



MOROCCO: FREEDOM OF EXPRESSION  
AND MEDIA BETWEEN THE LAW, THE  
PRACTICES OF POLITICAL ACTORS, AND  
THE JUDICIARY

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## INTRODUCTION: GENERAL POLITICAL FRAMEWORK

Morocco began to open up shortly before the death of King Hassan II, who ruled undisputed from 1961 to 1999. His long reign was punctuated with years of brutal oppression of dissidents, particularly leftists who opposed his monopolisation of power and the corruption of his regime. Spanning the 1960s, 70s, and 80s, this period was known as the Years of Lead. It was documented after his death by the Equity and Reconciliation Commission, which worked between 2004 and 2006.

The opposition and independent press bore a substantial share of this repression, characterised by prosecutions of leftist leaders and critical voices, assassinations of prominent leaders (e.g. Mehdi Ben Barka and Omar Benjelloun), the erosion of rights and stiffer penalties in media law, the complete monopolisation of public media, support for the pro-regime press, and attacks on the opposition.

Shortly before his death on July 23, 1999, the King appointed Abderrahmane Youssofi, the leader of the most important leftist party at the time, the Socialist Union of Popular Forces (USFP), as prime minister, a post he held from March 1998 to October 2002. The reforms Youssofi was able to institute included relatively important amendments to the press law, most significantly: requiring press institutions to appoint a deputy director if the director enjoyed parliamentary or governmental immunity; requiring judicial authorisation for the suspension and prohibition of newspapers; requiring the interior minister to justify the seizure of a newspaper, with a compulsory, expedited judicial review within 24 hours of a legal filing; abolishing numerous prison sentences and minimising others; instituting penalties for discrimination, the publication of hate, and infringements of private life; reducing the statute of limitations from one year to six months; extending the time frame for the filing of the proof for defamation from 48 hours to 15 days; and abolishing the requirement that a newspaper manager put up the financial equivalent of fines and civil damages within 15 days of a preliminary judgment, on pain of suspension of the newspaper.

With the decline of the partisan press associated with parties in the government under the Youssofi government, the independent press made important strides, leading to the proliferation of dailies and weeklies in both Arabic and French. Some of these newspapers developed highly professional practices in newsgathering and investigative journalism, shedding light on key public interest topics such as political corruption, the monarchy and its wealth, the reality of political parties, the public and private press, economic conglomerates, the military and intelligence apparatus, and human rights violations.

These newspapers stood at arm's length from the state, parties, and financial powers, excelling at their craft. These publications, including renowned papers such as *Le Journal*, *TelQuel*, *Al Ayam*, and *Assahifa*, were run by young people whose first commitment was to the reader.

But starting in 2000, the authorities and the press, particularly the aforementioned papers, began to clash. In addition to throttling the press financially by blocking public advertising and pressuring private advertisers, the authorities used the courts to attack the free press in several cases. The latter ended with the suspension or banning of some newspapers, suspended prison sentences for their journalists, and hefty fines. The official press was also deployed by the regime to attack the independent press. This compelled some journalists to leave the country, among them Aboubakr Jamaï, the publisher of *Le Journal*, Ahmed Benchemsi, the editor and publisher of

TelQuel, and Ali Lmrabet, the director of Demain, who was sentenced to prison and banned from practicing journalism for ten years.<sup>1</sup>

This brief window of political opening began to close in 2002 when Driss Jettou, who was unaffiliated with any political party, was appointed prime minister, although Abderrahmane Youssefi's party won more votes than any other party in the September 2002 elections.

The international climate in the wake of the terrorist attacks on the US on September 11, 2001 provided a strong pretext for tightening the security grip over the country in the name of fighting terrorism, particularly after the terrorist attack in Casablanca on May 16, 2003. That attack spurred the hasty adoption of a new terrorism law on May 28, 2003, which stiffened criminal penalties and strengthened the authority of both the security establishment and the public prosecution - at the expense of defendants' rights and judicial independence. Ironically, the work of the Equity and Reconciliation Commission since 2003—tasked with investigating human rights violations, offering restitution to victims, and making recommendations to prevent a recurrence of rights violations and impunity—coincided with a brutal campaign targeting thousands of people, with arrests, enforced disappearances, torture, and swift trials resulting in harsh sentences.

This erosion of rights was accompanied by another extremely damaging political development. Even if the state is supported by a host of loyal parties that lack independence, credibility, and efficacy, but nevertheless control parliament and most institutions. Nonetheless, the state decided to create its own preferred party, perceiving the rise of Islamist movements as a looming threat. In 2008, the Authenticity and Modernity Party (PAM) was established, declaring it had been founded to fight the Islamists. Winning the most seats in the municipal elections of 2009 paved the way for a victory in the subsequent parliamentary elections. Dignitaries and people searching advance or protect their interests began joining the party in droves. PAM even absorbed other loyalist parties, boosting its seats in both chambers of parliament.

The political landscape seemed set to further deteriorate when the Arab Spring broke out in Tunisia and Egypt in early 2011, inspiring Moroccan youth, leftist forces, and the Islamist movement Al Adl Wa Al Ihsane. This gave rise to the February 20 movement, which staged demonstrations in more than 50 cities, demanding an end to corruption and tyranny. The King was compelled to announce significant constitutional reforms, which enabled him to avoid the threat of outright revolution. A new constitution was adopted in July 2011, followed by elections in November 2011. The Islamist-oriented Justice and Development Party (PJD) won those elections and subsequently led a coalition government with parties close to the palace.

The PJD continued to score electoral victories, despite all attempts to contain its rise. In 2015, it won a majority of the large and medium cities, which had previously voted for the nationalist parties; in 2016, it won nearly one-third of parliamentary seats (125 of 395), and the King appointed PJD leader Abdelilah Benkirane as head of the government. But the coalition partners with whom he was slated to form a government set several conditions designed to weaken him. After months of negotiations ended in deadlock, the impasse was used as a pretext to oust him. His successor Saadeddine Othmani, chosen from the same party, proceeded to accept all the conditions Benkirane had rejected, with party backing.

