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L'Usage Thérapeutique Du Cannabis Et La Problématique De Développement Des Régions Du Nord Au Maroc.

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Résumé :

La légalisation de l'usage thérapeutique du cannabis vise à mettre en place un cadre législatif, suivant la nécessité et l'importance de cette richesse nationale pour renforcer le développement local et national dans un cadre légal et l'innovation de l'usage thérapeutique du cannabis.

The Abstract:

The legalization of the therapeutic use the cannabis aims to establish a legislative, framework according to the necessity and the importance of this wealthness to strengthen local development and national, within the legal and therapeutic usage innovation of cannabis in morocco.

Keywords:

Legalization – therapeutic – CANNABIS - development national and local.

Introduction :

La culture du cannabis au Maroc ne cessait de susciter des polémiques, voire des controverses doctrinales, aussi bien variées avec de multiples dimensions dans l'histoire de la région du Nord au Maroc, de même, les répercussions de cette activité agricole et ses effets pervers sur les agriculteurs et leurs situations sociales archaïques, dont ils assument les interprétations dérivées des textes de loi ,qui ont été sujet de critique très profonde, surtout sur la culpabilisation , d'un pauvre agriculteur au profit des bandes de commerce illicites de cette plante ,et qui pourrait changer la donne, suivant l'adoption de la nouvelle loi 13-21 relative à l'usage licite du cannabis datant du 14 juillet 2021 ,ainsi que les décisions accompagnant cette loi, pour une meilleure application et dans le but d'aider les agriculteurs à sortir de l'impasse de la pauvreté et trouver des solutions thérapeutiques en utilisant les produits issus de cette plante pour des objectifs de santé, en introduisant de nouvelles pratiques de façon à atténuer la douleur des soins, voire même à être une partie importante dans l'industrie médicale et pharmaceutique au niveau national et international.

Pour développer cette réflexion nous proposons le plan suivant :

I- Le cadre législatif de l'usage thérapeutique du cannabis au Maroc :

A-La loi 13.21 et les mécanismes d'application.

B-L 'effectivité de la loi 13.21 en question.

II-Le développement humain au nord du Maroc et le cannabis :

A-Le cannabis et les cultivateurs.

B-Le cannabis et l'économie nationale.

I- Le cadre législatif de l'usage thérapeutique du cannabis au Maroc :

A- La loi 13.21 et les mécanismes d'application :

La loi 13-21 se compose de 56 articles définissant et expliquant les différentes étapes du cannabis depuis son agriculture ,sa production , sa transformation ainsi que l'industrialisation de ces produits et son transport, de plus la transformation ,la fabrication, la commercialisation, l'exploitation du cannabis , de ses produits , l'exportation et l'importation de ces semences, de ses plantes ,l'importation de ces produits ainsi que la création et l'exploitation des pépinières ce qui peut traduite tout le processus de l'usage du cannabis au Maroc.

Le chapitre VII de la loi 13.21 délimite toutes les fonctions de l'Agence nationale de réglementation des activités relatives au cannabis – **ANRAC** -, selon l'article 31 de cette loi, il est créé sous la dénomination l'Agence nationale de la réglementation des activités relatives au cannabis ,un établissement public doté de la personnalité morale et de l'autonomie financière , ainsi que la possibilité de créer des annexes régionales et provinciales de l'agence, dans le but de soutenir le travail de l'agence nationale dans ces compétences, dont le contrôle administratif reste entre les mains de l'État, sous forme d'une tutelle l'administrative selon les dispositions de l'article 32 de ladite loi.

En analysant cette loi, on constate que l'État cherche à capitaliser l'activité agricole du cannabis pour deux raisons majeures :

- légaliser l'usage du cannabis dans le domaine médical et faire une sorte de main levée sur l'aspect criminel de sa culture dans les régions concernées ex :
KTAMA, BAB BERD, TAOUNAT, CHAOUEN...
- la culture du cannabis est un levier majeur de développement des agriculteurs et l'effet positif de sa commercialisation au niveau local, régional et national.

On ose dire que la culture du cannabis au nord du Maroc revêt un aspect de normalité, une activité ancestrale puisque les agriculteurs de cette localité du Maroc ont hérité cette pratique de leurs parents et grands-parents et ne constituent, selon leurs points de vues au moins, aucun aspect de crime, de même, tous les membres de la famille participent à l'ensemble des activités de cette plante aux champs, comme étant une activité par laquelle ils gagnent leurs vies, depuis des décennies du côté des autres produits agricoles de la région et dont la criminalisation de leurs activités n'a, selon leurs avis, et suivant une dimension objective sociologique, tant qu'elle était reconnue comme étant une activité criminelle de trafic de drogue, aucun sens du point de vue de l'acte agricole en soi.

En outre, leurs situations sociales se trouvent en état archaïque, puisqu'ils représentent la partie la plus faible devant des bandes criminelles, qui investissent dans la pauvreté des cultivateurs de la région, et s'enrichissent en transformant cette plante en drogue dure et qui constitue un grand défi des autorités marocaines.

B- L'effectivité de la loi 13.21 en question :

Le gouvernement marocain a mis en place 06 arrêtés explicatifs de la loi 13.21, promulgués des ministres, de l'Intérieur, ministre de la santé et de la couverture sociale, et le ministre de l'agriculture et de la pêche maritime et du développement rural et eau et forêt, au bulletin officiel numéro 796 du 2 juin 2022 de façon à clôturer la législation de l'usage licite du cannabis au Maroc suivant ces arrêtés explicatifs :

– **Premier arrêté :** numéro 22.1293 : concerne l'octroi des autorisations pour pratiquer l'activité agricole du cannabis.

– **Deuxième arrêté :** numéro 22. 1294 : portant sur la création et l'exploitation des pépinières de cannabis et l'exportation et l'importation de ces semences et de ses plans.

– **Troisième arrêté :** numéro 22.1295 portant sur les conditions des pépinières selon l'agence nationale de la réglementation des activités du cannabis, ainsi que la transformation, la fabrication et le transport du cannabis et de ses produits.

– **Quatrième arrêté :** numéro 22.1296 il détermine les registres et les modalités d'enregistrement auprès de l'Agence nationale de la réglementation des activités relatives au cannabis.

– **Cinquième arrêté :** numéro 22.1297 il délimite la substance psychoactive de la tétrahydrocannabinol –THC– et le taux fixé par voie réglementaire pour des buts d'industrie médicale et pharmaceutique.

– **Sixième arrêté :** numéro 22.1298 concerne le contrôle des stocks des récoltes du cannabis et les modalités de destruction d'une partie de ces récoltes, ainsi que les actes qualifiés d'infraction et les sanctions en cas de violation de la législation en la matière.

On trouve le chapitre 8 de la loi 13.21 concerne le régime de contrôle suivant les sanctions allant du retrait d'autorisation passant par les amendes colossales jusqu'à l'emprisonnement ,dont les officiers de la police judiciaire et les agents des douanes ainsi que les agents des eaux et forêts, sont compétents pour verbaliser des sanctions dans le cas échéant .

II-Le développement humain au nord du Maroc et le cannabis :

A- Le cannabis et les cultivateurs :

Historiquement au Maroc, ce sujet était l'objet d'une polémique très controversée, étant donné que son aspect interdit par la religion et la nécessité de sa culture au nord du Maroc, vu l'incarnation de cette pratique dans le mode de vie des habitants de la région du Rif marocain.

L'État marocain a inauguré une nouvelle étape par l'encadrement législatif de cette plante dans le but médical et pharmaceutique et les effets de cela, surtout sur le revenu des agriculteurs et développement économiques de la région entière.

Néanmoins , la légalisation de l'usage du cannabis donne lieu à mettre fin à tout usage illicite, sachant que la mise en place de l'Agence nationale de la réglementation des activités relatives au cannabis ANRAC, a pour objectif aussi d'assister les agriculteurs pour capitaliser cette activité et la rendre rentable ,pour le bien être des habitants de la région ,en instaurant des coopérations avec des centres de recherche et les institutions publiques concernées par des recherches scientifiques au Maroc et entre le Maroc et les autres pays du monde : exemple l'agence espagnole des médicaments qui a vu le jour le 27 juin 2022 dont l'expérience marocaine peut constituer un terrain propice de partage ,de coopération et de capitalisation de cette démarche.

B-Le cannabis et l'économie nationale :

La légalisation du cannabis au Maroc a aussi une dimension nationale, tant que sa culture est limitée dans les zones du Rif marocain puisque son impact dépasse son aspect local et s'étend sur le territoire national, puisque d'abord, l'agence a été créée par l'État marocain, et l'industrie pharmaceutique et médicale revêt un aspect national, et donc l'effet de sa culture sur le produit national brut de l'économie du pays, en outre l'article 6 de la loi 13. 21 concerne l'autorisation de la culture et de la production des variétés du cannabis dont la teneur en substance psychoactive du tétrahydrocannabinol - **THC** - dépasse le taux fixé par voie réglementaire ne peut être accordé que pour les industries médicales et pharmaceutiques.

L'objectif est donc ,la garantie d'un traitement médical plus efficace pour alléger les douleurs et calmer les malades, ainsi selon la fédération nationale de l'industrie pharmaceutique et de l'innovation médicale, qui a soulevé le problème de détermination de la matière THC et CBD ,substances naturellement présentes dans la plante de cannabis dans toutes ses parties ,et leur effet sur le traitement thérapeutique positif ,et qui a été déterminé en 01% ,ce qui peut donner lieu à des pourcentages différents au niveaux international, en plus les effets positifs des coopérations qui peuvent se tisser de cette activité du cannabis sur l'économie nationale et mondiale.

En somme, le législateur marocain a pu dépasser une étape importante dans l'histoire de la culture de cette plante, pour le bien être des agriculteurs, de l'industrie médicale et pharmaceutique et l'économie nationale ,et faire face aux activités illicites et qui créaient des anomalies entre les pauvres agriculteurs et les commerçants qui s'enrichissent de façon illégale au détriment des années de labeur des ruraux, ainsi que cette activité constitue une étape innovante dans le domaine de la médecine et au niveau de l'économie nationale et mondiale.

