AN OVERVIEW OF JUVENILE JUSTICE LAWS IN MOROCCO

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Abstract:
This article discusses the trend of juvenile justice and provides an overview to the study of Juvenile Justice laws presented in the Moroccan Penal Code. With the help of literature derived from the philosophies, processes, and practices of Moroccan Juvenile Justice, this work highlights that Moroccan juvenile justice policy intertwines between rehabilitative and punitive approaches to managing young offenders. As noted, Juvenile Justice relates to a child below 18 years. The article also examines official responses to delinquency as well as the recent development of Juvenile Justice in Morocco. It argues that the current system of delinquency control and juvenile justice should gradually move toward the adoption of a just restorative approach. The article recommends the creation of separate institutions or courts for the trial and rehabilitation of juveniles.

Keywords: Minors, Moroccan Juvenile Justice, Moroccan Penal Code.

Résumé:
Cet article analyse les différentes lois de la justice juvénile et son traitement judiciaire dans le Code pénal marocain. À l’aide de la littérature issue des philosophies, des processus et des pratiques de la justice juvénile marocaine, ce travail met explique comment la politique marocaine de justice juvénile s'entrelace entre les approches rééducatives et punitives de la gestion des jeunes délinquants. Comme indiqué, la justice juvénile concerne un enfant de moins de 18 ans. L'article examine également les réponses officielles à la délinquance ainsi que le développement récent de la justice pour mineurs au Maroc. Il met l’accent sur des problèmes et des lacunes démontrant l’incohérence du système pénal avec les diverses institutions éducatives et pénales qui prennent en charge les délinquants mineurs. Il fait valoir que le système actuel de contrôle de la délinquance et de justice juvénile devrait progressivement évoluer vers l’adoption d’une approche juste réparatrice. L’article aussi recommande la création des institutions ou des tribunaux séparés pour le jugement et la réadaptation des mi


Introduction
Juvenile justice in Morocco faces significant challenges; it requires a series of interventions designed to improve the justice system for minors and provide prevention mechanisms. Youths with little education and poor job opportunities too often turn to crime extremism. Crimes committed by minors have risen extensively the last years and they include drug-related crimes, family violence, and in some cases even murder. There is a clear lack of competent free legal services, particularly for minors charged with crimes. It is clear that the Moroccan juvenile justice system is inadequate to meet the current needs and requires significant reform. While legal provisions are in place to protect juveniles, they are not being implemented in practice. In Morocco, there are no juvenile courts and there are no judges dedicated solely to juvenile cases. In practice, there is a special chamber within each court and
the judge hears both adult and juvenile matters. It is then possible that judges are more inclined to treat juveniles as adults and apply adult sentences. There are no specialized juvenile prosecutors, who could serve as a source for plea bargaining and alternative sentencing to ensure proper treatment of juvenile offenders.

All these factors contribute to the lack of proper application of juvenile laws and procedures. In rural areas, court hearings are delayed often due to lack of transportation from the detention centers, and court proceedings are postponed because the minor is not accompanied by a parent or guardian, as required by the law. In practice, criminal cases involving minors are sometimes held at the end of the day after all the criminal cases involving adults have been dealt with. In particular, investigative reports in juvenile cases typically do not explore the social or psychological issues that could support effective treatment for the minor. The important role of social workers in juvenile cases is also limited and should be expanded. While they do present reports to judges in criminal cases involving minors, these reports do not propose best practical solutions that support optimal outcomes, such as alternative sentencing. A specialized juvenile center, funded by the state, with appropriate psycho-social staffing, could offer alternative sentencing and reintegration services for minors.

Rights for juvenile offenders, while available in law, are not exercised in practice. For example, Article (476) of the criminal procedure code provides that minors should only be imprisoned provisionally. This section of the law also requires that minors be held in separate facilities from the adult prison population and requires judges to visit incarcerated minors at least once a month. Article (471) criminal procedure code empowers the judge to entrust a minor to the care of a variety of public or private centers and to engage an NGO to assist in the provision of health and educational services. Furthermore, Article (41) criminal procedure code encourages mediation in these cases. The law clearly provides for alternative sentencing, such as remanding the child to the custody of his or her parents or entrusting them to the care of an alternative organization for education and rehabilitation. Through a combination of Articles (41) and (461) of the criminal procedure code, a prosecutor can simply drop the charges where a settlement is reached. Plea-bargaining does not exist in the Moroccan system. The juvenile law provides that prison should be a last resort for dealing with minors who commit crimes and that the focus of the criminal justice system should be on rehabilitation. In practice, there is little focus on rehabilitation and reintegration into society for minors who have committed crimes; practically the only solution is prison or detention in the juvenile delinquency centers (Human Rights Watch. 2004:29).