Presumably, the PJD opted for a course of non-confrontation given its isolation, along with international and regional developments. Seeing what had happened to President Morsi and his party in Egypt, coupled with the domestic balance of power, the party calculated that remaining a partner in the government was preferable to an

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<sup>1</sup> See Abdelaziz Nouaydi, *al-Sahafa amam al-qada': dalil li-l-sahafiyin wa-l-muhamin* (The Press before the Judiciary: a guide for journalists and lawyers) (Casablanca: al-Najah al-Jadida Press, 2008).

opposition stance it could not adequately maintain. Since it joined the government in 2011, the PJD government has failed to end flagrant assaults on liberties committed by security forces and the Interior Ministry. The party has remained silent, and some of its ministers have even attempted to find justifications for such infringements, among them the former minister of communication and government spokesman, and the current minister of parliamentary affairs.

The regime thus killed two birds with one stone: it was able to push through repressive policies and economic decisions with adverse social impacts for the poor and middle classes, thereby eroding the popularity of the PJD, while at the same time absolving the palace of responsibility for these policies.

Since 2011, the media landscape has undergone several significant developments:

- With the proliferation of the digital press and the widespread use of social media, some press outlets have begun to pose a strong challenge to the regime, especially with the growing use of mobile phones with internet and photography capabilities.
- To counter this trend, the state has facilitated the development of a digital press to spread “facts” lauding the regime and attacking its critics or opponents.
- Law 88-13 on press and publishing was adopted on August 10, 2016. The official narrative claims that the law provides for no prison sentences for publication crimes; this will be discussed below. That same year, Law 89-13 on professional journalists and Law 90-13 creating the National Press Council were adopted.<sup>2</sup> Although more than a year has elapsed since the promulgation of the latter, no members of the press council have been elected or appointed.<sup>3</sup>
- With the mounting social crisis and growing protests in various regions, in particular the Rif protests since October 2016,<sup>4</sup> the authorities grew impatient with freedom of the press, especially the digital outlets that cover these events and expose excesses. It therefore went on the counterattack via trials and arrests, as discussed below.

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<sup>2</sup> The mandate of the National Press Council includes self-regulation of the press and publication sector; the drafting of a code of professional ethics and oversight to ensure compliance by professional journalists; acting as a mediator in disputes between professional journalists or between journalists and other parties, and arbitrating disputes between professional journalists; granting press credentials and considering disciplinary cases involving press institutions and professional journalists who abandon their professional duties and breach professional ethics; offering an opinion on proposed laws and regulations related to the profession or its practice, as well as on other issues put to it by the administration; proposing measures to develop, train, and modernise the press and publication sector; and contributing to organising continuing training for journalists.

<sup>3</sup> The National Press Council has 21 members: 7 members elected by professional journalists from among their ranks, with due regard shown for the representation of various types of press and media; 7 members elected by press publishers from among their ranks; 7 members representing each of the following institutions: Supreme Judiciary Council, National Council for Human Rights, National Council for Moroccan Languages and Culture, Moroccan Bar Association, Federation of Moroccan Writers, a former publisher, and an emeritus journalist.

<sup>4</sup> The protests were set off by the death of fishmonger Mohsen Fikri, who was crushed in a trash compactor as he attempted to retrieve the fish he had just purchased, after police officials threw it in the compactor.

## 1.0 THE STATUTORY FRAMEWORK AND ITS LIMITS

We will first review the status of freedom of the press and media in the constitution, and then in law.

### 1.1 FREEDOM OF THE PRESS AND MEDIA IN THE JULY 2011 CONSTITUTION

The 2011 constitution was the most significant gain of the February 20 movement, despite its omissions and subsequent poor enforcement. In the preamble and particularly in Title II, it sets forth several rights, linking their exercise with laws regulating them. It also created an important mechanism for the subsequent review of these laws, allowing a litigant to challenge the unconstitutionality of any law relevant to the course of a dispute underway when it infringes the rights and liberties set forth in the constitution (Article 133).

#### 1.1.1 FREEDOM OF EXPRESSION AND THE MEDIA IN THE CONSTITUTION

Regarding freedom of expression and media, Article 25 of the constitution states:

“Freedom of thought, opinion, and expression are guaranteed in all forms. Creative freedom and the freedom of publication and exhibition in the fields of literature, art, and scientific and technical research are guaranteed.”

Article 28 adds:

“The freedom of the press is guaranteed. It may not be restricted by any form of prior censorship. Everyone has the right to express and publish news, ideas, and opinions, freely and without limitation, save that which is explicitly set forth in law. The public authorities shall encourage the regulation of the press sector in an independent manner and on democratic foundations, and the establishment of the legal and ethical rules related to it. The law shall establish the rules for the regulation and oversight of public media and guarantee access to these media while respecting the linguistic, cultural, and political diversity of Moroccan society. The Supreme Authority for Audiovisual Communication shall ensure respect for this diversity, pursuant to the provisions of Article 165 of this constitution.”

#### 1.1.2 THE RIGHT OF ACCESS TO INFORMATION IN THE CONSTITUTION

Article 27 states:

“Citizens [male and female] have the right of access to information held by the public administration, elected institutions, and the bodies entrusted with the mission of public service. The right of access to information may not be restricted except by law, with the objective of protecting matters of national defence, internal and external state security, and the private life of persons, preventing the infringement of basic liberties and rights enshrined in this constitution, and protecting the sources of information and areas specifically enumerated by law.”

### 1.2 FREEDOM OF EXPRESSION AND THE PRESS AND ACCESS TO INFORMATION IN THE LAW

On August 15, 2016, the Official Gazette published Royal Edict 1.16.122, issued by the King on August 10, 2016, for the implementation of Law 88.13 on the press and publication. Although the law was widely reported to contain no prison penalties, this is incorrect (see ‘a’ below). In addition, the Criminal Code applies to misdemeanours that can only be committed via publication; these should have been included in the press law, which offers greater protection (see ‘b’ below). Despite a number of safeguards in the new press law, such as the prohibition of the suspension of a publication or pretrial detention under Article 98, these were not enforced

in the first test of the law (see Part II of this paper). Moreover, despite a multiplicity of draft laws on freedom of information, there is a lack of political will to adopt a robust, effective law that ensures compliance with international standards (see 'c' below). Finally, the existence and sustainable development of the digital press is jeopardised by new conditions included in the press law (see 'd' below).

