المجلس الوطني لحقوق الإنسان
ⵓⵔⵔⵉⵎ ⵓⵏⵎⵙⵙⵓ ⵏ ⵜⵣⵔⴼⵓⵏ ⵏ ⵓⵎⵔⵓⵎ
Conseil national des droits de l'Homme

The Code of Military Justice
Dahir No. 1-56-270

Memorandum

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EXPLANATORY STATEMENT

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

The CNDH, pursuant to Article 13 of the said Royal Decree, also examines the compatibility of "laws and regulations in force with the international treaties relating to human rights and the international humanitarian law which the Kingdom has ratified or acceded to, as well as with the concluding observations and recommendations made by UN bodies on the reports submitted thereto by the Government".

The CNDH, under Article 15 of the same law, encourages and urges all government departments and public authorities concerned to ensure follow-up to the implementation of the concluding observations and recommendations issued by the human rights treaty bodies and other relevant international and regional institutions in fulfilment of the international commitments made by the Kingdom.

In accordance with Article 24 of the said Royal Decree, the CNDH submits for the High Appreciation of His Majesty the King "proposals and thematic reports on all matters that can contribute to better protection and defence of human rights".

2. As the National Dialogue on Justice Reform is an historic opportunity to build, on a collaborative basis, the fundamental principles of public policies for reforming this strategic sector, the National Human Rights Council seeks to contribute to public debate on judicial organization through this Memorandum on Royal Decree No. 1-56-270 of 6 Rabii II 1376 A.H. (10 November 1956) establishing the Code of Military Justice, as amended and supplemented.

3. The proposals put forward in this Memorandum are based on (i) the various national and international reference standards and declarations, (ii) the contributions and recommendations of national and international non-governmental organizations, and (iii) the relevant recommendations of United Nations treaty bodies. The Council also carried out a comparative study of laws governing military courts in several democracies to bring its proposals into closer alignment with good practice in these countries.

4. The reference standards and declarations that the CNDH considered in preparing this Memorandum are as follows:

- The Moroccan Constitution of 1 July 2011, in particular the Preamble[1] and Articles 6 (paragraph 2)[2], 23[3], 32 (paragraph 1)[4], 107, 113, 117, 118 (paragraph 1), 120, 127 and 128[5];
- The International Covenant on Civil and Political Rights, in particular Article 14[6], as interpreted by the Human Rights Committee in its General Comment No. 32[7], notably paragraphs 8[8] and 22[9] ;
- The Convention on the Rights of the Child, in particular Article 38 (2nd and 3rd paragraphs)[10] ;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, which entered into force on 12 February 2002 and was ratified by Morocco on 22 May 2002, in particular Articles 1 and 3 (paragraphs 1 to 4)[11] ;
- The Forced Labour Convention (No. 29) of 1930, ratified by Morocco on 20 May 1957, in particular Article 2[12] ;
- The Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and approved by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular paragraph 5[13];
- Resolution 2004/27 on the issue of the administration of justice through military tribunals adopted by the Sub-Commission on the Promotion and Protection of Human Rights at its 24th session held on 12 August 2004, in particular paragraphs 8 and 10[14] ;
- Draft principles governing the administration of justice through military tribunals, presented to the Human Rights Committee at its 62nd session on 13 January 2006, in particular principles 5[15], 8[16] and 13[17] ;
- The relevant recommendations of the Equity and Reconciliation Commission, particularly recommendations No. 1 on the consolidation of respect for human rights and the improvement of security governance, and No. 11 on the promotion of good governance of security.

5. The CNDH wishes to point out that the issue of reforming the military tribunal has always been a priority on the agenda of national and international non-governmental organizations working in the field of justice reform.

In 2010, ten associations presented a memorandum on judicial reform in which they recommended an overhaul of the jurisdiction and composition of and proceedings before the Permanent Military Tribunal of the Royal Armed Forces[18].

