

## Morocco

Despite the lively public debate in Morocco around political reform and human rights, especially women's rights, in 2015 a number of civil society institutions, human rights associations, and independent media continued to face restrictions. Coinciding with the rapid deterioration of the human rights situation around the Arab region, the civil war in Libya, and the swift expansion of the Islamic State in Iraq and Syria, the major preoccupation of the monarchy and the ruling Islamist Justice and Development Party (PJD) was to maintain domestic stability. Conservative forces within the regime took advantage of the new political situation to continue curtailing freedom of expression on security and counterterrorism grounds.

### **Current Political Climate:**

Under the rules of the political game in Morocco, the monarchy and court plays a central role in determining the political balance of power, relying on strategies of gradual cooptation, isolation, and suppression if necessary. The PJD has proved adept at evasion and offering concessions to retain its place on the political landscape and in the Moroccan political equation. Some even credit it for the success

of the experiment, which has come to be seen as a model worth emulating for coexistence between a traditional, conservative, Islamist party and what remains of the Moroccan communist party, other traditional and right parties, and ideologically indeterminate parties created by the central authority. A discussion of the impact the PJD government has had on human rights cannot be had without examining its political incorporation and its relationship with other political forces, especially after it moved from the ranks of the opposition to a position where it holds political decision making power. In fact, it requires understanding the nature of the political system in Morocco, in which the government is an executive agency under the king, assisting him in executing public policies.<sup>1</sup> It should be recognized that the change in the kingdom's legal, constitutional framework has entailed no shift in the balance of power or the political reality, though the tragic end of most Islamist experiments in Egypt, Tunisia, Libya, and Syria has again made Islamists subject to suspicion and doubt. In contrast, Moroccan Islamists, especially the PJD, gained the sympathy of a large section of the electorate in the 2011 elections and the municipal and regional elections of September 4, 2015 with their slogan of fighting corruption, though it actually stood against a popular movement that called for an end to corruption and tyranny.

### **Impact of Legal, Constitutional, and Institutional Reforms:**

In recent years Morocco has seen a marked opening in political life and a desire to move toward greater respect for human rights in response to the Moroccan and international human rights movement, thanks to a bitter struggle waged by various democratic forces and the steadfastness of thousands of political prisoners and victims of enforced disappearance and secret detention and their families, and the families of the disappeared and victims of torture, as well as the efforts of rights groups, democratic national bodies, the media, and civil society institutions. Nevertheless, there has been no actual, full break with past practices of human rights violations.

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<sup>1</sup> Which certainly contravenes the provisions of Articles 87, 89, and 90 of the constitution, which considers the government an executive and regulatory authority.

In July 2011, Morocco adopted a new constitution that enshrines internationally recognized human rights and protects the human rights system, with due regard for their universal, indivisible nature. The new constitution upholds the human rights set forth in the Universal Declaration of Human Rights and establishes that international conventions ratified by Morocco take precedence over national legislation. Morocco undertook reforms announced in 2013 on its policies on migrants, giving temporary legal status to hundreds of refugees and thousands of other foreign nationals, most of them from sub-Saharan Africa.

Despite the strong human rights provisions in the constitution, these constitutional reforms did not lead to better practices, the adoption of practical legislation to enforce them, or a review of repressive laws. Now more than four years since the adoption of the new constitution, the Moroccan government and the political elite have failed to make its provisions a democratic, rights-oriented reality even as the status of rights and liberties is eroded by the absence of a statutory arsenal providing for accountability and preventing impunity.

Proposed amendments to the Moroccan Penal Code released by the Ministry of Justice and Liberties garnered much attention in rights and political circles. Some saw the amendments as supporting rights gains, while others saw them as a conservative proposal containing overly broad provisions that could be used to curtail liberties. The Ministry of Justice and Liberties created a legislative forum on its website on April 3, 2015 in order to solicit observations and proposals on the draft amendments.

