

CHECK-LIST OF ISSUES ON ENFORCEMENT¹

Replies from Morocco

Civil and administrative procedures and remedies

(a) *Civil judicial procedures and remedies*

1. Specify the courts which have jurisdiction over IPR infringement cases.

In all IPR infringement cases, the jurisdiction of the courts is determined by the nature of the right that forms the subject of the action and the status of the party against which that action is brought.

Thus, in the field of industrial property, Law No. 17-97 concerning Protection of Industrial Property stipulates that the commercial courts alone are competent to hear cases of this kind. Decisions taken by these courts can be appealed to the Commercial Court of Appeal whose decisions can, in their turn, be appealed on points of law to the Supreme Court. The decisions taken by the Commercial Court of Appeal and by the Supreme Court may either uphold or reverse the decisions taken by the commercial courts.

Civil actions resulting from the infringement of plant breeders' rights (as defined by Law No. 9-94 on the Protection of New Varieties of Plants) and of Copyright and Related Rights (as defined by Law No. 2-00 on copyright and related rights) are brought before the courts of first instance in the chief town of the appeal court district. Their judgements can be challenged in the Court of Appeal. In the last instance, the parties to the dispute can appeal to the Supreme Court on a point of law.

Under Law No. 41-90 Establishing Administrative Courts, when the party against which proceedings are brought is an administration or a public-law corporation, the administrative courts are competent to hear cases arising out of the infringement of a right.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

Which persons have standing to assert IPRs?

Under Article 1 of the Code of Civil Procedure, "only those with standing, capacity and interest may take part in legal proceedings to assert their rights. The judge shall establish, *proprio motu*, the lack of standing or capacity or interest or the lack of authorization when the latter is

¹ Document IP/C/5.

required." In accordance with these provisions, any natural or legal person holding intellectual property rights may assert his rights, after payment of a court fee, except where legal aid is provided.

How may they be represented?

Natural or legal persons holding rights in new plant varieties or industrial property rights and not having their domicile or registered office in Morocco must appoint an agent having his domicile or registered office in Morocco. Under Article 33 of the Code of Civil Procedure, "the agent must be domiciled within the jurisdiction. The appointment of an agent is equivalent to electing domicile with that agent. The only persons not professionally entitled to represent others in legal proceedings who may act as an agent are the spouse or a relative or relative by marriage in the direct or collateral line of descent up to the third degree, inclusive."

Copyright holders may have themselves represented by the *Bureau Marocain des Droits d'Auteur* (Moroccan Copyright Bureau).

In order to take part in court proceedings all holders of intellectual property rights must have themselves represented by an attorney on the roll of one of Morocco's bar associations.

Thus, Article 31 of Law No. 1-93-162 Organizing the Practice of the Profession of Attorney stipulates that "only attorneys on the roll of the Kingdom's bar associations shall be authorized, when representing or assisting the parties, to present petitions, arguments and defence pleadings in all cases other than criminal cases, maintenance cases before the courts of first instance and appeal courts, and proceedings falling within the jurisdiction of the courts of first instance against which no appeal lies."

However, under the same Article, "attorneys practising in a foreign country linked with Morocco by a convention under which nationals of each of the Contracting States have access in the other to the profession of attorney may conduct proceedings before the Moroccan courts provided that they elect domicile with an attorney on the role of one of the Kingdom's bar associations and, unless the convention otherwise provides, have been specially authorized to do so, on a case-by-case basis, by the Minister of Justice."

Are there requirements for mandatory personal appearances before the court by the right holder?

In general, personal appearances before the court by the right holder are not mandatory. Nevertheless, there are circumstances in which the right holder may, in fact, be required to appear, for example, to hear his statement or for confrontation purposes.

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

This authority is conferred on the judicial authorities by various provisions, in particular those featuring in the Code of Civil Procedure and the Dahir Establishing the Code of Obligations and Contracts.

Thus, Article 55 of the Code of Civil Procedure stipulates that "before ruling on the merits, the judge may, at the request of both or one of the parties, or ex officio, order an expert study, an inspection of premises, an inquiry, the establishment of the genuineness of a document or any other investigative measure."

