



## Overview of the legal framework governing the work of Human rights defenders

“MOROCCO”

المؤسسة العربية  
للحريات والمساواة  
arab foundation for  
freedoms and equality



A study issued by the Arab Foundation for Freedoms and Equality

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## I. Introduction

### 1. Study methodology:

At the request of the Arab Foundation for Freedom and Equality, this study was developed with the aim of shedding light on the legal framework governing the activity of human rights defenders in the Arab world, with a particular emphasis on Lebanon, Tunisia, and Morocco.

The study is divided into two main sections:

- The theoretical, legal section; in which we go over the primary laws that support or hinder the work of human rights defenders, starting with the country's constitution, the international conventions ratified by the state, and various laws relating to public and private freedoms, as these freedoms constitute the pillar of the work and activism of human rights defenders in the region;

- The practical implementation section; in which we focus on one case study which highlights – in each country – the violations endured by activists in the human rights and humanitarian fields on the basis of their work and activism, specifically in cases where harassment and violations result from the judicial and security institutions' discriminatory attitudes on the basis of gender and sexuality.

Before studying the legal system in the aforementioned countries, we need to first give a definition of what a human rights defender is, in order to better understand the main forms of rights and freedoms that need to be highlighted in the body of the study; we will also briefly go over the evolution of this group within the international context because of the value of such a development in demonstrating the importance of providing the legal framework and mechanisms necessary to reinforce and invigorate such activism in our societies.

### 2. Definition of a human rights defender:

According to the United Nations' High Commission for Human Rights (UNHCR), human rights defenders are those "working, individually or in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."<sup>1</sup>

Amnesty International defines human rights defenders as "the individuals, groups, and organizations working to promote and protect human rights, through peaceful and non-violent means; their work includes:

- Exposing human rights violations;
- Subjecting violations to public scrutiny;
- Urging for officials to be held accountable;
- Empowering individuals and groups to demand their basic rights as human beings."

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<sup>1</sup> For more information, please refer to the page dedicated to human rights defenders on the UNHCR website: <http://www2.ohchr.org/arabic/issues/defenders/who.htm>

Accordingly, and regardless of nationality, social/academic/professional background, or sexual identity, anyone can be a human rights defender. Defenders may work independently or with others; on a professional or personal level; some may carry human rights wherever they work, others become human rights defenders due to a specific job or the adoption of a position relating to human rights.<sup>2</sup>

Some human rights defenders focus on specific rights, such as civil and political rights,<sup>3</sup> or economic, social, and cultural rights.<sup>4</sup> Others defend the rights of groups of individuals who are subjected to discriminatory and marginalizing practices, such as the LGBT community will be the focus of this study.

Therefore, it would be safe to say that the term human rights defender is a flexible and fluid one, defined only by the defender's activism and regardless of their position and status. As a result, this work differs from other forms of work in the fact that it lacks clear and concise laws to regulate and organize it. For instance, if a lawyer or a journalist take part in socially relevant activities, they will benefit from the guarantees granted by legislations developed to promote and protect their work.

However, as noted above, anyone can become a human rights defender when they adopt a cause, a position, or an activity which upholds human rights. In addition to that, a significant number of human rights defenders do not adhere to specific professions and are not members in any syndicate, they are therefore not operating under any specific legal. In this case, what is their legal status? Are they not entitled to legal protection and guarantees which would enhance their work like any other professional?

### 3. The Universal Declaration on the Right and Responsibility of Human Rights Defenders:

Human rights defenders suffer attacks and reprisals due to their activism, hence the need for a declaration adapted to the needs of this group, regardless of national borders and geographic location they operate in.

On the eighth of March 1999, the United Nations General Assembly adopted resolution 53/144, titled the Declaration on the Right and Responsibility of Individuals Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in which it reaffirmed and stressed certain rights and freedoms, namely freedom of thought, expression, and dissemination of information; and the right to peaceful assembly, dissemination and exchange of information, and criticism of the work and performance of governmental agencies; in addition to the fundamental right of every individual to engage in activities aiming to promote and protect human rights in general.

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<sup>2</sup> For more information, please refer to the page dedicated to human rights defenders on Amnesty's website: <http://www.amnesty.org/ar/human-rights-defenders/background>

<sup>3</sup> For more information, please refer to the International Covenant on Civil and Political Rights (1966).

<sup>4</sup> For more information, please refer to the International Covenant on Economic, Social and Cultural Rights (1966).

The last right indicated above has been sanctified by the Universal Declaration on Human Rights, as well as in the International Covenant on Civil and Political Rights. Also, the vast majority of national constitutions worldwide include provisions that affect the work of human rights defenders. In fact, the work of human rights defenders is often compromised due to "retaliatory" actions by state agents against human rights defenders because of their defense of the rights of others, compromising human rights defenders work, if not rendering it impossible.

Hence, the importance of the Universal Declaration on the Right and Responsibility of Human Rights Defenders to emphasize the responsibility to protect human rights. The declaration emphasizes that "everyone who, as a result of his or her profession, can affect human dignity, human rights, and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics."

In addition to holding the state responsible to take "legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social, and cultural rights," it also emphasized that the responsibility to protect and enhance these rights falls first and foremost on the state. Therefore, when individuals are working to address the grave violations to basic human rights, which the state and its institutions fail to address – and in some cases actively cause – then it becomes even more important to provide the appropriate frameworks and environment for these individuals to continue their activities.

### 4. LGBT Advocates

Over the past couple of decades, we have witnessed a proliferation of campaigns and movements supporting LGBT rights and to address violations against them. In our societies, these initiatives gained particular importance in reaction to laws which still punish individuals based on their sexual choices. In addition to the regressive attitudes that legislators insist on in some Arabic speaking countries, stigmatizing and discriminatory practices, positions, and judgements still predominate in our societies against the LGBT community, based on religious, cultural, or traditional considerations which perpetuate the marginalization of this community, and exposing it to grave violations.

According to Amnesty International, which has been documenting human rights violations, LGBT advocates often run the risk of attacks and defamation in their communities. In fact, these activists are faced with a plethora of violations, including:

- Denial of legal registration
- Imprisonment for charges of "crimes against nature"
- Death at the hands of lynch mobs
- Threats
- Assaults
- Being ostracized within their communities

Advocates also highlighted the different ways in which LGBT individuals or people perceived as LGBT are prevented from living out their lives, enjoying their human rights and fundamental freedoms, which are basic rights that others take for granted.<sup>5</sup>

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<sup>5</sup> For more information, please refer to Amnesty's page on the challenges faced by LGBT human rights defenders: <http://www.amnesty.org/ar/human-rights-defenders/issues/challenges/lgbt-rights-defenders.htm>

## 5. Issues and themes covered by the study, based on national constitutions and laws:

The study will address the legal status of human rights defenders in different countries from two angles:

First of all, we will analyze the situational laws which uphold **or** overturn the set of rights sanctified by the Universal Declaration of Human Rights Defenders, namely:

✘ Right to protection and enactment of fundamental human rights and freedoms;<sup>6</sup>

✘ Right to peaceful organizing and assembly, including the right to participate in, join, or form non-governmental organizations, associations, or groups, as well as the right to communicate with non-governmental organizations or international organizations;<sup>7</sup>

✘ Right of access to information, including that which relates to fundamental human rights and freedoms, to request it, obtain it, and keep it, including the right to access information on how to realize these rights and freedoms, and national legislative, judicial, and administrative systems governing these rights;<sup>8</sup>

✘ Freedom of opinion and expression, including the freedom to disseminate opinions and information relating to fundamental human rights and freedoms and communicating them to others, as well as the right to study, discuss, form, and hold opinions on the observance of all fundamental human rights and freedoms, whether at the legislative or implementation levels;<sup>9</sup>

✘ Right to develop, discuss, and advocate for ideas and principles relating to human rights;<sup>10</sup>

✘ Right to participate in public policy making on the basis of equality and non-discrimination;<sup>11</sup>

✘ Right to object to policies and actions of government bodies and entities which influence public policies, as well as make suggestions to improve the latter's performance, in addition to the right to draw attention to any aspect of their work which hinders or impedes the promotion of fundamental human rights and freedoms;<sup>12</sup>

✘ Right to prompt and effective judicial processing of violations;<sup>13</sup>

✘ Right to the legal practice of a trade or profession;<sup>14</sup>

✘ Right to participate in peaceful activities in protest of violations of human rights and fundamental freedoms;<sup>15</sup>

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<sup>6</sup> Art. 1 of the Universal Declaration of Human Rights Defenders

