiciary was not independent in the trial of Rachdi. Youness Moujahid interview with Secretary General of the Syndicat National de la Presse Marocaine In Al Massaër No. 580 of 30.07.2008

Briefing by Mr. Omar Azziman, Minister of Justice at the conference organized by the World Bank on the legal and judicial framework for an integrated society more just and equitable 21st Century Washington, from June 5 to 7, 2000

Abderrahmane Benameur: Independence of Justice.
Organization-ACRLI Introduction paper / Organization of the Judiciary body for Morocco

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

National level judges are commonly influenced by politics. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

References:

Pity for the Judges: T. In Al Bouachrine Massae No. 556 of 02.07.2008

Reform of Justice is not related to people regardless of their integrity. In Benameur Abderrahmane Al Massaër No. 601 of 24.08.2008

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

References:

http://www.justice.gov.ma/fr/Ministere/presentation.aspx?_=0

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

There are specific, formal rules for the removal of a judge. Removal must be related to abuse of power or other offenses related to job performance.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary, consolidated version containing changes made by Law No. 5-98, No. 35-01 and Law No. 17-06

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There were no documented cases in either press or official reports of cases of judges being assaulted during the study period.

References:

There were no documented cases in either press or official reports.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There were no documented cases in either press or official reports of judges being killed related to their involvement in a corruption case during the study period.

References:

There were no documented cases in either press or official reports.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are not affected by racial or ethnic bias. Racism does not exist in Morocco.

There are discriminatory practices, but they never reach the level of racism. In justice it is impossible to find racial or ethnic practices.

References:

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary [consolidated version containing changes made by Law No. 5-98, No. 35-01 and Law No. 17-06]

Annual Report of AMDH (Moroccan Association of Human Rights)

Annual Report of CMDH (Moroccan Centre of Human Rights)

Annual Report of FIDH (International Federation of Human Rights)

Annual Report of OMDH (Moroccan Organisation of Human Rights)

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

According to several participants in a survey, most people believe women have a difficult time finding justice and that the system is full of bias.

Moroccan society supports vulnerable women by assisting them with access to justice. Access to justice requires a sound judicial environment, where there is no favoritism or corruption and where access to justice is guaranteed for all citizens.

References:

The status of women in Morocco: opinion surveys. By Laila Warrach on Tuesday May 22 2007, 19:39 – Permalink <http://chercheur.blog.estjob.com/index.php/post/2007/05/22/Le-statut-des-femmes-au-Maroc:-enquetes-dopinion>

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES

NO

Comments:

The government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

Only those with citizenship can access this right. That is why Moroccan society supports vulnerable groups and assists them with access to justice.

References:

Décret Royal No. 851-65 du 07 Rajab 1386 (22 octobre 1966) unifiant et réglementant les perceptions et frais de justice en matière civile, commerciale et administrative devant les cours d appel et tribunaux du royaume. In BO No. 2818 du 02-11-1966

Dahir Act No. 1-74-447 (11 Ramadan 1394) approving the text of the Code of Civil Procedure (BO September 30 1974).

Dahir No. 1-97-65 of 4 chaoual 1417 (12 February 1997) promulgating the Law No. 53-95 establishing courts of Commerce

Dahir No. 1-91-225 of 22 Rebia I 1414 (10 September 1993) promulgating the Law No. 41-90 establishing administrative courts.

Dahir of 11 November 1974 law 1-74-467 of 26 chaoual 1394 (11 November 1974) forming status of the judiciary [consolidated version containing changes made by Law No. 5-98, No. 35-01 and Law No. 17-06]

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Public defenders may be sometimes unable or unwilling to competently represent all defendants.

Legal aid is governed by an older text from 1996. And a lawyer said, It is no longer an acceptable practice in law that that allows for lawyers to practice without being paid. We ask that the lawyer is paid for legal assistance, like doctors or other experts.”

In these circumstances, the assistance rendered weak because of poor quality, repeated absences of the lawyer or his withdrawal from the trial, widely recognized despite occasional threats of judges.

The World Bank has found that legal aid is not acceptable in Morocco.