In a study on national legislation relating to security sector governance, a national NGO[19] called into question the competence and organization of the military tribunal regarding the guarantee of fair trial.

An international network of human rights NGOs has recently called[20], in a comparative study on "the Reform of Judiciaries in the Wake of the Arab Spring", for the reform of the judiciary in several Arab countries (including Morocco) so that civilians should no longer be brought before military courts.

It should also be noted that the Moroccan Bar Association has attached, for several decades now, particular attention to the reform of the military tribunal. Two key events are worth recalling here: the national conference on human rights[21] that the Association organized in 1987 at which the status of the Permanent Military Tribunal of the Royal Armed Forces was widely debated, and the 23rd convention of the Association at which it issued a recommendation for the abolition of special courts, a recommendation that all subsequent conventions of the Association have endorsed.

6. In the same vein, the National Human Rights Council conducted a comparative study of the laws governing military courts in several democratic countries, namely:

- *The Military Criminal Code of 24 May 1974, as amended by the Act of 26 January 1998 (Germany);*
- *The Act of 10 April 2003 making provision for the abolition of military courts in peacetime and their retention in wartime (Belgium);*
- *The National Defence Act of 1950 (Canada);*
- *The Organic Law No. 4/1987 of 15 July 1987 on the Jurisdiction and Organization of Military Justice (Spain);*
- *Law No. 180 of 7 May 1981 on Military Justice and Law No. 561 of 30 December 1988 establishing the Military Judicial Council (Italy);*
- *The Armed Forces Discipline Act of 2000 (United Kingdom);*
- *The Military Criminal Procedure Act of 23 March 1979, the Order on Military Criminal Justice of 24 October 1979 and the Military Criminal Code of 13 June 1927 (Switzerland*).

7. The CNDH proposals on the Royal Decree establishing the Code of Military Justice (as amended and supplemented) are justified by the following arguments:

Argument 1: the need to harmonize certain provisions of this Code with the Constitution, particularly as regards the rights of litigants, the independence of the judiciary and the protection of fundamental rights and freedoms provided by the Constitution during a state of emergency.

Argument 2: clarification of the military tribunal's legal status as Article 10 of Royal Decree No 1-56-270 of 6 Rabia II 1376 (10 November 1956) introducing the Code of Military Justice establishes "a permanent military tribunal of the Royal Armed Forces within national territory" while the Supreme Court defined this tribunal as a "special court" in its decision No. 971S of 31 May 1979.

Argument 3: Proposals relating to the personal and subject matter jurisdiction of this court form part of the implementation of the concluding observations of the treaty bodies, particularly the 13th paragraph of the concluding observations of the Committee against Torture concerning Morocco following the submission of its fourth periodic report (October-November 2011), which recommended to Morocco to "amend its laws to guarantee that all civilians will be tried only in civilian courts".

Argument 4: the proposals put forward in the Memorandum aim to bring the national system of military justice into closer alignment with the the practices observed in advanced democracies.

Indeed, the analysis of relevant comparative experiences shows four major trends:

- Aligning military courts with ordinary courts, particularly as regards the status of judges and court proceedings;
- Limiting the subject matter jurisdiction of military courts to military criminal code offences and military discipline;
- Limiting the personal jurisdiction of military courts to military personnel;
- Excluding the executive branch from the administration of military justice.

The CNDH proposals relating to Royal Decree No 1-56-270 of 6 Rabia II 1376 (10 November 1956) introducing the Code of Military Justice (as amended and supplemented) are presented below.

8. Proposals for editorial amendments

The CNDH proposes to :

- Replace the Supreme Court by the Court of Cassation in the body of the Royal Decree starting from Article 1;
- Delete the expression "occupied State" mentioned in Article 5, because of its clear incompatibility with the intention of Morocco, solemnly affirmed in the preamble of the Constitution, "to continue to endeavour for the preservation of world peace and security.

