



# ASSESSMENT OF MEDIA LEGISLATION IN MOROCCO

BY AHMED GHAZALI

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# MED MEDIA

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The new constitutional, legislative and institutional systems acknowledge and encourage change in the Moroccan audio-visual landscape and are generally favourable to increased freedom of enterprise and freedom of expression in the Moroccan media.



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# I. EXECUTIVE SUMMARY

This report looks at the status and context of legislation on the printed press, the private audio-visual media and electronic communication in Morocco, and makes recommendations about the development of these sectors.

Unlike Tunisia, Libya or Egypt, for example, it was an evolution in the existing political regime and not a revolution that brought about the liberalisation of the Moroccan media. The lifting by legal decree of the state broadcasting monopoly inherited from the French protectorate, the setting up of the Haute Autorité de la Communication Audiovisuelle (Supreme Audio-visual Communication Authority) (HACA) and the adoption in 2005 of an audio-visual communication law established the new legal and institutional framework of this liberalisation.

The printed press has also seen a progressive trend towards liberalisation as part of the slow and painful path towards the democratisation of Moroccan society and the increased freedoms this demands. The reforms made to the 1958 Press Code are among the most significant elements of this change. The new constitutional, legislative and institutional systems acknowledge and encourage change in the Moroccan audio-visual landscape and are generally favourable to increased freedom of enterprise and freedom of expression in the Moroccan media.

## 1.1. AUDIO-VISUAL FREEDOM OF ENTERPRISE

Freedom of enterprise and free competition in all areas of human activity are guaranteed by the new Moroccan Constitution, as specified in Article 35 of the Constitution of July 2011.

Article 3 of Law No. 77-03 (2002) expressly states that: "audio-visual communication is free". This freedom is understood by the legislator to be, in political terms, the editorial freedom of audio-visual operators and, in economic terms, their freedom of enterprise.

The creation and operation of private audio-visual enterprises in Morocco, by virtue of this newly acquired freedom, are also subject to precise legal provisions, the aims of which are to guarantee the diversity of the media.

Title 2 Law No. 77-03 is dedicated to the legal system governing private audio-visual communication. Applications to establish and/or operate networks for the distribution of audio-visual communication services are subject to a licensing requirement and the

law requires that every audio-visual enterprise be incorporated as a public limited company.

Law N° 77-03 also sets out laws governing the awarding of frequencies and the guaranteeing of fair and transparent processes for private operators seeking to access the airwaves. The Agence de Réglementation des Télécommunications (Telecommunications Regulatory Agency) (ANRT) manages frequencies at a national level, and the HACA, in co-ordination with the ANRT, manages the allocation of audio-visual frequencies to operators.

## 1.2. FREEDOM OF THE PRESS

The Moroccan Press Code enshrines freedom of the press and the right to information: "The freedom of publication of printed press, publishing and library press is guaranteed pursuant to the provisions of this law."

According to the Press Code, a newspaper may belong to a private individual or a legal entity, and the group behind a press enterprise may be a

company, an association or a political party. Ownership of share capital is not subject to any limitation and the same enterprise may own several titles. However, to avoid the concentration of media under Moroccan law, no one whose business is the publication of newspapers or written periodicals may hold a stake in the share capital of more than one licensed audio-visual communication operator.

## 1.3. FREEDOM OF ENTERPRISE OF ELECTRONIC COMMUNICATION

There are no legal provisions specific to internet freedoms in Morocco. Pending a law enshrining freedom of online communication, the key issue is whether the current Press Code and Law No. 77-03 on audio-visual communication can be applied to online content.

## 1.4. FAIR ACCESS TO FUNDING BY THE PRIVATE SECTOR

Unlike the public audio-visual media, which are highly subsidised by the state, private audio-visual media receive no government funding. The establishment of a fund to promote the audio-visual sector – to be supplied from fees paid by operators for radio frequencies – has been suggested but has yet to be implemented.

Commercial advertising brings in most of the revenue to finance the activities of private audio-visual operators. Although there is no general legislation dedicated to advertising, several texts govern audio-visual advertising in Morocco.

Subsidies and financial aid from the state for the printed press are important for the survival and diversity of mass media in Morocco. As in Tunisia, ink and newsprint is subsidised by the state. The Communication Ministry grants financial aid to daily newspapers and periodicals irrespective of whether they are independent or owned by political parties.

Moroccan law has no special provisions on advertising in the printed press, but at the time of writing a professional debate on the subject is under way, focusing on

the creation of a legal framework for this form of advertising and the setting up of a self-regulating mechanism to guarantee transparency, efficacy, equity and competitiveness between operators.

## 1.5. INSTITUTIONALISED CENSORSHIP AND LIMITS ON FREEDOM OF EXPRESSION

Since the lifting of the state monopoly on audio-visual media, the Moroccan legal system no longer enforces any institutional censorship on broadcasters. Special provisions set out by Law No. 77-03 and the decree creating the HACA nevertheless set out legal limitations to freedom of expression for broadcasters.

According to Article 3 of Law No. 77-03, broadcasting's freedoms of expression must be exercised "subject to respect for human dignity, the freedom and property of others, the diversity and plural nature of expression in all its forms of thought and opinions, as well as the respect for religious values, public order, morality and the needs of national defence". It is also subject to respect for the requirements of public service, technical constraints inherent to means of communication and the need to develop a national audio-visual production industry.

## 1.6. GUARANTEE OF PLURALIST EXPRESSION DURING ELECTIONS

The new Moroccan Constitution is innovative regarding the pluralist expression of ideas and thoughts in the broadcasting sector. It is unique in the region in guaranteeing the parliamentary opposition a status which allows it adequately to perform its tasks relating to parliamentary work and political life. Notable among the rights thus guaranteed is: "airtime on official media in proportion to their representation" (Article 10).

The Constitution upholds the principle of fair access to the public media and full exercise of fundamental rights and freedoms linked to electoral campaigns. The establishment of the HACA, Law No. 70-03 and the decisions and recommendations of the audio-visual

regulator set out the principles, general rules and precise conditions guaranteeing fair access to public and private audio-visual media during electoral campaigns and referenda.

## 1.7. SHORTCOMINGS CONCERNING THE PROTECTION OF WOMEN, CHILDREN AND MINORITIES

Moroccan audio-visual law contains no provisions specifically in respect of women and few aimed at protecting young people. Children are not taken into account as either the target audience of or as actors in broadcasts and programmes. The few provisions that do relate to children focus on protection against content that might be damaging for child viewers.

Moroccan audio-visual law does not as yet expressly encourage broadcasters to respect the linguistic diversity of Moroccan society in the media, although Law No. 77-03 has made some progress in this direction by recognising the presence of the Amazigh language in the audio-visual media. This rather half-hearted legal recognition has since been superseded by a law in the new Constitution acknowledging the plural, cultural and linguistic identity of Moroccan society and enshrining the Amazigh language as an official language, on the same level as Arabic.

The SWOT analysis shows that trends are generally favourable to liberalisation of the communications and information sector in Morocco. However, the media remain vulnerable because of ongoing disputes between traditionalists and reformers and because of the challenge the media present to political players in a changing public governance system. Accordingly, it is important rapidly to consolidate the current opportunities by making legal and institutional systems compliant with the new Constitution and adopting legislation to tackle legal shortcomings in media governance in order to make freedom of expression and the regulated liberalisation of the Moroccan media a secure reality.

# 2. INTRODUCTION

The liberalisation of the Moroccan media was born out of an evolution of the existing political regime. The extent to which this legislation enables freedom of expression across all media is examined over the following pages.

This project is focused on the status of legislation on the printed press, the private audio-visual media and electronic communication in Morocco. Its aims are to:

- assess and evaluate the legislation in force in these different fields;
- contribute to the drafting of a route map to accompany changes occurring in the region and stimulate discussions around decision-making processes with key stakeholder groups.