#### 1.2.1. IS THE PRESS LAW FREE OF PRISON PENALTIES?

At first glance, this seems to be the case, but some articles are flawed, and link press crimes with similar crimes defined in the Criminal Code. This allows judges to apply the criminal penalties, which may entail a prison sentence. An example is Article 71 of the press law, which states:

“The provisions of Articles 104 and 106 below shall be applied if a publication, periodical, or digital newspaper includes defamation of the Islamic religion or the monarchical order, or incitement against the territorial unity of the kingdom, or libel or slander of or an infringement of the private life of the person of the King, the Crown Prince, or members of the royal family, or an infringement of the duty to show due esteem and respect to the person of the King.”

The provisions of these two articles shall similarly apply if a publication, periodical, or digital newspaper includes direct incitement to the commission of a felony or misdemeanour, or incitement to discrimination or hatred among persons.

A review of Articles 104 and 106 reveals that indeed, they only penalise the newspaper or periodical. But the person committing these acts is subject to a different, harsher penalty under the Criminal Code. Section 267-5 of the Criminal Code allows for a term of imprisonment of six months to two years, or a fine of 20,000–200,000 Moroccan dirhams (MAD), or both. For each offense against Islam or the monarchy, or incitement against Morocco's territorial unity, the sentence is two to five years imprisonment and a fine of MAD50,000–500,000, or both, if the acts are committed by means of publication.

As such, it cannot be said that publication crimes carry no prison sentences. Although the legislature has removed apparent prison penalties from the press and publication law, they have been retained in the Criminal Code. In short, a single incident of a publication crime entails one penalty for the publication itself and another for the person who committed it. The judge will not hesitate to apply both laws, since both are applicable to a specific party and do not overlap.

Recently, to resolve this inconsistency, the Ministry of Justice and the Ministry of Culture and Communication drafted a bill in October 2017, which transfers some provisions of the press law related to various publication crimes to the Criminal Code. These provisions cover incitement to a number of crimes, such as praise for terrorism, war crimes, genocide, or crimes against humanity, as well as incitement to hatred and discrimination and crimes of insulting judges, civil servants, law enforcement, or a regularly constituted state body. The danger of removing these misdemeanours from the press law is that it will subsequently make such offenses subject to the Code of Criminal Procedure, which allows for detention. Currently, the press law does not permit detention, and misdemeanours are not subject to prison sentences.

#### 1.2.2 ACTS CRIMINALISED IN THE CRIMINAL CODE THAT CAN ONLY BE COMMITTED BY MEANS OF PUBLICATION

These include, for example, insulting the judiciary or civil servants, influencing the judiciary, showing contempt for judicial rulings, or praising terrorism, whenever such acts are committed in writing or via other means of publication. In addition, although praising terrorism is only subject to a fine in the press and publication law, it is also found in the Criminal Code, where it carries much stiffer penalties. The penalties and procedures differ significantly depending on whether we apply the Criminal Code or the press law. The terrorism law, which is incorporated into the Criminal Code, allows the application of a code of procedure specific to terrorism crimes,

which permits suspects to be detained and placed in police custody for up to 12 days. It also invests exclusive jurisdiction over terrorism crimes with the Rabat Appellate Court, and makes the investigating judge responsible for examining terrorism crimes to the case. The crime of praising terrorism carries stiff penalties: Section 218-2 of the Criminal Code prescribes a sentence of two to six years imprisonment and a fine of MAD10,000–200,000.

### 1.2.3 AN UNDESIRABLE RIGHT: THE RIGHT OF ACCESS TO INFORMATION

Since 2013, the government has submitted three drafts bills on the right to information, the best version being the second bill of 2013. The most recent draft, published on the website of the government secretariat on July 31, 2014, is the worst. While observers awaited the results of their proposals and comments on the second draft, government parties, among them the Secretariat of the Government and the Interior Ministry, were busy disregarding the feedback from non-governmental organisations (NGOs) and even some consultative bodies, such as the National Council for Human Rights, which became clear with the release of the third version of the bill. It did not go unobserved that such practices became more prevalent with the crackdown on civil society that began in the summer of 2014. As a result of the regressive amendments to the 2014 draft, the bill received a poor score of 65 of a possible 150, based on international standards set by organisations that assess access to information laws, such as the Centre for Law and Democracy and Article 19. These assessments cover seven areas: the right of access, the scope of the law, request procedures, exceptions, possibility of grievance and appeal, penalties and protections, and promotional measures. With this score, the Moroccan bill fell in the rankings to 83 out of 98 information laws assessed, compared to the 2013 bill, which scored 100 and was ranked 27—a substantial decline.

As this law has not yet been passed, and its content remains in flux, it will not be analysed in this paper.

### 1.2.4 THE DIGITAL PRESS: UNDER EXISTENTIAL THREAT

In 2017, the social movement in the Rif continued apace and many digital outlets covered and documented events there as well as other protests and incidents—including, for example, bribes given to officials. In response, the minister of culture and communication threatened the owners of these websites with the strict enforcement of the press and publication law against any site that did not meet the formal and substantive conditions for the professional practice of digital journalism.

Article 16 of the new press law sets forth high barriers for operators of existing websites. They must hold a BA at least, a specialised journalism degree, or a recognized equivalent diploma. They must be professional journalists based on the terms of the law.<sup>5</sup> They must own the press institution if a natural person, or, in contrast to the law governing corporations and the appointment of company officials, they must own a majority stake in a press institution with legal personhood.