According to an official document, the government proposal seeks a comprehensive revision that would reform penal policy and put in place alternate penalties. The reform would reduce statutes carrying the death sentence from 31 to 11 articles, reduce the sentences of 13 of 27 articles from life imprisonment to a defined term of imprisonment, stiffen the penalty for torture, and strengthen protection for women by expanding the concept of sexual harassment, criminalizing forced marriage, and stiffening the penalty for libel and slander if it targets women based on their gender.

Articles 231-1 to 231-8 carry a sentence of five–ten years imprisonment and a fine of 5,000–50,000 dirhams for torture, without prejudice to other harsher criminal provisions. The reforms would increase the penalty to 10–20 years imprisonment and a fine of 20,000–50,000 dirhams if torture is proven in the following conditions: if committed by a group of persons as principal or secondary defendants with premeditation or with the use of arms or threat; if perpetrated against a judge, police personnel, or a public servant in the course of duty; or against a witness, victim, or civilian because of his testimony, a complaint, or a lawsuit filed or to prevent such. The sentence may reach 30 years imprisonment and a fine of 20,000 dirhams under Article 231-4 if the victim of the torture is a minor, has a special status due his/her advanced age, disability, or illness, or is a pregnant woman, provided her pregnancy is manifest and known to the perpetrator or if the torture is preceded or accompanied by sexual assault. This proposal is an important step toward meeting Morocco’s international obligations to prohibit all forms of torture and ensure accountability for it.

The proposed penal amendments criminalize sexual harassment in Article 503-1, which prescribes a penalty of one–three years imprisonment and a fine of 5,000–50,000 dirhams for any person who uses orders, threat, means of coercion, or other means thereby exploiting his authority over another person for sexual purposes. The same penalty is applicable to anyone who harasses a family member or someone over whom he has custody, care, or guardianship, or if the victim is a minor. All of these are cases involving aggravating circumstances. In all other cases, the proposed amendment sets forth a penalty of imprisonment of one–six months and/or a fine of 2,000–10,000 for anyone who intentionally harasses another person in public or other places by deed, word, or gestures of a sexual nature or for sexual purposes and anyone who sends a written, telephonic, electronic, or recorded message or images of a sexual nature or for sexual purposes to another person. The penalty is doubled if the harassment is perpetrated by a work colleague or persons tasked with maintaining order and security in public or other spaces. The proposed change is a victory for women who have tirelessly demanded protection from harassers, whether in the workplace or public places.

The proposed amendment also criminalizes blasphemy, which heightens fears that this provision could be used to curtail freedom of opinion and expression, academic freedom, and freedom of religion and belief. In addition, although some have called for the repeal of the statute punishing public eating in Ramadan, under the proposed changes, the crime would carry a sentence of one–six months in prison and/or a fine of 2,000–10,000, up from the current penalty of a fine of 1,200 dirhams.

### **Apprehensions Around the Counterterrorism Law:**

The Moroccan parliament ratified changes to the counterterrorism law on May 20, 2015, despite fears from rights associations. The amendments place additional restrictions on travel to certain countries plagued by conflict and tension and on acts that advocate, praise, or promote terrorist entities, organizations, gangs, or groups. The provisions are marked by their vague language, leaving ample interpretive room for judges when applying them. This could lead to the same violations seen in the wake of the application of the 2003 law—officially recognized as individual cases of overreach—especially given the absence of any legal accountability for those who violated human rights in applying that law

The government and parliament did not accept the proposals of the National Human Rights Council, most significantly that the bill be modified to clearly define the objective of terrorist entities, organizations, gangs, or groups as spreading fear, intimidating the populace, or compelling the government or an international organization to commit or refrain from committing an act, in order to avoid all non-necessary restrictions on the freedom of movement as guaranteed under the constitution and the International Covenant on Civil and Political Rights. The council also recommended defining training for terrorism as “providing training in the manufacture or use of explosives, firearms or other weapons, toxic or hazardous substances, or special technologies with the goal of committing a terrorist crime or contributing to its commission, knowing that the training provided is likely to be used to achieve this goal.” The council further suggested including a provision that would make recruiting or using children in terrorist groups an aggravating

circumstance, as well as avoiding criminalizing praise for terrorism as a synonym for ‘advocate’ and