We first describe the models used for the main laws analysed and give a snapshot of specific initiatives that have failed or succeeded in comparable environments. The report includes a SWOT analysis to define development imperatives and make recommendations to ensure that the development of the media sector is carried out in the service of social development and the democratisation of the country.

The end goal of this report is to generate exchanges of opinion at round tables, workshops and conferences that will be organised during the next project phases.

## 2.1. METHODOLOGY

### 2.1.1. Definition of the study framework

This report seeks to:

- provide context for the current constitutional, legislative and regulatory systems as they apply to the print, broadcast and the electronic media in Morocco;
- identify and analyse, in context, the legislative and regulatory reforms under development in these fields;
- assess the legal framework in force, based on a comparative analysis with the lessons learnt by the EU and the legal situation of countries in the region in the matter;
- perform a SWOT analysis of Morocco's current legal framework in these fields;
- make recommendations for strengthening the legal framework of the Moroccan media in the service of development, democratisation and the social and cultural progress of the country.

The research draws on the available documentation as well as interviews with key players in the information and communication sectors.

### 2.1.2. The issues raised by the report

Key questions to be addressed include the extent to which legislation enables liberalisation and freedom of expression across all media in Morocco. This can be measured in the following terms:

- *access to the market*: the constitutional and legislative guarantees given to private media and legislation in matters of spectrum and the awarding of operating licences;
- *media ownership*: the limits on public monopoly, cross-ownership of media and the transparency and neutrality of media;
- *legislation on freedom of expression and the press*.

The conditions for the financing of private enterprises in audio-visual and print media will be examined to determine the levels of fair competition between media operators. Financing might include:

- *state funding*: measures relating to the state's ability to provide aid within the context of fair competition and non-discrimination;
- *advertising*: legislative rules applicable to advertising in the media, as well as governmental and political advertising.

Another key question relates to the level of freedom of expression in the fields of communication and information and the extent to which they are protected in the constitutional and legislative contexts. Accordingly, it involves analysing legal provisions relating to:

- *institutionalised censorship*: legislative restrictions on what may and may not be published for political (legislation on political expression) or social (social crises) reasons;
- *the guarantee of pluralist political expression during elections*;
- *the protection of minorities, children and women*: current legislation concerning the printed press and audio-visual and electronic communication;
- *checks on the internet and new communication technologies*.

Before considering these, an overview of the historic evolution and current composition of the private information and communication sectors in Morocco is useful to understand the purpose of the constitutional, legislative and regulatory systems we are analysing and the contexts in which they evolved.

## 2.2. THE POLITICAL AND LEGAL CONTEXT

We can trace a history of communication and information in independent Morocco from the State of Emergency declared in 1965. With early governments slow to take stock of the new political dynamic, management of the media took on an authoritarian aspect, which would last for several decades.

### 2.2.1. Authoritarian control over the audio-visual media

As in many countries that have liberalised their communication and information sector, such as Tunisia and Jordan in the southern Mediterranean and Spain, Greece and Portugal in Southern Europe, laws governing the media in Morocco developed through periods of authoritarian management and ongoing efforts at liberalisation.

### 2.2.1.1. A liberal foundation and authoritarian management of the audio-visual media

In a break from its colonial past, the young Moroccan state embraced a liberal agenda with the promulgation in 1958 of a Code of Public Freedoms. This confirmed Morocco's entry into the community of nations just two years after its admission into the UN. In 1962 the first Moroccan Constitution expressly restated its commitment to international legality and signed up, in its Preamble, to the principles deriving from the charters of international bodies.

In adhering to the general philosophy of the Universal Declaration of Human Rights, having a constitution guaranteeing freedom of expression and political pluralism and a Code of Public Freedoms unusual in the Arabic and African context of the time (including one of the most innovative Press Codes), independent Morocco showed an early preference for liberal media laws.

It was not to last, however. Throughout the 1960s and 1970s television and radio were put under the control of the Information Ministry, which was then absorbed by the Home Office. The audio-visual media apparatus was effectively bound by a state monopoly, the legal foundations of which went back to the Dahir of 25 November 1924.

It was only in the 1980s, following much internal debate and strong international criticism, that politicians start to break down the monopoly, allowing the creation of the first "private" radio station, Radio Méditerranée Internationale (Médi 1), under relatively opaque conditions. Just under a decade later the creation of 2M International signalled – at last – a political will to start the progressive liberalisation of the media.

The ideal conditions for liberalisation were not in place until the arrival of the "alternance" (government of Abderrahmane el Youssfi) at the end

of the 1990s, after which, ideologically and politically, the practical scope and also the real problems of the potential liberalisation of the audio-visual sector became clear.

### 2.2.1.2. The rupture with the authoritarian model in managing the audio-visual sector

Economic liberalisation based on political interventionism created an anachronistic situation throughout the 1990s, which eventually became unsustainable. The existence of a part-liberalised media sector inevitably meant that the state would have to give up its monopoly.

This was achieved when, on 30 September 2002, Decree No. 2-02-663 finally lifted the monopoly, repealing the provisions of the Dahir of 25 November 1924 on the state broadcasting monopoly, which had been maintained by Article 11 of Law No. 24-96 of 7 August 1997 on post and telecommunications. This legislation entrusted the granting of authorisations to create private radio and television outlets to the Haute Autorité de la Communication Audiovisuelle (HACA), set up one month before by Dahir No. 1-02-212 (31 August 2002). The authorities were clearly aware that the new state policy could be meaningful only if it included an independent regulatory authority.

### 2.2.1.3. The setting up of the regulator and the new legal framework

The first major step towards reform was therefore the setting up of the HACA, an administrative authority independent of government, which regulates and controls the audio-visual sector, particularly by participating in the regulation of activity, ensuring control is applied according to law and penalising violations as required.

However, after the setting up of the regulator and the lifting of the monopoly there remained nothing in the way of legislation until Law No. 77-03, which was, as its Preamble states, "an important

milestone in the process aimed at the setting up of the legal framework of the liberalisation of this sector...". Law 77-03 represents a break with the traditional approach in that it established a clear legal framework and defined the general principles and mechanisms essential to the restructuring of the audio-visual communication sector. It offered new private operators the chance to create and operate enterprises in an environment now governed by a specialist and independent institution under which fairness and transparency – previously completely absent – were guaranteed.

The 2011 elections saw a new government come to power headed by the *Partie de la Justice et du Développement* (PJD), a moderate Islamic party. The new government sought to amend Law No. 77-03 and with it the legal status of the HACA. The Constitution in fact states that the HACA, itself on a constitutional footing, must be subject to a new law, and no longer the Royal Dahir that currently controls it. Many observers fear that these plans will constitute an opportunity for this conservative party to reduce the hard-won freedoms that liberalisation has brought to the Moroccan audio-visual sector over the last ten years.

The Islamic ideology of the PJD and its conservative tendencies concern the modernist and liberal fringe of civil society and the Moroccan political world. Public debates have always been controversial when they touch on the composition and role of the HACA, audio-visual public service missions (SNRT and 2M) and the editorial independence of private radio stations. This seems unlikely to change soon.

### 2.2.2. The printed press and the democratisation process

The print media sector has also experienced a progressive trend towards liberalisation, reflecting the slow general progress towards democratisation in Moroccan society. The reforms made to the Press Code are among the most

significant elements of the change. Old models of censorship have ceded and the newspapers enjoy increased autonomy. What follows is a summary of the key changes in the freedom of expression legislation for journalists in Morocco.