<sup>7</sup> Art. 5 of the Universal Declaration of Human Rights Defenders

<sup>8</sup> Art. 6 (a) of the Universal Declaration of Human Rights Defenders

<sup>9</sup> Art. 6 (b) and (c) of the Universal Declaration of Human Rights Defenders

<sup>10</sup> Art. 7 of the Universal Declaration of Human Rights Defenders

<sup>11</sup> Art. 8 (1) of the Universal Declaration of Human Rights Defenders

<sup>12</sup> Art. 8 (2) of the Universal Declaration of Human Rights Defenders

<sup>13</sup> Art. 9 of the Universal Declaration of Human Rights Defenders

<sup>14</sup> Art. 11 of the Universal Declaration of Human Rights Defenders

<sup>15</sup> Art. 12 (1) of the Universal Declaration of Human Rights Defenders

✘ Right to protection and enactment of personal freedom;<sup>16</sup>

✘ Right to seek, receive, and utilize resources for the purpose of promoting and protecting human rights and fundamental freedoms.<sup>17</sup>

The second angle aims to focus on specific laws which influence LGBT activists, thus resulting in the difficulties and challenges they face in each country. In this section we will be exploring specifically the applicable criminal laws, as well as focusing on the practices of law enforcement bodies, which interfere with the work and movement of activists, whether by harassment on the basis of the practice of their personal freedoms, or by extortion, intimidation, and terrorism on the basis of their sexuality, or the sexualities they defend.

Finally, we wish to draw your attention to two general observations regarding the content of the report for each country:

- The approach adopted in report on the situation in Lebanon differs from the ones on Tunisia and Morocco, due to the contextual differences in each country. For, on one hand, the Arab Spring began in 2011 in Tunisia and Tunisian civil society and human rights actors took part in the post-revolutionary reform and modernization processes. In Morocco on the other hand, reforms have been undertaken after the eruption of the Tunisian revolution, but the different components of the Moroccan society had little to no role in this process, which comes to feed the atmosphere of skepticism surrounding the nature and efficiency of such reforms, which we will be addressing within the study. In both cases however, we were interested to examine the context as a comparison between the pre- and post-reforms, especially regarding the legal framework. In parallel, it could be said that the Lebanese context remained isolated from the wave of reforms which has spread in other Arab countries. As a result, the Lebanese study focused on the violations and practices that the civil society has been accustomed to suffer from and resist in the context of their activism work;

- We discuss the Universal Declaration of Human Rights and the Universal Declaration on the Right and Responsibility of Human Rights Defenders only within the context of the Lebanese study. While the same applies to the Tunisian and Moroccan contexts – especially following the latest reforms in both cases – we have mentioned them once to avoid redundancy and repetition.

### • Context

- Socio-political and human rights situation during and following the populist uprisings
  - Current legal framework governing human rights work in Morocco
  - Evaluation of the legal framework governing rights and freedoms: the new moroccan constitution includes
  - A declaration of principles restricted by ongoing limitations and the absence of implementation mechanisms
  - Official structures and bodies relevant to human rights

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<sup>16</sup> Art. 12 (2) and (3) of the Universal Declaration of Human Rights Defenders

<sup>17</sup> Art. 13 of the Universal Declaration of Human Rights Defenders

- Individuals rights and freedoms and their effect the human rights and humanitarian movement
  - Right to life
  - Personal freedom
  - Right to bodily integrity
  - Right to a privacy
  - Penal and discriminatory restrictions on sexual liberties and the inviolability of the home
  - Legal framework governing the protection of personal data
  
- Current state of rights and freedoms and its effect on the human rights movement
  - Freedom of speech
  - Freedom of the press
  - Freedom of audiovisual broadcasting
  - Legal restrictions on freedom of opinion and expression
  - Freedom of assembly and peaceful organizing
  - Right of access to information
  
- Case study

## 1- Context

In the few months that followed the Tunisian revolution, the Kingdom of Morocco was quick to announce the ratification of a new constitution in July 2011 in an attempt to preemptively contain the rise of any popular movement that may be inspired by uprisings in other Arab speaking countries. The Tunisian constitution took three years to see the light, its development came at the hands of a constitutional Institution elected by the people and thus representative of the masses, it was the result of strategic, participatory discussions that included representatives of the different components of the Tunisian society. The Moroccan constitution, on the other hand, was ratified by a royally appointed government prior any referendum, thus making it a mere formality. Moreover, even though excluded from the development phase of this “constitutional reform”, most political parties declared their support to the suggested constitution and invited their members to vote in favor of its ratification. Therefore, the referendum on the new constitution, in July 2011, was “nothing more than a renewed declaration of allegiance to the Sultan by his subjects.”<sup>18</sup>

However, the new constitution was a significant milestone in the Moroccan legislative history. It is a step worth analyzing and building on, especially in relation to its potential role in enriching and developing human rights discourse within the justice system and the different components of the Moroccan civil society.

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<sup>18</sup> For more information on the subject, read “The 2011 Moroccan Constitution: A Critical Analysis,” published by the International Institute for Democracy and Electoral Assistance (IDEA), prepared by Mohamed Madani, Driss Maghraoui, and Saloua Zerhouni, available on the following link:  
<http://www.idea.int/sites/default/files/publications/the-2011-moroccan-constitution-critical-analysis.pdf>.

## 2. Socio-political and human rights situation during and following the populist uprisings

On the twentieth of February 2011, a popular movement erupted in Morocco, which would later be known as the Movement 20 Février [Twenty February movement]. Thousands of people went down the streets in the capital, as well as other cities, demanding a new constitution, a democratization of government institutions, efforts to counter corruption, and improvements of socio-economic conditions.

In March 2011, King Mohammad VI announced the commencement of the constitutional amendment. The amendment process was boycotted by all leading opposition parties of the movement.<sup>19</sup> The new constitution was adopted in the month July of the same year, and included fundamental changes including the introduction of a section dedicated to rights and freedoms. The latter left the human rights movement hopeful, but until the writing of this study, these changes remained inactive as the necessary legislation has not been development for their implementation as we will be showing below. This was translated on the ground into more abuses and violations against those who insisted on demonstrating for real, practical change, as described in the annual report published by the Moroccan Association of Human Rights (Association Marocaine des Droits Humains - AMDH) on the state of human rights in Morocco in 2012 and 2013:

*“In 2012, social protests and movements have tremendously increased in size, the official response was an alarming increase in violations against human rights defenders. The state has resorted to all kinds of psychological and physical pressure against activists, to the point of encroaching on their right to life, to their right to safety and bodily integrity, to free movement, in addition to aggressive and violent dispersion of peaceful activities. That is not to mention arrests and prosecutions on the basis of fabricated charges, thus flagrantly violating national and international laws. Reports from the local branches of AMDH indicate that these violations targeted political and human rights activists and other members of the 20 Février movement; as well as people who have participated in social protests in different cities, including dozens of activists associated with the AMDH and other human rights organizations.”<sup>20</sup>*

Some legislative reforms did, however, take place between 2012 and 2014. These include the government approving in 2012 draft laws developed for the implementation of the Optional Protocols for the Convention against Torture, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women. Similarly, the Moroccan parliament voted in January 2014 to amend a provision of the Criminal Code that prevents those found guilty of rape from avoiding imprisonment by proposing to marry their victim if she is under the age of eighteen.

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<sup>19</sup> For more information, read the reports published by Amnesty International on the state of human rights in the world, the part about Morocco and Western Sahara in 2011, 2012, and 2013, available on Amnesty International’s website: [www.amnesty.org](http://www.amnesty.org).

<sup>20</sup> For more information, read the previously mentioned report on human rights in Morocco, p77-81.

## 1. Current legal framework governing human rights work in Morocco

In this section, we will (A) look at the general legal framework addressing rights and freedoms as described in the new constitution, and (B) refer to some official structures and bodies concerned with human rights.

### **A. Evaluation of the legal framework governing rights and freedoms: the new Moroccan constitution includes**

As noted above, the new constitution was adopted in 2011 by the King as a preemptive move to avoid popular movements. The process involved no debate or engagement with opposition parties or civil society organizations regarding their demands for radical change. Eventually, this has weakened the content of the new constitution, particularly when it comes to the promotion and reinforcement of rights and freedoms as we will show below.

The new constitution includes an introduction and 180 articles organized under fourteen sections, or titles. We will be focusing on the most significant provisions included in the first two titles, namely “general provisions” and “fundamental freedoms and rights,” as they are directly connected to our study subject.