Similarly, the communication to the other party of commercial ledgers and balance sheets and household records cannot be ordered by the courts in collation, community and partnership cases or in

other cases in which the books are common to both parties or in the event of financial difficulties (Article 435 of the Code of Obligations and Contracts and Article 545 of Law No. 15-95 Establishing a Commercial Code). Communication or production may be ordered either ex officio or at the request of one of the parties in the course of the proceedings and even before any complaint has been lodged, when justified by sufficient need and only to the extent required by that need (Article 435 of the Code of Obligations and Contracts and Article 22 of the Law No. 15-95 Establishing a Commercial Code). Production consists in extracting from the accounts only those entries that concern the case before the court (Article 23 of Law No. 15-95 Establishing a Commercial Code).

4. What means exist to identify and protect confidential information brought forward as evidence?

This situation is dealt with in numerous statutory provisions.

Thus, Article 18 of the General Civil Service Act and Regulations requires every official to keep confidential everything concerning facts and information of which he becomes aware during or in connection with the performance of his duties, irrespective of the confidentiality provisions of the Criminal Code.

Article 15 of the Code of Criminal Procedure stipulates that "during the investigation or inquiry the procedure shall be confidential. Anyone participating in this procedure shall be bound to professional secrecy under the conditions and subject to the penalties laid down in the Criminal Code."

The Code of Obligations and Contracts also contains various provisions concerning the relevant obligations of the State and those of its officials and members of the legal service. Thus, the State is liable for any damage caused directly by the activities of its services or the administrative errors of their officials (Article 79). Civil servants are personally liable for any damage caused by them, intentionally or through their gross negligence, in the performance of their duties. An action for damages may be brought against the State only if the officials responsible are insolvent (Article 80). A member of the legal service who fails in his official duties shall be civilly liable to the injured party where there are grounds for an action for damages against him for misuse of authority (Article 81).

Under Article 2 of Law No. 41-80 Establishing and Organizing a Bailiff Service, the powers of the bailiff include "the capacity personally to make any service of process required by the preparatory stages of the proceedings and perform all acts required for the execution of orders and judgements, where the method of service has not been specified, and to bring to execution court decisions and enforceable measures and writs of execution, subject to referral in the event of difficulties."

However, bailiffs are faced with various sanctions and penalties in the event of failure to comply with their professional obligations, in accordance with the provisions of Articles 19 to 21 of Law No. 41-80 Establishing and Organizing a Bailiff Service.

Moreover, in no circumstances may an attorney make any disclosure in contravention of professional secrecy. In particular, he must respect the confidentiality of criminal inquiries and refrain from communicating any information taken from the files or publishing documents or letters concerning an ongoing investigation (Article 36 of Law No. 1-93-162 Organizing the Practice of the Profession of Attorney).

With reference, in particular, to new plant varieties, it should be noted that Article 71 of Law No. 9-94 on the Protection of New Varieties of Plants stipulates that "the production and trade secrets

of interested parties shall be safeguarded. The opposing party shall be given access to evidence that might reveal such secrets only insofar as consistent with their protection."

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:

- **Injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

Injunctions

The judicial authorities are authorized to take various types of decisions: expert reports, injunctions or other urgent measures, orders made in chambers, payment orders, and final or other judgements.

- Expert reports, injunctions or other urgent measures:

may be ordered in any matter for which there is no special provision, without prejudice to the rights of the parties, after the president of the court has ruled on an *ex parte* application (Article 148 of the Code of Civil Procedure).

- Orders made in chambers:

are only provisional and issued without prejudice to what is decided on the merits (Article 152 of the Code of Civil Procedure). They are immediately enforceable. The urgent applications judge may, however, make their execution dependent on the lodging of security (Article 153 of the Code of Civil Procedure). He may also order attachment or any other precautionary measure, whether or not proceedings have begun before the trial judge (Article 149 of the Code of Civil Procedure).

- Payment orders:

may be issued pursuant to any request for payment of a sum of money in excess of 1,000 dirhams owed by virtue of a document or an acknowledged promise (Article 155 of the Code of Civil Procedure).