Working with juveniles can yield significant benefits by developing future leaders who expect and will demand transparent and accountable institutions. To ensure that, a comprehensive approach is developed to juvenile justice, an extensive assessment of the needs and resources should be conducted, a more in-depth assessment should be conducted to pinpoint the areas for immediate intervention and to determine the resources within the community to support change.

1. Juvenile Legal Responsibility

The Children Right Convention takes matters a little further. Article (40.3a) provides that State parties to the Convention shall seek to establish a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law. However, no minimum age of criminal responsibility is stipulated. All that the Convention requires of States is that they establish a minimum age of criminal responsibility. The relevant provisions of the United Nations Standard Minimum Rules on the Administration of Juvenile Justice “the Beijing Rules” and their commentary are, however, more enlightening. Article 40 of the
criminal procedure code was drafted so as to reflect the approaches to juvenile justice taken in the Beijing Rules, and although the rules and their commentary are not in themselves binding, they do provide an indication of the shared thinking of States on the issue. Rule 4, on the age of criminal responsibility, is not particularly helpful, merely stating that:

“In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”

This seems to require even less than the criminal procedure code, as there is no obligation to establish a minimum age of criminal responsibility. However, the commentary to the rule is more interesting. It sees disparities in national minimum ages of criminal responsibility as the product of historical and cultural differences. It goes on to say that:

“The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of his or her individual discernment and understanding, can be held responsible for antisocial behavior. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless.”

In other words, criminal responsibility should only be imposed when there is some element of fault, that is, sufficient mental and moral awareness on the part of the individual committing the prohibited act of the consequences or potential consequences of his/her actions. The commentary ends by stating that efforts should be made to agree an international standard minimum age of criminal responsibility. Unfortunately, no such agreement has yet been possible. Elucidation of the requirements of Article 40 (3a) of the CRC has been given by the Committee of the Rights of the Child, established under Article 43 of the Convention to monitor States’ compliance with its provisions. On a number of occasions in its comments on States’ periodic reports, the Committee has expressed concern when it appeared that no minimum age of criminal responsibility had been fixed. In a general discussion on the administration of juvenile justice, the Committee considered that criminal responsibility should not be determined by reference to subjective factors, such as “the attainment of puberty, the age of discernment or the personality of the child”, as doing so led to invidious discrimination. The implication is that only objective factors, such as age, are appropriate criteria.

The minor in the criminal procedure code is a person who has not reached 18 years. The Moroccan law has avoided using the word offender for the minor. He is treated as a minor until he is 18. There is no legal age under which a juvenile cannot be prosecuted in legal proceedings. The sole criterion posed by the law is that of moral discernment, which can vary in relation to the maturity of the child and the nature of the offence committed. Under twelve years old, a child is unaware of whether he/she has broken a law and thus he/she cannot be convicted for a crime, irrespective of its gravity. The principle of criminal responsibility of minors in the Moroccan legal system is announced in an explicit manner. Article (458) of the Children Right Convention reads as follows:

“the age of criminal responsibility is determined to reach eighteen years (old). The minor until the age of twelve years is not criminally responsible for the lack of moral discernment. Even though the minor over the age of twelve years until eighteen years is treated as criminally responsible, yet his responsibility is incomplete due to his incomplete moral discernment.”
Consequently, Moroccan law recognizes the concept of the age of criminal responsibility for young people in conformity with the terms of article (40) Children Right Convention. A minor is a person between seven and eighteen years of age. The minimum age for criminal responsibility is twelve years of age. Underage persons who have not completed twelve years are not to be held criminally responsible. Limiting the age of criminal responsibility is one of the manifestations of the protecting procedures in which the Moroccan juvenile system is involved. The Criminal Penal Code of 1959 determines the age of juvenile offenders in 16 years. In line with the Beijing international conventions ratified by Morocco, the Criminal Penal Code of 2003 determines the age of criminal responsibility in eighteen years, and the minor up to the age of twelve years is not criminally responsible due to the lack of moral discernment.

Special investigations of minors have to be conducted in line with what the third Article (40.3) of the Convention Child Rights claims. The hearings of juvenile cases are conducted in special institutions under the supervision of competent authorities. Rule (14) of the United Nations Standard Rules for the Administration of Juvenile Justice stipulates that an offender minor must be investigated by competent authority in accordance with the principles of a fair trial. Indeed, the minor’s protection cannot be achieved without taking into consideration the work of social reformers and social experts. The Moroccan legal system defines not only the social experts’ functions but also their particular roles in the examination of the social circumstances of the accused minor. This is important for the court to understand the minor’s circumstances and to choose the appropriate decision for further care of the minor during and after the implementation. Hence, all the above factors of protection participate in achieving a good rehabilitation and integration of the minor into the community. It has been singled out in the Criminal Penal Code from article (458) to article (517), for young offenders, victims of misdemeanors and felonies, and minors who are in difficult situations that protection principles should be adopted in relation to the best interests of minors.