#### 2.2.2.1. Landmarks in print media freedom

Since Morocco's independence, the management of information has been difficult for successive governments. The combining of the Information Ministry and Home Office in the 1980s, when opposition forces were hopeful of the role the printed press could play in democratising the state, illustrates the difficulties with and limits to "freedom of information" during the period.

At the turn of the century, before its liberalisation, the audio-visual sector was under government control whereas the print media could be more critical, representing opposition movements and acting for civil society. As a result, the print media have developed a broad range of (frequently partisan) political positions.

Paradoxically, the "opinion press" constitutes both one of the strengths and one of the great weaknesses of Moroccan journalism. Its success, particularly in its undeniable contribution to the defence of public freedoms in general and its own freedom in particular, is countered by its limited appeal to new audiences. This raises questions about the future model for journalism in Morocco, and in particular about increased professionalism versus more partisan models of working. It is not enough to focus solely on the constricting role that "security" has played in limiting freedom of information; it is important also to look objectively at a press which, in part, prides itself on its sometimes inflammatory opinions rather than on the quality of its factual reporting.

The obverse of this is the role the media plays in providing citizens with access to information. In this context, the dilemma between the ideal of "press freedom" and the desire to clean up press activity

has been dealt with by the establishment of legislative and regulatory systems able to organise the profession, legally and in terms of ethics, with the aim of addressing its shortcomings while safeguarding its democratic principles.

#### 2.2.2.2. The regulatory dimension of liberalisation

The Dahir of 15 November 1958 established the Press Code, the cornerstone of Moroccan media legislation. Adopted at the same time as legislation on freedom of association and public gatherings, against a backdrop of the structural transformation of Moroccan institutions, the Press Code was one of the most liberal compared with other Arab and African countries.

However, although these texts signalled a more democratic regime, there was a violent setback in which press freedom suffered under increasing dissent between the national movement and the monarchy. For over 30 years the printed press bore the brunt of this. After 1960 the Press Code became more restrictive and this continued, with new modifications to the Press Code by the Dahir introducing the law of 13 November 1963 and later of 12 April 1973. The Moroccan media throughout the 1970s and 1980s was subject to numerous prohibitions, censorship and even arrests.

In the mid-1990s, as the liberal democratic model expanded worldwide, Morocco experienced an initial period of relaxation and reconciliation between the monarchy, opposition parties and the press. This change began with the promulgation of the new status of journalists on 22 February 1995 and the attendant separation of the Home Office and the Information Ministry and ended with the allocation of the Communication Office, first to the party of *Istiqlal* and then to the *Union Socialistes des Forces Populaires*, under what was referred to after 1998 as "consensual alternance".

This gave rise to a raft of new media legislation. Alongside important reforms

affecting copyright and audio-visual matters, the reform of the press showed most clearly a desire to move forward with liberalisation. Law No. 77-00 was the controversial response to the growing clamour for change from the professions, civil society, the political class and the international community. Whereas the young independent Moroccan press, relatively critical of government since the end of the 1990s, emphasised the inadequate nature of the reform, the centre-left government sought to highlight the complexity of the changes it had managed to implement, focusing on improvements made to the legal framework for exercising press freedom. The constitutional elements of Morocco's media laws are detailed in Appendix I at the end of this report.

### 2.3. THE PRINTED PRESS

In 2012, 321 national newspapers and periodicals were published, including 225 Arab language, 74 French language, 18 multilingual and five Berber. In 2006 there had been 398, many more than in Egypt, for example.

Initially, the printed press was largely partisan.<sup>1</sup> In the 21st century it would undergo a radical change due to the liberalisation of the sector and the concomitant effects of globalisation and the increasing ease of accessing information.<sup>2</sup>

The readership of the printed press is less than 1% of the population, according to KPMG<sup>3</sup> and the average sales are 13 copies per thousand citizens, according to *Latifa Akherbach* (eMarrakech 2006).

For several years the printed press has experienced a clear decline in numbers and quality. The decline in sales and advertising inserts coupled with increasing political and economic pressures, proved too disruptive for some titles (*Assahifa*, *Demain*, *Nichane*, *le Journal*).

## 2.4. THE DIVERSIFICATION OF AUDIO-VISUAL MEDIA

### PUBLIC AUDIO-VISUAL SECTOR

<i>Société Nationale de radio et de télévision (SNRT): TELEVISION</i>	ALAOULA, trilingual general national channel	1
	National general channel in the Amazigh language	1
	LAAYOUNE regional channel	1
	National digital terrestrial sports channel	1
	National digital terrestrial cultural channel	1
	National digital terrestrial religious channel	1
	National digital terrestrial cinema channel	1
SOREAD 2M	2M	1
<b>Total public TV</b>		<b>8</b>
SNRT: NATIONAL RADIO	National Arabic channel	1
	National Amazigh channel	1
	International multilingual channel	1
	General national bilingual channel	1
SOREAD 2M	Radio 2M	1
SNRT: REGIONAL RADIO	Regional stations	9
SNRT: THEMATIC RADIO	National religious radio	1
	Regional musical radio	1
<b>Total public radio</b>		<b>16</b>

### PRIVATE AUDIO-VISUAL SECTOR

<i>Information television</i>	MEDI 1 TV	1
<i>Local radio</i>	Radio Plus Marrakech, - Radio Plus Agadir, Radio Plus Casablanca	3
<i>Regional radio</i>	MFM Saïss, MFM Souss, MFM Atlas; MFM Casa; MFM Sahara; MFM Oriental; Chada FM;	7
<i>Multi-regional musical radio</i>	Hit Radio	1
<i>Multi-regional local radio</i>	Cap Radio	1
<i>Thematic multi-regional radio</i>	Radio Atlantic (Economy and finance), Radio Aswat (Economy) Luxe Radio (Crafts), Radio Med (Associative life and mediation) Radio Mars (Sport), Medina FM (Rural affairs)	6
<i>Radios with an international focus</i>	Radio méditerranée internationale, radio Sawa	2
<b>Total private radio</b>		<b>21</b>
<b>TOTAL OF PUBLIC AND PRIVATE RADIO AND TELEVISION</b>		<b>46</b>

<sup>1</sup> In 1959 the *Union Nationale des Forces Populaires* (UNFP; the future *Union Socialiste des Forces Populaires*, USFP), the result of a division within *Istiqlal*, created *Attahir*, which would fight relentlessly against *Al-Alam*, the newspaper of the Independence Party. This period marked the golden age of the partisan press. Also published were *l'Opinion* (the French-language organ of *Al-Alam*), *Al-Bayane* for the *Parti du Progrès et du Socialisme* (PPS), *Al-Ittihad*, *Al-Ichiraki*, *Libération* for the USFP and *Al-Haraka* for the *Parti Populaire*. With the creation of new right or centre-right parties, such as the *Rassemblement National des Indépendants* (RNI), *Le Parti National Démocrate* (PND) and the *Union Constitutionnel* (UC), other newspapers were created, including: *Attajammoue Al-Watani*, *Al-Ittihad Addoustouri*.

<sup>2</sup> Several so-called independent daily and weekly newspapers were created – a phenomenon already under way in the 1990s – in 1994. *La vie économique*, *Maroc Hebdo*, *L'économiste group* (*L'économiste and Assabah*), and the *Femmes du Maroc* group (several magazines in Arabic and French) changed the game, where the partisan press had previously reigned. In their wake came titles such as *Assahifa*, *Al-ayyam*, *Demain*, *Le Journal*, *Tel Quel*, *Nichane*, *Al-Massae*, *Akhbar Al-yawm*, *Le reporteur*, *Zamane* and many other Arab and French-language daily and weekly publications.

<sup>3</sup> *L'économiste*, 19 December 2011.



### 2.5. EXPANSION OF CONNECTIVITY AND INTERNET ACCESS

At the time of writing, the electronic press comprises over 407 information sites. They are registered with the domain name “.ma” and represent 0.8% of the websites registered under this domain name.