‘promote.’ Instead, the council proposed replacing ‘praise’ with more precise terminology, such as public incitement to the commission of a terrorist crime. The National Human Rights Council suggested that the provision should be inspired by Article 5 of the Council of Europe Convention on the Prevention of Terrorism, which defines “public provocation to commit a terrorist offence” as “the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.” More specifically, the council recommended replacing the terms ‘advocate,’ ‘praise,’ and ‘promote’ in the second paragraph of Article 218-2 with a provision that would criminalize using the means set forth in the paragraph to publicly incite to joining terrorist groups. It also recommended removing the term ‘persuade another person’ while maintaining the terms ‘urge’ and ‘incite’ as a more specific standard, as well as the term ‘entice’ as related to minors.

### **Debate Over Enacting Gender Equality:**

The National Human Rights Council gave major attention to constitutional principles on gender equality, parity, and non-discrimination, working on two principal priorities: submitting proposals for the creation of a commission on parity and anti-discrimination as provided for in Articles 19 and 164 of the constitution and fleshing out the legal framework for countering violence against women and children. In this context, the council submitted a report, the first of its type, on the topic of gender equality and parity. The report included several recommendations to the government, most importantly amending the family law to give women equal rights with men on marriage and divorce, the relationship with children, and inheritance.

The report stated, “unequal legal provisions regulating inheritance increase the fragility and poverty of women and girls, and endowments and rules that govern everyone contribute to stripping

them of their right to land or inheritance.” The report supported its recommendation for equality in inheritance by citing Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Article 19 of the constitution, which states that women and men shall enjoy, on equal footing, civil, political, economic, social, and cultural rights and that the state shall strive to achieve equality between men and women. The report also stressed the need for the strict application of provisions of the family law on marital support and expanding support for specific measures to educate and train all judicial personnel and hold them accountable.

In its recommendations, the National Human Rights Council urged the government to grant women the right to pass citizenship to their foreign husbands pursuant to the same conditions applied to foreign wives of Moroccan men, to pass a law to suppress all forms of violence against women, and to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. The council further recommended withdrawing explanatory declarations on the CEDAW and taking action to circulate the convention more broadly, particularly among judges and judicial personnel, while urging them to consider its standards and provisions in the course of duty.

In response, the general-secretariat of the PJD stressed that this recommendation encroaches on the office of the commander of the faithful and the royal speech given to the first session of the 2013 legislative session, in which the king said that as commander of the faithful, he could not sanction that which God had proscribed or proscribe that which God had sanctioned. The PJD noted that the National Human Rights Council’s recommendation would spark a profound debate on matters regulated by unequivocal Quranic proofs, among them the matter of inheritance. Rejecting the council’s recommendation, Mohammed al-Fizazi, one of the most prominent Salafi sheikhs in Morocco, said that the council could not interfere in matters outside its remit and that those who understand God’s book are the ones fit to interpret it. He added that the recommendation was an assault on institutions, insofar as Morocco is an Islamic state, as well as an infringement on the function of Islamic scholars and the Supreme Scholarly Council, headed by the king in his capacity as commander of the faithful. For his part, government spokesman

Mustafa al-Khalfi had not considered the matter since the council had not directly contacted the government.

### **Implementation of the Recommendations of the Equity and Reconciliation Commission:**

The creation of the Equity and Reconciliation Commission (IER) had a strong impact on Moroccan society, demonstrating that the nation had decided to courageously face its painful past, take action to bring justice to victims, and strive to expose the truth of grave human rights violations, manifested as systematic violence against the citizenry and the arbitrary exercise of power that led to enforced disappearance, arbitrary detention, and torture of all kinds. The Moroccan authorities presented the IER as the centerpiece of the process of strengthening democracy and rule of law, but continued human rights violations call this claim into question.