Like many other comparative legislation, Moroccan juvenile system does not adopt the principle of criminal responsibility, and leaves the minor under the age of twelve without any examination. If the juvenile judge sees that the minor’s health or psychological behavior requires a lengthy examination, he can order for a temporary deposit in a hospital for a period not exceeding three months. Defining the minor’s age is of a paramount importance in the field of juvenile cases as it ensures the first legislative premises of minor protection. The aim of defining the age of criminal responsibility is to determine the type of punishment or the appropriate educative measure. It also helps to identify the competent judicial authority in juvenile justice that deals with the appropriate case.

Identifying the age of the minor raises several practical difficulties both in terms of estimating the real age and the means to prove it in court. In Moroccan legislation as well as other legislations, the only proof for determining one’s age is through a birth certificate or the civil status book. In case of doubt, the legislator would give the court a priority to resort to the use of medical or technical expertise to resolve this contentious issue. The issue of limiting the age also remains problematic if it is associated with the date of committing the crime, the time of a lawsuit, the time of the trial. It is evident that the trial proceedings can last for a period during which the minor can reach the age of criminal responsibility. Moreover, delays can occur if the authorities in charge of inspection and investigations with minors take a long time. On this basis, in most of comparative legislation as well as in Moroccan criminal legislation, the minor’s age is defined in relation to the moment of committing the crime and not to the time of lawsuit or judgment as is stated in article 459.

A fair trial for the minor guarantees that all the procedures of protecting him should be
provided in all the stages: during the pre-trial stage, during the preliminary investigation phases of research, during and after the trial. In line with the international conventions ratified by Morocco, the Criminal Penal Code developed several legal mechanisms to strengthen the protection and promotion of the philosophy of these various safeguards. They are more broadly related to the ability of people to have access to justice, to the quality of laws to be applied and to human and financial means at the service of justice. The following section is devoted to the discussion of the private protection that should be guaranteed for juveniles at the stage of preliminary research and the public prosecution.

2. Accused Minor Rights during the Pre-Trial Period

Assessment of fair trial conditions begins in the pre-trial period. These conditions are not limited to pre-trial detention conditions. They are more broadly related to the ability of people to have access to justice, to the quality of laws to be applied and to human and financial means at the service of justice. The focus will be on two aspects: the rights related to the lawfulness of the detention and the rights related to the human treatment of the detainees. These rights have far-reaching consequences on the other rights and on the issue of the trial. Arbitrary arrest and detention violate the right to freedom and security of the person. They are an infringement on the presumption of innocence and may lead to the transgression of other human rights. Torture mainly occurs during the first hours and days of the arbitrary arrest and/or detention. These violations may also have destructive consequences on the person, his family, his social status and environment. What makes this serious is the fact that the justice machinery sometimes tends to condemn the arrested person in order to cover the administrative and judicial mistakes which have led to it. Dealing with these violations with indulgence or indifference will open the door to arbitrary abuses by officials and judges. It can also lead to using them as a way of settling old arguments of a personal character.

There are cases in which the law allows for the arrest and detention of persons before trial, the control of the lawfulness of these practices, and the practice of these conditions and controls. The Moroccan Constitution of 2011 affirms in Article (23) that nobody can be detained, arrested or punished except in the cases, and in conformity with procedures, established by law. Moroccan law allows arrest and detention of persons before trial in three cases: in the framework of garde à vue where a suspect is arrested and held in the custody of the judicial police, in the implementation of a judicial order to carry out investigations (rogatory commission). The two conditions are required to hold persons in garde à vue detention: the presumed offence must be punishable by imprisonment and the necessity of investigation must require the detention. The necessity of detention is often related to the collection of information from the detainee, to the recognition and verification of this identity, to his confrontation with other suspects or with witnesses, or to prevent his escape when he has no known address.

The officers of the judicial police, furthermore, can hold minors in custody in police stations in three situations: in the case of a flagrant offence; during the preliminary investigation and when implementing a judicial order to carry out investigations (rogatory commission). The two conditions are required to hold persons in garde à vue detention: the presumed offence must be punishable by imprisonment and the necessity of investigation must require the detention. The necessity of detention is often related to the collection of information from the detainee, to the recognition and verification of this identity, to his confrontation with other suspects or with witnesses, or to prevent his escape when he has no known address.