There are around 16.5 million internet users in Morocco. That equals a penetration rate of 51%. Accordingly, Morocco leads neighbouring regions (the Arab world, Africa) in terms of connectivity and the development and use of equipment, as well as skills and transaction development infrastructures (technopoles) and also in terms of the legislative and regulatory framework of this new economy.

There are around 40.9 million Facebook users in Morocco. At the end of September 2012 there were 3,876,627 internet subscribers – representing an annual growth rate of 34.51% and a penetration rate of 11.92%. Of the overall internet pool, 3G connection represents 83.27%, followed by ADSL with 16.68%.



Paradoxically, the ‘opinion press’ constitutes both one of the strengths and one of the great weaknesses of Moroccan journalism. Its success, particularly in its undeniable contribution to the defence of public freedoms in general and its own freedom in particular, is countered by its limited appeal to new audiences. This raises questions about the future model for journalism in Morocco.



## 3. THE LEGISLATIVE CONDITIONS FOR ACCESS TO THE MEDIA MARKET

The freedom of expression enshrined in Morocco’s Constitution and media legislation seems to offer an example of best practice to other Arab countries undergoing democratic and constitutional reform. These ideals still remain to be turned into reality, however.

Today freedom of expression is explicitly enshrined in Morocco, in both the new Constitution and media legislation.

### 3.1. FREEDOM OF AUDIO-VISUAL ENTERPRISE AND THE GUARANTEE OF DIVERSITY OF PRIVATE MEDIA IN THE NEW CONSTITUTIONAL AND LEGISLATIVE SYSTEMS

Freedom of enterprise and free competition are guaranteed by the new Moroccan Constitution in all areas of human activity (Article 35 of the Constitution of July 2011).<sup>4</sup>

#### 3.1.1. Access to the market

In audio-visual matters, although the state monopoly was de facto breached in the first half of the 1980s (see 2.2.1.1. above), not until 2002 was it properly broken down with the new audio-visual communication legislation. This freedom is understood by the legislator, in political terms, as the editorial freedom<sup>5</sup> of audio-visual operators, and in economic terms, as the freedom of audio-visual enterprise. Article 3 of Law No. 77-03, promulgated in 2002, expressly states that “audio-visual communication is free”.

The creation and operation of privately owned audio-visual enterprises in Morocco is also subject to precise legal provisions, the aim of which is to guarantee the diversity of the media.

Title 2 of Law No. 77-03 covers privately owned audio-visual media. It establishes a licensing requirement for the setting up and/or operation of networks for audio-visual media services by whatever means (terrestrial, satellite, cable, and so on) they broadcast. The government consulted the HACA on the draft legislation, which led to the inclusion of jurisdiction over access to ADSL and broadband audio-visual services.

#### 3.1.2. Media ownership

Law No. 77-03 sets out the rules around licensing a private audio-visual media enterprise. The first requirement is that applicants set up a public limited company under Moroccan law. This company must include among its shareholders “at least one qualified operator, a private individual or legal entity having proven professional experience in the field of audio-visual communication, who must hold or

undertake to hold at least 10% of the company’s share capital and voting rights. They may not be a shareholder in another company with the same corporate purpose” (Article 18).

In order to guarantee the stability of the company and the diversity of private audio-visual media, the legislation limits licence holders to a maximum of 51% of shares and/or voting rights in the company (or in the case of several shareholders, they must be linked by a shareholders’ agreement to the same effect). It also limits to 30% of the share capital or voting rights the participation of existing licence holders where they hold another licence for the same type of company. Such participation is allowed only where it does not infringe the principle of plurality of operators and does not bring about a dominant position.

Finally, to avoid the concentration of audio-visual operators and the printed press, Moroccan law states that “an audio-visual communication operator holding a licence may only hold a stake in the share capital and/or voting rights of a

<sup>4</sup>“The state guarantees freedom of enterprise and free competition. It seeks human and sustainable development to allow consolidation of social justice and preserve national natural resources and the rights of future generations. The state ensures the guarantee of opportunity for all, and special protection for disadvantaged social groups.”  
<sup>5</sup> Article 4: “Subject to the preservation of the pluralist nature of expression, audio-visual communication companies freely design their programmes. They assume full responsibility for them.”

single company that owns newspapers or written periodicals governed by the Press and Publishing Code”.

### 3.1.3. EQUAL ACCESS

Noting the importance of private initiatives in the development of the audio-visual sector; Law No. 77-03 sets standard criteria for different potential investors, including guaranteeing the same rights to the public in terms of reception or to producers in terms of content. Thus, according to Article 11, the HACA “may restrict or prohibit any type of contract or commercial practices if they hinder, in particular, free competition and access of citizens to events of national or public interest”. The same law states that “Audio-visual communication operators must provide the largest number of regions of the country with a sufficient package of radio and television programmes” (Article 8).

Articles 23 to 25 of Law No. 77-03 specify that the HACA may, if asked by the relevant government authority, encourage potential licensees to make an expression of interest – the content and conditions such calls are published in the *Official Gazette*.

The licence is granted by the Conseil Supérieur to any legal entity that makes an application and meets the legal requirements. However, where there are several expressions of interest pertaining to the same offer of services or coverage of the same region, the HACA must issue an invitation to tender. For each invitation to tender it sets out the regulations, the objective and the conditions for participation, the required contents of bids and of course the criteria on which they are assessed.

To a similar end, Article 61 requires public bodies to respond to requests from operators authorised to install and operate audio-visual transmission equipment, as long as these requests are reasonable and meet specific legal requirements. Access by operators must be by agreement, under transparent and

non-discriminatory conditions, respecting the environment and aesthetic quality of sites, and under conditions that are the least damaging for private properties and the public domain.

The right of citizens to receive programming is also covered. Article 62 proclaims that, subject to payment of tax for the promotion of the national audio-visual landscape, any private individual or legal entity may benefit from the freedom to receive audio-visual programmes and access services offered by the broadcasting networks.

In matters of public service, the law makes equal access of citizens to programmes an essential obligation. Article 48 requires national public companies to respect the terms and conditions establishing their special obligations, particularly relating to general and diversified factual programming aimed at the broadest possible audience, to include a regional focus in their local programming and to encourage the broadcast of local information.

#### Benchmark: EU

*In matters of freedom of expression and communication, Morocco remains a regional leader, particularly in legal and institutional terms. Evidence of this can be seen in the advanced negotiations taking place with a view to Morocco becoming a signatory to various instruments of the Council of Europe, including the European Transfrontier Agreement (CETT). Nevertheless, the legal overall architecture still lacks integration, particular in terms of the impact of convergence on the very concept of “social communication” and its overlap with individual communication, which the internet is continually shifting. The European models themselves, which traditionally inspire Morocco, follow a system of enshrining freedom of expression as an individual and not collective freedom, on the basis of the Human Rights Declaration.*

*The different European constitutions enshrine this “individualist” concept, leaving the law to integrate the concept collectively. Directive 2007/65/EC: Audio-visual Media Services (AMS) is an illustration of this. Having been adopted on 11 December by the European Parliament, it seeks to review the Television Without Frontiers Directive (TVWF) of 1989 to take into account the current phenomenon of technological convergence and the new audio-visual landscape. It exemplifies “strengthened liberalism”, setting up more flexible rules and expanding the object and scope of the TVWF directive (the AMS Directive establishes minimum rules common to EU member states).*

### 3.1.4. The assignment of radio frequencies in the new legislative and regulatory system

Law No. 77-03 sets out rules governing the awarding of frequencies and guaranteeing fair and transparent access by private operators to this asset, which falls under the public domain of the state. This has ended the opaque and highly security-focused management of frequencies by entrusting to the HACA their investigation, allocation and control (Articles 5 and 6) in co-ordination with the (ANRT) under the National Frequencies Plan.