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- 3- Arrêté conjoint du ministre de l'intérieur, du ministre de l'agriculture, de la pêche maritime, du développement rural et des eaux et forêts et du ministre de l'industrie et du commerce n° 1294.22 du 11 chaoual 1443 (12 mai 2022) précisant les modèles du contrat de la vente des cultures du cannabis, les procès-verbaux de livraison des cultures mentionnées et les registres de destruction des excédents de la production du cannabis, de ses graines, plantes, cultures et produits.
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- 5- Arrêté conjoint du ministre de l'intérieur, du ministre de la santé et de la protection sociale, du ministre de l'agriculture, de la pêche maritime, du développement rural et des eaux et forêts et du ministre de l'industrie et du commerce n° 1296.22 du 11 chaoual 1443 (12 mai 2022) précisant les formes de registres et les modalités de leur délivrance par l'Agence nationale de réglementation des activités liées au cannabis et des titulaires de licences liées au cannabis.
- 6- Arrêté conjoint du ministre de l'intérieur, du ministre de la santé et de la protection sociale, du ministre de l'agriculture, de la pêche maritime, du développement rural, des eaux et forêts et du ministre de l'industrie et du commerce n° 1297.22 du 11 chaoual 1443 (12 mai 2022) déterminant les proportions de Tétrahydrocannabinol (THC) prévues aux articles 6 et 17 de la loi n° 13.21 relative aux usages licites du cannabis.
- 7- Arrêté du Ministre de l'Intérieur n° 1298.22 du 11 chaoual 1443 (12 mai 2022) précisant les modalités de déclaration des dommages et pertes qui peuvent toucher les cultures de cannabis.



Current Trends And Issues Regarding The Use Of New Technologies In A Judicial Context: Moroccan System As An Example.

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Résumé:

L'émergence de l'intelligence artificielle a suscité des débats allongés impliquant différents spécialistes et juristes. Par conséquent, ledit travail envisage un renforcement de ce débat par l'analyse des travaux théoriques et stratégies récentes en la matière. A cet égard, l'étude sera structurée comme suit: il s'agit d'abord de commencer par un aperçu général de l'apparition de l'intelligence artificielle dans le domaine de la justice, en explorant les premières manifestations de la police prédictive, nous allons étudier une telle apparition dans une approche internationale, déterminant les avantages et les limites qui s'y attachent. En second lieu, dans une perspective nationale, nous allons analyser l'évolution en trois étapes de l'intégration de la technologie voir

également la technologie avancée dans le domaine judiciaire, mettant en évidence les préoccupations actuelles en la matière. La particularité de cette approche réside dans la dualité des objectifs, compte tenu à la fois, de l'importance de la numérisation et des risques qui y sont associés. Par conséquent, l'étude est basée sur une analyse qualitative des stratégies et projets de loi. Cela reposera sur une approche descriptive et analytique de la position du Maroc par rapport à cette tendance.

Mots-clés: Intelligence artificielle, police prédictive, justice prédictive, le système judiciaire marocain, le droit à un procès équitable, l'indépendance des juges, la présomption d'innocence.

Abstract:

Artificial intelligence has emerged as a major area of debate and reflection, and it includes a range of legal specialists. In fact, this paper draws on recent theoretical work it will be structured as follows: first, starting with a step back to the initial appearance of advanced technology and its implementation in the legal system, we studied the gradual use of technology in an international approach, and determined the limits attached to it. Secondly, from a national perspective, we studied the three-step evolution of the integration of technology in the judicial field, highlighting the current concerns. The particularity of the

national approach lies in the duality of objectives, bearing in mind both the importance of digitalization and the risks associated with it. Consequently, the study is based on a qualitative analysis of strategies and bills. Then, adopting a descriptive and analytical approach to Morocco's position regarding this trend.

Keywords: Artificial intelligence, predictive policing, predictive justice, Moroccan judicial system, right to a fair trial, Independence of judges, Presumption of innocence.

Introduction:

The need to ensure fair justice not only reflects the actual and rigorous implementation of fair trial overarching safeguards but also involves pursuing the development of comparative judicial systems. The issue of modernizing and improving the functioning of justice is intrinsically related to the persistent search for the effectiveness of judicial responses while respecting the fundamental principles of procedures, such as, without claiming to be exhaustive, the principle of reasonable time, the right of access to a court, the right to defense, and the presumption of innocence.

The trends towards the dematerialization of various aspects of our daily life have led the judicial system to undergo reform without having a strict legal basis that regulates the phenomenon or a clear fathoming of the extent of this digitalization. Although, it should be noted that during the Covid-19 pandemic, like other countries around the world, Morocco was faced with the challenging reality of having only one way to ensure the continuity of the functioning of justice, specifically, using digitalization.

Such use of digitalization has proved extremely useful, as it has helped to address the weaknesses and mismatches of our system in front of unintended consequences raised by the pandemic. However, the post-covid situation reveals Morocco's intention to continue using digitalization, given the benefits it brings. Hence, there is a need for a shift towards the use of current information and communication technologies, including the integration of artificial intelligence tools into the functioning of the judicial system.

However, Artificial intelligence, big data, blockchain, the Internet of Things, digitalization, and nanotechnology create an environment for new threats that will intensify in the future¹. As large strides are made in the academic discipline of AI, this technology is starting to make its way into digital decision-making systems, which in turn are replacing human decision-makers, and institutions, both public and private, seeking increasing effectivity². The threat to the rule of law lies in the

¹ Kovalchuk, O.; Karpinski, M.; Banakh, S.; Kasianchuk, M.; Shevchuk, R.; Zagorodna, N. (2023) "Prediction Machine Learning Models on Propensity Convicts to Criminal Recidivism". Information. P1. <https://doi.org/10.3390/info14030161>.

² Greenstein S. (2022). "Preserving the rule of law in the era of artificial intelligence (AI)", Artificial Intelligence and Law. P 292. <https://doi.org/10.1007/s10506-021-09294-4>.

fact that most of these decision-making systems are ‘black boxes’ because they incorporate extremely complex technology that is essentially beyond the cognitive capacities of humans and the law too inhibits transparency to a certain degree¹. It is in this context that the demands of the rule of law, such as insight, transparency, fairness, and explainability, are almost impossible to achieve, which in turn raises questions concerning the extent to which the rule of law is a viable concept in the technocratic society².

Despite these powerful critiques, proponents- computer scientists, technology vendors, and policymakers- nonetheless insist that algorithmic systems, i.e., predictive policing and predictive justice, not only improve efficiency in the criminal justice system but will ultimately “make the legal system fairer”³. This provides that the use of artificial intelligence involves both benefits and drawbacks that justice stakeholders must consider, hence the issue addressed in this study.

Problematic:

Front of this issue how can algorithmic justice be fathomed as both a way to modernize the judicial system and a source of risk in terms of equitable justice safeguards? And what is the exact position of Moroccan judicial system in such field?

The study objectives:

Study the impact of artificial intelligence on the judicial system, the emergence of algorithmic justice in Moroccan system, and make a comparison between the benefits and drawbacks of this innovative growth of justice in terms of ensuring fair trial guarantees.

The study plan:

To provide an answer to our problem, we must study first some evidence of artificial intelligence implementation in the judicial system, and in the second place the current state of the Moroccan judicial system.

¹ Ibid.

² Ibid.

³ Shapiro A (2019). “Predictive Policing for Reform? Indeterminacy and Intervention in Big Data Policing”. *Surveillance & Society*, 17(3/4). P 457. See also: Siegel, Eric. 2018. How to Fight Bias with Predictive Policing. *Scientific American*, February 19, 2018 (How to Fight Bias with Predictive Policing – Scientific American Blog Network).

1. Evidence of artificial intelligence implementation in the judicial system

The development of artificial intelligence has opened several opportunities to upgrade our activities (2.1), covering huge sectors, of which justice is a major illustration (2.2).

1.1. The initial rise of Artificial intelligence

Over the last three decades, the world has attended a phenomenon that has changed how people perform a front of a new stage of needs. The digital revolution, which continues to undergo various mutations, reflects today other manifestations by allowing greater influence on the automation and digitalization of the physical world. Now, algorithms are powerful artifacts that operate within our informational milieu, structuring our data, profiling, categorizing, and predicting who we are, what we want and more¹.

Obviously, we could look at this occurrence as an irresistible evolution for several reasons, first the combined use of technology and profit-making: the internet of things, robotics, cybersecurity, big data, and artificial intelligence, this presents, by 2025 a turnover of more than two thousand billion euros². For example, the **CEO** of **IBM**, Ginni Rometty, argues that AI technologies are “technologies to augment human intelligence...By and large, we see a world where this is a partnership between man and machine, and this is in fact going to make us better and allow us to do what the human condition is best able to do”³.

In fact, there is no common definition of AI, which means that is difficult to confer a unanimous definition of it. This definitional issue is not only related to the different scientific approaches associated with it (symbolic, connectionist, probabilistic, evolutionary programming, cellular automata, etc.) or the

¹ Hayes P, van de Poel I, Steen M. (2020). “Algorithms and values in justice and security”, AI & SOCIETY. P 533. <https://doi.org/10.1007/s00146-019-00932-9>.

² De Codt J. (2019). « Justice et algorithme : danger pour le procès équitable et la démocratie ? », Revue trimestrielle des droits de l’Homme, (N°117), Éditions Anthemis. P5. DOI10.3917/rtdh.117.0003.

³ Duana Y, S. Edwardsb J, K Dwivedi Y. (2019). “Artificial intelligence for decision making in the era of Big Data – evolution, challenges and research agenda”, International Journal of Information Management 48. P 63.

<https://doi.org/10.1016/j.ijinfomgt.2019.01.021>. See also: <https://www.youtube.com/watch?v=mNEQsl1-iZs>.

heterogeneity of its objects of study (vision, language reasoning, planning, common sense, etc.), but it also due to the multiple referential functions of the noun phrase: sometimes mobilized as a concept other time solely as an artifact¹.

Generally, artificial intelligence refers to computer programs that use algorithms, which are made possible through the advent of computers and enable them to multiply infinitely². The term “artificial intelligence” began to emerge in 1950, starting with attempts to assimilate it with a purely philosophical framework. Over the process of its development, artificial intelligence has undergone several terminological explanations. The first tentative definition was in 1956 when the American logician McCarthy coined the term during the famous conference, he co-organized at Dartmouth College in New Hampshire³. However, after years of difficulties, AI gaining meaningful traction within top corporations⁴. It is reported that the take-up of AI-enabled systems in organizations is expanding rapidly⁵ and AI is on its way to transforming the performance of business⁶.

In the case of criminal justice, the use of algorithms is not a recent attitude. In the USA, the algorithms have been used in some way during the process of decision-making since the 1920s. Thus, they are considered useful for the pre-trial phase. The algorithmic tools take in a variety of inputs, ranging from just a few variables to over a hundred, and assign defendants a risk score based on the probability of rearrest, failure to appear in court, or both⁷. The score is then often

¹ Benbouzid B, Meneceur Y, Alisa Smuha N. (2022). « Quatre nuances de régulation de l'intelligence artificielle Une cartographie des conflits de définition », Réseaux (N° 232-233). DOI : 10.3917/res.232-233.0029. P 31.

² De Codt J, Op.cit. 5.

³ See : Goutefangea P (1999), Alan Turing :la "pensée" de la machine et l'idée de pratique, thèse de doctorat, Vienne M J (dir), Université de Nantes.