The criminal procedure code in articles (458) to (517) launches special rules for the minor category. During this preliminary stage, the first contact of the minor is with judicial police. The ordinary judicial police may not qualify the minor’s conditions and may fail to communicate with the minor easily. Under the criminal procedure and the philosophy aimed at enhancing the protection of individual rights, the Moroccan legislature has provided in the code of criminal procedure in article (19) a new specialty of judicial police officers entrusted with the investigation of juvenile crimes. There are two reasons behind the provision of these
kinds of officers. The first one is associated with the psychological and physical nature of the minor. The second is related to the type of treatment that a minor should have.

Article (460: Cf. note 17) requires that the police officers notify the detainee's family immediately after they take the decision to hold him in *garde à vue* custody. In practice, this notification does not occur. The detainee's family, if not present at the arrest, tries to look for their absent member. The law does not establish any sanction for the absence of notification. Article (460) also requires police officers to indicate in their statements "procès verbal" the exact date and hour of the release of the detainee or his presentation to the public prosecutor or the judge concerned. They must send a list of persons held in *garde à vue* custody during the past 24 hours to the public prosecutors of the primary court and the appeal court. The detainee must sign the police statement concerning his investigation "procès verbal," and his refusal to sign must be indicated. These lists must be included in a special register with numbered pages signed by the judicial authority (article 69).

According to the 1959 law of criminal procedure, the term of *garde à vue* was limited to 48 hours, with a single 24-hour extension permitted with the written approval of the public prosecutor. But the amendment of the Criminal Procedure in 1962 permits the overall doubling of the periods to 96 hours which can be prolonged 48 hours with the public prosecutor's authorization. Thanks to campaigns by Human Rights NGOs in Morocco and abroad, largely because of serious violation during the *garde à vue* detention -- particularly torture -- the Moroccan regime accepted some amendments which return to the initial periods of 48 hours which can be extended 24 hours by a written authorization of the public prosecutor or the investigating judge. In the offences related to state security, the *garde à vue* period is 96 hours and can be renewed for the same period by written approval of the public prosecutor (article 68 of criminal procedure code).

In accordance with the requirements of the final paragraph of article (67), the right to keep everything confidential is among the requirements of protection during the preliminary stage. It is noteworthy to claim that despite the provision of various specialized officers and enabling them with broad powers to apply their own criminal rules, juvenile criminal justice during the pre-trial stage remains inadequate. It is exactly at this stage that the minor suffers from different abuses. Article (460) has not determined the time and the manner a judicial officer should question a minor. In most cases, the juvenile judicial officer finds himself asking the minor in the ways he asks an adult. Another shortcoming of article (460) is that it does not claim the presence of parents, a trustee and a person or organization during the interrogation of the minor. After listening to the detainee, the public prosecutor can issue a written order to maintain him a further 48 hours. The article states that as an exceptional matter, the order can be given without presenting the detainee to the public prosecutor, by a written justified decision.

So, the door has been open to abuses: a detainee can be held in *garde à vue* more than 96 hours (4 days and nights and up to 15 days and nights) without being presented to a judge in offences not related to state security. For those later offences, any justification can be accepted for a longer *garde à vue* detention. What makes things worse is that it is very difficult in practice for the detainee, his family and his lawyer to verify respect for the conditions set by the law for the extension of the periods of detention. No provision in the law mentions their right to know if these conditions have been met. Judicial police can falsify arrest dates to create the appearance of compliance with law. Moreover, common abuses occur in *garde à vue* custody and in preventive detention. There are abuses related to non-respect of the *garde à vue* terms and procedures of arrest (penetration into houses outside legal times, police not producing arrest warrants, arrest warrants without formal required conditions, officers who fail to identify themselves, considerable use of the flagrant offence
In Moroccan law, there is no right to habeas corpus or similar procedures which can guarantee the right of an arrested or detained person to take proceedings before a court to decide without undue delay on the lawfulness of his detention and order release if the detention is not lawful. There is an article (227) of the penal code which states:

“Any public servant or public authority agent or public authority invested with judicial or administrative power, who refuses or neglects a demand addressed to him which aims at confirming an arbitrary, unlawful detention in detention centers or any other place and who does not give any proof that he had notified the hierarchical authority of his civil rights.” (The article, maybe, seems to be incomplete)

This important article does not, however, contain any procedure allowing the detainee a right to be brought before a court which may decide on the lawfulness of his detention. Rather, it is addressed to public agents asking them to notify demands about arbitrary detention to their hierarchy, without any mention to the destination of this notification. Article (470) claims that the public prosecutor has the authority to demand for investigation and release the minor or to return the file of the minor to the judicial police in order to continue their investigation. Moroccan legislature has given to prosecutors in juvenile cases a very important role at all stages of public proceedings, from preliminary research and up to implementation. They watch the work of the judicial police in charge of juvenile cases and take the necessary actions. In the case of provisional detention, it is the public prosecutor who obliges the judicial police to put the minor in a place of temporary custody within a period of 15 days.