The ANRT establishes the general conditions for the allocation and operation of radio frequencies by the audio-visual operator to which they have been awarded, and gives the HACA the power to plan the allocation of frequencies for audio-visual purposes and fix the conditions relating to the technical parameters of radio stations in order to:

- ensure the international, bilateral or multilateral coordination of radio frequencies intended for audio-visual use with the aim of guaranteeing that national stations do not suffer from or create any prejudicial disruption;

- allocate audio-visual frequencies to licensed operators;
- modify frequencies or blocs of frequencies allocated to broadcast operators when these technical constraints require it and, in particular, standardise the frequencies used by the audio-visual sector in line with the rules of the International Telecommunications Union (ITU) (modification or withdrawal must be carried out by reasoned decision);
- remove from the operators in question those frequencies that are not needed for the purposes set out in their terms and conditions;
- award as a priority to national public audio-visual companies the use of the additional frequencies as needed to accomplish their public service missions. Any modifications to the allocation of frequencies must be performed without interruption to services and without affecting the reception quality of broadcasts.

### 3.2. FREEDOM OF PUBLICATION AND ENTERPRISE OF THE PRINTED PRESS

The Moroccan Press Code enshrines freedom of the press and the right to information under these terms: “The freedom of publication of printed press, publishing and library press is guaranteed pursuant to the provisions of this law.”

#### 3.2.1. Entering the print media market

Under the Press Code, no prior authorisation is needed to establish a newspaper. The procedure is simply to submit a declaration containing information about the plan to the court with jurisdiction over the head office of the company publishing the newspaper. The declaration is acknowledged by the issuing of a provisional receipt to the press company. A definitive receipt must be issued to the company within 30 days. In the absence of a full receipt, the newspaper may still be published under Article 5 of the current Press Code.

Press freedom, perceived in terms of its acceptance of political freedom, is written into the new Moroccan Constitution as an absolute freedom that may not be subject to any form of prior censorship. All have the right, according to this fundamental law, to freely express and disseminate information, ideas and opinions subject to the sole limits expressly set out by the law. It entrusts the public authorities with encouraging the organisation of the press in an independent manner and on democratic foundations, and with determining the legal and ethical rules concerning it.

#### 3.2.1.1. The ownership of a newspaper

According to the Press Code, a newspaper may belong to a private individual or a legal entity. The collective enterprise may be a company, association or political party. Ownership of share capital is not subject to any limitation. The same enterprise may own several titles. However, to avoid the concentration of the media, under Moroccan law anyone whose business is the publication of newspapers or written periodicals may not then also hold a stake in the share capital of more than one licensed audio-visual communication operator.

#### 3.2.2. The right to be informed and have access to information

The new Moroccan Constitution enshrines the right to information. Article 27 of the fundamental law states that:

Citizens have the right to access information held by the public authorities, elected institutions and public service bodies. The right to information may be limited only by law with the aim of ensuring the protection of all information concerning national defence, internal and external security of the state and the private life of the population, preventing attacks on the rights and freedoms set out in this constitution and protecting the sources and domains expressly determined by law.

A draft law on the matter is in preparation. This has led to debate between the public authorities and certain opposition parties and members of civil society who are concerned that the right to access information held by the authorities and other public bodies may be significantly weakened by some proposed limitations to the new law.

### 3.3. FREEDOM OF THE ELECTRONIC PRESS

There are no provisions specific to the freedom of electronic communication in Moroccan primary law. It is not mentioned in the Constitution and no other legislation deals with this question. Pending a law enshrining this freedom of communication online, the issue is whether the current Press Code and Law No. 77-03 on audio-visual communication also extend to cover the electronic press. In effect, if one were to hold that the general terms used in Article 1 of the Press Code and/or Article 3 of Law No. 77-03 did in fact cover the internet, then a broad interpretation of these texts would offer some protection. However, this is as yet unproven and it would be more satisfactory in the current circumstances to enshrine freedom of electronic communication in a new text, particularly since not all the provisions of either piece of legislation is fully applicable to the internet.

# 4. THE LEGAL RULES APPLICABLE TO MEDIA FINANCING

The flow of financial resources is vital to the development of the media sector. Fair access to financing, and transparency regarding funding, are also important for the advancement of a healthy information and communications landscape.

The mobilisation of financial resources is a significant challenge for the development of the information and communication sector. Fair access to financing and transparency regarding funding are vital for the development of a healthy media landscape.

In political terms, equality of opportunity to access these resources is a necessary condition for the viability and diversity of the media. This diversity and viability largely determines the quality of the media sector and is vital to protect the pluralist expression of ideas and thinking in the service of the public.

Moroccan primary law, although it has made notable progress over recent years, is still under development in terms of state funding and commercial advertising.

## 4.1. THE FINANCING OF AUDIO-VISUAL MEDIA

### 4.1.1. State funding of audio-visual media

Unlike public audio-visual media, which are highly subsidised by the state, private audio-visual media receive no funding from the government. The establishment of a fund to promote the audio-visual sector, to be supplied from funds paid by operators

for use of the radio frequencies assigned to them, has been raised by the public authorities but has yet to be implemented.

#### Benchmark: France

*The French system provides aid and subsidies for the private audio-visual sector.*

*The audio-visual sector, a cultural sector, benefits from public aid and subsidies intended to encourage pluralism and audio-visual creation. The Fonds de Soutien à l'Expression Radiophonique (FSER), created by decree on 1 December 1984, is a national fund supplied by a tax on advertising income from television and radio. It also manages the public aid awarded to terrestrial radio and can fund local audio-visual communications companies as social enterprises where there is a need for them and where the commercial resources of the audio-visual enterprise in question are below 20% of total turnover.*

*The FSER proposes four types of subsidies: set-up subsidies; operating subsidies; increased operating subsidies; and equipment subsidies.*

*At the same time, the Compte de Soutien à l'Industrie des Programmes Audiovisuels*

*(COSIP), managed by the Centre National de la Cinématographie (CNC), is an account aimed at encouraging the production of audio-visual works intended for broadcast on French television channels. Subsidies are paid to producers. This aid underwent technical adjustments in September 2004: Decrees 2004-1009 and 2004-1010 refocus COSIP's objectives on supporting heritage works and seeking to improve the financing of youth programming.*

### 4.1.2. Advertising revenue for the broadcasting sector

Commercial advertising brings in most of the resources that go towards financing the activities of private audio-visual operators. Although there is no general legislation on advertising, several texts govern this activity in the Moroccan audio-visual sector

Law No. 77-03 provides a standard definition of advertising for audio-visual media (Article 2.1) and authorises the use of sponsorship (Article 69), subject to specific terms and conditions. Article 2.5 of Law No. 77-07 makes a clear distinction between commercial and non-commercial advertising.

The terms and conditions of each audio-visual operator set out the precise conditions for the insertion of advertising spots in its programmes. These rules seek, in general, to protect listeners and viewers from misleading or clandestine advertising and to ensure fair competition.

Messages meeting the criteria of non-commercial advertising, as defined by Article 2.5 of Law 77-07, may be broadcast outside advertising sequences and their duration is not counted in the hourly advertising volume.

The wording of the definitions of commercial and non-commercial advertising is extremely complex and is based on the French decree of March 27th 1992. In striving for a general approach, the wording has had to include long lists of hypotheses setting out the elements that constitute advertising in specific examples.