⁴ Bean, R. (2018).” How big data and AI are driving business innovation in 2018”. MIT Sloan Management Review Februray. See also: Duana Y, S. Edwardsb J, K Dwivedi Y, Op.cit. P 63.

⁵ Miller, S. (2018), “AI: Augmentation, more so than automation”, Asian Management Insights, 5(1), 1–20. See also: Duana Y, S. Edwardsb J, K Dwivedi Y, Op.cit. P 63.

⁶ Daugherty, P. R., & Wilson, H. J. (2018). Human+ machine: Reimagining work in the age of AI. Harvard Business Press. See also: Duana Y, S. Edwardsb J, K Dwivedi Y, Op.cit. P 63.

⁷ WYKSTRA S. (2018). “Philosopher’s Corner: What is “Fair”? Algorithms in Criminal Justice”, Issues in Science and Technology, Vol. 34, No. 3. P21.

shown to judges, who may choose to release defendants with low-risk scores on their own recognizance or under some form of limited supervision¹.

Due to the power of Big Data, the role of the AI is becoming increasingly prominent. Therefore, Big Data has influenced many aspects of modern society, including the judicial system. Over the past few decades, there has been a remarkable advancement in the field of data science, which prioritizes the use of large amounts of raw data and fast computing power to extract scientific insights from big data. This new approach mainly excludes the traditional process, which is basically theoretical to focus on modern data processing techniques. The use of data is now aimed at determining patterns and correlations in the data and generating analysis and modeling strategies. The setup of algorithms has become the essential tool for extracting information and solutions. In recent years, the data analysis has undergone major mutations through the enormous advancements that affected both the field of *machine learning* and inferential statistics. The main contribution of these approaches, perhaps, is their capacity to generate answers to variety of practical problems, which can be sorted into two categories: prediction (e.g., an algorithm that recommends new content based on our viewing history on a streaming platform) and categorization (e.g., the filter that automatically sends certain incoming emails to our spam folder)².

However, what interests us most in this study is the prediction side. At this point, the term predictive can have different significations under judicial practice. It may include the action of forecasting as an estimation process applied to random variables which are the product of a chance process so that the value(s) that materializes cannot be known in advance³. Using those new technological tools for enhancing the judicial system, has been from a recent time one of the most important applications in artificial intelligence history.

¹ Ibid.

² J. CASTRO-TOLEDO F, MIRO-LLINARES F, C. AGUERRI J (2023), "Data-driven criminal justice in the age of algorithms: epistemic challenges and practical implications", Criminal Law Forum. <https://doi.org/10.1007/s10609-023-09454-y>. P4. See also: Shobha G, Rangaswamy S (2018) Chapter 8-Machine Learning. Handbook of Statistics 38: 197-228. <https://doi.org/10.1016/bs.host.2018.07.004>.

³ Berk R. (2008)., "Forecasting Methods in Crime and Justice", The Annual Review of Law and Social Science. p 220. DOI: 10.1146/annurev.lawsocsci.3.081806.112812.

1.2. From predictive policing to predictive justice

The use of artificial intelligence in the judicial system entails a broad variety of aims, that are adapted to the context of their application. Historically, the use of AI was initially manifested in the pre-trial process, which gave rise to the term “predictive justice”, but this has been subject to many criticisms. After several inclusion attempts, AI is now once again a tool for enhancing the judicial practitioner’s activities, mainly in some police departments.

Pre-emptive policing because of such an involvement, allowed to reveal the advantages brought by using advanced technology, thus being able to reexamine the efficiency of predictive justice. Considering that the fact that judges are human beings, the political science or social science approach related to this area, assumes that judges may be ideologically inclined towards some side in various issues, have their own perceptions and other biases, and various other social and political factors that affect their judgment such as mental resources of judge and decision of lower court¹.

Predictive analytics and artificial intelligence are now used regularly across criminal justice institutions and law enforcement agencies, thus automated data analysis promises to make such institutional decision-making more objective, consistent, rigorous-neutral, and value-free². Before the emergence of analytical platforms, police departments used crime maps with geographic information systems, albeit on personal machines of crime analysts³. Mapping itself has a long history, but crime mapping specifically can be traced back to the early 1800s when social theorists began to create maps to illustrate their theories and research about

¹ Athar Shaikha R, Prasad Sahu T, Anand V. (2020). “Predicting Outcomes of Legal Cases based on Legal Factors using Classifiers”, International Conference on Computational Intelligence and Data Science (ICCIDS 2019), Procedia Computer Science.P 2394. Available online at :

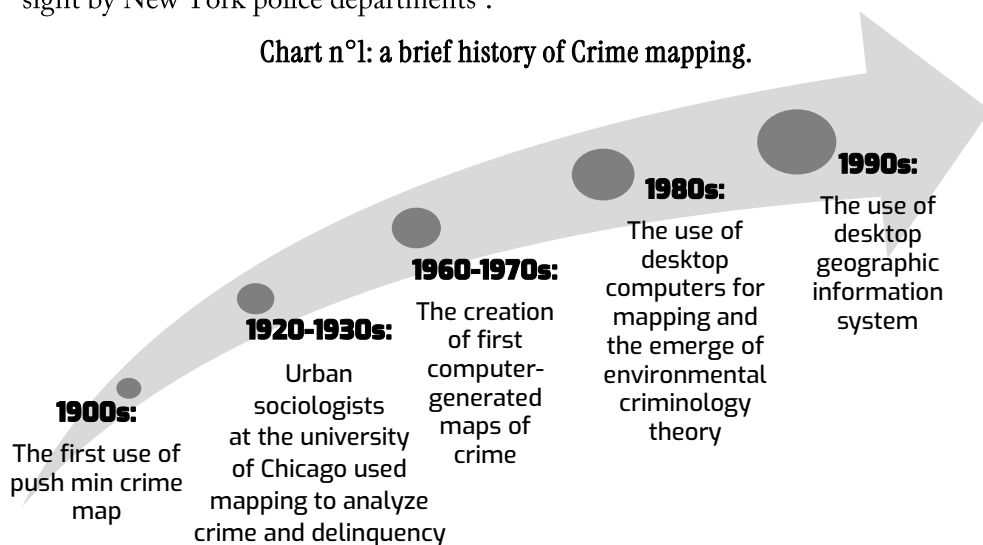
www.sciencedirect.com.

² Shapiro A, Op.cit. p 456.

³ Benbouzid B. (2018). « Quand prédire, c’est gérer : La police prédictive aux États-Unis », Réseaux 5 (n° 211). p 227. DOI10.3917/res.211.0221.

crime¹. However, 1900 was recognized by the first *push pin* crime maps used at first sight by New York police departments².

Chart n°1: a brief history of Crime mapping.



Source: Boba R, Crime Mapping Laboratory, Report to the Office of Community Oriented Policing Services Cooperative Agreement #97-CK-WXK-004, November 2001, p 17.

Since the 1920s, crime analysis has undergone several changes, because of new explanatory theories of delinquency, as well as the use of desktop computers for mapping. The usage of spatial studies on criminality has been evolving in France since the late 1980s and has guided the efforts of geographers who investigate correlations between space and crime by analyzing features of spaces themselves³. they aim to comprehend the geographical distribution of offenses.

In 1990, the emergence of geographic information systems, consisting of spreadsheets, spatial analysis software, and statistical packages, opened new avenues for crime analysis, despite that they were considered insufficient to fulfill the information requirements of law enforcement management, which actually was due

¹ Boba R. (2001). Crime Mapping Laboratory, Report to the Office of Community Oriented Policing Services Cooperative Agreement #97-CK-WXK-004, November 200. Available online at: <https://cops.usdoj.gov/ric/Publications/cops-w0273-pub>. Accessed on : 13/05/2024.

² See the chart n°1.

³ Cuntz C, Fussell F, Perez P. (2007). « Géocriminologie, quand la cartographie permet aux géographes d'investir la criminologie », *Cybergeographie : European Journal of Geography* [En ligne], Cartographie, Imagerie, SIG, document 378, mis en ligne le 08 juin. Consulté le 03 mai 2024. URL: <http://journals.openedition.org/cybergeographie/7058>; DOI: <https://doi.org/10.4000/cybergeographie.7058>.

to the growing amount of data gathered through micro-computing technology, that prompted law enforcement to seek out technologies capable of storing and processing vast quantities of data, particularly those with a spatial element, such as incident report, phone calls, and complaints, in real-time¹.

In general, predictive policing operates between potential criminal acts that may be committed, potential criminals, and potential victims. Therefore, two methods are applied:

- **Crime hotspots:** in the criminological literature, the presence of crime hotspots is often explained by routine activity theory² which suggests that crimes tend to occur when a favorable combination of crime opportunities emerge, usually in the form of motivated offenders, an attractive target and the absence of capable guardianship converging in a confined space and time³. Criminal activities tend to concentrate in certain areas for reasons that have been explained by the interaction of victims and offenders and the strength of guardianship⁴. An accurately identified and clearly visualized crime hotspot map will significantly benefit police practices by aiding threat visualization, police resource allocation, and crime prediction⁵.
- **Risk terrain modeling:** it is generally a diagnostic tool using data analysis techniques to forecast crimes, mainly **RTM** identifies environmental conditions that contribute to crime problems⁶. In contrast to the first method,

¹ Benbouzid B, Op.cit. p 228.

² See in this field: Cohen, L. E., & Felson, M. (1979). "Social change and crime rate trends: A routine activity approach", *American Socio- logical Review*, 44(4), 588–608.

³ SHIOD N, SHIOD SH, INOUE R. (2022). "Measuring the colocation of crime hotspots", *GeoJournal*, December. p2. <https://doi.org/10.1007/s10708-022-10806-1>.

⁴ Wang D, Ding W, Lo H, Stepinski T, Salazar J, Morabito M, (2013), "Crime hotspot mapping using the crime related factors—a spatial data mining approach", *Appl Intell*, 39, p 772. DOI 10.1007/s10489-012-0400-x. see also: Cohen, L. E., & Felson, M, Op.cit.

⁵ Ibid.

See also: CHAINEY S, TOMPSON L, UHLIG S, (2008), "The utility of hotspot mapping for predicting spatial patterns of crime", *Secur J* 21(1), pp 4–28.

⁶ <https://simsi.com/articles/what-is-risk-terrain-modeling/>. Accessed on : 10/05/2024 at 07 :54pm.

these aims to go further by identifying circumstances that are likely to occur outside the currently identified hotspots¹.

In terms of methods to predict individual-level parolee outcomes, Ernest Burgess whose work in the 1920s is widely credited as the first application of an actuarial assessment tool to forecast parolee success². Regarding the field of prison population forecasting, Stollmack's (1973) mathematical model incorporated criminal justice system flows (e.g., arrest, conviction, recidivism rates) and length of stay to predict prison populations and represented a major improvement over forecasts based on linear extrapolation of trends from regression models that were common at the time³.