Considering that the minimum age for admission to military schools is 18 years and taking account of Morocco's commitments under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, the CNDH proposes to repeal the provisions of Article 5 relating to the military tribunal's jurisdiction to try military minors. Implementing this proposal would lead to the abolition of the questions asked to juvenile offenders provided for in Article 99 of the Royal Decree as well as the provisions of the second paragraph of Article 202.

9. Proposals concerning the subject matter and personal jurisdiction of the military tribunal

The CNDH proposes redefining the military tribunal's subject matter and personal jurisdiction through a reformulation of Articles 3 and 4 of the Royal Decree introducing the Code of Military Justice, in the following manner:
In terms of Article 3, the CNDH proposes to limit the personal jurisdiction of the military tribunal in peacetime to all categories of individuals mentioned in points 1, 2 and 4 for all felonies or offences against military duty and discipline under this Royal Decree and Royal Decree No. 1-74-383 of 15 Rajab 1394 A.H. (5 August 1974) approving the General Rules of Discipline of the Royal Armed Forces, as well as for offences related to felonies or violations falling within the jurisdiction of these courts. It is therefore proposed to delete point 3 relating to individuals detained in military prisons for an offence falling within the jurisdiction of the military tribunal.

In the same context, the CNDH recommends repealing the last two paragraphs of Article 3 that give jurisdiction to the military tribunal to try:

1. All persons, regardless of their capacity, who have committed an act classified as a crime against members of the Royal Armed Forces and similar personnel;
2. All persons, regardless of their capacity, who have committed an act classified as a crime when one or more members of the Royal Armed Forces are conspirators or accomplices.

The CNDH also proposes reformulating Article 4 of the Royal Decree as follows: "The military tribunal shall have jurisdiction to try all persons belonging to the categories referred to in Article 3 of this Royal Decree, who have committed:
- Felonies or offences classified as a breach of national security and provided by Articles 163 to 218 of the Criminal Code,
- Offences under Articles 218-1 to 218-9 of the Criminal Code."

For the sake of consistency with the amendment proposed above, the CNDH recommends replacing the term "external security of the State" with "felonies, crimes and offenses provided in Article 4 of this Royal Decree", and repealing the last paragraph of Article 20 of that Royal Decree. It also proposes to delete the expression "individuals subject to the jurisdiction of the military court" following the redefinition of the military tribunal's personal jurisdiction as suggested above.

The CNDH wishes to point out that the comparative study of the international experiences cited above confirms the prevalence of an international trend to limit the jurisdiction of military tribunals in peacetime to disciplinary cases or even to remove them in peacetime. For example, by Act 82-261 of 21 July 1982 France abolished the permanent courts of the armed forces in peacetime as well as the Permanent High Court of the Armed Forces while maintaining military courts in times of war.

In the same vein, Article 3 of the Belgian Law of 10 April 2003 states that "In times of war, there shall be permanent military tribunals and a Military Court, the headquarters and jurisdiction of which shall be determined by the King".

Article 96 (paragraph 2) of the German Basic Law[22] stipulates that military criminal courts may exercise jurisdiction only in wartime. In peacetime, offenders against the Military Criminal Law of 24 May 1974 (as amended by Law of 26 January 1998) are tried by the ordinary criminal courts.

Article 117 (paragraph 5) of the Spanish Constitution stipulates that "the principle of jurisdictional unity forms the basis for the organization and operation of the Tribunals" and that "the law shall regulate the exercise of the military jurisdiction within a strictly military framework and, in the event of a state of siege, in accordance with the principles of the Constitution". In times of peace, the jurisdiction of the Spanish military courts is limited to breaches of the military criminal code and appeals against disciplinary sanctions.

In a similar logic, the jurisdiction of Swiss military courts in peacetime is restricted to hearing and trying military offences committed by active members of the military.