First, we will start with the preamble, which is an integral part of the constitution itself. The language used in the preamble shows the constitution’s ambiguity regarding the importance of human rights and relevant international conventions. On the one hand, Islam is given prominence in the development of national identity, as demonstrated in the sentence “Moroccan identity is characterized by the prominence of Islam in it.” On the other hand, the Kingdom of Morocco declares its commitment to the promotion of international conventions and the adaptation of its national legislation “within the scope of the Kingdom’s constitution, legislation, and established national identity.” Thus, in this passage, justifying and legitimizing restrictions on individual and public freedoms if they are deemed in conflict with the essence and foundations of Islam, as we shall demonstrate below.

However, it is worth highlighting that the Kingdom declared its commitment to some important principles, namely:

- To protect and to promote human rights mechanisms and of international humanitarian law and to contribute to their development as indivisible and universal;

- To ban and combat all discrimination whenever it is encountered, for reason of sex; color; beliefs; or cultural, social, or regional origins; of language; of handicap; or of any other personal circumstance.

**Beginning with the first title, the constitution clearly declares the prominence of Islam and monarchy over public life**<sup>21</sup>, leaving it up to public authorities to “create the necessary conditions for the effective practice of liberty and equality among citizens, male and female, as well as their participation in political, economic, cultural and social life,” while indicating the supremacy of the law on all and the obligation to comply with it.<sup>22</sup>

<sup>21</sup> Art. 1, of the constitution, states: “The Nation relies for its collective life on the federative tenets, represented by the tolerant Muslim religion, the national unity of its multiple components, the constitutional monarchy, and the democratic choice.”

<sup>22</sup> Art. 6, of the constitution.

Islam is the religion of the Moroccan state. **The new constitution does not explicitly guarantee freedom of belief**, it does however state that it guarantees “to all the free exercise of beliefs.”<sup>23</sup>

The new constitution does not establish Islam as the source of legislation, as it is the case in other countries, such as Iraq or Egypt, in an attempt to showcase political plurality and a free, democratic approach. **It does, however, prohibit the formation of political parties that state the infringement of Islam, or monarchy, as their objective.**<sup>24</sup> Thus prohibiting the work of parties advocating for secularism or the overthrow of monarchy. Interestingly though, the constitution has a new approach to political opposition, calling it an “essential component of both chambers. It participates in the functions of legislation<sup>25</sup> and of control.”<sup>26</sup> Granting it a set of rights and privileges, which would enable it to fulfill its role and actively participate in politics.

As for the organization of labor unions, the constitution guarantees the freedom to establish labor unions for the defense and promotion of the socio-economic rights and interests of the populations they represent. It also encourages public authorities to promote collective negotiations and encourage the signature of collective labor agreements within the conditions provided for by the law.<sup>27</sup>

However, the first title also sets **limitations on the freedom to form political parties and labor unions, as well as their activities**, within “the principles referred to under this title, particularly the regulation on the establishment, activities, and eligibility to funding, and financial monitoring of the funds.” **The same restrictions apply to social movements and non-governmental organizations (NGO).** Organizations are free to register and carry out activities, as long as they do so within the conditions and criteria established by the law and with respect to the constitution.<sup>28</sup>

Under the second title (fundamental freedoms and rights), the constitution declares protection for a number of freedoms that were not mentioned in the constitution of 1996. An improvement that should be commended. However, the first article under this title carries a contradiction between, on one side, the principles of equality in freedoms and rights, as well as the universality and indivisibility of rights; and on the other, the condition that they **would not breach “royal tenets”**.<sup>29</sup> It is also worth mentioning that the constitution establishes the concept of **parity between men and women**, as opposed to equality, a discourse that is known to be utilized to justify and legislate certain discriminatory provisions against women, especially in the field of personal status, employment, etc.

<sup>23</sup> Art. 3, of the constitution.

<sup>24</sup> Art. 7, of the constitution.

<sup>25</sup> Art. 60, of the constitution.

<sup>26</sup> Art. 10, of the constitution.

<sup>27</sup> Art. 9, of the constitution.

<sup>28</sup> Art. 12, of the constitution.

<sup>29</sup> Art. 19, of the constitution, states: “Men and women enjoy, in equality, the rights and freedoms of civil, political, economic, social, cultural and environmental character, enounced in this title and in the other provisions of the constitution, as well as in the international conventions and pacts duly ratified by Morocco and this, with respect for the provisions of the Constitution, of the tenets of the Kingdom and of its laws.”

In this section, the protected rights and freedoms are enumerated in details, including:

- Right to life;
- Right to bodily integrity;
- Prohibition of torture, as well as cruel, inhumane, or degrading treatments or infringements of human dignity;
- Personal freedom, legitimacy, and presumption of innocence;
- Right to privacy, the inviolability of the home, and privacy of personal communications;
- Freedom of conscience, opinion, and expression;
- Freedom to be creative, to publish, and to exhibit;
- Right to information
- Freedom of reunion, of assembly, of peaceful demonstration, of association and of syndical and political membership

Practically however, **many of the protections indicated above remain at the level of mere declaration of principles**, which is due to two main reasons:

- First of all, the text of the constitution repeatedly refers to regulatory laws that need to be issued for these protections to be translated in reality. Human rights activists have raised concerns at this level, particularly in the Moroccan context, as shown in this following passage:

*In democratic states, the intervention of the legislator is common and accepted. In the Moroccan context, however, this becomes problematic because the parliament is under the de facto custodianship of the King. As a result there is a risk that a number of rights may lose their consistency at the level of either ordinary laws or regulatory laws (...), the latter being theoretically intended to complement the constitution by protecting more rights, but may, in the end, contradict it, thus limiting rights instead of protecting them. It is expected that under the current constitution, twenty regulatory laws will be issued and, in Moroccan practice, may never see the light (...). The right to strike, for instance, has been established in the constitution since 1962.*

- Second, certain freedoms, such as freedom of the press, freedom of assembly, association and the right to strike, etc., are restricted by the constitution through the supporting statute laws. Unlike what had happened in Tunisia, these statute laws were not changed prior to the adoption of the new constitution. They include many harsh restrictions on the activities of human rights professionals and activists.

For instance, the right to life is protected in the constitution but capital punishment remains entrenched in the penal code.<sup>30</sup> The inviolability of the home is also constitutionally protected but there are conditions and procedures that permit home searches. The same applies to the privacy of personal communications which also have legal conditions and procedures allowing for their violation.<sup>31</sup> The right to information is limited for the protection of all which concerns "national defense, the internal and external security of the state; and the same goes for the protection of the private life of persons, and the protection of fundamental freedoms and rights enounced in this constitution and the protection of data specified in the law."<sup>32</sup> Press freedom is limited by the law governing information, ideas, and opinions.<sup>33</sup> Freedom of assembly, peaceful demonstration, and organizing within labor unions and political parties are guaranteed as well but limited by a law regulating these activities.<sup>34</sup>

<sup>30</sup> Art. 20, of the constitution.

<sup>31</sup> Art. 24, of the constitution.

## B. Legal framework governing the protection of personal data

In addition to introducing and sanctifying new concepts in rights and freedoms, the new constitution put in place a number of mechanisms which would allow citizens to take part in policy-making and implementation of public policies.

The constitution urges public authorities to create "consultation bodies to include various social actors in the preparation, enactment, implementation, and monitoring of the implementation of public policies." It also guaranteed citizens the right to present motions in legislative matters," according to "conditions and modalities determined by regulatory laws."<sup>35</sup>

### ○ The National Human Rights Council

The new constitution established the constitutionality of the **National Human Rights Council**. The council was established in 2011 when popular movements broke out, under Law No. 1.11.19 of 25 March 2011. It came to replace the Consultative Council on Human Rights, which had been established in 1990.

The text of the constitution defines the National Human Rights Council the Rights of Man "as a pluralist and independent national institution, charged with taking cognizance of all the questions relative to the defense and to the protection of human rights and freedoms, to guarantee their full exercise and promotion, as well as the preservation of the dignity, of the individual and collective rights and freedoms of the citizens, and this, with strict respect for national and universal references on the issue."<sup>36</sup> The council's duties include:

- Monitoring violations, as well as the possibility of carrying out investigations; writing necessary reports with the outcomes, conclusions, and investigations; and submitting them to competent authorities with recommendations as to how to address the violations in question;

- To receive, study, address, and follow-up on complaints and, where appropriate, refer the complaints to competent authorities and keep the complainants informed;

- To urgently and preemptively intervene when tensions are detected that may lead to human rights violations against individuals or groups, within the framework of the tasks entrusted to the council and in coordination with competent state authorities;

- Support the enactment of mechanisms provided for the implementation of international human rights treaties ratified or acceded to by the Kingdom;

- Inspection visits to detention centers, prisons, child protection and reintegration institutions, mental and psychological health hospitals, and centers for foreigners with irregular residence papers; as well as writing reports of the findings that would be submitted to competent authorities;

<sup>32</sup> Art. 27, of the constitution.