Other than this relevant early prediction in the judicial system, many studies are addressing this issue, e.g., Blumstein's (1980)⁴, and Barnett's (1987)⁵ research. The existing research analyzes automated decision-making process and prediction in several judicial domains. The use of algorithms and AI in the judicial system, based on actual legal analysis, is taking a new path of progression, specifically by the landmark decision in *Loomis v. Wisconsin* (2016) in the USA, in which the Supreme Court of Wisconsin considered the legality of using the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) risk assessment software in criminal sentencing⁶. Which led to criticism of some drawbacks of automated justice and analysis of the benefits that might emerge due to the implementation of AI.

In the case of Morocco, recent studies refer mainly to the impact of COVID-19 on the judicial system, as a result, several challenges are now facing the Moroccan system, between the useful use of AI and different types of risk can bring out.

¹ Jankowski M. (2015). « Big data : de la police préventive à la police prédictive », *Revue Défense Nationale* (N° 779). P 19. <https://doi.org/10.3917/rdna.779.0019>.

² J. Sabol W, L. Baumann M. (2022). "Forecasting and Criminal Justice Policy and Practice", *American Journal of Criminal Justice*. P 1145. <https://doi.org/10.1007/s12103-022-09715-3>.

³ Ibid.

⁴ Blumstein, A., Cohen, J., Miller, H. (1980). Demographically disaggregated projections of Prison Populations. *Journal of Criminal Justice*, 8, 1-25.

⁵ Barnett A. (1987). Prison Populations: A Projection Model, *Operations Research*, 35(1), 18-34. <https://doi.org/10.1287/opre.35.1.18>.

⁶ Završnik A. (2021). "Algorithmic justice: Algorithms and big data in criminal justice settings", *European Journal of Criminology*, Vol. 18(5). P 626. <https://doi.org/10.1177/1477370819876762>.

2. The current state of the Moroccan judicial system

Since it is already admitted that AI is a new tool to ensure the modernization of the judicial system (3.1), it is essential to adopt it while anticipating the adverse effects it may have (3.2).

2.1. The advantageous integration of artificial intelligence in the judicial system

Today, it is argued that using artificial intelligence technologies in the field of justice represents a fast-moving trend to modernize the judicial system. In France, data mining techniques are used by the general directorate of public finances to detect and prevent more complex and increasingly sophisticated cases of fraud through monitoring and algorithmic analysis of data and information published on social networks and other online platforms such as Google Maps¹. In the United States and the United Kingdom, it is used by justice and police departments to prevent recidivism of criminal offenses and to enhance the safety of cities².

Algorithmic risk assessment tools were initially used only by probation and parole departments but have now expanded to bail hearings and sentencing³, mainly in the USA. On the other hand, one UK force has made basic use of a forecast policing tool developed by the private sector, i.e., “PredPol”, implemented by Kent Constabulary, to predict areas where offenses are possible to take place⁴. Recently, it has been reported that West Midlands police are evaluating a third-party system

¹ Shahrjerdi S. (2022). « La modélisation algorithmique du paradigme des criminels : un outil d'évolution du droit pénal », *Revue Internationale des Gouvernements Ouverts*, vol 11. P193. Available online at : <https://shs.hal.science/halshs-03791503>.

² Ibid.

³ Oswald M and Grace J and Urwin Sh and Barnes G. (2017). “Algorithmic Risk Assessment Policing Models: Lessons from the Durham HART Model and ‘Experimental’ Proportionality”, *Information & Communications Technology Law*, Forthcoming, (August 31). pp 1-27. P 27. Available at SSRN: <https://ssrn.com/abstract=3029345> or <http://dx.doi.org/10.2139/ssrn.3029345>.

⁴ Rachel O'Donoghue. (2016). “Is Kent’s predictive policing project the future of crime prevention?”, *Kent Online*, 5 April. <https://www.kentonline.co.uk/sheerness/news/what-if-police-could-detect-93715/>. Accessed on: 15/05/2024, 05:09pm.

called “Valcri” for use in the investigative process¹, a tool that aims to collect related crimes by the analysis of semantic features².

Now, certainly, in the case of the Moroccan system, the implementation of AI was not recent as its expansion during the pandemic period. In fact, within the context of drafting the charter of the judiciary system reform (July 2013), the High Commission for the National Dialog on the Reform of the Judiciary system recommended to “ *Lay the foundations of Digital Court, open to its surroundings and the gradual generalization of the use of modern technological means in the management of the courts and relations with both litigants and the professionals, and enacting the necessary legal provisions for the purpose*”³. In addition, the main aims of modernizing judicial administration by embracing a digital justice system are to ensure legal and judicial security and to encourage investment. This goal was thus concretized by the Royal message on the second edition of the Marrakech conference about justice whose underlying topic is “Justice and investment: challenges and issues’ on 21st and 22nd October 2019. From this prescriptive, the Royal message aims to underline the necessity of making “*most of the means afforded by modern technology for the dissemination of legal and judicial information. Also, it’s necessary to promote the paperless processing of legal procedures and judicial regulations and adopt online justice methods*”⁴.

Within the new development model published in 2021, the Special Commission of Development Model argued that digital technology is a real lever for a successful change and enhancement towards different public services, thus public administrations. Which includes in priority the judicial system.

On second thoughts, the SCDM presumes “that Morocco can aim to be an e-Nation by 2025 and considered that digital technology is likely to reduce corruption and promote economic, social and territory inclusion of large segments of the population,

¹ Oliver Moody. (2017). ‘Detectives call in AI to hunt offenders’ The Times, May 17 : <https://www.thetimes.co.uk/article/detectives-call-in-ai-to-hunt-offenders-8g5ncqxs?region=global>. Accessed on: 15/05/2024, 05:09pm.

² Oswald M and Grace J and Urwin Sh and Barnes G, Op.cit. p 2.

³ High Commission for the National Dialog on the Reform of the Judiciary system (2013), The charter of the judiciary system reform, p49. Available online at: <http://www.ism.ma/basic/web/pdf/charte/en.pdf>.

⁴<https://www.maroc.ma/en/royal-speeches/hm-king-sends-message-participants-second-international-conference-justice>. Accessed on: 16/05/2024, 09:10pm.

simplified and also clarified procedures and better-quality services"¹. Which will restore the trust and transparency between the citizens and the State.

Recently, Morocco has embarked on a cooperation program between the Ministry of Justice and Council of Europe (Nov 2020– Apr 2023), which leads to enhancing the functioning of the judicial system based on the tools developed by the European Commission for Efficiency of Justice. In other words, this improvement involves strengthening the capacity of the Ministry of justice and those of legal professionals, while also facilitating the digitalization process of Moroccan Justice, and will take into account lessons learned from the health crisis's management².

In fact, an experimental year, 2020, witnessed the material use of digital justice³. Moreover, due to COVID-19 pandemic, the implementation of digital courts began to take shape through holding remote trials as an exceptional measure, as also part of the preventive measures advocated to deal with the spread of COVID-19, particularly in the ranks of prisoners⁴. Similarly, the figures for the first half of 2021 revealed that approximately 241,743 prisoners appeared by videoconference, corresponding to 207, 489 cases spread over 9,980 audiences⁵.

After this date, Morocco became familiar with this new procedure, which encouraged it to adopt a new approach: the generalization of digital justice. At present, the use of AI and advanced technology in general is an inevitable reality. In addition to videoconference, Morocco is currently using "intelligent radars" to minimize road risks and ensure that road users behave responsibly. On top of that, several websites have been set up to facilitate the digitalization process⁶. These

¹ Special Commission of Development Model, The new development model (Summary of the SCDM's General Report), April 2021, p28. Available online at: <https://www.csmd.ma/rapport-fr>. Accessed on: 09/07/2024, 10 :00pm.

²<https://www.coe.int/en/web/cepej/improving-the-functioning-of-justice-in-morocco-based-on-the-tools-developed-by-the-cepej-phase-ii>. Accessed on 09/07/2024, 11 :11pm.

³ See: the judgment n° 588 of the court of cassation (Morocco), criminal case n°1421/6/5/2021, 26 May 2021, related to interviewing witness remotely.

⁴ ATMANI Kh. (2023). « L'incidence de la visioconférence sur la conduite du procès pénal », Revue électronique internationale pour la publication de recherches juridiques, Issue 10, Vol II. P 184.

⁵ See the website of supreme council of judicial power (<https://www.cspj.ma>).

⁶ Including: <https://juriscassation.cspj.ma/>. Jurisprudence database.

<https://www.chikaya.ma/>. The National Portal of claims.

websites guarantee access to information, reduce the cost of justice and mobility, minimize time spent by professionals and litigants, and finally make justice closer to litigants.

Nowadays, the judicial system is being fleshed out by several bills providing the legal framework for the use of modern technologies in the judicial process. For instance:

• **The draft bill on the Criminal Procedure Code:**

Provides updates on judicial measures involving the introduction of modern technologies on procedural acts, including electronic signature of minutes, judgments, and judicial orders. It also provides for litigants to be summoned by remote means of communication, including video conferencing.

• **The draft bill n° 27-21 on the digitalization of judicial procedures:**

The draft legislation aims to regulate the use of recent technologies of information and communication in legal proceedings while guaranteeing the protection of personal data. Furthermore, it aims to enhance the efficiency of the judicial system, ensure that legal cases are dealt with swiftly and within a reasonable time, and guarantee transparency and fairness of the justice system. This bill sets out a terminological framework defining the digital system, professional account, electronic address, electronic signature, and electronic payment. It also regulates the remote trial and even the use of remote acts of investigation and instruction. Such as the hearing and confrontation of parties¹.

• **The law n°43-22 on alternative penalties:**

One of the new features of this bill is the implementation of electronic surveillance. This mechanism relies on the use of innovative technologies to monitor the movement and mobility of the accused (article 35.10 of this law).

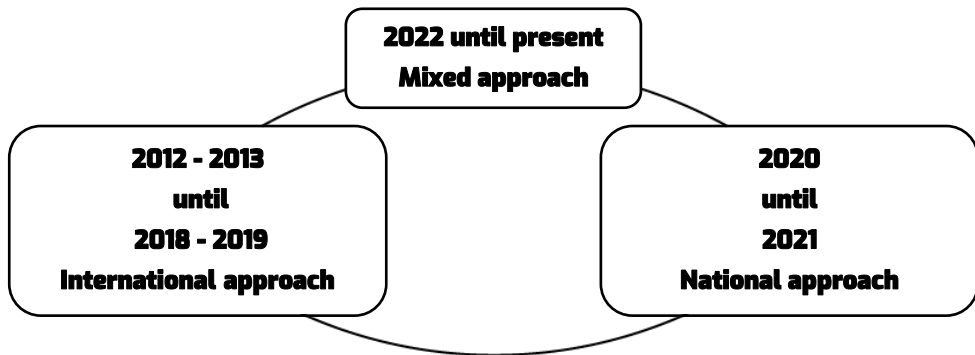
<http://www.cnej.ma/>. The National Council of Judicial Experts.