Although nine years have passed since the king ratified the final report of the IER, on January 6, 2006, and although its recommendations have been integrated into the constitution, most and the most significant recommendations have not been implemented.<sup>2</sup> These recommendations include steps that require only political will, such as an official, public state apology and vow of non-repetition, as well as the repeal of the death penalty, combatting impunity, better security governance, and the ratifications of conventions and protocols. Moreover, the truth is still unknown in several significant cases, particularly the case of Mehdi Ben Barka, Omar Benjelloun, Mohamed Karina, and Abdellatif Zeroual; the fate of several still missing persons such as Houcine El Manouzi, Abdelhaq Rouissi, and Abdelhaq al-Wousouli; and incidents seen in the countryside, desert, and elsewhere. In addition, individuals were identified as the parties responsible for grave human rights violations in lieu of assigning

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<sup>2</sup> On August 25, 2015, the Moroccan League for the Defense of Human Rights sent a letter to Prime Minister Abdelilah Benkirane about the disregard shown to the urgent demands of a group of victims of grave human rights violations during the Years of Lead, “who were not comprehensively included in the settlement of the issue or were arbitrarily denied social integration.”

institutional responsibility, and the Moroccan judiciary has not pursued cases against persons involved in these violations.

### **Freedom of Association, Opinion, and Expression:**

Numerous human rights defenders in Morocco have been subjected to violence, prosecution, defamation, and imprisonment, while many persons of conscience and social activists continued to be detained, especially among the field coordinators of unemployed graduates. The offensive against the rights movement and the Moroccan League for Citizenship and Human Rights (LMCDH) has escalated. Several protest events have been banned, most recently a march by the LMCDH to mark Global Solidarity Day and the refusal to turn over the legal file to the Tangier branch.<sup>3</sup> Dozens of activities by the Moroccan Association for Human Rights were prohibited and various branch offices around the country were denied permits.

In late 2015, the authorities referred seven human rights defenders and journalists to trial. Five were charged with receiving foreign funding with the goal of infringing public security, while two were charged with failure to declare receipt of foreign funding. The charges are based on a vague, overly broad provision in the Penal Code.

Advocates of an election boycott were detained around the country, including members of the Democratic Way Party and activists with the National Association of Unemployed Graduates and the February 20 movement. Their publications were also confiscated and they were denied access to public media to present their position to the public. The Moroccan authorities also continued to reject the establishment of several associations by denying them receipts of deposit although they fulfilled all legal procedures. These include the Association for Digital Rights, Freedom Now which defends press freedom, and associations defending the rights of Sahrawis, journalists, Amazigh, sub-Saharan African migrants in Morocco, and unemployed university graduates, as well as charitable, cultural, and educational associations led by members of al Adl wal Ihsane.

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<sup>3</sup> See the statement from the parliament of the LMCDH, Kenitra, Jan. 21, 2015, [https://swadeh-24.blogspot.com.eg/2015/01/blog-post\\_5.html](https://swadeh-24.blogspot.com.eg/2015/01/blog-post_5.html).

The authorities have refused to license a number of organizations with headquarters in the Western Sahara, including the Collective of Sahrawi Human Rights Defenders (CODESA), the Sahrawi League for the Defense of Human Rights and the Protection of Natural Resources, the Samara branch of the Moroccan Association for Human Rights, and the Laayoune branch of the Moroccan Commission for Human Rights. Nevertheless, in a first, a Sahrawi human rights association strongly critical of the government was legally licensed—ten years after the Sahrawi association first submitted its application and nine years after a court ruling stating that the authorities were unlawfully impeding the registration of the association.