In addition, Article 21 sets forth other conditions for the licensing of any periodical or digital outlet, which must be acquired 30 days prior to the day on which the publication will be issued. The license must be obtained from the crown prosecutor in the first-instance court in the same district in which the press institution's main office is located. The license requires the submission of a significant volume of information, including the domain or name of the website, the civil status of the publication director and editors if necessary, their nationalities and educational qualifications, with the appropriate documentation, and their criminal records, as well as the name and address of the owner of the site and the institution's registration number in the commercial registry.

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<sup>5</sup> Press cards are granted by a committee overseen by the Ministry of Communications and are to be renewed annually. Article 12 of the law on professional journalism (Royal Edict 1.16.51 issued on April 27, 2016 in implementation of Law 89.13 on the regulation of professional journalists) states, "Any person who intentionally makes a statement containing false information with the intent of obtaining a professional press card, or uses an expired or cancelled professional card, or impersonates a professional journalist or the equivalent for a particular purpose without having obtained a professional press card, or intentionally submits cards similar to the professional press card set forth in this law shall be subject to the penalties established in the Criminal Code."

Article 125 allowed one year for compliance with the new law, with the deadline set for August 15, 2017.<sup>6</sup> Parliament is currently debating a law that would extend the deadline an additional year, with heavy penalties in the event of non-compliance.<sup>7</sup>

In addition, Article 34 of the law states that digital newspapers that fulfil these requirements shall benefit from a free domain name that uses the national press domain (press.ma). Article 35 adds, “The digital newspaper that has fulfilled the conditions of Article 21 above shall automatically benefit from a license to film, submitted by the Moroccan Cinema Center, valid for one year and renewable, for audiovisual production to serve the digital press. Any unlicensed filming is subject to the penalties set forth in this law.”

In other words, one is required to obtain one-year permits from the Moroccan Cinema Center to film video clips and a one-year license from the national communications regulatory agency for website hosting.

Since these licensing organisations are under state control, they can deny or refuse to renew the license of journalists and digital outlets that take a critical stance. Dozens of digital press workers staged a protest in front of the Ministry of Culture and Communication in Rabat, following a call from the National Coordinating Committee in Defense of Press and Media. Protestors condemned what they saw as the unfair, arbitrary, and reckless trampling of media and rights gains. Other professionals, among them the National Syndicate for the Moroccan Press and the Moroccan Federation of Newspaper Publishers, see this as an opportunity to bring order to the field and clear it of hangers-on. They noted that the new law has restored the stature of journalism, which has become the chosen profession of anyone without one.<sup>8</sup>

Several website operators received summonses from the Public Prosecutions, which urged them to shutter their websites on the grounds of non-compliance with the new press law.

In order to comply with Morocco’s international legal obligations in regard to freedom of expression, two basic conditions must be met by both website operators and the authorities: websites should be declared to the authorities to allow the latter to enforce the law if a website infringes the rights and liberties of others, in line with the limits set by Article 19 of the International Covenant on Civil and Political Rights (respect for the rights and liberties of others and protection of public security and morals as necessary in a democratic society). At the same time, the authorities should not arbitrarily block websites, because this violates the right of the public to access information and opinions and is an assault on the right of everyone to freely access, receive, and publish information, within the limits permitted under international standards.

If these punitive requirements are enforced, they will most certainly constitute an infringement of freedom of opinion, expression, and the press, and the right to access information, even if under the cloak of legality. This is a real setback in the post-independence gains made by journalists and in freedom of opinion and expression. It will also go down as one of the major grievances held against the PJD and its allies in government and parliament in the period of 2012–2016.

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<sup>6</sup> [sawtsoouss.com/archives/46155](http://sawtsoouss.com/archives/46155)

<sup>7</sup> Article 24 of the law states, “A fine of 2,000 to 10,000 dirhams shall be assessed against the owner of the periodical or digital newspaper or the lessee operating them, or absent them the publication director, or absent him the printer, or absent him the distributor of the periodical or the host of the digital newspaper, who does not hold a license pursuant to the requirements of Articles 21 and 22 above, or relied in publication on a license that is void pursuant to the requirements of Article 23 above. The publication of the periodical or digital newspaper may not continue until after compliance with all the procedures set forth in Article 21 above. In the case of non-compliance with the aforementioned procedures, the persons enumerated in the first paragraph above shall be jointly subject to a fine of 20,000 dirhams, to be paid for every new, unlawful publication, and to be calculated based on every issue published starting from the date of the pronouncement of the judgment, if issued in presence, or from the third day after it to allow notice of the judgment, if issued in absentia, even if there is an appeal. The digital newspaper, if its establishment was not licensed, is subject to the penalty set forth in the first paragraph above, as well as blocking, pending compliance with the procedures set forth in Article 21 above.”

<sup>8</sup> <http://assabah.ma/244919.html>

## 2.0 POLITICAL AND JUDICIAL PRACTICES

Since 2014 in particular, the crackdown on civil society has increased, after the interior minister made a statement in the parliament accusing some Moroccan rights movements of acting as foreign agents, receiving foreign funds, harming national interests, and hindering the operation of the security establishment by propagating what he considered lies about torture and human rights abuses in the kingdom.

The repression intensified, striking a severe blow against freedom of the press and expression with the arrest of journalists, activists, and rights advocates. Journalists were also arrested in connection with the movement in the Rif, as were young people affiliated with the JDP due to Facebook posts, part of the increased harassment of the party that, ironically, leads the government (see section 1 below).

In the same context, barriers to the establishment of independent associations, including investigative journalism initiatives, have persisted. Activists were monitored, while the loyalist press was mobilised to serve these repressive tendencies and attack human rights activists and dissidents. Political motivations lay behind most violations of freedom of expression and the press, and the judiciary and judicial means were employed as cover, in a flagrant distortion of sound legal interpretation and in violation of fundamental rights (see section 2 below).

### 2.1 ARREST OF JOURNALISTS, PARTY ACTIVISTS, AND RIGHTS ADVOCATES

A number of journalists have been arrested and prosecuted because of their advocacy or media activities critical of the authorities and their management of public affairs. Several examples are discussed below.