#### Benchmark: France

*The regulation of advertising and sponsorship*

*Advertising is an essential source of audio-visual financing, whether public or private. The advertising business, which covers advertising, sponsorship and shopping broadcasts, is nevertheless restricted within the framework of a code of ethics aimed at respecting the viewer but also maintaining a balance between the different economic sectors financed by advertising.*

*Television stations and radio channels are bound by respect for general rules resulting from the law and its decrees that frame advertising, sponsorship and shopping broadcasts. In terms of television, whatever the method used to distribute services, it is Decree No. 92-280 of 27 March 1992, amended, for the application of Articles 27 and 33 of the law, which establishes these general principles. For private radio it is Decree No. 87-239 of 6 April, for the application of Article 27.*

*Article 14 of the law of 30 September 1986, amended, entrusts the Conseil Supérieur de l'Audiovisuel (CSA) with controlling the object, content and methods for advertising broadcasts distributed on the airwaves. There are numerous grounds for intervention by the CSA based on the failure to respect regulations, such as the distribution of messages for sectors banned, for ethical or economic reasons, from advertising on the radio or television, the programming of messages that are ethically dubious or the use of clandestine advertising.*

*However, since 1993, the contents of advertisements has not been subject to the prior control of the CSA: it is the Bureau de Vérification de la Publicité (BVP), an inter-sector body including advertising houses, advertisers, agencies and the media, which provides professionals with advice at the time of preparing their advert, and gives its opinion before broadcasting on the compliance of the advert with existing regulations.*

## 4.2. FINANCING OF THE PRINTED PRESS

### 4.2.1. Material state support

Material subsidies and financial aid from the state are important elements in the survival and diversity of the print media in Morocco. As in Tunisia, ink and newsprint are subsidised by the state. The Communication Ministry grants financial aid to daily newspapers and periodicals. Regulations have started to eliminate discrimination between partisan and independent newspapers so that independent papers as well those belonging to political parties now benefit from financial aid.

The state subsidies are granted by a mixed commission, on which representatives of the Federation of Publishers sit, and which takes decisions on the basis of transparent and neutral criteria.<sup>6</sup> The commission held four

meetings in 2012, and added eight new independent beneficiaries, including an opposition newspaper. In order to guarantee the transparency of aid supplied by the state, the Communication Ministry regularly publishes lists of the beneficiaries.<sup>7</sup>

To manage state financial aid, professional newspaper publishers are bound to the government by a printed press contract covering the 2014–2016 period. The objectives for state aid are: to support investment that helps press companies to modernise, to protect pluralism, to improve the professional and social conditions of journalists and to strengthen ongoing training. This support is intended to bring about an overall improvement of quality and content in the press, by updating both technology and the skills and expertise of staff.

### 4.2.2. Advertising revenue for the printed press

Moroccan law has no special provisions relating to advertising in the printed press. A professional debate is, however, under way concerning the organisation of this sector. It bears on the creation of a legal framework specific to press advertising and the setting up of a self-regulation mechanism, which guarantees transparency, efficacy, equity and competitiveness between operators. All of these new rules are intended to be included in the draft of the new version of the Press Code in preparation at the time of writing. A legal framework for the distribution of legal announcements between the different dailies must also be prepared to avoid the lack of transparency and political interference that currently affects this issue. The creation of the Organisme de Justification de la Diffusion (OJD) and its restructuring in 2012 represented a step towards this.

<sup>6</sup> Steps been taken to embed the rules of neutrality, transparency and good governance, as well as ensuring the aid genuinely fosters pluralism and diversity and consolidates the economic model of press enterprises on the basis of the evaluation of a contract-programme signed in 2005.

<sup>7</sup> In 2013, 55 million dirhams were distributed to 74 paper publications (dailies, weeklies, monthlies, national or regional, general or specialist). The list shows that annual amounts of subsidies are on the increase: going from DH 200,000 to DH 2,000,000. They relate to 2 million dirhams for 6 titles, 1.8 million dirhams for 4 titles, 1.4 million dirhams for 6 titles, 1.1 million dirhams for 11 titles, 700,000 dirhams for 4 titles, 600,000 dirhams for 1 single publication, 400,000 dirhams for 4 titles, 300,000 dirhams for 13 titles, 200,000 dirhams for 25 titles, essentially concerning the regional press.

# 5. THE LEGAL FRAMEWORK FOR FREEDOM OF COMMUNICATION AND THE PRESS

The current Press Code could limit the full exercise of press freedom because it leaves a broad margin of interpretation. This section analyses the restrictions imposed by the legislation on Moroccan media's freedom of communication.

As we have seen, the new Moroccan Constitution guarantees freedom of expression in its broadest interpretation, as well as the right to information and access to information held by state authorities and public bodies for all citizens. Unlike the Tunisian and Algerian constitutions, it also includes more specific provisions on press freedom and fair access by political parties to audio-visual media. It does not, however, guarantee free access to social networks.

In this section we analyse the restrictions imposed by the legislation in force on freedom of expression in the communication and information fields. We cover legislation:

- restricting the exercise of this freedom, in the form of institutionalised censorship justified by considerations of public order, morals or political considerations;
- guaranteeing pluralist political expression in electoral periods;
- aimed at protecting minorities, children and women.

## 5.1. LIMITATIONS ON FREEDOMS IN THE AUDIO-VISUAL SECTOR

The limitations on the freedom of audio-visual communication may consist either of legal restrictions for reasons of public order or public morality by the guarantee of pluralist expression of ideas and thoughts or the protection of human dignity and rights.

### 5.1.1. Legislative restrictions on exercising freedom in audio-visual communication

Since the lifting of the state monopoly, the Moroccan legal system has exerted no institutional censorship over the freedom of audio-visual communication. Special provisions set out by Law No. 77-03 and the Dahir creating the HACA do, however, set out certain legal limitations on the freedom of audio-visual communication. Article 3 of Law No. 77-03 states that this freedom is:

...subject to respect for human dignity, the freedom and property of others, the diversity and plural nature of

expression in all its forms of thoughts and opinions, and respect for religious values, public order, morality and the needs of national defence.

It is also subject to respect for the requirements of public service, the technical constraints inherent in this means of communication and the need to develop a national audio-visual production industry.

Under Article 9 of Law No. 77-03, audio-visual broadcasts and programmes must not:

- contravene dogmas of the Kingdom of Morocco as defined by the Constitution, particularly those relating to Islam or the territorial integrity of the kingdom and the monarchy;
- violate public morality;
- act as apologists for and/or serve the exclusive interests and causes of political, ethnic, economic, financial or ideological groups;
- condone violence or incite racial

discrimination, terrorism or violence against a person or group persons due to their origin, ethnicity, nationality, race or religion;

- incite behaviour damaging to the health or safety of people or goods, or to the protection of the environment;
- include, in any form whatsoever, false allegations, statements or presentations, such as those that mislead consumers.

### 5.1.2. Legislation intended to protect minorities, children and women

**5.1.2.1. Protection of young people**  
Moroccan law contains few provisions aimed at protecting young people. Children are not taken into account either as the target audience or as actors in audio-visual broadcasts and programmes. The few provisions concerning them cover audio-visual operators, whose broadcasts must not infringe the rights of the child as universally understood.

Article 2 of Law No. 77-03 bans advertising that causes moral or physical harm to minors by:

- directly inciting them to buy a product or service, exploiting their inexperience or credulity, or directly inciting them to persuade their parents or third parties to buy the products or services concerned;
- exploiting or altering the special relationship of trust between minors and their parents, teachers or people having legitimate authority over them;
- exposing minors to danger without good cause.

### 5.1.2.2. The protection of women

There is currently no legislation in force specifically for the protection of women from audio-visual broadcasts or programmes that could damage their image or that convey degrading or reductive depictions. There are no rules to ensure the promotion of women as separate stakeholders in audio-visual broadcasts and programmes.