- Judgements:

are not final if the decision can be appealed (Article 150 of the Code of Civil Procedure). However, they may always be made immediately enforceable, with or without security, depending on the circumstances of the case, which must be specified (Article 147 of the Code of Civil Procedure).

- Final judgements:

bring the case to a close by deciding the question forming the subject-matter of the proceedings.

Damages, including recovery of profits, and expenses, including attorney's fees:

Under Article 77 of the Code on Obligations and Contracts, a person responsible for causing, knowingly and deliberately, pecuniary or non-pecuniary damage to others, must make good the damage, when it is established that his action was the direct cause.

Article 84 of the Code on Obligations and Contracts specifies that the payment of damages may be ordered in connection with certain practices that infringe industrial property rights.

Law No. 17-97 concerning Protection of Industrial Property provides for the payment of compensation to the injured party, at the latter's request, in the event of infringement of an industrial property right relating to patents (Article 212), integrated circuit topographies (Article 218), industrial designs (Article 220), trademarks (Article 224), and indications of source or designations of origin (Article 183).

In compensation for pecuniary and non-pecuniary damage suffered by the right holder, Law No. 2-00 on Copyright and Related Rights provides for the payment of damages to the proprietor of the rights under Article 62.1. According to the same statute, where there is a risk of the acts that constitute a violation continuing, the judicial authorities may expressly order the cessation of those acts. They may also fix an amount equivalent to at least 50 per cent of the value of the operation (Article 62.6).

In the event of infringement of a breeder's right, Article 67 of Law No. 9/94 on the Protection of New Varieties of Plants requires the value of the confiscated objects to be taken into account in calculating the compensation awarded to the beneficiary of the judgement.

As far as the recovery of expenses is concerned, Article 124 of the Code of Civil Procedure stipulates that "any losing party, whether a private individual or a government department, shall have the costs awarded against it. Depending on the circumstances of the case, each party may be ordered to bear all or part of its own costs."

Destruction or other disposal of infringing goods and materials/implements for their production

Article 62.4 of the Law on Copyright and Related Rights authorizes the destruction of infringing copies and their packaging or disposal outside commercial channels, so as to avoid causing damage to the right holder.

Article 62.5 of the Law on Copyright and Related Rights also authorizes the destruction, as far as reasonably possible, of equipment used to commit or continue committing infringing acts or disposal outside commercial channels so as to minimize the risk of further infringements, or its handing over to the right holder.

Under Article 212 concerning civil suits involving patents, Law No. 17/97 concerning Protection of Industrial Property provides for the possibility of the court ordering confiscation in favour of the petitioner, if necessary, of articles recognized as constituting an infringement and implements or means specifically intended for committing the infringement. The same provisions are applicable to infringements of an industrial property right involving industrial designs (Article 220) or trademarks or service marks (Article 224).

With respect to wilful infringements of the rights of the holder of a new plant variety certificate, Article 73 of Law No. 9-94 on the Protection of New Varieties of Plants allows the court to order the destruction of the product and/or the propagating material at issue.

Any other remedies

Article 208 of Law No. 17-97 concerning Protection of Industrial Property provides for the loss, for a maximum period of five years, of the right to belong to a professional association.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third parties involved in the production and distribution of goods or services found to be infringing and of their channels of distribution?

In several situations, the judicial authorities are authorized to order the infringer to inform the right holder of the identity of third parties involved in the production and distribution of goods or services found to be infringing and of their channels of distribution.

Thus, within the context of investigative measures (inquiries, expert studies, inspection of premises, etc.) ordered under Articles 59 ff. of the Code of Civil Procedure, the judge may require the infringer to state the identity of his accomplices or co-principals.

In urgent cases, the right holder may request the president of the court of first instance to summon the infringer or to question him through a bailiff concerning the identity of his accomplices (Article 148 of the Code of Civil Procedure).