In fact, the public prosecution is the only first judiciary force that deals with juveniles in the Moroccan legal system. It is also the only competent body that orders public proceedings that cannot be established by other public administrations. Once a minor is submitted to the Crown Procurator in charge of juveniles in the Court of first instance or of the General Solicitor of the King's in appeal court, he/she is interrogated in relation to the requirements of a fair oral interrogation. According to Article (490), the investigation of the minor at the Criminal Chamber for Juveniles in the first instance court as well as in the appeal court is done in the presence of the Chamber President, two counselors and a court clerk.

3. Accused Minor Rights during Trial

At this stage, the sentencing panel consists of a representative of the public prosecution, a presiding judge and two Judges, or a Single Judge, a court reporter and a social worker. The trial judge is responsible of conducting the trial, of maintaining order and of managing the examination of witnesses. The trial stage consists of many phases. In the first phase, the judge ascertains the defendants. He asks about his name, his age, his address and his level of study. Then, he calls the witnesses. He checks if the lawyer, the mother/the father are present or not. After that, the chief magistrate orders the withdrawal of the witnesses.

The second phase is called examination. The judge tells the defendant about the nature of his/ her crime and then he begins his oral examination with the defendant. The judge poses whatever questions he finds necessary to make the defendant tell the truth. If the defendant has a health condition that prevents him from being present at the hearing, and there are serious reasons precluding any delay in adjudicating the case, then the court shall issue a special and justified of the court reporter, to examine the defendant at the location where he is present either in the police station or in the prison. In this case, the judge can pursue his examination in the presence of the parents or the defendant’s lawyer. He hears the experts (the
social reformer, if necessary). He asks the Defense lawyer to present his defense on behalf of the defendant. After that, he hears the witnesses. He asks the lawyer if he has any questions for the litigant’s lawyer or for the minor. Then, the public prosecution has to present its decision on the case. The last step of the examination phase is related to the defendant. The judge asks the defendant to say his last word in relation to the crime he is charged with. Finally, the judge announces the end of the trial of arguments to court reporter (From article 476 to 484). Decision to assign one of its members, with the assistance.

Article (289) of the Criminal Penal Code states that the judge must establish his decision only on evidence exposed during the proceeding and which has been discussed orally and publicly before the court. Article (25) of the law of judicial organization states that a judge who is a parent or relative of a lawyer or a party in a case must not judge in that case, otherwise the judgement will be null and void. Among the principal guarantees are the publicity of the trial, the presence of the accused and his lawyer, the facilities to prepare the defense, the precise determination of the offences, the right to discuss the witnesses and the equality of arms between the parties to the proceedings and between the prosecution and the defense, the right to an interpreter when necessary, the right not to be tried again for the same offences, and the right to a trial without undue delay. In fact, Criminal justice objectives cannot be reached by ignoring the fundamental guarantees of the fair trial.

More importantly, the public hearing is related to the possibility of the public and all interested people and observers to attend the trial. It also comprises the possibility of the press and media representatives to be present and to report on the trial in a way which does not violate the legitimate rights of the parties in the proceedings. Publicity has a pedagogic impact, but in particular it is a guarantee to the parties because the public opinion watches and witnesses the proceedings. Publicity also allows the court to affirm its independence and impartiality. According to article (301), the proceedings and the debate must be public. Otherwise, this nullifies the results of such proceedings. But this nullity is not recognized unless the public prosecutor or the accused or the civil rights claimant asks to record the non-publicity of the hearing. Article (346) of the Criminal Penal Code states that all judgments or decisions have to be made in a public hearing unless a special provision state otherwise. However, Moroccan law permits exceptions to the public hearing. Article (302) permits the president of the hearings to exclude juveniles from some hearing if he considers their presence not appropriate. Article (303) allows the judges to hold confidential hearings if they consider that publicity threaten public order and morals.

In fact, juvenile hearings are private as specified in article (478). The president of the hearing has all the power to maintain order in the courtroom. The president can authorize the police to prevent the public from attending. Moreover, during the public hearing, the press code forbids the publication of the accusation documents before they are read in a public hearing. It also forbids the publishing of the secrets of courts debate: the information on the defamation cases and defense speech related to family disputes (article 54 and 55 of the law of 15 November 1958). But the law does not forbid the publication of judgments or the discussion and comment on them, except in cases related to defamation and personal statute (family disputes). Article (57) permits publication in good faith of discussion before the courts.