### 5.1.2.3. The protection of the rights of cultural minorities in the audio-visual media

Morocco is a composite society. The cultural and linguistic diversity of its peoples must be taken into account by an audio-visual sector that is undergoing great change. Law No. 77-03 made some progress by recognising the presence of the Amazigh language in the audio-visual media. Article 26, paragraph 12 obliges audio-visual operators to set out in their terms and conditions their commitment to offering each of the main types of programming in Arabic, Amazigh, Moroccan dialects and/or other foreign languages. Article 65 states that advertisements must be broadcast in Arabic, Amazigh or Moroccan dialects if they are intended for the Moroccan public.

This acknowledgement of Amazigh in audio-visual communication was made somewhat reluctantly by the legislator, but it is formalised in the recognition of the culturally and linguistically plural nature of Moroccan society by the new Constitution. In its Preamble, the Constitution declares that the Kingdom of Morocco seeks to preserve, in its fullness and diversity, its single and indivisible national identity as a unit forged by the convergence of Arabic-Islamic, Amazigh and Saharan-Hassanic cultures, nourished and enriched by its African, Andalucian, Hebraic and Mediterranean heritage.

Article 5 of the Constitution establishes Amazigh as an official state language (after Arabic) and as the common heritage of all Moroccans without exception. An organic law sets out the process of implementing Amazigh as an official language, including integrating it into teaching and public life.

### 5.1.3. Legislation guaranteeing pluralist political expression in electoral periods

The new Moroccan Constitution is also innovative in terms of the pluralist expression of ideas and thoughts in

audio-visual media. For example, it is unique in the region in conferring on the parliamentary opposition guaranteed status and rights that allow it adequately to perform its parliamentary work and play a role in the country's political life. The rights thus guaranteed include "airtime on official media in proportion to their representation" (Article 10).

Concerning elections, the Constitution lays down the principle of fair access to the public media and full exercise of fundamental rights and freedoms linked to electoral campaigns and voting operations. A law should define the rules guaranteeing this access, and the authorities responsible for the organisation of elections must ensure they are applied.

Some key details of the legislation guaranteeing pluralist expression follow.

- Law No. 9-97 gives political parties participating in general communal and legislative elections the right to access public audio-visual media. Article 295 states that "access to public audio-visual media is open to political parties participating in communal and legislative general elections subject to the terms and conditions fixed by decree taken at the proposal of the Home Office, the Justice Ministry and the Communication Ministry."
- The Dahir of 31 August 2002 creating the HACA and Law No. 77-03 on audio-visual communication together constitute an important milestone in guaranteeing pluralism, particularly political, in audio-visual communication. Article 3, paragraph 14, of the Dahir specifies that the Conseil Supérieur de la Communication Audiovisuelle "ensures respect for legislation and regulations applicable to the rules and conditions of production, scheduling and broadcasting of programmes relating to electoral campaigns that the communication bodies from the public and private sector must respect."
- Article 48 of Law No. 77-03 on audio-visual communication states that: "National public audio-visual companies

are required to respect the terms and conditions setting out their specific obligations. Terms and conditions must, in particular, set out the conditions under which said companies perform their public service missions, and relating to... respect for the plurality of expression of thoughts and opinion, and fair access by political and union structures, according to their size and representativeness, particularly during electoral periods, pursuant to current regulations."

- Article 22 states: "In the absence of legislative or regulatory provisions in force and, if applicable, the Haute Autorité [HACA] is authorised to fix the rules necessary to ensure respect for fairness to political or union organisations and professional chambers, or candidates to elections to the chamber of representatives or the council chamber, and concerning rules of production, scheduling and broadcasting of party political broadcasts." The same article entrusts the HACA with "ensuring, during elections in particular, that competing candidates have the right to regular and fair airtime on national and regional radio stations and television channels." (The HACA has responded by laying down two recommendations (during the 2007 and 2011 elections) and one decision (during the 2011 elections).)
- Private operators are under no obligation to participate in programming during elections. They remain free to cover or ignore electoral news and to contribute to programming during the electoral period.

The Moroccan Constitution extends this requirement of respecting the plural expression of ideas and thoughts to the printed press. Its Article 28:

- entrusts the public authorities with encouraging the organisation of the press in an independent manner and on democratic foundations, as well as determining the legal and ethical rules that govern it;
- states that the law sets out rules for organising and controlling public means of communication and guarantees access to these, respecting the linguistic, cultural and political pluralism of Moroccan society;
- entrusts the HACA with ensuring this pluralism is respected.

## 5.2. THE LEGAL LIMITATIONS ON EXERCISING FREEDOM OF THE PRESS

In the absence of a clear law defining the extent of and specific exceptions to press freedom, it should be noted that the current Press Code could in effect limit the full exercise of press freedom because it leaves a broad margin of interpretation to the administration and the courts, and the custodial sentences it stipulates impose a heavy burden of responsibility on any contravening parties.

The Moroccan Press Code dedicates a whole chapter to press crimes and misdemeanours, and stipulates serious criminal penalties for the perpetrators. The crimes listed include incitement to carry out crimes and misdemeanours, and crimes against the public realm (serious and heavily punishable crimes that include any offence against the king and royal princes and princesses, defamation and libel against heads of state and foreign diplomats, and the publication of accusatory acts and other criminal procedure acts that have not yet been debated in a public hearing). Sanctions vary from a fine for minor violations to five years in jail for the most serious.



In the absence of a clear law defining the extent of and specific exceptions to press freedom, it should be noted that the current Press Code could in effect limit the full exercise of press freedom because it leaves a broad margin of interpretation to the administration and the courts.



# 6. SWOT ANALYSIS

	POSITIVE ELEMENTS	NEGATIVE ELEMENTS
INTERNAL	<b>Strengths</b> <ul style="list-style-type: none"> <li>• Lessons learnt in matters of sustainable constitutional and legislative reforms</li> <li>• An active civil society has long contributed to political and social change in the country</li> <li>• A culture of political, cultural and linguistic pluralism favourable to change towards greater democracy in the country</li> <li>• The practice of independent regulation of the audio-visual sector for more than 10 years</li> <li>• A de facto liberalisation of the audio-visual sector since the beginning of the 1980s, and for more than 10 years by law</li> <li>• The adoption of a particularly liberal constitution favourable to human rights and good governance</li> <li>• The existence of a rich and varied arsenal in matters of information and communication</li> <li>• Political stability around a constitutional monarchy and the progressive sharing of powers</li> <li>• A cultural and linguistic diversity which is increasingly understood to be a source of collective wealth and of values and civilisation</li> <li>• Increased regionalisation enshrined by the Constitution</li> <li>• Constitutionalisation of communication and information in terms of strongly guaranteed freedoms, and a dedicated mechanism and institution (the HACA, with constitutional footing)</li> </ul>	<b>Weaknesses</b> <ul style="list-style-type: none"> <li>• The political situation in Libya is very volatile</li> <li>• Fragility and limited size of the economic market which provides the media with its financial resources</li> <li>• A trend towards using the media as a tool in competition and political disputes between parties</li> <li>• The continued lack of professionalism of audio-visual operators</li> <li>• A trend towards the commercialisation of media and the development of poor quality programmes and journalistic content</li> <li>• The involvement of the audio-visual regulator in political disputes between the Islamists in power and the modernists in opposition</li> <li>• The slowness and complexity of the process of writing draft laws relating to the communication and information sectors</li> <li>• Weakness of budgetary allowances for the communication and information sectors</li> <li>• The explosion of the electronic press and the dawning of media convergence not yet seriously taken into account in public policy</li> <li>• A significant delay in the technical, financial and legal preparation of the abolition of analogue and the switch to digital in 2015 and 2020</li> <li>• Slowness in drawing up the new legislative and institutional framework</li> <li>• Absence of a representative elected legislative power</li> <li>• Strong presence of a conservative trend in the political landscape, and sensitivity of the media to this trend</li> </ul>
	<b>Opportunities</b> <ul style="list-style-type: none"> <li>• Support of the EU and western democratic states</li> <li>• Complete and in-depth free-trade agreement in preparation with the European Union</li> <li>• Admission of Morocco into certain European media management and consultation mechanisms and spaces: Council of Europe, European Media Observatory...)</li> <li>• Support from international institutions for media reforms under way</li> <li>• Strong requirement on the part of international organisations evaluating freedom of expression in Morocco</li> <li>• Significant presence of Moroccan media in sub-Saharan Africa and the Arab world, as an interesting experience in progressive liberalisation and advanced regulation of audio-visual media</li> <li>• Strong media links with countries in Southern Europe such as Spain and France</li> <li>• Availability in Morocco's neighbourhood of advanced legal and institutional models for media management and regulation</li> </ul>	<b>Risks</b> <ul style="list-style-type: none"> <li>• Long term freeze on North African integration</li> <li>• The proximity of households to political and military tensions</li> <li>• Fanaticism of Jihadist groups</li> <li>• Greater influence of conservative thinking from the Middle East</li> <li>• Weakness and decline of European political and economic support following the shift of resources towards central and eastern Europe to the detriment of the south Mediterranean</li> <li>• A greater presence of capital from Gulf countries in Moroccan media, and the risk this could have of influencing trends</li> </ul>
EXTERNAL	General short- and medium-term trends	

