

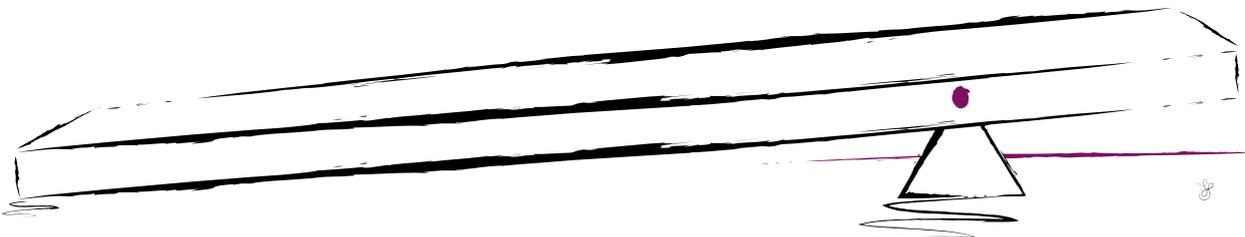


المجلس الوطني لحقوق الإنسان
المجلس الوطني لحقوق الإنسان
Conseil national des droits de l'Homme

المملكة المغربية
المملكة المغربية
Kingdom of Morocco

The Authority for Parity and Fight against All Forms of Discrimination

Additional memorandum



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ADDITIONAL MEMORANDUM ON THE AUTHORITY FOR PARITY AND FIGHT AGAINST ALL FORMS OF DISCRIMINATION

1. The National Human Rights Council,
Considering Articles 13, 24 and 25 of the Royal Decree (Dahir) No. 1-11-19 of 25 Rabi
I 1432 A.H. (1st March 2011) establishing the National Human Rights Council (CNDH);
Considering its initial memorandum on the establishment of the Authority for Parity and
Fight against all Forms of Discrimination (APALD), adopted by the Council's 3rd Ordinary
Session, held on the 6th of October 2012;
After reviewing the draft bill laying down the structure, organization, powers and rules
of operation of the Authority for Parity and Fight against all Forms of Discrimination, as
amended on April 7, 2014;
Recalling that draft bill on the establishment of the APALD was not officially referred to
the Council for opinion,
Hereby presents an additional memorandum on the aforementioned draft bill.

APALD legal status (the preamble of the draft bill)

2. The last paragraph of the preamble defines the APALD as a “body”, whereas the
Constitution does not use this term in defining the mission of the Authority under Article
164. Since the Constitution uses only the terms “council”, “institution” and “authority”
when it refers to the institutions provided for in Articles 161 to 170, and in order to avoid
any semantic confusion, the CNDH recommends reformulating the last paragraph of the
preamble to be literally consistent with the mission of the APALD as defined by Articles
19 and 164 of the Constitution.

Introducing definitions (Title I of the draft bill)

3. The National Human Rights Council notes with satisfaction that the draft bill assigns
to the APALD a mandate that focuses exclusively on the fight against gender-based
discrimination. However, the Council considers that the consolidation of this choice, which
it recommended in its main memorandum on the APALD, requires introducing in Title I
the definitions of equality, parity and discrimination against women.

4. In this respect, the CNDH recommends adopting, in the draft bill, the definition of
(direct and indirect) discrimination against women perpetrated by an individual or a
legal entity, a group or a public or private institution, as provided for in Article 1 of the
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

In the same respect, the Council proposes developing the definitions of gender equality
and parity based on Articles 19 and 30 of the Constitution, Articles 3 and 4 of CEDAW

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and the Recommendation CM/Rec(2007)17 of the Council of Europe's Committee of Ministers to member states on gender equality standards and mechanisms¹.

5. The CNDH also recommends enshrining that the draft bill the advisory role and missions of the Authority in reviewing positive measures under Articles 6, 19 and 30 of the Constitution and international conventions, in particular Article 4 of CEDAW.

APALD's mission and functions (art. 2 and 3 of the draft bill)

6. The CNDH notes that the draft bill does not clearly define the mission of the APALD. It recommends, therefore, incorporating the definition of its mission as laid down in Article 19 of the Constitution, namely the fight against all direct and indirect forms of discrimination and the promotion of equality and parity between men and women in all areas.

7. Furthermore, in accordance with its mission, the CNDH proposes that the draft bill defines the powers of the APALD as follows: advisory functions and other functions related to the protection and promotion of equality and parity between men and women.

6

Enhancing the advisory functions of the APALD (art. 4 of the draft bill)

8. To strengthen the advisory powers of the Authority, the CNDH proposes introducing in Article 4 an explicit provision entrusting the Authority with an advisory mandate to the King, the Government, the House of Representatives or the House of Councillors.