Another right that guarantees an impartial trial for the minor is the right to the presence of the accused and the parties. This principle relates to the presence of the court members and the parties to the proceedings. It is necessary for the discussion of evidence and in order to permit the parties to defend their positions. This allows the court to build a better understanding of the case and helps it to decide on objective grounds. The presence of the parties is guaranteed by a convocation made with due formality as described in articles (367)
to (370) of the criminal procedure. The convocation must be sent to the accused, whoever is responsible for civil rights and the claimant of these rights. The convocation must indicate the day, hour and the place of the hearing. It must also indicate the offence, the date of its commitment and the articles applied. These conditions are required under the nullity sanction. According to article (368), this convocation is considered to be notified formally to its addressee if it was handed personally to him or left at his home or with his lawyer. Furthermore, article (369) states that a minimum period of 15 days must be given between the date of the convocation and the day of the hearing. Violation of these conditions leads to the annulations of the convocation and the judgement can be produced in absentia.

During the garde à vue, the accused minor can have the help of a lawyer. Legal assistance is obligatory in criminal cases and for juveniles. It is also obligatory if the accused is dumb, blind or has an infirmity which prevents him from defending himself. The needy accused in criminal offences is granted free legal assistance if he cannot afford legal counsel. In Morocco, lawyers appointed in legal assistance framework are not paid. According to lawyers, this does not assure an effective defense to the accused. Lawyers are not enthusiastic in these cases. In flagrant offences cases (art. 76), the law states that the judge must inform the detainee that he has the right to a delay to prepare his defense. The law adds that if the detainee used this right, the court must grant him a minimum three days’ delay. The judgement must include this information and the detainee’s answer; otherwise it will be considered null (art. 396).

However, in practice, because of the high number of cases (and because they want to try the maximum of cases), judges drive the accused to not using their right by a specific question formulated as follows: “Do you want to talk for yourself or do you want somebody else to speak for you?” Another usual formulation is: “Do you want to defend yourself or do you want to appoint someone to defend you?” This question is different from that required by article (396) which needs another formulation, for example: “The law gives you the right to a delay to prepare your defense. Do you want a delay or do you give up this right?” So, because of the ignorance of the true meaning of these questions as put by the judges, and because of the ignorance of the importance of a lawyer, or for other reasons (financial reasons, for example) the detainees, driven by the question, answer that they can defend themselves, which, for the court, means that the trial can start immediately. After rapid questions and answers, the court usually produces a judgement which has become familiar to trial observers: “The accused is presented in a detention situation. He withdraws from preparing his defense. He denies the charges. The public prosecution asks for condemnation . . . The court will decide at the end of his hearing (or next week).” Very often, the court condemns the accused on the grounds of police statements. The judgment is notified to the detainee in jail in the majority of cases.

In addition to the rights stated above, the law states that every accused person can have a copy of the statement which contains the charges, the witnesses’ declarations and the expert reports (art. 458 C.P.). The lawyer can communicate freely with the accused and may have access to all components of the file (art. 457 C.P.). The accused or his lawyer can ask to postpone the hearings. The law also states the transfer decision (of the case to the criminal court) must be notified to the accused, otherwise the proceedings are nullified. The accused has the right to know the charges against him (arts. 314, 451 and 458 C.P.). The accused has the right to be notified of the names of witnesses, their professions and their addresses 24 hours before the hearings if they were called on demand of public prosecution or the civil rights claimant. The accused can object to the witness who is not mentioned in the notification (art. 479 C.P.). As a rule, the court listens to the accusation witnesses before the defense witnesses, but the president can decide on the other order.
The accused has the right to comment on the witnesses' declarations. According to article (330) (C.P.), the president asks the accused after every declaration of a witness if he has something to say concerning this declaration. The president can also ask the prosecutor and the civil rights claimant if they have questions. Every hearing starts by asking the accused about the charges, listening to witnesses and expert and submitting the evidence. The discussion is followed by the presentation of the claims of the civil party, the presentation of the prosecutor's demands and the expositions of the defense of the accused. The accused is the last one to speak, and then the president declares that the discussions are closed (arts. 305 to 307 C.P.). The judgement follows immediately or after an indicated delay (arts. 379, 399 and 420 C.P.). According to article 316 (CPC), if the accused speaks a language or a dialect which is difficult to understand by the judges, the defendants or the witnesses, the president must appoint an interpreter. The right to an interpreter applies especially to foreigners. In practice, when their consular or diplomatic representatives follow the proceedings, there is more chance of their rights being respected.

The last right that an accused minor should have during the trial is the right to trial without undue delay. This right means the right to a trial which produces a final judgement and, if appropriate, a sentence without undue delay. This right takes into consideration all delays related to means of recourse. This right does not depend on the accuser’s demands. European jurisprudence considers that the accepted justifications for long delays are those related to the complexity of the cases or the accuser’s behavior. This jurisprudence considers from another point of view that some special conditions must be taken into account in order to hasten the proceedings, such as the detention of the accused, the cases related to labor conflict (when a person is licensed) and in cases related to children in custody.