<sup>33</sup> Art. 28, of the constitution.

<sup>34</sup> Art. 29, of the constitution.

<sup>35</sup> Art. 14, 15, and 16; of the constitution.

<sup>36</sup> Art. 161, of the constitution.

- Examine current legislative and regulatory laws; assess their compatibility with international human rights treaties and international humanitarian law; and propose recommendations in this regard to competent authorities;

- Contribute to the preparation of state reports that would be submitted to international human rights bodies;

- Upon request, provide the parliament and the government with assistance and consultation on the subject of proposed laws' compatibility with international treaties;

The assignment process for the members of the council is reserved to the King exclusively, but relevant academic and civil institutions are included in the process to a certain extent, as shown below:

- Eight members are appointed by the King;
- Eleven members are nominated by non-governmental organizations;
- Eight members are nominated by the parliament;
- Two members are nominated by high religious authorities;
- One member is nominated by the union of magistrates.

#### o **The High Authority on Audiovisual Broadcasting**

Art. 28 and 165 constitutionally established the formation of the **High Authority for Audiovisual Broadcasting**. The aim of this body is "to see to the respect for pluralist expression of the currents of opinion and of thought and of the right to information, within the domain of broadcasting and this, within respect for the fundamental values of civilization and for the laws of the Kingdom." In fact, this body was established by Law No. 1-02-212 on the thirty-first of August 2002, followed by Law No. 2-02-663 on the tenth of September 2002. Thus ending the state's legal monopoly over radio and television broadcasting. Law No. 1-04-257 came later, on the seventh of January 2005 to organize broadcasting sectors. All these changes are part of what has been called the "liberalizing the broadcasting sector and ensuring everyone's right to information as an essential condition for the freedom of expression."<sup>37</sup>

An analysis of the legal texts on the subjects shows that the High Authority on Audiovisual Broadcasting has consultative powers in some cases and a censorship role in others.<sup>38</sup> However, an examination of the assignment process reveals its great dependence on the king, as well as the parliament and government, aggravated by a total absence of civil society or experts' input. Below, we go over some details and texts that were classified under the title "general provisions."

<sup>37</sup> For more information, read the text of Law No. 1-02-212 of August 31, 2002, which provides for the establishment of the High Authority on Audiovisual Broadcasting.

<sup>38</sup> Art. 3, of the aforementioned law, indicates the responsibilities.

#### • **High Authority for Parity and the Elimination of all Forms of Discrimination**

Art. 19 and 164 constitutionally established the formation of the **High Authority for Parity and the Elimination of all Forms of Discrimination**. The aim of this body is "to ensure the respect of civil, political, economic, social, cultural, and environmental rights and freedoms as defined under the first title of the constitution, constitutional provisions, and international conventions and treaties as they were ratified by Morocco, all within the scope provided by the Moroccan constitution, laws, and tenets." In October 2013, the Ministry of Solidarity, Women, Family, and Social Development announced that the "draft law for the establishment of the High Authority for Parity and the Elimination of all Forms of Discrimination has been finalized and will soon be submitted for ratification (...) and that the draft law was developed by a committee of multi-disciplinary experts. The committee reviewed more than ninety memoranda collected from civic bodies, namely women organizations, political parties, labor unions, and governmental organizations. The ministry also consulted with partner bodies, namely the Ministerial Delegation on Human Rights, the Ministry of Justice, and the Venice Commission of the Council of Europe."<sup>39</sup> Despite our efforts to find updates regarding the development of the process, and until the writing of this report, we found no news in the official Moroccan Gazette on the subject.

It is also worth noting that, in 2003, a **legislative reform of the Moroccan criminal code gave a definition of discrimination and criminalized it**, in the cases that were addressed by the law. Of that reform we highlight the following:

"Any distinction between natural persons on the basis of national origin, social origin, color, sex, family status, health status, disability, political opinion, labor union membership, or because of the true or alleged affiliation or non-affiliation of race, nation, race or religion.

Discrimination is also defined as any distinction between incorporeal individuals, or communities, on the basis of some, or all, of its members' nationality, social status, race, gender identity, familial status, medical status, disability, political opinion, enrolment in unions, as well as their actual or perceived belonging, or lack thereof, to a certain race, nation, lineage, or religion.<sup>40</sup>

Discrimination, as defined in Title 1-431, is punishable by a prison sentence of one month to two years and a fine of 1'200 to 50'000 MAD, if the act of discrimination included the following:

- Refusal to provide a service;
- Obstruction of an economic activity;
- Refusal to hire a person, their punishment, or termination of their contract;
- Conditional provision of service or hiring for work on a condition relating to one of the factors detailed in Title 1-431.<sup>41</sup>

<sup>39</sup> For more information, read the draft law, available on the following link: <https://www.facebook.com/KhadijaRouissi/posts/417534941671719>; as well as the study published by the National Human Rights Council, with the support of the United Nations, available on the following link: <http://www.ccdh.org.ma/sites/default/files/documents/RapportVANum.pdf>.

<sup>40</sup> Art. 431 (1), of the Moroccan Penal Code.

<sup>41</sup> Art. 431 (2), of the Moroccan Penal Code.

## I. Individuals rights and freedoms and their effect the human rights and humanitarian movement

This section focuses on the reality of individual rights and freedoms in practice, and how that affects the human rights movement, based on the fact that the violation of such rights and freedoms restrains the work of human rights defenders, and allows for the utilization of their personal, private lives against them. Security forces, and even judicial authorities, have been observed to resort to such practices against activists and participants in the 20 Février movement, and the period that followed.<sup>42</sup> First, we will go over the legal framework governing (1) the right to life, (2) personal freedoms, and (3) the right to bodily integrity, then the legal framework governing (4) the right to privacy, in which we will be talking about sexual freedoms, the inviolability of the home, and the protection of personal data.

### 1. Right to life:

Over the last decade before the ratification of the new constitution, important reforms to the Moroccan penal legal framework took place, which affected both the penal code and the penal procedure code. The reforms in question were designed to reinforce personal freedoms and combat torture. However, they did not abolish the death penalty, which remains legal under Title 16 of the Moroccan penal code. Death penalty is generally applied to individuals convicted of crimes against national security, namely aggressions and conspiracies against the king, the royal family, or the form of governance (first section of the first title of the penal code); or premeditated homicides;<sup>43</sup> or acts of torture or cruelty while committing a crime.<sup>44</sup>

In addition to the fact that the death penalty remains in the penal code, there has been a number of deaths reported by human rights organizations since 2011, and in which “the state is directly responsible, either because the victim was in custody when they lost their life, or because the victim was killed due to police (or other state forces) violence in the public sphere”.<sup>45</sup> **No serious investigations have been conducted to determine the circumstances of the deaths in question and no perpetrators were held accountable.**

### 2. Right to bodily integrity :

In 2006, amendments of the Moroccan penal code included the introduction of torture into legal texts. Torture is defined as “any act which results in severe physical or psychological pain and suffering, perpetrated, instigated, approved, or ignored by a public servant against an individual with the purpose of terrorizing or forcing them, or others, to give information, statements, or confessions in order to punish the person, or others, for an act they have done or are suspected of having done. Torture is also defined as acts which result in severe physical or psychological pain and suffering on the basis of discrimination.” It is also worth noting that the introduced amendments included an unusual article in criminal legislation relating to torture, and which excluded from the definition of torture any “pain or suffering resulting from, following, or associated with legal criminal penalty.”<sup>46</sup>

<sup>42</sup> For more information, read the annual report on the state of human rights in Morocco in 2012, which was published by AMDH in July 2013, available on the following link: [www.amdh.org.ma/](http://www.amdh.org.ma/)

<sup>43</sup> Art. 393, of the penal code.

<sup>44</sup> Art. 399, of the penal code.

<sup>45</sup> For more information, read the previously mentioned annual report on the state of human rights in Morocco in 2012, p16-17.

<sup>46</sup> Art. 231 (1), of the penal code.