## 7. RECOMMENDATIONS

In accordance with the provisions of the new Constitution, Morocco needs a new audio-visual law, guidelines on transparent management of the sector, an amended Press Code and a clearer definition of the responsibilities of various stakeholders.

In audio-visual communication our recommendations are as follows:

1. To draw up a new audio-visual law in accordance with the provisions of the new Constitution and the technological, cultural and institutional changes that Morocco is experiencing. In particular, this would involve opening up the private sector to NGO radio and taking into account the advanced regionalisation process, the dawn of terrestrial digital television and the convergence between audio-visual, telecommunications and broadband internet.
2. To give the HACA a new legal status, as announced by the Constitution, adapting its composition, powers and operating methods to match the political, cultural, linguistic and technical changes that have affected the Moroccan media since the adoption of the new Constitution.
3. To establish a new text specific to audio-visual advertising dealing with all questions that require the rational and transparent management of the sector, thus providing protection for listeners and viewers, consumers, young people and women as well as economic stakeholders against denigrating, clandestine or misleading advertising. This legislative system should also specifically cover advertising in the print and electronic press. Self-regulation among commercial advertising operators should be promoted through this text.
4. To set out precise, complete and rigorous rules to more effectively protect children against the damaging effects of advertising

on their physical and mental health, and also as actors in advertisements.

For the printed press, we recommend that:

1. The Press Code be adapted to the spirit, values and requirements of the new Constitution, totally abolishing any custodial sentences currently stipulated and guaranteeing journalists' access to information, as well as their right to protect their sources.
2. The Conseil Supérieur de la Presse should be set up with a view to promoting self-regulation by operators and journalists in the printed press themselves.
3. The draft law in preparation on the right to information and access to information held by the authorities and other public bodies should be completed without imposing limitations that deprive these rights of their substance. Any considerations relating to the protection of persons and the greater good that could be invoked to justify these limitations must be precisely and rigorously defined.
4. Public aid and subsidies intended for informational newspapers and for announcing and publicising legislation must be covered by a specific text, which sets precise rules and conditions for accessing such funding under proper conditions, with fair access and transparency.
5. The legislation and regulations applicable to the printed press and to the electronic

press should be extended; journalists in this sector must be subject to a specific regime, bringing them into line with other professional journalists in terms of rights and obligations.

For electronic communications, it is recommended that aspects relating to the convergence of audio-visual, telecommunications and media sectors should be taken into account at the current legislative and regulatory level, particularly by:

1. Substituting concepts of "electronic communication networks" for those of "telecommunications networks" and "audio-visual communications networks".
2. Determining "different types of electronic communication" and their definitions in order better to manage them.
3. Identifying the different stakeholders in the internet chain and the classifying fields of responsibility: operators, publishers, providers, hosts, service providers, and so on.
4. Reviewing the Moroccan legal framework on the press and publishing, managing the online press and electronic publishing, identifying the main stakeholders and defining their responsibilities and obligations.
5. Classifying the responsibilities of providers in matters of copyright and similar rights, within the global framework of identifying stakeholders in the internet chain and defining the limits of their responsibilities.

## 8. LEGAL SOURCES

### 8.1. PRINTED PRESS

- Dahir No. 1-02-207 of 25 rejev 1423 (3 October 2002) promulgating Law No.77-00 modifying and supplementing Dahir No.1-58-378 of 3 Jomada I 1378 (15 November 1958) forming the Press and Publishing Code;
- Dahir No. 1-95-9 of 22 ramadan 1415 (22 February 1995) promulgating law No. 21-94 on the status of professional journalists;
- Law No. 20-99 on the organisation of the cinematographic industry (March 2001);
- Law No. 34-05 modifying and supplementing Law No. 2-00 on copyright and related rights (February 2006);
- Decree No. 2.05.957 creating the "National Press Grand Prix" (October 2006);
- Decree No. 2.64.406 of 5 kaada 1384 (8 March 1965) creating the Moroccan Copyright Office BO. No. 2732 of 7 Kaada 1384 (10 March 1965);
- Contract-program 2013-2017 for upgrading press enterprise (Arabic version) – (08/03/2013).

### 8.2. AUDIO-VISUAL COMMUNICATION

- Dahir No.1-04-257 of 25 kaada 1425 (7 January 2005) promulgating law No. 77-03 on audio-visual communication;
- Dahir No. 1-00-20 of 9 kaada 1420 (15 February 2000) promulgating Law No. 2-00 on copyright and related rights;
- Dahir No. 1-02-212 of 22 jomada II 1423 (31 August 2002) creating the Haute Autorité de la communication audiovisuelle;
- Decree No. 2-02-663 of 2 rejev 1423 (10 September 2002) abolishing the State monopoly on broadcasting and television;
- Dahir No. 1-97-162 of 2 rabii II 1418

(7 August 1997) promulgating Law No. 24-96 on post and telecommunications;

- Dahir No. 1-01-123 of 29 rabii I 1422 (22 June 2001) promulgating Law No. 79-99, modifying and supplementing Law No. 24-96 on post and telecommunications;
- Dahir No. 1-95-115 of 27 moharrem 1416 (26 June 1995), promulgating Law No. 17-94 on activities of production, publishing, import, distribution, reproduction and exploitation of videos intended for private and public usage.

### 8.2.1. Electronic press

- Dahir No. 1-59-413 of 28 jomada II 1382 (26 November 1962) approving the text of the penal code;
- Dahir No. 1-97-162 of 2 rabii II 1418 (07 August 1997) promulgating Law No. 24-96 on post and telecommunications, as modified and supplemented;
- Dahir No. 1-00-20 of 9 kaada 1420 (15 February 2000) promulgating Law No 2-00 on copyright and related rights;
- Dahir No.1-07-129 of 19 kaada 1428 (30 November 2007) promulgating Law No. 53-05 on the electronic exchange of legal data;
- Dahir No. 1-09 -15 of 22 safar 1430 (18 February 2009) promulgating Law No. 09-08 on the protection of natural persons concerning the processing of personal data;
- Decree No. 2-08-444 of 25 jomada I 1430 setting up a national council of information technologies and digital economy.



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The media remain vulnerable because of ongoing disputes between traditionalists and reformers and because of the challenge the media present to political players in a changing public governance system.

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