Moreover, under Article 264 of the Dahir on Obligations and Contracts, the judge may inform the infringer that he will be ordered to pay the right holder damages if he does not inform the latter of the identity of accomplices or co-principals who might be able to take a share of the liability.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

Article 203 of Law No. 17-97 concerning Protection of Industrial Property provides that in infringement cases the judge may make the prohibition of continuation of the allegedly infringing acts, provisionally and on pain of a fine, subject to the furnishing by the applicant of security intended to ensure the eventual indemnification of the defendant if the infringement action is subsequently judged to have been unfounded. The same article also stipulates that the application for prohibition or provision of security shall be allowed only if the main action is deemed to be serious and was brought within a maximum of 30 days of the day on which the proprietor became aware of the facts on which the action is based.

Similarly, Article 222 of Law No. 17-97 concerning Protection of Industrial Property provides that the execution of the order of the president of the court relating to a detailed description, with or without the taking of samples, or the seizure of products or services which the proprietor of a registered mark or the beneficiary of an exclusive right of exploitation claims have been marked, offered for sale, delivered or supplied to his detriment in violation of those rights may be made subject to a deposit by the applicant intended to ensure the possible indemnification of the damage suffered by the defendant if the infringement action is subsequently judged to be unfounded.

Likewise, Article 70 of Law 9-94 on the Protection of New Varieties of Plants stipulates that "when an infringement action is brought before the court, its president, under an urgent procedure, may prohibit, provisionally and on pain of a fine, the continuation of the allegedly infringing acts or

make such continuation subject to the furnishing of security intended to ensure the indemnification of the holder of the new plant variety certificate or the beneficiary of an exclusive right of exploitation."

Furthermore, Article 153 of the Code of Criminal Procedure allows the judge to make the execution of an interim order subject to the provision of security by the plaintiff.

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

In principle, the duration and cost of proceedings are not fixed; they both depend on a number of factors such as the nature and complexity of the case, the fees of the attorneys, the attitude of the parties and the principles applicable.

However, Law No. 53-95 Establishing the Commercial Courts includes several provisions placing time-limits on the procedure applied by those courts. Thus, Article 6 stipulates that "as an exception to the provisions of Article 17 of the Code of Civil Procedure, the commercial court must rule on an objection to jurisdiction on grounds of the matter before it in a separate judgement delivered within eight days. The judgement concerning jurisdiction may be appealed within a period of ten days from the date of notification." According to Article 14 of the same law, "as soon as the application has been registered, the president of the court shall appoint a judge to direct preparations for trial, to whom he shall transmit the file within 24 hours. The judge directing the preparations shall summon the parties to the next hearing, the date of which he shall have fixed." Moreover, "if the case is not ready for trial, the commercial court may adjourn it to a later hearing or refer it to the judge directing the preparations. In any event, the judge directing the preparations must send the case back for trial within a maximum of three months (Article 16)".

With respect to the execution of judgements and orders, Article 23 of Law No. 53-95 Establishing the Commercial Courts states that "the officer responsible for execution shall notify the party concerned of the decision he has been instructed to execute and call upon him to accept it or to inform him of his intentions within a maximum of ten days of the filing of the application for execution. The executing officer shall draw up a record of execution, or a statement of the reasons that have prevented him from doing so, within 20 calendar days of the expiration of the notice to comply".

With respect to court fees, Article 125 of the Code of Civil Procedure states that the amount of the costs assessed shall be mentioned in the judgement deciding the case, unless an assessment can be made before judgement is delivered. In this latter case, the costs are assessed by judge's order annexed to the case file.

Under Article 127 of the Code of Civil Procedure, "within ten days of notification of the order fixing the costs, the expert, the interpreter and the parties may object to the assessment before the president of the court of first instance. The order ruling on this objection shall not be subject to appeal".

(b) Administrative procedures and remedies

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

The Moroccan legislation does not provide for any such remedies.

Provisional measures

(a) *Judicial measures*

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

Several types of provisional measures may be taken depending on the category of the right infringed.