Unlike the process that took place in Tunisia, for example, the **legislative reforms which criminalized torture were not accompanied by the establishment of a body or mechanism with adequate powers and independence to combat torture and inhumane treatment.** Reports on human violations reveal that security forces regularly and systematically violate the rights of human rights defenders and political prisoners. In its 2012 report, AMDH wrote the following:

*“There has been numerous accounts of violations of this sort (i.e. the rights to bodily integrity, the right to personal security, and the abuse of power). In fact, these practices have become well known to the general public, including various forms of violence by state actors against citizens during demonstrations and peaceful sit-ins, or torture of individuals in provisional custody at police stations. In 2012, AMDH registered a significant regression at the level of the right to peaceful demonstration, due to the systematic repression of the most peaceful marches and demonstrations, with an excessive, disproportionate use of force observed in most cities.”<sup>47</sup>*

### 3. Personal freedom

Art. 23, of the new constitution protects, in theory, personal freedom by indicating that “no one may be arrested, detained, prosecuted, or condemned outside of the cases and forms provided by the law.” It also protects one’s right to “be informed immediately, in a fashion which is comprehensible to them, of the reasons for their detention and of their rights, including the right to remain silent,” adding that “they must benefit, as well, from juridical assistance and of the possibility of communication with relatives, in accordance with the law.” The article then states that “arbitrary or secret detention and forced disappearance are crimes of the greatest gravity. They expose their authors to the most severe sanctions.”

Similarly, the penal code criminalizes violations against personal freedom, severely punishing perpetrators, up to the death penalty, if they torture an abducted, detained, imprisoned, or detained individual.<sup>48</sup>

In this section, it is important to review the legal provisions governing the time limit of police custody and the rights suspects are guaranteed. The penal procedure code was fundamentally amended over the past ten years to make it more compatible with principles of presumption of innocence, personal freedom, right to counsel, and human dignity. The new constitution came to confirm this direction. In the law, it is important to distinguish between **police custody**, under the authority of law enforcement forces, and **provisional arrest**, which takes place during investigation and under judicial supervision.

Art. 66, of the penal procedure code regulates police custody as follows: “A judicial police officer may detain a person, or more than one person, based on investigation requirements for a period that would not exceed forty-eight hours, starting at the time of arrest and immediately communicated to the public prosecution office. Detention may be extended to another twenty-four hours by written permission from the public prosecutor. In the case of crimes against national security, whether at the domestic or international level, the time limit of police detention is ninety-six hours. It may be extended once by written permission from the public prosecutor.

<sup>47</sup> For more information, read the previously mentioned annual report on the state of human rights in Morocco in 2012, p18.

<sup>48</sup> Art. 436-438, of the penal code.

In the case of terrorist crimes, the time limit of police detention is ninety-six hours. It may be extended twice for a period of ninety-six hours each by written permission from the public prosecutor.

As for the rights guaranteed to individuals under arrest, the most crucial one is the right to counsel, meaning the right to get in touch with a lawyer who can submit papers, documents, and notes to the police or the public prosecutor to be added to the interrogation record. Such documents include for example filing for litiſpendence and connexity, thus possibly ensuring the release of the detainee. The lawyer can also monitor the duration of detention, the duration of interrogations, the physical and medical state of the detainee, and request referral to specialized medical examination if need be. The penal procedure code also requires the law enforcement officer in charge to inform the detainee's family immediately and record the execution of that task in the police report.

As for preventive arrest, it is considered by the penal procedure code as an **exceptional procedure** that should be reserved for cases in which it is absolutely necessary, or if investigation circumstances require it, as it deprives the individual of their personal freedom, thus violating their basic human rights. Unlike police arrest, preemptive arrest falls under the exclusive jurisdiction of the investigating magistrate, neither the general attorney nor law enforcement officers. Preventive arrest can only be ordered for investigations that involve felonies and misdemeanors punishable by a prison sentence, and after the suspect has been interrogated by the investigating magistrate in person. The **problematic of preventive arrest, however, lies in the permissible time limit**, which can be as long as three months in the case of felonies and ten months in the case of misdemeanors, on the basis of a judicial order upon the request of the general attorney.<sup>49</sup>

When it comes to arrest conditions, despite positive amendments of the penal procedure code in regard to the rights of detainees, human rights defenders and organizations have reported numerous violations perpetrated by the police or the justice systems. These violations take place at two levels mainly:

- Police officers are **not accountable** for their practices during police detention, nor are they accountable for violations against the rights of detainees, namely preventing them from contacting family, lawyers, or doctors. Thus, leading to **arbitrary detention, torture, and intimidation**;
- Authorities resorting to **systematic detention against individuals for expressing opinions, beliefs, or participating in peaceful demonstration**, mainly fabricating allegations to compromise organizing. AMDH estimates the number of political arrests in 2012 to have reached 217 arrest.

<sup>49</sup> Art. 176, of the penal procedure code.

#### **4. Personal Freedom:**

Art. 24, of the constitution, now guarantees the right to personal freedom, stating that:

- A person has the right to the protection of their private life;
- The home is inviolable. Searches may only intervene in the conditions and the forms provided by the law;
- Private communications, under whatever form that may be, are secret. Only justice can authorize, under the conditions and following the forms provided by the law, the access to their content, their total or partial divulgation or their summons at the demand of whosoever;
- The freedom to circulate and to establish oneself on the national territory, to leave it and to return, in accordance with the law[,] is guaranteed to all.

Despite these guarantees in the constitution, a review of regulations governing practices reveals a number of legal violations and restrictions limiting the practice of personal freedoms. This was made possible by either keeping regulations that criminalize personal, private, and sexual acts; or by granting the police, the general attorney, and the investigating magistrate broad powers that enable them to deprive individuals of their right to freedom of movement, as well as violate private spaces and personal lives. These violations can be done with the pretext of the investigating "moral crimes" and offenses. In section A, we will be focusing on this point, while in section B, we will take a look at the regulations governing the protection of personal data.

#### **A. Penal and discriminatory restrictions on sexual liberties and the inviolability of the home**

In spite of the constitutional protection of the principle of personal life, sexual liberties and agency over one's body remain subject to violations due to penal criminalization of sexual practices between consenting adults. A situation that allows law enforcement agents to violate the privacy of one's life and home under the pretext of arrest in "flagrante delicto".

"**Sexual deviance**" in Moroccan legislation is a vague term that leaves a lot of space for different interpretations. Deviant sexual acts between individuals of the same sex are, nonetheless, punishable by a prison sentence of six months to three years, in addition to a financial fine of 200-1000 MAD.<sup>50</sup> As for the "**moral corruption**," it is defined as a "sexual relationship between a man and a woman outside the lock of marriage," and is punishable by a prison sentence of one month to one year.<sup>51</sup> **Adultery** is another such crime. In theory, a case of adultery is filed by the spouse of the person engaging in adultery, but the general prosecutor has the authority to "initiate the legal prosecution of the spouse clearly engaging in adultery."<sup>52</sup>

On the other hand, there are discriminatory penal provisions on the basis of gender and sex. For instance, **rape is defined as a crime whose victim can only be a woman**: "Rape is defined as sexual intimacy done by a man to a woman without her consent, it is punishable by a prison sentence of five to ten years. If the victim's is less than eighteen years old, incapacitated, pregnant, disabled, or known to have weak mental capacities, the prison sentence is aggravated to ten to twenty years."<sup>53</sup>

<sup>50</sup> Art. 489, of the penal code.

<sup>51</sup> Art. 490, of the penal code.

<sup>52</sup> Art. 491, of the penal code.

<sup>53</sup> Art. 486, of the penal code.

When it comes to rape, it is worth mentioning that the rape law was amended on January 2014 to abolish the legal provision allowing for the perpetrator to escape imprisonment by marrying his victim. An unquestionably positive step towards the fulfillment of the Moroccan state's international commitments, especially after the annulment of all reservations on the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). However, amendments failed to acknowledge the different forms in which rape can take place, namely by coercion that may not involve physical violence, the rape of victims that may involve or target other gender identities, and marital rape. As a result, many perpetrators of rape remain immune to legal prosecution. Also, the gravity of the sentence remains dependent on the virginity status of the victim, thus indicating that the legislator regards rape as a morality issue of honor and chastity rather than the protection of the victim.

**In reality, all these "crimes" are difficult to prove with facts and evidence. The most efficient way to prove they have taken place is when they are caught in flagrante delicto, a condition that requires a breach to the privacy of one's life and the inviolability of their home.**

**The penal procedure code sets specific regulations for home inspections to be conducted, differentiating between a crime with witnesses and one without. For the former, the conditions are:**

- **An inspection can only be conducted by a judicial police officer, an investigating magistrate, the king's high commissioner, or a king's commissioner;**
- **Inspection can only take place in the presence of the home owner, or a representative of the owner. If the owner is absent or escaping authorities, inspection must be conducted in the presence of two witnesses who are under the jurisdiction of the judicial police officer;**
- **Inspections are conducted between 6AM and 9PM only;**
- **Judicial police officers in charge of inspection must take all possible measures to maintain confidentiality.**

In the case of crimes without witnesses, the legislator also added the condition that the judicial police officer acquires explicit approval to make a home inspection, in writing and/or explicit. Finally, Art. 631, of the penal procedure code, declared any evidence collected in violation to this procedure void. Magistrates, public servants, or law enforcement officers who engage in such practices are liable to imprisonment from one month to one year and a fine of 200-500 MAD, based on Art. 280, of the penal code.

