



Pro Bono Practices and Opportunities in Morocco¹

INTRODUCTION

The Moroccan legal system has long provided for legal assistance to the indigent population of Morocco. However, this system suffers from structural loopholes and support for voluntary pro bono work among private lawyers has not yet earnestly been developed. This chapter discusses the law and regulations governing the provision of free legal services in Morocco and the specific pro bono opportunities available to lawyers in Morocco.

OVERVIEW OF THE LEGAL SYSTEM

Constitution and Governing Laws

Morocco is a constitutional, democratic, parliamentary and social monarchy, and after 44 years as a French protectorate, obtained independence in 1956. Since 1956, Moroccan law has been shaped by French Civil Law, and a combination of Muslim and Jewish traditions.

The Constitution of Morocco has also played a pivotal role in shaping the law and legal systems in Morocco. The most recent constitutional developments took place following the “Arab Spring.”² Following this event, Morocco drafted and adopted a new Constitution in July 2011. Morocco’s Constitution proclaims that “*the judicial authority is independent from the legislative power and the executive power.*” The King of Morocco is the guarantor of the independence of the judicial power.

The Courts

The organization of the judiciary in Morocco is based on the Law No. 1 74 338, dated July 15, 1974, which was amended in 1991 to create the administrative courts and in 1997 to establish the commercial courts. The judiciary is divided into two principal categories of courts:

- General jurisdiction courts: comprising neighbourhood courts (formerly the communal and district courts), 67 courts of first instance and 21 courts of appeal.
- Specialized jurisdiction courts: comprising seven administrative courts, two administrative courts of appeal, eight commercial courts and three commercial courts of appeal.

Each court of first instance is composed of a president, judges, prosecutors and a clerk of the court. These courts are competent for: (i) all cases concerning all litigants except those that are assigned by law to another judicial body; (ii) civil, real estate, criminal, social and personal status cases; (iii) criminal matters; (iv) marriage, divorce and inheritance cases; (v) employment disputes, industrial accidents and occupational diseases in social cases; and (vi) civil transactions of sale, purchase, rent and mortgage, except those relating to commercial transactions, which are within the jurisdiction of the commercial courts.

In 2011, the neighbourhood courts replaced the communal and district courts under Act No. 42.10. They are competent for: (i) civil cases up to 5,000 dirhams, with the exception of disputes under the Family Code, Real Estate Code, social and rent cases; and (ii) criminal cases, but the penalty they may impose must not exceed a fine of 1,200 dirhams.

The Courts of Appeal are composed of a first President, judges, prosecutors and clerk of the court. These courts consider appeals in cases where the courts of first instance have jurisdiction and appeals

¹ This chapter was drafted with the support of Benzakour Law Firm.

² The “Arab Spring” was a series of demonstrations, protests, riots and civil wars that began on December 18, 2010 in Tunisia with the Tunisian Revolution and spread throughout countries of the Arab League and its surroundings.



concerning orders issued by the Presidents of those courts. Through their first instance chambers, they also consider felonies, and hear appeals concerning the decisions of investigating judges and others.

In 2011, the Court of Cassation replaced the Supreme Council.³ The Court of Cassation does not review the merits of a case, but determines whether lower Court decisions are compliant with the law and, in particular, whether there is a violation of law, a violation of procedural rules, an incompetency, an excess of power or an absence of legal ground. It is composed of a first President, chambers, the Prosecutor-general, assistant prosecutors and clerk of the court.

The Supreme Court has the highest jurisdiction of any Moroccan court and ultimate power of review of any court decision.⁴ The Supreme Court consists of six chambers: (i) the civil chamber; (ii) the family matters chamber; (iii) the commercial chamber; (iv) the administrative chamber; (v) the social chamber; and (vi) the criminal chamber.

The administrative courts (first instance and appellate) hear cases concerning decisions, acts or activities by administrative authorities and disputes regarding administrative contracts. The commercial courts hear actions or disputes relating to commercial contracts, debt securities, shareholders' claims, sale or transfer of company assets, winding-up and bankruptcy procedures.

Judges in Morocco are appointed and not elected. Since 1965, only Moroccans may be appointed as Judges. In addition to Moroccan citizenship, Judges shall hold the equivalent of an LLB (*License en Droit*), pass a professional examination, complete a two-year internship, pass another professional examination and be nominated by Dahir (Royal Decision). There is also the possibility for professors teaching law for ten years and lawyers practising for 15 years to become a judge.