This trend is also confirmed by Article 103 (paragraph 3) of the Italian Constitution, which provides that "military courts in time of war shall have jurisdiction according to the law. In time of peace they shall have jurisdiction only over military offences committed by members of the armed forces".

In the same sense, the Canadian Code of Service Discipline[23], which is very similar to that of the United Kingdom, restricts the personal jurisdiction of military courts to members of the Canadian Armed Forces, with the exception of certain categories of civilians that may be subject to the Code of Service Discipline, such as persons accompanying members of the Canadian Forces on service abroad.

10. Proposals to strengthen the rights of persons appearing before the military tribunal

The CNDH considers that strengthening the rights of persons appearing before the military tribunal in accordance with the relevant constitutional provisions requires proceedings before the military tribunal to be aligned with those in force before the ordinary courts, while taking account of the particular nature of military justice.

In order to give a general scope to the provisions of the first paragraph of Article 118 of the Constitution, it is proposed to amend the first paragraph of Article 9 of the Royal Decree introducing the Code of Military Justice so as to allow all who have personally suffered bodily, material or moral injury directly caused by an offence subject to prosecution before the military tribunal to file a civil suit before that court. As a result, a civil action may be brought in conjunction with a criminal action before the military tribunal.

To harmonize the Code of Military Justice with the provisions of Article 128 of the Constitution, the CNDH proposes to place the members of the judicial police mentioned in paragraphs 1, 2 and 3 of Article 34 of the Code under the authority of the government commissioner and the military tribunal's examining magistrate. For the record, they currently operate under the government authority responsible for national defence.

To strengthen the guarantees of a fair trial, the CNDH proposes to redraft the rules governing the proper conduct of the hearing (particularly Article 82 of the Royal Decree) to bring them in line with those contained in Articles 357 to 361 of the Code of Criminal Procedure.

For similar reasons, the Council recommends aligning the time for appeal before the Court of Cassation (8 days under Article 109 of the Royal Decree) with that provided by the Code of Criminal Procedure (10 days under Article 527 thereof).

The Council would also mention that the comparative analysis of experiences shows a clear trend towards aligning military court proceedings with those of the ordinary courts, such as the Swiss military justice system. In Italy, military courts apply the ordinary Code

of Criminal Procedure

11. Proposals to align the organisation of the military tribunal with that of the ordinary courts

With the aim of standardizing the organization of the military tribunal and effecting the withdrawal of the executive branch from the administration of military justice, as part of the process of strengthening the independence of the judiciary, the CNDH proposes that the decision to hold military court hearings in peacetime in a place other than Rabat should be taken by the Executive President of the High Council of the Judicial Power, on referral from the government authority responsible for national defence.

In order to entrench the role of the High Council of the Judicial Power as the body responsible, under Article 113 of the Constitution, for ensuring "the implementation of the guarantees afforded to judges, especially with respect to their independence, appointment, promotion, retirement and discipline", the CNDH proposes that the list of commissioned and non-commissioned officers meeting the legal requirements to be designated to sit as military tribunal judges, which is currently drawn up by the government authority responsible for defence, should first be submitted to the High Council of the Judicial Power to be appointed under the same conditions as judges in the ordinary courts. This proposal requires the amendment of Article 21 of the Royal Decree.

In addition, the CNDH proposes that the presiding judges of the military tribunal be appointed at the beginning of each judicial year by decision of the Executive President of the High Council of the Judicial Power, which requires the amendment of Article 22 of the Royal Decree.

It is worth noting that the comparative experiences, despite their diversity, tend towards establishing rules to ensure the independence of the judiciary in the composition and organization of military courts. Several countries have opted for entrusting their high judicial council with the task of managing the career development of military judges.

Spain, for example, has put in place a specialized military chamber of the Supreme Court (the highest court in the Spanish judicial organization) by virtue of Organic Law 4/1987. It is half composed of military judges who retire from the army and are not permitted to rejoin it, and therefore become full-time judges of the Supreme Court.