## **B. Legal framework governing the protection of personal data**

On the twenty-third of February 2009, Law No. 9/2009 was enacted, protecting the privacy of personal data of a natural person. The first article of the law states that "collected data is to the service of the citizen and develops in the context of international collaboration. Data should not breach individual or collective identities, rights, and freedoms, they should not be used to disclose private, intimate information about the citizens' personal life."

The law defines personal data as "any information - regardless of its nature and supporting technology, and including sound recordings and pictures – relating to a natural person, identified or identifiable (...) especially if it connects to their identification number, or one or more elements of their physical, physiological, genetic, psychological, economic, cultural or social identity." As for the processing of the data in question, it is defined as "any process(es) – whether it is technologically aided or not – which handles such information, including collection, recording, archiving, saving, adaptation, modification, extraction, access, use, or communication (through transmission, broadcasting, or any other way of making data available), approximation, interconnection, closure, deletion, or destruction." Sensitive information, which are protected more strictly, are defined as any information which "indicate the person's ethnic or racial origins; their political, religious, philosophical, or union affiliation; or their medical records, including genetic profile and data." Information which inherently indicate the sexual orientation and identity of individuals are excluded from the law in question.

The main objectives from the law are as follows:

- Protection of natural persons' private data in line with the guideline set by international legislation in this regard;
- Equip the Moroccan legislative body with the adequate legal means to protect personal data;
- Protection of individuals from excessive data management which may affect their private life;
- Establishing a legal protection framework that is receptive to development and which can strike a good balance between national security needs and international human rights norms and principles, to which Morocco is unreservedly committed;
- Obliging any person responsible for data management to file for permission from the committee assigned to monitor compliance with the provisions of this law; as well as to declare the ways in which data is processed before commencing any full or partial processing;
- Identification of data intended to be processed in the file for permission; the monitoring committee must be informed of any changes to the planned process;
- Establishment of a National Control Committee for the Protection of Personal Data, which would be assigned the task of establishing a national registry for the protection of personal data, managing the registry, and coordinating in this regard with other government agencies;
- Setting administrative and penal measures and penalties for the violation of the principles and provisions of this law.

The introduction of such a law is a positive legislative improvement towards the protection of privacy, however, it is important to point out two fundamental observations, one in regard to the degree of independence of the control committee from the government, and the other, the margin of discretion it holds to override protection provisions in some cases.

On the one hand, protection may be lifted in “the interest of national defense, domestic and international state security concerns, or for the purpose of preventing crimes and misdemeanors.”<sup>54</sup>

Also, information may be shared with other parties without prior consent of the person involved if it serves the following objectives:

- Fulfillment of the legal obligation of either the person whose data is processed or the one processing the data;
- Fulfillment of a contract or pre-contract proceedings signed by the person whose data is being processed, upon their request;
- Maintaining the physical or legal vital interests of a person whose data is processed and who is not capable of expressing consent;
- Execution of a mission that serves public interest, or within the public authority of the person processing the data, as well as third parties with access to the data;
- Achieving legitimate interests sought by the person processing the information, or third parties with access, while taking into account the fundamental rights and interests of the person whose data is being processed.

On the other hand, the National Control Committee for the Protection of Personal Data is entirely dependent on the legislative body, with no margin of independence, neither in the appointment of its members nor in its functions. Also, non-governmental organizations and field experts are excluded from the appointment process. The king appoints the members and head of the committee; based on recommendations from the prime minister, the head of the parliament, and the chief adviser. And though the parliament and the government may represent the legislative authorities of the country, they remain under the direct authority of the king himself.

Finally, it is worth pointing out that investigating magistrates and general prosecutor have the authority to permit the interception, recording, and storage of calls and communications whenever they deem it necessary. The penal procedure code specifies the permissible duration, the protocols to be followed, and the penalties for violations.<sup>55</sup>

<sup>54</sup> Art. 4, of Law No. 9/2009 on the protection of natural persons' personal data issued on the twenty-third of February 2009.

<sup>55</sup> Art. 108-116, of the penal procedure code.

<sup>56</sup> Freedoms of thought, opinion, and expression can also be considered personal freedoms, our decision to include them in the section for public freedoms due to their close relation to human rights and humanitarian movement.

## II. Current state of rights and freedoms and its effect on the human rights movement

In this section, we will be focusing on rights and freedoms specifically within the context of human rights and humanitarian activism. Therefore, we will address the legal framework governing (1) freedom of speech,<sup>56</sup> (2) freedom of assembly and peaceful organizing, and (3) the right of access to information.

### 1. Freedom of speech

Art. 25, of the constitution, now guarantees the freedoms of thought, opinion, and expression under all their forms, as well as the freedom of creation, publication, and exhibition in literary and artistic matters, and of scientific and technical research. Art. 28, in particular, states:

- “Press freedom is guaranteed and may not be limited by any form of prior censure.
- All have the right to express and to disseminate freely and within the sole limits expressly provided by the law, information, ideas and opinions
- The public powers encourage the organization of the sector of the press in an independent manner and on democratic bases, as well as the determination of the judicial and ethical rules concerning it.
- In accordance with the provisions of Art. 165, of the constitution, the High Authority on Broadcasting [Haute autorite de la communication audiovisuelle] sees to respect for this pluralism.”

Accordingly, this section will focus on the legal framework governing (A) press freedom, (B) freedoms relating to audiovisual broadcasting, and finally, (C) we will highlight the most important clauses and provisions that can potentially be used to hinder such freedoms.

#### A. Press freedom

The principle of press freedom may be constitutionally protected, but it is in the same constitution also that press limitations are set through laws and regulations that apply to all forms of media. These regulations are inherently restrictive to press freedom and remain without change following the amendment of the constitution.

The Press and Publication Law governs the practice, it was last amended on the third of October 2002. The first article states the following:

*“The provisions of this law guarantee the freedom to issue, print, publish, and disseminate newspapers and books in all.*

*Media outlets have the right to contact news sources and access information from various needed sources, as long as the information in question is not legally classified.*

*These freedoms are to be exercised within the framework of constitutional principles, legal provisions, and professional ethics. Media outlets are to cover news with a great level of honesty and loyalty.”*

In addition to its role in organizing the sector and the work of activist within in, the law contains a number articles that fundamentally restrict press freedom, with prison sentences and substantial financial penalties for infringements, as well as granting the executive authority a large margin of discretion when it comes to withholding press passes, or decisions to close down national and international media institutions.

For instance, and under the title “misdemeanors against public interests,” the Press and Publication Law punishes any person who does **not show due respect to the King, or their Royal Highnesses, the princes and princesses** with a prison sentence of three to five years, and a fine of 10’000 – 100’000 MAD. The same penalties apply to the publication of content that touch upon Islam, the monarchy, or territorial integrity. As for newspaper or bulletin that include such content, they may be suspended by the same judicial provision for up to three months. A court order can use this judicial provision to issue a ban on the newspaper or the bulletin.<sup>57</sup>

Also, the law punishes with one month to one year and/or a fine of 1’200 to 100’000 MAD any person who intentionally disseminates, publishes, broadcasts, or relays false news, claims, inaccurate facts, or tampered or inaccurate attributed documents, which **disrupt public order or cause panic in the populace**. The sentence is aggravated to a prison sentence of one to five years and/or a fine of 1’200 to 100’000 MAD if the information had the potential to **affect military morale or discipline**.<sup>58</sup>

The gravity of having a potential custodial sentence allowed for vague acts which are susceptible to interpretation, e.g. disruption of public order, disrespect to the king, etc., is proven by the AMDH report for 2012, in which it is stated:

*“As for press freedom and the democratization of public information, the association noted further decline in Morocco’s classification in the press freedom index, which was published by Reporters Without Borders in late January. In fact, all Maghreb countries, including Libya, showed progress, while Morocco fell behind with three point. Morocco currently ranks at 138, behind Algeria, Tunisia, and Mauritania. This was confirmed by the report published by Freedom House on the subject. In 2012, we have witnessed a number of physical aggressions against journalists carrying out their duties, particularly in the repression of the 20 Février demonstrations (...), while some journalists still have their press passes withheld arbitrarily, others have seen theirs confiscated arbitrarily, and numerous newspapers have been denied entry to Morocco by a decision of the Ministry of Communication (...).”<sup>59</sup>*

A number of human rights activists and groups have been calling for a comprehensive review of the Press and Publications Law that would abolish custodial sentences and reduce financial fines as they compromise the survival of the press in Morocco. In March 2013, the Minister of Communication issued a statement renewing the state’s commitment to abolish “custodial sentences” in the press law, indicating that he had commissioned an “experts’ advisory committee including representatives of the press, publishers, civil society actors, and human rights activists with diverse positions and opinions. The aim of the committee is to support the adoption of a new press law.<sup>60</sup> Until the time of writing, there has been no development in this regard.