The Practice of Law

Education

Lawyers are required to obtain the equivalent of an LLB (*Licence en Droit*) (namely, an undergraduate degree in law), pass a professional examination and then intern with an experienced lawyer.⁵ The LLB can be obtained from any Moroccan University or from overseas universities (especially French universities) whose diplomas are recognized in Morocco. After some years of experience, a qualified lawyer becomes experienced. Qualified lawyers are not required to undergo continuing legal education.

Licensure

Lawyers are individually registered with one of the 17 Bar Associations.⁶ Each Bar is managed by an elected council, which is headed by the Bar President. Individual Bar Associations are federated under a National Association, *Association des barreaux du Maroc*.

Foreign lawyers may be admitted to practise in Morocco on equal terms with their Moroccan colleagues, provided that they are nationals of a country with which Morocco has an agreement containing a reciprocity clause on the right to practise.⁷ Such recognition agreements have been signed by Morocco with France⁸ and Spain.

³ It was established by Act No. 58/11, promulgated under Royal Decree 1.11.170 of October 25, 2011, amending Royal Decree No. 1.57.223 of September 27, 1967 on the Supreme Council.

⁴ Dr. Mustapha El Baaj (Deputy public prosecutor of Morocco), presentation titled "L'organisation judiciaire au Maroc."

⁵ Law No. 1-93-162 of September 10, 1993.

⁶ Id.

⁷ Article 5 of Law No. 1-93-162.

⁸ Agreement dated May 20, 1965 modifying the provisions of the judicial convention dated October 5, 1957 entered into between France and Morocco.



To practise law in Morocco, a foreign lawyer must hold a certificate of aptitude to practise law, or provide evidence that he or she has practised law for a minimum of five years in their home country.⁹ Failing that, they have to take an examination in Morocco to assess their knowledge of the Arabic language and Moroccan law. They must also be registered with one of the Moroccan Bar Associations.¹⁰

Foreign lawyers satisfying the aforesaid requirements may also provide legal services before the Moroccan courts, without seeking admission to one of the Moroccan Bars. In such case, they are required to establish domicile at the office of a Moroccan lawyer registered with one of the Moroccan Bars, and (unless this is waived by an aforementioned recognition agreement) be specially authorized to practise there by the Secretary of Justice.¹¹ Since all pleas in Moroccan courts are made in Arabic, a high degree of fluency in the Arabic language is an additional prerequisite to practise law in Morocco.

Demographics

Over the past 20 years, the number of lawyers has risen considerably in response to the increasing caseload of the courts.¹² Despite such considerable increases, the number of lawyers in Morocco remains lower than any other country in the Mediterranean area or the member states of the Council of Europe. There are approximately 10,500 lawyers in Morocco and 10,000 trainee lawyers, which is 60 lawyers per 100,000 inhabitants, as compared to (a) an average of 145 lawyers per 100,000 in the Mediterranean area and (b) an average of 120 lawyers in the member states of the Council of Europe.¹³ The majority of work undertaken by lawyers in Morocco is in the area of litigation.¹⁴

Legal Regulation of Lawyers

The legal profession in Morocco is regulated by Law No. 28-08 dated October 20, 2008.¹⁵ The Dahir No. 1-08-102 of October 20, 2008, which enacted Law No. 29-08, specifically regulates the *société civile professionnelle* (being, professional non-commercial law firms) and Decree No. 2-81-276 of February 1, 1982, determines the requirements to obtain the certificate of aptitude to practise as a lawyer.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

In light of international recommendations, Morocco has launched an ambitious process of legal reform in order to place “justice at the service of the citizen.”¹⁶ In a speech on August 20, 2009, the King of Morocco outlined six major pillars of such reform, including among others, the enhancement of judicial efficiency.¹⁷ Subsequent initiatives also included a draft law on legal assistance and legal aid, a decree organizing the provision of legal assistance, the creation of information desks in the courts of appeal and

⁹ Article 18 of Law No. 1-93-162.

¹⁰ Report of the Secretariat of the World Trade Organization, “Trade Policy Review”, Kingdom of Morocco, WT/TPR/S/217, (May 20, 2009).

¹¹ Article 31 of Law No. 1-93-162.