<https://www.mahakim.ma/>. This platform provides access to several services, such as electronic submission of summary statements, judicial announcements, issuance of an extract from the criminal record, submission of marriage authorization requests, appointment scheduling portal for national courts, electronic exchange platform with lawyers, call center service (NIDA), electronic fine payment service for traffic violations.

¹ Articles 24, 117, 133, 193-1, 325, 347-4 of this bill.

By way of analysis, it has been noted that new technologies have a relevant impact on the strengthening and development of the judicial system. Morocco, trying to take advantage of technology, has improved its approach to adopting advanced technologies and AI, following several phases.

Chart n°2: various approaches to integrating technology in the judicial system.



Phase I overview: The Moroccan initiative to open up to the digital domain didn't take off until 2012 and 2013, although before then there was a considerable trend in scientific research into AI¹. However, from a legislative and strategic point of view, Morocco only turned on the light bulb when it drew up its charter for the reform of the justice system. Thus, as we have already seen, the digitalization of the justice system was initially aimed at bringing the country into line with international requirements and following in the footsteps of other countries. Also, this digital transformation takes into account economic considerations, based on the need to promote investment.

Phase II overview: Due to the spread of the covid-19 pandemic, Morocco has moved towards the digitalization of judicial procedures, so we have resorted to technology to avoid the suspension of justice. As long as the concern is national, the legislation applied digitalization without taking any prior concerns into account. Yet, this helped to identify the challenges of technology and AI in such a sector.

Phase III overview: As Morocco is already experiencing friction with new technologies, it has begun to take into account that AI and advanced technologies are both a development factor and an undeniable source of risk.

¹ See: OECD.AI (2023), visualisations powered by JSI using data from OpenAlex., accessed on 10/7/2024, www.oecd.ai.

2.2. The right to a fair trial within algorithmic justice

Currently, in its action plan for the next years (2022-2025), the priority of the **CEPEJ** is to accompany States and Courts in a successful transition towards digitalization of justice in line with European standards and particularly Article 6 of the European Convention of Human Rights¹. Given Morocco's involvement in this action plan, it is incumbent upon the country to guarantee the protection of fundamental rights that may be jeopardized by the intervention of advanced technologies. To provide more clarity, specific focus should be placed on upholding these rights, particularly those enumerated in Article 6. This includes:

- **The presumption of innocence**

According to paragraph 2 of the Article 6 of the European Convention of Human Rights, *"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law"*. Although this article provides an indispensable guarantee of a fair trial, it overburdens the accusers' lawyers with proving the contrary. The detainee's protection is privileged here, as he is the only person subject to penalty that is often a custodial sanction. Such special attention is not implemented unless it is strongly justified, firstly by the assumption of possible innocence, and secondly by the conviction of guilt if it is established.

In practice, taking this principle into consideration is quite straightforward, given its clear scope in a classical trial. But would the same be true in an algorithmic trial?

The answer is, unfortunately, perplexing. If we take the example of the use of algorithmic evaluation systems to determine possible recidivism, it's obvious that, while this process facilitates the judicial handling of criminal cases, it clearly undermines the presumption of innocence, since the person will be deemed capable of re-offending despite the lack of material evidence to support such an intention (the commission of an offence is approached to an individual even before it has necessarily been committed).

¹ European Commission for the Efficiency of Justice (CEPJ). (2021), 2022–2025 CEPEJ Action Plan: Digitalization for better justice, December 2021, p2. Available online : <https://rm.coe.int/cepej-2021-12-en-cepej-action-plan-2022-2025-digitalisation-justice/1680a4cf2c>. Accessed on: 14/07/2024, 09h49pm.

- **The independence of the judiciary**

Regarding paragraph 1 of article 6 of ECHR “... *everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*”. The independence of judges is now a key focus of attention, as a guarantee of a more ethical judicial system. Public policy is currently increasingly concerned with this issue, and a number of initiatives have been launched to effectively implement this principle. A recent code of judicial ethics demonstrates a well-founded commitment to making the justice system fairer and, above all, more moral. The code’s provisions deal more closely with independence, impartiality and neutrality of judges. These give an outline of the situations and acts that may give rise to violation of such procedural requirements. However, what is inevitably overlooked is how these obligations can be transgressed when AI is used.

In this respect, according to article 5 of the Judicial Deontology Code “the *magistrate exercises his judicial functions in an independent manner, based on an appreciation of the facts in order to ensure the fair enforcement of law, free from all influences, temptations, pressures, threats, direct or indirect interference from any party and for any reason whatsoever*”¹. While the use of AI techniques to evaluate judicial decisions previously handed down by other judges, exerts a certain pressure on judges how find themselves influenced by the orientation of their colleagues.

- **Bias and discrimination**

The problem of discrimination was one of the earliest manifestations of the risks associated with AI use in the judicial system, particularly when it brought into question equality between litigants. From this point of view, AI systems can, in certain circumstances, lead to prejudiced policing, surveillance via AI software produces a focus on specific areas where the possibility of offences being committed is strongly presumed, so investigators prioritize one area above another and neglect other areas where offences may be occurring².

To sum up, automated judicial processes lead to various challenges, for respecting, at first sight, human rights involving access to justice, public hearing within a reasonable time, protection of personal data, motivation of decisions, etc.

¹ Article 5 of the Judicial Deontology Code, June 2022, p29.

² See : Završnik A, “Criminal justice, artificial intelligence systems, and human rights”, ERA Forum (2020) 20:567–583. P 575.<https://doi.org/10.1007/s12027-020-00602-0>.

Consequently, this highlights the complexity of a direct involvement of new technologies in such a sector.

3. Discussion and conclusion:

Certainly, the use of technology to improve the efficiency and speed of the judiciary is not a recent discovery, revealing an initial attempt at such an option.

Perfection, even if it is a goal far from being achieved with efficiency, has been the subject of many strategies and attempts to bring new tools to the judicial system. Thus, as justice is the key to the stability of society, it must regularly prove its flexibility in the face of diverse types of storms. Therefore, AI involvement has been able to assess both requirements, above all by recognizing this form of advanced technology as a factor of development and, at the same time, as a source of risk.

At first sight, AI was considered an amiable remedy, devoid of any litigious character, to guarantee swift and efficient justice. However, due to a lack of experience in the digital field, the integration of AI has proved limited.

In Morocco, as well, the early pioneering stages of this technology were characterized by a purely international concern. “Ensuring legal and judicial security and encouraging investment”, and “adopting online dispute resolution”, are the targets set by Morocco in its preliminary phase, reflecting the international interests in adopting a trend towards digitalization of the judicial sector. The secondary phase is where the level of commitment seems both deeper and more serious. Being in an extremely challenging pandemic period, priority has been given to national interests. Finally, the interaction between these two phases has given rise to the emergence of the third phase of AI adoption, a period that has lasted until the present day, revealing the duality of such a technology. In this case, introducing technology into the justice system, for better functioning of the public service of justice, requires being able to take advantage of AI, while anticipating the adverse effects it may have.

AI is not only a beneficial tool but also an opportunity to violate many fundamental rights. At the core of algorithmic justice, there are a few concerns regarding the lack of transparency of the algorithmic models. This has consequences for both the effectiveness and accountability of these models, if for example in the case of predictive policing, police officers do not comprehend why these predictive algorithms derive certain outcomes or how their patrol routes are

configured¹. Furthermore, there is the challenge of protecting personal data. As an example, in the context of predictive justice, the data collection process requires reference not only to court judgments, but also to data from other sources, including experts' reports, pre-trial interrogatories, information accessible online from social networks, websites, etc., and information from public databases often accessible on the web². Miscarriages of justice are also added to the rubric of AI issues, as machine liability is currently the subject of debate and legislative loopholes. Thus, in the case of "digital trial" the probability of fault exists, but the response to remedy it gives rise to practical and legislative constraints, leading to questions as to who should be held liable (the state, the machine, or the machine owner).

In sum, according to the strategies developed by Morocco, as well as the texts in the process of being adopted, we can conclude that Moroccan legislation favors the exceptional use of technological tools in the procedural phase. It promotes the digitalization of certain procedural aspects, such as notification, but retains the classic essence of the trial by introducing the use of remote trials if circumstances warrant, including remote hearings and all acts of investigation and instruction (article 595-11 of the draft bill n° 27-21 on the digitalization of judicial procedures). Moreover, in certain comparative legislations, digital justice is more generalized than limited to certain procedural acts. The most striking example is French legislation. In the current state of French law, videoconferencing covers all stages of the criminal trial, from the police investigation to the sentence execution phase, and during the trial phase for hearings of witnesses, civil parties, and experts, so that it is excluded only as a means of bringing the accused or defendant before the trial court³.

In fact, during the pandemic phase, Morocco opted for the generalization of digital justice, but by reviewing both aspects (advantages and disadvantages), it instituted a new vision for this field, one that reflects Morocco's hesitation in favor of e-justice and AI. Indeed, this hesitation stems not only from the risks already discussed but also from several constraints of a different nature, such as the

¹ Meijer A & Wessels M. (2019) Predictive Policing : Review of Benefits and Drawbacks, International Journal of Public Administration, 42 :12. P 1037., DOI : 10.1080/01900692.2019.1575664.

² Benyekhlief K, Zhu J (2018). « Intelligence artificielle et justice : justice prédictive, conflits de basse intensité et données massives », Les cahiers de la propriété intellectuelle, Vol 30, n°3, P810-811.

³ ATMANI Kh, Op.cit. p 196.

insufficiency of managers specialized in IT, the lack of training in this field for judicial personnel, etc. Furthermore, despite the adoption of several bills on the digitalization of justice, their implementation is still behind schedule, which legitimizes the hesitation of the Moroccan judicial framework in favor of the widespread integration of AI.



The Moroccan judicial system in the era of Law No. 38-15¹



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Abstract:

The article explores Morocco's judicial system, which plays a crucial role in maintaining law and order. It covers both regular and specialized courts. Regular courts, like the ones at first instance, appeal, and cassation levels, handle most legal matters. They ensure fair trials and consistent legal rulings. Specialized courts focus on specific areas like commerce and administration, ensuring expertise in those fields.

Additionally, it provides an overview of the areas of application of Law No. 38-15, including the competence of ordinary and specialized courts in adjudicating various legal matters. It concludes by acknowledging the challenges faced by the Moroccan legal system and the prospects for improvement and development, including enhancing access to justice, ensuring judicial independence, legal reform, promoting legal awareness, protecting human rights.