Regarding press and media freedom, the Moroccan authorities continued to crack down on journalists, artists, activists, and human rights advocates, some of whom were denied freedom of movement. Freedom of expression and journalists were constrained by laws that criminalize acts considered an affront to the king, Islam, or Moroccan sovereignty over the Western Sahara. Several independent journalists were convicted of publishing false news, libel, and insult and sentenced with heavy fines.

In March 2015, the Rabat First Instance Court sentenced journalist Hicham Mansouri to ten months in prison on charges of adultery following an unfair, politically motivated trial. The Kenitra First Instance Court sentenced cartoonist Khalid Gueddar to three months in prison on charges of public intoxication and insulting a regularly constituted authority.<sup>4</sup> In November 2015, journalist Taoufik Bouachrine, the managing editor of *Akhbar al-Youm*, was sentenced to two months in prison (suspended) and fined 1.6 million dirhams on libel charges, after he published a news story based on leaked diplomatic cables.<sup>5</sup> The year 2015 also saw tension between the Moroccan government and Reporters Without Borders, after the latter published a report in March 2015 criticizing what it called deteriorating press and media freedom in the kingdom, citing several

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<sup>4</sup> See Amnesty International, 2015 annual report, chapter on Morocco and Western Sahara.

<sup>5</sup> Ibid.

incidents. The report also accused the government of pressuring journalists to stay clear of sensitive topics.

### **Dispute over the Western Sahara:**

Although the Kingdom of Morocco criminalized torture in 2006 and enshrined the prohibition in the 2011 constitution, it continues to offer protection for torturers and other human rights violators, who are subject to no accountability or prosecution, especially in the Western Sahara.

A report of the UN secretary-general on the situation in the Western Sahara, released on April 15, 2015, said that the Moroccan authorities had not permitted demonstrations in the region demanding the right of self-determination, adding that Moroccan security forces continue to disperse such gatherings with excessive force, especially against women and children. In some cases, demonstrators and activists have been subjected to arbitrary arrest, torture, ill treatment, and legal action. The UN Working Group on Arbitrary Detention remarked on the imprisonment of 21 Sahrawis from Akdim Izik pursuant to a military court ruling in 2013.

Human rights in the Western Sahara took a new turn following official recognition of the Sahrawi Association of Victims of Grave Violations of Human Rights Committed by the Moroccan State (ASVDH), which was approved for registration under Moroccan law provided a general assembly of Sahrawi human rights defenders is convened before the deposit of receipt is obtained. With this step, Morocco affirms the right of Sahrawis to establish civic organizations, perhaps advancing their right to the establishment of political frameworks and organizations.

A UN Security Council resolution<sup>6</sup> of April 28, 2015 stressed the importance of improving the human rights situation in the Western Sahara and the Tindouf camps and urged the competent parties to work with the international community to develop and implement credible, independent measures to this end. The Fourth Committee of

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<sup>6</sup> The full text of UNSC Resolution 2218 on the Western Sahara can be found at <https://mapnr.blogspot.com/2015/04/2218.html>.

the UN General Assembly on October 15, 2015 approved, without a vote, a resolution to support the UN political track for the resolution of the Western Sahara issue and called on regional states to fully cooperate with the UN secretary-general and his personal envoy. The UN stressed the need for all parties to continue to show the political will to work in a climate conducive to dialogue and to enter with good faith and without preconditions a phase of intensive negotiations, taking into consideration efforts and new developments since 2006, as well as to ensure implementation of UNSC resolutions.

In conclusion, despite increasing human rights violations over the last two years, reform initiatives on the legislative, institutional, and social fronts, particularly seen in the active role played by the National Human Rights Council, constitute an opportunity that must be seized by all active parties, for these will be reflected in policies and decisions that touch every aspect of Moroccan society, including freedom of the press and human rights organizations. The actual, public stance taken on these initiatives by the monarchy will determine the direction and pace of reform in Morocco, or set the stage for a greater setback.