<sup>57</sup> Art. 41, of the Press and Publication Law.

<sup>58</sup> Art. 42, of the Press and Publication Law.

<sup>59</sup> For more information, read the previously mentioned annual report on the state of human rights in Morocco in 2012, which was published by AMDH in July 2013.

<sup>60</sup> For more information, read the article entitled “وزير الاتصال: الدولة ملتزمة بإلغاء ‘العقوبات السالبة للحرية’ من قانون الصحافة” (The Minister of Communication: “The State is Committed to the Abolishment of ‘Custodial Sentences’ from the Press and Publication Law”) published in Al-Akhbar Al-Yawm (Moroccan daily), Issue 1013 of the eighteenth of March 2013.

## B. Freedom of audiovisual broadcasting

Since 2002, the audiovisual broadcasting sector has witnessed a number of legislative reforms. Under the title or “liberalizing the sector and ensuring the right of access to information as an essential prerequisite to the exercise of freedom of expression,”<sup>61</sup> and with the aim of ending state monopoly over audiovisual broadcasting, Law No. 1-02-212 was enacted on the thirty-first of August 2002 and led to the formation of a committee for audiovisual communication. Then, on the seventh of January 2005, Law No. 1-04-257 came to regulate the different aspect of the audiovisual sector.

In the first few articles, the law already states restrictions on the freedom of audiovisual broadcasting. In Art. 3, of Law No. 1-04-257, we read the following:

*“Audiovisual broadcasting is to be free. This form of freedom is to be exercised within the limits of respect to human dignity and freedom, and the intellectual property of others, but also in respect to principles of diversity and pluralism in all forms of expression, namely in opinion and thought, and the **respect of religious values, public order, morality, and national security requirements**. Also to be taken into considerations are technical and infrastructural restrictions of such communication means, as well as the need to develop the national, audiovisual production industry.”*

Furthermore, Art. 9, of the same law, prohibits the integral or partial broadcasting of programs that **“violate the tenets of the Kingdom of Morocco as defined in the constitution, namely those relating to Islam, territorial integrity, the monarchy, or public morals.”**

Practically speaking, the Moroccan legislation enshrined **prior censorship** on audiovisual broadcasting by requiring licensing for institutions and prior authorization for content at the following levels:

- All forms of creation or utilization of broadcasted audiovisual content requires **prior authorization**, regardless of the technology used;

- Organizers of time-bound cultural, commercial, or social events are required to obtain **prior authorization** before broadcasting audiovisual content, this includes festivals, exhibitions, fairs, and public fundraising events.<sup>62</sup>

<sup>61</sup> For more information, read the Press and Publication Law, amendment No. 1-02-212 of the thirty-first of August 2002, which established the High Authority on Audiovisual Broadcasting.

<sup>62</sup> Art. 13, 14, and 29, of the Audiovisual Broadcasting Law.

The required conditions for obtaining a prior authorization include considerations of **national defense and general security**.

In fact, the High Authority on Audiovisual Broadcasting is the party authorized to issue the above-mentioned licenses and permits. It is also assigned both consultative and regulatory functions.<sup>63</sup> The content of the law also reveals the extent to which it is dependent on the royal, legislative, and executive authorities of the country. As indicated in Art. 6 of: "The High Authority on Audiovisual Broadcasting comprises nine members. His Highness (the King) appoints the president and four members, while the Prime Minister appoints two, for a mandate of five years, renewable only once. The Speaker of the Parliament and the President of the Moroccan House of Councillors appoint one member, for the same mandate as the members appointed by the Prime Minister."<sup>64</sup>

Thematic experts and civil society representatives have been excluded from the process. In this regard, we also cannot ignore the abuses reported by human rights defenders in this field, who describe the situation as "characterized by the monopoly of some and the exclusion of others, as well as the dominance of the state, and its utilization for political propaganda. In fact, it does not fulfill its role in serving public interests, education, entertainment, news, and awareness of human rights values."<sup>65</sup>

### C. Legal restrictions on freedom of opinion and expression

Legal restrictions on freedom of expression come in two forms. First, we have the regulatory texts dedicated to specific forms of media, for instance the press or audiovisual broadcasting, which we have mentioned above. Then, there are general provisions, including provisions in the penal code which we will be addressing now.

Under the title "Contempt and Assault against a public official", the penal code sets a prison sentence of one month to one year and a fine of 250 to 5'000 MAD for anyone who intends to "infringe on **the honor, feelings, or due respect of magistrates, public officers, police agents or officers while on duty, or because of the performance of their duties**. Infringements include words, gestures, threats, sending or delivering objects, as well as writings or drawings even when not made public. If the act of contempt is made against one or several magistrates or jurors during a hearing, the prison sentence will be one to two years."<sup>66</sup> The same penalties are applicable to:

- Acts, statements, and writings done in public with the intention to influence the decision of a judge, before the delivery of an irrevocable sentence;
- Acts, statements, and writings done in public with the intention of discrediting judicial decisions, which are in contempt to judicial authority and independence.<sup>67</sup>

<sup>63</sup> Art. 3, of Law No. 1-02-212 issued on the thirty-first of August 2002, indicates the functions of the High Authority on Audiovisual Broadcasting.

<sup>64</sup> For more information on the work of the High Authority, the reports it publishes, and the provisions regulating its work on the following page: <http://www.haca.ma/indexAr.jsp>

<sup>65</sup> For more information, read the previously mentioned annual report on the state of human rights in Morocco in 2012, which was published by AMDH in July 2013.

<sup>66</sup> Art. 263, of the penal code.

<sup>67</sup> Art. 266 of the penal code.

Under the title "Insult to the Flag or Other Symbols of the Kingdom", the penal code sets a prison sentence of six months to three years and a fine of 10'000 to 100'000 MAD to anyone who insults the flag or any other symbol of the Kingdom. Perpetrators may also be punished with the frustration of some of their national, civil, or familial rights, for a period of one to ten years; whereas their right to reside in the country may be frustrated for two to ten years. Furthermore, any display of praise to a crime of insult to the Moroccan flag and symbols, and the incitement to such acts, are punishable with a prison sentence of three months to ten years and a fine of 20'000 to 200'000 MAD; this may be done by means of statements, speeches, or threats verbalized in public places or meetings, or through publications that are distributed or offered for sale, or displayed in public places and meetings, or presented to the public through traditional or electronic media platforms.<sup>68</sup>

Under the title "Violation of a Person's Honor and Reputation, and Disclosure of Secrets", the penal code defines libel and insult as follows:

- Any allegation or attribution of an act that **harms a person's honor and reputation** of the person or the group to whom it was attributed;
- Any **offensive or contemptuous term** or piece of invective which does not relate to a specific act.<sup>69</sup>

**It goes without saying that terms like "honor", "reputation", "offensive term", or "contemptuous term" can be interpreted to mean different things and used to prosecute, convict, and imprison people.**

As for the disclosure of secrets, the legislator only criminalized instances in which an employee discloses, or attempts to disclose, factory secrets. In other words, it does not differentiate between the secrets that cause damage to the employer mainly, and those that would serve public interest (regardless of whether or not it causes damage to the private entity).<sup>70</sup> Such a provision mainly deters employees from uncovering evidence of corruption and mismanagement of funds.

### 2. Freedom of assembly and peaceful organizing

In this section we will address, first of all, the legal framework governing freedom of assembly, which includes the freedom of peaceful demonstration and mobilization. Then, we will study the legal framework that governs the work of NGOs, including human rights organizations.

As the name implies, the Public Assembly Law of the fifteenth of November, 1958, governs the conditions for public assemblies. This law is guided by the principle of free assembly and the exclusive declaration, as opposed to systems of prior authorization and licensing.

<sup>68</sup> Art. 267 (1), of the penal code.

<sup>69</sup> Art. 442 and 443, of the penal code.

<sup>70</sup> Art. 447, of the penal code.

The law defines a public assembly as any temporary, planned, and public gathering, which discusses matters set in an agenda, and is open to anyone. A public assembly is a right that is guaranteed to everyone and, therefore, does not require prior authorization or license, as long as the declaration of the activity is made public and includes the following information:

- Date, time, and location of assembly;
- Subject of the assembly;
- Signatures, names, roles, addresses, and copies of the identity cards of three individuals.