Thus, Law No. 17-97 concerning Protection of Industrial Property provides for the following provisional measures:

- Prohibition, provisionally and on pain of a fine, of the continuation of allegedly infringing acts (Article 203);
- seizure on importation, at the request of the Public Prosecutor's Office or any other interested party, by virtue of an interim order of the president of the court, of any product unlawfully bearing a trademark, service mark or trade name and, likewise, any product bearing false indications concerning its origin or the identity of the producer, manufacturer or trader (Article 206);
- attachment of a patent by virtue of an interim order of the president of the court notified to the owner of the patent, the body responsible for industrial property and those holding rights in the patent (Article 76). Similar provisions apply to industrial designs (Article 128) and trademarks and service marks (Article 159);
- a detailed description of the allegedly infringing products or processes and establishment of the origin, nature and extent of the infringement, with or without seizure in patent and industrial design cases (Article 211);
- a detailed description, with or without the taking of samples, or seizure of allegedly falsely marked products or services (Article 222).

Interim measures may also be requested in cases of infringement of a right associated with indications of source or designations of origin, under Article 183 of Law No. 17-97 concerning Protection of Industrial property.

Law No. 9-94 on the Protection of New Varieties of Plants provides for the following measures:

- A detailed description, with or without seizure, of any plants or parts of plants and any propagating material allegedly obtained in violation of rights (Article 64);
- a detailed description, with or without seizure, of plants, parts of plants or any material for the propagation of the allegedly infringing variety in question (Article 65);
- possibility of requiring the applicant to furnish security before the allegedly infringing products are seized (Article 66);

- possibility of prohibiting, on pain of a fine, continuation of the allegedly infringing acts or making such continuation subject to the furnishing of security intended to ensure the indemnification of the holder of the new plant variety certificate or the beneficiary of an exclusive right of exploitation. The application for prohibition or the furnishing of security is only allowed if the main action is deemed to be serious and was brought soon after the holder of the certificate or the beneficiary of the exclusive right of exploitation became aware of the facts on which the action is based. Prohibition may be made subject to the furnishing by the applicant of security intended to ensure the possible indemnification of the defendant if the infringement action is subsequently judged to be unfounded (Article 70).

Article 61 of Law No. 2-00 on Copyright and Related Rights provides for the following provisional measures:

- prohibition on infringing or order to cease infringing a protected right; and
- ordering the seizure of copies of works and sound recordings suspected of having been made or imported without the authorization of the holder of the right protected by law, where the making or importation of copies is subject to authorization, together with the packaging of such copies, any implements which may have been used for making them, and documents, ledgers or business papers relating thereto.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

These measures may be ordered because of urgency, difficulties relating to the execution of a judgement or a document giving authority to execute or for effecting an attachment or other precautionary measure, whether or not the case has been brought before the trial court. These measures are taken by the president of the competent court sitting in chambers. If the case is submitted to the appeal court, the same functions will be performed by the president of that court (Article 149 of the Code of Civil Procedure).

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Measures are initiated on application to the president of the competent court who may make an order, sitting in chambers if necessary, subject to the provision by the applicant of security intended to ensure the eventual indemnification of the defendant if the action is subsequently judged to be unfounded. In this case, the security must be lodged before the court issues the order.

The order is maintained until the case has been judged on the merits or until the defendant furnishes the court with evidence that his interests might be irreversibly harmed by the maintenance of the order.

Where the procedure for which these articles provide is applied, proceedings on the merits must be instituted within a time-limit that varies, depending on the circumstances, from 15 to 30 days; otherwise the provisional measures will be rendered void.

13. Describe provisions governing the length and cost of the proceedings?

The length of the proceedings is generally shorter and the cost less than in the case of proceedings on the merits.

As with proceedings on the merits, the costs of provisional proceedings are borne by the losing party.

14. Replies to the above questions in relation to any administrative provisional measures.

The Moroccan legislation does not provide for such measures.

Special requirements related to border measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

Article 206 of Law No. 17-97 concerning Protection of Industrial Property provides for the seizure at importation, at the request of the Office of the Attorney-General or any other interested party, by virtue of an order of the president of the court sitting in chambers, of any product unlawfully bearing a trademark or service mark or trade name. The same applies to products bearing false indications concerning their origin or the identity of the producer, manufacturer or trader.