9. Similarly, the CNDH recommends reformulating paragraphs 2, 3 and the last paragraph of Article 4 to include a provision under which the Government, the House of Representatives or the House of Councillors are required to refer draft laws and bills relating to gender equality and the fight against discrimination against women, to the APALD for opinion, as well as the strategies related to State policy in these areas, particularly those relating to the objectives defined in Articles 19 and 30 of the Constitution. To rationalize the exercise of this advisory mandate, the CNDH proposes introducing a provision under which the APALD shall be required to give its opinion on draft laws, bills and matters referred to it by the Government and the Parliament within a period not exceeding two months from the date on which these draft laws, bills and matters are referred to the Authority. If the APALD issues no opinion within this deadline, the drafts, bills and matters that have been referred to it shall be considered as not raising any particular observations.

1- Adopted by the Committee of Ministers on 21 November 2007 at the 1011th meeting of Ministers' Deputies.

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The scope of APALD's advisory mandate regarding motions and petitions (art. 4 of the draft bill)

10. Article 4 of the draft bill confers on the APALD consultative powers in legislative motions and petitions. CNDH welcomes the government's approach which aims to broaden the scope of the advisory mandate of the Authority and recommends adding to the 4th paragraph of Article 4 a clause specifying that the advisory functions of the APALD regarding motions and petitions must take into account the provisions of the organic laws provided for in Articles 14 and 15 of the Constitution. In this regards, the CNDH recalls its proposals on the advisory functions of the APALD which it presented in paragraph 13.2 of its initial Memorandum (available in the website of the institution www.cndh.ma).

Protection mandate of the APALD (Art. 5 of the draft bill)

11. The CNDH notes that the wording of Article 5 of the draft bill does not include clear provisions on the protection mandate of the APALD. It seems, moreover, that the wording of Article 5 may reduce the powers of the APALD in the area of protection to simple surveillance and monitoring, despite the fact that Article 5 confers on the APALD the prerogatives to receive and investigate complaints. Indeed, the term "Authority" refers to a quasi-judicial institution that does not merely handle and forward complaints. On this basis, the CNDH recommends rewording Article 5 of the draft bill on the basis of the proposals put forward in its initial Memorandum on the APALD, particularly those related to the "protection mandate" (see Appendix).

12. The CNDH also recalls that the opinion of the Commissioner for Human Rights of the Council of Europe on national structures for promoting equality, issued on the 21st of March 2011, specifically recommends including in the competences of national institutions for the fight against discrimination with the "provision of independent assistance to victims of discrimination in pursuing their complaints of discrimination"² and "conducting research and surveys on discrimination and equality issues."

13. The CNDH also proposes including in the draft bill a clause allowing sworn officers of the APALD to perform discrimination tests in order to prove the existence of a potentially discriminatory behavior or situation. One of the measures needed to implement this proposal is amending the Criminal Procedure Code in order to recognize the results of discrimination tests in discrimination trials. This proposal is consistent with the recommendations of the European Network of Equality Bodies (Equinet) published in its opinion entitled "Equality Bodies: Current Challenges" (October 2012). Equinet stresses in

²- Opinion of the Council of Europe's Commissioner for human rights on national structures for promoting equality, Strasbourg, 21 March 2011, Comm. DH(2011)2 (p. 6).

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its report that “the need for enhancing the protection afforded to those who experience discrimination” through “legal provisions with the effect of preventing discrimination”.

Scope of the powers of the APALD in terms of surveillance and monitoring (art. 5 of the draft bill)

14. The CNDH proposes clarifying the scope of certain powers of the APALD in terms of surveillance and monitoring. This proposal is justified by the need to enshrine the principle of complementarity of the areas of intervention with the other institutions provided for in Articles 161-170 of the Constitution and to strengthen the competences of the APALD in monitoring complaints. To this end, the CNDH proposes introducing in the second paragraph of Article 5 a provision allowing the APALD to submit reports to the competent authorities containing the findings of its complaint investigations together with its recommendations.

15. Similarly, the CNDH recommends adding to paragraph 7 of Article 5 a clause specifying that the responsibilities of the APALD in the field of media monitoring must take into account the powers of the High Authority for Audiovisual Communication (HACA).

16. The CNDH also proposes clarifying the scope of the APALD competences in mediation, provided for in paragraph 10 of Article 5, in order to exclude any possibility of mediation in cases of violence against women and girls. The Council recalls in this regard point (a) of paragraph 20 of its opinion on the violence against women bill³.

System of incompatibilities (Art. 8 and 19 of the draft bill)

17. The CNDH recalls that, from a legislative point of view, opting for the choice to have the members of the APALD appointed by the King logically implies the futility of incorporating in the draft bill provisions on the their enjoyment of civil and political rights. However, the loss of civil and political rights must be stipulated as a reason to lose membership of the Authority.

The CNDH also recommends extending the system of incompatibilities of APALD members. This recommendation is linked to the fact that the draft bill provides in Article 19 that members shall serve full-time.

3- The CNDH proposed “prohibiting, as regards all forms of violence covered by the Law, alternative methods of dispute resolution, including mediation and conciliation”.