#### 2.1.1. THE CASE OF ALI ANOUZLA

On September 17, 2013, journalist Ali Anouzla was arrested for publishing a story taken from the Spanish El País, which contained a link to an al-Qaeda video. The Moroccan authorities arrested him at his home and confiscated equipment and computers from the website offices. He was taken to the headquarters of the National Brigade in Casablanca for questioning. After he was taken into custody, the Public Prosecution issued a notice, dated September 24, 2013, stating that it had petitioned the investigating judge to conduct an investigation into three crimes: 1) intentionally providing assistance to those involved in terrorist acts; 2) providing material for the execution of terrorist crimes; and 3) praising acts constituting terrorist crimes.

These crimes are set forth in the Moroccan Criminal Code under Sections 218-2 and 218-6, all of them part of the 2003 counterterrorism law.

Crucially, the method used to commit these alleged crimes was publication on the Lakome website, so they necessarily fall into the category of publication crimes. Logically, any prosecution should have been based on the press and publication law of 1958, amended in 2002, rather than the terrorism law. Following a campaign and numerous legal writings that found no legal basis for his detention or even prosecution,<sup>9</sup> on October 25, 2013, Anouzla was released after spending 40 days in prison; legal action continued against Anouzla while he was free on his own recognisance. The case is still pending before the first-instance felony chamber of the Rabat Appellate Court.

#### 2.1.2 THE CASE OF HICHAM MANSOURI

Mansouri is a young journalist who also works as teacher with the Education Ministry. He was the primary assistant to historian Maati Monjib at the Ibn Rochd Center, which is engaged in various dialogues between

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<sup>9</sup> Abdelaziz Nouaydi, "Hal yujid nass fi-l-qanun al-Maghribi yasmah bi-mutaba'at 'Ali Anuzla?" (Is there a statute in Moroccan law that permits the prosecution of Ali Anouzla?) Akhbar al-Yawm, Oct. 5–6, 2013, <https://www.maghress.com/lakome/30874>.

secular and Islamist political forces and also conducts training activities for investigative journalists. Hicham Mansouri was placed under surveillance, and his home was raided in February 2015 by an entire police unit in civilian clothing. He was stripped naked and photographed as evidence, and led to the police vehicle as he attempted to cover himself with a blanket, a clear attempt to further smear and humiliate him. He was tried with a woman who had been visiting him, all based on fabricated reports and files prepared by the judicial police, which at times plays a political role. A report of the moral division of the judicial police in Rabat alleged that the police had obtained information from Mansouri's neighbours and the building doorman, who apparently stated that he was using a furnished flat in the building for the purpose of prostitution, which had disturbed the peace of other residents. The report also stated that a field investigation had been conducted, confirming that Mansouri had indeed rented the furnished flat to engage in corrupt practices. Despite testimony from building residents, who stated they had filed no complaint and that Mansouri was an ideal neighbour, and from the building doorman, who courageously testified in court denying the charges against Mansouri, the first-instance court in Rabat on March 31, 2015 sentenced him to ten months in prison on charges of adultery.<sup>10</sup>

Prior to his release in January 2016, Mansouri was prosecuted in the fall of 2015 in connection with another case, which also involved Maati Monjib and several journalists, some of whom had received training in investigative journalism through the centre.<sup>11</sup> These included journalist Samad Ait Aicha and Hisham Khribchi with the Association for Digital Rights; Mohamed Elsabr, president of the Moroccan Association for Youth Education; and Rachid Tarek and Maria Moukrim, with the Moroccan Association for Investigative Journalism. The first five defendants were charged with infringing national security, punishable by one to five years in prison and a fine of MAD1,000–10,000. The charge, set forth in Section 206 of the Criminal Code, punishes "any person who receives, directly or indirectly, from a foreign person or group, any form of grants, gifts, loans, or any other benefits designated or used in whole or in part to facilitate or finance an activity or advocacy liable to infringe the unity, sovereignty, or independence of the Kingdom of Morocco or to undermine the allegiance of citizens to the Moroccan state and the institutions of the Moroccan people."

In addition, Maati Monjib was charged with misappropriating funds, while Rachid Tarek and Maria Moukrim faced charges of receiving funds from foreign bodies and international organisations in violation of Articles 5 and 6 of the associations' law, which do not apply in their case. The case has been pending before the first-instance court in Rabat since October 2015, having been delayed several times, most recently on October 11, 2017. Hicham Mansouri and Samad Ait Aicha were forced to leave the country and seek political asylum in France, where following preliminary approval, they are awaiting the final decision. Hicham Khribchi, also known as Hiham Almiraat, the founder of the Association for Digital Rights (which was unable to obtain a license) was also compelled to seek asylum abroad. He is among the accused in the case of Monjib and the other activists. His association, in concert with Privacy International, published a report on the surveillance of activists and journalists in Morocco.<sup>12</sup>

### 2.1.3 THE CASE OF HAMID AL-MAHDAOUI AND SEVERAL JOURNALISTS DETAINED IN CONNECTION WITH THE RIF MOVEMENT

Mahdaoui is the director of the Badil website, which publishes videos exposing instances of injustice, abuse of authority, and bribery, especially in the judiciary and high administration. He also publishes stories of arbitrary actions endured by citizens, and occasionally does on-the-ground investigations highlighting the wretched

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<sup>10</sup> As part of Mansouri's defense counsel, I submitted briefs and arguments to the court, but the court disregarded them.

<sup>11</sup> The trials of these activists and journalists was related to their participation in training workshops organized with the support of the Dutch NGO, Free Press Unlimited, in Marrakech. A police force raided the workshop, confiscated the participants' smartphones, and transferred them to the police center in Casablanca, where many of them were questioned. Ultimately, seven activists were prosecuted.

<sup>12</sup> Jesús García Luengos and Laurence Thieux, *Les medias en ligne au Maroc et le journalisme citoyen: analyse des principales limites à un environnement favorable*, p. 41.

conditions in some areas. He strongly supported the social movement in the Rif, a series of peaceful demonstrations that erupted in the wake of the death of fishmonger Mohsen Fikri on October 28, 2016. Fikri was crushed in a trash compactor while attempting to retrieve a large quantity of fish thrown there by police.