Introduction:

The judicial system refers to the network of courts, judges, and legal institutions responsible for interpreting and applying the law to administer justice within a society. It encompasses the structure and processes through which legal disputes are resolved, criminal offenses are prosecuted, and individuals' rights are protected.

In recent years, the Moroccan judicial system has undergone significant transformations, driven by the implementation of Law No. 38-15. This pivotal legislation represents a milestone in Morocco's legal evolution, aiming to modernize and enhance the efficiency, fairness, and transparency of its judiciary. Enacted in 2022, Law No. 38-15 addresses various aspects of the judicial system,

¹ –(Ce travail est réalisé avec le soutien du CNRST dans le cadre du Programme « PhD-Associate Scholarship – PASS »)

including the organization of courts, the appointment and responsibilities of judges, procedural reforms, and measures to strengthen the rule of law.

The introduction of Law No. 38-15 reflects the Moroccan government's commitment to advancing legal reforms and promoting the principles of justice and equality. With its comprehensive scope, the law seeks to address longstanding challenges within the judicial system, such as delays in court proceedings, insufficient access to justice, and concerns regarding judicial independence and accountability.

Throughout this essay, we will delve into the multifaceted implications of Law No. 38-15 on the Moroccan judicial landscape. We will analyze its key provisions, assess its impact on legal proceedings and jurisprudence, and evaluate its effectiveness in fostering a more transparent, efficient, and equitable legal system.

The importance of the judicial system in a society cannot be overstated. Here are several key reasons why the judicial system is essential:

- 1) **Upholding the Rule of Law:** The judicial system plays a fundamental role in ensuring that laws are interpreted and applied consistently and fairly. It serves as a check on the power of the government and individuals by holding them accountable to the law. This helps maintain order and stability within society and prevents arbitrary actions.
- 2) **Protection of Rights and Liberties:** One of the primary functions of the judicial system and of the constitution is to safeguard the rights and liberties of individuals. Courts adjudicate disputes, enforce contracts, and protect citizens from violations of their constitutional and legal rights. This includes protecting civil liberties, such as freedom of speech, religion, and assembly, as well as ensuring due process and equal protection under the law.
- 3) **Dispute Resolution:** The judicial system provides a forum for the peaceful resolution of disputes between individuals, organizations, and the government. By offering a formal process for adjudicating conflicts and enforcing legal decisions, courts help maintain social order and stability. This encourages respect for the law and discourages vigilantism and the use of violence to settle disputes.
- 4) **Promoting Justice and Equality:** Courts play a crucial role in promoting justice and equality within society. They provide an impartial forum where all

individuals, regardless of their wealth, social status, or political influence, can seek redress for grievances and have their rights protected. By applying the law fairly and consistently, courts contribute to the notion of equal justice for all.

- 5) Safeguarding Democracy: The independence of the judiciary is essential for the functioning of a democratic society. An impartial and independent judiciary serves as a check on the executive and legislative branches of government, ensuring that they act within the bounds of the law and respect the rights of citizens. By upholding the rule of law and protecting constitutional principles, the judicial system helps safeguard democracy and prevent the abuse of power.

By examining the practical applications and outcomes of Law No. 38-15, we aim to provide insights into the ongoing transformation of the Moroccan judiciary and its implications for the rule of law and societal development. Which allows us to formulate the following problem statement:

"What impact has the implementation of Law No. 38-15 had on the evolution of the Moroccan judicial system and the protection of justiciable fundamental rights?"

The topic will be structured into two main parts:

Part 1: components of the judicial system in Morocco.

Part 2: overviews of law no 38-15.

Part 1: components of the judicial system in Morocco

The Moroccan judicial system is a cornerstone of the country's legal framework, providing a vital mechanism for the administration of justice and the protection of rights. Comprising a diverse array of courts and legal institutions, it plays a pivotal role in upholding the rule of law and ensuring accountability within society. From the local courts of first instance to the esteemed Court of Cassation, each component of the system serves a unique function in adjudicating disputes, interpreting laws, and safeguarding the rights of citizens.

Moreover, the presence of specialized courts, such as commercial and administrative courts, underscores the nuanced nature of Morocco's legal landscape, catering to the specific needs of various sectors. In this part, we delve into the key components of the Moroccan judicial system, exploring their roles, functions, and significance in ensuring access to justice and maintaining the integrity of the legal system.

a. Structure and hierarchy of ordinary courts:

The judicial system is based on a complex structure composed of various courts responsible for the application of the law. In principle, it includes:

- Courts of first instance;
- Courts of appeal;
- The Court of Cassation.

1. The Courts of First Instance (including local justice):

The courts of first instance represent an essential link in the judicial system, providing the initial stage of the judicial process in many cases. The court of first instance may have general jurisdiction (courts of first instance with general jurisdiction generally include a section dedicated to family law, as well as civil, criminal, real estate, commercial, social chambers, and a chamber for the settlement of local disputes, depending on the nature and scope of the cases to be handled¹), general jurisdiction including specialized sections for commercial justice and

¹ Article 44 of Law No. 38-15

administrative justice, and the typical/classified court of first instance¹ that may be established in accordance with the provisions of Article 48 of Law No. 38-15².

An example of a typical court of first instance is that of Casablanca; a court of first instance for social, civil, and criminal matters. According to Article 42 of Law No. 38-15 concerning judicial organization; The organization of the court of first instance includes:

- A president ;
- A public prosecutor;
- One or more vice-presidents and judges;
- One or more deputy public prosecutors;
- The registry;
- The secretariat of the general prosecutor's office.

Furthermore, according to the provisions of Article 44 of Law No. 38-15, in the territorial jurisdiction of the court of first instance, one or more judicial centers may be established, the seats and territorial jurisdictions of which are determined by decree. This decision is made after consultation with the Superior Council of the Judiciary, the Public Ministry (prosecutor), and the relevant professional bodies.

2. The courts of Appeal:

The Courts of Appeal are second-instance courts that hear appeals seeking partial reform or reversal of judgments rendered by first-instance courts (the Court of First Instance)³.

A Court of Appeal is composed of:

¹ The courts of first instance may be classified according to the type of cases they are competent to handle, including civil courts of first instance, social courts of first instance, and criminal courts of first instance. These courts may be established, when necessary, within the limits of the mentioned classification, with defined specific competencies. Classified courts of first instance are created, and their seats as well as their territorial jurisdictions are determined by decree, after consultation with the Superior Council of the Judiciary, the Public Ministry, and the relevant professional bodies.

²Article 43 of Law No. 38-15

³ Legal dictionary available online on the website: Court of Appeal - Definition - Legal (Dictionary_dictionnaire-juridique.com) consulted on February 26, 2024 at 8:00 PM. Cour d'appel - Définition - Dictionnaire juridique (dictionnaire-juridique.com)

- A Chief President;
- A General Prosecutor ;
- One or more Vice-Presidents of the Chief President and counselors;
- One or more Deputy General Prosecutors;
- The registry;
- The secretariat of the general prosecutor's office.
- Each Court of Appeal is divided into judgment panels designated as "Chambers." Each of them is chaired by a "Chamber President."¹.

3. The Court of Cassation:

The Moroccan Court of Cassation was established following independence by Dahir No. 1-57-223 dated September 27, 1957, known as the "Supreme Court," until the promulgation of the new Moroccan Constitution on July 29, 2011.

According to Article 84 of Law No. 38-15, the Court of Cassation, as the supreme judicial authority of the kingdom, ensures the correct application of the law and the unification of jurisprudence and law.

It should be noted that the Court of Cassation is fundamentally a court of law and does not constitute a third level of jurisdiction; it verifies whether the lower court judges have correctly applied the rules of law in the case before them².

The Court of Cassation comprises a Chief President and presidents of chambers: The Civil Chamber (the first chamber), the Commercial Chamber, the Criminal Chamber, the Social Chamber, the Administrative Chamber, the Personal Status Chamber, and the Land Chamber. Like lower courts, the Court of Cassation also includes judges, a general prosecutor, assisted by deputy prosecutors, a registry, and a secretariat of the general prosecutor's office³.

¹ Ibid.

² Article 85 of Law No. 38-15

³ Mohamed Jalal ESSAID, INTRODUCTION TO THE STUDY OF LAW, published by the Mohamed Jalal ESSAID Foundation for Legal Reform and Socio-Economic Development with the support of the Education and Culture Foundation of the Popular Bank Group's, 5th edition, 2013-2014; see also Articles 84 and 85 of Law No. 38-15.

b. Structure and hierarchy of specialized courts:

In other side, Morocco relies on specialized, this includes Commercial Courts, which focus on commercial disputes, and Administrative Courts, which deal with cases involving government actions and decisions.

- Administrative courts
- Commercial courts

1. Administrative courts:

The Administrative Court of First Instance is composed of¹:

- A president and one or more deputy presidents and judges;
- One or more royal commissioners for defending the law and rights, appointed from among the court's judges in accordance with the procedures outlined in the first section of the second chapter of the second section of the first chapter of this law;
- The chief registrar, as well as other officials of the registry's office.

According to The article 63 of Law no. 38-15, each administrative court of first instance may include chambers, each chamber consisting of one or more panels, depending on the types of cases brought before it. Each chamber may adjudicate all cases brought before the court.

Each chamber or panel of the Administrative Court of First Instance is headed by a judge and their deputy, appointed according to the procedures specified in the first section of the second chapter of the second section of the first chapter of this law.

Among the judges of the Administrative Court of First Instance, one or more judges are appointed to carry out enforcement duties, and any judge appointed for another mission within the court, in accordance with the procedures specified in the first section of the second chapter of the second section of the first chapter of this law.

All chambers of the Administrative Court of First Instance operate under the supervision of the court president.

¹ Article 62 of Law NO. 38-15.

With regard to the authorities delegated to the court president by law, the Administrative Court of First Instance holds its sessions and issues its judgments in open court, consisting of three judges, including the president, unless the law provides otherwise, with the presence of a registry¹.

The attendance of the royal commissioner² for defending the law and rights at the sessions is mandatory, and required.

The Administrative Court of Appeal is composed of³:

- A Chief Judge, along with one or more deputies to the Chief Judge and counselors;
- One or more commissioners appointed from among the counselors of the court to defend the law and the rights, according to the provisions outlined in the first branch of the second chapter of the second section of this law;
- The head of the registry, and staff of the registry.

Each administrative appellate court includes chambers, and each chamber consists of one or more bodies, depending on the types of cases presented to it. Each chamber may decide on all cases brought before the court⁴.

Each chamber or body of the Administrative Court of Appeal is chaired by a counselor appointed, along with their deputy, according to the provisions outlined in the first branch of the second chapter of the second section of this law. All chambers of the Administrative Court of Appeal operate under the supervision of the Chief Judge⁵.