¹² Euromed Justice II Project, “Study on Access to Justice and Legal Aid in the Mediterranean Partner Countries” (2008 - 2011).

¹³ Id.

¹⁴ Morocco: Legal and Judicial Assessment, “Legal Vice Presidency of the World Bank” (June 2003).

¹⁵ Dahir No. 1-08-102 of October 20, 2008 enacted the Law No. 28-08, which modified the Dahir establishing the Law No. 1-93-162 of September 10, 1993.

¹⁶ Speech on October 8, 2010 by the King of Morocco, Mohammed VI.

¹⁷ Ministry of Justice of Morocco, “Réalizations au titre du processus de la réforme globale et profonde du système de la Justice” (August 2011).



first instance, and the appointment of an ombudsman in charge of helping citizens during their proceedings.¹⁸

The Right to Legal Assistance

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

In Morocco, legal representation is compulsory before any court, with the exception of cases involving alimony, social matters or small cases.¹⁹ However, as aforementioned, the number of lawyers in Morocco remains disproportionate to the population's needs.

In addition, lawyers' fees are neither regulated by law nor regulated by the Bar, but are freely negotiable.²⁰ The average lawyer's fee ranges from 1,000 to 2,000 dirham (approximately USD114 to USD228), which is equal to two to four weeks of the minimum wage in Morocco. Therefore, the majority of the population cannot afford legal services. Legal aid is thus an important mechanism to ensure equal access to justice, as provided for under the Constitution of Morocco.

State-Subsidized Legal Aid

Pursuant to the Dahir dated November 16, 1966, which established the Law No. 514-65 on judicial assistance, legal aid in Morocco covers "judicial assistance."²¹ This is defined as the assistance provided by a State to individuals who do not have sufficient financial means to defend themselves before a court. This excludes legal counselling, i.e. consultation with legal professionals.²²

Legal aid is granted for the whole litigation process from the legal representation of an individual before the court up to the stage of execution of a decision by the court.²³ Such legal aid encompasses all the legal costs an individual may incur (e.g. appointment of a lawyer, experts, translators and execution costs) and excuses the individual from paying any taxes due in connection with the commencement of the proceedings. Legal aid applies to all cases, whether criminal or otherwise.²⁴

Eligibility

The criteria under which legal aid is granted includes the following:²⁵

- Applicant's nationality: Under Article 1 of the Law No. 514-65 on judicial assistance (save specific provisions in international treaties allowing foreigners to benefit from such aid) judicial assistance is granted to Moroccan citizens, public-benefit institutions, and private associations with a mission of assistance and legal personality. Such aid also benefits Moroccans living outside Morocco.²⁶

¹⁸ Id.

¹⁹ Morocco: Legal and Judicial Assessment, supra n. 13; Article 310 of the Criminal Code of Morocco.

²⁰ Law No. 1-93-162 of September 10, 1993 organizing the practice of the profession of attorney.

²¹ A Dahir is a rule issued by the King. Though it has the value of law, it is often translated as royal edict.

²² Law No. 514-65 on judicial assistance.

²³ Id.

²⁴ Id.

²⁵ Id.

²⁶ Ministère Chargé des Marocains Résidant à L'Étranger, <http://www.marocainsdumonde.gov.ma> (last visited on September 4, 2015).



- Applicant's resources: In the assessment of resources, there are no standard ceilings, nor tables or models with an order of priority. Decisions are taken on a case-by-case basis. The financial situation of the applicant is assessed by a local institution, which issues a "certificate of poverty" to be submitted to the judge.²⁷
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- Grounds upon which legal aid is requested: In non-criminal cases, legal aid may also be refused if there are no good grounds for the case (e.g. abuse of the process).²⁸

The Legal Aid Bureau is responsible for determining the allocation of legal aid to an individual. The composition of the Bureau depends on the court responsible for the case. However as a general rule, it is composed of one prosecutor (also the President of the Bureau), one representative from the tax department and a lawyer.²⁹ The Bureau collects all information necessary to assess the applicant's resources and may invite the applicant to present his or her situation in person. The Bureau may also hear both litigants of the dispute for which legal aid is sought and in such cases, the Bureau will attempt to reach an amicable settlement.³⁰ Applicants may appeal a decision of the Legal Aid Bureau within 15 days.³¹

Legal aid may be withdrawn in the event the aided party recovers sufficient resources from the proceedings (i.e. from a successful judgment), the parties settle, the case is withdrawn or the applicant's inaction indicates a disinterest in pursuing the case.³²

Assignments to Legal Aid Matters and Legal Aid in Practice

Legal aid is in practice restricted to criminal matters.³³ The reason for this is that the appointment of lawyers by criminal courts can take a lot of time and rather than adjourn the proceedings, the judge frequently ends up asking lawyers who are present in the court to volunteer to defend the accused. In civil matters, there are no provisions for legal aid besides the general principles expressed in the law on judicial assistance dated 1966.