References:

Décret Royal No. 851-65 du 07 Rajab 1386 (22 octobre 1966) unifiant et réglementant les perceptions et frais de justice en matière civile, commerciale et administrative devant les cours d appel et tribunaux du royaume. In BO n° 2818 du 02-11-1966

Abdelhamid AKHRIF Guide du consommateur marocaine. Centre de Droit des Obligations et Contrats (SDOC) http://www.geocities.com/guid_conso/index_files/Page784.htm

L'assistance judiciaire ne sera plus gratuite. Interview de M. A TABIH In Aujourd'hui le Maroc du 5/6/2007. <http://www.infosdumaroc.com/modules/news/article-print-4477.html>

Retrait des avocats désignés dans le cadre de l'assistance judiciaire du Procès des détournement au Palais Royal d'Agadir In Acharq Al Awsat No. 9819 du 16.10.2005

World Bank <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/MarocEvaluationFINAL.pdf>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases,

the cost is prohibitive. Attorney fees are a significant consideration when a person considers filing a case.

References:

Décret Royal No. 851-65 du 07 Rajab 1386 (22 octobre 1966) unifiant et réglementant les perceptions et frais de justice en matière civile, commerciale et administrative devant les cours d appel et tribunaux du royaume. In BO No. 2818 du 02-11-1966

Abdelhamid AKHRIF Guide du consommateur marocaine. Centre de Droit des Obligations et Contrats (SDOC) http://www.geocities.com/guid_conso/index_files/Page784.htm

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World Bank <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/MarocEvaluationFINAL.pdf>

Le processus de réforme et de mise à niveau de la justice et les réformes dédiées à assurer le règne de la loi. A. GHAZALI In le rapport des Droits humains du cinquantenaire.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

Comments:

Doing Business in Morocco findings:

The cost breaks down in court costs, fees and performance fees. Access to justice is the cheapest at Oriental, but it still costs the excessive amount of 21.25 percent of the value of the debt to enforce a contract. The same procedure will cost even more for an expensive contractor in Tangier, or 23.84 percent of the debt. In Casablanca, entrepreneurs bear the highest cost, paying more than a quarter of the amount demanded.”

The trial of “Tel Quel” Newspaper against former Foreign Affairs Minister Mohamed Benaissa had lasted more than a year and had had an appeal over a dozen hearings. The final ruling was 500,000 Dirhams (US\$60,000) plus about 300,000 Dirhams (US\$36,000) in legal costs.

The following is an excerpt from the chapter Morocco in the last survey of Doing Business, “Enforcing Contracts (2005)”:

The ease or difficulty of enforcing a commercial contract in Morocco is measured by the number of cases or complaints filed in court until a final settlement and the duration and cost of proceedings (court costs and lawyers) as a percentage of the value of the claim. In Morocco, this cost is 17.7 percent compared with a regional average of 17.7 percent and OECD average of 10.6 percent.

References:

Parodie de justice. Affaire TelQuel Tel Quel No. 189
http://www.telquel-online.com/189/zoom_189.shtml

The business environment in Morocco: Doing Business Indicators 2006
Décret Royal No. 851-65 du 07 Rajab 1386 (22 octobre 1966) unifiant et réglementant les perceptions et frais de justice en matière civile, commerciale et administrative devant les cours d appel et tribunaux du royaume. In BO No. 2818 du 02-11-1966

Abdelhamid AKHRIF Guide du consommateur marocaine. Centre de Droit des Obligations et Contrats (SDOC) http://www.geocities.com/guid_conso/index_files/Page784.htm

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Retrait des avocats désignés dans le cadre de l'assistance judiciaire du Procès des détournement au Palais Royal d'Agadir In Acharq Al Awsat No. 9819 du 16.10.2005

World Bank <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/MarocEvaluationFINAL.pdf>

Le processus de réforme et de mise à niveau de la justice et les réformes dédiées à assurer le règne de la loi. A. GHAZALI In le rapport des Droits humains du cinquantenaire.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

Comments:

The judicial map is changing very slowly compared to the population (67 courts of first instance, 21 courts of appeal and 1 Supreme Court in 1997 against 68, 21 and 1 in 2003).

Meanwhile the population has increased by 2.01 percent each year. In addition, the regional distribution of justice staff is largely unfair and favors large cities including the Casablanca-Kenitra area.

References:

Ministry of Justice

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

References:

Royal Decree No. 401-67 of 13 rebia I in 1387 (22 June 1967) on the enactment of the system of examinations and competitions on access to the body, grades and functions of government

Decree No. 2.75.879 of 20 hija 1395 (23 December 1975) deals with officials of the Directorate General of National Security as amended and supplemented

The Prime Minister's circular No. 71 of 25 November 1992 on the simplification of procedures and administrative channels.