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18. As such, the CNDH proposes that the functions of the APALD members be inconsistent with:

- membership of the Government, the House of Representatives, the House of Councillors, the Higher Council of Judicial Power, the Economic, Social and Environmental Council, the authorities for the protection and promotion of human rights, good governance, regulation, promotion of human and sustainable development and participatory democracy, as well as the councils provided for in Articles 5, 41 and 54 of the Constitution;
- the exercise of any other public function, or holding a public electoral office, any paid-for position in a company in which more than 50% of capital is held by one or more public legal persons, any other position in a limited company in which more than 30% of capital is directly or indirectly held the State or one or more public legal persons, and any other position in companies and firms in which the State, public institutions or local elected councils individually or jointly, directly or indirectly, have a major decision-making power;
- the exercise of a non-electoral position paid for by a foreign country or an international governmental or non-governmental organization.

19. The CNDH proposes giving the members of the APALD the opportunity to exercise, on a voluntary basis, educational and research functions which, in the CNDH's opinion, would not be incompatible with their duties as members of the Authority. The implementation of this proposal will allow them to contribute to education and research on issues related to gender equality and the fight against discrimination.

Composition and structure of the APALD (art. 11 of the draft bill)

20. According to the draft bill, the Authority consists of two bodies: the higher board –a decision-making body– and an advisory board. In this regard, the CNDH proposes a third responsible for technical steering. Given the nature and mission of the APALD, the role and contribution of this third body is of the utmost importance for all of the powers that will be devolved to the APALD.

The Higher Board of the APALD (art. 11 and 13 of the draft bill)

21. The CNDH notes that Article 11 of the draft bill tends to limit the power of the King in choosing the members His Majesty appoints in the Higher Board of the APALD, as it requires a representative of the Higher Council of Ulemas to be among the members of the Board. On this particular point, the CNDH recalls the 17th paragraph of its main Memorandum in which the Council recommends “to insulate the future operation of the APALD from the paralyzing effects that the interference of political and ideological factors may cause. Given the Authority’s specific mandate, the legitimacy induced by an

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appointment mode favoring political representation or inclusion of the diverse ideological trends will eventually constitute a reliable guarantee for the efficiency of an institution of this nature”.

22. The CNDH thus proposes reformulating the second paragraph of Article 11 to introduce a clause stipulating that the three members of the Higher Board of the APALD (including its chairperson) designated by the King should be chosen from among the personalities known for their great expertise and meritorious contribution in combating discrimination against women and promoting equality.

Moreover, the CNDH proposes increasing the number of the Council's statutory meetings to two meeting per month instead of one (art. 13 of the draft bill).

The status of the Secretary General of the APALD (art. 34 of the draft bill)

23. Under Article 34 of the draft bill the Secretary General of the APALD shall be appointed by a decision made in the Government Council pursuant to Organic Law No. 02.12 on the appointment to senior positions. The CNDH recalls in this regard the fact that the Constitutional Council required in its Decision No. 932 (30 January 2014) on the Organic Law establishing the Economic, Social and Environmental Council that Secretary General of the institution be appointed by the King.

Appendix

EXCERPTS FROM THE CNDH MAIN MEMORANDUM ON THE APALD: RECOMMENDATIONS ON THE PROTECTIVE FUNCTIONS OF THE APALD

13.1 Regarding the “protection” function, the CNDH recommends given the Authority a quasi-judicial mandate in order to adhere to the spirit and letter of the Constitution. Indeed, the term “authority” refers to a quasi-judicial institution whose duty is not merely to process and forward complaints. The establishment of a quasi-judicial entity draws its significance and justification from the difficulties faced by litigants, especially women and girls -more vulnerable to discrimination-, in accessing justice and enjoying their rights. Therefore, it is recommended that the APALD be vested with the following functions:

- Receiving complaints from individuals, their representatives, non-governmental and socio-professional organizations, and all other representative organizations;
- Informing the complainants of their rights and the available remedies;
- Handling complaints according to established standards and procedures, and forwarding them to the competent authorities and other relevant actors;
- Intervening with the authorities, other entities and all those involved in the complaint to seek a settlement by conciliation/mediation or by a binding decision (set by law);
- Conducting investigations in public and private organizations and other entities through the appointment, within the APALD, of eligible officials accredited for this purpose;
- Initiating investigations on its own initiative in cases of discrimination, and bringing actions before the courts;
- Making recommendations to the Government and other stakeholders, by proposing reforms to laws, administrative practices and others based on the analysis of complaints and the assessment of the settlement process;
- Monitoring and following up the cases of discrimination/violence and the recommendations it issues.

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Conseil national des droits de l'Homme

**THE AUTHORITY FOR PARITY AND FIGHT AGAINST ALL FORMS
OF DISCRIMINATION**

Additional memorandum - may 2014

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