Lawyers are required to accept matters assigned to them by the applicable legal aid scheme and are also subject to disciplinary measures if they refuse the assignment without a valid justification.

In 2008, a new law expressly asserted the right of lawyers to receive financial compensation for legal aid assistance and referred to a future decree to set out the procedures for the determination of this compensation.³⁴ The decree did not however, bring the expected clarifications.³⁵ It only provided that legal fees with respect to legal aid should be borne by the budget of the Secretary of Justice and that the Bar Associations should agree on the allocation of such budget amongst themselves.

Recently, a new law has stated the principle that lawyers' assistance to an aided party shall be remunerated on a flat rate basis by decree and reviewed when necessary. By a decree dated February 26, 2013, the current applicable flat rates (approximately in €) are as follows:

- €110 for proceedings before the Courts of first instance;

²⁷ Euromed Justice II Project, supra n. 11.

²⁸ Id.

²⁹ Law No. 514-65 on judicial assistance.

³⁰ Id.

³¹ Id.

³² Id.

³³ Article 312 of the Criminal Code of Morocco.

³⁴ Dahir No. 1.08.101 of October 10, 2008, enacted the Law No. 28.08, which modified the Law regulating the legal profession.

³⁵ Decree No. 2-10-587 of April 20, 2011, implemented the Law No. 28-08.



- €140 for proceedings before the Court of Appeals; and
- €190 for proceedings before the Supreme Court.

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

Unmet needs and access analysis

Despite early and generous legislation, the current legal aid system in Morocco is deficient.³⁶ Since there is no specific application form for requesting legal aid, legal aid procedures are fragmented, and ultimately become complex and ambiguous. The criteria for assessing a person's eligibility for legal aid is not centralized, which means that the process can be opaque and discretionary. These deficiencies, in addition to the relatively low number of lawyers compared with the Moroccan population, mean that the current legal aid scheme does not sufficiently meet the needs of the Moroccan people and enable adequate access to justice for all.

PRO BONO ASSISTANCE

Pro Bono Opportunities

The Pro bono associations currently operating in Morocco are involved mainly in reception and attendance centers for refugees, and for women and minors who are victims of violence.³⁷ They also provide some support with legal proceedings and assist in distributing legal information.

The development of these associations is recent and there is no national federation of associations. However certain associations, which are more structured with more members, have more weight, which allows them to be heard when there is government consultation with civic society (e.g. in areas such as consumption and health). However, these associations are not a sufficient alternative to legal aid or the assistance of lawyers. They may assist in initial legal guidance for victims and provide them with financial aid, but such associations cannot provide individuals with legal representation in court.

Barriers to Pro Bono or Participation in the Formal Legal System

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

In Morocco, legal information is also not adequately disseminated to the public.³⁸ In addition, the low literacy rate – 52.3% for the total population (39.6% for women, 65.7% for men)³⁹ – renders access to justice all the more difficult. A substantial proportion of the population is therefore vulnerable and may fall prey to unethical behaviour.⁴⁰ The Bar Association has great difficulty in supervising “homeless” lawyers, who are lawyers with no fixed business address and operate with a cellular telephone from undisclosed

³⁶ Reda Oulamine, “L’assistance juridique ne fonctionne pas car l’avocat désigné n’est pas pay”, Aujourd’Hui Le Maroc (May 21, 2012); “Elaboration d’un nouveau projet de loi sur l’assistance juridique et judiciaire”, Aujourd’Hui Le Maroc (May 21, 2012).

³⁷ Euromed Justice II Project, supra n. 11.

³⁸ Morocco: Legal and Judicial Assessment, supra n. 13.

³⁹ US Department of State, 2004 census <<http://www.state.gov/r/pa/ei/bgn/5431.htm>> (last visited on September 4, 2015). The definition of a literate woman or man is a person aged 15 years or over who can read and write.