Italy has established the Council of Military Justice under Law No. 561 of 30 December 1988, which assumes the functions of a high judicial council for military judges.

Other countries have created a military justice service that operates occasionally and has jurisdiction only over disciplinary offenses committed by members of the armed forces. This is the case of the United Kingdom where military tribunals are not permanent courts. A Military Court Service, composed entirely of civilians, operates as a registry and does not report to the military chain of command. In the event of offences against the Service Discipline Act, this service convenes the court. In the same vein, the Armed Forces Act of the United Kingdom (1996) has enshrined the independence of the Office of the Judge Advocate General from the military chain of command.

The involvement of the ministry of defence in overseeing certain aspects of military justice administration in some comparative experiences is explained by the subject matter jurisdiction of these courts that is essentially disciplinary. This is the case for example of Switzerland, where the Office of the Armed Forces Attorney General administers military justice under the supervision of the Ministry of Defence.

In other countries, the presumed effects of the appointment of military judges by the executive branch are offset by statutory guarantees afforded to these judges. For instance, while Spanish military judges are appointed by the Minister of Defence, their security of tenure is guaranteed and they may inform the General Council of the Judiciary if they feel that they have been subjected to any pressure. The General Council of the Judiciary is also responsible for inspecting all military justice bodies.

Italy has aligned the status of military judges to that of ordinary magistrates. The 1981 Act states that the status and promotion of military judges are governed by the provisions applicable to the ordinary judges.

12. Proposal to abolish forced labour sentences

Noting that forced labour is no longer among the penalties provided under the Criminal Code, the CNDH proposes to abolish all forced labour sentences stipulated in Articles 152, 154, 164, 169, 171 and 172 of the Royal Decree which is the subject of this Memorandum.

13. Proposal regarding the subject matter jurisdiction of the military tribunal during states of emergency

The CNDH considers that the provisions of the first paragraph of Article 213 of the Royal Decree, which provide for the extension of the subject matter jurisdiction of the military tribunal to "all felonies or offences, regardless of their perpetrators, committed on the territory of provinces or prefectures" declared as military, constitute a serious risk to the protection of fundamental rights and freedoms enshrined in the Constitution and protected even in a state of emergency under Article 59 of the Constitution. For this reason, the CNDH recommends the repeal of this paragraph.

Notes

1- In the preamble of the Constitution, the Kingdom of Morocco asserts its "determination to continue to endeavour for the preservation of world peace and security".
"The Kingdom of Morocco, as a united, fully sovereign State belonging to the Greater Maghreb, reaffirms and vows to work for the following: … accord international conventions, which are duly ratified by the Kingdom and once they are published, supremacy over domestic laws - within the framework of the provisions of the Constitution, the laws of the Kingdom and respect for its immutable national identity - and harmonize the relevant national legislative provisions with these conventions".

2- "The principles of constitutionality, the hierarchy and mandatory disclosure of legal instruments shall be asserted. The law shall have no retroactive effect".

3- Article 23 guarantees the right to a fair trial.

4- By virtue of this paragraph, the State "... shall ensure equal legal protection as well as equal social and moral consideration for all children, regardless of their family status".

5- Article 107: "The judicial power shall be independent of the legislative power and the executive power. The King shall be the guarantor of the independence of the judicial power".

Article 113: "The High Council of the Judicial Power shall ensure the implementation of the guarantees afforded to judges, especially with respect to their independence, appointment, promotion, retirement and discipline".
Article 117: "The judge shall be responsible for the protection of the rights, freedoms and judicial security of individuals and groups, in addition to the enforcement of the law".
Article 118 (paragraph 1): "Access to justice shall be guaranteed for any person in order to defend his or her rights and interests that are protected by the law".
Article 120: "Any person shall have the right to a fair trial and to a ruling within a reasonable time. The rights of the defence shall be guaranteed before all courts".
Article 127: "Ordinary or specialized courts shall be created by law. The creation of extraordinary courts shall not be permitted".
Article 128: "The judicial police shall act under the authority of public prosecutors and examining magistrates in all matters relating to enquiries and investigations necessary for detecting offences, arresting offenders and establishing the truth".