Articles 53(a) and (c), 99(b) and 214 of the same law also provide, failing the consent of the holder of the industrial property rights protected, for the following measures:

- Prohibition on importing or stocking with a view to making, offering, putting on the market or using a patented product or a product directly obtained by a patented process;
- prohibition on importing, selling or otherwise distributing for commercial purposes a protected lay-out design (topography), an integrated circuit in which a protected lay-out design is incorporated, or an article incorporating such an integrated circuit only insofar as it continues to contain an unlawfully reproduced lay-out design;
- imposition of the same penalties on those who have knowingly handled, put on sale or sold, introduced or exported products deemed to be counterfeit as those imposed on the counterfeiters themselves. The same applies to any aid knowingly given to a perpetrator of the above-mentioned infringements.

Article 61(b) of Law No. 02-00 on Copyright and Related Rights gives the court competent to hear civil suits the authority to order the seizure of copies of works or sound recordings suspected of having been made or imported without the authorization of the right holder, together with the packaging of such copies, implements which may have been used for making them and documents, ledgers or business papers relating thereto.

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of goods) and 57 (right of inspection and information) been implemented?

At the border, the Customs and Excise Administration, at the request of the Public Prosecutor's Office or any other interested party, may intervene, on the basis of a court decision, in the importation of any goods liable to infringe the rights of intellectual property right holders.

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

Decisions by the competent authorities for the suspension of the clearance of goods remain valid until the proceedings have been settled.

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to ex officio action?

The customs authorities are not required to act upon their own initiative.

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

The president of the court may order the customs authorities to prevent the clearance of confiscated goods throughout the duration of the judicial proceedings relating to the infringement action.

Criminal procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

As in civil proceedings, the question of which court is competent to hear criminal cases involving acts of infringement of intellectual property rights will depend on the category of the right infringed and the status of the party against which the action is brought.

Thus, criminal actions may be brought before the commercial courts in cases of infringement of industrial property rights (Article 15 of Law No. 17-97 concerning Protection of Industrial Property).

Criminal actions relating to infringements of the rights of a plant breeder or of copyright and related rights are brought before the courts of first instance in the chief town of the appeal court district.

21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available.

Criminal procedures and penalties exist and can be applied, in particular, against anyone who, intentionally or through negligence and with a view to profit or gain, infringes the pecuniary or non-

pecuniary rights of authors of literary or artistic works and holders of related rights, as defined in Law No. 02-00 on Copyright and Related Rights.

With regard to industrial property, the acts deemed to constitute a criminal offence, under Law No. 17-97 concerning Protection of Industrial Property, are wilful infringements of the rights of the owner of a patent, an industrial design, an integrated circuit layout design (topography), a trade name, an indication of source or designation of origin, an industrial award or a registered trademark or service mark. Criminal procedures and penalties may also be applied against anyone who wilfully and repeatedly infringes the rights of the owner of a new plant variety certificate, as defined in Article 16 of the Law on the Protection of New Varieties of Plants, and against anyone who repeatedly makes unlawful use of the status of owner of a new plant variety certificate or an application for such a certificate.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

Under Article 1 of the Code of Criminal Procedure, any offence gives grounds for the commencement of criminal proceedings for the imposition of penalties and, if damage has been caused, a civil action for damages.

Criminal proceedings are instituted against the perpetrator of the offence, his co-principals or accessories. They are initiated and conducted by the judges or the officers to whom they are entrusted by law. Criminal proceedings may also be initiated by the injured party (Article 2 of the Code of Criminal Procedure).

However, under Article 74 of Law No. 9-94 on the Protection of New Varieties of Plants and Article 205 of Law No. 17-97 concerning Protection of Industrial Property, in the event of an infringement of an intellectual property right defined by either of the two laws, criminal proceedings can be commenced by the Public Prosecutor's Office only upon a complaint by the injured party.

In cases of infringement of the provisions of Articles 24(a), 113 and 135(a) and (b) of Law No. 17-97 concerning Protection of Industrial Property, the Public Prosecutor's Office may institute legal proceedings on its own initiative, under Article 205 of the same law.

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

Anyone who considers his protected rights to have been infringed has standing to initiate criminal proceedings in accordance with the rules of the Code of Criminal Procedure.