For the region's residents, the incident exemplified the contempt, repression, and marginalisation they had endured for decades. The Rif area still bears the scars of wounds inflicted since the end of 1950s, having been a stronghold of anti-colonial resistance in the 1920s, in the revolution led by local hero Mohammed Ben Abdel-Karim al-Khattabi against the Spanish and French.

In the wake of Fikri's death, numerous young people organised demonstrations that drew thousands of people and drafted a list of demands to end the region's marginalisation, including fighting unemployment, creating a cancer hospital in the region, building a university, and encouraging investment. The authorities responded aggressively, arresting some 50 activists in the summer of 2017, most significantly leader Nasser al-Zafzafi, and charging them with infringing state security and numerous other crimes. The defendants were then transferred for trial from Al Hoceima in the north to Casablanca, about 600 km away. As the protests continued, the repression intensified, and hundreds of young people were arrested and tried in Al Hoceima, most of them sentenced to prison. The trials were still ongoing in Casablanca as of mid-January 2018.

In this context, journalist Hamid al-Mahdaoui was arrested in Al Hoceima while covering a march that local residents had planned for July 21, 2017. After his arrest on July 20, the prosecutor with the Al Hoceima Appellate Court issued a notice that Mahdaoui was arrested for inciting people to demonstrate despite a ban by the competent authorities.

Although the press law does not permit the detention of journalists during prosecution and does not entail a prison sentence for inciting to participation in a demonstration, Mahdaoui was sentenced to three months in prison. On appeal, on September 11, 2017, the sentence was increased to one year, pursuant to Section 299-1 of the Criminal Code,<sup>13</sup> an amendment introduced in tandem with the adoption of the press and publication law. This provision was applied, despite claims by the then-minister of communications that the press code would apply to publications and journalists, and did not provide for any prison penalties.<sup>14</sup>

Mahdaoui was transferred from prison in Al Hoceima to an investigating judge in Casablanca, where he is being prosecuted on another charge related to failure to report an infringement of state safety (Section 209 of the Criminal Code<sup>15</sup>), punishable by two to five years in prison and a fine of MAD1,000–10,000. This charge is based solely on phone calls Mahdaoui received from a person he did not know, claiming he intended to bring weapons into Morocco, including tanks, to stage a revolution. While the journalist accorded the claims no importance based on their lack of credibility, he is nevertheless being prosecuted on this serious charge. His trial is underway. In the latest development on October 24, 2017, the Public Prosecution asked to join his case to that

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<sup>13</sup> Section 299-1 states, "In cases other than those of participation as set forth in Section 329 of this law, and whenever the law does not provide for stricter penalties, a sentence of three months to one year imprisonment or a fine of 5,000 to 50,000 dirhams, or both, shall be levied on anyone who directly incites a person or several persons to commit a felony or misdemeanor if such incitement has no subsequent effect, and this by means of speeches, shouting, or threats voiced in public places and assemblies, or by means of postings displayed in public, or by any means that meets the condition of public accessibility, including electronic, print, and audiovisual. If the incitement to the commission of felonies or misdemeanors has a subsequent effect or such incitement resulted only in an attempt to commit a crime, the penalty shall be one to five years imprisonment or a fine of 5,000 to 100,000 dirhams, or both."

<sup>14</sup> Mustafa al-Khalfi, "Mashru' qanun 73/15 la yudakhkhil al-sahafa li-l-majal al-jina'i!" (Draft Law 73/15 [the law that added Section 299-1] does not make the press criminally liable!). See: [www.tanja40.com/%D8%B7%D9%86%D8%AC%D8%A9-4694-43.html](http://www.tanja40.com/%D8%B7%D9%86%D8%AC%D8%A9-4694-43.html)

<sup>15</sup> Section 209 makes not reporting an infringement of state safety punishable by two to five years imprisonment and a fine of MAD1,000–10,000, to be levied against "any person who learns of plans or acts whose objective is to commit acts punishable as a felony under the provisions of this title, and who despite this does not immediately notify the judicial, administrative, or military authorities upon learning of them."

of detainees with the Rif movement in Al Hoceima. The court granted the request, despite objections from the defense.

It should be noted that several other journalists have been detained for covering news of the Rif movement on their websites. These include Rabie al-Ablaq, a correspondent for Badil Info, which was run by al-Mahdaoui; he has launched a life-threatening hunger strike. Five other journalists are also being detained.<sup>16</sup> The National Syndicate for Moroccan Journalism has demanded their release, noting that they had been subjected to security interrogations in a city far from their homes and all manner of severe criminal charges, including insulting a regularly constituted state body, inciting unauthorised gatherings, undermining citizens' allegiance to the Moroccan state, inciting violations of national security, and collecting donations without authorisation.<sup>17</sup>

#### 2.1.4 TRIAL OF PJD YOUTH

On December 22, 2016, six young members of the JDP were arrested on charges of praising terrorism after publishing posts on Facebook in the wake of the killing of the Russian ambassador in Turkey and the death of his killer. Some of them wrote of the killer, "May God have mercy on you, hero," as some of the youths saw the incident as retribution for the Russian role in the Syrian conflict and its support for the regime of Bashar al-Assad.

The young men were sentenced to one year in prison on July 13, 2017 by the first-instance felony court in Salé, which has jurisdiction over terrorism cases.