4. The Accused minor’s rights after the trial

The Moroccan law allows for recourses allowing another trial of the facts and the legal aspects of the case. There is the appeal and the objection. Another recourse allows only for the examination of the legal and procedural aspects of the case; this is the cassation. Finally, the revision of a judgement can be recourse if factual errors or new findings reveal the crime was attributed to an innocent person. In Morocco, appeal recourse is possible only against judgments of the primary courts. Appeal is not possible against the preliminary judgments or judicial orders related to formal objections taken alone. It is possible against them when they are submitted with the appeal against the judgement.

As a result of the appeal, the judgement cannot be carried out because it is not final. Appeal is examined by the “correctional” chamber of the appeal court. It does look at the case in its factual and legal aspects tried by the primary court. The court decides on the form, taking into account the capacity of the claimant, the formal quality of the judgement, the delays and the form of the appeal demand. If the appeal is refused in form, the court does not examine objections. When the appeal is accepted in form, the court can confirm the judgement of the primary court even if that judgement was based on an accepted legal reason. The appeal court can disagree with the judgement of the primary court if it declares its incompetence; for example, when the appeal court is the competent court. In this situation, the appeal court decides the case. If the appeal court decides a case in which it is not competent, the appeal court annuls the judgement. If the primary court was competent, the appeal court can confirm its judgement or annul it partly or completely. The powers of the appeal court to annul the decisions of the primary court are limited by the rights which the person asking for the appeal has gained from the primary court's decision article (494).

After the appeal recourse, the accused can move to the "cassation" recourse according to article (495) of CPC. The “cassation” recourse aims at controlling the legal qualification that
the judge has given to the incriminating acts. It also controls the adequate application of law and procedures. “Cassation” is not a degree of judicial proceedings; it does not discuss the facts, but monitors the application of law. The "cassation" recourse before the Supreme Court is open to the public prosecutor and to the parties that have not benefitted from the judgement (art. 575 C.P.). “Cassation” recourse is possible against all judgments, decisions and judicial orders that cannot be appealed, except when the law states otherwise (art. 571 C.P.). So ‘cassation’ can be requested against an appeal decision, a judgement of the criminal chamber, the special court of justice and the Military court and a judgement related to provisional release.

To sum up, the law permits the public prosecutor the demand of cassation for the benefit of the law when there are judicial errors violating the fundamental rules without any party demanding the cassation of the judgement. The Minister of Justice can also demand a cassation for the benefit of law. This cassation can benefit the accused if it concerns the penal provision of the judgement which was against him. The “cassation” does not harm him if the “broken” judgement was beneficial to him.

### Conclusion

This article has presented the Moroccan legal system through the examination of the laws relevant to juvenile cases held within the Moroccan minor trials. The main goal of this translation is to show how these laws can nurture the process of communication in the trial setting at the level of their formulation as well as in their actual implementation. The idea is that the implementation of law in the judges’ interrogation maybe a direct cause of tension between the minor and the law professionals. This fact has been traced back by referring to existent legal provisions that the judges should consider in their oral interviews with the minors.

Moreover, by presenting the relevant provisions of the criminal and civil codes to the Moroccan juvenile justice, this work presents the legal framework that judges may draw on in the course of making judgments. In the same vein, discussion also centered on the functions of judges and prosecutors, and the court procedures as stipulated by the Penal Code. Finally, the chapter highlighted some of the most significant reforms in the Moroccan legal system. Special attention has been devoted to the reading of the main articles devoted to juvenile justice, stressing the procedures that concern the different types of rules that govern the implementation of juvenile justice in the first instance court and the appeal court.

On the other hand, it is crucial to recognize that more effort is still needed to promote juvenile criminal justice. With regard to laws providing for misdemeanors, a closer examination of marital dispute cases shows that these issues lend themselves to civil as well as to penal legal provisions. Therefore, a special legal framework is needed that is able to provide for the specificities of juvenile issues. Juvenile justice in Morocco is inextricably tied to youth in prisons and can be considered a root cause of disaffection. Since many youths are held in pre-trial detention for minor non-violent crimes, for example, they could benefit from the piloting of alternative sentencing arrangements and other initiatives that could keep the youth from entering the prisons system altogether. This would set a precedent that could contribute to reducing the number of younger prisoners who may become “schooling” in criminality in prisons. In sum, support efforts should focus on establishing juvenile courts and providing technical assistance in developing and implementing alternative methods for addressing youth offenders.
References


المادة 476 إذا كان الحدث متاحاً عن نفس الأفعال وفي نفس القضية متمنين رشداً وكان قد تم قبول قضية الرشداً عن القضية المتعلقة بالحدث طبقاً للمادة 461 أعلاه فيوجر البت في حق الحدث بقرار معلل إلى أن يصدر الحكم في حق الرشداً ما لم يتعارض ذلك بمصلحة الحدث.