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- **Imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

Infringements of industrial property rights, as defined by Law No. 17-97 concerning Protection of Industrial Property, are subject, under that same law, to the following penalties:

Patents

Any deliberate violation of the rights of the owner of a patent, as defined in Articles 53 and 54 above, shall constitute an infringement and shall be punishable with imprisonment for two to six months and/or a fine of 50,000 to 500,000 dirhams.² For repeat offenders, the penalties may be doubled. There shall be repetition of the offence, within the meaning of the present article, when the defendant has been irrevocably convicted of the identical offence within the previous five years. The court may also order the destruction of objects found to be counterfeit owned by the infringer, as well as implements or means specially intended for committing the offence (Article 213).

Those who have knowingly handled, exhibited, offered for sale or sold, introduced or exported infringing products shall be liable to the same penalties as the infringer. The same shall apply to any aid knowingly given to the perpetrator of any of the above-mentioned offences (Article 214).

The penalties provided for in Articles 213 and 214 above shall be increased to imprisonment for six months to two years and/or a fine of 100,000 to 500,000 dirhams only if the infringer is an employee who has worked in the workshops or the establishment of the patentee. An employee who has entered into association with the infringer after informing him of the processes described in the patent shall be liable to the same penalties. The employee may be prosecuted under the provisions of Article 447 of the Criminal Code (Article 215 of Law No. 17-97 concerning Protection of Industrial Property).

Without prejudice to the penalties laid down in special laws, those who, in speeches or lectures delivered in public places or at public meetings, or in documents or publications sold or distributed, offered for sale or displayed in public premises or at public meetings, have given any information, indication or description whatsoever concerning patents or patents of addition relating to a main patent or integrated circuit lay-out designs (topographies) for which an application has been filed by them or by others but which have not yet been issued, shall be liable to a fine of 50,000 to 500,000 dirhams. In addition to the fine, repeat offenders shall be liable to imprisonment for three months to two years (Article 216).

Without prejudice, where appropriate, to the more serious penalties for breaches of national security, anyone deliberately infringing one of the prohibitions specified in Article 42 above shall be liable to a fine of 100,000 to 500,000 dirhams. If national defence has been impaired, a penalty of imprisonment for one to five years may also be imposed (Article 217).

Integrated circuit layout designs (topographies)

The provisions relating to patents are also applicable to civil and criminal infringement proceedings concerning integrated circuit lay-out designs (topographies) (Article 218).

Industrial designs

Any deliberate infringement of the rights of the owner of an industrial design is punishable by a fine of 25,000 to 250,000 dirhams. This penalty shall be increased to a fine of 50,000 to 250,000 dirhams and imprisonment for one to six months if the offender was in the employ of the injured party. The latter penalties shall also be applicable if the defendant is a repeat offender, that is to say has been irrevocably convicted of the identical offence within the previous five years. The

² In 1999, 1 US dollar was equivalent to 9.83 dirhams.

court may also order the destruction of infringing objects owned by the infringer, as well as of implements or means specially intended for committing the offence (Article 221).

Trademarks

Under Article 225, the following shall be deemed to be infringers and liable to imprisonment for two to six months and/or a fine of 50,000 to 500,000 dirhams:

- Those who have counterfeited a registered mark or fraudulently affixed a mark belonging to others;
- those who have made use of a mark without the authorization of the interested party even if accompanied by words such as "formula", "style", "system", "recipe", "imitation", "kind", or any other similar indication liable to mislead the buyer;
- those who, without lawful cause, have stocked products which they knew to bear a counterfeit or fraudulently affixed mark and have knowingly sold, put on sale, supplied or offered to supply goods or services under such a mark;
- those who have knowingly delivered a product or provided a service other than that requested of them under a registered mark.

Under Article 226, the following only shall be liable to a penalty of imprisonment for one to six months and/or a fine of 25,000 to 250,000 dirhams:

- Those who, without counterfeiting a registered mark, have made a fraudulent imitation thereof likely to mislead the buyer or have made use of a fraudulently imitated mark;
- those who have made use of a registered mark bearing indications likely to mislead the buyer as to the nature, material properties, composition or active-principle content, type or origin of the object or product described;
- those who, without lawful cause, have stocked products which they knew to bear a fraudulently imitated mark or have knowingly sold, put on sale or offered to supply products or services under such a mark.