Article 82 provides that, the Administrative Court of Appeal holds its sessions and issues its decisions in open session, composed of three counselors, including the president, unless otherwise provided by law, with the assistance of a registrar.

¹ Article 64 of Law no 38-15.

² According to the article 64 of the Law no 38-15; The royal commissioner shall express his opinions independently in writing, and he may clarify them orally to the judging body during the session, whether concerning the facts or the legal principles applied to them.

³ Article 80 of Law no 38-15.

⁴ Article 81 al 1 of Law no 38-15.

⁵ Article 81 al 2 of Law no 38-15.

The presence of the commissioner¹ appointed to defend the law and the rights in the sessions is mandatory and obligatory.

2. Commercial courts:

The Commercial Court of First Instance is composed of²:

- A President;
- A Public Prosecutor;
- One or more Vice-Presidents of the President and judges;
- One or more Deputy Public Prosecutors and their assistants;
- The chief registrar and the head of the public prosecutor's office, as well as other officials of the registry's office and the public prosecutor's office.

According to Article 59 of Law no 38-15, every commercial court of first instance has the option to establish chambers, with each chamber possibly comprising one or more panels tailored to the types of cases presented. Additionally, each chamber holds the authority to handle all cases brought before the court.

According to the same article, each chamber or panel of the commercial court of first instance is headed by a judge and their deputy, appointed in accordance with the procedures outlined in the first section of the second chapter of the second section of the first chapter of The law no 38-15. Among the judges of the commercial court of first instance, one or more judges are appointed for execution, one judge is appointed for commercial registry matters, and one or more judges are appointed for cases involving contractor difficulties. Any judge appointed for another mission within the court is also designated based on the procedures specified in the first section of the second chapter of the second section of the first chapter of this law. All chambers of the commercial court of first instance operate under the supervision of the court's president.

¹The commissioner appointed to defend the law and the rights expresses their opinions independently in writing, and may orally clarify them to the judging body during the session, whether regarding facts or the legal principles applied to them. Parties have the right to obtain a copy of the written conclusions of the commissioner appointed to defend the law and the rights. The commissioner appointed to defend the law and the rights does not participate in the deliberations.

² Article 58 of Law no 38-15.

According to Article 60 of the same law, taking into account the competencies granted to the court president by law, the commercial court of first instance holds its sessions and issues its judgments in open court, comprising three judges, including the president, unless otherwise provided by law, and in the presence of a court clerk. The attendance of the public prosecutor's representative at the sessions is optional unless otherwise required by law, and it becomes mandatory when either party is present.

The Commercial Court of Appeal is composed of¹:

- A Chief Judge;
- A Public Prosecutor;
- One or more deputies to the Chief Judge and counselors;
- One or more deputies to the Public Prosecutor and the remaining deputies;
- The head of the registry and the head of the public prosecutor's office, and other staff of the registry and the public prosecutor's office.

According the article 77 of the Law no 38-15, each commercial court of Appeal includes chambers and each chamber consists of one or more juries, depending on the types of cases presented to it. Each chamber may decide on all cases brought in front of the court.

Each chamber or jury of the Commercial Court of Appeal is chaired by a counselor appointed, along with their deputy, according to the provisions.

All chambers of the Commercial Court of Appeal operate under the supervision of the Chief Judge nominate president of court.

Article 78 provides that the Commercial Court of Appeal holds its sessions and issues its decisions in open session, composed of three counselors, including the president, unless otherwise provided by law, with the assistance of a registrar. The presence of the public prosecutor's representative in the sessions is optional unless otherwise provided by law, and their presence is mandatory if they are an original party.

¹ Article 76 of the Law no 38-15.

Part 2: overviews of law no 38-15

Law No. 38-15 represents a significant milestone in the evolution of the Moroccan legal system. Enacted to reform and modernize the judiciary, this law has brought about fundamental changes aimed at enhancing the efficiency, independence, and accessibility of the legal system. By providing an overview of Law No. 38-15, we can gain insight into its key provisions, objectives, and implications for the Moroccan legal system.

This introductory overview sets the stage for a deeper exploration of the law's impact on the administration of justice, the protection of rights, and the promotion of the rule of law in Morocco.

a. Fundamental principles of law no 38-15

The Law No. 38-15 is underpinned by several fundamental principles, these principles not only shape the interpretation and application of the law but also uphold the values of justice;

In this regard, the Charter for the Reform of the Judicial System was the result of a year-long effort by the "High Authority for National Dialogue on Judicial Reform," established by His Majesty the King on May 8, 2012. The work of this body initiated a national dialogue on judicial reform, allowing for an examination of the reality of the justice system, its strengths, and its weaknesses.

Therefore, Law No. 38-15 on judicial organization is part of this significant national reform, as it integrates constitutional principles¹ into the text of the law. It also aims to equip the judicial system with all necessary guarantees and principles to ensure equality and safeguard the rights of parties to the legal process, both prior to the initiation of proceedings and during the course of such proceedings².

¹In other words, the implementation of constitutionally established safeguards for the independence of the judiciary, namely the recommendations of the Authority, aims to establish a balanced judicial system in harmony with constitutional provisions and international conventions.

²Abdelkarim Al-Taleb. The Moroccan Judicial Organization in Light of Law 38-15. Library el maarefa. Seventh Edition. 2023. Pages 23 and 24.

1. The right to access to a competent judge, an independent and impartial court.

Generally, parties have the right to access to a competent judge, an independent, and impartial court.

In light of the foregoing, it is evident that the separation of powers is of paramount importance for strengthening the Moroccan judicial system. In this regard, the very foundation of the Kingdom's constitutional regime rests on the separation and balance of powers. To materialize this principle in practice, Article 107 of the Constitution provides that the judiciary is independent of the legislative and executive branches, and the King guaranteeing this independence. In case of non-compliance with this principle, Articles 295 and 298 of the Code of Criminal Procedure allow for the disqualification of judges, either *ex officio* or at the request of one of the parties involved as an example.

The disqualification of judges is reinforced by Articles 39, 40, and 41 of Law No. 38-15 relative to the judicial organization. Only sitting judges (whether in a single formation or in a collegiate formation) can be disqualified, while public prosecutors cannot be disqualified according to Article 274 of the Code of Criminal Procedure. But according to article 299th of the code of civil procedure; The causes for disqualification applicable to judges also apply to public prosecutors when they are joined parties; they are not subject to disqualification when they are principal parties¹.

2. individual adjudication or collective adjudication²:

The principle of collegiality in a judicial system offers the following advantages:

- Justice rendered by multiple individuals is more considered, thereby reducing the error rate in judgments.
- Collegiate formation ensures judicial impartiality and serves as a barrier against the possibility of corruption.

The Court of Cassation is a collegiate jurisdiction where hearings are held, and judgments are rendered by five magistrates. In some cases, this collegiality may be

¹ Article 299 of the code of civil procedure.

² panel of judges (collegial judges) and single judge (sole judge).

reinforced when the judgment is referred to a formation consisting of two chambers convened together¹.

According to the article 10 of law no 38-15; The primary courts rely on individual adjudication or collective adjudication depending on the cases specified by law, taking into account the jurisdiction granted to the president of the court pursuant to the applicable legislative provisions. Collective adjudication is employed, unless the law provides otherwise, in commercial primary courts, administrative primary courts, specialized sections in commercial jurisdiction, specialized sections in administrative jurisdiction established within the primary courts, second instance courts. Collective adjudication is also employed in any case where the law mandates it.

3. The principle of double degree of jurisdiction:

The principle of double degree of jurisdiction provides that a judicial decision should be brought before another higher instance to affirm or overturn the initial decision. This involves discussing both points of law and facts. A jurisdiction that only rules on the law is exempt from the application of this principle².

Which means that a judicial error is always infinitely regrettable. In criminal, as an example, matters, its consequences are particularly fearsome as the freedom, honor, and assets of citizens are at stake. It is therefore natural that the Code of Criminal Procedure has surrounded the administration of criminal justice with the maximum guarantees and has opened effective avenues of recourse to litigants to enable them to have justice decisions that would, by mistake, infringe upon their rights, reformed.³

4. Open court session

The Civil Procedure Code for the year 1974 enshrines the principle of open court sessions in articles 43, 52, 345, and 375, as well as in Article 7 of the judicial organization. It mandates that judgments must be delivered in open sessions, whether at the primary or appellate stages, or in Court of Cassation. Given that the

¹ Article 10 of the Law no 38-15.

² Abdelkarim Al-Taleb. The Moroccan Judicial Organization in Light of Law 38-15. Library el maarefa. Seventh Edition. 2023. Page 30.

³ Bernard Bouloc, Haritini Matsopoulou, General Criminal Law and Criminal Procedure, 21st edition, published by Dalloz, 2018, page 593.

rules of civil procedure¹ are considered general law in procedural matters, the same principle applies to both commercial and administrative courts at both the primary and appellate levels.

Further emphasizing the importance of this principle, Article 11 of Judicial Organization Law No. 38-15 stipulates that in accordance with Article 123 of the Constitution, sessions shall be public, except in cases where the law provides otherwise.

Undoubtedly, the principle of open court sessions is a significant procedural mechanism established by the legislator to enhance protection for the rights of litigants and parties during lawsuits. It allows each party to observe how the proceedings unfold, providing transparency and clarity regarding the course of litigation, which may guide or inform the direction of their claims².

5. The unity of justice" and "specialized justice

"*The unity of justice*" emphasizes the cohesive operation of the judiciary as a single, integrated system, regardless of the diversity of legal issues or the specialized nature of certain cases. It signifies that all courts, from lower-level tribunals to higher appellate courts, are interconnected and operate under the same legal framework. This principle ensures uniformity in the interpretation and application of the law throughout the judicial hierarchy³.

On the other hand, "*specialized justice*" involves the creation of specialized courts or chambers within the judicial system to handle specific categories of legal disputes. These specialized courts are staffed with judges who possess expertise in the relevant field, such as commercial law, administrative law, or family law. By concentrating on particular areas of law, these courts can develop a deeper

¹ Article 43 of the Civil Procedure Code states: "Sessions shall be public unless otherwise provided by law."

² Abdelkarim Al-Taleb. The Moroccan Judicial Organization in Light of Law 38-15. Library el maarefa. Seventh Edition. 2023. Page 36.

³ Abdelkarim Al-Taleb. The Moroccan Judicial Organization in Light of Law 38-15. Library el maarefa. Seventh Edition. 2023. Page 41.

understanding of complex legal issues and apply specialized procedures to expedite the resolution of cases¹.

Together, these principles aim to balance the need for a unified legal system with the advantages of specialized expertise and procedural efficiency in addressing diverse legal matters. While the unity of justice ensures consistency and coherence in legal decisions, specialized justice allows for tailored approaches to different areas of law, ultimately enhancing the overall effectiveness and fairness of the judicial process.