المادة 471 يمكن القاضي في قضايا الجنح أن يصدر أمرأ بمقضاء الحدث لواحد أو أكثر من تدابير ن تلامع

الحراسة المؤقتة وذلك بتسلمه:

1. إلى أبوه أو الوصي عليه أو المقدم عليه أو كافله أو إلى حاضنه أو إلى شيء جدير بالثقة;
2. إلى مركز الملاحظة;
3. إلى قسم الإيواء بمؤسسة عمومية أو، خصوصية معدة لهذه الغاية;
4. إلى مصلحة عمومية أو مؤسسة عمومية مكافحة برعاية الطفلة أو إلى مؤسسة صحية وبالأخذ في حالة ضرورة الحدث من التسامم;
5. إلى إحدى المؤسسات أو المعاهد المعهودة للتربية أو الدراسة أو التكوين المهني أو للمعالحة التابعة للدولة أو إدارة عامة مؤهلة لهذه الغاية أو إلى مؤسسة، خصوصية مكافحة الفقدان بهذه المهنة;
6. إلى جمعية ذات منفعة عامة مؤهلة لهذه الغاية.

إذا رأى قاضي الأحداث أن حالة الحدث الصحية أو النفسانية أو ملوكه العوام تستوجب فحصا عميقاً فيمكنه أن
يأمر بإعداده مؤقتا لعدة لا تتجاوز ثلاثة أشهر بناءً على اتفاقية التفاهم الخاصة تحت نظام الحرية المحروسة.

تتم هذه التدابير المؤقتة رغم كل طعن وكونه قابل دامًا للاستمرار.

المادة 41: يمكن للمتضرر أو المشتكي، قبل إعداده مؤقتا لعدة لا تتجاوز ثلاثة أشهر، إجراء جريمة عناصرها ضمانية.

المادة 42: يمكن للخصومية أو المنظمات المدنية، قبل إعداده مؤقتا لعدة لا تتجاوز ثلاثة أشهر، إجراء جريمة عناصرها ضمانية.

ملحقات:
1. إلى أوجه أو الوصي عليه أو القائد عليه أو كافاله أو إلى حاكمه أو إلى شيء جدير بالثقة.
2. إلى مركز الملاحظة.
3. إلى قسم الاياء بمؤسسة عمومية، أو خصوصية معدة لهذه الغاية.
4. إلى مؤسسة عمومية أو مؤسسة عمومية مكلفة بإعداد الطفولة أو إلى مؤسسة صحية والأخص في حالة ضرورة نقل الحالة.
5. إلى إحدى الجامعات أو المراكز المعروفة للتدريب أو الدراسة أو التكوين المهني أو للمعاهلة التابعة للدولة أو إدارة عمومية مؤهلة لهذه الغاية، أو مؤسسة، خصوصية مكلفة لإعداد الفهم..
6. إلى جميع ذات صفة مغعلة مؤهلة لهذه الغاية.

إذا رأى قاضي الأحداث أن حالة الحدث الصحية أو النفسية أو سلامة الطفلة تستوجب فحصًا عميقًا فحكم أن يأمر بإعداده مؤقتا لعدة لا تتجاوز ثلاثة أشهر بناءً على اتفاقية التفاهم الخاصة تحت نظام الحرية المحروسة.

يتضمن المحضر كذلك إشعار وكيل الملك للطرف الأول أو لدافعه بتاريخ جلسة غرفة المشورة.

ويوجه وكيل الملك والطفل.

المادة 45 يعتبر سن الرشد الجنائي سن الجانح يوم ارتكاب الجريمة إذا لم توجد شهادة تثبت الحالة المدنية ووقع خلاف في تاريخ الولادة فإن المحكمة المرفوعة إليها القضية تقدر السن بعد أن تأمر بإجراء فحص طبي.

وبجميع التحريات التي تراها مفيدة وتصدر إن أقضي الحال مقرراً بعدم الاختصاص.

المادة 19 تضم الشرطة القضائية بالإضافة إلى الوكيل العام للملك ووكيل الملك ونوابهما وفاضي التحقق بوصفهم ضباطاً سامين للشرطة القضائية: أولا: ضباط الشرطة القضائية ثانيا: ضباط الشرطة القضائية المكلفين بالإحداث ثالثا: أعيان الشرطة القضائية رابعا: الموظفون والأعوان الذين يربط بهم القانون بعض مهام الشرطة القضائية.