Under Article 227, imprisonment for one to three months and/or a fine of 50,000 to 500,000 dirhams may be imposed only on those who have had incorporated in their trademarks or service marks prohibited signs mentioned in Article 135(a) above without the authorization of the competent authorities and those who have introduced into Morocco, stocked, put on sale or sold natural or manufactured products bearing the said signs as a mark.

The court may also order the destruction of infringing objects owned by the infringer, as well as of implements or means specially intended for committing the offence (Article 228).

The penalties laid down in Articles 225 to 228 above are applicable to collective marks as well as to collective certification marks (Article 229).

Indications of source and designations of origin

The following only are punishable, under Article 231, by imprisonment for one to six months and/or a fine of 25,000 to 250,000 dirhams:

- The direct or indirect use of a false or misleading indication concerning the source of a product or service or the identity of the producer, manufacturer or trader;
- the direct or indirect use of a false or misleading designation of origin or the imitation of a design of origin, even if the true origin of the product is indicated or the designation is used in translation or accompanied by expressions such as "kind", "style", "imitation" or the like.

Industrial awards

Under Article 232, the following only are liable to imprisonment for two to six months and/or a fine of 50,000 to 500,000 dirhams:

- Those who, without entitlement and fraudulently, have conferred upon themselves industrial awards mentioned in Article 189 above or have conferred upon themselves fictitious awards by reproduction on their products, signs, advertisements, prospectuses, letterheads, business documents or packaging, or in any other manner;
- those who, under the same conditions, have used them for purposes other than those for which they were obtained;
- those who have made industrial or commercial use of awards other than those mentioned in Article 189 above.

Those who, having benefited from an industrial award, have made industrial or commercial use thereof without complying with the provisions of Articles 189, 190 and 198 of Law No. 17-97 concerning Protection of Industrial Property (Article 233).

The counterfeiting of products of the mind is liable to the following penalties:

- A fine of 120 to 10,000 dirhams (Article 575 of the Criminal Code);
- imprisonment for three months to two years and a fine of 500 to 20,000 dirhams for habitual offenders (Article 577 of the Criminal Code);
- doubling of the term of imprisonment and the fine and the temporary or permanent closure of establishments operated by the infringer or his accomplices for repeat offences (Article 577 of the Criminal Code);
- the penalties may be tripled (Article 64 of Law No. 2-00 on Copyright and Related Rights);
- confiscation of sums equal to the proportion of the proceeds derived from illegal reproduction, performance or distribution, as well as confiscation of any equipment specifically installed with a view to illegal reproduction and all infringing copies and objects (Article 578 of the Criminal Code);

- publication of the conviction and sentence, in whole or in part, in the newspapers and posting of the conviction on the convicted person's premises, in particular, on the doors of his residence and of any establishment or theatre belonging to him (Article 578 of the Criminal Code);
- the counterfeit material or copies, together with the proceeds or portions thereof that have been confiscated, are handed over to the author or his successor in title to indemnify them for the damage suffered; the remainder of the indemnity to which they are entitled, or the entire indemnity if there has been no confiscation of equipment, counterfeit articles or proceeds, gives rise to the award of damages, at the request of the complainant and under the usual conditions (Article 579 of the Criminal Code).

Infringements of the rights of breeders, as defined by Law No. 9-94 on the Protection of New Varieties of Plants, give rise, under that same law, to the following penalties:

- Without prejudice, where appropriate, to the application of penalties under special laws, in particular those relating to the repression of fraud, any deliberate infringement of the rights of the holder of a new plant variety certificate, as defined in Article 16 of the said law, is punishable by a fine of 3,000 – 30,000 dirhams (Article 73);
- whoever makes unlawful use of the status of owner of a new plant variety certificate or an application for such a certificate is liable to a fine of 3,000 to 30,000 dirhams. Repeat offenders may also be sentenced to imprisonment for two months to one year. For the purposes of this Article, a repeat offender is one who has been irrevocably convicted for an identical offence within the previous five years (Article 75).

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost if any.

The provisions in force have already been described. Information on the actual duration of proceedings and their cost is not available.