⁴⁰ Morocco: Legal and Judicial Assessment, supra n. 13.



premises. Up to 800 of the 3,000 lawyers registered with the Casablanca Bar Association are reportedly “homeless” lawyers, who prey on the uninformed and often maintain frivolous suits in order to collect higher fees.

Moroccan lawyers are predominantly generalists and sole practitioners. They focus on litigation and provide little pre-litigation counselling.⁴¹ Consequently, they may not have the leverage necessary to provide pro bono services. In addition, the legal community in Morocco does not have a tradition or culture of providing pro bono services.

Pro Bono Resources

Some of the more active entities offering pro bono services are as follows:

Droit et Justice (www.droitetjustice.org (last visited on September 4, 2015))

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

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

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

ABCDS - Association Beni Znassen pour la Culture, le Développement et la Solidarité (www.abcde-maroc.org (last visited on September 4, 2015))

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

ADFM - Association Démocratique des Femmes du Maroc (www.adfm.ma/index.php?lang=fr (last visited on September 4, 2015))

The democratic association of women in Morocco, ADFM, is an autonomous, feminist and non-profit non-governmental organization (“NGO”). Its principal objective is the promotion of women’s rights and strategic interests. ADFM is a member of the Euromed Human Rights Network’s Migration and Asylum Working group.

AMAPPE - Association Marocaine d’Appui à la Promotion de la Petite Entreprise (www.amappe.org.ma (last visited on September 4, 2015))

This association runs a socio-economic integration project in partnership with the UNHCR in Morocco. This creates micro income-generating activities.

⁴¹ Morocco: Legal and Judicial Assessment, supra n. 13.



AMDH - L'Association Marocaine des Droits Humains (www.amdh.org.ma (last visited on September 4, 2015))

AMDH is an independent NGO which promotes respect for all human rights. AMDH intervenes with officials and those responsible to protect and ensure respect for human rights, and support and bring justice to victims of human rights violations. The AMDH is a member of the Euromed Human Rights Network's Migration and Asylum Working group.

GADEM - Groupe Antiraciste d'Accompagnement et de Défense des Étrangers et Migrants (www.gadem-asso.org (last visited on September 4, 2015))

This is a Moroccan association established on December 18, 2006 and aimed at effective respect of the rights of foreigners and migrants in Morocco. It also ensures (within its means and ability to take action) accompaniment and legal defence of foreigners who apply, regardless of their status (i.e. this includes migrants, asylum seekers, refugees, or persons in regular or irregular administrative situations).

OMDH – l'Organisation Marocaine des Droits Humains (Morocco Human Rights Organization) (www.omdh.org (last visited on September 4, 2015))

OMDH has a partnership with UNHCR. In Rabat, besides legal assistance to refugees at all stages of the refugee status determination process, the center offers legal representation before a court or in police stations. In Oujda, OMDH works to prevent the refoulement of refugees to the borders. If needs be, the center also helps refugees organize their return to their home country. In most big cities in Morocco, OMDH is developing a network of lawyers who are able and willing to intervene on behalf of refugees.

OPALS - Organisation PanAfricaine de Lutte contre le Sida (www.opalsmaroc.ma (last visited on September 4, 2015))

In collaboration with UNHCR, OPALS Maroc offers HIV/AIDS services for refugees and migrants. This includes education and prevention (including information in the refugees' own language), medical care, psychosocial services, and legal support from OPALS lawyers (a legal helpline). There are 17 sections of this association across the country although refugee services are concentrated in three major cities - Rabat, Casablanca and Fes.

CONCLUSION

In Morocco, deficiencies in the legal provisions of legal aid has hindered the development of a robust legal aid system, despite the fact that it has long been asserted that each person in Morocco has guaranteed access to justice under the Constitution. Indigents may obtain free judicial assistance but the Moroccan legal community does not have a strong tradition of providing such services.

Pro bono organizations promoting various voluntary activities are quite proactive in various fields of society; however in the field of legal services, especially the provision of legal advice, there is a lot of room for improvement. Nevertheless, Morocco has engaged in intensive reforms. For resourceful lawyers, such circumstances may be regarded as opportunities to position themselves as useful counsels to the Moroccan government or to NGOs and to foster legal reforms with respect to legal aid and the development of pro bono work in the legal profession.

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