While some of the Facebook postings do constitute praise of terrorism, the circumstances of the case and trial require several observations:

1. Section 218-2 of the Criminal Code was applied, which carries a sentence of two to six years in prison and a fine for praising terrorism. They were also prosecuted on charges of inciting to the commission of a terrorist crime under Section 218-5, which carries a sentence of five to ten years in prison and a fine. In contrast, Article 72 of the press and publication law criminalises praising terrorism and is punishable only by a fine of MAD100,000–500,000 (\$10,000–50,000). The judge denied the motion to apply the press law, as required by Section 6 of the Criminal Code, which states, "If several laws are in force from the date of the commission of the crime and the final judgment, the law most favourable to the defendant must be applied." In addition, Article 95 of the press and publication law states, "All prosecutions related to publication shall be subject to the procedures set forth in this law." Article 98 of the law prohibits "arresting the suspect or subjecting him to pretrial detention."
2. The young men were members of the PJD, whose secretary-general, Abdelilah Benkirane, was tasked at the time with forming the government, following his appointment as head of the government on October 10, 2016. His efforts were met with numerous obstacles for several months, due to the impossible conditions for a coalition government set by the party close to the palace, although the PJD won the most votes in the October 2016 elections. This was clearly a message to the party.
3. After Benkirane was relieved of his duties, ostensibly for his failure to form a government, replaced by Saadeddine Othmani, and after the PJD accepted the conditions it had previously rejected, a royal amnesty was issued for the PJD youth. This took place on Throne Day, July 29, 2017, after they had spent more than seven months in prison.

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<sup>16</sup> These are Houssein Al-Idrissi, a photographer with the Rif Press website; Mohamed El Asrihi, the manager of the Rif 24 website; Jawad Sabiri, a photographer with the Agraw.tv website; Fouad Assaidi, who works with the Araghi.tv website; and Abdelali Haddou, the director of the same website.

<sup>17</sup> <http://lakome2.com/politique/media/28236.html>

## 2.2 OBSTRUCTING THE FREEDOM TO ESTABLISH ASSOCIATIONS AND ENCOURAGING SMEAR CAMPAIGNS

### 2.2.1. OBSTRUCTING THE FREEDOM TO ESTABLISH ASSOCIATIONS

The Moroccan authorities habitually obstruct the establishment of independent civic associations, either by refusing to accept their registration papers or refusing to give them a receipt once the file is deposited. (The receipt is vital for opening a bank account, signing a lease, or organising a public activity.) As a consequence, associations often opted to file their papers with the help of a bailiff, who would guide the filing process, and file a report in the event of refusal of the administration for use in the administrative courts. Now, however, many bailiffs refuse to assist associations with this task, citing other obligations. In fact, they simply want to avoid giving an official statement against the authorities, although the law authorises them to fulfil this mission. However, the authorities encourage the establishment of associations whose objectives and activities they can oversee and control.

In this context, the association Freedom Now was created on April 25, 2014 by a core group of researchers, academics, journalists, and artists who were on the committee for solidarity with Ali Anouzla. The association's objectives include monitoring violations of freedom of opinion and expression in Morocco, defending media figures, intellectuals, and artists, mobilising defence for victims and providing support, and proposing reforms to guarantee the rights of free expression and opinion.

As required by the law on associations, the group of activists filed their registration papers with the local authority—the Rabat province—on May 9, 2014. The provincial official responsible for receiving such files refused to accept the application, although he was legally required under Article 5 of the law to accept the papers and immediately provide a dated and time-stamped receipt. The association officials petitioned the administrative court on June 18, 2014, appealing against what was effectively a rejection of their registration application. The Rabat Administrative Court denied the appeal on July 22, 2014, on the grounds that the association did not yet possess the standing to independently file suit and had not followed proper procedure, by having the founders who possess standing file the suit. The ruling cited Article 5 of the associations law, which requires the granting of “a temporary receipt stamped and dated immediately.” It adds, “The final receipt must be granted within 60 days. If it is not granted within this time period, the association may begin to operate in accordance with the objectives set forth in its laws.” The logic of the ruling is that the association should have waited 60 days to acquire official legal standing before filing suit. Yet, the ruling did not preclude all possibility of a suit, to be filed either by the founders of the association or 60 days after filing for the license.

In addition to Freedom Now, the authorities also refused to grant a registration receipt to the Association for Digital Rights, and prosecuted the group's founders. In 2016, authorities refused to accept the establishment papers submitted by the founders of the Association of International Journalists in Morocco, although they had met all legal requirements.

### 2.2.2 ENCOURAGING SMEAR CAMPAIGNS<sup>18</sup>

It has become common practice for a number of printed and online newspapers to engage in smear campaigns against the political opposition or critics of the authorities, whether individuals, political groups or rights-based organisations. Rights activists are particularly vulnerable to this type of attack. The most prominent example is Khadija Al-Ryadi, the former president of the Moroccan Association for Human Rights (AMDH), the coordinator of the Maghrebine Coordinating Committee for Human Rights, and the recipient of a UN human rights award. Smear campaigns also target writers, journalists, and academics, as well as businessmen and activists known for

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<sup>18</sup> My analysis is based on a set of defamatory articles collected and classified by student Abd al-Latif al-Hamamouchi, based on dozens of press articles from both print and digital outlets.

their criticism of the regime and who have both domestic and international connections. These are people who exercise public influence, including but not limited to Maati Monjib, Aboubakr Jamaï, Fouad Abdelmoumni, Abdellah Hammoudi, Prince Moulay Hicham, Karim Tazi, Abdelhamid Amin, and Ali Anouzla. Even foreign journalists such as Ignace Dalle and Ignacio Cembrero have not escaped unscathed. Such campaigns have also targeted members of the PJD, such as Abdelali Hamidine, Abdelaziz Aftati, and Abdullah Bouano, the head of the party's parliamentary bloc.

These defamation campaigns can be precisely and narrowly framed. For example, Maati Monjib is consistently described as an anti-Semite in the Francophone media, to erode his credibility with Western public opinion, while the Arabic-language media calls him a Zionist, aiming to tarnish him among the generally pro-Palestinian Moroccan public.

Organisations as well as individuals are targeted, first and foremost the Islamist-oriented Al Adl Wa Al Ihssane and Annahj Addimocrati, which has been labelled a leftist party. Some platforms and writers have devoted themselves to smearing the PJD, particularly its ministers and its secretary-general Abdelilah Benkirane, although the party leads the government and does not criticise the regime (and indeed, has been silent on various rights abuses).

Certain human rights organisations with strong credibility are also subject to these campaigns, which affects public opinion. The most prominent example is the AMDH. In the wake of reports released about human rights violations in Morocco, international NGOs have also been attacked, in particular Amnesty International and Human Rights Watch.