Enquête. Cette police qui vous veut du bien. In Tel Quel Newspaper No. 179

http://www.telquel-online.com/159/couverture_159_1.shtml

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Budget of the Ministry of Interior has always been one of the most important. The General Directorate of National Security is under this Ministry.

But everyone agrees that the low efficiency in mobilizing resources and the enormity of the tasks at hand shows three major problems that senior police summarized in an interview with Tel Quel newspaper: "Our police suffer from a pace of work barely sustainable. They are underpaid, poorly equipped and seen as evil in their society."

References:

Investigation. Cette police qui vous veut du bien. In Tel Quel" Newspaper No. 179
http://www.telquel-online.com/159/couverture_159_1.shtml

2008 budget

The Finance Act 2008 (Final)

http://www.finances.gov.ma/portal/page?_pageid=33,13054296&_dad=portal&_schema=PORTAL

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The agency is typically independent, yet it is sometimes influenced in its investigations or enforcement actions by negative or positive political pressure.

This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency may not be provided with information needed to carry out its investigations.

References:

Investigation. Cette police qui vous veut du bien. In Tel Quel" Newspaper No. 179

The interior, has he really changed? In "La Vérité No. 247, 10 to 16 March 2006.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

29

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The decisions of the police, similar to those of other administrations, are able to be challenged before the administrative courts.

References:

Dahir No. 1-91-225 of 22 rebia I 1414 (10 September 1993) promulgating the Law No. 41-90 establishing administrative courts.

The Covenant of Good Housekeeping. Government of Morocco.

Dahir Penal Code No. 1.59.415 of 28 Jumada II 1382 (26.11.1962) approving the text of the Penal Code.

The Prime Minister's Circular No. 4-99, 17 February 1999 requiring officials to enforce judgments rendered final administrative proceedings against persons of public law.

Act 0301 of 21 July 2002 requiring the government to justify their administrative decisions when those decisions are detrimental to the citizen

Officials of the Directorate General of National Safety Decree No. 1180.66, 22 Chouali 1383 (02.02.1967)

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Some offenses, like theft and assault, take a long time to be responded to, according to some citizens.

The agency is still inadequate, although several efforts have been made to change this, but behavior is more dependent on individuals than the institution itself.

References:

Investigation. Cette police qui vous veut du bien. In "Tel Quel" Newspaper No. 179
http://www.telquel-online.com/159/couverture_159_1.shtml

The interior: has it really changed? In "La Vérité No. 247, 10 to 16 March 2006.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | **NO**

Comments:

No such agency exists.

References:

No such agency exists.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

No such agency exists.

References:

No such agency exists.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

Law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions. However, there is the privilege of jurisdiction for senior officials.

The court controls the legality of such judgments and their conformity with the legislation. It means that it affects only the form of judgments rendered by the various courts of Morocco. The exception to this principle is governed by Articles 264 to 268 of the Code of Criminal Procedure. This exception is the legal privilege granted to senior officials. When the alleged misconduct was committed in the course of their duties, the accused must appear before the Supreme Court at first hearing.

References:

Abdelaziz Lâafora again before the Supreme Court. Maroc Hebdo International Week 797 number from 20 to 26 June 2008.

Investigation. The police qui vous veut du bien. In Tel Quel" Newspaper No. 179

http://www.telquel-online.com/159/couverture_159_1.shtml

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

Law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions. However, there is the privilege of jurisdiction for senior officials.

The court controls the legality of such judgments and their conformity with the legislation. It means that it affects only the form of judgments rendered by the various courts of Morocco. The exception to this principle is governed by Articles 264 to 268 of the Code of Criminal Procedure. This exception is the legal privilege” granted to senior officials. When the alleged misconduct was committed in the course of their duties, the accused must appear before the Supreme Court at first hearing.

References:

Code of Criminal Procedure Articles 264 to 268

Laâfoura cleared for formal defect in ‘The Economist’ of 30 March 2008. <http://www.leconomiste.com/article.html?a=84787>

Investigation. The police qui vous veut du bien. In Tel Quel” Newspaper No. 179
http://www.telquel-online.com/159/couverture_159_1.shtml

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.