6- Article 14:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a

suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
(c) To be tried without undue delay;
(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

7- The General Comment No. 32 was adopted at the ninetieth session of the Human Rights Committee (9-27 July 2007), CCPR/C/GC/32, 23 August 2007.

8- Paragraph 8:
The right to equality before courts and tribunals, in general terms, guarantees, in addition to the principles mentioned in the second sentence of Article 14, paragraph 1, those of equal access and equality of arms, and ensures that the parties to the proceedings in question are treated without any discrimination.

9- Paragraph 22:
The provisions of Article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military. The Committee notes the existence, in many countries, of military or special courts which try civilians. While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of Article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in Article 14. Trials of civilians by military or special courts should be exceptional.

10- Article 38:
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

11- Article 1:
States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 3:
1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in Article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;
(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
(c) Such persons are fully informed of the duties involved in such military service;
(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

12- Article 2:
1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include:

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
(b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
(c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
(d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

13- Paragraph 5:
Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

14- "Reaffirming also that everyone has the right to be tried by ordinary courts or tribunals using established legal procedures and that tribunals that do not use procedures duly established under the law shall not be created to displace the jurisdiction belonging to the ordinary courts,
Stressing that the composition, operation and procedures of military courts should comply with the international standards and rules providing for a fair and just trial,"
E-CN_4-SUB_2-RES-2004-27, p. 1-2.

15- Principle No. 5: Jurisdiction of military courts to try civilians.

16- Principle No. 8: Functional authority of military courts.

17- Principle No. 13: Right to a competent, independent and impartial tribunal.

18- Moroccan Bar Association, Moroccan League for the Defence of Human Rights, Moroccan Human Rights Association, Moroccan Human Rights Organization, Moroccan Forum for Truth and Justice, Moroccan Observatory of Prisons, Transparency Morocco, Moroccan Association for the Defence of Judicial Independence, Amnesty International (Morocco section) and Adala Association, "Memorandum on the reform of justice in Morocco", 2010, p. 13.

19- The Centre for Human Rights and Democracy Studies and the Foundation for the Future, "Security governance laws in Morocco", February 2010, p. 93.

20- The Euro-Mediterranean Human Rights Network, "The Reform of Judiciaries in the Wake of the Arab Spring", 2012, p. 19.

21- This conference was held in Oujda on 10-12 August 1987.

2- Article 96 (paragraph 2):
The Federation may establish federal military criminal courts for the Armed Forces. These courts may exercise criminal jurisdiction only during a state of defence or over members of the Armed Forces serving abroad or on board warships. Details shall be regulated by a federal law. These courts shall be under the aegis of the Federal Minister of Justice. Their full-time judges shall be persons qualified to hold judicial office.

23- The Canadian Code of Service Discipline has a dual nature: disciplinary and criminal. Breaches of the code of discipline include offences against the criminal law and any other federal law.
The Canadian Supreme Court has confirmed the dual nature of this code in its decision "R. v Generous [1992] 1 S.C.R. 259", p. 281 (Chief Justice Lamer, on behalf of the majority): "... Although the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Armed Forces, it does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare. Many of the offences with which an accused may be charged under the Code of Service Discipline (...) relate to matters which are of a public nature. For example, any act or omission that is punishable under the Criminal Code or any other Act of Parliament is also an offence under the Code of Service Discipline."

المجلس الوطني لحقوق الإنسان

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Conseil national des droits de l'Homme

DAHIR NO. 1-56-270 OF 6 RABII II 1376 A.H. (10 NOVEMBER 1956)
ESTABLISHING THE CODE OF MILITARY JUSTICE (AS AMENDED AND SUPPLEMENTED)

Memorandum - march 2013

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