The declaration, along with all the required information, is to be delivered to the geographically relevant authorities. The latter will, in return, hand over a dated receipt notice. If it turns out to be difficult to deliver the declaration in person, the document may be mailed using a secure mailing service, along with a receipt notice from the authorities in place.

In theory, the only restriction on the practice of the freedom of assembly is the minimum period that needs to separate between the deposition of the declaration and the date of the assembly. This period is set for twenty-four hours if the deposition is in person, and forty-eight hours if it is done by mail.<sup>71</sup>

Reality, on the other hand, is different. Authorities have managed to transform the declaration system, which guarantees the freedom of assembly, into a prior authorization system. In fact, authorities delay the return of the delivery notice, or refuse to give it all together. In some cases, security forces prohibit some gatherings and demonstrations, or resort to intimidation and violence to repress them. This has particularly been the case after the 20 Février movement, as shown below:

*“As for the freedom of assembly and demonstration, numerous demonstrations were banned this year, some were repressed using extreme forms of violence. This has particularly been the case for demonstrations organized by the 20 Février movement, namely the Celebration of Allegiance to Freedom and Dignity, in August 2012; the sit-in demanding a review of the royal budget, on the eighteenth of November; the march organized by the Moroccan Labor Union in Rabat on the twenty-ninth of February 2012; as well as demonstrations by a number of deactivated trade unions, or citizens in marginalized areas against neglect and land-grabbing. We have recorded a constant increase in the frequency of violent repression of peaceful demonstrations at the hands of security forces. Despite the statement that was made by the Minister of Justice and Freedoms in which he acknowledged that public agents have broken the law during demonstrations, when intervening against citizens, he has commissioned no investigations in this regard. Authorities have also been adopting a security approach against social movements in different areas, often resorting to extreme violence to silence dissenting voices, as well as grave human rights violations in an environment of absolute impunity and non-accountability, there has not even been any investigations in serious violations such as torture, extreme violence against the individuals and detainees, raids on homes and businesses, accompanied by brutalization of those in them, vandalism, looting, threats of rape, and verbal abuse that included insults, humiliation, and racist slurs against the population.”<sup>72</sup>*

<sup>71</sup> Art. 2 and 3, of Public Assembly Law issued on the fifteenth of November 1958.

<sup>72</sup> For more information, read the previously mentioned annual report on the state of human rights in Morocco in 2012, which was published by AMDH in July 2013.

Finally, though the new constitution guarantees the right to join labor unions, regulatory laws have not been developed. As a result, authorities, including law enforcement and general prosecution, target labor rights activism using a provision in the penal code that punishes with one month to one year in prison and/or a fine of 200 to 5'000 MAD anyone who calls for a strike, or for a continuation of one, and anyone who tries to do so using damage, violence, threats, or fraud with the intention to force employers to raise wages, reduce them, or cause damage to others' right to work or engage in industrial activities.<sup>73</sup>

The same strategy is used in the case of NGOs. The Associations Law of fifteen October 1958, in theory, guarantees the freedom to start an organization without prior permission, as long as it follows the declaration protocol detailed in the text.<sup>74</sup>

According to the Associations Law, every organization needs to submit a declaration at the local governance authority for the area in which it will operate. The governance authority will then be in charge of sending the file to the general prosecution area of the area. If the content of the declaration is in order, the final receipt should be delivered within sixty days, if the competent authority fails to do so within the set timeframe, the organization is legally allowed to operate according to the declared objectives.

The required information in a declaration are the following:

- Name of the organization and objectives;
- Personal coordinates and positions of founding members;
- Copies of each founding member's identity card;
- Address of the organization's headquarters.

The local governance authority is required to handover a dated and stamped receipt notice.<sup>75</sup>

As it is the case with restrictions on freedom of assembly, local governance and other relevant authorities often stall with the delivery of the receipt notice, if delivering at all. As a result, we would often hear the term “prohibited organizations” within public discourse, a concept that has no legal basis whatsoever. Eventually, the National Human Rights Council (Conceil national des droits de l'homme – CNDH), along with some international human rights organizations, were compelled to submit a letter to the Moroccan state, urging it to respect and duly implement the provisions of the law, namely when it comes to the associations that have challenged the competent authorities' refusal to hand over receipt notices and, therefore, legally recognize their presence in spite of supporting judicial judgements.<sup>76</sup>

<sup>73</sup> Art. 228, of the penal code.

<sup>74</sup> Art. 2, of the Associations Law issued on the fifteenth of November 1958.

<sup>75</sup> Art. 5, of the Associations Law of the fifteenth of November 1958.

<sup>76</sup> For more information, read “ مجلس حقوق الإنسان المغربي يطال الرباط بالتخييص للجمعيات المحظورة ” (National Human Rights Council Demands the Moroccan State to Issue Licenses for the Prohibited Organizations), published on the twentieth of November 2013, and available on the following page: <http://www.france24.com/ar/20131120->

In addition to encroaching on the law to practically impose a permission system on NGOs, the legislator has imposed a number of restrictions on freedom of assembly, namely the clause that declares void any organization with **“objectives that go against laws or public morality; or undermining Islam, the integrity of national territory, or the monarchy; or calls for any form of discrimination.”**<sup>77</sup> Clearly, the first part leaves a large margin of discretion and “legalizes” violations that undermine freedom of association.

Finally, one of the clauses of the Associations Law allows for the dissolution of an organization by a non-justiciable degree, thus rendering the law obsolete, in clear contradiction with the principle of freedom to establish an organization, a right that can only be overridden through a court order and in accordance with the principles of freedom.<sup>78</sup>

### **3. Right of Access to Information**

Art. 27, of the constitution, now guarantees the right of access to information, verbalizing it as follows:

“Citizens have the right of access to information held by the public administration, elected institutions, and the organs invested with missions of public service.

The right to information may only be limited by the law, with the objective of assuring the protection of all which concerns national defense, the internal and external security of the State, and the private life of persons, of preventing infringement to the fundamental freedoms and rights enounced in this constitution and of protecting the sources and the domains determined with specificity by the law.”

However, the new constitution has not yet been accompanied by any amendment to the national laws. Calls for the amendment of regulatory legislation have been met with silence or resistance, in spite of the central role freedom of association plays in uncovering and fighting corruption and mismanagement of public funds, and holding perpetrators accountable. On the contrary, authorities regularly persecute and prosecute those who expose corruption on the basis of the provisions criminalizing the disclosure of secrets, mentioned above.

<sup>77</sup> Art. 3, of the Associations Law issued on the fifteenth of November 1958.

<sup>78</sup> Art. 3, of the Associations Law issued on the fifteenth of November 1958.

### **III. Case study**

This study shows that the Moroccan model, if compared to the Tunisian and Lebanese models, remains greatly conservative when it comes to the addressing issues of sexual liberties, both in the margin of discussion and how far one can take the conversation. This becomes evident when one looks at the almost complete absence of research, studies, or reports on the subject. In this vacuum, social and new media platforms become the only space available for activist groups to voice their concerns and demand their rights.<sup>79</sup>

This is the case of the group MALI, an alternative movement for individual freedoms which, to the best of our knowledge is one of the few groups fighting for individual and sexual freedoms in Morocco. Last May, two men were sentenced by the court in the city of Temara, near the capital, for engaging in “sexual perversion” after they were caught “engaging in sexual acts in a car.” They were sentenced for four months in prison under Art. 489, of the Penal Code. The defense lawyer was quoted in one newspaper interview saying he tried his best to “acquit” himself of the “suspicion” of being homosexual himself.<sup>80</sup> According to a member of the organization MALI, the subject of personal freedoms, particularly when it comes to sexual freedoms, remains a big taboo in the Moroccan society, even within human rights groups.

In October 2012, in parallel with the arrival of the ship “Women on Waves” - a Dutch ship that wanted to provide safe abortions for women in Morocco- two MALI members were arrested while in the company of a Dutch woman. The interrogation they were subjected to focused on MALI’s objectives, how they coordinated the arrival of the “abortion ship”. Investigators resorted to tactics that were demeaning and provocative, using the activists’ political background and the parties behind their movements.<sup>81</sup>

<sup>79</sup> For more information, read Zahir Rahman (2012) “Online political activism in Morocco: Facebook and the birth of the February 20th movement”. In this paper, the author compares three movements that started online since 2009.

<sup>80</sup> <http://www.foxnews.com/world/2013/05/21/2-moroccan-men-convicted-being-homosexual-sentence-to-4-months-in-prison/>

<sup>81</sup> <https://www.lakome.com/> & <http://www.aswatmag.com/>