6. The principle of free access to justice

The principle of free access to justice is a cornerstone of democratic societies, embodying the fundamental right of individuals to seek legal recourse and protection without encountering financial obstacles within the judicial system. This principle underscores the belief that justice should be available to all, irrespective of one's economic standing. It encompasses several key elements aimed at facilitating access to justice, including the waiver of court fees for those unable to afford them, the availability of legal aid services to assist individuals in navigating legal processes, and the guarantee of fair and impartial proceedings².

By ensuring that everyone can exercise their rights and have their grievances addressed in a court of law, free access to justice plays a crucial role in upholding the rule of law, fostering equality before the law, and promoting societal cohesion by ensuring that justice is accessible to all members of society.

b. Areas of application of law no 38-15:

The Law No. 38-15 has a broad impact on the functioning of the legal system in Morocco, influencing various aspects of court operations and legal proceedings. This law extends its reach to multiple facets of *judicial* processes and procedures. This section delves into the specific domains affected by Law No. 38-15 and elucidates the alterations it brings about. By comprehending the scope of its

¹ Abdelkarim Al-Taleb. The Moroccan Judicial Organization in Light of Law 38-15. Library el maarefa. Seventh Edition. 2023. Page 43 and 44.

² Abdelkarim Al-Taleb. The Moroccan Judicial Organization in Light of Law 38-15. Library el maarefa. Seventh Edition. 2023. Page 43 and 44.

application, we gain insight into the transformative role of this law in shaping the Moroccan legal. Taking into account their seats and numbers¹.

1. The competence of ordinary courts:

The competence of ordinary courts refers to their legal authority or jurisdictional capacity to adjudicate on a wide range of legal matters within their general jurisdiction. These courts, also known as general or regular courts, have the authority to hear and decide cases across various areas of law, including civil, criminal, administrative, and commercial matters. Their jurisdiction is typically defined by law and extends to cases that are not specifically designated to specialized courts.

The Jurisdiction	The Competence	Number of Courts
The first instance court (primary court)	According to the Article 54 of Law No. 38-15, the primary courts, including those classified, have jurisdiction to consider all cases for which jurisdiction has not been explicitly assigned to another judicial authority, considering them to be the general jurisdictional authority. They issue their judgments initially and definitively, or initially with the right of appeal, in accordance with the provisions of the Code of Civil Procedure ² and the Code of Criminal Procedure ³ or other legal texts, as appropriate.	The judicial map includes 88 courts of first instance. And The number of judicial centers affiliated with the courts of first instance is determined to be 83.
The court of Appeal	As a court of second instance, the Courts of Appeal examine cases that have been decided at first instance by the courts of first instance, and hear on appeal the orders issued by their presidents as well as all other cases that they are competent to hear under the Code of Civil Procedure, and within the framework of criminal procedure, they are	23 courts of second instance. Additionally, the judicial map includes specialized sections for financial crimes

¹ The implementation of Decree No. 2.23.665 regarding the determination of the judicial map of the Kingdom entered into force upon its publication in the latest issue of the Official Gazette on December 28, 2023.

This decree aims to implement the royal directives calling for bringing the judiciary closer to citizens and activating the recommendations of the Charter for the Reform of the Justice System. It seeks to provide justice characterized by quality and transparency, based on simplifying and expediting procedures to achieve judicial efficiency and meet the real needs of the justice system. Read more: <https://al3omk.com/898777.html>

² Article 11 to article 30 of civil procedure code.

³ Article 251 to article 285 of criminal procedure code.

	competent to hear crimes at first instance and on appeal before their appellate criminal chamber ¹ .	in appellate courts, totaling 4, in CASABLANCA - FES – RABAT AND MARRAKESH. And one section for terrorists crimes in appellate court in RABAT.
The Court of Cassation	The jurisdiction of the Court of Cassation is manifested in monitoring the application of the law by the trial courts, whether it is related to laws of form or laws of substance, and this jurisdiction is defined by the texts of the Civil Procedure Code, the Criminal Procedure Code, the Administrative Appeals Courts and Administrative Courts Code, the Commercial Appeals Courts and Commercial Courts Code, and other texts. In this capacity, the Court of Cassation hears the following cases Appeals against appellate and final judgments issued by courts of appeal and other courts at all levels². • Requests for the annulment of decisions issued by administrative authorities on the grounds of abuse of power. • Appeals against acts in which judges exceed their powers. • Deciding conflicts of jurisdiction between courts above which there is no common supreme court other than the Court of Cassation. • Requests for review of criminal or disciplinary judgments within the conditions stipulated in the Criminal Investigation Law. • lawsuits against judges and courts other than the Court of Cassation • Cases questioning the impartiality of the referee. • Withdrawal of proceedings from a court for reasons of public security. • Requests for extradition abroad.	The Court of Cassation, headquartered in RABAT.

¹ Read more in: court of appeal available in this link: [محاکم الإستئناف](#) – Ministère de la Justice

² Read more in: the court of cassation :

<https://justice.gov.ma/%d9%85%d8%ad%d9%83%d9%85%d8%a9-%d8%a7%d9%84%d9%86%d9%82%d8%b6/>

2. the competence of specialized courts:

The competence of specialized jurisdictions refers to the legal authority or specific jurisdictional capacity granted to these courts to handle certain categories of cases or issues within their area of expertise. These courts are typically established to address the particular needs of specific areas of law, such as commercial law, and administrative law.

Jurisdiction	The competence	Number of courts
Commercial court (primary)	The commercial courts have material competence to hear ² : 1 - Actions related to commercial contracts; 2 - Actions between merchants arising from their commercial activities; 3 - Actions related to negotiable instruments; 4 - Disputes among partners of a commercial company; 5 - Disputes concerning business assets. Matters related to traffic accidents are excluded from the jurisdiction of commercial courts. A merchant may agree with a non-merchant to submit disputes arising from the merchant's activities to the commercial court. The parties may also agree to submit disputes to arbitration and mediation procedures in accordance with the provisions of articles 306 to 327-70 of the Civil Procedure Code. according to article 10 of the same law, territorial jurisdiction ³ lies with the court of the defendant's real	Commercial court (primary) are 10 tribunals.
Commercial court of appeal¹		Commercial court of appeal are 4 courts

¹ These courts shall have jurisdiction to hear appeals against judgments issued by the Commercial Court within fifteen (15) days from the date of service of the judgment in accordance with the procedures set forth in Article 134 et seq. to Article 141 of the Code of Civil Procedure, subject to the second paragraph of Article 8 of this Code. The appeal article shall be submitted to the registry of the Commercial Court, whose registry department shall file it within fifteen (15) days from the date of its submission to the registry department of the Commercial Court of Appeal. Read more in:

محاكم الاستئناف التجارية – Ministère de la Justice

² Article 5 of the Dahir No. 1-97-65 of 4 Chaoual 1417 (12 February 1997) promulgating Law No. 53-95 establishing commercial courts.

³ Article 11 of the Law no 53-95 provides that: Notwithstanding the provisions of article 28 of the Code of Civil Procedure actions are brought:

– in corporate matters, the Commercial Court of the place where the of the company's registered office or branch;

	or elected domicile or elected domicile of the defendant. If the defendant is not domiciled in Morocco, but has a residence jurisdiction lies with the court of that residence. Where the defendant has neither domicile nor residence in Morocco may be brought before the court of the domicile or residence of the of the plaintiff, or of one of them if there are several. If there are several defendants, the plaintiff may choose to bring the case before the court of the domicile or residence of one of them. According to the article 79 of law no 38-15: The Commercial Court of Appeals is competent to hear appeals of judgments issued by the Commercial Courts of First Instance, and in all other cases that it is competent to hear under the Code of Civil Procedure or by other legal provisions.	
Administrative court (primary) Administrative court of appeal	The administrative courts are governed by the law 41-90 And the courts of appeal are governed by the law no 80-03. The administrative courts include both administrative tribunals and administrative courts of appeal. The administrative courts are empowered to hear disputes relating to administrative contracts and electoral disputes, as well as actions for compensation for damage caused by the acts or activities of public bodies¹. The Administrative Court of Appeals is competent to hear appeals of judgments issued by the administrative courts of first instance, and in all other cases that it is competent to hear under the Code of Civil Procedure or other legal provisions².	Administrative court (primary) are 10 tribunals. Administrative court of appeal are 4 courts

- in cases of business difficulties, the Commercial Court before the Commercial Court of the place where the trader has or the company's head office;
- for precautionary measures, the commercial court in whose territorial jurisdiction the object of the measures is located. measures.

¹ Euro Med Justice Program, “La situation générale actuelle du Maroc” Seminar I: Judicial system, Hicham EL BLAOUI (Deputy King's Attorney at the Court of First Instance – Meknes), 2007.

² Article 83 of the Law no 38-05.

Conclusion:

In summary, the implementation of Law No. 38-15 has reshaped the Moroccan legal landscape, aiming to enhance judicial efficiency and accessibility. Despite notable progress, challenges persist, including the need for further capacity building and ensuring judicial independence. Looking forward, the Moroccan legal system holds promising prospects for modernization and adaptation to societal needs. Emphasizing the importance of Law No. 38-15 in safeguarding fundamental rights and strengthening the rule of law is crucial for advancing justice and contributing to the country's development.

The Moroccan legal system faces several challenges and holds various perspectives for improvement and development:

- **Access to Justice:** Despite reforms, access to justice remains a challenge for many Moroccans, particularly marginalized groups and those in remote areas. There is a need to enhance the accessibility of legal services, including legal aid and representation, to ensure that all citizens can effectively exercise their rights.
- **Judicial Independence:** While efforts have been made to strengthen judicial independence, there are ongoing concerns about political interference and influence within the judiciary. Upholding the principle of judicial independence is essential for maintaining public trust and confidence in the legal system.
- **Legal Reform and Modernization:** The legal framework in Morocco is undergoing continuous reform and modernization to adapt to evolving societal needs and international standards. This includes updating laws, procedures, and institutions to enhance efficiency, effectiveness, and fairness in the administration of justice.
- **Legal Awareness and Education:** There is a need to improve legal awareness and education among the general population to empower individuals to understand their rights and obligations under the law. This can help prevent legal disputes and promote the rule of law within society.
- **Human Rights Protection:** Ensuring the protection of human rights and fundamental freedoms is crucial for the integrity of the legal system. Efforts should be made to strengthen mechanisms for safeguarding human rights, including the independence of oversight bodies and the effective implementation of international human rights standards.
- **Technological Integration:** Embracing technology in the legal sector can improve access to justice, enhance the efficiency of legal processes, and facilitate transparency and accountability. Investing in digital infrastructure and promoting e-government initiatives can streamline court procedures and improve service delivery.