Defamation campaigns combine political allegations with personal insults and innuendo. On the political front, human rights activists and democratic secularists have been implicated in alleged relationships with the Polisario Front or Algeria and accused of treason or lack of patriotism. Some are said to be in the employ of Prince Moulay Hicham, a cousin of the King who is suspected of wanting to usurp the throne. Some are said to be anti-monarchists or to have republican tendencies, while others are accused of being communists and atheists. Such people are typically accused of receiving foreign support from anti-Moroccan organisations and countries, and using this funding in a fraudulent manner. Finally, they are accused of tarnishing Morocco's image abroad when they speak of human rights violations or the lack of democracy, or of undermining secret counterterrorism agencies and asking questions about their work.

Smear campaigns that target the private lives of individuals are generally directed at Islamist movements or parties, but occasionally at others as well. Islamists are typically accused of extramarital affairs or involvement in homosexuality and sometimes corruption, especially if they are PJD elected figures. Non-Islamists may be accused of adultery or homosexuality; or of not fasting during Ramadan, or of using drugs and alcohol. They are also accused of misappropriating funds granted by foreign agencies or NGOs.

Some activists have been compelled to file suits abroad against some press outlets for their defamatory claims, having despaired of obtaining justice through the Moroccan courts.<sup>19</sup>

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<sup>19</sup> This is the case of historian and rights activist Maati Monjib, who filed suit in France against the Le360 website.

### 3.0 CONCLUSIONS AND RECOMMENDATIONS

This paper concludes by presenting a set of conclusions, each of which is accompanied by a recommendation to address the deficiency in law or practice. These recommendations are directed at relevant body, either with the direct competence to implement the change, or able to influence the direction of implementation. The recommendations concern first and foremost the public authorities, including the government, parliament, and judiciary. They are also relevant for the bodies that oversee compliance with international human rights conventions and standards, whether these are treaty-based agencies, bodies with thematic mandates such as special rapporteurs and working groups, or the UN Human Rights Council within the framework of its Universal Periodic Review. Finally, these recommendations, based on an analysis of the law and practice, are a means by which NGOs can pursue their advocacy work in regard to all these stakeholders.

*Conclusion 1:* Although the right of freedom of expression and access to information is enshrined in the constitution, the legal regulation of press and media freedoms allows for the application of the Criminal Code and for high fines.

*Conclusion 2:* Several publication crimes still exist in the Criminal Code (i.e. acts which can only be committed by means of publication). These must be moved to the press and publication law. These include crimes related to praise for terrorism, contempt for judicial rulings, offenses against the Islamic religion or the monarchy, incitement against the territorial unity of the kingdom, libel, slander, or infringement of the private life of the King, the Crown Prince, or members of the royal family, infringement of the duty to esteem and respect the person of the King, and incitement to the commission of a felony or misdemeanour, or discrimination or hatred.

*Recommendation:* The press and publication law must incorporate all misdemeanours that can only be committed by way of publication such that defendants may not be detained during prosecution. It should be noted that some publication crimes can carry prison penalties, such as incitement to the commission of felonies, discrimination, hatred; or the commission of war crimes, crimes against humanity, or genocide. In these cases, if the press code is applied, the sentence is only executed once the judgment is final.

*Conclusion 3:* There is no law guaranteeing the right of access to information, and the authorities have revealed their intention to establish strict controls that fail to uphold international standards.

*Recommendation:* A law guaranteeing the right to access to information must be passed, as per Article 27 of the constitution, in consultation with civil society organisations and with due regard for international standards.

*Conclusion 4:* The press and publication law enacts severe restrictions on the right to issue newspapers or establish new websites, while also jeopardising the continuation of existing websites.

*Recommendation:* Although the authorities have the right to regulate newspapers and websites, regulation should not entail conditions that hinder freedom of opinion or expression, except for legitimate restrictions based on international standards. The most important condition is the need to register the person responsible for publications, to enable the enforcement of the law in the event of any infringement of the rights and liberties of others or legitimate interests that must be protected in any democratic society. The National Press Council, which oversees, inter alia, journalism ethics, should be established as an independent and representative body.

*Conclusion 5:* A number of print and online publications are encouraged to attack and smear critical or independent voices, including human rights activists and democracy advocates, political opponents and independent organisations critical of the management of public affairs.

*Recommendation:* The authorities and decision makers must end the practice of encouraging and protecting newspapers and websites that engage in such defamation and other negative behaviours.

*Conclusion 6:* Journalists and bloggers are prosecuted under the Criminal Code in a selective and at times retaliatory manner, and the courts are complicit in arbitrary interpretations of the law.

*Recommendation:* There must be stronger guarantees for judicial independence, and judges' organisations must ensure that judges are bound by all laws and interpret them in a way that ensures justice and full respect for the rights of defendants and the right of defense.

*Conclusion 7:* The Public Prosecution and the judiciary rely on reports from the judicial police, which often do not respect guarantees designed to inform persons of their rights (contacting an attorney, notifying the family, the right to remain silent, the right to read the interrogation minutes prior to signing them). Interrogation reports are written in a way that guarantees confessions of alleged crimes, and such reports are probative in misdemeanour cases until proven otherwise. Reports may be disallowed in cases of torture confirmed by medical experts, but this rarely happens.

*Recommendation:* Security governance must be reformed to grant protection to judicial police officers for the refusal to follow unlawful orders. They should be subordinate to the judiciary alone, not their administrative superiors. The law should be changed to make judicial police reports in misdemeanours purely informative and not binding on the judge, in accordance with the principle of the freedom to determine means of proof. It must also be explicitly stated that an attorney should be present from the first moment a person is taken into custody, and especially when his client signs police interrogation minutes.

*Conclusion 8:* The establishment of independent associations, including those that defend freedom of the press, faces arbitrary obstructions.

*Recommendation:* The terms of the association law must be respected, and criminal penalties should be established for infringement of a fundamental democratic freedom.