

13th Forum on the Modernisation of Public Administration and State Institutions:

**“Fight against corruption in public services in Africa as an operational element of a responsible governance”**

**Rabat, 5-6 July 2017**

**A tool for good governance:**

**THE VENICE COMMISSION’S RULE OF LAW CHECKLIST**

Herdís Kjerulf Thorgeirsdottir, Vice Presiden of the Venice Commission

Chairman,

Your Excellences

Ladies and Gentlemen,

It is a pleasure for me to participate on behalf of the Venice Commission of the Council of Europe in this 13th Forum on the Modernization of Public Administration and State Institutions: **“Fight against corruption in public services in Africa as an operational element of a responsible governance”** and introduce to you the **Venice Commissions Rule of Law Checklist** - adopted by the Commission in March 2016.

I would like to mention here the **excellent cooperation between the Ministry of Civil Service and the Venice Commission**, the Council of Europe advisory body on constitutional matters. As many of you know the Venice Commission has **gained international recognition** for its advisory work **in providing legal advice and in assisting states** to bring their legal and institutional structures into line with European principles regarding the rule of law, democracy and human rights. The scope of the Venice Commission expands more than the 47 member states of the Council of

Europe as the Commission now has 61 member states with a total population of 3 billion people. Indeed, **Morocco is a full member of the Venice Commission and it was the first country in this region to accede to membership status 10 years ago, in 2007.**

Thanks to the Ministry we have since 2015 launched the **UNIDEM seminars** with the aim of improving good governance in the southern Mediterranean through public service reform. The Venice Commission believes that the **quality of the public service is a key** factor for a country's well-being and an indicator of the state of its system of governance.

The UNIDEM seminars aim at sharing experiences and best practices on issues of common interest for public administration – it is therefore a great occasion for introducing to you **the Rule of Law Checklist that the VC adopted in March 2016.** The Rule of Law is a concept of universal validity and is, as you know, one of the three pillars that the CoE basis all its work on along with human rights and democracy. The achievement of these three principles – **respect for human rights, pluralist democracy and the Rule of Law** – is regarded as a single objective – the core objective of the Council of Europe.

The VC in its work on the checklist analyzed definitions of the Rule of Law from various sources and it considered that the notion of the Rule of Law requires a **system of certain and foreseeable law** where everyone has the right to be treated by all decision-makers with dignity, **equality** and rationality and **in accordance with the laws**, and to have the opportunity to **challenge decisions** before independent and impartial courts through fair procedures.

It is important to note that:

The VC does not regard the concept of the Rule of Law as merely formalistic – only requiring that any action of a public official be authorized by law;

The VC also stresses that **individual human rights** are affected not only by authorities of the State, but also by private actors and entities which perform tasks that were formerly the domain of the State authorities or include unilateral decisions affecting a great number of people as well as by international or supranational organizations.

The Rule of Law must be applied **at all levels of public power and in private law relations.**

Chairman,

Ladies and Gentlemen,

The core elements of the Rule of Law as well as of the *Rechtsstaat* and the *Etat de Droit* are, as previously stated, **not only formal but also substantive.**

These core elements listed in the Rule of Law Checklist are the following:

- Legality
- Legal certainty
- Prevention of abuse/misuse of powers
- Equality before the law and non-discrimination.

- Access of Justice
- Respect for Human Rights

The Rule of Law Checklist is aimed **to be a tool to evaluate the state of the Rule of Law** – the practical application of the principles just mentioned from the standpoint of constitutional and legal structures, the law in force and the existing case-law. The Checklist aims at enabling an objective, thorough, transparent and equal assessment. It is mainly directed at **assessing legal safeguards**. The Checklist also takes into consideration the **proper implementation of the law**. That is why the Checklist includes certain complementary benchmarks – not exhaustive – relating to the practice.

Assessing whether the parameters have been met requires sources of verification (standards). For legal parameters, these will be the law in force as well as (in Europe) the legal assessments of the European Court of Human Rights; the Venice Commission and so forth.

The Checklist is meant as a tool for a variety of actors; parliaments and other State authorities; civil society and international organizations.

The Venice Commission stresses the importance of - when using the Checklist - **to take into account the whole context** and avoid mechanical application of specific elements of the Checklist.

The Rule of Law is linked not only to human rights but also to democracy which relates to the involvement of people in the decision-making process in society; human rights seek to protect individuals from arbitrary and excessive interference with their rights and freedoms and to secure human

dignity; the Rule of Law focuses on limiting and independently reviewing the exercise of public powers. The Rule of Law promotes democracy by **establishing accountability of those wielding power and by safeguarding human rights.**

Although the Rule of Law is a global and ideal aspirations and that **its main components are constant**, the specific manner in which they are realized may differ from one country to the other. It is, however, increasingly recognized that authorities must not only refrain from interfering in the civil and political rights of individuals but **they furthermore, have a positive obligation** to resort to measures when necessary to guarantee these civil and political rights.

Chairman,

Ladies and Gentlemen,

The theme of this seminar is the **fight against corruption** in public services in Africa as an operational element of a responsible governance. Where there is Rule of Law; respect for human rights and an active civil society which feels responsible to uphold a society based on such values; corruption cannot thrive. Where corruption, however, is prevailing, the system is too weak to prevent bribes and misuse of public money and the conflict of interest between a public office and private gains.

An effective weapon to fight corruption is an enlightened public holding the authorities accountable and reminding of the core elements of the Rule of Law and their practical implementation. In the end it is in the interest of everyone to promote the Rule of Law, human rights and as Churchill, a

great fan of Morocco, emphasised: democracy! - which as he said, democracy - although far from being the perfect form of regime - is still better than all other forms of government. Churchill spent months every year in the North African Sun – here in beautiful Morocco - so his vision must have been clear and not clouded by a dark sky.

It is therefore appropriate to continue this discussion in Morocco - the next UNIDEM seminar will take place here in Rabat in September and will deal with the prevention of corruption and promotion of integrity in the public service – also on the basis of the experience shared here by the participants in this seminar. Hopefully the Venice Commission’s Rule of Law Checklist will play an active role in that seminar’s discussions!

It has been a privilege to get the chance to present to you the Rule of Law Checklist, which was endorsed by the Council of Europe Committee of Ministers in September 2016. I hope this tool made in Europe will become of use here on North African soil – as well as contributing to these fruitful debates taking place here today and yesterday.

On behalf of the Venice Commission, I thank again the Minister, Mr. Benabdelkader, and of course, everyone in the Ministry of Civil Service for our excellent, very close and genuine co-operation.

Thank you very much for your attention.